

Report by the Japan Federation of Bar Associations  
on the Review of “Ninth Periodic Report on the Convention on the  
Elimination of All Forms of Discrimination against Women, Japan”

Proposed Questions and their Background Information  
that should be included in the List of Issues Prior to Reporting  
to be Prepared by the Pre-Sessional Working Group

January 23, 2020

Japan Federation of Bar Associations

Introduction

The Japan Federation of Bar Associations submitted as a Nongovernmental Organization in active consultative status with the UN Economic and Social Council to the Committee on the Elimination of Discrimination against Women the “Report by the Japan Federation of Bar Associations on the ‘Seventh and eighth periodic reports of States parties due in 2014, Japan’ - Proposed questions and their background information that should be included in the List of Issues to be Prepared by the Pre-Sessional Working Group -” in March 2015 and the “Update Report on the List of Issues and Questions from the Committee on the Elimination of Discrimination against Women in Relation to the Combined Seventh and Eighth Periodic Reports of Japan” in December 2015.

In the Concluding Observations on the Combined Seventh and Eighth Periodic Reports as of March 7, 2016, recommendations were made on various items, but unfortunately, many of them have not been implemented.

This Report states the opinions of JFBA on the proposed questions that should be included in the List of Issues Prior to Reporting to the Japanese government, which is to be considered, for the review of the Ninth Periodic Report of Japan, at the Working Group of the UN Committee on the Elimination of Discrimination against Women scheduled to be held from March 2 through March 6, 2020.

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1. National Human Rights Institution (Concluding Observations on the Combined Seventh and Eighth Periodic Reports (hereinafter referred to as “Previous Concluding Observations”) Paragraphs 14 and 15)

Proposed Questions for List of Issues

State party should clarify the plan and status of early establishment of a national human rights institution in compliance with Paris Principles with a clear time frame, as recommended in the Previous Concluding Observations.

[Background Information]

The UN Committee on the Elimination of Discrimination against Women (hereinafter referred to as “Committee”) has recommended in the Concluding Observations in 2003<sup>1</sup>, 2009<sup>2</sup> and the Previous Concluding Observations in 2016<sup>3</sup> to establish a national human rights institution in compliance with Paris Principles to protect women’s human rights. Similar recommendations have been made also by other human rights treaty bodies.

However, while the Ministry of Justice prepared in 2012 the “Draft Bill on the Establishment of a Human Rights Commission” and submitted it to the Diet, since the abolition of the Bill due to dissolution of the Diet, there has been no progress on the part of the government toward establishment of a national human rights institution in accordance with the Recommendations.

It is required to realize establishment of a national human rights institution in order to make significant progress in the resolution of various issues, including discrimination against women, one of the current social issues.

2. Ratification of the Optional Protocol (Previous Concluding Observations, Paragraphs 8, 9 and 50)

Proposed Questions for List of Issues

State Party should clarify what considerations were given, after the previous review, to the planning for ratification of the Optional Protocol accompanying the Convention on the Elimination of all Forms of Discrimination against Women, which was recommended in the Previous Concluding Observations.

[Background Information]

Japan has not ratified the Optional Protocol accompanying the Convention, which provides for an individual complaint mechanism. In the Concluding Observations of the

Committee, it has been encouraged to ratify the Optional Protocol each time and similar recommendations were made not only by other human rights treaty bodies but also in the universal periodic review by the UN Human Rights Council.

As the mechanism of communication from individuals has not been introduced, judgments of courts in Japan have not been criticized by treaty bodies. Therefore, there are situations in which, even if violations of human rights treaties are argued, treaties are not directly applied in any judgment in most cases, and adoption as a standard for interpretation of the national laws is not implemented. If the mechanism of communication from individuals is introduced, a person under the jurisdiction of Japan, who was not remedied by national legal procedures such as by bringing a case before the court in Japan, can make an individual complaint to the Committee, seeking remedy of rights by arguing that the infringed rights are the rights protected by the Convention on the Elimination of All Forms of Discrimination against Women. In order to make significant progress in the resolution of issues including discrimination against women, it is required to realize introduction of an individual complaint mechanism, that is, ratification of the Optional Protocol.

3. Disaster Risk Reduction and Management (Previous Concluding Observations, Paragraphs 44 and 45)

Proposed Questions for List of Issues

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| <p>1. Proportion of Women in Leadership under the Basic Plan for Gender Equality</p> <p>(1) While the target was expressly set that the proportion of women in leadership positions would increase to 30% by 2020 under the Third Basic Plan, why was the target lowered to “striving to reach at least approximately 30%” under the Fourth Plan?</p> <p>(2) What goals are planned to be set as the proportion of women in leadership positions under the Fifth Basic Plan for Gender Equality, starting in 2021? What actions are intended to be taken for achieving the target?</p> <p>(3) In the White Paper on Gender Equality 2019, as the data of gender equality in disaster prevention and reconstruction, there is no statement on the status of the participation of female members in the Central Disaster Management Council in the field of Gender Equality in Disaster Prevention in Section 2 of Chapter 4 in the White Paper 1. Why is the proportion of women among members and committee members of the Central Disaster Management Council of Japan and expert</p> |
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members of the Council is not stated in the White Paper?

2. Gender Equality in Disaster Prevention and Reconstruction

- (1) Please clarify the transitions of proportion of women among members and committee members of the Central Disaster Management Council and expert members of the Council after the Great East Japan Earthquake up to the present time.
- (2) Regarding the proportion of women among committee members of disaster management councils of local governments, please clarify measures which have been taken to realize the proportion of 30% by 2020, the target of the results in the Fourth Basic Plan and measures to accelerate the proportion of women in the future.

[Background Information]

The Fourth Basic Plan for Gender Equality sets out, as its basic policy, a target of increasing the proportion of women in leadership positions to at least approximately 30% by 2020<sup>4</sup>. In the said Policy, based on the experiences and lessons from the Great East Japan Earthquake, etc., it is emphasized that viewpoints of gender equality will be introduced in measures for disaster prevention and reconstruction and the importance of participation and leadership of women in disaster prevention and reconstruction will be communicated inside and outside of Japan<sup>5</sup>. Recovery and reconstruction from the Great East Japan Earthquake and the nuclear power plant disaster have not been sufficiently realized. At any level of disaster rescue, reconstruction, recovery and disaster prevention, it is required that women be given the opportunity to exert their abilities as participants in policies. In order to reconstruct regional communities that are resilient in the face of disasters, mainly by regions and communities, it is essential that the viewpoint of gender equality be reflected in all processes of measures for disasters, including prevention of disasters, victim support, recovery and reconstruction. For that purpose, half (if it is difficult to realize the above target due to unavoidable reasons, at least 30%) of the members of the Reconstruction Agency, Reconstruction Promotion Committee of the Agency, Local Response Headquarters, Central Disaster Management Council, Prefectural Disaster Management Councils and Municipal Disaster Management Councils should generally be women.

4. Elimination of Discrimination in Political and Public Life (Article 7) (Previous Concluding Observations, Paragraphs 18, 19, 30 and 31)

Proposed Questions for List of Issues

Based on the election results after the enactment of the “Act on Promotion of Gender Equality in the Political Field,” please provide information about efforts made to increase participation of women in political and public life, including adoption of temporary special measures such as quota systems in order to realize the target of increasing the proportion of women in leadership positions to at least approximately 30% in every field of society by 2020.

[Background Information]

The Fourth Basic Plan for Gender Equality sets out the target that the proportion of women in candidates for members of the House of Representatives and House of Councillors will be 30% by 2020 as stating “increasing the proportion of women in leadership positions to at least approximately 30%” The “Act on Promotion of Gender Equality in the Political Field,” which was enacted as of May 23, 2018, sets up basic principles such as aiming at an equal number of male and female candidates as practicable as possible in elections of the House of Representatives and House of Councillors and local assemblies, and it provides that political parties shall autonomously make efforts such as by determining the duties of the national and local governments and the target number of candidates for public offices for men and women respectively, etc.

In the 25th ordinary election of the House of Councillors, held on July 21, 2019 after the enactment of the Act, ruling parties, including the Liberal Democratic Party and Komeito, have not determined the target rate of female candidates<sup>6</sup> and only the Japanese Communist Party achieved a proportion of female candidates of more than 50%<sup>7</sup>.

Looking at the rate of female members of 10.1%<sup>8</sup> in the House of Representatives and 22.9%<sup>9</sup> in the House of Councillors<sup>10</sup>, it will be difficult to realize 30% of women occupied in leadership positions by 2020.

In this regard, for the unified local elections conducted in April 2019, successful female candidates were 237 persons in 41 Prefectural assembly elections, which was the largest in history, and the rate to the total number (2,277) became a record high of 10.4%, however, it did not reach 30%.

5. Elimination of Discrimination in the Field of Education (Article 10) (Previous Concluding Observations, Paragraphs 32 and 33)

Proposed Questions for List of Issues

Please clarify the following matters which were carried out by the government for the period from publication of the Previous Concluding Observations by the Committee to the time of response.

1. Policies executed to increase the proportion of women's enrollment in fields of studies that are traditionally male-dominated such as science, technology, engineering and mathematics.
2. Any and all measures taken (including surveys, policies and guidance) in university entrance examinations in order for women to enjoy equal education with men with respect to the Convention, Article 10 (b).
3. Specific countermeasures taken in school and social education to resolve the stereotypical consciousness regarding roles and responsibilities of men and women.

[Background Information]

In the Previous Concluding Observations, Paragraph 32 (a), concerns were expressed that there was a wide gender gap in enrollment at universities and graduate schools in fields of studies that are traditionally male-dominated.

In fact, in 2018, at entrance examinations of medical schools of several universities, it was revealed that wrongful uniform tampering of scores of female students was made to adjust the number of successful examinees. Such uniform disadvantageous treatment in entrance examinations due to gender is unreasonable discrimination in violation of the purpose of Constitution, Article 14, paragraph 1 which provides that All of the people are equal under the law, the Basic Act on Education, Article 4, paragraph 1, which provides that students shall not be discriminated against by gender and the Convention on the Elimination of All Forms of Discrimination against Women, Article 10.

Under such circumstances of unfair treatment, there is the status of the current working environment in which many women leave the workplace due to pregnancy, giving birth and childcare. In order to achieve the tasks set forth in Proposed Question 1, it is necessary to improve the environment in which men and women can continue to work, while maintaining a work-life balance.

6. Elimination of Discrimination in the Field of Employment (Article 11) (Previous Concluding Observations, Paragraphs 34 and 35)

Proposed Questions for List of Issues

Please indicate the measures expected to be taken additionally with respect to the following matters.

(a) Establishment of comprehensive policies to promote gender equality in employment, (b) promotion of participation of minority women in the labor market, (c) abolition of horizontal and vertical occupational segregation, (d) countermeasures against the dominant conditions of fixed-term, part-time and non-regular employment in the employment of women, (e) abolition of illegal dismissal of women due to pregnancy and giving birth, (f) measures for ensuring prevention of forced resignations of women due to incompatibility between work and family life, (g) promotion of equal domestic responsibilities between men and women, (h) ensuring equal pay for work of equal value (including enactment of legal provisions to realize the principle), (i) enactment of the act specifying prohibition of and sanctioning sexual harassment in the workplace, (j) study of monetary value of unpaid work by women, (k) reduction of the gender gap in pension benefits and (l) ensuring high-quality childcare

[Background Information]

Many labor law provisions have been provided, including the Labor Standards Act, Article 4, Equal Employment Opportunity Act, Act on Promotion of Women's Participation and Advancement in the Workplace, etc., for the purpose of gender equality, prohibition and resolution of gender discrimination and maternity protection in the workplace. By the Act on the Arrangement of Related Acts to Promote Work Style Reform, the “Act on Improvement, etc., of Employment Management for Part-Time Workers” was amended as the “Act on Improvement, etc., of Employment Management for Part-Time Workers and Fixed-Term Workers,” and not only part-time workers but also fixed-term workers are subject to the protection of equal treatment and equal compensation under the same Act.

Despite these acts, however, wage gaps between men and women, the M-shaped curve and non-regular work of female workers continue to remain at low levels relative to international standards.

Although the Equal Employment Opportunity Act is the only Act concerning sexual harassment in the workplace, it is an administrative act imposing on employers the obligation to take measures for preventing and responding ex post fact to sexual harassment,

which does not directly prohibit sexual harassment. Regarding sanctions, there are no direct sanctions on the occurrence of sexual harassment and breach of the obligation to take measures<sup>11</sup>. We cannot deny that there are factors making victims hesitant to take legal remedial proceedings and deterring the will to exercise legal rights due to the fear of secondary damage, burden of proof and the low compensation amounts admitted by courts and administrative agencies, etc.

In order to resolve discrimination in the workplace, it is essential not only to improve laws but also to establish measures for ensuring effectiveness of the laws to secure exercise of the legally guaranteed rights and performance of obligations imposed by the laws. Specifically, authority of bringing litigation by trade unions and administrative agencies and introduction of class action system should be considered. In particular, foreign female workers are vulnerable to combined discrimination in terms of being women and foreigners and if their Japanese proficiency is insufficient, they tend to be subject to illegal labor exploitation or sexual harassment. Therefore, such specific measures should be considered as granting the status of residence permitting work and extending the period of stay at least during the period in which they utilize civil courts and administrative agencies for solutions of labor-related disputes.

#### 7. Elimination of Discrimination in the Field of Health (Article 12) (Previous Concluding Observations, Paragraphs 24, 25, 36, 37, 38, 39 and 40)

##### Proposed Questions for List of Issues

1. Please indicate the specific steps for removing the provisions of crimes of abortion under the Penal Code, which punishes women who have undergone induced abortions and their practitioners.
2. Please clarify that the government will remove or amend the provisions of the Maternal Protection Act, which requires consent from the spouse for an induced abortion.
3. Please clarify what measures the government will take for increasing access to safe induced abortions, in particular, reducing the burden of expenses necessary for induced abortions and method of induced abortions in compliance with international standards, including WHO guidance documents, etc.
4. Regarding forced eugenic operations under the Eugenic Protection Act, are further legal remedies of victims considered?

5. Please answer the following questions in relation to health damage by the nuclear power plant disaster.

(1) Measures in compliance with the recommendations of the Committee which have been taken from the recommendations made in Previous Concluding Observations, Paragraph 37 to the time of answer in relation to the health of women affected by radiation contamination.

[1] Measures which were taken to reduce the criteria for lifting of evacuation to 20mSv or less of annual integrated dose.

[2] Please clarify specifically, how far improvements of such infrastructures as schools, medical treatment, care and welfare has progressed in zones where designation of evacuation zones has been lifted as measures for reconstruction and creation of areas affected by the nuclear power plant disaster.

[3] How has measurement monitoring of radiation contamination on land and sea in Fukushima Prefecture and adjacent prefectures been made and published? How about budget measures required for monitoring until completion of reactor decommissioning and the implementation entity.

[4] If health damage and any other impact on health due to the nuclear power plant disaster are recognized, is the government able to establish a system to provide medical treatment without any burden on the patients?

(2) While the Act concerning Support for Reconstructing Livelihoods of Disaster Victims supports victims by household, why is it not changed to support by individual?

[Background Information]

1. Japanese government has expressed its intention not to repeal the provisions of the crimes of abortion.
2. The Maternal Protection Act, Article 14 is regarded as the justifiable cause for noncompliance with the law of the crimes of abortion under the Penal Code, which provides that a person shall not be punished by the crimes of abortion, but it requires the consent of the husband as a requirement for induced abortion. If the husband refuses consent to induced abortion, the woman will be forced to continue an undesired pregnancy and give birth against her will and in particular, in the case where domestic violence has resulted, life and body of the woman may be exposed to danger.
3. Expenses for early term abortion are as high as about ¥100,000, abortion method is mainly by the aspiration and the suction method recommended by the World Health

Organization (WHO), etc., has not been disseminated and the government has not allowed medical abortions.

4. In 2019, a law was enacted to provide a lump-sum of ¥3,200,000 to those who underwent eugenic operations under the old Eugenic Protection Act, but the contents are insufficient as the unconstitutionality of the old Eugenic Protection Act was not specified, induced abortion was not subject to compensation and notice to individual victims known to the administration was not specified<sup>12</sup>.
5. (1) Eight years have passed since the Great East Japan Earthquake and the disaster of the TEPCO Fukushima Daiichi Nuclear Power Plant, but recovery and reconstruction from the disaster has not been sufficient. The rate of return to the local communities where the evacuation instructions were lifted is not high. Victims who returned home are forced to live in an environment in which infrastructure is insufficient and there are many victims who are compelled to continue their life of evacuation.

In the Previous Concluding Observations, the Committee recommended that the State party should reaffirm that the lifting of designation of places as evacuation zones of contaminated areas with radiation exposure is consistent with internationally accepted knowledge on risk factors for women and girls considering that women are more sensitive to radiation than men, and further recommended that the State party should intensify the provision of medical and other services to women and girls affected by radiation, in particular pregnant women in Fukushima Prefecture<sup>13</sup>.

The JFBA aims at abandoning nuclear power generation, considers that it is an urgent task to carry out complete remedy of damages from nuclear power plants and measures for health damage by exposure to radiation in the future and improvement of the law to protect health from radiation contamination, and sets a goal in the “Declaration on Action for Human Rights” that the JFBA will make efforts to make various laws and regulations concerning compensation for damages, healthcare and energy policies, etc., more effective in terms of both remedy for damages by the disaster and prevention of recurrence.

- (2) In Japan, the household head is usually the husband and in such a case, support for the entire household is given to the husband. As a result, it is difficult for a woman, a wife to receive support.

8. Elimination of Discrimination in Marriage and Family Relations (Article 16) (Previous Concluding Observations, Paragraphs 12 and 13)

Proposed Questions for List of Issues

1. Regarding introduction of optional dual-surname system, has the government considered, based on the support of a majority of public opinion?
2. Please answer on the reasons why it is difficult to introduce abolition of the period of prohibition of remarriage for 100 days. Please answer on the status of review after the amendment of the Civil Code in June 2016.
3. Please clarify the specific measures taken to abolish the legal term of “illegitimate children” for children born out of wedlock under the law and to eliminate any social discrimination against children born out of wedlock.

[Background Information]

1. Introduction of the optional dual-surname system

The government has stated that introduction of the system would require the understanding of the people. In a “Public Opinion Poll on the Family Legal System,” conducted by the government in 2017, responses supporting the introduction of the optional dual-surname system far outweighed responses that it would be unnecessary. In addition, responses supporting the introduction of the system exceeded the majority among women between 18 and 49 years old, and consideration of a review based thereon is necessary.

2. Abolition of the period of prohibition of remarriage

It cannot be regarded as restrictions necessary to the minimum extent and unavoidable to establish the period of prohibition of remarriage only for women and the period of prohibition of remarriage should be abolished.

3. Children born out of wedlock

There is social discrimination as children born out of wedlock are “illegitimate” and it is necessary to eliminate such discrimination.

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<sup>1</sup> Report of the Committee on the Elimination of Discrimination against Women, Twenty-ninth session (A/58/38) p. 374

<sup>2</sup> Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW/c/jpn/co/6) (August 7, 2009)

<sup>3</sup> Concluding Observations on the Combined Seventh and Eighth Periodic Reports (CEDAW/c/jpn/co/7-8) (March 7, 2016)

<sup>4</sup> Refer to the Fourth Basic Plan for Gender Equality (December 25, 2015) Part 1

<sup>5</sup> Refer to the Fourth Basic Plan for Gender Equality (December 25, 2015) Part 1- 2 Viewpoints emphasized again in the Fourth Plan <Improvement of Foundation toward Realization of Gender Equal Society> (5)

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- <sup>6</sup> Constitutional Democratic Party (Proportional Representation: 40%), National Democratic Party (30%), Japanese Communist Party (50%)
- <sup>7</sup> Liberal Democratic Party: 14.6%, Constitutional Democratic Party: 45.2%, National Democratic Party: 35.7%, Komeito: 8.3%, Japan Restoration Party: 31.8%, Japanese Communist Party: 55%.
- <sup>8</sup> House of Representatives, as of December 25, 2019  
[http://www.shugiin.go.jp/internet/itdb\\_annai.nsf/html/statics/shiryo/kaiha\\_m.htm](http://www.shugiin.go.jp/internet/itdb_annai.nsf/html/statics/shiryo/kaiha_m.htm)
- <sup>9</sup> Members of House of Councillors, as of December 27, 2019  
<https://www.sangiin.go.jp/japanese/johol/kousei/giin/200/giinsu.htm>
- <sup>10</sup> The rate of female members of the House of Representatives is ranked at the 163rd out of 193 countries in the world as of December 1, 2019  
<https://data.ipu.org/women-ranking?month=12&year=2019>
- <sup>11</sup> Overview of the Equal Employment Opportunity Act by the Ministry of Health, Labour and Welfare  
<https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/0000087600.html>
- <sup>12</sup> List of Issues in relation to the Initial Report of Japan to the UN Committee on the Rights of Persons with Disabilities (CRPD/C/JPN/Q/1)  
[https://www.mofa.go.jp/mofaj/gaiko/jinken/index\\_shogaisha.html](https://www.mofa.go.jp/mofaj/gaiko/jinken/index_shogaisha.html)
- <sup>13</sup> Refer to the Concluding Observations of the Committee of 2016, Paragraphs 36 and 37