

Washington International Law Journal

Volume 13 | Number 3

6-1-2004

No More Waiting for Revolution: Japan Should Take Positive Action to Implement the Convention on the Elimination of All Forms of Discrimination Against Women

M. Christina Luera

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wilj>



Part of the [Comparative and Foreign Law Commons](#), and the [Law and Gender Commons](#)

Recommended Citation

M. C. Luera, Comment, *No More Waiting for Revolution: Japan Should Take Positive Action to Implement the Convention on the Elimination of All Forms of Discrimination Against Women*, 13 Pac. Rim L & Pol'y J. 611 (2004).

Available at: <https://digitalcommons.law.uw.edu/wilj/vol13/iss3/5>

This Comment is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington International Law Journal by an authorized editor of UW Law Digital Commons. For more information, please contact lawref@uw.edu.

NO MORE WAITING FOR REVOLUTION: JAPAN SHOULD TAKE POSITIVE ACTION TO IMPLEMENT THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

M. Christina Luera[†]

Abstract: In 1985, Japan ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), which requires the eradication of all legal, political, social and cultural structures that prevent women from enjoying full equality with men. Under CEDAW, Japan is legally obligated to strive for actual, not just formal, equality between men and women. CEDAW also requires States Parties to take positive action to achieve gender equality.

Despite the Japanese government’s apparent efforts to comply with CEDAW over the last two decades, gender equality remains a distant reality. On July 8, 2003, the Committee on the Elimination of Discrimination Against Women reviewed Japan’s compliance with CEDAW and concluded that gender equality is being achieved at a glacial pace in Japanese society.

Japan’s failure to achieve a gender equal society is largely the result of the Japanese government’s rule by consensus. Under this system, social beliefs and practices dictate political action, and the government will not affirmatively act to change society in the absence of a social or political consensus. Effectively, Japanese leaders wait for social change to occur, and then adjust the law to conform to the new majority belief. Given that CEDAW’s vision of gender equality does not have widespread support among Japanese, the government’s approach to implementing CEDAW has been gradual, compromising and incomplete. While Japan’s efforts to comply with CEDAW have nearly attained formal gender equality under the law, on a practical level, the status quo has been almost entirely preserved. Rather than waiting for revolution, the government should take affirmative measures to transform Japan into a gender equal society. To do so while still maintaining its rule by consensus, the government needs to build a consensus that will support gender equality in Japan.

I. INTRODUCTION

In contemporary Japan, a woman’s life is defined by her gender. According to Japan’s conservative majority,¹ the ideal Japanese woman

[†] The author would like to thank all those who have assisted in the process of writing this Comment, including *Pacific Rim Law & Policy Journal* editorial staff for their patience and insight, as well as the University of Washington School of Law librarians for their knowledge and resourcefulness.

¹ Conservatism in Japan is characterized by a deep commitment to tradition and the status quo. See Paul Lansing & Tamra Domeyer, *Japan’s Attempt at Internationalization and Its Lack of Sensitivity to Minority Issues*, 22 CAL. W. INT’L L.J. 135, 140 (1991) (describing Japan’s aversion to change). That the conservatives are the majority is apparent from the “backlashes” to legislation and education campaigns that support women’s rights. See Japan NGO Network for CEDAW (“JNNC”), *Convention on the Elimination of All Forms of Discrimination Against Women: The Summary Report of the NGOs in Japan 11* (July 16, 2003), [http://www.jaiwr.org/jnnc/20030701jnncsummaryreport\(en\).pdf](http://www.jaiwr.org/jnnc/20030701jnncsummaryreport(en).pdf) (last visited May 21, 2004) [hereinafter *NGO Report*].

devotes herself exclusively to familial and domestic affairs, including caring for children and elderly relatives.² Indeed, the feminine ideal of *ryōsai kenbo*, “good wife, wise mother,” remains pervasive.³ The structure of Japanese society also continues to perpetuate traditional⁴ gender roles, limiting opportunities for women to be anything but caretakers.⁵

Despite this social environment, recent generations of women are postponing marriage and motherhood, indicating an unwillingness to be defined by *ryōsai kenbo*.⁶ Growing numbers of young women prefer living with their parents to marrying an incompatible mate.⁷ They enjoy their freedom by spending their salaries, earned from “pink-collar” jobs,⁸ on leisure activities and luxury items.⁹ Although these young women may not be consciously working to change social practices,¹⁰ their behavior indicates

² NANCY ROSENBERGER, *GAMBLING WITH VIRTUE: JAPANESE WOMEN AND THE SEARCH FOR SELF IN A CHANGING NATION* 16 (2001).

³ See Kathleen S. Uno, *The Death of “Good Wife, Wise Mother”?*, in *DIMENSIONS OF CONTEMPORARY JAPAN: WOMEN AND WOMEN’S ISSUES IN POST WORLD WAR II JAPAN* 225 (Edward R. Beauchamp ed., 1998). Developed by government officials in the late nineteenth century, the concept of *ryōsai kenbo* defined the ideal Japanese woman. *Id.* at 226. Even then, the official ideal did not reflect the reality of working class Japanese women. *Id.*

⁴ Recognizing that tradition is a social construct, and not merely a historical fact, this Comment uses the term “tradition” to describe social practices perceived as culturally-fixed by the conservative Japanese majority—those who believe that gender roles are determined by custom and seek to uphold them. Tradition is often used to legitimate social norms, justifying existing inequities. See Celestine I. Nyamu, *How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?*, 41 HARV. INT’L L.J. 381, 382 (2000). See *infra* Part IV.B for a discussion of how tradition is manipulated to sustain gender inequality in Japanese society.

⁵ For instance, the public pension program continues to favor the stay-at-home wife, exempting the spouse of a salary earner from paying premiums if she does not earn above a part-time wage. JNCC, *NGOs’ Answers to the List of Issues and Questions for the Consideration of the Fourth and Fifth Periodic Reports by Committee on the Elimination of Discrimination Against Women* 11 (May 2003), <http://www.jaiwr.org/jncc/japanngoanswersenglishfinal.pdf> (last visited May 21, 2004) [hereinafter *NGOs’ Answers*]. Limited opportunities for permanent and fulltime employment also function to keep women at home; women also continue to have difficulty obtaining non-secretarial employment with prospects for advancement, despite a statute enacted for the purpose of ending discrimination against women in the workplace. See *infra* Part III.A. See also Robbi Louise Miller, *The Quiet Revolution: Japanese Women Working around the Law*, 26 HARV. WOMEN’S L.J. 163, 191 (2003).

⁶ ROSENBERGER, *supra* note 2, at 132. In 2002, approximately half of Japanese women in their late twenties were unmarried, even though the traditional age of marriage for a woman was before twenty-five. Fifth Periodic Report of Japan, CEDAW/C/JPN/5 10 (Sept. 13, 2002), available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02/600/19/IMG/N0260019.pdf> (last visited May 21, 2002). Also, the average number of children Japanese women will have over their lifetimes, or the total fertility rate, is 1.36, indicating that the Japanese population, without immigration, will decline after 2006. *Id.*

⁷ ROSENBERGER, *supra* note 2, at 182-85.

⁸ The term “pink-collar” describes those forms of employment that have historically been dominated by women, such as nursing, elementary school teaching, and secretarial work. Diane L. Bridge, *The Glass Ceiling and Sexual Stereotyping: Historical and Legal Perspective of Women in the Workplace*, 4 VA. J. SOC. POL’Y & L. 581, 597 (1997).

⁹ ROSENBERGER, *supra* note 2, at 182-85.

¹⁰ See Miller, *supra* note 5, at 184 (interviewee stating: “I suppose if this were America, women in that position [of not being hired in jobs for which they are qualified] would feel discriminated against, and

that conservative ideals concerning gender are losing their hold on Japan. Indeed, many scholars have concluded that young women's choice to resist traditional roles foreshadows a significant change in gender relations in Japan.¹¹

The United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") seeks to facilitate this change to a gender equal society.¹² In 1985, Japan ratified CEDAW without reservations, pledging itself to establish gender equality throughout Japanese society.¹³ As a state party to CEDAW, Japan is legally obligated¹⁴ to pursue "all appropriate measures . . . to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."¹⁵ As part of its obligation, Japan must also submit periodic reports to the Committee on Elimination of Discrimination Against Women ("the Committee")¹⁶ every four years.

On July 8, 2003, the Committee reviewed Japan's fourth and fifth periodic reports,¹⁷ noting that the pace of social change with respect to gender equality has been "frustratingly slow" in Japan.¹⁸ Its pronouncement echoed the dissatisfaction expressed by Japanese nongovernmental organizations ("NGOs") during the Committee's review.¹⁹ The Committee also advised Japan to take more proactive measures to achieve greater

they'd try to do something about it. We [Japanese women] just react by going out and having fun, by not being a part of it [the corporate world].")

¹¹ As evidenced by the titles of the following books, many scholars have great hope that the social position of women in Japan will be improved soon: PATRICIA MORLEY, *THE MOUNTAIN IS MOVING: JAPANESE WOMEN'S LIVES* (1999); KAREN KELSKY, *WOMEN ON THE VERGE: JAPANESE WOMEN, WESTERN DREAMS* (2001); NANCY ROSENBERGER, *GAMBLING WITH VIRTUE: JAPANESE WOMEN AND THE SEARCH FOR SELF IN A CHANGING NATION* (2001).

¹² Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

¹³ Miller, *supra* note 5, at 194.

¹⁴ Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, art. 26, 1155 U.N.T.S. 331, 339 ("Every treaty in force is binding upon the parties to it and must be performed by them in good faith.").

¹⁵ CEDAW, *supra* note 12, art. 2(f).

¹⁶ The Committee is composed of twenty-three experts on women's rights. *Id.* art. 17.

¹⁷ Fourth Periodic Report of Japan, CEDAW/C/JPN/4 (Aug. 28, 1998), available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N98/355/16/IMG/N9835516.pdf> (last visited May 21, 2004), and Fifth Periodic Report of Japan, *supra* note 6.

¹⁸ See Press Release, Committee on Elimination of Discrimination Against Women, *Committee Experts Noting Important Progress in Japan's Legal Framework, Welcome New Legislation to Foster Gender Equality*, (Sept. 7, 2003), available at <http://www.un.org/News/Press/docs/2003/wom1408rev1.doc.htm> (last visited May 21, 2004) [hereinafter *Committee Press Release*].

¹⁹ See Yumi Wijers-Hasegawa, Group to Push for Greater Gender Equality in Japan, *JAPAN TIMES*, July 1, 2003. See also Government Faces Grilling on Women's Rights, *NIKKEI WEEKLY*, May 12, 2003.

gender equality.²⁰ Amid this domestic and international pressure, Japan should reevaluate its efforts to achieve gender equality.

Although Japan has already substantially complied with CEDAW by taking legal and political action,²¹ its efforts have not translated into actual gender equality.²² This Comment argues that Japan's efforts to legislate gender equality have failed because of the government's method of rule by consensus, under which law and politics must reflect social consensus in order to preserve social harmony.²³ In the absence of social consensus, the Japanese government's political actions are tentative at best.²⁴ As long as Japan's conservative social majority continues to embrace the ideal of *ryōsai kenbo*,²⁵ the government will weakly enforce legislation and policies that are contrary to this ideal.²⁶ Thus, Japan adopts gender equality legislation

²⁰ Report of the Committee on the Elimination of Discrimination Against Women, 29th Sess., Supp. No. 38, at 130-38, U.N. Doc. A/58/38 (2003) [hereinafter Report].

²¹ See *infra* Part III for a discussion of the efficacy of this government action. For the government's presentation of its efforts to comply with CEDAW, see Fifth Periodic Report of Japan, *supra* note 6. For the perspective of non-governmental organizations ("NGOs"), see *NGO Report*, *supra* note 1. See also Japan NGO Network for CEDAW, *Statement at the CEDAW Pre-Session Working Group* (Feb. 3, 2003), available at <http://www.jaiwr.org/jnnc/030203presen.html> (last visited May 7, 2004) [hereinafter *NGO Statement*].

²² This Comment uses the term "actual gender equality" to describe equality that is a social reality, which is actually experienced by women in their daily lives. Often called *de facto* equality, this form of egalitarianism is distinguished from *de jure* or formal equality that provides for equality in the law. For an explanation of the difference between *de jure* and *de facto* equality, see Masako Kamiya, *Women in Japan*, 20 U. BRIT. COLUM. L. REV. 447 (1986) (explaining that *de jure* equality can preserve the status quo, which includes discrimination against women).

²³ See FRANK UPHAM, *LAW AND SOCIAL CHANGE IN POSTWAR JAPAN 1-2* (1987). The values of harmony and consensus are derived from Confucianism. *Id.* at 1. See also Kiyoko Kamio Knapp, *Don't Awaken The Sleeping Child: Japan's Gender Equality Law and the Rhetoric Of Gradualism*, 8 COLUM. J. GENDER & L. 143, 145-46 (1999).

²⁴ See, e.g., *Committee Press Release*, *supra* note 18 (Japanese delegate, Mariko Bando, Director-General of the Gender Equality Bureau, explaining that a Panel on Equal Employment Opportunity Policies had not yet developed a policy concerning "indirect discrimination" against women, because it was still "build[ing] consensus" on the definition of indirect discrimination). In response to comments from the Committee criticizing the slow pace of social change in Japan, Ms. Bando admitted that in Japanese society there is "perhaps an excessive emphasis on consensus." *Id.*

²⁵ See *supra* note 3 and accompanying text. See also Knapp, *supra* note 23, at 160.

²⁶ The system of rule by consensus severely undermines the government's power to effect social change. Governments can successfully use law to remedy social injustices, regardless of popular dissention. For instance, in the United States, Congress enacted legislation to protect African-Americans' civil rights, even though significant portions of the country opposed the legislation. Civil Rights Act of 1866, Ch. 31, 14 Stat. 27 (codified as amended in scattered sections of 42 U.S.C. (2004)); Civil Rights Act of 1964, 42 U.S.C. § 2000 (2004). For information on difficulties in implementing this legislation, see generally Jack M. Beerman, *The Unhappy History of Civil Rights Legislation, Fifty Years Later*, 34 CONN. L. REV. 981 (2002). Encapsulating the American approach to using law to achieve social justice, the Supreme Judicial Court of Massachusetts maintained that "an unconstitutional situation [cannot be allowed] to fester because the remedy might not reflect a broad social consensus" in *Goodridge v. Dept of Public Health*, 328, 798 N.E.2d 941, 958 (Mass. 2003) (holding that the denial of marriage licenses to same-sex couples was a violation of the state's constitutional guarantee of equal protection). Conversely, the Japanese approach does not remedy social injustices until a social consensus supports those remedies.

without sanctions,²⁷ relying on individuals' voluntary compliance to change society. This tactic is contrary to CEDAW, which requires States Parties²⁸ to actively work for gender equality.²⁹ In order to faithfully comply with CEDAW while preserving its rule by consensus, the Japanese government must take affirmative measures to build a consensus that will support gender equality in Japan.

In exploring how the Japanese government may more effectively promote the creation of a gender equal society, this Comment examines the affirmative measures Japan should adopt to adequately implement CEDAW.³⁰ Part II of this Comment describes the Japanese government's obligations under CEDAW, as well as the legal, political, cultural, and social changes that gender equality requires. Part III evaluates the actions the Japanese government has already taken to achieve CEDAW's vision of gender equality and Part IV describes the limited social change that has resulted from these efforts. Finally, Part V discusses the cultural reasons for the slow progress of gender equality in Japan and recommends specific legal and political measures the Japanese government can use to initiate actual gender equality.

II. JAPAN'S OBLIGATIONS UNDER CEDAW

CEDAW is an ambitious international instrument that obligates all States Parties to strive for the ideal of gender equality. CEDAW has two distinct functions. First, it defines gender equality, providing an ideological framework that gives States Parties a substantive vision of the gender equality towards which they must strive.³¹ Second, CEDAW establishes a legal framework upon which gender equality may be initiated.³²

²⁷ For an explanation of Japan's use of law without sanctions, see John O. Haley, *Sheathing the Sword of Justice in Japan: An Essay on Law without Sanctions*, 8 J. JAPANESE STUD. 265 (1982).

²⁸ CEDAW uses the term "States Parties" to identify all the nation-states that have ratified the treaty. CEDAW, *supra* note 12, art. 2.

²⁹ CEDAW, *supra* note 12, art. 2 (stating "States Parties . . . agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women").

³⁰ Although rule by consensus severely limits the legal and political measures Japan may take to achieve gender equality, the author does not suggest that Japan alter its approach to government; that hegemonic suggestion does not adequately respect Japan's sovereignty or its Confucian values.

³¹ CEDAW, *supra* note 12, art. 1.

³² See *supra* note 14 and accompanying text.

A. *The Social Change Mandated by CEDAW Sets an Ambitious Goal for Japan*

Under CEDAW, Japan must rigorously pursue universal gender equality. First, CEDAW obligates Japan to provide gender equality in all aspects of life—political, economic, legal, domestic, educational, and most ambitiously, cultural.³³ Described as the “international bill of rights for women,”³⁴ CEDAW does not tolerate any cultural impediments to women’s exercise of essential rights and freedoms.³⁵ Thus, Japan must strive to eradicate all patriarchal³⁶ and androcentric³⁷ paradigms that structure Japanese culture,³⁸ regardless of whether they are state-sponsored.³⁹

³³ Article 1 establishes the scope of CEDAW’s application as “the political, economic, social, cultural, civil or any other field.” CEDAW, *supra* note 12, art. 1. In specifying that CEDAW seeks to secure women’s rights in “any other field,” Article 1 establishes CEDAW as utterly comprehensive, allowing no realm of human experience to become a sacred enclave for discrimination against women. See Brad R. Roth, *The CEDAW as a Collective Approach to Women’s Rights*, 24 MICH. J. INT’L L. 187, 189 (2002) (explaining that CEDAW extends to private as well as state discrimination and to intentional as well as de facto discrimination).

³⁴ Division for the Advancement of Women, *Convention on the Elimination of All Forms of Discrimination against Women*, at <http://www.un.org.womenwatch/daw/cedaw> (last visited May 7, 2004).

³⁵ CEDAW, *supra* note 12, arts. 1, 5. States Parties must “guarantee [women] the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.” *Id.* art. 3.

³⁶ Patriarchy, or “power of the fathers,” is the system that places men in positions of power over women in the family and in society. See WOMEN: IMAGES AND REALITY 9 (Amy Kesselman et al. eds., 2d ed. 1999). Through patriarchy women are disenfranchised from socioeconomic and political institutions, and the law is often the means of disinheriting women. See CATHERINE A. MACKINNON, SEX EQUALITY 2 (2001). For instance, during the nineteenth and early twentieth centuries in Western societies, women were denied the right to vote, own property, initiate lawsuits, and be employed and maintain one’s own earnings without spousal consent. Kristian Miccio, *Women and the Law*, in WOMEN: IMAGES AND REALITY 167-68, *supra*.

³⁷ An ideological framework that sustains patriarchy, androcentricism is the valuing of the male to the subordination of the female. Androcentricism posits male experience as the norm and the standard of humanity, while female experience is a deviation from that allegedly neutral and universal standard. See SANDRA L. BEM, LENSES OF GENDER: TRANSFORMING THE DEBATE ON SEXUAL INEQUALITY 40-42 (1993).

³⁸ CEDAW requires States Parties to eliminate “social and cultural patterns of conduct . . . which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women.” CEDAW, *supra* note 12, art. 5. CEDAW may be interpreted as advocating the destruction of culture, contravening the principles of multiculturalism. Much has been written about the fundamental conflict between multiculturalism and feminism. See, e.g., Gila Stopler, *Countenancing the Oppression of Women: How Liberals Tolerate Religious and Cultural Practices that Discriminate Against Women*, 12 COLUM. J. GENDER & L. 154 (2003). Yet, it is not a zero-sum conflict. Some scholars consider the “cultural legitimization of gender hierarchy” rather than cultural practices to be antithetical to the quest for gender equality. Nyamu, *supra* note 4, at 382-83. Because culture is multifaceted, those in power can appropriate cultural practices that support existing gender inequalities. *Id.* Thus, it is this use of culture to justify the status quo that is detrimental to gender equality. In addition, multiculturalism is not equivalent to cultural relativism, which refrains from passing value judgments on any cultural practice. Leti Volpp, *Blaming Culture for Bad Behavior*, in FEMINIST LEGAL THEORY: AN ANTI-ESSENTIALIST READER 282 (Nancy E. Dowd & Michelle S. Jacobs eds., 2003). Volpp asserts that “valuing difference does not destroy our ability to judge among differences,” concluding that feminism is not therefore incompatible with multiculturalism. *Id.* See also Leti Volpp, *Feminism Versus Multiculturalism*, 101 COLUM. L. REV. 1181

Second, CEDAW requires States Parties to pursue gender equality “by all appropriate means and without delay.”⁴⁰ Accordingly, Japan should not rely exclusively on legislation to achieve a gender equal society. Recognizing that legal equality does not necessarily result in actual equality, the Committee recommends that States Parties take “positive action” in order to fully implement CEDAW.⁴¹ Specifically, CEDAW encourages States Parties to use temporary special measures, such as preferential treatment or quota systems, to advance the social position of women.⁴² Thus, under CEDAW, Japan is obligated to adopt affirmative measures to establish gender equality in all aspects of its society. As an international treaty, CEDAW has legal force in Japan, establishing methods of enforcing the government’s obligations.

B. Judicial Interpretation Undermines CEDAW’s Force in Japan’s Legal Framework

Despite Japan’s favorable incorporation of international law in its legal framework, the judiciary, as well as other government officials, customarily undermine CEDAW’s legal force. In this framework, CEDAW has the same legal force as domestic Japanese law.⁴³ After the Diet⁴⁴ ratifies

(2001). In light of these distinctions, Article 5 of CEDAW can be interpreted as refusing to recognize a cultural defense that legitimates patriarchy and androcentrism.

³⁹ CEDAW, *supra* note 12, art. 2(e) (obligating States Parties to “eliminate discrimination against women by any person, organization or enterprise”).

⁴⁰ CEDAW, *supra* note 12, art. 2. The question of whether CEDAW, as a legal instrument, has the power to achieve the social change necessary for gender equality will not be fully explored in this Comment. See *infra* Part V.B for a brief discussion of the efficacy of law in achieving social change. Regardless of the answer to this question, the comprehensive equality required by CEDAW serves as an ideal by which progress can be measured. States Parties, including Japan, are legally obligated to achieve the closest approximation of universal gender equality within their societies.

⁴¹ Committee on the Elimination of Discrimination Against Women, *General Recommendation 5 on Temporary Special Measures*, Report of the Committee on the Elimination of Discrimination Against Women, 7th Sess., U.N. Doc. A/43/38 (1988), available at <http://www.un.org/womenwatch/daw/cedaw/recomm.htm> (last visited May 21, 2004) [hereinafter *Recommendation 5*].

⁴² CEDAW, *supra* note 12, art. 4. See also *Recommendation 5, supra* note 41. In its recent review, the Committee advised Japan to develop special temporary measures to increase employment opportunities for women and the number of women in political office. *Report, supra* note 20, at 136.

⁴³ Nihonkoku Kenpō [KENPŌ] [Constitution] art. 98, para. 2 (1946). English translation available at <http://www.solon.org/Constitutions/Japan/English/english-Constitution.html> (last visited May 21, 2004). This article states: “The treaties concluded by Japan and established laws of nations shall be faithfully observed.” *Id.* The Japanese government interprets Article 98(2) to give international law the force of law within Japan. YUJI IWASAWA, *INTERNATIONAL LAW, HUMAN RIGHTS, AND JAPANESE LAW: THE IMPACT OF INTERNATIONAL LAW ON JAPANESE LAW* 29 (1998). The precedence given to international law distinguishes Japan from other nation states. For example, the United States adopts a less deferential approach to international law. See *infra* note 45.

an international treaty, the instrument is presumed to be self-executing.⁴⁵ In addition, under the Japanese Constitution, a ratified international treaty supersedes domestic statutes.⁴⁶ While it is unclear whether a treaty can prevail over a conflicting provision of the Japanese Constitution,⁴⁷ the Japanese Constitution does not bar human rights conventions from providing citizens greater protection than domestic law.⁴⁸ Insofar as Japan ratified CEDAW without reservations, all of its provisions have the force of law in Japan and supersede domestic legislation.

Although Japanese citizens can bring suit in Japanese courts under CEDAW when particular provisions have been violated, these claims are generally unsuccessful.⁴⁹ Most Japanese courts assume that ratified international instruments, such as CEDAW, are directly applicable law⁵⁰ and do not examine the issue.⁵¹ While Japanese courts have generally rejected claims based on alleged CEDAW violations⁵² they have not done so based on the fact that CEDAW is inapplicable.⁵³ Thus, the presumption that CEDAW is directly applicable stands. Consequently, CEDAW theoretically

⁴⁴ The Diet is the main legislative body in Japan. See IWASAWA, *supra* note 43, at 2.

⁴⁵ A self-executing treaty is one that immediately has domestic legal effect without further government action beyond the act of ratification. KENNETH L. PORT & GERALD PAUL MCALINN, *COMPARATIVE LAW: LAW AND THE LEGAL PROCESS IN JAPAN* 839 (2d ed. 2003). In contrast, the United States presumes the exact opposite; without express language in the treaty declaring that it is self-executing, the United States will not grant it the force of law. *Id.*

⁴⁶ IWASAWA, *supra* note 43, at 95.

⁴⁷ PORT, *supra* note 45, at 842.

⁴⁸ See *infra* Part III.A.

⁴⁹ IWASAWA, *supra* note 43, at 63. PORT, *supra* note 45, at 842 (stating that human rights conventions "create standing for individual human rights plaintiffs"). A treaty with the force of law can be distinguished from one that is directly applicable. See IWASAWA, *supra* note 43, at 44-46. Whereas parties can request Japanese courts to interpret a treaty with the force of law, litigants can bring claims under a directly applicable treaty. *Id.* at 44-45. In Japan, a treaty that has domestic force of law is presumed to be directly applicable. *Id.*

⁵⁰ As the term implies, "directly applicable" treaties may be directly applied in domestic law, allowing citizens to bring suit under its provisions. IWASAWA, *supra* note 43, at 44.

⁵¹ PORT, *supra* note 45, at 842. Some courts have determined the question of direct applicability by looking to the intent of the parties as well as to the precision of the treaty's articles. IWASAWA, *supra* note 43, at 46-48. First, the presumption in favor of direct applicability will be nullified if the signatories have expressly provided that the treaty is not directly applicable. *Id.* at 47. Second, if the provisions do not require a particular course of action by one of the parties, the treaty cannot be directly applicable. *Id.* at 47-48.

⁵² For instance, in a challenge to Article 733 of the Civil Code which requires divorced women (but not men) to wait six months before remarrying, the plaintiff invoked *inter alia* Articles 2, 15, and 16 of CEDAW. 1375 HANREI JIHŌ 30 (Hiroshima District Court 1991). The court upheld the waiting period, since it ensured the certainty of a child's paternity and was therefore reasonable. See also Junko Torii, *International Human Rights Law and the Japanese Law Concerning Family Relations*, in *JAPAN AND INTERNATIONAL LAW, PAST, PRESENT, AND FUTURE* 265 (Nisuke Ando ed., 1999).

⁵³ IWASAWA, *supra* note 43, at 63. See *supra* note 52 for an example of the rationale given by Japanese courts for rejecting claims under CEDAW.

provides Japanese citizens with enforceable rights in Japan's legal system.⁵⁴ Yet, in practice, the judiciary appears reluctant to enforce these rights.

Although many scholars assume that human rights treaties, such as CEDAW, can be used to compel social change in Japan,⁵⁵ the force of these instruments is customarily undermined through judicial interpretation. Although trained to maintain judicial restraint, Japanese judges nevertheless act to preserve the social status quo by refusing to recognize legislation or governmental policies as violations of CEDAW.⁵⁶ For example, the Hiroshima High Court upheld the waiting period that prevents widows from marrying for six months after the death of a spouse as a reasonable measure to ensure accuracy in determining the paternity of children.⁵⁷ By interpreting CEDAW to prohibit only "unreasonable discrimination," the court ignored CEDAW's clear language, requiring States Parties to "condemn discrimination against women in *all* its forms."⁵⁸ Accordingly all gender discrimination, whether "reasonable," culturally-justified, or convenient, violates CEDAW.⁵⁹ As this example illustrates, Japanese courts can undermine CEDAW through judicial interpretation.

In addition, the legal force of CEDAW in Japan is compromised by the government's characterization of it as a "progressive" treaty. Progressive

⁵⁴ PORT, *supra* note 45, at 842. However, not all CEDAW provisions may be directly applicable; provisions that require a general policy or program rather than prohibit particular actions are not. The issue is similar to the U.S. constitutional doctrine of vagueness, which requires laws to provide an ascertainable standard of conduct so that those who are bound by the law have fair notice of the proscribed action. Japanese courts must have a clear standard by which to evaluate whether the government has violated CEDAW's provisions. Thus, Article 5, which requires States Parties to alter discriminatory customs, would not be directly applicable, because it would be difficult to prove that the government violated that provision. For instance, did the government violate the provision by not making those customs illegal? Or by not instituting a media campaign to change the stereotypes upon which those customs rely? Because there are numerous methods by which Article 5 can be implemented, Japanese courts will not recognize that it is directly applicable. Consequently, Article 5 and similar CEDAW provisions cannot be invoked by Japanese litigants.

⁵⁵ Kenneth L. Port argues that "the Japanese are actively utilizing international legal norms as transformative tools of social change." PORT, *supra* note 45, at 849. Port's optimism must be tempered by the reality that such transformation has been slow, at least as it pertains to women's rights. In more subdued tones, Junko Torii asserts that "Many Japanese are now aware that by utilizing human rights conventions they could transform their society." Junko, *supra* note 52, at 269.

⁵⁶ See Junko, *supra* note 52, at 268 (describing "the negative attitude of . . . Japanese court[s] toward the application of human rights conventions"). See also David T. Johnson, *American Law in Japanese Perspective*, 28 LAW & SOC. INQUIRY 771, 780-81 (2003) (explaining that the bureaucratically organized Japanese judiciary is predictably conservative, aligning themselves with the Liberal Democratic Party (LDP) "because Japanese judges who defer to LDP politicians on sensitive questions consistently do better in their careers than judges who do not").

⁵⁷ 1406 HANREI JIHO 3 (Hiroshima High Ct., Nov. 28, 1991). See also IWASAWA, *supra* note 43, at 241.

⁵⁸ CEDAW, *supra* note 12, art. 2.

⁵⁹ See *supra* Part II.A.

treaties identify specific goals that should be immediately realized.⁶⁰ Consequently, if the goal is not achieved at the time of signing, the treaty will not be considered breached.⁶¹ Japan views CEDAW as progressive in nature,⁶² although some scholars do not agree with this characterization.⁶³ By characterizing CEDAW as a progressive treaty, the government can escape the obligation to fully implement its provisions, justifying the gradual measures it has instituted to achieve gender equality.⁶⁴

III. CEDAW COMPELS JAPAN TO TAKE LEGAL AND POLITICAL ACTION BUT THESE EFFORTS FAIL TO ACHIEVE GENDER EQUALITY

In attempting to comply with CEDAW, the Japanese government has taken action apparently designed to achieve the treaty's objectives. CEDAW has prompted new legislation, such as the Equal Employment Opportunity Law and the Basic Law for a Gender-Equal Society.⁶⁵ In addition, the government also created administrative agencies designed to study the issue of achieving gender equality in Japan, monitor the progress toward this goal, and recommend policies the government can pursue.⁶⁶ These measures have substantially established formal gender equality under the law,⁶⁷ which is a prerequisite for actual equality.⁶⁸ Yet, even though the government has performed important work, CEDAW requires additional action.

⁶⁰ IWASAWA, *supra* note 43, at 40-41.

⁶¹ *Id.*

⁶² *See id.* at 43.

⁶³ *Id.* at 43-44.

⁶⁴ *Id.* at 209. *See also* NGO Statement, *supra* note 21 (stating that the government invoked the fact that CEDAW does not require immediate eradication of all discrimination against women to support the dismissal of a case to challenge the wage gap between men and women at a private company).

⁶⁵ *See infra* Part III.A-B.

⁶⁶ *See infra* Part III.C.

⁶⁷ IWASAWA, *supra* note 43, at 246-47. The Japanese government asserts that the Civil Code provides equal rights to men and women. *See* Hayashi Yoko, *Policies of the Japanese Government Toward Women*, in VOICES FROM THE JAPANESE WOMEN'S MOVEMENT 84 (AMPO ed. 1996). For a discussion of the parts of Japanese law that remain discriminatory toward women, *see id.* at 82-89.

⁶⁸ Formal equality is a necessary but not sufficient condition for actual gender equality. In order to move beyond this preliminary state of equality to a point of equilibrium in gender relations—which is actual equality—male privilege must be countered in society. CEDAW recommends that States Parties adopt temporary special measures which are more favorable to women in order to “accelerat[e] de facto equality between men and women,” expressly stating that such measures are not discriminatory. CEDAW, *supra* note 12, art. 4.

A. *Transcending Constitutional Limitations: CEDAW Provides for Greater Gender Equality Than the Japanese Constitution*

By prohibiting all discrimination, whether “reasonable” or employed by private actors, CEDAW affords greater protection for Japanese women’s rights than the Japanese Constitution. Before Japan ratified CEDAW, the Japanese Constitution was the primary instrument to guarantee gender equality.⁶⁹ Article 14 of the Constitution provides: “All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.”⁷⁰ This guarantee is only enforceable against the government, and accordingly does not bar gender-based discrimination in the private sector.⁷¹ Article 14 has been further limited by Japanese courts, which have interpreted the provision to only prohibit state action that unreasonably discriminates against women.⁷² Prompting Japan to transcend the limits of its Constitution, CEDAW compelled the enactment of the Equal Employment Opportunity Law⁷³ and the amendment of the Nationality Law of 1950.⁷⁴

1. *Equal Employment Opportunity Law Prohibits Private Discrimination*

CEDAW prompted Japan to enact the Equal Employment Opportunity Law (“1985 EEOL”) to remedy the discrimination women faced in private employment.⁷⁵ Before CEDAW was ratified, most Japanese employers

⁶⁹ See Yuji Iwasawa, *The Impact of International Human Rights Law on Japanese Law: The Third Reformation for Japanese Women*, 34 JAPANESE ANN. INT’L L. 21, 21-22 (1991) [hereinafter *Third Reformation*]. Following World War II, the Japanese Constitution was amended to provide women basic civil rights. *Id.* In addition to Article 14’s general guarantee of equality, Article 24 provides for equality in family life and Article 44 prohibits sexual discrimination in the right to vote and be elected to public office. KENPŌ, arts. 14, 24, 44 (1946). See also *Third Reformation, supra*, at 22.

⁷⁰ KENPŌ, art. 14, para. 1 (1946).

⁷¹ Miller, *supra* note 5, at 190. See also Kamiya, *supra* note 22, at 453.

⁷² Kamiya, *supra* note 22, at 454 (observing that judges use traditional gender roles to defend discrimination challenged under Article 14, and the challenged practice is then considered “reasonable and justifiable”).

⁷³ Equal Employment Opportunity Law, Law No. 113 of 1972, as amended by Law No. 45 of 1985 (partially reprinted in Nakano Mami, *Ten Years Under the Equal Employment Opportunity Law*, in VOICES FROM THE JAPANESE WOMEN’S MOVEMENT, *supra* note 67, at 79-81). The EEOL was later amended in 1997, see *infra* note 100. See also IWASAWA, *supra* note 43, at 215; Miller, *supra* note 5, at 193-94.

⁷⁴ Nationality Law, Law No. 147 of 1950, as amended by Law No. 45 of 1984. English translation available at <http://www.moj.go.jp/ENGLISH/CIAB/law01.html> (last visited May 21, 2004).

⁷⁵ Before the 1985 EEOL, the Labor Standards Law (“LSL”) provided the only legal protection specifically afforded to women employees in the private sector. See Labor Standards Law, Law No. 49 of 1947. English translation available at <http://www.campus.ne.jp/~labor/rootseiri/roukihoh.html> (last visited May 7, 2004). See also Miller, *supra* note 5, at 191; Catherine W. Brown, *Japanese Approaches to Equal*

assumed that women would only be employed until familial caretaking responsibilities became paramount in their lives, either upon marriage or the birth of children.⁷⁶ Many employers therefore structured work opportunities for women to reflect the belief that work should be of secondary importance in their lives, forcing them into part-time positions.⁷⁷ Also, women were hired almost exclusively into secretarial and other non-managerial positions, where they assisted their male co-workers and served tea.⁷⁸ As "office flowers," female office workers had the additional duty of bringing beauty and grace to the workplace.⁷⁹ Many women were therefore forced to retire upon marriage, pregnancy or at the age of thirty.⁸⁰ Female employees also had little or no opportunity for promotion,⁸¹ and employers would purposefully hire women who had completed high school or junior college, but not university graduates.⁸² The segregation of men and women in the work force was reflected in the employment section of newspapers, which had separate categories for women and men.⁸³ All of these practices conflict with CEDAW, which expressly requires the elimination of employment discrimination.⁸⁴

Realizing that legal reform was necessary before CEDAW could be ratified, the Japanese government enacted the 1985 EEOL, the first Japanese law to prohibit sexual discrimination and secure gender equality in private employment.⁸⁵ Under the 1985 EEOL, women did see some improvements

Rights for Women: The Legal Framework, 12 L. IN JAPAN 29, 30 (1979). Although the LSL prohibits "discriminatory treatment with respect to wages, working hours or other working conditions by reason of the nationality, creed, or social status of any worker," gender is not a protected category. Labor Standards Law, *supra*, art. 3. Most LSL provisions provide special protections for women, such as maternity leave. *Id.* art. 64-2 (Working Hours and Rest Days), art. 64-3 (Night Work), art. 64-4 (Ban on Underground Labor), art. 64-5 (Limitations on Dangerous and Injurious Work for Expectant and Nursing Mothers), art. 65 (Before and After Childbirth), art. 67 (Time for Childcare), art. 68 (Measures for Women for Whom Work During Menstrual Period Would be Especially Difficult). See also IWASAWA, *supra* note 43, at 213. Because these special protections authorized employers to treat women differently from men, the drafters of the LSL reasoned that LSL's protections for women would violate a guarantee of equality with men. *Id.* Unable to distinguish between discriminatory and disparate treatment, the drafters concluded that they could not extend Article 3's prohibition against discrimination to women. *Id.*

⁷⁶ See Mami, *supra* note 73, at 66.

⁷⁷ See *id.*

⁷⁸ IWASAWA, *supra* note 43, at 213. See also Brown, *supra* note 75, at 29.

⁷⁹ See Kiyoko Kamio Knapp, Note, *Still Office Flowers: Japanese Women Betrayed by the Equal Employment Opportunity Law*, 18 HARV. WOMEN'S L.J. 83 (1995) (describing women's role in the workplace as "ornamental"). See also IWASAWA, *supra* note 43, at 213 (stating that office flowers "needed to be replaced from time to time," alluding to the fact that their beauty fades).

⁸⁰ IWASAWA, *supra* note 43, at 213. See also Brown, *supra* note 75, at 34-40.

⁸¹ IWASAWA, *supra* note 43, at 213.

⁸² *Id.* For an explanation of this discrimination against women college graduates, see *infra* note 173.

⁸³ Miller, *supra* note 5, at 197.

⁸⁴ CEDAW, *supra* note 12, at art. 11.

⁸⁵ IWASAWA, *supra* note 43, at 213.

in their opportunities for employment.⁸⁶ For the first time, they could compete for career track positions with opportunities for advancement.⁸⁷ In addition, help wanted ads in newspapers were no longer segregated into male and female categories.⁸⁸

Despite the advances instituted by the 1985 EEOL,⁸⁹ the legislation was notoriously weak.⁹⁰ Most notably, compliance with the prohibitions of the 1985 EEOL was largely voluntary: the statute merely counseled employers to “endeavor” to provide equality in the areas of recruitment, hiring, assignment, and promotion.⁹¹ Only severe discrimination, such as mandatory retirement policies and the provision of different job training and fringe benefits to men and women, were categorically prohibited.⁹² Even if employers violated these specific prohibitions, however, the 1985 EEOL offered no formal legal consequences.⁹³ Rather than instituting fines or providing a cause of action,⁹⁴ the 1985 EEOL established a system of voluntary mediation that required the mutual consent of all parties.⁹⁵ Not only could an employer avoid mediation by withholding consent, but the

⁸⁶ Miller, *supra* note 5, at 197.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *But see* Miller, *supra* note 5, at 199, arguing that the 1985 EEOL merely codified the progress litigants had acquired in the landmark case of *Sumitomo Cement v. Suzuki*, 18 RŌ-DŌ-KANKEI MINJI SAIBAN REISHŪ 1407 (Tokyo Dist. Ct., Dec. 20, 1966), and its progeny. *Sumitomo Cement* held that forced retirement upon marriage violated the public policy articulated in Article 90 of the Civil Code. Miller’s argument, however, appears flawed because case law has no precedential value in a civil law state, such as Japan, where judicial decisions only provide remedies for the individual litigants. *See* IWASAWA, *supra* note 43, at 214-15.

⁹⁰ For criticism of the 1985 EEOL, *see* Knapp, *supra* note 23, at 154-73; Jan M. Bergeson & Kaoru Yamamoto Oba, *Japan’s New Equal Employment Opportunity Law: Weapon or Heirloom Sword?*, 1986 B.Y.U. L.REV. 865 (1986); M. Diana Helweg, Note, *Japan’s Equal Employment Opportunity Act: A Five-Year Look at Its Effectiveness*, 9 B.U. INT’L L.J. 293 (1991); Helen A. Goff, *Glass Ceilings in the Land of the Rising Sons: The Failure of the Workplace Gender Discrimination Law and Policy in Japan*, 26 LAW & POL’Y INT’L BUS. 1147 (1995); Robbi Louise Miller, Note, *Women’s Job Hunting in the “Ice Age”: Frozen Opportunities in Japan*, 13 WIS. WOMEN’S L.J. 223 (1998). *But cf.* Loraine Parkinson, *Japan’s Equal Employment Opportunity Law: An Alternative Approach to Social Change*, 89 COLUM. L. REV. 604 (1989) (arguing that the 1985 EEOL’s non-coercive approach could be effective); Barbara Molony, *Japan’s 1986 Equal Employment Opportunity Law and the Changing Discourse on Gender*, 20 SIGNS 268, 272 (1995) (concluding that, despite the EEOL’s inadequacies, it provided the perception that women could aspire to professional employment).

⁹¹ Equal Employment Opportunity Law, *supra* note 73, arts. 6-7. *See* Miller, *supra* note 5, at 196.

⁹² Equal Employment Opportunity Law, *supra* note 73, arts. 8-10. *See* IWASAWA, *supra* note 43, at 216.

⁹³ *See generally* Equal Employment Opportunity Law, *supra* note 73. *See also* Miller, *supra* note 5, at 196.

⁹⁴ Miller, *supra* note 5, at 196.

⁹⁵ Equal Employment Opportunity Law, *supra* note 73, arts. 13-21. *See also* Miller, *supra* note 5, at 196, 202.

employer could also disregard the mediator's proposed settlement, for it was not legally binding upon the parties.⁹⁶

Because the 1985 EEOL was largely voluntary, it failed to attain actual gender equality. In the early 1990s, only 3.7% of women were employed in jobs on the career track, whereas virtually all men (99%) were accepted into positions on that track.⁹⁷ These statistics suggest that discrimination against women in the workplace persisted, but in more indirect forms. Although employers could no longer prohibit women from applying for jobs on the professional track, they simply did not hire them when they did.⁹⁸ In fact, many employers still strenuously encouraged women to apply for traditionally "female" jobs.⁹⁹

Widespread criticism of the 1985 EEOL prompted the government to amend the statute in 1997 ("1997 EEOL").¹⁰⁰ The 1997 EEOL expressly prohibits all discriminatory practices and requires employers to provide equality in recruitment, hiring, assignment, and promotion.¹⁰¹ Yet, it too fails to provide strong enforcement mechanisms. The 1997 EEOL merely eliminates the mutual consent requirement for mediation and provides for publication of the names of companies who violate its provisions.¹⁰² The extent of the social change produced by these amendments, if any, has not yet been determined.¹⁰³

2. *1985 Amendment to the Nationality Act of 1950 Prohibits "Reasonable" Discrimination*

CEDAW also expanded the protections of Article 14 of the Japanese Constitution by providing for greater gender equality in Japanese nationality laws. Under the Nationality Law of 1950, the citizenship of a child was determined solely through paternity—such that a child born to a Japanese mother and a foreign citizen was not automatically a Japanese citizen, unlike

⁹⁶ Miller, *supra* note 5, at 202.

⁹⁷ Knapp, *supra* note 23, at 166.

⁹⁸ See Mami, *supra* note 73, at 72.

⁹⁹ Miller, *supra* note 5, at 175. See also Mami, *supra* note 73, at 69.

¹⁰⁰ Equal Employment Opportunity Law, Law No. 113 of 1972, as amended by Law No. 92 of 1997 [hereinafter 1997 EEOL]. English translation available at http://www.jil.go.jp/laborinfo-e/docs/lj_law4.pdf (last visited May 7, 2004). See IWASAWA, *supra* note 43, at 216.

¹⁰¹ 1997 EEOL, *supra* note 100, arts. 5-6.

¹⁰² IWASAWA, *supra* note 43, at 218.

¹⁰³ For further analysis of the 1997 EEOL, see Miller, *supra* note 5, at 203-207. See also Jennifer S. Fan, *From Office Ladies to Women Warriors?: The Effect of The EEOL on Japanese Women*, 10 UCLA WOMEN'S L.J. 103 (1999); Robert Larsen, *Ryousai Kenbō Revisited: The Future of Gender Equality in Japan After the 1997 Equal Employment Opportunity Law*, 24 HASTINGS INT'L & COMP. L. REV. 189 (2001).

a child born of the converse parentage.¹⁰⁴ In addition, naturalization was easier for immigrants married to Japanese men than for those married to Japanese women.¹⁰⁵ These provisions respectively violated Articles 9(2) and 9(1) of CEDAW, which require equal rights for women “with respect to the nationality of their children” and equal rights “to acquire, change or retain their nationality.”¹⁰⁶ The Japanese government subsequently recognized the need to amend the Nationality Law, and did so in 1985, the same year it ratified CEDAW.¹⁰⁷ As the amendment to the Nationality Law of 1950 demonstrates, CEDAW’s ability to prompt legal changes necessary to achieve gender equality in Japan is beyond that of the Japanese Constitution.

B. *Subsequent Legislation Prompted by CEDAW Lacks Specificity and Depth*

Since the ratification of CEDAW, Japan has enacted numerous laws designed to achieve gender equality.¹⁰⁸ Legislative action has ranged from nominal changes designed to enforce gender-neutral titles for health care professionals¹⁰⁹ to the comprehensive, such as the Basic Law for a Gender-Equal Society (“Basic Law”), which establishes principles for achieving gender equality in Japan.¹¹⁰ Such legislation indicates that the Japanese government is attempting to guide its society toward gender equality.¹¹¹

¹⁰⁴ Nationality Law, Law No. 147 of 1950, art. 2. See IWASAWA, *supra* note 43, at 226.

¹⁰⁵ Nationality Law, Law No. 147 of 1950, arts. 6-7.

¹⁰⁶ IWASAWA, *supra* note 43, at 227-28.

¹⁰⁷ *Id.* at 226-27. Ministry of Justice officials maintained that the amendment was not required under the Japanese Constitution, for a few years earlier, the Tokyo High Court had held that unequal standards for men and women in attaining nationality were constitutional. 33 GYŌSEI JIKEN SAIBAN REISHŪ 1374 (Tokyo Dist. Ct., Mar. 30, 1981). See IWASAWA, *supra* note 43, at 227-28. Although the court recognized that the requirements for nationality were not “entirely reasonable,” the court nonetheless found that the Nationality Act of 1950 was not “excessively unreasonable” and, therefore, constitutional. *Id.* at 227.

¹⁰⁸ Although CEDAW is the only legal instrument that compels Japan to adopt gender equality legislative measures, the feminist movement in Japan should also be credited with prompting this legislation. See Yoko, *supra* note 67, at 82. The pressure exerted by Japanese feminists was also instrumental in compelling Japan’s ratification of CEDAW. *Id.*

¹⁰⁹ Hokenshi Josanshi Kangoshihō No Ichibu Wo Kaisei Suru Hōtsu [Law Concerning Partial Amendment to the Law of Public Health Nurses, Midwives and Nurses] Law No. 153 of 2001. See Fifth Periodic Report of Japan, *supra* note 6, at 14.

¹¹⁰ Basic Law for a Gender-Equal Society, Law No. 78 of 1999. English translation available at http://www.gender.go.jp/english/basic_law/index.html (last visited May 6, 2003).

¹¹¹ The true motivations of the Japanese government remain unclear. It is suggested that Japan’s adherence to international human rights law is part of “a program of *kokusika* (internationalization) to counteract its xenophobic global image and cultivate an international outlook in Japanese society that is commensurate with Japan’s economic power.” PORT, *supra* note 45, at 840. If this were correct, it would seem that Japan is perfunctorily abiding by CEDAW and gender equality is not its true goal.

This guidance, however, is tentative, perhaps even reluctant in character.¹¹² Japan's gender equality legislation often lacks a concrete course of action to achieve its goals.¹¹³ As Japan's Basic Law and the Law for the Prevention of Spousal Violence and the Protection of Victims ("Law on Spousal Violence") demonstrate, without precise guidance for action, the efficacy of legislation is undermined.

1. *The Basic Law for a Gender-Equal Society Fails to Specify a Course of Action*

Enacted in 1999, the Basic Law provides general guidelines for achieving gender equality at each level of the Japanese government, but fails to provide definite steps for implementing those guidelines. The Basic Law identifies the following elements as essential to achieving gender equality: respect for the human rights of women and men, analysis of social systems or practices, joint participation of men and women in planning and deciding policies, equal responsibilities in family life and other activities, and international cooperation.¹¹⁴

The Basic Law also identifies the respective responsibilities of the national government, local governments, and ordinary citizens.¹¹⁵ It requires the national government and each prefecture¹¹⁶ to establish a basic plan for

¹¹² Even when a consensus has been reached, the government is slow to change its laws. For instance, Article 750 of the Civil Code currently requires each married couple to share the same surname. Suvendrini Kakuchi, *In Japan, Women Continue to Struggle to Change the Law to Allow Married Women to Retain Their Maiden Name*, INTERPRESS SERVICE, Sept. 6, 2001, RDS Contemporary Women's Issues 3064426. Although there are no legal impediments to the couple assuming the women's surname, 98% of all couples assume the name of the husband's family. *Id.* The remaining 2% accounts for when the bride's family has no male descendants and her husband takes her surname to continue the patriarchal line. IWASAWA, *supra* note 43, at 233. In a May 2001 survey, most respondents indicated that they supported married couples being able to have different names, such that women could retain their maiden names. *NGOs' Answers*, *supra* note 5, at 29. Yet, two years later, the bill to amend the Civil Code, which was introduced to the Diet in 1996, has not been enacted. *Id.*

¹¹³ In the recent review of the Fifth Periodic Report of Japan, the Committee asked the Japanese delegates about how various gender equity goals were going to be achieved, and the delegates had no answer. *See Committee Press Release*, *supra* note 18. For example, there was no plan as to how to attain the goal of increasing the number of elected officials who are women to at least 30% by the year 2010. *Id.* The delegates could only confirm that there were no affirmative action measures in place to achieve the goal. *Id.* They also indicated that the Japanese people did not approve of government action, such as quota systems, aimed to improve the position of Japanese women in society, viewing this action as reverse discrimination against Japanese men. *Id.*

¹¹⁴ Basic Law for a Gender-Equal Society, *supra* note 110, arts. 3-7. *See also* Fifth Periodic Report of Japan, *supra* note 6, at 17.

¹¹⁵ Basic Law for a Gender-Equal Society, *supra* note 110, arts. 8-10.

¹¹⁶ Japan is divided into forty-seven prefectures, which are regional divisions with their own system of local government. Japan Local Government Center (JLGC), *Local Government in Japan*, at <http://www.jlgc.org/japan/local.htm> (last visited March 28, 2004).

attaining a gender equal society,¹¹⁷ and it also recommends each municipality develop its own plan to reach that goal.¹¹⁸ Crucially, the Basic Law establishes that the national government should¹¹⁹ take “positive action” to fulfill its responsibility to “comprehensive[ly] formulat[e] and implement[] policies” that will create a gender equal society.¹²⁰ Under this provision, the national government should not merely suppress discriminatory action, but also creatively work to develop a society of equal opportunities, rights, and freedoms. However, government officials may be able to interpret the Basic Law as merely imposing a duty to take “reasonably necessary” positive action.¹²¹ Similar interpretations demonstrate that a reasonableness requirement has the potential to undermine the spirit of the entire provision.¹²²

The Basic Law further provides that citizens “shall make efforts to contribute to [the] formation of a Gender-Equal Society in all areas of society, including workplaces, schools, the local community and the home.”¹²³ Although this duty does not give rise to a cause of action,¹²⁴ it indicates that the government recognizes the role of individual citizens in achieving gender equality. Because social change is accomplished by the collective action of individuals,¹²⁵ consciousness-raising must be a

¹¹⁷ Basic Law for a Gender-Equal Society, *supra* note 110, arts. 13, 14. See Fifth Periodic Report of Japan, *supra* note 6, at 17.

¹¹⁸ Basic Law for a Gender-Equal Society, *supra* note 110, art. 14, para. 3.

¹¹⁹ Here, “should” is probably more accurate than “must.” The Basic Law does not expressly mandate that the government *must* take positive action. Rather, the reference to positive action is in parentheses, as follows: “The State is responsible for the comprehensive formulation and implementation of policies related to promotion of formation of a Gender-equal Society (including positive action. The same shall apply hereinafter.) pursuant to the basic principles on formation of a Gender-equal Society prescribed in Articles 3 to 7[.]” *Id.* art. 8. Given the general trend of Japanese law, the parenthetical most likely means that the government *should* take positive action. This is the most lenient interpretation.

¹²⁰ *Id.* art. 8. Positive action is defined as “[p]ositive provision of the opportunities stipulated [in the Basic Law] to either women or men within the necessary limits in order to redress gender disparities in terms of such opportunities.” *Id.* art. 2, para. 2. Positive action should be distinguished from affirmative action implemented in the United States to combat racial and sexual discrimination, which now has a negative connotation. Positive action is used in the philosophical sense to distinguish it from negative restraints. A law that compels positive action requires a person or entity to perform a particular action. For instance, a justice system that requires the tortfeasor to remunerate the plaintiff is compelling positive action from the tortfeasor. Conversely, a law that imposes a negative restraint instructs persons or entities to refrain from executing a particular action. For instance, the ancient prohibition, “Thou shalt not kill,” is a negative restraint.

¹²¹ The Basic Law’s definition of positive action, includes the proviso “within the necessary limits.” *Id.*

¹²² See *supra* Part II.B.

¹²³ Basic Law for a Gender-Equal Society, *supra* note 110, art. 10.

¹²⁴ This duty may be similar to the “duty to endeavor” imposed by the 1985 EEOC on private employers. See *supra* Part III.A.1.

¹²⁵ For additional discussion of the individual’s role in social change, see *infra* Part V.B.

fundamental part of initiating gender equality.¹²⁶ In their daily lives, Japanese citizens either perpetuate or deviate from androcentric social norms. Thus, each individual needs to be aware of his or her complicity in social systems of inequality, and thereby given the opportunity to decide whether to embrace or resist the patriarchal status quo.¹²⁷ Under the Basic Law, the Japanese government clearly encourages individuals to deviate from androcentric norms.

Nevertheless, the Basic Law fails to provide a concrete course of action for the attainment of gender equality. The government claims that the Basic Plan for a Gender-Equal Society, approved by the cabinet in 2000,¹²⁸ details concrete measures to achieve gender equality.¹²⁹ By setting out such measures in a document created by bureaucratic officials, however, the government conceals its precise plan of action from the public.¹³⁰

2. *Japan's Law for the Prevention of Spousal Violence and the Protection of Victims Does Not Cover All Aspects of Domestic Violence*

Enacted in April 2001,¹³¹ the Law on Spousal Violence was the first legislative effort to address the problem of domestic violence in Japan.¹³²

¹²⁶ As applied in the feminist context, consciousness-raising requires critical thinking about one's own conduct and realizing how it is influenced by and perpetuates androcentric norms. See Kathie Sarachild, *Consciousness-Raising: A Radical Weapon*, in *FEMINIST REVOLUTION* 144 (Kathie Sarachild ed., 1978).

¹²⁷ Thus, it is important for the government to establish public outreach efforts that promote the critical reflection required by consciousness-raising. See *infra* Part V.B.

¹²⁸ Fifth Periodic Report of Japan, *supra* note 6, at 18.

¹²⁹ The statement was made in its report to the Committee as follows: "11 important objectives were set out together with long-term policy directions up to the year 2010 and concrete measures to be implemented by the end of FY 2005 for each of them [in the Basic Plan]." *Id.*

¹³⁰ A summary of the Basic Plan for a Gender-Equal Society is published, but it merely lists the government's specific objectives without providing how they will be achieved. The only action suggested is conducting surveys or reviewing existing practices. Headquarters for the Promotion of Gender Equality, *Basic Plan for Gender Equality*, available at <http://www.gender.go.jp/women2001/n5.html> (last visited May 6, 2004).

¹³¹ Fifth Periodic Report of Japan, *supra* note 6, at 13.

¹³² Thirty percent of all divorces in Japan are initiated in direct response to physical violence. *Id.* at 177. Mental abuse accounts for another twenty-five percent of divorces. *Id.* One in twenty women has admitted to experiencing violence from a spouse or partner that made them fear for their lives. *Id.* at 25. Although there is no article in CEDAW that explicitly addresses violence against women, in 1992, the Committee confirmed that violence that either targets women because of their gender or affects women disproportionately constitutes gender discrimination. Committee on the Elimination of Discrimination Against Women, *General Recommendation 19 on Violence Against Women*, Report of the Committee on the Elimination of Discrimination Against Women, 47th Sess., U.N. Doc. A/47/38 (1992), available at <http://www.un.org/womenwatch/daw/cedaw/recomm.htm> (last visited May 7, 2004). See also MACKINNON, *supra* note 36, at 48. In addition, Article 16 mandates equality between men and women in marriage and family relations. CEDAW, *supra* note 12, art. 16. Accordingly, Japan's Law on Spousal Violence can be seen as complying with CEDAW.

Although this law provides a welcome system of protection for domestic violence victims, it remains inadequate.¹³³ The statute's three basic elements each have serious limitations.

First, the statute requires prefectures to establish counseling centers that also function as shelters for victims of domestic violence. Although the national government partially subsidizes these centers,¹³⁴ the statute does not require prefectures to establish a center in every municipality.¹³⁵ If a prefecture establishes only one center within its jurisdiction, it will have fulfilled the literal requirements of the law.¹³⁶ The statute should be amended to require a specific number of shelters per capita or a fixed number of shelters in order to ensure that all women have access to these valuable services.

The Law on Spousal Violence also establishes guidelines for reporting abuse, but these guidelines are weakened by their voluntary character.¹³⁷ The statute does not impose a legal duty on individuals (including physicians, medical personnel, and social workers) to report persons suspected of being victims of spousal violence.¹³⁸ The law simply provides that these persons "should endeavor" to report the victim to the local counseling center and provide information to suspected victims.¹³⁹ At a minimum, health care professionals should be required to refer suspected victims to a counseling center. Without information about the existing support system, these women cannot exercise their choice to use the services. In addition, it is important for health care workers to provide information about local counseling centers, because a belief that their problem is personal or shameful may prevent domestic violence victims from seeking help on their own.¹⁴⁰

Finally, the statute develops a limited system of protective orders. Only when a wife, but not a girlfriend, faces a "grave threat . . . constituting significant harm to life or bodily conditions" can a court issue a protective order.¹⁴¹ In the case of a wife who is no longer residing in the home she

¹³³ See Part III.A.1 regarding the voluntarism and resulting inadequacy of the 1985 EEOL.

¹³⁴ *Id.* art. 28.

¹³⁵ *Id.* art. 3.

¹³⁶ *See id.*

¹³⁷ Law for the Prevention of Spousal Violence and Protection of Victims, Law No. 31 of 2001, art. 3. English translation available at <http://www.gender.go.jp/dv/sv.pdf> (last visited May 6, 2004).

¹³⁸ *Id.* art. 6. Nor do these individuals have the duty to provide suspected victims with information about counseling services. *Id.*

¹³⁹ *Id.* art. 6, paras. 1, 4.

¹⁴⁰ *See WOMEN: IMAGES AND REALITY, supra* note 36, at 423.

¹⁴¹ Law for the Prevention of Spousal Violence and Protection of Victims, Law No. 31 of 2001, art.

once shared with her husband, the judge may enter a six-month protective order prohibiting the husband from approaching the premises.¹⁴² When the husband and wife share the same home, the protective order is valid for two weeks.¹⁴³ This system should be improved by extending its application to women who are not married to their abusers, so that all women who are abused by romantic partners may be protected. Removing the requirements of “grave threat” and “significant bodily harm,” which may be interpreted by judges as authorizing protective orders in only heinous cases of physical abuse, would additionally strengthen the statute.¹⁴⁴

The Basic Law and the Law on Spousal Violence are two of the statutes that Japan has recently enacted to comply with CEDAW.¹⁴⁵ Japan’s legislative efforts seem to demonstrate dedication to the goal of gender equality. Yet, the weak enforcement provisions of such legislation also confirm the Japanese government’s adherence to its method of rule by consensus.¹⁴⁶ In the absence of social consensus, legislation that is characterized by voluntarism cannot be effective.¹⁴⁷ Thus, the Japanese government cannot rely exclusively on legislation to achieve gender equality. Rather, additional action, such as may be performed by the new administrative agencies dedicated to gender issues, will be necessary.

C. *Institutional Changes Prompted by CEDAW Do Not Result in Substantive Political Action*

In complying with CEDAW, Japan has created a variety of administrative agencies focused on gender equality, but these agencies do not have the authority to implement the policies they recommend.¹⁴⁸ In 2001, the Council for Gender Equality (“Council”), composed of twelve ministers and twelve experts appointed by the prime minister, was

¹⁴² *Id.* art. 10, para. 1.

¹⁴³ *Id.* art. 10, para. 2.

¹⁴⁴ For instance, a judge might consider bruising permissible, because only broken bones are considered “significant bodily harm.” Also, if a threat is conveyed over the phone, rather than in person, it might not be considered grave. In its July review, the Committee further recommended that the statute expand the definition of violence to include non-physical abuse. *Report, supra* note 20.

¹⁴⁵ For a list of these statutes, see Fifth Periodic Report of Japan, *supra* note 6, at 12-14.

¹⁴⁶ For discussion of Japan’s rule by consensus, see *supra* Part I and *infra* Part V.A.2.

¹⁴⁷ See *infra* Part V.A.2.

¹⁴⁸ The Committee recommends States Parties to develop “effective national machinery” that are wholly dedicated to the goal of gender equality. Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 6 on Effective National Machinery and Publicity*, Report of the Committee on the Elimination of Discrimination Against Women, 7th Sess., U.N. Doc. A/43/38 (1988), available at <http://www.un.org/womenwatch/daw/cedaw/recomm.htm> (last visited May 7, 2004) [*Recommendation 6*].

established within the Cabinet Office.¹⁴⁹ The Council is responsible for monitoring the government's progress in establishing a gender equal society, surveying the results of the government's measures, and recommending basic policies.¹⁵⁰ However, the Council's ability to supervise the government's efforts is limited, as it convenes only four times a year.¹⁵¹ Most notably, contrary to the Committee's recommendation,¹⁵² the Council does not execute the policies it develops. Therefore, the Council has no authority to effectuate actual gender equality.

Similarly, the Gender Equality Bureau ("Bureau"), also established within the Cabinet Office in 2001, has a facilitating, rather than active, role.¹⁵³ The Bureau formulates plans for achieving gender equality, coordinates the government's efforts, and promotes public awareness of those efforts as well as the general principles necessary to achieve the goal of gender equality.¹⁵⁴ Effectively acting as a public relations office, the Bureau generally does not implement policies.¹⁵⁵ The Bureau, however, could include consciousness-raising activities within its public outreach efforts, and thereby become an integral part of Japan's efforts to achieve gender equality.¹⁵⁶

Even though Japan has created administrative agencies to address the issue of gender equality,¹⁵⁷ these agencies do not have the authority to take the positive action that is required to effectively facilitate the creation of a

¹⁴⁹ Fifth Periodic Report of Japan, *supra* note 6, at 15. The Cabinet Office is "the administrative body responsible for carrying out planning and overall coordination of policies among ministries from a higher position within the government structure." *Id.*

¹⁵⁰ *Id.* The following committees have been established under the Council for Gender Equality: Specialist Committee on Basic Issues, Specialist Committee on Violence Against Women, Specialist Committee on Monitoring and Handling Complaints, and Specialist Committee on Surveying Effects. *Id.* These committees are responsible for studying their respective fields, and then issuing a report that may include recommendations for the government. *NGOs' Answers*, *supra* note 5, at 2.

¹⁵¹ *NGOs' Answers*, *supra* note 5, at 2.

¹⁵² *Recommendation 6*, *supra* note 148 (suggesting that institutions be given the authority to "help formulate new policies and effectively carry out strategies and measures to eliminate discrimination").

¹⁵³ See Fifth Periodic Report of Japan, *supra* note 6, at 15-16.

¹⁵⁴ *Id.* at 16.

¹⁵⁵ Although a public outreach program can be considered a government policy if it is engineered to convey particular messages, the Bureau seems to be merely a news service, providing information about the government's activities. See generally Gender Equality Bureau, *Gender Information Site*, http://www.gender.go.jp/english_contents/index.html (last visited May 21, 2004).

¹⁵⁶ See *supra* Part III.B.1 for a discussion of the importance of consciousness-raising in achieving gender equality in Japan.

¹⁵⁷ In addition, the Chief Cabinet Secretary was given the additional responsibility of being Minister for Gender Equality, a position among the "Ministers of State for Special Missions" in the Cabinet Office. Fifth Periodic Report of Japan, *supra* note 6, at 16. The new agencies coexist with the Headquarters for the Promotion of Gender Equality, composed of the Prime Minister, the Chief Cabinet Secretary, and all Cabinet Ministers, in addition to the Liaison Conference for the Promotion of Gender Equality, which facilitates communication between NGOs, the government, and the public. *Id.*

more gender equal Japan. The power to implement affirmative measures, as required by CEDAW, ultimately rests with the prime minister or the Diet.¹⁵⁸ Yet, these state actors have not thus far used their power to comprehensively address the issue of gender equality. Accordingly, Japan has failed to become a gender equal society.

IV. THE POSITION OF WOMEN IN CONTEMPORARY JAPANESE SOCIETY REVEALS THAT GENDER EQUALITY REMAINS A DISTANT REALITY

Despite Japan's efforts to comply with CEDAW, significant differences in the position of men and women in Japanese society still exist.¹⁵⁹ In the realm of education, family, and employment, Japanese women continue to assume traditionally female roles.¹⁶⁰ The fact that Japanese women were not traditionally scholars is reflected in their low participation rates in more academically rigorous programs. As recently as 2001, women accounted for only 37% of university students, but nearly 90% of junior college students.¹⁶¹ In addition, the subjects studied by men and women at the university level are divided along gender lines.¹⁶² The most popular fields of study for female university students are home economics, humanities, and education, which more closely conform to women's traditional caretaking and domestic roles.¹⁶³ As of 2001, only 25% of female university students were enrolled in science courses, and a mere 10% attended engineering classes.¹⁶⁴

¹⁵⁸ For additional information about the structure of the Japanese government, see JOHN OWEN HALEY, *AUTHORITY WITHOUT POWER: LAW AND THE JAPANESE PARADOX* 139-144 (1991).

¹⁵⁹ Fifth Periodic Report of Japan, *supra* note 6, at 103-127 (illustrating disparities between men and women in education, employment, family life through demographic trends).

¹⁶⁰ Socialization rather than an essentialist view of men and women explains the different roles that women perform in contemporary Japanese society. A woman's identity is constructed around what is viewed as the traditional role of women in Japanese culture. See JOANNA LITTLE & SACHIKO NAKAJIMA, *RISING SUNS, RISING DAUGHTERS: GENDER, CLASS AND POWER IN JAPAN* 11 (2000). Rather than questioning this social construction, most Japanese women embrace it, as exemplified by the dominance of "housewife feminism" in the Japanese women's movement. See *id.* at 10-11. A more critical Japanese feminist, Matsui Yayori, explains that the social factors of "a conformist educational system, material affluence, and a culture of mass consumption" undermine women's consciousness of their social role and of social issues in general. See Matsui Yayori, *The Women's Movement: Progress and Obstacles* in VOICES FROM THE JAPANESE WOMEN'S MOVEMENT, *supra* note 67, at 32.

¹⁶¹ Fifth Periodic Report of Japan, *supra* note 6, at 104. Junior colleges in Japan have been called "bride-preparatory school[s]," as they are used to increase women's ability to marry well by being educated. ROSENBERGER, *supra* note 2, at 141. Therefore, junior colleges are less rigorous academically, and graduates usually do not intend to seek corporate careers.

¹⁶² *Id.* at 106.

¹⁶³ *Id.* (94% of female enrollees study home economics, 67% humanities, 60% education).

¹⁶⁴ *Id.*

The gender-based discrepancies in these statistics indicate that women's educational choices are being heavily influenced either by social pressures or the absence of employment opportunities.¹⁶⁵ Insofar as women's decisions in the field of education are constrained by discriminatory social and employment practices, these decisions are not made freely. The right to pursue education is arguably a fundamental freedom, protected by Article 1 of CEDAW.¹⁶⁶ In addition, constraints on women's educational choices can be seen as impermissible effects of socio-cultural and employment discrimination, which are clearly prohibited by CEDAW.¹⁶⁷

Within the family, women continue to bear nearly all the responsibility for domestic chores and family obligations, in direct violation of Article 16 of CEDAW, which provides that men and women have the same rights and responsibilities during marriage.¹⁶⁸ As a result, women of childbearing age continue to have very low participation in the work force.¹⁶⁹ After quitting a job to raise children, most women will return to low-paying part-time or temporary positions.¹⁷⁰ If her employer does not voluntarily provide daycare facilities, a mother with young children may not be able to retain a career-track position.¹⁷¹ In this employment system, women continue to confront difficult decisions regarding careers and children, even after the 1997 EEOL.

Furthermore, the slowly changing society in which Japanese women today live conflicts with CEDAW in at least two respects. First, although the choice to live outside the traditional female gender role is now available, Japanese women risk their virtue in exercising this choice.¹⁷² Women who choose to pursue careers rather than marriage and motherhood are viewed as selfish, unfeminine or "headstrong."¹⁷³ When they do not conform to *ryōsai*

¹⁶⁵ If there is no possibility of finding employment in a given field, one usually will not pursue a degree in that field. Thus, when only 3% of career track jobs are held by women, women will adjust their chosen field of study accordingly. Fifth Periodic Report of Japan, *supra* note 6, at 103.

¹⁶⁶ CEDAW, *supra* note 12, art. 1 (guaranteeing women the exercise of fundamental freedoms).

¹⁶⁷ Article 5 prohibits cultural practices that discriminate against women. CEDAW, *supra* note 12, art. 5. Article 11 prohibits discrimination in the field of employment. CEDAW, *supra* note 12, art. 11.

¹⁶⁸ CEDAW, *supra* note 12, art. 16(c). See also, Marsha A. Freeman, *The Human Rights of Women in the Family: Issues and Recommendations for Implementation of the Women's Convention*, in WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES 149, 158-59 (Julie Peters & Andrea Wolper ed., 1995).

¹⁶⁹ When graphed according to age, women's participation in employment creates an M-shaped curve. Miller, *supra* note 5, at 166. See also Fifth Periodic Report of Japan, *supra* note 6, at 103.

¹⁷⁰ See *NGOs' Answers*, *supra* note 5, at 11.

¹⁷¹ See Miller, *supra* note 5, at 166.

¹⁷² See ROSENBERGER, *supra* note 2, at 1-2.

¹⁷³ *Id.* at 186. See also Knapp, *supra* note 23, at 160 (quoting Furuuchi Masaru, personnel director of one of the largest bookstores in Japan, who in response to the question why the company did not hire

kenbo, women are considered deviant or marginal by the conservative majority, which is decreasing but still influential.¹⁷⁴ Conversely, female caregivers, who behave more consistently with traditional Japanese ideals, are viewed as compassionate, virtuous women.¹⁷⁵ This divergent treatment operates as a powerful social mechanism to compel women to perform traditional gender roles. Although social pressure to conform exists in most cultures, the mechanism violates Article 5 of CEDAW when it functions to encourage women to remain in stereotypical roles.¹⁷⁶

Additionally, women's development of dual selves—one to correspond to a public face and one that is the private, true self—conflicts with CEDAW's comprehensive guarantee of liberty for women.¹⁷⁷ Women in contemporary Japan outwardly project the image of dutiful women who emulate *ryōsai kenbo*, while privately allowing themselves the freedom to deviate from conservative conceptions of feminine duty.¹⁷⁸ For instance, some Japanese women no longer address their husbands in the traditional manner as either "master" or "father" while in the privacy of their homes.¹⁷⁹ Yet, these women generally revert back to using these traditional terms when in the presence of non-family members, particularly their husbands' co-workers and employers.¹⁸⁰ Using the distinction between public and private in this way preserves conservative social norms, providing the illusion that traditional customs remain firmly rooted. As expressly stated in Article 5, CEDAW stands to dissolve the cultural obstacles that prevent women from becoming openly independent.¹⁸¹ Within a gender equal society, women will be able to exercise the right of self-expression in the public realm.¹⁸²

female university graduates, stated: "[they] tend to stop working after a few years. And quite frankly, we find them rather headstrong."

¹⁷⁴ ROSENBERGER, *supra* note 2, at 222 (explaining that women who choose not to marry still experience marginalization, although less than in the past). In an interview with Nancy Rosenberger, a single woman in her early thirties stated: "You have to be a woman in a box—an ideal pattern—and then men spoil you and women approve." *Id.*

¹⁷⁵ *See id.* at 2, 161.

¹⁷⁶ CEDAW, *supra* note 12, art. 5(a) ("States Parties shall take all appropriate measures . . . [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women[.]").

¹⁷⁷ ROSENBERGER, *supra* note 2, at 2. CEDAW, *supra* note 12, art. 1.

¹⁷⁸ ROSENBERGER, *supra* note 2, at 2-3.

¹⁷⁹ *Id.* at 155-56. While in the home, some women preferred to address their husbands as *uchi no otoosan* (father of the house) and others referred to their husbands by their family names. *Id.*

¹⁸⁰ *Id.*

¹⁸¹ CEDAW, *supra* note 12, art. 5(a).

¹⁸² The right of self-expression should be a fundamental freedom protected by Article 1 of CEDAW. *See supra* note 166 and accompanying text.

In spite of the government's efforts to comply with CEDAW, contemporary Japanese society still retains many forces that undermine CEDAW's objectives. Because these efforts have not been sufficient to achieve actual gender equality, Japan should alter its approach to implementing CEDAW.

V. THE UNCERTAIN ROAD TO REAL CHANGE IN JAPANESE SOCIETY: HOW JAPAN CAN REALIZE CEDAW'S IDEAL OF GENDER EQUALITY

Japanese society appears to be posed on the verge of great social change in gender relations, for social attitudes about women appear to be evolving.¹⁸³ Unfortunately, given the persistent nature of patriarchy and cultural justifications for gender inequalities, Japan may maintain this position for generations. Without stronger government action, the dual forces of socialization and individual choice will determine social practices regarding gender in Japan. This uncertain route to gender equality is contrary to CEDAW, which requires Japan to take positive action¹⁸⁴ to achieve universal gender equality.¹⁸⁵ In order to comply with CEDAW, Japan cannot simply wait for gender equality to occur; it must actively guide its citizens toward a gender equal society. Because of its proclivity to govern through consensus, Japan must take measures to build a new social consensus that fully supports gender equality. Thus, the first task of the Japanese government should be to deconstruct conservative attitudes toward gender relations that preserve the unequal status quo.

A. *Undermining Japan's Cultural Legitimization of Gender Inequality*

Under Article 5 of CEDAW, the Japanese government has the obligation to work toward changing social customs and institutions that obstruct the realization of gender equality.¹⁸⁶ Thus far, however, Japan appears to have largely neglected this obligation.¹⁸⁷ The government should critically evaluate the cultural justifications conservatives offer to maintain the status quo. To do so, the Japanese government should counter historical justifications of gender inequality.¹⁸⁸ The government should also assess its

¹⁸³ See generally ROSENBERGER, *supra* note 2. See also *supra* note 174 and accompanying text.

¹⁸⁴ CEDAW, *supra* note 12, art. 2. See also *supra* note 119 and accompanying text.

¹⁸⁵ CEDAW, *supra* note 12, art. 1.

¹⁸⁶ *Id.* art. 5(a).

¹⁸⁷ See *supra* Part IV.

¹⁸⁸ In the name of history, Japanese women are relegated to the domestic role of wife and mother, even though the majority of women throughout Japanese history worked alongside their husbands. Anne

commitment to the cultural values of harmony and consensus—values conservative politicians rely on to preserve the status quo.¹⁸⁹ In order to comply with CEDAW, the government must take affirmative measures to ensure that its rule by consensus does not hinder the goal of gender equality; Japan must transcend cultural justifications for inequality.

1. *Historical Alternatives Should Be Used to Challenge the Cultural Justification for the Subjugation of Women in Japanese Society*

Although, as in most cultures, Japan has a history of gender inequality, there are also different social practices within this history that support CEDAW's objectives. In different eras, Japanese women were accorded different rights.¹⁹⁰ The system of honor and patriarchy¹⁹¹ that is recognized as "traditional" by contemporary Japanese was only created by Tokugawa shoguns in the 1600s.¹⁹² Under this hierarchical system, women were deprived of legal and economic rights.¹⁹³ In addition, Tokugawa sensibilities concerning feminine modesty prevented women from appearing in public.¹⁹⁴ This feminine ideal, however, was created with reference to the wives and daughters of the elite samurai class,¹⁹⁵ who comprised a mere six percent of Japanese society.¹⁹⁶ Commoner women did not remain indoors, for they worked in their fields alongside their husbands.¹⁹⁷ According to popular poetry during this period, commoner women were virtually equal to their husbands within their own family.¹⁹⁸ Thus, the contemporary Japanese conception of traditional gender roles is based on customs that applied to an under-representative minority of women during one period of their extensive

Walthall, *Devoted Wives/Unruly Women: Invisible Presence in the History of Japanese Social Protest*, 20 SIGNS 106, 111 (1994).

¹⁸⁹ UPHAM, *supra* note 23, at 2 (describing the position which "dismiss[es] the cultural explanations [of Japan's undeveloped legal system] as a politically convenient myth used by Japanese elites to legitimize the suppression of conflict"). See also *infra* Part V.A.2.

¹⁹⁰ For a brief history, see Ryosuke Ishii, *The Status of Women in Traditional Japanese Society*, 29 JAPANESE ANN. INT'L L. 10 (1986).

¹⁹¹ Walthall, *supra* note 188, at 108.

¹⁹² *Id.* at 108. See also ROSENBERGER, *supra* note 2, at 7.

¹⁹³ Walthall, *supra* note 188, at 108. For instance, all household property was inherited patrilineally. *Id.* In a patrilineal system of inheritance, property passes only from father to son, or the next closest male descendant to the patriarch, or head of the household.

¹⁹⁴ Walthall, *supra* note 188, at 108, 110.

¹⁹⁵ *Id.* at 111.

¹⁹⁶ ROSENBERGER, *supra* note 2, at 7.

¹⁹⁷ Walthall, *supra* note 188, at 111.

¹⁹⁸ *Id.*

history.¹⁹⁹

Before the Tokugawa, or Edo, period, women had greater political, legal and economic rights. In the archaic period of Jodai, there were female sovereigns.²⁰⁰ By contrast, the Imperial House Law in contemporary Japan specifies that the emperor must be male, ensuring that there will be no more ruling empresses.²⁰¹ Also during the Jodai period, husbands either went to live with their wives or constructed new homes,²⁰² rather than wives assuming a place in their husbands' ancient family home, as in the Tokugawa period. This practice suggests that Jodai households were less patriarchal than households in present-day Japan.²⁰³ Also, in the subsequent Josei period, women were allotted farmland²⁰⁴ and retained their family name.²⁰⁵ Today, however, the Japanese Civil Code requires married couples to share the same surname, effectively compelling women to assume their husbands' family name.²⁰⁶

The various rights and liberties Japanese women have held throughout history provide ample cultural examples that the current government can use to help create a more equal role for contemporary women. Although the conservative majority has employed gender-based ideals of the Edo period to justify current gender inequalities, the government should develop a campaign that emphasizes different aspects of Japan's history. In public outreach and consciousness-raising efforts,²⁰⁷ government agencies could help the public understand that their culture and history are more diverse and egalitarian than commonly conceived. The reality of Japan's diverse history undermines the current conservative consensus that feminism threatens

¹⁹⁹ For further explorations of the status of women in Japanese history, see RECREATING JAPANESE WOMEN, 1600-1945 (Gail Lee Bernstein, ed., 1991); JAPANESE WOMEN: NEW FEMINIST PERSPECTIVES ON THE PAST, PRESENT, AND FUTURE (Kumiko Fujimura-Fanselow & Atsuko Kameda, eds., 1995); WOMEN AND CLASS IN JAPANESE HISTORY (Hitomi Tonomura, et al., eds., 1999).

²⁰⁰ See Ishii, *supra* note 190, at 12.

²⁰¹ Imperial House Law, Law No. 3 (1947), c. I, art. 1 (stating "[t]he Imperial throne shall be succeeded to by male descendants in the male line belonging to the Imperial lin[e]age.") The death of males in the royal family has prompted discussions about amending this provision, but no bill has been introduced to the Diet. *Imperial Succession Debate Muted as Japan Awaits Baby*, JAPAN POLICY & POLITICS, Nov. 26, 2001, 2001 WL 31665479.

²⁰² Ishii, *supra* note 190, at 11-12.

²⁰³ Although the Tokugawa household system was officially abolished after World War II, remnants of the system still exist in contemporary Japan. *Third Reformation*, *supra* note 69, at 22. For instance, Japanese families continue to desire a male household head, as evidenced by a daughter's husband assuming that position when there are no sons in the family. See *supra* note 112 and accompanying text.

²⁰⁴ Ishii, *supra* note 190, at 12.

²⁰⁵ *Id.* at 13.

²⁰⁶ MINPŌ (Civil Code), art. 750. See also Kakuchi, *supra* note 112.

²⁰⁷ Such efforts can satisfy the Japanese government's duty to take positive action to achieve gender equality. Positive action does not have to be in the form of much-contested quota systems. See *supra* note 120 and accompanying text.

traditional Japanese values.²⁰⁸ In addition, a more complex understanding of Japanese history de-stigmatizes alternate conceptions of a woman's proper social role. Thus, by criticizing conservatives' use of culture, the government may make significant progress toward the goal of gender equality. Similarly, Japan has much to gain by critically evaluating its commitment to the traditional values of social harmony and consensus.

2. *The Government Cannot Allow the Cultural Values of Harmony and Consensus to Impede the Goal of Gender Equality*

By implementing gradual measures to achieve gender equality as required by its rule by consensus, the Japanese government fails to meet its obligations under CEDAW.²⁰⁹ Japan's emphasis on consensus as a prerequisite to social change²¹⁰ creates a social inertia that effectively preserves the conservative status quo.²¹¹ Although Japan does not have to forsake its Confucian values, it must not allow them to obstruct Japan's stated goal of attaining a gender equal society. The government must be critical of politicians' use of supposed cultural values to preserve the status quo, and it should be cognizant of the limitations of achieving CEDAW's goals while preserving harmony and consensus. By gaining this awareness, the government may more readily identify measures it should adopt to comply with CEDAW.

Government officials' use of Confucian values is widely perceived as a tool to further political objectives.²¹² Since the end of World War II, Japan has been almost continuously ruled by the Liberal Democratic Party

²⁰⁸ For examples of the conservative view of the feminist goal of gender equality and the role of CEDAW in achieving it, see Michiko Hasegawa, '*Danjo Koyō Byōdo Hō*' *Wa Bunka No Seitaikei Wo Hakaisuru* [The Equal Employment Law Threatens Cultural Ecology], 99 CHUO KORON 78 (May 1984); Taro Yayama, '*Danjo Koyō Byōdo Hō*' *Wa Nihon Wo Tsubusu* [The Equal Employment Law Will Destroy Japan] 16 SHOKUN 240 (May 1984). See also IWASAWA, *supra* note 43, at 215.

²⁰⁹ Knapp, *supra* note 23, at 145-46.

²¹⁰ *Id.*

²¹¹ Every society has social and political institutions that seek to preserve the status quo. Japan is unique in that it uses cultural values to oppose social change; however, the same political and economic investments in the status quo belie Japan's cultural justifications. See *infra* note 214.

²¹² Robert L. Kidder & John A. Hostetler, *Managing Ideologies: Harmony as Ideology in Amish and Japanese Societies*, 24 LAW & SOC'Y REV. 895, 896 (1990) (asserting that in Japan "an informalist antilaw ideology of harmony and consensus is deliberately promoted and sustained by leader elites who are pursuing goals and using strategies that do not conform with the ideals they profess"). See also Chalmers Johnson, *The People Who Invented the Mechanical Nightingale*, in SHOWA: THE JAPAN OF HIROHITO 71, 88 (Carol Gluck & Stephen R. Graubard eds., 1992) (stating "Japan is a . . . developmental state based on a covert conservative alliance [who *inter alia* use cultural values] to keep the people docile and preoccupied with nonessential matters"). See also Larsen, *supra* note 103, at 190 (maintaining that "the government has used Confucian values in order to build support for . . . policy agenda[s]").

("LDP"), which, despite its name, is conservative and elitist.²¹³ The LDP uses cultural values to justify its political decisions, concealing prosaic political interests.²¹⁴ It is these political interests, rather than Confucian values, that are opposed to establishing a more gender equal society.²¹⁵ In this political regime, the invocation of harmony and consensus to defend gradual measures to achieve gender equality must be considered critically.²¹⁶ Additionally, even if the government were to adopt the position that gradual measures are necessary, it should develop a concrete plan of action that incorporates the principle of gradualism. For instance, legislation can be enacted that incrementally establishes greater protections for women's rights and stronger enforcement.²¹⁷ Even though these measures would be gradual, they would constitute positive action by the government, as required by CEDAW and recommended by Japan's own Basic Law.

Rule by consensus limits Japan's ability to meet CEDAW's goals, and Japan must strive to transcend these limitations. The purpose of consensus-based rule is to avoid social conflict by not imposing laws and policies on an unsupportive populace.²¹⁸ Although this principle is admirable, it does not recognize justice as a reason to compel social change.²¹⁹ In addition, without a pre-existing state of harmony, rule by consensus merely suppresses conflict, ignoring minority groups, including feminists, and their demands for social justice. Despite Japan's claim to be a harmonious society,²²⁰ it is

²¹³ Sylvia Brown Hamano, *Incomplete Revolutions and Not So Alien Transplants: The Japanese Constitution and Human Rights*, 1 U. PA. J. CONST. L. 415, 416 (1999).

²¹⁴ Johnson, *supra* note 212, at 88 ("[T]he obstacles to basic change in Japan are almost never what Japanese spokesmen say they are. What stands in the way is not the need for consensus . . . [but] political vested interests.").

²¹⁵ *Id.*

²¹⁶ It is not necessary to delve into ulterior governmental motives, however. It is sufficient to observe that these motives probably exist, providing an additional reason why cultural justifications should not be allowed to bar social change.

²¹⁷ Such legislation would be more effective than statutes such as the 1985 EEOL, for women's groups would not have to pressure the government to continually revise it. In the event that such a comprehensive scheme is too difficult to negotiate, statutes could have sunset provisions that would force the government to reevaluate their efficacy.

²¹⁸ See Knapp, *supra* note 23, 145-46.

²¹⁹ Government action without popular support may seem unwise, or even coercive and undemocratic. The author of this Comment does not intend to suggest that the Japanese government needs to tyrannically enforce CEDAW. Simply, in the conflict between conservatives who wish to sustain gender inequality and international human rights standards, the author asserts that principles of justice and equality should prevail.

²²⁰ To substantiate the myth that Japan is a nation of harmony and consensus, the government points to litigation rates that are lower than other industrialized nations. Upham, *supra* note 23, at 1-2. However, lower litigation rates can also be explained by the fact that Japanese legislation provides for informal dispute resolution rather than causes of action for potential litigants. *Id.* at 22. Upham also argues that by siphoning power away from the legal system in order to maintain social control, the bureaucracy conceals conflict. *Id.* at 17. Negotiations and compromises occur within private discussions between bureaucrats,

not culturally homogenous²²¹ and minority groups were struggling for justice and equality in Japan before any human rights treaties were ratified.²²² By definition, Japan's rule by consensus does not adequately address minority concerns,²²³ which is particularly alarming in the context of human rights. Although Japan may choose to uphold the cultural ideals of harmony and consensus, it must also comply with its legal obligations under CEDAW, which requires social justice for women.²²⁴

The simplest resolution of the conflict between the principles of harmony and justice would be to provide a human rights exception to the rule by consensus.²²⁵ This approach, which would require Japan to abandon its Confucian values when implementing CEDAW, is not likely to be accepted by the Japanese government. Alternatively, Japan may maintain its rule by consensus, but allow the government to foster that consensus.²²⁶ In this scheme, the government would transition from investigating what the consensus is²²⁷ to building a new consensus. This would allow the government to maintain social harmony while fulfilling its obligations to CEDAW. Thus, rather than merely assessing the attitudes of the citizenry, the Japanese government should educate its citizens so as to cultivate attitudes that support gender equality.²²⁸

The values of harmony and consensus do not foreclose the possibility of gender equality in Japan. Rather, the government should seek creative solutions within this cultural framework, not only when drafting legislation

politicians, and businessmen. *Id.* at 15-16. Contention in Japanese society is thereby veiled by the seamless functioning of the bureaucracy. It should be noted that the myth of a satisfied consensus marginalizes dissenting voices. If society were viewed as a continuum of different perspectives and interests, women might not have to conceal their real selves from the public. *See supra* Part IV.

²²¹ Lansing & Domeyer, *supra* note 1, at 141-44. *See generally* JAPAN'S MINORITIES: THE ILLUSION OF HOMOGENEITY (Michael Weiner ed., 1997).

²²² Hamano, *supra* note 213, 418-20.

²²³ It is the nature of Japan's rule by consensus to have political policies address the concerns of the majority rather than any minority groups. *See generally* Lansing & Domeyer, *supra* note 1.

²²⁴ Although CEDAW does not use the term "social justice," the entire enterprise of securing equality and liberty for women is grounded in principles of justice; women are entitled to the rights enumerated in CEDAW by virtue of their human dignity. CEDAW, *supra* note 12, annex. Because it is unjust to deprive a person of her natural entitlements, CEDAW secures justice as well as equality by protecting women's rights.

²²⁵ Members of the Committee effectively adopt this position when saying *inter alia* to Japan "changes of the civil code [are] not so much the matter of public opinion, but of obligations under the Convention." *See Committee Press Release, supra* note 18.

²²⁶ As applied to gender equality, Japan's rule by consensus allows majority belief to influence government action but overlooks the fact that government action can influence the social consensus. *See supra* note 26 and accompanying text. In other arenas, the government has not been so shortsighted, mobilizing the public through slogans and media campaigns. *See infra* note 229 and accompanying text.

²²⁷ *See supra* Part III.C.

²²⁸ *See infra* Part V.B. for further discussion.

but also when instituting political policies. Throughout Japanese history, the government has sought to mobilize its people for its own purposes.²²⁹ It should apply similar efforts to creating a gender equal society.

B. By All Appropriate Means: Japan Needs to Take Positive Action to Achieve CEDAW's Goals

In order to achieve actual gender equality, Japan must do more than enact legislation. CEDAW recognizes that law has severe limitations as a method of initiating social change²³⁰ and therefore requires States Parties to use any and all appropriate measures to achieve gender equality.²³¹ Changes in law do not automatically result in social changes, which require individual citizens to alter their behavior and ideological perspectives.²³² The individual is the locus at which social change needs to occur.²³³ Consequently, law is always an uncertain means of achieving social change because human beings are self-determining agents with deep psychological commitments to custom.²³⁴ For these reasons, CEDAW requires Japan to take measures beyond legislation.²³⁵

In order to make gender equality in Japan a social reality, as required by CEDAW, Japan should build the requisite consensus concerning women's roles in society. Rather than studying what the consensus

²²⁹ ROSENBERGER, *supra* note 2, at 18, 66-7, 127-130 (stating that government endorsed "individualism" for women in order to promote consumerism in the 1980s and later encouraged middle-aged women to have an "independent way of working" so that they could occupy part-time, temporary, and contract positions in the 1990s). See also LIDDLE & NAKAJIMA, *supra* note 160, at 128 (discussing the government transition from the slogan "Bear more children and increase the population" to "Build more aeroplanes" in order to address its changing needs during World War II).

²³⁰ Kamiya, *supra* note 22, at 447. See also Berta Esperanza Hernandez-Truyol, *Latinas, Culture and Human Rights: A Model for Making Change, Saving Soul*, 23 WOMEN'S RTS. L. REP. 21, 33 (2001).

²³¹ See *supra* Part II.A.

²³² Sachiko Kaneko, *The Struggle for Legal Rights and Reforms: A Historical View*, in JAPANESE WOMEN: NEW FEMINIST PERSPECTIVES ON THE PAST, PRESENT, AND FUTURE, *supra* note 199, at 11.

²³³ This assumption is apparent in an analysis of the effectiveness of law in the civil rights movement in the United States, which includes a discussion of individual compliance with law. See HARRELL R. RODGERS, JR. & CHARLES S. BULLOCK III, LAW AND SOCIAL CHANGE: CIVIL RIGHTS LAWS AND THEIR CONSEQUENCES 182-85 (1972).

²³⁴ Law, and indeed any other system including propaganda and the media, cannot completely regulate individual belief and action.

²³⁵ Although law can prompt ideological change, it should be supplemented by additional government action. In the case of the 1985 EEOL, even though it was accompanied by "a general acclimation to the concept of equality within Japanese society," it still failed to achieve actual equality within the workplace. Miller, *supra* note 5, at 198. In addition, Japan needs to go beyond legislative measures, because its use of law without sanctions is often undermined by its consensus-based rule. Although voluntary legislation can be effective in Japan, cultural values substitute as the enforcement mechanism. PORT, *supra* note 45, at 13. Thus, because legislation prompted by CEDAW is not supported by a clear consensus, statutes without sanctions will not be completely effective, as illustrated by the 1985 EEOL.

currently is,²³⁶ the Japanese government should proactively create a consensus that supports women's rights to autonomy and self-determination. Japan's Gender Equality Bureau, which already is responsible for increasing the public's awareness of the government's efforts to achieve gender equality, should develop a media campaign designed to change conservative attitudes toward gender roles.²³⁷ Education programs for youth should also be a vital part of this consciousness-raising campaign. Also, the government should mobilize its citizenry by developing slogans that promote a more gender equal Japan.²³⁸ Furthermore, rather than focusing solely on the values of harmony and consensus, the government's rhetoric should also invoke the principles of justice and equality.²³⁹

IV. CONCLUSION

Although Japan has made legislative and administrative changes in order to comply with CEDAW, it has not achieved actual gender equality. Neither has its efforts fully created legal equality for women.²⁴⁰ The contemporary social reality of Japan is far from the gender equal society conceived by CEDAW, which entitles women to actual equality in the political, economic, legal, domestic, educational, and cultural aspects of life.

In Japan, the traditional values of consensus and harmony are the primary impediments to achieving gender equality. The government's rule by consensus has stymied legislative efforts to provide equality for women. Although the Japanese government does not have to renounce its Confucian ideals, it is obligated under CEDAW, as well as its own Basic Law, to take positive action to initiate gender equality. Because the absence of consensus constrains legislative and political action, the government should act to cultivate a new consensus that embraces the ideal of a gender equal society. Without reinforcement by cultural values, the government's legislation and policies cannot fully succeed. Thus, the Japanese government should implement consciousness-raising programs, educating the public about women's issues.

Under CEDAW, the Japanese government's efforts have positioned Japan at the verge of creating a truly gender equal society. Social attitudes

²³⁶ See *supra* Part III.C. See also *supra* note 5 and accompanying text.

²³⁷ Many of the government's own officials will have to change their attitudes toward women. See Kakuchi, *supra* note 112. An interviewee characterized male politicians as "old and conservative." *Id.*

²³⁸ See *supra* note 229 and accompanying text.

²³⁹ See *supra* Part V.A.2.

²⁴⁰ See *supra* note 67.

are changing; women are deviating from *ryōsai kenbo* by postponing or foregoing marriage and motherhood. The government, however, cannot remain idle, waiting for this social change to occur. CEDAW demands further effort: Japan must take positive action to prompt the social change, guiding its citizens in building a gender equal society.

