



**Discrimination in the field of Reproductive and Sexual
Rights in Japan**

Shadow Report

July 2008

**This Shadow Report about Discrimination in the field of
Reproductive and Sexual Rights in Japan was written by
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“SPACE ALLIES”

**The Convention on the Elimination of All Forms of Discrimination against
Women
(CEDAW) 44th Session, July 20 – August 7, 2009**

Dear Committee members,

As one of the States parties to the Convention, Japan presented a periodic report on September 18, 2008 (CEDAW/C/JPN/6) to fulfill its obligations under Article 18 of the Convention. The report will be considered during the 44th CEDAW session in July 2009.

This Shadow Report is an attempt to describe discrimination in the field of Reproductive Sexual Rights in Japan, especially regarding the criminalization of abortion, defects in the legal system regarding sexual assault, and insufficient policies for sexual minority women, with the goal of assisting the Committee's evaluation of Japan's compliance with CEDAW provisions and ultimately improving Japanese women's lives.

This Shadow Report is intended to complement the periodic report submitted by the Japanese government. Our aim is to provide specific information regarding the legal situation faced by women in Japan. We would especially like to highlight the points below, focusing on discrimination in the field of Reproductive and Sexual Rights in Japan, with particular attention to abortion, sexual assault, and discrimination against sexual minorities.

Space Allies, an independent nongovernmental organization, has worked extensively with government initiatives to amend laws to guarantee women's reproductive sexual rights and to protect the rights of survivors of sexual assault as well as sexual minority women.

We hope that the Committee will consider the following questions during their meeting to review the Japanese government's compliance with its obligations, and that the questions will be included in your concluding observations. The information on which the questions are based can be found in the subsequent text.

Suggested questions for the government of Japan during the 44th CEDAW session:

- 1. Does the Government plan to decriminalize abortion immediately, within one year?**

- 2 .Does the Government plan to abolish the article of the Maternal Protection Law which requires a woman who seeks an abortion to obtain the authorization of her male partner?
- 3 .Does the Japanese Government plan to approve the abortion pill?
- 4 .Will the government take measures to improve access to emergency contraceptive pills?
- 5 .How will the Government take decisive action to bring to justice the perpetrators of:
 - 1) marital rape
 - 2) incest and sexual violence against children
 - 3) sexual violence committed by abusing a position of authority or power
 - 4) sexual assault by U.S. military personnel
 - 5) systemic sexual violations during the World War
- 6 .Does the Japanese Government plan to legislate reform to define the following types of violence as constituent elements of aggravated rape or aggravated sexual battery?
 - 1) incest and sexual violence against children
 - 2) sexual violence committed by abusing a position of authority or power
- 7 .How will the government amend, from the view of women's human rights, the constituent element of laws relating to sexual violence and their enforcement by police officers, prosecutors and judges?
 - 1) Does the Japanese government plan to change the definition of sexual crimes to include all sexual acts which occur without consent and against the victims' free will?
 - 2) Does the Japanese government plan to modify the Penal Code with a view to qualifying sexual violence as a violent crime rather than as a crime against morality?
 - 3) Does the Japanese government plan to revise the operation of the citizen-judge system or to revise the laws governing the citizen-judge system to ensure that the rights of victims of sexual violence are protected?
 - 4) Does the Japanese government plan to protect victims from secondary

victimization and to eliminate the legal and procedural barriers for bringing perpetrators to justice, such as the necessity to file a complaint of rape, the tendency for courts to require victims to prove that they desperately resisted the attack, and the absence of specific provisions barring reference to victims' past sexual history in court?

5) Does the Japanese government plan to increase the minimum punishment and increase the penalty, particularly in cases whereby perpetrators committed sexual assaults by abusing their position of authority or power?

6) Does the Japanese government plan to provide mandatory training regarding sexual violence and gender sensitivity for judges, prosecutors and police officers?

8 .Does the Japanese government plan to improve support for victims of sexual assault by developing 24-hour rape crisis centers, training qualified medical staff, and increasing funding for NGOs that support victims?

9 .Does the Japanese government plan to take measures to respond the following situations?

1) U.S. Military personnel accused of sexual violence have returned to the U.S. unprosecuted and/or unpunished.

2) The Japanese government has not taken adequate measures to redress the wrongs of "Comfort Women," ignoring recommendations by international bodies.

10. Does the Japanese government plan to enact legislation that prohibits discrimination against sexual minority women and protects their rights?

Abortion in Japan

The Japanese Government should decriminalize abortion immediately!

PENAL CODE (Act No. 45 of 1907)

Article 212 (Abortion)

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

Article 213 (Abortion with Consent; Causing Death or Injury)

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

Article 214 (Abortion through Professional Conduct; Causing Death or Injury)

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

The Maternal Protection Law

Article 14 (Abortion based on doctors' authorization)

A doctor who is designated by the medical association of the prefecture is authorized to perform the medical procedure of abortion for the following women, after obtaining the consent of the woman and **authorization of her husband**.

1. A woman for whom pregnancy or delivery could cause damage to her health for physiological or economical reasons.
- 2 .A woman whose pregnancy is caused by violence or intimidation, during which she could not have resisted or refused.

“If my husband does not authorize my abortion, can I be sent to prison?”

1. The Penal Code of Japan stipulates in Article 212 that “when a pregnant woman causes her own abortion by drugs or any other means, imprisonment with work for not more than 1 year shall be imposed.” This article has not changed for more than 100 years and has been used as a tool for singling out defiant women for punishment.

Although the report by the Japanese government asserts the legitimacy of this Article, it is clear that it violates Article 2(g) of the CEDAW as well as Clause 14 of General Recommendation 24 of the CEDAW, which requires party States to refrain from obstructing actions taken by women in pursuit of their health goals. Obstruction includes criminalizing medical procedures needed only by women, as well as criminal punishment for women who undergo these procedures. Clause 31(c) of the Recommendation clearly requires that “legislation criminalizing abortion be amended and punitive provisions for women who undergo abortion be removed.”

Japan’s Penal Code also violates Clause 21 of General Recommendation 21 of the CEDAW, which guarantees women’s rights to decide on the number and spacing of their children.

In relation to abortion, Japan also has a Maternal Protection Law, under which abortion is recognized as a legal medical procedure. Under this law, most abortions are justified, so long as they are performed in accordance with the requirements of the law.

However, as long as Article 212 of the Penal Code remains, a woman who has an abortion, even in the first trimester, can be punished. The existence of the article itself, which punishes only women, is an intolerable example of discrimination against women. It is a law that should be abolished immediately by the Japanese government.

Regarding abortion methods, women’s right to choice is restricted by the rulings of the Japanese Ministry of Health, Labour and Welfare, which has restricted abortion methods based on such unscientific criteria as the financial merits for the hospital.

Surgery (dilation and curettage) is designated as the only standard abortion method in Japan, even in early-stage abortions, but medical abortions and manual vacuum aspiration should also be permitted, improving the conditions for implementation.

2. The Second National Plan for Gender Equality does not stipulate any guarantee of Reproductive Rights, and the policies of the Japanese government have made light of the rights of women to make choices regarding her own body.

The Maternal Protection Law requires a woman who seeks an abortion to obtain the authorization of her male partner. But while both the woman and her partner are party to the application for an abortion, only the woman may be punished by the Penal Code for having an abortion, which is clearly discriminatory.

The above-mentioned article of the Maternal Protection Law should be abolished because it also violates Article 16 of the CEDAW, which guarantees equal rights for women in all matters relating to marriage and family relations, and Clause 14 of General Recommendation 24 of the CEDAW, which prohibits party States from restricting women's access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities.

Although 15 years have passed since the ICPD, not only the concept but also the term “Reproductive Health/Rights” has not become widely recognized in Japan. What is worse, due to political pressure by right-wing groups, it is becoming increasingly more difficult to use the term “Reproductive Rights.”

However, the Japanese government should undertake a fundamental reform of the Maternal Protection Law and the Maternal and Child Health Act from the standpoint of Reproductive Health/Rights and the rights of women to make choices regarding their own bodies. The Japanese government also needs to develop policies to further awareness of and respect for “Reproductive Health/Rights,” especially in the field of education.

3. Because the Japanese Ministry of Health, Labour and Welfare has refused to approve emergency contraceptive pills, including even such widely accepted oral emergency contraceptive kits as “Preven,” low- to medium-dose contraceptive pills

are usually used as substitutes. Even then, most Japanese women do not know that emergency contraceptives may be used to avert an unwanted pregnancy.

In Japan, while almost all perpetrators of marital rape enjoy impunity under the law, a woman who becomes pregnant due to marital rape can be punished under the Penal Code for having an abortion without the authorization of her husband.

We, the women of Japan, need comprehensive laws against sexual assault. All sex acts against our will constitute sexual violence.

PENAL CODE (Act No. 45 of 1907)

Article 176 (Forcible Indecency)

A person who, through assault or intimidation, forcibly commits an indecent act upon a male or female of not less than thirteen years of age shall be punished by imprisonment with work for not less than 6 months but not more than 10 years. The same shall apply to a person who commits an indecent act upon a male or female under thirteen years of age.

Article 177 (Rape)

A person who, through assault or intimidation, forcibly commits sexual intercourse with a female of not less than thirteen years of age commits the crime of rape and shall be punished by imprisonment with work for a definite term of not less than 3 years. The same shall apply to a person who commits sexual intercourse with a female under thirteen years of age.

Article 180 (Complaints)

(1) The crimes prescribed for in Articles 176 through Article 178 and attempts of the above-mentioned crimes shall be prosecuted only upon complaint.

(2) The provision of the preceding paragraph shall not apply when the crimes prescribed under Article 176, paragraph (1) of Article 178 or attempts of the above-mentioned crimes are committed jointly by two or more persons who are at the scene of crime.

We face many problems with the Japanese Penal Code and its implementation.

1. To end impunity

(1) Marital rape

In Japan, almost all perpetrators of marital rape enjoy impunity under the law because many judges rule that marriage entails a duty to respond to demand for sexual relations from a spouse. In fact, nearly one fifth of married women suffer from sexual violence by their male partner. **Almost all perpetrators of marital rape**

are unprosecuted and unpunished, whereas the victims suffer not only the violence itself, but also unwanted pregnancy and illegal abortion. The Japanese government, including courts and legislature, should take all possible measures to end impunity for perpetrators of marital rape.

In the case of marital rape, the law should not require assault or intimidation by the perpetrator for the charge to stand, because the subordinate relationship in marriage forces victims to engage in sexual acts against their will, even if the perpetrator does not use force or intimidation.

(2) Incest

In Japan, almost all perpetrators of incest remain unprosecuted and unpunished.

Although the Penal Code does not exclude incest from criminal acts, crimes by the guardians of minors are rarely reported. Considering the harmful effects of these crimes on their victims, the Japanese government should introduce legislation to define incest and sexual violence against children as constituent elements of aggravated rape, and take measures to protect victimized children.

(3) Sexual assault through abuse of a position of authority or power

In Japan, most perpetrators of such sexual assaults remain unprosecuted and unpunished.

Cases in which perpetrators abuse their position of authority or power to commit sexual acts are often not prosecuted because the act is interpreted to have been consensual sex. Considering the inherent coercion of the power relationship, the Japanese government should formally recognize abuse of a position of authority or influence to be a constituent element of aggravated **sexual battery**, and take measures to protect the victims.

In the case of Sexual assault through abuse of a position of authority or power, the law should not require assault or intimidation by the perpetrator for the charge to stand, because the subordinate relationship forces victims to engage in sexual acts against their will, even if the perpetrator does not use force or intimidation.

(4) Sexual violence involving military personnel

U.S. servicemen accused of sexual violence have returned to the U.S. unprosecuted and/or unpunished.

The Japanese government should ensure the safety of women and girls in areas near U.S. military bases by taking necessary measures to prevent and prosecute

sexual abuses and to protect victims; this includes a review of the Status of Forces Agreement. The Japanese government should work in collaboration with parties including the Ministry of Defense and police to ensure that victims have access to justice through criminal proceedings as well as negotiations with the perpetrator/U.S. military authority. (This paragraph is based on a report by the Asia-Japan Women's Resource Center, an NGO.)

(5) Ignoring recommendations by international bodies, the Japanese government has not taken adequate measures for the redress of sexual slavery by its military, the victims of which were called "Comfort Women."

The Japanese government should act immediately on the recommendations made by international bodies to take adequate measures, through legislation and implementation, for redress of the systematic victimization of "comfort women."

The Japanese government should refute any and all arguments justifying the crime or denying state responsibility, and ensure that information on the issue is presented at all levels of education. (This paragraph is also based on a report by the Asia-Japan Women's Resource Center, an NGO.)

2 To reconsider the definition of sexual violence from the standpoint of women's human rights

(1) All sexual acts against a woman's will constitute sexual violence.

Sexual violence is a sexual act committed or attempted against a victim's will, or when a victim is unable to refuse due to age, illness, disability, or the influence of alcohol or other drugs. Sexual violence also includes intentional touching of the genitals, anus, groin, or breast against a victim's will or when a victim is unable to refuse; it also includes voyeurism, exposure to exhibitionism, and undesired exposure to pornography. The perpetrator of sexual violence may be a stranger, friend, family member, or intimate partner.

The Penal Code defines only Forcible Indecency (article176) and Rape (Article 177) and their attending violence or intimidation as sexual crimes.

All types of sexual violence should be punished, and sexual violence should be classified by the severity of damage to the victim, not by any measure of the perpetrator's perceptions or social precedents.

Additionally, there are many barriers to bringing perpetrators to justice.

(2) The resistance requirement

For a rape charge to stand, Courts have tended to require that victims prove they desperately resisted the assault. Perpetrators are therefore not punished without evidence of desperate resistance by the victim, even when the victim could not resist for fear of injury or death.

(3) Assault or intimidation

Under the Penal Code, perpetrators are punished in principle only when they have used force or intimidation. Consequently, many victims who are forced to engage in sexual acts against their will are not redressed in the legal process.

(4) Sexual violence cannot be prosecuted without a formal complaint filed by the victim in principle, according to the Penal Code. This clause prevents many victims from bringing perpetrators to justice. Although the clause exists ostensibly to protect the victim's honor, measures should be taken both to protect the victim's privacy and rights and to bring the perpetrators to justice.

(5) Under the existing citizen-judge system, there is no way for victims of sexual violence to refuse to have the citizen-judge system applied in their cases, even when the victims wish to protect their privacy or conceal their identity from exposure to citizen-judges. There is a possibility that private information regarding the victim will be disclosed by a citizen-judge or candidate because they do not have the duty of confidentiality. These defects act as deterrents for victims of sexual violence in bringing perpetrators to justice.

(6) Due to insufficient training regarding sexual violence and gender sensitivity for judges, prosecutors and police officers, many victims of sexual violence hesitate to file a complaint.

Often, victims also experience secondary victimization in court as a result of references to their past sexual history, behavior, clothing, job and other personal information. The Japanese government needs to mandate revisions in laws and current prosecutorial practices to disallow such references and other strategies that demean or denigrate victims in court, and implement effective training for judges, prosecutors, police officers and other related professionals.

Additionally, there is insufficient education for police, medical staff and other relevant professionals about the specialized needs of victims who are lesbian, bisexual or transgender.

3 The Japanese government should strengthen the current system supporting sexual assault victims by developing 24-hour rape crisis centers, training qualified medical staff and increasing funding for NGOs that support victims. NGOs in Japan already have demonstrated capabilities for 24-hours rape crisis centers and for training qualified medical staff, so the Japanese government should support these activities.

Other clauses of the Penal Code

Article 178 (Quasi Forcible Indecency; Quasi Rape)

(1) A person who commits an indecent act upon a male or female by taking advantage of loss of consciousness or inability to resist, or by causing a loss of consciousness or inability to resist, shall be punished in the same manner as prescribed for in Article 176.

(2) A person who commits sexual intercourse with a female by taking advantage of loss of consciousness or inability to resist, or by causing loss of consciousness or inability to resist, shall be punished in the same matter as prescribed in the preceding Article.

Article 178-2(Gang Rape)

When two or more persons jointly commit the crimes prescribed under Article 177 or paragraph (2) of Article 178, they shall be punished by imprisonment with work for a definite term of not less than 4 years.

Article 179 (Attempts)

An attempt of the crimes prescribed for in Articles 176 through the preceding Article shall be punished.

Article 181 (Forcible Indecency Causing Death or Injury)

(1) A person who commits a crime prescribed under Article 176, paragraph (1) of Article 178 or an attempt of the above-mentioned crimes and thereby causes the

death or injury of another shall be punished by imprisonment with work for life or for a definite term of not less than 3 years.

(2) A person who commits a crime prescribed under Article 177, paragraph (2) of Article 178 or an attempt of the above-mentioned crimes and thereby causes the death or injury of another shall be punished by imprisonment with work for life or for a definite term of not less than 5 years.

(3) A person who commits a crime prescribed for in Article 178-2 or an attempt of the above-mentioned crimes and thereby causes the death or injury of another shall be punished by imprisonment with work for life or for a definite term of not less than 6 years.

The Japanese government should enact legislation that prohibits discrimination against sexual minority women and protects their rights.

The Human Rights Committee has expressed its concern¹ regarding discrimination against lesbian, gay, bisexual and transgendered individuals in the areas of employment, housing, social security, health care, education and other fields regulated by law. This trend is exemplified by Article 23(1) of the Public Housing Law, which applies only to married and unmarried opposite-sex couples and effectively bars unmarried same-sex couples from renting public housing, as well as the exclusion of same-sex partners from protections under the Law for the Prevention of Spousal Violence and the Protection of Victims (Articles 2(1) and 26).

The Committee has stated² that the Japanese government should consider amending its legislation to include sexual orientation among the prohibited grounds for discrimination, and to ensure that benefits granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples.

During the first Universal Periodic Review of Japan by the Human Rights Council, the Japanese government was urged to “take measures to eliminate discrimination based on sexual orientation and gender identity,”³ in response to which Japan

¹ Concluding observations of the Human Rights Committee. Para. 29. HUMAN RIGHT COMMITTEE Ninety-fourth session, Geneva, 13-31 October 2008. (CCPR/C/JPN/CO/5)

² *ib.*

³ Report of the Working Group on the Universal Periodic Review of Japan. Para. 60-11. HUMAN RIGHTS

declared its acceptance of the recommendation.

However, in the subsequently published sixth State Report on the Convention on the Elimination of All Forms of Discrimination against Women, the Japanese government makes no reference to measures or policies regarding transgender, lesbian and bisexual women.

The Japanese government should also, without exclusion, take measures to prevent violence on the basis of sexual orientation and gender identity, protect and support the victims of such violence, including victims of domestic violence in same-sex relationships.

The Japanese government should also prohibit legal or de facto discrimination against sexual minority women and girls at all levels of public and other education and employment, and enact legislation to guarantee them equal opportunities.

The Japanese government should enact legislation to recognize same-sex relationships between women, including those whose biological sex does not match their gender identity, by guaranteeing them the right to have and raise children, as well as the right to sexual and reproductive health, including access to information and related services.

It is necessary for the government to modify existing systems regarding medical and legal services for people with gender identity disorder, based upon their diverse needs.

The government should also include “well-founded fear of persecution on the basis of one’s sexual orientation” among the grounds for granting asylum within the definition of refugees in the Immigration Control and Refugee Recognition Act.

(Appendix)

The following is a list of questions regarding article 12 for the sixth State Report on the Convention on the Elimination of All Forms of Discrimination against Women by the Japanese government. This list was made by our organization in cooperation with other NGOs in advance of the compilation of issues by the UN.

Article 12

Issues	Questions and Backgrounds	Gov't Report Paras.
<hr/> <p><Space Allies>, <Japan's Network for Women and Health>, <SOSHIREN></p>		
Legal Reform for Abortion	Laws and Policies on Abortion and Contraception Does the Japanese Government plan to decriminalize abortion immediately, to abolish the clause of the Maternal Protection Law which requires the husband's permission to abort a pregnancy, to approve the abortion pill, to enact a fundamental and comprehensive law concerning Reproductive Health/Rights, to approve emergency contraceptive methods as medical procedures and cover its cost under public health insurance as well as provide such procedures free of charge in cases of sexual violence, and to apply policies aimed at increasing the practice of contraception when pregnancy is not desired?	362
Backgrounds	The criminal code prescribes punishment by imprisonment for a pregnant woman found guilty of causing her own abortion by drugs or any other means. Furthermore, the Maternal Protection Law requires not only the pregnant woman's declaration of intent, but also the husband's consent in order to perform an abortion. There is no law in Japan stating fundamental rights concerning pregnancy, childbirth, abortion, and contraception. The Ministry of Health, Labor and Welfare (MHLW) has not yet approved emergency contraceptive pills and abortifacients. The use of modern methods of contraception stands at only 51% in Japan.	
Backlash against Sex Education	Does the Japanese Government have plans to promote comprehensive sex education, including education on reproductive health for adolescents, rights regarding contraception and abortion, and the right	366

Policies **of self-determination regarding pregnancy and childbirth, despite movements which seek, based on the specific values held by their proponents, to stigmatize effective sex education by branding it as “excessive” and “extreme.”**

Backgrounds A sex education text provided to junior high school students was recalled due to protests by a number of Diet members, and members of an education committee and the Metropolitan Assembly of Tokyo strongly criticized the implementation of sex education in schools for the developmentally handicapped. Although the first national Gender Equality Basic Plan of 2000 expressed the need for greater awareness regarding Reproductive Health/Rights and declared that “sex education should be enhanced,” the second national Gender Equality Basic Plan of 2005 emphasized that “explicit sex education” should be restricted, indicating a clear regression in the provision of sex education.

Issues of Obstetrics and Gynecology **Will the Japanese Government declare specific policies for ensuring sufficient staff and facilities in obstetrics and gynecology, reducing current regional disparities, resolving inadequate collaboration between medical facilities, and decreasing maternal mortality and injury; will it also enact measures to provide free childbirth and antenatal checkups as well as secure financing for these services, and amend laws on health nurses, midwives and clinical nurses to meet women’s needs?**

361

Backgrounds The number of obstetricians and gynecologists has been decreasing, and the number of deliveries per doctor has increased to unprecedented levels. Additionally, medical accidents in obstetric cases have increased. Efforts toward comprehensive and regional perinatal medical centers for mothers and infants are still inadequate, as is cooperation with other medical facilities. Delivery costs are not covered by Japan’s public health insurance, and costs differ between regions. Antenatal checkups are provided free of charge in some municipalities, but such places are far from the norm. Also, the health care system is not fully utilizing the skills of midwives.

Reproductive rights in Workplaces **Does the Japanese Government have plans for specific legislation and/or measures providing for women’s mental and physical health in workplaces, including Reproductive Health/Rights for working women?**

291

Backgrounds Working women continue to face difficulties choosing pregnancy and childbirth because of inadequate safeguards and insufficient promotion in the workplace of Reproductive Health/Rights. It is essential to press employers to mitigate discomfort and otherwise accommodate the specific needs relating to pregnancy and childbirth through measures such as the use of “Maternal Health Management Cards.” Sufficient regulation is also necessary to ensure maternity leave and improve conditions for women in workplaces where heavy loads are lifted or carried, or where they may be exposed to hazardous substances. Ratification of ILO 103 and safeguards ensuring maternity leave for women who are irregular employees are also essential. Finally, there is a need for concrete plans that protect against health risks for working women and to bring about safe and gender-sensitive working environments, free from gender discrimination or sexual harassment. Reproductive Health issues must also be brought into safety and health education in workplaces.

Child-Support Programs **(1) Will the Japanese Government provide better support for raising children, including those with special needs?**
(2) Does the Japanese Government have plans to counter child abuse, to provide specialized support/counseling for abused children, those with developmental disabilities, and their families? 358

Backgrounds Although the conditions for childbirth and raising children are still far from ideal, there has been considerable focus in Japan solely on increasing the birthrate. Better childcare environments and expanded financial support are necessary. Support services for families raising children with special needs are significantly behind, and there is a need to better address the mental health issues of postnatal women. There is also a need to provide greater support/counseling for abused children, particularly victims of sexual abuse, and children with developmental disabilities. In addition, family support systems and the training of specialists such as medical or health care professionals need to be increased. It is also essential to take action against the victimizers—those who have been involved in abuse and child prostitution. Moreover, in addition to support for victims, appropriate prevention and hotline/first response programs are needed.

Sexually **(1) Does the Japanese Government have constructive policies for** 371

Transmitted Disease

improving access to information and medical services relating to sexually transmitted diseases, without discriminating against HIV-positive women who are foreign nationals, sex workers, and illegally-resident foreigners, and with a view to the particular needs of women and the conditions they face?

(2) What is the current status of plans for investment in microbicides and other means of female-initiated HIV prevention, and for early ratification of the HPV vaccine?

Backgrounds

The number of cases of sexually transmitted diseases is increasing, and women tend to make up a greater percentage of reported cases. It is critically important to provide education and information to youth. Of pregnant women who are HIV positive, 60% are of foreign nationality, so a response that meets their needs is essential. Sex workers are a vulnerable group regarding HIV/AIDS infection, but the criminalization of human trafficking and revisions to Japan's sex industry laws have sent illicit activities underground, with the result that human rights violations and health hazards to workers have become more difficult to prevent or monitor. Stronger legal protections and enforcement are needed to safeguard health and human rights. There is also a need for investment in international research activities on female-initiated HIV-prevention strategies such as those employing microbicides. Regarding the HPV vaccine, effectiveness has already been proven, and it is already available in North America and Europe. In Japan, the annual death toll from cervical cancer is about 2,500, and is rising particularly among women in their twenties and thirties.

Support for Victims of Sexual Violence

Does the Japanese Government have plans to provide further support by police and medical professionals for victims of sexual violence, to train and deploy specialized health-care professionals to support victims of sexual violence, to make available emergency contraception, and enhance victim compensation; will the government also promote efforts in the fields of law and education to address the issue of sexual violence against women, including coercion by acquaintances, to criminalize sexual violence by spouses, and to combat violence against women from the viewpoint of protecting Reproductive Health/Rights?

52

Backgrounds

In order to better support victims of sexual violence, there is a need for greater protection and compensation of victims. It is essential to

improve the quality of specialist care and to prevent secondary victimization. Because the issue of sexual violence against women by acquaintances has only recently been acknowledged, little is known about how prevalent it may be, and the response in all relevant fields is insufficient.

Under Japanese criminal law, there is no rule exempting spouses from punishment for rape, but the law is never applied when the parties are in a marital relationship because women are considered to have an obligation to accept sexual relations within a marriage. There is also a need to provide shelter for women threatened with violence, as well as effective provisions against stalkers.

Medical
Services for
Women

Does the Japanese Government intend to establish specific policies to address the gender gap in medical services, provide fiscal support to promote breast cancer screening and mental health services that are sensitive to gender and age, and promote more equal association between psychiatry and other medical specializations in the medical and health system, and set clear guidelines for female patients' rights?

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Backgrounds

The number of gynecologic disorders has rapidly increased, particularly among younger women, and breast cancer is the number one malignancy among cancers striking Japanese women. Yet, the percentage of women undergoing screening remains extremely low, partly due to the increased personal expense following the introduction of mammography in screening. It is essential to increase public awareness while reducing the financial cost borne by individuals. Effective strategies are also needed for other disorders of the female reproductive organs and mammary glands, for dealing with the linkage between women's social status and health, and in the area of mental disorders, where gender distinctions are evident. Regarding all issues relating to violence against women as well as mental health issues that stem from fatigue and/or stress arising from the household roles of women, solutions must seek to exterminate violence against women and bring about more equitable sharing of familial and domestic responsibilities, and more effectively coordinate psychiatry with other medical departments. Furthermore, women who do seek help sometimes find their rights abused by medical staff or other patients,

owing to gender discrimination. There is also inadequate protection against abuses of women's basic human rights by members of their family.

<p>Medical Services for Older Women</p>	<p>(1) Does the Japanese Government have specific programs to promote the health of older women? (2) Does the Japanese Government have concrete policies aimed at correcting the predominance of women among providers of senior care, particularly among those from overseas?</p>	<p>363</p>
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<p>Backgrounds</p>	<p>A growing class of older women is sinking into poverty, and it is becoming difficult for them to afford medical insurance and health insurance. The public health system has been revised for the worse, increasing the economic burden borne by the elderly. In addition, the majority of elderly victims of abuse, both in the home and in care facilities, are women. Another critical need is ensuring the mental and physical health (including sufficient rest) as well as economic security of workers providing care for the elderly. The fact that a disproportionate proportion of these caregivers are women must also be addressed. Regarding the acceptance of medical nurses and care workers from other countries, care must be taken to ensure legal standing, inclusion in a social security system, and prevention of discrimination by gender.</p>
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<p>Eugenic Sterilizations</p>	<p>Does the Japanese Government intend to investigate eugenic sterilizations performed without the individual's consent, and to offer an apology and compensation to the victims?</p>	<p>106</p>
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<p>Backgrounds</p>	<p>The Japanese Government has not responded to inquiries regarding forced female sterilization and illegal hysterectomies, although the United Nations Commission on Human Rights has admonished the Japanese Government in 1998 to provide compensation to the victims. Although the "Convention on the Rights of Persons with Disabilities" in 2006 declared that the sexual and reproductive rights of handicapped women must be respected, this is rarely acknowledged in Japan. Handicapped women need more education to exercise self-determination regarding sexuality and reproduction; an examination of sexual violence against handicapped women and assistance for victims are also needed.</p>
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<p>Rights of</p>	<p>(1) Does the Japanese Government intend to formulate policies</p>	<p>98</p>
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Sexual
Minorities

concerning the Sexual and Reproductive Health /Rights of sexual minorities?

(2) What specific plans will be provided for in new laws and public administration to protect the rights of sexual minorities?

Backgrounds

Government policies are required to be more sensitive to the health and human rights of sexual minorities in order to achieve the goal of universal health, particularly in the area of Sexual and Reproductive Health/Rights. Sexual minorities are discriminated against in administrative procedures as well as in social and family life, in violation of their human rights. New laws are needed to ban all types of discrimination and protect the rights of sexual minorities; the necessary education and information must be provided, and laws should be enacted to ensure the right to form a household, as well as to confer recognition of non-traditional relationships, such as in PACS, a form of civil union between two adults for organizing their joint life.

Support for
Women in
Poverty

Does the Japanese Government have concrete plans to promote the health and basic living conditions of women in poverty? Also, does the Japanese Government have concrete plans to extend medical care to all foreign women in Japan?

373

Backgrounds

The number of impoverished people who cannot access medical services because they cannot pay the National Health Insurance fees has increased, signaling a collapse of the ideal of National Health Insurance. With the abolition of additional welfare payments for single mothers and the movement (since rescinded) to reduce child-care allowances, the financial challenges of raising children are growing more severe. Also, contraceptives and abortions for financial reasons are not covered by National Health Insurance, so there is a need for measures to reduce the financial burden without infringing on the individual's privacy. Furthermore, the medical needs of impoverished foreigners are not being adequately met.

Women's
Health in
Case of
Natural
Disasters

What kinds of specific responses are planned regarding women's health issues in the case of natural disasters?

351

Backgrounds

For survivors of natural disasters, there is a need to distribute sanitary

products, set up women’s toilets as well as living spaces with adequate privacy, prevent sexual violence, assist in the event of childbirth, and support those with illnesses and disabilities. In temporary shelters and afterward, women often face difficulties returning to paid work due to various care-giving responsibilities.

Women’s
Rights for
Reproductive
Medicine

(1) Does the Japanese Government plan to enact laws or guidelines with the aim of protecting the rights of all women relating to reproductive medicine, to balance the need to support fertility treatments with the need for integrity regarding possible adverse effects and sensitivity to the pressures that may be experienced by those seeking treatment?
(2) Does the Japanese Government plan to enact laws or policies aimed at safeguarding those seeking treatment for infertility from becoming tools or samples for the development of assisted reproduction technologies, and for reducing the physical and mental burden of ovum donors?

359

Backgrounds

There has been insufficient review of the legal and ethical issues relating to surrogacy, and restrictions are called for that will protect the Reproductive Health/Rights of all women as well as guarantee the rights of children conceived with the assistance of reproductive technologies.

Not only in fertility treatment, but in research on assisted reproduction technologies, it is necessary to consider the physical, emotional, and other effects on women. There is also a need to reduce regional disparities in the availability of treatments for infertility, as well as to reduce—through education on a wider level and counseling on a personal level—the pressures felt by women who do not have children.

Gender Issues
in
International
Cooperation

With regard to timelines, amounts, and uses of funds for international cooperation, what are the specific plans in the following areas: gender equality, maternity health care, gender balance issues in the international effort to combat HIV infection, and support for Reproductive Health and other needs of women in disaster relief?

246

Backgrounds

In the area of cooperation for international development, active funding is essential for reduction of maternal mortality and universal access to Reproductive Health Services, which is the target of Millennium Development Goal 5, gender equality and women’s empowerment (MDG 3), reduction of gender inequality in HIV/AIDS issues, and health/nutrition education not only for women but all inhabitants in program areas. In humanitarian aid and disaster relief, it must be

recognized that women have particular needs; the Japanese government's immediate response to the Indian Ocean Tsunami set a good precedent which should be followed.

(Appendix) Other main conclusions and recommendations by treaty bodies and Human Rights councils

Fourth and fifth periodic reports Japan Concluding observations: 29th session

Part of A/58/38

361. While acknowledging legal and other measures by the State party to address violence against women, the Committee is concerned about the prevalence of violence against women and girls and about women's apparent reluctance to seek assistance from existing public institutions. It is concerned that the Law for the Prevention of Spousal Violence and the Protection of Victims currently does not cover forms of violence other than physical violence. It is also concerned that the penalty for rape is relatively lenient and that incest is not defined explicitly as a crime under the Penal Code but is dealt with indirectly under a number of different penal provisions. The Committee is further concerned about the particular situation of foreign women who experience domestic violence and whose immigration status might depend on their living together with their spouse. The Committee is concerned that fear of repatriation might be a deterrent for those women to seek assistance or take steps to seek separation or divorce. While appreciative of the comprehensive information provided by the State party with respect to the measures it has taken before and after the Committee's consideration of the second and third periodic reports of the State party with respect to the issue of "wartime comfort women", the Committee notes the ongoing concerns about the issue.

362. The Committee calls upon the State party to intensify its efforts to address the issue of violence against women, including domestic violence, as an infringement of their human rights. In particular, the Committee urges the State party to broaden the Law for the Prevention of Spousal Violence and the Protection of Victims so as to include different forms of violence, increase the penalty for rape and include incest as a specific crime in its penal legislation, and implement

policies in accordance with the Committee's general recommendation 19, in order to prevent violence; provide protection, support and other services to the victims; and punish offenders. The Committee recommends that revocation of residence permits of foreign but separated married women who experience domestic violence be undertaken only after a full assessment of the impact of such measures on those women. The Committee recommends that the State party endeavour to find a lasting solution for the matter of "wartime comfort women".

CCPR/C/79/Add.102

30. The Committee continues to be gravely concerned about the high incidence of violence against women, in particular domestic violence and rape, and the absence of any remedial measures to eradicate this practice. The Committee is troubled that the courts in Japan seem to consider domestic violence, including forced sexual intercourse, as a normal incident of married life.

CCPR/C/JPN/CO/5

14. The Committee notes with concern that the definition of rape in article 177 of the Criminal Code only covers actual sexual intercourse between men and women and requires resistance by victims against the attack, and that rape and other sexual crimes cannot be prosecuted without a complaint filed by the victim except in cases where the victim is under 13 years of age. It is also concerned about reports that perpetrators of sexual violence frequently escape just punishment or receive light sentences, that judges often unduly focus on the sexual past of victims and require them to provide evidence that they have resisted the assault, that the monitoring and enforcement of the revised Prison Law and the guidelines of the National Police Agency for victim support is ineffective, and that there is a lack of doctors and nurses with specialized training in sexual violence, as well as of support for non-governmental organizations providing such training (art. 3, 7 and 26).

The State party should broaden the scope of the definition of rape in article 177 of the Criminal Code and ensure that incest, sexual abuse other than actual sexual intercourse, as well as rape of men, are considered serious criminal offences; remove

the burden on victims to prove resistance against the assault; and prosecute rape and other crimes of sexual violence ex officio. It should also introduce mandatory gender-sensitive training in sexual violence for judges, prosecutors and police and prison officers.

15. The Committee is concerned that sentences for perpetrators of domestic violence are reportedly lenient and that violators of protection orders are only arrested in cases of repeated violations or when they ignore warnings. It is also concerned that there is a lack of long-term assistance for victims of domestic violence, and that the delays in granting foreign victims of domestic violence residence status effectively bar them from applying for stable employment and from having access to social security benefits (art. 3, 7, 26 and 2 (3)).

The State party should review its sentencing policy for perpetrators of domestic violence, detain and prosecute violators of protection orders, increase the amount of compensation for victims of domestic violence and of child-rearing allowances for single mothers, enforce court orders for compensation and child support, and strengthen long-term rehabilitation programmes and facilities, as well as assistance for victims with special needs, including non-citizens.

22. The Committee notes with concern that the State party has still not accepted its responsibility for the “comfort women” system during the Second World War, that perpetrators have not been prosecuted, that the compensation provided to victims is financed by private donations rather than public funds and is insufficient, that few history textbooks contain references to the “comfort women” issue, and that some politicians and mass media continue to defame victims or to deny the events (art. 7 and 8).

The State party should accept legal responsibility and apologize unreservedly for the “comfort women” system in a way that is acceptable to the majority of victims and restores their dignity, prosecute perpetrators who are still alive, take immediate and effective legislative and administrative measures to compensate adequately all survivors as a matter of right, educate students and the general public about the issue, and refute and sanction any attempt to defame victims or to deny the events.

27. The Committee is concerned about the low age of sexual consent, which has been set at 13 years for boys and girls (art. 24).

The State party should raise the age of sexual consent for boys and girls from its current level of 13 years, with a view to protecting the normal development of children and preventing child abuse.

29. The Committee is concerned about discrimination against lesbian, gay, bisexual and transgender persons in employment, housing, social security, health care, education and other fields regulated by law, as exemplified by article 23 (1) of the Public Housing Law, which applies only to married and unmarried opposite-sex couples and effectively bars unmarried same-sex couples from renting public housing, and by the exclusion of same-sex partners from protection under the Law for the Prevention of Spousal Violence and the Protection of Victims (art. 2 (1) and 26).

The State party should consider amending its legislation, with a view to including sexual orientation among the prohibited grounds of discrimination, and ensure that benefits granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples, in line with the Committee's interpretation of article 26 of the Covenant.

CAT/C/JPN/CO/1

Compensation and rehabilitation

23. The Committee is concerned over reports of difficulties faced by victims of abuse in obtaining redress and adequate compensation. The Committee is also concerned over restrictions on the right to compensation, such as statutory limitations and reciprocity rules for immigrants.

The Committee regrets the lack of information on compensation requested and awarded to victims of torture or ill-treatment.

The State party should take all necessary measure to ensure that all victims of acts of torture or ill-treatment can exercise fully their right to redress, including compensation and rehabilitation. The State party should take measures to establish rehabilitation services in the country. The State party should furnish the Committee with information on any compensation or rehabilitation provided to the victims.

24. The Committee is concerned at the inadequate remedies for the victims of sexual violence, including in particular survivors of Japan's military sexual slavery

practices during the Second World War and the failure to carry out effective educational and other measures to prevent sexual violence- and gender-based breaches of the Convention. The survivors of the wartime abuses, acknowledged by the State party representative as having suffered ‘incurable wounds’, experience continuing abuse and re-traumatization as a result of the State party’s official denial of the facts, concealment or failure to disclose other facts, failure to prosecute those criminally responsible for acts of torture, and failure to provide adequate rehabilitation to the victims and survivors.

The Committee considers that both education (article 10 of the Convention) and remedial measures (article 14 of the Convention) are themselves a means of preventing further violations of the State party’s obligations in this respect under the Convention. Continuing official denial, failure to prosecute, and failure to provide adequate rehabilitation all contribute to a failure of the State party to meet its obligations under the Convention to prevent torture and ill-treatment, including through educational and rehabilitation measures. The Committee recommends that the State party take measures to provide education to address the discriminatory roots of sexual and gender-based violations, and provide rehabilitation measures to the victims, including steps to prevent impunity. Gender-based violence and trafficking

25. The Committee is concerned at continued allegations of gender-based violence and abuse against women and children in custody, including acts of sexual violence by law enforcement personnel. The Committee is also concerned at the restrictive scope of the State party’s legislation covering rape, referring only to sexual intercourse involving male and female genital organs, excluding other forms of sexual abuse and rape of male victims. In addition, the Committee is concerned that cross-border trafficking in persons continues to be a serious problem in the State party, facilitated by the extensive use of entertainment visas issued by the Government, and that support measures for identified victims remain inadequate, leading to victims of trafficking being treated as illegal immigrants and deported without redress or remedy. The Committee is also concerned 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.

The State party should adopt preventive measures to combat sexual violence and violence against women, including domestic violence and gender-based violence,

and promptly and impartially investigate all allegations of torture or ill-treatment with a view to prosecuting those responsible. The Committee calls on the State party to strengthen its measures to combat trafficking in persons, including restricting the use of entertainment visas to ensure they are not used to facilitate trafficking, allocate sufficient resources for this purpose, and vigorously pursue enforcement of criminal laws in this regard. The State party is also encouraged to undertake training programmes for law enforcement officials and the judiciary to ensure that they are sensitized to the rights and needs of victims, to establish dedicated police units, and to provide better protection and appropriate care for such victims, including, inter alia, access to safe houses, shelters and psychosocial assistance. The State party should ensure all victims can claim redress before courts of law, including victims of foreign military personnel stationed on military bases.

A/HRC/8/44

II. CONCLUSIONS AND/OR RECOMMENDATIONS

60. In the course of the discussion, the following recommendations were made to Japan:

5. Respond sincerely to the recommendations of the United Nations mechanisms (Special Rapporteur on violence against women, the Committee on the Elimination of Discrimination against Women and the Committee against Torture) on the issue of “comfort women” during the Second World War (Republic of Korea);

11. Take measures to eliminate discrimination based on sexual orientation and gender identity (Canada);

14. Continue to take measures to reduce the incidence of violence against women and children, inter alia, by ensuring that law enforcement officials receive human rights training, and to fund recovery and counselling centres for victims of violence (Canada);

7. Please describe steps taken to develop a comprehensive strategy to combat all forms of violence against women, including prosecution of perpetrators, provision of protection and assistance to victims, such as shelters and restraining orders to protect victims, and introduction of capacity-building and awareness-raising programmes for various groups (such as the police, lawyers, health and social workers and the judiciary) and the general public.

A comprehensive strategy to combat all forms of violence against women is developed by the Expert Committee on Violence Against Women (“Expert Committee”) under the Council for Gender Equality. However, serious shortcomings exist:

1. **Root causes of gender-based violence:** Government strategies fails to address social structures maintaining and/or magnifying gender inequality. For example, the need to address unstable, low-paid employment available to women is not considered through effective legislation when developing strategies to combat domestic violence or sexual harassment.
2. **Lack of education:** While government strategies focus on distributing general information to the public, it has failed to provide education for gender equality and sex education at all levels of public education programs due to the resistance by conservative policy makers. Thus, many boys and girls leave school with little or no chance to learn basic knowledge about gender-based violence. Training for public servants including judges, prosecutors and police officers remains insufficient.
3. **Punishments for perpetrators:** Despite the Expert Committee’s stress on a need for criminalizing and increasing punishments for gender-based violence it is not a priority of the government. Domestic violence and sexual harassment is not categorized as crimes punishable under the Criminal Code. Majority government sentiment does not consider increasing punishments for sexual violence crimes as a way to combat gender-based violence.
4. **Victim support:** Besides a short-term protection system for victims of domestic violence or human trafficking, no long-term or comprehensive support system for gender-based violence victims exists. Cooperation with and support for NGOs providing support for victims of male violence remains insufficient.
5. **Lack of strategic planning for women with special needs:** The government has not considered a special strategy to empower and support women of marginalized groups. Women who are migrants, ethnic minorities, living with disabilities, in poverty and sexual minorities are most vulnerable to gender-based violence. It may require for them to provide specialized assistance to access to support programs.
6. **Lack of an effective agency:** Part of the above-mentioned shortcomings can be attributed to a lack of resources and authority provided the Gender Equality Bureau. It is often the case that responses and recommendations of the Bureau for combating gender-based violence do not receive adequate attention, nor is logistical arrangements made for necessary implementation.

8. In its previous concluding observations (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.

While Japanese government officials did not take any measures to follow-up on recommendations made by Committee Against Torture in May 2007, violent sexual assaults by US soldiers continued to occur. Some of these include the gang rape of a 19-years-old Japanese woman in Hiroshima in October 2007, the sexual assault of a 14-years-old girl in Okinawa in February 2008 and the sexual assault and injury of a 22-years-old Filipino migrant woman in Okinawa in February 2008. As the sexual assault of an Okinawan girl invoked strong protests in local communities, Japanese government officials and US military authorities consulted local governments on preventive measures including stronger regulation of soldiers going on an outing outside of the bases, education for soldiers, installing security cameras, implementing co-patrol (US military and Japanese police), and monitoring US soldiers living outside of the bases. Yet, these measures do not directly address situations in which foreign soldiers get into the areas where local people are living, especially those residential areas situated next to military bases.

Further, while these sexual assault cases were heard and soldiers were convicted in the US Court of Appeals for the Armed Forces, none were prosecuted in the Japanese criminal court. This failure to follow suit invites serious doubt over the ability of the Japanese legal system to prosecute and punish perpetrators of sexual crimes. In case of the Okinawan girl, prosecutors dropped the charge because the victim withdrew her suit due to external pressure—under the Japanese rape law, a sex crime cannot be prosecuted *ex officio* without the victim filing a complaint. For two other discharged cases, without explicit account, prosecutors cited doubts about the non-consensual nature of the sexual acts despite the fact victims suffered brutal violence. Such impunity is caused by: out-of-date rape laws, gender and sexual bias held by prosecutors and judges, and the Status of Forces Agreement (“Agreement”) allowing US servicemen free movement outside of the bases while limiting powers of Japanese authorities to investigate, arrest, prosecute and try the case of sex crimes committed on Japanese soil. Despite the request of communities hosting the bases to renegotiate the terms of the Agreement, government officials are not considering to do so. Furthermore, a document discovered by a researcher reveals a secret negotiation between the Japanese and American governments in 1953. It indicates that Japan agreed to not exercise jurisdiction over crimes and accidents involving US military personnel stationed in Japan, except for only very serious cases. However, the Japanese government denies this secret agreement via requesting the National Diet Library to remove the documents from public access archive. Government officials insist these documents “could cause trouble for the relationship of trust with the US government.”

27. The report indicates the ratio of abortions in the teenage population was 10.5 out of 1000 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?

The Penal Code of Japan stipulates in Article 212 that “when a pregnant woman causes her own abortion by drugs or any other means, imprisonment with work for not more than 1 year shall be imposed.” Although the report by the Japanese government asserts the legitimacy of this Article, it is clear that it violates Article 2(g) of the Convention as well as Clause 14 of General Recommendation 24 of CEDAW, which requires State parties to refrain from obstructing actions taken by women in pursuit of their health goals. Obstruction includes criminalizing medical procedures needed only by women, as well as criminal punishment for women who undergo these procedures. Clause 31(c) of the Recommendation clearly requires that “legislation criminalizing abortion be amended and punitive provisions for women who undergo abortion be removed.”

The Penal Code also violates Clause 21 of General Recommendation 21 of CEDAW, which guarantees women’s rights to decide on the number and spacing of their children.

In relation to abortion, Japan also has a Maternal Protection Law, under which abortion is recognized as a legal medical procedure. Under this law, most abortions are justified, so long as they are performed in accordance with the requirements of the law.

However, as long as Article 212 of the Penal Code remains, a woman who has an abortion, even in the first trimester, can be punished. The existence of the article itself, which punishes only women, is an intolerable example of discrimination against women. It is a law that should be abolished immediately by the Japanese government.

Regarding abortion methods, women’s right to choice is restricted by rulings of the Japanese Ministry of Health, Labour and Welfare, which has restricted abortion methods based on such unscientific criteria as the financial merits for the hospital. Only surgery (dilation and curettage) is designated as a standard abortion method in Japan, even in early-stage abortions, but medical abortions and manual vacuum aspiration should also be permitted, improving the conditions for implementation.

2. Although the rate of teenage abortion is on a declining trend, 10.5/1000 is still too high, and the response by the Japanese government is far from sufficient.

Although the Japanese Ministry of Health, Labour and Welfare reports that they have implemented activities to disseminate information on reproductive health as well as projects to provide counseling to adolescents, in fact, they have made little progress in making information available regarding reproductive health services, including family planning, and in improving accessibility to such information and services.

Additionally, the main method of contraception in Japan is still the use of condoms. Access to contraceptive pills and reproductive health services is very limited because of their high costs and

Proposal 1: Discrimination against children born out of wedlock is violation of the absolute human rights of women to get pregnant and give birth to a child.

lack of information about them. Because the Japanese Ministry of Health, Labour and Welfare has refused to approve emergency contraceptive pills, including even such widely accepted oral emergency contraceptive kits as “Preven”, low- to medium-dose contraceptive pills are usually used as substitutes. Even then, most Japanese women do not know that emergency contraceptives may be used to avert an unwanted pregnancy.

What is worse, in the field of sex education, there have been many setbacks in the past several years. The National Plan for Gender Equality has been amended for the worse, deleting “fulfillment of sex education” as stated in the First Plan. Instead, as the government yielded to political pressure by conservative groups, the Second Plan calls for a “review” with the intent to “prohibit extreme sex education.” This change has made many teachers shrink back from active engagement in sex education.

The Ministry of Education, Culture, Sports, Science and Technology has also changed its curriculum guideline from “active development of sex education curricula” to the less proactive stance of “sex education that takes into account students’ developmental stages.” The constraint on sex education—the concern that students may not be “ready” for certain information—makes sex education more difficult in Japan, putting at risk the reproductive health of adolescents.

Children whose parents are not legally married are referred as “illegitimate children” and discriminated with regard to inheritance in the Civil Code. This discriminatory provision has promoted various forms of social discrimination.

There is an item to indicate “a legitimate child” or “an illegitimate child” in the birth registration forms and failure to tick either one leads to rejection of such registrations. Because of the implication the word legitimacy conveys, imposing the mothers of children born out of wedlock to indicate their children as illegitimate has caused tremendous anguish to them. In addition, those children whose birth registrations were rejected are not registered in family registry, which results in various disadvantages including their exclusion from governmental services. The Human Rights Committee in its concluding observations in 2008 made a recommendation that “[the State party] should remove any provisions discriminating against children born out of wedlock from its legislation, including Article 49, of the Family Registration Law prescribing that birth registration forms shall indicate whether or not a child is ‘legitimate’”.

The Committee on the Elimination of Discrimination against Women in 2003 stated that “it is concerned about discrimination in law and administrative practice against children born out of wedlock with regard to registration and inheritance rights and the resulting considerable impact on women”. However, the Government has failed to take this recommendation seriously and revise the law. Furthermore, the Government made a reply in the Diet to the effect that “the Committee on the Elimination of Discrimination against Women wrongly interpreted the Convention taking up the issue of discrimination against

children born out of wedlock with regard to inheritance as discrimination against women since there is no discrimination between a boy child and a girl child with regard to inheritance rights.”

In spite of the fact that the existing discrimination in the Civil Code and the Family Registration Law in Japan not only has directly imposed considerable disadvantages on the mothers of children born out of wedlock but also promoted social discrimination, the Government has left such situation and taken no human rights awareness raising measures on the social discrimination against those children and their mothers.

The Government has ignored the recommendation of the Committee on the Elimination of Discrimination against Women by denying discrimination against children born out of wedlock as discrimination against women. But discrimination against children born out of wedlock is violation of the absolute human rights of women to get pregnant and give birth to a child. It is clear from the fact that the Nairobi Forward-Looking Strategies adopted by the Third World Conference on Women in 1985 explicitly stated that “legal or other appropriate provisions should be made to eliminate discrimination against single mothers and their children”.

Proposal 2: The issue of Japan's military sexual slavery, the so-called "comfort women" issue, should be taken up as one of the principal issues for the review of Japan's report.

1. In the concluding observations of the last report, the Committee recommended that "the State Party endeavour to find a lasting solution for the matter of 'wartime comfort women'". However, the government report merely describes the projects of the Asian Women's Fund and does not refer to any new measures the concluding observations requested. The AWF, whose projects were directed only to a limited number of victimized countries, dissolved in March 2007. Further, the government report neglects the fact that the bills for the government to provide apology and compensation to the survivors on the government's own responsibility, have been submitted to the Diet in vain several times.

2. After the last review of the Committee, several UN and other international human rights organizations including the Committee against Torture (CAT), the Human Rights Committee (CCPR), the Universal Periodic Review of Human Rights Committee (UPR) and the ILO, have made recommendations over the "comfort women" issue. Several parliaments, including the United States, the Netherlands, Canada, ROK, Taiwan and the European Union, passed resolutions calling on the Japanese government to seek solutions for the issues of "comfort women". In particular, CCPR issued concrete recommendations on the issue, referring to matters including the acceptance of legal responsibility, apology that is acceptable to the majority of victims, prosecution of perpetrators, legislative and administrative measures for compensation, educating the general public, and the refutation and sanction for denial⁴. In response, the Japanese government issued an official statement that "a recommendation [of the committee] is not legally binding and is not such that it is a duty for a State party to the International Covenant on Civil and Political Rights to adhere to."⁵ This attitude of the Government of Japan is a denial of the efforts of the international community to improve human rights situations through the UN human rights mechanisms.

3. Nine out of the ten claims filed by "comfort women" survivors at Japanese courts against the Government of Japan for apology and state compensation have been finally dismissed by the Supreme Court, thus exhausting domestic remedies. Unless the Government of Japan takes new measures, the victims are left unremedied, and the issue is kept unresolved without Japan acting according to its international obligations under the Convention. Eighteen years have passed since the first victims spoke out. The survivors are now of very senior age and many of them have passed away⁶. There is an urgent need for the Committee to take up this issue once again in its periodic review of Japan's report, and further clarify the kind of measures to be taken by the government of

⁴ Concluding observations of the Human Rights Committee. Para. 22. Human Rights Committee Ninety-fourth session, Geneva, 13-31 October 2008. (CCPR/C/JPN/CO/5)

⁵ The Cabinet's response in writing on January 13, 2009, to the official inquiry in writing from MP Tanioka.

⁶ e.g. In ROK, out of 234 survivors registered, 141 survivors passed away. In Taiwan, out of 58, 38 survivors passed away, as of March 2009.

Japan that the committee called for in its previous concluding observations of 2003.

Proposal 3: The Japanese government should implement policies to recognize the multiple discrimination faced by women with disabilities and to protect their human rights. In particular, it should work to eliminate domestic violence against them and provide compensation for forced sterilization. To do this, it must conduct surveys of persons with disabilities and compile statistics disaggregated by gender.

The section on “Measures for Women with Disabilities” in the government’s report actually contains nothing at all dealing with women with disabilities. In fact, it is difficult to find any policy at all. Article 6 of the Convention on the Rights of Persons with Disabilities, expresses a clear recognition that women and girls with disabilities are subject to multiple discrimination and calls for appropriate measures to guarantee them the exercise and enjoyment of the human rights. The situation in Japan is far from this ideal.

The Japanese government’s surveys on the situation of persons with disabilities do not publish gender-disaggregated data. As a result, the government cannot grasp the problems of women with disabilities, and cannot implement necessary policies. In 1991, the UN Committee on the Elimination of Discrimination against Women recommended that State Parties provide information on women with disabilities and on measures taken to deal with their particular situation (General Recommendation 18). In 2003, the Committee, in its recommendation (A/58/38(SUPP)) to the Japanese government, following Japan’s fourth and fifth periodic reports, called on it to collect and analyze data disaggregated by gender and age. However, the Japanese government has yet to comply.

No progress has been made in preventing domestic violence against women with disabilities, grasping the reality to protect victims and make physical and psychological recovery possible, and making consultations and shelters accessible to persons with disabilities. Nothing has been done to provide women who have disabilities with educational, work and income opportunities to gain independence, which is necessary to the prevention of and recovery from abuse.

The Eugenic Protection Law, which was in force until 1996, included provisions for the sterilization of people with disabilities without consent, and 16,520 people were subjected to this provision by 1994, 68% of them women. It is possible that illegal sterilization is still carried out today. The UN Human Rights Committee issued a recommendation to the Japanese government in 1998 calling for the provision through law of the right to compensation for women with disabilities who had been subjected to forced sterilization (Concluding Observations, CCPR/C/79/Add.102, paragraph 31). However, the government failed to adopt the required legal measures, and has neither carried out investigations nor provided compensation.

Proposal 4: The Japanese government should clearly guarantee Reproductive Rights and develop quality policies on Reproductive Health.

1. The National Second Plan for Gender Equality does not stipulate any guarantee of reproductive rights, and the policies of the Japanese government have made light of the rights of women to make choices regarding her own body.

The Maternal Protection Law requires a woman who wants an abortion to obtain the authorization of her male partner. But while both the woman and her partner are parties to the application for an abortion, only the woman may be punished by the Penal Code for having an abortion without the consent of her partner, which is clearly discriminatory.

The above-mentioned article of the Maternal Protection Law should be abolished because it also violates Article 16 of the Convention, which guarantees equal rights for women in all matters relating to marriage and family relations, and Clause 14 of General Recommendation 24 of the CEDAW, which prohibits State parties from restricting women's access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities.

Although 15 years have passed since the ICPD, not only the concept but also the term “reproductive health/rights” has not become widely recognized in Japan. What is worse, due to political pressure by right wing groups, it is becoming increasingly more difficult to use the term “reproductive rights.”

However, the Japanese government should undertake a drastic reform of the Maternal Protection Law and the Maternal and Child Health Act from the standpoint of reproductive health/rights and the rights of women to make choices regarding her own body. The Japanese government also needs to develop policies to increase awareness of and respect for “reproductive health/rights,” especially in the field of education.

2. The Japanese government has not fulfilled its responsibilities or borne its share of costs to ensure safe motherhood. The Ministry of Health, Labour and Welfare has continued to deny coverage for pregnancy and delivery under the national health insurance system on the grounds that they are not diseases.

Even for antenatal checkups, which are necessary for safe delivery, the Japanese government does not cover all the expenses, and municipalities have discretion over the number of antenatal checkups and amount of subsidies, so that there is considerable disparity in services and costs depending on where one lives. Some women cannot afford or access antenatal health services, so that a high-risk delivery results. There have even been fatalities among pregnant women who needed emergency obstetric care but were refused by hospitals.

Furthermore, women who can not afford to pay health insurance have difficulty access to medical services, even when they suffer from complications relating to pregnancy and delivery. Most are

low-income earners or are foreigners of illegal residency. Even a woman who is covered by the national health insurance only receives a lump-sum allowance for childbirth; all other expenses relating to delivery are her own responsibility.

Less than half of working women are full-time and permanent employees, which means that the majority of women are not covered by a social security scheme. There have also been many cases in which women were fired or terminated at the end of a fixed-term labor contract, immediately after informing the employer that they were pregnant, which illustrates that there is little guarantee of reproductive health rights in the workplace.

In response to the declining birth rate, the Japanese government enacted a law in 2003 defining its basic countermeasures. However, this law and related national policies neglect the rights of women to make their own decisions in matters affecting their lives and reproductive health. While urging women to bear more children, the government has failed to address many problems such as insufficient perinatal services, insufficient support for child raising, the acute shortage of obstetricians, and refusals by hospital emergency rooms to accept women needing obstetric care.

Proposal 5: The Japanese government should legislate to prohibit discrimination against women of sexual minorities and to protect their rights.

The Human Rights Committee has expressed its concern⁷ on discrimination against those who are lesbian, gay, bisexual and transgender in employment, housing, social security, health care, education and other fields regulated by law, as exemplified by Article 23(1) of the Public Housing Law which applies only to married and unmarried opposite-sex couples and effectively bars unmarried same-sex couples from renting public housing, and by the exclusion of same-sex partners from the protection under the Law for the Prevention of Spousal Violence and the Protection of Victims. (Arts. 2(1) and 26) The Committee has stated⁸ that the Japanese government should consider amending its legislation, with a view to including sexual orientation among the prohibited grounds of discrimination, and ensure that benefits granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples.

During the first Universal Periodic Review of Japan in the Human Rights Council, the Japanese government was recommended to “take measures to eliminate discrimination based on sexual orientation and gender identity”⁹ and declared its acceptance of the recommendation.

On the contrary to these, there is no reference to measures or policies on transgender, lesbian and bisexual women in the sixth periodical report on the Convention on the Elimination of All Forms of Discrimination against Women by the government.

The Japanese government should, without exclusion, take measures to prevent violence on the basis of sexual orientation and gender identity, to protect and support the victims of such violence, and to protect and support the victims of domestic violence in same-sex partners.

The Japanese government should also prohibit legal or de facto discrimination against women and girls of sexual minorities at all levels of social education, school education and employment and legislate to guarantee them equal opportunities.

The Japanese government should legislate to recognise same-sex relationships between women including those whose biological sex does not match their gender identity, to guarantee them the right to have children and raise them and the right to sexual and reproductive health including access to information and service related to it.

It is necessary for the government to modify the existing systems regarding medical and legal treatment of those people with gender identity disorder based on their diverse needs.

The government should include well-founded fear of persecution on the basis of one’s sexual orientation among the grounds to grant asylum into the definition of refugees in the Immigration Control and Refugee Recognition Act.

⁷ Concluding observations of the Human Rights Committee. Para. 29. HUMAN RIGHT COMMITTEE Ninety-fourth session, Geneva, 13-31 October 2008. (CCPR/C/JPN/CO/5)

⁸ *ib.*

⁹ Report of the Working Group on the Universal Periodic Review of Japan. Para. 60-11. HUMAN RIGHTS COUNCIL Eighth session. (A/HRC/8/44)