

***Japan Federation of Bar Associations Supplementary Report  
Pertaining to the Fifth Periodic Report by Japan's Government  
Pursuant to the Convention on the Elimination of All Forms of  
Discrimination Against Women***

**May 2003**

**Japan Federation of Bar Associations**

1-3,KASUMIGASEKI 1-CHOME CHIYODA-KU,TOKYO 100-0013 JAPAN  
TEL:+81(0)3 3580 9841 FAX:+81(0)3 3580 2866 • 9840(International)  
TEL:03 3580 9841 FAX:03 3580 2866 • 9840(In Japan)  
E-mail:kouhou@nichibenren.or.jp [kttp://www.nichibenren.or.jp/en/index.html](http://www.nichibenren.or.jp/en/index.html)

- Contents -

	Page
I. Spousal Violence (question 8, government report's article 2.4 (1) e, article 16.2 (2)) .....	1
II. Sexual Harassment (question 10, government report's article 2.4 (6)) .....	4
1. Current Legal System	
2. Prevention in the Workplace	
3. Relief the Victims of Sexual Harassment	
III. Rights of Foreign Women (question 12, government report's article 6.1 (2)) .....	5
1. Determining the Number of Victims	
2. Human Trafficking: View from the Inside	
3. Relief for the Victims	
4. Punishment	
IV. Discrimination Against Women in Employment (question 18, government report's article 11.1-1 (1)) .....	8
1. Employment of Women Students	
2. Discrimination Against Women in Resignation and Dismissal	
V. Part-time Workers (question 19, government report's General Introduction 2 (3), article 11.1-2 (1)) .....	9
1. Wide Variety in Employment Forms for Japanese Women	
2. Women Part-time Workers and Their Situation	
VI. Dispatch Workers (question 20, government report's article 11.1-2 (2)) .....	12
1. Dispatch Workers	
2. Changes in the Legal Regulation of Dispatched Labor	
3. Labor Dispatching at a Glance	
4. The Need for Worker Protection	
VII. Gender-related Education and Training in the Judiciary (government report's article 2.3 (3)) .....	15
1. Statement in Government Report Article 2.3 (3), and the Reality	
2. Problems	
VIII. Poverty in Japan (not covered in government report) .....	17
1. Rising Unemployment and Other Problems	
2. Higher Social Insurance Premiums	
3. The Homeless	
4. Desperate Circumstances for Household Finance	

The Japanese government's fourth periodic report on the implementation in Japan of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was submitted to the United Nations secretary-general in June 1998, and the fifth periodic report in September 2002.

In February 2003 the Pre-Session Working Group of the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) sent the Japanese government a 31-item list of issues and questions on Japan's fourth and fifth periodic reports, and there is to be discussion on these reports in the CEDAW Committee's 29th session, which will be held from June 30 to July 18.

In November 2001 the Japan Federation of Bar Associations (JFBA) prepared a report on the government's fourth periodic report, and in July 2002 submitted it to the CEDAW Committee and other parties.

JFBA also authored a report on the government's fifth report to address the Pre-Session Working Group's list of issues and questions without repeating what we had written in our already-submitted report on the government's fourth report.

We hope that the present report will, along with our report on the government's fourth report, be of service in the CEDAW Committee's discussion on the Japanese government's reports.

#### I. Spousal Violence (question 8, government report's article 2.4 (1) e, article 16.2 (2))

Enforcement, current status, and problems of the Law for the Prevention of Spousal Violence and the Protection of Victims (Domestic Violence Prevention Law)

1. According to the "Survey on Spousal Violence" released by the Cabinet on April 11, 2003, 19.1% of women have been subject to "physical violence," "sexual violence," or "psychological violence," and of these 4.4% responded that they had "felt their lives were in danger."

The Domestic Violence Prevention Law took effect on October 13, 2001 (part took effect on April 1, 2002). From that time to December 2002 there were 1,550 settled requests for protection orders, and protection orders were issued in 1,250 of those (the breakdown is 888 orders to prohibit approach only, 4 orders to vacate only, and 358 instances of both, according to the Civil Bureau of the Supreme Court's General Secretariat).

2. The "Declaration on the Elimination of Violence against Women," adopted by the UN General Assembly in December 1993, says that violence against women is not only physical violence, but includes all forms such as

psychological and sexual violence. Psychological violence and sexual violence violate the human rights of the victims (many of whom are women), who must also be saved from these types of violence. For this reason, in JFBA's view domestic violence includes not only physical violence against women, but also psychological violence and sexual violence, and JFBA has campaigned for legislation to eliminate it and help the victims.

However, the Domestic Violence Prevention Law allows requests for protection orders against "violence" that is defined as "illegal attacks from one spouse (including persons who are in a de facto state of marriage even if it has not been legally registered) that threaten the spouse's life or physical condition." Because this definition narrows violence to physical violence, in many instances victims cannot request protection orders even when protection is needed. For example, a protection order cannot be requested by a wife who, although not subject to physical violence, has been severely harmed by sexual, psychological, or other violence by her husband, has decided to get a divorce, has moved away from her husband, and is requesting divorce mediation while keeping her whereabouts secret (in many cases husbands will relentlessly pursue their wives and try to bring them home). And because the legal system provides that women cannot request protection orders unless they have been subjected to violence at least once, they cannot make such a request until physical violence occurs, even if they undergo psychological or sexual violence, or are threatened with death if they try to flee.

These problems arise because the Domestic Violence Prevention Law has a narrower definition of violence than the aforementioned declaration. Therefore Japan should broaden the definition of "violence" so that protection orders can be issued for psychological and sexual violence as well.

3. Because the Domestic Violence Prevention Law holds that protection orders can be requested only by a "spouse (including persons who are in a de facto state of marriage even if it has not been legally registered)," they cannot be requested against violence by a boyfriend or cohabitation partner. Allowing requests for protection orders only by a "spouse (including persons who are in a de facto state of marriage)" is too narrow. Requests should be permitted for cohabiting people, boyfriends, and even after divorce (it is said that violence worsens when a wife flees or tries to flee, but under this law a woman cannot request a post-divorce protection order against violence from her ex-husband).

Further, the relatives or children of a violence victim cannot request protection orders under this law. Violent husbands often search out their wives' residences, make contact with their children or relatives, and subject them to threats or violence. In a 2002 incident, a violent husband trying to locate his runaway wife holed up with some of her relatives as hostages, and

killed a small girl among the hostages. Therefore a broader scope of people should be able to request protection orders.

4. Another problem is that one of the protection orders, the order to vacate, is valid only two weeks and cannot be requested again. Since a violent husband can be kept at bay only two weeks, there is barely enough time for a wife to get her belongings.

The six-month period of an order to prohibit approach is also too short. In nearly all domestic violence cases, even if a wife requests divorce mediation, the husband will refuse divorce and induce a court trial, but as one can see from the courts, it is extremely difficult to get a decision within six months. Although a wife may request another protection order, it appears that in some instances the request is turned down as no longer necessary because the husband has not approached the wife for six months (which would seem to be thanks to the protection order). While this also involves the problem of judges' awareness of domestic violence, procedures should be simplified to extend the term of an order instead of requiring a new request, even if a protection order is for six months.

5. At present protection orders comprise orders to vacate and orders to prohibit approach (i.e., stalking and loitering), but prohibiting in particular only stalking and loitering is too narrow a scope. It seems this narrow scope is related to limiting "violence" to physical violence, but it is important to note that victims often suffer serious psychological damage from threats by telephone, email, and other means. Orders should also include the acts coming under Articles 2 and 3 of the Law Concerning Restrictions on Stalking and Other Acts.

6. Average hearing time for approved protection order cases is 11.0 days (Civil Bureau of the Supreme Court's General Secretariat). Although this is shorter than it used to be, the victim must spend each of those 11 days in anxiety. In this light, hearing time should be shortened somewhat.

7. It is commendable that the Domestic Violence Prevention Law provides a legal basis for protection at public shelters from domestic violence, but human resources and facilities also need to be enhanced.

Formerly children, particularly boys, could only be kept in facilities with their mothers until finishing half of elementary school, then taken from their mothers and placed in child guidance centers. Some public shelters without this age restriction have appeared since enactment of the Domestic Violence Prevention Law, but the inadequate nature of the facilities makes boys feel uncomfortable around the resident women, and consequently confine themselves to their rooms. It is necessary to enhance facilities to that children can live at least with their mothers.

8. Victims of domestic violence need support to provide for the recovery of their mental and physical health. And because many victims completely abandon their livelihoods when fleeing from violent homes, emphasis is needed on assistance to help them get back on their feet, but our legal institutions are still inadequate in this regard.

## II. Sexual Harassment (question 10, government report's article 2.4 (6))

### Preventing Sexual Harassment

#### 1. Current Legal System

As stated in the government's fifth report, sexual harassment is punished under criminal law when the act is a violation of criminal law. Criminal punishment is also imposed for the crimes of rape and forced indecency. Yet, because there is no law to control sexual harassment, it goes unpunished unless it violates criminal law.

#### 2. Prevention in the Workplace

Article 21 of the 1999 Amended Equal Employment Opportunity Law (EEOL) stipulates that business proprietors must exercise precautions in their employment management to prevent sexual harassment, but while this obligates proprietors to take precautions, it does not prohibit sexual harassment for being against the law. In the event a proprietor does not take such precautions, the Minister of Labor and Welfare is empowered to demand a report, and to provide advice, guidance, and recommendations, but even if the proprietor does not comply, no sanctions are applied and the company's name is not made public.

As stated in the government report, a 1999 survey showed that only 34.3% of companies had created offices for consultation and handling complaints, and that even when they existed, the offices had difficulty functioning as intended because they could not operate independently.

Further, there are no provisions on offenders, and no provisions that protect workers' right to work without being victimized by sexual harassment.

The government should clearly outlaw sexual harassment, provide for the right to work without sexual harassment, and establish an organization to provide quick and effective help to victims.

#### 3. Relief the Victims of Sexual Harassment

Against offenders, sexual harassment victims need to seek compensation for damages citing unlawful acts under Article 709 of the Civil Code, while against employers they must seek compensation citing employer responsibility and responsibility for contract non-performance

under Article 715 of the Civil Code. Because the EEOL imposes on proprietors only the obligation to exercise precaution, victims cannot seek compensation for damages under EEOL Article 21.

Even in cases where victims resigned and filed lawsuits demanding compensation, until 1999 the average solatium granted was about ¥1.5 million. Since 1999 there have been court decisions granting solatia of over ¥6 million.

However, in the case of a victim who sought damages claiming she had been raped by her supervisor, although Sendai District Court granted a solatium of ¥6 million, on March 29, 2001 the Sendai Appellate Court reduced the award to ¥2 million on the grounds that the victim "did not exercise sufficient caution" and that "it would seem that if the victim had put up desperate resistance, [her underwear] would have been damaged more," even while noting that "the unjust use of [the supervisor's] standing, which required obedience [from the victim] led to this act" and that the crime could not be said to have been committed "using violence or threats" (decision in the Tohoku Seikatsu Bunka College sexual harassment case).

The small solatium amounts for sexual harassment are not redress for the victims, and do not deter offenders.

### III. Rights of Foreign Women (question 12, government report's article 6.1 (2))

#### Trafficking and Sexual Exploitation of Foreign Women

##### 1. Determining the Number of Victims

The government's fifth report describes the situation of foreign women involved in prostitution crimes, noting that in 2001 there were 65 women from five countries victimized by sexual exploitation, with 39 Thai women being the largest number, followed in order by women from the Philippines, Taiwan, Indonesia, and Colombia. These statistics are from the National Police Agency's figures on women involved in prostitution crimes, but taking for example Colombian women, who have been increasing in recent years, statistics from the Consular Section of the Colombian Embassy in Japan show that in 2001 there were 375 verbal notices of such crimes by victims.

NGOs say that in 2001, 44% of the women in shelters were fleeing from human trafficking. While the number of Colombians is rising, on January 1, 2003 three Thai women fled to shelters, followed by four on the next day. The NGOs say these women included two girls ages 13 and 16.

Around 1994 the number of Thai women victims was said to be about 20,000, which later declined. According to the Justice Ministry's Immigration Bureau, as of May 1, 1994 there were 27,381 Thai women without residence status, and while this number dropped to 10,219 on

January 1, 2001, certainly more than a few dozen of these women are victims of sexual exploitation.

Determining the circumstances of human trafficking victims requires not just knowing about cases actually exposed, but investigating the situation in collaboration with embassies, consulates, NGOs, and other parties.

## 2. Human Trafficking: View from the Inside

### (1) The Case of Thai Women

Thai women are asked by recruiters if they would like to work as restaurant waitresses in Japan, but upon arrival they are deprived of their passports and sold to business establishments for ¥3.5 million to ¥4 million yen each (NGO investigations show that 45% of the women sell in this range), and those amounts are the women's debts. Other foreign women such as a Taiwanese married to a Japanese man, live with several Thai women and manage them. The Thai women are not allowed to go out or to converse in Thai, and their meals are restricted. They are taken by car from their residences to clubs where they work as hostesses, and in response to customer requests they go as prostitutes to hotels which have partnerships with the clubs. Even when clubs are closed, the women must go to hotels if customers request a prostitute, and they cannot get time off even for illness or menstruation. Upon return to their residences they are searched and deprived of tips from customers. Because of their "debts" the women obtain none of the proceeds of their work as hostesses or prostitutes; further, meals and other expenses are deducted, and they are assessed penalties for various reasons. Because all these are deducted, the women's debts do not diminish. When clubs are closed, the women must perform cleaning and other housework, and if they eat food on the sly, they are fined and even beaten.

Near a workers' bunkhouse in the mountains there was a brothel with 15 Thai women, two women to a room. When a customer visits a room, the other woman has to wait in the cafeteria, and when the trick finishes, the women change off. A guard stationed outside keeps the women from leaving. The brothel's woman manager buys groceries and the Thai women prepare their own two daily meals. Although they are supposed to be paid a certain amount of their prostitution earnings, they are assessed deductions for meals, rent, and personal articles like shampoo, as well as penalties for various reasons such as having spoken in Thai. As a result their debts do not diminish.

Even if women fleeing to shelters can locate their former residences, it is difficult to rescue the other women because they have already been relocated. Finding victims is also difficult because they do not speak Japanese and are resold, making it difficult to identify locations.

Nevertheless, the similarities such as prices for women (i.e., their debt



amounts), the form of prostitution, the system of fines, and other attributes suggests the existence of an underlying organization and a manual of procedures.

## (2) The Case of Colombian Women

Getting to Japan is hard because there are no direct flights to Japan, because Colombians cannot take flights via the US, and because Japan has strict immigration procedures. Due to reasons including the use of forged European passports, brokers have complicated jobs, and the victimized women shoulder higher debts than Thai women, running between ¥5 million and ¥8 million yen. Colombian women are lured to Japan with promises of waitressing jobs. Refusing to become prostitutes induces violence, and fleeing brings threats to kill their family members. One woman came to Japan pregnant and was forced to work as a prostitute until just before giving birth, and another was rotated among strip clubs every 10 days.

It is likely that brokers in several countries are involved in the trafficking of Colombian women.

## 3. Relief for the Victims

The "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children," which the government's fifth report says is under consideration, says that victims be provided with counseling, a place to live, education, medical care, and, when appropriate, the status for short- or long-term residence.

But victims have all they can do to flee to NGO shelters from their places of confinement, and foreigners with no residence status are not eligible under the Livelihood Protection Law. Therefore NGO shelters are their sole support. Even if they fall ill, foreigners with no residence status are not eligible for health insurance or medical care assistance. Paying out of their own pockets is the only way to receive medical care. Some women develop mental disturbances or are HIV-positive, but NGOs can only do so much for them, and the only way to obtain public medical care is the 1899 Law on the Treatment of Travelers Suffering Illness and Death, which covers travelers who fall ill or die.

The Domestic Violence Prevention Law states that the national and local governments are obligated to make efforts to financially assist private shelters in helping victims of spousal violence, but shelters which help foreign women who lack residence status are chronically short of funds.

When the women are from Colombia, there is the additional difficulty of finding the money to send them back home. There must be public means to help victims, and assistance for NGOs.

Victims of human trafficking must at the least be granted short-term residence status, or the victims will not be able to recover from their psychological and physical harm before going home.

#### 4. Punishment

##### (1) Victims

Foreigners who have entered Japan using forged passports or who have no residence status are subject to punishment for violating the Immigration Control and Refugee Recognition Act (Immigration Act), even if they are victims of human trafficking. At the same time, the Anti-Prostitution Law imposes punishment only on the crime of public solicitation by streetwalkers.

##### (2) Brokers and Employers

The Anti-Prostitution Law punishes prostitution management and procurement, and the provision of a place, while procurement is also punished under the Employment Security Law and the Dispatched Workers Law. The crime of abetting undocumented labor under the Immigration Act also applies.

But investigations do not include the brokers and international human trafficking organizations behind these crimes. Even if victims are rescued, it is impossible to keep more women from being victimized, and human trafficking cannot be eradicated.

The aforementioned protocol provides for investigation of human trafficking through international cooperation, punishment, and immigration control. Domestic legislation for this purpose is needed.

#### IV. Discrimination Against Women in Employment (question 18, government report's article 11.1-1 (1))

##### 1. Employment of Women Students

Owing to the recession it is harder for women to find employment. College graduate employment percentages in April 2002 were 92.5% for men, and 91.5% for women. Tentative hiring rates as of February 1, 2003 were 85.4% for men and 80.9% for women, while for women junior college graduates the rate was 70.6% (no statistics for men). Rates for women are lower than those for men.

##### 2. Discrimination Against Women in Resignation and Dismissal

Discriminating against women in resignation and dismissal is prohibited by the EEOL, but a 2000 study called "Study on Hiring of College Graduates and Women Holding Career-Track Positions" by the Japan Institute of Workers' Evolution states that 18.1% of newly hired college graduates in all industries replied that there is "a practice of resignation when marrying and giving birth," and 18.2% said that "there are no women who continue working after pregnancy and childbirth." This shows that resignation upon marriage or childbirth is still a firmly

entrenched practice.

According to the Ministry of Labor and Welfare, requests for assistance from women workers concerning resignation and dismissal made to prefectural Labor Bureaus in 2001 numbered 84, an approximate 20% increase over the previous year. Marriage and childbirth were the reasons for 70 of these requests.

A lawsuit example would be the case of a kindergarten teacher being dismissed for pregnancy (March 13, 2002 decision by the Sakai Branch of Osaka District Court). In this case the employer claimed that pregnancy is a personal matter whose timing can be adjusted, the female teacher became pregnant at an inopportune time, thereby abandoning her important responsibilities as a teacher. The employer asserted that she had caused a loss of trust in the kindergarten and lacked qualification as a teacher, pressured her to have an abortion, demanded that she quit, and finally dismissed her (the plaintiff was hospitalized due to the risk of a miscarriage, which she subsequently suffered). The court decision held that the kindergarten director had advised an abortion, demanded a resignation, and dismissed the defendant on the grounds of her pregnancy, and that the dismissal was invalid, affirmed the plaintiff's status under her employment contract, and ordered the kindergarten and director to pay a solatium.

Because the EEOL prohibits systems which require women to resign because of marriage and childbirth on the grounds that such systems discriminate against women, currently hardly any companies institutionalize them, but the practice still persists. Eliminating it will require rooting out the entrenched idea of different jobs for men and women, as well as following the CEDAW's intent of making childraising the responsibility of men and women, and of society, by providing the conditions in both workplaces and society making it possible for both women and men to balance their family and job responsibilities.

## V. Part-time Workers (question 19, government report's General Introduction 2 (3), article 11.1-2 (1))

### 1. Wide Variety in Employment Forms for Japanese Women

In 2002 there were 21,610,000 women and 31,700,000 men employed, with women accounting for 40.5% of all working Japanese.

By type of employment, 16,690,000 workers were permanently employed, for a decrease of 270,000 from the previous year, while temporary employees numbered 4,120,000, which is 230,000 over the previous year and another substantial increase.

In recent years there are more non-regular employees such as part-time workers, dispatch workers, and contract workers. Women have higher percentages in all these categories, accounting for 69.0% of part-time workers, 77.8% of dispatch workers, and 70.1% of home workers.

According to 1999 government statistics, 45.2% of working women are regular employees, while 81.7% of men are. Women are losing their regular employee status faster than are men, and they are making up an increasing percentage of part-time and other non-regular employees. Diversification of employment types is proceeding mainly among women. Employment as non-regular employees is insecure, and working conditions are inferior to those of regular employees. Therefore improving the working conditions of both regular and non-regular employees is important to the right to work and the status enhancement of working women.

## 2. Women Part-time Workers and Their Situation

(1) Care is needed to distinguish between the terms "part-timer" and "part-time worker" because in Japan they are not used to mean the same thing.

Government statistics use the term "short-time employee" to describe a worker who works under 35 hours per week. The 1993 Law Concerning the Improvement of Employment Management for Short-Time Workers (Part-Time Work Law) defines it as "a worker whose weekly scheduled working hours are shorter than the weekly scheduled working hours of a regular worker employed in the same place of business." And "people called part-timers" are sometimes all called part-time workers.

(2) According to government statistics, in 2002 there were 8,350,000 women short-time employees (working fewer than 35 hours per week) and 3,760,000 men short-time employees, for a total of 12,110,000. A high percentage of women employees, 39.7%, are short-time employees.

A characteristic of "people called part-timers" in Japan is that some of them are called "full-time part-timers" or "false part-timers" because they work as many or more hours than regular workers. False part-timers have increased over the past few years, and there are more and more part-timers who work over 40 hours (the legally stipulated working hours). These workers are "part-timers" in name only, while their wages and benefits are inferior to those of regular workers.

### (3) Insecure Status of Part-time Workers

About 40% of part-time workers are limited-term employees. In Japan the only stipulation on limited-term employment is that it not exceed one year (three years for high-level professional jobs), and there are no other limitations, such as restricting part-time work to temporary needs. Accordingly, part-timers find themselves out of work upon contract expiration even if they are performing permanent tasks, and there are also many instances in which employers arbitrarily dismissed part-timers during the contract term. Part-time workers therefore have insecure status.

#### (4) Inferior Wages and Working Conditions

The average hourly wage for women is 891 yen (regular pay in 2002), which is 64.9% of the pay level for regular, general women workers (regular pay for general women workers in 2002 was converted to an hourly wage and given a value of 100). In 2002 the wage differential between general men and women workers was 66.5%. Thus the pay level of part-time women workers is only about 43% that of general men workers.

And while more than 90% of regular employees are eligible for bonus and retirement pay programs, only 40-odd percent of part-time workers are eligible for bonuses, and under 10% for retirement pay programs. In these and other ways, there are big differences between regular and part-time employees. Under the principle of equal pay for equivalent work, the pay and other benefits of women part-timers are not commensurate with their jobs.

(5) As their reasons for hiring part-time workers, employers cite: (1) low cost and (2) the ease of adjusting the number of employees. Hence their perception of part-time workers is inexpensive labor that can be hired or fired at will. Work itself consists more of key jobs. It is certain that businesses will continue replacing regular employees with part-time workers in an attempt to hold down overall personnel costs.

Workers, on the other hand, often consider the element of time -- time slots, hours and number of times worked -- as the reasons for working part-time, but recently there are more and more workers who find they must choose part-time work because they have no opportunities to become regular employees. A particularly serious problem is that 20% of new women graduates and 16.3% of new men graduates work first as part-timers, showing that young people are increasingly taking this insecure employment. Owing to this situation, the number of part-time workers will definitely continue increasing.

(6) As noted above, women account for over 70% of part-time workers, increasing by 2.8 million over the past decade. At present, women who find employment again after marriage or childbirth can obtain only part-time work.

Because part-time workers have insecure status and poor working conditions, it is not an overstatement to say that the status of women workers will not improve unless working conditions for part-time workers improve.

The low pay levels for Japan's part-time workers must be rectified under the CEDAW's principle of equal pay for equivalent work, but Japan has no effective legal controls to rectify the discriminative treatment of part-time workers. Japan's 1993 Part-Time Work Law stipulates only that companies must endeavor to improve their employment management while taking into consideration a balance with regular workers (this is not the

principle of equal treatment set forth in ILO Convention 175), but it contains no principle of equal treatment. Further, Japanese law has no provisions banning indirect discrimination, and such a ban does not exist as a socio-legal norm, either. Hence Japan currently has no effective legal controls to improve the discriminative treatment of part-time workers.

For this reason help in the courts is also difficult. There is but one case in which a lawsuit over discriminative treatment of part-time workers resulted in a decision: the Maruko Keihoki Co., Ltd. Case, filed by 28 women working at this auto part manufacturer. The district court decision (Nagano District Court, Ueda Branch, March 15, 1996) held that the employer would have committed an unlawful act unless it paid the plaintiffs 80% of the regular employee wage, and a settlement for 90% was reached in the appellate court. However, the plaintiffs in this case were the previously described false part-timers, whose working hours and jobs were exactly the same as those of regular employees. There is still no judicial relief for victims of discriminative part-time treatment.

Additionally, under 3% of part-time workers are organized into labor unions, giving them very little muscle for negotiating with employers.

Even though Japan has ratified ILO Convention 156, there is little progress in improvements to comply with it or with Convention 165.

But the government is disinclined toward legislation. The Ministry of Labor and Welfare commissioned the Part-time Labor Research Committee to perform research called "Problems of Part-time Labor and How to Address Them," and a report was released in July 2002. In response, the government's Labor Policy Council discussed remedial measures for part-time work, but citing the difficulty of equal treatment for part-timers due to the restraints on regular employees such as transfers and overtime, the government is proceeding in the direction of administrative guidance for a "Japanese-style principle of balanced treatment" instead of legislating a principle of equal treatment.

(7) But Japan ratified ILO Convention 156 in 1995. Japan must ratify ILO Convention 175 and then, in line with the intent of that convention, of Convention 156, and of the Recommendations of Convention 165, quickly revise the Part-Time Work Law, or pass a new law, to expressly state the equal treatment principle.

## VI. Dispatch Workers (question 20, government report's article 11.1-2 (2))

### 1. Dispatch Workers

Dispatching workers was formerly prohibited because it was said that the workers' rights could not be adequately guaranteed, but since 1985 when enactment of the Dispatched Workers Law allowed some dispatching, this has been a growing form of employment.

Japan's labor dispatching system works as follows.

A temporary employment agency (the dispatcher) hires workers, and in response to a request from a company or organization (the user) which needs workers, the dispatcher sends some of the workers it has itself hired. Although the dispatch workers' employer is the temporary employment agency, it is the user that directs the workers and receives their labor.

This system is problematic because the employer and user are different entities. The dispatcher signs a dispatch worker contract with the user and charges a dispatching fee, and out of that fee it pays wages to the dispatch workers it has hired. Under the present Dispatched Workers Law, there are no restrictions on the margin left over from the dispatching fee (the dispatcher's profit is dispatching fees minus wages paid to workers and costs incurred in dispatching workers). Hence the lower the wages paid to workers, the higher the dispatcher's profit.

There are two types of dispatched labor systems. In the "permanent" type, workers are permanently employed by a dispatcher, which must pay them wages even when no users are demanding their services. In the "registered" type, workers register with a dispatcher, giving their names, desired type of work, skills, and other information. Registration itself does not constitute employment with a dispatcher; employment exists only when a registered worker is sent to a user, and wages are paid only during that period of time. It is the registered type which involves the most problems with respect to guaranteeing workers' rights. Workers cannot know when they will be dispatched, and it is often the case that short-term dispatches come one after another. Workers never know when employment opportunities will come.

## 2. Changes in the Legal Regulation of Dispatched Labor

When the Dispatched Workers Law was first enacted, worker dispatching was allowed only for 26 highly specialized jobs, but worker dispatching has rapidly expanded since a 1999 revision that in principle allowed any kind of job. Although the present law prohibits dispatched labor in fields such as the manufacturing industry and medical care, the Diet is currently examining a bill for a revision of the Dispatched Workers Law that would further ease restrictions. This bill includes provisions that would lengthen limits on dispatch time periods, and allow dispatching workers to "jobs manufacturing products," and physicians and nurses to certain social welfare facilities. As many as 8 million people work in the manufacturing industry, which means that if dispatched labor is allowed, dispatchers stand to increase their earnings by sending (renting) many workers. The Employment Security Law prohibited dispatching workers because it was thought that dispatchers practice intermediary exploitation, that workers are not protected, and that dispatching workers erodes the employment of regular employees, but revisions to the Dispatched Workers Law so far have

eased restrictions on dispatching labor despite insufficient protection of workers. Further deregulation poses serious problems regarding worker protection.

### 3. Labor Dispatching at a Glance

Dispatch workers have rapidly increased, and a Ministry of Labor and Welfare study shows that the number of such workers in 2002 was about 1,750,000, for a 26.1% increase over the previous year. In 1996 there were about 720,000 dispatch workers, meaning that their number increased about 2.5-fold in six years.

A growing proportion of dispatch workers are the registered type, whose employment is insecure, and women constitute an overwhelmingly large percentage. Government statistics say that in 1997 women accounted for 85.9% of registered dispatch workers, and the figure given by a Metropolitan Tokyo survey in 2002 is 86.6%.

The reason that users give for employing dispatch workers is to reduce full-time regular employees and replace them with low-wage non-regular employees such as part-timers and dispatch workers. On the other hand, while one opinion about the dispatch worker system is that "it is applauded because people can work to suit their lifestyles," one study indicates that recently more workers choose dispatch work because they cannot get regular full-time jobs.

According to the above Metropolitan Tokyo survey, in response to the question, "Why did you choose dispatch work?" the responses "I can work when it's convenient for me" and "I could not get a regular full-time job" account for over 40% (respondents could choose up to two answers). The response "Because I can take advantage of my specialized skills and qualifications" was 22.9% in a 1998 survey, but in the 2002 survey it slipped considerably to 13.4%, showing that fewer workers unreservedly approve of dispatch labor, while more of them want to be regular employees. About 70% of dispatch workers said they "feel employment insecurity."

It is evident that women are concentrated in this form of employment, which offers workers insufficient protection and, like other forms of employment, has a male-female wage differential.

There are many other problems with worker protection, such as the termination of contracts while still in force, and the leakage of dispatch workers' personal information from dispatchers.

### 4. The Need for Worker Protection

Despite these and many other problems with dispatched labor, the government has submitted to the Diet a bill to further broaden the use of dispatched labor to manufacturing and other industries. JFBA has responded with opinions including the following: (1) The dispatch period (in principle one year) should not be extended, (2) if a dispatch worker has



performed the same job continuously for at least one year, that worker must be directly hired if the worker so desires, and (3) manufacturing jobs should not be made eligible for dispatched labor.

## VII. Gender-related Education and Training in the Judiciary (government report's article 2.3 (3))

### 1. Statement in Government Report Article 2.3 (3), and the Reality

The government's fifth periodic report makes the first mention of training on human rights in the judiciary. This is likely a response to the repeated observations made by the Committee on Civil and Political Rights and the Committee on Economic, Social and Cultural Rights, about gender-related and other human rights education in the legal profession. But the responses of the courts and Ministry of Justice are still inadequate, especially as regards gender education and training.

For this reason, even since 2000 there have been sexual harassment cases other than that cited in Part II. In one example, the court reduced the compensation award on the grounds that the victim was at fault for not resisting. Underlying this decision is the lack of understanding about the domination/subordination relationship between offender and victim. In a case in which a woman was injured by spousal violence, the court approved a solatium that was lower than that for injury in a traffic accident (from negligence) on the grounds that the compensation was paid between spouses (Kobe District Court, September 8, 1999; in an appeal, the court approved compensation which was the same amount as that for a traffic accident).

A JFBA study found that in a settlement meeting for a domestic violence case, violence was sanctioned by statements like that by the judge: "I too hit my wife," and by a mediation committee member: "It's only natural that men are violent to their wives, so put up with it." Also reported are statements that force people into gender-defined roles: "The spouses of working women have it hard. Husbands of full-time housewives are much better off," "The wife doesn't get up early and fix breakfast for her husband. She neglects her housework," and "Men are supposed to work and support their families." These statements show that people in the judiciary are shackled by gender biases.

To rid the judiciary of such gender bias, it is urgent that judges, prosecutors, lawyers, and others in the judiciary be given adequate gender education.

Training is also problematic, making it necessary to see gender bias as a structural problem that underlies various kinds of discrimination against women, and to provide education and training with this as the focus.

It is doubtful if the training in human rights given in the judicial field is gender education and training in this sense.

## 2. Problems

### (1) Lack of Data on Gender Education

The total lack of data on the extent to which gender education is being conducted in the courts, the Ministry of Justice, and bar associations makes it totally impossible to see how well it is being implemented. Ensuring that these entities properly conduct gender education requires carrying out comprehensive studies on how it is being implemented (not just how many times training is conducted, but also what is taught), and then using this information to immediately make improvements if inadequacies are found in these education programs.

### (2) Attention to Educational Content and Methods

Even if gender education is provided, it may still be inadequate in terms of content.

For example, Article 24 of the Domestic Violence Prevention Law states, "The national and local governments shall encourage education and enlightenment measures so as to deepen understanding among the public of the need to prevent spousal violence," and there are reports that training is conducted in the courts on the interpretation and implementation of the law, including its procedures for protection orders. But the same article's second part states, "In doing so, they should seek to heighten awareness that words and deeds by spouses that are physically and psychologically harmful are as unforgivable as spousal violence." This means that education must be provided to better understanding about not only the physical violence that protection orders are meant to stop, but also so-called psychological violence, sexual violence, and economic violence. Yet, results of the "Questionnaire Survey for Authorities on Spousal Violence" released by the Cabinet Office in 2002 revealed that a far smaller percentage of people in the judiciary than of authorities in various fields thought of acts like this as violence: "Showing another person pornographic videos or magazines even though that person indicates a dislike," "Ignoring another person for a long time no matter what he or she says," and "Greater than necessary monitoring of another person's telephone calls and the company he or she keeps." People in the judiciary lack a realization of how psychological, sexual, and economic violence abuses the self-respect of victimized women, and makes them feel humiliation and suffering. In light of these results, it is quite impossible to believe that currently provided training has improved understanding of violence other than physical violence, i.e., "words and deeds by spouses that are physically and psychologically harmful."

Gender education and training should address all kinds of gender issues including general violence against women, sexual harassment, gender discrimination in the workplace, gender-defined roles in the home, and the gender-equal society. Further, training and education methods should incorporate sociological and psychological scrutiny that can make people

aware of the gender biases that underlie these problems.

## VIII. Poverty in Japan (not covered in government report)

### 1. Rising Unemployment and Other Problems

(1) Japan's unemployment rate until the 1980s was in the 2% range, but in the 1990s it grew steadily until reaching an average annual rate of 5.4% in 2002 (5.5% for men, 5.1% for women). This is the worst since the government began keeping statistics in 1953.

In December 2002 the unemployment rate attained 5.5%, the worst ever, with 3,310,000 people out of work. Involuntary unemployment including those attaining retirement age claimed 1,520,000, of which 1,140,000 left their jobs because of restructurings or other company-determined reasons, while 1,050,000 quit voluntarily.

In 2002 the average active job opening ratio was 0.54, and in December of that year it was 0.58, showing that it was harder to find jobs.

In December 2002 the number of employed people was 62,910,000, a decrease of 710,000 from December 2001. Regular and other full-time workers decreased by 650,000, while part-timers and other short-time workers (those working under 35 hours per week) increased by 410,000, showing that the replacement of regular with non-regular workers was proceeding.

In general the unemployment rate of women is only slightly lower than that of men, but this is because some women gave up job-hunting efforts and chose to become full-time housewives. With the arrival of 2003, household finances worsened and women increasingly sought work in order to make ends meet, which brought unemployment among women to nearly the same as among men.

### (2) Unemployment Is Actually Worse

Because Japan is lax in designating people as unemployed, the actual number of unemployed is far higher than statistics indicate.

In surveys by the Ministry of Public Management, Home Affairs, Posts and Telecommunications, "total unemployment rate" means the percentage of totally unemployed people in the labor force. To be totally unemployed, people must fulfill these three conditions: (1) They have no work, and must be totally unemployed during the survey period, (2) they can immediately begin work if there is an opening, and (3) they looked for work during the survey period.

Surveys actually cover about 100,000 people ages 15 and above from about 40,000 households chosen at random throughout the nation, and they check whether people are working or not during the last week of the month. Therefore, people who worked even a little in a week during the last week of the month are considered "employed," indicating laxity in designation of the

unemployed. If Japan's unemployment is recalculated using the six indicators of the US Department of Labor (U1 through U6), then only category U2 (involuntarily unemployed/labor force) is lower than that of the US, while the other five indicators are higher. Unemployment in Japan is actually worse than government statistics show.

## 2. Higher Social Insurance Premiums

Higher social insurance premiums and limitations on the payment of benefits are worsening the livelihoods of workers and their families.

### (1) Employment Insurance

At a time when unemployment is such a serious problem, employment insurance benefits are literally the lifeline of the unemployed, but despite the increased burden on workers for employment insurance, benefit levels are falling.

### (2) Health Insurance

The patient's share of medical bills under health insurance increased in October 2002 for people 70 or older, and in April 2003 for people under 70.

For example, workers enrolled in health insurance who work in the public sector, for private-sector organizations, or for businesses paid 20% themselves until recently, but since April 2003 they must pay 30%, a 1.5-fold increase.

### (3) National Pension System

In March 2000 the government decided to raise by stages, to age 65, the age at which national pension payments begin, and it has defied objections by pushing ahead with a substantial worsening of the pension system, such as by freezing the sliding pay scale and reducing by 5% the portion that is proportional to a worker's pay. Calculations indicate that this will reduce by at least 10 million yen the pension amount received by a white-collar couple now in their 30s, from retirement until death, which is a major source of anxiety about post-retirement livelihood.

## 3. The Homeless

On March 26, 2003 the Ministry of Labor and Welfare released the results of a nationwide survey on the homeless. This was the first survey covering all municipalities in the nation, and it found 25,296 homeless living in 581 municipalities. Osaka Prefecture had the most, at 7,757, and Tokyo had 6,361. Homeless people were found in all Japan's prefectures.

The survey visually identified homeless people, of which 3% appeared to be women, although the gender of 15.4% could not be determined from outward appearance alone.

Survey personnel interviewed 2,163 homeless and found that the

reasons for becoming homeless were: decrease in work, 35.6%; bankruptcy or loss of job, 32.9%; and 18.8% who said they could no longer work because of illness, injury, or age.

Just before joining the ranks of the homeless, 38.6% of them had been regular employees, the largest group, while 35% had been day laborers. These results show how people who had been regular employees became homeless after losing their jobs through restructurings or other causes.

By age, 45.4% were ages 50 to 59, and 30.8% were ages 60 to 69.

In response to health questions, 47.4% said they "have some health problems," but only 31.6% of them said they are addressing those problems by doctor visits or over-the-counter medicine, and 8.9% said they worry about violence from passers-by.

Survey results showed that the prolonged recession has produced more homeless, and that many of them cannot visit doctors or take other action even if their health deteriorates.

#### 4. Desperate Circumstances for Household Finance

As the livelihood conditions cited above deteriorate and incomes continue a long-term decline, Japan now has 7,420,000 households in the absolute low-income bracket of under 2 million yen annually. The livelihoods of such households, which account for 16.3% of Japan's total households, are below even the borderline for receiving welfare support.

In 2002 the number of applications to courts for personal bankruptcy reached 223,561, an approximate five-fold increase from a decade earlier in 1992. Causes included the inability to repay loans.

The gap between rich and poor is widening further, and it is especially women workers, whose number among non-regular workers is rapidly increasing, are quickly joining the ranks of low-wage workers.

Mother-child households have more difficulty making ends meet because in 2002 the government revised the Law for Mother and Child and Widows' Welfare, thereby making substantial cuts in the child-care allowances that support their livelihoods. Even though 90% of the mothers in mother-child households are employed, their average annual income is only 2,290,000 yen. A 2002 survey showed that 41% of mother-child households said they are "needy," and 40% say they are "somewhat needy."

5. In relation to how the CEDAW is being implemented, the government should report on how well women are faring under the circumstances affecting men and women as a whole.