Submission to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: On harm reduction as key public health interventions for populations that are often stigmatised and discriminated against

JOICFP, #Nandenaino, and Spring

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This submission is made by a joint CSOs group consisting of JOICFP, #Nandenaino, and Spring.

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Introduction

This submission analyses specifically the Japanese policies surrounding sexual and reproductive health and rights. It argues that restrictions on the essential sexual and reproductive health services imposed by the existing laws, ordinances, and guidelines disguised as "harm reduction" are in fact placing obstacles to women, girls, and persons with a womb, and young people to access health care and medications that they require to protect their bodily autonomy and self-determination. Specifically, the report looks at the Education for the Safety of Lives initiative of Japan, restricted access to the emergency contraceptive, the Government of Japan's reluctance for the implementation of CSE, the crime of abortion (1909), and the need for non-discrimination law supporting the rights of LGBTQ+ people.

Questions and Responses

Q1. While the concept of harm reduction has traditionally been applied to drug use, the Special Rapporteur is taking a broadened approach to harm reduction. What types of harm reduction policies, programmes, and practices are in place in your community, and what is their purpose or aim? How successful have they been at achieving that aim? Please provide data, as possible.

In the domain of sexual health, with the rising concern over the sexual abuse of children, the Government of Japan (GoJ) launched the "Education for the Safety of Lives (ESL)" initiative in 2020[1] in an attempt to protect school-age children from the potential harm of sexual and gender-based violence (SGBV). This program is designed to commence at kindergarten level in an age-appropriate manner and it addresses crucial topics such as bodily autonomy, consent, and SGBV, to prevent children from becoming either perpetrators, victims, or passive observers of sexual violence. It is an encouraging development, especially given the legal framework that now hinges on sexual consent in cases of sexual offences. However, the ESL falls short of scientifically proven Comprehensive Sexuality Education (CSE) such as one that was promulgated by UNESCO[2], as its sole focus is on the prevention and protection from SGBV and in fact avoids the use of the word "sexuality education" thereby providing young people comprehensive education that is crucial for maintaining their physical and psychological well-being concerning Sexual and Reproductive Health. Unlike the CSE, the ESL lacks crucial components such as relationships including families, friends, long-term relationships, values, rights, culture, and understanding of gender, thereby failing to fully serve its purpose of protecting young people from the harm of SGBV.

Furthermore, in Japan the availability of contraception and abortion remains restricted which also places young people, women, and persons with wombs in a vulnerable situation. While each prefecture in Japan offers free Sexually Transmitted Infections(STI) screenings in an attempt to reduce harm derived from unprotected sexual activities, the GoJ must provide scientifically proven and effective sexuality education than the ESL so that the young

[1]Plan for the Prevention of Sex Crimes Against Children, https://www.npa.go.jp/policy_area/no_cp/uploads/2022_basic_plan.pdf (Chapter 2-1, pg14)
[2] 43,000 signatures seeking review of sex education at Japanese schools submitted https://mainichi.jp/english/articles/20221205/p2a/00m/0na/009000c

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Japanese people will be equipped with knowledge, skills, attitudes, and values that are required to protect their physical and psychological wellbeing throughout their life course.

Q2. How do legal frameworks affect the harm reduction policies, programs, and practices (whether related to drug use or otherwise) that are available in your community, country, or region? Are there laws or policies that either facilitate or serve as a barrier to adopting or implementing certain harm reduction policies, programmes, and practices? Aside from legal and regulatory barriers, are there other obstacles in place? Please provide specific examples.

Education in Japan is conducted following the National Curriculum Guidelines[3]. Within these Guidelines, there exists a '*Hadome*-rule'[4], "*Hadome*" literally translates in English as "drag" or "brake" and this rule effectively puts a brake on sexuality education in Japan. The guideline states that "fertilisation and pregnancy should be dealt with, **but the progression of pregnancy must not be covered**" in health and physical education for junior high school students. While this provision does not explicitly prohibit teaching on these topics, it has led to hesitancy among teachers in practice. In many cases, the teachers are reluctant to teach sexual intercourse and the problem remains how effective such "sexuality education" could be for young people to understand how to protect themselves from sexual violence, STI, pregnancy, etc. There have been demands from schoolteachers as well as CSOs calling for the implementation of scientifically proven CSE such as one that was promulgated by UNESCO[5]. However, such a request has been repeatedly denied by the GoJ. Most recently, the GoJ rejected the UPR recommendations for adopting CSE at the school level which were posed by two UN member states during its 4th UPR adoption in July 2023[6]. The GoJ has also received similar recommendations from the Committee of the Rights of Child in 2019[7], and from the Committee on the Rights of Persons with Disabilities in 2022[8].

The obstruction of CSE not only denies the Japanese youth the learning opportunity they deserve to protect their physical and psychological well-being and rights, especially in the realm of SRHR, but also keeps them vulnerable to potential exposure to a number of harms

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[3]Curriculum Guidelines ("Courses of Study") and ESD,
https://www.mext.go.jp/en/unesco/title04/detail04/sdetail04/1375712.htm

[4] English Translation of Guidelines for the Course of Study for Junior High Schools (Tentative)
"Health and Physical Education" (3. Handling the Content (3), pg 15)
https://www.mext.go.jp/component/a_menu/education/micro_detail/__icsFiles/afieldfile/2011/04/11/1298356_8.pdf

[5] 43,000 signatures seeking review of sex education at Japanese schools submitted
https://mainichi.jp/english/articles/20221205/p2a/00m/0na/009000c

[6]Decision adopted by the Human Rights Council on 10 July 2023 (158.157 and 158.158)
https://www.ohchr.org/sites/default/files/documents/hrbodies/upr/sessions/session42/jp/A_HRC_53_15_Add_1_AV_Japan_E.docx

[7] CRC/C/JPN/CO/4-5, https://www.ohchr.org/en/documents/concluding-observations/crccjpnco4-5-concluding-observations-combined-fourth-and-fifth

[8] CRPD/C/JPN/CO/1,
https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsox6sZe%2Fik6d3iDJzISRPhvIaActFR9I%2FAIZ%2Be8dEYc3x9pGI%2BAqnUjiYnhf%2BzLRJLqW2mBzZdcaW0%2B10tvwrA97qOnmCuV89Qwl7dhkmc1B

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that could be caused by sexual activities, furthermore to seek care and justice should they fall to the victim of SGBV.

Additionally, In Japan, emergency contraceptive pills (EC) can only be obtained with a doctor's prescription. Despite the nature of its effect (must be taken within 72 hours of sexual intercourse with contraception failure or in which contraception was absent), it is imperative that the EC be easily accessible, especially in a country where the CSE is prevented by the government. The Ministry of Health, Labour, and Welfare (MHLW) has long been reluctant to switch the EC to over-the-counter (OTC) medicine, however with the diligent lobbying and advocacy performed by CSOs, the discussion process has finally started. The process to make medicines OTC involves approval by the MHLW, and influential medical groups, the Japan Association of Obstetricians and Gynecologists, opposing wider access. The narrative of such resistance is their definition of “harm reduction”; concerns such as misuse of the EC as a contraceptive and the resulting increase of STIs persist, despite evidence to the contrary.[9] To meet public demand, the government will initiate trial sales of EC in pharmacies. However, stringent conditions, such as requiring parental accompaniment for under 18s, and limited sales in select open-time pharmacies, may limit only to 335 out of 60,000 pharmacies participating in the trial[10]. These regulatory barriers hinder harm reduction in sexual activities through emergency contraceptives.

Q4. Beyond reducing the adverse health, social, and legal consequences of drug use, what other areas can benefit from harm reduction policies, programmes, and practices in furtherance of the right to health and related human rights? Examples may include, but are not limited to, the decriminalisation of sex work, the decriminalization of abortion, and safe sex programmes.

As a part of safe sex programs to ensure SRHR and bodily autonomy for all, the authors believe the implementation of the following efforts is vital:
- Decriminalisation of abortion
- Endorse non-discrimination law for LGBTQ+ people
- Decriminalization of sex work

Elimination of Chapter 29 of the Penal Code- Crime of Abortion is vital to prevent stigma and discrimination against women, girls and persons who have abortion.

Since 1907, in Japan, abortion has been criminalised under the Penal Code. The code punishes pregnant persons who have abortion and the person who performed the abortion procedures while there is no penalty for the man who participated in the sexual intercourse which caused the pregnancy. This outdated law poses stigma and discrimination to the persons who have abortion, and places obstacles to accessing abortions, hindering a form of harm reduction that is vital to protect the physical and psychological health of women and persons with wombs.

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[9] Sorano S, Emmi S, Smith C. Why is it so difficult to access emergency contraceptive pills in Japan? Lancet Reg Health West Pac. 2021 Jan 28;7:100095. doi: 10.1016/j.lanwpc.2021.100095. PMID: 34327420; PMCID: PMC8315389.
[10] https://www.abc.net.au/news/2023-08-05/japan-trials-over-the-counter-emergency-contraceptives-sales/102672494

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Abortion can be permitted under some conditions prescribed in the Maternal Protection Law[11] (MPL, 1948). For example, abortion can be performed when (1) continuation of pregnancy is a health risk to the pregnant person, (2) there's financial difficulty, (3) only by the physicians specified by the MPL and authorised to perform abortions, and (4) pregnant persons must have the consent from their partner.

Falling short of these conditions is subject to a "crime of abortion", as such placing the barriers to abortion access. Indeed, there have been many reported cases where pregnant women are refused by the designated abortion practitioners to perform the procedures because their spouse/ partner did not provide consent (or have disappeared) for the abortion.

Moreover, since abortion is not a part of national health coverage, it is directly linked to designated physicians' interests, requiring women to pay around 100,000 to 200,000 JPY (800-1300 USD) for surgical abortion which is to this day a major method of abortion in Japan.

In July 2023, abortion pills were finally approved by the MHLW[12]. However, the application of MPL remains unchanged, meaning the medicine has to be provided by the designated abortion physicians, at medical premise, and at similar costs to surgical procedures (100,000 JPY or USD 800).

The criminalization of abortion significantly amplifies societal stigma against individuals who have abortion. Simultaneously, those who have undergone abortion might internalise this stigma, feeling compelled to remain silent even when they need assistance and support. This is one form of violation of the right to health, SRHR, and bodily autonomy.

Endorsement of non-discrimination law supporting the rights of LGBTQ+ people, particularly trans-people is desperately needed too. Especially in recent times when transphobia is increasing, transgender individuals are facing various difficulties, one of which is the difficulty in securing stable employment. As a result, many transgender individuals are more likely to be engaged in night work compared to cisgender individuals. In such cases, they may experience double discrimination as both transgender individuals and night workers, increasing the likelihood of not being able to receive the necessary care, support, or assistance. Therefore, achieving harm reduction also requires an urgent transformative change in discriminatory social structures through legal reforms.

[11] https://www.japaneselawtranslation.go.jp/ja/laws/view/2603
[12] https://www.theguardian.com/world/2023/apr/29/japan-approves-abortion-pill-for-the-first-time

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