

~ VIOLATIONS OF WOMEN'S RIGHTS IN JAPAN ~

**ALTERNATIVE REPORT TO THE
UNITED NATIONS COMMITTEE AGAINST TORTURE**

38TH SESSION

Coordinated by



April 2007

TABLE OF CONTENTS

1. GENERAL INTRODUCTION.....	3
2. GENERAL BACKGROUND ON WOMEN'S RIGHTS	4
3. RELEVANT LEGAL ISSUES	7
4. DEFINITION OF TORTURE (Article 1, CAT).....	9
5. CRIMINAL LEGISLATION (Article 4, CAT)	12
6. PRACTICE OF TORTURE	13
7. NON-REFOULEMENT (Article 3, CAT).....	18
8. MEASURES TO PREVENT ACTS OF TORTURE (Articles 2 and 10, CAT).....	19
9. ARREST, DETENTION OR IMPRISONMENT (Article 11, CAT).....	22
10. INVESTIGATION, REMEDY AND REDRESS (Articles 12 to 14, CAT).....	23
11. RECOMMENDATIONS.....	30

1. GENERAL INTRODUCTION

This report is designed to supplement the NGO Shadow Report on the general situation of torture in Japan, in order to ensure that women's issues are brought to the attention of the UN Committee against Torture. It is important that gender issues are highlighted as frequently there is a failure by the Japanese Government to recognize the scale and seriousness of gender-based violence and to integrate a gender perspective into its consideration of, and response to, torture and ill-treatment in Japan.

Torture and other ill-treatment of women in Japan, including rape, domestic violence and trafficking, persists in Japanese society under silent acquiescence, open tolerance, inaction and sometimes direct involvement of State agents including police, immigration control officers and the judiciary. Further, the Japanese State has continued to fail to bring redress and remedy for the victims of such crimes, including the military sexual slavery during the Second World War. Even though the Japanese State has been recommended by several international bodies including the CEDAW and the ILO to address these issues in a responsible manner, it has failed to take necessary actions until today.

Violence against women is deeply rooted in persistent and institutionalised gender stereotypes and discrimination against women, which make women vulnerable to violence and reluctant to report crimes committed against them. Women of ethnic minorities and migrant women without stable resident status are made further vulnerable to violence, as gender-based discrimination is closely interrelated to discrimination based on race and nationality. However, the State has failed to fulfil its responsibility to prevent and to establish independent and strong legal mechanisms, and lacks political will to take necessary actions to eliminate such discriminations and address inequality faced by women and other minority groups in Japan.

1.1 Authors of the Report & Methodology

The Asia-Japan Women's Resource Center (AJWRC) is an independent, non-profit, non-governmental organization working for a democratic Japanese society based on gender equality and respect for human rights. The organization was founded in 1977 and reorganized in 1995 as a NGO with consultative status with ECOSOC. With focus on issues such as peace and security, gender and development, sexual and reproductive autonomy of women, and empowerment of women, AJWRC works in three major programs including Information Sharing and Networking Program, Gender Training and Education Program, and Advocacy and Campaign. In order to pursue the stated goals, the AJWRC actively works with a number of other women's groups and civil groups in Japan and abroad.

Following OMCT’s request for information on women’s issues to be incorporated into the shadow report, AJWRC contacted fellow organizations working in relevant fields, requesting their input and suggestions for issues which the report should address.

Information was provided in the following areas:

Organization	Issue(s)
Japan Network Against Trafficking in Persons	Trafficking in Persons
SWASH – Sex Work and Sexual Health	Violence against sex workers
Warriors Japan	Police Investigation in Sexual Crimes
Violence Against Women in War Network-Japan (VAWW-Net Japan)	Military Sexual Slavery
Kalakasan - Migrant Women Empowerment Center	Migrant women, Domestic violence against migrant women
Okinawa Women Act Against Military Violence	Sexual Abuse near Military Bases
National Shelters Network	Domestic Violence
International Movement Against All Forms of Discrimination and Racism-Japan Committee (IMADR-JC)	Minority women

Interviews were held with several legal experts and victims of violence, and analysis was made of official government documents, documentation prepared by civil society groups, legislation, and existing documents in the area of gender-based violence and gender equality. Information was then integrated into the present report by the AJWRC in consultation with OMCT’s Violence against Women Programme.

2. GENERAL BACKGROUND ON WOMEN’S RIGHTS

2.1. Historical and Political Background

Japanese women who had been denied equal status as men under the pre-war imperial regime were granted equal rights in political participation, social activities and family life, for the first time in the history when the Japanese Constitution was promulgated in 1946. Under this Constitution, Japan achieved high economic development by the 1980s without being directly involved in military conflicts, although issues of war responsibility remained unsolved and the US military forces continued to station in Okinawa and other parts of the nation. However, women’s actual participation in political and public activities has been kept at low level due to persisting discrimination against women and institutionalized gender stereotypes of man-as-breadwinner and woman-as-caretaker.

In recent years, a number of measures have been introduced to address gender inequality, guided by the international agreements including the Convention on the Elimination of Discrimination against Women (CEDAW) and the Beijing Platform of Action. Among major measures, the Law on Equal Opportunity and Treatment between Men and Women in Employment was enacted in 1985 and, most importantly, the Basic Law for Gender Equal Society was legislated in 1999. The Gender Equality Bureau was also set up within the Cabinet Office as the national machinery to implement the National Action Plan for Gender Equality, and local action plans and women's centres were also set up in most of local municipalities.

However, impacts of those measures have been largely disappointing so far. While achieving high human development with regard to life expectancy and education, Japanese women still hold only 9 % of seats in the National Diet, about 10% of senior and managing positions in business, and earn on average only 51.3% of men's earnings¹. This may be partly attributed to the lack of political will to place strong anti-discrimination and positive action measures on one hand, and deregulation of labour and cuts in social welfare, on the other hand. Without effective measures to ensure equal pay and equal opportunity and adequate support for both of women and men to equally balance paid work and family responsibilities, women comprise only 30% of formal workers compared to about 80% of informal workers, which leads to large economic inequality. In particular, incidence of poverty among single mothers is seriously high, not only because of the gender-skewed labour market but also due to reduction in public assistance for poor families. The lack of adequate support for single mothers has a serious impact on victims of domestic violence.

Anti-Gender Equality Backlash

Another serious concern is the rise of sentiments against the principle of and measures for gender equality, which prevents effective public actions from being carried out. Notably since around 2000, there has been a massive campaign against gender equality and sex education in schools led by policy makers, mass media and right wing groups, following the attack against educating the past war crimes of Japan including the issue of military sexual slavery. In recent years, the target of this attack has been extended to national and local governments' gender equality policies and programmes, or even use of the word "gender" in any public documents. In a case reported in March 2006, 150 books on feminism and sexuality were removed from the shelves of a public centre dedicated to promoting gender equality in Fukui Prefecture, after receiving a complaint from a member of the local council. In Chiba Prefecture, a women's centre was closed down in March 2006 after the proposal to expand the gender equality promotion programme was rejected at the assembly. Pressure from the conservatives often led by local council members makes the administration reluctant to implement gender equality programmes.

¹ 2005 White Paper on Gender Equal Society by the Gender Equality Bureau

Although very serious cases of violence involving physical attack have not been reported, women's rights advocates, particularly those working for redress for the "comfort women", often receive threatening phone calls or are harassed and attacked in the internet space. There is also a recent case of arrest of a female union activist who protested gender discriminative practice of workplace and subsequent lay-off. As a part-time worker of a University Cooperative, the woman was denied the right to paid leave and then filed a complaint to the Labour Standard Monitoring Office. As a result, the employer was forced to grant paid leave to all of about three hundred part time workers, most of which were women. However the woman was laid off in April 2005 after she refused the order of relocation. She was arrested on 25 March 2007 with other thirteen union members and supporters after a protest action against the lay-off in the University Campus. As such a discriminatory practice against part-time workers is based on gender, this specific case should be recognized as a case of violence against women's rights defenders².

Minority and Migrant Women

Violence and discrimination against women and girls of ethnic minorities in Japan requires special attention. They continue to face marginalization and discrimination in relation to education, employment, political participation, health care, social security and exposure to violence, which has significant implication on their vulnerability to violence and access to justice. The largest ethnic minority group is Koreans who have been residing in Japan for generations. While they have been subject to continued discrimination in Japan, in recent years as tension between Japan and North Korea increases, there has been an increase in pressure and human rights violation against Koreans, particularly against those with *chosen-seki*, that are Koreans without the nationality of the Republic of Korea and thus often regarded as associated with the State of Democratic People's Republic of Korea. Girl students of Korean schools have repeatedly been subject to hate attacks, as they are easily identified with their school uniforms. Also forceful police investigations into enterprises run by Koreans or Korean schools for the reason of minor offences have dramatically increased. This has significant impacts on women in parenting and in supporting their families.

Migrant women living in Japan continue to face discrimination and violence, including trafficking and domestic violence. While the government has recently introduced some measures to counter trafficking in persons as discussed below, stricter immigration control, matched with little support for victims of violence, systematically makes migrant women, in particular those without stable resident status, vulnerable to violence and exploitation. Foreign wives are also more likely subject to domestic violence because of ethnic discrimination as well as their unstable resident status which depends on living together with their violent spouses. Despite social and economic difficulties they face, these women are typically overlooked in gender-related government policies and limited in access to public services. Rather, they are frequently targeted by immigration authorities and policing campaigns.

² Information provided by the Santama Labour Legal Center.

2.2. Political Structure³

There is no independent ministry devoted to promotion of gender equality and eradication of gender-based violence. Instead, the Japanese Government has established the following bodies within the Cabinet Office.

The Gender Equality Bureau is responsible for the overall coordination and promotion of matters relating to gender equality, serving as the secretariat for the Council and the Headquarters. *The Council for Gender Equality* was established within the Cabinet Office and is tasked with investigating, reporting and advising on gender issues. Its membership is comprised of twelve designated cabinet ministers and twelve intellectuals appointed by the Prime Minister. The Council currently delegates work to four specialist committees on issues such as violence against women, declining birth rate, and assessment and evaluation. *The Headquarters for the Promotion of Gender Equality* is comprised of all Cabinet Ministers and high-level government officials, with the Prime Minister as president. Although it is meant to facilitate gender equality measures at high government level, in reality it often works to prevent the Bureau from taking strong and effective measures, in particular when the government lacks the political will to address gender inequality.

These bodies are typically under-funded, lack influence and are marginalised from mainstream political decisions and initiatives. Furthermore, there is little knowledge among the general public, and even amongst politicians themselves, as to the purpose and activities of these gender-focused entities.

3. RELEVANT LEGAL ISSUES

Discriminatory clauses against women in the Civil Code

Although the Japanese Constitution prohibits discrimination based on sex, the Civil Code still contains several discriminatory clauses against women. First, the minimum age for marriage is defined as 16 years old for women while it is 18 years old for men. Second, only women are not allowed to remarry for six months after divorce for the reason that it is necessary to determine the paternity of a child. Third, children born out of wedlock are discriminated against legally and in administration practices with regard to registration and inheritance rights. Although it has a significant impact on women's reproductive autonomy, the government holds the view that it is not gender-based discrimination since both girls and boys born out of wedlock are equally discriminated against. Further, a married couple has to choose either the husband's or wife's family name, without the option to use dual surnames. With a patriarchal family registration system, this compels about 97% of married women to choose the husband's family name, which causes identity problems and disadvantages in pursuing careers on the part of women.

³ *Gender Equality in Japan 2007*, Gender Equality Bureau, Cabinet Office, Government of Japan, 2007, pp.22-25.

Lack of effective legal mechanisms to ensure equality

Another major concern is the lack of effective legal mechanisms to put punitive sanctions on discrimination against women or to ensure substantive equality. Penalties for violence and discrimination against women are lenient in general, and while the Law on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment was revised in 2006 to cover indirect discrimination, its definition is too narrow and the sanction is too weak. Also, discriminatory statements against women by public figures usually go without any sanction since there is no legal provision to prohibit such statements or to protect the collective rights of minority groups vis-à-vis the freedom of speech. There is no strong and independent mechanism to monitor and address human rights violation and discrimination. Although the Japanese government ratified the CEDAW in 1985, it has not ratified the Optional Protocol, which sets out rules for addressing complaints of rights violations against women in member countries and for conducting direct UN investigations in which CEDAW members visit the countries involved. Ratification of this Protocol, as well as of the Optional Protocol to ICCPR and recognition of CAT competence to receive individual communications under article 22, would strengthen the independence of the Japanese judiciary and its awareness of, and responsiveness to, all forms of violence against women.

Immigration Laws and Regulations

Laws and regulations regarding immigration control have significant impacts on violence against women of foreign origin. While the Japanese government holds on to the position of not allowing unskilled workers to legally migrate to Japan, industries in fact heavily rely on cheap labour force of foreign workers. For women migrants, besides marrying to Japanese nationals, the ways to legally migrate and work in Japan are extremely limited. While the government accepts a limited number of women “trainees” (who are not recognized as “workers”, thus excluded from any legal protection of workers’ rights), this system is strongly criticized by human rights organizations as exploitative. And, while a number of women from Latin America and other regions entering Japan having blood relationship with Japanese is allowed to fill up the lack of workers in factories and shops, these women are often subjected to brokers and middlemen, tantamount to bonded labour. Also the Japanese government has tightened issuance of “entertainer visa” upon criticism from human rights organizations and the international community that it had become an official channel for trafficking in persons. Under such conditions, women without proper documents often seek jobs in the sex industry, since paid domestic labour is not so common in Japan. Further, particularly since the terrorist attack in the United States, the Japanese Government tightened the Immigration Control and policing campaign against migrant workers without working visa. It threatens the lives of migrants including those with legitimate resident status. A Filipino woman without proper documents, working in a snack bar jumped from the 3rd floor of the building when the police raided the place where she was working. The Japanese government does not grant amnesty even to migrants who have resided in Japan for decades. Thus, migrant women are easily made vulnerable to trafficking, sexual exploitation and domestic violence.

Laws regulating sex-related business

Other relevant laws that have impacts on violence against women are those regulating sex-related business. The *Anti-Prostitution Law* (1956) bans buying and selling of sex, which means sexual intercourse in exchange for any kind of interests, and provides punishment for those who support such activities. These include acts of tempting, pimping, setting places, providing money, and taking control over women who sell sex. Notably, women involved in prostitution are not punished, but regarded as requiring rather protection and correction. Customers are not punishable either. In practice, though, the sex industry has kept growing under loose regulation by the Security Committee and police. The Law Regulating Adult Businesses, etc, regulates business places, business hours, business conditions, qualifications for manager, etc.. However this law provides little help to prevent and address rampant sexual exploitation and violence against sex workers, leaving a number of human rights violations against sex workers unreported.

4. DEFINITION OF TORTURE (Article 1, CAT)

Definition of Torture

Article 36 of the *Constitution of Japan* provides that the “infliction of torture by any public officer and cruel punishments are absolutely forbidden.” Further Chapter XXV of the *Penal Code*, specifically Articles 193 to 196, prohibits abuse of authority by public officers and special public officers and assault and cruelty by special public officers. Although these provisions are narrow in scope in light of definitions given in the Convention against Torture, Japan ratified the Convention in 1999 without any revision of the conventional domestic laws. Thus the government has never clearly articulated in legislation the meaning of torture and coercion in line with the Convention and that coercion and intimidation by a public officer to commit a sexual act will constitute torture. An example of the problem with the lack of clear definition is found in the recent discussion within Japan in relation to the acts of military sexual slavery during the Second World War. Prime Minister Shinzo Abe invited much criticisms from other countries by commenting that, “The fact is, there was no evidence to prove there was coercion. . . That largely changes what constitutes the coercion, and we have to take it from there.”⁴

Definitions of Rape and Other Forms of Gender-Based Violence and Abuse

Rape, spousal violence, sexual harassment, trafficking and other forms of sexual abuse and gender-based violence are addressed individually under a number of different clauses in the Penal Code and other laws. These laws typically too narrowly focus on the factual use of violence and threats, rather than the bodily integrity of victims or power relations between victims and perpetrators. Thus some women’s rights advocates call for a comprehensive legislation against gender-based violence so that a victim-centred definition of violence is set in laws.

⁴ Prime Minister Abe, Statement to the Press, March 2007.

Rape is defined in Article 177 of the *Penal Code* as occurring when “A person who, through assault or intimidation, forcibly commits sexual intercourse with a female of not less than thirteen years of age (...). The same shall apply to a person who commits sexual intercourse with a female under thirteen years of age.” This definition of the crime of rape is narrow in scope referring only to sexual intercourse with male and female genital organs, excluding other forms of sexual abuse and rape against male victims. While there was a case in which a husband who raped his wife with his friends was penalized, rape within marriage in general is still not recognized to constitute the crime of rape. It is also a problem that incest is not clearly defined as a crime of rape in the *Penal Code*.

Notably, incidence of violence, use of threats or unambiguous power disparity between those involved itself is not regarded to prove the crime of rape, but it is the victim who is required to prove that there was no clear agreement to have sex. This typically leads to an expectation that the victim will show evidence of having resisted attack. The following court decision on a sexual abuse case is illustrative of this attitude:

*If an indecent assault occurred as she insists, it would be normal for her to scream, ask for help or physically resist to escape . . . It is normal for victims of indecent assault to try to escape without thinking or to resist spontaneously . . . We cannot deny the fact that her attitude was based on rational thoughts which is quite unlikely for victims of indecent assault.*⁵

The same limitations as to the standard of proof are also evident in crimes of forcible indecency. The *Penal Code* also identifies the crime of **Forcible Indecency**, which is described as when “a person who, through assault or intimidation, forcibly commits an indecent act upon a male or female,” and defines **Quasi Forcible Indecency / Quasi Rape** as a crime occurring when “a person who commits an indecent act upon, or sexual intercourse with 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.” The *Penal Code* also identifies **gang rape** in Section 178-2 as taking place “when two or more persons jointly commit the crimes” proscribed in Articles 177 and 178-1.

The crimes of rape and quasi forcible indecency / rape will be prosecuted only upon complaint (Article 180).

⁵ Akita Case, Compensation Claim, Akita District Court, 1993 H5; Counter Compensation Claim, 1994 H6 (wa) 334, 49-50. Although this case occurred more than a decade ago, these attitudes are still evident in court rooms today. See discussion in Catherine Burns, “Constructing Rape: Judicial Narratives on Trial,” *Japanese Studies*, Vol. 24, No. 1, May 2004, pp.81-96.

Trafficking in Persons

In 2005, the *Immigration Control and Refugee Recognition Act* was amended, with a revised Article 2 which defines the term “trafficking in persons” as follows:

- a. The Kidnapping or the buying or selling of persons for the purpose of making a profit, committing an indecent act or causing injury to their life or physical being, or delivering, receiving, transporting or harbouring such persons who have been kidnapped or bought or sold;
- b. Except for the acts set forth in Sub-item (a), placing persons under the age of 18 under one's own control for the purpose of making a profit, committing an indecent act or causing injury to their life or physical being;
- c. Except for the acts set forth in Sub-item (a), delivering persons under the age of 18, knowing that they will be or might be placed under the control of a person who has the purpose of making a profit, committing an indecent act or causing injury to their life or physical being.

In theory, even without the amendment in 2005 most acts of trafficking in persons (TIP) constituted crimes in other Japanese laws. For example, the Penal Code bans abduction and fraud; the Anti-Prostitution Law bans acts of pimping, setting places, and taking control over women who sell sex; and similar acts are also prohibited under the Labour Standards Law and the Regulating Temporary Employment, the Immigration Control and Refugee-Recognition Acts, etc.. However these laws were proved to be ineffective in preventing trafficking in persons as well as violence against sex workers.

Domestic Violence

The *Law for the Prevention of Spousal Violence and the Protection of Victims* (Law No. 31 of 2001)⁶ defines spousal violence as “violence toward the body by one spouse (illegal attacks toward the body threatening the other’s life or physical condition. . .) or words and deeds by one spouse that cause comparable psychological or physical harm to the other.” Importantly, the definition of spouse in the *Spousal Violence Law* includes those in a de facto relationship and ex-spouses/de factos, while it does not cover violence committed by boyfriend/girlfriend who is not living together.

Stalking

The *Law on Proscribing Stalking Behaviour and Assisting Victims* enacted in 2000 defines stalking as “following a specified person about, demanding for social intercourse, making silent telephone calls, saying things that damage the honour or sexual dignity of a specified person and so on for the purpose of satisfying one’s feelings of love or other such feelings of affinity towards the specified person or revenge in cases where such feelings have not been satisfied”.

Sexual Harassment

⁶ As amended by Law No. 64 of 2004.

There is no comprehensive law to address sexual harassment. The Law on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment enacted in 1985 prohibits sexual harassment in the workplace, which is defined as any disadvantage in women's working conditions either caused by women workers' responses to sexual speech and behaviour or by their working environments.

5. CRIMINAL LEGISLATION (Article 4, CAT)

As shown below, penalties applied in instances of rape, trafficking, domestic violence and other forms of violence against women are significantly lenient in general, reflecting gender stereotypes among the judiciary.

The Penalties for Acts of Rape or Forcible Indecency

Under Article 176 of the *Penal Code*, the penalty for forcible indecency is imprisonment with work for no less than six months and no more than ten years. The same penalty applies if the victim is a child. The same punishment also applies for quasi forcible indecency. Article 177 provides that rape shall be punishable with imprisonment with work for a definite term of not less than three years. Again, the same punishment applies if the victim is a minor. The same punishment also applies for quasi rape. The punishment for gang rape is a definite term of imprisonment of not less than four years. Notably, these punishments for rape remain inadequate and are in fact lighter than sentences imposed for robbery. These minimal sentences lead to sexual abuse and rape being dismissed as a trivial crime with little deterrence for perpetrators.

Trafficking in Persons

In June 2005 the Japanese government amended the Penal Code as follows:

- “A person who kidnaps or buys and sells another for the “purpose of transportation from one country to another” is liable to be imprisoned for a minimum term of two years up to 20 years (Article 226/ Article 226-2-5). The same penalty applies to a person who transports an individual who has been kidnapped or bought / sold from one country to another (Article 226-3).
- A person who kidnaps or buys and sells another for the “purpose of profit, indecency, marriage or threat to the life or body” is subject to a minimum sentence of 1 year and a maximum of 10 years (Article 225 / Article 226-2).
- Further, a person who buys/sells another individual is only subject to a minimum term of 3 months and a maximum term of 5 years. If the victim is a minor, the maximum term is 7 years (Article 226-2).

These short minimum terms do not reflect the seriousness of, or the harm caused by, the crime of trafficking.

Domestic Violence

Criminal punishment will only occur if the victim suffers physical assault and files a complaint under the *Penal Code*. If the victim has suffered injury, under Article 204 the perpetrator shall be punished by imprisonment with work for not more than 15 years or a fine of not more than 500,000 yen. There is no minimum sentence requirement. If the victim has not suffered any injury as a result of the assault, the perpetrator shall be punished by imprisonment with work for not more than 2 years, a fine of not more than 300,000 yen, imprisonment without work or a petty fine.

Stalking

Repetitive stalking is punishable under the *Law on Proscribing Stalking Behaviour and Assisting Victims*, when the person who repeats such behaviour does not follow the orders of "warning" and "cease-and-desist order" issued by the police.

Sexual Harassment

Although the *Law on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment* initially only required "consideration" of the employer, the 2006 revision made it the responsibility of employers to take necessary measures to prevent sexual harassment in the workplace. Yet, penalty for employers who fail to take adequate measures is still very weak. The Ministry of Health and Labour may issue a recommendation of improvement, and in case of non-compliance, publicly announce the name of the company as a sanction. While sexual harassment in schools is addressed by the ordinance made by the Ministry of Education in line with the Equal Opportunity Law, this is to deal with harassment in schools as working place, and sexual harassment against girls or boys is not directly addressed.

6. PRACTICE OF TORTURE

Sexual Violence and Exploitation of Sex Workers

Although prostitution is clearly prohibited under the *Anti-Prostitution Law* (1956), in practice, the Japanese police have rather loosely regulated the vast sex industry, which is a major financial source of crime syndicate (Yakuza). In recent years there are more divergent and subtle forms of controlled prostitution with use of internet and mobile phones in order to get around regulations, which often leads to unsafe and exploitative working conditions for sex workers. For example, women who applied for bar hostess often find themselves involved in prostitution which was not mentioned in advertisement, or sex workers are forced to provide sexual services they do not consent to, which often involve violence. As more women are drawn into sex work for living, there are also increasing numbers of complaints of non-payment of wage, unreasonable penalty, sales norm and violence by employers. However, most women are reluctant to report cases of violence and exploitation, due to the illegal character of prostitution and possible revelation by police, fear of Yakuza, and stigma attached to sex workers. Under such

circumstances, those inexperienced, young girls and those working in secret without telling family or friends are more likely exposed to sexual violence and exploitation. Further there are cases of harassment and arbitrary arrests of sex workers by police as examples to others. For instance, a woman who was working as a stripper was arrested for public indecency, and had her name and address published in the newspaper. The police also provided her personal information including phone number to some of the customers in the process of prosecution, and as a result she received a phone call from one of the customers against her will⁷.

Migrant women without working visas are particularly reluctant to report the crime committed against them, as more and more the policing focus is on foreign workers. Statistics indicate that more than half of those arrested for procurement of prostitution in public are foreign workers. The number of immigrant women deported for offending the *Immigration Control and Refugee Recognition Law* by working illegally in activities such as acting as hostesses (serving of drinks and socialising with customers) was 7,061 in 2005 (15 percent of deported illegal workers and 36 percent of all women deported).⁸ The fear of arrest and deportation makes those women an easy target of exploitation and violence by both customers and employers. A migrant woman sex worker told that she was threatened by one of her customers to return the money he had paid. He said otherwise he would report to the police or the Immigration Office. She was beaten by her employer when she told him about it. In such a circumstance, migrant women are reluctant to seek assistance even from NGOs⁹.

Transnational Trafficking

Japan is one of the major destination countries for women trafficked for commercial sexual exploitation purposes from countries including Thailand, the Philippines, Indonesia, Russia, Romania, Colombia, Brazil, Mexico, Taiwan and South Korea. While trafficking was already a very serious social issue in the 1980s, the government has not seriously tackled the problem for two decades. In June 2004, Japan was placed on the “Tier 2 watch list” in the US Department of State’s Trafficking in Persons Report for not complying with minimum standards against human trafficking.

After the government formulated the *National Action Plan to Combat Trafficking in Persons* in December 2004, the Immigration Bureau of Japan reported that 115 female victims were offered protection or assistance in returning to their home countries in 2005. The average age of the victims was 24 years old, and 6 of them were under 18 years old. Of the victims, 47 were from the Philippines, 41 from Indonesia, and 17 from Thailand. This comprised 91% of the total¹⁰. This is a dramatic increase compared to precedent years, yet seems to be just the tip of the iceberg.

⁷ Information provided by SWASH.

⁸ The Immigration Control Office

⁹ An interview conducted by SWASH in 2007.

¹⁰ Press release, the Immigration Bureau of Japan (<http://www.immi-moj.go.jp/english/index.html>)

Typically, women from abroad are transported into Japan as “temporary visitor” residence status holders. On arriving their passports are taken away and they are forced to engage in prostitution in order for them to repay the transportation “debt,” that is, the amount that the survivors of trafficking would have to ostensibly pay off to gain their freedom, often 4 to 5 millions of yen. Even if they have legitimate “entertainer” status, which allows working in entertainment business as dancer or singer, they tend to be coerced into taking on jobs that are outside the scope of their visa or their contracts. This is even made worse by the fact that work as entertainer is not considered as work thereby denying the women the right to complain against abuses and exploitative work conditions forced to them by their managers, recruitment agencies and promoters. These women are often faced with dire threats as well as violence, imprisonment and other forms of coercion. Typically, they were told:

‘Run and you’re dead.’

‘Your home in Thailand will burn’

*‘Your parents’ lives are at stake’*¹¹

The survivors faced conditions they had never imagined before leaving home: forced into prostitution, receiving not the least amount of the money made off their bodies:

“If you don’t work and start to pay off some of that money, within four months the 20% interest will come into effect.”

“I had to take at least ten customers a day.”

*“If I had to keep working like that I was sure I’d go mad.”*¹²

Confinement, constant monitoring, and other forms of emotionally extreme circumstances were not uncommon:

“Wherever you went it felt like you were being watched.”

“Work time was at night, with only three or four hours’ break.”

“I was made to work day and night.”

*“I was forced to solicit customers on the street with the yakuza watching.”*¹³

Experience of violence and sexual exploitation leaves serious damage on the survivors, both emotionally and physically. They are often subject to physical ailments including HIV infection and drug dependency.

Police Violence and Violence in the Penitentiary System

It is very difficult to exactly know the incidence of police violence against women since it is the most complicated kind of crimes to be reported and prosecuted. Yet, small numbers of reported cases indicate how perpetrators make use of their power as police officers over women in vulnerable positions, under a situation where there is no strict law enforcement mechanism and outside monitoring.

¹¹ Cited from the "Research on Trafficking in Persons in Japan 2005"(English version), JNATIP, Ochanomizu University 21c COE program Frontiers of Gender Studies, The Asia Foundation (2006).

¹² *ibid.*

¹³ *ibid.*

In July 2005, an assistant inspector was arrested for sexually abusing and raping a woman detainee who had been arrested for holding drugs. The perpetrator had been interrogating the victim over twenty times since her arrest.¹⁴ In June 2004, the chief warden of Toyohashi Branch of Nagoya Prison was arrested for repeatedly having sexual relationship with a detained women and making her pregnant. It was reported that the perpetrator demanded the woman to have sexual relationship with him in exchange for improvement of treatment. Even though the National Police Agency has an internal rule that male officer should not interrogate female suspects without female assistant or that male officer should not get into women's cells without female fellows, these cases show that such rules are not actually practiced.

There is even a case that the victim of domestic violence was further subject to sexual violence by the police. In April 2004, a woman filed a report of rape by an assistant inspector who received a report of domestic violence from her in December 2003. Since then, the assistant inspector repeatedly visited her at the protection shelter "to see the situation" as a part of a police operation, and raped her in March 2004 as her child was asleep in the same room, which made her unable to resist. However the police did not prosecute the perpetrator for rape but eventually dismissed him for the reason that "the victim's resistance was not strong enough to consider it as an act of rape"¹⁵. Such a failure on the part of the police to recognize and prosecute the crime of rape not only reflects the narrow definition of rape in the Penal Code, but also implies serious shortcomings in monitoring and prosecuting of violence committed by police personnel.

Domestic Violence / Violence against Foreign Wives

Domestic violence remains a widespread problem in Japan. It is often unreported due to societal attitudes towards gender roles and violence as well as rather tolerated attitudes of police and the judiciary towards violence against women in intimate relationships. According to the *Survey on Violence between Men and Women* which was conducted by the Cabinet Office in 2005, 26.7 percent of women had suffered physical abuse from their spouse. In addition 16.1 percent of women had suffered psychological abuse and 15.2 percent of women had been coerced into unwanted sexual activity.¹⁶ Actual statistics are likely to be higher.

The particular issue of domestic violence suffered by migrant women requires special attention. Significant numbers of women married to Japanese men experience violence based on gender *and* ethnicity, such as their cultures being degraded or being blamed for not being like "Japanese women". Often the resident status of these women depends upon them remaining living with their abusive spouse. Consequently, the fear of deportation is often a deterrent against these women seeking assistance, reporting instances of domestic

¹⁴ Report by Mainichi Shimbun, 7 July 2005.

¹⁵ Report by Asahi Shimbun, 23 August 2004.

¹⁶ *Gender Equality in Japan 2007*, Gender Equality Bureau, Cabinet Office, Government of Japan, 2007, p.31.

violence or seeking divorce or separation. There have been cases of women calling a shelter to get protection, only to have their husbands report them to the immigration bureau to request that their visa not be extended. Women who have fled from their abusive spouse and failed or are denied extension of their visa are often treated as criminals for violating immigration law. According to support groups in the Kanto region, there are many women who have been arrested for overstaying their visas although they are victims of domestic violence.¹⁷

Sexual Abuse near Military Bases

The incidence of violence against women and girls around the US military bases is significantly high. In Okinawa where seventy-five percent of the US bases in Japan are concentrated, assaults against women and girls including rape, gang rape, attempted rape, abduction and murder by US soldiers have been a persistent threat to local communities for the past six decades¹⁸.

The problem is not only with the high incidence of the crime but also with the difficulty faced by victims in accessing justice, as the Status of Forces Agreement (which accompanies the Security Treaty) assures favourable conditions for US servicemen including free movement out of the bases.¹⁹ The gang rape of a girl by three marines in 1995 and the subsequent comment on the case by the Commander “they (the soldiers) could buy a prostitute with the money they rented a car” provoked a mass protest against the continued violence around the US military bases and indifference and inaction of the Japanese Government. Nevertheless, the Japanese State has not made serious efforts to review the Status of Forces Agreement or to take effective measures to prevent and prosecute crimes by the US military. More recently, “date-rape” type military violence seems to be increasing, which leads to military violence becoming hidden and more difficult to prosecute. Typically these cases involve off-duty soldiers meeting women in night clubs outside of the base and bringing them back to base where they are raped or gang-raped. Sixty percent of the crimes by the US military are committed by marines and sixty percent of the US military stationed in Okinawa are marines of which 80 percent are aged between 18 and 22 years.²⁰ These young men, with less disposable incomes, tend to try to meet women for sex in social settings rather than going to sex workers. Women in date-rape situations are reluctant to report such crimes due to the tendency of Japanese society to blame the victims in such situations which do not reflect the conventional understanding of rape.

The Military Sexual Slavery during the Asia-Pacific War

¹⁷ Ken Suzuki, Deputy Director-General of Solidarity Network with Migrants Japan, 2007.

¹⁸ Documentation of incidence of violence by US soldiers, Okinawa Women Act Against Military Violence

¹⁹ *Agreement Under Article VI of the Treaty of Mutual Cooperation and Security Between Japan and the United States of America, Regarding Facilities and Areas and the Status of United States Armed Forces in Japan, 1960 (“Status of Forces Agreement”)*

²⁰ *ibid.*

The issue of the “Comfort Women” system, the military sexual slavery under the former Japanese military regime before 1945, should be highlighted here as a typical case of rape as a form of torture in which the State was directly involved. During the Second World War, the Japanese imperial military set up the “comfort stations” all over the occupied and colonized areas in Asia and the Pacific, where women and girls from Korea, Japan, Taiwan, China, the Philippines, Indonesia, Malaysia and other occupied areas were forced to sexually serve the rank and soldiers. The major objective of setting up this large-scale sexual slavery system was to prevent rapes by Japanese soldiers against women, which invited the rise of anti-Japanese sentiments and the spread of venereal disease among soldiers, although it did not serve the said purposes. While the number of those “comfort women” is estimated between several thousands to 200,000, actual figures are not available since the Japanese military systematically burnt down the records before the investigations by the Occupation Authority started. Many of these women were tricked by fake job recruitment or taken by force. They were confined in small rooms to be raped by more than 20 men a day and subject to daily violence. It should be also noted that most of victims were minors. When the Japanese military was defeated, most of deployed “comfort women” were abandoned or killed in distant places²¹.

This crime against humanity has been addressed at some of the international human rights organizations including the ILO, as well as UN mechanisms such as the Special Rapporteur on Violence against Women and the CEDAW Committee. However the Japanese State has continued to fail to meet its obligations to investigate, prosecute those responsible, bring just and adequate redress and remedy for the victims, and to educate the public about the issue. The government has even tolerated repeated offensive comments by politicians against the victims, which further torments the survivors and has significant impacts on persistent impunity of violence against women in Japan. This will be further discussed in Section 11.

7. NON-REFOULEMENT (Article 3, CAT)

Being very restrictive in accepting asylum seekers and migrants, the Japanese Government makes it a principle to deport immigrants who have overstayed their visas or engaged in non-permitted activities, no matter how long they have lived in Japan and without adequately assessing the risks they may face in their “home” countries. Although there are cases in which special permissions of stay are provided, the guidelines for granting the permission are not made public. The Government has provided special permission of stay for migrant women who were identified as victims of trafficking. However the assessment of circumstances of arrested women is not adequate and there is a great danger that victims who may face violence or risk of being trafficked again are deported as

²¹ For more details on the practice and legal discussion about the “Comfort women” system, refer to the *Final Judgement of the Women’s International War Crimes Tribunal For the Trial of Japan’s Sexual Military Slavery* given on 4 December 2001, The Hague, Netherlands. (<http://www1.jca.apc.org/vaww-net-japan/english/womenstribunal2000/Judgement.pdf>)

“criminals” without any assistance. Further, there is a lack of international cooperation between Japan and sending countries in assessing the risks the victims may face, investigating and prosecuting traffickers, and protecting and supporting victims after their return. This was evident in a case before the Osaka District Court in July 2006:

A Filipino woman entered Japan, after an invitation from a promoter in Osaka, as a singer under an entertainment visa and began work in Kanazawa. However, she was abducted by Filipino pub industry people and was sold to a pub in the city of Yokosuka for 380,000 yen. Five people were arrested as a result of this incident and of these; four Japanese men were indicted and charged with trafficking in persons offences. Testimony given by the defendants in the trial revealed the existence of organizers, a Japanese broker and a Philippine broker, behind the scenes and both living in the Philippines. Their names were identified. However, judicial authorities in the Philippines were not notified through diplomatic channels, there was no communication of this matter to the Japanese embassy in the Philippines nor was there any cooperation between the two governments in order to provide the victim with support upon her return to the Philippines. Indeed, no judicial cooperation seemed to be done between the two countries in order to investigate this case and ensuring the safety of Virgie, who was repatriated to the Philippines after testifying during the first trial in July 2006, in spite of the fact that Japan's Action Plan of Measures to Combat Trafficking in Persons stipulates the necessity of international cooperation. The International Organization for Migration (IOM) just offered assistance for her return. An NGO based in Manila was entrusted by IOM to provide some care to her²².

The lack of international coordination in prosecuting crime organizers and protecting victims not only suggest that women sent back to home countries may face risk of re-victimization, but also poses serious limitation in efforts to counter trafficking.

8. MEASURES TO PREVENT ACTS OF TORTURE (Articles 2 and 10, CAT)

8.1. Effective legislative, administrative, judicial and other measures to prevent acts of torture (Article 2.1)

National Programmes to Combat Gender-Based Violence

Within the framework of the Basic Plan on Gender Equality, the Japanese Government included as a goal the elimination of all forms of violence against women, and established the Specialist Committee on Violence against Women as one of the specialist committees under the Council for Gender Equality. However, national programmes have failed so far to address the root causes of women's vulnerability to violence, including inequality in

²² Nobuki Fujimoto, Asia-Pacific Human Rights Information Center, 'Two Years since the Adoption of the Action Plan to Combat Trafficking in Persons' in *Voices from Japan*, vol. 18, Winter 2007, AJWRC

employment and access to social security, due to the lack of authority and coordination with other government bodies. Also these programmes largely focus on spousal violence, failing to acknowledge the multiple forms of violence and particular issues concerning minority women.

In each prefecture, there are public women's consulting offices and public-funded women's shelters, which were initially intended to protect women involved in prostitution. Later, these public services were extended to assist victims of violence such as domestic violence. Further, in recent years, these offices have been tasked to support survivors of trafficking. However they are only intended to provide urgent help including short-term stay, food and clothing, and there is no adequate system to provide mid- and long-term support for victims including rehabilitation.

Trafficking in Persons

Faced with increased international pressure, the Japanese Government adopted *the National Action Plan to Combat Trafficking in Persons* in December 2004.²³ On prevention of human trafficking, the Government took some measures, including the following; strengthening of immigration control and of investigation of activities during foreigners' stay in Japan; amendment to the Immigration Standard Ministerial Ordinance regarding entertainer's visa, and amendment of the Law Regulating Adult Businesses, etc including imposing business owners an obligation to confirm and make record of the status of residence of the employees who engage in servicing customers.

However, two years since the adoption of the Action Plan, it is doubtful whether these measures have really been effective to prevent trafficking so far. While there is an increasing number of cases where brokers and sex service shop owners are arrested and indicted for charges of the newly introduced crimes for trafficking in persons, kidnapping for profit, Immigration Control and Refugee Recognition Act violations, Employment Security Law violations, etc., those who are indicted and become defendants in Japan are only brothel managers who are often women with the same nationality as the victims, and those who may be manipulating those managers have not been arrested or indicted.

Also, even when the perpetrators are arrested, penalty remains minimum. According to the available data, out of seventy-five perpetrators prosecuted, sixty-one were found guilty: among them, three were sentenced to prison, forty-eight were given stay of execution, and thirteen were fined, as of June 2005²⁴. Further, there is a lack of information-sharing and internationally co-ordinated efforts to prosecute those engaged in trafficking between Japan and sending countries.

²³ The Recent Actions Japan has taken to combat TIP (Trafficking in Persons)
http://www.mofa.go.jp/policy/i_crime/people/action0508.html

²⁴ Press Release, the National Police Agency

Rape

The lack of gender-sensitive training of law enforcement personnel including police officers and judges has a serious impact on prevention, investigation and redress of victims of sexual crimes. It is still often the case that the behaviour or sexual history of the victim is questioned at courts, causing serious harm on victims. This makes victims reluctant to report sexual crimes. There are also not enough professional emergency clinics to enhance the treatment of victims in the immediate aftermath of sexual assault and allow them the dignity that they rightly deserve.

Domestic Violence

Under the *Spousal Violence Law*, victims can apply for various protection orders – an order to prohibit approach (6 months); an order to vacate and to prohibit loitering around the family residence as well as current residence of the victim (2 months) and an order to prohibit approach to minors cohabiting with the victim (6 months). The law also provides for a Spousal Violence Counselling and Support Centre designed to provide counselling, temporary protection and information to victims.

Despite these measures provided for in the *Spousal Violence Law*, problems remain with the enforcement of these protection measures. More support is needed for the provision of domestic violence shelters and for children who suffer the effects of domestic violence. Further, there is a need for the protection order to be extended to include intimidation by phone, fax and email. Another limitation with the current law is that it very much focuses on protection of the victims without addressing the underlying causes of domestic violence. There is therefore a need for the education of perpetrators as well as the introduction of strict punishments to deter the commission of domestic violence (currently the violation of a protection order only results in imprisonment of up to one year or a maximum fine of 1 million yen). Furthermore, the number of arrests for the perpetration of violence against a spouse remains low. It is worth noting that the law is lenient in terms of enforcing court judgments of paying fines to the victims or giving support to the children. It is the victim who should file another court process to demand payment, which is usually very difficult since women is financially in need. Again the abusive spouse in this system is allowed to escape responsibility.

Difficulties are also faced by domestic violence victims as a result of the Japanese registration system. Many domestic violence survivors are reluctant to notify the city and ward offices of their change of address, as this may enable their abusers to discover their location. Without notifying the new municipality, victims cannot enjoy government services, such as health care, voting, national pension and schooling.

8.2. Education and Information (Article 10.1)

There are no systematic efforts by the government to ensure opportunities for the general public as well as targeted population to learn about the facts, nature, background and

relevant laws and measures on violence against women. Considering that more young children, especially girls, are likely to be exposed to sexual exploitation and violence in recent years, it is particularly worrying that a holistic education programme on sex, gender equality and human rights is not placed in national school curriculum. Education on these issues almost solely depends on efforts of individual teachers. These teachers are not receiving any public support, but are rather under attack from the conservative parties. For example, the sex education programme provided at a public school in Tokyo for mentally handicapped children came under massive attack at the Metropolitan Council and in the media, ravelled as “obscene” and “immoral”²⁵. Gender equal education in public schools has also been attacked as “promoting unhealthy idea to deny traditions and family” by conservative media and ruling parties. Thus young girls and boys are not ensured to learn about their rights, management of risks of violence or even accurate knowledge about HIV/AIDS and other sexually transmitted diseases²⁶.

Information for the general public on gender-based violence is also seriously limited. While the Gender Equality Bureau conducts a public awareness campaign for a couple of weeks every year, it is just to call for non-violence against women, without providing any detailed information about the facts, causes and preventive measures of various forms of gender-based violence. Particularly there is no adequate effort to inform minority women of risks of violence and of assistance measures in case of facing violence. For example, foreign women entering Japan often face humiliating investigation by the Immigration Control Office, while there are no sufficient efforts to adequately inform them of, for example, crisis hotlines. It is also a problem that no specific efforts are made to educate men and boys, as well as targeted population depending on the types of violence. For example, there is no specific effort to educate men about the incidence of violence against sex workers and trafficking in women.

Gender sensitive training of law enforcement personnel including police and judges is also inadequate. While the Community Safety Bureau of the Police Agency provides training of officers on rape, domestic violence and other gender-based violence, it is not required for all police officers, and there are often cases where officers who have not had appropriate training are involved in investigation in crimes of rape and other violence against women. Also, gender stereotypes among the judiciary often bring further suffering to victims in courts and lead to impunity or lenient penalty for perpetrators. However, there is no systematic gender-sensitive training of judges, except for some voluntary initiatives.

9. ARREST, DETENTION OR IMPRISONMENT (Article 11, CAT)

²⁵ Emiko Shimizu, “Sex Education in Schools Today” in *Voices from Japan* Vol.12, Winter 2004

²⁶ Kokichi Murase, “AIDS kyoiku no mondai to seikyoiku bashing” in *Women’s Asia* 21, Vol.39, 2004

It has been repeatedly pointed out by a number of lawyers and human rights organizations that the Japanese police heavily rely on confessions to prosecute criminals, which often leads to use of threats and intimidation during investigation, with the lack of outside monitoring. As shown in Section 6, unchecked use of power by police officers often results in sexual abuse of women suspects and detainees. Although the National Police Agency established in principle that female officers shall accompany female suspects, detainees and prisoners, it is only an internal rule without punitive sanctions, and in fact, not strictly practiced. Also the published internal regulations of the Police Agency do not mention any specific measure to respond to gender specific needs and issues regarding women suspects, detainees and prisoners.

A woman who was arrested and prosecuted for participating in non-violent anti-war activity testified that the interrogator threatened her saying “you would not be able to walk in the town freely.” She was not allowed to use sanitary napkins during 6-hours of interrogation, which caused her underwear to be stained with blood. She was told to wash it herself in front of other female detainees. She also told that she found, after exchanging information with her male colleagues who were detained at the same time, that rules were more strictly applied in women’s cells compared to men’s cells in the facility where they were detained. For example, circulating reading materials or time to use writing materials were more severely restricted in women’s cells.²⁷

Prolonged detention, uncertainty of their status, risk of deportation and separation of families causes great suffering for asylum seekers and migrants and their families. Particularly separation from children causes great pain for mothers in detention, including physical and mental illness. Also detention of spouses puts heavy burden on women to support their families. The detention and deportation of immigrants often results in actual breaking up of families. For example, in November 2005, a Vietnamese woman was forcibly repatriated to Vietnam although her husband (a refugee) and baby remained in Japan.²⁸

10. INVESTIGATION, REMEDY AND REDRESS (Articles 12 to 14, CAT)

Trafficking in Persons

Since the National Action Plan was approved five laws were revised, including the Penal Code and the Immigration Control and Refugee Recognition Act, and trafficking victims are now better protected and allowed to stay at public women’s shelters located in every province in Japan. However the guideline or/and system of recognizing trafficking victims remains unclear, and many trafficking victims are still treated as illegal migrants and thus deported without redress and remedy. Even though trafficking victims are

²⁷ An interview conducted by AJWRC staff member on March 14, 2007.

²⁸ Amnesty International, *Report 2005: Japan*, <http://web.amnesty.org/report2005/jpn-summary-eng>.

protected and housed temporarily at public women's shelters, the current legislation could be further improved so as to address victims' insufficient understanding of due process during protection and investigation until their return, as well as weaknesses in the interpreter and translation system and in the medical check and health care system. Moreover, legal support in claiming unpaid wages or compensation for victims is missing.

As trafficking cases are frequently viewed as a criminal matter in which the victim is at fault, the criminal justice system often finds the trafficking victim guilty or somehow at fault without any further effective investigation into linkages with organized trafficking crime. In addition, the determination of whether a person is a victim to be protected is made by the police and/or Immigration Bureau that have been treating the victims as perpetrators in breach of the law. Actually, persons who can ask protection at a police box may be treated as victims, but those who are discovered during the investigation for sex related businesses may be arrested even if they could be victims. *In a trafficking and murder case in Yokkaichi city involving a Thai woman that occurred in 2000, a trafficking victim who was under severe threat to be resold to another trafficker tried to escape from her boss with the assistance of her boyfriend. After she hit her boss over the head, her boyfriend became afraid that the boss or the organized crime members would take revenge, so he murdered her boss. The court recognized the human trafficking background of this case and that the Thai woman was a victim of trafficking, but she was sentenced to seven years in jail for robbery resulting in death²⁹. The lawyers in this case appealed to the Supreme Court, but in November 2004, just one month before the National Action Plan to combat human trafficking was launched, the appeal was rejected without any further investigation.*

In June 2005, The *Immigration Control and Refugee Recognition Act* was revised to stipulate that victims of human trafficking can get special permission under Article 50:

1. The Minister of Justice may, even if he finds that the objection filed is without reason, in making a decision under Paragraph 3 of the preceding article, grant the suspect special permission to stay in Japan if he falls under any of the following items:

(3) He resides in Japan under the control of another due to trafficking in persons.

2. In the case of the preceding paragraph, the Minister of Justice may impose conditions, which he may deem necessary such as on the period of stay, in accordance with a Ministry of Justice ordinance.

The Japanese Government also determined through the national plan that Women's Consulting Offices established by prefectures should accept victims for temporary protection which should also be entrusted to private-run shelters. The Office can provide clothing, food and shelter, but its personnel are lacking the necessary experience and

²⁹ Mainichi Shimbun (Japanese) evening edition, 20 July 2005

know-how. Thus it is difficult for them to provide adequate protection to victims of TIP who do not speak Japanese and are in a very particular situation. The Office also does not have the authority to provide medical care, counselling or living expenses, does not have interpreters who are stationed at the Office, and lacks experience in dealing with or contacting the Immigration Bureau or foreign embassies and consulates.

Hence there is a lack of even a minimum level of redress and rehabilitation for the victims. The government even refuses to bear medical expenses except for a few cases. There is also no place where the victims can be protected for a long term after temporary protection. Also, even though victims of TIP are granted special permission for residence in Japan, they can get only “special activities” status that does not make them eligible to obtain social security benefits.

Moreover, in order to punish not only the underlings but all perpetrators involved in TIP, the victim’s statement is important as the starting point of investigation. But, it could be extremely difficult for the victims, who have often been physically injured and psychologically traumatized, to come forth and make statements, risking retaliation from the perpetrators. The measures taken by the government are not sufficient for the victims to recover physically and psychologically, and witness protection measures under the Criminal Procedure Code are only given while they are in court buildings. It is thus difficult to extend protection to out of court and to the victims/witnesses and their families residing in their home countries. Therefore, the victims remain unable to make statements without fear. In order to enforce strict punishment of the perpetrators, it is necessary to strengthen the protection of victims and witnesses.

Rape and other forms of Sexual Abuse

The National Police Agency enacted the *Guideline on Support to the Victims* in 1997, which provided measures to prevent causing secondary suffering by inappropriate police actions, including deployment of specialized officers in investigation of sexual crimes and deploying women officers in the investigation of sexual crimes. Also legislations on domestic violence, stalking and child abuse respectively require training of police officers. However these are only guidelines without strong enforcement and monitoring mechanisms, and no punitive sanctions are taken even if inappropriate actions by officers are identified. In fact, many victims of sexual abuse and domestic violence still experience uncomfortable or humiliating comments and behaviour by police officers, as the following case shows:

In a rape case which occurred in Kanagawa Prefecture in 2002, the victim was immediately forced to accompany the police back to the scene of the crime to pose in photographs taken by the police of the crime scene. Despite the fact that the victim was in deep shock at the nature of the crime at the time, the police made her give them her underwear as evidence without providing her replacements and in these photographs the victim was forced against her wishes,

to point to the place where she was raped. The victim was denied immediate medical treatment for more than four hours and during this time the victim tried not to use the bathroom in efforts to save the forensic evidence by herself. When the police denied her medical treatment for so many hours, she begged to use the bathroom in hopes to find a paper cup, but in finding none, just sat on the toilet and cried. The victim was questioned by 3 to 4 male officers in a large room where other officers were coming in and out. No photographs were taken of the victim's vaginal trauma and bruising until the next week. It is imperative that any investigation into the suspected use of date rape drugs involve the immediate carrying out of a blood test, however in this case no blood test was taken by the police, even though the victim smelled alcohol. After more than ten hours had passed since she was raped and in the "custody" of the police, the victim was finally released and drove herself home without any underwear. At a further date the victim was then made to direct a male and female police officer in photographs of the entire rape act against her, from one position to the next. The treatment of the police conducting the investigation added immensely to the traumatic nature of the rape. Following that, sexual and insulting remarks were made to her by the police when she made her statement. This was also noted by her Embassy Consulate staff who accompanied her to the police station in Kanagawa³⁰.

Women of ethnic minorities are often subject to discriminatory and humiliating comments by police officers, suggesting that they are just lying or not worth to be protected.

In order to encourage and assist survivors to report the case, the police agency in each prefecture provides hotline service. Also, there is a public women's consultation office to provide victims with counselling. However, there is no protection shelter where rape victims can stay even for short period, or 24-hour rape crisis centres to provide the kinds of counselling and immediate medical treatment. The Japanese National Police Agency has drawn up policies for victim support, including efforts to help victims of sex crimes and to lessen their psychological burdens, however police probes have traditionally and still are now, centred on conducting investigations to find the criminal and many police officers still remain unable to pay attention to the victim's emotional needs and care most necessary to lighten the burden of the trauma they have just experienced.

Sexual Abuse near Military Bases

Rape and other crimes committed by US military personnel often go unpunished as they are placed under the jurisdiction of the United States under the bilateral mutual cooperation and security treaty between Japan and the United States. Soldiers who return to base after committing crimes are beyond the reach of local Japanese authorities. Suspects remain under military control until indicted. Additionally, violence committed by

³⁰ information provided by the Warriors-Japan

off-duty soldiers is typically viewed as outside the scope of State responsibility on the part of either the United States or Japan, and left for negotiations for compensation between the victim and the assailant. But it is literally impossible for the victim to locate the perpetrator. Further, there is little deterrence against committing sexual violence against women, given the minimal sentences under Japanese law. In a rape incident in 2002 near the U.S. military base in Yokosuka, Kanagawa, while the Japanese police failed to prosecute the identified perpetrator, the survivor won the case in the civil court in 2005. However the perpetrator fled from Japan after dismissal from the Navy, without the US military informing the courts of Japan, and without the perpetrator paying the compensation ordered by the court. His whereabouts still remain unknown to the victim.

Domestic Violence

While survivors of domestic violence can use public-funded protection shelters in each prefecture, the facilities are rather for short-term stay and no adequate support for rehabilitation is provided. Most of the victims with young children easily face financial problems because of the burden of family responsibility and inadequate work experience. According to a national survey, no more than 20% of divorced women receive child support from ex-spouses, and compensation payment ordered by court on perpetrators of domestic violence is relatively low - around three million yen in average. In that situation, most of single mothers with young children have to apply for public assistance to support their families. However, the Japanese government has continuously reduced cash assistance for single mothers in the past years. Furthermore, the government is planning to eliminate additional payment for low-income single mothers who are already on social welfare. Also, although the *Daily Life Security Law* does not stipulate any criteria in relation to past history for eligibility, domestic violence victims report difficulties in gaining access to social welfare benefits. Some municipalities require domestic violence survivors to talk with female counsellors, designated by the municipalities, to assess whether they are eligible for welfare benefits. Eligibility criteria are strict and the process often fails to acknowledge the position of these women as victims of a crime. The other financial support benefit, the Mother-and-Child Welfare Loan, available to domestic violence survivors with children is also difficult to access. The eligibility criteria are also strict, including requirements such as the need for a guarantor under the age of sixty, who has a secure job.

Foreign women victims of domestic violence

According to the *revised Spousal Violence Act*, State agencies and local governments should provide support for victims of domestic violence regardless of their nationality or residence status. However it is still often the case that domestic violence victims who seek help to police are treated as criminals offending the Immigration Control Act and thus deported without any investigation and redress.

In March 2006, the police arrested a Thai woman inside the protection shelter where she was staying for overstaying her visa. The woman was unable to renew her visa because

she was subject to brutal violence from her spouse and thus had to move to the protection shelter. She had filed a damage report to the police in July 2005 and, at the time of arrest, she was applying for special residence status at the Immigration Control Office and waiting for the divorce trial to start. This kind of arrest, detention and worst, deportation of victims who have overstayed their visa is the most problematic area in giving protection to victims of domestic violence.

Prolonged separation following arrest and detention causes deep pain in the case of mothers and children. In case of women without children they are immediately deported to their country without addressing the violence; thereby, failing to punish the abusive spouse and neglecting to make him realize the negative, deep impact of his assault to the life of the woman and to hold him accountable for his action.

Even if undocumented migrant women are recognized as victims of domestic violence, they are not immediately granted a stable resident status. And, even after the amendment of the Law on Spousal Violence in 2004, that emphasizes first the protection of victims, it still takes about six months to one year before an undocumented victim is granted a residence status. This has grave consequences to the life of the women and their children as they are barred from applying for stable jobs and accessing social security benefits. The situation is less difficult for undocumented victims with children having Japanese nationality. The single women household has to contend with the minimal support given to the Japanese children. The lack of any public support, limited job opportunities and the lack of family support make the lives of victims with children, especially those with an undocumented status, very difficult.

Redress for the Victims of Military Sexual Slavery³¹

While the practice of the “comfort women” system has been general knowledge in Japan, it was only after the survivors in Asian countries came forward to demand official apology and compensation in the early 1990s that the issue of State responsibility and compensation for victims came to the forefront in public discussion. Although the Japanese government initially tried to deny State responsibility, it was forced to make an official apology through the statement of the then Chief Cabinet Secretary Yohei Kono in 1993, upon discovery of the official documents to show the involvement of the military in recruitment and management of the sexual slavery system. The statement, known as the “Kono Statement”, expressed the government's "sincere apologies and remorse" and has been followed by the succeeding administrations as the base of the Japanese government's standpoint on this issue.

While acknowledging moral responsibility, though, to date, the Japanese Government has refused to admit its legal responsibility to provide State compensation to individual

³¹ For further details, see a shadow report to CEDAW prepared by International Criminal Justice Institute (ICJI) and the Violence Against Women in War Network-Japan (VAWW-Net Japan), 2003 (http://www1.jca.apc.org/vaww-net-japan/english/whats_new/shadow_report_CEDAW.PDF)

victims, claiming that the issues of compensation have been adequately addressed in bilateral agreements with the victimized countries, despite that the issue of military sexual slavery was not apparently addressed in those agreements. The government insists that it has taken responsible actions through the programmes of the Asian Women's Fund established in 1995, only to limited victimized countries. However the Fund was to provide "private donations from the people of Japan" in order to avoid the necessary legislation to make State compensation to individual war crimes possible. In fact many victims rejected to receive the "charity money." The Fund ceased its activities in March 2007.

Japanese courts have also failed to address the failure of the State in bringing justice to the victims. Out of ten law suit cases filed by the victims against the Japanese government between 1991 to 2001, except for three cases still pending in court, seven cases were dismissed at the Supreme Court for technical reasons such as statute of limitations and immunity of the State at the time of the act concerned, even without factual findings.

A few of those judgments pointed out the need for redress for victims through legislations and administrative measures. This point was also included in the recommendations made by Radhika Coomaraswamy, then UN Special Rapporteur on Violence against Women in 1996, and Gay McDougall, then Special Rapporteur on slavery-like practices during war-time in 1998, and the CEDAW recommendations pursuant to the consideration of the 4th and 5th periodic reports of the Japanese State. Despite these recommendations, the Japanese government has not made efforts for enacting necessary legislation. Rather, the ruling Liberal Democratic Party (LDP) has been taking quite a negative attitude toward the proposal of a "Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coercion Bill" made by the opposing parties to provide redress for victims. This bill was first submitted in 2000 by the opposing parties to the Diet, only to repeatedly be scrapped facing with strong resistance from the ruling parties. Further, the present Cabinet led by Prime Minister Shintaro Abe tolerates the attempt of the right-wing group of the LDP to review the even minimum standpoint expressed in the Kono Statement and Mr. Abe himself has repeatedly made comments disputing the Kono Statement³². Such repetitive statements to deny State responsibility by government officials further hurt the survivors.

The Japanese government has also failed to educate about the issue in schools and to the general public. Since the survivors came out for demanding justice, there has been a massive campaign against those women and their supporters, defaming the women as "lying for money" or "merely prostitutes", and justifying the war, colonization, rape and sexual slavery during that time. They also act against education about the issue in junior high schools. While the issue was first mentioned in junior high textbooks in 1997, it triggered a massive campaign against "masochistic historical views." As a result, most of

³² "Abe's Violent Denial: Japan's Prime Minister and the 'Comfort Women'", *Japan Focus* (<http://japanfocus.org/products/details/2368>); "Japanese prime minister fuels tensions over wartime sex slaves", *The Guardian*, March 9, 2007

the textbook companies have avoided mentioning the issue and currently, only two textbooks among eight barely refer to the issue. The government's failure to take adamant stand against such attacks, not only hurt the survivors again, but also reproduces discriminative discourse against women and prolongs the attitude of the State and the judiciary to prioritize national interests over human rights of women.

11. RECOMMENDATIONS

In general

- While the Japanese Government insists that all the obligations in the Convention can be implemented in accordance with the existing domestic laws and regulations, the existing domestic laws have proven to be inadequate to bring justice to the victims of torture, as discussed above. The Japanese Government should review domestic laws in line with the Convention against Torture so that different forms of sexual abuse, exploitation and gender-based violence shall be clearly articulated in legislation to constitute the crime of torture and accordingly prosecuted and penalized.
- The Japanese Government should seriously consider establishing an independent legal mechanism to monitor human rights violations, which should be totally independent from the government. In this connection, the Japanese State should ratify the Optional Protocols to ICCPR and to CEDAW, and recognize CAT's competence to receive individual communications under article 22. While the Japanese Government insists that those protocols may weaken the independence of the Japanese judiciary, these mechanisms will rather strengthen its independence from the Executive.

Addressing the Root Causes of Violence against Women

- Although the Japanese State has made some efforts to address gender-based violence such as spousal violence and trafficking in persons, these efforts are narrow in focus and remain inadequate. There is a need for the Japanese government to incorporate the efforts to address gender-based violence and the efforts to empower women, recognizing that violence against women is deeply rooted in gender stereotypes and economic and social inequality faced by women.
- Considering that indirect discrimination against women in employment and the lack of access to adequate social security faced by women including minority women has crucial implications in women's vulnerability to violence and exploitation, the Government should take necessary measures to achieve de facto equality, including introducing positive measures and eliminating remaining legal provisions that discriminate against women.
- The Japanese Government should ensure to provide education on gender equality and human rights of women and girls at all levels, including sexual and reproductive rights and issues of minority women, standing firm against any attempt to misinterpret or hamper such education.

Law Enforcement

- The Government must require a special training on gender and multi-cultural sensitivity for police officers, immigration officers, court judges and other law enforcement personnel.
- The Japanese Government should review the Criminal Investigation Norms of the National Police Agency and, more preferably, legislate a law in order to prevent human rights violations and abuse of power by the police, as well as to incorporate gender specific issues. For that purpose, the Government should conduct an independent assessment of the incidence of human rights violations by the police, as well as compliance with internal norms, related domestic laws and international human rights standards, with specific focus on gender-based violence.
- Establish strong and independent mechanisms to monitor human rights violations by the police and to penalize those in breach of laws and rules, with specific focus on gender-based violence.
- The Government should stop unnecessary separation of families in detention and ensure the right of detainees to communicate with their family members.

Rape and other Sexual Crimes

- The Japanese Government should review the Penal Code so as to widen the definition of rape to include spousal rape and incest, other forms of sexual abuse than actual sexual intercourse, as well as rape of men, and apply aggravated sentences when the victim is a minor and when the perpetrator is in ascendant position to the victim. In this particular case, coercion should be always presumed and the victim should not have the burden of proof. An increase in minimal sentences should also be considered in view of the low deterring effect of the current law.
- Ensure that women victims of rape or other sexual abuse are eligible for protection measures such as shelters and to rehabilitation programmes. Provide more training and funding for medical personnel, to increase numbers of hospitals staffed by sexual assault nurse examiners, dedicated and compassionate doctors and with intervention to other support services if required. Rape test kits and collection of specimens for toxicological analyses for drug facilitated sexual assault must be also made more readily available than they are now, to these institutions.

Migrant Women

- Considering that the unstable resident status makes migrant women vulnerable to violence and exploitation, the Japanese Government should review the Immigration Control Law and other regulations to avoid criminalization, deportation and revictimization of victims of trafficking or domestic violence. Residency permissions should be immediately provided to the victims of violence based on their needs.
- The Government should make efforts in the labour administration to widen prospects of obtainable employment, one that guarantees migrant women's human and labour rights.

- To deal holistically with the issue of violence against minority women, beyond protecting and supporting the victims, punishment of perpetrators and setting up a monitoring mechanism, the Government has to sincerely consider discrimination and racism in Japan against minorities and against women as an important reality contributing if not causing violence especially to minority women. For that purpose, it should take special measures to promote empowerment of minority women, in line with the recommendations made in the report on Japan by Doudou Diène, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2006/16/Add.2).

Sexual Violence and Exploitation of Sex Workers

- The Japanese Government should make serious efforts to counter sexual exploitation of women and girls as well as sexual violence and abuse of sex workers. In doing so, it should carry out thorough consultations with relevant groups including sex workers, rather than just strengthening regulations over the sex industry, which often negatively affect women in the industry.
- Considering that most sex workers are reluctant to report crimes to the police fearing arrest and deportation, there is a need for an independent mechanism devoted to assisting victims in seeking justice without fear of being handed to the police or the Immigration Control Office.

Trafficking

- While considerable efforts have been made so far to tackle the problem, there is a need for more coordinated efforts to address the root causes of trafficking. Given the international nature of human trafficking, there is a need for the Japanese Government to implement reporting mechanisms to ensure information-sharing and internationally co-ordinated efforts to investigate and prosecute the organizers of trafficking.
- The Government should make more coordinated efforts to educate the general public as well as target groups about trafficking in persons and sexual exploitation of women.
- There is a need to greatly expand assistance measures for victims to ensure protection until their full recovery, clarifying responsibilities of government agencies and securing adequate funding. Also, there should be more careful assessment of the circumstances of each woman involved in trafficking. There is also a great need for international cooperation to support victims after their return to home countries.

Domestic Violence

- There is a need to extend protection orders to include threats by phone, fax and e-mail.
- There is a need for education of perpetrators as well as introduction of strict punishments including compensation for the victims.
- The Government should greatly expand the support for the victims, including enhancing cash assistance for poor families and effective employment policy to ensure adequate income for single mothers.

- In applying the Law for the Prevention of Spousal Violence and the Protection of Victims, related Government agencies and local government shall ensure that victims receive protection and support regardless of nationality and status of residence; and, the Government shall prioritize the protection of victims. Meaning, that the Law for the Prevention of Spousal Violence and the Protection of Victims will take precedence over the Immigration Control Law. In principle, victims shall not be arrested and detained through criminal and administrative procedures for immigration-related violations. Further, the Government should set up a system wherein the abusive spouse is strictly made responsible.

Prevention of Sexual Violence near US Military Bases

- The Japanese Government should ensure safety of women and girls around the US military bases by taking necessary measures to prevent rape and other sexual abuses by the US military personnel before carrying out the plan of relocation of the US military forces in Japan. For that purpose, the Government should negotiate with the United States to review the Status of Forces Agreement so that acts of violence perpetrated against women in the premises of a US military base are duly investigated and punished according to the Japanese laws.

Remedy and Redress for Victims of Military Sexual Slavery

- The Japanese Government should make an urgent effort to immediately take adequate measures for redress for the victims of the “comfort women” system through legislation and administration following the recommendations made by the international bodies, recognizing that this crime constitutes a violation of non-derogable rights under international law and that the State of Japan is legally responsible to ensure redress and remedy for the victims.
- The Japanese Government should refute any argument to justify the crime or deny State responsibility, and ensure education about the issue is provided at all levels.