**Comments on “DRAFT Guidelines on the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography”**

# **The Arguments:**

1. In Article 61, we oppose the stretched definition from Article 2 of OPSC, and also oppose including fictional child representations, such as drawings, cartoons, and written materials into the definition.

In Article 62, we oppose labeling representations of non-existing children as child sexual abuse material and also oppose it by prohibitive legislation.

1. In Article 102, we agree to protect and assist sexually victimized children. The framework must defend an existing child from any exploitational bodies, not only by individuals but also commercial, governmental, and non-governmental bodies.

# **Reasons for Arguments:**

* 1. Drawings, cartoons, written materials, or any other forms of expression that does not directly

infringe any existing individual human rights, even if depicting fictional children engaged in any fictional sexual activities. Banning imaginary representation is not equal to the protective action of human rights.

1-B) It is a fact that there are several manga titles that depict sexual abuses and rapes, however, they are represented by the imagination of an author, without a record of existing child abuse, which is a criminal offense. Manga is a form of fictional representation, which provides this artform with the potential to represent materials to consider existing child sexual abuses.

1. The inevitable truth is that child sexual abuse occurs in many places, and the protection and support of victimized children is our zero-tolerance task. It should also be noted that existing child molesters are not only nameless individuals but also NGO members and even UN staff.
2. We request everyone to save and protect our children from existing harms, and we also request not to try to save imaginary non-existing children from fictional child abuse.

# **Background:**

1. We strongly support the idea of protecting the human rights of all children. However, we oppose including fictional representations of children into the definition of "child pornography", and we also oppose including any non-existing childlike representation into the definition of "child sexual abuse materials". This is because fictional representations and non-existing childlike representations do not have individual or group human rights to be saved.

There are manga titles which depict child sexual abuse and rape that are based on imagination and they are non-existing fictional children. Not a small number of these works, such as "Kaze to Ki no Uta" by Keiko Takemiya and "Banana Fish" by Akimi Yoshida, may have critical social value that considers what real sexual abuse is.

Especially, "Banana Fish", which was adapted into a television series in 2018, and depicts the protagonist as a sex slave who is victimized during filming. Its story emphasizes the struggle to survive through his suffering. These narratives are also put in danger by the change and stretch of definition to this fictional area. It may also deprive the rights of children to think about and/or discuss sexual abuse problems and may also conflict with the Convention on the Rights of the Child, Article 17, which encourages international cooperation of cultural diversity.

1. There is no doubt that child sexual abuse occurs all over the world. However, the perpetrators are not always typical criminals. According to A/71/818 (http://undocs.org/A/71/818) and related documents, even United Nations officers can be an exploitation body. The exploitation of children by socially powerful people is an abuse of power and these injustices reflect social and structural problems. The protection of exploited children from powerful people is critical. Children should be rescued from any sexual abuse, by any person, including all authorities. A protective framework for victimized children by any persons, such as government officers or UN officials is needed.

Political control over the representation of fictional children and imaginary child abuses may be a distraction of attention to protecting victimized children and misuse of our efforts and resources which should be used to save our existing children.

# **Conclusion**

The extended definition of child pornography in the draft guidelines does not function for protecting the rights of existing children. Furthermore, it may deprive children of social benefit and is not reasonable for child rights protection. Considering the recent UN case above, where actual child sexual abuses were perpetrated by members of an international power, imaginary fiction is not appropriately placed by being at the front of these rights issues. It is critical to face real existing human rights violations without transferring responsibility to non-existing fictional expressions.

To guarantee any rights by the states, it does not matter who the targets are; all actions should be achievable, effective, and acceptable to all people of each country. Often, political action against manga and other imagination-based representations apply pressure to comply with unfair regulations that are camouflaged as "Rights Protection" (Appendix). Therefore, true rights protection must also apply to manga to eliminate the unfair suppression of imagination and to protect our children's rights.

Sincerely,

March 30, 2019

Kumiko Yamada

Representative Director of Women's Institute of Contemporary Media Culture/Designer/Art Director

**emorandaum on "Protecting Women's Rights in Japan" by the United Nations Committee on the Elimination of Discrimination against Women, particularly the section that recommends prohibiting of the sale of video games or manga depicting sexual violence**

[ Appendix ]

**【Introduction】**  
  
On February 16 this year, the United Nations Committee on the Elimination of Discrimination against Women held a deliberation on the topic of women's rights in Japan. This deliberation included a proposal that sales of video games and manga depicting sexual violence be banned. We would like to present a memorandum on this proposal. (While the English text speaks of "videos", this is translated from a word that means "video games" in the original Japanese text (ow.ly/YaCbm). Therefore, we assume that "videos" means "video games".)  
  
  
**[Summary]**  
  
We strongly support strengthening the protection of women's rights in Japan. However, we also want to ensure that any measures in support of this goal are taken only after careful consideration of their actual usefulness.  
  
Would a prohibition of the sale of video games and manga that depict sexual violence help bring about more respect for women's rights in Japan? Our answer to this question is a resounding "No".  
  
  
**[Reasons behind our opinion]**  
  
[Reason 1]  
Fictional sexual violence in manga and video games does not actually violate people's human rights, so prohibiting these media in order to preserve women's rights would be meaningless.  
  
[Reason 2]  
In Japan, the creative space of manga in particular is a space that women have built for themselves, and where they play a very active role. A ban on the sale of manga depicting sexual violence would only end up aggravating the gender-based discrimination that women face in Japan.  
  
  
**[More information about reasons]**  
  
[About reason 1]  
We must make all efforts to protect and support real, living rape survivors who have been forced into sexual acts without their consent. We must make all efforts to deal with sexual violence as the grave human rights violation that it is. However, sexual violence inflicted on fictional beings in manga and video games simply does not cause direct harm to actual people. We must focus on tackling actual, real violations of the human rights of real, flesh and blood women.  
  
[About reason 2]  
In Japan, the creative space of manga in particular is a space that women have built for themselves, and where they play a very active role.  
  
As far back as the 1970s, Japan has had magazines for girls' manga that nurtured one female cartoonist after the other. Even before the Equal Employment Opportunity Act was enacted in 1986, girls' manga were already a well-established space for female creativity. The stories in these manga for women very often focused on love, as well as sex and sexuality.  
Our country's countless manga for women also include works that recount the history of women's exploitation. One example is Fumiko Sone's "Cliff Parents". This work, based on historical events, tells the survival story of a girl whose poverty leads to her being sold by human traffickers into the Makusai red-light district of Muroran, Hokkaido.  
  
Reading this kind of manga gives modern-day people a way to imagine the great pain these women experienced. If any wholesale ban on the sale of manga depicting sexual violence were enacted, however, readers would be robbed of this opportunity. The work contains scenes of sexual violence, after all, so it would be forced to go out of print entirely.  
  
Many other manga by women would have to go out of print if a ban on depictions of sexual violence were to become a reality. Keiko Takemiya's "Song of Wind and Trees" and Akimi Yoshida's "BANANA FISH" are only a few famous examples. (It should be noted that some of these works show sexual violence against men. However, sexual violence is not a problem that is limited to women, and should not be associated solely with women's rights.)  
  
If a ban on depictions of sexual violence were to become a reality, publishers would be forced to stop distribution of a large number of works. The result would be a narrowing, or even outright destruction, of the creative space of manga that women have worked so hard to cultivate and make their own. Manga readers, on the other hand, would lose the opportunity to learn about the history of the sexual exploitation of women. Doing such targeted violence to manga, our country's foremost space for female creativity, would harm not only female cartoonists, but also female manga enthusiasts and other female creatives whose work relies on manga. Enforcing these kinds of restrictions would be an act of discrimination against Japanese women.  
  
We do acknowledge that manga depicting sexual violence cause great discomfort to some people. However, the decision to outright prohibit the distribution of a particular kind of speech should never be based solely on people's feelings of discomfort, or their moral judgments.  
Feelings of comfort or discomfort, or moral judgments, vary greatly from person to person, from region to region, from culture to culture, and from society to society. There is no guarantee whatsoever that society A will have the exact same moral values as society B. It follows that when one society elevates its values above those of all other societies, conflict will be the result.  
  
If our goal is to make our society function in a harmonious way, then we should strive to ensure that people are not forcibly confronted with material that they find deeply offensive. That is something that can be accomplished simply by making sure that offensive materials are not made accessible in places where anyone could accidentally stumble across them. There is absolutely no need to enforce censorship of an entire genre of content, let alone to enshrine that censorship in law or even outright forbid people to create manga that some might find distasteful.  
  
  
**CONCLUSION**  
  
As we said, the goal of protecting women's rights is a laudable one. However, a prohibition on the sale of video games or manga depicting sexual violence would not be an appropriate way to reach that goal.  
  
Perhaps cracking down on fictional sexual violence makes many people feel that at least something is being done. However, while we are busy debating the human rights of fictional characters, nothing is being done to protect the human rights of actual, living women.  
  
Japanese manga are a brilliantly diverse medium, enough to include many works about sexual exploitation. The reason for this diversity is that manga have always been characterized by an extreme open-mindedness  
towards any kind of expression. This open-mindedness could endure because we believe that this world is a maelstrom of people, of life and death, and of good and evil - and that manga artists should be free to explore that complexity.  
  
Manga creation is a space where Japanese women have labored to carve out their own place, and where women's expression flourishes. We strongly believe that protecting women's rights means fighting to keep that space from being destroyed, so that we can leave it to the next generation.

February 28, 2016

Kumiko Yamada, corepresentative of the Women's Institute of Contemporary Media Culture,

designer

**[Supporters of this memorandum]**

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