

Report by the Japan Federation of Bar Associations
on the "Fourth Periodic Report on Implementation
of the Convention on the Elimination of All Forms
of Discrimination Against Women: Japan"

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Japan Federation of Bar Associations

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Introduction

The Japan Federation of Bar Associations (JFBA), a nongovernmental organization in special consultative status to the UN Economic and Social Council, submits this report in response to the "Fourth Periodic Report on Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women: Japan."

JFBA was founded in September 1949, and its membership includes all Japan's lawyers and bar associations. As of March 31, 2001 JFBA had 18,838 member attorneys.

There are 52 local bar associations, each located in the jurisdiction of one of Japan's 50 district courts. Tokyo is an exception with three local bar associations. Bar associations are autonomous and independently incorporated, not under the supervision of administrative authorities or the courts.

The Practicing Attorney Law stipulates that the mission of attorneys is to protect basic human rights and to bring about social justice, and for that reason JFBA, bar associations, and attorneys have conducted activities for those two purposes.

Occasioned by the International Women's Year in 1975, JFBA the following year established a Women's Rights Committee (now called the Committee for the Equality Between Men and Women) to further energize its efforts to eliminate discrimination against women, to protect women's rights, and to raise their status. JFBA has worked to raise women's status and eliminate discrimination against women. Those activities include: Efforts to have the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) ratified; efforts for legislation so that the legal system conform with CEDAW; submission of "The Japan Federation of Bar Associations Report on the Application and Practice in Japan of the Convention on the Elimination of All Forms of Discrimination Against Women" when the Japanese government's report was being reviewed at the 13th meeting of the Committee on the Elimination of Discrimination Against Women in January 1994; and authorized participation as an NGO in the United Nations Fourth World Conference on Women, and submission at that venue of the "Japan Federation of Bar Associations Report on the Japanese Government Report for the Fourth World Conference on Women" in a bid to influence the drafting of the Beijing Declaration and the Platform for Action.

In response to the report by the 13th session of the Committee on the Elimination of Discrimination Against Women, and after the committee issued its Concluding Observations including concerns, advice, and recommendations, Japan's government enacted the Basic Law for a Gender-Equal Society in June 1999, and in accordance with that law it developed the Basic Plan for Gender Equality. To better women's employment it amended the Equal Employment Opportunity Law, and to deal with violence against women it established the Domestic Violence Prevention Law. The government took these and other steps to eliminate discrimination against women.

But despite the committee's concerns, advice, and recommendations, Japan's gender-based wage differential has yet to be rectified, and indirect discrimination has hardly been mitigated. Discriminatory parts of the Civil Code have not yet been amended, and no significant changes have been effected to facilitate women's participation in policymaking.

Despite this state of affairs, the Government's Fourth Periodic Report does not clearly show that Japanese women suffer discrimination, and what is more it offers no analysis of the barriers to eliminating discrimination. Further, its measures to eliminate discrimination are still quite inadequate.

In the preparation of this report, JFBA considers how the committee's Concluding Observations have been put to use as it elucidates the state of discrimination against women in

Japan, including foreign women, the causes, and the measures that the government should take to eliminate discrimination with an eye to CEDAW implementation.

This report was written and organized in the following manner.

. JFBA's report follows the CEDAW's articles corresponding to items in the table of contents. "A" is JFBA's opinion, "B" is the committee's Concluding Observations, "C" is an overview of the government's report, and "D" describes the process by which JFBA arrived at its opinion.

Part 1 Women in Japan Today

A. Conclusions and Recommendations

Instead of showing the current status of women with figures, Japan's government should report on whether it views that status as an indication of discrimination against women, and if it recognizes the existence of discrimination, show specifically how it does, determine through analysis what barriers hinder the elimination of discrimination, and describe what the government is doing to remove those barriers.

B. Concerns of and Recommendations by the Committee on the Elimination of Discrimination Against Women

(1) Principle Subjects of Concern 5

"The Committee also expressed its concern that although [Japan's] report contained a wealth of data, it was otherwise descriptive and lacked critical analysis of the obstacles to full implementation of the Convention in Japan."

(2) Suggestions and Recommendations 8

"The Committee asks that the Government of Japan engage in effective dialog with Japanese women's organizations during the preparation of the next periodic report so that a better picture of Japanese women emerges. The legal and functional discrimination faced by Japanese women, both in the private sphere and in the workplace should be identified, as should the measures in place or planned to overcome these obstacles."

C. Statement in the Government's Fourth Periodic Report

The report describes the situation of Japanese women in 10 items on pages 2 through 13: 1) Population and vital statistics, 2) Education, 3) Employment, 4) Women engaged in agriculture, forestry and fisheries, 5) Results of public opinion survey on gender equality, 6) Activities of non-governmental organizations, etc., 7) National Machinery for the Promotion of Gender Equality, 8) National Plan of Action, 9) Examples of activities by local public organizations, and 10) Major amendments to laws and ordinances.

D. JFBA's Opinion

(1) In "1) Population and vital statistics," the report notes that the 1996 total fertility rate was 1.43, and explains, "The increase in the feeling of burden in child rearing and the feeling of burden in managing the compatibility with work particularly due to the development of women's advanced role in society and the change in the sense of values toward marriage among both men and women are also pointed out as factors leading to this trend." As this shows, the report attributes the fertility rate decline to the sense of burden and to changing marriage values.

However, the 1997 Annual White Paper on Life in Japan says that one cause of fewer children is the increase in the costs of having and raising children, especially educational costs, and it cites the costs of missing income opportunities (opportunity cost, costs associated with taking off from work during childbirth and childraising). Of this opportunity cost, the White Paper notes that even if women find new employment as part-timers, the low pay and slim possibility for promotion make the opportunity cost for childbirth and childraising even bigger, and it says, "It is necessary to create an environment making it easy for working women to have and raise children." It goes on to write, "Regions with programs for private support and programs that provide day-care services for which licensing is not an issue have shown that it is easy even for working women to have children and actually continue working while raising children" (1997 Annual White Paper on Life in Japan, pp. 93-100).

Actually, it is difficult to reconcile childraising and work for other reasons as well, including long working hours, and disadvantageous treatment and reassignments after maternity leave and childcare leave, making it difficult to work while raising children.

Instead of conceiving the issue through the sense of burden and changing values, the government must deal with the trend toward fewer children by using institutional and legal efforts to lower educational costs and to help women work while raising children.

(2) Regarding "3) Employment," the government report says that the "gap between the wages of men and women workers is caused by such miscellaneous factors as length of service, academic background, field of employment, rank at work, working hours and others." It adds, "If one looks at the wages of ordinary workers... women workers aged 45-49 where the gap grows widest make up to 81.8 compared to 100 for their men counterparts..."

"Ordinary worker" first appeared in the Ministry of Labor's 1982 Working Women in Japan. The 1981 edition of this report compares men and women workers, including part-timers, and writes that if men's wages are 100, women's were 55.8% in 1975 and 56.2% in 1978, showing that the gap narrowed, but it then widened two years in a row to 54.9% in 1979 and 53.8% in 1980. The 1981 edition (p. 24) explains, "Factors behind the gender wage gap are the tendency to think of women as fixed in short-term, supplementary jobs, and women are more often than men subject to limitations in hiring, placement, education/training, promotions, and the like." By comparing "ordinary workers" at a time when the gap was widening (1981), which eliminated factors bringing about gender differences, reports would no longer manifest the reality of gender discrimination.

Differences are actually arising due to practices in hiring, placement, education/training, and promotion, so, for example, citing a very small number of career-track women and claiming that there is little gender difference while not comparing the numbers of men and women in a company with a separate-track employment system is of no use in determining why there is discrimination or what to do about it.

Wage discrimination cases in which lawsuits have been filed clearly show that there is discrimination. It is necessary to first show there is discrimination, then determine the reasons, and have the government take remedial action.

(3) On the question of how to assess the results discussed in "5) Results of public opinion survey on gender equality," the government should indicate what steps it is taking to eliminate gender-specific roles.

Part 2 Report by Article

1 Article 1

A. Conclusions and Recommendations

Laws must be established to define discrimination so as to conform to discrimination against women as set forth in CEDAW Article 1, but neither the Basic Law for a Gender-Equal Society nor the Equal Employment Opportunity Law (EEOL) has any provisions for discrimination that happened despite the absence of any purpose or intent to discriminate. A law must be established to define discrimination that includes indirect discrimination. Discrimination by reason of marital or family status is also discrimination against women, and this too must be clearly specified in legal definitions of discrimination.

B. . Concerns of and Recommendations by the Committee on the Elimination of Discrimination Against Women

(1) Conclusions and Recommendations 10

The government must ensure the private sector's compliance with the EEOL, and report

on measures for dealing with the indirect discrimination in promotion and wages faced by women in the private sector.

C. Statement in the Government's Fourth Periodic Report

None.

D. JFBA's Opinion

(1) When the Basic Law for a Gender-Equal Society was enacted and when the EEOL was amended, NGOs expressed the opinion that the laws should explicitly include indirect discrimination in the definition of discrimination, but no provisions were established for discrimination that resulted despite the absence of any purpose or intent to discriminate.

In lawsuits seeking state compensation under the EEOL, the government argues that when something results in discrimination, it is not discrimination subject to the EEOL. But CEDAW Article 1 stipulates something "which has the effect or purpose," thereby distinctly including in its definition discrimination that happens as a result of something else. Therefore the government's report should clarify its interpretation of the definition of discrimination, and also explain why there is no law that expressly forbids indirect discrimination.

(2) There is a court case in which the government explains discrimination in raises and promotions because of being married or having children by saying that "there are no men in the same hiring category with whom to make comparisons." Plaintiffs filed a lawsuit seeking state compensation claiming that, based on the provisions and course of deliberations of CEDAW Article 1, the provisions of Article 11, and the provisions of Article 10 of the Declaration on the Elimination of Discrimination against Women, regarding discrimination based on marital status as not in violation of the EEOL is a mistaken interpretation and application of the CEDAW. As soon as the EEOL became effective, the defendant company had created employment categories, made women desk workers into clerical-track workers, and gave men desk workers career-track positions. All clerical-track employees were women, and women accounted for 0.3% of the career-track workers (the company hired career-track women for the first time in 1994). According to the government's interpretation, the EEOL applies to this company in connection with discrimination based on marital status for only 0.3% of its women workers, while the law does not apply to the other 99.7% of the women workers. The government claimed that the provision "irrespective of their marital status" in Article 1 means that "women" includes both married and unmarried women.

Another government claim was, "It is in fact difficult to make an issue of discrimination in every single phenomenon and to take specific action on it, and this is a natural assumption of the CEDAW." Article 2 provides that each party is to take measured deemed appropriate in view of its own circumstances, and further states that states are allowed to gradually achieve their goals in the time needed.

In its report the government should tell how it interprets and applies the convention. Further, the EEOL should expressly prohibit discrimination based on marital or family status.

2 Article 2 (a)

(1) Violence Against Women

1) Sexual Crimes

A. Conclusions and Recommendations

The Council for Gender Equality, a government advisory body, submitted a report titled "Basic Policy on Violence Against Women" on July 21, 2000. Basically this report deserves a positive evaluation, and the government should move to immediately implement it.

(a) On sexual crimes, strong resistance by women should be withdrawn as a

constitutive requisite for the crime of rape.

(b) The number and deployment of women investigators should be substantially increased in order to prevent secondary harm to the victims of sexual crimes during investigations.

(c) To increase awareness that sexual crimes are violence against women and violations of their human rights, the government should assume responsibility for training all judicial officials, and broadly inform the citizens through public information.

(4) Help victims become self-reliant and get back on their feet by establishing specialized agencies for providing care to sexual crime victims, or give assistance to such private organizations.

C. Statement in the Government's Fourth Periodic Report (pp. 14-15)

D. Government's Response and JFBA's Opinion

The government enumerates the provisions for punishing sexual crimes, states that they are being carried out to the letter, and emphasizes that preventive measures are being taken to help victims and to preclude latent harm.

Indeed there has been a great deal of progress in this area, including elimination of the complaint period for sexual crimes, amendment of penal procedure law to allow victims to testify in court without being in the presence of the perpetrator, passage of the Crime Victims Remedial Measures Law, and passage of the so-called "Stalker Law."

However, in findings of "assault and intimidation" as the constitutive requisite for the crime of rape, because "the use of a certain extent of tangible force is involved even in cases of sex by consent," there has been no change in legal interpretations necessitating assault and intimidation of an "extent making resistance very difficult." Another remaining problem is that rape case trials make an issue of the women victims' past relationships with men, and that women are criticized for past mistakes.

This illustrates the need to quickly train judicial officials who deal with sexual crimes to better their awareness that sexual crimes are violence against women, and are human rights violations that offend human dignity.

Victims of sexual crimes are also exposed to dangers including physical injury, sexually transmitted diseases, and pregnancy. The serious mental shock causes symptoms of post-traumatic stress disorder (PTSD) or forces victims to change residences, or causes other heavy economic and social impacts. Hence victims of course need appropriate medical care immediately after a rape occurs, but also psychiatric care and support, and assistance for livelihood self-reliance.

But in every sense, Japan as yet lacks comprehensive institutions and facilities for providing care to sexual crime victims. The government must take immediate action on policy measures to enhance these institutions and facilities.

2) Sexual Harassment

A. Conclusions and Recommendations

There are references to sexual harassment in the Basic Policy on Violence Against Women discussed above, but especially sexual harassment in the workplace is not just violence against women, but a violation of women's basic right to work, and remedial measures are still inadequate.

(a) The EEOL obligates employers to be heedful of sexual harassment in their hiring management, and the Ministry of Labor (currently the Ministry of Health, Labor and Welfare) has issued guidelines for accommodating the law and responding to complaints and inquiries. However, the law should have provisions that unequivocally make sexual harassment illegal.

(b) The government should distinctly show which agencies are to help sexual

harassment victims so that help is provided quickly and appropriately.

(c) The government should immediately take steps to prevent sexual harassment in universities and other educational institutions.

C. Statement in the Government's Fourth Periodic Report (pp. 15-16)

D. Government's Response and JFBA's Opinion

The government says that it deals with sexual harassment by carrying out to the letter the provisions for punishing perpetrators of sexual violence against women, that the police respond to victims' needs with sexual crime counseling agencies and other means, and that initiatives against sexual harassment are progressing in educational institutions. The government's report makes only a passing reference to sexual harassment in the workplace, saying that to accommodate Article 11 the EEOL obligates employers to show consideration in their hiring management.

However, even though sexual harassment is a grave problem, it is often not outwardly apparent, and it is widespread throughout all sectors of society including in workplaces and in education. Because sexual harassment can occur due to the inequality and power differential between men and women in all social venues, a program is needed to eradicate it.

The government must quickly ascertain the nationwide state of sexual harassment in education. Further, the national or local governments must establish offices to deal with complaints in all schools, and have schools take steps such as teacher training, as well as ensure that children receive gender-free education.

In the workplace it is necessary to go beyond the obligation that employers have to show consideration, by clearly prohibiting sexual harassment and setting up agencies and institutions to provide victims with immediate and proper redress.

3) The Comfort Women Issue

A. Conclusions and Recommendations

Japan's government should, in accordance with its legal responsibility toward the so-called "comfort women" victims, immediately conduct an exhaustive investigation, make an official apology, and take steps needed for recovery from harm, including legal compensation.

B. Concerns of and Recommendations by the Committee on the Elimination of Discrimination Against Women

In its Concluding Observations on the second and third Japanese government reports, the Committee on the Elimination of Discrimination Against Women expressed dismay that no attention was given to the issue of sexual exploitation of Asian women during the Second World War, and it pointed out that this issue is also included in the Japanese government's responsibilities under the CEDAW.

C. Statement in the Government's Fourth Periodic Report

In its fourth periodic report the government states that it has on two occasions released the results of a study it conducted on this matter, that it has taken every opportunity to express its apologies and remorse to former comfort women, and that to discharge its moral responsibility in this matter it supported the establishment of the Asian Women's Fund (AWF), bears all the fund's operating costs, and lends total support to the fund's operations through fundraising and other activities (tentative translation, pp. 18-20).

D. Government's Response and JFBA's Opinion

Victims who have come forward have asked Japan's government for a formal apology

and legal compensation. JFBA has demanded that the government conduct a thorough study and disclose the results, apologize to the victims, take steps for the restoration of their honor, pay compensation, and teach this part of history in Japanese schools ("Proposal on the 'Comfort Women' Issue," JFBA, January 1995). Special rapporteurs designated by UN agencies have repeatedly advised that Japan should acknowledge its legal responsibility to the victims, carry out a thorough investigation, make an official apology, pay legal compensation, and punish those responsible (Report of the Special Rapporteur Ms. Radhika Coomaraswamy to the Commission on Human Rights, "Report on the mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the issue of military sexual slavery in wartime," E/CN.4/1996/53/Add. 1, and Report to the Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities by Special Rapporteur Ms. Gay J. McDougall, "Final report on Systematic rape, sexual slavery and slavery-like practices during armed conflict," E/CN.4/Sub. 2/1998/13).

The "atonement" conducted by Japan's government under the AWF is not the official apology and legal compensation by the government that is sought by the victims, and does not satisfy the measures sought in JFBA's Proposal mentioned above. For that reason many victims have refused the letters from the prime minister and the lump-sum payments, or they continue the civil lawsuits against Japan's government in Japan.

Former "comfort women" and other victims of wartime sexual slavery were seriously harmed by the former Japanese Army, and they are growing old and dying without having received redress. Japan's government should recognize its legal responsibility to these victims and take immediate steps for their recovery from harm.

3 Article 2 (c)

(1) Examination on Ombudspersons

A. Conclusions and Recommendations

Agencies that handle complaints and provide redress are essential if the national machinery is to fully discharge its roles. Immediate steps should be taken toward the appointment of ombudspersons.

C. Government's Response and Statement in the Government's Fourth Periodic Report

"Plan for Gender Equality 2000," the government's domestic action plan developed according to the Vision for Gender Equality, calls for Japan to "perform studies and research on the possibility of introducing ombudspersons into Japan to solve problems of gender equality while learning from activities and related legal systems in other countries" (p. 20).

D. JFBA's Opinion

Concrete government initiatives are far overdue, because even the 2000 Plan calls for only studies and research.

The JFBA December 7, 1993 "Opinion on the Desirable State of the National Machinery for Promoting Planning in Women's Issues" asks the national government and other entities to appoint ombudspersons for gender equality.

Since that time JFBA has continued to cite the need for and ask for the establishment of ombudspersons, and of agencies to handle complaints and provide redress.

However, because concrete government initiatives are overdue, it should immediately begin specific discussions that assume the establishment of agencies and ombudspersons.

4 Article 3

(1) Enhancing the Domestic Headquarters

(2) Enhancing Policy Measures in Local Public Entities

A. Conclusions and Recommendations

(a) From the perspective of gender and in light of the Beijing Platform for Action, the government must provide all ministries and agencies with the authority to review policies and measures, and elevate their implementation responsibilities under that authority to the highest level possible. The government must reorganize the organizational authority of the Conference for Gender Equality and the Headquarters for the Promotion of Gender Equality, clarify the connections between the Conference, which has legal authority, and the supervising sections of ministries and agencies, and strengthen the coordinating mechanism among ministries and agencies for building networks with the associated organizations.

(b) To encourage and establish cooperative relationships with women's organizations, civil society, and all other actors, new memberships in the Liaison Conference for the Promotion of Gender Equality must be allowed.

(c) Implementation of the Basic Law for a Gender-Equal Society is seriously delayed at the city, town, and village level throughout Japan, making it necessary to immediately develop measures to formulate basic plans for gender equality in cooperation with NGOs.

C. Government's Response and Statement in the Fourth Periodic Report

Regarding Japan's national machinery, readers of the fourth report are informed that Japan established the Headquarters for the Promotion of Gender Equality in Japan in 1994, with the prime minister as its president and the chief Cabinet secretary as its vice-president (the minister for gender equality). According to the report, the Council for Gender Equality was established under the Law Concerning the Council for Gender Equality. It has a Committee on Basic Issues and a Committee on Violence Against Women. The report says that the former is "investigating and discussing the basic legislation regarding promotional measures to realize a gender-equal society."

In 1999 the Basic Law for a Gender-Equal Society was enacted to encourage the realization of a gender-equal society. In January 2001 an amendment to the law inaugurated a system to expedite the formation of a new gender-equal society. Within the government a Conference for Gender Equality, headed by the chief Cabinet secretary, was established to replace the Council for Gender Equality.

The Conference for Gender Equality is empowered to conduct studies and deliberations on basic policy and other important matters, monitor the government's implementation of policy measures, and carry out studies on the effects of those measures.

The fourth report also says the Liaison Conference for the Promotion of Gender Equality has been created to facilitate the exchange of information and views with people in a wide variety of fields, as well as other necessary linkages for collaboration with private organizations.

D. JFBA's Opinion

The fourth report touches upon the national machinery, action plan, social policy, and other implementation of measures meant to improve the status of women so that existing laws, customary practices, and government policy will ensure the complete development and improvement of women's capabilities.

(a) Organization of the Headquarters for the Promotion of Gender Equality -- Council for Gender Equality

Under the Basic Law for a Gender-Equal Society the Conference for Gender Equality was established within the government and headed by the chief secretary of the Cabinet, but there is also the Headquarters for the Promotion of Gender Equality in Japan headed by the prime minister and comprising all Cabinet members, in which has been established the Conference of

Gender Equality Officers, which is made up of the gender equality officers who are the bureau directors and others from ministries and agencies making up the Headquarters. The role of the Headquarters for the Promotion of Gender Equality is the smooth and effective implementation of policy measures, but allocation of authority to and the relationship between the Headquarters for the Promotion of Gender Equality and the Conference for Gender Equality are not clearly defined.

Hardly any of the gender equality officers in the Headquarters for the Promotion of Gender Equality perform the role of officers with responsibilities (focal points).

The Beijing Platform for Action provides that from the perspective of gender and in light of the Beijing Platform for Action, the government must provide all ministries and agencies with the authority to review policies and measures, and elevate their implementation responsibilities under that authority to the highest level possible. Further it must establish or strengthen the coordinating mechanism among ministries and agencies for the purposes of carrying out this authority, monitoring progress, and building networks with the associated organizations.

From this perspective and in view of the Platform, the government must empower the gender equality officers to review the policies and measures of government ministries and agencies, and elevate their implementation responsibilities to the highest level possible. Regarding the relationship between the Conference for Gender Equality and the Headquarters for the Promotion of Gender Equality, the government must also clarify the relationship between the Conference, which has legally stipulated authority, and the Headquarters, within which is the Conference of Gender Equality Officers that comprises the gender equality officers, and it must clearly define the coordinating mechanism among ministries and agencies for building networks with associated organizations.

(b) Liaison Conference for the Promotion of Gender Equality

The purpose of the Liaison Conference for the Promotion of Gender Equality is to facilitate the exchange of information and views with people in a wide variety of fields, and the creation of other necessary linkages for collaboration with private organizations. But its members are fixed, making it impossible to admit member organizations working on women's issues in new areas. The Beijing Platform for Action provides, "The participation and contribution of all actors of civil society, particularly women's groups and networks and other non-governmental organizations and community-based organizations, with full respect for their autonomy, in cooperation with Governments, are important to the effective implementation and follow-up of the Platform for Action," which makes it necessary to allow the admission of new members to the Liaison Conference.

(c) Enhancement of Local Government Measures

Since immediately after the enactment and promulgation of the Basic Law for a Gender-Equal Society, local governments have passed ordinances for gender equality. As of 2000, the prefectures having such ordinances were Saitama (March 24), Metropolitan Tokyo (March 31), Yamaguchi (July 1), Mie (October 13), and Tottori (December 26).

Provisions of these ordinances include measures for the prohibition of gender-based discrimination, prohibition of violence and sexual harassment against women, and expediting gender-equality in employment and education. Some ordinances have provisions including systems for dealing with complaints regarding local government measures, and for helping victims of human rights violations, showing that local governments are actively trying to advance gender equality.

However, a report issued in June 2000 by the Office for Gender Equality in the Prime Minister's Office notes that at the city, town, and village level implementation of the Basic Law is seriously delayed because only 571 of 3,252 cities, towns, and villages, or 17.6%, have formulated basic plans for gender equality. The government must immediately establish a means to facilitate the development of such plans by cities, towns, and villages with the participation of

NGOs.

(3) Policy Measures for Women with Disabilities

A. Conclusions and Recommendations

Japan's national and local governments should study problems specific to women in their policy measures for the disabled, and then endeavor to enhance those measures for disabled women.

In particular, the government should take steps to compensate women who underwent forced sterilizations pursuant to the Eugenic Protection Law.

B. Concerns of and Recommendations by the Committee on the Elimination of Discrimination Against Women

None in particular.

Nevertheless, the Human Rights Committee in item 31 of its Concluding Observations states that even though it recognizes that forced sterilization measures for disabled women were abolished, it deplores the lack of a law setting forth the right of women who underwent forced sterilization to receive compensation, and it advises that the necessary legal means should be instituted.

C. Statement in the Government's Fourth Periodic Report

The government's report cites the "Government Action Plan for Persons with Disabilities" (p. 22) and "Disabled Persons' Week" (p. 23). With respect to women the report offers the descriptions "for women with disabilities as well as men" (p. 22) and "both men and women" (p. 23).

Concerning the Law Partially Amending the Eugenic Protection Law (promulgated on June 25, 1996), the report says only, "In view of discriminatory expressions against persons with disabilities in some sections of the Law based on the eugenic idea that stands for the prevention of dysgenic posterity births, stipulations based on the eugenic idea were deleted from the provisions on abortion, etc., and the Law was converted into the Material Protection Law, enforced on September 26, 1996."

D. JFBA's Opinion

It stands to reason that policy measures for the disabled should not discriminate against people for being women, but such measures additionally require consideration for problems specific to women (a gender perspective).

Sexual violence is being committed against women with disabilities, especially those with mental disabilities, in institutions because men attend to their care. Because menstrual care for disabled women in institutions is difficult, they were being given hysterectomies even though normal.

The Platform of Action from the United Nations Fourth World Conference on Women points out that women with disabilities are particularly affected by violence (Part 4, "Strategic Objectives and Actions," D. Violence Against Women, p. 116). In Strategic Objectives D. 1 it says, "Take integrated measures to prevent and eliminate violence against women."

In their policies on the disabled, the national and local governments should show consideration for women's human rights, especially the right of sexual self-determination. They should address problems raised through studies and efforts at enhancing policy measures to prevent human rights violations.

In particular, the government should provide restitution for victims of forced sterilization under the Eugenic Protection Law, which was subject to a recommendation by the Human Rights Committee.

(4) Policy Measures for Elderly Women

A. Conclusions and Recommendations

Japan's national and local governments should reassess the operation of and make improvements in the nursing care insurance system so as to address the needs of users, especially women.

C. Statement in the Government's Fourth Periodic Report

The government's report states, "The share of women among the elderly is higher compared to men, therefore women are more affected by the issues confronting the elderly" (p. 23), and it cites the "establishment of a long-term care insurance system" as its main policy measure (p. 24). The one reason it gives for not making family care benefit cash payments for the time being is that "there is the fear that family care could be fixed to restrict women engaged in family care work."

D. JFBA's Opinion

JFBA's opinion has three points.

(1) Japan's government should establish a Basic Law on the Elderly to assure the basic rights of elderly citizens.

(2) The government should guarantee elderly citizens' right to an adequate standard of living, and implement policies to support families of the elderly.

(3) The government should immediately set up a system that can provide appropriate nursing care services needed by the elderly.

"Further actions and initiatives to implement the Beijing Declaration and the Platform for Action" (the "Outcomes Document") cites the actions that governments and other entities should take: "Take measures to enable all older women to be actively engaged in all aspects of life, as well as to assume a variety of roles in communities, public life and decision-making, and develop and implement policies and programmes to ensure their full enjoyment of human rights and quality of life, as well as to address their needs, with a view to contributing to the realization of a society for all ages" (83 (c)).

Japan's government launched a public nursing care insurance system in April 2000, but the groundwork is still inadequate, making it impossible to provide the necessary nursing care.

Low-income elderly people who cannot afford the 10% they are supposed to pay by themselves cannot receive proper services. Older women find it harder to find work and apartments than men, and receive lower pensions. These and other factors put many women among low-income people, making this problem all the more serious for women.

Human rights issues affecting older women include abuse (such as verbal abuse, physical violence, sexual violence, abandonment of care) of demented or bedridden elderly women by care personnel in facilities or family members who care for them at home. In the case of home care, elderly women are often cared for by other women, especially their daughters-in-law, who sometimes become abusive because they cannot bear the strain of providing care. In some cases hired female "home helpers" are victimized by their charges or family members as through sexual harassment.

Now that the nursing care insurance system has logged over a year of operation, people are pointing out its inadequacies. The national and local governments should listen to the opinions of users, especially elderly women, as well as the recipients of nursing care, many of whom are women, flexibly review the system to address users' needs, improve the system, and enhance livelihood assistance for the elderly.

(1) Appointment of Women to National Advisory Councils and Committees

(2) Request for Cooperation in Appointing Women to the Advisory Councils and Committees of Local Public Entities

A. Conclusions and Recommendations

It will be difficult to raise the percentage of women on government advisory councils and other committees to 30% by the end of 2005. The government should employ "positive action" for advisory councils and other panels with very low percentages of women.

To encourage local governments to follow suit, the national government should set an example with positive action to give local governments a better understanding of the importance of appointing more women.

B. Concerns of and Recommendations by the Committee on the Elimination of Discrimination Against Women

Main Concerns

4. Although Japan ranks second in terms of overall national development, it ranks 14th in consideration for the status of women, which indicates that Japan is indifferent to pursuing economic development that includes women.

C. Government's Response and Statement in the Government's Fourth Periodic Report (pp. 24-25)

Concerning item (1)

In May 1996 the Headquarters for the Promotion of Gender Equality set targets of achieving the international target of 30% in 10 years, and achieving 20% by the end of 2000. As of September 31, 1997, the proportion of women was 17.4%.

Concerning item (2)

Prefectures and designated cities are also endeavoring to appoint women to advisory bodies and other committees by setting numerical targets and attainment dates. The legally stipulated percentage of women members on advisory bodies and other committees was 12.8% as of June 1, 1996.

D. JFBA's Opinion

A September 30, 2000 study by the Prime Minister's Office states that the proportion of women members on advisory bodies and other committees increased 1.5% over the year from September 30, 1998, but that over the year from September 30, 1999 it increased only 1.1%. Owing to the slow rate of increase and to decreases on some committees, it is unlikely that the government's goal of 30% women members by the end of 2005 can be attained.

Furthermore, there are big differences between committees. A study by the Japan Communist Party performed on September 30, 2000 showed that the Fiscal System Council, which is involved in the tax system that promotes Japan's stereotyped gender-based social roles, had only 7.4% women members. The Pension Council, which deals with similar matters, had the low proportion of only 15.8% women members.

Participation according to type of women members shows that job-designated members were 5.2%, and organization-recommended members were 12.0%, especially low. These figures are indicative of the firmly entrenched mentality about stereotyped gender roles held by recommending organizations in Japanese society.

Instead of letting this social mentality control appointments, the government should use positive action for committee members, including those recommended by organizations, to increase the numbers of women members on advisory committees and other committees of the national and local governments.

(3) Initiatives to Encourage the Use of Women Workers' Abilities

1) Facilitating Positive Action

A. Conclusions and Recommendations

The government should set a positive action gender ratio and require businesses to file progress reports with the government.

C. Statement in the Government's Report

The government is using the "guideline regarding voluntary measures by business proprietors to promote the use of women workers' abilities and skills" to improve business proprietors' understanding of the importance and methods of positive action.

D. JFBA's Opinion

Provisions for facilitating positive action made their first appearance in the amended EEOL, which was enacted in June 1997. However, the government merely provides help such as consultations, advice, and information when businesses analyze the situation concerning the women workers hired, prepare and implement plans for rectifying conditions that hinder equal treatment, or set up systems for that purpose.

Everything is left totally up to businesses, and they are not even required to make efforts. Legal provisions are not effective, and there is no way to know how much progress will be made. The Basic Law for a Gender-Equal Society, which was enacted in June 1999, also contains express provisions for the inclusion of positive action in the national and local governments' policy measures for expediting the formation of a gender-equal society, but these provisions likewise lack concreteness. As shown above, the government's report also has nothing concrete in the way of positive action.

The Basic Plan for Gender Equality tendered in December 2000 under the Basic Law for a Gender-Equal Society stipulated that the government and ministries are to formulate their own plans to facilitate the hiring and appointment of women as national government employees, but it says only that "it is necessary to set medium- and long-term targets for efforts aimed at actively hiring and appointing [women]," but makes no mention of specific measures to actively rectify discrimination. With reference to local governments, the plan only makes statements such as "It is hoped that positive initiatives will be made to facilitate the hiring and appointment of women," and "It is desirable that consideration be given to having women employees receive training."

The government must play an active role in encouraging the vigorous rectification of discrimination in the labor arena. Even in 1998, companies with 100 or more employees had women in only 2.2% of department manager positions, 3.7% of section manager positions, and 7.8% of subsection manager positions. In view of these extremely low percentages, it is necessary to set targets for men/women ratios to be attained in each employment area, and, to attain those targets, prepare the social basis and enhance public awareness. That having been done, it will then be necessary for businesses to meet their targets by discharging their obligation to report on reviews of men/women ratios, setting of targets, the state of implementation, progress toward attaining targets, and other information. Companies must also publicly release their results, provide guidance and supervision, and set up monitoring systems for this purpose.

Further, to ensure that positive action works, an essential prerequisite is the social basis that allows women to continue working. This requires alleviating the excessively heavy burden of family responsibilities on women, and requires the national government, local governments, and businesses to create a social system allowing men to shoulder their share of family responsibilities. But recent government policy measures have relaxed the regulations on working time such as by eliminating provisions for protecting women, and have postponed the shortening

of working hours. Allowing women to hold down jobs just as men do requires creating the conditions that let them continue working even while caring for children or elderly family members. This will necessitate: reasonable restrictions on working hours that are the same for both sexes; improvements in the EEOL and establishing a system to redress discrimination; providing daycare for preschool and school children; extended child care hours when women must work into the night; and the qualitative enhancement of, and expanded public funds for, nighttime child care other care.

2) Support for Women Entrepreneurs

A. Conclusions and Recommendations

Comprehensive and specific policy measures are needed for women entrepreneurs to help with procuring business funds, imparting the knowledge and techniques needed to operate businesses, balancing home responsibilities with business, and the like.

C. Statement in the Government's Report

In 1996 the government conducted a study group to implement support projects to help women who want to start businesses, and considered policy measures. In 1997 it prepared a manual for woman entrepreneurs.

D. JFBA's Opinion

Support for women entrepreneurs necessitates developing comprehensive policy measures covering areas including procurement of business funds (to compensate for insufficient self-financing, security, or credit); insufficient opportunity to obtain the knowledge, techniques, and know-how for business management; problems of reconciling businesses with home responsibilities such as housework, childraising, and nursing care; sexual discrimination and prejudices that underlie their difficulties; and insufficient exchange of experience and information among entrepreneurs.

But the government has yet to develop its own comprehensive policy measures, and it has given no specific indication how it will help women entrepreneurs. It needs concrete initiatives to address the most serious problems of capital procurement, business management training, and prejudices against women.

In 1996 the ILO held the ILO Entrepreneurial Forum 96 on Facilitating New Businesses and Encouraging Women Entrepreneurs, and in 1999 it adopted the Resolution on Encouraging Self-Employment. The Small and Medium Enterprise Law passed in 1997 in the US, where women entrepreneurs have a major presence, includes provisions to assist women entrepreneurs. In comparison, Japan's efforts lag far behind.

6 Article 5 (a)

(1) Public Information and Public Education Activities Meant to Rectify Stereotypical Notions About Gender Roles

(2) Promoting the CEDAW

(3) Respect for the Human Rights of Women in the Media

A. Conclusions and Recommendations

Japan's government should immediately implement the following policy measures, including revisions to laws and social institutions, to change perceptions that induce gender inequality, such as the stereotypes of distinct roles for men and women, which still remain deeply entrenched in Japanese society.

1) Amend the Civil Code to give married couples the choice of either the same or different surnames. As 97.7% of women change their surnames names under the current same-surname system, it is not a neutral arrangement.

2) Eliminate legal institutions that discriminate against children born out of wedlock.

(a) Amend the Civil Code to eliminate inheritance discrimination against children born out of wedlock.

(b) Eliminate inheritance discrimination between children born in and out of wedlock in the "relationship" section of family registers. More children are born out of wedlock owing to the diversification of family types, and the current system unjustly discriminates between children who will carry the future. This also violates the Constitution and international conventions.

3) Create measures to ensure the payment of child support after a divorce.

4) Household-based social security provisions such as spouse tax exemptions, tax systems, and other systems should be switched to an individual basis.

5) Establish public shelters, and provide private shelters with public assistance, to help victims of domestic violence.

6) The government should help mass media efforts to increase the number of women in management.

C. Government's Response and Statement in the Fourth Periodic Report

In "Public Information and Public Education Activities Meant to Rectify Stereotypical Notions About Gender Roles," the government's report gives only examples of public information and public education activities by the government and other entities, but no examples of correcting perceptions through institutional reform or amendments to laws.

In "Promoting the CEDAW," the report mentions only leaflets, posters, and a website on the convention.

In "Respect for the Human Rights of Women in the Media," the report mentions only program improvements by broadcast media, and makes no mention whatsoever of government policy measures.

D. JFBA's Opinion

A separate report will cover the above items A 1) through 5). This report will discuss women and the media.

1) Gender-discriminative expressions everywhere

(a) According to a 1994 study by the Metropolitan Tokyo Life and Culture Bureau, 74.9% of women and 66.1% of men responded that "it is necessary to restrict sexual expression in the media."

As this indicates, the overabundance of sexual expression is one of the factors convincing many citizens that restrictions are needed on sexual expression in the media.

(b) Each year the Japan Newspaper Publishers and Editors Association's Research Department discusses articles and advertisements which appeared in member newspapers and which were judged to be inappropriate in the spirit of the Newspaper Ethics Principles and the Newspaper Advertisement Ethics Principles. Most of the articles, photographs, and other items judged inappropriate by the department in 1998 were "articles presenting women." Such articles describe women working in the adult entertainment industry, and include their rates, telephone numbers, and facial photographs. They have been on the increase since 1996, and in 1998 the department said that 366 of them, or 60 percent of the whole, were "inappropriate."

In sports newspapers there is a very noticeable presence of articles about pornographic videos, articles about the adult entertainment industry with photographs, illustrations accompanying "reportage on adult entertainment experiences," and other undisguised sexual descriptions.

Sports newspapers are sold at train stations, and one can often see men perusing them on commuter trains. Many women are exposed to information they do not wish to see, and such content is also easily seen by children.

(c) Many weekly magazines publish nude photographs of women including pubic hair, as well as many explicitly titled articles that make sexual objects of women.

The sale of weekly magazines at train station newsstands, and the hanging of their advertisements from the ceilings of train cars expose many women and children to such explicit titles. Even some men are disgusted by such information.

(d) Even the national newspapers delivered to homes every morning carry advertisements for weekly magazines. At the July 1999 Newspapers in Education national convention, some in the audience expressed the opinion that newspapers cannot be taken into schools because the indecent advertisements make them unsuitable as educational materials.

(e) Owing to this situation the Newspaper Association and some mass transit authorities are reviewing the advertisement screening criteria, but this has not induced any major efforts that would change the content of sports newspapers and weekly magazines.

(f) Under these circumstances, women are constantly exposed to sexual discrimination and sexual expression in the home and while commuting. Currently Japan offers no protection to people who do not wish to see this.

2) Inadequate Voluntary Restrictions by the Media

(a) Ethics Principles

Nearly all the ethics principles on "sexual expression" established by the media are "obscenity restrictions" that lack a perspective on the violation of women's human rights or on sexual discrimination.

(b) Print media have no press council at all.

(c) In April 2000 broadcast media established a Committee on Broadcasting and Young People to consider issues involving young people and broadcasting, but although it can state opinions on sexual expression and other issues, there is no organization empowered to investigate, make recommendations, or otherwise act on complaints from viewers/listeners, making action in this area still inadequate.

3) Few Women in the Media

One reason for this situation is the paucity of female participation in the media. The 1998 proportions of women in the editorial departments of the national newspapers were 9.9% at the Asahi, 9.6% at the Yomiuri, and 10.8% at the Mainichi's main office in Tokyo (survey by the Tokyo Women's Foundation). Only 8.5% of the entire workforce at the Japan Broadcasting Corporation (NHK) is female. A UN study shows that the percentage in Japan is even lower than those in Malaysia, Indonesia, and other Asian countries, not to mention European countries.

The percentages in Japan are even lower for women in management.

4) The amended EEOL, which became effective in April 1999, prohibited sexual discrimination in the recruitment and hiring of media employees. The Ministry of Labor and Welfare is supposed to publish the names of companies that violate this provision. Hence in view of this law, the government must carefully watch the recruitment and hiring of media companies, as it does others.

It is essential that the media incorporate a gender perspective into their policy decisions, and the government should support media efforts to increase women in their management ranks.

7 Article 5 (b)

(1) Participation of Both Men and Women in Home Life

A. Conclusions and Recommendations

1) Because almost the entire burden of nursing care falls on women, it is necessary to create policy measures based on the assumption that men and women both provide nursing care, and to change perceptions about gender roles.

2) Japan needs an employment system that allows both sexes to balance jobs and family responsibilities, as well as the qualitative enhancement of and greater public financial support for day care.

D. JFBA's Opinion

1) The Need for Measures That Bring About Genuine Equality

Developments including enactment of the EEOL have more or less stopped disadvantageous treatment of women on account of their gender as provided for institutionally, but in actuality women shoulder most of the responsibility for the home and childraising, and gender differences are maintained through indirect pretexts. Sixty percent of working women are married, so that both spouses work, but they do 3 hours and 18 minutes of housework on weekdays, and 4 hours and 10 minutes on Sundays. Working men, on the other hand, do 24 minutes of housework on weekdays, and a slightly longer 1 hour and 19 minutes on Sundays. The percentage of working men who perform housework is 26% for weekdays, and 48% on Sundays, both of which are low percentages (these figures are from NHK's 1995 "Survey of Citizens' Use of Time in Everyday Life"). Compared to women, of whom 90% perform housework both on weekdays and Sundays, men perform little housework. From this it is apparent that the heavy burden of family responsibilities on women is cited as a reason for gender distinctions.

Hence, to bring about true equality of the sexes, Japan's government must set up an effective system to redress differences, for example shortening working hours and enhancing day care systems, by instituting a policy to ensure a balance between jobs and home life, providing institutional security, rectifying unfair labor practices, and correcting differentials.

8 Article 6

(1) Current state of prostitution

(2) Circumstances Affecting Prostitution

A. Conclusions and Recommendations

1) A fact-finding survey is needed on prostitution and the adult entertainment industry, and particular attention should be paid to human rights violations against girls and foreign women.

2) In view of the circumstances of women working in the sex industry, and especially women victimized by the international traffic in human beings, the government should immediately implement measures such as the following within support programs meant to eliminate violence against women.

(a) To help foreign women whose human rights might be violated, as through human traffic, prostitution, or rape, the relevant government agencies (police, immigration authorities, Ministry of Health, Labor and Welfare, and prefectural governments) must establish adequate emergency shelters and give women information in their native languages on how to contact them.

(b) Police, immigration, and other government agencies that discover wrongdoing must probe the crime syndicates, brokers, and other organizations behind exploitation, and quickly expose them.

(c) Cooperate with NGOs and give them financial help.

(d) The government must cover medical care expenses under the Livelihood Protection Law to provide emergency medical care to short-term resident foreigners, including victims of international traffic in human beings.

B. Concerns of and Recommendations by the Committee on the Elimination of Discrimination Against Women

Main Concerns

The Committee was disappointed because there was no treatment of the sexual exploitation of women from other Asian countries.

Advice and Recommendations

Advice 9

More detailed information on Japan's sex industry must be furnished so that the Committee can better understand sexual exploitation and prostitution involving foreign women in Japan. The Committee asks that the government research Japan's sex industry and include the results in its next report. And in order to address these contemporary problems and war-related crimes, the Committee encourages Japan to enact specific and effective measures, and include them in the next report.

The Human Rights Committee's Concluding Observations 29 states, "Despite the amendment to the Entertainment Business Law, traffic in women and insufficient protection for women subject to trafficking and slavery-like practices remain serious concerns under article 8 of the Covenant" (note 2, CCPR/C/79/Add.102).

C. Statement in the Government's Fourth Periodic Report

1) Current State of Prostitution

Indications of the state of prostitution include: the provisions and application of the Anti-Prostitution Law, the Child Welfare Law, the Penal Code, prefectural youth protection ordinances, and other legal instruments applicable to prostitution-related crimes; the involvement in prostitution-related crimes of foreign women under the illegal circumstances of having overstayed their visas, and the intervention of hidden brokers who supply foreign women, as well as domestic organized crime groups and unscrupulous employers; the increase of so-called "patronage dating," and the trend toward the participation of younger girls; and instances in recent years in which Japanese travelers are arrested for child prostitution in developing countries in Southeast Asia and other areas, and charged with crimes upon their return to Japan.

2) Circumstances Affecting Prostitution

In 1984 the Law Regulating Adult Entertainment Businesses (currently the Law Concerning the Improvement of Regulations and Operations of Adult Entertainment Businesses) was amended to define five types of sex-related businesses as adult entertainment businesses (known as special sex-related entertainment businesses after amendment of the above law), and required such businesses to register. In 1998 there was another partial amendment to the law that included new provisions on non-store special adult entertainment businesses and on-line adult entertainment businesses (p. 32).

Chapter 4 of the Anti-Prostitution Law contains provisions on the protection and correction of women who might fall into prostitution in view of their disposition, behavior, and environment (p. 33).

Of the undocumented foreign women deported in 1996, 484 had been engaged in prostitution. The government says that its efforts to deal with the problem of undocumented foreign workers include carrying out rigorous immigration screenings, and beefing up the exposure of wrongdoing, primarily malicious cases, through collaboration with the relevant agencies (p. 33).

The Council for Gender Equality, which was created pursuant to the April 1994 Law for Establishing the Council for Gender Equality, has taken over and further developed the role of the former Prostitution Countermeasures Council (p. 34).

D. Government's Response and JFBA's Opinion

1) Enactment of the Child Prostitution Punishment Law at the Instance of House Members

In May 1999 the Child Prostitution Law (Law Concerning Punishment for Acts Relating to Child Prostitution and Child Pornography and to the Protection of Children) was enacted at the instance of House members, and it entered into force that November. Under the law, people who offer payment to children under 18 years of age for sexual intercourse or other acts face punishment of not more than three years of imprisonment or a fine of not more than 1 million yen. The first person arrested under the law was a middle school teacher, followed by a police officer, an appeals court judge, and others, indicating that prostitution is prevalent throughout society. The government must of course crack down on prostitution, but also investigate the state of prostitution, both buyers and sellers.

2) The Second Tokyo Bar Association conducted a study through petitions made for redressing human rights violations by trafficking or prostitution against women coming from other Asian countries to Japan, and reported that recruiters or the organizations that conduct transactions deal in mostly Asian women from Thailand and other countries, who are sexual products that bring high profits, and that the women victims are under the control of adult entertainment businesses in Japan, where they are forced into prostitution under the pretexts of "debt" or "debt repayment." While there is no accurate count of women victims, it is estimated that in 1994 such Thai women alone numbered 20,000 or several thousand more. The international human rights NGO Human Rights Watch released a report on the state of Thai women victims in particular.

To keep women victims of international human trafficking from fleeing, they are deprived of their passports and identification documents, cut off from outside contact, and kept in confinement. Their escape is also prevented by means including violence, threats, and rape by business proprietors or the people who supervise them, and they are forced into prostitution. In many cases the women's consciousness is dulled when performing prostitution by dosing them with sleeping pills or cold medicine, or forcibly injecting them with narcotics. In addition to forced prostitution, women victims are required to work as club hostesses, sometimes for no money and for long hours. Often they are forced to perform prostitution even during their menstrual periods.

Victims have difficulty fleeing or notifying authorities because they do not speak Japanese or know their way around.

Furthermore, even though the government is aware of such international trafficking in women, it exercises only haphazard measures by arresting the women as illegal residents under the Immigration Control Law or the Anti-Prostitution Law.

Because some women must work and live in inferior environments, they contract physical or mental illnesses, and some of them are in urgent need of medical care and public assistance. Yet the Ministry of Health and Welfare (currently the Ministry of Health, Labor and Welfare) denies them all urgent medical attention or assistance on the grounds that they are illegally in Japan.

In 1995 JFBA formally asked the Minister of Health and Welfare to provide short-term resident foreigners with emergency medical care, and in 1999 we made another such request to the Ministry of Health and Welfare (currently the Ministry of Health, Labor and Welfare) on the occasion of a survey on the aforementioned Thai victims of human trafficking. However, the ministry has yet to change its policy.

In view of the victims' circumstances, the government is not taking "all appropriate measures... to suppress all forms of traffic in women and exploitation of prostitution of women," as called for by CEDAW Article 6. It is also possible that the sexual exploitation of foreign women violates the International Convention on the Elimination of All Forms of Racial

Discrimination, and constitutes a serious infringement of human rights as intersectional discrimination. Already in 1958 Japan had joined the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which obligates it to protect victims. Japan's government must enact measures like those in the Recommendations so that these foreign victims enjoy equal human rights.

9 Article 7 (b)

(1) State of Women's Participation in Public Life

A. Conclusions and Recommendations

To encourage the participation of women personnel and achieve gender equality in policymaking, the government must take legal and other appropriate, effective measures such as introducing quota systems and positive action.

C. Statement in the Government's Fourth Periodic Report (p. 34 ff.)

The government says that women's participation in determining policy is at "the request of democracy," and gives the numbers and percentages of women participating in various public fields.

D. JFBA's Opinion

Women's participation in policymaking is a fundamental of democracy, and a necessary condition for reflecting the views of women in policies. But just as the report notes, in Japan the participation of women seriously lags in the policymaking process, both in the private and the public spheres.

Some reasons for the low participation of women in the formulation of public policy are (1) the mindset of gender-determined roles is still firmly entrenched, (2) there are inadequacies in labor conditions such as working hours, and in the share of childraising and nursing care responsibilities assumed by men, and the social institutions to support it, and (3) legislative assemblies and organizations are traditionally male-centered. Thus to expand women's participation in determining policy in the public arena it is essential not only to remake perceptions through gender-free education, but also to provide conditions allowing women's participation.

The June 1999 Basic Law for a Gender-Equal Society calls for positive action, but it requires only "consideration," and even though the government is to enact measures, the law contains nothing specific. Further, the Basic Plan for Gender Equality, which was formulated in December 2000 pursuant to the above law, is little more than a declaration: "In facilitating the participation of women in the Diet and local assemblies, there are hopes for the initiatives of political parties and other organizations in various fields."

As discussed below, the proportion of women's participation in public decision-making processes is extremely low, and although it has increased lately, there is no big change. Japan must therefore institute specific requirements for introducing the quota system and other active means of rectifying discrimination such as positive action, specify targets and deadlines for the national and local governments, and implement aggressive policies with effective features such as compliance measurements, evaluations, and analyses.

1) Women Diet Members

In 1999, one year after the government's figures, the proportion of women Diet members was 25 or 5.5% in the House of Representatives and 43 or 17.1% in the House of Councilors, representing slight increases, but these are internationally low as the report observes. Bringing about equal participation by women will require studying, and actively considering the introduction of, positive action in Japan's election system, as in other countries.

It is said that some political parties are studying the quota system, which is the strongest form of positive action, and indeed positive action must be introduced to encourage women's participation in the policymaking of political parties themselves.

France's parliament had only 10.9% women members, but last May equal numbers of men and women candidates were required by a new law that is being closely watched as a positive means of rectifying discrimination. Very different measures will be needed in view of the international level, running between 30 and 40% in Germany and Northern European countries, and 28% in Spain.

2) Women Cabinet Members

Five women were appointed as Cabinet members in 2001, but as the government report notes, women Cabinet ministers and parliamentary vice-ministers are still the exception. There have been one or two women in each Cabinet, and the Cabinet formed in July 1995 had none.

3) Local Assembly Members, Local Government Heads

Proportions of women in local assemblies continue to rise because they employ their experience in community activities and citizens' campaigns, but the proportions are nevertheless lower than the Diet. Even in 1997, one year after the report's figures, the overall proportion was just 4.6%, which means that over the five years since 1992, when it was 3.3%, there was a mere 1.3% increase. This shows that no effective measures at all are being taken on women's participation.

The years 2000 and 2001 each produced one women governor, but as the government report says, the proportions of local government heads, deputy governors, deputy mayors, and the like are still so low as to be mere exceptions.

4) Women in the Judiciary

Judges have the highest proportion of women in the judiciary, but in 1998 this was 10.2%, followed by 7.9% lawyers and 5.2% public prosecutors, all very low. In 1996 there was but one women Supreme Court justice, no district or appellate court judges, and two family court judges. There were no women prosecutors in the Supreme Public Prosecutors Office, three in high public prosecutors offices, and no chief public prosecutors. Even among JFBA's 71 directors, who are the people making our decisions, there were only four women, and very few women serving as presidents or vice-presidents of the bar associations making up JFBA. Thus the presence of women is still very exceptional.

And as observed below, there is a serious problem with the exclusion of women from the judicature.

5) Women National Government Employees

6) Women Local Government Employees

In 1989 restrictions on public service examinations were removed on all job types for the appointment of women as regular service national government employees, but seven years later in 1996 women accounted for 94 of 9,348 employees, a mere 1%.

Concerning local public employees the government's report mentions only an increase, but as of 1996 women accounted for only 26.6%. Women occupied 2.6% of management positions in governors' and mayors' offices, and 2.5% in board of education offices, both very low percentages.

The June 1999 Basic Law for a Gender-Equal Society calls for positive action, but it requires only "consideration," and even though the government is to enact measures, the law contains nothing specific. Even the section "(2) Setting Positive Action in Motion" of the Basic

Plan for Gender Equality says only this about national government employees: "It is necessary to set medium- and long-term goals for positive hiring and appointment," while on local public employees it says, "It is hoped that vigorous initiatives will be used to encourage the hiring and appointment of women," and "It is hoped that consideration will be given to allowing women workers to attend training courses." This promises no effectiveness.

7) Hiring Discrimination Against Legal Apprentices

While giving sufficient consideration to bar association autonomy, measures should be enacted to address discrimination against women by law offices when hiring lawyers.

More and more women pass the legal examinations each year, and in 2000 the percentage of total qualifiers was 28.72%. About 80% of those passing become lawyers, but law offices still discriminate against women in hiring. In response to a questionnaire sent to 608 people registered as lawyers in October 2000 (19.2% response rate), one-third of the respondents said, "There were law offices whose policies were to hire no women." This indicates that even law offices are not complying with the EEOL, and signifies that opportunities for women to participate and be active in the judicature, which is a public activity, are not adequately assured.

In view of the vital role that the legal apparatus must discharge in eliminating discrimination against women and completely enforcing the CEDAW, bar associations must enact the measures necessary, such as surveys of actual conditions and providing information, to ensure no discrimination against women by law offices when hiring lawyers.

8) Discrimination Against Women in Public Prosecutor Appointments

In addition to clarifying and disclosing the criteria for public prosecutor hiring, the government must ban discrimination against women in hiring public prosecutors. It should also implement positive action and endeavor to increase the number of women public prosecutors.

(i) Discrimination against women in public prosecutor hiring has become a social issue. Such discrimination became known when a Legal Training & Research Institute instructor, who was also a public prosecutor, openly intimated to legal apprentices that the Public Prosecutors Office had a limit on the number of women hired as prosecutors. A JFBA investigation found that when the Public Prosecutors Office hires Legal Training & Research Institute graduates as prosecutors, it has a "female quota" (a limitation on the number of women) which allows the hiring of only one or two women per graduating class.

(ii) This discriminatory treatment violates articles 7 and 11 of the CEDAW, articles 13, 14.1, and 22 of the Constitution, article 27 of the National Public Service Law, and article 5 of the EEOL. The government must therefore clearly ban gender discrimination in hiring public prosecutors, and create and publicly release fair, nondiscriminatory hiring criteria.

(iii) Despite the extremely low percentage of women prosecutors (7.1% in 1997), during the last eight years the proportions of women hired as prosecutors from among Institute graduates is lower than the proportions of women among total Institute graduates. The extremely low participation of women in the Public Prosecutors Office is a source of concern.

Efforts should therefore be made to implement positive action and increase the number of women prosecutors.

9) Supreme Court Justices

A. Conclusions and Recommendations

The government should actively appoint women as Supreme Court justices.

C. Statement in the Government's Fourth Periodic Report

The first woman Supreme Court justice served from February 1994 to September 1997 (p. 36).

D. Government's Response and JFBA's Opinion

Japan's first woman Supreme Court justice assumed her post in February 1994, but there has been not one woman among the nine justices appointed since her retirement in September 1997. All 15 Supreme Court justice posts were filled by men before February 1994, and have been since September 1997.

There is a high risk of gender bias in judgments by the Supreme Court, all but one of whose justices have been men, and the absence of women among justices means there is little chance of rectifying that bias. Because Supreme Court decisions are legally binding against lower courts, a single gender-biased decision by the Supreme Court will affect all Japanese courts and impose a disadvantage upon many women.

Therefore it is urgent that the Supreme Court actively appoint women from the perspective of fully protecting the human rights of women by eliminating gender bias from the judiciary.

10 Article 8

(1) Participation in the Making of International Policy

A. Appropriate steps should be taken to ensure the equal access to, and full participation of women in, policymaking in the international arena.

C. Statement in the Government's Fourth Periodic Report (pp. 37-40)

In describing the state of participation in policymaking in the international arena, the report cites international conferences, the Fourth World Conference on Women, and the participation of women in international organizations.

D. Government's Response and JFBA's Opinion

The Koizumi Cabinet, formed in April 2001, had Japan's first woman Minister of Foreign Affairs, but the participation of women in policymaking in the international arena is behind that in domestic public affairs.

Japan's government should enact the following measures to ensure the equal access to and full participation of women in international policymaking.

(i) From the perspective of achieving the equal participation of women and men in all government and public management positions, government agencies should actually increase the number of women, by, if necessary, working through positive action to publicly commit themselves to goals for achieving a gender balance, which might include setting specific targets.

(ii) Work toward submitting gender-balanced lists of recommended Japanese candidates for election or appointment to UN organs, specialized agencies, or the UN system, especially to high-ranking posts.

(iii) Encourage and support the participation of NGO women in UN conferences and their preparation.

(iv) Strive toward and support gender balance in delegations sent to the UN and other international fora.

11 Article 9

(1) Amendment of the Foreign Service Personnel Law

D. JFBA's Opinion

Since 1952 over 150 diplomats have married citizens of other countries, but because people whose spouses are not Japanese nationals are disqualified as foreign service personnel, they must have their spouses acquire Japanese citizenship, and some diplomats resign because of

their marriages.

Although amendment of the Foreign Service Personnel Law can be said to have solved this problem legally, close observation will be necessary to see if foreign service personnel with foreign spouses are subjected to de facto discriminatory treatment, or if there is discrimination in the treatment accorded to men and women foreign service personnel.

Behind this problem is the government idea that "foreign citizens cannot become public employees, who participate in the exercise of public power and in forming the public will." Even though the Local Public Service Law and the School Education Law place no restrictions on nationality, local governments limit public servant general administrative and technical positions to Japanese citizens. People without Japanese citizenship cannot be public school teachers, and may be hired only as lecturers.

Although a few municipalities are moving to eliminate citizenship requirements for general administrative and technical positions, this is not happening nationally because the government claims that the citizenship requirement for public employees is a matter-of-course legal principle existing before the law.

12 Article 10

(1) Enhancement of Education and Learning to Promote Joint Participation of Both Genders and Allow Diverse Choices

(2) Enhancement of Education and Learning Opportunities That Address the Demand for More Diversified and Advanced Learning for Women

(3) Enhancement of Career and Employment Guidance

(4) Education Reform Programs

A. Conclusions and Recommendations

On December 12, 2000 the government formulated the Basic Plan for Gender Equality pursuant to the Basic Law for a Gender-Equal Society. Although we approve of the plan's orientation, efforts for concrete policy measures with a gender perspective are insufficient in primary and secondary education, while in higher education the gender imbalance in education majors, the small number of women professors, and other factors generate stereotyped ideas about the gender-specific division of labor and the separation of men and women according to the job.

C. Statement in the Government's Fourth Periodic Report (pp. 41-45)

(i) To enhance primary and secondary education, home economics became a required subject for both boys and girls in middle schools in 1993 and in high schools in 1994.

(ii) In 1993 the national Ochanomizu University established an Institute for Gender Studies whose work on gender includes academic research, studies, educational training, and information provision.

(iii) The Ministry of Education (now the Ministry of Education, Science and Technology) is promoting social education by providing assistance to home education classes and other such education.

(iv) Efforts to promote lifelong learning include setting up systems to boost lifelong learning in communities, promoting recurrent education, and expanding the University of the Air.

(v) Since 1990 the government has commissioned women's education organizations to perform model programs for learning and practice to facilitate social participation by women, and in 1994 it has assisted programs by prefectures to run "Programs for the Promotion of Women's

Lifelong Learning."

(vi) For the enhancement of academic and career counseling, national employment guidance meetings have been held since 1995, and that same year the Ministry of Labor (now the Ministry of Labor and Welfare) began holding seminars for high school girls, their parents, and school counselors to change their perceptions so that girls do not decide their futures under the influence of stereotyped ideas.

(vii) In 1997 the Ministry of Education developed a "Program for Educational Reform" for specific and positive action on the government's reform of education.

D. JFBA's Opinion

JFBA here comments only on elementary and middle school textbooks, and gender-free education.

1) JFBA released an opinion titled "Gender Equality in Textbooks" in February 1989.

With respect to elementary and middle school textbooks we proposed: "Make remedial changes in text, photographs, and drawings that implant and reinforce in children the stereotyped perceptions of gender-specific roles and stereotyped concepts of what is "masculine" and "feminine," and make textbooks that can teach children how both men and women can live self-reliant, diverse, and fulfilling lives based on the idea of gender equality."

But there was no real improvement in textbooks even after our suggestions. Hence, specific actions that should be taken are as follows.

(i) Although both boys and girls take home economics, due to incomplete implementation it must be required and both sexes must take it together.

(ii) Textbooks need a gender perspective, and home economics textbooks in particular need to show consideration for family diversification and individual self-reliance.

(iii) Vigorous initiatives are needed to root out the so-called "hidden curriculum," which includes the practice of gender-separate education, uneven proportions of men and women teachers, and words and actions that worsen gender discrimination.

(iv) Consider developing and implementing guidelines for gender-free education.

(v) Lifelong education and vocational education should have a gender perspective, and they should lead to empowerment for women.

2) People should be aware that in actuality gender equality has yet to be realized in society, schools, or the home, and the government must strive for totally gender-free education to bring about true gender equality allowing individuals to make free choices suited to themselves.

13 Article 11.1 (a)-(c), (f), Promoting Measures to Ensure Equal Opportunity in Employment

(1) State of Equal Employment Opportunity Law Enforcement

(2) Amendment of the Equal Employment Opportunity Law

(3) Efforts to Ensure Enforcement of the Equal Employment Opportunity Law

A. Conclusions and Recommendations

The following provisions should be added to the EEOL.

(i) A ban on indirect discrimination.

(ii) Switch burden of proof for discrimination.

(iii) Give the EEOL penalty provisions for violations.

(iv) Prohibit sexual harassment and establish an agency to administer proper redress.

(v) Make positive action obligatory.

- (vi) Set up a redress system to effectively ensure that discrimination is rectified.

The court system, as well as the mediation system run by the Ministry of Labor and Welfare under the EEOL, must be improved to effectively redress discrimination against women in hiring.

B. Concerns of and Recommendations by the Committee on the Elimination of Discrimination Against Women

Concluding Observations

Main Concerns

- * Of note is that discrimination persists despite the EEOL.

Advice and Recommendations

- * The next report should be prepared under a dialog with NGOs so that it pictures the situation of Japanese women better. It should recognize that instances of legal and actual discrimination exist in the workplace, and develop means or plans to eliminate it.

- * The government must make private enterprise comply with the EEOL, and it must take measures to eliminate indirect discrimination, and report on it.

C. Statement in the Government's Report

1) Reinforcing the EEOL

- (i) Create provisions that ban discrimination against women in recruitment, hiring, placement, and promotions.

- (ii) Reinforce measures that assure the law's effectiveness.

- * Institute a system to publish the names of companies that do not follow administrative guidance.

- * Improve the mediation system.

- (iii) Create provisions to encourage positive action.

- (iv) Create provisions to prevent sexual harassment.

2) Initiatives to Assure Equal Employment Opportunity

- (i) Administrative guidance and assistance in settling individual disputes

- * Provide companies with administrative guidance in a planned manner by visiting places of business.

- * Appropriate advice, guidance, and recommendations by the director of the Prefectural Women's and Young Workers' Office, smooth operation of the EEOL Mediating Committee, and other means should be employed to provide for quick and smooth resolutions of individual disputes between women workers and their employers over unequal treatment.

- (ii) Encourage positive action by companies to help women exercise their potentials.

- (iii) Provide administrative action for the proper operation of separate-track employment management systems.

D. JFBA's Opinion

1) Prohibiting Indirect Discrimination

Gender discrimination in promotions that is linked to wages remains a serious problem.

In 1999 the proportions of women in management positions in the department manager and section manager class were 8.2% for deputy section managers, 3.4% for section managers, and 2.1% for department managers, all low percentages showing that promotions for women are still exceptional.

Further, the existence of "indirect discrimination" like the separate-track personnel systems discussed below is likely a major factor behind low pay for women. Currently many lawsuits are in progress seeking rectification of promotion and wage discrimination.

Passage of the EEOL brought an end to blatant institutional discrimination against women, such as gender-based wage systems, but even though equal treatment appears to be practiced, in reality companies often practice so-called "indirect discrimination," which excludes and gives disadvantageous treatment to one sex. One example is the payment of wages (especially benefits) using the criteria of "head of household" or "primary source of support." Because over 90% of heads of households are men, use of these criteria puts the overwhelming majority of women at a disadvantage because they are not "heads of households" or "primary sources of support." Such indirect discrimination is still firmly entrenched.

Since the EEOL was enacted, women have also been treated disadvantageously under the transfer criterion. For example, the "separate-track personnel systems" used by mainly financial, insurance, and trading companies divide jobs into types such as "career-track" and "clerical-track" positions, treating workers very differently in terms of promotions, wages, and other ways. Many companies cite "transfers" as the criterion for separate tracks. But because almost all women also shoulder household responsibilities, it is hard for them to choose career-track jobs when presented with the "transfer" condition. In view of the facts that almost all women are stuck in low-pay, no-promotion clerical-track jobs, and that very few men are in clerical track positions, the very act of creating the "transfer" criterion is doubtless indirect discrimination to treat women disadvantageously. Even in companies that do not use separate-track personnel systems, and in government offices too, transfers are often a de facto criterion for promotions. Women hold a mere 3.5% of career-track positions (according to a 2000 21st-Century Industry Study called "Study on Hiring of College Graduates and Women Holding Career-Track Positions").

Further, recently more and more companies are, under their personnel policies, instituting job competence qualification systems under the pretext of merit systems, and they use evaluations, tests, or other means to determine promotions. But actually in not a few companies these systems constitute indirect discrimination, by having men perform key operations and women perform routine, supplementary jobs, and by using evaluation criteria and test questions to put women at a disadvantage.

In a lawsuit example, the court decision in the case on Sanyo Bussan's wage discrimination against women found that, in reference to the company citing "head of household" and "transfer" as criteria for age-based wages, "The company established those criteria knowing full well that the application of said criteria would work to the considerable disadvantage of women employees alone," and indicated that indirect discrimination would not be allowed.

2) Switching the Burden of Proof for Discrimination

Of the greatest difficulty in wage discrimination cases is proving that a wage differential exists, and that it is gender-based.

Finding if wage differentials exist requires asking employers to submit their wage ledgers and other documents. Penal provisions should be established so that when employers refuse to submit them even when ordered to do so by courts, those employers will be punished. And new provisions should be established so that if an employer does not produce evidence showing that there is a rational basis for gender-based differentials, it will be assumed they are gender-based.

3) Penal Provisions for EEOL Violations

Even though EEOL provisions regarding retirement age and retirement have always prohibited resignation upon marriage and young retirement, women are still forced to do these

things, making it evident that mere prohibition is not enough.

The EEOL should include these provisions: When an employer does not follow recommendations by the Prefectural Women's and Young Workers' Office, or refuses to obey an order to submit documents, administrative sanctions would be imposed, such as making these facts public, or refusing job placement services; additionally, if an employer does not follow recommendations by the Prefectural Women's and Young Workers' Office, it should be possible to administer punishment based on a charge of wrongdoing by the office director.

4) Positive Action

The government report claims that amendment of the EEOL incorporated provisions to encourage positive action. But the substance of those provisions is that the government will advise and help proprietors, who are to develop and carry out plans to analyze the circumstances of the women workers they employ, and alleviate conditions that are impediments to equal opportunity and good treatment, as well as setting up systems for those purposes.

Under these provisions it is totally up to proprietors whether or not they implement positive action, so they are not compelled to do so.

Although limitations on women sitting for the national public service (clerical positions) examinations were eliminated, there are still few women in management positions, and a look at employees to whom the administrative position (I) salary table is applicable shows that the percentage of women in grades nine through 11, which correspond to section managers and deputy section managers in the ministries and agencies proper, is only about 1% (as of December 31, 1999). No positive measures have been enacted to raise that percentage.

Also, few women are among newly hired employees. People qualifying and hired for type I positions, who are expected to be appointed to key ministries and agencies, clearly include a lower percentage of women than the percentage of women among applicants (according to "Study on Women's Participation in Policymaking"). The percentage of qualifying women peaked in 1994, declined for two years in a row, then recovered to only 14.2% in 1998 and 14.4% in 1999.

Therefore, to adjust gender ratios in each employment area it is important that the government declare and release goals to be achieved; assist the attainment of those goals by means such as building a social foundation to guide and oversee proprietors and conducting public awareness activities; and require that those proprietors who report the status of their goal attainment must file reports with the Minister of Labor stating the gender ratios of their workforces, the goals that were set, and implementation progress. Further, it is important that positive measures to rectify discrimination consist of analyzing the current situation, setting goals, mandatory goal attainment plus guidance and supervision for that purpose, and public release of results. Provisions should include a monitoring system and requiring concrete measures, as well as budgeting for these purposes.

5) Redress System to Ensure That Discrimination Is Effectively Rectified

Eliminating gender discrimination requires a system to quickly and properly help discrimination victims, but the EEOL-prescribed mediation system does not function as a redress system to compensate discrimination.

Before the EEOL amendment, mediation was not initiated unless both sides agreed to it, and hence over a 10-year period arbitration was initiated for only one company. Under the amendment, agreement by both parties is not required to initiate mediation, but the requirement "if the manager of the Prefectural Young Women's and Young Workers' Office deems it necessary" remains unchanged. In instances to date mediation has not been initiated merely because, for example, said manager argued that companies using separate-track personnel systems did not separate employees according to a gender criterion.

In the Japan Airlines gender promotion discrimination case, in which mediation was requested after the EEOL amendment, it was still unclear four months after the request whether mediation would be initiated, and even after initiation was approved, application and other procedures by representatives considerably delayed initiation. In the end, the proposal from the mediation committee produced no resolution at all. This shows that because the mediation system is not functioning, it is necessary not only to create a mediation system, but also to establish an independent administrative commission whose decisions are binding and that can quickly issue orders for rectification.

Under present circumstances, women suffering discrimination must file lawsuits to seek rectification.

However, it is difficult for lawsuits that seek rectification for wage and promotion discrimination against women to achieve redress when their work is the same as men's in quality and quantity, and especially when they are victims of discriminative placement in routine, supplementary jobs. Of particular significance are lawsuits in which women who were hired between 1955 and 1975 and have 30 to 40 years of continuous service file lawsuits to redress discrimination, claiming gender-based wage differentials. As in the Sumitomo Electric Industries case, discussed below, a characteristic of recent trials is the many decisions claiming no discrimination on the grounds of the "contemporary circumstances argument."

The Osaka District Court decision in the Sumitomo Electric Industries gender discrimination case (July 31, 2000) held that placing only women in "routine, supplementary jobs" and according them inferior treatment violates Article 14 of the Constitution, but it also stated that because gender equity must be harmonized with companies' business freedom and property rights, and that 1965 was a time when there was a strong sense of the division of labor, under which women did not stay on the job many years, did not transfer, and did not perform overtime or holiday work like men; companies in those days hired only women for "routine, supplementary jobs," and the fact that they continue even now to pay women less than men is not illegal under generally accepted social understanding.

Further, even among the cases where there were findings of discrimination, at the appeals-court level there is but one case in which the decision confirmed that the defendant should have been promoted, and the only redress demanded was compensation for the past. Currently it takes about 10 years for a district-court decision, and consequently not a few women must resign themselves to their circumstances without a legal battle (see the table "Court Decisions in the Main Recent Cases of Gender Discrimination in Wages and Promotion," below).

6) Sexual Harassment

Provisions are needed that explicitly ban sexual harassment and set forth the right of women to work free of it. The government should establish an agency for dispute resolution providing quick and proper redress.

It is not an overstatement to say that in Japan sexual harassment is widely prevalent not only in the workplace, but also in education. On April 1, 1999 the EEOL gained a provision requiring employers to deal with sexual harassment in hiring through care in hiring management, but this provision imposes only the obligation for "careful consideration," and does not explicitly ban sexual harassment as illegal.

Many sexual harassment lawsuits have been filed since 1989, and the victims have won nearly all of them, but the fact that very few such disputes in Japan actually end up in court suggests that sexual harassment is a very widespread problem. What is more, victims win very low compensation. The book *Sexual Harassment and Related Legal Principles* by Hideo Mizutani lists 58 lawsuits, of which 52 demanded compensation (different instances of the same case are all counted). The amounts that courts recognized as compensation, including consolation payments for being forced to resign or otherwise losing one's job were under 1.5

million yen in half the cases. In 1999 attention was focused on decisions recognizing consolation payments of between 7 and 9 million yen, but these were simply high in comparison with the small sums granted previously. At present, redress through the courts is not only insufficient to make up for the harm victims suffer, but also promises no effective deterrent for violators and employers.

There must be provisions on employment that do not merely obligate employers to be "considerate" about sexual harassment, but that explicitly ban it and confer the right to work free of sexual harassment. As a means of solving problems, companies are required to establish in-house dispute resolution agencies, but these are so far inadequate, and the manager of the Labor Bureau, which is the dispute resolution agency specified in the EEOL, has only weak authority that does not include performing inquiries or the power of compulsion to make parties cease certain actions. As this discussion shows, the courts are inadequate for preventing or redressing sexual harassment, which must therefore be explicitly prohibited by a statutory provision.

Court Decisions in the Main Recent Cases of Gender Discrimination in Wages and Promotion

Case	Decision date	Decision summary
Promotion and wage discrimination by the Social Medical Fee Payment Fund	Jul 4, 1990 (Tokyo District Court)	To correct inter-association discrimination the only criterion for men was years of service, but similar promotion measures were not taken for women, which constitutes unreasonable gender discrimination. Court order included payment to compensate wage differential due to unlawful act.
Wage discrimination by Iwate Bank	Jan 1, 1990 (Sendai Appellate Court)	Ruled that employee treatment based on pay provisions limiting payment of family allowance and other benefits to "husband bank employees" is discriminative treatment based solely on gender and violates Article 4 of the Labor Standards Act. Nullified by Article 90 of the Civil Code.
Nisso Publishing Company wage discrimination	Aug 27, 1992 (Tokyo District Court)	Nisso violated Labor Standards Act Article 4 by never raising the lower starting salary paid to woman whose work quality was equal to that of men hired about same time.
Sanyo Bussan wage discrimination	Jun 16, 1994 (Tokyo District Court)	The wage criteria of "head or non-head of household" and "limitation or no limitation on work site" were calculated knowing full well they were disadvantageous to women alone, and violate Labor Standards Act Article 4.
Ishizaki Honten Company, Limited wage discrimination	Aug 7, 1996 (Hiroshima District Court)	Court found no reasonable explanation for the difference in starting and subsequent salary between genders despite performing same work, and held this to be discrimination against women on account of gender; ordered payment of compensation for unlawful act.
Shiba Credit Bank promotion and wage discrimination	Nov 27, 1996 (Tokyo District Court)	Despite having a testing system for promotions, men were promoted by years of service according to labor-management practice that was not applied to women, which not only violated company regulations but also was impermissible under the current legal order. Court recognized plaintiffs' promotion to section manager, ordered payment of past and future pay differences, and confirmed plaintiffs' post-promotion status.
	Dec 22, 2000 (Tokyo Appellate Court)	Because all men pass the promotion test, which has an extremely low pass rate, the court presumed that men are treated preferentially in personnel evaluations, and that women too would pass if they were given the same consideration. It confirmed plaintiffs' status and approved payment of wage differences, consolation, and attorneys' fees.

Shionogi & Co., Ltd. wage discrimination	Jul 28, 1999 (Osaka District Court)	College graduate women at first hired to do supplementary work were later switched to the same work as men, yet got lower proficiency pay than men, violating Labor Standards Act Article 4; court ordered payment of difference between women's pay and 90% of men's average proficiency pay, plus consolation payment.
Sumitomo Electric Industries wage discrimination	Jul 31, 2000 (Osaka District Court)	Male high-school graduates are hired as management candidates, female high-school graduates to perform routine, supplementary jobs; gender-specific hiring and gender-based labor management with considerable gender differentials violate the intent of the Constitution's Article 14, but in 1965 there was a strong sense of gender-based division of labor, and women tended to quit working upon marriage and childbirth. Court claimed that such management does not violate public mores and that company has no obligation to rectify treatment, and dismissed claim for payment of wage difference.
Shoko Chukin Bank wage discrimination	Nov 20, 2001 (Osaka District Court)	Upon introduction of track-based personnel system, plaintiffs chose career track but were placed in clerical track, resulting in large differential with men's career-track positions. Court recognized this as gender discrimination, but ruled for payment of consolation alone, and dismissed claim for wage difference payment.
Sumitomo Chemical Co., Ltd. wage discrimination	Mar 28, 2001 (Osaka District Court)	Hiring categories in which male high-school graduates performed specialized jobs and female high-school graduates get clerical jobs cause a wide gender differential, but court dismissed claim by ruling that gender-specific hiring categories do not violate public mores because in 1965 there was a strong sense of gender-based division of labor and women tended to leave after a short time.
Sumitomo Life Mrs. wage discrimination	Jun 27, 2001 (Osaka District Court)	Court recognized that married women were given low evaluations because they took maternity leaves, creating large differentials with men in promotions and raises, and thereby limiting the exercise of rights under the Labor Standards Act. Ruled that defendant violated the law and ordered payment of compensation.

14 Article 11.1 Amendment of the Labor Standards Act

(1) Regulation of Late-Night and Holiday Work, and Overtime

A. Conclusions and Recommendations

1) The government should limit overtime work to two hours daily, six hours weekly, and 120 hours yearly (150 hours yearly for the time being), and as a rule prohibit working on holidays.

2) Late-night work should generally be prohibited for both men and women, except jobs deemed necessary for the public benefit. For determining exceptions, ceilings should be placed as on the number of hours per night, times late-night work is performed, the interval between nights worked, and the number of nights worked in succession.

C. Statement in the Government's Report

1) Amendment of Labor Standards Act (p. 47)

(i) "Abolition of restrictions on overtime work, holiday work or late night work by women

"The revised law has abolished restrictions on overtime work, holiday work or late night work by women aged 18 years and above."

(ii) "Establishment of measures to restrict late-night work by employees taking care of children or other family members (revision of The Child Care and Family Care Leave Law) (p. 48)

"As a result of the removal of restrictions on late-night work by women under the revised Labor Standards Law, there may be a case when both parents work late-night shift or when no one is available for child care or family care late at night. In order to avoid such a case, the revised law prohibits employers from assigning a certain category of employees taking care of their family members to a late-night shift upon request from such employees, except when doing so obstructs the normal operation of business."

D. JFBA's Opinion

1) The government explains that it has eliminated restrictions on late-night work and similar labor by women "to ensure gender equity in opportunity and treatment," but in Japan working hour restrictions themselves are insufficient, making long hours, overtime, and holiday work matter-of-course. While doing nothing about this situation, the government eliminated Labor Standards Act provisions that restricted such work by women. Instead of being a legal amendment to bring about gender equity, it was a change for the worse that actually aggravates gender discrimination.

2) Because Japan originally had no restrictions on overtime or holiday work, all a company has to do is enter into an "Article 36 Agreement" (an agreement which specifies overtime and holiday work pursuant to Article 36 of the Labor Standards Act) to have employees work any number of hours daily, or perform unlimited holiday work.

Furthermore, the introduction and expansion of flex-time schedules and discretionary work systems has further loosened working hour restrictions. Under flex-time schedules, restrictions on working hours each day, week, or month are eased, and working hours become irregular. Under discretionary work systems, no matter how many hours an employee works, hours worked are regarded as the number stipulated in advance, and have nothing to do with actual working hours. As a consequence, nothing has been done about long working hours.

A 2000 labor study by the Management and Coordination Agency showed that men and women employees worked an average of 43.1 hours weekly, which comes to 2,241.2 hours yearly, and that the figures for men were 47.6 and 2,475.2. Since 1985 restrictions have been relaxed on overtime and holiday work by women, mainly professionals, and many women work long hours

or late at night. Not a few women in the publishing and broadcasting industries work more than 100 hours of overtime a month. What is more, there is a great deal of "free overtime" in Japan. Faced with huge amounts of work and quotas, employees work long overtime hours, and not a few employers do not even keep track of actual overtime hours.

Additionally, Japan has yet to ratify a single ILO convention on working hours.

These long working hours are a cause of damage to health symbolized by death from overwork ("karoshi") among men, but health damage has likewise become serious among women who work long hours or late at night. This also threatens their health as mothers.

It has long been observed that long hours and late-night work cause neglect of home life, and especially of children. In terms of childbirth, the 1999 fertility rate of 1.34 casts a long shadow over Japan's future.

Despite calls for both genders to assume household responsibilities, women must assume most of them because of the long hours that men are obliged to work. This situation makes it difficult for women to keep jobs because they cannot work the same long hours as men that relaxed regulations impose upon them, and they are forced out of the workplace. With the introduction and expansion of flex-time schedules, already long working hours have become irregular. This makes it difficult to reconcile jobs with home life, especially childraising, and in this respect as well women find it hard to hold down jobs. In fact there is a sharp increase in part-timers and other low-wage "irregular" employees who get no promotions and work under highly inferior conditions.

Therefore the combined effects of eliminating restrictions on overtime and late-night work by women and relaxing regulations on working hours are a further stimulus to Japan's considerably long working hours and create impediments to life in the home and society. They narrow the work opportunities of women who shoulder home responsibilities, and actually increase gender discrimination. What Japan needs is stricter controls on working hours for both sexes, and in view of the long working hours, overtime work must be limited to two hours daily, six hours weekly, and 120 hours yearly (150 hours yearly for the time being).

3) The negative health impact of late-night work is the same with both men and women. That impact is especially heavy on pregnancy and childbirth, as evidenced by the considerably higher rates of imminent abortion, abnormal births, and premature births among late-night workers than day workers. And without exception, death from overwork ("karoshi") is the result of long working hours extending to late at night. Late-night work also has profound impacts on the home.

For these reasons late-night work should generally be prohibited, with exceptions allowed only for the public weal. Even in those exceptions, daily working hours must be restricted to a maximum of six hours in consideration of a balance with daytime work, ILO recommendations, and other factors. Further, in consideration of workers' health and home life, it is necessary to put caps on late-night work, such as the number of times (maximum of six times monthly), the interval between nights worked (at least 16 hours), and the number of nights worked in succession. Furthermore, some workers should be placed in day jobs when requested, examples being workers with household responsibilities, those with health reasons, and women who are pregnant or gave birth less than a year ago.

Even people with family responsibilities experience heavy impacts on health, home life, and social life by late-night work. The government should quickly take action to restrict late-night work in general, and then take special measures for workers with family responsibilities.

However, even during the period of time until late-night work is as a rule prohibited and general restrictions are achieved, it is possible to relax the requirements for the right to be exempted from late-night work. The government claims that it instituted measures to limit late-night work for workers who perform childraising and nursing care, but under the current Childcare and Nursing Care Law, even if both parents have late-night jobs and their elementary

school child is left home alone, the parents cannot ask their employers to be exempted from late-night work. At the very least, the requirements for exercising the right to exemption from late-night work should be relaxed to allow exemptions for parents with elementary school children.

4) In view of the Introduction and Article 11 of the CEDAW, maternity protection is a social right, and the necessary extent of protection in a country corresponds to the overall level of labor conditions in that country. ILO Convention 156 and Recommendation 165 call for raising labor standards in general, specifically shortened daily working hours and limits on overtime, in order to balance work and home responsibilities and bring about gender equity. Accordingly, the relaxation of restrictions on working hours and late-night work, and the introduction of discretionary work and flex-time schedules occur under a policy of lengthening working hours, despite supposed active government efforts to shorten them. This deprives women of their right to hold jobs and engenders promotion and wage discrimination, which runs counter to the intent of the foregoing conventions.

16 Article 11.1 (c)

(1) Action on Developing the Abilities of Women

A. Conclusions and Recommendations

The government should come up with concrete policies for developing vocational capabilities. Regulations are needed to encourage shortened working hours so that women can find the time to develop their abilities.

C. Statement in the Government's Report

The Ministry of Labor "1) has implemented a Business Career System (professional potential acquiring system) to support a step-by-step, systematic development of the professional potential of white-collar workers, and 2) is promoting the improvement of measures, including subsidies, to support employers who establish a work environment, including working hours, to enable workers, regardless of their sex, to voluntarily develop their potential."

D. JFBA's Opinion

The "professional potential acquiring system" for developing women's capabilities is generally unknown to workers, and it is unclear how exactly it is being implemented. Workers must have free time to develop their capabilities, and the report says that employers are provided with subsidies and other support to create conditions allowing workers to find the time. However, working hours cannot be shorted by leaving this up to employers; government regulations for that purpose are indispensable. The problem of long working hours in Japan is discussed in another section, but shortening hours is also important from the perspective of developing capabilities.

(2) Programs to Support the Participation of Women in Society

A. Conclusions and Recommendations

To help women exercise their abilities, the government must come up with more concrete policy measures than just opening new facilities.

C. Statement in the Government's Report

The government plans the integrated implementation of programs to help women exercise their abilities. They include training, seminars, counseling, displays, and providing information, and a facility under construction for these programs is to open in 1999.

D. JFBA's Opinion

It is not clear how close the facility mentioned in the government report is to opening. What is more, the Women's Plaza in Tokyo, a facility that was widely used for women's training, meetings, and other purposes, was recently closed, and there have been other closings of facilities and reductions of budgets meant to support working women's participation in society. Needed are concrete policy measures that can provide women with opportunities for education and learning.

37 Article 11.1 (d)

(1) Efforts to Eliminate Gender-Based Wage Differentials

A. Conclusions and Recommendations

1) Japan's government should immediately take effective measures to eliminate serious gender differences in wages and promotions, which violate the principle of equal pay for equivalent work in Article 11.1 (d) of the CEDAW.

2) The government should ratify ILO Conventions 175, 181 and others, and pass domestic legislation based on international standards to provide employment opportunities for and improve the wages of part-timers, dispatched workers, and limited-term workers.

B. Concerns of and Recommendations by the Committee on the Elimination of Discrimination Against Women

The government should make sure the private sector abides by the EEOL, and report on measures taken to deal with the indirect discrimination in promotions and wages that women face in the private sector.

C. Statement in the Government's Report

It observes that the gender wage differential has not been eliminated, and that it "stems largely from the difference in duty (type and rank of job), length of service and educational background, and so on."

D. JFBA's Opinion

Like the concerns of the Committee on the Elimination of Discrimination Against Women, the government report lacks a critical analysis of the barriers to full CEDAW implementation.

1) Male-Female Wage Differential

The government report compares the average wages for men and women, excluding part-time workers, but its comparison should include them because, as discussed below, recently there have been sharp increases in women part-time and dispatched workers, and the wages of such non-regular workers are lower than those of regular workers. Hence the gender wage differential remains and keeps women's pay down. In 1993 the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) observed that the main causes of wage differentials in Japan are that many women are concentrated in low-wage jobs, and that there are not enough equal employment opportunities for women workers. The government's report lacks an analysis of these items, and should give a description of Japan's situation including these problems.

2) Gender Wage Differentials

Differences in average wages actually paid (regular pay excluding overtime) were as follows.

1985 51.8% (59.6% when excluding part-timers)
1990 no data (49.6% when excluding part-timers)
1995 no data (62.5% when excluding part-timers)
1998 no data (63.9% when excluding part-timers)
1999 no data (64.6% when excluding part-timers)

Even government studies (including the 1999 and 2000 editions of the White Paper on Working Women) have made the observations given below, and women are concentrated in low-paying jobs (such as part-time work). Government reports must have analyses based on the real-world situation.

(i) Gender wage differentials among general workers tends to shrink year by year, but there are differences between industries. Finance and insurance, for example, have the largest differences between men and women, and they are on a rising trend in recent years.

(ii) Wage differentials differ according to company size. While the gap has narrowed considerably in small and medium enterprises, it is expanding in big companies.

(iii) The higher educational levels, the smaller differentials are.

(iv) Examining wage differentials by age shows that gaps are widening among older workers. Although the wages of general women workers reach their highest point in the 35 to 39 age group, men's wages continue to rise until ages 50 to 54.

3) Causes of Gender Wage Differentials

The government report cites jobs, years of service, education, and other factors as the causes of gender wage differentials, but it must also analyze whether they are reasonable differentials.

As the report states, Article 4 of the Labor Standards Act prescribes the principle of equal pay for equal work, but in 1967, long before ratifying the CEDAW, Japan had ratified ILO Convention 100, which prescribes the principle of equal pay for equal work just as the CEDAW does.

It was the government's view that it can ratify this ILO convention and the CEDAW even if it does not pass corresponding domestic legislation. That is to say, even though Japan was expected to implement the principle of equal pay for equal work beginning in the 1960s, the government took no effective measures. Although the government report acknowledges the gender wage gap, it offers no adequate analysis on whether it arises because of discrimination against women.

(i) Japan still has no criteria for objectively evaluating job performance. Work that is mostly performed by women is rated low, while that mostly performed by men is rated high.

The government report offers no analysis from the perspective of prohibiting discriminatory treatment in evaluating work quality, a prohibition stipulated in the CEDAW.

As noted previously, the separate-track personnel management systems instituted mainly by large companies serve to lock women into low-paying jobs.

In the matter of promotions, the proportions of managerial positions held by women are 2.1% department manager class, 3.7% in section manager class, and 8.2% for deputy section manager class ("Basic Study on Employment Management of Women," Ministry of Labor, 1999).

Therefore the paucity of women in management positions is one factor behind the wage gap.

(ii) Years of Service

Women's years of service have become long in recent years. The problem is not that women get lower pay because they have fewer years of service than men. It is that even if

women do work many years like men, they do not get the same pay.

Although many companies have adopted seniority-based wages, many women get lower raises for years of service than men.

And if women quit their jobs, they have few opportunities to be hired at other companies as regular employees, and can only work as part-timers, dispatched workers, or other workers with insecure positions and low pay. Eliminating the gender wage gap will require working conditions that allow women to continue working even if they have children, and higher wages for part-time and dispatched workers.

(iii) Education

It is observed that the higher the educational level, the smaller the gender wage differential. But at the same time, although women with high education levels, such as those with undergraduate or graduate degrees, have high initial employment rates, they find it harder to keep their jobs when getting married, having babies, and raising children, and their employment rate increases little even after they have more or less finished raising their children. Represented graphically, the employment pattern is called "giraffe-curve" because it traces the outline of a giraffe with the head at the left (generally in the case of women it is the "M-curve"). But many women out of the work force would like to work again. The biggest reason for not continuing work is, "The job wasn't worth doing," and the biggest reasons for not returning to the work force are, for women in their 30s, "I want to use my time for housework and childraising," and for women in their 40s, "I want to use my time for my interests and learning things." And the biggest reason for not being able to find work is the age limitation.

For these reasons, necessary actions include the creation of working environments that provide highly educated workers having superior potential abilities with employment opportunities that suit their abilities and aptitudes, and the creation of systems that remove age restrictions on reemployment help and develop the abilities of people who wish to be employed again.

(iv) Differences in Forms of Employment

A look at forms of employment shows that both the number and percentage of non-regular women employees have increased substantially. According to the "Special Survey on Labor" (1985, 2000) by the Ministry of Labor's Statistics Bureau, the number of non-regular employees (called variously "part-time," "dispatched," "contract," or by other terms depending on the employer) was 6,450,000 in 1985, but 12,570,000 in 2000. Women account for 4,850,000, or 75%, of that increase. The increase in part-timers was especially marked. In 2000 there were 20,890,000 women workers not employed in farming and forestry (not including those temporarily not working), and workers working medium and short hours accounted for 7,540,000 of them (36.1%). There were also continuing increases in contract employees, dispatched workers, and other non-regular employees in insecure positions, bringing the total percentage to 42.9%. Because men are 10.3% of the non-regular workers, the percentage of women is overwhelmingly high.

Though part-time sounds like short-term, short-hour work, in Japan part-timers have an average 4.9 years service and work an average of 5.5 hours daily, which does not differ much from regular employees (1999). While part-timers and others like them are regarded as non-regular employees by employment form alone, it is not unusual for them to work the same hours and perform the same jobs as regular employees. Yet, while the wages of regular women employees are only 64.6% those of their male counterparts, the wages of women part-time workers are a mere 67.3% of regular women workers. And as shown by the graph, "Wage Gap Between Women Part-Time Workers and General Workers," the differential grows year by year, as wages fall and workers are made insecure by the abuse of layoffs.

The 1993 Part-Time Labor Law doesn't prescribe the principles of equal treatment and of proportional wages. So, this law does not try to directly protect part-time workers, it merely counts on employers to improve working conditions by means of employment

management efforts. The law is therefore highly inadequate for pushing up the wages of part-time workers.

The Dispatched Workers Law also has no provisions for wage standards. Under Japan's legal system, Article 4 of Japan's Labor Standards Act does prescribe the principle of equal wages for both sexes, but no concrete measures have been taken to effectively implement that principle.

Wage Gap Between Women Part-Time Workers and General Workers

(v) Separate-Track Employment Management Systems

The "separate-track employment management systems" created by mainly large corporations about the time the EEOL was passed and enforced were subsequently adopted by a growing number of companies until in 1998 about 50% of all companies with 5,000 or more employees, and about 40% of all companies with 1,000 to 4,999 employees, had implemented such systems ("Basic Study on Employment Management of Women," Ministry of Labor, 1998).

However, women occupy only a very low 3.5% of career-track positions, so almost all women are relegated to clerical-track positions, which pay low wages and offer poor conditions for promotions and the like. Not a few of the companies adopting these separate-track systems put men in career-track positions and women in clerical-track positions from the outset, or, even if they place women in career-track positions, such women are a mere handful. Such discriminatory treatment is a cause of the gender wage gap.

International concern is being shown for these separate-track employment management systems. The CEACR has consistently given attention to the issue of Japan's gender wage differential with regard to Convention 100, and has asked Japan's government to rectify discrimination. The CEACR observed that Japan's gender wage differential is wider than in other highly developed countries, and that without comprehensive policy measures, women workers will remain trapped in the low-wage sector (1993 CEACR report).

In 2000 the CEACR reconfirmed what had been noted at its 1999 meeting: the Japanese government had admitted that some companies are using separate-track employment management systems to discriminate against women by hiring only men, or mostly men, for career-track positions. In reference to the June 2000 guidelines called "Items Requiring Attention with Regard to Employment Management According to Separate-tracks or Other Systems," which, as reported by the government to the CEACR, were created "to deal with gender discrimination through separate-track personnel management," the CEACR stated that it had noted with interest that prefectural Labor Bureaus and Equal Employment Departments are to issue directives and provide guidance based on those guidelines, and the CEACR asked Japan's government to provide it with information on how the guidelines are implemented by companies, how effective they are at narrowing the wage gap between men and women, and how they are used in administrative and judicial procedures. The CEACR seeks through information provision to have Japan rectify discrimination against women in separate-track personnel management systems.

Because the guidelines are not a law, they are hardly effective in eliminating the gender wage differential. Indirect discrimination should be expressly banned by law.

(2) Unpaid Work

A. Conclusions and Recommendations

1) The government (Economic Planning Agency) can be commended for its "monetary assessment of unpaid work," which was part of its efforts toward the economic and quantitative assessment of unremunerated work in, for example, the Nairobi Forward-looking Strategies (paragraph 120), the recommendations and conclusions on the first review and assessment of the Nairobi Strategies (fifth recommendation), and the Beijing Platform for Action (paragraphs 156 and 165).

It was an attempt to ascertain the monetary value of the labor that women have performed without remuneration, even though that labor is vital to the home and to the community.

2) But calculations for this assessment were limited to five types of labor: cooking, laundry, and other types of housework; nursing care for the elderly and ill; childraising; shopping; and volunteer activities, and therefore it does not cover all the many types of labor for which women

are responsible. The assessment totally misses the work of women laborers, and the farming and fishing work performed by women in self-employed households.

In future the government should perform a monetary-value assessment of the remunerated and unremunerated work that women perform in areas like these.

3) The government should not only ascertain the monetary value of unremunerated work, but also incorporate the results into its policies for improving the economic and social status of women.

C. Statement in the Government's Report

The monetary value of unpaid work in 1996 "totaled 116 trillion yen, accounting for 23% of gross domestic product." Unpaid work performed by women "was estimated at 98 trillion yen, or 85% of the total."

The per capita value of unpaid work was 1.8 million yen for women, which was five times the 350,000 yen for men.

D. Government's Response and JFBA's Opinion

As noted previously, the government's quantitative estimation of unremunerated work is limited to housework, childcare, nursing care, and the like, which differs considerably from the international trend. The Beijing Platform for Action, paragraph 167 (g) states: "Seek to develop a more comprehensive knowledge of work and employment through... efforts to measure and better understand the type, extent and distribution of unremunerated work, particularly work in caring for dependents and unremunerated work done for family farms or businesses..."

17 Article 11.2 (c)

(1) Improving Conditions for Child Care and Nursing Care

(2) Better Child Care Support

(3) Programs to Support the Balancing of Family and Work

A. Conclusions and Recommendations

(1) Concerning leave for child care and nursing care

(i) Guarantee at least 60% of the income of employees taking leave (currently it is 25%).

(ii) Require employers to secure replacements for employees on leave.

(iii) As a rule, employees should return to their original jobs after leave.

(iv) Require measures to maintain and improve job competence in anticipation of employees' return to their original jobs after leave.

(v) Explicit provisions to prohibit all disadvantageous treatment (now only dismissal is prohibited).

(vi) Explicitly set forth means (sanctions, etc.) to ensure effectiveness.

(vii) Expand and enhance public facilities that assist childraising and nursing care.

(viii) Require a shortened-working-hours leave system, and guarantee workers' right to choices.

(ix) Provide intermittent leave for nursing care when necessary.

(2) A System of Labor Exemption for Workers with Home Responsibilities

(i) In addition to late-night work, labor subject to exemption should also include overtime and holiday work.

- (ii) Exemption period should last until children finish elementary school.
- (iii) Eliminate provisions for exclusions, and time limits to apply for exemptions.
- (iv) Legislate leave for sick child care.

C. Statement in the Government's Report

- (1) Improving Conditions for Child Care and Nursing Care
- (2) Better Child Care Support
- (3) Programs to Support the Balancing of Family and Work

D. JFBA's Opinion

- (1) Improving Conditions for Child Care and Nursing Care

Because employees are guaranteed only 25% of their income during child-care leave, this currently has a profound impact on total husband-wife income owing to the large gender wage differential. Thus only women take child-care leave, which economically further entrenches and encourages the gender-based division of tasks. According to an October 1999 study, only 0.42% of men have obtained child-care leave, while the figure for women is over 70% in workplaces with 100 or more women employees. Government policy calls for boosting child-care leave acquisition by men to 40% (bill currently under deliberation), but as long as this assumes the present wage differential, total husband-wife income can attain about 75% of the pre-leave level only if couples secure at least 60% of male income. Once guaranteed income is at least 60%, child-care leave by men will become an economically realistic choice.

The shortened-working-hours leave system allows people to continue working without pause, eliminates problems in returning to the workplace, affects income little, and easily allows sharing of household responsibilities if husbands and wives take leave by turns. The government should therefore require employers to offer both the total leave and shortened-working-hours leave systems so that workers are guaranteed a choice.

Under current provisions, nursing-care leave is limited to a continuous three-month period, and may be used only once for a certain reason. But terminal nursing care nearly always requires more than three months, and often it is hard to know when the end will come. Hence not a few people who need still more time when their nursing-care leave has expired will give up returning to work and resign instead, or will return to work and consequently be unable to perform care at the end, when it is most needed. This makes it impossible to both continue working and discharge household responsibilities, which is the whole idea behind nursing-care leave. The government should require employers to give workers nursing-care leave intermittently when needed, to offer workers the choice of shortened-working-hours leave, and to allow the flexible use of leave in accordance with the care recipient's symptoms and related conditions, thus making it possible for workers to obtain leave totalling at least one year's equivalent of working time.

The work exemption system for workers with home responsibilities and preschool children presently covers only late-night work. But because children are in the home during overtime hours and holidays, the system should be expanded to reconcile workplace and home responsibilities. The system should also be expanded to the age when children can be home alone with few problems, which should be at least until finishing elementary school. Because the work exemption system responds to the needs of child supervision and protection, the government should give prime consideration to child welfare by in general eliminating provisions for exclusions and for the application time limit (one month in advance) so that the system is flexible.

Care for a sick family member, such as a child with a fever, is a serious matter for parents, especially those with small children. Under present circumstances, which offer almost no hope that parents can care for children who suddenly fall ill, women workers raising children

"often take off from work because of their children." For that reason companies dislike hiring them, and women perforce choose part-time positions and other low-wage, unstable jobs that readily allow time off. For that reason caring for sick family members impacts heavily on women's right to work. Therefore a family illness care leave should be one of three elements legislated along with child-care leave and nursing-care leave.

An additional requirement for child and nursing care is that, because these burdens are assumed by society instead of individual workers, the government should further enhance public facilities and services including day-care centers, after-school care for elementary pupils, special homes for the elderly, and other care institutions.

(2) Better Child Care Support

An April 2000 statistical study by the Ministry of Labor and Welfare showed that 1,736,000 children were enrolled in day care centers (53,000 more than the previous year), and that 33,000 children were on waiting lists (up 700 from the previous year). In consideration of potential demand, it is said there are as many as 100,000 children waiting to enroll, and solving this problem is an urgent priority.

In response to the June 19, 2001 document "Opinion on Measures to Support the Harmonization of Work and Childraising" by the Conference for Gender Equality, the government has set a goal of enrolling an additional 150,000 children. It plans to find new facilities by employing unused classrooms in schools, and other rooms in existing public and private facilities, and mainly having businesses, NPOs, and other private organizations run them, thereby accepting the largest possible number at the lowest cost.

But this plan for rapidly increasing facilities, and the goal of enrolling the most children at the lowest cost, are conceived as an integral part of giving day care centers more flexible capacities, easing standards for establishing centers, and commissioning the private sector to run public day care centers. In view of the many accidents resulting in child deaths at privately run "baby hotels," it is possible that commissioning the private sector could result in lower quality care that puts profit first.

As day care directly affects children mentally and physically, it should basically be public instead of left to the private sector, which would involve the careless loosening of standards and blurring of public responsibility.

18 Article 11.2 (d)

(1) Protecting Mothers (Protecting Pregnant and Nursing Women)

A. Conclusions and Recommendations

1) In response to technological innovations, the government should review the provisions for restrictions on jobs that are dangerous or hazardous to pregnant and nursing women, as provided by law.

2) Provisions under current laws are inadequate in light of international conventions.

(i) Prenatal leave should be compulsory.

(ii) Maternity leave should be eight weeks before birth, and 10 weeks after.

(iii) One-hundred percent of income should be guaranteed by health insurance during maternity leave or pregnancy trouble leave.

C. Government Report

Under the 1997 amendment to the EEOL, securing the requisite number of hours for health guidance or health examinations under the EEOL was changed so that instead of just having business proprietors make efforts, they are actually required to do so. Additionally, the

prenatal leave for multiple pregnancies was extended from 10 to 14 weeks.

D. JFBA's Opinion

1) Formerly there were prohibitions on dangerous and hazardous jobs for women, and for pregnant or nursing women, but restrictions were considerably relaxed on nursing women. For example, a nursing woman cannot refuse even "jobs presenting the danger of injury by an object falling from a height of 5 meters or more." At the least, employers should ask nursing women whether they want to perform dangerous or hazardous tasks that are prohibited for pregnant women.

Further, owing to technological progress and the increasing use of hazardous substances, continuing research must be performed to study restrictions on performing jobs that are dangerous and hazardous, but the government has established no such agency.

2) In June 2000 the ILO adopted the amended version (no. 183) of the 1952 Maternity Protection Convention and the Maternity Protection Recommendation (no. 191). This convention calls for maternity leave of at least 14 weeks, and the recommendation is at least 18 weeks. In Japan maternity leave is six weeks before birth and eight weeks after. To ensure the health of women leave should be eight weeks before and 10 after.

The convention states: "Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living," and "the amount of such benefits shall not be less than two-thirds of the woman's previous earnings," while the recommendation specifies "the full amount." And like other conventions and recommendations, they say that medical benefits must be paid. In Japan health insurance pays only 60%. Women cannot give birth free of worries unless they have adequate monetary and medical guarantees. The government should take steps to provide full monetary coverage and free medical care.

19 Article 12

A. Conclusions and Recommendations

1) The government should facilitate legislation that secures women's right of sexual self-determination. In particular, abortion should no longer be a criminal offense, and vigorous resistance on the part of a woman should not be a requirement for rape to constitute a crime. Also, the judicature should abolish the concept of men having the right to demand sex of their partners.

2) The government should stop legislation which aims to instill in women the perception that they are meant to have and raise children. Instead, legislation should aim to upgrade social infrastructure making it easy to have and raise children.

3) Legislation on issues such as assisted reproduction medical treatment, prenatal diagnoses, and other issues on which a national consensus has yet to be achieved should come only after sufficient discussion. When writing such legislation, the government should make sure that physicians provide for informed consent, and make efforts to see that all citizens have knowledge of these issues.

B. The Human Rights Committee's "Concluding Observations" (November 5, 1998)

"The Committee is troubled that the courts in Japan seem to consider domestic violence, including forced sexual intercourse, as a normal incident of married life."

C. Government's Response and Statement in the Government's Fourth Periodic Report

The government report does not describe current problems, and it fails to describe what

must be done and how the government intends to do it. The report only discusses new programs and other matters, and does not describe what the programs are actually like, such as how easy it is to make effective use of them, whether they cover all citizens instead of just certain people, or if they are properly funded.

D. JFBA's Opinion

(1) Lifelong Health Care for Women

(i) The government report makes no mention at all of women's sexual self-determination, which, it is safe to say, is not yet assured in Japan. In particular, courts in general have held that in a marriage relationship husbands have a "right to demand sex," that women are obligated to consent, and that sexual relations take place even without voluntary agreement. Only when a marriage fails and the two people are no longer husband and wife do the right to demand sex and the obligation to acquiesce cease to exist. This thinking is widely recognized by of course the courts, but also in the interpretation of laws.

For this reason, JFBA concurs with the statement of the Human Rights Committee's Concluding Observations: "The Committee is troubled that the courts in Japan seem to consider domestic violence, including forced sexual intercourse, as a normal incident of married life."

In findings of "violence/intimidation" as a constitutive requisite for rape, Japan has considerably narrowed the interpretation of rape from "the use of a certain extent of tangible force is involved even in cases of sex by consent" to requiring violence/intimidation "of an extent that makes resistance highly difficult" in order to say that an act was rape.

Further, trials of rape and forced indecency cases often make an issue of woman victims' past relationships with men, or criticize the errors of women, thereby emphasizing "chastity" more than women's sexual freedom.

(ii) Meanwhile, abortion is still a criminal offense. The Maternal Protection Law defines the legal extent of abortions, and aborting a pregnancy is still a constituent element of the crime of abortion. Further, attempts are underway to amend the Maternal Protection Law and narrow the range of allowable abortions. There are also attempts to pass a Basic Law to Remedy the Low Birth Rate whose provisions would include "make the citizens responsible for aspiring to raising children." The orientation of legislation is to imbue women with a mindset that makes them have children. This runs counter to the agreement reached at the UN International Conference of Population and Development in Cairo, which advised leaving the choices of whether to have children, and if so, how many, up to women themselves.

(2) Provision of Pregnancy and Childbirth Services

(i) When there are no problems, childbirth is not covered by health insurance, and parents must themselves cover expenses that are quite onerous at between 300,000 and 500,000 yen.

In Japan the health insurance system provides wide coverage for the populace, and debate is needed on the pros and cons of excluding only normal births because they are not illnesses.

(ii) Assisted reproduction medical treatment has been provided without any legal regulation, but the "Law Concerning Restrictions on Human Cloning Technology" was passed last December. This law, however, concerns mainly cloning technology, and includes no direct provisions for infertility treatment. Although the government is making preparations for passing legislation on the use of assisted reproductive technologies, the matter has not yet been subjected to sufficient public discourse. Reproductive assistance treatment is given to the woman even if the man is the cause, making it essential that women grant informed consent and receive counseling.

Especially in Japan, where women are undeniably pressured by their families, relatives, and society to bear children, broadening the options for assisted reproductive treatment could actually

create a climate that coerces women to bear children. Care is needed to ensure that women are not relegated to the status of "egg donors" for egg donation and egg sharing programs.

(iii) Prenatal diagnosis

Even though prenatal diagnosis is a matter of great importance to pregnancy and childbirth, there are no national studies.

a. Growth of Prenatal Diagnosis

Amniocentesis was introduced in the latter half of the 1960s, but the rapid development of diagnostic technologies has brought a steady increase in the kinds of disorders that can be diagnosed and treated. It is now possible to diagnose not only chromosome aberrations and outwardly visible impairments, but also internal disorders and genetic-level problems. At the outset diagnoses were limited to older women and women who had already given birth to children with disabilities, but with the spread of diagnostic methods that create comparatively little burden on women, such as ultrasound and the maternal serum multiple marker screening test, the use of diagnostic tests is expanding to cover women in general.

b. New Diagnostic Technique: Preimplantation Genetic Diagnosis

Further, approval has come for preimplantation genetic diagnosis (PGD), which checks and selects defect-free eggs at the fertilization stage. Developed in England in the 1990s with the idea of avoiding abortions, the technique involves examining the genetic information of laboratory-fertilized eggs or embryos in the early developmental stage, before implantation in the womb. It was approved in Japan by the Japan Society of Obstetrics and Gynecology's board of directors in June 1998. Because PGD involves in vitro fertilization and embryo transplantation, it uses large doses of fertility drugs that cause physical and mental side effects on women, and impose an overly heavy burden.

c. Problems with Prenatal Diagnosis: Handicapped Child Exclusion and Discrimination

In response to criticism that prenatal diagnosis excludes and discriminates against handicapped children and leads to eugenic thinking (and to discrimination against women based on the idea that women naturally must give birth to "healthy children"), proponents counter by saying, "We should respect women's right of self-determination. It is up to women (couples) whether they get prenatal diagnoses, and what they do if a defect is found."

But before citing the right of self-determination and shifting responsibility to the individual, the government should make an issue of the fact that society is not yet a place where it is easy for handicapped people to live, and of the prejudices to which the handicapped are subjected. It is this environment that forces some women into the "self-determination" of abortion.

(3) Enhancing Perinatal Medical Care

Japan's pediatric medical care is in such a state of crisis that a Ministry of Labor and Welfare report titled "Healthy Parents and Children 21 Panel" points out that "the pediatric medical care system might collapse." In 1990 Japan had 4,118 children's hospitals, but in 1999 the number dropped to 3,528, and there is an acute shortage of pediatricians. Hospitals also have a conspicuous shortage of inpatient facilities for babies and small children.

The reasons are that examining babies and small children is troublesome, and that the medical care system links physicians' incomes with the amounts of drugs they dispense, which means that pediatric care does not pay because drugs are not prescribed as often or in large amounts. The government should consider revamping this medical care payment system.

(4) Family Planning

(i) Reproductive Health/Rights Education

All women have the lifetime right to enjoy physical and mental health related to their reproductive systems and their functions and processes.

It is important that women themselves make their own decisions about important matters of female health such as safe motherhood, family planning, the prevention of HIV/AIDS and other sexually transmitted diseases and care for infected people, abortion, and contraception, after having received sufficient concrete information about these matters. It is essential that women be educated from childhood about reproductive health/rights from such a perspective.

In Japan as in other countries people are coming to perceive the importance of sex education, and in 1999 the Ministry of Education released the document "How to Conduct Sex Education in the Schools," but only a few educators are providing such knowledge, making for a serious dearth of education on reproductive health/rights.

(ii) In 1999 the use of low-dose contraceptive pills was finally approved in Japan, but some physicians will not prescribe it without extensive testing. Low-dose pills cost more than the preexisting medium-dose pills, making them harder to use than women had hoped. Hence the pill is not a contraceptive method that puts women in control and is simple to use. Because not enough information is provided about using the low-dose pill, including safety, women need information to make their freedom of choice meaningful.

(5) HIV/AIDS

In its report the government claims it is making efforts to educate the public and disseminate correct knowledge about AIDS, but the government still lacks the awareness needed to eliminate prejudices and disseminate correct knowledge, as evidenced by the previous prime minister when in a March 13, 2001 speech he used the expression "it was as if AIDS had come" to describe how people retreated into their homes when he was campaigning in a rural area once in the past.

(6) Preventing Illnesses Peculiar to Women

Only a few of the people eligible for health examinations given by the national and local governments actually receive them, which underscores the need for better public information about these physical examinations. In view of the rising number of working women, the government must come up with some kind of policy measures to have gynecology added to the health examinations that companies administer for their employees.

20 Article 13 (a)

(2) Payment of Child Care Support

21 Article 13 (b)

(1) Services for Unmarried Mothers

A. Conclusions and Recommendations

The national and local governments should consider providing adequate services necessary for all mothers, whether married or unmarried, to raise their children without concerns.

C. Government Report

Page 62 of the government report says of the services for unmarried mothers only that the government "offers low-interest or interest-free mother/child welfare loans for starting businesses," and that it "offers special counseling with experts including lawyers."

D. JFBA's Opinion

The mother/child welfare loans cited by the government are small amounts and must be

repaid, making the program insufficient for the economic stability of fatherless families.

Representing the counseling program are welfare offices, mother/children counselors, and welfare commissioners, but it is not clear what procedures must be followed to get counseling with experts.

Consideration should be given to arrangements allowing all mothers to receive comprehensive counseling and assistance for economic, psychiatric, and physical problems.

22 Article 14.1

(1) State of Participation in the Policymaking Process in Rural Areas

A. Conclusions and Recommendations

People are becoming more aware of gender discrimination and correcting their practices, and progress is being made in women's participation in policymaking. Nevertheless, there is still a long way to go toward gender equality in rural areas.

For this reason, to protect the rights of rural women and win equality for them the government should, from the perspectives of respect for the individual and guaranteeing workers' rights, explore the whole range of issues including taxes on the self-employed, social security, working conditions, and working environments, and enact far-reaching measures including institutional reforms.

C. Government Report

Enactment of the Basic Law on Food, Agriculture and Rural Areas

In July 1999 the government enacted the Basic Law on Food, Agriculture and Rural Areas, included provisions for "facilitating the participation of women" and emphasized the provision of conditions allowing an active part by women and the proper assessment of women's roles.

D. JFBA's Opinion

Although the government's positive initiatives have achieved much, rural women still have far to go before achieving equality with their male counterparts.

Many rural women perform agricultural work but are not guaranteed rights as laborers, such as being covered by the Labor Standards Act. And even if they perform farm labor as joint business managers, the tax law principle of one proprietor per household excludes them from treatment as joint managers, and they have no rights as individuals even for national health insurance.

These problems are not limited to rural women, but are common to all self-employed women. Hence from the perspectives of respect for the individual and the guarantee of workers' rights, the problems of self-employed women should be given broad study over areas including taxes, social security, working conditions, and working environments, and far-reaching measures should be taken.

23 Article 16

(1) Considering Amendments to the Civil Code

A. Conclusions and Recommendations

The government should quickly amend the Civil Code to bring about gender equality under family law.

- 1) The marriageable age for both men and women should be 18.
- 2) The remarriage waiting period should be abolished.

- 3) Civil law should specify the fifty-fifty principle for distribution of property.
- 4) Civil law should specifically require even persons without parental power to bear childraising expenses for minors, and the government should establish systems to ensure the payment of childraising expenses.
- 5) Grant the right to deny legitimacy to both wives and children themselves.
- 6) Eliminate inheritance discrimination against illegitimate children.
- 7) Abolish the requirement that husbands and wives have the same surname, and amend the Civil Code to allow the choice of either the same or different surnames.

C. Government's Response and Statement in the Government's Fourth Periodic Report

In February 1996 the Legislative Council sent a report related to gender equality titled "An Outline for a Bill to Partially Revise the Civil Code" to the Minister of Justice, but the Diet has not yet discussed it.

D. JFBA's Opinion

Ideas about fixed gender roles and feudal thinking are still firmly entrenched in Japan's Civil Code. These ideas leave unremediated the mentality of discrimination against women, and obstruct the achievement of respect for the individual and true gender equality.

In accordance with Article 16.1 of the CEDAW, the government should quickly amend the Civil Code as follows.

1) Marriageable age

The marriageable age for both men and women should be 18. From the perspective of equally guaranteeing both men and women the right to work and receive an education, there is no rational basis for having different marriageable ages for men and women. Further, in view of Japan's average first-marriage age and the percentages of people who attend high school and find employment, 18 is appropriate as the age at which both sexes can become socially and economically self-reliant.

2) Remarriage waiting period

The government should abolish the "remarriage waiting period," which limits the remarriage freedom of women alone. With a view to avoiding duplication in conjecturing paternity, presuming that the subsequent husband is the father is more consistent with the actual circumstances of remarriage.

3) Distribution of property

To provide for real gender equality in divorce, and to ensure the enhancement and performance of divorce payment, the Civil Code should have an express rule for a fifty-fifty distribution of property. This should include future property such as annuities and retirement allowances. The law should also allow post-divorce compensation (support) for a certain period of time as a supplement.

4) Payment of childraising expenses

Concerning instances of divorce, the current Civil Code and Personnel Affairs Procedure Law have no express provisions requiring persons without parental power to bear childraising expenses for minors, and specify no special measures suitable for ensuring the payment of childraising expenses. In cases of divorce, mothers become the person with parental power for 80% of minors, fatherless households have very low incomes, and mothers cannot count on the payment of childraising expenses from fathers. For these and other reasons, Civil Code provisions should be reviewed for amendments, as below.

(i) Specifically require even persons without parental power to bear childraising expenses for minors.

(ii) On the occasion of divorce by agreement and divorce court decisions, the amount and payment method of childraising expenses should be specified.

(iii) Ensure the payment of childraising expenses by establishing a "system for ordering the payment of childraising expenses," a "wage garnishment system," and a "system for temporary payment of childraising expenses in place of the payer."

5) Denial of legitimacy

Wives and children themselves should be allowed the right to deny legitimacy. Under the current Civil Code, only husbands have the right to deny legitimacy, but this violates Article 16.1 (d) of the CEDAW, which stipulates the same rights and responsibilities as parents for children.

6) Discrimination against illegitimate children

The government should immediately abolish the proviso of Article 900.4 of the Civil Code, which stipulates that illegitimate children inherit one-half of what legitimate children do. Japan's legal system on illegitimate children constitutes "discrimination as to... birth" as set forth in Article 24.1 of the International Covenants on Human Rights, and should therefore be amended immediately.

7) Married couples' surnames

The requirement in Article 750 of the Civil Code that couples take the same surname upon marriage should be amended to give couples a choice. A surname is an individual's appellation, and a right constituting part of an individual's personal rights. Requiring the same surname forces people to change their surnames upon marriage, and is a violation of personal rights.

Because 97.7% of married couples in Japan take the husband's surname, this system is forcing women to change their names, which puts married women at a disadvantage various ways in society. This requirement also hampers the freedom of marriage. For these reasons it violates CEDAW Article 16.1 (g).

(2) Domestic Violence

A. Conclusions and Recommendations

Japan's government should conduct more studies of domestic violence (violence against wives, abuse of children, etc.), make people aware that it is a violation of human rights, and put efforts into human rights education and other areas. It should establish and equip public temporary emergency shelters in order to rescue battered wives and abused children and assure their safety, and it should provide privately run shelters with financial assistance. The government should also help women become independent, and establish and enhance care systems.

The provisions of the Domestic Violence Prevention Law (enacted on April 6, 2001, took effect in October 2001) should be enhanced and implemented so that the law is effective and easy for victims to use. Effective measures are needed for the early discovery, protective custody, and rehabilitation of abused children, and treatment for abusing parents.

C. Government's Response and Statement in the Government's Fourth Periodic Report

The police deal with violence between husbands and wives. To deal with child abuse the police appropriately address instances, including making cases of them, and cooperates with related agencies in rescuing victimized girls (pp. 65-66).

D. JFBA's Opinion

To eliminate violence by husbands against wives and the abuse of children by their parents, JFBA in September 1998 directed the following resolutions to the national and local governments.

1) Perform a study and make people aware that domestic violence is a violation of human rights.

2) As an emergency temporary measure, widen the scope of people eligible for the temporary protection program, endeavor to assure the safety of victims, and provide public assistance for privately run shelters.

3) Facilitate the rescue of victims, set up a program for victim care, help wives become independent, and develop a program to re-educate parents.

The JFBA Committee on Equality of Men and Women drafted a Domestic Violence Prevention Bill and released it on March 3, 2001.

On April 6, 2001 the government enacted its Domestic Violence Prevention Law, but that law is concerned only with physical violence, not psychological or sexual violence. Owing to this and other shortcomings, the government's law is somewhat inadequate compared to the JFBA bill. But now that the law has been passed, it should be effectively used to eliminate violence by husbands to their wives, and to save wives. The law is scheduled for a review after three years, at which time it should be amended into a more substantial law.

(3) Domestic Violence Against Foreign Spouses

A. Conclusions and Recommendations

When residency status under the Immigration Control and Refugee Recognition Law is granted to foreign residents married to Japanese, they are charged with the additional requirement to "live as a spouse," but residency status should not be restricted in that way.

D. JFBA's Opinion

When foreign residents who have Japanese spouses are granted residency status, they are charged with the requirement to "live as a spouse," which is above and beyond what is required by the Immigration Law. They are thereby enjoined to live with their spouses. Because of this interpretation, however, even if a foreign wife wishes to escape violence by her husband, she would find it difficult to live apart owing to the need to maintain her residency status, perhaps even unavoidably endangering her life.

Residency status granted to foreigners under the Immigration Law should not be limited by the additional demand that they "live as a spouse."

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