

Committee on Elimination of Discrimination Against Women
The Third Consideration of Japanese Governmental Report

**Proposal of List of Issues
for Pre-sessional Working Group**

**Feb. 2003
Japan Civil Liberties Union**

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Article 2(c)[Obligation of State Parties]

[National Human Rights Commission]

1. The Human Rights Protection Bill proposed by the Government of Japan places the National Human Rights Commission under the control of the Ministry of Justice. Please clarify how the Government maintains the Commission's independence
 2. Why does the Government limit the range of human rights infringements by public authorities, subject to remedies by the National Human Rights Commission, to discrimination and physical abuse?
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■ Description of The Government Report

"The Government submitted the Human Rights Protection Bill to the Diet in March 2002 in order to introduce a drastic reform of the current human rights protection system. The bill prohibits human rights violation[s] such as discrimination or ill treatment including gender discrimination or sexual harassment, and provides for the establishment of the Human Rights Commission, an independent administrative commission, and a new human rights remedy system to be operated mainly by the Commission. The new mechanism is designed to provide proper and prompt redress for and effective prevention of damages caused by human rights violations." (The Fifth Periodic Report, Article 2 Section 3 (2) a))

■ Reason for the Questions

1. According to the Human Rights Protection Bill, The Minister of Justice holds its jurisdiction over the National Human Rights Commission and the Commission is placed as an external organ of the Ministry of Justice. However, the Ministry of Justice is the agency which controls the detention system which includes detention houses, prisons, and immigration centers where officials often cause abuse and excessive punishment. So, it is highly possible that the Ministry would be subject to complaints made to the Commission regarding these human rights infringement cases. In that case, the Commission cannot hold its justice as long as it is under the control of the Ministry of Justice.
2. The Bill stipulates that the limited range of human rights infringements by public authorities, i.e. discrimination and physical abuse, shall be subject to the Special Remedy of the Commission ('Special Remedies' indicates conciliation, consultation, arbitration, legal assistance and public admonition). But possible infringements by public authorities cannot be limited to discrimination and physical abuse.

The bill also put any government policies out of the range of remedies by the Commission. So even if people find that discrimination against women is led by government policies, the Commission cannot give any effective remedies.

The bill was presented to the Diet on 2002, but as a result of criticism by NGOs and opposition parties pointing out the above issues, it was postponed. As outlined above, it breaches the UN Paris Principle. Therefore, it needs drastic amendments.

Article 2(c)(d)[Obligation of State Parties]

[Training for Personnel in the Justice Field]

1. The Supreme Court is responsible for the training of those who will be qualified as lawyers, i.e. judges, public prosecutors, and practicing attorneys in Japan. Are issues such as the domestic effect of international treaties and conventions, including CEDAW, or the social context of discrimination included in the training curriculum? Are those would-be lawyers given some instruction and training to overcome their own gender bias?
 2. Regarding the training courses undertaken by public prosecutors, how much time is allocated to issues of the rights of women, of direct and indirect discrimination against women, and other matters pertaining to women? How often are these training courses offered? (How long would it take for all public prosecutors to undertake an appropriate training course at least once?)
 3. Regarding the training courses pertaining to constitutional and human rights undertaken by judges, how much time is allocated to the rights of women and gender equality, and how often are these training courses offered?(How long would it take for all judges to undertake an appropriate training course at least once?)
 4. Regarding the training courses pertaining to constitutional and human rights offered to correctional officers, how much time is allocated to gender equality and the rights of women? How often and when are the training courses offered? What is the percentage of correctional officers who attend these training courses?
 5. The Government has committed itself to the judicial reform. The reform is expected to introduce lay participation to the judicial process. Will the Government be offering some training courses on constitutional and human rights, in particular, the rights of women, to lay persons who will be called to participate? At the moment, there is some lay participation in the judicial process, namely, the inclusion of lay persons as conciliators. Does the Government provide some training courses to enlighten those lay conciliators on matters of human rights and the rights of women?
 6. What kind of training courses are offered to law enforcement officers on the front-line to attain legal remedies against discrimination?
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■ Description of The Government Report

In the Fifth Periodic Report, the Government refers to "Training for Personnel in the Justice Field" in Part II, Article 2, Section 3 (3). It states that some training on violence against women and other contemporary issues pertaining to women are offered to public prosecutors and to judges. Training on constitutional and human rights is also offered to correctional officers.

■ Reasons for the Questions

Several bar associations have illustrated in their reports that there is apparent "gender bias in courts." The existence of "gender bias in courts" is a very serious problem, especially when gender bias exists among those who participate in the administration of justice and provide for legal remedies

to those discriminated against. Yet, the Fifth Government Report refers to the issue of violence against women as the major concern in its training process as if it is the only discrimination in need of legal assistance. (Furthermore, the Japanese text, tentatively translated by the Government, refers to legal remedies against discrimination while the English text refers to legal assistance against discrimination.) This is not to deny that violence against women is a very serious issue, but the discrimination should be understood from much wider perspectives. For example, the Government could have indicated in these training sessions that, for people involved in the administration of justice, having the expectation that a woman should act to fit the expectation of femininity within the society, or that the belittling, ignoring, and silencing of a woman's voice in themselves are discrimination.

1. In Japan, qualified lawyers are trained under the auspices of the Supreme Court (and paid their stipends during the training period by the Government). It would not be too much to expect the Government to make it its major policy to overcome gender bias, particularly among lawyers. We trust that the Legal Training and Research Institute already offers sufficient programs so that newly-qualified lawyers are free of gender bias and that it is currently planning to offer recurrent programs for others. Nevertheless, it is impossible to assess its accomplishment in overcoming gender bias without disclosure of the specific contents of the curriculum offered to trainees at the Institute.

2. Without detailed information on the contents and the frequency of training courses that judges and public prosecutors undertake, it is not clear that the training is offered to all judges and public prosecutors or to those who voluntarily attend the course, or even limited to those whom their superiors decided are in need of such training. We sincerely hope that these training courses are undertaken by all judges and public prosecutors at short intervals. We are also concerned with the contents of the courses being offered. As there is no indication of the details of the contents, what we could do is hope that they are sufficiently enlightening to those who had the opportunity to undertake them.

We appreciate the recent trend among courts that became apparent in the so-called "price of life" issue. The courts had traditionally calculated the compensation for a deceased in a traffic accident by relying on the expected earnings and the loss thereof of the deceased. As there would be little information when the deceased was of tender age, courts utilized the average wage of male workers for a young boy and the average wage of female workers for a young girl (in a country where an average female worker earns less than 60% of an average male worker) as the basis of the expected earning, and assessed the compensation for a girl considerably less than that of a boy of the same age. In recent years, various courts began to calculate the average wage of all workers for a girl (while maintaining the average wage of male workers for a boy). Although this does not mean that courts have completely abandoned their gender-specific views in terms of what a person could have been had s/he been alive, we welcome the change as evidence that courts are willing to do their share to realize a gender-equal society.

4. We agree that the courses offered to correctional officers, on constitutional and human rights, are extremely important. In fact, we would like to emphasize the importance of their understanding of these rights, and that we believe these courses, including training to overcome gender bias, should be given at the very beginning of their career as their first required training.

5. This is not to suggest that some legal education may be equated with the ability to be free of gender bias. Nevertheless, it would not be too much to expect lawyers, who had proper legal

education and training, to know more about constitutional and human rights and to be more sensitive to issues of discrimination than an average lay person. When the legal system expects lay persons to participate fully in the administration of justice, it is also expected that those people would bring commonsense into the deliberation process. We welcome the injection of commonsense to our judicial decisions but would like to raise the possibility that "commonsense" within certain segments of society might not recognize discrimination as such or might perceive it as a natural state of being. It is strongly recommended to have some training sessions and courses on gender bias, as well as on the rights of women, and on discrimination against women particularly when there is lay participation in the judicial process. At the moment, lay conciliators are the essential element in family disputes, particularly in divorce proceedings. It appears that some of their social and gender biases have intimidated many women and hindered their access to law.

6. The Government Report does not include law enforcement officers-- as if they are irrelevant to legal remedies being offered. We believe that law enforcement officers and their training programs are very important because these officers are at the forefront in dealing with violations of the rights of women and discrimination against women. In fact, we believe that law enforcement is so important in this aspect, it is necessary for the public to know the contents of the training the officers undertake in the areas of the rights of women, discrimination and its prevention, gender equality, and gender bias.

Article 2(c)(d)[Obligation of State Parties]

[Discriminatory remarks made by public officials]

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1. Is the Japanese government taking necessary action against discriminatory remarks made by the public officials, especially those in high ranks?
 2. Is there an appropriate training (program) in place to prevent further recurrence?
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■ Description of The Government Report

Not mentioned in neither the fourth nor the fifth report of the state party.

■ Reasons for the Questions

Concluding Observations of the Committee on the Elimination of the Racial Discrimination (CERD) to the Japanese government in March 2001 noted concern regarding discriminatory statements made by high ranking public officials. (See the Background below)

In March 22, 2001, during the Judicial Committee session of the House of Councilors, the government explained that the observation was made in reference to Tokyo Governor, Shintaro Ishihara.

Nevertheless, Governor Ishihara has been repeatedly making discriminatory comments even after the above Observation was made by the CERD. In fall 2001, he made comments implying that the “old women who have lost their reproductive function are not worth living” (see the Background below) in a magazine interview and in the Tokyo City Parliament session.

Governor Ishihara is not the only one making these kinds of comments. Members of the parliament are making discriminatory remarks against women; there is sexual harassment and a hostile environment toward women seen in the legislatures.

These recurring discriminatory acts by high public officials show that the Japanese government has not taken any measures to implement recommendations from the UN, and the government has no intention of dealing with the discriminatory acts of public officials-- leaving the problem as it is.

■ Background

*** Concluding Observations of the Committee on the Elimination of Racial Discrimination (58th session)**

13. The Committee notes with concern statements of discriminatory character made by high-level public officials and, in particular, the lack of administrative or legal action taken by the authorities, as a consequence, in violation of article 4 (c) of the Convention, and the interpretation that such acts can be punishable only if there is an intention to incite and promote racial discrimination. The State party is urged to take appropriate measures to prevent such incidents in the future and to provide appropriate training of, in particular, public officials, law enforcement officers, and administrators with a view to combat prejudices which lead to racial discrimination, in compliance with article 7 of the Convention.

***Discriminatory statements disparaging women made by Governor of Tokyo, Shintaro**

Ishihara

1、 (Ishihara answering the interview, referring to the theory he have read(?)), "It is said that the 'Old women is the worst evil and malignant being that the civilization have produced.' It says that the 'old women who lives after they have lost their reproductive function are useless and are committing a sin.' Men have reproductive functions even in their 80s and their 90s, however, women cannot bear children after they reach their menopause. It says that it is evil and malicious for the world that these people live until the age of Kinsan and Ginsan (famous twin sisters over 100 years of age)...I agree with the idea, but can not say it as a politician (laughter)." (from the Interview article of "Shukan Josei", December 11, 2001 issue)

2、 The Governor has admitted the charge that he had made those remarks, but counter-reacted to the pursuit from the Metropolitan parliament by saying that the old women are tyrant beings. (December 11, 2001)

Article 7[Equality in Political & Public Activity]

[Discriminatory acts in the public workplace]

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1. What measures are taken against sexual harassment in the public domain, especially within the legislative bodies?
 2. Are there any incidences when the female politician is hindered from her work because she is a woman? What measures are taken against those problems?
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■ Description of The Government Report

In the fourth/fifth government report, there is no analysis made to explain the reason for the low political participation by women in public positions.

■ Reasons for the Questions

As it can be seen from the UNDP statistics in the Japanese government report, although the percentage of women participating in politics is on the rise both in local and central governments, overall political participation by Japanese women is still very low compared to the international level. It is easily understood that Japanese women face strong difficulties in a political setting dominated by men. However, there are no institutional measures taken by the government to change the current disparity of political participation, nor is there any action taken against repeated discriminatory remarks and sexual harassment in those settings.

■ Background Information

*Discriminatory remark against women by the Lower House member, Shingo Nishimura

Senator Shingo Nishimura, vice minister of the Japan Defense Agency at the time, made following comments in his interview with Weekly Playboy Magazine (November 2, 1999 Issue); “If act of rape was not punishable, we’ll all be a rapist. But the sentence on rape works as a deterrent, preventing it from happening.” Also, referring to several female congress persons belonging to a particular party, “I would never save you even if you were being raped!”

His remark shows that his decision to save a woman being raped would depend upon her belief. He blames a woman in a case of rape. This way of thinking leads to a premise which tolerates rape in some instances. This is a discriminatory remark against women. He totally ignores the fact that rape is a human rights violation.

Facing strong protest against his remarks, he resigned as Vice Minister of the Japan Defense Agency, but he remains as a Representative and once held a post of Chair of the Committee on Discipline.

*Slanderous leaflets

During the session of the Lower House Budgetary Committee on February 9, 2001, a male member distributed slanderous leaflets to several other members of the House of Representatives. The leaflet insulted one of the female members by calling her a “manager of the disorderly house.” The male member was not penalized for this remark except for a verbal warning made by the Chairperson of the Committee.

Article 12[Discrimination in Health Care] [Introduction of Male Midwives]

1. Actually, in Japan, only women are licensed by law to practice as midwives. Is there any plan to amend the law to open the possibility of gaining a midwife's license to men?
 2. How do expectant mothers and midwives declare themselves in favor of or against question 1?
 3. What kind of measures were taken by the Government to protect privacy, the right to choose, and other rights of expectant mothers regarding question 1?
 4. The "midwife" title was changed to "mid-person" by amending legislation in 2001. Is this to lay the ground for the introduction of male midwives?
 5. What attitude did the midwives' professional organizations take on question 3?
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■ Description of the Government Report

“xv) Law Concerning Partial Amendment to the Law of Public Health Nurses, Midwives and Nurses (promulgated on 12 December 2001)

The Law intends to unify the titles for public health nurses, nurses, and assistant nurses, which used to be named differently according to their gender. In order to express their profession appropriately, gender neutral and professional titles were given. The law came into force on 1 March 2002.”

(The 5th Periodic Report, Part 1 Section 2 (5))

■ Reasons for the Question

The government report seems to have taken the change of the midwife title to mid-person affirmative from the viewpoint of gender equality.

The Japanese government formerly introduced a bill, to open the possibility of gaining a midwife's license to men, to the Diet. However, women and midwives raised a strong movement against this bill and it was withdrawn. The results of the surveys conducted by the midwives' professional association and other organizations showed that 70 to 80 percent of women are against male midwives.

A midwives' professional organization, the Japan Midwives' Association, has adhered to a policy against the introduction of male midwives over many years. However, in March 2000, the Association suddenly released its comment that many of the Association's members have voted for the introduction of male midwives at “an extraordinary general meeting in writing” and have passed a resolution in support of the introduction. Then the Association pressured the ruling party to introduce male midwives so that the change of the midwife title to mid-person was realized.

Now, six midwives filed a suit in the Tokyo District Court against the Association, and requested a confirmation of the invalidity of the Association's decision on grounds that the general meeting in writing went against its articles of association and that the procedure for electing the Directors was unlawful. The defendant carried out surveys of all the members of the Japan Midwives' Association. More than seventy percent of those members questioned were against the introduction of male midwives.

In recent Japan, the concept of “care by the same gender” in caring for the handicapped and the aged came to be respected at last. It is acknowledged that the care of men by men, and the care of women by women, is indispensable for the protection of privacy and dignity of those receiving care.

Midwives closely attend expectant mothers over long hours before and after delivery, caring for the

genitals, etc. Their work is of a different nature from that of obstetricians. The need for care by the same gender for expectant mothers is as important as the handicapped and the aged. Since expectant mothers are only female, it is not necessary to accept the introduction of male midwives. Furthermore, it is unusual that the Japan Midwives' Association would be in a hurry to introduce male midwives ignoring the voices of an overwhelming majority of midwives and women.

Article 16[Discrimination in Marriage and Family Relation]

[Domestic Violence]

After the enactment of “Law for the Prevention of Spousal Violence and the Protection of Victims (DV Law),” has the National Police Agency ever instructed Prefectural Police Headquarters to show police officers clear standards for handling DV cases, including the arrest of a perpetrator?

■ Description of the Government Report

For cases of spousal violence, police officers are taking necessary measures in accordance with “The Outline for Implementing Measures to Protect Women and Children”. Now that DV Law is enforced, police officers will continue making proper responses with considerable care for the victims. (The 5th Periodic Report, Part II Article 16 2.(2)e))

■ Reasons for the Question

In the official notification, issued on December 13, 1999, to Prefectural Police Headquarters titled “The Outline for Implementing Measures to Protect Women and Children,” it was instructed that “upon responding to spousal violence case where a crime was committed, police officers should take necessary measures, including applying criminal procedure, with consideration of victim’s desire.” After the enactment of DV Law, a new notification was issued on July 9, 2001, titled “The Guidelines for Responding to the Spousal Violence Cases in accordance with DV Law”. In the new guidelines, police officers are expected to continue taking necessary and proper measures for each case in accordance with “The 1999 Outline for Implementing Measures to Protect Women and Children.”

We can see no clear difference of police policy between the two guidelines issued in 1999 and 2001. The enactment of DV Law has so far made no change in police policy for responding to spousal violence, and it is still being left to the discretion of a police officer whether to apply criminal procedure. The policy of considering the victim’s desire, in a case where a crime was committed, may be used by police to circumvent the law. Furthermore, victims may possibly refuse to give statements and file charges if they are under the control of the offender’s threat and violence and, therefore, a crime will be hidden. A strict policy is necessary to show police officers that they should protect victims and take strict criminal measures against perpetrators who clearly commit criminal acts.