

## Discrimination in the field of reproductive rights in Japan



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Dear Committee members,

As one of the States parties to the Convention, Japan presented a periodic report on September 5, 2014 (CEDAW/C/JPN/7-8) to fulfill its obligations under Article 18 of the Convention. The report will be considered during the 63rd CEDAW preessional working group in July 2015.

This NGO Shadow Report is an attempt to describe discrimination in the field of reproductive sexual rights in Japan, especially regarding the criminalization of abortion, with the goal of assisting the Committee's evaluation of Japan's compliance with CEDAW provisions and ultimately improving Japanese women's lives.

This Shadow Report is intended to complement the periodic report submitted by the Japanese government. Our aim is to provide specific information regarding the legal situation women are facing in Japan. We would especially like to highlight the points below, focusing on discrimination in the field of reproductive and sexual rights in Japan, with particular attention to reproductive rights issue. Space Allies, an independent nongovernmental organization, has worked extensively with government initiatives to amend laws to guarantee women's reproductive sexual rights.

We hope that the Committee will consider the following information during their meeting to review the Japanese government's compliance with its obligations, and that the questions will be included in your list of issues and concluding observations.

### **Background of women's rights in Japan in the current political context**

The current third Abe administration has made a little progress and a lot of setbacks in the field of women's rights with many competing elements from the point of view of neo-liberal economic growth, government-led countermeasure to the falling birthrate, and containment policy of the social welfare, and which has seen reactionary patriarchy and militarism.

Groups which support the current administration set many goals which impede the progress in women's rights; goal to maintain and reinforce negative gender stereotype (including in the field of

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education, denial of equal participation based on the belief that gender has its own set of characteristics and this should be maintained, disapproval of women's autonomy and independence), opposition to the revision of the Civil Code to achieve equality between women and men, minimization of violence against women, minimization of discrimination against women and for its countermeasure, opposition to tentative special measure, opposition to reproductive health and rights, denial of the issue of "Comfort Women"

This report focuses on the situations surrounding abortion issue amongst all women's issues in Japan.

### **Background of the abortion issue**

There are a number of politicians in the current administration which has a stance such as mentioned above. National Public Safety Committee Chairperson and the Cabinet Office Minister of State for Special Missions Yamatani Eriko claimed that reproductive rights are not acceptable in Japan, where there is a penalty for women who has an abortion, in the House of Councilors Committee on Foreign Affairs and Defense on 29 March, 2005. She also opposed sex education and stated that sex education should not be given until after marriage. Cabinet Office Minister of State for Gender Equality, Haruko Arimura strongly opposes abortion and has declared her position (such as at the talk organized by anti-abortion group "Angel's Smile" on 31 May, 2009).

There is a danger that situations surrounding this issue may deteriorate, and it is very unlikely that there will be an improvement following para 50 on women's health of the last Concluding Observation of CEDAW in 2009. The number of abortion in Japan is approximately 200,000 cases a year, and estimates for unwanted pregnancy (including pregnancy which the women got pregnant at the timing of their lives when they do not wish) would be even greater, and it's a serious problem for women living in Japan.

The (governmental) Fourth Basic Plan for Gender Equality will be drawn up in 2015, and an influential and conservative Committee member Shiro Takahashi submitted his opinion on reproductive health/rights and sex education, and he states that the governmental Committee needs to summarize the reproductive rights issue "in a balanced way", which means disapproval and oppression of sexual reproductive health and rights. It's more likely that there will be a setback for the Fourth Basic Plan for Gender Equality compared with the Third Basic Plan for Gender Equality.

On the other hand, abortion issue is an issue difficult to share even among those who have had an experience of abortion. It has been discussed more in relation to religion, morality, and medicine, and it has not been regarded so much as women's rights.

Many of the following items are included in the last CEDAW's Concluding Observation in 2009, but the government does not take heed of any of these, and we request strong recommendation from the Committee once again.

### **Specific issues**

#### **1. Abortion in the Penal Code**

It was recommended in the article 50 of the previous Concluding Observation that the government

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should remove the provision in the Penal Code, which penalize women who had an abortion (article 212 and the Article 214 which penalize professionals who cause women's abortion). However, the government report for the periodic review in 2014 (para 359) says that "it is not appropriate to remove the provision which penalize the abortion."

**(Proposed question for List of Issues) Please provide an answer as to government's plan to remove this provision, given that it is discriminatory against women, and it forms a high barrier for women's access to necessary insurance for healthcare.**

### *Articles of the Penal Code*

*Article 212 When a pregnant woman causes her own abortion by drugs or any other means, imprisonment with work for not more than 1 year shall be imposed.*

*Article 213 A person who, at the request of a woman or with her consent, causes her abortion, shall be punished by imprisonment with work for not more than 2 years. If the person thereby causes the death or injury of the woman, the person shall be punished by imprisonment with work for not less than 3 months but not more than 5 years.*

*Article 214 When a physician, midwife, pharmacist or pharmaceuticals distributor, at the request of a woman or with her consent, causes her abortion, imprisonment with work for not less than 3 months but not more than 5 years shall be imposed. If such person thereby causes the death or injury of the woman, imprisonment with work : imprisonment with work for not less than 6 months but not more than 7 years shall be imposed.*

## **2. Maternal Protection Act**

Maternal Protection Act Article 14 requires a woman who seeks an abortion to obtain an authorization of her male partner. This prevents women to have access to necessary healthcare services, and some women are not able to have an abortion even if they wish to do so especially in cases of domestic violence, as female victims of domestic violence or medical institution cannot access to violent husband and are afraid that they might be punished due to this clause.

**(Proposed question for List of Issues) Does the government have a plan to remove this clause?**

## **3. (The past) Eugenic Protection Act ( ,which forced abortion to women with disabilities)**

Another group will submit a report on this issue.

## **4. Actual situation of abortion**

Government report (para 361) states that "sex education should not be excessive and extreme".

**(Proposed question for List of Issues) Does this mean that the government will put a restriction on sex education? How does the government guarantee the access to the information on reproductive health, and access to reproductive health, and what are the effects that have been achieved?**

Especially, abortion performed for girls of 15 years old and under is on the increase, and its number reaches almost 1,500 cases per year.

**(Proposed question for List of Issues) Can it be said that the government's policy has been effective in such situations?**

## **5. Method and Cost of Abortion, and Access to Abortion**

Main method for abortion in Japan is dilation and curettage with general anesthesia which is far

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removed from the method recommended in the guidance document published by WHO (Safe abortion: technical and policy guidance for health systems, Second edition(2012) [http://www.who.int/reproductivehealth/publications/unsafe\\_abortion/9789241548434/en/](http://www.who.int/reproductivehealth/publications/unsafe_abortion/9789241548434/en/)), which based on women's human rights, and this not only put much mental and physical burden on women but also put economic burden, since cost of abortion is not covered by national health insurance. This sometimes causes unsafe abortion.

**(Proposed question for List of Issues) Does the government have a plan to review such policy on abortion?**

### **6. Marital Rape**

The government report says that marital rape can be punished, however, there is hardly any case where perpetrators are punished, and it is only limited cases where they are punished such as when marriage is broken up. Ministry of Justice examined whether they should include the phrase “whether they are married or not” in the provision for rape, but it seems that it concluded that there is no need to specify that the perpetrator be punished “whether he are married the victim or not”

**(Proposed question for List of Issues) Does the government plan to amend the Penal Code for including marital rape clearly in the provision?**

### **7. Period during which women are prohibited to remarry**

The government report (para 384 and 385) claims that there is valid and logical reason for setting the period during which women are prohibited to remarry after they are divorced so as to identify the paternity. It is a restriction imposed only on women, and the government rejected even to consider the removal of this provision.

**(Proposed question for List of Issues) Does the government have any plan to remove this provision?**

### **8. Problem with the provision concerning the assumption of legitimate child**

According to the Civil Code, any child born to a woman less than 300 days after her divorce is considered to be the child of the previous husband, and a child join their mother's previous husband's family register. Because of this, there are many disadvantages for divorced mothers and their children in such situations; some mothers have to refrain from notifying a birth of her child to the authorities, or others may have to take a legal action in some situation which cannot substitute the legal action to the biological father, or some new-born baby cannot join a family register.

**(Proposed question for List of Issues) Does the government have any radical solution for this situation?**

We hope that this information is useful during the Committee's review of the Government's compliance with the provisions of the CEDAW Convention.

If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Sincerely,

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