

To the United Nations
Committee on the Elimination
of All Forms of Discrimination
against Women

No Action: No Progress

**Report on Japan's Progress in
Implementing Priority Recommendations
made by NGO "Space Allies"**

**Report
June 2011**

**Submission by
NGO "Space Allies"
JAPAN**

**Attention
United Nations CEDAW
Committee**

NGO "Space Allies" is submitting a shadow report on the implementation of the recommendations contained in paragraphs 18 and 28 of the concluding observations of the Committee on the Elimination of Discrimination against Women on the sixth periodic report of Japan, CEDAW/C/JPN/CO/6, in order to complement the shadow report submitted by JNNC, Japan NGO Network for CEDAW. These paragraphs are on discriminatory legislation and temporary special measures.

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Discriminatory legislation

17. The Committee is concerned 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required for women before they can remarry after divorce and the choice of surnames for married couples have yet to be repealed. It is further concerned that children born out of wedlock continue to be discriminated against through the family registry system and in provisions on inheritance. It notes with concern the use by the State party of public opinion surveys to explain the lack of progress in the repeal of discriminatory legislation.

18. The Committee urges the State party to take immediate action to amend the Civil Code with a view to setting the minimum age for marriage at 18 for both women and men, abolishing the six-month waiting period required for women but not men before remarriage and adopting a system to allow for the choice of surnames for married couples. It further urges the State party to repeal the discriminatory provisions in the Civil Code and in the Family Registration Law that discriminate against children born out of marriage and their mothers. The Committee points out that the obligations undertaken under the Convention by the State party upon ratification should not be solely dependent on the results of public opinion surveys, but on its obligations to align national laws in line with the provisions of the Convention as it is a part of its national legal system.

Temporary special measures

27. The Committee notes with regret that no temporary special measures are in place to accelerate de facto equality between men and women or to improve the enjoyment by women of their rights in the State party, in particular with regard to women in the workplace and the participation of women in political and public life.

28. The Committee urges the State party 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 timetable.

0. Misunderstanding of the Japanese government on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women

Article 2 of CEDAW stipulates that States Parties agree to “pursue by all appropriate means and without delay” a policy of eliminating discrimination against women and undertake

- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise,
- and (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

General recommendation No. 28 on the core obligations of States parties under article 2 also

- confirms “States parties also agree to “pursue by all appropriate means” a policy of eliminating discrimination against women” in paragraph 23,
- stipulates “the obligation to fulfill requires that States parties take a wide variety of steps to ensure that women and men enjoy equal rights de jure and de facto, including, where appropriate, the adoption of temporary special measures in line with article 4, paragraph 1, of the Convention and general recommendation No. 25 on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures” in paragraph 9,
- states “Article 2 also imposes a due diligence obligation on States parties to prevent discrimination by private actors. In some cases, a private actor’s acts or omission of acts may be attributed to the State under international law” in paragraph 13,
- confirms “Subparagraph (e) establishes an obligation of States parties to eliminate discrimination by any public or private actor” in paragraph 36
- and explains the words “without delay” is “unqualified, and does not allow for any delayed or purposely chosen incremental implementation of the obligations that States assume upon ratification of or accession to the Convention It follows that a delay cannot be justified on any grounds, including political, social, cultural, religious, economic, resource or other considerations or constraints within the State” in paragraph 29.

In **paragraph 18 of the concluding observations**, the Committee points out that the obligations undertaken under the Convention by the State party upon ratification should be dependent “on its obligations to align national laws in line with the provisions of the Convention as it is a part of its national legal system”. The obligation of the State Parties to pursue their policy, by all appropriate means, is of an immediate nature, “without delay”.

In **paragraph 28 of the concluding observations**, the Committee urges the State party 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 timetable. This concluding observation should be understood that the needed temporary special measures are not optional and that “numerical goals and timetable” is not sufficient.

As to **paragraph 18 of the concluding observations**, before the concluding observations, the Japanese government reported “As concrete steps, the Second Basic Plan for Gender Equality that was approved by the Cabinet in December 2005 specifically states that the Government will continue its efforts to deepen public discussion of the proposed system that allows married couples to use separate surnames, in conjunction with the proposed revisions to the marriage and divorce system, including setting the minimum age for marriage at 18 for both men and women and reducing the set period during which women are prohibited from remarrying after divorce. The government conducted a public opinion survey in December 2006 on the family-related legislative system that included questions about the minimum age for marriage for women and the system of allowing married couples to use separate surnames, and it has since been studying the marriage and divorce system. In addition, the government has published the contents of the abovementioned Outline and the outline of the system of allowing married couples to use separate surnames on its homepage and is making continued efforts to deepen public discussion about these issues” in responses to the list of issues and questions with regard to the consideration of the sixth periodic report.

Followed by the concluding observations, which pointed out the obligations should not be solely dependent on the results of public opinion surveys, the government doesn’t use the word “the results of public opinion surveys” in the third national basic plan on gender equality, which outlines the basic policy for the five years starting from 2010. In this governmental plan, the government, however, plans only to continue to “consider” the amendment of the Civil Code with a view to setting the minimum age for marriage and adopting a system to allow for the choice of surnames for married couples. This plan ignores the fact that the Committee urges the State party to take “immediate” action in the concluding observations and doesn’t manifest the abolishing the six-month waiting period required for women but not men before remarriage and repealing the discriminatory provisions in the Civil Code and discrimination against children born out of marriage and their mothers in the Family Registration Law. Furthermore, the plan leaves enough room for not defaulting the States obligation under the excuse of diversification of the family with stating “in light of the diversification of the configuration of couple and family”. What is worse, the plan states

the government continues to consider the amendment of the Civil Code “in light of the concluding observations”, which means the government regards the concluding observations as only reference and states “the government will “try” to strengthen implementation of CEDAW”. This means poor understanding of the government on legal status of the Convention and on the core obligations of States parties.

As to **paragraph 28 of the concluding observations** on temporary special measures, Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment (Act No. 113 of July 1, 1972) only stipulates “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” in article 8 and the word doesn’t promote the temporary special measures. The third national basic plan on gender equality only states the government will “ask” related organizations for understanding of promotion of effective positive action and will “urge” them to undertake adoption of positive action in the areas of employment of women and participation of women in political and public life. As to political area, this plan sets the limitation of the obligation to redress the discrimination, stating this plan is only nonbinding targets of the government and doesn’t limit the autonomy of political parties. As the government has failed to eliminate discrimination in this area since ratification of CEDAW in 1985, and it should know the existing measures have little effect on eliminating of discrimination and the above plan, which is an extension of the existing measures, is insufficient and ineffective. The government seems to interpret the States obligation as only asking political parties and private companies for taking temporary special measures and to misunderstand that the government will fulfill its obligations if the government only asks and urges the related organizations and announces “numerical goals and timetable”, even if the discrimination is not eliminated.

Influence of conservative backlash

This negative attitude toward gender equality partly attributes to the conservatism which seeks to recurrence of the feudalistic family system before World War Two and the new constitution. They don't want substantive gender equality, especially equality in marital life, and non-discriminatory against women out of wedlock, and have strongly lobbied against abolishing discriminatory law. Most discriminatory legislations were established as a substitute of the feudalistic family system or remained throughout prewar and postwar under the influence of these conservative groups.

As to the **discriminatory legislations**, the Civil Code and the family registry system were revised immediately after World War Two under the new constitution, but in the process of the revision, the conservative groups resisted the promotion of gender equality by the General Headquarters of the Allied Forces. As a result of this compromise, the discriminatory 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, the choice of surnames for married couples and discrimination of inheritance against children born out of wedlock and the family registry system which continue to discriminate against children born out of wedlock remain. The article in the Penal Code which punishes abortion remains. These days, conservative groups both inside and outside of the administration insist that these discriminatory legislations should be maintained, from the standpoint that family value and family bond should be sustained all the more in the diversified period. As a result, the national plan on gender equality in 2010 was pushed back in the process of drafting, and the word was watered.

As to **temporary special measures**, in addition to inclination of industry associations, which prefer male-dominated personnel system and employment systems based on men who can do prolonged work under the gender stereotype, conservative groups have insisted temporary special measures is a discrimination against men and in response to this, the government often cites the public opinion research which shows 20.7% of men and 17.3% of women are against temporary special measures, which watered the word in the national gender equality plan.

The current situation and recommendation by NGO “Space Allies”

1. On the paragraph 18 on discriminatory legislation

As the discriminatory legislation against women, the CEDAW committee requires the Japanese government to amend discriminatory legislations in this paragraph, illustrating by examples regarding the Civil Code and the Family Registration Law. As the report by the other Japanese NGOs states, there is no specific progress in these fields in the past two years, although the government is excusing itself in its report and there happened a slight change in acceptance of birth registration without reporting whether legitimacy or illegitimacy.

Besides the above examples, there are a lot of discriminatory legislations within the Japanese law, which reinforce the subordination of married women and discriminate women living out of marriage system.

On this report, we will especially focus on the penal provisions which constitute discrimination against women, as the article 2 (g) stipulates “To repeal all national penal provisions which constitute discrimination against women” and the UN Human Rights Council announced the adoption of a historic resolution to create a new mechanism to promote the elimination of laws that discriminate against women in October 2010.

In Japanese law, women’s reproductive ability and their children are forced to be under the control of men, by 1) the Civil Code, which saves the patriarchal discrimination which includes subordination to husband and abandonment of social life of wife in the marriage system, 2) the discrimination against children out of wedlock, which is punitive measures against the women who had a sexual relationship and a pregnancy out of her marriage and 3) the Penal Code, which punishes woman who had an abortion which is a result of pregnancy of undesirable relationship. Abortion has been criminalized under the article 212 of the Penal Code (Act No. 45 of 1907), which stipulates that “when a pregnant woman causes her own abortion by drugs or any other means, imprisonment with work for not more than 1 year shall be imposed.” Women in prostitution, who have a sexual relationship out of the marriage, are also subject to punishment of the article 5 of the Anti-Prostitution Act, if she solicited prostitution, although prostitution without soliciting are not punishable and they are treated as degenerates against morality. Furthermore, there is a stipulation on detention and correctional institute for women in prostitution. However, as to abortion, men are not subject to the crime of abortion and the crime of adultery which punished those who had sexual relationship with married woman was abolished in 1947. As to prostitution, buyer of prostitution has yet to be subject to punishments and rather the Act Regulating Adults Entertainment Business, etc legalizes operations entertaining clients offering sexual acts other than vaginal intercourse.

The above stipulations not only are discriminatory against women but also violate sexual and reproductive health and rights. The concluding observations on the sixth periodic report of Japan pointed out “The Committee calls on the State party to take appropriate measures to suppress the exploitation of prostitution of women, including by discouraging the demand for prostitution. It also urges the State party to take measures to facilitate the reintegration of prostitutes into society and provide rehabilitation and economic empowerment programmes for women and girls exploited in prostitution.” in the paragraph 40. Also, the paragraph 50 pointed out “The Committee recommends that the State party amend, when possible, its legislation criminalizing abortion in order to remove punitive provisions imposed on women who undergo abortion, in line with the Committee’s general recommendation No. 24 on women and health and the Beijing Declaration and Platform for Action.” In spite of these problems and the concluding observations, the Japanese government has shown very weak will to change and improve these legislations and current situations. The Japanese government released the third national basic plan on gender equality, which outlines the basic policy for the five years starting from 2010. Its only reference to abortion is-- “with the low birthrate and progress in science and technology, as legal system on abortion and assisted reproduction technologies should be considered from many points of view, the government plans to obtain information for the discussion, if needed.” Although the concluding observations on the sixth periodic report of Japan clearly pointed out “the obligations undertaken under the Convention by the State party upon ratification should not be solely dependent on the results of public opinion surveys, but on its obligations to align national laws in line with the provisions of the Convention as it is a part of its national legal system”, the government has still insisted “(it) should be considered from many points of view”. This expression means nothing other than the refusal of the implementation and lack of political will of the Japanese government. As to prostitution, the above third national basic plan on gender equality only states “The government may consider the amendment of the Anti-Prostitution Act.” It does not refer to anything on the Act Regulating Adults Entertainment Business, etc and does not show any specific measures for discouraging the demand for prostitution. Furthermore, it states the government plans to strengthen the function of detention and correctional institute for women who committed the crime of prostitution. Thus, the Japanese government has maintained the negative attitude toward changing for the better the legislation on abortion and prostitution which have supported discriminatory patriarchy system still after World War II.

2. On the paragraph 28 on temporary special measures

In the governmental third gender equality basic plan in 2010, the government set numerical targets on proportion of women in fifteen fields by the year 2015 or 2020. However, there is no specific and effective measure to achieve these goals in it. It only states it plans to try to achieve and to request authorities, institutes and organizations concerned to achieve the goals and to take some related abstract measures, such as discovering role models and establishing mentor system for working women. These are not accompanied by obligation of the government and the authorities, institutes and organizations having responsibility for implementation and there is no law which has legal binding on temporary special measures nor law which underlie the implementation of these measures.

What is worse, but more importantly, the governmental plan on political parties and private companies does not include the legal binding words. As to the plan on political parties, the government clearly states the governmental plan only shows “nonbinding” targets, although the plan sets goal on proportion of women among the candidates for each House at 30% by 2020. As to private companies, the Equal Employment Opportunities Law stipulates the temporary special measures, but it does not mean to promote the measures, only means not to prohibit the measures on the ground of discrimination in its article 8. Although the governmental plan sets goal on proportion of women among manager or above at around 10% by 2015, there is no specific and efficient measures to achieve them. It only states the government plans to give information, give an award, discover role models, establish mentor system and “try to” disseminate the temporary special measures. Also, although the plan sets goal on proportion of corporation which copes with the measures at above 40% by 2015 from 30.2% in 2010, the government should consider why there has been little progress of gender equality in the field of labor in spite of the 30.2% of the companies cope with the measures.

These governmental irresponsible attitudes also are violation of the CEDAW and the general recommendation 28, especially its article 13 on the obligation of states. This plan is not only sufficient for gender equality but also abdication of obligation and responsibility of the government.

In addition, the plan refers to the promotion of work-life balance. However, there is little prerequisite for women to continue to work and to raise her families. As to continuing career, the governmental plan sets goal on rate of women who continues their career after delivery of their first child at 55% by 2020, while the rate in 2009 is 38%. However, as the concluding observation pointed out in its paragraph 45, illegal dismissal of women due to pregnancy and childbirth has been widespread. Being forced to work for long hours and insufficient provision of childcare prevent women from continuing her career. If a woman continues her career, the fact of having taken maternal leave is often disadvantage for her in promotion. Also, the government has not fulfilled the needed measures to ensure women to continue their career, such as strict response to sexual harassment, eliminating discrimination against women in working place including indirect discrimination and prohibiting “employment management category”, or a kind of occupational segregation between women and men and so on. The measure by the government is non-effective for them about it. Furthermore, the government has taken policies which induced women into being full-time housewives, and asked men not to be family responsible, taking preferential tax and social insurance system for married men with full-time housewives since the 1980s as well as unequal treatment. The government has obligation to redress these system causing gender inequality.

As to care work, the socialization of which is a premise of social and economic participation of women, although the governmental plan sets goal on rate of offering nursery for children under age 3 at 44% by 2017, while at 22.8% in 2010, the goal of the 44% underestimates the latent demand for nursery. Universal “Child Allowance” is supposed to be abolished in this year due to lack of revenue shortfall. There is no specific numerical goal in the governmental plan on socialization of caring for the elderly, although it expresses the will on fulfillment of support for caregivers and on establishment of infrastructure of caring. Also the rate of taking paternal leaves is only at 1.72% and the government sets very modest goal on it at 13% by 2020 and the government does not have specific measures to improve them effectively. In these poor policies, women will continue to burden excessive family responsibility and will have to abandon their careers. Regarding reform for regionally-decentralized system and new child care system, the government has a tendency to abdicate the governmental obligation and responsibility to ensure the national minimum of child care, to introduce the market mechanism into child care, and which will cause problem that women, especially poor women, who need child care will not be able to obtain affordable and appropriate child care. Unless the condition for women to continue their careers is established, the paragraph 28 will never be achieved.

We hope that this information is useful during the Committee's review of the Government's compliance with the provisions of the CEDAW Convention.

If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

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