

JAPAN

In paragraph 2 of its report, the Government of Japan cites Article 11 of its Constitution, which states that the people shall not be prevented from enjoying any of the fundamental human rights and that these fundamental human rights shall be conferred upon the people of these and future generations as eternal and inviolable rights. Equality Now notes that Article 14 of the Constitution of Japan provides that “All of the people are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status or family origin.” However, the Government in its report also acknowledges the need to increase women’s political participation (Para. 50) and that the issue of violence against women is a serious problem (Para. 58). In addition to these concerns acknowledged by the Government, Equality Now is concerned that trafficking and exploitation of women and girls as prostitutes, the prevalence of violent pornography, discriminatory statutes, restrictions on reproductive rights, and discrimination in employment leave Japan short of compliance with its obligations to respect women’s rights pursuant to the Covenant. In preparing its submission, Equality Now consulted the following non-governmental organizations: HELP Asian Women’s Shelter, New York Coalition on Comfort Women Issues, and End Child Prostitution, and Child Pornography And Trafficking Of Children For Sexual Purposes (associated with Stop Child Prostitution Action). Equality Now also received information from Yukiko Tsunoda, Attorney at Law, and Mieko Yoshihama Ph.d., Assistant Professor, School of Social Work at the University of Michigan, and also a founder of the Japanese organization Domestic Violence Action & Research Group. Reports from these groups and individuals are included among the annexes to this submission.

Violence Against Women

Equality Now is concerned that violence against women in Japan remains largely unreported due to inadequate laws and the failure of police and judicial officials to treat such crimes with the requisite degree of concern. In 1994 for example, only 1500 rapes were reported in Japan. This under-reporting may be attributable to a six month period of limitations within which a rape must be reported, as well as the difficulty of securing justice in rape cases (Annex A). In Japan a rape victim must show evidence of having resisted the attack (Annex A, p. 3). The legal standard of the degree of coercion in sexual assault cases is that the force used must be so extreme as to deprive the victim of the ability to resist (Annex B, p. 423). A rapist’s misunderstanding of consent is still accepted as a defense (Annex A, p. 3). Moreover, Japan has no “rape shield” law to protect the privacy of rape victims (Annex A, p. 3). Judicial interpretations of Articles 176 and 177 of the Penal Code have further weakened the effect of laws pertaining to sexual assault and rape. A 1959 precedent from the Yamaguchi district court held that “a certain degree of violence is a normal part of sexual intercourse,” thus making rape more difficult to prove (E/CN.4/1997/47, p. 9). In a 1978 case a charge of rape was dismissed because the court found no evidence of tangible force beyond “ordinary sexual intercourse” (E/CN.4/1997/47, p. 9). Equality Now is also concerned that victims of domestic violence in Japan have been forced, because of the strong patriarchal structure of Japanese society, to remain silent, and society as a whole has acted to effectively silence them (Annex A, p. 4). In a 1992 survey, 77 per cent of

women reported experiencing some type of violence with their male partners (Annex B, p. 413). Only 34 per cent sought assistance from the police, family courts, and public social services (Annex B, p. 415). Approximately one-third of female murder victims are killed by their male intimate partners (Annex B, p. 419). Physical violence by husbands ranks as the second most frequent cause for divorce petitions, and emotional violence by husbands ranks as the fifth leading cause (Annex B, p. 419-421). No specific law defines spousal violence as a crime nor are civil remedies such as restraining orders available (Annex C, p. 63). Police are reluctant to file charges against a man who has an intimate relationship with the woman he assaulted, and virtually no government funding is allocated to services specifically for battered women (Annex C, p. 63).

Although Article 177 of the Penal Code provides no spousal exception for rape, marital rape is hardly recognized as a punishable crime (Annex B, p. 422). A 1985 Tokyo district court decision denied a woman's request for divorce on grounds of the husband having used physical force to have sex with her, ruling, "It is in no way illegal for a husband to demand sexual intercourse from a wife, nor does a wife have any rights to deny such a request" (Annex B, p. 422). In a 1986 divorce case, a Tokyo court denied a wife a divorce which she sought on grounds that her husband had frequently raped her, ruling that the husband had a right to force sexual intercourse and that the wife was at fault for not assuming her "legal duty" as a wife (Annex A, p. 5). A poll conducted by a men's weekly magazine revealed that 70 per cent of the respondents had compelled their wives to have sex (Annex A, p. 5). No precedent exists in Japanese law stating that forced sex in marriage constitutes rape (Annex B, p. 423).

The degree of violence against women in Japan and the lack of adequate remedies available to the women on whom this violence is inflicted, the inadequacy of the laws relating to violence against women and their implementation, as well as the apparent failure of the Government to take effective action to address these concerns, deny women their rights under Articles 3 and 26 of the Covenant.

Trafficking of Women and Prostitution

According to the Coalition Against Trafficking in Women, Japan is the largest sex industry market for Asian women, with over 150,000 non-Japanese women in prostitution. It is estimated that more than 90 per cent of these women are from Thailand and the Philippines (Annex D, p. 4). Women trafficked into Japan are often held in a form of debt bondage where they suffer monetary penalties for trivial and arbitrarily defined "offenses" thereby increasing their debt and delaying their freedom (Annex E, p. 20-22). Trade of women and girls from South-East Asia to Japan, connected to the organized crime syndicate known as the Yakuza, has been well documented (A/49/478, para. 161). Increasingly, there is documentation of women and girls being trafficked to Japan from Russia. Russian prostitutes are openly advertised in Japanese pornography magazines (Annex E, p. 6). HELP Asian Women's Shelter alleges that trafficking is aided by "an old boys network" in the Immigration Bureau (Annex F, p. 6-7), and it is widely

thought that the role of organized crime in trafficking effectively deters the Government from intervention.

Since 1993 Equality Now has been calling on the Japanese Government to investigate the death of Maricris Sioson, whose case effectively illustrates the failure of the Government to respond to trafficking-related crime. In April 1991 Maricris Sioson, a 22 year-old dancer from the Philippines arrived in Japan to work as an entertainer. In Japan she was employed at the Faces Club in Fukushima, owned by Mr. Keizo Sato. On September 7, 1991, Maricris Sioson was admitted to Hanawa Welfare Hospital in Fukushima. She died one week later and her death certificate listed hepatitis as the cause of death. When the family of Maricris Sioson opened her coffin for the funeral they found that she had been beaten and stabbed. Dr. Floresto P. Arizala, of the Philippine National Bureau of Investigation, conducted an autopsy. The autopsy findings included a subdural hemorrhage in the cerebral cortex, presumably caused by blows to the head, and two stab wounds to her thigh and genital area. Dr. Arizala identified the cause of death as traumatic head injuries. This finding was subsequently confirmed by Dr. Fred B. Jordan, the Chief Medical Examiner of the State of Oklahoma, who reviewed the autopsy report and other available medical records at the request of Equality Now and stated that the death should have been classified as a homicide. The Japanese Government failed to cooperate with a mission sent by the Philippine Government to investigate the death of Maricris Sioson in 1991. Both Dr. Arizala and the Employment Secretary of the Philippines participated in that mission. The Japanese government denied the family of Maricris Sioson full access to medical records and police documents and the Japanese police investigation ruled her death to have been from natural causes, despite the autopsy findings (Annex G).

Equality Now urges the Committee to raise the case of Maricris Sioson with the Government of Japan and to request that the Government acknowledge that her death was a homicide and reopen the investigation with the objective of charging those responsible. This case is internationally symbolic of the vulnerability of women trafficked to Japan, and should be turned into an example of accountability rather than impunity.

Equality Now is concerned that an increasing number of young women are entering into prostitution in Japan. It was reported by the Prime Minister's Office in June 1997 that, "In 1996, one third of the total number of prostitutes were women under the age of 20, with 18.2 per cent of them being 17 years old or younger..." (Annex H, p. 2). The emergence of "image clubs" where men can have sex with prostitutes dressed as school girls has been described as reflecting "...a disturbing national obsession with schoolgirls as sex objects" (Annex I). Equality Now submits that the problem of child prostitution is further aggravated by the low age of sexual consent in Japan, which is 13 years old.

Equality Now is also deeply concerned about the frustration of attempts by the "comfort women" to obtain redress from the Government. The few survivors of the 200,000 girls and young women who were systematically impressed by the Japanese military into sexual slavery as "comfort women" between 1932 and 1945 have been largely unsuccessful in their efforts to

obtain compensation and an apology from the Government. The Government has refused to acknowledge any legal responsibility to these women, nor have they prosecuted any individual for the crimes committed against the women (Annex J). This response contrasts notably with the average of \$345,000 paid to each wounded Japanese veteran or civilian employee, including Japanese soldiers who were convicted as war criminals (Annex J). In the only judgement on behalf of “comfort women” known to Equality Now, three South Korean women were each awarded \$2,272 by a Japanese court. Equality Now submits that the amount of damages awarded in this case is woefully inadequate for the injuries suffered by these women. Equality Now also notes that the International Commission of Jurists has recommended an immediate interim payment of \$40,000 for each victim (Annex K, para. 21).

Equality Now believes that trafficking of women constitutes cruel, inhuman and degrading treatment and a modern form of slavery in violation of Articles 7 and 8 of the Covenant. The failure of the Japanese Government to effectively address this criminality, which is open, notorious, and well reported as in the case of Maricris Sioson, violates women’s right to equal protection of the law guaranteed by Article 26 of the Covenant. The growing number of young prostitutes also violates the right of young girls to the protection required for minors by Article 24 of the Covenant.

Presentation of Women in Media and Pornography

Equality Now submits that the prevalence of pornography and negative depictions of women in the media contributes to violence against women, and to the high number of women and girls trafficked into and exploited as prostitutes in Japan. Japan is said to be the world’s largest producer and distributor of commercial pornography (Annex L). One popular video series in Japan is entitled “Rapeman.” A schoolteacher by day, Rapeman is a character who avenges spurned men by raping the women who rejected them. It is common in these stories that Rapeman’s “repentant prey” falls in love with him. The Rapeman videos are freely available in video shops along with a plethora of other rape fantasies depicting bound and gagged women on their covers (Annex M, p. 76). Violent rape imagery is also prevalent in adult comics, known as *manga*, which are openly read by office workers on commuter trains, as well as in television dramas and magazines (Annex H). Naomi Tagima of the Tokyo Rape Crisis Centre has stated that she has no doubt that *manga* leads directly to rape. She noted that “some comics and videos are virtually manuals for rape” and reported that many callers to the crisis centre say their attackers tried to copy what they had seen and read.

Equality Now is concerned that Japanese laws do not effectively address pornography, even child pornography, which is openly produced, published and distributed by Japan’s child pornography industry, one of the world’s largest (Annex N). The depiction and promotion of young Japanese girls as sexual objects, and their use in making pornography, has a direct impact on the level of violence against girls in Japan. To complement the “image clubs” mentioned above, in which Japanese men pay by the hour to live out their sexual fantasies of schoolgirls, there are several magazines in Japan, such as *V-Club*, which contains pictures of naked

elementary schoolgirls, and *Anatomical Illustrations of Junior High School Girls*. 69% of high school girls reported in a poll that they had been groped on crowded subways, a common form of abuse and one of the “scenarios” Japanese men find in the “image clubs”.

Equality Now believes that prevalent media images of women enjoying being raped and abused, the prevalence of violent pornography in Japanese society in which women are shown being raped and abused, the acceptance of these images, and the tolerance of this reality serve to dehumanize women and contribute to an attitude of hostility toward them resulting in increased violence against women. Public order and public health are adversely affected by the Government’s failure to act to stem this cause of violence against women and girls. Public morals are also adversely affected when citizens are subjected, as they are in Japan, to a constant spectacle of misogynist images, which distort the ability of men to see women and treat women as equal beings. Women subject to the attacks of violence provoked by these materials are being denied their equal rights under Articles 3 and 26 of the Covenant. Article 19 of the Covenant provides that the exercise of freedom of expression “carries with it special duties and responsibilities” and may therefore be subject to restrictions necessary for respect of the rights of others and for the protection of public order, public health and morals. Equality Now submits that in Japan restrictions within the contemplation of Article 19 are necessary to ensure respect for the right of Japanese girls and women to be free from violence and to protect public order, health and morals. Equality Now further submits that the prevalence of severely violent and misogynist pornography in Japan constitutes “incitement to discrimination, hostility or violence” as contemplated by Article 20 of the Covenant, which would clearly require the suppression of this speech if it were characterized by national, racial or religious hatred. Although Article 20 does not apply to gender-based hatred, Equality Now urges the Committee to invoke the restrictions on speech recognized in Article 19 as applicable to pornography in Japan, and to inquire as to why the Government considers that such restrictions are not “necessary” as envisioned by Article 19, in light of its own acknowledgment of violence against women as a concern.

Discriminatory Laws

Article 733 of the Civil Code prohibits women from remarrying within six months of divorce. In Japan, men may remarry immediately after divorce (Annex O). The constitutionality of this provision was upheld by the Hiroshima High Court on November 28, 1991. Pursuant to the Civil Code, the age of marriage for a man is 18 while it is 16 for a woman (CRC/C/41/Add. 1, para. 38). Under Japanese law, the age of sexual consent is thirteen years old (CRC/C/41/Add. 1, para. 43). Equality Now submits that a waiting period for remarriage after divorce imposed only upon women, and a lower age of marriage for women than men, violates Articles 3, 23 and 26 of the Covenant. Equality Now is also concerned that setting the legal age of sexual consent at 13 is too young and violates Article 24 of the Covenant.

Reproductive Rights

Equality Now notes that abortion is permitted by law in Japan within the first 24 weeks of pregnancy. However, Chapter III, Article 14.2 of the Protection of Mother's Bodies Act (Law No. 105, June 26, 1996) requires the consent of the spouse, if he is known, to an abortion (Annex P, p. 2). Equality Now considers that this consent provision violates the right to privacy of women, guaranteed under Article 17 of the Covenant. Equality Now also considers that the failure of the Government to provide funding for abortion on the same terms as other medical procedures violates women's right of women to equality and equal protection of the law. Equality Now believes that forced maternity is a violation of Article 7 of the Covenant.

Although abortion is clearly permissible under the law in Japan, Equality Now is concerned that Articles 212 through 216 of the Penal Code, which criminalize abortion, remain in force (Annex Q). Article 212 provides for up to one year imprisonment for a woman who obtains an abortion. Article 213 provides for up to two years imprisonment for an individual performing an abortion and Article 214 increases the penalty to a five-year maximum for certain health care professionals who perform abortions. Although Equality Now is unaware of any recent prosecutions under Articles 212-216, the continued viability of these laws could theoretically subject women who have an abortion to criminal prosecution. Equality Now urges the Committee to seek repeal of the aforementioned Penal Law provisions.

Equality Now notes that surgical sterilization is permitted by law in Japan under Chapter II, Article 3 of the Protection of Mother's Bodies Act (Law No. 105, June 26, 1996), which requires the consent of the spouse, if any, to the procedure. Equality Now considers that this consent provision violates the right to privacy, guaranteed under Article 17 of the Covenant. Equality Now is also deeply concerned about the government's refusal to apologize or pay compensation to the 16,000 women forcibly sterilized under a Government program in effect between 1949 and 1995 (Annex R).

Discrimination in Employment

Article 14 of the Constitution provides that there shall be no discrimination in economic relations because of sex. Despite this assurance and despite the country's advanced economic status in the world, the relative status of women in Japan is far lower than that of men which raises a question regarding the State's commitment to integrating women fully in the economic development process. The Women's Bureau of the Ministry of Labour has reported that "...the equality of men and women has not been fully achieved in practice, for the traditional concept that the woman is to stay at home is still deeply rooted" (Annex S, para. 1(1)).

Women workers account for only 39.5 per cent of all paid employees in Japan (Annex S, para. 2 (1)). Only 50 per cent of Japanese women are economically active compared to 77.76 per cent of men (Annex T, p. 2). More than one-third of all women workers are part-time, and women constitute 67 per cent of the 11.14 million part-time workers in the country. Women's wages are only 62.5 per cent of those of men and women start only 13.6 per cent of new businesses

(Annex S, p. 2, p. 4). According to a 1997 report covering all 2,413 listed companies and other major economic organizations there were only 84 women executives out of a total of 44,925, or 0.18 per cent (Annex V, p. 3). Japanese women's economic activity is confined largely to the manufacturing, wholesale, retail trade, and service sectors, which employ 80 per cent of all women (Annex W). To avoid the effect of the 1986 Equal Employment Opportunity Law, which provides that employers should "endeavor" to provide women with equal opportunity with men, major Japanese companies adopted a dual-track employment system. Career track employees, "sogoshoku," are eligible for promotion to officer positions. The other category "ippanshoku" do clerical work, serve tea, and have little chance of promotion. According to statistics for more than half of the Japanese companies with more than 5,000 employees, only 2.5 per cent of the "sogoshoku" are women, and all "ippanshoku" are women (Annex X, p. 2).

Japan has no law against sexual harassment, although a 1995 government survey found that sexual harassment in the workplace was the most frequent answer (46.4% of women surveyed and 34.5% of men surveyed) to the question "What makes you realize that women's human rights are being violated" (Annex H, p. 1). A 1991 survey revealed that 70 per cent of the respondents had been sexually harassed. The Tokyo Metropolitan Government's Bureau of Labour and Economics states that many women are experiencing sexual harassment but not reporting it (E/CN.4/1997/47, p. 12). A survey conducted in November and December 1997 of women working in all government ministries and agencies revealed that 70.3 per cent of women had been annoyed by obscene remarks, 17 per cent said they were forced to have sexual relations and 6.2 per cent said they were victims of rape and violence (Annex Y, p. 3). Equality Now submits that women are also discriminated against in employment by business methods that as a practical matter exclude women from participation. These include arranging prostitutes for clients, taking clients to "soaplands" where a naked woman bathes a male customer and engaging in "nyotaimori," the practice of eating sushi off of the body of a naked woman (Annex Z).

The apparent inequality of economic opportunity and the myriad forms of harassment and discrimination suffered by Japanese women in the workplace violate their right to equality and equal protection of the laws as set forth in Articles 3 and 26 of the Covenant.

Political Participation

As a result of the July 1998 elections women now comprise 8.9 per cent of the total number of members of the Diet (Annex Y, p. 2). At other levels of government women's participation is similarly inadequate. Women comprise only 4.6 per cent of members of Local Assemblies. Of the 47 prefectures in Japan, there are ten with no women in their assemblies (Annex Y, p. 3). At the national level, women comprise 17.6 per cent of Advisory Council members and 13.1 per cent at the prefectural level (Annex Y, p. 3). At the ministerial level of government, only 5.9 per cent of the positions were occupied by women and the total number of women at the ministerial and sub-ministerial levels in 1996 was 9.3 per cent (Annex AA). According to the Government's Office for Gender Equality, as of April 1997 women constitute only 9.7 per cent of judges, 4.6 per cent of prosecutors, and 7.4 per cent of lawyers (Annex BB, p. 16). As of December 1997,

Japan had only three women municipal mayors out of 3,232 cities, towns, and villages (Annex BB, p. 15). The low levels of participation of women in the various branches of government and the failure of the Japanese Government to effectively address the under-representation of women at all levels, violates the equal right of women to take part in the conduct of public affairs set forth in Articles 3 and 25 of the Covenant.

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