Report on the Japanese Government's Follow-up to the Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/JPN/CO/6, paragraphs 18 and 28)

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Japan Federation of Bar Associations

Contents

Introduction

Following its consideration of Japan's sixth periodic report in July 2009, the United Nations Committee on the Elimination of Discrimination against Women (hereinafter, “the Committee”) requested the Japanese government to provide, within two years, detailed written information on its implementation of certain recommendations contained in the Committee’s concluding observations of August 7, 2009. This report evaluates the progress the Japanese government has made since then in implementing these recommendations, which are contained in paragraphs 18 and 28 of the concluding observations. Paragraph 18 calls on the government to amend discriminatory legal provisions in the Civil Code with respect to the minimum age for marriage, the waiting period required for women before they can remarry after divorce and the choice of surnames for married couples, and repeal provisions in the Civil Code and in the Family Registration Law that discriminate against children born out of wedlock. Paragraph 28 calls on the government to adopt temporary special measures to increase representation of women in decision-making positions.

The Japan Federation of Bar Associations (hereinafter, the “JFBA”) has reviewed how the Japanese government has responded to the requests from the Committee, examining, among others, the content of the obligations of States parties under the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter, “the Convention”), the degree to which a national machinery exists to implement obligations under the Convention, the steps taken by the Japanese government with regard to the recommendations in paragraphs 18 and 28 of the concluding observations, the Committee’s general recommendations No. 25 and No. 28, the Third Basic Plan for Gender Equality (approved by the Cabinet in December, 2010), and the White Paper on Gender Equality (published after the adoption of the concluding observations), and also referring to the activities of NGOs and related organizations.

The Japanese government, as a State party, has the obligation “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women” according to article 2, subparagraph (f) of the Convention, and the obligation “to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise” according to article 2 subparagraph (e) of the Convention. General recommendation No. 28,

on the core obligations of States parties under article 2 of the Convention, confirms that they must pursue by all appropriate means a policy of eliminating discrimination against women, and that their obligation to fulfill women's right to non-discrimination and to the enjoyment of equality includes the adoption of temporary special measures in line with article 4, paragraph 1 of the Convention and general recommendation No. 25. General recommendation 28 also confirms that article 2 imposes a due diligence obligation on States parties to prevent discrimination by private actors , and that the words "without delay" do not allow for any delayed or purposely chosen incremental implementation of the above obligations General recommendation No. 25 states that States parties are obliged to adopt and implement temporary special measures in relation to any of articles 6 to 16, if such measures can be shown to be necessary and appropriate in order to accelerate the achievement of women's de facto or substantive equality. However, the Japanese government has not implemented its obligations under the Convention with regards to the recommendations in paragraphs 18 and 28 of the concluding observations. With regards to paragraph 18, it has not even presented a bill on amending discriminatory provisions in the Civil Code and Family Registration Law to the Diet, and these discriminatory provisions thus still remain in effect. With regards to paragraph 28, although the Japanese government continues to cite a target of "increasing the share of women in leadership positions to at least 30% by 2020 in all fields in society" (the "30% by 2020" target) in the Third Basic Plan for Gender Equality, the plan sets extremely low interim numerical targets that are inadequate for achieving the "30% by 2020" target, does not set out specific measures for achieving the numerical targets, and does not include the adoption of national legislation on temporary special measures, such as a quota system for Diet members, Diet member candidates, public servants, teachers, researchers, and department and section chiefs at companies, or the adoption of temporary special measures as a condition for companies being awarded contracts in the field of public procurement. The plan merely states that the Japanese government will introduce an award system as an incentive for taking temporary special measures, and will "ask" individuals and organizations to introduce such measures. The government thus misunderstands its obligations under the Convention, especially its obligations under article 2, subparagraph (e), and has not taken appropriate measures toward individuals or organizations.

Further, although the Gender Equality Bureau in the Cabinet Office serves as the national machinery for implementation of the Convention, the bureau lacks sufficient human and

financial resources to do anything other than liaison, coordination, and PR activities. In addition, the minister in charge of gender equality is not dedicated solely to this portfolio, but also holds other portfolios. The JFBA has put together this report, which provides detailed information on the Japanese government's response to the recommendations designated by the Committee as items for detailed follow-up reporting, in the hope that it will be of assistance to the Committee and that it will encourage the Japanese government to take immediate action to eliminate discrimination against women in accordance with the Convention.

Section 1: Executive summary

1. Request for follow-up in the concluding observations and the response of the Japanese government to this request

The Committee's concluding observations, issued in response to Japan's sixth periodic report and dated August 7, 2009, are composed of 60 paragraphs. The Committee requested the Japanese government to provide, within two years, detailed written information on the implementation of the recommendations contained in two of these paragraphs, paragraphs 18 and 28.

The Japanese government, however, has not taken good-faith action to implement these recommendations, and has thus failed to fulfill its core obligations under article 2 of the Convention.

With regards to paragraph 18, discriminatory legislation, including provisions in the Civil Code relating to marriage that violate article 16 of the Convention, and provisions in the Civil Code and Family Registration Law that discriminate against children born out of wedlock, have yet to be amended. With regards to paragraph 28, although the Committee urged the Japanese government to adopt temporary special measures with numerical goals and timetables to increase representation of women in decision-making positions at all levels, the government has not adopted these measures appropriately in any of the spheres of politics, administration, the judiciary, employment, or education (including academia), and has thus failed to implement special measures under article 4, paragraph 1 that would serve to fulfill its obligation to eliminate discrimination against women in the areas of education, employment, and political and public life under articles 7, 10 and 11 of the Convention.

In the following, the JFBA reports on the follow-up of the Japanese government to the concluding observations, referring to general recommendations No. 25 and No. 28, the Third Basic Plan for Gender Equality, the White Paper on Gender Equality (issued by the Japanese government after the concluding observations were adopted), and NGO activities, among others.

2. Obligations of States parties under the Convention

Under article 2 of the Convention, States parties agree “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women” (subparagraph (f)), and “to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise” (subparagraph (e)). These measures must be taken “without delay.” Further, general recommendation 28 confirms, with regard to the core obligations of States parties under article 2 of the Convention, that they must pursue by all appropriate means a policy of eliminating discrimination against women, and that their obligation to fulfill women’s right to non-discrimination and to the enjoyment of equality includes the adoption of temporary special measures in line with article 4, paragraph 1, of the Convention and general recommendation No. 25. General recommendation 28 also confirms that article 2 imposes a due diligence obligation on States parties to prevent discrimination by private actors, and that the words “without delay” do not allow for any delayed or purposely chosen incremental implementation of the above obligations (paragraph 29).

General recommendation No. 25 clearly states that States parties are obliged to adopt and implement temporary special measures in relation to any of articles 6 to 16 if such measures can be shown to be necessary and appropriate in order to accelerate the achievement of women’s de facto or substantive equality (paragraph 24).

In paragraph 18 of its concluding observations, the Committee pointed out the obligation of the Japanese government to align national laws in line with the provisions of the Convention, and without delay. In paragraph 28 it called on the government to adopt temporary special measures, indicating that the adoption of such measures is not optional but obligatory.

In response to Question 28 of the list of issues and questions from the Committee regarding Japan's sixth periodic report, the Japanese government tried to justify its failure to amend the Civil Code by citing the Second Basic Plan for Gender Equality that was approved by the Cabinet in December 2005, which specifically stated that the government will continue its efforts to deepen public discussion of the proposed system that allows married couples to use separate surnames by publicizing the results of a public opinion survey conducted in December 2006. Since the Committee noted with concern the use by Japan of public opinion surveys to explain its lack of progress in the repeal of discriminatory legislation in paragraph 17 of its concluding observations, the Third Basic Plan for Gender Equality does not contain any references to public opinion surveys. Instead, it only states that "the government will continue to consider amending the Civil Code to set the same minimum age for marriage for both men and women and to allow married couples to use separate surnames… in light of the diversification of couples and families and the Committee's concluding observations." This wording suggests that the government will continue to default on its obligations. Furthermore, the phrase "in light of …. the concluding observations" indicates that the Japanese government regards the concluding observations as a mere reference, demonstrating a fundamental misunderstanding of the legal status of the Convention and its obligations under the Convention.

With regard to paragraph 28 of the concluding observations, article 8 of the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment (Act No. 113 of July 1, 1972) stipulates only that "the preceding three paragraphs shall not preclude employers from taking measures in connection with women workers with the purpose of improving circumstances that impede the securing of equal opportunity and treatment between men and women in employment." The law does not proactively promote temporary special measures. Further, the Third Basic Plan for Gender Equality only states the government will "ask" related organizations for understanding on the importance of the promotion of effective positive action measures and "encourage" positive initiatives in the areas of employment of women and the participation of women in politics. With regards to political participation, the plan sets limitations on the obligation of the government to redress discrimination, stating that it is only a nonbinding target for the government and does not limit the autonomy of political parties.

If we consider the government's actions to date, we can see that the plan is a continuation of the its attitude that it is enough for it to simply "ask" companies and political parties to address discrimination against women, even if this achieves no results. This shows that the government misunderstands its obligation under the Convention to take measures to eliminate discrimination by private actors, and that it is not taking action to fulfill this obligation. Furthermore, the government seems to misunderstand the position of the Convention that temporary special measures do not constitute discrimination against men.

3. National machinery for implementation of the Convention

The Basic Law for a Gender-equal Society (Law No. 78 of 1999) places a top priority on promotion of various steps for realizing a gender-equal society, stipulating in its preamble that "it is vital to position the realization of a gender-equal society as a top-priority task in determining the framework of 21st-century Japan, and implement policies to promote the formation of a gender-equal society in all fields."

Amending discriminatory legislation such as the Civil Code and taking temporary special measures, as the Committee urges in its concluding observations, are crucial steps for realizing a gender-equal society. It is necessary for the government to address these issues aggressively and to establish strong machinery in order to effectively implement temporary special measures in all fields, verify the effects of these measures, make any necessary corrections, and ultimately achieve a gender-equal society in which there will no longer be any need for temporary special measures.

The Committee recommends that States parties should adopt and implement the most appropriate temporary special measures, and report to the Committee on "the type of temporary special measures taken in specific fields," "concrete goals and targets, timetables, the reasons for choosing particular measures, steps to enable women to access such measures, and the institution accountable for monitoring implementation and progress," "how many women are affected by a measure, how many would gain access and participate in a certain field because of a temporary special measure," "the amount of resources and power [State parties aim] to redistribute to how many women, and within what time frame" (general recommendation No. 25, paragraph 36). The Committee also stresses the need for institution(s) responsible for designing, implementing, monitoring,

evaluating and enforcing such temporary special measures. In order to carry out these recommendations, strong machinery for implementation of the Convention is necessary.

4. The need to strengthen the current weak implementation structure

Although the Basic Law for a Gender-equal Society places a top priority on promotion of various steps for realizing a gender-equal society, the measures taken by the government to date have not been adequate. There is no strong organization tasked with realizing gender equality, such as the ministries for women's affairs that exist in some countries. Instead, there is only a Gender Equality Bureau in the Cabinet Office and a minister in charge of gender equality in the Cabinet.

The Gender Equality Bureau has far too few staff to carry out its mandate of realizing a gender-equal society for all people in Japan as a top-priority task. Further, in most cases the minister in charge of gender equality has also been tasked with another portfolio/other portfolios.

Although a Liaison Conference for the Promotion of Gender Equality was established as part of the national machinery for the promotion of gender equality, it has been used only for one-sided public relations for the government, and other organizations in the national machinery have also not functioned effectively. The government should appoint a minister tasked solely with realizing gender equality, and establish a Ministry or Agency for Women's Affairs with sufficient human resources to plan, implement, monitor, and verify temporary special measures in each field in order to seriously tackle the requests from the Committee.

Section 2: Paragraph 18 (Amendments to the Civil Code, etc.)

1. Japan's failure to fulfill its obligation to improve its national laws

In its concluding observations, the Committee expressed concern that, despite its recommendation in its previous concluding observations, discriminatory legal provisions in the Civil Code with respect to the minimum age for marriage, the waiting period required for women before they can remarry after divorce and the choice of surnames for married couples had not yet been repealed, and that children born out of wedlock continue to be discriminated against through the family registry system (notification of birth as stipulated in article 49 of the Family Registration Law) and in provisions on

inheritance. It also noted with concern the use by Japan of public opinion surveys to explain the lack of progress in the repeal of discriminatory legislation (paragraph 17).

The Committee also pointed out that the Japanese government has an obligation to align national laws in line with the provisions of the Convention as the Convention is a part of Japan's national legal system (paragraph 18), and it requested the government to provide detailed written information on the implementation of the Committee's recommendations regarding these discriminatory provisions (paragraph 59).

2. Announcement of an "Outline of a Bill to Revise Part of the Civil Code" and background to the shelving of this bill

An "Outline of a Bill to Revise Part of the Civil Code" containing virtually the same details as the requests of the Committee (except that the period during which only women are forbidden to remarry was not to be repealed but only shortened from 300 days to 100 days) was previously submitted to the Minster of Justice by the Legislative Council of the Ministry of Justice in February 1996.

However, there were strong objections from within the Liberal Democratic Party (hereinafter, the "LDP"), the ruling party at that time, and the bill was not approved by the Minister or submitted to the Cabinet for consideration. In 1997, the Democratic Party of Japan (hereinafter, the "DPJ") independently submitted a draft bill to revise the Civil Code to the Diet, and from 1998 submitted such a bill each year together with other opposition parties. The DPJ also included revision of the Civil Code as part of its manifesto during the 2009 Lower House election.

After the DPJ came to power, the Ministry of Justice planned to submit a bill in line with the "Outline of a Bill to Revise Part of the Civil Code" during the 174th ordinary Diet session convened on January 18, 2010, and the Minister of Justice repeatedly stated in reply to questions in the Budget Committee and the Committee on Judicial Affairs that he intended to submit the bill. Despite this, objections were raised by coalition parties such as the People's New Party, and plans to submit the bill were shelved after attempts to reach a compromise failed. To date, no bill to revise the Civil Code has actually been submitted to the Diet, either as a Government bill or as a bill by a Diet member.

3. References to amending the Civil Code in the Third Basic Plan for Gender Equality

The Third Basic Plan for Gender Equality of December 2010 states that "the government will continue to consider amending the Civil Code to set the same minimum age for marriage for both men and women and to allow married couples to use separate surnames… in light of the diversification of couples and families and the Committee's concluding observations." This represents a major step backwards compared to a July 23, 2010 report of the Council for Gender Equality, "Towards Formulation of the Third Basic Plan for Gender Equality," which clearly stated that "amendments to the Civil Code are needed."

Indeed, the First Basic Plan for Gender Equality, issued 10 years ago, stated that "from the standpoint of gender equality, and based on public awareness trends, we are continuing to consider reforming the marriage and divorce system, including the introduction of a system which allows a married couple to use separate surnames and the shortening of the waiting period for women before they can remarry after divorce," indicating that virtually the same ideas as 10 years ago remain today. The only change is that the phrase "in light of … the Committee's concluding observations" has been added. It is very difficult to say that this phrase strongly suggests that making improvements (amendments) to the national legal system is a legal obligation of the Japanese government under the Convention, and it should be noted that the government has not met the Committee's requests as set out in Paragraph 18.

4. Trends in case law concerning discrimination against children born out of wedlock

The proviso to item 4 of Article 900 of the Civil Code that the share in inheritance of a child born out of wedlock shall be one half of the share in inheritance of a child born in wedlock has not been abolished. The Supreme Court Grand Bench decision in 1995 that upheld the constitutionality of this provision (Grand Bench, July 5, 1995, Minshu 49, no. 7, page 1789) remains good law to this day.

However, all subsequent rulings on the constitutionality of this provision by the Supreme Court Petty Bench have held it to be constitutional by only a narrow margin. Further, a 2009 ruling by the Second Petty Bench (Second Petty Bench, September 20, 2009, Kagetsu 61, no. 12, page 55) found the provision to be constitutional, but in a supplementary opinion Judge Yukio Takeuchi stated that "at the present moment (2009) at

least, it must be noted that there are extremely strong doubts regarding the constitutionality of this provision." In addition, in March 2010, in an inheritance dispute between an adopted child and a biological child born out of wedlock in which the constitutionality of this provision was contested, the Tokyo High Court ruled that the Tokyo High Court ruled that applying this provision to the case was unconstitutional (Tokyo High Court, March 10, 2010, Hanta no. 1324, page 210).

Furthermore, in July 2010, the Supreme Court Third Petty Bench decided to transfer an inheritance dispute between a child born in wedlock and a child born out of wedlock in which the constitutionality of this provision was contested to the Supreme Court Grand Bench. For this reason, there were expectations that the previous decisions on this issue would be overturned. However, an out-of-court settlement was subsequently reached between the parties and the case ended without a decision being made regarding the constitutionality of this provision (Third Petty Bench ruling, March 9, 2011, Supreme Court website). These developments suggest that the 1995 Supreme Court Grand Bench decision will be reviewed sooner or later. However, the Japanese government should be aware that it cannot just wait for a ruling by the Supreme Court. The Convention requires that it must itself act to improve (amend) domestic laws.

5. Other comments concerning the elimination of discrimination against children born out of wedlock

In March 2010, after the concluding observations were released, a notice was issued by the Civil Affairs Bureau of the Ministry of Justice, which stated that a birth notification would be accepted without any mention of whether the child was born in or out of wedlock, as long as it stated that the child would be entered in the mother's family register. However, article 49 of the Family Registration Act, which requires mention in a birth notification of whether the child was born in or out of wedlock, has not been revised. Even the Third Basic Plan for Gender Equality, which contains a reference, albeit inadequate, to amending the Civil Code (the fact that the government intends to continue considering amendments to the Code) contains no reference at all to the need to revise article 49 of the Family Registration Act. Moreover, the Third Basic Plan does not list discrimination in matters of inheritance against children born out of wedlock as one of the possible areas for amendment of the Civil Code, indicating that it has no political will to elimination discrimination in this area.

6. Calls for amendments to the law by civil society

After the change of government in 2009, hopes increased among the public that the Civil Code would be amended, given that the party that had been proactively working for amendment up till that point had taken power. The JFBA released a statement on February 26, 2010 demanding that “discriminatory provisions in family law be promptly amended,” and it proactively lobbied the Japanese government, the Diet, the ruling party and public opinion by holding symposiums and taking other actions. Since the change in government alone, a total of 30 regional bar associations have also issued statements calling for amendments to the law.

Meanwhile, political developments running counter to the recommendations by the Committee on the Elimination of Discrimination Against Women have also arisen. For example, some local assemblies have adopted resolutions opposing the introduction of a system that would allow married couples to choose different surnames. However, it is dangerous to treat this backlash as representative of public opinion. It has arisen precisely as a result of the Japanese government’s failure to carry out its duty to educate and enlighten the public about the object of the Convention and other laws on gender equality and the need to enact, modify or abolish domestic laws in accordance with the Convention.

Furthermore, civil society has been active on this issue, with, for example, NGOs holding gatherings in parliament. In February 2011, a lawsuit was brought demanding compensation for damages from the Japanese government on the basis that article 750 of the Civil Code, which provides that husbands and wives shall have the same surname, violates the right to retain one’s original name under article 13 of the Japanese Constitution, freedom of marriage under article 24 of the Japanese Constitution, and the Convention on the Elimination of All Forms of Discrimination against Women. This case has attracted attention as a “lawsuit on the right of couples to retain different surnames.”

Section 3: Paragraph 28 (Introduction of temporary special measures)

1. Request for the introduction of temporary special measures and the details thereof

In its concluding observations, the Committee urges Japan “to adopt, in accordance with article 4, paragraph 1 of the Convention and the Committee’s general recommendation No. 25, temporary special measures, with an emphasis on the areas of employment of women

and participation of women in political and public life, including women in academia, and with numerical goals and timetables to increase representation of women in decision-making positions at all levels.

2. Women's participation in policy decision-making processes

(1) Women's participation in the Diet and local assemblies: the current situation

In the Second Basic Plan for Gender Equality (approved by the Cabinet on December 27, 2005), the Japanese government set a target of increasing women's participation in policy decision-making processes to 30% by 2020. The Third Basic Plan for Gender Equality (approved by the Cabinet on December 17, 2010) states that "government and private sectors need to work together" to achieve this target, but also acknowledges that "the response to the government's request that political parties, private enterprise and other bodies implement specific measures has been unenthusiastic," and that numerical targets for the proportion of female Diet members in both chambers, the proportion of female candidates who were elected, and the proportion of women in leadership roles in the Diet are nowhere close to being reached. With regard to local assemblies, too, there has not been any major change in the situation since the Committee issued its concluding observations to the Japanese government after considering Japan's sixth periodic report.

More specifically, in December 2010 the proportion of women occupying positions as Diet members in the House of Representatives was 10.9% (compared to 11.3% in 2009), and in the House of Councilors, 18.2% (compared to 17.4% in 2009). In the August 2009 election, the proportion of female candidates who were elected to the House of Representatives was 8% for single-seat constituencies (compared to 6.3% in the September 2005 election), and 16.7% for proportional representation constituencies (compared to 13.3% in the September 2005 election), and in the July 2010 election, the proportion of female candidates who were elected to the House of Councilors was 11% for single-seat constituencies (compared to 19.2% in the July 2007 election), and 18.8% for proportional representation constituencies (compared to 25% in the July 2007 election).

In December 2009, the proportion of female members in local assemblies was 8.1% for prefectural assemblies (compared to 8.2% in December 2007), 12.4% in city

councils (compared to 11.8% in December 2007), and 17.4% in ordinance designated cities (compared to 17.2% in December 2007), while the proportion of female members in town and village assemblies was 8.1% (compared to 7.8% in 2008) and 24.8% in special wards (compared to 24.9% in 2008).[1]

With regard to leadership roles in the Diet, the roles of chairperson and deputy chairperson in both the House of Representatives and the House of Councilors were held by men as of December 14, 2010 and December 16, 2010, respectively. The proportion of women who are chairpersons of House of Representatives standing committees is 6.3%, while 14.3% chair special committees. The proportion of women who are chairpersons of House of Councilors standing committees is 5.9%, while there are none chairing special committees.[2]

(2) Implementation of temporary special measures in the political field

The Committee's August 2009 concluding observations were not the first time that an international body has recommended that the Japanese government take temporary special measures as a way of increasing women's participation in decision-making processes. The Committee also made such recommendations in July 2003, as did the Human Rights Committee in its concluding observations to the Japanese government in October 2008. After receiving the recommendations in the Committee's August 2009 concluding observations the Japanese government took various measures to increase participation by women in politics in accordance with the Second Basic Plan for Gender Equality (formulated in 2005). In FY2009 it aimed in particular to improve the rate of child care and family care leave taken as a workplace environmental improvement for central government and local authority employees, and worked to achieve a 10% target for men taking child care leave. In FY2010, it worked on activities to increase the proportion of women recruited as national public officials by examination to 30% or as much as possible. While the target of having 30% of women in leadership positions in national advisory councils by FY2020 was already achieved by the end of FY2005, the Japanese government has taken virtually no temporary special measures, such as

[1] Refer to pages 1, 9 and 10 of the "Survey on the State of Participation by Women in Policy Decision-making Processes" (Gender Equality Bureau in the Cabinet Office, January 2011) for data on women's participation in the Diet, and pages 33 and 34 of the same publication for data on women's participation in local assemblies.

[2] *Ibid*, page 13.

establishing quotas and incentives and setting numerical targets and deadlines, to increase the number of women in decision-making positions in key political areas such as the Diet and local assemblies.

(3) Temporary special measures in the political field in the Third Basic Plan for Gender Equality

As a target for increasing women's participation in the political field, the Third Basic Plan for Gender Equality aims for the proportion of female candidates for seats in the House of Councilors and the House of Representatives to be 30% by 2020. Given that the percentage of women who are members of various national advisory councils, etc. had already reached 33.2% in 2009, the Third Basic Plan aims to raise this to between 40% and 60% by 2020. As specific measures to raise the proportion of female candidates in parliamentary elections, the plan calls for "consideration of incentives for political parties, the establishment of concrete numerical goals, and the introduction of a quota system for female candidates." With regard to increasing participation by women in political parties, the plan calls for "investigating the state of progress of gender equality in political parties, publishing the results, and requesting that each political party work to increase the proportion of female party members, the number of female party officials, and the number of female candidates in elections for members of the House of Representatives and members of the House of Councilors." With regard to increasing participation by women in local politics, the plan "requests political parties and the six local organizations to establish structures for promoting a balance between work and family life" as a way of increasing the number of female candidates for seats in local assemblies and thus increasing the number of female members of these assemblies, and to form a network of female heads of local organizations.

However, these concrete plans for temporary special measures introduced by the Japanese government are no more than "requests," and specific means for achieving these plans are not specified. Moreover, it is necessary to implement specific temporary special measures to make such requests by the Japanese government effective.

(4) Temporary special measures that should be taken by the Japanese government

As part of the Third Basic Plan for Gender Equality, the Japanese government is to conduct a survey of legal systems and policies in other countries with a high proportion

of female legislators, publish the results widely, and proactively undertake educational activities regarding the importance of increasing participation by women in political fields, as measures to promote gender equality in politics. Furthermore, it is to consider a variety of positive action, including quotas allotting a fixed percentage of places to women on lists of candidates for both the House of Representatives and the House of Councilors in proportional electoral constituencies, taking into account the systems and policies of other countries.

However, the Gender Equality Bureau in the Prime Minister's Office already conducted a survey of women's participation in policy decision-making processes in other countries in FY2007 and FY2008, while in March 2008 the Japanese government published a report on Germany, France, South Korea and the Philippines, and in March 2009 published a report on the Netherlands, Norway, Singapore and the USA. According to these reports, the countries surveyed did not originally have a high level of women's participation in society, but, as a result of consciously tackling the issues of gender equality and the promotion of women's participation, they now rank higher than Japan with regard to women's participation in society. The Philippines, Singapore and Korea, all Asian countries, far outstrip Japan in terms of women's participation in politics.[3] The countries surveyed can be divided into three types: those where governments have introduced a compulsory form of positive action (French parity, the Republic of South Korea's 50% quota system for proportional representation districts in national elections, Norway's 40% quota system in local elections, and the Philippines's party list system); those where political parties have implemented voluntary positive action of their own accord (national elections in Germany, the Netherlands and

[3] The indexes described below provide data on women's participation in society. The rankings for the eight countries examined by the Japanese government in its surveys and for Japan itself are as follows.

1) The Gender Inequality Index (GII) is a new index that was announced by the UN Development Program (UNDP) in November 2010, in its "Human Development Report 2010." This index consists of three aspects: health, empowerment, and the labor market. Germany ranked 7th, France 11th, Norway 5th and Japan 12th amongst 138 countries. The January 2011 edition of "Gender Equality," published by the Cabinet Office's Gender Equality Bureau, states that "this [high] ranking may be a result of the fact that [the GII] measures fields in which Japan is superior, such as health, but there are still many issues to be tackled in terms of gender equality."

2) The Gender Gap Index (GGI) is a World Economic Forum index that ranks 134 countries on the basis of their performance in four areas: women's participation in economic activities, women's educational opportunities, women's participation in policy decision making, and women's health. In 2010, Germany ranked 13th, France 46th, Korea 104th, the Philippines 9th, the Netherlands 17th, Norway 2nd, Singapore 56th, the USA 19th, and Japan 94th (Global Gender Gap Index 2010 rankings).

3) The Inter-Parliamentary Union (IPU)'s "Women in National Parliaments: Situation as of 30th April 2011, WORLD CLASSIFICATION" ranks 133 countries on the basis of the proportion female legislators each country's national parliament. Germany ranked 19th, France 61st, Korea 78th, the Philippines 49th, the Netherlands 9th, Norway 8th, Singapore 44th, the USA 69th, and Japan 95th.

Norway); and countries that have not adopted powerful forms of positive action such as quota systems and zipper systems in the political arena (the USA, Singapore). These reports provide much food for thought for the Japanese government.[4]

Although the situation varies, many countries where the proportion of female legislators is high have adopted proportional representation systems. The results of Japanese national elections to date clearly show that a single-seat electoral system produces results unfavorable to female candidates. This indicates a need to reconsider Japan's electoral system itself.

At the meeting of the Liaison Conference for the Promotion of Gender Equality on February 14, 2011, the Japanese government established a "Positive Action Subcommittee" which will be active for one year and hold meetings approximately once a quarter, as well as exchanging information as necessary. It also decided to proceed with practical activities, including familiarization of promotional measures for "30% by 2020," encouraging initiatives by various organizations, and reporting on the current situation. That such activities have commenced should be commended. Moreover, the fact that the White Paper on Gender Equality 2011 "Part I Special Edition" (published in June 2011) attempts to accelerate concrete initiatives by reviewing and analyzing positive action being undertaken in both Japan and other countries and by introducing positive case studies can also be positively commended. However, since sufficient investigative studies and reports on systems and policies in other countries have already been conducted, and since these studies and reports are already being considered, the time has come for the government to make actual use of this information by presenting effective policies for proactively dealing with discrimination to the public and putting specific measures into practice as soon as possible.

[4] In "Section 1: The Current State of the Formation of a Gender-equal Society" in the "2011 White Paper on Gender Equality," published in June 2011, the Cabinet re-calculated the rankings for the proportion of female legislators in Japan and other countries, based on materials published by the IPU. Looking at the eight countries surveyed by Japan in the above-mentioned studies, as of March 2011, Japan ranked 121st out of 186 countries (House of Representatives: 11.3%, House of Councilors: 18.2%), Germany ranked 20th (Bundestag: 32.8%), France ranked 75th (Assemblée nationale: 18.9%), South Korea ranked 97th (one house system: 14.7%), the Philippines' rank was unclear (lower house: 22.2%, upper house 13%), the Netherlands' rank was unclear (lower house: 39.3%, upper house 34.7%), Norway ranked 7th (one house system: 39.6%), Singapore ranked 47th (one house system: 23.4%), and the USA ranked 85th (House of Representatives: 16.8%). In the Part 1 Special Edition of the white paper, according to the part which describes the proportion of female legislators in other countries by region and the various kinds of quota systems in detail, in most countries with a higher proportion of female legislators than Japan, a legislative seat quota system or a candidate quota system based on the constitution or law has been adopted, or political parties have adopted voluntary quota systems
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Current positive action initiatives for increasing the participation of women in the political arena in Japan that are listed as specific measures in the Third Basic Plan for Gender Equality can be described in short as follows. The government will establish targets and deadlines for increasing the proportion of women being recruited as national and local public employees and the proportion of men who take child care leave, and will appeal to (make requests to) different areas and institutions and introduce an award system for individuals and organizations. In Japan, a country in which participation by women in politics is minimal, such initiatives, which do not include a legally imposed quota system for legislators or candidates and involve mere "requests," not the introduction of an incentive system, are severely lacking in effectiveness, and will never result in participation by women in important decision making positions. It is can be observed that the Japanese government is making certain efforts towards increasing the participating of women in politics, but these efforts are inadequate as temporary special measures of the kind set out in the Committee's general recommendation No. 25, and do no constitute an adequate response to the requests made by the Committee in paragraph 28 of the concluding observations.

3. Women's participation in the administrative field

(1) Women's participation in the administrative field: the current situation

Looking at the current situation of participation by women in the administrative field, the proportion of national public employees recruited through the Level I recruitment examination for the national civil service (administrative classification) who are female was 24.2% in FY2008, 30.6% in FY2009, and 25.7% in FY2010, indicating that recruitment of women is around 25 to 30%. Meanwhile, the proportion of women in managerial positions is extremely low. The proportion of women at supervisor level was 17% in FY2007, 17.4% in FY2008, and 17.1% in FY2009, whilst the proportion of women in positions equivalent to or higher than section chiefs or office heads in central government ministries and agencies was 1.9% in FY2006, 2% in FY2007, and 2.2% in FY2008.

Furthermore, looking at the situation at the local level, the proportion of those who successfully passed the local public employee recruitment examination who are female was 24.6% at the prefectural level and 48.2% at the city level in FY2007, 24.7% at the prefectural level and 45.8% at the city level in FY2008, and 25.6% at the prefectural

level and 45.1% at the city level in FY2009, indicating that women continue to make up about 50% of those who pass the examination at city level.

However, even at a local level, the proportion of managerial positions occupied by women is also very low (5.4% at the prefectural level, 8.9% at the city level, and 8.5% at the town/village level in 2008; 5.7% at the prefectural level, 9.4% at the city level, and 8.9% at the town/village level in 2009; 6% at the prefectural level, 9.8% at the city level, and 9.6% at the town/village level in 2010).

The proportion of female committee members on advisory councils and committees at the national level was 32.4% in 2008, 33.2% in 2009, and 33.8% in 2011, whilst at the local level, it was 32.6% at the prefectural level, 30.7% at the government-ordinance-designated city level, 26.2% at the city level, and 22.6% at the town/village level in 2008; 33.1% at the prefectural level, 31.9% at the government-ordinance-designated city level, 26.7% at the city level, and 23.2% at the town/village level in 2009; and 33.9% at the prefectural level, 32.4% at the government-ordinance-designated city level, 27.1% at the city level, and 23.2% at the town/village level in 2010. It is thus around 20-30% overall.

(2) Initiatives in the administrative field in the Third Basic Plan for Gender Equality

1) The Third Basic Plan for Gender Equality (approved by the Cabinet on December 17, 2010) lists a number of concrete measures for increasing participation by women in central and local public body policy decision-making processes, such as promoting the recruitment and appointment of female public employees (citing specific numerical targets), providing training opportunities, identifying and promoting female role models, and promoting work-life balance.

To this end, on January 14, 2011 the National Personnel Authority announced “Guidelines on Increasing the Recruitment and Appointment of Female National Public Officials.” These guidelines call for the formulation of a plan for the recruitment and appointment of female national public officials” in each Office and Ministry, setting goals for increasing the recruitment and appointment of women and establishing concrete initiatives to achieve these goals, developing an environment conducive to work, and appointing a person responsible for increasing the recruitment and appointment of female employees.

2) The Third Basic Plan for Gender Equality sets a numerical target of approximately 30% by the end of FY2015 for the proportion of national public employees recruited through the Level I recruitment examination for the national civil service (administrative classification) who are female, and a numerical target of approximately 5% by the end of FY2015 for the proportion of women in managerial positions equivalent to or higher than the director of a division or office in central government ministries to be approximately 5% by the end of fiscal year FY2015.

However, the Second Basic Plan for Gender Equality (approved in 2005) set the same numerical target (30%) as the Third Basic Plan for the proportion of national public employees recruited through the Level I recruitment examination for the national civil service (administrative classification) who are female by FY2010., Yet, as stated above, the proportion achieved in FY2010 was only 25.7%, thus the goal of 30% was not met.

Moreover, the “Program to Accelerate Participation by Women” (decided by the Headquarters for the Promotion of Gender Equality in April 2008) set a goal of 5% by the end of FY2010 for the proportion of women in in government positions equivalent to or higher than section chiefs and office heads in central government ministries and agencies, but as of the end of January 2009 the actual proportion was no more than 2.2%.

The numerical targets cited in the Third Basic Plan thus remain unchanged from those cited in the Second Basic Plan.

3) Meanwhile, circumstances have arisen that bring the effectiveness of the newly enacted Third Basic Plan into doubt.

In response to the Great East Japan Earthquake and the accident at the Fukushima Daiichi and Daini nuclear reactors that occurred on March 11, 2011, after the enactment of the Third Basic Plan, the Great East Japan Earthquake Reconstruction Design Council, the Dispute Reconciliation Committee for Nuclear Damage Compensation, and the TEPCO Fukushima Nuclear Plant Accident Investigation and Examination Committee. were established as key government institutions involved in

the reconstruction of Japan.

The number of women participating in these committees is extremely low, standing at one out of 16 members (6.25%) of the Design Council in response to the Great East Japan Earthquake (an advisory panel to the Prime Minister, approved by the Cabinet on April 11, 2011), two out of 19 members (10.5%) of the council's study group, one out of 10 members of the Nuclear Power Damage Compensation Dispute Examining Committee (established under the Ministry of Education, Culture, Sports, Science and Technology in accordance with article 18 of the Act on Compensation for Nuclear Damage on April 11, 2011), and two out of 10 members (20%) of the Investigation Committee on the Accidents at the Fukushima Nuclear Power Station of Tokyo Electric Power Company (an advisory panel to the Prime Minister, approved by the Cabinet on May 24, 2011).

Despite participation by women in policy decision-making being an urgent issue, the Japanese government is not applying the specific measures set out in the Third Basic Plan for Gender Equality in these newly established Japanese government bodies, which are involved in making crucial policy proposals in areas such as earthquake damage reconstruction, limiting the damage from the nuclear accident, and preventing reoccurrence of such accidents, all of which involve public safety and peace of mind.

In Part II ("Basic Policy Directions and Specific Measures"), Priority field 1 ("Expansion of women's participation in policy decision-making processes"), Section 3 ("Increasing the Participation of Women in Administration"), Sub-section 4 ("Regarding Increasing the Participation of Women on Advisory Councils, etc. at a National Level") of the Third Basic Plan, various measures are listed, such as continuing to promote initiatives to increase the proportion of women on national advisory councils and committees by identifying and nurturing women with specialist knowledge and skills, appointing women from a wide range of fields, recruiting women who have the viewpoint of beneficiaries and consumers, and proactively selecting women through open recruitment, and creating a situation in which the proportion of women on committees such councils and committees is not less than 40% throughout the Japanese government by 2020 or as early as possible (with the

aim to of increasing the proportion to between 40% and 60%). However, as stated above, the proportion of female members actually on these committees is at most only 20%, and thus such measures have not been put into practice.

Moreover, the government has not made the most of the ideas outlined in Part II, Priority Field 14 (“Promoting gender equality in the area of regional development, disaster prevention, environment, and others”) of the Third Basic Plan. Plans that are formulated but not put into practice are meaningless. Promises to members of civil society, such as NGOs who have worked expecting an increase in participation by women in decision making from the Third Basic Plan, have been broken. Of course, it goes without saying that this also goes against the purport of the recommendations of the Committee on the Elimination of Discrimination Against Women.

(3) Issues that must be considered

1) As an initiative to realize gender equality in the administrative arena, the Third Basic Plan and specific activities based on this plan are important, yet it must be noted that the numerical targets stated in the plan are insufficient as targets for improving the current inadequate situation surrounding female participation in the administrative arena.

In particular, with regard to the numerical targets to be achieved by the end of FY2015 for national public employees in managerial positions throughout the government, the plan aims for the proportion of women in government positions equivalent to or higher than section chiefs and office heads in central government ministries and agencies to be approximately 5%, the proportion of women in government positions equivalent to or higher than section chiefs of central government regional organizations or deputy section chiefs of central government ministries and agencies to be approximately 10%, and the proportion of women in positions equivalent to designated central government positions to be approximately 3%. These targets are far too low.

A 2003 decision by the Headquarters for the Promotion of Gender Equality stated that “the expectation should be that the proportion of women in leadership positions in all fields in society will be at least 30% by 2020. In order to achieve this, the

Japanese government will proactively promote the appointment of women ahead of the private sector and recommend that voluntary initiatives be taken setting targets and deadlines in each field," According to this decision, the proportion of women in leadership positions in all fields should be at least 30%, regardless of the above-mentioned managerial categories.

If this is the case, interim numerical targets should be set at 30% or a figure close to 30% in order to achieve the goal of 30% by 2020.

However, with numerical targets of only approximately 3-10% to be achieved by the end of FY2015, it is impossible to get a sense that the government is seriously attempting to ensure that at least 30% of leadership positions are occupied by women by 2020.

2) Furthermore, initiatives for achieving numerical targets are not sufficiently specific.

In Part I ("Core Concepts") of the Third Basic Plan, the promotion of effective positive action is cited as an urgent issue to be tackled, and a wide variety of concrete measures are listed, such as quota systems, the granting of incentives, and "goals and timetable" methods.

However, the plan does not list the introduction of quota systems as a specific measure to be implemented in the administrative field, despite their effectiveness, and goes only so far as to establish numerical targets and a time schedule.

3) As the Japanese government has adopted a stance of proactively promoting the appointment of women ahead of the private sector, it should take the lead by introducing effective measures such as quota systems in the administrative field, in order to ensure that the proportion of women in leadership positions is at least 30% by 2020.

4. Women's participation in the judicial field

(1) Women's participation in the judicial field: the current situation

1) The proportion of women who passed the (new) National Bar Examination was 27.3% in FY 2008, 26.4% in FY 2009, and 28.5% in FY 2010.

The proportion of female judges was 15.4% in FY 2008, 16% in FY 2009, and 16.54% in FY 2010, the proportion of female prosecutors was 12.2% in FY 2008, 12.9% in FY 2009, and 13.6% in FY 2010, and the proportion of female attorneys was 14.4% in FY 2008, 15.4% in FY 2009, and 16.3% in FY 2010.

As of April 2011, only two (13.3%) of the 15 Supreme Court judges are female, while only one (12.5%) of the eight High Court judges is female. None of the eight Prosecutor-Generals of the High Public Prosecutors' Office are female. Only one (1.9%) of the 52 presidents of bar associations is female.

2) The JFBA formulated a "Basic Plan for Gender Equality Promotion" on March 13, 2008, which sets basic targets in 12 areas necessary for realizing gender equality, and specific measures to be tackled by FY 2012.

One of the 12 targets is encouraging female members to participate in the JFBA's policy decision-making processes, and in order to achieve this target, various specific goals have been set, including (i) reducing the number of JFBA committees that have no female members to zero in two years; (ii) increasing the percentage of female chairpersons and vice chairpersons in JFBA committees to 10% in five years; and (iii) working to promote the establishment of conditions to increase the percentage of women on the JFBA board, in the expectation that the percentage will increase to about 10% in five years.

(2) Initiatives in the judicial field in the Third Basic Plan for Gender Equality

As initiatives in the judicial field, the Third Basic Plan sets a target of increasing the proportion of female prosecutors to 23% by the end of FY 2015, and also cites measures such as the identification and promotion of female role models and the promotion of work-life balance. However, it sets no targets for appointing women to managerial positions in the Public Prosecutors Office.

Moreover, with regard to judges, prosecutors and attorneys, the plan only requests that initiatives be taken in courts and bar associations.

Thus it has to be said that initiatives in the Third Basic Plan for increasing women's participation in policy decision-making processes in the judicial field are inadequate.

(3) Issues that must be considered

1) Given that increasing the number of women among those who successfully pass the National Bar Examination is essential in order to realize equal participation by women in the judicial field, there is a need to increase the proportion of female students at law schools (graduate schools that specialize in training students to work as legal professionals; at present, about 30% of students in law schools are female) and in undergraduate law faculties.

Consequently, in the same way as has already been undertaken in the areas of science and engineering, there is a need to take various initiatives to support and encourage female students to take up law as a career, such as identifying and promoting female role models and providing information.

2) Furthermore, women's participation in policy decision-making processes is also essential in the judicial field.

As stated above, the JFBA has formulated a five-year basic plan to promote gender equality, which includes increasing women's participation in policy decision-making processes as one of its targets, and has begun implementing specific initiatives to achieve this target.. However, it still cannot be said that initiatives in the judicial field, including the activities of bar associations, are adequate.

Consequently, rather than merely increasing the proportion of women working as judges, prosecutors and attorneys, it is necessary to increase the proportion of women in each of these areas who are participating in policy decision-making processes, by establishing specific measures such as numerical targets and working proactively to ensure that such targets are met..

5. Temporary special measures in employment

(1) Introduction: follow up by the Japanese government over the past two years

It cannot be said that the Japanese government has introduced any real temporary special measures with numerical goals and timetables in the field of employment since receiving the recommendations of the Committee on temporary special measures two years ago. The only actions relating to temporary special measures that the government appears to have taken are inserting references to positive action into the Third Basic

Plan for Gender Equality (adopted in December 2010), the fact that a Positive Action Working Group began operating in March this year under the Specialist Committee on Basic Issues and Gender Impact Assessment and Evaluation and is carrying out "surveys and research," and a series of measures undertaken by the Ministry of Health, Labour and Welfare.

(2) Third Basic Plan for Gender Equality

1) Numerical targets

In relation to positive action measures, the Third Basic Plan for Gender Equality sets a target of increasing the percentage of women in positions equivalent to or higher than section chief in private corporations to approximately 10% by 2015 (the actual figure was 6.5% in 2009), and increasing the percentage of private corporations that have implemented positive action measures to more than 40% by 2014 (the actual figure was 30.2% in 2009). The current percentage (6.5%) of women in positions equivalent to or higher than section chief in private corporations is extremely low, and it is necessary to set numerical targets and develop effective strategies to drastically increase this number. The target of approximately 10% by 2015 is manifestly inadequate for this purpose. Further, the target of increasing the percentage of private corporations that have implemented positive action measures to more than 40% is also totally inadequate. Under the Second Basic Plan, which stated that "in the expectation that the percentage of women in leadership positions will be at least 30% by 2020, we will promote initiatives in all areas," the government set a target of 10% for the percentage of women in positions equivalent to or higher than section chief but did not achieve this goal. Setting a target of 10% by 2015 in the Third Basic Plan can thus only be described as a backward step.

2) Policies put forward for achieving numerical targets

Setting the above numerical targets only partially fulfills the Committee's request for the introduction of temporary special measures with numerical goals and timetables. What is also required is strategies to achieve these targets and the actual implementation of specific special measures. However, the Third Basic Plan lists only the following special measures:

- Promoting positive action to enable women in corporations to give full scope to their abilities.

- Working for the adoption of effective promotional plans with the view to achieving the goal of “30% by 2020,” such as establishing specific targets for the recruitment of women and the appointment of women to managerial and executive positions.
- Proactively carrying out measures from the point of view of CSR (corporate social responsibility) as well, such as recommending positive action, facilitating activities such as holding seminars in each region, providing information about different initiatives, and giving awards.
- Co-operating with labor and management organizations.
- Supporting corporations implementing positive action.
- In order to foster voluntary initiatives by corporations, in the area of in public procurement, positively evaluate corporations proactively working for gender equality when selecting contractors to carry out surveys relating to gender equality.
- Considering appropriate measures to support corporations proactively working for gender equality (such as tax breaks).
- Considering the enactment of legislation that would make initiatives contributing to securing fair working conditions and proactively working for gender equality conditions for contractors to be selected for public procurements.

However, what is meant by such abstract phrases as “working for,” “providing information,” “co-operating with labor and management organizations” is not clear, and effective and specific measures are not proposed. Tax breaks and legislation relating to public procurements are not listed as measures for supporting corporations implementing positive action.

(3) Policies currently being implemented to facilitate positive action

1) Major policies announced by the Ministry of Health, Labour and Welfare in 2011

Major policies announced by the Ministry of Health, Labour and Welfare in 2011 are as follows.

a) Positive action awareness-raising projects

- Holding a “Conference for the Promotion of Women’s Activities,” and promoting voluntary initiatives by corporations.

- Giving awards to corporations that promotes positive action.
- Providing information on positive action to those selected to be in charge of particular projects.

b) Strategic projects for the promotion of positive action

- Promoting transparency with regard to discrimination/gender gaps in corporations.
- Widely disseminating information on positive action initiatives by corporations.
- Conducting practical training and creating manuals.

However, as far as awareness-raising is concerned, the Conference for the Promotion of Women's Activities has been held once a year since July 2001, and its effectiveness is questionable, given the fact that it has resulted in no major progress being made in the implementation of positive action. With regard to providing information, this has been restricted to sending material to corporations through the mail. Further, awards have been given to corporations since 1999.

It is clear that no fundamental improvement has been achieved as a result of these measures, and the government should analyze why temporary special measures have not been effective and implement stronger and more effective measures. However, despite the fact that the Committee requested the government to provide a follow-up report on the steps it has taken to implement temporary special measures, the government has not introduced or proposed any new measures based on reflection and analysis of its past policies.

Meanwhile, although strategic projects for the promotion of positive action have been introduced in recent years, no data has been released about the extent to which information has been provided or to what extent training and the creation of manuals have been carried out. Furthermore, transparency with regard to disparities between men and women in corporations is regarded as a tool for promoting action necessary to eliminate such disparities, not as a mechanism for making information about such disparities publicly available.

If serious efforts are to be made to redress such disparities and implement

temporary special measures, it is necessary to oblige corporations to disclose information relating to gender discrimination and the position of women in management positions. Transparency for the benefit of corporations is inadequate.

2) Measures taken in public procurement

In local public bodies, measures are currently taken in which the implementation of positive action is treated favorably when evaluating bids for public contracts. To date, 36 prefectures have introduced measures by which positive action is treated as one of the factors that are evaluated when examining whether companies are qualified to bid for public contracts. What is examined here is not just whether a company has introduced temporary special measures, but whether gender equality, work-life balance and child-rearing support exist at the office level. However, the effectiveness of this approach in enhancing gender equality in the workplace has not yet sufficiently reviewed.

Meanwhile, this approach has not been sufficiently adopted at the national level. The Gender Equality Bureau in the Cabinet Office is the only governmental body that has adopted a policy of positive evaluation for companies implementing “positive action” in the selection of contracts for public procurement. Since these contracts consist of a very small proportion of all government contracts, the impact is minimal. In the area of public procurement, it is necessary to pass legislation making the implementation of positive action a condition for companies to be awarded government contracts, not only for bids but also for private contracts.

3) Cabinet initiatives

A Positive Action Working Group was set up in March 2011 the Specialist Committee on Basic Issues and Gender Impact Assessment and Evaluation in the Committee for the Promotion of Gender Equality in the Cabinet Office, and has begun deliberations. However, it has yet to come up with any effective measures, and discussion has been limited to presentations amongst committee members and free debate. No public hearings have been held and no comments from the public have been accepted.

(4) Inadequacy of measures for structural reform of discrepancies between men and

women in the workplace

Temporary special measures are measures of a temporary nature that aim to promote de facto or substantive equality between men and women. However, permanent measures to eliminate de facto discrimination against women have not been adequately taken in Japan, and serious disparities between men and women exist in the workplace. Overall improvement of the situation will not occur unless effective measures to deal with de facto gender discrimination are taken.

The number of female workers as well as the percentage of women in the workforce is increasing. In 2010, the total number of female workers was 23,290,000, and women comprised 42.7% of the workforce (of 54,620,000 men and women).

However, there is a serious wage gap between men and women . If we count the wage level for male general workers as 100, the level for all female workers is approximately 60, and for part-time female workers, around 45. ILO Convention No. 100 (Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value), has not been effectively implemented. According to statistics published in May 2011 (“The Situation of Working Women: FY 2010”), the wage gap is between 69.8 and 69.3 for general workers, and between 72.6 and 72.1 for permanent full-time employees, and the gap has increased by 0.5 points in the past year.

The background to de facto discrimination against women in the workplace, including wage discrimination, is the increase in non-regular employment. At the time of the enactment of Equal Employment Opportunity Law in 1985, the percentage of female full time-workers was 68.1%, while the figure now stands at 46.2%. The proportion of female workers employed on a non-regular basis was 31.9% in 1985 (part-time and casual workers: 28.4%; dispatched workers, contract workers, and temporary workers: 3.5%; full-time employees and workers: 68.1%), but rose to 53.8% in 2010 (part-time and casual workers: 41.2%, dispatched workers, contract workers, and temporary workers: 12.6%, full-time employees and workers: 46.2%), and now accounts for the majority of workers.

Equal treatment of non-regular workers has not been established under the law and non-regular workers are forced to do extremely unstable work for low wages. The Act

on Improvement etc. of Employment Management for Part-Time Workers prohibits discrimination against part-time workers who meet certain conditions but since the conditions are extremely narrow, it has only been possible to realize the equal treatment of a limited number of part-time workers, and the equal treatment of those in other forms of non-regular employment is not guaranteed under the law. In this situation women, who account for most of the non-regular workforce, are forced to work for invariably low wages.

Indirect discrimination based on management classification by recruitment remains, two-track recruitment is still a major function in de facto gender discrimination, and there are no effective legal remedies for such indirect forms of discrimination.

Measures to address such structural inequalities are extremely inadequate. The Third Basic Plan for Gender Equality does not even establish clear numerical targets or a time schedule for dealing with the wage gap between men and women or the ratio of non-regular female workers. Details included as measures to redress such disparities are significantly inadequate whilst recruitment strategies to increase permanent workers from non-regular workers, legislative revisions to ensure the equal treatment of non-regular workers, and the total elimination of indirect discrimination including two-track recruitment, have not been included.

In Japan, work evaluation methods designed to ensure the effectiveness of the Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ILO Convention No. 100) have not been established. In May 2010, the Ministry of Health, Labour and Welfare created and established a “Work Analysis and Work Evaluation Implementation Manual” relating to part-time workers but the comparison targets were extremely limited and the manual is remarkably incomplete and insufficient as an objective work evaluation method and evaluation standard, and there is a danger that the effect will be to rationalize discrimination.

There is a need for the prompt establishment of work evaluation methods based on international standards. The Third Basic Plan only states that “surveys and research” on such methods will be carried out, but implementing such evaluations based on a definite schedule is required.

(5) Recommendations

1) Setting numerical targets

With regard to the percentage of women in positions equivalent to or higher than section chief in private corporations, it is necessary to drastically review the approximately 10% by 2015 target, and set interim numerical targets that will make it possible to achieve the goal of “30% by 2020.”

It is necessary to set numerical targets for redressing the wage gap and reducing the rate of non-regular employment, and set out a roadmap for achieving these goals.

2) Granting of effective incentives

In the area of public procurement, it is necessary to pass legislation making the implementation of positive action a condition for companies to be awarded government contracts, not only for bids but also for private contracts.

Furthermore, it is also necessary to promptly introduce tax breaks for corporations that implement positive action.

3) Disclosure of gender disparities

Initiatives to grasp and make transparent disparities between men and women that are being implemented as contracted work only aim to increase the corporation’s own awareness of the problem; it is necessary to extend this so that the information is disclosed to the public. It is necessary to request corporations that employ more than 100 workers to disclose information such as the gender breakdown of their workforce, average wages, the number of years workers have been employed, the percentage of women in positions equivalent to or higher than section chief, percentage of workers, and the percentage of full-time and non-regular workers, and to encourage initiatives to eliminate de facto discrimination.

It is also necessary to oblige companies listed on the stock exchange to submit the gender specific statistics on the number of workers, their average age, the number of years they have been employed, average wages, and number of managers according to gender (department and section chiefs), in their security reports.

4) Proposals for far-reaching measures based on reflection on the past

To date, the focus of national measures has been education and promotional activities that encourage voluntary initiatives by corporations, but it is clear that such measures have not proved sufficiently successful. Thus, it is necessary to promptly establish new and effective strategies and measures based on reflection and analysis of the past.

In order to establish effective strategies, the government should seek opinions from society at large, and not just stop at closed study groups made up of experts such as the Cabinet Office's "Positive Action Working Group," and also facilitate open debate in society by proactively publishing positive examples from a variety of countries, holding public inquiries and hearings, and accepting public comments.

5) Measures to resolve serious de facto discrimination against women in employment

In order to eliminate the extremely low wages and unstable status of non-regular workers, which is the main cause of wage disparities between men and women, it is necessary to amend the law (dispatch worker, part time, fixed-term workers) based on the principle of equal treatment between regular workers and non-regular workers, to reform the system to make it easier for non-regular worker to change their status and become full-time employees, to promptly come up with recruitment strategies to increase the percentage of full-time female employees, to amend the Labor Standards Act to prohibit all indirect discrimination including two-track recruitment, and to promptly establish work evaluation means based on international standards in order to effectively implement ILO Convention No. 100.

6. Equality in the field of education and research

(1) Equality in the field of education and research: the current situation

1) The percentage of students going on to higher education

According to the Ministry of Education, Culture, Sports, Science and Technology's "Basic School Survey," the percentage of students who went on to senior high school in 2010 was just over 96% for both women and men.

However, the percentage of men who go on to university (undergraduate level) is 56.4%, whilst the percentage of women who go on to university (undergraduate level)

is 45.2%, and 10.8% for junior college.

Very few men go on to study at junior college. The percentage of women who go on to university (undergraduate level) is increasing each year whilst the percentage that go on to junior college is decreasing, but still there is a noticeable difference between the percentage of men and women. The reason for this lies in parents' ideas regarding education, which are rooted in the concept of division of labor according to gender, and spiraling tuition fees at national universities as well as at private universities, coupled with the inadequate scholarship system, which is thought to have given rise to a situation in which men are given priority when it comes to sending children to university (undergraduate level).

The percentage of students who proceed to graduate school immediately after graduating from university (undergraduate level) was 17.4% for men and 7.1% for women in FY 2010 – a difference of more than 10%.

Looking at the proportion of women among graduate students, 29.6% of master's students and 32.5% of doctoral students are women, indicating a significant difference. However, women account for 48.9% of students who also have a full time job in 2010, and the focus should be on the type of career these women go on to in the future.

2) Major fields

Discrepancies in the areas in which male and female students choose to specialize still exist at universities (undergraduate level) and graduate schools. Fields with a high proportion of women are home economics, humanities, art, and education, and fields with a high proportion of men are engineering, sciences, and social sciences. In the health-care field, the percentage of men in medicine and dentistry is 66% whilst the percentage of women in pharmaceutical sciences, nursing sciences and nutrition sciences is 65%.

The Ministry of Education, Culture, Sports, Science and Technology's "Basic School Survey" also shows that in 2010 the proportion of women specializing in social sciences was approximately 30% and the proportion of women specializing in

engineering was approximately 10%, whilst the proportion of women specializing in humanities was 66.5%.

Of the major fields in graduate school master programs, most women tend to specialize in humanities and social sciences, followed by engineering, health care (excluding medicine and dentistry), and education. Most men, however, tend to specialize in engineering, followed by sciences, social sciences, agricultural sciences, and medicine and dentistry. In doctoral programs, most women tend to specialize in home economics, art, education, and humanities. 28.2% of students in law schools are women.

There is a need to be aware that these differences in the areas in which male and female students choose to specialize at universities and graduate schools are linked to gender segregation in the workplace after graduation (for example, legal and economic faculties are said to be advantageous for taking the national public officials level 1 recruitment examination.)

3) Disparity in the amount spent on education according to parents' income bracket

"Educational disparity" has been a major issue since the 1990s. Educational disparity refers to disparities that arise in a child's educational opportunities due to the environment in which they are brought up and due to their parent's income level in particular, and there are concerns that disparities that cross generations will remain. According to the Ministry of Education, Culture, Sports, Science and Technology's "FY 2006 Survey of Household Expenditure for Children's Education," the amount spent on education, from kindergarten to senior high school, increased the higher a household's income, and households with an annual income of more than 12 million JPY spent between 1.5 and twice the amount spent by households with an annual income of less than 4 million JPY. In Japan the proportion of education-related expenditures in general total government expenditures is low and there is a danger that the "educational disparity" will increase even further.

4) Teaching staff

According to the Ministry of Education, Culture, Sports, Science and Technology's "Basic School Survey" (2010), the proportion of women among the

total number of regular teaching staff (full-time teaching staff registered at a particular school) was 65.2% at elementary schools, 42.1% at junior high schools, and 27.7% at senior high schools, and this proportion is increasing year on year. However, the proportion of women in management positions (principal, deputy principal, vice principal), whilst increasing, is still noticeably low. According to the survey, no more than 18.4% of elementary school principals, 5.3% of junior high school principals, and 5.6% of senior high school principals are women.

The proportion of women amongst all teaching staff at universities, graduate schools and junior colleges is close to 50% at junior colleges, but only within the range of 20-30% at universities and graduate schools. Furthermore, the proportion of women decreases the higher the job rank. The percentage of women who are professors or above, is 14.5% at junior colleges and no more than 9% at universities. Conversely, the proportion of women who are research assistants or in assistant positions that are treated as administrative posts is approximately 90% at junior colleges and more than 50% at universities.

5) Proportion of female researchers

The proportion of female researchers is gradually increasing but remained at 13.6% as of March 31, 2010 (Ministry of Internal Affairs and Communications “Report on the Survey of Research and Development”), and is extremely low in comparison to other countries. This figure is extremely low given that 30% of students enrolled on master and doctoral courses are women. The reason for this is not only due to it being difficult for women to handle both careers and raising children, or to it being difficult to return to work after raising children. It has also been pointed that the tendency for evaluators to give priority to men, the lack of consideration for child care and nursing care, etc. in performance evaluations, the low level of recruitment compared to men, the lack of role models, and the social division of labor by gender and workplace environment (Japan Inter-Society Liaison Association Committee for Promoting Equal Participation of Men and Women in Science and Engineering “Major Survey of the State of Gender Equality Amongst Science and Technology Experts”), are all part of the reason. The current research framework/structure and performance evaluation criteria assume a healthy man supported by someone who does the housework, child care and nursing care, etc.

6) Female researchers' affiliations and specialist fields

Approximately 60% of male researchers are affiliated with corporations, etc. and 30% at universities, etc., whilst approximately 60% of female researchers are affiliated with universities, etc. and 30% with corporations, etc. (Ministry of Internal Affairs and Communications "Report on the Survey of Research and Development 2010"). The proportion of female teaching staff (researchers) at universities, etc. is within the range of 20-30% and the low number of female researchers affiliated to corporations, etc. is conspicuous.

Looking at the field of specialization of women at universities, etc. (who account for approximately 60% of female researchers), it would appear the almost half of such female researchers are involved in fields such as pharmaceutical sciences, nursing sciences, and nutrition science, etc., whilst more than 30% are involved in humanities. Meanwhile, only 8.3% are involved in engineering, 10-20% in sciences and agricultural sciences, and 20-30% in social sciences and medicine and dentistry. Even in fields in which the proportion of female researchers is comparatively high, the proportion of women falls as the job rank rises from assistant to assistant professor to lecturer to associate professor to professor.

7) Learning in social education institutions

Classes and courses are held that are organized by boards of education, community centers, youth education institutions, and female education institutions, as an opportunity for social learning other than learning in schools. The proportion of women who participate in such courses is high, at between 60-90% at each institution (Ministry of Education, Culture, Sports, Science and Technology "Social Education Survey").

(2) The Basic Act on Education

1) The Basic Act on Education is a law enacted in 1947. The preamble of the act states that "the realization of these ideals (which are expressed in the Constitution of Japan) shall depend fundamentally on the power of education" and "[we] shall esteem individual dignity and endeavor to bring up people who love truth and peace, while education which aims at the creation of culture general and rich in individuality shall be spread far and wide. We hereby enact this Act, in accordance with the spirit of the

Constitution of Japan, with a view to clarifying the aims of education and establishing the foundation of education for new Japan."

Article 5 of the act (Coeducation) provides that "[m]en and women shall esteem and cooperate with each other. Coeducation, therefore, shall be recognized in education," and this article amplifies the spirit of article 14, paragraph 1 of the Constitution. More specifically, the principles of coeducation are stated based on the reflection that the pre-war school education system institutionalized gender discrimination through the single sex education system and single sex school system. This article includes the perspective that men and women shall respect, acknowledge values of, understand each other, and exert mutual characteristics in all social activities based on the idea of such respect for each other, and to this end, the law acknowledges the merits of coeducation, recommends coeducation, states that the Japanese government and their institutions shall not prohibit coeducation (however, coeducation education is not compulsory), and that conducting coeducation in principle shall be the fundamental ideal of education.

2) However, the act was substantially amended in 2006 and article 5 was removed. The removal of this article shook the foundations of gender equality in the field of education. Even now, disparities between gender exist in education such as disparities between gender in the ratio of students who go on to higher education school and the unbalanced ratio of men to women in major fields, and such discrimination is clearly linked to the production of social and cultural disparities, gender segregation at work, and sexual discrimination in employment recruitment. The removal of article 5 not only obstructs the progress of resolving such issues, but has also raised concerns that it may lead to the evolution of education that further distinguishes gender, including the establishment of single sex public schools based on the theory of gender characteristics. Such removal was naturally criticized as "lacking the education system principles which specifically achieve the concept of gender equality" (Japan Educational Law Association (ed.), "Houritsu Jihou Special Edition: Criticism of Revisions to the Basic Act on Education," April 2004, Page 96: Hashimoto).

(3) Issues raised by the Committee on the Elimination of Discrimination Against

Women

The Committee on the Elimination of Discrimination Against Women raised the following issues with regard to the field of education and research.

i. Its concern at the persistence of stereotypes regarding the roles and responsibilities of women and men, which are particularly reflected in the media and in educational textbooks and curricular materials, and which influence women's traditional educational choices and contribute to the unequal sharing of family and domestic responsibilities, resulting in their disadvantaged situation in the labour market and their underrepresentation in political and public life and decision-making positions.

ii. The need to enhance the education and in-service training of the teaching and counseling staff of all educational establishments and at all levels with regard to gender equality issues, and to speedily complete a revision of all educational textbooks and materials to eliminate gender stereotypes.

iii. Its concern that the Basic Act on Education has been amended and article 5, which refers to the promotion of gender equality, has been removed.

iv. The need to ensure that education policy includes measures to encourage girls and women to pursue education and training in non-traditional fields and so broaden their opportunities for employment and careers in better paying sectors of the economy.

v. The need to increase the target set for the ratio of female faculty in university and colleges from 20 percent to ultimately facilitate movement towards parity in the sex ratio in these institutions.

(4) Measures taken by the Japanese government

1) The Second Basic Plan for Gender Equality, which was formulated in 2005, followed on from the First Basic Plan, citing "the enhancement of education and learning to promote gender equality and facilitate diversity of choice" as one priority field. It also tackled the promotion of women's participation in science and technology for the first time, and aimed to support women university students and high school graduates in choosing paths into scientific fields.

However, a backlash against gender equality had gathered momentum, and the Second Basic Plan aimed, "with regard to the definition of the principle of gender

equality and the perspective of ‘socially based sex discrimination’ (gender),” to “endeavor to eliminate misunderstandings, and proceed with easy-to-understand publicity and educational activities to ensure that arbitrary operation and interpretation does not occur.” The Japanese government planned thorough familiarization of such matter with regard to municipal boards of education and those involved in lifetime learning and social education.

2) The Third Basic Plan for Gender Equality (formulated in 2010)

As a basic approach for each field, the Third Basic Plan states that: “fostering deeper understanding of gender equality in all children is something that benefits not only the children themselves, but leads to promoting gender equality across future Japanese society as a whole” (Priority field 3); “If we want to achieve a gender-equal society, we need both men and women to independently express their individuality and abilities, and participate in building that society. All of this begins with education and learning. We plan to cooperate interactively with schools, the family, local communities, workplaces and all other arenas in society to expand education and learning that advances gender equality. Our aim is to dispel belief in the stereotyped perception for gender roles, build a sense of gender equality based on respect for human rights, and promote a deeper understanding of gender equality” (Priority field 11); and “Science and technology, and academia are the foundation for the future development of Japan – and of human society – and we are seeing the intensification of the international competition to acquire knowledge. If we wish to maintain and improve Japan’s international competitiveness and reinvigorate our research endeavors with a variety of points of view and ideas, then we must create an environment in which women researchers can give maximum expression to their abilities and promote their participation. And generating a diverse range of creative, groundbreaking knowledge by furthering science and technology, and academia will also contribute to promoting the creation of a gender-equal society. ” (Priority field 12).

(5) Remaining issues

1) The need to make an accurate analysis of the reasons why inequality still exists

The concepts set out in the Third Basic Plan are basically correct; what is required is specific measures to realize them. To this end, there is a need to properly analyze

why inequality still exists.

For example, the specific measures in the plan with regard to the low proportion of female teaching staff in managerial positions is “to encourage prefectural boards of education to set specific targets for achieving the “30% by 2020” target.” However, many female teaching staff have heavy family responsibilities. They thus experience difficulties balancing their career and family life, and have not been able to attend education and training as persons undertaking work with responsibility. For this reason, they do not take examinations for recruitment to managerial positions. Rather than being an issue of individual motivation and skills, this is an issue of not having a social system in which women are able to take on work with responsibility. Fixed gender role assignment is reproducing gender disparities in education. The cause of disparities between gender in the percentage of students who proceed to university and the cause of the low proportion of female researchers have been discussed above. It will be difficult to achieve numerical targets, regardless of however many targets are set, unless the issues of text books and teaching materials which reflect belief in the stereotyped perceptions of gender roles and the content of training for teaching staffs are analyzed and improved.

2) Positive action

a) Boards of education, public and private schools and research institutions receive large amounts of public money. Thus, in order to promote initiatives for fostering gender equality at such institutions, the degree to which such initiatives have been implemented should be one of the items evaluated when determining and providing subsidies, etc.

For example, one idea is to make the existence of a certain percentage of female graduate students, teaching staff (at all teaching levels) and researchers a requirement for receiving subsidies, and to pay additional amounts the higher that percentage.

b) Request the formulation of an action plan that specifies a deadline and specific targets, and the preparation and publication of annual reports having analyzed the current situation and cause with regard to prefectural and municipal boards of

education and national universities, etc. throughout the country.

This plan includes the following as a minimum:

- Raising the performance target for the proportion of female teaching staff at universities and junior colleges from 20%, and ultimately encouraging the proportion of men and women at such institutions to become equal.
- Ensuring that the percentage of both men and women does not fall below 40% with regard to members of prefectural or municipal boards of education.
- Ensuring that the proportion of women holding the position of vice principal or above at elementary and secondary educational institutions is at least 40%.
- Ensuring that the proportion of female university professors is 40%.
- Establishing recruitment targets for female researchers in major fields other than sciences.

c) Further enhancing the scholarship system and partial reimbursement exemptions etc. in the case of scholarship systems and loans in particular.

3) The Basic Act on Education

Reviving article 5 of the Act (Coeducation) which provides that “men and women shall esteem and cooperate with each other. Coeducation, therefore, shall be recognized in education” is necessary.

Section 4 – Conclusion

As stated above, the Japanese government has clearly not sincerely fulfilled either of the two recommendations for which follow-up was requested by the Committee.

END

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