

**Universal Periodic Review of Japan
42th Session, January - February 2023
Joint Stakeholder Submission**

**Joint Stakeholder Report
on
Sexual and Reproductive Health and Rights in Japan**

Submitted by

Japanese Organization for International Cooperation in Family Planning (JOICFP)

JOICFP is a Japan-based international NGO active in sexual and reproductive health and rights (SRHR). Our goal is to improve the health and wellbeing of women, men, and young people worldwide.

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Sexual and Reproductive Health and Rights for all



Citizen's Project for Pharmacy access to Emergency Contraception (CIPATEC)

CIPATEC is a civil organization which has been advocating for making emergency contraceptives available without prescription at pharmacies at an affordable price under an environment where emergency contraception is used properly and safely in Japan since 2020.

Website: <https://kinkyuhinin.jp/>

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#Nandenaino Project (Why don't we have?)

#Nandenaino means 'Why don't we have?' in Japanese and it is a grass-rooted youth movement which has been advocating sexual and reproductive health and rights including the full option of contraceptives and safer abortion, and reliable information based on comprehensive sexuality education in Japan since 2018.

Website: <https://www.nandenaino.com/home-1>

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#nandenaino

SOSHIREN (Women's Network for Reproductive Freedom)

A women's network formed in 1982 from the movement against the revision of the Eugenic Protection Act, striving towards the abolishment of the crime of abortion, and the realization of women's reproductive freedom.

Website: <http://soshiren.org/>

Address: 1-4-18-401, Nakameguro, Meguro, Tokyo, 153-0061, Japan

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J-ALL (Japan Alliance for LGBT Legislation)

J-ALL is an NGO which has been advocating since 2015 for the introduction of a national anti-discrimination law to remove social barriers based on SOGI (sexual orientation and gender identity), with more than 90 member NGOs across Japan.

Website: <https://lgbtetc.jp/english/>

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Spring

Spring is a general incorporated association established in July 2017 that envisions a society where survivors of sexual violence can live at ease. The association is mainly run by survivors who support this vision. Spring conducts advocacy activities with the goal to have the Japanese Penal Code revised so it reflects the actual condition of the victims of sexual crimes.

Website: <http://spring-voice.org/english/>

Email: info@spring-voice.org



Japan Youth Platform for Sustainability (JYPS)

JYPS is a "space" that allows for the collection and the delivery of the voices of Japanese youth to the Japanese government, UN agencies and other civil societies towards the discussions on the SDGs, and on the creation of various other UN frameworks.

Website: <https://en.jyps.website/>

Email: japanyouthplatform@gmail.com



Sexual Rights Initiative

The Sexual Rights Initiative is a coalition of national and regional organizations based in Canada, Poland, India, Argentina, and Southern Africa that work together to advance human rights related to sexuality at the United Nations.

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Asia Pacific Alliance for Sexual and Reproductive Health and Rights

APA is a network of national, regional and global civil society organizations that advocate for the fulfilment of sexual and reproductive health and rights (SRHR) for all persons in the Asia Pacific region.

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Key Words: sexual and reproductive health and rights (SRHR); contraception; emergency contraception; safe abortion; medical abortion; forced sterilization; sexual orientation and gender identity and expression ; sexual violence; consent law; comprehensive sexuality education

Executive Summary

1. Japan is a country where the rapidly declining birth rate and growing ageing population have become dominant as a demographic trend. The Japanese government (“the Government”) has implemented policies to mitigate this trend by adopting laws including the Basic Law to Deal with a Society where the Birth Rate is Declining (2003)¹. The Government started covering fertility treatment, including in vitro insemination, in the national insurance scheme from 2022 to encourage women to have more children. However, the Government has left out some critical issues regarding sexual and reproductive health and rights (SRHR). SRHR issues gain little spotlight because of women’s underrepresentation in decision-making, especially in legislative bodies. This is strongly reflected by the absence of a comprehensive anti-discrimination law and a national human rights institution (equality body) in Japan. SRHR can be discussed intersectionally with other various human rights issues, which have been raised in other multi-stakeholder reports to Japan.
2. This report is jointly submitted by nine (9) national, regional, and international civil organizations striving to promote SRHR. It highlights ongoing issues concerning SRHR in Japan with a focus on six (6) topics: access to contraceptives including emergency contraception, access to safe abortion, redress for victims of forced sterilization, discrimination based on sexual orientation and gender identity and expression (SOGIE), law reform of the crimes of sexual violence including rape, and universal access to comprehensive sexuality education.

Access to Contraceptives, including Emergency Contraceptives

3. We regret that there have been no previous recommendations made to Japan on access to contraceptives including emergency contraceptives (EC).
4. Globally, access to modern methods of contraception is ensured through a variety of safe options such as oral contraceptives, intrauterine devices (IUDs), injections, implants, and vaginal rings. In Japan, male condoms, IUD/IUS, and the contraceptive pill are currently the only available options. Other methods included in the World Health Organization (WHO)’s Model List of Essential Medicines² are not available.
5. Modern contraceptive methods are not covered by the national insurance scheme in Japan for contraceptive purposes, yet the same methods will be covered by insurance if they are used to cure a "health disorder" such as premenstrual syndrome or hypomenorrhoea. The Japanese national health insurance does not cover the cost of ECs, which ranges from 15,000 JPY (\$115) to 20,000 JPY (\$153) per dose.

¹ <https://elaws.e-gov.go.jp/document?lawid=415AC1000000133> (Japanese)

² <https://www.who.int/groups/expert-committee-on-selection-and-use-of-essential-medicines/essential-medicines-lists>

6. Absence of insurance coverage has prevented marginalised groups' access to contraceptives, especially people of low income and the youth. Clinics have the discretion to decide the pricing of contraceptives and will charge additionally for consultations, check-ups, and first-time visits.³
7. Many people in Japan do not have easy access to ECs. Rape victims are supposed to receive an EC pill for free through the public system, but most victims cannot reach those services. ECs are not available over the counter at pharmacies, and a prescription is required- which is only provided after consultation with a gynaecologist. As the most common EC pill must be taken within 72 hours after intercourse, these conditions severely limit access to safe and effective contraception. Additionally, the Government has not approved EC with longer applicable periods because applications have not been submitted for approval⁴.
8. According to the online survey⁵ by the #nandenaino project, out of all women who needed an EC in 2020, only 17% were able to obtain it. Respondents said they felt anxious about unintended pregnancy. Protecting the privacy of women and girls who need EC1008 is also a concern since obtaining the doctors' prescription requires data recording of the patients' health insurance certificate. Furthermore, the current government EC review committee is considering requiring the user to take the pill in front of the pharmacist to prevent the patient from keeping, reselling, or giving the medicine to a third party. This is because the committee is worried that women will make "bad use" of the emergency contraception and procure it for purposes other than their personal consumption.
9. Not allowing persons who can get pregnant to have access to ECs when needed hinders the persons' choice of whether or not to have a child, and if having a child, when and how. This is a critical component of SRHR.

Access to Safe Abortion

10. We regret that Japan has not previously received recommendations on access to safe abortion.
11. Japan committed to provide access to safe abortion in the 2013 Asia Pacific Ministerial Declaration on Population and Development, as well as to further advance the ICPD Programme of Action at the Nairobi Summit. However, access to safe abortion is not fully realized in Japan for legal, social, technical and economic reasons. This hinders the realization of reproductive health and rights of people who want to terminate a pregnancy. Furthermore, it often disproportionately impacts persons under vulnerable conditions such as young people, single mothers, migrant workers, people with financial difficulties and persons with disabilities.

³ A contraceptive pill costs from JPY2,500 (\$20) to JPY3,000 (\$23) per month, IUD from JPY30,000 (\$230) to JPY40,000 (\$306), and the cost of an IUS ranges between JPY60,000 (\$460) to JPY 80,000 (\$612) <https://w-health.jp/delicate/anticonception/> (Japanese)

⁴ According to the United Nations' World Contraceptive Use 2019, only 0.9% of women in the reproductive ages in Japan used oral contraceptives. The Japanese market for the pill, the emergency contraceptive, and the abortion pill is considered to be very small, and the cost is high to obtain approval from the Government. As such, many companies are reluctant to apply.

⁵ <https://kinkyuhinin.jp/wp-content/uploads/2020/06/%E6%96%B0%E5%9E%8B%E3%82%B3%E3%83%AD%E3%83%8A%E3%82%A6%E3%82%A4%E3%83%AB%E3%82%B9%E3%81%A8-%E5%A6%8A%E5%A8%A0%E4%B8%8D%E5%AE%89%E7%B7%8A%E6%80%A5%E9%81%BF%E5%A6%8A%E8%96%ACfull.pdf>

12. Abortion is still a crime in Japan, according to Article 212 of the Penal Code. A pregnant woman can be imprisoned up to 1 year for having an abortion. Article 213 and 214 of the Penal Code also punishes abortion providers, including medical personnel, with up to 2 years of imprisonment for providing abortion.
13. In practice, however, the application of the Penal Code may be exempted if all of the following conditions provided for by Article 14 of the Maternal Protection Act (MPA) were met:
- a) Obtaining consent from the pregnant woman and their spouse⁶⁷. If the spouse is not known or cannot express an opinion, or if the spouse no longer exists after the pregnancy, consent is unnecessary.
 - b) Performed by a doctor designated by a medical association.
 - c) Performed on a woman who falls under any of the following conditions:
 - i. A person for whom the continuation of pregnancy or delivery may significantly damage their physical health due to bodily or economic reasons
 - ii. A person who experienced sexual intercourse by use of physical force or verbal threat, or at a time when the person could neither resist nor refuse, and consequently became pregnant.

Under such legal conditions, 145,000 abortions took place in 2020⁸, while 4 were arrested for the crime of having or providing abortions in the same year⁹.

14. This legal structure has several problems. Firstly, Article 212 of the Penal Code is discriminatory, as it punishes the “pregnant women” for seeking to exercise their right to bodily autonomy. Criminalizing abortion creates stigma and guilt, which discourages a pregnant person from seeking one. As the treaty body jurisprudence indicates, not having access to abortion may result in the violation of the rights to health and privacy.¹⁰

15. Another problem is that the MPA requires a woman to be authorized by her partner to legally perform an abortion, although the Ministry of Health, Labor, and Welfare, while responding to an inquiry from a doctors’ association, stated that the spouse or partner’s consent is unnecessary in the case of rape¹¹ or when it is difficult to obtain, such as in a collapsed marriage¹². This denies each woman’s right to make decisions about her own body. Yet some physicians still request that a pregnant person obtains their partner’s consent, in fear of the punishment deriving from Article 214 of the Penal Code. This poses a serious threat to secure access to abortion. In fact, in 2020, a 20-year-old student was arrested for allegedly abandoning her newborn baby. She had attempted to have an abortion in early pregnancy and visited two clinics. There, she was requested to obtain this consent, but her partner abandoned her without giving it. According to her testimony, she contacted 5 to 6 more clinics

⁶ The spousal consent requirement applies not only to married and common-law marriage couples, but also to the partner or sexual partner of a non-married woman, too.

<https://www.washingtonpost.com/world/2022/06/14/japan-abortion-pill-women-reproductive-rights/>

⁷ The word spouse here does not refer only to a married partner but also any male sexual partner with whom the women had a sexual relationship with.

⁸ <https://www.mhlw.go.jp/content/11920000/000784018.pdf> (Japanese)

⁹ https://www.npa.go.jp/toukei/soubunkan/R02/pdf/R02_ALL.pdf(Japanese)

¹⁰ https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf

¹¹ <https://www.mhlw.go.jp/hourei/doc/tsuchi/T201022N0010.pdf> (Japanese)

¹² http://www.taog.gr.jp/pdf/210316_4.pdf (Japanese)

without any success. As a result, she gave birth alone in a toilet in a park.¹³ The removal of spousal consent serves to protect a person's bodily autonomy. In addition, it would also protect service providers from the risk of being charged under the Penal Code.

16. There are also technical issues when providing safe abortion. Most notably, medical abortion is not available in Japan, as the Government has not approved the abortion pill as of June 2022. Furthermore, most of the surgical abortions are carried out using the dilation and curettage (D&C) method¹⁴, although the WHO recommends replacing D&C with vacuum aspiration, since "D&C" is less safe than vacuum aspiration and considerably more painful for patients.¹⁵

17. D&C continues to be used for a number of reasons, but at the core is a reluctance to make access to abortion easier, cheaper, and less painful. As abortion is stigmatized, indeed even medical practitioners who perform abortions are stigmatised even among obstetrician-gynaecologists, in some ways the difficulties of the process are considered, in a sense, a punishment for women who seek abortion, or an opportunity to display social disapproval. Additionally, there is inertia in the medical sector, as D&C is still being taught in medical schools in Japan, and textbooks do not mention manual vacuum aspiration (MVA). Under current regulations, a doctor that performs abortion must have a specialised license, so they do not want change the technique that they have used for long time.

18. Further, changing surgical abortion methods has cost implications. Data from 2010¹⁶ shows that only 10% of abortion was performed by electric vacuum aspiration (EVA), and the remaining cases involved a partial (D&C combined with EVA) or full D&C. MVA kits only started being sold in Japan from 2015. Doctors who perform abortions consider the purchasing of disposable MVA kits to be costly compared with use of partial D&C and EVA because for the latter combination, they already have the equipment and machines necessary for the procedures, which can be cleaned, sterilized and reused.

19. The high cost of abortion deters persons from seeking abortion as well. In Japan, a clinic or hospital can set the price of an abortion because the Government provides neither subsidy nor national insurance coverage for abortions. Costs range between 100,000 JPY and 200,000 JPY (\$800 to \$1,600). Even if the abortion pill was authorized, the price of a medical abortion would be equally as expensive as a surgical one, according to a statement made by the president of the Japan Association of Obstetricians and Gynaecologists. Per the president of the association, "abortions should take place in medical facilities capable of hospitalizing the patient and providing surgery if the foetus and placenta are not safely removed by abortion medication. The fees will stay at the current level considering the overhead cost." Such a high pricing of abortion care, and a restrictive approach to locations where medical abortion can be provided, clearly undermines financial accessibility and thereby goes against the AAAQ framework¹⁷.

¹³ <https://www.asahi.com/ajw/articles/14387528>

¹⁴ https://www.jsog.or.jp/news/pdf/20210705_kourousho.pdf (Japanese)

According to this survey in 2021 (<https://pubmed.ncbi.nlm.nih.gov/34571569/>), "although EVA with sharp curettage was the most common surgical method, which was used for 11,953 spontaneous miscarriages (28.9%) and 24,045 induced abortions (37.3%), the most common surgical method per facility was D&C, and the rates of D&C for spontaneous miscarriages (38.4%) and induced abortions (44.7%) performed in general hospitals were significantly higher than those in clinics (24.1% and 22.0%, respectively)," and "in Japan, especially in general hospitals, D&C is still widely used."

¹⁵ WHO "[Safe abortion: technical and policy guidance for health systems, Second edition](#)" (2019)

¹⁶ Mizuno, Maki. "Clinical experience and perception of abortion: A cross-sectional survey of gynecologists in Japan," *Sexual & Reproductive Healthcare* 6 (2015) 255–256 <http://journal.ukb.ac.id/journal/detail/125/>

¹⁷ [https://www.thelancet.com/journals/lanwpc/article/PIIS2666-6065\(21\)00004-3/fulltext](https://www.thelancet.com/journals/lanwpc/article/PIIS2666-6065(21)00004-3/fulltext)

20. Finally, persons in precarious conditions are likely to be severely impacted by limited access to contraception and abortion. For example, in 2020, a "technical intern"¹⁸ from Vietnam was arrested for using an imported abortion pill to abort by herself.¹⁹ She did so in fear of facing deportation, knowing that migrant workers often get deported once they get pregnant. Also, news of arrests such as in the case of the aforementioned student who abandoned her newborn baby are not rare. Similar incidents are reported almost every year.

Redress for Survivors of Forced Sterilization

21. We regret that Japan has not previously received recommendations on redress for survivors of forced sterilization.

22. Under the now defunct Eugenic Protection Act (1948 to 1996),²⁰ about 25,000 people were sterilized in Japan.²¹ Aiming to prevent the birth of the so-called "inferior descendants" from the 'eugenic' point of view and to "protect the life and health of motherhood," the act contained provisions that allowed sterilization and abortion on people who were considered to be "inferior," including persons with hereditary psychopathy, hereditary bodily disease or hereditary malformation, mental illnesses and the 'mentally retarded'. The law authorized doctors to conduct sterilizations without such persons' consent. Data shows that at least 16,477 people were subjected to forced sterilization without consent.²²

23. In 1997, survivors of these sterilization surgeries started advocating for an official apology and compensation from the State. After a series of requests and lawsuits carried out by the survivors and several recommendations issued by UN treaty bodies²³, the Japanese Diet (legislative body) passed legislation in 2019 to provide a lump sum payment to the people concerned ("the Payment Law"). However, survivors have expressed their dissatisfaction with this law for several reasons.

24. Firstly, the Government failed to clearly acknowledge the State's responsibility in this matter. Although the law contains some words of apology, they are delivered in an obscure way, such as not clearly using the word "State" nor "Government" as the subject. Instead, it expressed vague apologies by "we." Indeed, the Payment Law did not even use the word "compensation" with the acknowledgement of State's accountability. Instead, the money to be paid to the survivors was just called a "payment." Obviously, this law falls short in satisfying the survivors' earnest requests for an official apology and compensation by the State. In addition, the amount of the lump sum payment (JPY3.2 million = approx. USD\$25,000) was disproportionate against the unrestorable harm that the survivors had endured. Therefore, it also falls short of providing satisfaction to the survivors.

¹⁸ While keeping a very restrictive immigration policy towards foreigners, Japan has a specific scheme to welcome 'interns' from other countries. "Technical intern" is a euphemism for cheap manual labour through foreign workers. These workers work for Japanese farms and factories at very cheap prices, while receiving 'technical training'.

¹⁹ Pregnancy trap for workers in controversial Japan scheme

<https://www.france24.com/en/live-news/20220412-pregnancy-trap-for-workers-in-controversial-japan-scheme> 12/04/2022

FOCUS: Pregnant trainee in Japan feared being forced to return to Vietnam

<https://english.kyodonews.net/news/2022/04/803ebc204b8e-focus-pregnant-trainee-in-japan-feared-being-forced-to-return-to-vietnam.html> 20/04/2022

²⁰ <https://www.ipss.go.jp/history/EnglishPamphletSeries/pdf/J000008736.pdf>

²¹ <https://www.mhlw.go.jp/content/11925000/000530068.pdf> (Japanese)

²² *ibid.*

²³ CCPR/C/79/Add.102 (para.31) 1998/11/19, CEDAW/C/JPN/CO/7-8 (para. 24, 25) 2016/03/07

25. Second, measures to prevent repetition of human rights violations based on eugenics were not thoroughly introduced or implemented. The fact-finding investigation was not insufficiently implemented, because:

- a. It was not done by an independent body with the participation of survivors, their families and/or supporters
- b. The initial scope did not cover all the related institutions
- c. No follow-up research was made on possible survivors identified through the initial research and
- d. No interview survey with related parties including survivors has been made.
- e. Anti-discrimination education or trainings regarding persons with disabilities has not taken place in a comprehensive manner.

26. Given the Eugenic Protection Law was in effect in Japan for nearly 50 years, it can reasonably be assumed that eugenics is still deeply embedded in Japanese society. Indeed, there was a mass murder of people living with disabilities even as recently as 2016. The perpetrator, citing eugenics as his motive, killed 19 people and injured 26 at a care home in Sagamihara, near Tokyo. Without a proper investigation and an appropriate education program implemented throughout the country, it is difficult to guarantee that human rights violations deriving from eugenics will not be repeated.

27. Third, the Government has taken insufficient measures to implement the legislation, notably on locating and reaching out to the survivors. Even though administrative records identified 5,400 possible survivors,²⁴ the Government is hesitant to reach out to them, saying that it is difficult to identify them without exposing their privacy. Despite concerns about privacy, not reaching out to the survivors is not an option because some of them may not even know that they have been forcefully sterilized, and those who know that they have been subjected to this surgery may still hesitate to come out, fearing stigma and discrimination.

28. In addition, the dissemination of the information of the Payment Law was not sufficient. Indeed, while the law limits the period of application for this payment to 5 years, as of June 2022, three years since it came into effect, the number of applications filed remains around 1,160 and the number of certified payments total only around 990. As the number of survivors that was identified through the initial research was 5,400,²⁵ it is clear that the vast majority of survivors have not applied or received payment.

29. There are also several ongoing judicial procedures to hold the State accountable for the matter. Until May 2022, 25 plaintiffs have brought their cases to eight (8) district courts all over Japan. So far, six (6) judgments have been rendered by district courts, all of which dismissed the claims of the plaintiffs. Following that, two (2) high courts (Osaka and Tokyo) rendered judgments, which overturned the district court decisions. While the majority of judgements found the forced sterilizations unconstitutional, the six initial district court level judgments did not order the State to compensate survivors with damages, on the grounds that the 20-year statute of limitation had lapsed. However, two new judgments from high courts found the States liable and ordered compensations of 1.3 and 1.5 million JPY (approx. \$4,100,000 to \$115,000- about 4 to 4.6 times more than the lump-sum payment) respectively for the survivors. Regrettably, the Government has appealed in objection to both, while the survivors are ageing, and four plaintiffs already passed away in the course of the court procedure.

²⁴<https://www.mhlw.go.jp/content/11925000/000530068.pdf>(Japanese)

²⁵ *ibid.*

Discrimination based on Sexual Orientation and Gender Identity and Expression

30. In the previous cycle, Japan received a recommendation on same sex partnerships and efforts to eliminate discrimination based on SOGIE, by Mexico, Netherlands, Norway, Germany, Honduras, Switzerland, USA, Canada, Colombia, Ireland, Australia, and New Zealand in 2017.²⁶ However, the Government's response was "unclear" or "partially accepted". Japan has not implemented either of them.

31. Japan is the only country in G7 that does not have a law prohibiting discrimination based on sexual orientation and gender identity (SOGIE), and the only country in the grouping that does not legally recognize same-sex marriage and civil unions at the national level. Consequently, LGBT people in Japan are left to face various social barriers in their everyday lives with the absence of comprehensive anti-discrimination legislation and explicit recognition of SOGIE.

32. According to surveys, nearly 60 percent of LGBT people have experienced bullying at school, and almost 50% of LGBT people face difficulties at work. Compared to those who identify as cisgender and heterosexual in Japan, the attempted suicide rate is 6 times larger for gay and bisexual people, and 10 times larger among transgender people.²⁷

33. Transgender persons in Japan who need to change their gender marker in order to obtain legal documents that match their preferred gender must undergo forced sterilization surgeries, as provided by the GID Special Cases Act.²⁸ However, this sterilization requirement is a violation of human rights

²⁶ para. 161.58-75, 161.84, A/HRC/37/15 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/002/35/PDF/G1800235.pdf?OpenElement>

161.58 "Eliminate legislative provisions that are discriminatory against (...)lesbian, gay, bisexual, transgender or intersex persons, with a view to expressly prohibiting hate speech and penalizing any non-consensual sexual conduct. (Mexico)

161.59. Adopt a broadly applicable anti-discrimination law, including a comprehensive definition of discrimination, with a view to ensuring the prohibition of all forms of direct and indirect discrimination, including on the basis of age, gender, religion, sexual orientation, ethnicity or nationality (Netherlands)

161.61 Enact a law prohibiting discrimination, including on the basis of age, gender, religion, sexual orientation or ethnicity, and that other necessary measures be undertaken to ensure gender equality (Norway)

161.63 Adopt and implement a comprehensive anti-discrimination law that would prohibit and sanction any direct or indirect form of discrimination based on age, race, gender, religion, sexual orientation, ethnic origin or nationality (Germany)

161.65 Adopt comprehensive legislation to combat discrimination in line with its international obligations and standards, which includes discrimination based on sexual orientation and gender identity (Honduras)

161.70 Take steps to address discrimination based on sexual orientation and gender identity, including revising the Gender Identity Disorder Law (New Zealand)

161.71 Continue developing the positive developments related to the elimination of discrimination based on sexual orientation and recognize same-sex unions at the national level (Switzerland)

161.72 Implement comprehensive anti-discrimination legislation to protect and promote the rights of lesbian, gay, bisexual, transgender and intersex persons (United States of America)

161.73 Further the efforts of some local governments and private firms to eliminate discrimination based on sexual orientation and gender identity, including by extending at the national level formal recognition of same-sex partnerships (Canada)

161.74 Continue developing the implementation of actions against any kind of discrimination for gender, ethnicity, skin colour, sexual orientation and gender identity, among others (Colombia)

161.75 Move quickly to introduce comprehensive anti-discrimination legislation to provide equal protection against discrimination for all persons and on all grounds, including sexual orientation or gender identity (Ireland)

161.84 Take further steps to effectively address hate speech and protect the rights of minorities, including introducing legislation to prohibit discrimination on the grounds of race, ethnicity, sexual orientation and gender identity (Australia)

²⁷ <https://www.hrw.org/EqualityActJapan>

²⁸ 'Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder', Article 3 (1) (iv)-(v). https://elaws.e-gov.go.jp/document?lawid=415AC0100000111_20220401_430AC0000000059 (in Japanese), <https://www.japaneselawtranslation.go.jp/ja/laws/view/2542/je> (in English).

and runs counter to respect for bodily integrity, self-determination, and human dignity, according to the interagency statements in 2014 by WHO etc.²⁹

34. In 2021, a draft bill which essentially bans any discrimination based on SOGIE was agreed upon by a politicians' working group. This group was nonpartisan and consisted of various parties including the ruling Liberal Democratic Party (LDP). However, the bill was not submitted due to criticisms from lawmakers within the LDP that "it will lead to an excessive anti-discrimination movement" or "the range of discrimination is not clear and the number of court cases will increase."³⁰

35. In the national report for the last UPR, the Japanese government spoke about "Japan's belief that human rights violations based on sexual orientation and gender identity should not be tolerated" (para.79, A/HRC/WG.6/28/JPN/1). However, as already mentioned, no legal protection has been introduced and there is much room for improvement to ensure equal treatment and human rights for all.³¹

36. In 2019, for the first time in Japanese history, a class action lawsuit took place by a group of same-sex couples against the Japanese government in five big cities to seek judicial redress demands for mental and emotional suffering and creation of legislation recognizing same-sex marriage.

37. In March 2021, the District Court in Sapporo ruled that not allowing same-sex couples to marry was unconstitutional since it violates the Constitution's guarantee of equality before the law³². The suit was appealed by the Government and is pending at the high court. At the District Court in Tokyo in February 2022, the Japanese government stated that, as a marriage requirement, it is crucial whether it is between a male/female couple who have the biological potential for reproduction.,

38. Based on the principle of non-discrimination in the Constitution of Japan and the obligations of international human rights, we request states to urge the government of Japan to legislate an anti-discrimination law with a national equality body, legally recognize same-sex partnerships and marriages at the national level and repeal the forced sterilization requirement from the GID Special Cases Act.

Law Reform of the Crimes of Sexual Violence including Rape

²⁹ World Health Organization (2014) Eliminating forced, coercive and otherwise involuntary sterilization: an interagency statement, OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO. <https://apps.who.int/iris/handle/10665/112848>

The impact of increasing gamete cryopreservation by transgender persons due to the mandatory sterilization on sexual and reproductive health and rights has been under inter-disciplinary research and academic discussion in Japan. <https://kaken.nii.ac.jp/ja/grant/KAKENHI-PROJECT-17H04096/>

³⁰ Editorial: Japan's ruling party must outlaw LGBT discrimination, recognize rights - The Mainichi <https://mainichi.jp/english/articles/20210527/p2a/00m/0op/021000c> 27/05/2021

³¹ National Personnel Rules which apply only to national public servants explicitly state discrimination at the work place based on SOGIE is a form of Sexual Harassment as well as power harassment. The Ministry of Health, Labour, and Welfare revised "Act on Comprehensive Promotion of Labor Policies and Stabilization of Employment and Improvement of Working Lives, etc." in 2020, which obliges companies to take measures preventing power harassment including that of SOGIE. However, such SOGIE harassment prevention at the workplace is not effectively applied within education systems. Teachers, guardians and students still lack understanding of the concept of harassment. Therefore mistreatment and bullying have persisted and are not adequately dealt with. this goes back to the amount of bullying at schools and high number of suicide (and attempted suicide) rate of LGBT people written in #25.

³² Japan court rules banning same-sex marriage not unconstitutional <https://english.kyodonews.net/news/2022/06/bba8c16192e9-japan-court-rules-banning-same-sex-marriage-not-unconstitutional.html> 20/06/2022

39. In the previous UPR, several countries recommended Japan make more effort to combat the sexual exploitation of children and reform of the penal code to raise the age of consent for sexual conduct. Currently, the age of consent is set at 13 for everyone. CEDAW's concluding observations (2016) "urged Japan to raise the legal minimum age for women to 18 years (para 38)." The Civil Code reform to raise the marriageable age became effective in 2022. However, law reform of the Penal Code to raise the age of consent, which affects the recognition of statutory rape, has not been made.

40. The Penal Code does not effectively capture perpetrators of sexual violence crime in Japan. In 2017, 1 in 14 women and 1 in 100 men experienced sexual assault.³³ 59.9% of victims told no one about their experiences³⁴ and only 5.6% of rape victims reported it to the police.³⁵ Of all reported cases, only one third was prosecuted in 2017.³⁶ In the same year, the definition of sexual crimes in the Penal Code was revised^{37,38} for the first time in 110 years, thanks to the continuous effort of women's human rights organizations including survivors of sexual violence.³⁹

41. Although these changes were a positive step forward, significant problems, especially those regarding sexual offence requirements, remained in the Penal Code.^{40 41}

42. The Penal Code requirement to prove existence of assault or threats in the case of forced sexual intercourse does not reflect how victims have little or no power to resist actual sexual violence. Although the 2017 amendment to the Penal Code⁴² included a supplementary resolution for "due consideration of the psychological state of the victim when certifying the degree of 'violence and/or threat' and 'inability to resist,'" whether this happens depends on the judge presiding.

43. The Japanese Penal Code requires substantial evidence that the perpetrator exercised enough physical force, verbal threats (Article 178), or any other methods that would make the victim lose their

³³ https://www.gender.go.jp/policy/no_violence/e-vaw/chousa/pdf/r02/r02danjokan-7.pdf (Cabinet Office)(Japanese)

³⁴ Ibid

³⁵ Ibid

³⁶ <https://hrn.or.jp/activities/project/women/womensrights-2020/> (Japanese)

³⁷ <https://www.waseda.jp/foiaw/icl/news-en/2018/02/06/6110/> (English)

³⁸ <https://www.nhk.or.jp/heart-net/article/128/> (Japanese)

³⁹ Several key changes were made to the actus reus, minimum penalty, and expanding the scope the crime of rape leading to a change in the name of the crime under Article 177. The stipulation that victims of rape be limited to females was changed, and cases where men were subjected to forced sexual intercourse began to carry heavier punishment than forcible indecency (Article 176). In addition to the act of vaginal penetration by male genitalia, anal and oral sexual intercourse became heavily punishable. Due to these alterations, the name of the crime was changed from "rape" to "forced sexual intercourse." The minimum penalty was raised from three years' imprisonment to five. Furthermore, the minimum penalty in cases where the victim died or was injured as a result of rape or the like (Article 181, Section 2: Rape Causing Death or Injury) was raised from five years' imprisonment to six (accompanying this revision, the crimes of gang rape and gang rape causing death or injury were abolished). The same change was also added for quasi-rape (Article 178, Section 2), in which a person takes advantage of another person by causing loss of consciousness or inability to resist. There was the establishment of a new crime involving intercourse by a guardian (Article 179, Section 1) and indecency by a guardian (Article 179, Section 2):

(3) Amendment to the crime of rape at the scene of a robbery (Article 241):

(4) Making all sexual offenses a crime that is prosecutable without a victim complaint:

⁴⁰ <http://spring-voice.org/wp-content/themes/theme-bones-master/library/pdf/sexcrime.pdf> (Japanese)

⁴¹ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fJPN%2f7&Lang=en
CCPR/C/JPN/7, 30 March 2020 (para. 64 & 65)

⁴²

https://www.shugiin.go.jp/internet/itdb_rchome.nsf/html/rchome/Futai/houmuC902012E465436A34925813D001C83EE.htm (Japanese)

ability to fight against the perpetrator (Article 179). The perpetrator is unlikely to be punished for the crime if the victim could not prove that it was extremely difficult for the victim to resist. This has been reinforced by past court decisions. In the ruling of the Okazaki branch of the Nagoya District Court in March 2019, the accused, who had sexual intercourse with his daughter when she was at the age of 19, was acquitted because the judge said that even though the sexual intercourses were not consensual, the victim had not resisted her father's sexual advances to the extent that Article 179 could be applied.⁴³⁴⁴ The problem is that the current legal structure cares about how the victim resisted more than the question of consent, and the degree of resistance is arbitrarily decided by individual judges.

44. Crimes of Forcible Sexual Intercourse and Constructive Forcible Sexual Intercourse (Articles 177 and 178) of the Penal Code should be abolished and replaced with the title 'The offence of non-consensual sexual intercourse', which punishes sexual conduct which neglects to confirm voluntary consent and active participation in alignment with the law of Sweden.

45. The legal age of consent at 13 years old is unjustifiably low. In Japan, the legal age of consent for sexual conduct is 13 years old. If a victim is 12 years old or younger, sexual conduct constitutes statutory rape regardless of use of physical force or verbal threat, but if a victim is 13 years old or older, proof of force or threat is required to indict a perpetrator. The age of consent in the context of articles 176 and 177 in the Penal Code (indecent acts and sexual intercourse) should be raised to 16 years old.

46. Protection of victims from sexual violence is insufficient. The Penal Code was revised to establish new offences: "indecent by person having custody of person under 18" and "sexual intercourse by person having custody of person under 18" (Article 179, (1) and (2) of the Penal Code). However, the definition of a custodian is quite narrow. It only refers to an adult who supervises and protects a child and does not include adults who exercise power over minors such as teachers, coaches, supporters, welfare workers, or step family members.

47. The Penal Code should be amended to establish a new crime that punishes non-consensual sexual intercourse or conducts committed by those in power or people close to the victim who use their power or subordinate relationships to sexually violate the victim.

48. The statute of limitations is unreasonably short. The statute of limitations of forced sex crimes and indecent acts are respectively ten and seven years. Taking the severity of physical and emotional harm such as dissociation, PTSD, or CPTSD into consideration, and particularly the low age of consent for sexual conduct, the statute of limitation of sexual violence should be eliminated.

49. The above requirements to prosecute sexual offences foster the false assumption that "the victim should resist strongly." Consequently, many court decisions have been made by biased judges who did not consider how the victim could not resist the assault, and many perpetrators went free. This bias has also created a condition where many law enforcement officers and media repeatedly engage in secondary victimisation of victims and survivors, by blaming the victim for her behaviour, clothing etc. When reporting to police or court about the violence they experienced, victims are often made to recount the details of violence multiple times; that alone is traumatic. On top of that there have been many cases where untrained law enforcement officers and OB/ GYN doctors examining the victims ask questions about the victims history of romantic relationships or choice of clothing as if to say the violence inflicted was a result of certain behaviour of the victims. After being blamed for their

⁴³ <https://www.asahi.com/ajw/articles/13268301>

⁴⁴ <https://mainichi.jp/english/articles/20200323/p2a/00m/0na/010000c>

“irresponsible” conduct and treated as “unreliable victims,” many survivors gave up filing their cases and blamed themselves in silence.

50. Recognizing that only a limited number of survivors are legally acknowledged as a victim, public support for survivors of sexual assault including physical and psychological care in the short and long term should be extended to cover all those that indicate that they were sexually assaulted. At the same time, building a system to continuously provide proper trauma treatment is urgent. The Law on Support for Women with Difficulties (2022)⁴⁵⁴⁶ was newly established to enhance support for vulnerable women, i.e women who are victims of sexual crimes, marginalized from their homes and societies, and have difficulty in sustaining their livelihoods. The law’s effective implementation should be promoted.

51. Further comprehensive legislation on preventing and combatting sexual violence should be developed upon ratification of the Istanbul Convention. The Government should make its utmost efforts to advocate to society as a whole that “sexual conduct without the partner’s consent is sexual violence”⁴⁷, a slogan that has been promoted through the Cabinet Office’s “Elimination of Violence Towards Women” campaign, before ratifying the convention.

Universal Access to Comprehensive Sexuality Education

52. We regret that Japan has not previously received specific recommendations on access to CSE. However, the implementation of the Basic Plan for Gender Equality was recommended by several countries in the previous UPR⁴⁸. The Basic Plan states the promotion of “sex education”, but the Government has not sufficiently implemented it yet.

53. CSE is rights-based and covers relationships and communication, values or cultures, gender, violence and safety, sexual health and wellbeing, physical development of the human body, sexuality and sexual behaviours, and sexual and reproductive health and rights.

54. Japan’s compulsory education lasts to age 15, consisting of six years of elementary school and three years of junior high school. National curriculum guidelines for schools up to high school education are defined by the Government, and guidelines are revised every 10 years⁴⁹. However,

⁴⁵ <https://houseikyoku.sangiin.go.jp/bill/outline04052.htm> (Legislative bureau of councillors, 2022) (Japanese)

⁴⁶ <https://www.japantimes.co.jp/news/2022/05/19/national/crime-legal/women-support-bill-pass/>

Japan Times, Japan passes bill to enhance support for vulnerable women, May 19, 2022

⁴⁷ https://www.gender.go.jp/policy/no_violence/no_violence_act/pdf/dv_poster_r02.pdf (Japanese)

⁴⁸ The countries were Cuba, Thailand, Bahrain, and Bulgaria. Sri Lanka, and Tunisia

<https://www.ohchr.org/sites/default/files/lib->

[docs/HRBodies/UPR/Documents/Session28/JP/MatriceRecommendationsJapan.docx](https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session28/JP/MatriceRecommendationsJapan.docx)

161.154 Ensure the effective implementation of the 4th Basic Plan for Gender Equality with particular focus on the “Reformation of “men-oriented working styles” for women’s empowerment” (Bahrain)

161.155 Continue its efforts in the advancement of the protection of the rights of women, gender equality and the promotion of gender-equal society by implementing the fourth Basic Plan for Gender Equality (Bulgaria)

161.156 Continue the implementation of the Basic Plan for gender equality (Cuba)

161.169 Ensure decent work without discrimination by enhancing effective implementation of the Basic Plan for Gender Equality and the Act on Promotion of Women’s Participation in the Workplace, and by ensuring reasonable wages and safe working conditions for foreign workers, particularly those under the Technical Internship and Training Program (Thailand)

161.192 Continue implementation of the Government’s “Basic Plan on Measures against Child Sexual Exploitation”, and supporting and rehabilitation of victims (Sri Lanka)

161.194 Continue efforts to protect children from sexual abuse and exploitation by implementing the Basic Plan adopted in April 2017 through measures to combat sexual exploitation of children (Tunisia)

⁴⁹ https://www.mext.go.jp/a_menu/shotou/new-cs/idea/index.htm (Japanese)

Japanese “sex education”, according to the guidelines up to junior high school, is limited to topics related to reproduction (i.e. the process of pregnancy and delivery of a baby without any details of actual sexual intercourse). Also, it fails to include many of the CSE factors above.

55. According to the national curriculum guideline, pupils learn about contraception and abortion only after they complete the 9 years of compulsory education (elementary and junior high school). There is restrictive guidance which was created in 1998. The guideline restricts teachers from teaching the following two components from sexuality education at school:

- f. At 5th grade (10-11 years old), the process leading to human fertilization shall not be dealt with⁵⁰
- g. At junior high school 1st grade (12-13 years old), the process of becoming pregnant shall not be dealt with⁵¹

56. On top of insufficient sex education, such restrictions effectively put a brake on teaching sexual intercourse to young people. Japanese youth are left unprepared for a myriad of potential risks such as unplanned pregnancy, STIs, and sexual violence without resources such as learning about consent, healthy relationships, and sexual health information, in a society where contraceptives and access to abortion is limited.⁵²

57. Japanese youth feel that they lack knowledge on SRHR, from understanding of SOGIE to sexual harassment and non-consensual sex, contraception methods, STIs, and having a mutual respectful relationship. In Japan, due to the low birth-rate and ageing society, there is a tendency to treat women and girls as ‘future mothers’ and ‘natural family caregivers’ more than individual persons. However, sexuality education should always support individual decisions and ambitions regardless of gender, based on human rights and scientific evidence, independent from social expectations and norms.

58. Implementation of the Basic Plan for Gender Equality was repeatedly recommended by several countries in the previous UPR. The Fourth Basic Plan for Gender Equality, as well as the Fifth Basic Plan for Gender Equality published in 2020, stated that “a perspective on reproductive health and rights is particularly important”⁵³ and the government will “promote sexuality education, including preventive methods of sexually transmitted infections and contraceptive methods.”⁵⁴ There is a need for immediate action to fulfil the gap between this target and societal reality.

59. The Fourth and the Fifth Basic Plan for Gender Equality as well as the “International Technical Guidance on Sexuality Education” by UNESCO emphasizes the importance of the condition that young people can ask for help without a feeling of guilt or shame when they face challenges or issues concerning sexuality. Along with the implementation of CSE, we urge the Government to prepare an environment where young people can consult to and receive sexual and reproductive health services and care in a youth-friendly manner.

Recommendations

⁵⁰ https://www.mext.go.jp/content/1413522_001.pdf (Japanese)

⁵¹ https://www.mext.go.jp/content/1413522_002.pdf (Japanese)

⁵² <https://www.nhk.or.jp/shutoken/wr/20210826a.html> (Japanese)

⁵³ https://www.gender.go.jp/about_danjo/basic_plans/5th/pdf/2-07.pdf (Japanese)

⁵⁴ *ibid.*

60. Make modern contraceptives available and provide them at affordable prices to women of reproductive age through government subsidies.
61. Make ECs available at pharmacies without a medical prescription. Train pharmacists with SRHR knowledge and on how to support people in need.
62. Repeal the crime of abortion in the Penal Code and amend the Maternal Protection Act to ensure access to safe, timely, affordable, and respectful abortion care for all persons who need it, without stigmatizing the pregnant person, and without the requiring spousal consent.
63. Ensure the access to safe and affordable abortion for everyone who needs it by authorizing medical abortion, replacing D&C (dilation and curettage) with other methods such as vacuum aspiration and medical abortion, and covering abortion under the national healthcare scheme to ensure affordability, while providing sufficient support and information to people of vulnerable groups including non-citizens and minors.
64. Take measures to restore the dignity and recognise the rights of victims of sterilisation by delivering a public apology and acknowledging the State's responsibility, withdrawing all any appeals to higher courts in cases where the government has been held liable, conducting an independent third-party investigation to adequately document violations and victims, and strengthening anti-discrimination education and training regarding persons with disabilities to ensure that the society will never repeat such discriminatory acts based on eugenics.
65. Actively identify and contact potential survivors of forced sterilisation, while protecting their privacy, and disseminate sufficient information about the law in a considerate manner considering the disabilities that the potential survivors may have. Extend the period of the eligibility for payments as only a limited number of applicants have turned out, and raise the amount of the lump-sum payments in accordance with high court judgements.
66. Eliminate any discrimination based on sexual orientation and gender identity and expression (SOGIE) by legislating an anti-discrimination law with a newly established national equality body, legally recognizing same-sex partnerships and marriages at the national level, and revising the Gender Identity Disorder Act (2003) to repeal the forced sterilization requirement.
67. Revise the Penal Code to recognize 'sexual intercourse without consent' as sexual crime, raise the age of consent for sexual conduct, establish a new penal provision to punish sexual intercourse or conduct committed by a perpetrator who has taken advantage of an imbalanced power relationship with the victim, and eliminate the statute of limitations for sex crimes.
68. Train members of the legal profession and law enforcement officers on how to deal with cases of sexual violence including rape.
69. Ratify the Istanbul Convention (Council of Europe Convention on preventing and combating violence against women and domestic violence).
70. Revise the national curriculum guidance to allow teachers to provide age-appropriate and evidence-based comprehensive sexuality education (CSE) to students of all ages.

71. Implement CSE inside and outside of schools based on the “International Technical Guidance on Sexuality Education”⁵⁵ published by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

⁵⁵ <https://www.unfpa.org/sites/default/files/pub-pdf/ITGSE.pdf>