

JFBA/28/2009

June 1, 2009

To: The Secretariat of the forty-fourth session of the Committee on the Elimination of Discrimination against Women

Dear Sirs/Madams,

We, the Japan Federation of Bar Associations (JFBA), in special consultative status with the UN ECOSOC, are pleased to send you "Update Report on Issues and Questions from the Committee on the Elimination of Discrimination against Women with regard to the Sixth Periodic Report of the Japanese Government".

We have learned from the Internet that the Conference of the forty-fourth session of the Committee on the Elimination of Discrimination against Women will be held from 20 July to 7 August 2009. We would be grateful if you would read and distribute our report to the Committee members for their information in examining the report by the Japanese government.

Thank you in anticipation of your consideration and assistance.

Yours sincerely,

A handwritten signature in black ink that reads "M. Miyazaki". The signature is written in a cursive, flowing style.

Makoto MIYAZAKI

President

Japan Federation of Bar Associations

Update Report on Issues and Questions from the
Committee on the Elimination of Discrimination
against Women with regard to the Sixth Periodic
Report of the Japanese Government

May 2009

Japan Federation of Bar Associations

Introduction

As a non-government organization qualified to engage in discussion with the UN Economic and Social Council, the Japan Federation of Bar Associations (JFBA) submitted the Report by the Japan Federation of Bar Associations on the “Sixth Periodic Report of the Japanese Government on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women” in September 2008. The JFBA also took part in a hearing of NGOs held on November 10 by the pre-session working group for the 44th session of the Committee on the Elimination of Discrimination against Women (CEDAW) and made comments at that time.

This report provides the latest information on the list of issues and questions with regard to the periodic review of Japan released on November 20, 2008 by the above working group, and is a supplement to the report already submitted by the JFBA. We hope that this report together with our previous report will serve as a useful reference in deepening the understanding of discrimination against women in Japan today from both a legal and de facto perspective. We also hope that the 44th session of CEDAW will engage in constructive dialogue in its discussion of the Japanese Government’s Sixth Report so that discrimination against women in Japan can be eliminated as early as possible through the full implementation of the Convention.

The following pages provide information and present the JFBA’s responses to the issues and question items (presented in the frame at the beginning of each section) made public by the working group mentioned above.

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Update Report on Issues and Questions from the
Committee on the Elimination of Discrimination against Women
with regard to the Sixth Periodic Report of the Japanese Government
(Summary)

This report was prepared as a supplement to the report dated September 2008 already submitted by the Japan Federation of Bar Associations (JFBA) to provide to the Pre-session Working Group of the UN Committee on the Elimination of Discrimination against Women the latest information concerning the list of issues and questions with regard to the consideration of the Sixth Periodic Report of Japan (“Sixth Report”) released by the working group on November 20, 2008.

Information and replies of the JFBA are presented below in the order in which the Pre-session Working Group presented the issues question items (Text in the frames to be referred to “question items hereafter.”) boxed text at the front.

1. Please explain whether the sixth report was adopted by the Government and whether it was submitted to Parliament.

There is no existing legislation requiring the government to submit to the Diet reports on the current status of the implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

In Japan, the opportunity to examine the need for legal measures should be ensured by amending the Basic Act for A Gender-equal Society to include a provision which requires the government to submit reports on the current status of the implementation of the convention to the Diet in addition to the UN Secretary-General in accordance with Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women.

4. (1) Invocation of the Convention on the Elimination of All Forms of Discriminations against Women in domestic court cases and outcomes thereof, (2) Measures taken to increase awareness of the Convention among the judiciary and the legal professions in general.

(1) There have been 42 cases in court decisions that have been made public. Although the court gave some form of response to the plaintiffs’ claims, in 14 cases, all invocations of the Convention were denied.

(2) For lawyers, there are various activities conducted by the Committee on Equality of Men and Women, the Center for Gender Equality Promotion, and the Committee on

【summary】

International Human Rights of the Japan Federation of Bar Association. However, the process of judiciary training with respect to the Convention on the Elimination of All Forms of Discriminations against Women and violence against women is not adequate.

5. The current status and progress achieved in the implementation of the second basic plan for gender equality

In the taxation, medical insurance, and pension systems respectively, certain preferential treatment is given to legally married couples where the husband supports the wife, necessitating adjustment for women in employment. In the family register system, and the resident registration system, recognition of a household centered on the head of the family or the head of a household, and the structure of a hierarchy within the families is evident. There are many cases of women bearing the burden of caring for the elderly, particularly cases of elderly wives caring for their elderly husbands. School education for eliminating gender-based roles is regressing.

6. The progress made towards establishing a national human rights institution in accordance with the Paris Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights.

On November 20, 2008 the JFBA made public a system framework for the establishment of a national human rights institute. However, there has been no noticeable action on the part of government regarding the establishment of a national human rights institution in accordance with the Paris Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights.

7. Measures taken for the protection of victims, etc. and awareness raising of lawyers and the judiciary regarding violence against women.

It is doubtful whether the penalties for the perpetrators of domestic violence are properly executed. Furthermore, there are few public shelters for the victims of domestic violence, and personnel and fiscal support for these shelters is inadequate. Moreover, privately run shelters which supplement the public shelters are in a serious condition due to the lack of funding. The preparation and introduction of awareness-raising programs teaching about the devastating effects of domestic violence are needed for police, lawyers, the judiciary, and the general public.

【summary】

8. Violence perpetrated against women and girls by the U.S. military personnel and its prevention.

Despite numerous incidences of crimes (especially sex crimes) committed by the U.S. military and civilian personnel, the government has not officially released relevant figures or details of such incidents.

The JFBA has been calling for the streamlining and reduction of U.S. military bases and their abolishment, particularly in Okinawa, at the earliest possible time as well as a review of the Japan-U.S. Status-of-Forces Agreement. The realization of these measures is vital for the prevention of such crimes.

9. Statistical data on about the number of prosecutions brought against human traffickers.

The government commenced the examination of measures to combat human trafficking with the signing of the United Nations Convention against Transnational Organized Crime, and The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. In terms of statistics, the number of arrests and persons in custody has been on the decline after peaking in 2005. Nevertheless, it is somewhat doubtful that the number of persons falling victim to human trafficking is actually decreasing. Exposing human trafficking is getting more difficult; therefore, more effort is needed to sufficiently ascertain the true conditions.

10. Measures taken for victims of human trafficking

There are some cases of victims of human trafficking being arrested for violation of the Immigration Law, and consequently charged and court decisions handed down. Protection facilities for victims are also inadequate and hardly any support is provided for them.

11. Measures taken to prevention the sexual exploitation of women and girls

Although there is existing legislation such as the Penal Code, the Anti-Prostitution Act, and the Child Welfare Act, they cannot be said to be sufficiently effective in the prevention of the sexual exploitation of women and girls.

12. Measures taken to address the concerns at the practice of *enjo kosai*, or compensated dating

Extremely inadequate.

【summary】

13. Measures taken to increase the participation of women at the managerial level in national public officers

The higher the position, the more sharply the participation rate by women drops. There is a need to review measures.

15. Measures taken to reduce the gender gap in institutions of higher learning

Some universities have taken such measures but, overall, these measures cannot be said to be adequate.

16. Measures undertaken to increase the participation of women in the teaching profession at university and junior colleges

Some universities have established offices for the promotion of gender equality in both undergraduate and graduate departments where the level of female participation is low. The challenge for the future is to rapidly and widely promote programs that will contribute to advancing the cause of gender equality at many more universities and junior colleges.

17. Measures taken to prevent government officials from making sexist remarks

Sexist remarks have been repeatedly made by people in public officers (political leaders). A law prohibiting discrimination against women that provides for the following points should be established:

1. That discrimination against women is a violation of human rights
2. A definition as to what constitutes discrimination against women.
3. That discrimination against women is prohibited.
4. That penalties will be imposed for violations of the prohibition of discrimination against women

18. Measures taken to encourage male employees to take parental leave

The rate of male employees taking parental leave is extremely low. There is a need to consider specific measures to remedy this.

【summary】

19. The legal avenues open to employees in case of violations of the revised Equal Employment Opportunity Law and sanctions for offending employers

There is a problem as to whether legal relief measures accorded to employees by the law function adequately or not. Although social sanctions to deal with offending employers have been put in place, such as publicly announcing the offending companies, to date there are no cases of such public announcement.

20. Results of positive actions undertaken by employers

Although positive action measures were added to the revised Equal Employment Opportunity Law (EEOL), employers are not obliged to take these measures, and therefore results cannot be expected.

21. Measures established to address the disparity in wages between men and women

Adequate measures have not been established. To eliminate the disparity in wages between genders through management categories such as work type, etc. and to eliminate the disparity in wages between regular and non regular workers including part-time workers, it is necessary to establish a work culture based on the principle of the same remuneration for men and women for work of the same value and an objective means of evaluating work duties to implement this.

22. Indirect discrimination targeted by the ordinance concerning the Equal Employment Opportunity Law.

A clear definition of what constitutes indirect discrimination is not clearly established in the EEOL, and the path for redress for complicated discrimination cases will be insufficient through the courts.

23. Measures employers are required to take to prevent sexual harassment in the workplace

The revised EEOL does not include punitive measures to enforce compliance, and although public announcement of the name of offending companies has been established as a social sanction, there have been no cases of such public announcement to date.

24. The situation of minority women in Japan

【summary】

The report by the government refers only to issues concerning Dowa (social minorities), the indigenous Ainu, and foreigners, and makes no reference to women with disabilities. On the basis of the information provided, it is not possible to grasp the current status of minority women in terms of education, employment, health conditions, and violence they are subjected to, and in both quality and quantity the information provided is inadequate.

25. The economic and social situation of migrant and refugee women and measures to support them

Japanese society has not yet advanced to the stage where it has a system for accepting multicultural coexistence. The economic and social status of refugee and migrant women is weak, and support and relevant measures to improve their situation are not sufficiently implemented.

26. Government policies towards Japan's aged women

The percentage of women in unstable employment is high, and many single aged women live in harsh financial conditions. In addition to insufficient measures regarding pensions, the health care system for the latter-stage elderly places an added burden on aged women. Abuse during old age is yet another problem aged women face, and 77% of aged victims of abuse are women. Government measures to address these issues are insufficient.

27. The promotion of a comprehensive sex education plan, and decriminalization of abortion

Despite the inundation of inappropriate sex information available today, it cannot be said that sex education that will have an impact on young people both mentally and physically, or education on safe contraception has been implemented. In fact, there are many problems with sex education in schools.

From the viewpoint of women's right to self-determination, Articles 212 to 214 of the Penal Code criminalizing self-induced abortion or abortions performed with consent or upon request should be abolished. Moreover, the Maternal Protection Act, which makes the consent of the spouse a prerequisite for abortion, must be amended.

28. Provisions in the Civil Code discriminating against women

No action has been taken by the Government to repeal provisions in the Civil Code discriminating against women.

Furthermore, redress for children whose births have not been officially registered is becoming an issue as a result of problems stemming from Article 772 of the Civil Code, which stipulates that a child born within 200 days after the notification of marriage or within 300 days after the notification of divorce is deemed to be the child of the previous

【summary】

husband. Article 772 of the Civil Code must be amended.

29. Distribution of property at the time of divorce

The economic base of women after divorce is insufficient. Although a legal system has been established to some extent concerning the division of pensions after divorce, the scope of property subject to distribution and the criteria for distribution are not clear. In many cases in Japan husbands control the property. Therefore, in reality distribution of property through arbitration or a court decision in many cases is difficult.

30. Progress made with respect to the ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

With respect to the individual communications procedure, the Japanese government takes the stand that it may be problematic in terms of the independence of the judiciary and no progress is evident.

Japan Federation of Bar Associations

1-3,KASUMIGASEKI 1-CHOME, CHIYODA-KU,TOKYO 100-0013 JAPAN

URL: <http://www.nichibenren.or.jp/en/>

TEL: +81-3-3580-9841 FAX:+81-3-3580-2896

1. Please explain whether the sixth periodic report was adopted by the Government, and whether it was presented to the Diet.

In Japan, based on article 73, item 3 of the Constitution, the Cabinet is responsible for concluding treaties and conventions, although the Diet's approval is needed in advance or, depending on the circumstances, afterwards. However, reports to the Secretary General of the United Nations on the state of a concluded treaty's implementation are not reviewed by the Diet. In other words, there are no such laws that obligate the Government to submit to the Diet the reports on the state of implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

Moreover, according to article 12 of the Basic Law for a Gender-equal Society, the Government must annually submit to the Diet a report on the progress that has been made in formation of a Gender-equal society and on the measures taken by the Government to promote the formation of such a society. However, information on the state of implementation of the Convention is not included in those reports. One might say that once the Convention was ratified, it was relegated to a situation where the Diet no longer directly dealt with it.

Japan ratified the Convention in July 1985. However, the discriminatory provisions against women in the Civil Code still exist. In the workplace, indirect discrimination has been found to exist with regard to wages, promotions, and more. Although the Equal Employment Opportunity Law was revised, measures to eliminate indirect discrimination have been inadequate. Greater effort is also required regarding such things as violence against women, as well as human trafficking and other forms of sexual exploitation. The Committee for the Elimination of Discrimination against Women, as well as the Human Rights Committee, the Committee against Torture, and other human rights treaty body's and the Human Rights Council have, in their general, periodic considerations expressed various concerns about the state of human rights of Women in Japan called for related improvements and made other recommendations as well. However, it would be difficult to say that the government has been serious about putting those recommendations into practice. Thus, in Japan, there is an extremely strong need to respond to those recommendations, improve the human rights situation of women, and fully implement the Convention.

Therefore, in accordance with article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, the Basic Law for a Gender-Equal Society should be revised by adding to its regulations that require the Government to submit to the Diet the same reports on the state of the Convention's implementation that are submitted to the Secretary General of the United Nations.

Legally requiring the government to submit the reports to the Diet would enable the Diet to understand the state of the Convention's implementation as well as the factors that are impeding implementation, and would systematically guarantee to the Diet the opportunity to investigate the need for legislative measures aimed at overcoming those impediments – which, it is believed, would be an extremely effective means of promoting the implementation of the Convention.

2. The report mentions that a specialist committee on monitoring gender impact assessment and evaluation conducted a study and deliberated, on the adopted opinion of the Council for Gender Equality on the state of implementation in each ministry and agency, in the light of the previous concluding observations of the Committee on the Elimination of Discrimination against Women (see para.4). Please provide information on the recommendations made by the specialist committee in July 2005 and the measures taken to implement those recommendations.

1. On June 27 and July 15, 2005, the Specialist Committee on Monitoring and Gender Impact Assessment and Evaluation of the Council for Gender Equality conducted a hearing about the state of each ministry's and agency's efforts regarding the concluding observations of the Committee on the Elimination of Discrimination against Women, and proposed that the following points (hereinafter referred to as the "Proposal(s)") be taken into account when preparing the sixth periodic report.

The Proposals were as follows.

- (1) The results (the so-called "outcomes") produced from the measures should be included to the extent possible in the report.
- (2) We expect the results of the studies conducted on indirect discrimination in the field of employment to be presented at an early date. We would also like for examples of the various kinds of indirect discrimination to be collected on a continuing basis, and for effort to be made to disseminate information on the regulations related to the Convention on the Elimination of All Forms of Discrimination against Women and to the Basic Law for a Gender-Equal Society.
- (3) Regarding respect for women's human rights in the media, we would like there to be an exchange of opinions in which organizations related to games, internet sites, etc., take part.
- (4) With regard to minorities and human trafficking, the relevant data obtained by each ministry and agency should be organized and included in the report.
- (5) Continued effort should be made to deepen public awareness and understanding of the proposed revisions, which set the same marriageable age for men and women, reduce the period during which women are prohibited from remarrying after divorce, and introduce a system for allowing husbands and wives to have different surnames.
- (6) Continued deliberation on the possibility of ratifying the Optional Protocol to the Convention should take place at an early date.

2. The following measures were taken to implement the Proposals.

- (1) The measures taken by the Government are described in the sixth report. Paragraphs 116-124 concern the participation by women in the process of deciding the country's policy. Using concrete numbers, paragraphs 118-122 report that the proportion of women on the country's deliberative councils and other committees, and serving as government officials, has increased. Nevertheless, other than these numbers, nothing specific is mentioned about the "results produced from the measures" that are called for in this Proposal.
- (2) The Equal Employment Opportunity Act (Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment) was revised in 2006 (enacted in April 2007), so that it expressly prohibits indirect discrimination (article 7).

However, in the Ordinance for Enforcement (article 2), only three kinds of indirect discrimination are prohibited: (a) making a certain height, weight or physical strength a requirement when recruiting and hiring; (b) making a job transfer together with residential relocation a requirement in recruiting and hiring for a career-track position in a system that employs separate management for each course; and (c) making job transfer experience a requirement for promotion. Moreover, the regulations state that "when there is a legitimate reason" for these, they will not be considered discrimination.

In the ancillary resolutions made at the time of the revision, various things were confirmed: for example, that it should be made widely known that treating indirect discrimination as a breach of the law will be possible not only based on the provisions in ministerial decrees but also based on juridical rulings; that the actions viewed as indirect discrimination in ministerial decrees will be actively increased and reviewed; and that, to do this, investigations aimed at understanding the actual state of gender discrimination and at analyzing the factors involved will be promoted. (With regard to the problems of indirect discrimination in the area of employment, see question 23.)

As for disseminating information about the regulations related to the Convention on the Elimination of All Forms of Discrimination against Women and to the Basic Law for a Gender-Equal Society, the text of the Convention and other information has been posted on the website, but it would be difficult to say that dissemination activities have otherwise been actively carried out.

- (3) Prior to this Proposal, on May 13, 2002, a "Meeting for Discussing 'Gender Equality in the Media'" was held, sponsored by the Planning Committee of the Egalit  Network (a gender equality promotion organization). At the meeting, information and opinions were exchanged about the latest efforts related to promoting gender-equal participation in the media. Whether there have been any such efforts since the Proposal, however, is unclear.

(Regarding respect for women's rights in the media, see questions 11 and 12.)

- (4) Regarding human trafficking, data on the state of victims and other matters are presented in the Government's sixth report (paragraphs 170-197). (Concerning human trafficking, see questions 9 and 10.)

With regard to minority women, information is provided in the Government's sixth report (article 2, "Concerning Minority Women," paragraphs 98-100). Annexed to the report are data on the situation with the Budget Related to Projects for Caste Discrimination Countermeasures and Regional Improvement Measures (No. 13 of the Statistical Data), on the Ainu population (the population of men and the population of women) in 2006 (No. 14), and the number of registered male and female South Koreans and North Koreans in Japan (No. 15).

However, the data are inadequate for providing an understanding of the current situation with minority women. (Concerning minority women, see question 24.)

- (5) Regarding marriage and family activities, see question 28.
(6) Regarding the possibility of ratifying the Optional Proposal, all that the Government says, in paragraph 103 of the report, is, "It is currently being studied." (Concerning human trafficking, see question 30.)

3. In its previous concluding comments(A/58/38, para. 357), the Committee expressed concern about the lack of any specific definition of discrimination in the domestic legislation and recommended that a definition of discrimination against women, encompassing both direct and indirect discrimination in accordance with article 1 of the Convention, be included in the domestic legislation. Please indicate what measures the Government has taken in response to the Committee's recommendations.

With regard to the definition of discrimination and to indirect discrimination, see questions 17 and 22.

4. Has the Convention on the Elimination of All Forms of Discrimination against Women been invoked or referred to in any domestic court cases and, if so, what has been the outcome? Additionally, please specify what measures have been taken to increase awareness about the Convention among the judiciary and the legal profession in general.

1. Among published cases since the Convention was ratified, there are 42 in which the Convention has been referred to in domestic courts. However, this is the number of cases that include mention of the claim of the plaintiff. Of these cases, the number in which the court has provided some kind of reply to the plaintiff's claim is 14. In all of these cases, the applicability of the Convention was denied. Some examples are given below.

(1) In the most recent case, the Kyoto District Court issued a ruling on July 9, 2008. In this case, a woman who worked part-time in an organization that was appointed by the city of Kyoto to manage the Kyoto City Gender Equality Center claimed that she suffered wage discrimination in that she was paid less than full-time employees, and demanded payment of the difference. The ruling dismissed her claim; and with regard to article 11, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Woman, it stated as follows.

“The Convention does not go beyond setting forth the rules which international society should follow with regard to gender discrimination. It does not establish specific, common standards regarding the principle of equal pay for equal value work. Therefore, from the standpoint of the principle of equal pay for equal value work, the Convention cannot be interpreted as having automatic enforceability.”

(2) A child born from a Philippine mother and a Japanese father was recognized by the father after birth, but the mother and father were not legally married, so, based on article 3 of the Nationality Act, the child could not obtain Japanese nationality. As a result, a suit was brought demanding that the Government acknowledge that the child had Japanese nationality. The ruling issued by the Tokyo District Court on March 29, 2006 recognized the child's Japanese nationality. However, with regard to the plaintiffs' claim that “Gender equality also has to be realized in connection with the nationality of children born of unmarried men and women, and therefore article 3 of the Nationality Act violates the Convention on the Elimination of All Forms of Discrimination against Woman,” the ruling stated as follows.

“The first clause of article 9, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women stipulates: ‘States Parties shall grant women equal rights with men to acquire, change or retain their nationality.’ And paragraph 2 of the same article stipulates: ‘States Parties shall grant women equal rights with men with respect to the nationality of their children.’ These stipulations demand that women or mothers be given the same rights as men or fathers with regard to obtaining nationality for a child. When blood lineage is used among the requirements for obtaining nationality, it may be demanded that the blood

lineages of both parents meet the requirement. However, those stipulations cannot be interpreted further to require that a Japanese father be treated in the same way as a Japanese mother with regard to obtaining nationality for a child born of a legally married couple and a child born of a man and woman not legally married.”

- (3) In a case involving a demand that the entries in the family relationship section of a family register be revised, the Tokyo High Court issued a ruling on March 24, 2005. In response to the appellants’ (plaintiffs’) claim that “making a distinction, in the family relationship section of a family register, between the parents of a child born out of wedlock and the parents of a child born in wedlock is a violation of article 16, paragraph 1, section (d) of the Convention on the Elimination of All Forms of Discrimination against Women,” the ruling stated as follows.

“The various provisions of the Civil Code have been confirmed by the Supreme Court, even recently, as being constitutional...” “Moreover, distinguishing a child born in wedlock from a child born out of wedlock cannot be said to be a violation of the provisions of the Convention on the Elimination of All Forms of Discrimination against Women, as argued by the appellants, or of the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, etc.”

- (4) In a case brought against the Governor of Tokyo for making discriminatory statements against women, the Tokyo District Court issued a ruling on February 24, 2005. The plaintiffs claimed: “The defendant’s statements violate article 16 of the Convention on the Elimination of All Forms of Discrimination against Women. They infringe the right to live as one wishes with regard to reproduction” In response, the ruling stated: “Needless to say, this view of the value of the existence of women, which focuses only on their procreative capability in evaluating them, is incompatible with the Constitution, the Basic Law for a Gender-equal Society, and other laws and ordinances which set forth regulations concerning respect for the individual and equality under the law, and also with the International Covenants on Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the basic thinking in other undertakings of international society.” Nevertheless, the defendant was not held liable.

Also, please refer to question 17, which is related.

- (5) In a case in which the plaintiffs argued the illegality of a company’s system that treated male and female employees differently (the Okaya Case), the Nagoya District Court issued a ruling on December 22, 2004. The plaintiff’s claim was partially accepted, but the following judgment was issued regarding the Convention on the Elimination of All Forms of Discrimination against Women.

“Based on the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenants on Human Rights, the ILO conventions and more, the plaintiffs argued that, since gender equality had already been established as an international public policy when they entered the company, the defendant’s treating men and women differently contravened international public policy and was therefore illegal.

“However, the aforementioned conventions, etc., are not enforceable domestically without the enactment of a domestic law. Moreover, based on an investigation of the history and content of the defendant’s gender-differentiated system of employee recruitment and treatment, that system cannot immediately be regarded as a violation of those conventions. Accordingly, the plaintiffs’ claim is not accepted.”

(6) In a case in which gender-based wage discrimination was claimed (the Sumitomo Electric Industries Case), the Osaka District Court issued a ruling on July 31, 2002. Based on the Convention on the Elimination of All Forms of Discrimination against Women, the plaintiffs asserted that the defendant company’s different treatment of male and female clerical workers was a violation of the law. In response, the ruling stated as follows.

“The plaintiffs assert that the Convention on the Elimination of All Forms of Discrimination against Women also calls for the elimination of those things that give rise to gender discrimination. However, the plaintiffs are using the convention to evaluate employment practices that were not illegal at the time in question, which was before the Convention was ratified and Act on Security, Etc. of Equal Opportunity and Treatment between Men and Women in Employment had been enacted. Thus, these would have to be applied retroactively, although they have no retroactive validity. Therefore, on this point the plaintiffs’ claim cannot be accepted.”

This case was amicably settled in the Osaka High Court on December 24, 2003. The court actively adopted the spirit of the Convention, and the following language was included in the preamble to the settlement. (However, the settlement is different from the ruling and thus hasn’t been made public.)

“In international society, especially through the United Nations, efforts are being steadily promoted to realize gender equality. A society in which women are not discriminated against on account of their gender, in which they develop their abilities and talents for the sake of their own satisfaction and of society as a whole, and in which men and women join forces to advance society – this is the kind of equitable society that is truly wanted. It can be said that this view has already become common throughout the world. In order to keep Japan linked to international trends and establish their spirit in Japanese society, solid efforts are also being promoted in this

country, such as the ratification of the Convention on the Elimination of All Forms of Discrimination against Women and the enactment of the Basic Law for a Gender-equal Society...”

(7) In a case that contested the constitutionality of a provision in the Civil Code that prohibits only women from remarrying for six months after a divorce, the Hiroshima District Court issued a ruling on January 28, 1991. In response to the plaintiff’s claim that “the provision in question violates the preamble and articles 2, 15 and 16 of the Convention,” the ruling stated the following.

“There is no reason to interpret those sections of the Convention as meaning that differences in the treatment of men and women that are based on legitimate reasons have been prohibited, or that placing restrictions that are based on legitimate reasons on ‘the right to marry and form a household’ has been prohibited, in the signatory countries.”

(8) In a case that disputed the constitutionality of the Income Tax Act’s exclusion of the unacknowledged children of common-law marriages, and the children from a spouse’s previous common-law marriage, from being considered dependents for whom deductions can be taken in income tax, the Tokyo District Court issued a ruling on December 16, 1987. In response to the plaintiff’s claim that “based on article 16, section 1d of the Convention on the Elimination of All Forms Discrimination against Women and on its import, it should be possible to claim de facto children as dependants,” the ruling stated as follows.

“The provisions mentioned are, in the first place, not related to taxes. Moreover, they cannot be interpreted as prohibiting de facto relatives and de jure relatives from being treated differently with regard to deductions for dependants in taxes.”

2. Activities conducted in order to increase awareness about the Convention among judges and the legal profession in general

(1) Activities of the Japanese Federation of Bar Associations

1) Activities of the Committee on Equality of Men and Women

The Committee on Equality of Men and Women, which celebrated its 30th anniversary in 2006, researches and studies the status and rights of women and makes proposals for how existing legislation should be revised.

a. The Committee’s main activities since June 2006 are as follows.

- Released an opinion on the bill to revise the Equal Employment Opportunity Act and issued a related pamphlet.
- Released an opinion on the bill to revise the Law Concerning the Improvement of Employment Management of Part-time Workers, and made a related request to members of the Diet.

- Conducted a survey on the state of gender equality in bar associations and in JFBA (a survey on the number of female attorneys among officers and on affirmative actions that have been taken).
 - Requested that a rule be established to exempt female JFBA members from paying JFBA fees during the period before and after childbirth.
 - Issued a pamphlet entitled “‘That’s not womanly.’ ‘Manhood is spoiled.’ Is it true? Correcting misunderstandings about gender.”
 - Prepared training textbooks and sent members who specialize in domestic violence to promote efforts to expand the system that handles, and provides consultation for, cases of domestic violence (DV).
 - Held symposia aimed at promoting gender equality in bar associations.
- b. The following activities have been specifically related to the Convention.
- As assistance for preparing the list of issues related to the Government’s sixth periodic report, the “PT Concerning the Convention on the Elimination of All Forms of Discrimination against Women,” which was established in the Committee, provided information to (prepared a report for), and sent Committee members to, a working group of the UN Committee on the Elimination of Discrimination against Women.
 - “The application of the Convention on the Elimination of All Forms of Discrimination against Women to legal practice” was raised as a theme of a training session held for all attorneys in December 2008. The lecturer was an attorney who is currently a member of the Committee on the Elimination of Discrimination against Women.
 - In April 2009, at a conference related to international human rights that was jointly sponsored with the International Committee on Human Rights, a panel discussion was conducted on Japan’s report in the July 2009 CEDAW.

2) Activities of JFBA’s Center for Gender Equality Promotion

In April 2007, JFBA created the “Japanese Federation of Bar Associations’ Basic Framework for Gender Equality” (hereinafter referred to as the “Basic Framework”). Section 9 of the Basic Framework, titled “Steps for Realizing and Respecting Internationally Established Principles,” states: “So that JFBA’s gender equality promotion measures will realize and respect the internationally established principles of the International Covenants on Human Rights, the Convention on the

Elimination of All Forms of Discrimination against Women, etc., JFBA will exchange information with international organizations and take other necessary steps.”

In June of that year, the Center for Gender Equality Promotion was established to promote the Basic Framework. In an effort to inform JFBA members about the Basic Framework, the Center held a National Caravan for Publicizing the Basic Framework for Gender Equality, which visited 12 locations throughout the country. At each location Center members listened to the opinions of JFBA members about gender discrimination and disparities in legal practice, on balancing family and work, and other matters. In March 2008, moreover, the Center drew up the JFBA Basic Plan for Gender Equality Promotion. For publicizing the Basic Framework, it also prepared a pamphlet, “Good balance, Good life – In a society where women are energized, so are men,” and distributed it to members.

3) Activities of the International Committee on Human Rights

The International Committee on Human rights was established in 1996. It conducts studies and research on international human rights, and provides information on international activities to relevant committees of JFBA. Since the year of its establishment, it has also regularly held International Human Rights Seminars. Since 2006, there haven't been any seminars on the theme of the Convention on the Elimination of All Forms of Discrimination against Women. However, past themes have included “International Human Rights Law and the Role of the Legal Profession” and “Women's Rights in the Administration of Justice.” In the seminars, lectures are given by scholars and Committee members knowledgeable about the themes, and opinions are exchanged by the participants.

4) Provision of information on the Convention to members

JFBA maintains an International Human Rights Library on its website and provides various information to members. The Library contains information on the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women. It also contains the latter convention's entire text, the Government's second to sixth periodic reports on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, JFBA's reports on the Government's reports, and the Committee on the Elimination of Discrimination against Women's concluding observations about the Government's first to fifth reports.

The previously mentioned Committee on Equality of Men and Women

and Center for Gender Equality jointly publish “News” twice a year and send it to all members. Among other things, this publication contains articles on subjects such as each bar association’s efforts to promote gender equality; bulletins and reports on symposia; and reports on the participation at pre-sessions of the Committee on the Elimination of Discrimination against Women. It provides members with information in a form that is easy to understand.

(2) Regarding judges and others in the legal profession

1) According to the Supreme Court, the following kinds of training are carried out for judges and students of the Legal Training and Research Institute (Supreme Court answer of March 30, 2009 to an inquiry from JFBA).

(a) Regarding judges

Each year, the Legal Training and Research Institute, which is in charge of training judges, invites university professors specialized in international human rights issues, and members of human rights organizations (including international organizations), to come and provide lectures to newly appointed judges, assistant judges and summary court judges, presiding judges of district courts and family courts, and the chiefs of branch of district courts and family courts, in order to raise their awareness about the Convention on the Elimination of All Forms of Discrimination against Women and about violence against women.

(b) Regarding students of the Legal Training and Research Institute

In the new legal training that began in 2006, training concerning the Convention on the Elimination of All Forms of Discrimination against Women and concerning violence against women is mainly seen as an elective type of practical training. A training program that covered the Convention and violence against women was carried out at seven bar associations in the 60th training period (FY 2006) and at 16 bar associations in the 61st training period (FY 2007). For group training, moreover, outside lecturers were invited who conducted lectures on international human rights that included information on such things as the Convention and gender-based violence.

2) Regarding the education at law schools

In March 2009, JFBA sent a questionnaire to all 74 law schools in Japan. Answers were received from 38 schools. According to those answers, 18 schools do not teach classes on the Convention on the Elimination of All Forms of Discrimination against Women. At the 16 schools that said they do teach such classes, at least a one-hour lecture is provided on gender and law, international law, the Constitution, etc. There are also places, such as Waseda Law School, where more specialized teaching is

provided, but this is thought to be due to special circumstances, such as the faculty including members of the Committee on the Elimination of Discrimination against Women. Eighteen of the schools give lectures on violence against women, whereas 17 do not.

Based on the above, it can be said that education about the Convention and about violence against women is less than adequate in the system for educating future lawyers.

5 Please describe the current status and progress achieved in the implementation of the second basic plan for gender equality (see para. 29). The response should include information on the impact of each policy set out for each of the 12 fields mentioned in the plan aimed at the practical realization of gender equality.

2. Review social systems and practices, and raise awareness, from a gender-equal perspective.

(1) Tax system, medical insurance, pensions

As one concrete policy, the Government cited a general study on the “tax and social insurance systems.” However, as before, systems that give preferential treatment to legally married couples in which the husband supports the wife are in effect, inducing women to make adjustments regarding their work.

1) When calculating income tax and individual inhabitant tax, if a person (spouse) is legally married to the taxpayer and living together with him and has annual income of 380,000 yen or less, 380,000 yen can as a rule be deducted from the taxpayer’s income (exemption for a spouse). Moreover, if the income of the taxpayer’s spouse is greater than 380,000 yen but less than 760,000 yen, and if the taxpayer’s income is 10 million yen or less, 30,000-380,000 yen can be deducted from his income (special exemption for a spouse).

For example, in the case of a husband who works full-time at a company and a wife who works part time, if the wife’s annual income is 380,000 yen or less (1,030,000 yen or less in earned income), the wife is not assessed any income tax and the husband can deduct 380,000 yen from his income and pay tax on the rest. If the wife’s annual income is greater than 380,000 yen and less than 760,000 yen (earned income greater than 1,030,000 yen but less than 1,410,000 yen), the wife will have to pay income tax, but if the husband’s income is 10 million yen or less, he can deduct 30,000-380,000 yen from it and pay tax on the

balance.

Based on tax law, exemption for a spouse cannot be claimed for a spouse whose income exceeds 1,030,000, but if her income is less than 1,410,000 yen, she qualifies for special exemption for a spouse, so the income of the household as a whole does not decrease. However, if the company where the husband works limits the people for which it pays a family allowance (an allowance for dependents) to a spouse eligible for exemption for a spouse, and if the spouse's income exceeds 1,030,000 yen, it's possible that the income of the household as a whole will decrease.

- 2) In the case of Government-managed health insurance, a person whose annual income is less than 1,300,000 yen may, as the dependant of a health insurance subscriber, use health insurance without paying any premiums. A person whose annual income exceeds 1,300,000 yen is not treated as a dependant but must enroll in the national health insurance system herself and pay premiums based on her previous year's income.

Moreover, if a spouse has an annual income of less than 1,300,000 yen, she is treated as a dependant spouse under employee pension plans and as a Category 3 insured person under the National Pension Plan, and, without paying pension premiums, may receive pension payments, just like the person who paid the premiums. If her annual income exceeds 1,300,000 yen, she must enroll in the National Pension Plan, etc., and pay pension premiums.

For example, in the case of a husband who works full-time at a company and a wife who works part time, if the wife's annual income is less than 1,300,000 yen, she will be considered a dependant family member under the health insurance system and a Category 3 insured person under the National Pension Plan, and does not have to pay premiums. However, if her annual income exceeds 1,300,000 yen, she loses such status, resulting in the possibility that the household's income will decrease.

- 3) Work adjustments

As a result of the provisions described above, there are not a few women who decrease their working hours in December in order to keep their annual income under 1,030,000 yen or 1,300,000 yen. The provisions also have the effect of keeping hourly wages from rising.

- (2) Family register system

A family register is a personal status record that the government in the Meiji Period established as a powerful tool for understanding and controlling the situation of the people. Originally it was centered around the "householder" and described his family members in terms of their relationship to him. It arranged the family members according to certain

standards of value – direct ancestor, lineal descendant; direct descent, collateral family; male, female – and was used for controlling families. Based on this system, the “family system” was reconstituted as a system of the civil law. Based on the “family register system” and the “family system”, moreover, the family was considered more important than the individual, and women were always placed below men in status. A woman’s calling was to serve her husband and his parents, and to bear and raise progeny. Living in this way was compulsory.

After the defeat in World War II, in 1947, the family law section of the civil law was revised and the “family system” was abolished. However, the “family register system” remained in effect although in altered form (it was changed from a three-generation to a two-generation register, and “householder” was changed to “head of family”). Moreover, due to various legal provisions – (a)the collectivistic view of families was maintained through a legally married husband and wife and their unmarried children continuing to be viewed through their family register as a family unit rather than as individuals; (b)also continued was the legal requirement that all actions that affect one’s status in society – marriage, divorce, betrothal, dissolution of adoption, acknowledgement of parenthood, etc. – be reported to the government; and (c) a new law was established that required legally married couples to have the same surname (around 98% “select” the husband’s name); etc. – a system that is centered around the individual in a couple who originally bore their surname (that is, the head of the family = the husband), and that records the changes in the status of family members in terms of their relationship to that individual, was firmly retained. By allowing the family register system to remain in effect, “family” consciousness and the hierarchical structure within the family were maintained, and that structure continues to this day.

According to the law, family registers can serve as a proof of nationality and a means of identification, but have no other function. A personal register system could serve these same purposes. Thus, switching to a personal register system should be investigated, as it would allow “family” consciousness and the hierarchical structure within the family to be eliminated.

(3) Residence card and head of household

A residence card is a document issued to each individual citizen that certifies the individual’s residence. It records that individual’s name, address, date of birth, sex, etc. Moreover, in accordance with article 7 of the Basic Resident Registry Law, a residence card states that “the individual is the head of household if this is the case or, if the individual is not the head of household, it states the name of the head of household and the

individual's relationship to that person." Cities, towns and villages issue a residence card for each member of each household and create a public registry of all residents. This is the basic resident registry.

The Basic Resident Registry Law does not contain any provisions that define "household" or "head of household." However, the Guidelines for Handling Operations Related to Basic Resident Registries state: "A household is a unit of social activity for both habitation and livelihood. Among the people who comprise a household, the person who presides over the household is the head of household. In one-person households, that person is the head of household." In addition, the Guidelines define "the person who presides over the household" as "the person who maintains the household's livelihood and who represents the household."

Theoretically, creating registries based on the household unit, and the head-of-household provisions, are no more than a system that contributes to the convenience of public administration. In actuality, however, they promote discrimination against women. That is, with the current large gender-based disparity in wages, the person who mainly maintains a household's livelihood is usually a man; moreover, the attitude that men are the representatives of households is still deeply ingrained in society. Given this situation, the majority of heads of household are in fact men (fathers or husbands). In addition, residency information about family members is recorded in terms of their relationship to the head of household ("head of household" serves the same purpose as "head of family" in family registers). Even in matters related to the rights and obligations of household members, the head of household is provided with the authority to make reports and requests, receive payments, and so on. For example, with regard to national health insurance, each member of a household is considered an insured party, but there are many municipalities where the insurance certificates are sent only to the heads of household. As a result, there are cases in which wives and children living apart from the household are unable to receive national health insurance. Moreover, despite the fact that every household member is eligible to receive the cash rebate and special childrearing support allowance that were enacted in 2009 as measures to combat the recession, only the head of household is able to make the related reports and requests and receive the payments, so that some wives and children living apart from the household have been unable to receive the payments, resulting in a serious problem. Together with the family register system, this system is a powerful device for reinforcing both "family" consciousness and the hierarchical structure within the family.

(4) The Government has absolutely no intention of changing these systems.

6. Create conditions that allow the elderly to live with peace of mind

(1) Together with the aging of society, the elderly who are bedridden or suffer from dementia have rapidly increased. As of May 2008, the number of people, both men and women, receiving long-term care insurance payments had nearly doubled. Reflecting the fact that the average lifespan is longer for women than for men and that the proportion of women thus increases with age, there are more women than men who require long-term care. The number of people receiving long-term care insurance payments in May 2008 was 3,706,200, 71.2% of them were women (according to the 2009 Data Book on Gender Equality Statistics, from the National Women's Education Center).

In Japan, the idea that a son should look after his elderly parents has traditionally been very strong. Therefore, until now, an extremely common pattern for women has been that, in their 40s-60s, they are pressed to take care of their husbands' parents; in their 70s, they are pressed to look after their husbands; and then, when they reach a condition in which they themselves need care, their husbands have passed away and they themselves receive care from a son's wife.

With the number of people who require long-term care increasing, with the length of time during which they require such care increasing as well, and with caregivers themselves becoming increasingly old, it became clear that adequately dealing with the elderly through the care provided by families (women) would be extremely difficult; for many people, moreover, care problems related to life in old age had become their biggest concern. As a result, a long-term care insurance system was established in 2000 as a mechanism intended to equitably cover the care costs of all citizens.

However, the services covered by long-term care insurance are limited. Moreover, the insured parties have to bear 10% of the cost. A situation has thus arisen where elderly women with little income are unable to receive even insured services.

(2) Nor has the situation whereby women are responsible for providing care changed since the long-term care insurance system was started. According to the 2007 National Living Standards Survey, which, among other things, surveyed the relationship between caregivers and care receivers, 60% of caregivers were family members or others who lived with the care receivers. As for the relationship of the cohabiting caregivers to the care receivers, 25% were spouses, 17.9% were children, and 14.3% were the spouses of children. Viewed by gender, 71.9% of the main cohabiting caregivers were women. The relationship was also surveyed in terms of the age of the care receivers, whereby it was found that the caregivers were frequently the wives of sons when the care receivers were 80 or older, and wives when the care receivers were 79 or less. The phrase "the old caring for the old" has

been created, but this mostly refers to an elderly wife caring for an elderly husband.

10. Implement education and learning that promote gender equality and facilitate diversity of choice

It has been said that, since the ratification of the Covenant on the Elimination of All Forms Discrimination against Women, coeducation has been established in home economics courses and gender-equal education has been achieved in the educational curriculum. However, a “hidden curriculum” that hinders this gender-equal curriculum – that is, a mindset that, through the school system and customs, and through the words and attitudes of teachers, is transmitted to, and influences, children subconsciously – still firmly exists.

According to the Japan Federation of Women’s Organizations’ 2007 White Paper on Women, the proportion of women teachers progressively decreases from elementary school to middle school to high school, and the proportion of women serving as principals and vice-principals is especially small. In 2007, the proportion of women who served as teachers, principals and vice-principals was, respectively, 65.0%, 21.2% and 17.9% in elementary schools, 40.9%, 8.0% and 4.8% in middle schools, and 26.1%, 6.2% and 5.0% in high schools.

The proportion of all public elementary, middle and high schools that use a student register in which boys and girls are mixed together and not separated by gender is about 70%. In middle school, however, that proportion is no higher than around 40%. There are thus many schools that continue to use a gender-differentiated register that unconsciously communicates a “boys first, girls later” sense of values.

Also, the proportion of schools where “san” is added at the end of the names of both boys and girls when addressing them progressively decreases as one goes from elementary school to middle school to high school. Such lack of equality is also consciously and unconsciously communicated to children in various other ways – in the interaction between teachers and students, in the teaching materials and teaching tools, in the deployment of teachers, and so on – and serves to reinforce gender-based roles.

In 2006, the Government revised the Fundamental Law of Education, eliminating provisions related to coeducation and instituting new provisions for home education. Moreover, in the Ministry of Education’s curriculum guidelines, revised in 2008, there is almost no mention of how to deal with gender equality. Together with the trend towards gender bashing, education aimed at eliminating the (compulsory) assignment of gender-based roles seems to be moving backwards (see the 2007 White Paper on Women).

6. The report indicates that the Government is reviewing a human rights protection bill that would establish a human rights commission (see para. 44). In the light of Japan's pledge at the Human Rights Council at the end of the universal periodic review (see A/HRC/8/44/Add.1, para. 1 (a)), please indicate the progress made towards establishing a national human rights institution in accordance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights.

At the Human Rights Council, the Government pledged to establish a national human rights institution conforming with the Paris Principles. However, it apparently intends to resubmit the bill that was previously abandoned. Effort to modify the bill according to the Paris Principles is nowhere evident.

In the previously abandoned bill that is to be resubmitted, (1) a human rights committee would be established as a national human rights agency and would effectively be placed under the jurisdiction of the Ministry of Justice as an external organ of that ministry; moreover, its budget and staff and all of its regional offices (its organization for conducting regional activities) would be dependant on the Ministry of Justice, so that there would be a problem in terms of its independence from the Government. In addition, (2) this system suffers from the shortcoming that its concept of human rights, which are what is to be studied and protected by the agency, is unclear, so that the only infringements of human rights by public authority that would end up being targeted for study and amelioration are those related to discrimination and abusive treatment.

On November 18, 2008, the Japan Federation of Bar Associations issued guidelines for the system of the national human rights institution that is to be established, as well as a basic design for the agency. These guidelines include the following proposals: (1) so that it can function as a highly independent administrative committee, the agency should be placed under the jurisdiction of the prime minister; (2) a central committee and regional committees should be established; the prime minister should appoint central committee members who, based on the recommendations of the recommendations committee established in the Diet, obtain the agreement of both houses of the Diet, and regional committee members who, based on the recommendations of the recommendations committees established in the prefectural assemblies, obtain the agreement of the assemblies; and the committees should possess diversity in their composition, with people who have deep insight about human rights, and the knowledge and experience necessary to protect human rights, being selected as members; (3) the human rights agency should independently appoint and dismiss the people who staff the executive offices of the

committees, for which personnel should not be obtained through exchanges with other government agencies; executive offices that have numerous people passionate about protecting human rights should be established; and the human resources and budget necessary for the committees to conduct their activities effectively should be secured; (4) all of the types of human rights infringements stipulated in the Constitution and international human rights laws should be targeted and, above all, the organization should have the authority to study and make recommendations concerning human rights infringements committed by public authority; and (5) the agency should have the ability to make policy suggestions and conduct human rights education.

The Government should refer to the guidelines proposed by JFBA, revise the bill, and promptly establish a national human rights institution that accords with the Paris Principles.

7. Bearing in mind the Committee's general recommendation No. 19 regarding violence against women, please describe the steps taken to develop a comprehensive strategy to combat all forms of violence against women, including the prosecution of perpetrators, provision of protection and assistance to victims, such as shelters and restraining orders to protect victims, and introduction of programs of capacity-building and awareness-raising programmes for various groups (such as the police, lawyers, health and social workers, the judiciary, etc.) and the general public.

1. As examples of violence directed at women for the reason that they are women or of violence that excessively influences women, general recommendation No. 19 mentions, among other things, sex crimes such as rape and indecent assault, domestic violence, sexual harassment, arranged marriages with women from developing countries, prostitution, human trafficking, etc.

Regarding rape, indecent assault and other sex crimes, see question 11; regarding arranged marriages with women from developing countries, see question 25; prostitution, question 11; and human trafficking, questions 9 and 10.

The following mainly deals with domestic violence.

2. Domestic violence

(1) Prosecution of perpetrators

Punitive regulations for perpetrators of domestic violence include, among other things, Penal Code for assault and battery and the punitive regulations (for violations of protection orders, etc.) prescribed in the Act on the Prevention of Spousal Violence and the Protection of Victims.

However, whether these punitive regulations are being appropriately

applied and implemented in actual cases is highly questionable. The fact is that spousal violence is clearly treated less seriously than violence between unrelated parties.

Ordinarily, between unrelated parties, recurrent violence is rare. When it does occur, however, the most common practice is to punish it as a criminal offence and also award damages to the victim (generally, the police and the prosecutor, in the course of interrogating the perpetrator, urge him to pay damages).

By contrast, in spousal violence, recurrence is a common factor; moreover, the extent of the human rights infringement, and of the damage, is generally far beyond that in violence between unrelated parties. In cases of spousal violence, however, the victim is rarely awarded damages, nor do the investigating and prosecuting agencies encourage the perpetrator to pay damages. Moreover, despite the fact that there are no payments of damages, the punishment is extremely light compared to that in cases of violence between unrelated parties. If there is no injury from the violence, there is generally no prosecution. If there is injury, the violence is generally punished with merely a fine, unless the injury is extremely severe. And even when a trial is held, a suspended sentence is usually the result, unless there is a previous conviction or some other special circumstance.

Moreover, “the victim’s wishes” are brought to bear overly much on the decision whether to prosecute the perpetrator. A trend that has been seen of late is to justify not prosecuting on the grounds of “the victim’s wishes” in that the victim fears that prosecution would invite reprisals by the perpetrator.

The cases of domestic violence known to the police are increasing annually (roughly 21,000 in 2007 and 25,000 in 2008). Apart from murders and injuries resulting in death (80 cases in 2007 and 94 in 2008), arrests are rare for assault and battery and so on. All told they amount to just a few percent of all cases known to the police (according to the National Police Agency’s March 12, 2009 report, “The Situation with Handling Stalker Cases and Cases of Spousal Violence”).

<http://www.npa.go.jp/safetylife/seianki74/h20stdv.pdf>)

(2) Shelters for protecting victims

The number of public shelters (Spousal Violence Counselling and Support Centers under the Act on the Prevention of Spousal Violence and the Protection of Victims) is small. There is only from one to a few in each prefecture. Only some of them provide temporary protection for victims. Moreover, they don’t have a system in which full-time staff with specialized knowledge and know-how deal with domestic violence on a continuing basis; there is a high turnover of staff members; and the working conditions of those who deal directly with victims of domestic violence include low

wages and fixed terms and are otherwise unattractive. Perhaps because of their limited budgets, there are centers where the staff members are few in number compared to the people seeking protection, are usually overworked and exhausted, and often end up resigning. There are also staffers who have little idea of what it means to protect victims of domestic violence, and who deal with victims in a perfunctory or bureaucratic manner lacking in flexibility or warmth. For the sake of the victims, and for the sake of the staffers who tend to suffer mental health problems, centers should have their own in-house counsellors; however, such a system does not exist. Centers also have numerous restrictions (residents are prohibited from commuting to their workplaces or schools from the center; males of middle school or high school age or above cannot enter the premises; etc.), so that there are problems in terms of helping the residents to become independent.

Private shelters help to compensate for the dearth of public shelters. As of November 2007, there were over 100 private shelters nationwide (see the Gender Equality Bureau of the Cabinet Office website,

<http://www.gender.go.jp/e-vaw/soudankikan/05html>). However, while these shelters have some public financial support, they are chronically underfunded; thanks to the self-sacrificing spirit of their staff members, they are managing to stay afloat. Almost none of the staff members are able to live on what they earn at the shelters. There are also many unpaid volunteers. The Government should increase the amount of public aid for private shelters. It should also energetically conduct PR activities calling for donations to private shelters and take other innovative steps, such as giving those donations preferential treatment by making the tax exemption rate for them higher than for donations to other NPOs.

(3) Protection orders

The Act on the Prevention of Spousal Violence and the Protection of Victims provides for orders to vacate and stay-away orders. However, the period for both is short – two months for orders to vacate and six months for stay-away orders – and the requirements for a repeated petition are excessively onerous, so that in some cases the petitions are dismissed.

For stay-away orders, a system should be adopted whereby the orders are permanent unless the victim files for rescission. For victims fleeing from their persecutors, having to repeatedly file for stay-away orders is an enormous burden. Thus, there are many victims who give up on repeatedly filing and, after the latest order expires, continue to hide for fear of being pursued by the persecutor. As for orders to vacate, they were established merely to give the victim a chance to prepare to move out of her home. The victim loses the foundations of her life, whereas the victimizer loses nothing. This unfairness cannot be justified on any grounds.

(4) Providing support and financial aid to victims

The core of support consists of information and temporary protection (facilitating entry into a shelter) provided by the Government. It is extremely difficult to receive public aid without going into temporary protection first. In certain cases a victim needs to begin to receive public aid promptly, before going into temporary protection, but the fact of the matter is that in order to get welfare offices to recognize victims of domestic violence as such, the victims first have to be receiving temporary protection. However, considering the shortage of shelters and the limitations of their functions, the requirement for temporary protection should be revised.

Also, support for enabling victims of domestic violence to become independent after they suffer damage and flee to safety is inadequate. It is extremely important for women to become independent both economically and emotionally even before they suffer damage. This also helps to prevent suffering in the first place. In Japan, such customs as quitting work after getting married or giving birth are still commonplace for women, as is a work history that follows the M-shaped pattern of participation of women in labour force. Measures to improve this situation and also school education are indispensable. However, the Government's measures for enabling women to become economically and emotionally independent before they suffer damage from domestic violence are as good as no measures at all.

(5) Programs for raising the awareness of the police, lawyers, and the judiciary

For all their effectiveness, such programs are as good as non-existent. Regarding the police, all police officers should have knowledge and awareness of domestic violence, but the actual situation is that domestic violence cases are referred to and handled by a special department, the Community Safety Section. The disparity in knowledge about domestic violence between the officers in this department and other officers is enormous.

With regard to lawyers, training about domestic violence is optional, and there are many lawyers who openly declare, "I don't handle domestic violence cases."

As for judges, how aware they are about domestic violence is not always clear.

In any case, it is necessary to create and introduce programs that will raise awareness about domestic violence.

(6) Programs for raising the awareness of the general public

All that the Government has done in this area is just produce leaflets and posters intended to raise awareness. Otherwise there have been no

substantial efforts. In order to prevent violence in dating relationship and the like, the Government should treat domestic violence issues in health textbooks in the same way as sex education.

3. Sexual harassment

(1) Protection and support of victims

Special measures for protecting and supporting victims are not being adequately carried out.

The Government should revise the Equal Opportunity Employment Act and establish clear provisions prohibiting sexual harassment in the workplace, create an agency for providing prompt, appropriate redress to victims, and otherwise upgrade the system. For details, see question 23.

With regard to demanding damages and otherwise pursuing perpetrators in terms of their civil liability, various problems stand in the way, including the prolonged length of trials, the low amount of damages, and the difficulty of establishing proof, so that there are not a few victims who have not received redress.

(2) Prosecution of perpetrators

The prosecution of perpetrators is conducted based on Penal Code (for rape, indecent assault, etc.). In actuality, however, only a small percentage of perpetrators are punished. There are various reasons for this. For example, there are many cases where the victim doesn't bring a complaint for fear of the prejudices held by those in her surroundings and of retaliation by the perpetrator; there are also cases where the victim does bring a complaint but the perpetrator is not indicted because of the presuppositions or prejudices of the investigating authorities; and even if the perpetrator goes on trial, there are many cases where the victim is not thoroughly protected and even subjected to prejudice, including that of judges and attorneys for defendants.

(3) Prevention of damage

Despite the fact that the damage from it is serious, sexual harassment often goes unnoticed by the society at large. Nevertheless, it is pervasive, occurring in workplaces, schools, and almost all other social settings. That is because the inequality, and the disparity in power, between men and women in those settings conduce to its occurrence. Thus, programs to eliminate those precipitating factors are necessary.

With regard to sexual harassment in schools, it is necessary to quickly gain an understanding of the nationwide situation and for the national government or local governments to take measures such as establishing complaint-handling mechanisms for schools and conducting training for teachers. In addition, the content of education should be made gender-

equality.

4. Measures for establishing a comprehensive strategy for combating all forms of violence against women

- (1) The actual authority of the Gender Equality Bureau of the Cabinet Office is very limited, and its budget is also small. Moreover, its findings and proposals regarding the elimination of violence against women are often treated lightly in the Government. Thus, the adjustments necessary to realize a strategy are not being promoted.
- (2) The basic awareness that violence against women is rooted in a structure of gender-based prejudice has not yet been adequately formed in the Government. For example, women's working conditions – job insecurity, low wages – are important background information for domestic violence and sexual harassment, but Government measures are not linked to them, thus inhibiting the development of an effective strategy.
- (3) The Government has incorporated almost no education about sex, gender, and human rights into school curricula. As a result, many children have no opportunity to acquire even basic knowledge about gender-based violence. Gender education for judges, prosecutors and other law-enforcement officers, and for civil servants, is also inadequate. For more information on this subject, see part 2 of question 4.

8. In its previous concluding observations (see CAT/C/JPN/CO/1, para. 25), the Committee against Torture expressed concern over “the lack of effective measures to prevent and prosecute violence perpetrated against women and girls by military personnel, including foreign military personnel stationed on military bases”. Please specify the measures taken in response to this concern.

1. Based on Article 6 of the Treaty of Mutual Cooperation and Security between Japan and the United States of America, the U.S. Army, Navy, Air Force, and Marine Corps are stationed in Japan. As of 2008, there are a total of 100 U.S. military facilities in 13 prefectures. (These facilities include camps, airfields, bombing and shooting grounds, communications stations and facilities, oil tanks and reservoirs, depots, housing, warehouses, auxiliary facilities, naval facilities, docks, ammunition depots and dumps, and training grounds.) In particular, the U.S. military bases, which make up some 75% of the total area of land used exclusively for U.S. military facilities in Japan, are concentrated in Okinawa Prefecture, which accounts for only 0.6% of the total land area of Japan. The U.S. military bases in Okinawa occupy about 11% of the total land area of the prefecture and about 19% of the main island of Okinawa, on which the prefecture’s population and industry are clustered. There are 37 U.S. military facilities and some 22,000 troops, the main body of which is the Marine Corps, stationed in the prefecture (website of the Military Base Affairs Division of the Okinawa Prefectural Government).

The U.S. forces in Japan have caused many incidents and accidents involving the local citizens. According to Japan’s Defense Facilities Administration Agency, the U.S. troops in Japan gave rise to more than 201,000 incidents and accidents, both on and off duty, from 1952 to 2004, and 1,076 Japanese died as a result (not including data before Okinawa’s return to Japan) (Akahata newspaper, July 10, 2005). From 1972, when Okinawa was returned to Japan, to 2006, the number of crimes perpetrated by U.S. troops and civilians attached to the U.S. forces totaled 7,105 cases, and 6,231 U.S. troops and civilians were arrested. This translates into about 200 criminal cases perpetrated and 180 arrests made each year (Takayoshi Egami, Waseda University Opinion, No.260, 2007, [www://www.waseda.jp/jp/opinion/2007/opinion280.html](http://www.waseda.jp/jp/opinion/2007/opinion280.html)).

The number of sexual offenses and information about arrests and penalties imposed on sexual offenders, however, has not been made public. The Japanese Government should publicize the number of cases and other details of offenses, and in particular, those related to sexual offenses, committed by military and civilian members of the U.S. forces in Japan.

2. Frequent occurrences of sexual offenses

(1) Sexually violent perpetrated in Okinawa

Over the years, there has been recurrence of violence against Japanese women and girls by U.S. troops in Japan. In particular, immense harm has been done to women and girls in Okinawa. According to statistics provided by Ryukyu government police, newspaper reports, and Okinawa Prefecture Police, 629 sexual offenses were perpetrated from 1945 to 1997, of which 35 were cases in which the victims were under 20 years of age, including a case involving a nine-month-old infant (Ms. Suzuyo Takasato, Co-chair, Women's Action Group against Bases and the Military).

From the time a 12-year-old girl was raped in 1995 to 2007, there were 18 victims (14 cases) of sexual offenses exposed by Okinawa Prefecture Police that were committed by U.S. military personnel (Okinawa Tsushin, No.56, March 2008). There were 2 more victims in 2008 (2 cases), which brings the total to 20 (16 cases). Of the 12 victims of sexual offenses committed after 2000, 6 were under 20 years of age at the time of the offense (ages 10, 14 (two victims), 17, and 19 (two victims); Ms. Takasato, already cited).

Of all of these serious sexual offenses, more notable ones are listed in Annex 1.

(2) Sexual offenses perpetrated by U.S. military personnel are recurring outside Okinawa Prefecture as well, as shown in Annex 2.

(3) The above are those cases that appeared in the news and are only the visible tip of an iceberg. In response to the Committee against Torture's concluding observations of May 2007, the Japanese Government has failed to adopt any meaningful measures. As a result, sexual offenses by U.S. soldiers are recurring.

3. The Japanese Government has relinquished its jurisdiction over crimes committed by U.S. soldiers

(1) So long as military and civilian members of the U.S. forces commit crimes in Japan, jurisdiction (judicial power) over those crimes rests with Japan, and Japan's penal code and other punitive regulations obviously apply to those cases (Penal Code, Article 1).

However, as shown below, the Japanese Government has waived its jurisdiction over crimes by U.S. troops for many years. The Japanese Government's response that "the concern stated by the Committee against Torture is obviously based on a misunderstanding" is contrary to facts.

(2) The Japan-U.S. Administrative Agreement, concluded in 1952, a year after the conclusion of the Treaty of Mutual Cooperation and Security between Japan and the United States of America in 1951, provided that jurisdiction over criminal cases caused by U.S. military or civilian personnel or their families in Japan rested with the U.S.

The Administrative Agreement was revised in 1953. The revision provided

that the primary right to exercise jurisdiction over offenses committed by U.S. troops would rest with the U.S. if the offense was committed while the offender was “on duty” and with Japan if it was committed while the offender was “off duty.”

At the time of this revision, however, the Japanese Government concluded a secret agreement, which stated that with respect to criminal cases involving officers and men of the U.S. forces in Japan, “the Japanese authorities would not exercise the primary right to exercise jurisdiction with the exception of cases of material importance to Japan” and that “the instances where (offenders held under the custody of the U.S. military authorities) to be held by Japanese authorities would probably not be many” (statement by the Japanese chair of the working group on criminal affairs of the subcommittee on jurisdiction of the joint committee on the issue of Paragraphs 3 and 5 of the Protocol of September 29, 1953, to revise Article 17 of the Administrative Agreement). The Ministry of Justice issued a notice, dated October 7, 1953, in the name of the Director-General of the Criminal Affairs Bureau, to all superintending public prosecutors and chief public prosecutors in Japan, instructing them that “in consideration of international precedents, utmost caution must be applied in the exercise by Japan of the primary right to exercise jurisdiction.”, and that “it would be appropriate to consider all circumstances and exercise the primary right to exercise jurisdiction only in cases of material importance to Japan.” In other words, Japan should waive its primary right to exercise jurisdiction in “cases of no material importance to Japan” (in “Reference Materials Related to Criminal Jurisdiction over Members of the U.S. Military,” prepared by the Criminal Affairs Bureau in March 1972, with the title, “To serve as a reference in the performance of duties;” Akahata newspaper, August 5, 2008; Kyodo News, October 23, 2008).

- (3) With the revision of the Treaty of Mutual Cooperation and Security between Japan and the United States of America in 1960, the Japan-U.S. Administrative Agreement was revised and became the Japan-U.S. Status of Forces Agreement, which provided that Japan had the primary right to exercise jurisdiction over offenses committed by U.S. soldiers while the offender was off duty (Article 17, Paragraph 3b). It also provided, however, that Japan “shall give sympathetic consideration” to a request from the U.S. for a waiver of Japan’s primary rights (Article 17, Paragraph 3c) and that unless Japan arrested the offender in the act of crime, Japan would not hold the suspect in custody until the suspect was indicted and detained (Article 17, Paragraph 5c).

The secret agreement of 1953 and the notice by the Director-General of the Criminal Affairs Bureau, which was issued to conform to the secret agreement, were maintained. In a book published in 2001, the judge

advocate of the U.S. forces in Japan wrote, “Japan has been faithful to this agreement [i.e. the secret agreement of 1953]” (The Handbook of the Law of Visiting Forces, Oxford University Press; Akahata newspaper, August 26, 2008).

The Japanese and U.S. Governments continued to conceal the secret agreement, but, in May 2008, a document was discovered that revealed its existence (a public document preserved by the U.S. National Archives and Record Administration was declassified and became public). The Japanese Government, however, still does not recognize the existence of the secret agreement. Moreover, the above-mentioned “Reference Materials,” which were prepared by the Criminal Affairs Bureau of the Ministry of Justice in 1972, had been available for view at the National Diet Library since 1990, but the reading of the documents was prohibited in June 2008 on the grounds of “a public decision of the publisher to withhold the documents from public view” (Akahata newspaper, August 11, 2008; Kyodo News, October 23, 2008).

The “Reference Materials” state, with regard to handling of offenses committed “on duty,” over which the primary right to exercise jurisdiction rests with the U.S., that it suffices for the commanding officer of the suspected U.S. soldier to declare that the “offense was committed while the suspect was on duty” in “an on-duty certificate” and that “duties” also include “military customs,” including the “custom where commissioned officers can, under any circumstances, provide supervision over violations of military discipline by non-commissioned officers.”

(4) As described above, even though the primary right to exercise jurisdiction formally rests with Japan, investigation by Japanese police is significantly restricted, such as when the suspect is held in the hands of the U.S., and a charge is hardly ever brought against the suspect. The Japanese Government has de facto relinquished criminal jurisdiction over offenses perpetrated by U.S. soldiers.

In the face of frequent crimes in the vicinity of U.S. bases, local governments and citizens have repeatedly called for revision of the Japan-U.S. Status of Forces Agreement. The Japanese Government, however, has indicated that it will respond by improving the way the Status of Forces Agreement is implemented and has refused even to start negotiation for revision of the agreement.

In the event of “hostilities” against Japan, as provided for in Article 5 of the Treaty of Mutual Cooperation and Security between Japan and the United States of America, a notice shall be given unilaterally by the U.S. to suspend the applications of all provisions of Article 17 of the Status of Forces Agreement (Status of Forces Agreement, Article 17, Paragraph 11). The intent of this provision is to introduce a mechanism in which Japan will

have absolutely no jurisdiction over offenses by U.S. soldiers in times of emergency in Japan. It is essential to revise this provision as well.

4. The Japanese Government, which customarily requests the U.S. forces to “reinstate discipline” and “prevent recurrence” each time an offense occurs, sees these crimes primarily as a potential destabilizing factor in the Japan-U.S. relations and not as violence and violation of human rights committed against women. There has even been a case where the Japanese Government, taking advantage of the fact that rape and sexual assault require a formal complaint from the victim in order to prosecute, urged the victim to reach an out-of-court settlement to bring a quick close to the case (Ms. Takasato, already cited).

The Japanese Government should abrogate the secret agreement of 1953, radically revise the inequitable Japan-U.S. Status of Forces Agreement, and put into place the self-evident legal principle of applying the Japanese law to criminal acts perpetrated by military and civilian members of the U.S. forces in Japan. To begin with, it is abnormal for the U.S. forces to maintain its presence in Japan for more than 60 years after the end of the Second World War. Had the U.S. bases being withdrawn, the tragic cases of violence against women would not have occurred.

JFBA is requesting the reduction as well as withdrawal, as soon as possible, of the military bases, particularly those in Okinawa, and the revision of the Japan-U.S. Status of Forces Agreement (“Declaration of Actions for Human Rights,” November 1999). The Government should make an earnest effort.

5. Sexual offenses are also frequent within the Self Defense Force (SDF)

Although the Ministry of Defense began, in 2005, to publicize disciplinary actions brought against the regular personnel and administrative officials of the SDF, it does not make public the breakdown of “wrongdoings committed in private capacity” (violations of discipline excluding acts performed in official duty or in relation to official duty, malevolent violation of traffic regulations while driving a private car, larceny, fraud, extortion, embezzlement, bodily harm, battery, intimidation, and bodily injury or manslaughter caused by negligence).

In response to questions by an opposition member of the Diet, it became clear that disciplinary action was brought against about 160 cases of ““wrongdoings committed in private capacity” in both FY 2005 and FY 2006 and that in addition to murder, child abuse (resulting in death), and use of stimulant drugs, there were many sexual offenses, including indecent exposure, sexual assaults, buying sex with children, and sexual harassment. In particular, the number of disciplinary actions brought against sexual offenses in 2005 and 2006 was 67 and 75, respectively, which means that sexual offenses were occurring almost every week in both of these years.

These numbers are extraordinary in themselves, but they are only a tip of the iceberg. Key officers were among those punished.

There were also many cases of sexual offenses committed by male SDF personnel in uniform against female personnel in uniform and female administrative staff of the SDF, but penalties against these offenses are extremely light. In a case where a female member of the regular SDF personnel was sexually assaulted by her superior, the mental pain caused by the incident forced her to be hospitalized for about a month, and later she resigned from her job. The offender, however, was subjected only to a day of suspension from work, and the offender's superior was only admonished (Akahata newspaper, May 29, 2007).

In a separate case in September 2006, a female member of the regular SDF personnel became a victim of attempted rape perpetrated by her superior. When she sought advice from her other superiors, they defended the assailant and tried to force her to submit a letter of resignation and continued to harass her. She filed a damages suit against the Japanese Government (the case is still pending). The government claims that it has "ignorance" of the assault, and no penalties have yet been imposed on the assailant. Moreover, in January 2009, Government refused to keep her in employment without indicating the reason for the decision (according to the Group Supporting a Woman SDF Personnel in a Human Rights Trial).

[Annex 1]

- (1) In September 1955, an American sergeant attached to Kadena Base raped a six-year-old girl before murdering her and abandoning her corpse.

The assailant was sentenced to death at a military court, but after the assailant's repatriation to the U.S., the sentence was reduced to 45 years of hard labor.

- (2) In 1984, three American soldiers raped a 17-year-old girl.

The victim is suffering from trauma. After the rape of a primary-school girl in 1995, mentioned under (4) below, she came forward to tell her story in the hope of preventing similar cases in the future.

- (3) In 1993, an American soldier abducted a 19-year-old girl and raped her on the base premises.

The suspect was detained by the U.S. forces but managed to flee to the mainland U.S. He was later arrested and sent back to Okinawa under guard.

- (4) In September 1995, three American marines attached to Camp Hansen abducted and gang-raped a 12-year-old girl in northern Okinawa (rape resulting in bodily injury, and illegal arrest and confinement).

Okinawa Prefecture Police took out an arrest warrant three days after the incident, but the suspects were held by the U.S. forces until charges

were actually brought against them. Because of the atrociousness of the crime, there were strong protests not only from the local citizens and governments, but also from all over the country. Consequently, the Japanese Government entered into discussions with its U.S. counterpart. In October 1995, a verbal agreement was reached to the effect that “the United States will give sympathetic consideration to any request for the transfer of custody prior to indictment of the accused which may be made by Japan in specific cases of heinous crimes of murder or rape.” This, however, does not constitute revision of the Japan-U.S. Status of Forces Agreement but only a revision in the implementation of the agreement.

In March 1996, the Okinawa District Court passed sentences ranging from six years and six months to seven years of penal servitude without a stay of execution to the three assailants who were indicted (two of them appealed but the appeals were dismissed).

In August 2006, one of the assailants, who returned to the U.S. after serving five years in Japan, murdered a woman before killing himself.

- (5) On June 29, 2001, an American soldier attached to Kadena Base raped a woman.

The court issued an arrest warrant immediately after the incident, but the U.S. forces declined Japan’s request to turn over the assailant for custody. It was only after the rise of public opinion in Okinawa Prefecture (Okinawa Prefectural Assembly unanimously adopted a resolution of protest against the U.S. forces and the Japanese Government on July 5, requesting immediate transfer of custody of the American soldier and radical revision of the Japan-U.S. Status of Forces Agreement) that the U.S. forces agreed, on July 6, to transfer custody.

- (6) On November 2002, a major in the U.S. Marine Corps attempted rape.

The Japanese authorities requested transfer of custody prior to indictment, but the U.S. forces initially declined the request. The assailant was indicted (for attempted sexual assault) 16 days after the issuance of an arrest warrant. At the same time, the custody of the assailant was transferred to Japan. He pleaded not guilty, but the Naha District Court sentenced him to a year of penal servitude with a stay of execution of three years. After returning to the U.S., he was arrested for kidnapping a 19-year-old girl with intent to rape.

- (7) In July 2005, an American soldier attached to Kadena Base sexually assaulted a girl in the fifth grade of elementary school.

The Okinawa District Court sentenced the assailant to a year and six months of penal servitude with a stay of execution of four years.

- (8) In October 2007, a son of an American soldier living on Kadena Base struck and raped a woman employee of a restaurant (rape and bodily injury). The Okinawa District Court sentenced him to three years of penal

servitude.

- (9) In February 2008, a sergeant in the U.S. Marine Corps raped a 14-year-old middle-school girl.

This incident recalled the rape of an elementary-school girl in 1995 and brought strong protest from the local citizens. The U.S. forces and the Japanese Government held talks with the local governments on measures to prevent recurrence, and it was decided to implement stricter regulations on U.S. soldiers going out, provide education, set up security cameras around the U.S. bases, conduct joint patrol by the U.S. forces and Japanese police, and carry out a fact-finding survey on U.S. soldiers living outside the bases. These measures, however, fail short of restricting entry of a large number of U.S. soldiers from neighboring military bases into the living space of the citizens of Okinawa. The victim dropped charges against the assailant, who was later sentenced to three years of penal servitude by a court-marshal.

- (10) In the same month, a U.S. Army soldier raped a Philippine woman. The district public prosecutors office did not bring any charges against this case.

[Annex 2]

- (1) In April 2002, a crewman of a U.S. aircraft carrier raped a woman in Yokosuka.
- (2) In August 2003, an American soldier attempted rape and caused bodily harm against a woman in Iwakuni, Yamaguchi Prefecture. In March 2004, the district court sentenced the assailant to three years of penal servitude with a stay of execution of four years.
- (3) In January 2004, an American soldier raped a woman in Sasebo, Nagasaki Prefecture.
- (4) In January 2006, a civilian member of the U.S. forces sexually assaulted a woman in Yokohama.
- (5) In October 2007, four American soldiers attached to Iwakuni Base took a 19-year-old girl in a car and gang-raped her in Hiroshima.
- (6) In May 2007, an American soldier attached to Misawa Base assaulted a woman from behind on the street of Hachinohe, Aomori Prefecture.
- (7) In June 2007, a crewman of U.S. Navy landing ship raped and caused bodily harm to a woman in Sasebo, Nagasaki Prefecture.
- (8) In June 2008, an American soldier attached to Misawa Base clasped and otherwise sexually assaulted a 19-year-old girl in Hachinohe, Aomori Prefecture.

9. The report indicates (see para. 172) that “the Law Concerning Partial Amendment to the Penal Code”, which was enacted in June 2005, includes the establishment of trafficking in persons as a crime and introduces an increase in the penalties for such a crime. Annex No. 21 of the report provides statistical data on how many prosecutions have been brought against traffickers from 2001 to 2005. Please give further details about the results to date of those prosecutions in terms of convictions and sentences as well as statistical data and prosecutions since the enactment of the new legislation.

1. Japanese Government starts to implement measures

Based on the economic disparity between the source countries and Japan, many victims of human trafficking were sent to Japan at least by the 1980s. In terms of the damage to women in the form of sexual exploitation, in particular, Japan has been regarded as one of the major destination countries. The Japanese society, however, had long disregarded this fact. The media occasionally reported on the plight of the victims, but it was generally thought that “their plight was inevitable because they had come to Japan to make money with the full knowledge that they were engaging in prostitution. They only needed to be returned to their native countries.” The Japanese Government claimed that “there were only illegal foreign workers in Japan and no victims of human trafficking,” and failed to take any measures.

This stance, however, was criticized by the international community, including NGOs providing assistance to the victims, the governments of the source countries, and the United Nations. The signing of the Trafficking Protocol of the Convention against Transnational Organized Crime prompted the Japanese Government to begin considering and implementing measures against human trafficking, starting around 2004.

2. Prosecution of traffickers

One of the measures adopted by the Japanese Government is the partial amendment of the Penal Code, which includes the establishment of trafficking in persons as a crime. This amendment was enacted in June 2005 and came into effect in July of the same year. The statutory penalties for the newly established crime of trafficking in persons (Article 226-2) are penal servitude of not less than 1 year but not more than 10 years for traffickers who sell persons as well as for the buyers, if the purchase is for profit, sexual exploitation, or marriage. (If the objective of the purchase cannot be proven as much, the penalties for the buyers are penal servitude of not less than 3 months but not more than 5 years. If the victim is a minor, the penalties are penal servitude of not less than 3 months but not more

than 7 years.)

Prior to the amendment, the police had arrested the perpetrators on the grounds of the Immigration Control and Refugee Recognition Act (for encouraging illegal labor.etc), the Anti-Prostitution Act (for encouraging prostitution), and the Law on Control and Improvement of Amusement and Entertainment Business (the "Entertainment Business Law" hereafter). After the amendment, the police began exposing cases related to trafficking in persons with the establishment of the new crime in mind.

The number of arrests and the number of persons arrested since 2005 are as shown below (National Police Agency, press release on February 5, 2009, <http://www.npa.go.jp/pressrelease/index.htm>).

2005: 81 cases (83 persons arrested, of which 26 were brokers), 117 victims

2006: 72 cases (78 persons arrested, of which 24 were brokers), 58 victims

2007: 40 cases (41 persons arrested, of which 11 were brokers), 43 victims

2008: 36 cases (33 persons arrested, of which 7 were brokers), 36 victims

Of the above cases, in 39 of the cases the perpetrators were indicted by public prosecutors for the crime of trafficking in persons, by the end of December 2008. Thirty one persons were given a sentence in the first trial, also by December 2008, of which only 20 were passed a sentence without a stay of execution. The remaining 11 were granted suspension of the sentences. Further details of the sentences have not been made public.

The numbers of arrests and the persons arrested are on the decline since the peak in 2005, but this does not indicate a decrease in trafficking in persons. Instead, on top of the fact that trafficking in persons is by nature a latent crime, devious management methods used by traffickers in recent years to prevent the victims from fleeing or reporting the crime and changes made in the management approach that make the victims less aware that they are in fact victims are making it more difficult for cases of human trafficking to come to the surface. For example, giving a forged or altered passport to victims or letting victims expire their duration of stay in Japan, even if coerced or instructed, is an effective way to psychologically place them in complicity with the crime and make them hesitant about asking for help from the police. Instead of physically confining the victims under lock and key and surveillance cameras, they may be required to obtain permission each time they go to work or simply go out, violation of which may result in fines being charged to a group of victims as a whole. On the other hand, as long as they follow the instructions of the perpetrators, they may actually be paid a sum roughly equivalent to several hundred dollars, and the perpetrators may act on their behalf to remit money to their families in their native countries. The victims may be compelled to provide

services as hostesses including coming to work accompanied by a customer but may not be forced into prostitute themselves. These astute management methods are effective in keeping the victims bound to the perpetrators. In Japan, however, the image of victims of trafficking being placed under confinement, physically beaten up, and forced in prostitution is prevalent, and cases in which these astute management methods are practiced may easily be overlooked. There is a need to fully disclose the actual situation in which the victims are placed.

10. In its previous concluding observations (see CAT/C/JPN/CO/1, para. 25), the Committee against Torture expressed its concerns at the cross-border trafficking in persons, facilitated by the extensive use of entertainment visas issued by the Government, as well as at the inadequate nature of support measures for victims, leading to victims of trafficking being treated as illegal immigrants and being deported without redress or remedy. Please describe measures that have been taken to address those concerns as well as any protection measures and assistance given to witnesses and victims of trafficking.

1. In response to the criticism that many victims of trafficking were being trafficked to Japan using the status of residence of the “entertainer,” the Ministry of Justice twice revised the ministerial ordinance that set the criteria for permitting landing on Japan based on the status of residence of the entertainer. In the revision that took effect in March 2005, the requirement that foreign entertainer “must have a qualification certified by a foreign government, foreign local government, or public or private organization acting in the equivalent capacity” was deleted, as such qualification had been used to traffic women, particularly from the Philippines. In the revision that took force in June 2006, it provided that the inviter or employer who accepts foreigners with the status of residence of the entertainer in Japan may not be a person who has been involved in trafficking of persons or who has violated the Anti-Prostitution Act or an organization that is managed by or that employs members of organized crime as regular employees. Additionally, it obligated that the foreign entertainer must be paid monthly remuneration of ¥200,000 or more.

As a result of these revisions, the number of persons entering Japan with the status of residence of the entertainer dropped sharply from about 135,000 in 2004 (of which about 82,700 were Filipinos) to about 39,000 in 2007 (of which about 5,500 were Filipinos), which shows how much the status of residence of the entertainer had been misused.

However, cases are still being reported of women who cleared the revised criteria to enter the country with the status of entertainer to be later put

under protection as victims of trafficking (National Police Agency, press release on February 5, 2009). Entry with the status of residence of “short-term stay” or “spouse or child of Japanese national” instead of “entertainer” is increasing, and women continue to be trafficked to Japan using counterfeit or altered passports.

There are also concerns that there may be cases where a Japanese man will falsely recognize a foreign woman or girl as his child, force her to obtain Japanese nationality, bring her to Japan, and exploit her, and cases where a Japanese man will falsely recognize a foreigner’s child as his own, obtain Japanese nationality for the child, force a foreign woman to obtain status of residence in Japan as a nurturer of the child, bring her to Japan (and force her to reside in Japan), and exploit her. Because these could potentially be even more guileful methods of trafficking than making false reports of marriage (the so-called fraudulent marriage), developments need to be followed carefully.

2. Recognition of victims of human trafficking

The Government provides, within the scope it set for itself, protection and support to individuals recognized as victims of trafficking (the inadequacy of this protection and support will be described below). However, individuals who are not recognized as victims, regardless of whether they are in fact victims, have no access to this protection and support. They are deported and may even be prosecuted, prior to deportation, for violating the Immigration Control and Refugee Recognition Act and other laws. Therefore, the entity judging whether or not an individual is a victim of trafficking and the criteria by which the judgment is made is extremely important.

The Japanese Government maintains that the police and the Immigration Bureau are making judgment appropriately, using the results of analyses on past cases of trafficking in persons as well.

It is doubtful, however, whether devious management methods used by traffickers to prevent the victims from fleeing or reporting the crime and changes made in the management approach that make the victims less aware that they are in fact victims (see question 9) are accurately reflected on their judgment.

For example, there was a case in which a public prosecutor pressed charges, in December 2008, against a woman who had been judged as a victim of trafficking by the police and the International Organization for Migration (IOM). The judge gave her a verdict of guilty (penal servitude with a stay of execution; January 2009, in A Prefecture). In another case, a public prosecutor attempted to indict a woman who had also been judged as a victim of human trafficking by the police and the IOM and who had been placed under protection (December 2008 in B Prefecture). Both cases

involved Philippine women who landed and remained in Japan using a forged or altered passport supplied by the trafficker. In the case in A Prefecture, the public prosecutor indicted the Philippine woman on account of illegal residence (Immigration Control and Refugee Recognition Act, Article 70, Paragraph 2). In the case in B Prefecture, the public prosecutor tried to bring charges, but ultimately no charges were brought against the victim. A correct understanding of these two cases would be that the acts that the two women were suspected of were clearly the direct result of their involvement in trafficking as victims and they should never have been indicted or punished. These cases attest to the fact that there are many latent cases in which victims of trafficking are not properly recognized.

The Government claims that it is providing training to members of law enforcement agencies to deal with trafficking in persons, but the effectiveness of such training is not clear. There were admittedly cases where the police or the Immigration Bureau recognized women who had been trafficked to Japan using similar modus operandi as the cases in A and B prefectures as victims and promptly placed them under protection without indictment. Training is given to police and immigration officers to some extent, but hardly any training is provided to public prosecutors and judges. There is a need to provide training, which should also highlight the increasing guilefulness with which the traffickers manage the victims, to the members of law enforcement agencies and particularly to public prosecutors and judges. Moreover, the views and opinions of organizations that protect and support the victims should be reflected on the training programs and the participation of the members of such organizations in the training should be sought.

The Japanese Government adopts measures primarily against “trafficking of women for sexual exploitation.” It is true that many cases of trafficking in persons involve sexual exploitation, but some NGOs have pointed out that there may also be cases of “trafficking of women and men for labor exploitation” (Japan Network Against Trafficking in Persons, etc.). The Government should implement measures and recognize victims not only from the perspective of controlling violations of the Immigration Control and Refugee Recognition Act and labor laws and regulations, but also from the perspective of keeping in check trafficking in persons for labor exploitation.

3. Insufficient support for victims

Multilingual, 24-hour hotline is considered an effective way of helping victims seeking protection and support and has been established in many countries of the world, including the U.S. and South Korea. Japanese NGOs have persistently called upon the Japanese Government to establish the hotline, but the Government has remained passive.

Women's Consulting Offices provide protection to victims of trafficking in Japan. From April 2001 to December 2008, the offices took in a total of 255 victims, all of whom were women, into protection, of which 6 were put into the care of Child Guidance Centers and 89 in the temporary care of privately run shelters (Ministry of Health, Labour and Welfare's press release, "Ministry of Health, Labour and Welfare's response to victims of trafficking,"

<http://www.mhlw.go.jp/bunya/kodomo/dv32/index.html>).

Women's Consulting Offices, however, have problems that they must address. Few staff members understand the mother languages of the victims, and there are no full-time interpreters stationed at the offices. The offices cannot give the kind of support that gives consideration for the cultures and customs of the victims' native countries. There are no budgets to cover medical and living expenses. There is no system of legal assistance by lawyers. (Some local governments allocate budgets to the centers so that free legal counseling can be provided by lawyers, but such an arrangement is not guaranteed by law.) There are no programs to help victims find employment and establish independence. The Government provides hardly any financial assistance to privately run shelters.

Theoretically it is possible for victims to claim damages and unpaid wages to the perpetrators. However, with the exception of a system of legal assistance that JFBA provides through Japan Legal Support Center, there are no other systems providing victims free, reliable legal assistance from lawyers. For foreigners to receive financial assistance from the system of Civil Legal Aid, which is provided for by the Comprehensive Legal Support Act, they need to "have an address in Japan and be lawfully residing in Japan." Many victims do not meet this condition, and even if they did, they must still repay the legal costs. It may be possible to bring legal proceedings, but the need to secure money for their stay during the proceedings and the concern about their safety back in their native countries make it difficult for victims to actually exercise their right. Furthermore, if there is difficulty in assessing the perpetrators' assets, it would not be possible to recover any money.

The Japanese Government does not compensate the victims. The victims of trafficking are obviously victims of crime, but the Government's programs for victims of crime do not include measures for protection of victims of trafficking.

4. Protection of victims and witnesses in criminal action against the perpetrator

When a criminal action is brought against the perpetrator, the victims and others may be asked to appear before the court as witnesses. In this case, the Revised Code of Criminal Procedure may be applied to place a

screen between the perpetrator and the witness or to allow the witness to give testimony by video link from a remote room. It is, however, not possible to withhold the identities of the witnesses (including name, date of birth, nationality, and address) from the perpetrator (the defendant). In Japan, the Japanese police is responsible for the protection of victims and witnesses, but once they return to their native countries, it is the local police that will be responsible for their and their families' protection. The fear of retaliation cannot be denied, which is one of the main reasons that make victims hesitate about reporting the case or standing as witnesses.

11. Please provide information on the measures taken to address the root causes of prostitution, to prevent the sexual exploitation of women and girls, to raise awareness of the health and safety risks of prostitution and to ensure the protection, rehabilitation and social reintegration of prostitutes who wish to leave prostitution.

1. Sexual exploitation of “children” under 18 years of age (including rape, indecent sexual assault, commercial sexual exploitation for children (buying sex for children) , trafficking in persons for commercial sexual exploitation(buying sex for children) or for production of child pornography, distribution of child pornography, production, possession, and transportation of child pornography for the purpose of distribution) is prohibited and is subject to punishment by the Penal Code, the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children, and the Child Welfare Act.

Under the current law, however, the simple possession of child pornography (possession not for distribution) is not illegal and is not subject to punishment.

2. Sexual exploitation of girls and women of 18 years of age and over is practically unchecked.

(1) An individual who forcibly commits sexual intercourse with a girl or woman of 13 years of age or over by assault or intimidation is punishable for rape, and an individual who forcibly engages in an indecent act against a girl or woman of 13 years of age or over by assault or intimidation is punishable for sexual assault (Penal Code, Articles 177 and 176).

With respect to rape, however, the commonly held view and the position taken by the courts is that (1) the interest that should be protected by law is sexual freedom, and even if “assault or intimidation” was indeed applied at the time of sexual intercourse, that alone is not enough to describe the act as an illegal intercourse and the question is whether or not there was

consent; (2) even in the case of sexual act based on consent, it entails some degree of exercise of tangible force; and (3) it is consent that distinguishes between exercise of tangible force in sexual acts based on consent and unlawful exercise of tangible force which is subjective and not visible, and therefore it must be substituted with whether or not there was visible "resistance." Moreover, (4) the Supreme Court holds that it suffices that the degree of assault or intimidation in rape is one in which the assault or intimidation makes "resistance by the other party significantly difficult." It follows then that (5) in a case where the victim resists but it is not significant, the degree of assault or intimidation will not correspond to making "resistance by the other party significantly difficult."

Furthermore, according to precedent, (6) the woman needs to be "a cautious, chaste person" to be protected as a victim of rape.

In not a small number of cases, sentences were passed to acquit the offenders along this line of thinking.

In other words, the crime of rape is currently recognized only in special cases where "a cautious, chaste woman is assaulted or intimidated to the extent that she has to fight for her life, and despite her desperate resistance, she is violated."

(2) The Anti-Prostitution Act provides that prostitution, both the act of buying or selling sex, is illegal but not punishable. The law, however, stipulates that the "act of encouraging prostitution," such as soliciting customers in public, pimping, providing a place and funds for prostitution, and managing prostitution, is subject to punishment. The heaviest statutory penalties are imposed on the "act of forcing a person into prostitution for business" (managed prostitution), in which the offender is subject to penal servitude of up to 10 years.

In the case of the crime of soliciting customers in public, included in the "act of encouraging prostitution," the act of soliciting people to be customers of prostitution in a way to attract the public eye is punishable and the interest protected by law is "sexual morality" and "public morals." Moreover, only the women arrested and convicted of the crime of soliciting customers in public are subject to correction. (It is clearly provided for in the statute that only the "women" are subject to correction.) There is no provision for the correction of the male customers who bought sex.

Based on the view that "it is the sale of sex that prompts the purchase of sex and corrupts sexual morality and public morals," the legislators attempted to reduce the "sale of sex" by correcting women who engage in the practice and thereby maintain sexual morality. As reflected in the name of law "the Anti-Prostitution Act" and in the concept of "act of encouraging prostitution" in this law, it is clear that the law adopts a double standard on sexual norms. There is a need to radically revise the law as soon as possible.

The sexual conduct prohibited by the Anti-Prostitution Act is limited to “sexual intercourse” for compensation. Other types of sexual conduct (the so-called conduct similar to sexual intercourse) are not considered violations. On the contrary, such conduct is authorized by the Entertainment Business Law, if it is performed in a private room attached to a bathing facility, etc. It is a well-known fact that buying or selling sex (sexual intercourse) is frequently performed in these facilities, but it is hardly ever regulated based on the Anti-Prostitution Act (discussed later).

(3) The Entertainment Business Law provides for five types of “businesses related to sexual customs,” namely, “facility-based business,” “non-facility-based business,” “business of transmitting images,” “facility-based telephone dating service,” and “non-facility-based telephone dating service.” The law authorizes these businesses based on “notification” made by the business operators to the prefectural public safety commissions.

The Entertainment Business Law has been revised more than a dozen times, and there were discussions during the course of the revisions whether these businesses should be regulated by the use of “permits.” However, it was considered inappropriate for prefectural public safety commissions to grant permits to the operators, many of whom ran illegal businesses, and it was agreed that it would be better to maintain the system of having the operators notify of their businesses and thereby gain better perspective of their businesses, as many of them were being carried out without notification.

The services provided in the “businesses related to sexual customs” include “touching the customer of the opposite sex to satisfy the customer’s sexual curiosity” (non-facility-based business) and “showing images depicting sexual conduct or naked persons with the sole purpose of arousing sexual curiosity” (business of transmitting images). This shows that conduct similar to sexual intercourse is authorized to those who make the prescribed notification.

The Anti-Prostitution Act obviously applies to these businesses as well. (The Entertainment Business Law presupposes performance of conduct similar to sexual intercourse by the businesses that made the notification but it does not presuppose performance of sexual intercourse.) And it is a well-known fact that buying or selling sex (sexual intercourse) is being performed in these businesses. However, hardly any arrests are made for violation of the Anti-Prostitution Act. There are a number of explanations. Except where investigators raid the scene of the crime or seize videotaped images, it is difficult to gain evidence of “sexual intercourse,” because virtually no buyers of sex will cooperate in the investigation. Even if it is evident that sexual intercourse was in fact performed, drinks, food, and

other services are often provided along with sex, which makes the compensation for the other services and sex inseparable, and it is not always clear if compensation was made for sexual intercourse. It has also been explained that the investigation authorities see prostitution as a crime without victim and therefore they give low priority to prostitution cases.

- (4) With the exception of child pornography, there are no laws regulating pornography in general. The rights of the producers and users are stressed in the name of “freedom of expression” and “privacy,” and even pornography depicting a woman being raped or gang-raped is left unregulated. The human rights of the women appearing in this kind of pornography are totally disregarded.

Even for child pornography, production and possession of child pornography, for the purpose of sale, is now punishable, but the so-called “simple possession” of child pornography without the purpose of distribution is not and is not even illegal. There is a compelling argument for imposing penalties against simple possession, and both the Liberal Democratic Party and the Democratic Party of Japan submitted related bills respectively in 2008, both of which were abolished without substantial deliberation. On the other hand, there is also a strong argument against imposing penalties from concern that the ambiguous definition of child pornography may result in investigation authorities’ subjectively-based expansion of the scope of offenses subject to punishment.

In Japan, pornography is defined as “photographs, videotapes, and other objects” that “visually depict the image which arouses or stimulates the user’s sexual desires” (see the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children, Article 2). In other words, the emphasis is on the user’s subjective views rather than on the object of pornography. This definition, as it hinges on the user’s subjective views, is wrong. Pornography needs to be regulated not because it is a crime that corrupts public morals, but because the rights of women and children need to be protected from sexual exploitation and abuse. Therefore, regulation on pornography and the methods used to regulate pornography should be determined based on the points of view of women and children who are used as objects of pornography. The definition of pornography should also be restructured based on this line of thinking.

3. The Anti-Prostitution Act provides that for female prostitutes of 18 years of age or over, the Women’s Consulting Offices which are established by the prefectural government in each prefecture, provide them protection and assist in their rehabilitation and social reintegration. Only a very few prostitutes, however, actually seek protection from the Offices (National Research Council of Woman Counselors and Psychological Diagnosticians’ report by the government in FY2008). The reasons may be that due to lack

of communication, the women in need of support are not aware of the Offices and the support available there and that as a result of a marked decline in the number of prostitutes seeking support, fewer counselors can actually provide appropriate guidance to them.

For female prostitutes under 18 years of age, Child Guidance Centers primarily play the similar roles.

4. The term “*fuzoku*” is now part of the everyday language in Japan. It derives from “*sei fuzoku*” (sexual customs) and means purchase of sex and other sexual conduct. Few people, however, associate the term with exploitation. Many view purchase of sex and other sexual conduct with a girl or woman of over 18 years of age is not exploitation, because it is based on the “free will” of the girl or woman.

When sexual exploitation of children under 18 years of age was banned and became punishable, the only explanation offered was that children did not have sufficient faculty of judgment to act on their free will. There was no discussion on why it constituted exploitation and abuse. As a result, as soon as a girl turns 18, people summarily dismiss cases of prostitution and other sexual conduct, because the act is based on “free will.”

Research and education on the facts, causes, and effects of prostitution and other sexual conduct is needed. Little research has been done in this field, and education for promoting understanding and preventing sexual exploitation is almost nonexistent. In sex education provided by schools, the subject of respect for the right of self-determination in sexual conduct is not sufficiently dealt with.

12. In its previous concluding observations (see CRC/C/15/Add.231, para. 51), the Committee on the Rights of the Child expressed its concerns at the practice of *enjo kosai*, or compensated dating, and at the low minimum age of sexual consent, which might contribute to the practice and hamper the prosecution of sexual abuse of children. The sixth periodic report acknowledges (see para. 201) that “sexual acts committed in the name of patronage dating have drastically increased in number”. Please indicate what measures have been taken to address those concerns.

1. The Japanese Government has done nothing in the way to consider raising the minimum age of sexual consent which relates to the Penal Code, Articles 176(indecent assauly) and 177(rape).

The Government maintains that “the minimum age of 13 has been established only as a basis for distinguishing children who are generally regarded as mentally immature and without the capacity to consent or agree to sexual intercourse, etc.” It has, however, not indicated the rationale for establishing the age of 13 for such a standard.

2. In response to the rapid increase in cases of purchase of sex with minors and other crimes related to online dating websites, the Act on the Regulation of Acts Inducing Children Using Internet Dating Services (Online Dating Services Regulation Act) came into effect in September 2003. The law was later partially revised, and the revised act took effect in December 2008.

Online dating websites provide services where information about a person seeking new encounters with members of the opposite sex is posted, at the person's request, on the electronic bulletin board on the internet. The law prohibits postings that call for a relation or sexual intercourse with a child (defined as a person under 18 years of age) as well as the use of the websites by children. It also obligates the website operators to submit a notification to the public safety commission, check that children are not using the website, and delete postings that amount to the prohibited acts of inducement (violation of some of which carries penalties). Internet service providers and server rental providers are also required to make an effort in providing filtering services, and parents are required to make an effort in using the filtering services.

After the law took effect, the number of children involved in crimes on online dating websites, of which the National Police Agency is aware, remained level before decreasing to 724 victims in 2008 (of which 714 were using the cell phone to access the sites). Of about 1,600 arrests made in relation to cases involving online dating websites, the largest percentage, or about 40%, was for violation of the Child Prostitution and Pornography Act.

Of the children who became victims of crimes including the violation of the Child Prostitution and Pornography Act, of which the National Police Agency is aware, 792 children were using sites dedicated to uploading of personal profiles and other websites that were not online dating websites (2008), which claimed more victims than online dating websites. Measures against crimes on these other sites also need to be implemented as soon as possible.

3. The Act concerning Preparation of a Safe and Secure Internet Environment for Youth (Youth Internet Environment Preparation Act) was enacted in June 2008 and took effect on April 1, 2009.

The objective of this law is to prevent young people (defined as under 18 years of age) from becoming involved in incidents through their use of the internet and to provide a safe environment for young internet users. To protect young people from harmful information, the law obligates providers of internet services on cell phones to stipulate the use of filtering services to block out harmful information when concluding an agreement with a young person. An exception is allowed when the parent requests that the filtering services not be used.

Considering the vast amount of information on the internet that is constantly changing, however, it is impossible for filtering services alone to completely protect young people from harmful information. To protect them from crimes and other incidents, it is necessary for young people to have the ability to select and access necessary information from a variety of sources and accurately assess and use the information (information literacy). It is extremely important to promote development of such ability in youth. In addition, with the rapid development of information technology, the parents may not necessarily have sufficient information literacy to protect their children. Therefore, improvement of the parents' information literacy is also an urgent task. Furthermore, filtering services are still not widely recognized in Japan. Sufficient information has not been provided to users on the purpose and significance of the services and the ill effects that harmful websites have on youth. Education in this regard needs to be further increased.

4. The number of “*deai-kei kissa*” (cafés for new encounters) is increasing. In these cafés, the men’s seating section is separated from the women’s with a one-way mirror, and a male customer (member) may request to have a chat with a female customer (member) present in the café through the intermediary of the café staff. The male and female customers can then have a chat in the space provided, and if the man can agree to the conditions for going out offered by the woman, the two can go out, with the man paying the café a certain price for going out. It has been pointed out that these cafés are becoming a breeding ground for “*enjo kosaï*” and prostitution. However, since the services provided are novel and do not entail entertainment on the part of the establishment, they cannot be regulated by the Entertainment Business Law. A number of local governments have established ordinances to regulate these businesses.

13. The report notes that the number and ratio of female national public officers in managerial positions are small, and figures show a declining trend (see para. 228). Please indicate what measures the State party intends to take in order to increase the participation of women at managerial level, including temporary special measures, in line with article 4, paragraph 1, of the Convention, and the Committee’s general recommendations Nos. 23 and 25.

The Japanese Government reported that the number and Ratio of female national public officers in managerial positions in the Government are still small but are on the increase, while the number and percentage of female national public officers in all positions remained at the same level as in the last several years.

Since the sixth periodic report, which provided the number and ratio of national public

officers by gender in 2004, the ratio of female national public officers in all positions, in FY2007, declined by 0.3% from the previous year to 20.5% (see National Personnel Authority, “Report on the Employment of Regular National Public Officials FY2007”). The number of women as ratio of all national public officers in managerial positions in 2006, which showed an increase at all management levels, was as follows: 16.2% among chief managers, 5.9% among assistant directors in ministries and directors in regional organizations of the government, 2.1% among directors in ministries and heads of regional organizations of the government, and 1.1% among top-level directors. As shown, the ratio of women falls down sharply as the rank of the managerial positions moves up (see White Paper on Gender Equality 2008, Figure 1-1-4).

With regard to recruitment of national public officials for each type of recruitment examinations, the number of applicants in 2007 was 22,435 for the Level I recruitment exam, of which 6,609 (29.5%) were women; 38,659 for the Level II exam, of which 11,974 (31%) were women; and 17,313 for the Level III exam, of which 5,617 (32.4%) were women. The number of women as ratio of new recruits employed in 2008 was 21.8% and 25.4% for those taking the Level I and Level II exams (for graduates of universities or equivalent), respectively, and 35.5% for those sitting for the Level III exam (for graduates of senior high schools or equivalent). Compared with the previous year, the number of women recruited through the Level I exam decreased, but the number of women recruited through the Levels II and III exams increased. In terms of ratio, however, there was a decline in the number of women employed in all categories. Women constituted a very small ratio of people recruited as national public officers in all categories. (Gender Equality Bureau of the Cabinet Office, a survey on participation of women in determination of policies, October 2008).

The Government has set the objective of expanding recruitment activities to increase the number of women recruited as national public officers, preparing the working environment for their employment, conducting follow-up surveys on the recruitment and promotion of female national public officers, and setting the target of increasing the ratio of female national public officials in the positions of directors in ministries up to about 5% by the end of fiscal 2010. However, considering that the number of women recruited as national public officers continues to be small, it is impossible for the Government, even by implementing their current measures, to achieve its target of raising the ratio of female national public officers in managerial positions to 30% by 2020 or even by 2030. The Government is required to consider new policies to break the status quo, which should include effective temporary special measures (affirmative action).

14. According to statistical data provided in the report, women continue to be underrepresented in decision-making in many areas, in particular in the Diet (9% in the House of Representatives in 2005 and 13.6 % in the House of Councilors in 2004), in the national Government (9.1 % of all ministers in 2006), in the judiciary (13.7% in 2005), in local governments and in local assemblies. the Committee In its previous concluding comments (see A/58/38, sect. IV, para. 368), recommended that the State party increase the representation of women in political and public life through the implementation of temporary special measures and urged the State party to support training programmes for future women leaders and carry out awareness-raising campaigns regarding the importance of women's representation in decision-making for achieving gender equality. What measures are being undertaken by the State party to increase the number of women in the various levels and branches of Government, including the adoption of temporary special measures?

1. Participation of women in the decision-making process for policies and administrative measures for is essential for realizing gender equality in society. However, such participation remains far from adequate in our country.
2. In the field of politics
 - (1) The ratio of women in the Diet, as of February 2009, is 9.4% in the House of Representatives (45 members) and 18.2% in the House of Councilors (44 members). As for the officers of the Diet, comprising, in each house, a Speaker (President), a Vice-Speaker (Vice-President), 17 chairpersons of the standing committees, and 7 chairpersons of the special committees, no woman holds any of the offices in the House of Representatives. In the House of Councilors, only the Vice-President, a chairperson of a standing committee, and a chairperson of a special committee are women.
 - (2) The ratio of female members of local assemblies, as of December 2008, is 8.2% in prefectural assemblies, 10.8% in municipal assemblies, 17.2% in specified municipal assemblies, 17.7% in the assemblies of towns and villages, and 24.7% in Tokyo's ward assemblies. Overall the ratio of female members of local assemblies is only 10.4%.
 - (3) Two woman ministers out of 18 (11.1%, as of October 24, 2008), only two women senior Vice-Ministers out of 25 (8.0%), and only one woman Parliamentary Secretary out of 26 (3.8%, as of October 2008) were female. The ratio is extremely low.
 - (4) As for heads of local governments, there are only 3 woman governors out of 47 (6.4%), 4 woman vice-governors out of 86 (4.7%, as of October 15, 2008), 12 woman mayors of cities and wards out of 806 (1.6%), 16 woman deputy mayors of cities and wards out of 1,014 (1.6%), 6 woman mayors of towns and villages out of 1,005 (0.6%), and 5 woman deputy mayors of towns and villages out of 850 (0.6%, as of April 1, 2008). In particular, the percentage of female mayors of cities, wards, towns, and villages is exceptionally small.
3. In the field of administration
 - (1) As for national advisory councils, there are 607 female members out of the total of 1,873 members (32.4%), exceeding the 30% mark. Of 9,706 temporary members,

special members, and expert members, however, only 1,461 (15.1%, as of September 30, 2008) are female.

(2) As for local advisory councils, the percentage of female members is 28% on average at the prefectural level, 27.8% on average at the level of specified municipalities, and 25.3% on average at the level of cities, wards, towns, and villages (as of March 2008). Even though the percentage is close to 30%, it falls short of the level in the national advisory councils.

4. In response to the recommendations in the Committee's last concluding observations, the Japanese Government established, in July 2003, the Study Group on positive Action within the Gender Equality Bureau of the Cabinet Office. The study group submitted a report in October 2005.

On the introduction of positive action in the field of politics in Japan, the report states: "As regards introducing the quota system by law, there is a need to further consider what would be the rational approaches in relation to the constitutional principle of equality, sovereignty, and freedom of candidacy."

"On the other hand, there are few constitutional constraints on voluntary efforts by political parties, and efforts are being made to secure a certain number of women on the list of candidates in the party-list proportional representation system that makes up a portion of the House of Representatives elections."

However, the Second Basic Plan for Gender Equality, which was adopted by the Cabinet meeting on December 27, 2005, did not contain any concrete proposals for positive action for promoting participation of women in politics.

In March 2008, the Survey on Participation of Women in the Decision-Making Process in Other Countries was published. On promoting participation of women in politics in Japan, the survey proposed that "the voluntary quota system that could be adopted by political parties, as in the case of Germany, is recommendable" and that "as for ways to increase the ratio of woman candidates in the House of Representatives elections contested on the single-member constituency system, the approach of indirect compulsion through the use of subsidies is both desirable and easier to implement." The survey adds: "It is, therefore, considered effective to impose through legislation a moderate constraint through the intermediary of allocation of public funding to political parties with the goal of raising the ratio of woman candidates, for instance, to between 30% and 50%."

The above proposals, at the least, need to be promptly concretized to bring about a breakthrough in the current state of affairs where the ratio of female members in both the Diet and the local assemblies is negligible, as mentioned under 2. above, and to promote participation of women in the decision-making process in politics.

5. In national advisory councils, the ratio of female members exceeds 30%. As mentioned above, however, the percentage of female members in specialized advisory councils is only 15.1% (as of September 30, 2008). Therefore, further efforts need to be made to increase the ratio of female members in these advisory councils.

15. The report notes (see para. 15) that the percentage of women in institutions of higher education is on the rise, except at the university level, where a gap between men and women still exists (36.6 per cent for women and 51.3 per cent for men). Please provide information on measures taken to reduce that gap.

1. Encouragement of female students to major in science and engineering

Measures for promoting participation of women in universities and other institutions of higher education had focused primarily on the members of those institutions, as mentioned under Question 16 below, and, in terms of attracting people who would potentially become members in the future (senior high school girls) into universities, the measures had lagged behind. In 2006, the Ministry of Education, Culture, Sports, Science and Technology introduced the Project for Encouraging Junior and Senior High School Girls Make Career Choices in Science and Engineering. The universities chosen to conduct the project have the challenge to increase the number of woman researchers in the natural sciences, and based on the understanding that an increase in woman researchers is conditional on raising the percentage of female students, they are adopting strategies to recruit high school girls.

On July 26, 2007, the Science Council of Japan published a report titled, "Efforts Made towards and Issues Related to Gender Equality in Education and Research," which included reports on the efforts made by Nagoya University and Tohoku University.

(1) Nagoya University

Nagoya University, which was selected to promote the above-mentioned project of the MEXT, held the event "Aspire to Become Woman Chemists: Series 1-4" to encourage middle and high school girls to major in science and engineering. The event included lectures for the middle and high school girls and their parents and teachers and open classes in mathematics, chemistry, and biology for the girls. The pamphlet "The Working Style of Woman Scientists and Engineers," with role models of woman researchers, was distributed to the participants as well as to middle and high school students in three prefectures in the Tokai region to encourage the girls to major in science and engineering. The event apparently had a positive effect, as a number of girls participating in it made the decision to actually major in science and engineering.

(2) Tohoku University

In FY2005 and FY2006, Tohoku University organized the "Summer School for Senior High School Girls" with the objective of nurturing the next generation of woman scientists and engineers.

Another project that the university is carrying out for the next generation

of woman scientists and engineers is the “Science Angel system” (SA). In this program, female graduate students are appointed as Science Angels, who conduct seminars and experiments at the schools they once attended and at science museums to act as role models. In FY2007, 52 graduate students applied to participate in the program.

(3) Hokkaido University

A similar project is Hokkaido University’s “Caravan for Encouraging Students Who Want to Major in Science and Engineering.” The project’s underlying concept, which is somewhat different from that of Tohoku University’s SA system, is that to overturn the commonly held view in society that “boys should go into science and engineering and girls into the arts,” it is important to show, not only to middle and high school girls but also to middle and high school boys, parents, and teachers, both male and female, what women are truly capable of achieving in the fields of science and engineering. The project is supported by both male and female staff members.

2. Encouragement of female students to enroll in other departments.

In 2008, the percentage of female university students increased by 0.4% from the previous year to 40.2%. The projects described above focused particularly on science and engineering because of the MEXT’s policy to encourage high school girls to enroll in departments of science and engineering. For other departments (for instance, faculty of law), there are no specific policies to encourage enrollment.

Incidentally, although not as low as the number of female students enrolled in science and engineering departments, the percentage of female students among all students in law schools is only 27.6% (Ministry of Education, Culture, Sports, Science and Technology, Basic Survey of Schools FY2008). As it is pointed out in question 14 that women are underrepresented in the judiciary, an increase in the ratio of female law students is essential in increasing the representation of women in the judiciary. In this context, the percentage of female law students mentioned above is a matter of concern. The nation as a whole needs to share in the understanding that under representation of women in the judiciary is a grave concern for the nation, but that awareness has not yet been shared.

<p>16. While the report indicates that both the number and percentage of women teaching in universities and junior colleges are on the rise (see para. 17), women account only for 18.7 per cent of teachers. Please indicate measures undertaken to increase the participation of women in the teaching profession at university and junior colleges.</p>
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1. The Japan Association of National Universities has already made recommendations in 2000 that were titled, “For Promotion of Gender Equality in National Universities.” The wide-ranging recommendations on policies for promoting women’s participation included “preparation of survey data to comprehend the actual state of women’s employment and other matters related to education at universities, establishment of a public solicitation system and adoption of positive action for increasing the number of female faculty members, promotion of participation of women in science and engineering and other fields in which participation of women is insufficient, improvement in the treatment of part-time lecturers and their research environment, and improvement of the environment for parenting and nursing.”
2. In response to the above recommendations, for instance, the University of Tokyo established, in 2002, the University of Tokyo Committee for Promotion of Gender Equality and announced the Basic Plan for Gender Equality and the Declaration of Gender Equality in the following year. The Committee for Gender Equality was separately set up at the university in 2006 to serve as the central organ for coordinating policies. In 2007, the Basic Philosophy and Policy on Nurseries Operated by the University of Tokyo was drawn up to improve the services provided by nurseries, an important aspect for promoting participation of women. In 2008, a total of four nurseries opened on the university campus.
In the same year, a planning committee for promotion of gender equality was established in each of the faculties of medicine, agriculture, and engineering, which only had a small number of women constituting their organizations, in undergraduate and graduate schools.
3. In 2006, the Ministry of Education, Culture, Sports, Science and Technology invited universities and public research institutes to submit proposals for the “model projects for assisting and nurturing woman researchers,” which would be funded by the Special Coordination Funds for Promoting Science and Technology. The ministry adopted the proposals of 10 universities in FY2006 and of 7 universities and 3 independent administrative institutions in FY2007. By FY2008, proposals from 30 universities and 3 independent administrative institutions were selected.
These proposals included, for example, Ochanomizu University’s “Building of a Model of Employment Environment Suited to Woman Researchers,” Kyoto University’s “The ‘Kyoto University Model’ of Comprehensive Support for Woman Researchers,” Japan Women’s University’s “A Model for Assisting Woman Researchers in Multiple Career Paths,” and Tohoku University’s “Tohoku Women’s Hurdling Project.”
Assistance for woman researchers to balance work and parenting duties was an important feature in all of these proposals, which shows how much

the difficulty in balancing the two had been an obstacle to women's participation.

At coeducational national universities male students, faculty members, and administrative staff members hold the overwhelming majority. The fact that such institutions are discussing measures for balancing work and parenting can be regarded as a significant step forward for promoting participation of women.

Kyoto University has clearly indicated its policy to actively promote recruitment and promotion of women in a step to more radically promote participation of women. The university's Action Plan for Promoting Gender Equality states: "As for recruitment and promotion of the administrative staff members, recruitment and promotion of women will be actively promoted within the context of selecting talented individuals with exceptional ability and skills. Staff members in key positions will give consideration to promotion of female staff members and actively recommend them to take exams for promotion as well as nurture them. The university aims to have, at the minimum, 25% of all specialized staff members, 15% of all senior specialized staff members, and 10% of all section chiefs, department directors, and above constituted of female by 2019."

Among private universities, Waseda University published the Declaration of Gender Equality in 2007. The Basic Plan for Gender Equality, which was drawn up based on the declaration, set down that the university will "narrow the gap existing between men and women in the composition of faculty, administrative staff, and student body and strive to realize gender equality in the decision-making process concerning the administration of the university." More specifically, the university has set specific targets to increase the ratio of full-time female faculty members, full-time female administrative staff members, and women in managerial positions. It also established the Office for Promotion of Gender Equality to oversee projects related to gender equality.

4 . Considering that there are 765 universities and 417 junior colleges in Japan (as of FY2008), the number of universities that have adopted policies for gender equality, as described above, is still small. Universities and junior colleges without policies on gender equality make up the overwhelming majority. Our challenge will be to have these universities and junior colleges adopt similar projects as soon as possible.

17. In the constructive dialogue during which the fourth and fifth periodic reports of Japan were considered by the Committee, the issue of a sexist remark made by a Government official was raised by a Committee member (see CEDAW/C/SR.617,para. 59). Please indicate what steps have been taken to ensure that Government officials do not make disparaging sexist remarks that demean women and typify the unequal patriarchal system which discriminate against women.

The sexist remark cited as an issue here refers to a comment made by the Governor of Tokyo during a November 2001 interview in which he claimed to be quoting another person saying, "It is a waste and a crime for a woman to go on living once she has lost her ability to reproduce." Demanding an apology for this remark and the restoration of their integrity, a group of women filed a claim for compensatory damages in the Tokyo District Court. Despite pursuing the case all the way to the Supreme Court, the women ultimately lost their means of obtaining legal redress in November 2008 after their case had been dismissed by every court.

The JFBA also received a petition from 140 women seeking human rights' redress in response to the comment and the JFBA responded by notifying the Governor of Tokyo of the matter on December 25, 2003. Stating that his comment insulted the integrity of women and deprived them of their rightful peace of mind, the JFBA requested that the Governor retract his words immediately and make an apology through appropriate means. However, he ignored this request.

Even after this sexist comment by the Governor of Tokyo, further sexist remarks were subsequently made by other public figures. On June 26, 2003 a member of the House of Representatives jokingly made a comment about male students of Waseda University who were implicated in a gang rape incident, saying, "Those who commit gang rape at least show they have a bit of spunk!." Later, an ex-prime minister who remarked as if to vindicate this comment, made a further remark regarding single women on July 1, 2003 when he stated, "Governmental public welfare is meant to look after in the future those women who bore many children for the sake of society as a way of thanking them for their hard work. On the other hand, it is truly odd for women who never had any children but instead choose to live a life of indulgence, enjoying their freedom and doing whatever they pleased, to later demand to be looked after by the public purse when they became old and feeble." In another media report a former Minister of Health, Labour and Welfare in a speech at a meeting of the members of the prefectural governments on January 27, 2007 was said to have stated, "The number of women between the ages of 15 and 50 is limited. With

the understanding that the number of child-bearing machines and devices is limited, we only can hope that each of them will be mindful of this factor.” After this comment was made, a number of complaints and demands for the minister’s resignation were made by the opposition and others, and the accountability of the Prime Minister was also called into question as the person who appointed the minister. However, the incident ended without any party responding to assuming responsibility.

As the above incidents show, discriminatory comments that view women with contempt and ignore their basic human rights have been repeatedly made by persons in public positions who are considered political leaders of Japan.

In response to this question 17, the Government stated that it was promoting the dissemination of public information and awareness-raising activities as well as initiatives promoting gender equality in local public bodies in efforts to foster the widespread formation of a gender-equal society. However, initiatives at this level will not be able to eliminate the discriminatory comments by persons in public positions, who are meant to be political leaders such as governors, cabinet members, and the members of the Diet, with preconceived notions that women are “people who bear and rear children” and whose comments not only reflect a contempt of women and utter disregard of their human rights but also encourage violence against women. Furthermore, efforts of this nature by the Government cannot eradicate from Japanese society a state of affairs where the notion of what constitutes discrimination against women is intentionally kept ambiguous and where discriminatory remarks against women are made in public as a matter of course.

The Government should sincerely accept the recommendation by the UN Committee on the Elimination of Discrimination against Women, and the Human Rights Council Working Group and, as a measure which the signatories committed to in Article 2 of the Convention on the Elimination of Discrimination against Women, the Government should establish without delay a law prohibiting discrimination against women which incorporates provisions for the following:

1. Discrimination against women is a violation of human rights
2. A definition of what constitutes discrimination against women
3. Discrimination against women is prohibited
4. Penalties for violation of the prohibition of discrimination against women

18. The report is silent on both maternity and paternity leave entitlements. Please indicate the parental leave entitlements for both women and men as well as the percentage of men taking advantage of paternity leave, including measures taken to encourage men to take such leave.

1. In principle, both male and female employees are entitled to take parental leave once per child under a year old. In 2007 the percentage of employees taking parental leave reached almost 90% for female employees but was only 1.56% for male employees.

Furthermore, employees on contracts who have been employed by an employer for less than one year are not entitled to parental leave. A contract employee who fulfills the following two requirements may take parental leave: 1) The person has been continuously employed by the same employer for at least one year; and 2) The person is likely to remain employed at the same company after the day that person's child reaches one year of age. Nevertheless, even in cases where the above conditions are met, the percentage of contract employees taking parental leave remains very low. Furthermore, anticipating an increase in disadvantageous treatment of employees including the dismissal of employees who take parental leave entitlements, etc. amid worsening employment conditions, the Ministry of Health, Labour and Welfare issued a notification entitled "Strict measures, etc. against the dismissal of employees for taking maternity leave prior to and after childbirth and parental leave, and other disadvantageous treatment."

2. As measures to encourage male employees to take parental leave, the Ministry of Health, Labour and Welfare has implemented a number of initiatives including "positive action to encourage female employees to demonstrate their potential," publicly commending for companies, that promoting measures relating to "activities to help employees balancing work and family life" and held a symposium organized by businesses commissioned by the Ministry of Health, Labour and Welfare. It also set up a website through the Japan Institute of Worker's Evolution.
3. However, the percentage of men taking parental leave was only 0.5% in 2005, and 1.56% in 2007. Although the percentage at 1.56% is extremely low, in terms of company size, the percentage of men taking parental leave was 0.66% for companies of 500 or more employees, 0.57% for companies with 100 to 499 employees, 2.43% for companies with 30 to 99 employees, and 8.85% for companies with 5 to 29 employees. Although the ratio in companies with 99 or less employees is rising, particularly in companies of 29 or less employees, the overall rate still remains very low, and the larger the company, the lower the percentage of men taking parental leave. On the whole, it is not proper to say that the percentage of men taking parental leave in the period from 2005 to 2007 has increased.
4. That so few male employees take parental leave can be seen simply as an

indication that the family responsibilities of child care and family care are borne mainly by women, and that the notion of gender equality has yet to be realized.

On the other hand, although women taking parental leave were close to 90% in 2007, the percentage of women becoming full-time housewives following the birth of the first child also remains high at around 70%, even in 2007. Consequently, little has changed since the establishment of the Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care in 1995.

Furthermore, Article 6 of the above act sets down exceptional provisions for full-time housewives (husbands), and labor-management agreements excluding housewives (husbands) based on this provision exceed 70% of such agreements.

Situations like this reinforce the stereotypical perception of division of labor by gender, which dictates that family responsibilities such as child care and family care are the domain of women as housewives.

5. Furthermore, under the Employment Insurance Law, compensation of income during parental leave is only 50% of the employee's previous wage (an interim measure until the end of march 2010), and because the wage disparity between genders remains high, with women earning only 67.8% of men's wages in 2008, it is difficult for men to take parental leave for economic reasons.

In addition, in many companies the non-working period of parental leave is often evaluated negatively when an employee is being evaluated for a bonus, periodic pay rise, or promotion, etc. and this factor makes it difficult to raise the ratio of men taking parental leave.

Furthermore, when it comes to periodic pay rises, about half of all companies that have a periodic pay rise system do not provide a pay rise during the period of leave but instead carry it over to the next period following resumption of work. In addition, when companies assess employees for bonuses, only 3.7% of companies consider employees on leave as not being absent from work, and only 2.5% provide a bonus on the basis that an employee on leave attended work for a certain period of time even during the leave (Basic Statistical Survey on Employment and Management of Women Workers, FY2005, by the Ministry of Health, Labour and Welfare).

According to a report on men who take parental leave undertaken by a research group of the NLI Research Institute, 62.2% of companies in responding in regard to the treatment of male employees after their resumption of work following parental leave stated that parental leave had no impact on the periodic pay rise following parental leave of one to two

months. However, the percentage of companies replying that it had no impact on pay rises fell to 36.4% in cases of leave of six months or more.

Furthermore, 63.9% of companies interviewed stated that parental leave of one to two months had no impact on an employee's advancement or promotions, but this ratio fell to 37.8% for leave in excess of six months.

6. Family responsibilities including taking child care and family care leave are for the most part borne by women because there is still a gender-based perception regarding work and family responsibilities. Given this factor, the Government should implement concrete measures to educate people of this misunderstanding of gender-based perception of responsibilities and the need to correct it. Similarly, the Government should strive to increase the ratios of male and female workers taking childcare and family care leave.

Furthermore, to enable men to take greater advantage of parental leave, the Government should urgently examine compensating for loss of income during leave of absence and the issue of disadvantageous treatment of employees upon their return to work following parental leave including the banning of such treatment.

7. Moreover, during the one-year period from October 2006 to September 2007 the number of employees who either left their jobs or transferred to other workplaces to look after or provide family care for family members climbed to 144,800 (Employment Status Survey, Ministry of Internal Affairs and Communications) and 119,200, or 82.3%, of the total number were women who left the workplace. In the future, obtaining one's right to take family care leave is likely to become a major issue for both male and female workers.

19. The report explains the dispute settlement system put in place in cases of dispute between female workers and their employers which aims at conciliation but does not provide information in cases of failure of such conciliation (see paras. 303-305). Please indicate what legal avenues are available to the employees in case of violations of the revised Equal Employment Opportunity Law and what sanctions are foreseen for the employers found to be in breach of their obligations under this legislation. Please provide statistics about the number of cases brought by women and the outcome of such cases.

1. If employees wish to settle disputes with the employers in cases of violation of the revised Equal Employment Opportunity Law (EEOL), employees may seek advice, guidance or recommendations from the Director of the Prefectural Labour Bureau (Article 17, revised EEOL), or mediation through the Disputes Adjustment Commission (Article 18, revised EEOL). Under Article 29 of the revised EEOL, the Minister of Health, Labour and Welfare may request employers to give a report, advice, guidance, or recommendations, and may commission this authority in part to the Director of the prefectural Labor Bureau.

2. The revised EEOL also provides for the public announcement of those names of corporations as a punishment that have not complied with the recommendations of the Minister of Health, Labour and Welfare (Article 30). This announcement is aimed at ensuring the effectiveness of the EEOL through social sanctions.

However, Article 30 merely states that a corporation may be publicly announced, rather than will be publicly announced when a business owner fails to comply with the recommendations of the Minister, and the reality is that there have been no cases of companies being announced to date.

Moreover, there are no other sanctions for violation of the EEOL.

At the time of revision of the EEOL in 1997, a supplementary resolution was made to promote active application of the system for publicly announcing companies.

3. In 2007, the Equal Employment Opportunity Department of the Prefectural Labour Bureau received 29,110 enquiries concerning the EEOL. Of these, 12,972 (44.6%) were from employees.

The Equal Employment Opportunity Department of the Prefectural Labour Bureau provided administrative correctional guidance (advice, etc. under Article 29 of the EEOL) in response to 15,069 violations. Of these, 9,854 cases were concerning sexual harassment, 4,675 cases were for management of maternity health, 257 were related to recruitment and

employment, and 207 were related to assignment, promotion, and training.

Furthermore, amid recession conditions since the autumn of 2008, dismissals where pregnancy and childbirth have been cited as the reason are rapidly rising. Concerned about an increase in the disadvantageous treatment of female workers whose pregnancy and childbirth may be used as a reason for dismissal in the future, the Government issued a notification entitled "Strict measures.etc.against the dismissal of employees taking maternity leave prior to and after childbirth and parental leave, and other disadvantageous treatment" dated March 16, 2009.

However, detailed information about the actual number of employers that failed to comply with corrective recommendations and the nature of the violations have not been made available in the public arena.

4. If employees wish to receive assistance in settling disputes with employers, as previously mentioned, advice, guidance, and recommendations by the Director of the Prefectural Labour Bureau (Article 17, revised EEOL) and mediation are available. In FY 2007 there were 546 applications for individual Dispute Settlement Support based on Article 17 of the law revised in 2007. Of 507 cases completed with assistance during FY2007 (including cases carried over from the previous year), 394 cases, accounting for about 80% of all cases, are reported to have been resolved as a result of advice, guidance, and assistance provided (Conditions of Working Women in 2008 edition). There is no information concerning the 20% of cases that were not resolved.
5. In fiscal 2007 there were 62 new applications for mediation. Of these, mediation commenced for 56, and 31 recommendations for acceptance of mediation were made. Both parties are reported to have accepted mediation in 27 cases and these cases reached resolution (as shown above). Although the reasons for discontinuing mediation in the 35 cases which did not reach resolution are not indicated, employers with no intention of participating in mediation and the difficulty in reaching a compromise due to severe confrontation are the assumed reasons.
When mediation is discontinued, there is no system of recourse under the EEOL, and female employees have no alternative other than to seek redress through judicial procedures such as industrial tribunals and lawsuits.

At the time of the establishment and revision of the EEOL, the JFBA has repeatedly insisted that the establishment of an effective redress organization was necessary but this has yet to be realized.

6. Although the mediation system has inadequate areas, the number of cases of acceptance of mediation has increased. While the strengthening of this system is required in the future, the second recommendation of the Council for the Promotion of Decentralization Reform states that the Prefectural Labour Bureau, as a review of the regional offices of the national government, will integrate with the welfare department of the local governments by abolishing the present system and putting in place regional offices as block organizations. If the Prefectural Labour Bureau is abolished and becomes a block organization and the Equal Employment Opportunity Department is integrated into a local block unit, employees and employers alike will be unable to seek redress of rights of nearby organizations, and the disadvantage to female employees will increase, and will constitute a serious impediment in securing the rights stipulated in the EEOL for female employees.

On March 6, 2009 the JFBA issued a statement through its President in which it expressed its opposition to the integration of the Prefectural Labour Bureau with block organizations and the progressive scaling down of “Hello Work” (a national employment agency) by the Government.

20. The report indicates (see para. 292) that the revised Equal Employment Opportunity Law provides for assistance for employers who institute positive action. Please provide further information about positive action that were undertaken by employers, the assistance that employers received under the revised law and to what extent such assistance benefited the women employees.

1. Under the revised EEOL, the Government merely stated that it could provide additional assistance in positive action taken by employers when they disclosed or intended to disclose the implementation of those positive actions being undertaken or positive actions they intended to undertake. The amended law has no provisions advising employers to take any particular positive action. A measure based on the revised legislation was the establishment of a “Positive Action Assistance Website.”

The Committee in its concluding comments to the Japanese Government regarding ‘positive action’ in 2003 urged that the Japanese Government make efforts to promote the effective realization of equal opportunities for men and women using such measures. However, ‘positive action’ such as the above cannot respond to the requests of the Committee and no expectations

can be held for their effectiveness in the area of positive action.

2. The amended EEOL of 1997 established “positive action” as an approach to measures for improving the welfare of female workers but it stopped at stating that the Government would provide assistance to employers who voluntarily undertook positive action. Because “positive action” was left to employers as a voluntary initiative, the effective realization of equality between men and women, which was the objective of positive action, proceeded very slowly.
3. A look at the gap between the genders since the establishment of “positive action” under the EEOL shows that, to begin with, the number of female employees rose from 21.27 million in 1997, or 39.5% of the workforce, to 23.12 million, or 41.6% of the workforce, in 2008. However, from 1997 onwards the number of non regular female workers began to rise, and since 2003 the majority of female workers are non regular. In 2008 the percentage of regular female workers was only 46.4% of all female workers, with 53.6% of non regular female workers as an increasing trend in female workers to be engaged in non regular work continues.

At the same time, the number of non regular male workers is also rising but the number of men engaged in regular work in 2008 was 23.58 million, or 80.8% of all men in the workforce, which by far surpasses the ratio of women in full time work. Furthermore, in fiscal 2008 the ratio of women among employees working shorter working hours was 68.0%.

In terms of the disparity in wages between men and women, in 2008 women received 67.8% of scheduled wages while in 1995 this was 62.5%, indicating only a 5.3 point narrowing of the gaps in the period from 1995 to 2008. While during this period the gaps contracted slightly further to 67.6% in 2004, it began to widen again between 2004 and 2005 to 65.9% before improving marginally to 67.8% in 2008.

The above statistics do not include bonuses. If wages including bonuses were factored into the calculation, the disparity between male and female workers engaged in regular work and the disparity between regular male workers and female workers working shorter hours would widen even further.

A look at the percentage of female workers at the managerial level shows that the percentage of subsection chief level rose from 7.8% in 1997 to 12.7% in 2008, the percentage of women in positions equivalent to division manager from 3.7% in 1997 to 6.6% in 2008, and the percentage of department manager level from 2.2% in 1997 to 4.1% in 2008, with the percentage of women holding positions equivalent to division manager and above in particular extremely low.

According to the FY2006 “Basic Survey on Women’s Employment and Management,” the ratio of female workers in managerial level in the same fiscal year showed that 10.5% in subsection chief level, 3.6% in section chief, and 2.0% in department manager level. However, the ratios of female workers in managerial positions in companies with 5,000 or more employees were as follows: 10.3% in subsection chief level , 2.4% in section chief level , and 0.8% in department manager level, falling below the average value in all positions, and the ratio of female workers at the position of department manager level only 0.8%. (There are no more recent survey results than these for companies with 5,000 or more employees.)

4. In terms of “positive action” initiatives, the ratio of companies “already taking initiatives” in fiscal 2006 was less than that in fiscal 2003 according to the “Fiscal 2006 Women’s Employment Management Survey.” Moreover, the smaller the scale of the company, the lower the ratio of companies engaging in positive actions.

On the other hand, among companies of 5,000 and over, 66.5% answered that they were already taking positive actions but (in fiscal 2006) the ratio of female workers in managerial level on in companies of that scale fell below the average as stated in 3 above.

5. In this way, even after the words “positive action” were framed in the EEOL, the establishment of positive action has no binding force and the narrowing of the gap between genders has remained insignificant. In companies of 5,000 and over where the ratio of companies taking positive action was high, the ratio of female workers at managerial level remains low. Furthermore, a 2006 survey indicates that the ratio of companies taking positive action is on the decline.

It is clear that “positive action” established under the EEOL has in fact done little to narrow the gap between genders, and the Japanese government has no choice but to concede that the kind of positive action provided for in Article 4-1 of the Convention for Elimination of All Forms of Discrimination Against Women has not been implemented in Japan.

It is not possible to realize substantial gender equality in the workplace simply by providing for in law, including in the revised EEOL, the notion of positive action to assist the voluntary efforts of companies. The EEOL should be revised to include provisions requiring employers to establish positive action measures which include reporting on their status, formulating plans, and putting them into practice.

21. According to the report, in 2005, the average wage of female workers (excluding part-time workers) was 65.9% that of male workers. Apart from the Guidelines on the Improvement Measures of Wage and Employment Management for Eliminating Wage Disparity between Men and Women, compiled in 2003 by the Ministry of Health, Labour and Welfare, and the application of which is voluntary, please elaborate on any other measures developed and undertaken to address the wage gap between men and women.

1. As stated in question 20 above, the wage gap between men and women in 2008 still remains significant with female workers engaged in regular employment earning 67.8% of their male counterparts..

According to data of the “Study Group on the Gender Wage Disparity in a Changing Wage and Employment System,” the disparity in scheduled wages between genders reached its highest in 2007 with women earning 63.9% of the wages of men in companies of 1,000 or more employees. At the same time, the gap was at its smallest of 70% in companies of 10 to 99, indicating that the larger the company, the greater the gap in wages between genders. Moreover, although the disparity in wages between genders in 1986 in companies of 1,000 or over was 62%, this gap widened from 1993 onwards but in 1999 narrowed to 62.6%, improving on the level of 1986 but up until 2007 showed little change, narrowing only to a level of 63.9%.

Furthermore, the figures do not include bonuses. If bonuses were included, the disparity in wages between genders would be even greater, widening in line with the scale of the company.

In addition, 55% of companies of 1,000 and over have adopted a career-differentiated track personnel system, and the more prevalent the adoption of this personnel system, the lower the ratio of female workers participating in management roles. In fact, the larger the scale of companies, the more this differentiated track system is a factor contributing to widening the gap in salaries between genders.

2. As also stated in question 20, the ratio of women engaged in non regular work is rising. In 2008, 53.6% of all female employees were non regular workers with 40.3% of these in part-time or casual work. In 2008 female part-time workers earned only 70.3% of their regular female counterparts and only 48.5% of regular male workers, showing an extremely significant gap.

3. Under the amended the Part-time Workers Labor Law (enacted in April 2008), the discriminatory treatment of “part-time workers who should be viewed the same as ordinary workers” was prohibited but “part-time workers

who should be viewed the same as ordinary workers” were deemed to be 3 to 4% of the workforce in the counter-reply of the Diet at the time of deliberation of the amended law, and it is doubtful that the amended Part-time Law have any effect on narrowing of the gap in wages between part-time and regular workers. In the 2008 survey on the status of working women, there are no survey results on what the percentage of female “part-time workers who should be viewed the same as ordinary workers” is and the gap in wages, as stated above, remains substantial.

4. In the Sixth Report, the Japanese Government stated that it was making efforts to disseminate information by preparing guidelines for labor and management to voluntarily tackle the wage disparity between men and women and to distribute pamphlets through labor and business organizations and other means. However, the extent to which pamphlets were distributed and other means implemented since 2003 to the present are unclear. Also unclear is whether the distribution of pamphlets resulted in any specific practical action on the part of labor or business organizations. Therefore it can only be said that it is doubtful that the distribution of pamphlets had any effect.
5. The Government also states in the Sixth Report that it prepares reports on wage disparities between men and women, continually follows up the current state and changes in the gender wage disparity, and makes efforts to raise public awareness regarding disparity in wages between the genders. It also states that it helps promote efforts by labor and management to reduce the disparity. It is certain that the Ministry of Health, Labour and Welfare does compile and release reports on the gender wage disparity each year but there is no verifiable evidence to confirm whether these reports have increased awareness of the disparity in wages between the genders. Furthermore, it is not clear what specific measures the Government is taking to “promote initiatives by labor and management” to narrow the disparity in wages between genders.

Although the Government in the same report states that it is also making active efforts to promote positive action, the limited effectiveness of positive action has already been discussed in question 20. Even in 2008 in Japan where the gender wage disparity is still significant, with women earning 67.8% of the wages of men, it is doubtful that any of the measures that have been formulated and implemented to address the gender wage disparity including the distribution of guideline pamphlets have been effective as measures for correcting the gender wage disparity to date.

6. In the “Report concerning the Amendment of the “Act on Securing, Etc, Equal Opportunity and Treatment Between Men and Women in Employment” (June 16, 2005), the JFBA expressed the view that at present there is an extremely large number of cases in which employment management categories as well as employment patterns are causing disparities in wages among workers engaged in the same type of work. Because women comprise the overwhelming majority of the workforce in the part-time and other non regular working sectors, it is very difficult to make headway in resolving the gender wage disparity. In the above opinion paper the JFBA expresses the view that, as previously mentioned, the prohibiting of indirect discrimination under the EEOL should be clarified as a regulatory means for correction and that Article 4 of the Basic Labor Law should be revised to clearly state the principle of equal pay for equal value work.

In March 2008 the Expert Committee on Application of the ILO Convention Recommendations expressed its view and called upon the Japanese Government to revise the law to provide for the principle of equal pay for men and women for equal value work and also requested that the Government report on measures it had taken to promote the objective evaluation of work duties.

To eliminate the disparity in wages between genders through management categories such as work type.etc. and to eliminate the disparity in wages between regular and non regular workers including part-time workers, it is necessary to establish a statutory form on the principle of the same remuneration for men and women for work of the same value and an objective means of evaluating work duties to implement this.

22. The report mentions that the guidelines concerning the Equal Employment Opportunity Law were amended (see para. 290). Please provide details about those guidelines, in particular with regard to how they encompass indirect discrimination in the sections relating to employment management, recruitment and hiring, assignment (including allocation of work and vesting authority) and promotion.

1. With regard to indirect discrimination, the amended Equal Employment Opportunity Law of 2007 states that requirements in the three areas listed and limited in the ordinance of the Ministry of Health, Labour and Welfare are not to be applied without a rational reason. These are: 1) height and weight or other physical requirements in recruitment and hiring, 2) the requirement of nation wide mobility in recruitment and hiring for main

carrer track, and 3) the requirement to have had a past experience transfers involving changes of residence for promotion.

2. Limiting indirect discrimination prohibited under the amended Equal Employment Law to these three requirements resulted in the failure of the law to encompass indirect discrimination in a number of other circumstances such as, for example, discrimination in the treatment of the application of family benefits including the use of company financing or company recreation facilities depending on whether or not an employee is the head of a household under the resident register, or in cases where regular staff are given preferential treatment in decisions regarding the treatment of staff, or cases where benefit packages do not apply to part-time workers. Consequently, there has been absolutely no redress in the more complex cases of discrimination, and this factor greatly diminishes the meaning of incorporating the prohibition of indirect discrimination into that law.

However, in paragraph 290 of the revised guidelines, the general definition of indirect discrimination is clearly stated, and concerning in areas other than those stated in ministerial ordinances, the Government states that it has been disseminating information widely in efforts to inform the public of indirect discrimination through pamphlets and other means. According to the Government, this information states that while certain acts may not be included in the Ministerial ordinance, there is a possibility that by the court such acts could be judged as indirect discrimination. Nevertheless, establishing a clear definition of indirect discrimination in law and establishing a definition in ordinance that have no legally binding force cannot be viewed as being the same and cannot be deemed to be equivalent.

Furthermore, the Ministry of Health, Labour and Welfare makes the assumption that female workers will contest indirect discrimination in court. However, court cases where gender discrimination is at issue are inevitably protracted and place a significant burden on female workers. In cases of indirect discrimination where the nature of the discrimination is more complex, proving in a court that the actual disparity between men and women is gender discrimination is likely to place an even greater burden on women. Therefore, the EEOL must for the sake of female workers clearly define and prohibit indirect discrimination and establish a system where resolution regarding its violation can be achieved through redress procedures under the Equal Employment Law.

Furthermore, contesting the application of requirements other than the above three as indirect discrimination in a court would in reality be

extremely difficult. In the initially established EEOL, there were no provisions for dealing with discrimination against women in recruitment, hiring, assignment and promotion with regard to the application of the requirements discussed above, and the fact that the notion of equal treatment stopped simply at the obligation on the part of the employer to make efforts at equal treatment was supposedly because that at that time differentiating between men and women in recruitment or in treatment was not seen as a violation in society at large at that time. This is clear from examples of cases where this general perception became the basis for making court decisions. (Osaka District Court decision on the Sumitomo Electric case on July 31, 2000, Osaka District Court decision on the Sumitomo Chemical case on March 28, 2001, Tokyo District Court decision on the Nomura Securities case on February 20, 2002, Tokyo District Court decision on the Kanematsu Corporation case on November 5, 2003 , and Nagoya District Court decision on the Okaya and Company case on December 22, 2004). Based on this rationale, a growing body of court cases could not be expected to pave the way to broadening the scope for prohibiting discrimination. On the contrary, it could easily narrow the path for redress through the courts.

3. Examples of rational reasons were listed in the ordinance. However, (1) through (3) below were given as examples of cases where the reason was not rational for requiring nationwide mobility in recruitment and hiring for main carrer track employee under employment management differentiated by career tracking:

- (1) When there are no branch stores or offices over a wide area and there are no plans to establish branch stores or branch officers over a wide area
- (2) When there are branch stores and offices over a wide area but transfers requiring a change of residence are in effect rare unless the person desires a transfer for family reasons or other special circumstances
- (3) When there are branch stores or branch offices, etc. over a wide area but gaining experience in branch stores or branch offices of different regions or experience at production sites as a manager or experiencing the special characteristics of local regions as a top-level manager are not deemed to be particularly necessary for training or securing skills; and when personnel rotation including transfers with change of residence are not deemed to be necessary for the management of the organization

However, in (1) there is no possibility of a transfer and in (2) there is no need for a transfer. Therefore, from the outset these are examples that would not necessitate transfers. In the case described in (3) there is no need for a transfer either in terms of executing the relevant work or from the perspective of employment management that reflects management of the

business.

By indicating such extremely limited examples, cases where a rational reason for a transfer is deemed to be lacking would be extremely limited. Therefore, there is a likelihood that few cases will be judged as indirect discrimination in the application of a requirement for nationwide mobility in recruitment and hiring for main career track.

In reality, as described in 5, even after the enactment of the revised EEOL, the percentage of women in career track employment at the recruitment stage is extremely low and the majority of women are recruited under the general track.

4. Around the time of the enactment of the EEOL in 1986, the employment management system which differentiated between men and women underwent reform and was replaced by a differentiated career-tracking employment management system consisting of a career track and general track system of employment. As a system which provides for different working arrangements depending on the track, it was introduced chiefly in large companies and financial institutions.

To accommodate this system, at the time of the enactment of the EEOL the Ministry of Labour (at the time) established in ordinance work management categories and determined that decisions on violations of the EEOL would be made according to the employment management category. Therefore, the system of employment management by gender prior to the establishment of the EEOL changed in form only to a “career track” and “general track” management system, and under the guise of differentiation by “employment management categories” as set down in the ordinance, this system has become a hotbed for indirect discrimination. In this way, personnel management on the basis of gender has been effectively preserved.

5. According to the section “Status of Recruitment” of the publication “Implementation and Guidance, Etc. Relating to the Differentiated Career Tracking Employment Management System” released by the Ministry of Health, Labour and Welfare (December 24, 2008), women accounted for 16.6% of personnel recruited under the main career track in April 2006, 12.4% in April 2007, and an expected 16.9% in April 2008. The ratio of companies where women comprised less than 10% of main career track personnel recruits was 56.3% in April 2006, 46.6% in April 2007, and is expected to be 51.2% in April 2008.

Furthermore, women accounted for 92.8% of all general track recruits in April 2006, 92.6% in April 2007, and an expected 92.8% in April 2008. The ratio of companies where 100% of all women are general track recruits was

85.5% in April 2006, 76.8% in April 2007, and is expected to be 80.7% in April 2008.

In the section “Status of Active Duty” (2007), women accounted for 6.0% of employees in main career track employment, and in 84.7% of all companies they accounted for less than 10% of career track employees. Moreover, there were no companies in which the percentage of women engaged in main career track employment exceeded 30%.

The proportion of women engaged in general track employment overall is 77.9%. In companies of 5,000 employees or more, the percentage is 90.0%, and in 30.1% of Japanese companies the entire female workforce is employed under general track arrangements.

As the above statistics attest, in companies which have introduced the differentiated career tracking employment management system almost all women are segregated into the general track rung where wages are low and promotions occur at a slow pace.

6. Therefore, in regard to indirect discrimination, it is necessary to establish a definition of it and to ban it; to review the Ministry of Health, Labour and Welfare ordinance limiting indirect discrimination prohibited under the revised EEOL to the three requirements and to provide appropriate examples; and to do away with the ordinance which provide for decisions on violations of the EEOL according to career-differentiated management categories.

<p>23. Please give further details about the measures employers have an obligation to take under the revised Equal Employment Opportunity Law to prevent sexual harassment in the workplace (see para. 61 of the report). Please clarify whether this revised law includes punitive measures to enforce compliance other than publicizing the names of offending companies. Please indicate to what extent the new measures foreseen by the revised Equal Employment Opportunity Law have been enforced.</p>
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1. Provisions for ordinance regarding obligatory measures of employers established in Article 11-1 of the revised EEOL are set out based on paragraph 2 of the same article and state what constitutes sexual harassment in the workplace and the obligatory measures employers are to take to address sexual harassment.
2. Under the revised law, sexual harassment in the workplace constitutes a reason for public announcement of the name of the company.. The system of public announcement of the

name the company was established in 1997 at the time of the revision, and as stated in question 19 above, a supplementary resolution provides for the active application of this system. Despite this resolution, however, there are no examples of offending companies being publicly named, and even after the revision of 2006, which stipulates that the name of a company that has not followed the administrative recommendation shall be made public. For combating sexual harassment, there have been no examples of companies being publicly announced.

3. Of about 30,000 complaints received by the Equal Employment Department of Prefectural Labor Bureaus in 2007, 15,799 (54.3%) were complaints relating to sexual harassment. Administrative guidance for correcting systems was given in 15,069 cases, and of these 9,854 related to sexual harassment. However, in terms of content, the 2008 edition of “Current Conditions of Female Workers” merely mentions that administrative guidance was given to “companies that had not yet established sexual harassment measures in compliance with the law and companies that had not responded appropriately to sexual harassment when it occurred.” Therefore, it is not clear what specific guidance for correcting the systems was given to companies nor are the numbers of cases where administrative guidance was given and of companies that failed to comply with advice to make corrections.

4. Other than publicizing the names of companies, the revised law includes no additional punitive measures to force companies to comply. Article 29 of the EEOL states that the Government may “request a report” of an employer, and Article 33 of the revised EEOL provides for civil fines of no more than 200,000 yen for employers that “fail to provide a report or provide a false report” in response to the Government’s request. Although this is not a punitive measure that would force companies to comply with the law, it is the first punitive provision in the revised EEOL.

Nevertheless, to date there are no cases of civil fines being imposed on companies.

24. In its previous concluding comments (see A/58/38, sect. IV, para. 366), the Committee requested the State party to provide, in its next report, comprehensive information, including sex disaggregated data, on the situation of minority women with regard to their educational, employment and health status and exposure to violence.
Please provide such information.

1. In its previous concluding comments, the Committee requested the Japanese Government to provide disaggregated data on the status of minority women. Furthermore, in the recommendations of the Specialist Committee on Monitoring and Gender Impact Assessment and Evaluation of the Council for Gender Equality under the Cabinet Office (see paragraph 2) the Government was also advised in paragraph 4 “to collect relevant data on each prefectural government’s understanding of so-called minorities and people trafficking and to incorporate this in a report” and to report on data

relating to minority women.

2. In the Government's Sixth Report, provisions for minority women were set down in Article 2-5 "Minority Women," paragraphs 98 to 100, and data provided as attachments included the budget details on projects related to anti-discriminatory measures and local improvement measures (Statistical Data 13), the Ainu population (Statistical Data 14, 2006 disaggregated population data), and the number of registered South and North Koreans living in Japan (Statistical Data 15).

However, only 'Dowa' issue, Ainu, and foreigners are referred to in the above-mentioned provisions. No reference is made to minorities such as women with disabilities and the scope of minorities that should be considered as "minority women" is inadequate.

Furthermore, although women with disabilities are mentioned in Article 3 "Measures for Developing and Improving the Full Potential of Women" under paragraph 1(2) "Measures for Women with Disabilities," only measures for the disabled in general are listed without any mention of particular measures for women with disabilities.

In addition, in regard to 'Dowa' issue, Ainu and foreigners living in Japan data on relevant budgeting, population by gender, and number of registrants is provided, but it is quite obvious that this data on its own does not enable one to grasp the current status of minority women in terms of education, employment, health conditions, or violence they are subjected to, and the information in terms of both quality and quantity is inadequate.

3. At the Universal Periodic Review of Japan conducted in 2008 following the submission of the Sixth Report, the Japanese Government was advised to "respond to the problems faced by minority women." In the Japanese Government's response to the question items, the JFBA looks forward to the Japanese Government's provision of specific and beneficial information regarding minority women in its response in complying with the above request.

25 The report does not provide any information on the situation of migrant women and refugee women. Please provide such information, in particular the economic and social situation of migrant and refugee women and the measures in place to support them and protect them from violence and exploitation.

1. The numbers of registered foreigners in Japan at the end of FY2007 was

about 2.15 million. By gender, women comprised 1.15 million, and men about one million of this population, which has increased by about 670,000 people in the past 10 years, or about 1.5-fold in that period. Foreigners make up about 1.7% of Japan's total population of about 127.77 million. Registered foreigners include 190 different nationalities, with Chinese (including Chinese from Taiwan, and Hong Kong) comprising the largest group at about 610,000 (28.2%), followed by South and North Koreans at about 590,000 (27.6%), Brazilians at about 320,000 (14.7%), and the Filipinos at about 200,000 (9.4%). In addition to these foreigners residing in Japan, there is also a considerable number of foreigners who have not obtained alien registrations, and this also includes about 113,000 people who do not have legitimate residence status. (FY2008 statistics, the Immigration Bureau of the Ministry of Justice)

Of those couples who registered their marriage in FY2006, 6.6% of all couples, or about one in every 15 couples, were couples where either one or both parties were non-Japanese. Furthermore, of about 1.1 million newborn babies born in Japan in that year, 3.2% had either one or both non-Japanese parents, or about one in 30 babies ("Population Movement of Foreigners in Japan," FY2007 population movement statistics and attached table by the Ministry of Health, Labor and Welfare).

Furthermore, among the population who hold the Japanese nationality, there are ethnic Ainu and persons from former Japanese colonies including Chosen (present Korea) and Taiwan, who have acquired Japanese nationality, as well as those who acquired Japanese nationality after a long period of residency in Japan. However, many of these people are racial minorities. Still others – well in excess of ten and several thousands – become naturalized annually, and many of those naturalized are from South Korea and North Korea and China (Ministry of Justice, Civil Affairs Bureau website).

As the above indicates, Japanese society is already changing into multiracial and multicultural society but Japanese society operates on the assumption that those of other races and cultures will assimilate and integrate into Japanese society in areas such as language, culture, and social systems, and it can be said the notion of coexisting in a multicultural environment hardly exists.

2. Economic and social conditions of migrant women and protecting them from violence and exploitation

(1) Although there is no internationally accepted definition of what constitutes a migrant, for the purposes of this report, migrants are those who have moved to a country other than their normal place of residence and have lived there for at least 12 months (long-term migrants). (FY2006 June, UN General Assembly, International Migration and Development Report of the Secretary-General)

(2) Marriages between women of foreign nationalities and Japanese men are trending at approximately 30,000 annually. Around 1975 the mainstream combination of a Japanese female and male of foreign nationality began to change and marriages between couples comprised of women of foreign nationalities and Japanese men began to become more commonplace, and this trend has continued. In view of the fact that the majority of women in these marriages hail from Asian countries, it can easily be presumed that there is an underlying economic disparity between the partners. There are also many agencies that act as a go-between in marriages between Japanese men and foreign women, and there are many problems arising from highly inaccurate or arbitrary information relayed to the parties, and the high fees the agencies charge as a guaranty. However, there are no legal restrictions on such actions.

Incidentally, there are no statistics concerning the number of foreign women who fall victim to domestic violence in Japan. However, according to surveys by the Cabinet Office and other organizations, about one in three women falls victim to domestic violence. If a proportionate tentative figure were to be applied to the 1.15 million women who were registered as foreigners as of FY2007, about 380,000 of these women would have fallen victim to domestic violence. In fact, 315 non-Japanese women received temporary shelter at Women's Consulting Offices throughout Japan during the half year from April to September 2008, and 80% of these were victims of domestic violence ("Status of the Temporary Protection of Foreign Women at Women's Support Centers and Their Country of Origin," <http://www.wam.go.jp/>).

Even many Japanese women find themselves in unstable work situations with low wages; the situation is even worse for many foreign women lacking in adequate proficiency in Japanese to secure employment with sufficient income, and in many cases they have no choice but to depend on their Japanese husbands economically. Moreover, these women in principle require the cooperation of their Japanese husbands in obtaining and renewing their residence status. Consequently, in many cases women have no choice but to return to their home countries when they are divorced from their husbands. Because of this situation, many foreign women who fall victim to domestic violence remain with their husbands and put up with abusive treatment. Essentially, the immigration control system drives the victims of domestic violence into a corner and assists the perpetrators. As a result, the conditions of foreign women married to Japanese men can be harsh.

Only a small number of non-government organizations provide support for these women. There are cases of foreign women who have been unable to renew their residence status because they could not obtain the cooperation of their husbands as a result of domestic violence and abuse. In such cases the

Women's Consulting Office, which is the only public organization that provides protection assistance for women (the Women's Consulting Offices also established support centers for the victims of spousal violence in 2001), does provide protection for women but in the past was also expected to report to the Immigration Office any cases of violations of the Immigration Law. In 2004 this situation was remedied. Since then, foreign women have been able to use the Women's Consulting Offices with peace of mind in the same manner as Japanese women do. However, there are hardly any staff on site who can understand the mother tongues of the women and there are no arrangements for appropriate interpreters to be on site regularly. It is also very difficult for victims to secure a place to stay after the period of temporary shelter ends.

The Immigration Bureau of the Ministry of Justice issued a notification concerning a review of residence status and procedures for forcible deportation of victims of domestic violence in July 2008 (Ministry of Justice, Immigration General Notification No. 2323), and established the Outline for Implementing Measures in Cases of Domestic Violence from the view point of providing protection to victims. However, details on the actual judgment are still unknown and a follow up is necessary in the future.

Deliberation on the bill to revise the Immigration Law by tightening control on the residency of foreigners through centralization under the national government began in the Diet in April 2009. This bill stipulates that if Japanese spouses fail to maintain their activities as spouses for three months or longer, this will constitute new grounds for cancellation of the status of residence. However, this may possibly include those who are forced into separation due to the conjugal infidelity of the other party or their victimization in domestic violence, significantly weakening the position of foreign spouses of Japanese nationals.

(3) Training and on the job training

Accepting foreign trainees in Japan began in the latter half of 1950s. Through a revision of the Immigration Law in 1989 residence status for training purposes was established. In addition to the acceptance of trainees through individual companies, acceptance of trainees through association-managed training (a system of accepting trainees in small to medium-sized businesses, etc. through SME associations) was also approved. In 1993 the Technical Internship Program (with residence status granted for "specified activities") which permits the ongoing residence of trainees who have completed a technical training program as an on-the-job trainee in an employment relationship, and in 1997 the allowed period of stay during work experience training was extended to two years (a maximum of three years including the training program), and this is the system as it stands today.

In 2007 there were about 102,000 new entrants into Japan for industrial training purposes, and 54,000 of these trainees transferred to technical internship programs. There are close to 100,000 trainees in technical internship programs in Japan at present. Altogether there are about 200,000 industrial trainees and trainees in internship program working in Japan at present. In terms of nationality, about 80% of the trainees are from China, followed by trainees from Indonesia, Vietnam, the Philippines, and Thailand. Of an approximate 72,000 trainees for whom the Japan International Training Cooperation Organization (JITCO) provided support in 2007, about 54% were women. In terms of ages of the trainees, about 41% were between the age of 20 to 24, and about 29% between the age of 25 to 29.

The majority of accepting organizations are small to medium-sized enterprises (particularly small businesses with employees of 99 or less) and the majority of these businesses are manufacturers of textile products including clothing, manufacturers of foodstuffs, manufacturers of machinery and equipment for transportation, construction and engineering enterprises, and agriculture. (JITCO Whitepaper: FY2008 Report on the Implementation of Industrial Training and Technical Internship Program for Foreigners).

However, many problems have been pointed out in relation to these programs. Complaints about the accepting organization include lack of protection for trainees as workers (non-application of industry-related rules), low wages, long working hours, simple work content not calling for skilled labor, restrictions on going out, prohibition on making phone calls, confiscation of passports, forced savings, penalties for returning to the home country during the training program, sexual harassment, violence, work-related accidents. Complaints about the sending organization include high guarantee deposits and penalty fees for breaches of contract (Advocacy Network for Foreign Trainees). In the examples of requests for advice received by the Labor Union of Migrant Workers, there were even cases where marriage or becoming pregnant were prohibited during the stay, or discriminatory working conditions placed only on trainees such as low wages, etc.

In an attempt to address these issues, the Ministry of Justice established the status of residence for technical internships, firmed its policy for protecting the status of trainees as workers, and incorporated these in a proposed amendment of the Immigration Law which was presented to the Diet in March 2009. The new status of residence for technical internship stipulates that trainees undergo a short training course in Japanese language and skill acquisition during the first two months, enter into an employment contract with companies from the third month, and to maintain the receiving period to three years maximum. Through these initiatives the proposal aims to apply from the third month after a trainee's arrival in Japan industry-related rules

such as the Labor Standards Law and the Minimum Wages Law, which previously were applicable only from the second year.

However, even with the proposed amendment, the short-term Japanese-style rotation policy for utilizing the controlled, cheap labor of foreign workers has not changed. The Government should broaden protection under domestic laws to encompass trainees in industrial training programs and technical internship programs. The Government should also impose penalties on employers who exploit or mistreat industrial trainees and technical internship trainees. In short, the Government should amend existing legislation to establish a system that provides appropriate protection of the rights of industrial trainees and technical internship trainees.

Recommendations regarding the above were also made in the concluding comments of the review Japanese Government's Fifth Report by the UN Committee for the International Covenants on Civil and Political Rights.

(4) Nurses and Certified Care Workers

Japan concluded bilateral economic partnership agreements (EPAs) with the Philippines in 2006 and Indonesia in 2007 and these agreements established a scheme for "the acceptance of candidates for nursing and certified care worker programs." The basic principle of the scheme is for candidates to take courses (on-the-job courses) aimed at obtaining qualifications by passing the National Examination for Nurses or the National Examination for Certified Care Workers following on-the-job training at hospitals or nursing homes. Filipino candidates also have the option to take courses (study courses) at training institutions to obtain qualifications for certified care workers.

Under these EPAs, 205 participants arrived from Indonesia in August 2008 (allocation for the Association For Overseas Technical Scholarship was 149 participants including 101 women and 48 men. Other trainees were also accepted through the Japan Foundation.) and 400 nurses and 600 care workers from the Philippines are expected to arrive in Japan during the two years starting from FY2009.

The objective on the Japanese side is to supplement the staff shortage of both nurses and care workers in Japan. The main factors for the shortage of nurses are: 1) the large number of staff with qualifications taking maternity and parental leave (estimated to be 50,000), 2) the falling rate of staff returning to work following leave as a result of the severity of working conditions and long work hours including late night work, and the increasing sophistication of medical technologies, and 3) the high rate of newly graduated nurses leaving the profession (National Diet Library Reference, February 2006, Yamazaki). Although the demand for care workers is also increasing as Japan's society rapidly ages, there are many people who leave their jobs after

a few years despite having qualifications due to low wages and the severity of working conditions.

Furthermore, under the EPA schemes, nurses within three years and care workers within four years must pass national examinations in Japan to obtain their qualifications. If they are unable to obtain their qualifications, they have to return to their home countries. During their three- or four-year training, the trainees are required to work as assistant nurses or assistant care workers as their practical training. Although accepting organizations are required to pay these trainees a wage on the same level as Japanese staff during this period, their take-home wages after the deduction of expenses for accommodation, etc, can be expected to be fairly low. It is also extremely difficult for these candidates to pass national examinations, which are in Japanese and contain a considerable amount of technical terminology. Because of this arrangement, some concern has been expressed that this three-year limit is simply a system for establishing a rotational changeover of trainees every three years in the Industrial Training Program and the Technical Internship Program. (Hurights Osaka, <http://www.hurights.or.jp/newletter>).

The majority of workers engaged in nursing and care work are women. Even if the programs do secure work for women of other countries to some extent, it seems that the Government is ignoring the reasons and circumstances as to why qualified staff in Japan cannot continue working by attempting to fill the gap in the staff shortage stemming from these reasons with women from other countries. Consequently, there is serious concern that women may become entrenched in this environment as low wage earners.

3. Refugee Women

Japan has a negative attitude when it comes to recognizing refugee status. Not only are application procedures very strict but the number of persons who are actually recognized as refugees is extremely small.

The number of persons granted refugee status after 1982, when the system to grant asylum was established, is as shown on the website of the Immigration Bureau, Ministry of Justice.

<http://www.moj.go.jp/PRESS/090130-1.html>

There are a large number of applicants of Myanmar and Turkish nationalities but while many of the former have received refugee status not even one person of Turkey nationality has. The Japanese Government should collect statistics on refugees according to gender, examine the actual living conditions of refugees, and make this information public.

When a refugee applicant is already in the Japan without having gone through regular procedures, provisional status allowing a temporary stay is given in principle. When this permit is given, however, as conditions of stay a

refugee is prohibited from engaging in activities related to the operation of a business involving income or in activities for which remuneration is received (Ordinance for Enforcement of the Immigration Control and Refugee Recognition Act, Article 56-2-3-3) and these conditions are to be applied uniformly. However, the reasons for not granting a permit also encompass a wide area and out of 656 cases for which decisions were made in 2008, only 57 permits were granted. The other applicants are treated as persons on an irregular stay.

General social security system is hardly applies to applicants seeking refugee status. For example, applicants are not eligible for welfare benefits, membership in the national health insurance system, and provision of child-rearing allowance.

Measures to care for applicants for refugee status, are entrusted to the Refugee Assistance Headquarters by the Ministry of Foreign Affairs but not only is the amount of the allowance provided significantly lower than the allowance for welfare benefits, which is meant to guarantee a minimum standard of living. Moreover, it is only paid to a fraction of the applicants of refugee status. Furthermore, because the Minister of Foreign Affairs and the Ministry of Finance failed to increase the budget in response to an increase in the number of applicants seeking refugee status, the selective suspension and refusal to make payments have been occurring since 2009.

The current conditions are putting the lives of the applicants of refugee status at risk.

Recommendations regarding this matter were made in the concluding comments of the review of the Japanese Government's Fifth Report by the UN Committee for the International Covenant on Civil and Political Rights. These recommendations stated that access to appropriate social welfare through treasury funds or to employment during the entire period of application procedures must be provided for applicants seeking refugee status.

26. The report notes that women have a longer lifespan than men (see para. 13) and predicts that the aging rate of the population will continue to increase rapidly, rising to 28.7 per cent in 2025 and 35.7 per cent in 2050 (see para. 14). Given the health risks and other vulnerabilities faced by older women in Japan, please expand on Government policies and initiatives specifically targeting this section of the population, beyond the measures aimed at improving the nursing-care system (see paras. 110 to 114).

1. Recognition of an aging society

In Japan, already one out of five people is aged 65 or over, and about 58% of

these are women, and about 72% of persons aged 85 and over are women. Therefore, measures targeting the aged have a stronger impact on women.

As an increasing number of families becoming nuclear family units and fewer children live with parents, the number of aged persons living on their own is increasing. At present 19% of women aged 75 and over are living on their own and one-person households of persons aged 65 or over are set to increase dramatically in the future. It is estimated that in 2020 among households headed by persons 65 years of age and over one-person households will constitute the majority. In view of a combination of factors such as the rising rate of persons who remain unmarried throughout life, an increase in divorces, and a declining birthrate is expected to result in an increase in the number of childless aged persons living on their own. Increasingly unstable work conditions and rising unemployment are affecting not only the young but also mature-aged persons, and the percentage of women engaged in unstable work conditions is particularly high. Consequently, growing segments of the population who will be unable to make ends meet in old age is a matter of concern.

2. Poverty among aged women

Among the aged, a large percentage of single aged women endure especially harsh economic conditions. More than 30 % of these women are concentrated in the low-income segment with annual income of less than one million yen and their personal assets and savings are also meager with about 10% of these women owning assets of less than one million yen, and about 20% assets of less than three million yen. Among aged women who are on their own, economic conditions for divorced women are particularly harsh. More than 10% of these women have an annual income of less than 600,000 yen and more than 30% have an income of less than 1.2 million yen. The percentage of the aged receiving public assistance in 2005 was 40%, and single women accounted for just over 40% of these and this number is increasing every year.

The main factor affecting the financial situation of people later in life is their work history. Unlike men, many women have been employed in irregular or part-time work, and it is likely that they have been continually on the receiving end of discrimination throughout their working life, enduring, for example, suspension of employment or prejudicial treatment relating to maternity and childcare leave, discrimination in promotions, and a discriminatory wage system. These circumstances result in ongoing wage disparities, which are the direct cause of their lack of assets and savings and the low level of their pensions. Because about 70% of the income in aged households consists of the public pension annuity, the impact of disparities in pensions is significant.

Although a considerable number of women work in family enterprises in

agriculture and forestry, among others, their contribution is not evaluated in financial terms, and in many cases the formation of the assets does not occur under their names, so many of them end up relying solely on the basic pension of the government pension plan later in life.

Some women receive no pension despite having supported their families through many years of unpaid housework and child care. The abolition of the old age addition to public assistance in 2005 has also had a considerable impact.

The Government claims that it has taken measures to improve the pension system and has established a new system to divide the pension in the case of divorce. However, there are still a number of serious outstanding issues that need to be addressed such as, for example, the large number of people engaged in irregular, unstable work, the existence of discriminatory wages even among those in regular employment, and the disparity between the government pension plan (many women are on this plan) and employee pension plans.

3. Health care system for elderly of advanced age

The Japanese government decided that it could no longer afford to ignore the impact the increase in medical costs of the aging population was having on the public purse, and after revamping the existing medical care system for the elderly introduced a new health care system for the elderly of advanced age in April 2008. Under this system, elderly persons aged 75 and over (latter-stage elderly) join a separate scheme independent from the existing medical insurance system of the general population, and make a contribution to the premium which in principle is to be collected through deductions from their pensions. This arrangement has become an issue in Japan. In addition to the 10% contribution made by the elderly through their pensions, 50% of the costs are assumed by public funds shared by both national and municipal governments, and 40% from the working population.

Payment of a contribution regardless of income level is obligatory, and a health insurance card may not be issued to persons whose payments fall into arrears for a prolonged period. This may result in harsh treatment particularly for aged women on a low income.

After receiving strong criticism for this system, the Japanese Government has promised to review the system but to date has not undertaken a substantive review.

4. Abusive treatment of the elderly

About 77% of victims of abusive treatment of the elderly are women, and about 39% of the abusers are their sons and about 15% their husbands. Such abuse includes physical abuse, psychological abuse, neglecting to provide care, and financial abuse (taking their pension from them). (Information on the

independent living of the elderly above was based on the June 13, 2008 report entitled: "Monitoring and Gender Impact Assessment Report concerning Support for the Elderly in Independent Living" by the Specialist Committee on Monitoring and Gender Impact Assessment and Evaluation, Council for Gender Equality.)

27. The report indicates the ratio of abortions in the teenage population was 10.5 to 1,000 females in 2004 (see para. 355). What steps are being taken to promote a comprehensive sex education plan, including education on reproductive health, so that adolescent girls have access to age-appropriate reproductive health and family planning information and to affordable contraceptive methods? Does the Government plan to decriminalize abortion?

1. Abortion

While the total number of abortions and the abortion rate per 1,000 women between the age of 15 and under 50 show a declining trend consistently from about 22 per 1,000 women (in real terms, about 670,000 abortions) in 1975, the abortion rate in 2006 was about 99 per 1,000 women (about 270,000 abortions). In terms of the number of abortions according to age bracket, in 2006 there were about 27,400 abortions among young women aged 20 and under, about 126,300 among women aged 20 to 29, about 103,400 among women aged 30 to 39, and about 17,700 among women aged 40 to 49 (FY2008 Gender Equality Whitepaper). While the overall number of abortions is declining, abortions among young women aged 20 and under are increasing in both number and ratio. However, the frequent incidence of abortions is an issue shared by all women. In 2006 the ratio of abortions per 100 births was 25.3. (Population Statistics of Japan 2009, National Institute of Population and Social Security Research, <http://www.ipss.gp.jp/syoushika/tohkei/Data/Popular2008/T04-21.html>).

Incidents of the abandonment or murder of newborn babies by women who were unable to abort but gave birth instead are happening frequently. In May, 2007, a hospital in Kumamoto prefecture established the "Stork's Cradle" (a type of post box for anonymously dropping off unwanted babies).

In Japanese society, in general, there is a noticeable tendency to level criticism and blame solely at women regarding abortions and the abandonment or murder of newborn babies. The existence of the fathers of newborn babies and fetuses is totally ignored, and their responsibility is not an issue.

2. Sex education (school, society)

Information and education in relation to reproductive health, family planning, and contraception methods, etc. are hardly being offered not only to

teen agers but also women of all ages. Not only that, inappropriate sex information is inundating the internet and magazines (see question 12)

Furthermore, the mainstream method of contraception in Japan is the use of condoms, and a doctor's prescription is required to purchase low-dose oral contraceptives ("the pill"). Both unmarried and married women alike have an aversion to undergoing medical examinations coupled with the burden of the expense has resulted in a low rate of use of the pill.

The Ministry of Health, Labour and Welfare claims that it has been widely disseminating information concerning both the physical and psychological impact of abortion on women and has been promoting safe contraception (especially methods women can use independently), but available information on the above hardly exists.

There are many problems especially with sex educations at schools. In its sex education guidelines "Views and Approaches to Sex Education in Schools" distributed in 1999 to teachers to assist them in their overall planning of sex education, the Ministry of Education, Culture, Sports, Science, and Technology (MEXT), stated that those matters in guidance in each subject, moral education, and special activities relating to sex education should be undertaken in a progressive manner. However, some members of the Diet persistently condemned this statement claiming that it paved the way for conducting radical sex education, which is a far cry from the purport of the guidance outlines.

In addition to deleting this statement in 2008 out of concern that it might be misinterpreted as forming the basis for tolerating radical sex education, MEXT decided to revise the guidelines as an introduction of examples of effective sex education. In the general rules of new guidelines MEXT stated that the developmental stages of children and students should be taken into consideration and included in the instruction manual that teachers should "obtain the understanding of families and the community" In this way, it made a clear departure from any notion of "radical sex education."

Tokyo Metropolitan Nanao School for Handicapped Children instituted a detailed sex education program to enable handicapped children to properly understand their bodies, and they received the support of the parents. However, some members of Tokyo Metropolitan Assembly belonging to the Liberal Democratic Party and the Democratic Party attacked the program as radical sex education, and the Tokyo Metropolitan Board of Education confiscated the teaching materials in September 2003. However, the matter did not end there but developed into a major incident that saw many teachers including headmasters subjected to punishment. Initiating a lawsuit, a former headmaster who had been censured demanded that the Tokyo Metropolitan Government reverse his punishment. In its ruling, the Tokyo District Court, in February 2008, criticized the punishment as an abuse of discretion and

ordered the Tokyo Metropolitan Government to withdraw the punishment. In another lawsuit initiated by 31 people including former teachers of the school, the group made a claim for damages to the three members of the Tokyo Metropolitan Assembly for their unjustified involvement in the matter. In March 2009 the Tokyo District Court determined that the action taken by the members of the Tokyo Metropolitan Assembly was involvement and interference of school sex education motivated by political doctrine and belief, and risked distorting the autonomy of education. The court also indicated that despite the Tokyo Metropolitan Board of Education's obligation to protect the school's teachers from unjustified control it failed to do so. The court then ordered the assembly members and the Tokyo Metropolitan Government to pay compensatory damages. The defendants are all appealing the court ruling, and there is concern that similar situations may continue.

3. Decriminalization of abortion

The Penal Code of Japan establishes abortion as a punishable offense when a pregnant woman causes her own abortion by drugs or any other means (Article 212). It also defines as a punishable offense with an aggravated punishment any party that performs an abortion with the consent or at the request of the woman concerned (Article 213 and 214). According to commonly accepted principles, the interests protected by law are the protection of both the fetus and the mother.

In reality, however, abortions are performed mainly by doctors as induced abortions, and self-performed abortions or persons other than doctors conducting abortions with the consent or at the request of the woman involved are extremely rare. Therefore, it can be assumed that there are hardly any cases of criminal punishment under Articles 212 or 213 of the penal code. In theory, however, even if abortion were allowed under the Maternal Protection Law, there is a possibility that the woman herself could be punished on a self-induced abortion offense.

On the other hand, according to the Maternal Protection Law, a pregnant woman up to 22 weeks of gestation is allowed to undergo an abortion by a doctor if there is a fear that the continuation of the pregnancy or childbirth would cause serious harm to the pregnant mother due to either physical or financial reasons, or in the rape cases. In principle, the consent of the partner is required (Article 14), and the number of weeks during which abortion is allowed is established by government notification.

Neither the penal code nor the Maternal Protection Law recognizes a women's right to self-determination on the issue of continuation of a pregnancy or childbirth (the right to decide whether or not to give birth). However, the Article 212 or Article 214, which penalizes self-induced abortion or the performing of an abortion with consent or upon request should be

abolished. It goes without saying that abortion without consent should be punished, but this offense shall be punished as an injury. The requirement of consent of the partner at the time of an abortion essentially means granting the final right to decide on whether or not to proceed with an abortion is left to the man. The need to obtain the consent of a husband regarding abortion can be both dangerous and difficult for a wife who is taking shelter from domestic violence. In view of Article 14 of the constitution, which guarantees gender equality, and Article 13, which guarantees human rights, the provision calling for the consent of a spouse in the matter of abortion must be amended. However, the Japanese Government has no plans to amend this provision.

28. In its previous concluding observations (see A/58/38, sect. IV, para. 371), the Committee expressed its concerns that the Civil Code contained discriminatory provisions, including those with respect to the minimum age for marriage, the waiting period required for women before they could remarry after divorce and the choice of surnames for married couples. The report does not indicate any concrete actions that the Government has taken to repeal the legal provisions in the Civil Code discriminating against women. Please provide this information.

There are no indications that the Government plans to take action to abolish discriminatory provisions against women in the Civil Code by submitting to the Diet a proposal to revise the Civil Code. To eradicate discrimination against women, the JFBA has until now voiced its opinions on family law in areas such as setting the age at which both men and women may marry at 18, abolishing the period during which women are prohibited from remarrying, and introducing a system that allows the choice of surnames for married couples.

In relation to the provision prohibiting remarrying, under Article 772 of the Civil Code it is presumed that a child born within 200 days following notification of marriage or 300 days following notification of divorce is the lawful child of the former husband. Therefore, it is impossible for a woman to avoid legal proceedings involving the former husband if the child is registered in the former husband's domiciliary register or if the woman wants to determine that the child is not the lawful child of the former husband. To avoid legal entanglements of this nature, some women refrain from registering the births of their children and in recent years providing redress for children without official domiciliary registration has become a social problem. Under the Government notification of May 21, 2007, however, on the presumption that Article 772 of the Civil Code does not apply, it became possible for a mother to register her "unlawful child" as her own child or as the lawful child of her husband in the subsequent marriage provided that the earliest date on a doctor's "certification of the gestation period" of the pregnancy relating to that child is later than the date of the dissolution or annulment of the marriage of the mother to the previous husband. However, provisions of this notification are not able to provide redress for all unregistered children.

In the overwhelming majority of cases where there is overlap in the presumption of

legitimacy, the marriage had already broken down some time earlier and the couple in the subsequent relationship is already living together. Therefore, from the vantage point of avoiding overlap in the presumption of fatherhood, it is safer to assume that the child born in such circumstances is the child of the father in the subsequent marriage. Therefore, to eliminate discrimination against women in marriage, the Government should abolish the six-month period during which remarriage is prohibited under Article 733 of the Civil Code, revise Article 772 of the code on the presumption that when there is ambiguity over the legitimacy of a child, the father of the child is the husband in the subsequent marriage, provide redress for children without a domiciliary register, eliminate discrimination against women in marriage and adopt lawmaking measures in line with Articles 15 and 16 of the Convention for the Elimination of All Forms of Discrimination Against Women.

In the report of the working group of the Universal Periodic Review (UPR) of the Human Rights' Council, the Japanese Government was advised to abolish all provisions in legislation that discriminates against women and to continue to take measures to eradicate discrimination, and the Government has agreed to follow up matters. Therefore, the Government should immediately make good on its promises to the Human Rights Council and not only abolish the prohibition period for remarriage but also revise or abolish other discriminatory provisions against women relating to marriage, fulfill its obligations as a party to the Convention for Eliminating All Kinds of Discrimination Against Women, and demonstrate to international society a responsiveness that reflects sincerity and integrity.

29 . Please provide information on the type of property that is distributed upon dissolution of the relationship and indicate, in particular, whether the law recognizes intangible property (i.e., pension funds, severance payments and insurance). Please also indicate whether the law provides for the distribution of future earning capacity and human capital or considers enhanced earning capacity or human capital in any manner in the distribution of property upon dissolution(e.g., through a lump-sum award reflecting the other spouse's estimated share in this type of asset or by allowing for an award of compensatory spousal payment)

1. Property subject to distribution is that property which was jointly acquired by a couple during marriage and includes intangible property to some extent.

(1)Retirement allowance: If a retirement allowance has already been provided, the amount corresponding to the amount accrued during the marriage period is subject to distribution. If the allowance has not yet been made and retirement is expected in the near future, only the allowance that has a high probability of payment in the future and the amount accrued during the period of marriage is subject to distribution.

(2) Insurance benefits: If premiums have been jointly paid by the couple, the total amount determined is subject to liquidation. Life insurance for which premiums are currently being paid has in some legal precedents not been recognized as an asset for distribution but, in the practical business of arbitration and mediation, the amount refunded upon cancellation at the time of divorce (or separation) is often treated as an asset subject to distribution.

Like retirement allowances, only the amount of the insurance benefit which has a high likelihood of being redeemed is subject to distribution. If at the time of distribution of assets a specific amount cannot be determined, it will not be subject to distribution.

(3) The revised Employee's Pension Insurance Act established a system for dividing pension funds at the time of divorce. This system was implemented in April 2007. Insurance premium payment records of pension funds (mutual aid association) corresponding to the period of marriage are subject to distribution, and up to a maximum of one half is divided. However, dividing the amount requires either the agreement of the parties or going through proceedings of a court of law.

A Category 3 insured person under the National Pension Plan may receive half of the amount of the premiums paid since April 2008 upon request without the agreement of the spouse or without going through a court of law. However, for amounts paid prior to April 2008, agreement of the spouse or a ruling by a court is still required. Furthermore, even after the revision of the law, top-up amounts of the Employee Pension, corporate pensions, and private pensions are not subject to pension division. Therefore, these require separate consideration in the distribution of property.

2. The Civil Code merely stipulates that a court distribute property after considering all circumstances (Article 768), and the scope of property subject to distribution or the standards for distribution are not clear. Furthermore, there are no specific rules or regulations concerning future earning capacity or the division of human capital.

Although the code stipulates that a court will determine distribution after taking into consideration all circumstances of the couple including aspects of support for the party that will have difficulty maintaining economic independence after divorce, these considerations are merely supplementary or remedial considerations, and the monetary amounts under consideration are insignificant and the cases considered are few.

Because many women retire from the workforce when they get married or have children, or engage in non full-time work, the opportunities for increasing their earning capacity during marriage are extremely limited. Because of this, it is extremely difficult for them to achieve economic independence after divorce. On the other hand, men increase their earning

capacity during the period of marriage as they are supported by their spouses who assume responsibility for all household-related chores.

Recently there are an increasing number of cases where the courts set the wife's ratio of contribution in asset building during the marriage at 50% by taking into account her responsibility for household work. In the distribution of property, however, there are few cases where the enhanced earning capacity as well as future earning capacity of the spouse working outside, who received support from the spouse at home, is subject to distribution and it is difficult to say whether this support aspect is even taken into consideration in this context.

3. Furthermore, even if distribution of property is determined through arbitration, judicial proceedings, or a court decision, female spouses in many cases have difficulty in actually obtaining property through property distribution. This is because in Japanese society in the majority of households husbands manage the assets and the wives have very limited means of accurately grasping the extent of the assets of their husbands and partners. There are also instances where husbands fail to comply with property disclosure requirements or place their assets under the name of a third party. These ploys create difficulties in pinpointing the whereabouts of property that should be rightfully subject to distribution, and such cases are not few.

Moreover, property under the name of a third party is not subject to distribution. Therefore, even if such assets were created jointly by a husband and wife, there may be difficulty in including them in property that is subject to distribution when it is in the name of a third party (such as a company managed jointly by the husband and wife).

Therefore, if payment is not made voluntarily, compulsory execution of assets will be necessary. At the same time, because determining the location of property may be difficult, extinguishment or consumption of property may take place prior to a court decision, and therefore in many cases of this nature it is extremely difficult to achieve a satisfactory decision on asset distribution.

4. In uncontested divorces or in arbitrated divorces where representatives are not involved, there are many cases where the ratio of contribution is not determined to be equal or there is no distribution of property. In addition, in the majority of uncontested divorces there is no distribution of future benefits and future earning capacity. Consequently, the economic base of women after divorce is more often than not inadequate, and in many cases women either hesitate or are unable to proceed with divorce due to prospects of economic uncertainty after divorce.

30. In the light of the Committee's previous concluding observations (see A/58/38, sect. IV, para. 375), please indicate any progress made with respect to the ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

1. With respect to the individual communications procedure, the Japanese Government takes the stand that it may be problematic in terms of judicial independence, and since 1999 has been considering whether or not to introduce the procedure. However, at present there are no signs of any progress whatsoever.
2. Nevertheless, in the report "On the introduction and widespread promotion of international standards and regulations into Japan", taking into consideration the opinion expressed by the committee, the Specialist Committee on Monitoring and Handling Complaints, Council for Gender Equality stated the following regarding the Optional Protocol on July 28, 2004: "In terms of judicial independence, it is necessary to pay attention to the fact that individual communications may not be examined except when the Committee on the Elimination of Discrimination against Women (a) confirms that domestic relief measures have been exhausted, or (b) in case the Committee deems that the adoption of domestic relief measures has been unreasonably prolonged, or there is no expectation of effective relief.
Furthermore, it is assumed that the opinions and replies of the Committee are not legally binding, and that it is sufficient to consider them in a spirit of sincerity. The Committee on the Elimination of Discrimination against Women in its final comments also stated that the mechanism offered by the Optional Protocol would strengthen judicial independence and would assist the judiciary in the understanding of discrimination against women.
The Optional Protocol must be given early examination in terms of the potential of its ratification."
3. In view of the above, the Second Basic Plan for Gender Equality, approved by the Cabinet on December 27, 2005, clearly stated that the Government would endeavor to widely promote the adoption of international standards and regulations for improving the status of women, to make the guidelines widely known by a broad sector of the public, also to make vigorous effort to introduce these to Japan.
4. However, the Japanese Government in the Sixth Report in April 2008 stated that under various international conventions on human rights it had not ratified nor accepted the introduction of the Optional Protocol and was in the process of considering it. In the Council for Gender Equality's opinion regarding the follow-up results of the Second Basic Plan for Gender Equality dated March 4 of the same year, among the items concerning the introduction and widespread promotion of international criteria and standards to Japan, ratification of the Optional Protocol did not get any mention. Furthermore, not only is there an absence in proactive efforts by the Japanese

Government to ratify the Optional Protocol but there is also a sense that the Japanese Government is retreating on this issue.

Even in response to our question concerning this matter, the Japanese Government simply replied that it was continuing to consider the matter.

5. In October 2008 the UN Human Rights Committee expressed to the Japanese Government the view that Japan should consider ratification of the First Optional Protocol.

In June 2008 at the session of the UN Human Rights Council, the Japanese Government, promised to examine the ratification of the human rights treaties and the Optional Protocol to the Conventions except for the Second Optional Protocol. This Optional Protocol includes the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

In the House of Councilors, petitions requesting the ratification of the Optional Protocol have been adopted seven times at regular sessions of the Diet, and three times at extraordinary sessions of the Diet from 2001 to 2008, so it can be said that the will of the people demanding the ratification of the Optional Protocol is clear.

Over a long period of time the Japanese Government has conducted research on the ratification of the Optional Protocol, and has indicated results of its investigation regarding the relationship of an individual communications system and judicial independence in light of the introduction and widespread promotion of international criteria and standards in Japan as described in item 3,. Therefore, the Japanese Government should begin to consider concrete measures for the ratification as soon as possible.

Japan Federation of Bar Associations

1-3, KASUMIGASEKI 1-CHOME, CHIYODA-KU, TOKYO 100-0013 JAPAN

URL: <http://www.nichibenren.or.jp/en/>

TEL: +81-3-3580-9841 FAX: +81-3-3580-2896