

ISSUE FOCUS

Implementation of the Convention on the Elimination of All Forms of Discrimination against Women in Japan

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Upon Japan's ratification of the Convention on the Elimination of all forms of Discrimination against Women in 1985, certain law reforms for gender equality were realized. However, international human rights law has impacted limitedly on the Japanese judiciary. The Women's Convention has been invoked by parties in a number of cases, but so far has never been positively quoted by the courts. On the other hand, the jurisprudence of individual complaints under the Optional Protocol of the Women's Convention has developed significantly. This paper introduces the case law of the individual complaint procedure of the Women's Convention, and identifies its significance in comparison with Japanese jurisprudence. As the jurisprudence of individual complaints under the Women's Convention is still in the law-making stage, the author encourages the Japanese government to ratify the Optional Protocol so that it can participate in the process of developing this jurisprudence.

Keywords

Gender Equality, CEDAW, The Women's Convention, UN Women, Optional Protocol, Individual Complaint, CEDAW-OP, Japan

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I. Introduction

Twenty-eight years have passed since Japan ratified the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter the Women's Convention or the Convention) in 1985. The Optional Protocol, which includes an individual complaint mechanism, was added to the Convention in 1999. At present, all nine core human rights treaties of the UN¹ are vested with individual complaint mechanisms. Yet, to date, Japan has not agreed to give individuals within its jurisdiction the right to access these mechanisms. Nonetheless, there has been a remarkable development of case law in treaty bodies.

The primary purpose of this research is to analyze the case law of individual complaints under the Optional Protocol of the Women's Convention in order to assess the potential impact of the ratification of the Optional Protocol by Japan. The remainder of this paper is composed of five parts including Introduction and Conclusion. Part two will give a brief history of Japan's law reforms upon ratification of the Women's Convention, and outline the shortcomings of these reforms as identified by the Committee on the Elimination of Discrimination against Women² (hereinafter the CEDAW Committee or the Committee). Part three will examine Japanese case law invoking the Women's Convention, and observe its limited impact as well as the negative attitude of the Japanese judiciary towards international human rights law. Part four will analyze the case law of individual complaints under the Optional Protocol of the Women's Convention, and contrasts it with the jurisprudence of Japanese courts. Finally, the author will propose, as a means of enhancing the implementation of the Convention, the establishment of a stronger link between the CEDAW Committee and UN Entity for Gender Equality and Empowerment of Women (hereinafter UN Women).³

¹ The followings are the nine conventions: the International Covenant on Civil and Political Rights (1966); the International Covenant on Economic, Social and Cultural Rights (1966); the International Convention on the Elimination of All Forms of Racial Discrimination (1965); the Convention on the Elimination of All Forms of Discrimination against Women (1979); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); the Convention on the Rights of the Child (1989); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1998); the Convention on the Rights of Persons with Disabilities (2006); and the International Convention for the Protection of All Persons from Enforced Disappearance (2006).

² CEDAW is a treaty body established pursuant to Article 18 of the Women's Convention to monitor State parties' implementation of their treaty obligations under the Convention.

³ G.A. Res. 64/289, U.N. Doc. A/RES/64/289 (July 21, 2010), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/479/17/PDF/N0947917.pdf?OpenElement> (last visited on Sept. 20, 2013).