



UN Committee against Torture

*38th session
May 2007*

*Report on the Implementation of
the Convention against Torture and Other
Cruel, Inhuman or Degrading Treatment or Punishment*

Violations of Women's Rights in Japan

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OMCT would like to express its gratitude to Sarah King and Jastine Barrett for their assistance with the editing of the present report.

First Printing: May 2008
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Violations of Women's Rights in Japan
UNTB/CAT/38/2007/JPN/EN

ISBN 978-2-88894-006-7

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World Organisation Against Torture (OMCT)

The World Organisation Against Torture (OMCT) is the largest international coalition of non governmental organisations (NGOs) fighting against torture and all other forms of cruel, inhuman or degrading treatment, summary executions, forced disappearances and arbitrary detention. In co-ordinating the SOS-Torture network, comprising over 280 national, regional and international organisations, in more than 90 countries, OMCT has, since its inception, set as its task the provision of support for the actions of organisations in the field. Since 1996, OMCT has among its programmes the "Violence against Women Programme" which addresses the gender-related causes and consequences of torture and other forms of violence against women.

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Asia-Japan Women's Resource Center (AJWRC)

The Asia-Japan Women's Resource Center (AJWRC) is a non-governmental feminist organization based in Tokyo, Japan. It was founded in 1995 with aims of ending all forms of violence and discrimination against women, promoting human rights and social justice, and exploring alternative politics and empowerment of women.

In order to achieve these goals, AJWRC works in three major programmes: Information sharing and networking, Training and education, and Advocacy and campaign.

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1. GENERAL INTRODUCTION

This report was 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 United Nations Committee against Torture ("CAT") in its consideration of, and response to, torture and ill-treatment in Japan, given the Government's failure to recognize the scale and seriousness of gender-based violence. The report was presented by OMCT and AJWRC at the CAT's 38th session held in May 2007 in Geneva.¹

Torture and other manners of ill-treatment of women in Japan, including rape, domestic violence and trafficking, persist 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 continues to fail to provide redress and remedy for the victims of such crimes, including the military sexual slavery during the Second World War. Even though several international bodies, such as the Committee on the Elimination of All Forms of Discrimination against Women ("CEDAW") and the International Labour Organization ("ILO"), have made recommendations to the Japanese State, for it to address these issues in a responsible manner, it has failed to take necessary actions.

Violence against women is deeply rooted in persistent and institutionalized gender stereotypes and discrimination. This makes women particularly 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 tied to discrimination based on race and nationality. However, the State has failed to fulfil its responsibility of prevention, failed to establish strong and independent legal mechanisms, and lacks the political will to take the necessary actions to eliminate such discrimination

¹ For an overview of the drafting process and lobbying outcome, see Hisako Motoyama "Lobbying Made a Difference! United Nations Committee Against Torture recommends that Japan take Measures to Address Gender-based Violence" in *Voices of Japan*, Vol. 16, Summer 2007, available at <http://www.ajwrc.org/english/sub/voice/19-1-1.pdf>.

and to address the inequality faced by women and other minority groups in Japan.

1.1 Methodology

Following OMCT's request for information on women's issues to be incorporated into a shadow report to the CAT, 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

In preparation of this report, interviews were held with several legal experts as well as victims of violence, official government documents were analyzed, and documentation was prepared by civil society groups. In addition, legislation and existing documents in the area of gender-based violence and gender equality were also analyzed. 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

When the Japanese Constitution was promulgated in 1946, Japanese women, who had been denied equal status with men under the pre-war imperial regime, were granted equal rights in political participation, social activities and family life for the first time in history. Under this Constitution, Japan achieved high economic development by the 1980s, and although issues of war responsibility remained unsolved and the United States ("US") military forces remained stationed in Okinawa and other parts of the nation, the Japanese had no direct involvement in military conflicts. Despite these advances, Japanese women's actual participation in political and public activities remains at a low level due to persistent discrimination against women and institutionalized gender stereotypes of "man-as-breadwinner" and "woman-as-carer."

In recent years, a number of measures have been introduced to address gender inequality. International agreements such as the Convention on the Elimination of Discrimination against Women ("CEDAW Convention") and the Beijing Platform of Action have provided guidance in this arena. Among the 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 established within the Cabinet Office as the national machinery to implement the National Action Plan for Gender Equality. Additionally, local action plans and women's centres were set up in most local municipalities.

However, the impact of those measures has been largely disappointing so far. While on the one hand they have achieved high development in areas such as life expectancy and education, on the other hand, Japanese women

still hold only 10%² of the seats in the National Diet, about 10% of senior and management positions in business, and earn on average only 51.3% of men's earnings.³ This can be partly attributed to the lack of political will to implement strong anti-discrimination and positive action measures, as well as the deregulation of labour and cuts in social welfare. The absence of effective measures to ensure equal pay, equal opportunity, and adequate support for both women and men to balance paid work and family responsibilities creates large economic inequality. Currently, women comprise only 30% of formal workers compared to about 80% of informal workers. In particular, incidence of poverty among single mothers is seriously high, not only because of the gender-skewed labour market but also because of the reduction in public assistance for poor families. The lack of adequate support for single mothers has a serious impact on victims of domestic violence.

Backlash against Gender Equality

Another serious concern is the rise of public sentiment against the principle of gender equality, which prevents effective public action from being carried out. Notably, since around 2000, policy-makers, mass media and right-wing groups have led a massive campaign against gender equality and sex education in schools. This campaign comes in the aftermath of the attack against education about the past war crimes committed by 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, and even to the use of the word "gender" in any public documents. In a case reported in March 2006, after receiving a complaint from a member of the local council, 150 books on feminism and sexuality were removed from the shelves of a public centre dedicated to promoting gender equality in Fukui Prefecture. 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 conservatives, often led by local council members, makes the administration reluctant to implement gender equality programmes.

² Women hold 9.4% of seats at the House of Representatives and 14.3% at the House of Councillors as of the end of 1997.

³ 2005 White Paper on Gender Equal Society by the Gender Equality Bureau.

Although there have been no reports of very serious cases of violence involving physical attacks, women's rights advocates, particularly those working for redress for the "comfort women," often receive threatening phone calls or are harassed and attacked through the internet. Additionally, there is the recent case of the arrest of a female union activist who was laid off from her workplace after protesting against practices of gender discrimination by her employer. As a part-time worker at a University Cooperative, the woman was denied the right to paid leave and then filed a complaint with the Labour Standard Monitoring Office. As a result, the employer was forced to grant paid leave to all of its approximately three hundred part-time workers, most of whom were women. Despite the grant of paid leave, the woman was laid off in April 2005, after she refused an order of relocation. She was arrested on 25 March 2007 with 13 other union members and supporters after a protest action against the lay-off on the University Campus. This discriminatory practice against part-time workers was based on gender, and as such, this specific case should be recognized as a case of violence against women's rights defenders.⁴

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, all of which have significant implications on their vulnerability to violence and access to justice. The largest ethnic minority group are Koreans who have been residing in Japan for generations. While they have been subjected to continued discrimination in Japan, in recent years as tension between Japan and North Korea has mounted, there has been an increase in pressure and human rights violations against Koreans, particularly against those with *chosen-seki*. The *chosen-seki* are Koreans without the nationality of the Republic of Korea and thus are often regarded as associated with the State of Democratic People's Republic of Korea. Female students from Korean schools have repeatedly been victims of hate attacks, as they are easily identified by their school uniforms. Additionally, forceful police investigations into enterprises run by Koreans or Korean schools, for minor

⁴ Information provided by the Santama Labour Legal Centre.

offences, have increased dramatically. This has a significant impact on women who are both parenting and 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 to be subjected to domestic violence because of ethnic discrimination. Making their situation even more precarious, their unstable resident status depends on these women continuing to live together with their violent spouses. Despite the social and economic difficulties they face, these foreign wives are typically overlooked in gender-related government policies and have limited access to public services. Instead of being targeted for assistance, these women are frequently targeted by immigration authorities and policing campaigns.

2.2. Political Structure⁵

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

The Gender Equality Bureau is responsible for the overall coordination and promotion of matters relating to gender equality, serving as the Secretariat for both the Council and the Headquarters. *The Council for Gender Equality* was established within the Cabinet Office and is tasked with investigating, reporting and providing advice 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, assessment and evaluation. *The Headquarters for the Promotion of Gender Equality* is comprised of all Cabinet Ministers and high-

⁵ *Gender Equality in Japan 2007*, Gender Equality Bureau, Cabinet Office, Government of Japan, 2007, pp.22-25.

level government officials, with the Prime Minister as president. Although it is meant to facilitate gender equality measures at a 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 among 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, women are not allowed to remarry for six months after divorce, in the event that it is necessary to determine the paternity of a child, however, the same prohibition does not exist for men. Third, children born out of wedlock are discriminated against in both legal and administrative 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 this practice is not gender-based discrimination since both girls and boys born out of wedlock are discriminated against equally. Further, a married couple must 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 take the husband's family name, which causes identity problems and disadvantages in pursuing careers on the part of women.

Lack of Effective Legal Mechanisms to Ensure Equality

Another major concern is the lack of effective legal mechanisms to both ensure substantive equality between men and women and enforce punitive

sanctions against those who perpetrate discrimination. Penalties for violence and discrimination against women are, in general, quite lenient. 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 sanctions are too weak. Also, discriminatory statements against women by public figures usually go unsanctioned, as no legal provision exists to prohibit such statements or to protect the collective rights of minority groups vis-à-vis the freedom of speech. There is no strong, independent mechanism to monitor and address human rights violations and discrimination. Although the Japanese Government ratified the CEDAW Convention in 1985, it has not ratified the Optional Protocol. The Optional Protocol 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 the Optional Protocol to the CEDAW Convention, as well as of the Optional Protocol to the International Covenant on Civil and Political Rights (“ICCPR”) and recognition of CAT competence to receive individual communications under Article 22, would strengthen the independence of the Japanese judiciary as well as its awareness of, and responsiveness to, all forms of violence against women.

Immigration Laws and Regulations

Laws and regulations regarding immigration control have a significant impact on violence against women of foreign origin. While the Japanese Government continues to refuse to allow unskilled workers to migrate legally to Japan, industries actually rely heavily on the cheap labour force of foreign workers. For female migrants, other than marrying Japanese nationals, the ways to migrate and work legally in Japan are extremely limited. While the Government accepts a small number of women as “trainees,” they are not recognized as “workers,” and are thus excluded from any legal protection afforded by workers’ rights. This system is strongly criticized by human rights organizations as exploitative. A number of women from Latin America and other regions entering Japan have blood relationships with Japanese citizens, and are thus allowed to fill the space made available by the lack of workers in factories and shops. However, this is no great advantage as these women are often subjected to brokers and middlemen, and their condition is tantamount to bonded labour. Also, the

Japanese Government has tightened the issuance of the “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 documentation often seek jobs in the sex industry, since paid domestic labour is not very common in Japan. Further, particularly since the 2001 terrorist attacks in the United States, the Japanese Government tightened the immigration control and policing campaign against migrant workers without working visas. This threatens the lives of migrants, including those with legitimate resident status. The Japanese government does not grant amnesty, even to migrants who have resided in Japan for decades. Thus, migrant women are very vulnerable to trafficking, sexual exploitation and domestic violence.

To give a specific example, there is the case of a Filipino woman who was working at a snack bar at the time of a police raid. The woman did not have proper documents, and when the police entered the building, she jumped from the 3rd floor.

Laws Regulating Sex-Related Business

Other relevant laws that impact violence against women are those regulating sex-related businesses. The Anti-Prostitution Law (1956) bans the buying and selling of sex (sexual intercourse) in exchange for money or any kind of interest, and provides punishment for those who support such activities. It should be noted that while the law prohibits acts of prostitution, neither the women involved in prostitution, nor their customers, face punishment for their involvement. The law provides punishment for those who support such activities though tempting, pimping, providing places for prostitution, and taking control over women who sell sex. Women who are involved in prostitution instead are regarded as requiring protection and correction.

While these are the written laws, the reality is much different. In practice, the sex industry has continued to grow under loose regulation by the Security Committee and the police. The Law Regulating Adult Businesses, etc., regulates business places, business hours, business conditions, qualifications for managers, inter alia. 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, as well as 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 State has never clearly articulated in legislation the meaning of torture and coercion in line with the Convention, or specified that coercion and intimidation by a public officer to commit a sexual act will constitute torture. An example of the problematic nature of this unclear 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 criticism from other countries by commenting that, “The fact is, there was no evidence to prove there was coercion. . . That largely changes what constitutes coercion, and we have to take it from there.”⁶

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 focus too narrowly 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 comprehensive legislation against gender-based violence so that a victim-centred definition of violence is established in law.

⁶ 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 between 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 as constituting the crime of rape. Further, 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 an unambiguous power disparity between those involved, are not necessarily required to prove the crime of rape; however, it is the victim's burden 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 in a sexual abuse case is illustrative of this problematic 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.⁷

The same limitations with regard to the standard of proof are also evident in crimes of forcible indecency. The Penal Code identifies in Article 176 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** (in Article 178-1(1)) and **Quasi Rape** (in Article 178-1(2)) as a crime occurring when a person who commits an indecent act upon a male or female (Quasi Forcible Indecency) or sexual intercourse with a female (Quasi Rape) “by taking advantage of loss of consciousness or inability to resist, or by causing a loss of

⁷ 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.

consciousness or inability to resist.” The Penal Code also identifies **Gang Rape** in Article 178-2 as taking place “when two or more persons jointly commit the crimes” proscribed in Articles 177 and paragraph 2 of 178-1.

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

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 constituted crimes in other Japanese laws. For example, the Penal Code bans abduction and fraud; the Anti-Prostitution Law bans acts of pimping, providing places for prostitution, and taking control over women who sell sex; 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 have proven ineffective in both preventing trafficking in persons and preventing violence against sex workers.

Domestic Violence

The Law for the Prevention of Spousal Violence and the Protection of Victims (Law No. 31 of 2001)⁸ defines spousal violence as “violence toward

⁸ As amended by Law No. 64 of 2004.

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 a boyfriend/girlfriend who does not live with the victim.

Stalking

The Law on Proscribing Stalking Behaviour and Assisting Victims, enacted in 2000, defines stalking as "following a specified person about, demanding 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

There is no comprehensive law addressing sexual harassment. The Law on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment enacted in 1985 and amended in 2006 prohibits sexual harassment in the workplace. Sexual harassment in this context is defined as any disadvantage in working conditions either caused by a worker's responses to sexual speech and behaviour, or by their working environment.

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 legislative and judicial bodies.

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 by 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 State amended the Penal Code (Article 226) and established the Crime of Trafficking in Persons as follows:

Article 226-2

- (1) A person who buys another is subject to be imprisoned for a minimum term of three months up to 5 years.*
- (2) A person who buys a minor is subject to a minimum sentence of three months up to 7 years.*
- (3) A person who buys 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.*
- (4) The same penalty applies to a person who sells another.*
- (5) A person who buys or sells another for the purpose of transportation from one country to another is subject to a minimum sentence of two years.*

Article 226-3

A person who transports another who was abducted, kidnapped or sold from one country to another is subject to a minimum sentence of two years.

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 a 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. 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 two 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 a person repeats such behaviour despite a "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, the 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 the case of continued non-compliance, may publicly announce the name of the company as a sanction.

As for sexual harassment in schools, public and private schools are covered by the Equal Opportunity Law and thus rules to prevent sexual harassment. However this covers harassment in schools as a working place, and sexual harassment against pupils is not directly addressed. As the Law does not apply to the former national universities, each national university followed the ordinance of the Ministry of Education in line with the rules prepared by the National Personnel Authority, and prepared guidelines and rules to prevent any form of sexual harassment, including against students. Some of the private universities have also followed the ordinance and prepared guidelines.

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 for the crime syndicate (Yakuza). In recent years there are more diverse and subtle forms of controlled prostitution, for example, the use of internet and mobile phones in order to get around regulations. This often leads to unsafe and exploitative working conditions for sex workers. For example, women who apply for employment as bar hostesses often find themselves involved in prostitution, which was not mentioned in the employment advertisement; or in other cases, sex workers are forced to provide sexual services they did not consent to, services which often involve violence.

As more women are drawn into sex work as a living, there are increasing numbers of complaints for non-payment of wages, unreasonable penalties, client quota and violence by employers. However, most women are reluctant to report cases of violence and exploitation, due to the illegal character of prostitution, the possible consequences of police involvement, fear of Yakuza, and the stigma attached to sex workers. Under such circumstances, workers who are inexperienced, young girls and those who are working in secret without telling their friends or family are more likely to be exposed to sexual violence and exploitation. Further, there are cases of harassment and arbitrary arrests of sex workers by police, in order to make examples of them to others. For instance, a woman who was working as a stripper was arrested for public indecency, and as a result her name and address were published in the newspaper. The police also provided her personal information, including her phone number, to some of the customers in the process of her prosecution. As a result of the release of her personal information, she received a phone call from one of the customers against her will.⁹

Migrant women without working visas are particularly reluctant to report the crimes committed against them as the police are increasingly focusing

⁹ Information provided by SWASH.

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 hostessing (serving drinks and socialising with customers), was 7,061 in 2005 (15% of deported illegal workers and 36% of all women deported).¹⁰ The fear of arrest and deportation makes those women easy targets for exploitation and violence by both customers and employers. A migrant woman sex worker said she was threatened by one of her customers to return the money he had paid. If she did not return the money, this customer said he would report her to the police or the Immigration Office. When she reported this to her employer, he beat her. In such circumstances, migrant women are reluctant to seek assistance, even from NGOs.¹¹

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 even in the 1980s, two decades later, the Government has yet to seriously tackle the problem. 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 six 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 total.¹² This is a dramatic increase compared to previous years, yet it seems to be just the tip of the iceberg.

¹⁰ The Immigration Control Office.

¹¹ An interview conducted by SWASH in 2007.

¹² Press release, 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. Upon arrival, their passports are taken away and they are forced to engage in prostitution in order 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 million yen. Even if they have legitimate “entertainer” status, which allows them to work in the entertainment business as a dancer or singer, these women tend to be coerced into taking on jobs that are outside of the scope of their visa or their contracts. This problem is exacerbated by the fact that work as an entertainer is not actually considered work. Thus, the women are thereby denied the right to complain about abuses and exploitative working conditions forced on 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.”¹³

The survivors faced conditions they had never imagined before leaving home: forced into prostitution, receiving hardly any of the money made from selling their body:

“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.”¹⁴

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.”¹⁵

¹³ 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).

¹⁴ *ibid.*

¹⁵ *ibid.*

The experience of violence and sexual exploitation leaves the survivors with serious damage, both emotionally and physically. Additionally, they are often subjected to physical ailments including HIV infection and drug dependency.

Police Violence and Violence in the Penitentiary System

It is very difficult to know the exact incidence of police violence against women since it is the most complicated kind of crime to report and prosecute. Yet, small numbers of reported cases indicate how the perpetrators of this violence use their power as police officers over women in vulnerable positions, in situations where there is no strict law enforcement mechanism or outside monitoring.

In July 2005, an assistant inspector was arrested for sexually abusing and raping a female detainee who had been arrested for holding drugs. The perpetrator had interrogated the victim over twenty times since her arrest.¹⁶ In June 2004, the chief warden of the Toyohashi Branch of Nagoya Prison was arrested for repeatedly having sexual relations with a detained woman and for impregnating her. It was reported that the perpetrator demanded the woman to have sexual relations with him in exchange for improvement of her treatment¹⁷. Even though the National Police Agency has an internal rule that a male officer should not interrogate a female suspect without a female assistant, or that a male officer should not go into women's cells without female colleagues, the above cases show that such rules are not actually respected.

There is even a case where a victim of domestic violence was subjected to further sexual violence by the police while in a protective shelter. In April 2004, a woman filed a report of rape by an assistant inspector who had received her original report of domestic violence in December 2003. From that time, the assistant inspector repeatedly visited her at the protection shelter "to see the situation" as a part of a police operation. He raped her in March 2004, while her child was asleep in the same room, making her unable to resist the attack. However, the police did not prosecute the

¹⁶ Report by Mainichi Shimbun, 7 July 2005.

¹⁷ Report by Yomiuri Shimbun, 24 June 2004.

perpetrator for rape but instead dismissed the charges against him for the reason that “the victim’s resistance was not strong enough to consider it an act of rape.”¹⁸ 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 the 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 toward gender roles and violence, as well as tolerant attitudes by the police and the judiciary towards violence against women in intimate relationships. According to the *Survey on Violence between Men and Women*, conducted by the Cabinet Office in 2005, 26.7% of women had suffered physical abuse from their spouse. In addition 16.1% of women had suffered psychological abuse and 15.2% of women had been coerced into unwanted sexual activity.¹⁹

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 having their cultures degraded or being blamed for not being like “Japanese women.” Often, the resident status of these women depends upon them continuing to live with their abusive spouse. Consequently, the fear of deportation often deters these women from seeking assistance, reporting instances of domestic violence or seeking divorce or separation. Some husbands request the immigration bureau not to extend their wife’s visa as she has taken refuge in a shelter. 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, several women have been arrested for overstaying their visas although they are victims of domestic violence.²⁰

¹⁸ Report by Asahi Shimbun, 23 August 2004.

¹⁹ *Gender Equality in Japan 2007*, Gender Equality Bureau, Cabinet Office, Government of Japan, 2007, p.31.

²⁰ Ken Suzuki, “Effect of Counterterrorism and Public Safety Control on “Illegal” Immigration” in *Voices from Japan*, Vol. 18, Winter 2007.

Sexual Abuse near Military Bases

The incidence of violence against women and girls around US military bases is significantly high. In Okinawa, where 75% 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 decades.²¹

The problem is not only with the high incidence of crime but also with the difficulty faced by victims in accessing justice, due to the discriminative criminal justice system as well as the favourable conditions assured for US servicemen including free movement outside their bases under the Status of Forces Agreement (which accompanies the US-Japan Security Treaty).²² The gang rape of a girl by three marines in Okinawa 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 combined with the indifference and inaction demonstrated by the Japanese Government. Nevertheless, the Japanese State has not made serious efforts to take effective measures to prevent and prosecute crimes by the US military. More recently, “date-rape” types of military violence seem to be increasing. This type of violence by the military is even more easily hidden and more difficult to prosecute. Typically these cases involve off-duty soldiers meeting women in night clubs outside of the base and raping them. Sixty percent of the crimes by the US military are committed by marines, and 60% of the US military stationed in Okinawa are marines, of which 80% are between 18 and 22-years-old.²³ These young men, with smaller disposable incomes, tend to try to meet women for sex in social settings rather than paying to go to sex workers. Women in date-rape situations are reluctant to report such

²¹ Documentation of incidence of violence by US soldiers, Okinawa Women Act Against Military Violence.

²² *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”).*

²³ “Military Violence Against Women Under Long-Term Foreign Military Presence in Asia” By Suzuyo Takazato, Okinawa Women Act Against Military Violence, Japan (Co-Author, Akibayashi Kozue, East Asia-US-Puerto-Rico Women's Network Against Militarism) in *Realising our rights: Holding the state accountable for violence against women in the Asia Pacific region*, Asia Pacific Forum on Women, Law and Development (APWLD), 2005.

crimes due to the tendency of Japanese society to blame the victims in these situations. This attitude completely contradicts the conventional understanding of rape.

The Military Sexual Slavery during the Asia-Pacific War

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 and as a form of torture in which the State was directly involved. During the Second World War, the Japanese imperial military set up “comfort stations” all over the occupied and colonized areas in Asia and the Pacific. In these stations, 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 in turn invited the rise of anti-Japanese sentiments and the spread of venereal disease among soldiers (although it did not even serve the said purposes). While the number of the “comfort women” is estimated between several thousand and 200,000, actual figures are not available since the Japanese military systematically destroyed the records before the investigations by the Occupation Authority started. Many of these women were tricked by fake job recruitment or even taken by force. They were confined in small rooms to be raped by more than 20 men a day and subjected to daily violence. It should also be noted that most of the victims were minors. When the Japanese military was defeated, most of the deployed “comfort women” were abandoned or killed in distant places.²⁴

This crime against humanity has been addressed by some of the international human rights organizations, including the ILO, as well as by 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 and 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,

²⁴ 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>).

offensive comments by politicians against the victims, which further torments the survivors, and has a significant impact on the persistent impunity of violence against women in Japan. This will be further discussed under Section 10.

7. NON-REFOULEMENT (Article 3, CAT)

Given that it is 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 such permission is not very clear. The Government has provided special permission of stay for migrant women who were identified as victims of trafficking; however, the assessment of the circumstances of arrested women is inadequate. There is a great added danger that victims who may face violence, or the risk of being trafficked again, are deported as “criminals,” instead of being provided with assistance. Further, there is a lack of international cooperation between Japan and the countries of origin in assessing the risks the victims may face, investigating and prosecuting traffickers, and protecting and supporting victims after their return. This was exemplified 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, both living in the Philippines. Their names were identified. Despite the discovery of this fact, the 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 appears to have existed between the two countries in order to investigate this case and ensure the safety of Virgie, who was repatriated to the Philippines after testifying during the first trial in July 2006. Her repatriation occurred 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 her with some care.²⁵

The lack of international coordination in prosecuting organizers of crime and protecting victims not only suggests that women sent back to home countries may face the risk of re-victimization, but also poses serious limitations in the 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 so far failed to address the root causes of women's vulnerability to violence, including inequality in employment and access to social security, due to the lack of authority and coordination with other government bodies. Also, these

²⁵ 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.

programmes focus largely 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 publicly-funded women's shelters, which were initially intended to protect women involved in prostitution. These public services were later extended to assist victims of violence (for example, domestic violence). In recent years, these offices have been given the additional task of supporting the survivors of trafficking. However, they only provide urgent help including short-term stay, food and clothing, and there is currently 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 2004.²⁶ The Government took some measures toward the prevention of human trafficking, including: strengthening of immigration control and of investigation of activities during foreigners' stays in Japan; an amendment to the Immigration Standard Ministerial Ordinance regarding the entertainer's visa, and an amendment to the Law Regulating Adult Businesses, etc., including imposing on business owners an obligation to verify and record the residency status of employees engaged in servicing customers.

However, in the two years since the Action Plan was adopted, it is doubtful whether these measures have so far had any effect in preventing trafficking. There has been an increase in the number of cases where brokers and sex service shop owners have been arrested and indicted on charges of the newly introduced crimes of trafficking in persons, kidnapping for profit, Immigration Control and Refugee Recognition Act violations, Employment Security Law violations, etc. However, those who are indicted, and become defendants in Japan, are only brothel managers, and are often women with the same nationalities as the victims. Those responsible for manipulating these managers are still not being arrested or indicted.

²⁶ The Recent Actions Japan has taken to combat TIP (Trafficking in Persons)
http://www.mofa.go.jp/policy/i_crime/people/action0508.html

Also, even when the perpetrators are arrested, the penalty remains minimal. According to the available data, of the 75 perpetrators prosecuted, 61 were found guilty: among them, three were sentenced to prison, 48 were given stays of execution, and 13 were fined, as of June 2005.²⁷ Further, there is a lack of information-sharing and internationally coordinated efforts to prosecute those engaged in trafficking between Japan and sending countries.

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 often the case that the behaviour or sexual history of the victim is questioned in the courts, causing serious harm to that victim. This makes victims reluctant to report sexual crimes. Additionally, there are not enough professional emergency clinics for the treatment of victims in the immediate aftermath of a sexual assault thus denying them the support that they deserve.

Domestic Violence

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

Despite the measures provided for in the Spousal Violence Law, problems remain with the enforcement of these protective measures. More support is needed for the provision of domestic violence shelters and for the children who suffer the effects of domestic violence. Further, there is a need for the protective orders 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

²⁷ Press Release, the National Police Agency, May 2006.

order results in imprisonment of up to one year or a maximum fine of 1 million yen). The number of arrests for violence committed against a spouse remains low and compensation for victims is far from sufficient. It is worth noting that the law is lenient in terms of enforcing court judgments ordering the payment of compensation to the victims or giving support to the children. Currently the victim is the party who must file further court proceedings to demand payment. This is usually very difficult, as the woman is often in financial need. Once again, the abusive spouse in this system is allowed to escape responsibility.

Domestic violence victims also face difficulties because of the Japanese registration system. Many domestic violence survivors are reluctant to notify the city and ward offices when they have a 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, or for targeted populations, to learn about the facts, nature, background and relevant laws and measures related to 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 of particular concern that holistic education programmes on sex, gender equality and human rights are not currently part of the national school curriculum. Education on these issues depends almost solely on the efforts of individual teachers. These teachers are not receiving any public support, but rather, are 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 as “obscene” and “immoral.”²⁸ Gender-equal education in public schools has also been attacked as “promoting unhealthy ideas to deny traditions and family” by conservative media and ruling parties. Thus young girls and boys are not learning about their rights, management

²⁸ Emiko Shimizu, “Sex Education in Schools Today” in *Voices from Japan*, Vol. 12, Winter 2004.

of risks of violence or even accurate knowledge about HIV/AIDS and other sexually transmitted diseases.²⁹

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 few weeks every year, it is just a general 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. In particular, there are no adequate efforts to inform minority women of the risks of violence or of assistance measures in the event that they are facing violence. For instance, foreign women entering Japan often face a humiliating investigation by the Immigration Control Office, and there are not sufficient efforts to adequately inform them of available assistance, for example, crisis hotlines. It is also a problem that no specific efforts are made to educate men and boys, or targeted populations, depending on the type of violence at issue. For example, there is no specific effort to educate men about the incidence of violence against sex workers and trafficking in women.

The 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 for 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 the investigation of rape and other crimes involving violence against women. Additionally, gender stereotypes among the judiciary often bring further suffering to victims in courts and lead to impunity or lenient penalties for the perpetrators. However, there is no systematic gender-sensitive training of judges, with the exception of some voluntary initiatives.

²⁹ Kokichi Murase, "AIDS kyoiku no mondai to seikyoiku bashing" in *Women's Asia* 21, Vol. 39, 2004.

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

A number of lawyers and human rights organizations have repeatedly pointed out that the Japanese police rely heavily on confessions to prosecute criminals. This practice often leads to the use of threats and intimidation during investigations, which have no outside monitoring. As shown in Section 6, the unchecked use of power by police officers often results in sexual abuse of female 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, it is not strictly applied. Further, the published internal regulations of the Police Agency do not mention any precise measures to respond to gender-specific needs and issues regarding female 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 six hours of interrogation, which caused her underwear to be stained with blood. She was told to wash them herself in front of other female detainees. She also found, after exchanging information with her male colleagues who were detained at the same time, that the rules were more strictly applied in women’s cells compared to men’s cells in the same facility where they were detained. For example, the circulation of reading materials or the time allotted to use writing materials, was more severely restricted in women’s cells.³⁰

Prolonged detention, uncertainty of their status, risk of deportation and separation of families cause great suffering for asylum seekers, migrants and their families. In particular, separation from children causes great pain for mothers in detention, including both physical and mental illness. In addition, the detention of spouses puts a heavy burden on women to support their families. The detention and deportation of immigrants often result in the actual breaking up of families. For example, in November 2005, a

³⁰ An interview conducted by AJWRC staff member on 14 March 2007.

Vietnamese woman was forcibly repatriated to Vietnam although her husband (a refugee) and baby remained in Japan.³¹

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, giving trafficking victims better protection and also allowing them to stay at the public women's shelters located in every Prefecture in Japan. However, the guideline system for recognizing trafficking victims remains unclear, and many trafficking victims are still treated as illegal migrants and are deported without redress and remedy. Even though trafficking victims are protected and housed temporarily at public women's shelters, the current legislation could be much improved. Current weaknesses which could be addressed include: victims' insufficient understanding of their rights to due process during their stay at the shelter and investigation until their return, faults in the interpreting and translation system as well as faults in the medical check and health care systems. Moreover, legal support in claiming unpaid wages or compensation for victims is missing altogether.

As trafficking cases are frequently viewed as criminal matters, the justice system often finds the victim guilty or somehow at fault without any further effective investigation into links with organized trafficking crime. In addition, the determination of whether a person is a victim, and needs protection, is made by the police and/or the Immigration Bureau, indeed the same parties who have been treating the victims as perpetrators of crimes. Persons who ask for protection at a police station may be treated as victims, but those who are discovered during investigations of sex-related businesses may be arrested even if they could be victims.

³¹ Amnesty International, *Report 2005: Japan*, <http://web.amnesty.org/report2005/jpn-summary-eng>.

A 2000 trafficking and murder case in Yokkaichi city involving a Thai trafficking victim who was under severe threat to be resold to another trafficker illustrates this problem quite clearly. In an attempt to escape from her boss, with the assistance of her boyfriend, she hit her boss over the head. Her boyfriend then became afraid that the boss or the organized crime members would take revenge on them, so he murdered her boss. The court recognized that this was a case of human trafficking, and that the Thai woman was a victim of this trafficking, but despite this, she was still sentenced to seven years in jail for robbery resulting in death.³² 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 are eligible for special permission under Article 50 (Section 1.3):

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:
 - (1) *He has obtained permission for permanent residence*
 - (2) *He has had in the past a permanent domicile in Japan as a Japanese national*
 - (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 who should be entrusted to privately-run shelters. The Office can provide clothing, food and shelter, but its personnel lack the necessary experience to effectively work with women in these situations. It is even more complicated for the Offices to provide adequate

³² Mainichi Shimbun (Japanese) evening edition, 20 July 2005.

protection to victims of trafficking who do not speak Japanese and are thus in a very unique, difficult situation. Additionally, the Offices do not have the authority to provide medical care, counselling or living expenses, they do not have interpreters stationed there, and they lack experience working with the Immigration Bureau, foreign embassies and consulates. Due to these numerous issues, there is a lack of even a minimum level of redress and rehabilitation for the victims – with the exception of a few cases, the Government even refuses to bear medical expenses. There are no places where victims can go for long-term protection after leaving temporary care. Further, even though victims of trafficking are granted special permission for residence in Japan, they can get only “special activities” status, which does not make them eligible to obtain social security benefits.

Moreover, in order to punish not just low-level criminals, but all perpetrators involved in trafficking, the victim's statement is an important starting point in the investigation. However, it can 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 insufficient for the victims to recover both physically and psychologically. Furthering the complications, witness protection measures under the Criminal Procedure Code are only given while the victims are in court buildings. It is thus difficult to extend out-of-court protection to the victims/witnesses and their families residing in their home countries. Because of this, the victims are 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 adopted a Guideline on Support to Victims in 1997. This Guideline provides measures to prevent secondary suffering caused by inappropriate police actions, including deployment of specialised officers and female staff in the investigation of sexual crimes. There has also been legislation requiring specialised training of police officers on domestic violence, stalking and child abuse. However, these are only guidelines without strong enforcement or 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 illustrates:

In a 2002 rape case in Kanagawa Prefecture, after reporting the crime, the victim was immediately forced to accompany the police back to the scene to pose in photographs taken by the police. Despite the fact that the victim was still in deep shock at the nature of the crime, the police made her give them her underwear as evidence and did not provide her with replacements. 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 an effort 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 the hope of finding a paper cup, but in finding none, just sat on the toilet and cried. The victim was questioned by three to four 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 following week. It is imperative that any investigation into the suspected use of date rape drugs includes a blood test, however in this case no blood test was taken by the police even though the victim smelled of 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 later date the victim was then made to show the sequence of events of the entire rape act whilst a male and female officer took photographs for evidence. The treatment by the police conducting the investigation added immensely to the traumatic nature of the rape. Following that, the police made sexual and insulting remarks when she gave her statement. This was also noted by her Embassy's consular staff who accompanied her to the police station in Kanagawa.³³

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

In order to encourage and assist survivors to report crimes against them, the police agency in each prefecture offers a hotline service. There is also a public women's consultation office to provide victims with counselling.

³³ Information provided by Warriors-Japan.

However, there is no protection shelter where rape victims can stay for even a short period, nor are there any 24-hour rape crisis centres to provide the kind of counselling and immediate medical treatment that these victims need and deserve. The Japanese National Police Agency has drawn up policies for victim support, including efforts to help victims of sex crimes to lessen their psychological burdens, however police probes have traditionally been and currently remain, focused on investigations into finding the criminal. Many police officers are still unable to pay attention to the victim's emotional needs and provide the 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 within 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 they are indicted. Additionally, violence committed by *off-duty* soldiers is typically viewed as outside the scope of state responsibility on the part of either the United States or Japan, and is thus left to negotiations for compensation between the victim and the assailant. Unfortunately, it is literally impossible for the victim to locate the perpetrator. Further, there is little deterrence to those who would commit sexual violence against women, given the minimal sentences under Japanese law. In a rape incident in 2002 near the US 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 court-ordered compensation. 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 for short-term stay and no adequate support for long-term rehabilitation is provided. Most of the victims with young children face financial problems because of the burden

of family responsibility combined with 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 on average. In that situation, most single mothers with young children have no choice but to apply for public assistance to support their families. However, the Japanese Government has continuously reduced cash assistance for single mothers in the past several years. Furthermore, the Government is planning to eliminate additional payments for low-income single mothers who are already on social welfare. Although the Daily Life Security Law does not stipulate any criteria in relation to past history for eligibility, domestic violence victims report further difficulties in gaining access to social welfare benefits. Some municipalities take it one step further and even 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 quite difficult to access. The eligibility criteria are strict, including requirements such as the need for a guarantor under the age of sixty, who has a secure job.

Foreign Women who are 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 residency status. However, it is often the case that domestic violence victims who seek help from the police are treated as criminals offending the Immigration Control Act and are thus deported without any investigation or redress.

In March 2006, the police arrested a Thai woman inside the protection shelter where she was living temporarily, for overstaying her visa. The woman was unable to renew her visa because she was subjected to brutal violence from her spouse and was forced to move to the protection shelter for safety. 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 her divorce trial to start.

This kind of arrest, detention and worst, deportation of victims who have overstayed their visas, is the most problematic area in giving protection to victims of domestic violence.

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

Even if undocumented migrant women are recognized as victims of domestic violence, they are still not immediately granted a stable residency status. Moreover, even after the amendment of the Law on Spousal Violence in 2004, which puts primary emphasis on the protection of victims, it still takes about six months to one year before an undocumented victim is granted resident status. This long delay has grave consequences to the women's lives, and the lives of their children, as they are barred from applying for stable jobs or accessing social security benefits. The situation is somewhat less difficult for undocumented victims with children having Japanese nationality, but these households still have only the minimal support given to the Japanese children to survive on. The lack of any public support, limited job opportunities and the lack of family support makes the lives of victims with children, especially those with undocumented status, very difficult.

Redress for the Victims of Military Sexual Slavery³⁴

While the practice of the "comfort women" system has been common knowledge for some time in Japan, it was only after the survivors in Asian countries came forward to demand an official apology and compensation in the early 1990s that the issue of state responsibility and compensation for victims came to the forefront of public discussion. Although the Japanese Government initially tried to deny state responsibility, it was forced to make

³⁴ 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).

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 a moral responsibility, to date, the Japanese Government has refused to admit its legal responsibility to provide state compensation to individual victims; claiming that the issues of compensation have been adequately addressed in bilateral agreements with the victimized countries, despite the fact 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, however, the fund was limited only to certain countries, despite the fact that there are many other countries where victims of sexual slavery have been identified. Moreover, 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 refused to accept the "charity money." The Fund ceased its activities in March 2007.

Japanese courts have also failed to address the State's shortcomings in bringing justice to the victims of these crimes. Out of ten law suits filed by the victims against the Japanese Government between 1991 to 2001, with the exception of three cases still pending in court, seven cases were dismissed by the Supreme Court for technical reasons, such as statute of limitations and immunity of the Japanese State (due to a lack of treaty provisions mandating state responsibility) even without factual findings.

A few of the aforementioned judgments pointed out the need for redress for victims through legislation 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 any efforts to enact the necessary legislation. Rather, the ruling Liberal Democratic Party (LDP) has taken 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 be repeatedly defeated facing strong resistance from the ruling parties. Further, the present Cabinet³⁵, led by Prime Minister Shinzo Abe, tolerates the attempt of the right-wing group of the LDP to review even the minimum statements and apologies expressed in the Kono Statement and Mr. Abe himself has repeatedly made comments disputing the Kono Statement.³⁶ Such repetitive statements denying state responsibility by government officials further hurts the survivors.

The Japanese Government has also failed to provide both the school and the general public with education on this issue. Since the survivors began demanding justice, there has been a massive campaign against the women and their supporters, defaming them as “lying for money” or as “merely prostitutes,” and justifying the war, colonization, rape and sexual slavery during that time. The Government has also attempted to bar education about the “comfort women” programme in junior high schools. When 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 the textbook companies have avoided mentioning the issue and currently, only two textbooks among eight make even brief references to it. The Government’s failure to take a firm stand against such attacks not only hurts the survivors yet again, but it also reproduces the discriminative discourse against women and furthers the attitude of the administration and the judiciary, which continue to prioritize national interests over the human rights of women.

³⁵ At the time the present report was first submitted (May 2007).

³⁶ “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*, 9 March 2007.

11. RECOMMENDATIONS

In general

- While the Japanese Government insists that all of the obligations in the Convention against Torture 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 create legislation in order to prevent human rights violations and abuses 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 a specific focus on gender-based violence.
- The Japanese Government should seriously consider establishing an independent legal mechanism to monitor human rights violations. In connection with this, the Japanese State should ratify the Optional Protocols to ICCPR and to CEDAW, as well as 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 actually strengthen its independence from the Executive.
- In order to promote the success and usefulness of the mechanisms already in place, the Government should allocate the necessary resources, and provide the necessary authority, such as ministry status, to the Council on Gender Equality and the Gender Equality Bureau.

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 broaden 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 the economic and social inequality faced by women.

- Considering that the indirect discrimination against women in employment and the lack of access to adequate social security faced by women, including minority women, have crucial implications with respect to women's vulnerability to violence and exploitation, the Government should take the necessary measures to achieve de facto equality, including introducing positive measures and eliminating the remaining provisions of law that discriminate against women.
- The Japanese Government should ensure the provision of education on gender equality and the human rights of women and girls at all levels, including sexual and reproductive rights, as well as issues faced specifically by minority women. They should take a firm stance against any attempt to misinterpret or hamper such education.

Law Enforcement

- The Government should conduct an independent assessment of the incidence of human rights violations and state compliance with internal rules and standards, including the Criminal Investigation Norms, incorporating gender specific issues, with a particular focus on the investigation of rape and other forms of sexual abuse.
- The Government must require special training on gender and multi-cultural sensitivity for police officers, immigration officers, court judges and other law enforcement personnel. Additionally, emphasis should be put on putting an end to the absolute and unnecessary separation of family members in detention centres and ensuring that the right of detainees to communicate with their family members is respected.
- They should 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.

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, incest, other forms of

sexual abuse beyond just actual sexual intercourse, as well as rape of men. Additionally, when there is an unequal power relationship between the perpetrator and the victim, in other words, the former can exercise power over the latter (for example a teacher/student relationship), coercion should always be presumed and the victim should not have the burden of proving lack of consent. An increase in minimal sentences should also be considered in view of the low deterrent effect of the current law.

- The Government should ensure that female victims of rape, or other sexual abuses, are eligible for protective measures, such as shelters and rehabilitation programmes. Additionally there should be an increase in both training and funding for these clinics, shelters and programmes. Specific consideration should also be given to the provision of medical personnel in order to increase the number of hospitals staffed by nurse examiners for sexual assault, dedicated and compassionate doctors and with the possibility for intervention to other support services if required. Rape test kits and collection of specimens for toxicological analyses for drug facilitated sexual assault must also be made more readily available to these institutions than they are currently.

Migrant Women

- Considering that unstable residency status makes migrant women vulnerable to violence and exploitation, the Japanese Government should review the Immigration Control Law and other regulations to avoid criminalisation, deportation and re-victimisation of victims of trafficking or domestic violence. Residency permission should be immediately provided to the victims of violence based on their needs.
- The Japanese Government should acknowledge that discrimination and racism are important realities in Japan, which favour and may cause violence – especially to minority women. Because of this reality, the Government should take special measures to promote the 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).

- In addition to acknowledging the situations faced by these women, the Government should make efforts in the labour administration to widen the prospects for obtainable employment, as well as to guarantee migrant women's human and labour rights.

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 the 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 such that they do not fear of being handed to the police or the Immigration Control Office.

Trafficking

- While considerable efforts have been made 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, the Japanese Government needs to enhance internationally coordinated efforts to ensure information-sharing, investigate and prosecute the organizers of trafficking, and to support rehabilitation of victims.
- In order to assess the circumstances of each woman involved in trafficking more carefully and to prevent victims of trafficking from being treated as criminals violating immigration law, the Government should publish and review the procedures and mechanisms used to identify victims of trafficking and further review them in consultation with NGOs.

Further, there is a need to greatly expand assistance measures for victims, to ensure protection until their full recovery, clarifying the responsibilities of government agencies and securing adequate funding. There is additionally a great need for international cooperation to support victims after their return to their home countries.

- The Government should also make more coordinated efforts to educate the general public, as well as target groups, about trafficking in persons and the sexual exploitation of women, as there continues to be a serious lack of awareness in these areas.

Domestic Violence

- 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 their nationality and residency status. The Government shall make the protection of victims the primary priority. This means that the Law for the Prevention of Spousal Violence and the Protection of Victims will take precedence over the Immigration Control Law. Victims shall not be arrested and detained through criminal and administrative procedures for immigration-related violations.
- The Government should set up a system wherein the abusive spouse is made strictly responsible for the abuse and they should extend the protection orders available to victims to include threats by phone, fax and email. The perpetrator of the violence should be educated about the situation and the consequences of his actions. Punishments for these crimes, including compensation for victims, should be strictly applied.
- The Government should greatly expand the support available for the victims, including enhancing cash assistance for poor families and creating an effective employment policy to ensure adequate income for single mothers. This support must also extend to include long-term support, especially ensuring financial assistance for low-income single mothers.

Prevention of Sexual Violence near US Military Bases

- The Japanese Government should 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. To further this aim, the Government should also review the Status of Forces Agreement so that acts of violence perpetrated against women on the premises of a US military base are duly investigated and punished according to Japanese laws.

Remedy and Redress for Victims of Military Sexual Slavery

- The Japanese Government should make an urgent effort to immediately recognize its legal responsibility to the victims of the “comfort women” system and take adequate measures to provide redress for these victims. This should be accomplished 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.
- The Japanese Government should refute any argument to justify the crime or deny state responsibility, and ensure that education about the issue is provided at all levels.

Distr.
GENERAL
CAT/C/JPN/CO/1
3 August 2007
Original: ENGLISH

COMMITTEE AGAINST TORTURE
Thirty-eighth session
Geneva, 30 April - 18 May 2007

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**Conclusions and recommendations of the Committee against Torture
JAPAN**

1. The Committee considered the initial report of Japan (CAT/C/JPN/1) at its 767th and 769th meetings, held on 9 and 10 May 2007 (CAT/C/SR.767 and CAT/C/SR.769), and adopted, at its 778th and 779th meetings on 16 and 18 May 2007 (CAT/C/SR.778 and CAT/C/SR.779), the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the submission of the initial report of Japan, as well as the opportunity to initiate a constructive dialogue. In particular, the Committee notes with appreciation the clarifications and explanations provided by the delegation to the numerous oral questions posed by the Committee. The Committee also welcomes the large delegation, representing various departments of the Government, demonstrating the importance given by the State party to meeting its obligations under the Convention. It further welcomes nongovernmental organizations present during the discussion of the report.

3. The Committee regrets, however, that the report, due in July 2000, was submitted over five years late. It also notes that the report does not fully conform to the Committee's guidelines for the preparation of initial

reports, insofar as it lacks thorough information on how the provisions of the Convention have been applied in practice in the State party. The initial report is mainly limited to statutory provisions rather than providing an analysis of the implementation of the rights enshrined in the Convention, supported by examples and statistics.

B. Positive aspects

4. The Committee welcomes the ratification by the State party of the majority of international human rights conventions.

5. The Committee also welcomes the adoption of:

(a) The Law for Partial Amendment of Immigration Control and Refugee

Recognition (Law No. 73 of 2004)

(b) The Act on Penal and Detention Facilities and the Treatment of Inmates, which entered into force on 24 May 2005, and was revised on 2 June 2006

6. The Committee notes the establishment of new mechanisms aimed at improving the oversight of detention facilities and to prevent the recurrence of violence, such as the Board of Visitors for Inspection of Penal Institutions and the Review and Investigation Panel on Complaints by Inmates in Penal Institutions. In addition, the Committee welcomes the announcement of the establishment, as of June 2007, of the Board of Visitors for Inspection of Police Custody.

7. The Committee welcomes the activities of the Corrections Bureau concerning training curricula and practice for penal institution staff, which now include human rights standards as well as behavioural science and psychology.

8. The Committee also welcomes actions taken by the State party to combat trafficking, and in particular the adoption of the National Plan of Action to combat trafficking in persons of December 2004, and the revisions of the relevant laws and regulations in the Penal Code and the Immigration Control and Refugee Recognition Act.

9. The Committee welcomes the consultations with civil society undertaken by the State party in the framework of the preparation of the report.

C. Principal subjects of concern and recommendations

Definition of torture

10. Notwithstanding the State party's assertion that all acts that may be described as "torture" within the meaning of article 1 of the Convention are punishable as a crime under Japanese criminal law, the Committee notes with concern that a definition of torture as provided by article 1 of the Convention, is still not included in the Penal Code of the State party. In particular, the Committee is concerned that "mental torture" as per the Convention's definition is not clearly defined under articles 195 and 196 of the Penal Code and penalties for related acts, such as intimidation, are inadequate. In addition, the Committee is concerned that Japanese legislation does not cover all types of public officials, individuals acting in an official capacity, or individuals acting at the instigation or with the consent or acquiescence of a public official or other person acting in an official capacity, such as members of the Self Defence Forces and immigration officials.

The State party should incorporate into domestic law the definition of torture as contained in article 1 of the Convention, encompassing all its constituent elements which characterize torture as a specific crime with appropriate penalties.

Internal applicability of the Convention

11. The Committee regrets the lack of information on the direct applicability of the Convention, and in particular on any instances of its application by the domestic courts, as well as in times of war.

The State party should provide the Committee with information on the measures taken to ensure the direct applicability by the courts of the Convention, and of examples thereof. The State party should

provide information on the applicability of the Convention in times of war.

Statute of limitations

12. The Committee notes with concern that acts amounting to torture and ill-treatment are subject to a statute of limitations. The Committee is concerned that the statute of limitations for acts amounting to torture and ill-treatment may prevent investigation, prosecution and punishment of these grave crimes. In particular, the Committee regrets the dismissal of cases filed by victims of military sexual slavery during the Second World War, the so-called "comfort women", for reasons related to statutory limitations.

The State Party should review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention, so that acts amounting to torture and ill-treatment, including attempts to commit torture and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations.

Independence of the judiciary

13. The Committee is concerned at the insufficient level of independence of the judiciary, in particular the tenure of judges and the lack of certain necessary safeguards.

The State party should take all necessary measures to reinforce the independence of the judiciary, and in particular ensure the security of tenure of judges.

Non-refoulement

14. The Committee is concerned that certain provisions in domestic law and practices of the State party do not conform to article 3 of the Convention, and in particular:

(a) The 2006 Immigration Control and Refugee Recognition Act which does not expressly prohibit deportation to countries where there is a

risk of torture; in addition, reviewing authorities do not systematically investigate the applicability of article 3;

(b) The lack of an independent body to review refugee recognition applications;

(c) The conditions of detention in landing prevention facilities and immigration detention centres, with numerous allegations of violence, unlawful use of restraining devices during deportation, abuse, sexual harassment, lack of access to proper health care. In particular, the Committee is concerned that, so far, only one case in such a detention centre has been recognized as ill-treatment.

(d) The lack of an independent monitoring mechanism for immigration detention centres and landing prevention facilities, and in particular the lack of an independent agency to which detainees can complain about alleged violations by Immigration Bureau staff members.

The Committee is also concerned that the criteria for the appointment of third-party refugee adjudication counsellors are not made public;

(e) The lack of an independent body to review decisions by immigration officials, in light of the fact that the Ministry of Justice does not allow refugee recognition applicants to select legal representatives at the first stage of application, and governmental legal assistance is de facto restricted for non-residents;

(f) Insufficient guarantees of access to judicial review for all asylum-seekers, and allegations of deportations carried out immediately after the administrative procedure has ended;

(g) The undue length of time asylum-seekers spend in custody between rejection of an asylum application and deportation, and in particular reports of cases of indefinite and longterm detention;

(h) The strict character and limited effect of the provisional stay system adopted in the revised 2006 Immigration Law.

The State party should ensure that all measures and practices relating to the detention and deportation of immigrants are in full conformity with article 3 of the Convention. In particular, the State party should expressly prohibit deportation to countries where there are substantial grounds for believing that the individuals to be deported would be in danger of being subjected to torture, and should establish an independent body to review asylum applications.

The State party should ensure due process in asylum applications and deportation proceedings and should establish without delay an independent authority to review complaints about treatment in immigration detention facilities. The State party should establish limits to the length of the detention period for persons awaiting deportation, in particular for vulnerable groups, and make public information concerning the requirement for detention after the issuance of a written deportation order.

Daiyo Kangoku (detention in the substitute prison system)

15. The Committee is deeply concerned at the prevalent and systematic use of the Daiyo Kangoku substitute prison system for the prolonged detention of arrested persons even after they appear before a court, and up to the point of indictment. This, coupled with insufficient procedural guarantees for the detention and interrogation of detainees, increases the possibilities of abuse of their rights, and may lead to a de facto failure to respect the principles of presumption of innocence, right to silence and right of defence. In particular the Committee is gravely concerned at:

(a) The disproportionate number of individuals detained in police facilities instead of detention centres during investigation and up to the point of indictment, and in particular during the interrogation phase of the investigation;

(b) The insufficient separation between the functions of investigation and detention, whereby investigators may be engaged in the transfer of detainees, and subsequently be in charge of investigating their cases;

(c) The unsuitability of the use of police cells for prolonged detention, and the lack of appropriate and prompt medical care for individuals in police custody;

(d) The length of pre-trial detention in police cells before indictment, lasting up to 23 days per charge;

(e) The lack of effective judicial control and review by the courts over pre-trial detention in police cells, as demonstrated by the disproportionately high number of warrants of detention issued by the courts;

(f) The lack of a pre-indictment bail system;

(g) The absence of a system of court-appointed lawyers for all suspects before indictment, regardless of the categories of crimes with which they are charged. Currently, court appointed lawyers are limited to cases of felony;

(h) The limitations of access to defence counsel for detainees in pre-trial detention, and in particular the arbitrary power of prosecutors to designate a specific date or time for a meeting between defence counsel and detainees, leading to the absence of defence counsel during interrogations;

(i) The limited access to all relevant material in police records granted to legal representatives, and in particular the power of prosecutors to decide what evidence to disclose upon indictment;

(j) The lack of an independent and effective inspection and complaints mechanism accessible to detainees held in police cells;

(k) The use of gags at police detention facilities, in contrast with the abolition of their use in penal institutions.

The State party should take immediate and effective measures to bring pre-trial detention into conformity with international minimum standards. In particular, the State party should amend the 2006 Prison Law, in order to limit the use of police cells during pre-trial detention. As a matter of priority, the State party should:

(a) Amend its legislation to ensure complete separation between the functions of investigation and detention (including transfer procedures), excluding police detention officers from investigation and investigators from matters pertaining to detention;

(b) Limit the maximum time detainees can be held in police custody to bring it in line with international minimum standards;

(c) Ensure that legal aid is made available to all detained persons from the moment of arrest, that defence counsel are present during interrogations and that they have access to all relevant materials in police records after indictment, in order to enable them to prepare the defence, as well as ensuring prompt access to appropriate medical care to persons while in police custody;

(d) Guarantee the independence of external monitoring of police custody, by measures such as ensuring that prefectural police headquarters systematically include a lawyer recommended by the

bar associations as a member of the Board of Visitors for Inspection of Police Custody, to be established as of June 2007;

(e) Establish an effective complaints system, independent from the Public Safety Commissions, for the examination of complaints lodged by persons detained in police cells;

(f) Consider the adoption of alternative measures to custodial ones at pre-trial stage;

(g) Abolish the use of gags at police detention facilities.

Interrogation rules and confessions

16. The Committee is deeply concerned at the large number of convictions in criminal trials based on confessions, in particular in light of the lack of effective judicial control over the use of pre-trial detention and the disproportionately high number of convictions over acquittals. The Committee is also concerned at the lack of means for verifying the proper conduct of interrogations of detainees while in police custody, in particular the absence of strict time limits for the duration of interrogations and the fact that it is not mandatory to have defence counsel present during all interrogations. In addition, the Committee is concerned that, under domestic legislation, voluntary confessions made as a result of interrogations not in conformity with the Convention may be admissible in court, in violation of article 15 of the Convention.

The State party should ensure that the interrogation of detainees in police custody or substitute prisons is systematically monitored by mechanisms such as electronic and video recording of all interrogations; that detainees are guaranteed access to and the presence of defence counsel during interrogation; and that recordings are made available for use in criminal trials. In addition, the State party should promptly adopt strict rules concerning the length of interrogations, with appropriate sanctions for non-compliance. The State party should amend its Code of Criminal Procedure to ensure full conformity with article 15 of the Convention. The State party should provide the Committee with information on the number of confessions made under compulsion, torture or threat, or after prolonged arrest or detention, that were not admitted into evidence.

Conditions of detention in penal institutions

17. The Committee is concerned over the general conditions of detention in penal institutions, including overcrowding. While welcoming the abolition of the use of leather handcuffs in penal institutions, the Committee notes with concern allegations of instances of improper use of “type 2 leather handcuffs” as punishment. The Committee is concerned at allegations of undue delays in the provision of medical assistance to inmates as well as the lack of independent medical staff within the prison system.

The State party should take effective measures to improve conditions in places of detention, to bring them in line with international minimum standards, and in particular take measures to address current overcrowding. The State party should ensure strict monitoring of restraining devices, and in particular adopt measures to prevent them being used for punishment. In addition, the State party should ensure that adequate, independent and prompt medical assistance be provided to all inmates at all times. The State party should consider placing medical facilities and staff under the jurisdiction of the Ministry of Health.

Use of solitary confinement

18. The Committee is deeply concerned at allegations of continuous prolonged use of solitary confinement, despite the new provisions of the 2005 Act on Penal Institutions and the Treatment of Sentenced Inmates limiting its use. In particular, the Committee is concerned at:

- (a) The de facto absence of a time limit for solitary confinement, as there is no limit on the renewal of the three-month rule;
- (b) The number of detainees who have been in isolation for over 10 years, with one case exceeding 42 years;
- (c) Allegations of the use of solitary confinement as a punishment;
- (d) The inadequate screening of inmates subject to solitary confinement for mental illness;
- (e) The lack of effective recourse procedures against decisions imposing solitary confinement upon persons serving sentences;
- (f) The absence of criteria to determine the need for solitary confinement.

The State party should amend its current legislation in order to ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with international minimum standards. In particular, the State party should consider systematically reviewing all cases of prolonged solitary confinement, through a specialized psychological and psychiatric evaluation, with a view to releasing those whose detention can be considered in violation of the Convention.

Death penalty

19. While noting the recent legislation broadening visiting and correspondence rights for death row inmates, the Committee is deeply concerned over a number of provisions in domestic law concerning individuals sentenced to death, which could amount to torture or ill-treatment, and in particular:

(a) The principle of solitary confinement after the final sentence is handed down. Given the length of time on death row, in some cases this exceeds 30 years;

(b) The unnecessary secrecy and arbitrariness surrounding the time of execution, allegedly in order to respect the privacy of inmates and their families. In particular, the Committee regrets the psychological strain imposed upon inmates and families by the constant uncertainty as to the date of execution, as prisoners are notified of their execution only hours before it is due to take place;

The State should take all necessary measures to improve the conditions of detention of persons on death row, in order to bring them into line with international minimum standards.

20. The Committee is seriously concerned at the restrictions imposed on the enjoyment of legal safeguards by death row inmates, in particular with respect to:

(a) The limitations imposed on death row prisoners concerning confidential access to their legal representatives, including the impossibility to meet with them in private, while on appeal requesting retrial; the lack of alternative means of confidential communication and the lack of access to state defence counsel after the final sentence is handed down;

- (b) The lack of a mandatory appeal system for capital cases;
- (c) The fact that a retrial procedure or a request for pardon do not lead to suspension of the execution of sentence;
- (d) The absence of a review mechanism to identify inmates on death row who may be suffering from mental illness;
- (e) The fact that there has been no case of commutation of a death sentence in the last 30 years.

The State party should consider taking measures for an immediate moratorium on executions and a commutation of sentences and should adopt procedural reforms which include the possibility of measures of pardon. A right of appeal should be mandatory for all capital sentences. Furthermore, the State party should ensure that its legislation provides for the possibility of the commutation of a death sentence where there have been delays in its implementation. The State party should ensure that all persons on death row are afforded the protections provided by the Convention.

Prompt and impartial investigations, right to complain

21. The Committee is concerned at:

(a) The lack of an effective complaints system for persons in police custody. It regrets the fact the 2006 Penal Law does not introduce an independent body with such a mandate. The Committee notes the lack of information on the Board of Visitors for Inspection of Police Detention Cells, to be established in June 2007;

(b) The lack of authority of the Board of Visitors for Inspection of Penal Institutions to investigate cases or allegations of acts of torture or ill-treatment;

(c) The lack of independence of the Review and Investigation Panel on Complaints by Inmates in Penal Institutions, as its secretariat is staffed by personnel of the Ministry of Justice, and its limited powers to investigate cases directly, as it cannot interview prisoners and officers, nor does it have direct access to any related documents;

(d) The statutory limitations on the right of inmates to complain and the impossibility of defence counsel assisting clients to file a complaint;

(e) Reports of adverse consequences to inmates as a result of having filed a complaint and of law suits rejected on the grounds that the term for claiming compensation had expired;

(f) The lack of information on the number of complaints received, as well as the number of investigations initiated and completed and their outcome, including information on the number of perpetrators and sentences received.

The State party should consider establishing an independent mechanism, with authority to promptly, impartially and effectively investigate all reported allegations of and complaints about acts of torture and ill-treatment from both individuals in pre-trial detention at police facilities or penal institutions and inmates in penal institutions. The State party should take all necessary measures to ensure that the right of inmates to complain can be fully exercised, including the lifting of any statute of limitations for acts of torture and ill-treatment; ensuring that inmates may avail themselves of legal representation to file complaints; establishing protection mechanisms against intimidation of witnesses; and reviewing all rulings limiting the right to claim compensation. The State party should provide detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions.

Human rights education and training

22. The Committee notes the allegations of the existence of a training manual for investigators, with interrogation procedures which are contrary to the Convention. In addition, the Committee is concerned that human rights education, and in particular education on the rights of women and children, is only offered systematically to penal institution officials, and has not been fully included in the curricula for police detention officers, investigators, judges or immigration security personnel.

The State party should ensure that all materials related to the education curriculum of law enforcement personnel, and in particular investigators, are made public. In addition, all categories of

law enforcement personnel, as well as judges and immigration officials, should be regularly trained in the human rights implications of their work, with a particular focus on torture and the rights of children and women.

Compensation and rehabilitation

23. The Committee is concerned over reports of difficulties faced by victims of abuse in obtaining redress and adequate compensation. The Committee is also concerned over restrictions on the right to compensation, such as statutory limitations and reciprocity rules for immigrants. The Committee regrets the lack of information on compensation requested and awarded to victims of torture or ill-treatment.

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

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

The Committee considers that both education (article 10 of the Convention) and remedial measures (article 14 of the Convention) are themselves a means of preventing further violations of the State party's obligations in this respect under the Convention. Continuing official denial, failure to prosecute, and failure to provide adequate

rehabilitation all contribute to a failure of the State party to meet its obligations under the Convention to prevent torture and ill-treatment, including through educational and rehabilitation measures. The Committee recommends that the State party take measures to provide education to address the discriminatory roots of sexual and gender-based violations, and provide rehabilitation measures to the victims, including steps to prevent impunity.

Gender-based violence and trafficking

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

The State party should adopt preventive measures to combat sexual violence and violence against women, including domestic violence and gender-based violence, and promptly and impartially investigate all allegations of torture or ill-treatment with a view to prosecuting those responsible. The Committee calls on the State party to strengthen its measures to combat trafficking in persons, including restricting the use of entertainment visas to ensure they are not used to facilitate trafficking, allocate sufficient resources for this purpose, and vigorously pursue enforcement of criminal laws in this regard. The State party is also encouraged to undertake training programmes for law enforcement officials and the judiciary to ensure that they are sensitized to the rights and needs of victims, to

establish dedicated police units, and to provide better protection and appropriate care for such victims, including, inter alia, access to safe houses, shelters and psychosocial assistance. The State party should ensure all victims can claim redress before courts of law, including victims of foreign military personnel stationed on military bases.

Individuals with mental disabilities

26. The Committee is concerned at the role played by designated private psychiatrists in private hospitals in issuing detention orders for individuals with mental disabilities, and the insufficient judicial control over detention orders, management of private mental health institutions and complaints by patients concerning acts of torture or ill-treatment.

The State party should take all necessary measures to ensure effective and thorough judicial control over detention procedures in public and private mental health institutions.

27. The Committee encourages the State party to consider making the declaration under article 22, thereby recognizing the competence of the Committee to receive and consider individual communications, as well as ratifying the Optional Protocol to the Convention.

28. The Committee encourages the State party to consider becoming party to the Rome Statute of the International Criminal Court.

29. The State party is encouraged to disseminate widely the reports submitted to the Committee and the conclusions and recommendations of the Committee, in appropriate languages, through official websites, the media and non-governmental organizations.

30. The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, recently recommended by the international human rights treaty-bodies (HRI/MC/2006/3 and Corr.1).

31. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 14, 15, 16 and 24.

32. The State party is invited to submit its second periodic report by 30 June 2011.
