PUT WRONG ON THE SCAFFOLD
AND TRUTH ON THE THRONE:
The Women’s International War Crimes Tribunal

Indai Sajor
Philippines

8th Annual Dame Nita Barrow Lecture
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THE DAME NITA BARROW DISTINGUISHED VISITORSHIP

Ontario Institute for Studies in Education of the University Of Toronto

The Dame Nita Barrow Distinguished Visitorship in Women in Development and Community Transformation was launched by the Ontario Institute for Studies in Education of the University of Toronto (OISE/UT) in 1997. The Visitorship recognizes the remarkable contributions of Dame Nita Barrow, former Governor-General of Barbados and graduate of the University of Toronto.

The Distinguished Visitorship creates an opportunity for a woman from the “majority world” to be in residence at the University for six months each year working in the Centre for Women’s Studies in Education and the Department of Adult Education and Counselling Psychology. Each visitor offers a course that calls on her particular area of interest and experience, dealing with the current issues of women in development, and community transformation in a global context and from a Southern perspective.

This is the text of the Dame Nita Barrow lecture presented by the

Distinguished Dame Nita Barrow Visitor
DAME NITA BARROW
(1916-1995)

“Lost is a true daughter of the soil”
- Erskine Sandiford, Former Prime Minister of Barbados

The late Dame Nita Barrow, former Governor-General of Barbados, studied nursing at the University of Toronto from 1944 to 1948.

She served at various times as the world wide President of the Young Women’s Christian Association, the World President of the International Council for Adult Education, President of the World Council of Churches, and Barbados Ambassador to the United Nations. A member of the Global Fund for Women’s Board of Directors, Dame Nita was also a member of the Commonwealth Eminent Persons Mission to South Africa in 1986 and the Convenor of the NGO Forum for Women at the United Nations World Congress on Women in Nairobi in 1985. In all these capacities Dame Nita championed the causes of justice, equality, peace, and the empowerment of women. With high government office, diplomacy, and statescraft, she linked grass roots initiatives and loyalties and was a tower of strength to local and world-wide movements inspired by her spirit of activism, compassion, brilliance, common sense and joy.

Dame Nita’s life was an outstanding example of dedication, commitment and selfless service to women, men and children, especially the poor, dispossessed and disadvantaged.
The Women’s International War Crimes Tribunal for the Trial of Japan’s Military Sexual Slavery was convened in December 2000, at the very end of the 20th century. It was a culmination of more than a decade of work and sacrifices by the victimized survivors and on behalf of the victims who have not survived. The Tokyo Tribunal was established as a result of the failure of the states to discharge their responsibility to ensure justice for the former “comfort women” (Tokyo Tribunal Judgment).

The aims of the organizers were more than dramatic. Our objective was to fix legal responsibility on the Japanese government in accordance with International Humanitarian Law. This objective was framed within the larger reason of treating crimes of sexual violence and sexual slavery as grave and egregious violations punishable under international law. We were motivated by the conviction that the failure of the state to acknowledge its responsibility or worse deny it, should not silence the voice of the victims nor obscure public knowledge and accountability for such crimes.

This Tribunal was established out of the conviction that these failures must not be allowed to silence the voices of survivors nor allow the state of Japan to escape accountability for these crimes against humanity. It was established to redress the historic tendency to trivialize, excuse, marginalize, and obfuscate crimes against women, particularly sex crimes, and even more so when they are committed against women of subordinated ethnicities. This Tribunal was established out of the belief, expressed repeatedly by the brave yet tormented survivors now in the latter stages of their lives, that acknowledging and assigning responsibility for the crimes will help to ensure that they live out their remaining years with greater peace and security; and further, that the state of Japan will come to recognise its responsibility to seek the forgiveness of survivors and to provide them with reparations. This Tribunal is the product of an uncompromising hope that justice is still possible and that such atrocities will never be repeated (page 2, para 6, Tokyo Tribunal Judgment).

The authority for this Tribunal comes not from a state or intergovernmental organization but from the peoples of the Asia-Pacific region, and indeed, the peoples of the world to whom Japan owes a duty under international law to render account. Further, this Tribunal steps into the lacuna left by states and does not claim to replace their role in the legal process. The power of the Tribunal, like so many human rights initiatives, lies in its
capacity to examine the evidence, develop an accurate historical record, and apply principles of international law to the facts as found. The Tribunal calls upon the government of Japan to realise that the greatest shame lies not in this recording of the truth about these crimes, but in its failure to accept full legal and moral responsibility for them (page 2, para 8, Tokyo Tribunal Judgment).

In addition to the testimonies of the victim-survivors, the Tribunal heard and received in written form the testimonies of historians, of legal experts and psychologists, and of two former Japanese soldiers who testified about their participation in rape crimes and in the “comfort women” system. The Tribunal received documentary evidence from memoirs of officials involved in the war and from the limited official documentation available to the public. The Tribunal considered a small number of documents which, having survived the Japanese military’s pre-surrender destruction of documents, had been discovered by researchers or voluntarily released by the government of Japan or other states (page 9, para 44, Tokyo Tribunal Judgment).

Organizing the Tokyo Tribunal

The first historic meeting of the judges and prosecutors took place in The Hague in October 2000. The Convenors Yune Chung Ok of Korea, Yayori Matsui of Japan and Indai Lourdes Sajor of the Philippines were in agreement that the Tribunal would be framed as an international human rights initiative of civil society. They proceeded to set up an International Organizing Committee (IOC) consisting of the victimized countries: North and South Korea, The Philippines, China, Taiwan, Japan, Malaysia and Indonesia. The conveners then faced the task of identifying judges, chief prosecutors, legal advisers, historians and an advisory council from the international human rights movement. They succeeded in attracting the support of a number of imminent personalities including Judge Gabrielle Kirk McDonald (former presiding judge of the Yugoslavia War Crimes Tribunal), Judge Carmen Argibay (sitting judge in Argentina), Christine Chinkin (renowned international law expert on gender) and Willy Mutunga (international lawyer and human rights law expert).

The Charter for the Tribunal was codified through a series of meetings among the lawyers, human rights activists and legal experts from many countries. The preparation of the statutory form of the Charter took more than a year to finalize with meetings held in Shanghai, Tokyo, Seoul and Manila from 1999-2000, finally approved at the meeting in Manila in June 2000.

The preamble to the Charter of the Women’s Tribunal reads:

“Witnessing the passage of the 20th century without any justice done to women victims and survivors of sexual slavery committed by the Japanese Military in various Asian countries under its colonial domination and military occupation before and during the Second World War, being one of the most horrendous forms of wartime sexual violence known in this century… Desiring to hold a Women’s International War Crimes Tribunal 2000 for the Trial of Japanese Military Sexual Slavery, the primary task would be to bring out truths and to establish the legal responsibility of the states and individuals involved in sexual violence, especially
the sexual slavery of the “comfort women” at “comfort stations” perpetrated by the Japanese Imperial Army in connection with Japan’s colonial domination and war of aggression throughout the Asia Pacific region…”

Article 2 of the Charter states that the Jurisdiction of the Tribunal is as follows:

“The Tribunal shall have jurisdiction over crimes committed against women as war crimes, crimes against humanity and other crimes under international law and shall cover all countries and regions that were colonized, ruled or under the military occupation of, and to all other countries that were similarly victimized by Japan before and during the Second World War. These crimes include, but are not limited to, the following acts: sexual slavery, rape and other forms of sexual violence, enslavement, torture, deportation, persecution, murder and extermination.”

Article 3 of the Charter states that the Individual Criminal Responsibility is as follows:

“A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Article 2 of the present Charter shall be individually held responsible for the crime. Those who have concealed the crimes in Article 2 shall be held individually responsible.”

Article 4 of the Charter is on State Responsibility:

“State responsibility arises from the following: commission of crimes or acts as referred to in Article 2 by military forces, government officials and those individuals acting in their official capacity; acts or omissions by states such as (i) concealment, denial or distortion of the facts or in any other manner its negligence or failure to meet its responsibility to find and disclose the truth concerning crimes referred to in Article 2; (ii) failure to prosecute and punish those responsible for said crimes; (iii) failure to provide reparations to those victimized; (iv) failure to take measures to protect the integrity, well being and dignity of the human person; (v) discrimination based on such grounds as gender, age, race, color, national, ethnic or social origin or belief, health status, sexual orientation, political or other opinion, wealth, birth or any other status; and (vi) failure to take necessary measures to prevent recurrence.”

The Tribunal was held in Tokyo from December 8-10, 2000 and heard testimonies from survivors, experts, perpetrators and the prosecutors. The International Organizing Committee (IOC) and the Registry of the Tribunal served the Prime Minister of Japan with notice of the Tribunal on Japan’s Military Sexual Slavery on November 9, 2000, including an invitation to participate in the proceedings and hearing of the Tribunal. The government of Japan did not respond.

The Tribunal was attended by sixty-four survivors from the victimized countries of North and South Korea, the Philippines, Indonesia, China, Taiwan, East Timor, and the Netherlands. Prosecutors representing the victimized countries presented volumes of well-documented evidence, which included historical documents, visuals of former comfort stations, military documents on the rules and obligations of the comfort stations, visuals of
former Comfort Women and corroborating statements and historical research. This evidence was presented systematically and continuously backed by victims’ testimonies.

The Tribunal also heard the testimony of legal experts, psychologists and historians. Expert witnesses contributed to shattering the myths surrounding the Japanese military. For example, Yamada Akira, Professor at Meiji University, demonstrated that the Emperor as Supreme Commander not only received detailed reports on the situation of the Japanese Imperial Army in the occupied territories but also gave orders on military operations, shattering the illusion that he knew nothing of the happenings on the ground, including of the Comfort Women. Professor Yoshimi Yoshiaki of Chuo University, who has written numerous books on the systematic setting up of comfort stations to service Japanese soldiers all over Asia, also linked Emperor Hirohito to the responsibility of the establishment of the comfort stations.

Again, professor Hayashi Hirofumi of Kanto Gakuin University presented evidence on the hierarchy, structure and organization of the Japanese Imperial Army, providing a clear picture of the command responsibility and discipline inherent in Japanese military culture. In testimonies from two former Japanese Imperial soldiers, they admitted their personal complicity in rapes and in the ‘comfort station’ system in China. A number of pieces of documentary evidence from memoirs of soldiers and officials were also presented to the court.

Another expert witness, Professor Fritz Kalshoven from The Netherlands, a well-known international lawyer, addressed the issue of state responsibility and the responsibility of the Japanese government to pay reparation in cases of the Comfort Women. Lepa Mladjenovic, Director of the Autonomous Women’s Center Against Sexual Violence in Belgrade, clearly testified to the long-term impact of sexual violence on women and spoke of the need for punishing the perpetrators as an important condition for initiating a process for the survivors.

**False “Apology”**

To this day, the government of Japan has been failing to commit an act that can be recognized by many survivors as full and sincere apology. This is clearly shown by the fact that many of them strongly demand apology from the government of Japan even today, and that some of them go even as far as claiming it in court.

The alleged expression of “its apologies and remorse to the former ‘wartime comfort women’” on the part of the government of Japan has been performed in two different forms. One of the two categories is those statements made to the public at political or diplomatic occasions. One must note that this is not made to the individual victims or their close associates directly. The only expression made directly to the individual survivors is the so-called “letter expressing apologies and remorse” singed by the Prime Minister on behalf of the government, but this is given only to those survivors who accepted the “atonement money” provided by the AWF. The majority of women survivors, including those who have rejected the AWF’s “atonement project” or their “atonement money,” and those who
are outside the AWF’s “atonement projects” such as those in the countries where the
projects are not designated, have not received even this token “apology” as an individual.

The biggest reason why the women survivors do not accept the Japanese government’s
alleged “apology” as genuine is because the government has never ever accepted its own
legal responsibility for the matter. The expression of the government which is translated in
English as “apology and remorse” artfully avoids the use of the words with any hint of guilt
in the original Japanese text.

Further, the government of Japan to this day has never made any effort whatsoever to
identify and prosecute the perpetrators and those who were responsible for the crimes done
to these women, as well as the other war crimes that had not been indicted in the war
crimes trials in the aftermath of WW2 including the Tokyo Trial.

As such, the government of Japan repeats acts that most women survivors do not accept as
apology, continues the inactions that undermine its own alleged “apology,” and keeps
promoting both domestically and internationally that it has “apologized” despite the above,
thus keeps committing mental/emotional violation against the women victims today. The
women survivors want a sincere apology from the government of Japan more than anything
else so that their dignity may be restored, a wish that has never come true even to this day.

The Judgment

After four days of hearings, the Tribunal presented its Summary of Findings on 12th
December 2000, in which it acknowledged the courage of the survivors, recognized the
violations of international law and of humanitarian law by the state of Japan and more
importantly declared Emperor Hirohito guilty of Crimes Against Humanity. These
presentations were met with applause and jubilation. For the former Comfort Women, it
was the first sign of justice, long denied to them. Lola Tomasa Salinog from the
Philippines, after hearing the pronouncement remarked, “After ten hard years of seeking
justice, I have finally found it at the Women’s International War Tribunal. This is the first
trial to truly listen to us, to help us in our search for the truth and to restore our dignity.”
(Salinog was one of the first Filipino “comfort women” to file her case before the Tokyo
District Court in 1993. She lost her case in 1998 and then brought it to the High Court in
Tokyo. Four days before the Women’s Tribunal started, the Tokyo High Court handed its
decision dismissing her claim in less than 30 seconds). At the final judgment delivered at
The Hague on 4th December 2001, Salinog remarked: “Now we can really, really die in
peace.”

The Women’s International War Crimes Tribunal for the Trial of Japan’s Military Sexual
Slavery formally docketed Case No. PT-2000-1-T in the matter of The Prosecutors and the
Peoples of the Asian Pacific versus Hirohito Emperor Showa et al., it handed down its final
judgment in The Hague on December 4, 2001. The Tokyo Tribunal Judges found that
Counts 1 and 2 of the Common Indictment on Rape and Sexual Slavery in the “Comfort
System” constitute Crimes Against Humanity.
The Judgment finds the accused high ranking officials of Japan’s military and government, including the late Emperor Hirohito, guilty of crimes against humanity, and Japan responsible as a State for damages inflicted upon “comfort women.” The Judgment also recommends twelve measures that the Government of Japan should take, including official apology and full compensation based upon the acknowledgment of legal responsibility, research and investigation for fact finding and preservation of documentation, education for future generations, and prosecution and punishment of the perpetrators. The Judgment in which these recommendations are listed was directly handed to the Minister of Foreign Affairs Kawaguchi by the representative members of the Tribunal in June 2001, but the Government of Japan has shown no sincere response to the recommendation to date.

The Judgment states:

On the Positions Held by the Accused, the Judges of the Tokyo Tribunal found the following:

During the Second World War, the Emperor was the highest authority in Japan, a position carrying the ultimate power and influence; a Governor-General was charged with administrative functions and enforcement of laws over their appointed country, in the annexed territories of Korea and Taiwan and reported directly to the Emperor; a Commander was the head of the armed forces within his territory, and those holding the highest area positions reported to the Emperor; a Chief of Staff was the most senior administrator to the Commander of a territory who reported to and acted on behalf of the Commander; and the Minister of War was the government cabinet post responsible for all the armed forces.

The Judges note that each of the accused held either the highest or one of the highest level positions concerned with the war effort within the Japanese government or military from at least 1937 to 1945, during which time the “comfort station” system was continually expanded and maintained under the authority and for use of the Japanese military and this system was considered a critical component to the success of Japan’s war effort. With the sole exception of MATSUI, all of the accused held their positions of authority or influence for at least four years, some for considerably longer, and all held their positions during the time that rape and sexual slavery was institutionalized in the “comfort women” system.

Barring a consideration that exceptional circumstances exists, the above findings are more than sufficient to establish the guilt of the accused under Articles 3(2) and 3(1) of this Tribunal’s Charter for having knowingly participated in the “comfort system” despite being aware that criminal activity was endemic throughout the system and for failing to prevent crimes committed by subordinates.

On the Preservation of Memory, the Tribunal found:

That the efforts of the government of Japan to educate the people of Japan and future generations are sorely lacking in regard to the formal education through textbooks, official memorials, and commemorative days devoted to examining the history and engendering respect for the victimized women. Jose Zalaquett, a member of the Chilean Commission for Truth and Reconciliation, noted that if the
“ghosts of the past [are] not exorcised to the fullest extent possible, [they] will continue to haunt the nation. This is true in Latin America and it is true in Asia and elsewhere.

On Gender Training, Empowerment and Equality:

It is critical that the sexual enslavement of the “comfort women and girls” is not treated as an anomaly. Rather, the underlying ideology and political, economic and social structures which combine to validate women’s inequality and subordination and, thereby, immunize violence against women and girls in the public and private arenas, must be addressed at all levels of society. Efforts must be made to expose the attitudes and conditions contributing to the devaluation of women and to reverse such attitudes through broad education, training and support to women and girls to enable them to overcome the legacy of gender inequality.

On Restitution and Compensation:

It is incumbent on the government of Japan to take vigorous measures, in consultation with the survivors, to restore the honour and social status of the survivors. They must be restored in not only their own eyes, but also in the eyes of society. Additionally, restitution of material losses, such as repatriation of survivors who wish to be repatriated, the return of any property taken, or the return of remains of the deceased, would also provide a measure of remedy.

To be in compliance with international law, compensation must come from the source of the wrong-doer, the government of Japan and any other responsible party. The compensation must be adequate to the material harm, lost opportunities and emotional suffering of the victims, their families and close associates for the crimes committed and the ensuing harm resulting from the denial of truth and timely remedial measures. The Tribunal considers that the Asian Women’s Fund, vehemently rejected by many of the survivors, is neither appropriate nor adequate. Determination of the proper amount of compensation should be made in consultation with survivors, the families of those who are deceased and appropriate advocates and experts, and may draw upon international practice for similar or related atrocities.

The Judgment of the Tribunal made the following recommendations. It held that in order to fulfill its responsibility, the government of Japan must provide each of the following remedial measures:

1. Acknowledge fully its responsibility and liability for the establishment of the “comfort system,” and that this system was in violation of international law.

2. Issue a full and frank apology, taking legal responsibility and giving guarantees of non-repetition.

3. Compensate the victims and survivors and those entitled to recover as a result of the violations declared herein through the government and in amounts adequate to redress the harm and deter its future occurrence.
4. Establish a mechanism for the thorough investigation into the system of military sexual slavery, and allow for public access and historical preservation of the materials.

5. Consider, in consultation with the survivors, the establishment of a Truth and Reconciliation Commission that will create an historical record of the gender-based crimes committed during the war, transition, occupation, and colonisation.

6. Recognize and honour the victims and survivors through the creation of memorials, museums, and libraries dedicated to their memory and the promise of “never again.”

7. Sponsor both formal and informal educational initiatives, including meaningful inclusion in textbooks at all levels and support for scholars and writers. Efforts should be made to educate the population and, particularly, the youth and future generations concerning the violations committed and the harm suffered; research should endeavour to examine the causes of the crimes, societies ignoring of the crimes, and ways to prevent reoccurrence.

8. Support training in the relationship between the military and gender inequality and the prerequisites for realizing gender equality and respect for the equality of all the peoples of the region.

9. Repatriate survivors who wish to be repatriated.

10. Disclose all documents or other material in its possession with regard to the “comfort stations.”

11. Identify and punish principal perpetrators involved in the establishment and recruitment of the “comfort stations.”

12. Locate and return the remains of the deceased upon the request of family members or close associates.

**Conclusion of the Judgment**

1. Repeatedly in history, states have ignored crimes of sexual and gender violence committed against women in armed conflict violence. This failure is particularly reprehensible where justice is provided for other offenses. The failure of the of Allies to prosecute Japan’s military sexual slavery system denied the victimised women equal access to the law and perpetuated the view that their suffering did not merit equal disapprobation or that they were willing participants. This exclusion from justice in the immediate aftermath of the war played an unpardonable role in silencing and shaming the survivors and impeding their healing (page 264, para 1089).

2. It is our hope that the moral force of this Women’s International Tribunal and this Judgment will engage states as well as peoples of the world to bring Japan to recognise its responsibility to repair these atrocities, to right these wrongs, and to enable future generations to go forward on the basis of respect for women’s equality and dignity (page 264, para 1090).
3. The courage of the survivors, their yearning for justice, and their solidarity has inspired a worldwide movement for women’s human rights and against gender violence to ensure that such crimes never again be overlooked nor allowed to occur. That crimes against women have begun to be prosecuted in the recently established international criminal tribunals and have been codified in the Rome Statute of the International Criminal Court is one of the fruits of their efforts and has laid the foundation for ending impunity for violence against women (pages 264, para 1091).

4. This Tribunal makes clear that if states fail to fulfill their duty to investigate, prosecute, condemn and punish the perpetrators of crimes against women and to provide the full range of reparations to victims in timely fashion, then the women and peoples of the world will step into the chasm and call both the wrongdoers and the world to account. Survivors, their families and loved ones, activists, researchers, lawyers, translators and scholars from many countries, including, importantly, Japan the victimiser country, have united to make this Tribunal possible. In doing so, they have shaped a new and powerful mechanism of justice (page 264, para 1092).

5. The crimes committed against these survivors remain one of the greatest unacknowledged and unremedied injustices of the Second World War. There are no museums, no graves for the unknown “comfort woman,” no education of future generations, and there have been no judgment days, for the victims of Japan’s military sexual slavery and the rampant sexual violence and brutality that characterised its aggressive war (page 264, para 1093).

6. Accordingly, through this Judgment, this Tribunal intends to honour all the women victimized by Japan’s military sexual slavery system. The Judges recognise the great fortitude and dignity of the survivors who have toiled to survive and reconstruct their shattered lives and who have faced down fear and shame to tell their stories to the world and testify before us. Many of the women who have come forward to fight for justice have died unsung heroes. While the names inscribed in history’s page have been, at best, those of the men who commit the crimes or who prosecute them, rather than the women who suffer them, this Judgment bears the names of the survivors who took the stand to tell their stories, and thereby, for four days at least, put wrong on the scaffold and truth on the throne1 (page 264, para 1093).

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1 Judgment, Women’s International War Crimes Tribunal.
References


INDAI SAJOR is an internationally known activist and educator in the field of women’s human rights. She is currently Senior Advisor of the International League for Human Rights in New York, and was in 2003-4 a Rockefeller Fellow on Human Security and Gender at the City University of New York. She is Founder and former Executive Director of Asian Women’s Human Rights Centers, and has been Executive Director of the Women’s Caucus for Gender Justice at the International Criminal Court. In 2001, Indai organized a conference on “Justice and Accountability: Obstacles and Strategies toward International Justice, Peace and Security after September 11.” From 1998 to 2001, she served as co-convener of the Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery, a landmark initiative to redress the Japanese military’s sexual enslavement of women from nine Asian countries and recognize sexual violence against women as a crime against humanity. Indai documented the experiences of Filipino Comfort Women, eventually filing a case against the Japanese government for its abuses in April 1993. Much of her career has been devoted to articulating and training others to defend women’s human rights throughout Asia and Africa, and to documenting women’s human rights violations in situations of armed conflict. She has made formative contributions to numerous regional and international feminist networks, among other things in their work connecting and mobilizing women around United Nations world conferences on Human Rights (Vienna 1993), Population (Cairo 1994), Social Development (Copenhagen 1995) and Women (Beijing 1995). Her numerous publications include The Impact of Chemical Warfare into the Reproductive Rights of the Women and Men in Vietnam (2000, co-edited with Le Thi Nham Tuyet), Common Grounds: Violence Against Women in War and Armed Conflicts (1998), Women and Human Rights and the Challenge of HIV/AIDS (1994), Seizing the Alternative to Forge a Better Future (1994).