

# Report of NGO “Space Allies” for the 14<sup>th</sup> session for the second cycle review process of Japan in UPR

## **1. Discriminatory legislation against women, regarding the para7 of the recommendations at the first cycle**

- Abortion can be subjected to punishment under the Penal Code.
- Discriminatory legal provisions in the Civil Code with respect to the minimum age for marriage, the waiting period required for women before they can remarry after divorce and the choice of surnames for married couples have yet to be repealed.
- Children born out of wedlock continue to be discriminated against through the family registry system and in provisions on inheritance.
- Women in prostitution are subject to prosecution under the Anti-Prostitution Law, while their clients do not face punishment.

### *Background*

Japanese constitution, which stipulates gender equality, was established in 1946. Civil law and Family Registry Act were reformed accordingly. However, there still remain some provisions that discriminate against women. Besides, article 212 of Penal Code which criminalizes abortion remains since 1907.

#### 1) Abortion

##### Article 212 of Penal Code

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

##### Article 14 of the Maternal Protection Law

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

1. A woman for whom pregnancy or delivery could cause damage to her health for physiological or economical reasons.

2. A woman whose pregnancy is caused by violence or intimidation, during which she could not have resisted or refused.

Although the Committee on the Elimination of Discrimination against Women, CEDAW, asked the government to decriminalize abortion in its concluding observation for the government in 2009, immediately after that, abortion case was sent to prosecutor's office in 2010, and even worse, the government never shows any attitude to change or even review the article.

While the maternal protection law justifies some grounds of abortion, this law requires spouse's consent to have an abortion, and it makes it difficult for women to access necessary medical treatment. Especially, for the case of domestic violence, it is unrealistic to obtain her spouse's authorization, causing delay in treatment or losing chance to have an abortion, thus violating women's rights and health. Abortion is expensive (about 1,000 US\$ for first trimester) and isn't covered by health insurance, and the abortion method for early abortion is still dilation and curettage, which is not recommended by the WHO and place physical, mental and economic burden on women. Medical abortion is not approved. There is social stigma for abortion.

## 2) Amendment to the Civil Code

Legislative Council of the Ministry of Justice, which is a consultative body for Minister of Justice, submitted an outline of revision of the Civil Code in February, 1996. Although the bill had accordingly been submitted every year until the year of 2010, the bill was not submitted since then. Although CEDAW appointed this issue as a follow-up item in its concluding observations in 2009, there is no progress in this field.

## 3) Sex industry and prostitution

A person purchasing sexual act is not punished, whereas a person soliciting sexual act is punishable under article 5 of Anti-Prostitution Act. Under this legislation, it is considered that prostitution corrupts public morals. There are provisions for detention and correctional institute of the women soliciting sexual act. They are not legislation from the viewpoint of women's human rights.

Additionally, women in prostitution suffer from human rights violation, such as violence, compulsory burden of debt, unpaid wages, and health damage, however, they hesitate to file damage reports to the police and to seek for help and assistance, due to fear of being arrested for breach of Immigration Control Act and Anti-Prostitution Act, and due to social stigma.

The government has failed to take measures that ex-prostitute can be reintegrated into society and to offer recovery and empowerment programs for women and young girls victimized through sexual exploitation.

The government fails to take appropriate and effective measures to curb the demand. Those who purchase sexual act are not punished under Anti-Prostitution Act, and rather offering of sexual service other than sexual intercourse is legalized under Entertainment Business Law. Reduction of demand for sexual services should be considered from the point of view of women's rights and empowerment, not of maintaining social morals. However, the government does not show its proactive stance to reduce demand in the third basic plan for gender equality.

## **2 Discrimination on the ground of sexual orientation and gender identity, regarding the para8 of the recommendations at the first cycle**

- There is little progress since the last recommendation.
- There is no legislation to prohibit discrimination on the ground of sexual orientation or gender identity.
- LGBT people cannot access to appropriate social service, and they are often subjected to harassment, and sometimes resulting in committing suicide, resignation, and dismissal.

### *Background*

In Japan, there is no legislation to prohibit discrimination on the ground of sexual orientation or gender identity, although there is no provision for punishing same sex act. As a result, this kind of discrimination is prevalent, therefore LBT people often cannot obtain appropriate support, many of them are often subjected to harassment, and sometimes resulting in committing suicide, resignation, and dismissal. LBT people do not have access to social services due to lack of understanding of the public officers and users of the public facilities.

The Human Rights Committee, CCPR, is concerned about discrimination against lesbian, gay, bisexual and transgender persons in employment, housing, social security, health care, education and other fields regulated by law, as exemplified by Article 23 (1) of the Public Housing Law which applies only to married and unmarried opposite-sex couples and effectively bars unmarried same-sex couples from renting public housing,

and by the exclusion of same-sex partners from the protection under the Law for the Prevention of Spousal Violence and the Protection of Victims (arts. 2 (1) and 26). The committee recommends the government should consider amending its legislation, with a view to including sexual orientation among the prohibited grounds of discrimination, and ensure that benefits granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples, in line with the Committee's interpretation of article 26 of the Covenant. Nevertheless, there is no progress and improvement in this field.

### **3. Strengthen Effort to Combat Violence against Women regarding the para14 of the recommendations at the first cycle**

#### **Due to the limitation of the number of words,**

- Under the Penal Code, the crime of sexual violence is prosecuted only upon complaint by the victim and is still considered to be a crime against morality.
- Incest and marital rape are not defined explicitly as crimes and the minimum age of sexual consent is 13 under the Penal Code. The penalty for rape remains low.
- The domestic legislation does not cover all forms of violence within intimate relationships.
- The length of issuing a protection order may further endanger the victim's life.
- Victims of domestic and sexual violence face obstacles when bringing complaints and seeking protection.
- Immigrant women, minority women and women of vulnerable groups have difficulty in reporting cases of domestic and sexual violence.

#### *Background*

##### 1) Sexual Assault

##### PENAL CODE (Act No. 45 of 1907)

##### Article 176 (Forcible Indecency)

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

##### Article 177 (Rape)

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

thirteen years of age.

Article 180 (Complaints)

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

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

Article 177 of the Penal Code can also be applied for the cases of incest. However, there is no specific article penalize incest. To prosecute the offender, complaint of the victim is required, however, it is difficult for victims themselves to make a complaint, nor hard to expect their relative to make a complaint. Marital rape is rarely recognized unless marriage has been broken up. Age of consent is 13 years old, and men and boys cannot be a victim of rape according to Penal Code.

The definition of rape in Penal Code only covers actual sexual intercourse between men and women and requires violence or intimidation which deters the resistance of the victims and resistance by victims. However, most victims cannot resist due to the fear or shock at the site, accordingly and which causes impunity.

Crime of sexual violence is a subject to prosecution only on complaint. However, victims hesitate to file a complaint for fear of suffering secondary damage due to the prejudice that the victims are blame for the case. This is why law enforcer doesn't accept a complaint, victims suffers additional damage through the suits, and therefore the offender remains impunity. Especially, that is the case with victims who didn't behave according to dominant gender norm and with the women in prostitution and entertainment industries. Victims are required to give evidence of their resistance to clearly prove that she didn't consent the sexual act. Victims have to report repeatedly their experience during their criminal cases. Although there are regulations for protection of victims in criminal procedure, but there is no regulation for cross-examination to prohibit the lawyers from inquiring victims on their past sexual history. These cause immense psychological burden on the victim.

Although there are rape crisis centers operated by private organizations which can offer 24-hour services of comprehensive emergent assistance, the government fails to support the centers financially and at the human resources aspect, and there is no standard

service around the county. Emergency telephone counselling services for victims of spousal and sexual violence was set up by the Cabinet Office from February to March, 2011, but the service has not resumed since. There are only three One Stop Centres in Japan. Additionally, the government does not take measure of long-term assistance.

## 2) Domestic Violence

Despite of the Prevention of Spousal Violence Law, more than one hundred women are murdered by their husband per year. The number of recorded crimes relating to DV in 2010 was only 2,432, while the corresponding number recognized by the police was 33,852. Although the National Police Agency instructed every police office to prioritize arresting the perpetrator, it is rare that the perpetrators are charged, due to passive stand of police officer, neglecting safety of the victims.

As it takes about two weeks to issue protection order, and there is no system for emergent protection order, the judicial system cannot response to emergency. The order is issued only for the DV case in married couples. There is not enough support for the survivors. There is no helpline funded by the government that offers 24-hour assistance, and DV Centre has not functioned effectively. There is little financial support for private shelters in rural area. The government fails to offer mid-and long-term assistance for the survivors on the pretext of “self-reliance”, causing feminization of poverty.

Judicial professionals have not been well-educated, in particular, the law is not applied strictly to the perpetrator, and there is not much understanding and consideration for the domestic violence in many divorce cases and child-custody cases. Thus, judicial procedure is sometimes misused by the perpetrator to control the victim, harming victim and her children.

## 3) Violence against girls

The government doesn't take appropriate measures, including financial measures, to assist the physical and mental recovery and social integration of the victims. Only about 1,000 cases are reported to child guidance centres and the number of recorded crimes is below 100 cases. It is clearly underreported.

As it is difficult for victims of child prostitution and incest to report the case, in particular, in the case of crime by her family member, the government should legislate aggravated punishment for incest. Requirement of complaint for sexual assault and

prescription of prosecution make it difficult to penalize the case. The minimum age of consent of sexual act is 13 years old under the current Penal Code, but age of 13 years old is too young.

The regulation of online dating website started in 2008, but the extent of application is limited. Effective measure for prohibition of child prostitution through the internet has yet to be established.

There is not adequacy of formal arrangements to limit the number of times children are required to testify and the use of video evidence, in lieu of oral testimony, is not accepted during criminal proceedings.

#### 4) The Issue of “Comfort women”

The State party has yet to take legal responsibility for the system that the Japanese military enacted of setting up and managing “comfort stations” during World War II on the pretext of “Asian Women’s Fund” in 1995.

#### 5) Violence against women under the presence of foreign military bases

Sexual assaults by US soldiers remain as a serious threat to women and girls living in communities hosting military bases.

### **4. Continue Effort to Combat Trafficking in Persons, regarding the para15 of the recommendations at the first cycle**

- The Japanese government has not ratified the Palermo Protocol.
- There is little progress in taking measures against trafficking in women and children, although there is a little progress in measure against labourer exploitation.
- Victims of sexual exploitation and human trafficking do not receive assistance and protection they deserve
- The Japanese government fails to address the root causes of trafficking such as poverty, unemployment, under-education and gender inequalities.

#### *Background*

The Japanese government has not ratified the Palermo Protocol.

It is highly suspected that unlawful employment agencies exploit the victims of

trafficking in persons for labor purpose. Various illegal acts are performed; such as prolonged work, salaries below minimum wage, death by overwork, deposit and penalty charge system for detention of laborer, short-term employment, confiscation of passport and mobile phone, confining in a dormitory, sexual harassment, violence, and deportation.

Victims of sexual exploitation and human trafficking do not receive assistance and protection they deserve, and sometimes they aren't even recognized as victims, and are deported with no remedy. There is not much support for victims to stay in Japan, and to reintegrate themselves into society, although the CEDAW's recommendation.

Some victims are prosecuted under Immigration Control Act or other laws and are found guilty by misidentifying. Quality support and appropriate care and facilities for social and mental support for victims are very limited. Furthermore, the training for law enforcement officials and law professionals to raise their awareness for the rights and needs of the victims are not facilitated, nor prepared.

The government has failed to adopt bilateral agreements to tackle the human trafficking problem on a long-term basis, including by addressing the root causes of trafficking such as poverty, unemployment, undereducation and gender inequalities.

## **5. International cooperation, regarding the para24 of the recommendations at the first cycle**

- The government has not done concrete actions in the field of gender equality and women's empowerment, though it shows abstract words.
- The government has not made light of sexual and reproductive rights and health internationally as well as domestically.

### *Background*

Although the government placed achievement of gender equality and promoting empowerment of women as an important agenda and made some policies in the field of international cooperation, it has little addressed the above issues concretely and strategically, such as arrangement of mechanism and budgeting.

The gender mainstreaming which the government defines in the international

cooperation is limited to participation of women, which often means only equality of opportunity, and substantial equality is made light of. In the field of loan assistance, there is no policy and project that triggers gender equality. There is no earmark for ensuring the improvement of women's social and economic rights in the field of distribution of budget for development.

The government has not released a follow-up plan of the gender-related and human-rights-related agenda in the "Busan partnership for effective development cooperation."