

Executive Summary of

The Alternative Report

on

Violation of Women's Rights in Japan

for

The UN Committee Against Torture, 38th Session

Coordinated by

Asia-Japan Women's Resource Center

and

World Organisation Against Torture– Violence Against Women Programme

Introduction

Torture and ill-treatment of women in Japan may take various forms: sexual violence (including rape), trafficking and exploitation of sex workers, police violence and violence in the penitentiary system, domestic violence (and particularly, violence against foreign wives), sexual abuse near US military bases and the delicate issue of military sexual slavery during the Asia-Pacific war. These acts of violence against women are based on gender bias and socio-economic inequality faced by women, which is institutionalized in political, economic and social systems of Japan. Further, multiple discrimination faced by migrant and minority women and girls makes them all the more vulnerable to exploitation and violence.

Although the Japanese Constitution explicitly prohibits discrimination based on sex, there is still a large and even growing inequality between men and women in political participation, economic

empowerment and social opportunities. This is attributed to the lack of effective legal mechanisms to put punitive sanctions on discrimination against women or to ensure substantive equality. Another serious concern is the rise of an anti-feminist, conservative backlash against education on gender equality and the acknowledgement of State responsibility regarding the victims of the “comfort women” system. The Civil Code also still contains several discriminatory clauses against women (e.g. those related to the minimum age for marriage, remarriage after divorce, discrimination of children born out of wedlock, patriarchal family registration system).

Criminal Legislation on Violence against Women

Although Article 36 of the Constitution and Articles 193 and 196 of the Penal Code define and prohibit torture, the State has yet to articulate the meaning of

torture and coercion in line with international standards. Spousal violence, sexual harassment, trafficking and other forms of abuses and gender-based violence are addressed individually under a number of clauses in the Penal Code and other laws, but in a narrow way that merely focuses on the factual use of violence and threats. Accordingly, a more comprehensive legislation against gender-based violence that sets in law a victim-centred definition of violence is needed.

Rape as defined in Article 177 of the Penal Code refers exclusively to sexual intercourse with male and female genital organs. Moreover, rape within marriage is not recognised to constitute a crime and the same is true for incest. Typically, it is the victim that is required to prove that there was no general agreement to have sex, that is, it is the victim that is expected to show evidence of having resisted attack. The Penal Code further identifies the crime of Forcible Indecency, that of Quasi Forcible Indecency/Quasi Rape, and the crime of gang rape.

The Law for the Prevention of Spousal Violence and the Protection of Victims provides a definition of **spousal violence**, including those in a de facto relationship and ex-spouses/de factos, while it importantly does not cover violence committed by a boyfriend/girlfriend.

Moreover, a definition of **stalking** has been provided in 2000 in the Law on Proscribing Stalking Behaviour and Assisting Victims. Repetitive stalking is punishable when the perpetrator does not follow the orders of 'warning' and 'cease-and-desist' issued by the police.

Generally speaking, the main problem is the lenient penalties that are envisaged and applied. For example, punishments for rape are lighter than sentences imposed for robbery, thus contributing to the perception of sexual abuse and rape as trivial crimes and failing to deter

perpetrators from committing the act in the first place. Moreover, a difference in the penalty is not previewed in the case the victim is a minor.

Recommendations:

- 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 increase minimal sentences in view of the low deterring effect of the current law.
- Enhance measures to support victims of rape or other sexual abuse including access to shelters and rehabilitation programmes, providing more training and funding for clinics and shelters.

Human Trafficking and Exploitation of Sex Workers

Japan is a major destination country for **trafficking in women** for commercial sexual exploitation purposes. Although the Government has introduced anti-trafficking measures in recent years, effects of those measures are still limited. The guideline or/and system of recognising trafficking victims remains unclear in Japan, leaving possibility that trafficking victims may be treated as illegal migrants and deported without redress and remedy. They are also denied access to legal support in claiming unpaid wages or compensation, as well as to adequate interpreters, medical check and health care. Since trafficking cases are frequently viewed as a criminal matter in which the victim is at fault, the justice system fails to start any further effective investigation into possible linkages with organised crime. Moreover, given the fact that the starting point for the investigation is assumed to be just the victim's statement, the difficulty of extending protection from physical injuries, psychological trauma and threats to the victims/witnesses and their families further

inhibits the victim from reporting. This undermines the efficacy of the judiciary system to combat trafficking.

organizers of trafficking, and to support rehabilitation of victims.

As far as the **exploitation of sexual workers** is concerned, despite an Anti-Prostitution Law (1956) that unambiguously prohibits pimping without criminalising sex workers and clients, the Japanese police have rather loosely regulated the vast sex industry, which is a source of major financial revenues for the crime syndicate (Yakuza). In recent years more subtle forms of forced prostitution through Internet and mobile phones have been developed in order to get around regulations, often creating unsafe and exploitative working conditions for sex workers. Cases of harassment and arbitrary arrests of sex workers by police as examples to others have also been registered. The illegal character of prostitution, fear of Yakuza, and stigma attached to sex workers are some of the many causes that determine women's reluctance to report cases of violence and exploitation. Furthermore, migrant women without working visas represent a particularly targeted category in this sense. In fact, as statistics indicate an increasing focus of police activity on foreign workers, migrant women are even more unwilling to report the crimes committed against them, sometimes avoiding seeking assistance even from NGOs. Thus, the fear of arrest and deportation makes them an easy target of exploitation and violence by both customers and employers.

Recommendations:

- Expand assistance measures for victims to ensure protection until their full recovery, clarifying responsibilities of government agencies and securing adequate funding.
- Publish and review the mechanism to identify victims of trafficking.
- Enhance internationally co-ordinated efforts to investigate and prosecute the

Police Violence against Women

Although it is difficult to precisely report the incidence of police violence against women, there is full evidence of cases in which perpetrators make use of their power as police officers over women in vulnerable positions, given that the general situation is one where no strict law enforcement mechanism and outside monitoring exist. This often results in cases of sexual abuse toward women suspects and detainees. Moreover, the Japanese police heavily rely on confessions to prosecute criminals, often leading to the use of threats and intimidation during investigation.

Police violence against women also takes the form of humiliation in the handling of rape cases in which victims are revictimised by the police during interrogation and investigation.

Recommendations:

- Conduct an independent assessment of incidence of human rights violation and compliance to the internal rules including the Criminal Investigation Norms, with specific focus on investigation of rape and other sexual abuse.
- 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 and establish strong and independent mechanisms to penalise those in breach of laws and rules, with specific focus on gender-based violence.

Domestic Violence

Domestic violence remains a widespread problem in Japan. It often goes unreported due to societal attitudes and

stereotypes on gender roles, also among the police and judiciary. While there is temporary protection and assistance for victims, no long-term rehabilitation program is envisaged and enforcement of punishment and compensation on the part of perpetrators is meagre. Thus most victims with dependent children easily face financial difficulty, given lack of work experience, gender inequality in labour market and the lack of public support for family responsibilities. Recent cutbacks in social welfare for single parent families further puts burden on victims of domestic violence.

The particular condition of migrant women makes them more likely to be subject to violence. Specifically, significant numbers of women married to Japanese men experience both gender and ethnicity-based violence. Their resident status depends upon their staying with the partner so that the fear of deportation may represent for them a deterrent against seeking assistance, reporting instances of domestic violence or asking for divorce or separation. Women that have fled from their abusive spouse and have been denied an extension of their visa are often treated as criminals for violating immigration law.

Recommendations:

- Educate perpetrators and strictly apply punishments including compensation for victims.
- Ensure victim protection and support regardless of nationality and status of residence in applying the Law for the Prevention of Spousal Violence and the Protection of Victims.
- Enhance long-term support for victims including ensuring financial assistance for low-income single mothers.

Sexual Abuse of Women near US Military Bases

The incidence of this phenomenon is significantly high and consists of rape, gang

rape, attempted rape, abduction and murder by US soldiers. The victims face many difficulties in accessing justice because of the favourable conditions that the Status of Force Agreement grants to US servicemen and the indifference and inaction of the Japanese authorities. Recently, “date-rape” type military violence seems to have increased, thus making military violence hidden and more difficult to prosecute. These cases typically involve off-duty soldiers meeting women for sex in social settings (e.g. night clubs) rather than going to sex workers. Women in date-rape situations are reluctant to report such crimes, because the tendency of Japanese society is, again, to blame the victims in situations as such that do not reflect the conventional understanding of rape. Additionally, violence committed by off-duty soldiers is typically viewed as outside the scope of State responsibility both by the United States and Japan, and negotiations for compensation are relegated to the individual relationship between the victim and the assailant through civil proceedings. Moreover, there is generally little deterrence for foreign soldiers against committing sexual violence, given the minimal sentences under the Japanese law.

Recommendation:

- Ensure the safety of women and girls around US military bases by taking necessary measures to prevent rape and other sexual abuses by the US military personnel and, to this aim, 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 Japanese laws.

Military Sexual Slavery during WWII

The so-called “Comfort Women” system, i.e., military sexual slavery under the former Japanese military regime before 1945,

is 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 were forced to sexually serve the rank and soldiers. Many of these women, most of whom were minors, were tricked by fake job recruitment or taken by force and then confined in small rooms where they were raped by more than twenty men a day. When the Japanese military were defeated, most of these “comfort women” were abandoned or even killed. Although this crime against humanity has been addressed at some of the international human rights organizations, the Japanese State has continuously failed 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. Even the 1993 “Kono Statement,” in which the Government acknowledged its moral responsibilities in the case, has been recently challenged by the incumbent Prime Minister. The present Cabinet led by Prime Minister Shinzo Abe has tolerated the attempt of the right-wing group of the Liberal Democratic Party to review the even minimum standpoint expressed in the Kono Statement. The government’s failure to take adamant stand against such attacks, not only hurts 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.

Recommendations:

- Recognize legal responsibility of the government to ensure redress for the victims of the “comfort women” system and immediately take adequate measures, following recommendations made by the international human rights bodies. .
- Ensure education about the issue at all levels and refute any attempt to justify or deny State responsibility.

Other Recommendations:

Generally:

- Review domestic law in line with the Convention against Torture so that different forms of sexual abuse, exploitation and gender-based violence are clearly articulated in legislation to constitute the crime of torture and accordingly prosecuted and penalised.
- Establish an independent legal mechanism to monitor human rights violations; ratify the Optional Protocols to ICCPR and to CEDAW, and recognise CAT’s competence to receive individual communications under article 22.
- Incorporate the efforts to address gender-based violence and empower women, recognising that violence against women is deeply rooted in gender stereotypes and economic and social inequality faced by women.
- Require a special training on gender and multi-cultural sensitivity for police officers, immigration officers, court judges and other law enforcement personnel.
- Allocate the necessary resources to the Council on Gender Equality and the Gender Equality Bureau and provide them with the necessary authority within the Cabinet Office, such as ministry status.

Regarding Migrant Women:

- Consider that the unstable resident status makes migrant women vulnerable to violence and exploitation and consequently review the Immigration Control Law and other regulations to avoid criminalisation, deportation and revictimisation of victims of trafficking or domestic violence.
- Consider discrimination and racism in Japan as an important reality which favour and may cause violence especially to minority women and for that purpose, take special measures to promote empowerment of minority women.

