

The Impact of the United Nations Human Rights Treaties on the Domestic Level in Japan

Ayako Hatano, Hiromichi Matsuda and Yota Negishi

1 Introduction to Human Rights in Japan

The protection of fundamental human rights with respect to the dignity of an individual is the foundational principle of the Japanese Constitution. Based on the reflection of the devastation of World War II, the post-war Japanese Constitution contains an article on the renunciation of war and contains an elaborate Bill of Rights¹ that lists civil and social rights as justiciable rights.²

Japan is a constitutional democracy with a multi-party parliamentary system in which the emperor has strictly ceremonial duties. The National Diet, Japan's bicameral legislature, is the sole law-making organ of the state, composed of a lower house called the House of Representatives and an upper house, the House of Councillors. Both houses are elected directly using a parallel voting system. The Prime Minister is the head of the government and the leader of the national cabinet, where executive power is vested.³ The Supreme Court and the lower courts conduct judicial reviews independently under the

1 Constitution of Japan <https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html> accessed 29 May 2021, art 9. Some scholars and lower courts argue that the second paragraph of the Preamble and art 9 guaranteed the right to live in peace, eg T Fukase, *Sensō Hōkito Heiwateki Seizonken (Renunciation of War and the Right to Live in Peace)* (Iwanami 1987) 225–228; Nagoya High Court, Judgment, 17 April 2008, 1313 *Hanrei Times* 137, 146 (recognising the justiciability of the right to live in peace as a concrete right). However, the Supreme Court has not recognised the justiciability of the right to live in peace. While there have been constant attempts to amend the Constitution by the conservative ruling party, the Constitution of Japan remains in effect without a single amendment as of 2020. S Matsui, 'Fundamental Human Rights and "Traditional Japanese Values": Constitutional Amendment and Vision of the Japanese Society' (2018) 13 *Asian Journal of Comparative Law* 59.

2 Constitution of Japan, arts 11, 13 and 14.

3 The Prime Minister is appointed by the emperor after being designated by the National Diet and must enjoy the confidence of the House of Representatives to remain in office.

Constitution.⁴ The separation of powers is guaranteed under the Constitution of Japan.⁵

During the period covered by this study, from 1999 to 2019, Japan's political landscape was deemed relatively stable, with the conservative Liberal Democratic Party (LDP) continuing in power, except for a brief break from 2009 to 2012 when the Democratic Party of Japan (DPJ) held power. In general, the country's population has enjoyed peace without direct engagement in war and good socio-economic status with a highly developed free-market economy.⁶

However, Japan faces numerous human rights challenges. According to the white paper on human rights in Japan,⁷ the Japanese government has identified a list of human rights issues in Japan including those related to women

4 The judiciary consists of three main levels: district courts (trial courts), high courts, which are the first level of appeal, and the Supreme Court, the highest and final appeal court. See the Constitution of Japan <https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html> accessed 29 May 2021, arts 76, 77 and 78. There is no 'constitutional court' in Japan which determines the constitutionality of any laws without being accompanied by legal disputes and issues. All courts (the Supreme Court, High Courts and district courts) can examine compatibility of domestic laws with constitution and treaties. The Supreme Court is composed of the chief justice and 14 justices with a grand bench made up of all 15 justices and three petty benches with five justices each. The cases are first assigned to one of the three petty benches, and these cases that involve constitutional questions are transferred to the grand bench for its inquiry and adjudication. There are also different types of courts, such as family courts and summary courts, which deal with specific types of cases.

5 Prime Minister's Office, 'Constitution of Japan' <https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html> accessed 29 May 2021. At the end of the 19th century, the Empire of Japan adopted the Meiji Constitution (1889) and pursued a programme of industrialisation and modernisation. Under the Meiji Constitution, the emperor used to be the sovereign, and protection of human rights was limited. The new Constitution of Japan was enacted in 1946 during the occupation after its defeat in World War II, with a declaration of the popular sovereignty principle and of the emperor as the symbol of the state and of the unity of the people.

6 Japan's economy grew to become the world's second largest behind the US from 1968 until 2010, when it was overtaken by China. Japan struggled with economic deficiencies in and after the so-called 'lost decade' of the 1990s with growing economic inequalities. See M Koraha, and F Ohtake, 'Rising Inequality in Japan: A Challenge Caused by Population Ageing and Drastic Changes in Employment' in B Nolan and others (eds), *Changing Inequalities and Societal Impacts in Rich Countries: Thirty Countries' Experiences* (OUP 2014).

7 Ministry of Justice (MOJ), 'The Protection of Human Rights FY2019' (December 2019) <<https://www.moj.go.jp/ENGLISH/HB/activities/pdf/booklet2019.pdf>> accessed 16 November 2022; MOJ, 'Reiwa 2 Nen ban Jinken Kyōiku Keihatsu Hakusho (White Paper on Human Rights Education and Awareness-Raising FY2020)' <https://www.moj.go.jp/JINKEN/jinken04_0043.html> accessed 16 November 2022.

(sexual harassment, domestic violence, forced engagement in pornography);⁸ children (bullying, corporal punishment, sexual exploitation, and child abuse); elderly people, *Burakumin* (Dowa issues);⁹ Ainu people;¹⁰ foreign nationals;¹¹ HIV and Hansen's disease patients; people released from prison after serving their sentence; crime victims; human rights violations on the internet; victims abducted by North Korean authorities; homeless people; persons with disabilities; people with alternate sexual orientation and gender identity (SOGI);¹² human trafficking; and human rights problems arising after natural disasters. While the Government of Japan emphasises its efforts and the measures taken in the white paper,¹³ Japan faces severe criticism from international and domestic human rights organisations in several areas.¹⁴ The treaty bodies have repeatedly expressed their concerns to Japan because it has not established national human rights institutions (NHRI) in accordance with the Paris Principles, nor has it accepted individual communications mechanisms under any of the human rights treaties and their optional protocols or the enactment of a comprehensive anti-discrimination law.

8 The country ranks 116th out of 146 countries in terms of gender equality according to the World Economic Forum. See World Economic Forum, 'Global Gender Gap Report 2022' <http://www3.weforum.org/docs/WEF_GGGR_2022.pdf> accessed 12 October 2022.

9 The *Burakumin*, or *Buraku* people, is an outcast group in Japan's feudal order and has been discriminated against for a long time, even after the feudal caste system formally ended in the late 19th century. Buraku Liberation League, 'What is Buraku Discrimination' <<http://www.bll.gr.jp/en/index.html>> accessed 13 December 2020.

10 The Ainu are an indigenous people of the lands surrounding the Sea of Okhotsk, including Hokkaido Island, recognised by the Japanese government. See the Advisory Council for Future Ainu Policy, 'Final Report' <http://www.kantei.go.jp/jp/singi/ainu/dai10/siryou_en.pdf> accessed 13 December 2020.

11 The ethnic minority groups residing in Japan and often subjected to discriminatory treatment include, but are not limited to, residential Koreans (*Zainichi* Koreans who came to Japan from the Korean peninsula before and during World War II and their descendants, and newcomers) and other residents of foreign origin.

12 Organisation for Economic Co-operation and Development (OECD), 'Society at a Glance 2019: A Spotlight of LGBT People' (27 March 2019) <<http://www.oecd.org/japan/sag2019-japan-en.pdf>> accessed 9 February 2020.

13 See n 7.

14 Eg, see Human Rights Watch, 'World Report 2019: Japan' <<https://www.hrw.org/world-report/2019/country-chapters/japan#>> accessed 22 March 2021; Human Rights Watch, 'World Report 2020: Japan' <<https://www.hrw.org/world-report/2020/country-chapters/japan>> accessed 22 March 2021; Human Rights Watch, 'World Report 2022: Japan' <<https://www.hrw.org/world-report/2022/country-chapters/japan>> accessed 10 April 2022.

This chapter explores the impact of the United Nations (UN) human rights treaties on Japanese law, policy, judicial decisions, and society during the 20 years after 1999.¹⁵

2 Relationship of Japan with the International Human Rights System¹⁶

Japan has developed its relationship with the international human rights system in line with its political priorities as well as with prudent consideration of legal consistency between international and domestic laws. As a matter of general principle, human rights issues were not allowed to interfere with central concerns such as the pursuit of economic self-interest and national security. Thus, it is said that 'Japan's foreign policy towards human rights was almost non-existent until the 1980s'.¹⁷ Such a passive stance in human rights diplomacy often resulted in contradictions with its pro-Western diplomatic allies in multilateral forums. While it has taken human rights into account in its foreign policy since the late 1970s, the Japanese Government's response to human rights violations in the international community has generally been passive.

Japan joined the UN in 1956 and has become one of its most significant financial contributors.¹⁸ Japan is a party to all core human rights treaties, with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW).¹⁹ Japan acceded to the 1951 Convention Relating to the Status of Refugees in 1981 and the 1967

15 The main period of focus is between 30 June 1999 and 30 June 2019, while some recent important developments after this period may be covered in the chapter. This chapter does not aim to cover all relevant issues but rather to highlight some critical cases and evident narratives during the period.

16 This section includes Japan's relations with the UN human rights mechanism except for the UN human rights treaty mechanism which will be detailed in the next section.

17 Y Yokota and C Aoi, 'Japan's foreign policy towards human rights: Uncertain changes' in D P Forsythe (ed), *Human Rights and Comparative Foreign Policy: Foundations of Peace* (United Nations University 2000).

18 Japan contributed 8.5% of the UN regular budget in 2020, while its voluntary contribution to the UN Office of the High Commissioner for Human Rights (OHCHR) was less than 0.1% of the total amount in 2020. Ministry of Foreign Affairs (MOFA), '2020-2022 *Nen Kokuren Tsujō Yosan Buntanritsu Futankin* (2020-2022 UN Regular Budget Contributions and Assessment Rates)' <https://www.mofa.go.jp/mofaj/gaiko/jp_un/yosan.html> accessed 10 April 2022; United Nations, 'Human Rights Report 2020' <<https://www.ohchr.org/Documents/Publications/OHCHRreport2019.pdf>> accessed 13 December 2020.

19 For details, see part 4 below.

Protocol Relating to the Status of Refugees in 1982²⁰ and ratified the Rome Statute of the International Criminal Court (ICC) in 2007.²¹ However, Japan has not ratified the Convention on the Prevention and Punishment of the Crime of Genocide on the grounds that it may conflict with the Constitution and domestic law.²² It also has yet to ratify two of the eight core conventions of the International Labour Organization (ILO) on the grounds of possible inconsistencies with the domestic legal framework.²³ While there is no regional international human rights mechanism in East Asia, the Government of Japan conducts regular dialogues with the human rights body of the Association of Southeast Asian Nations (ASEAN)²⁴ and bilateral 'human rights dialogues' with

20 See UNHCR, 'States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol' <<https://www.unhcr.org/protection/basic/3b73bod63/states-parties-1951-convention-its-1967-protocol.html>> accessed 13 December 2020.

21 MOFA, '*Kokusai Keiji Saibansho* (International Criminal Court)' <<http://www.mofa.go.jp/mofaj/files/000162093.pdf>> accessed 26 January 2020. It took a long discussion before Japan ratified the ICC Rome Statute as the 105th signatory state. After its ratification, Japan has been the significant financial contributor to the ICC. For the status of Japanese ratification of the major international treaties regarding human rights, see Hurights Osaka, '*Shuyōna kokusai jinken jōyakuto hijun jōkyōno ichiran* (List of major international human rights treaties and their ratification status)'. <<https://www.hurights.or.jp/archives/treaty/un-treaty-list.html>> accessed 9 January 2021.

22 '*Kempōto Jōyaku: Ryōritsuwa Eienno Jiremma* (The Constitution and Treaties: Their Compatibility is an Eternal Dilemma)' (Mainichi, 20 May 2002) <<https://mainichi.jp/articles/20020520/org/00m/010/999000c>> accessed 16 January 2021.

23 ILO, 'Ratification for Japan' <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102729> accessed 18 March 2021; Japan Trade Union Confederation, '*8tsuno Jōyōna ILO Jōyaku, Nihonga 2tsu Mihijunna Wake: Chūkakateki Rōdō Kijun 4 Bunya, 8 Jōyaku* (Eight Important ILO Treaties, Why Japan Has Not Ratified Two of Them: Core Labour Standards, Four Areas, Eight Treaties)' <<https://www.jtuc-rengo.or.jp/shuppan/teiki/gekkanrengo/backnumber/data/201703why.pdf?91>> accessed 18 March 2021; ILO, 'C105 – Abolition of Forced Labour Convention, 1957 (No 105)' <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::55:P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C105,/Document> accessed 18 March 2021; ILO, 'C111 – Discrimination (Employment and Occupation) Convention, 1958 (No 111)' <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_ILO_CODE:C111> accessed 18 March 2021.

24 In 2009 the ASEAN established the ASEAN Intergovernmental Commission on Human Rights (AICHR) to promote human rights in the 10 ASEAN countries. See also ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), 'ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) Work Plan 2021–2025' <<https://asean.org/book/asean-commission-on-the-promotion-and-protection-of-the-rights-of-women-and-children-acwc-work-plan-2021-2025/>> accessed 7 September 2023. As a related entity, the ASEAN Committee on Women (ACW) was established as a subsidiary body of the ASEAN Ministerial Meeting on Women. ACW has organised ACW+3 meetings with Japan, China, and Korea since

several countries such as Cambodia, Myanmar, Iran, Sudan and the People's Republic of China.²⁵

Japan has undergone the Human Rights Council's Universal Periodic Review (UPR) in the first (2008), second (2012), and third (2017) cycles.²⁶ The number of recommendations received in each review steadily increased to 26, 174, and 217, respectively.²⁷ From the first to the third review, the country has continuously received numerous recommendations in the areas of the abolition of the death penalty, the establishment of a domestic human rights institution, the introduction of an individual communications mechanism, discrimination against women, and racial discrimination. This highlights the current gap between international human rights standards and the country's situation.

2009. ASEAN, 'AMMW – Overview' <[https://asean.org/asean-socio-cultural/asean-ministerial-meeting-on-women-ammw/overview/#:~:text=\(ASCC\)%20Pillar.,ASEAN%20Committee%20on%20Women%20\(ACW\),work%20plan%2C%20and%20managing%20partnerships](https://asean.org/asean-socio-cultural/asean-ministerial-meeting-on-women-ammw/overview/#:~:text=(ASCC)%20Pillar.,ASEAN%20Committee%20on%20Women%20(ACW),work%20plan%2C%20and%20managing%20partnerships)> accessed 15 November 2020; Gender Equality Bureau Cabinet Office, '*Joseini kansuru ASEAN+3 iinkai* (ASEAN+3 Committee on Women ACP+3)'. <https://www.gender.go.jp/international/int_kaigi/int_acw3/index.html> accessed 15 November 2020.

25 For example, MOFA, 'The Seventh Japan-Myanmar Human Rights Dialogue' (21 February 2020) <https://www.mofa.go.jp/press/release/press4e_002579.html> accessed 9 January 2021.

26 OHCHR, 'Universal Periodic Review – Japan' <<https://www.ohchr.org/EN/HRBodies/UPR/Pages/JPindex.aspx>> accessed 1 November 2020. See also UPR Info, 'Japan' <https://www.upr-info.org/en/review/Japan?device=c&gclid=EAIaIQobChMIIt3yoe-C7QIViuJ3Ch2_MQaQEAAAYASAAEgLjvD_BwE> accessed 9 January 2021.

27 Japan has consistently accepted more than 60% of recommendations from the UPR, with a slight decrease in the latest cycle. OHCHR, 'Infographics' <https://lib.ohchr.org/HRBodies/UPR/Documents/Session28/JP/JAPAN_Infographic_28th.pdf> accessed 1 November 2020. In the second cycle of UPR in 2012, Japan accepted 125 recommendations (71,8%) out of 174. It accepted 145 recommendations out of 217 (66,8%) in the third cycle in 2017. As for contents, the 145 recommendations accepted in the third cycle include those concerning national human rights institutions, individual complaints mechanism, human rights education, business and human rights, human trafficking, sexual exploitation, prohibition of corporal punishment, gender equality, persons with disabilities, migrant workers, and the Fukushima nuclear accident. Japan partially accepted to follow up on 10 recommendations, such as those regarding the recognition of same-sex marriage at the national level. However, it did not accept to follow up on 34 recommendations, including those on the death penalty, comfort women, ratification of the Nuclear Weapons Convention, independence of the media, abolition of the substitute prison system, extension of the application of the Atomic Bomb Survivors' Assistance Act to the second generation of atomic bomb survivors, and inclusion of Korean schools in the free high school education scheme in Japan. It 'noted' 28 recommendations, including the enactment of anti-discrimination laws. Human Rights Council, 'Report of the Working Group on the Universal Periodic Review, Japan, Addendum, Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State Under Review' <<https://www.mofa.go.jp/mofaj/files/000346500.pdf>> accessed 2 March 2021.

This also indicates that there have been no noticeable improvements over the past decade even in those areas where the government agreed to follow up.

Japan has maintained its active membership in the Human Rights Council (HRC). It was a member during the periods of 2006–2008,²⁸ 2009–2011,²⁹ 2013–2015,³⁰ 2017–2019,³¹ and, subsequent to the cut-off mark of this study, 2020–2022.³² With the issue of abductions of Japanese citizens by the Democratic People's Republic of Korea (DPRK), Japan has been submitting a resolution on the situation of human rights in the country to the Human Rights Council almost every year since 2008.³³ Japan maintains a generally positive attitude in supporting human rights resolutions and declarations adopted by the UN, except for resolutions not compatible with its domestic and foreign policies, such as resolutions against the death penalty.³⁴ Japan received 12 visits

28 OHCHR, 'Membership of the Human Rights Council 19 June 2006 – 18 June 2007 by Regional Groups' <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/Group20062007.aspx>> accessed 1 November 2020.

29 *ibid.*

30 OHCHR, 'Membership of the Human Rights Council, 1 January – 31 December 2013 by Regional Groups' <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/Group2013.aspx>> accessed 1 November 2020.

31 OHCHR, 'Membership of the Human Rights Council, 1 January – 31 December 2017 by Regional Groups' <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/Group2017.aspx>> accessed 1 November 2020.

32 OHCHR, 'Current Membership of the Human Rights Council for the 14th Cycle, 1 January – 31 December 2020' <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/CurrentMembers.aspx>> accessed 1 November 2020.

33 Japan did not join the submission of the resolution in 2019. United Nations Human Rights Council, 'Documents and Resolutions' <<https://www.ohchr.org/en/hrbodies/hrc/pages/documents.aspx>> accessed 1 November 2020.

34 Eg, in 2007 the UN adopted the Declaration on the Rights of Indigenous Peoples (United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295, 13 September 2007)). Japan voted in support of this declaration. House of Councillors, '*Ainu Minzoku wo Senjū Minzokuto Surukotoo Motomeru Ketsugi* (Resolution Seeking Government's Recognition of the Ainu as Indigenous People)' (6 June 2008) <<http://www.sangiin.go.jp/japanese/gianjoho/ketsugi/169/080606-2.html>> accessed 1 February 2020. On the other hand, Japan abstained from voting on the UN General Assembly's resolution of 14 November 2018 strongly condemning rights abuses against Rohingya Muslims and other minority groups in Myanmar. UN General Assembly, 'Promotion and Protection of Human Rights: Human Rights Situations and Reports of Special Rapporteurs and Representatives' <<https://undocs.org/A/74/399/Add.3>> accessed 13 December 2020. The situation behind Japan's inaction on the Rohingya issues is their intimate relationship with the Myanmar government that is boldly pushing forward economic development of the country. Human Rights Watch, 'Japan's Cold-Blooded Approach to the Rohingya Crisis' <<https://www.hrw.org/news/2019/06/20/japans-cold-blooded-approach-rohingya-crisis>> accessed 13 December 2020. Following the coup by the military in 2021, which led to deteriorated political and humanitarian situations, Japan and some 60 countries

through the Special Procedures of the HRC between 1999 and 2019.³⁵ It has also extended a standing invitation to thematic special procedures since 1 March 2011.³⁶

There seems to be a significant disparity between international commitment and domestic implementation. For example, in the international fora, Japan has played a pivotal role in advancing rights of lesbian, gay, bisexual, and transgender (LGBT) people, particularly in the UN system. Japan was one of the drafters of the statement presented in the General Assembly that affirmed that international human rights protections include SOGI.³⁷ It voted for two Human Rights Council (HRC) resolutions to end violence and discrimination

submitted the General Assembly Resolution of 18 June 2021 condemning lethal violence by Myanmar's Armed Forces. United Nations, 'General Assembly Reappoints Secretary-General to Second Five-Year Term, Adopting Resolution Condemning Lethal Violence by Myanmar's Armed Forces' <<https://www.un.org/press/en/2021/ga12339.doc.htm>> accessed 6 July 2021; 'Myanmā "buki ryūnyū soshi" ketsugi saitaku kokuren sōkaide saitaku chūronado kiken (Myanmar "Weapon Inflow Prevention" Resolution Adopted by UN General Assembly with Abstentions by China and Russia and so on)' (*Mainichi*, 19 June 2021) <<https://mainichi.jp/articles/20210619/k00/00m/030/055000c>> accessed 6 July 2021.

- 35 Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance (2005), Special Rapporteur on human trafficking, especially women and children (2009), Special Rapporteur on the human rights of migrants (2010), Independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation (2010), Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2012), Independent expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social, and cultural rights (2013), Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (2014), Special Rapporteur on the sale and sexual exploitation of children (2015), Special Rapporteur on the promotion and protection of freedom of opinion and expression (2016), Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (2016), Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (2017), Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (2017). OHCHR, 'Country Visits of Special Procedures of the Human Rights Council Since 1998, Japan' <<https://spinternet.ohchr.org/ViewCountryVisits.aspx?visitType=all&country=JPN&Lang=en>> accessed 11 November 2020.
- 36 OHCHR, 'Standing Invitations' <<https://spinternet.ohchr.org/StandingInvitations.aspx>> accessed 1 November 2020.
- 37 General Assembly, 'Letter Dated 18 December 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations Addressed to the President of the General Assembly' (A/63/635, 18 December 2008) <<https://undocs.org/A/63/635>> accessed 2 March 2021.

on the basis of sexual orientation and gender identity in 2011 and 2014.³⁸ However, it is ranked low at the 25th position among 36 Organisation for Economic Co-operation and Development (OECD) countries for social acceptance of homosexuality at the domestic level³⁹ and second to last in legal LGBT and intersex inclusivity, which has improved at a more modest pace than in other countries.⁴⁰

Despite its general pledge of commitment and cooperation with the international human rights system,⁴¹ there are some highly contentious issues, such as so-called 'comfort women'. The Special Rapporteur on Violence against Women highlighted the issue of military 'sexual slavery' in wartime in her report in 1996.⁴² The Japanese government does not acknowledge that comfort

38 General Assembly, 'Resolution adopted by the Human Rights Council: 17/19 Human rights, sexual orientation and gender identity' (A/HRC/RES/17/19, 14 July 2011); General Assembly, Resolution adopted by the Human Rights Council: 27/32 Human rights, sexual orientation and gender identity' (A/HRC/RES/27/32, 2 October 2014). On the other hand, Japan voted against the UN Human Rights Council resolution to condemn the imposition of a death penalty as a sanction against apathy, disbelief, adultery, consenting to homosexual acts, and so forth, in 2017 (General Assembly, 'Human Rights Council Thirty-sixth Session Agenda Item 3: Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, 36/ ... The Question of the Death Penalty' (A/HRC/36/L.6, 22 September 2017)). This is explained as the purpose of this resolution being rather towards the abolition of the death penalty and to seek a moratorium. Japan also became a member of the UN LGBT Core Group, an informal cross-regional LGBT group established in 2008, alongside other states, the European Union, the Office of the United Nations High Commissioner for Human Rights (OHCHR), and two civil society organisations (CSOs). UN LGBTI Core Group, 'Members' <<https://unlgbticoregroup.org/members/>> accessed 18 November 2022.

39 OECD, 'Society at a Glance 2019: OECD Social Indicators' <https://www.oecd-ilibrary.org/social-issues-migration-health/society-at-a-glance-2019_soc_glance-2019-en> accessed 2 March 2021.

40 OECD, 'Over the Rainbow? The Road to LGBTI Inclusion' <https://www.oecd-ilibrary.org/social-issues-migration-health/over-the-rainbow-the-road-to-lgbti-inclusion_8d2fdia8-en> accessed 2 March 2021.

41 Eg, see MOFA, 'Japan's Human Rights Commitments and Pledges' (January 2019) <<https://www.mofa.go.jp/files/000175306.pdf>> accessed 9 January 2021; see also MOFA, 'Commitment and Pledges of Japan as Candidate of Human Rights Council 2020–2022' <<https://www.mofa.go.jp/mofaj/files/000175485.pdf>> accessed 9 January 2021.

42 The report recommends that the Japanese government '(a)cknowledge that the system of comfort stations set up by the Japanese Imperial Army during the Second World War was a violation of its obligations under international law and accept legal responsibility for that violation' and '(p)ay compensation to individual victims'. Economic and Social Council, 'Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms Radhika Coomaraswamy, in Accordance with Commission on Human Rights Resolution 1994/45: Report on the Mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the Issue of Military Sexual Slavery in Wartime'

women were forcibly recruited by the Japanese military or authorities.⁴³ It maintains that the issue has been legally settled by treaties and agreements.⁴⁴ The Japanese government repeated this position at the Third Committee of the UN General Assembly, the HRC, and country reviews by treaty bodies.⁴⁵ The treaty bodies and international and national human rights groups severely criticise the government from the standpoint of women's rights and transitional justice.⁴⁶

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- (E/CN.4/1996/53/Add.1, 4 January 1996) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G96/101/23/PDF/G9610123.pdf?OpenElement>> accessed 9 January 2021. This report received significant guidance from humanitarian law but also had a reference to human rights law, such as CCPR, CESC and CAT. Similar views were expressed in a report on systematic rape, sexual slavery, and slavery-like practices during armed conflict, which was submitted in June 1998 to the UN Economic and Social Council by Special Rapporteur Ms Gay J McDougall. G J McDougall, 'Contemporary forms of Slavery: Systematic rape, Sexual Slavery, and Slavery-Like Practices During Armed Conflict' (22 June 1998) <https://digitallibrary.un.org/record/257682/files/E_CN.4_Sub.2_1998_13-EN.pdf> accessed 9 January 2021. For the most recent response on this issue by the Japanese government, see HRCtee, 'Seventh Periodic Report Submitted by Japan Under Article 40 of the Covenant Pursuant to the Optional Reporting Procedure, due in 2018' (CCPR/C/JPN/7, 28 April 2020); Nippon Television Network, '*Tanfu Mondai Meguri, Nikkanga Kokurende Shuchōno Ōshu* (Japan and Korea Argue at the UN over the Issue of Comfort Women)' (16 October 2012) <<https://www.news24.jp/articles/2012/10/16/10215887.html>> accessed 9 January 2021.
- 43 MOFA, 'Japan's Efforts on the Issue of Comfort Women' <https://www.mofa.go.jp/policy/postwar/page22e_000883.html> accessed 21 November 2022.
- 44 See 'Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Co-operation between Japan and the Republic of Korea' (22 June 1965) <<https://worldjpn.grips.ac.jp/documents/texts/JPKR/19650622.TgE.html>> accessed 2 March 2021; MOFA, 'Japan-ROK agreement' (28 December 2015) <https://www.mofa.go.jp/a_o/rp/page24e_000277.html> accessed 2 March 2021.
- 45 Eg. state party report under the List of Issues Prior to Reporting for the Human Rights Committee, Seventh periodic report submitted by Japan under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2018 (HRCtee (n 42) paras 148–54); Permanent Mission of Japan to the United Nations, United Nations Committee on Human Rights: Japan Defends Human Rights of Citizens Abducted by DPRK (6 November 2012) <<https://www.un.emb-japan.go.jp/pressreleases/110612.html>> accessed 13 December 2020; United Nations, 'Japan's Stance on "Comfort Women" Issue Violates Victims' Rights – UN Official' *UN News* (August 2014) <<https://news.un.org/en/story/2014/08/474572-japans-stance-comfort-women-issue-violates-victims-rights-un-official>> accessed 13 December 2020.
- 46 For example, see OHCHR, 'Japan / S Korea: "The Long Awaited Apology to 'Comfort Women' Victims is Yet to Come" – UN Rights Experts' (OHCHR, 11 March 2016) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17209>> accessed 9 January 2021; see also Women's Active Museum on War and Peace (WAM) <<https://wam-peace.org/en/>> accessed 2 January 2021, and their submission to the treaty bodies (eg, WAM, 'On Japan's Military Sexual Slavery Issue' (24 July 2017) <https://tbinter.net.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCP

Like the Coomaraswamy report mentioned above, observations and reports of the Special Rapporteurs often face harsh criticism from Japan. In May 2017, the Special Rapporteur on the right to privacy issued an open letter to the Prime Minister of Japan. The letter says that a controversial anti-conspiracy bill may breach the rights of privacy under article 17(1) of the International Covenant on Civil and Political Rights (CCPR).⁴⁷ The Japanese government strongly opposed the letter, condemning it for its lack of correct understanding of the Bill.⁴⁸ Similarly, in May 2017 the Japanese government issued a statement opposing the report of the UN Special Rapporteur on freedom of expression released for the Human Rights Council's 35th session.⁴⁹ The Japanese government argued that its recommendations were based on mistaken and misrepresented facts and uncertain information.⁵⁰ The cabinet emphasised that 'the views of the Special Rapporteur are expressed in his or her individual capacity and are *not* the views of the United Nations or of the Human Rights Council'.⁵¹ Some Special Rapporteurs, including the UN Special

R%2fCS%2fJP%2f28281&Lang=en> accessed 2 January 2021). Women's International Tribunal on Japanese Military Sexual Slavery in 2000, a people's tribunal organised by Violence Against Women in War-Network Japan (VAWW-NET Japan), attracted international attention to this issue. CM Chinkin, 'Women's International Tribunal on Japanese Military Sexual Slavery' (2001) 95 *American Journal of International Law* 335–41; Y Matsui, 'Women's International War Crimes Tribunal on Japan's Military Sexual Slavery: Memory, Identity, and Society' (2001) 19 *East Asia* 119–42.

47 MOFA, 'Kokuren Jinken Rijikaino "Puraibashino Kenri" Tokubetsu Hōkokushani Yoru Kōkai Shokanni Taisuru Nihon Seifu Kenkai (Japanese Government's Views on the Open Letter from the UN Special Rapporteur on the right to privacy)' (18 May 2017) <https://www.mofa.go.jp/mofaj/fp/is_sc/page3_002110.html> accessed 25 January 2020.

48 'UN Privacy Expert Shoots Down Japan's Complaints About 'Anti-Conspiracy' Bill Criticism' (Mainichi, 22 May 2017) <<https://mainichi.jp/english/articles/20170524/p2a/00m/ona/014000c>> accessed 25 January 2020.

49 For the Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression on his mission to Japan, see Human Rights Council, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression on His Mission to Japan' (A/HRC/35/22/Add.1, 15 June 2017) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/163/96/PDF/G1716396.pdf?OpenElement>> accessed 7 July 2021.

50 For the Japanese government's comments, see Human Rights Council, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression on His Mission to Japan: Comments by the State' (A/HRC/35/22/Add.5, 30 May 2017).

51 House of Representatives, 'Shūgiin Giin Ōsaka Seijikun Teishutsu Kokuren Jinken Rijikaino Tokubetsu Hōkokushani Taisuru Seifuno Teigini Kansuru Shitsumonni Taisuru Tōbensho (Answers to Questions Submitted by Member of the House of Representatives Seiji Osaka Regarding the Definition by the Government of the Special Rapporteur of the United

Rapporteur on hazardous substances and waste, have not been accepted for a visit, despite repeated requests. The press release and report issued in October 2018 by the UN Special Rapporteur on hazardous substances and wastes regarding nuclear accidents in 2011 in Fukushima triggered a strong reaction from the Japanese government condemning the statement as full of erroneous content based on a one-sided claim.⁵²

Furthermore, with the background of active advocacy and individual communications by civil society groups in Japan, the Working Group on Arbitrary Detention (WGAD) adopted opinions on the following cases: two Greenpeace Japan employees arrested and detained (2009);⁵³ a man with schizophrenia forcibly hospitalised after being arrested (2018);⁵⁴ a protester against the relocation of a US military base in Okinawa detained for about five months (2018);⁵⁵ a woman detained by police officers and compulsorily hospitalised (2018);⁵⁶ the lengthy detention of Turkish and Iranian asylum seekers with deportation orders (2020);⁵⁷ and Carlos Ghosn, a former head of a global

Nations Human Rights Council)' (30 May 2009) <http://www.shugiin.go.jp/internet/itdb_shitsumon.nsf/html/shitsumon/b193333.htm> accessed 16 January 2021.

52 OHCHR, 'Japan Must Halt Returns to Fukushima, Radiation Remains a Concern, Says UN Rights Expert' (25 October 2018) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23772&LangID=E>> accessed 15 November 2020.

53 Human Rights Council Working Group on Arbitrary Detention, 'Opinions Adopted by the Working Group on Arbitrary Detention' (A/HRC/13/30/Add.1, 4 March 2010) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/116/72/PDF/G1011672.pdf?OpenElement>> accessed 15 November 2020.

54 Human Rights Council Working Group on Arbitrary Detention, 'Opinions Adopted by the Working Group on Arbitrary Detention at its Eighty-First Session, 17–26 April 2018 Opinion No 8/2018 Concerning Mr. N (whose name is known by the Working Group) (Japan)' (A/HRC/WGAD/2018/8, 23 May 2018) <https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session81/A_HRC_WGAD_2018_8.pdf> accessed 15 November 2020.

55 Human Rights Council Working Group on Arbitrary Detention, 'Opinions Adopted by the Working Group on Arbitrary Detention at its Eighty-Second Session, 20–24 August 2018 Opinion No 55/2018 Concerning Yamashiro Hiroji (Japan)' (A/HRC/WGAD/2018/55, 27 December 2018) <https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session82/A_HRC_WGAD_2018_55.pdf> accessed 15 November 2020.

56 Human Rights Council Working Group on Arbitrary Detention, 'Opinions Adopted by the Working Group on Arbitrary Detention at its Eighty-Third Session, 19–23 November 2018: Opinion No 70/2018 Concerning Ms H (whose name is known by the Working Group) (Japan)' (A/HRC/WGAD/2018/70, 16 January 2019) <https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_58_Advance_Edited_Version.pdf> accessed 15 November 2020.

57 Human Rights Council Working Group on Arbitrary Detention, 'Opinions Adopted by the Working Group on Arbitrary Detention at its Eighty-Eighth Session, 24–28 August 2020, Opinion No 58/2020 Concerning Deniz Yengin and Heydar Safari Diman (Japan)'

automobile company, arrested and detained four times (2020).⁵⁸ Some critical recommendations of the WGAD were taken up in questions against the government at the National Diet.⁵⁹ However, the government has not provided a substantial response to these questions or requests by the WGAD.

There is an active civil society in Japan, with countless non-profit organisations (NPOs) and civil society groups.⁶⁰ Their role in providing public goods has grown due to insufficient government response to emergencies, such as large earthquakes after the economic slowdown in the 1990s.⁶¹ It is

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- (A/HRC/WGAD/2020/58, 25 September 2020) <https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_58_Advance_Edited_Version.pdf> accessed 15 November 2020.
- 58 Opinions Adopted by the Working Group on Arbitrary Detention at its Eighty-Eighth Session, 24–28 August 2020, Opinion No 59/2020 Concerning Carlos Ghosn (Japan) (A/HRC/WGAD/2020/59, 20 November 2020) <https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_59_Advance_Edited_Version.pdf> accessed 16 January 2021. This case attracted international attention with criticism of the Japanese ‘hostage justice’ system. R Wingfield-Hayes, ‘Carlos Ghosn and Japan’s “Hostage Justice” System’ (BBC, 31 December 2019) <<http://www.bbc.com/news/world-asia-47113189>> accessed 25 January 2020.
- 59 House of Councillors, ‘*Dai 197 Kai Kokkai Rinjikai Shitsumon Dai 13 Gō Sochi Nyūinwo Shiiteki Kōkinto Suru Kokuren Shiiteki Kōkintō Sagyō Bukai Kankokuni Kansuru Shitsumon Shuisho* (The 197th Diet Extraordinary Session, Question No. 13, Statement of Question on the UN Working Group on Arbitrary Detention’s Observation that Compulsory Hospitalisation is Arbitrary Detention)’ (24 October 2018) <<https://www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/197/syuh/s197013.htm>> accessed 15 November 2020. In 2019 Seong-Phil Hong, a member and the ex-Chairperson of the WGAD, visited Japan, upon invitation by a civil society group to attend events hosted by the JFBA and civil society organisations (CSOs). Keiji Bengo Oashisu, ‘Shimpojiumu “Nipponno Shintai Kōsoku – Sore, Shiiteki Kōkindeha Arimasenka?” (Symposium “Physical Restraint in Japan – That is Arbitrary Detention, Isn’t It?”)’ <<https://www.keiben-oasis.com/4193>> accessed 8 September 2023.
- 60 The number of officially acknowledged NPOs under the ‘Law to Promote Specified Non-profit Activities’ (NPO Law 1998) is 51,793 (as of 28 February 2022). See Cabinet Office NPO Homepage, ‘*Ninshō shinsei jurisū / ninshōsū (shokatsuchobetsu)* (Numbers of Applications for Certification Received and approved (by Authority))’ <<https://www.npo-homepage.go.jp/about/toukei-info/ninshou-zyuri>> accessed 10 April 2022. There are also many civil society groups that are not accredited under the law. For details of the legal system on charity organisation and its problems, see S Yamasaki, ‘Charitable Organisations in Japan: Overview’ *Thomson Reuters Practical Law* <[https://uk.practicallaw.thomson-reuters.com/w-019-3735?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomson-reuters.com/w-019-3735?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 12 January 2021.
- 61 R Pekkanen, ‘Japan’s New Politics: The Case of the NPO Law’ (2000) 26 *Journal of Japanese Studies* 111. However, most of those organisations and groups do not enjoy sufficient funds and resources due to legal, political and social constraints. Zhu and Iwatsubo, who study the challenges faced by Japanese NPOs, point out that the amount of contribution

noteworthy that the human rights defenders and CSOs take greater advantage of the special procedures concerning individual cases and communications as there is no individual complaints mechanism under treaty bodies available to them.

3 At a Glance: Formal Engagement of Japan with the UN Human Rights Treaty System

Refer to the chart on the next page.

4 Role and Overall Impact of the UN Human Rights Treaties in Japan

4.1 *Role of the UN Human Rights Treaties*

4.1.1 Formal Acceptance

Japan ratified the CCPR and the International Covenant on Economic, Social and Cultural Rights (CESCR) in 1979, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) in 1985, 1994, 1995 and 1999, respectively. After the turn of the 21st century, Japan joined two other UN human rights treaties and the two protocols. It ratified the Optional Protocol to the Convention on the Rights of the Child on

received by NPOs in Japan is still relatively small when compared to their counterparts in some other countries. While approximately 4,000 NPOs are newly established every year, the total amount of yearly contributions to NPOs is stagnant at around 600 billion yen. This amount corresponds to one-fortieth of 23,7 trillion yen in the United States. H Zhu and K Iwatsubo, 'Financial Constraints on NPO in Japan: The Role of Intermediaries' (2010) 18 *Journal of Business Administration and Information* 35. The Cabinet Office's Survey on Specified Non-Profit Organisations depict similar situations. Cabinet Office, '*Heisei 25 Nen Tokutei Hieiri Katsudō Hōjinni Kansuru Jittai Chōsa* (Survey on Non-Profit Organisations in 2013)' (24 December 2013) <<https://www.npo-homepage.go.jp/toukei/npojittai-chousa/2013npojittai-chousa>>; Cabinet Office, '*Heisei 29 Nendo Tokutei Hieiri Katsudō Hōjinni Kansuru Jittai Chōsa* (Survey on Non-Profit Organisations in FY2017)' (30 March 2018) <<https://www.npo-homepage.go.jp/toukei/npojittai-chousa/2017npojittai-chousa>> accessed 12 October 2022.

JAPAN

Treaties

CESCR
CCPR

CEDAW

CRC

CERD

CAT

OP-CRC
-AC

OP-CRC
-SC

CED

CRPD

Individual
complaints
procedure



the involvement of children in armed conflict (OP-CRC-AC) in 2004 and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography (OP-CRC-SC) in 2005.⁶² Subsequently, the government ratified the International Convention for the Protection of All Persons from Enforced Disappearance (CED) in 2009, including the acceptance of the interstate communication procedure under the Convention.⁶³ In 2014, Japan ratified the Convention on the Rights of Persons with Disabilities (CRPD) after a revision of pertinent domestic laws to meet treaty requirements.⁶⁴ Japan neither signed nor ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) as it contravenes domestic laws and the Constitution,⁶⁵ and is not a party to the Optional Protocol of the

62 C Heyns and F Viljoen, 'The Impact of the United Nations Human Rights Treaties on the Domestic Level' (2003) 23 *Human Rights Quarterly* 483; OHCHR, 'Ratification Status for Japan' <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=87&Lang=EN> accessed 11 November 2022.

63 There was significant concern and interest among the Japanese government and nationals on people abducted by the Democratic People's Republic of Korea (DPRK). This issue was raised by the government representative during the consideration of the first report submitted by Japan. Committee on Enforced Disappearances, 'Consideration of Reports of States Parties to the Convention, Initial Report of Japan (CED/C/SR.257, 23 November 2018)' <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CED%2fC%2fSR.257&Lang=en> accessed 13 December 2020. See also art 32 of CED.

64 The civil society had a major role in this ratification process of CRPD. See the following section on CRPD.

65 N Piper, 'Obstacles to, and Opportunities for, Ratification of the ICRMW in Asia' in R Cholewinski, P de Guchteneire and A Pécoud A (eds), *Migration and Human Rights: The United Nations Convention on Migrant Workers' Rights* (Cambridge University Press 2009) 171–92. The reluctance of ratification may be explained by Japan receiving many migrant workers, as other non-party developed countries. S Ago, 'Hitono Kokusai Idōto Rōdō: Kokusai Soshikino Yakuwari (Migration and Labour: The Role of International Institutions)' (2014) 357/358 *Ritsumeikan Law Review* 1573, 1582. For general obstacles to ratification of the receiving countries, see A Pécoud, 'United Nations Migrant Workers Convention' <https://link.springer.com/referenceworkentry/10.1007%2f978-981-13-2898-5_142> accessed 8 November 2020. According to the comment of the director of MOFA at the Committee of Legal Affairs at the House of Representatives, '[i]f Japan is to ratify ICMW, we must carefully consider the possible issues in relation to various domestic systems such as Japan's basic labour policy, immigration control, elections, education, criminal procedures, and social security, as well as whether migrant workers will be given preferential treatment over citizens or foreigners other than migrant workers and there will be problems in relation to the principle of equality or not'. National Diet Library, 'Dai 123 Kai Kokkai Shūgin Hōmu Inikai Dai 7 Gō (The 123rd Diet, House of Representatives

Convention against Torture (OP-CAT),⁶⁶ and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (OP2-CCPR). Japan has also not accepted any of the complaints mechanisms under the Optional Protocol to the International Covenant on Civil and Political Rights (OP1-CCPR), the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-CESCR), the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW), the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OP-CRC-CP), the Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD), CERD, CAT or CED.⁶⁷ In the past, the government reasoned that the acceptance of individual communications would be contrary to judicial independence.⁶⁸ However, through internal studies of issues related to a possible organisational framework for implementing the procedure,⁶⁹ the government admitted that it is 'not necessarily required to change the judicial system ... in association with individual communication mechanisms'.⁷⁰

Committee on Judicial Affairs, Case no 7)' (14 April 1992) <<https://kokkai.ndl.go.jp/simple/detail?minId=112305206X00719920414&spkNum=0#s0>> accessed 8 March 2021.

66 United Nations Treaties Collection, 'Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9-b&chapter=4&lang=en> accessed 4 July 2019; OHCHR, 'Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (4 July 2019) <<https://www.ohchr.org/Documents/HRBodies/OPCAT/StatRatOPCAT.pdf>> accessed 8 November 2020.

67 OHCHR, 'View the Ratification Status by Country or by Treaty' (*UN Treaty Body Database*) <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en> accessed 8 November 2020.

68 National Diet Library, '*Dai 169 Kai Kokkai Sangiin Yosan Inikai Dai 3 Gō* (The 169th Diet, House of Councillors Committee on Budget, Case no. 3)' (1 February 2008) <<https://kokkai.ndl.go.jp/#/detail?minId=116915261X00320080201¤t=1>> accessed 6 June 2021.

69 In the course of this process, the Division for Implementation of Human Rights Treaties was set up in the MOFA in April 2010, and the Division has held 20 seminars on the procedure with the relevant ministries and agencies. See International Human Rights Instruments, 'Common Core Document Forming Part of the Reports of States Parties: Japan' (HRI/CORE/JPN/2019, 14 October 2020), for the status as of September 2019.

70 National Diet Library, '*Dai 201 Kai Kokkai Sangiin Gaikō Bōei Inikai Dai 6 Gō* (Diet 201st Session, the House of Councillors, Committee on Foreign Affairs and Defence, Case no 6)' (26 March 2020) <<https://kokkai.ndl.go.jp/txt/120113950X0062000326/112>> accessed 10 July 2021. The government established the Division for Implementation of Human Rights

Japan entered reservations to several articles in multiple treaties, including one on articles 4(a) and (b) of CERD, which calls for the criminalisation of so-called racial hate speech. The government claims that this is because the provision may conflict with the protection of freedom of speech under the Japanese Constitution.⁷¹ Regarding CESCR, Japan entered several reservations and declarations upon ratification. In the application of article 7(d) of the Covenant, Japan reserves the right not to be bound by the ‘remuneration for public holidays’ referred to in said provisions; it also reserves the right not to be bound by article 8(1)(d) of the Convention on the right to strike, except in relation to the sectors in which the right referred to in said provisions is in accordance with the laws and regulations of Japan at the time of ratification of the Covenant. Further, the government declares that ‘members of the police’ referred to in article 8(2) as well as in article 22(2) of the Covenant be interpreted to include fire service personnel in Japan. In September 2012, Japan withdrew the reservation made upon article 13(2)(b)(c) of the Covenant regarding free secondary and tertiary education,⁷² while it reserves the right not to be bound ‘in

Treaties in the Ministry of Foreign Affairs in April 2010, aiming for the consideration and preparation to accept individual complaints mechanisms under human rights treaties. Government of Japan, ‘Mid-Term Report on the Progress Made in the Implementation of the Recommendations Issued at the Second Cycle of the Universal Periodic Review’ <<http://www.mofa.go.jp/mofaj/files/000225031.pdf>> accessed 10 October 2020.

71 International Convention on the Elimination of All Forms of Racial Discrimination, Declarations and Reservations-Japan, UNGA Res 2106 (XX) (A/RES/2106(XX)), 21 December 1965: ‘In applying the provisions of paragraphs (a) and (b) of article 4 of the [said Convention], Japan fulfils the obligations under those provisions to the extent that fulfilment of the obligations is compatible with the guarantee of the rights to freedom of assembly, association, and expression, and other rights under the Constitution of Japan, noting the phrase “with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention” referred to in article 4.’ The government maintains that CERD recommendations are already covered by existing laws or incorporated in several laws targeting specific groups, despite there being no comprehensive law against racial discrimination. These laws principally aim at raising and promoting understanding among the general public through human rights education and awareness-raising activities. CERD, ‘Tenth and Eleventh Combined Periodic Report by the Government of Japan under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination’ (CERD/C/JPN/10–11, 25 September 2017) para 105.

72 In 2010 the government under DPJ ruling decided to make upper secondary education free. Ministry of Education, Culture, Sports and Science and Technology (MEXT), ‘*Kōtō Gakkōtō Shūgaku Shienkinno Shikyūni Kansuru Hōritsu* (Act on Provision of High School Enrolment Support Fund)’ (31 March 2010) <https://www.mext.go.jp/a_menu/shotou/mushouka/detail/_icsFiles/afidfile/2014/08/06/1346770.pdf> accessed 6 June 2021.

particular by the progressive introduction of free education referred to in the said provisions'.⁷³

Japan also entered reservations to the CRC upon ratification. Regarding article 37(c) of the Convention, Japan reserves the right not to be bound by the provision in its second sentence, that is, 'every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so'. This is based on the government's view that in Japan, as regards persons deprived of liberty, those who are below 20 years of age are generally to be separated from those who are 20 years of age and over under its national law. Japan also declares that article 9(1) of the Convention 'be interpreted not to apply to a case where a child is separated from his or her parents as a result of deportation in accordance with its immigration law'. As for article 10(1), Japan decided that 'the obligation to deal with applications to enter or leave a state party for the purpose of family reunification "in a positive, humane and expeditious manner" be interpreted not to affect the outcome of such applications'.⁷⁴

4.1.2 General Attitude toward the UN Treaty System

Although human rights treaties are ranked higher than statutory law, courts are not very active in the application of human rights treaties. The Constitution, with supremacy in the Japanese legal system, stipulates its relationship with international law as follows: 'The treaties concluded by Japan and established laws of nations shall be faithfully observed' (article 98(2)). It has been construed that treaties and customary international law are treated respectfully, as placed under the Constitution but superior to domestic laws and can be invoked in the same way as laws in domestic courts.⁷⁵

73 United Nations Treaties Collection, 'International Covenant on Economic, Social and Cultural Rights, article 23' <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=en#23> accessed 8 November 2020.

74 United Nations Treaties Collection, 'Convention on the Rights of the Child' <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4#EndDec> accessed 11 July 2020; Y Saito, 'Convention on the Right of the Child and Problems on Domestic Law System' (2000) 22 Bunkyo University Life Science Studies 59.

75 Y Iwasawa, *International Law, Human Rights, and Japanese Law: The Impact of International Law on Japanese Law* (OUP 1998) 28–36, 95–103; Y Iwasawa, 'Domestic Application of International Law' (2016) 378 *Recueil des Cours* 9. See also H-B Shin, 'Japan' in Dinah Shelton (ed), *International Law and Domestic Legal Systems: Incorporation, Transformation, and Persuasion* (OUP 2011) 360, 365–76. The government takes the standpoint that it does not necessarily presuppose the absolute supremacy of the Constitution over treaties but determines the relative primacy in light of their substance. See the Statement of the Director-General of the Cabinet Legislation Bureau Shuzo Hayashi, the 33rd National Diet, the Budget Committee of the House of Councillors (17 November 1959)

However, Japanese courts have been reluctant to apply international law to domestic cases. Former justice of the Japanese Supreme Court, Itsuo Sonobe, frankly commented that '[s]ince our Constitution is well established, in particular with regard to human rights protections, we can solve most disputes without drawing upon support from international human rights law', and 'in practice of examination of cases, domestic laws come first, and the Constitution second, and subsequently depending on the allegation of the parties, if necessary, international human rights and other international law can be referred'.⁷⁶ This view that international human rights law is merely a supplementary yardstick to be used when the existing jurisprudence does not help judges to square the statutory circle is widely shared in the Japanese legal hierarchy.⁷⁷

It is worth noting that the Japanese justice system is traditionally considered to have two unique tendencies in this connection. First, the courts have a tendency to ignore claims based on international human rights law. Under Japan's Code of Civil Procedure, appeals on violations of international human rights law are often dismissed without further investigation and consideration of the actual situation on the grounds that such violations are mere violations of the law in general. For instance, the Supreme Court in 1995 rejected the appeal that the fingerprinting of aliens violated CCPR, saying that it was merely an allegation of violation of the law and did not constitute a legitimate ground for appeal.⁷⁸

<<https://kokkai.ndl.go.jp/#/detail?minId=103315261X0041959117¤t=6>> accessed 29 May 2021. See also V Mazzuoli and D Ribeiro, 'The Japanese Legal System and the Pro Homine Principle in Human Rights Treaties' (2015) 15 *Anuario Mexicano de Derecho Internacional* 239; H Yamamoto and Y Negishi, 'Japan' in F Palombino (ed), *Duelling for Supremacy: International vs National Fundamental Principles* (Cambridge University Press 2019).

76 I Sonobe and A Kotera, 'Saikō Saibanshōto Kokusaihō (Supreme Court and International Law)' (2009) 1387 *Jurist* 16. While Justice Sonobe acknowledges the potential role of international law in cases for which there is no applicable domestic law, he emphasises it would be a last resort for the courts to directly apply international law only after efforts to use the Constitution directly or indirectly had failed. See also I Sonobe, 'Nihonno Saikō Saibanshōni Okeru Kokusaijinkenhōno Saikin no Tekiyō Jyōkyō (Recent situations of the application of international human rights law in Japan's supreme court)' in K Serita, T Munesue, K Yakushiji and S Sakamoto (eds), *Kokusaijinkenhō to Kempō [International Human Rights Law and Constitution]* (Shinzansha 2006) 17–24.

77 T Webster, 'International Human Rights Law in Japan: The View at Thirty' (2010) 23 *Colombia Journal of International Law* 242, 245.

78 Supreme Court, Judgment, 15 December 1995, 49 *Keishū* 842, 847.

Second, the courts tend to conduct a detailed examination of the violations of the Constitution and dismiss claims based on international human rights law. Based on the interpretation that international human rights law and the human rights provisions of the Constitution of Japan have the same meaning and scope of application, and therefore international human rights law does not guarantee human rights beyond the Constitution, the Supreme Court appears to only give cursory attention to claims of international human rights law violations, often dismissing them without thorough examination. For instance, the Supreme Court in 1989 held that the right to take notes in court should be respected in the spirit of article 21 of the Constitution and that article 19(2) of CCPR serves the same purpose.⁷⁹

In recent years, certain studies contend that Japanese domestic courts have demonstrated a more active invocation and application of international human rights law. This trend is particularly notable in cases concerning the rights of vulnerable individuals and groups, such as women and persons with disabilities.⁸⁰

The government is also of the view that the Constitution and statutory laws provide the principal legal protection of human rights. Institutionally, the statutory laws are meticulously formulated to align with the obligations stipulated in the international human rights treaties that Japan has ratified. This process involves a thorough examination by the Legislation Bureau of the Cabinet Office.⁸¹ While the government states that it takes its obligation under international law seriously, when it comes to politically sensitive issues, the Japanese government expressed its defensive or even negative attitudes toward its obligation under international human rights law. For example, its cabinet decision in 2013 declared that the recommendation from the UN treaty bodies is not legally binding.⁸² Some human rights CSOs and academics severely criticise this attitude toward international human rights and urge the government

79 Supreme Court, Judgment, 8 March 1989, 43 Minshū 89, 93.

80 Eg, see K Ishibashi, 'Implementation of International Law in Japanese Courts: From Their Traditional Reluctance in Invoking International Law to Some Innovative Rulings Based upon International Human Rights Law' (2015) 3 Korean Journal of International and Comparative Law 139–70.

81 In Japan, when the Diet introduces a statute, the Legislation Bureau of the Cabinet Office very carefully checks the bill's compatibility and consistency with the Constitution, existing law, and international obligations. On the one hand, this attentive approach leads to implementing human rights obligations in good faith. On the other hand, the cautious Japanese approach tends to hinder immediate and drastic change of domestic law and active judicial review. See H Matsuda, 'International Law in Japanese Courts' in C Bradley (ed), *The Oxford Handbook of Comparative Foreign Relations Law* (OUP 2019) 541.

82 Cabinet, 'Tōbensho Dai n8 Gō (Counterstatement No 118)' (18 June 2013) <<https://www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/183/toup/t183118.pdf>> accessed 9 June 2021.

to take proactive, concrete, and fast-paced measures to fill the gap between national and international standards.⁸³

There have been constant gaps in communication among the government, treaty bodies, and civil society groups.⁸⁴ For instance, while many treaty bodies have expressed their concerns about the 'comfort women' issue, the government repeats its legal point of view that retroactive application of treaties is not allowed, and the issues have already been resolved at the diplomatic level.⁸⁵ Another example may be the controversial Japanese criminal justice system. While the Japanese government alleges that it is one of the countries with the most advanced and fair criminal justice system despite some shortcomings,⁸⁶ CSOs and UN treaty bodies have criticised the Japanese criminal legal system,

83 Amnesty International, 'Ibento Hōkoku: Kokuren Kankoku "Shitagau Gimu Nashi" ni Igi Ari! Kinkyū Shūkaiwo Kaisai (Event Report: Disagreement with 'no obligation to follow UN recommendations! We held an urgent meeting') <https://www.amnesty.or.jp/hrc/2013/0718_4065.html> accessed 1 November 2020.

84 Interview with an International Human Rights Law Expert (Geneva, Switzerland, 27 August 2019); Interview with an International Human Rights Law Expert (Geneva, Switzerland, 11 February 2019) (notes of all interviews on file with authors). One of the experts mentioned that even though the Japanese government tries to explain its stance and provide thorough information to help the committee to understand it, this often does not reach the heart of the discussion or address the questions of the committee members.

85 The government also states that it made an official apology towards the victims and made efforts to remedy the situation through the Asian Women's Fund established by the Japanese government in cooperation with the people of Japan. See CEDAW Cttee, 'Consideration of Reports Submitted by States Parties Under Article 18 of the Convention, Seventh and Eighth Periodic Reports of States Parties Due in 2014: Japan' (CEDAW/C/JPN/7-8, 16 September 2014) paras 97-102; MOFA, 'The Convention on the Elimination of All Forms of Discrimination against Women Statement by the Head of the Delegation of Japan for the Seventh and Eighth Periodic Reports' (16 February 2016) <<https://www.mofa.go.jp/mofaj/files/000133481.pdf>> accessed 9 June 2021; and Summary of Remarks by Mr Shinsuke Sugiyama, Deputy Minister for Foreign Affairs in the Question and Answer session in the same CEDAW session (16 February 2016, Geneva), Ministry of Foreign Affairs, 'Convention on the Elimination of All Forms of Discrimination against Women Consideration of the Seventh and Eighth Periodic Reports (16 February 2016, Geneva) (Summary of remarks by Mr Shinsuke Sugiyama, Deputy Minister for Foreign Affairs in the Question and Answer session)' <<https://www.mofa.go.jp/mofaj/files/000140100.pdf>> accessed 8 March 2021. In 2017 the government issued comments regarding the concluding observations (COs) on the third to fifth periodic reports of the Republic of Korea issued on 12 May 2017. Government of Japan, 'Comments by the Government of Japan Regarding the COs on the Third to Fifth Periodic Reports of the Republic of Korea' (12 May 2017) <https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/KOR/INT_CAT_COB_KOR_27508_E.pdf> accessed 22 March 2021.

86 The Statement of the Human Rights Ambassador of Japan in 2013 in the review of the government report to implement of the CAT. Kyodo, "'Shut up!'" UN Rights Envoy Quits Over Tirade in Geneva' *Japan Times* (21 September 2013) <<https://www.japantimes.co.jp/news/2013/09/21/national/shut-up-u-n-rights-envoy-quits-over-tirade-in-geneva/>> accessed 8 November 2020.

including its practice of not allowing criminal suspects to have defence lawyers with them during interrogation, and the ‘substitute prison’ system to use police stations as legal substitutes for detention centres or prisons.⁸⁷ These different perspectives and approaches have long impeded the progress of a ‘constructive dialogue’ on specific issues, keeping discussions on parallel tracks.⁸⁸

4.1.3 Level of Awareness

The level of awareness of the human rights treaty system has been increasing over the past 20 years in general, but different actors have varying levels of understanding.

Government officials in the pertinent divisions of ministries, responsible for the human rights treaty system, possess a certain level of familiarity with the system. However, they undergo rotations every few years. Thus, the level of awareness of international human rights law and standards is not high among government officials, especially in the ministries primarily dealing with domestic matters.

Likewise, international human rights mechanisms and treaties are not generally well known or acknowledged by members of parliament (MPs). Some MPs openly show their opposition or voice complaints against international human rights standards or recommendations by human rights treaty bodies.⁸⁹ However, several other MPs are active in leveraging the international human rights treaty mechanism for support or pressure from external authorities, aiming to address specific issues on the contentious domestic human rights agenda.⁹⁰

The government introduced basic training for judges and prosecutors for international human rights law. However, as indicated in former Justice Sonobe’s comments above,⁹¹ the awareness among judges on international human rights law does not seem high in general as there are not many chances

87 CCPR/C/JPN/CO/6, 20 August 2014; CAT/C/JPN/CO/2, 28 June 2013.

88 One of the experts points out that the translation of the dialogue in the review between English and Japanese may make the correct understanding of each side difficult, with some essential points lost in translation (Comment from International Human Rights Law Expert, 5 May 2020).

89 For example, MP Mio Sugita urged the government to withdraw from CEDAW and abolish the Basic Act for Gender Equal Society, stating that gender equality was an anti-moral delusion that could never be achieved. National Diet Library, ‘*Dai 187 Kai Kokkai Shūgin Honkaigi Dai 9 Gō* (The 187th Diet session, House of Representatives, Main Conference Case no. 9)’ (31 October 2014) <<https://kokkai.ndl.go.jp/#/detail?minId=118705254X00920141031&spkNum=30&single>> accessed 15 November 2020.

90 See the CERD part below regarding the development process of anti-hate speech law.

91 See n 76.

for them to use it in actual cases.⁹² These attitudes of the courts or judges have discouraged lawyers from invoking international human rights law in their complaints and arguments, as they think it is unlikely for judges to show a positive attitude in the domestic judicial review towards reference to international human rights law or standards. Thus, many practicing lawyers do not believe that international human rights law can make a strong case in most cases.⁹³

Meanwhile, there are some prominent lawyers who ardently learn about international human rights mechanisms, and some CSOs proactively use UN mechanisms in human rights advocacy. For example, the Japan Federation of Bar Associations (JFBA), a mandatory association of lawyers in Japan,⁹⁴ and also the largest, has worked intensively on the advancement of international human rights through domestic advocacy and lobbying to the committees, and complaints in some recent human rights litigations have seen more allegations with reference to international human rights law.⁹⁵

92 Interviews with International Human Rights Law Experts (Geneva, Switzerland, 11 February 2019; Online, Paris, France, 17 February 2019).

93 International public law is one of the Japanese Bar Exam's selective subjects in Japan, but only 1.3% of applicants choose this subject, which may relate to the awareness among legal professions of the international human rights law in domestic proceedings. Ministry of Justice, 'Situation of the Bar Exam 2020' <<http://www.moj.go.jp/content/001332199.pdf>> accessed 13 December 2020. A Japanese attorney of law argues that Japanese lawyers also are neither familiar with international human rights law and standards, nor being used to using it strategically in domestic cases. Interview with a Japanese Lawyer (Online, 22 November 2020).

94 Founded in 1949, the JFBA self-regulates the legal profession and strives to further the primary role of attorneys in society: the protection of fundamental human rights and the realisation of social justice. JFBA, 'About us' <<https://www.nichibenren.or.jp/en/about/us.html>> accessed 9 June 2021.

95 For example, the lawsuits for marriage equality which started in 2019 argues the inability of same-sex couples to marry is a violation of the Constitution and international human rights law and standards. Marriage for All, 'Saiban Jōhō (Lawsuit Information)' <<https://www.marriageforall.jp/plan/lawsuit/>> accessed 8 November 2020; interviews with Lawyers for the Plaintiffs (Online, Tokyo, Japan, 10 May 2020 and 14 May 2020). Further, in the litigation seeking redress for victims of the compulsory sterilisation undertaken under the state's eugenics programme and the now-defunct Eugenic Protection Act, after the redress was denied at the trial court as statute-barred, the lawyers for plaintiff brought forward the argument that the forced sterilisation constitutes 'torture' referred to in CAT; hence, 'in light of the spirit of the convention, any time limit that hinders victims from filing a lawsuit must not be in place and applying the statute of limitations to the damage in this case is contrary to the intention of the convention'. JFBA, 'Statement on Redress for Victims of the Now-defunct Eugenic Protection Act in the Wake of the Tokyo District Court's Judgment' <<https://www.nichibenren.or.jp/en/document/statements/200715.html>> accessed 8 March 2021. According to one of the lawyers, this argument is influenced by the advice that the Special Rapporteur on the elimination of discrimination

While civil society groups and activists have been working hard to raise awareness regarding the human rights treaty mechanism and international human rights standards among the general public, the majority of the general public do not have knowledge of international human rights treaties.⁹⁶ Although the importance of human rights is generally accepted, it is more frequently referred to in moral discourse than in legal discourse.

A lack of intensive coverage of human rights law in media and education may be behind this generally low level of awareness among people. The media and newspapers highlight international human rights treaties as far as they relate to controversial or sensational issues in international and domestic politics, such as comfort women, migrants, refugees, or some high-profile cases. However, they do not often refer to treaties regarding the discussions of domestic policies and their implementation. Human rights, including the UN human rights treaty system, are taught in universities as a theory.⁹⁷ Still, pedagogy does not lead citizens to reach a level at which they are aware of their ability to use the UN treaty body system to protect their rights.⁹⁸

against persons affected by leprosy and their family members made on the litigation when she visited Japan in February 2020. Interview with a Human Rights Lawyer (Online, 22 November 2020).

- 96 For example, the level of awareness of the terminology '*joshi sabsesu teppai jōyaku*' ('CEDAW' in Japanese) was 34.7% in 2019, while it was 36.1% in 2016, 34.8% in 2012, 35.1% in 2009, 35.3% in 2007, 32.8% in 2004, and 37.2% in 1999. Gender Equality Bureau Cabinet Office, '*Yoron Chōsa (Danjo Kyōdō Sankakuni Kansuru Mono)*' (Public Opinion Survey (on Gender-Equal Society))' <<http://www.gender.go.jp/research/yoron/index.html>> accessed 25 January 2020. The government was aiming to increase it to more than 50% by 2020. Gender Equality Bureau Cabinet Office, '*Daiyōji Danjo Kyōdō Sankaku Kihon Keikakuni Okeru Seika Shihyōno Dōkō*' (4th Men and Women Joint Participation Basic Plan Result Indicators Status) <https://www.gender.go.jp/about_danjo/whitepaper/h28/zentai/html/shisaku/ss_shiryō_5.html> accessed 15 September 2023. The official statistics on the level of awareness regarding other treaties are not available, which is a problem to be addressed. Interview with International Human Rights Experts (Geneva, Switzerland, 11 February and 10 April 2019, respectively). A survey conducted by an international CSO shows that in Japan, only 8.9% of children and 2.2% of adults know the content of CRC, and 31.5% of children and 42.9% of adults have never heard about CRC. Save the Children Japan, '*3 Mannin Ankētōkara Miru Kodomono Kenrini Kansuru Ishiki* (Attitudes to Children's Rights seen through a Survey of 30 000 People)' (11 November 2020) <https://www.savechildren.or.jp/news/publications/download/kodomonokenri_sassi.pdf> accessed 8 March 2021.
- 97 It is pointed out by an international human rights law expert that there is not substantial human rights education in education programmes in primary and secondary school. Interview with an International Human Rights Law Expert (Online, 17 February 2019).
- 98 MEXT, '*Jinken Kyoiku* (Human Rights Education)' <https://www.mext.go.jp/a_menu/shoutou/jinken/siryō/index.htm> accessed 26 January 2020; MEXT, '*Dai 2 Shō Dai 2 Setsu 1: Jinken Kyōikuno Naiyō Kōsei*' (Chapter 2 Section 2-1: Human Rights Education Contents

4.1.4 State Reporting

The Ministry of Foreign Affairs (MOFA), which stands at the forefront of dealing with the international human rights treaty mechanism in the international fora, is primarily responsible for state reporting in collaboration with other ministries, in particular with the Ministry of Justice (MOJ), which is in charge of human rights issues at the domestic level.⁹⁹ The Human Rights and Humanitarian Affairs Division (HRHAD) within the MOFA consolidates the contributions of other ministries and submits them to the committees.¹⁰⁰ For CEDAW, the Gender Equality Bureau of the Cabinet Office leads the consolidation of contributions by each ministry to put together the government's report.¹⁰¹ The MOFA then translates and sends the report to the UN secretary-general, who transmits it to the committee for consideration. The government also holds consultation meetings with CSOs and its citizens for public comments and opinions on the national report.¹⁰² However, it is not mandatory treatment under the law, but rather a voluntary commitment by the government.

The Japanese government generally complies with reporting obligations across ratified treaties. While occasionally its reports have not been submitted within the time limit, there is no specific pattern for the reason for delay. The vertically divided institutional tradition may cause structural problems that prolong the preparation of relevant documents, especially when the human

and Structure)' <https://www.mext.go.jp/a_menu/shotou/seitoshidou/jinken/06082102/009.htm> accessed 26 January 2020. A number of universities and law schools in Japan offer international human rights law courses but mostly as electives.

99 See under the Act for Establishment of the Ministry of Foreign Affairs. According to art 4(5) of the Act, the interpretation and implementation of treaties and other international agreements, as well as established international law, fall under the MOF's purview, explicitly defining its full and unique responsibility in this regard. Government of Japan, 'Gaimushō Setchi Hō (the Act for Establishment of the Ministry of Foreign Affairs)' <https://elaws.e-gov.go.jp/document?lawid=411AC0000000094_20160401_427AC0000000066> accessed 8 September 2023. T Mori, 'The Current Practice of Making and Applying International Agreements in Japan' in Curtis Bradley (ed), *The Oxford Handbook of Comparative Foreign Relations Law* (OUP 2019) 191.

100 Interview with the Director of the Human Rights and Humanitarian Affairs Division (Tokyo, Japan, 3 December 2018).

101 Gender Equality Bureau Cabinet Office <http://www.gender.go.jp/english_contents/index.html> accessed 25 January 2020.

102 Gender Equality Bureau Cabinet Office, 'Joshi Sabetsu Teppai Jōyaku Jisshi Jōkyō Dai 7/8 Kai Hōkokushoni Tsuite Kiku Kai (Meeting to Hear about the Combined Seventh and Eighth Periodic Report of Japan for CEDAW)' <<https://www.gender.go.jp/kaigi/renkei/ikenkoukan/60/index.html>> accessed 8 March 2021.

rights matters involve multiple ministries and agencies.¹⁰³ The degree of complexity among ministries and agencies also varies depending on the kinds of human rights issues in question when preparing the reports.

As individual complaints procedures are not available in Japan, state reporting is the main channel for CSOs to directly engage in dialogue with treaty bodies. Many CSOs actively engage in the state reporting mechanism by lobbying the treaty bodies by submitting parallel reports and using their recommendations for their domestic advocacy to pressure the government.

4.1.5 Domestic Implementation Mechanism

In principle, the MOFA translates the recommendation and relevant documents regarding international human rights treaties into Japanese to upload on its website.¹⁰⁴ Other ministries, in particular the MOJ, are primarily engaged in the implementation of the recommendation by treaty bodies at the domestic level by setting an agenda for drafting domestic laws and policies. The Human Rights Bureau of the MOJ acts as an administrative organ engaging in human rights promotion and protection in coordination with its regional offices and branches, as well as human rights volunteers, who are private citizens appointed by the MOJ.¹⁰⁵ They are collectively referred to as 'the human rights bodies of the MOJ', which cooperatively carry out national, regional, and community-level human rights promotion and protection activities. The human rights volunteers provide human rights counselling for the investigation of alleged human rights violations.¹⁰⁶ They also conduct human rights education and awareness-raising activities to disseminate knowledge of

103 Interview with the Director of the Human Rights and Humanitarian Affairs Division (Tokyo, Japan, 3 December 2018).

104 Not all the General Comments or recommendations are translated into Japanese. Regarding CEDAW, the Gender Equality Bureau of the Cabinet Office is in principle in charge of the dissemination of information and awareness-raising activities regarding the Convention. There is a recent practice that each ministry takes responsibility of the translation of relevant documents related to treaty bodies. Comments by a government official on 8 March 2021.

105 *Jinken Yōgo In* (human rights volunteers) are private citizens appointed by MOJ to engage in human rights counselling and the dissemination of the concept of human rights based on the Human Rights Volunteers Act. Ministry of Justice, 'Human Rights Volunteers' <<http://www.moj.go.jp/ENGLISH/HB/about/volunteers.html>> accessed 25 January 2020.

106 An international human rights expert points out the ineffective monitoring system with the human rights volunteers. Interview with an International Human Rights Expert (Online, 17 February 2019).

international human rights for people in Japan.¹⁰⁷ There are several national, public, and state-funded institutes that support these educational activities and campaigns, such as the National Women's Education Centre¹⁰⁸ and the Centre for Human Rights Education and Training.¹⁰⁹

However, the effectiveness of the system in monitoring and ensuring human rights protection and promotion has been questioned, in particular without independent national human rights institutions (NHRI).¹¹⁰ As neither the MOFA nor the MOJ is in a position to recommend other ministries to implement the treaty bodies' recommendations in the vertically-segmented administrative system with bureaucratic sectionalism, the system may not be the most effective in realising the recommendations from the treaty bodies, including raising awareness among government officials.¹¹¹ As for promoting the implementation of international standards of gender equality, the National Machinery for the Promotion of the Formation of a Gender Equal Society,¹¹² the Council for Gender Equality and Specialist Committees¹¹³ all exist to promote gender equality at the domestic level while monitoring the implementation of CEDAW recommendations.¹¹⁴ Nevertheless, the effectiveness of this national machinery in promoting and monitoring the implementation of CEDAW has

107 MOJ, 'Human Rights Bureau' <<http://www.moj.go.jp/ENGLISH/HB/hb.html>> accessed 25 January 2020.

108 National Women's Education Centre, 'Top Page' <<https://www.nwec.jp/en/index.html>> accessed 2 January 2021.

109 Centre for Human Rights Education and Training, 'Centre for Human Rights Education and Training (English version)' <<http://www.jinken.or.jp/en>> accessed 2 January 2021.

110 In particular, the human rights volunteers system has been widely criticised as ineffective, and a reform has been proposed. MOJ, '*Jinken Yōgo Suishin Shingikaino "Jinken Yōgo Iin Seidono Kaikakuni Kansuru Ronten Kōmoku" ni Taisuru Iken Boshūno Kekkani Tsuite* (Results of the Human Rights Promotion Council's Request for Opinions on the Reform of the Commissioner for Human Rights)' <http://101.110.15.201/JINKEN/public_jinkeno6_result_jinkeno6.html> accessed 15 November 2020; Y Kure and J Hiramine, 'The Reality and Problems on the System of Civil Liberties Commission' (2009) 16 *Constitutional Law Review* 89.

111 An expert mentions that the treaty bodies' review where the Japanese delegation consists of the representative of each ministry may function to disseminate the knowledge and awareness of international human rights standards among government officials. Interview with an International Expert (Geneva, Switzerland, 27 August 2019).

112 Gender Equality Bureau, Cabinet Office, 'National Machinery for the Promotion of the Formation of a Gender-Equal Society' <http://www.gender.go.jp/english_contents/about_danjo/prom/national_machinery.html> accessed 25 January 2020.

113 *ibid.*

114 The Gender Equality Bureau of the Cabinet Office facilitates the meeting of these machineries.

been questioned. Yoko Hayashi, a former CEDAW member, highlighted that the national machinery for gender equality does not operate as intended. She noted that the Minister of State for Gender Equality and other members of the machinery lack progressiveness in promoting gender equality and instead have a conservative political record. Additionally, she observed that the minister's busy schedule, often holding concurrent ministerial positions, is a common practice, further hindering effective attention to gender equality issues.¹¹⁵ Regarding the rights of persons with disabilities, the Commission on Policy for Persons with Disabilities placed in the Cabinet Office functions as the monitoring framework specified in article 33 of CRPD.¹¹⁶ The Commission informs the preparation process of the government's implementation report of CRPD, with the engagement of a range of actors beyond the Commission.¹¹⁷

4.1.6 Treaty Body Membership

Japanese experts have consistently been members of various treaty bodiestreaty bodies. (See Table 11.1 below.)

4.2 *Overview of Impact*

4.2.1 Incorporation and Reliance by Legislature and the Executive

Since the Japanese government generally assumes that the Bill of Rights in the Constitution and existing statutory laws cover a wide range of human rights, it is uncommon to see explicit reference to international human rights treaties in the Japanese legislature and the executive. A significant impact is often seen when the government decides to enter a treaty. Iwasawa observes that the government makes 'scrupulous effort to bring Japanese law into conformity with the treaty' and '[i]f there is any conflict between the treaty

115 Y Hayashi, *Jendā Byōdō Shakaieno Tembō* (Prospects for a Gender-Equal Society)' (2020) 280 Monthly Zenroren 16–17. It is also pointed out that the abolition of the specialised committee to monitor the implementation of the Basic Plan for Gender Equality and the recommendation of CEDAW hindered the effective work of the national machinery. A comment from an international human rights law expert on 17 February 2019. Interview with an International Human Rights Expert (Online, 17 February 2019).

116 The commission has duties that include providing study and experts comments for the development of the Basic Programme for Persons with Disabilities; monitoring the implementation status of Basic Programme for Persons with Disabilities (making recommendation to relevant ministers if deemed necessary); and monitoring the implementation status of CRPD in Japan. Cabinet Office, 'Commission on Policy for Persons with Disabilities (Overview)' <<https://www8.cao.go.jp/shougai/english/pdf/pc-1.pdf>> accessed 8 March 2021.

117 CRPD, 'Initial Report Submitted by Japan Under Article 35 of the Convention, due in 2016' (CRPD/C/JPN/1, 4 October 2017) <<https://undocs.org/CRPD/C/JPN/1>> accessed 8 March 2021; CRPD, 'List of Issues in Relation to the Initial Report of Japan' (CRPD/C/JPN/1, 29 October 2019) <<https://undocs.org/CRPD/C/JPN/Q/1>> accessed 15 November 2020.

TABLE 11.1 Membership of treaty bodies (as of 2021)

CRC	Ms Mikiko Otani (2017–present)
CERD	Ms Keiko Ko (2018–2022)
CRPD	Mr Jun Ishikawa (2017–2020)
CEDAW	Ms Ryoko Akamatsu (1987–1994), Ms Ginko Sato (1995–1998), Ms Chikako Taya (1999–2001), Ms Fumiko Saiga (2002–2007), Ms Yoko Hayashi (2008–2018), and Ms Hiroko Akizuki (2019–present)
CCPR	Mr Nisuke Ando (1987–2006), Mr Yuji Iwasawa (2007–2018), and Mr Shuichi Furuya (2019–2022)
CESCR	Ms Chikako Taya (1986–1990, 1992–1996)
CED	Mr Kimio Yakushiji (2011–2017) and Mr Koji Teraya (2017–2019)

SOURCE: <[HTTPS://WWW.OHCHR.ORG/EN/TREATY-BODIES](https://www.ohchr.org/en/treaty-bodies)> UNDER ‘MEMBERSHIP’ FOR EACH CTTEE, ACCESSED 9 SEPTEMBER 2023.

and domestic law, the government makes sure that domestic law is amended before it enters into the treaty’ with careful and thorough examinations by the relevant bureaus.¹¹⁸ Such significant reformation of domestic laws and policies in harmony with human rights treaties was explicitly seen at the time of the ratification of CEDAW and CRPD.¹¹⁹ The impact of human rights treaties after the ratification or accession of treaties may not be as explicit or drastic as it is at the time of entry into force. In most cases, as examined in the following part of this chapter, strong persuasion and pressure from civil society seem to have been significant drivers of the reformation process for legal and policy changes informed by the recommendations of the treaty bodies and treaties. While a few parliamentarians are actively promoting its standards with reference to it in the Diet, some politicians are strongly critical and concerned about the international human rights intervention as its principles and recommendations may alter the traditional values and practices of the country.¹²⁰

118 Iwasawa 1998 (n 75) 306.

119 The enactment of the basic law and revisions to related laws were made before and after ratification of those treaties.

120 See National Diet Library (n 89) for MP Mio Sugita’s statement urging the Japanese government to withdraw from the CEDAW. See also n 306 for MP Satsuki Katayama’s support for a CSO that called for the immediate dismissal of a Japanese member on CEDAW which criticised the Japanese government on the issue of comfort women.

In recent years, local governments have played an important role in the implementation of human rights treaties. More closely connected with local or community-based civil society groups, some local governments are very active in urging the national government to comply with international human rights treaties.¹²¹ Further, there are many initiatives to develop local ordinances in line with international human rights standards.¹²²

4.2.2 Reliance by Judiciary

Under the Constitution, the Supreme Court can review the constitutionality of any particular law, order, regulation, or official act in relation to an individual case of a specific dispute as a court of appellate instance.¹²³ Despite its wide scope of justiciability, since 1946, as of December 2019, the Supreme Court had identified only 10 cases in which statutes were deemed unconstitutional. In some highly political cases, the Supreme Court was restrained from

¹²¹ For example, at least 196 local assemblies have adopted statements of position asking for the ratification of the Optional Protocol of CEDAW (as of 15 March 2023). See OP CEDAW ACTION, '*Kakuchino Ikensho Kaketsu Jōkyō* (Status of Adoption of Statements of Position in Various Regions)' <<https://opcedawjapan.wordpress.com/>> accessed 15 September 2023. Regarding hate speech, over 230 municipalities sent comments to the government as of November 2015 seeking to strengthen countermeasures against hate speech, including the legal development, most of which referred to the Kyoto Korean School case and its ruling to demonstrate the seriousness of the issue to justify their allegation. See All-Japan Prefectural and Municipal Workers Union, '*Jichitaikara Hasshinnsuru Jinken Seisaku* (Human Rights Policies Initiated by Local Governments)' <https://www.jichiro.gr.jp/jichiken_kako/sagyouiinnkai/36-jinkenseisaku/contents.htm> accessed 15 November 2020.

¹²² For example, 97.9% of the prefectures and 100% of the ordinance-designated big cities (*seirei shitei toshi*) enacted local ordinances on gender equality. See Gender Equality Bureau Cabinet Office, '*Danjo Kyōdō Sankakuni Kansuru Jōreino Seitei Jōkyō* (Current Situation of the Enactment of Local Ordinances on Gender Equality)' (1 April 2019) <<http://www.gender.go.jp/research/kenkyu/suishinjokyo/2019/pdf/rep/02-1.pdf>> accessed 15 November 2020. Kawasaki City in Kanagawa Prefecture enacted an ordinance on children's rights and established a children's conference to hear their opinions. Namie City in Hokkaido Prefecture enacted an ordinance on children's rights and started an election among teenagers. See H Otsu, '*Kokusajinkenoshōni Okeru Jichitaino Kennōto Gimu* (The Functions and Responsibilities of Municipalities in International Human Rights Protection)' in K Serita, K Tonami, T Munesue, K Yakushiji and S Sakamoto (eds), *Kokusajinkenohō Kokunaiteki Jisshi* (*The Domestic Implementation of International Human Rights Law*) (Shinzansha 2011) 20.

¹²³ Art 81 of the Constitution of Japan 1947 ('the Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act'). However, the Court cannot examine constitutional questions without being accompanied by legal disputes and issues.

dealing with constitutional questions.¹²⁴ This may arguably indicate that the Supreme Court of Japan has not played a pro-active, formative role in light of constitutional questions.¹²⁵ Since judges tend to believe that the Constitution and statutory laws already protect human rights to the level that treaties require and are not familiar with international human rights law,¹²⁶ it is rare for Japanese courts to invalidate domestic law based on international human rights law. Human rights advocates have often criticised the courts for not seriously considering arguments based on international human rights laws or recommendations.¹²⁷

In the concluding observations (COs) of the review of the fourth periodic report of Japan in 1998, the Human Rights Committee strongly recommended that training of judges, prosecutors, and administrative officers in human rights under the Covenant be made available, which the JFBA had also strongly advocated.¹²⁸ Following this recommendation, some lectures on international

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- 124 See the *Naganuma Nike* case, in which residents of Naganuma, Japan, alleged that the existence of Japan Air Self-Defence Forces (JASDF) violated art 9 of the Japanese Constitution, which prohibits armed forces and the maintenance of 'war potential'. The Supreme Court dismissed the case based on the political question doctrine without making judgments on whether the existence of JASDF was against the Constitution. See WR Slomanson, 'Judicial Review of War Renunciation in the *Naganuma Nike* Case: Juggling the Constitutional Crisis in Japan' (1975) 9 *Cornell International Law Journal* 24. It seems the highest court's position of self-restraint from taking a clear position leads to the stance to wait for the problem to be decided in a political process rather than by the judiciary.
- 125 Some argue that the Constitution has not been regarded as law to be applied by judges, which is the most unfortunate reason for judicial passivism. S Matsui, 'Why is the Japanese Supreme Court So Conservative?' (2011) 88 *Washington University Law Review* 1375, 1413; DS Law, 'The Anatomy of a Conservative Court: Judicial Review in Japan' (2009) 87 *Texas Law Rev* 1545. On the other hand, some argue this reflects a very prudent approach of the Japanese judiciary. Through its contribution to bring about stability with pro-government and pro-business judicial decisions, the Supreme Court has indirectly helped achieve economic growth and a relatively egalitarian civil society. H Itoh, *The Supreme Court and Benign Elite Democracy in Japan* (Ashgate 2010).
- 126 See also Iwasawa 1998 (n 75) 288; K Teraya, '*Heito Supichi Jiken* (Hate Speech Case)' (2014) 1466 *Jurist* 292, 292.
- 127 Iwasawa 1998 (n 75) 288–306; D Zartner, *Courts, Codes, and Custom: Legal Tradition and State Policy toward International Human Rights and Environmental Law* (OUP 2014) 241–244. See T Ebashi, '*Kenri Hoshō Kihan to shitenō Kempō to Kokusai Jinken Kiyaku* (The Constitution and the International Covenants on Human Rights as Norms to Guarantee Rights)' (1994) 1037 *Jurist* 109.
- 128 See HRCtee, 'Concluding Observations of the Human Rights Committee: Japan' (CCPR/C/79/Add.102, 19 November 1998) <<https://undocs.org/CCPR/C/79/Add.102>> accessed 8 March 2021; HRCtee (n 42) para 3; JFBA, '*Kaikaku Semarareru Nihonno Jinken Hoshō Shisutemu* (Japan's Human Rights Protection System Under Pressure to Reform)' (1 March 2009) <<http://www.moj.go.jp/content/000055359.pdf>> accessed 15 November 2020.

human rights law have been incorporated into the curricula of the Legal Research and Training Institute and continuing legal training for legal experts and legal professionals, namely, judges, prosecutors, and lawyers, who must take courses on international human rights treaties during their training period before obtaining judicial qualifications.¹²⁹ However, the JFBA argues that the quality and quantity of these lectures are extremely inadequate.¹³⁰ Continuing training for prosecutors is also designed to study international human rights treaties at a certain frequency, but their specific contents are not clear, or distributed materials have not been published.¹³¹

In the Japanese legal system, an alleged violation of international law is not an explicit ground for a final appeal to the Supreme Court, as explained earlier.¹³² An international expert pointed out that it leads to human rights lawyers' allegations that the courts do not adequately respect international human rights law.¹³³ Although Japanese courts are reluctant to use international law to invalidate domestic law, the Supreme Court of Japan in some recent cases began actively referring to international sources and recommendations as persuasive authorities, particularly CCPR, CERD, and CRC.¹³⁴

4.2.3 Impact on and through Non-state Actors

As examined in the following part of this chapter, human rights CSOs and minority organisations have been the main drivers of change in light of the passive or reticent attitude of the government toward the incorporation of international human rights standards into domestic law and policies. CSOs leveraged the state reporting mechanism under the human rights treaties.¹³⁵

¹²⁹ HRCtee (n 42) para 3.

¹³⁰ JFBA, 'Report of JFBA Regarding the Seventh Periodic Report by the Government of Japan based on Article 40(b) of the International Covenant on Civil and Political Rights' (16 July 2020) <https://www.nichibenren.or.jp/library/pdf/activity/international/library/human_rights/iccpr_7en.pdf> accessed 10 June 2021, para I-1-(2).

¹³¹ *ibid.* The impact of this training, such as how it changes the understanding and attitude of legal professionals towards international human rights treaties in particular in their judicial decision and allegations in courts has still not been examined.

¹³² Code of Civil Procedure 2011, art 312, and Code of Criminal Procedure 2011, art 405, list a violation of constitutional law as the grounds for final appeal, without mentioning a violation of international treaties.

¹³³ Interview with an International Human Rights Law Expert (Online, 17 February 2019). Some argue that the lack of acceptance of individual communications leads to negligence of the courts of international human rights treaties.

¹³⁴ See the sections below.

¹³⁵ Given Japan's lack of acceptance of any individual complaints mechanism under the treaty bodies, civil society groups have urged the government to adopt the individual complaints procedure. For example, the JFBA adopted a resolution in 2019 requesting the government

TABLE 11.2 Number of independent/parallel (CSOs) reports under ratified treaties on the occasion of state reporting (cycle, year)

CERD	NA (1st–2nd in 2001); 6 (3rd–6th in 2010); 10 (7th–9th in 2014); 12 (10th–11th in 2018)
CCPR	45 (5th in 2008); 54 (6th in 2014); 78 (7th in 2022)
CESCR	3 (2nd in 2001); 38 (3rd in 2013)
CEDAW	18 (6th in 2009); 27 (7th–8th in 2016), 17 (9th in 2020)
CAT	5 (1st in 2007); 12 (2nd in 2013)
CRC	45 (4th–5th in 2019)
CED	3 (1st in 2018); 0 (2nd in 2020)

Note: UN Treaty Body Database <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx> accessed 29 September 2020. There is yet to be a first state reporting session for CRPD.

They regularly submit independent reports to treaty bodies and make use of their recommendations in their advocacy for the revision of domestic law and policies.¹³⁶ In addition, the number of independent reports submitted from CSOs, as well as the number of CSOs involved in providing information to each committee in the state reporting cycle, have increased as follows:

Several CSOs submit joint independent reports to the committees when they review the government's periodic report, coordinating a group of grassroots organisations, and consolidating different claims of multiple groups under specific treaties.¹³⁷ Albeit partially, CSOs are involved in consultation with relevant ministries and agencies to exchange views in the process of developing a

for implementation of an individual complaints procedure. JFBA, 'Resolution Requesting the Implementation of an Individual Complaints Procedure and the Establishment of a National Human Rights Institution' <www.nichibenren.or.jp/en/document/statements/2019_2.html> accessed 26 January 2020. For the history of how minority groups in Japan expanded their activism since the late 1970s empowered by global human rights ideas and institutions, see K Tsutsui, *Rights Make Might: Global Human Rights and Minority Social Movements in Japan* (Oxford Academic, 2018).

136 See Table 3 below for further details.

137 See eg, International Movement Against All Forms of Discrimination and Racism (IMADR), '*Jinshu Sabetsu Teppai* (Elimination of Racial Discrimination)' <<http://imadr.net/activity/erd/>> accessed 25 January 2020; Japan NGO Network for CEDAW (JNNC), 'NGO Joint Report (Japan)' (10 January 2016) <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/JPN/INT_CEDAW_NGO_JPN_22777_E.pdf> accessed 25 January 2020.

government report on the implementation of treaties.¹³⁸ They also hold campaigns and meetings to pressure the government to implement committee recommendations.¹³⁹ An expert in international human rights mentioned that cooperation among civic groups working for international human rights is a key for civil society groups to gain effective access to treaty bodies, and ardent follow-up by civil society groups after treaty bodies' recommendations is important for domestic incorporation of the treaty bodies' recommendations.¹⁴⁰

Furthermore, it is also noteworthy that the international human rights law and treaty body mechanism, although indirectly, contributed to the development of active research institutes and associations on international human rights. They have provided evidence-based research on the human rights situation to inform the government or the general public and conducted training and campaigns, which also contributed to raising awareness of human rights treaties among public officials and people. For example, the Centre for Human Rights Education and Training was restructured in 1997 as a national centre for human rights education.¹⁴¹ The Kyoto Human Rights Research Institute also conducts research on human rights issues and promotes academic exchange with domestic and foreign research institutes in the field of human rights, with more than 100 researchers.¹⁴² The International Human Rights Law Association was established in 1988 as a platform for discussions on the examination of domestic implementation of international human rights standards with the participation of researchers of international human rights law, constitutional and other fields of domestic law, and legal practitioners.¹⁴³

Concerning non-state actors' activism, it may be a unique phenomenon in Japan that some organisations and activists who argue against recommendations by human rights treaty bodies or allegations of other human rights CSOs

138 E.g., the meeting for the exchange of views between the government and CSOs upon the Tenth and Eleventh Combined Periodic Report under article 9 of CERD, held on 19 August 2016. The Ministry of Foreign Affairs of Japan, 'Jinshusabetsuteppai Joyaku (CERD)' <<https://www.mofa.go.jp/mofaj/gaiko/jinshu/index.html>> accessed 15 September 2023.

139 An expert observes that while civil society so far tends to focus on providing the information to the committee to have recommendations to reflect their arguments, they should work more on the follow-up procedure, with a focus on the domestic process to implement existing recommendations. Interview with an International Human Rights Expert (Geneva, Switzerland, 11 February 2019).

140 Interview with an International Human Rights Law Expert (Geneva, Switzerland, 11 February 2019).

141 Centre for Human Rights Education and Training, 'Information' <<http://www.jinken.or.jp/information>> accessed 22 March 2021.

142 Kyoto Human Rights Research Institute, 'Top page' <<http://khrii.or.jp/>> accessed 8 November 2020.

143 International Human Rights Law Association, 'Top Page' <<http://www.ihrla.org>> accessed 29 September 2020. It holds annual academic conferences, and many practitioners and

zealously provide information on several controversial issues to the committees as civil society actors. They actively engage in the state reporting process in Geneva, which has been observed since the 2000s. They claim that the committees have often misunderstood the Japanese historical background, culture, and political sensitivity, and in some cases even object to the basic principles or legitimacy of the human rights treaties and treaty bodies' work, which causes controversy in both international and domestic spheres.¹⁴⁴

4.2.4 Impact of State Reporting

The state reporting system is the main window for the Japanese government as well as civil society groups and victims of human rights violations to engage with treaty bodies. Through the state reporting cycle, the government revisits its activity through the human rights lens and constructive dialogues with the committees, including responses to their questions. This process potentially offers opportunities for governmental officials from domestically-focused ministries to familiarize themselves with international human rights standards through their involvement in the development of periodic reports and committee sessions.¹⁴⁵ A variety of measures have been taken by the state party to promote human rights through the process of state reporting as a positive impact at the domestic level.¹⁴⁶ This observation is substantiated by empirical analysis, which reveals a greater inclusion of references to international human rights treaties and the committees' recommendations in legislative processes. For example, as indicated in the graph below, the number of references to COs by MPs in the discussion at the Diet has increased over the years.

scholars participate in the discussion on actual human rights cases. Additionally, some constitutional scholars pay more attention to international human rights law. Eg, see M Sogabe, *Jinkenhōtoiu Hassō* (The Approach of Human Rights Law) (2020) 482 *Hogaku Kyoshitsu* (Legal Studies Class) 72.

144 For example, they say that the committees misunderstand the 'comfort women' issue by recognizing them as 'sex slaves.' Their arguments include that it is legally justifiable for the government not to subsidize Korean high schools in Japan and withhold local suffrage from foreigners. Furthermore, they assert that Okinawan people are not indigenous, and that Ainu people have not historically faced mistreatment or oppression. eg, Happiness Realization Research Institute, 'Report Submitted to the Committee on the Elimination of Discrimination Against Women' <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/JPN/INT_CEDAW_NGO_JPN_22837_E.docx> accessed 1 February 2020; Japan NGO Coalition against Racial Discrimination (JNCRD), 'NGO Report in Relation to the Tenth to Eleventh Periodic Reports of JAPAN' (14 July 2018) <https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/INT_CERD_NGO_JPN_31798_E.pdf> accessed 1 February 2020. These groups are not funded by the government, but some conservative members of parliament have explicitly shown support for these allegations.

145 A comment from an international human rights law expert (Geneva, Switzerland, 27 August 2019).

146 For the impact of state reporting of each treaty, see the following sections.

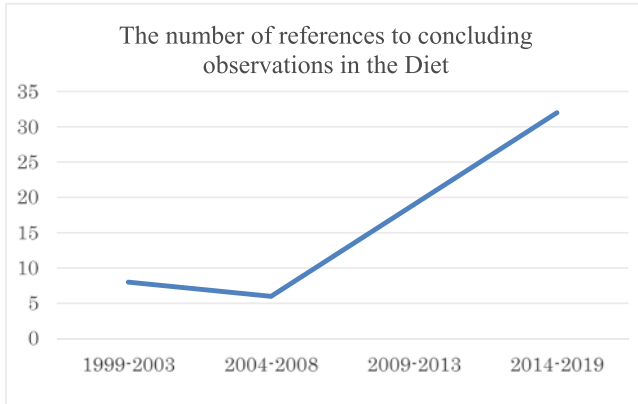


FIGURE 11.1 Reference to COS by Diet

SOURCE: THIS GRAPH IS BASED ON THE NUMBER OF REFERENCES TO COS IN THE DATABASE SYSTEM PROVIDING FULL-TEXT OF MINUTES OF THE DIET'S PARLIAMENTARY PLENARY SITTINGS AND COMMITTEE MEETINGS (SEE: KOKKAI GIJIROKU KENSAKU SYSTEM <[HTTPS://KOKKAI.NDL.GO.JP/](https://kokkai.ndl.go.jp/)> ACCESSED 12 NOVEMBER 2020). THE JAPANESE TERM "SOKATSUSHOKEN (CONCLUDING OBSERVATIONS)" WAS USED AS THE KEYWORD TO SEARCH.

5 Detailed Impact of UN Human Rights Treaties on the Domestic Level in Japan

5.1 *International Convention on the Elimination of All Forms of Racial Discrimination*

5.1.1 Incorporation and Reliance by Legislature and Executive Powers

There was no legal reformation or development at the time of the ratification of CERD in 1995. The Bill on the protection of human rights, including the prohibition of racial discrimination, was submitted to the Diet in 2002 and 2005 but was scrapped facing opposition from both conservatives and progressives.¹⁴⁷ However, several changes in legislation and ordinances aimed at eliminating racial discrimination have been observed in recent years. For example, the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour against Persons Originating from Outside Japan (Hate Speech Elimination Act) was enacted in 2016 to encourage national and local governments and the general public to eliminate hate speech, which had been

147 House of Representatives, '*Jinken Yōgo Hōan* (Human Rights Protection Bill)' <https://www.shugiin.go.jp/Internet/itdb_gian.nsf/html/gian/honbun/houan/g15405056.htm> accessed 18 March 2021.

rampant around 2010.¹⁴⁸ According to the MOJ, this law was developed ‘in response’ to the recommendations set out in ‘[the] Concluding Observations on the Sixth Periodic Report of Japan by the UN Human Rights Committee in July 2014 and [the] Concluding Observations on the Combined Seventh to Ninth Periodic Reports of Japan by the UN Committee on the Elimination of Racial Discrimination in August of the same year’.¹⁴⁹ While the law itself does not contain explicit reference to these treaties and does not make hate speech illegal, its development process was informed by the state reporting process and its recommendations, as well as domestic judicial decisions on hateful demonstrations that made significant reference to CERD.¹⁵⁰ It is noteworthy that the supplementary resolutions of both houses of the Diet attached to the law and the background documents on legal development explicitly mention that the law should be interpreted in view of CERD.¹⁵¹ The development of the Hate Speech Elimination Act contributed to several developments in policies,

148 Government of Japan, ‘Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons with Countries of Origin other than Japan’ <<https://www.japaneselawtranslation.go.jp/en/laws/view/4081/en>> accessed 8 September 2023. The term ‘unfair discriminatory speech and behaviour against persons originating from outside Japan’ in the Act, despite its problematic scope (addressed later in this chapter), is considered to be equivalent to what is known as ‘hate speech’ in principle, as indicated on the website of Japan’s Ministry of Justice. See MOJ, ‘Promotion Activities Focusing on Hate Speech’ <http://www.moj.go.jp/ENGLISH/m_jinken04_00001.html> accessed 5 May 2019.

149 *ibid.*

150 See A Hatano, ‘Hate Speech and International Law: The Internalisation of International Human Rights in Japan’ in Y Nasu and S Higaki (eds), *Hate Speech in Japan: The Possibility of a Non-Regulatory Approach* (Cambridge University Press 2021). As a consequence of the intense argument over the protection of freedom of speech and the regulation of hate speech, the law does not have provisions on the punishment of a person who displays unfair, discriminatory speech and behaviour and protects only those ‘persons originating exclusively from a country or region other than Japan or their descendants and who are lawfully residing in Japan’. Some have criticised the law as toothless and narrow, not fully complying with the recommendations of treaty bodies including CERD. See Hate Speech Elimination Act 2016, art 2; Tomohiro Osaki, ‘Diet Debates Hate-Speech Bill that Activists Call Narrow and Toothless’ *Japan Times* (19 April 2016) <<https://www.japantimes.co.jp/news/2016/04/19/national/politics-diplomacy/diet-debates-hate-speech-bill-activists-call-narrow-toothless/>> accessed 28 April 2019.

151 House of Councillors Committee on Judicial Affairs, ‘Supplementary Resolution for the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour against Persons Originating from Outside Japan’ <<https://houseikyoku.sangiin.go.jp/bill/pdf/h28-068ks.pdf>> accessed 8 September 2023; House of Representative Committee on Judicial Affairs, ‘Supplementary Resolution for the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour against Persons Originating from Outside Japan’ <https://www.shugiin.go.jp/internet/itdb_rchome.nsf/html/rchome/Futai/houmu684D38F3EE8DA72649257FBD00182F0C.htm> accessed 8 September 2023.

regulations, and ordinances to curb hate speech and racial discrimination in response to the prior recommendation of CERD.¹⁵² In these processes, there was active engagement of some MPs who strongly pressured the government to take measures against hate speech with reference to international human rights standards.¹⁵³

In addition, the Act on Promoting Measures to Realise a Society in which the Pride of the Ainu People is Respected was promulgated in April 2019. The Act recognises the Ainu as indigenous people in Japan and obligates the government to adopt policies to facilitate people's understanding of the traditions of the Ainu and the importance of the diversity that ethnic groups contribute to society.¹⁵⁴ While there is no reference to CERD in the law, the development

152 See Hatano 2021 (n 150) 3, 69–79. For example, on 2 June 2016 the Kawasaki Branch of the Yokohama District Court issued its first ever provisional injunction preventing an anti-Korean activist from holding rallies, again referring to the Hate Speech Elimination Act. Yokohama District Court, Kawasaki Branch, Judgment, 2 June 2016, 2296 Hanji 14. The government conducted a survey of the situation of hate speech in 2016 and another survey of foreign residents in Japan in 2017, both of which were commissioned by the MOJ. An analytical report of the survey was submitted to CERD on the occasion of the review of Japan's tenth and eleventh periodic reports. This responded to the prior CERD request for the Japanese government to collect comprehensive, reliable, and up-to-date data on the ethnic composition of the country's population in the COs on the combined seventh to ninth periodic reports. CERD, 'Tenth and Eleventh Periodic Reports of States Parties due in 2017' <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskWEDuvHC0lMabuZoOD1HY3EyquAhGLvlaiaU%02bU7v%02ffuOPReM5Yjd9gocrsHkePSXOZYbvzKrKbpDj%02bmnQnVkrwcY2byN%02fqnZAGPWpZv6H0n>> accessed 16 November 2020. Centre for Human Rights Education and Training, 'Analytical Report of the Foreign Residents Survey – Revised Edition' (June 2017) <https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/INT_CERD_AIS_JPN_30363_E.pdf> accessed 15 November 2020; CERD, 'Concluding Observations on the Combined Seventh to Ninth Periodic Reports of Japan' (CERD/C/JPN/CO/7–9, 29 August 2014) <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%02fPPRiCAqhKb7yhskWEDuvHC0lMabuZoOD1HY0SfxlfB1VeioXttAzGv30U0Rk%02bkdMAGVYyItJ663GQIU8ZU21%02fekVAPTfzZAumBFIK3%02fSvEnalM10Sl5jPCCBP>> accessed 16 November 2020.

153 Some MPs have joined in the country report reviews in Geneva. For example, MP Yoshifu Arita participated in the review of combined tenth and eleventh periodic reports of Japan for the CERD in 2018 in Geneva. Nishinippon Shimbun, 'Aritashi Heito Taisakude Seifu Hihan Shakumeini "Jidai Okure" (Arita Criticises Government on Anti-hate Measures, says their Explanation is "Outdated")' (18 August 2018) <<https://www.nishinippon.co.jp/item/0/442107/>> accessed 15 November 2020.

154 National Printing Bureau, 'Hōritsu (Law)' (Kampo, 26 April 2019) <<https://kanpou.npb.go.jp/old/20190426/20190426g00087/20190426g000870005f.html>> accessed 26 January 2020.

of this law followed and resonated with the resolutions adopted in June 2008 at both Houses of the Diet requesting the government to recognise the Ainu as indigenous people, which is informed by the Declaration on the Rights of Indigenous Peoples adopted at the UN General Assembly in 2007 and the recommendations of the CERD Cttee and other treaty bodies.¹⁵⁵

Regarding the *Buraku* people,¹⁵⁶ Japanese government, has disagreed with the view of the CERD Cttee and human rights CSOs over whether the issues of the *Buraku* people fall within the scope of CERD, more specifically, if *Buraku* people can be seen as a type of 'descent' as defined in article 1(1) of CERD. The Japanese government considers that, historically, the *Buraku* people were a class defined by a very specific occupation and governed by a special status and not regarded as 'descent' in the scope of article 1(1) of CERD.¹⁵⁷ Thus, despite the CERD Cttee's repeated requests to the Japanese government to cover the issue of the *Buraku* in state reporting,¹⁵⁸ the government has never done so throughout their reporting to date.¹⁵⁹ This attitude of the government

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- 155 House of Councillors, '*Ainu Minzokuwo Senju Minzokuto Surukotowo Motomeru Ketsugi* (Resolution Seeking Government's Recognition of the Ainu as Indigenous People)' (6 June 2008) <<https://www.sangiin.go.jp/japanese/gianjoho/ketsugi/169/080606-2.html>> accessed 1 February 2020; House of Representatives, '*Ainu Minzokuwo Senju Minzokuto Surukotowo Motomeru Ketsugi* (Proposal of a Resolution Seeking Government's Recognition of the Ainu as Indigenous People)' (6 June 2008) <<https://digitallibrary.un.org/record/438749?ln=en>> accessed 15 September 2023.
- 156 The *Buraku* people or *Burakumin*, although of Japanese ethnic origin, were treated as pariahs and relegated to the most demeaning jobs in the Japanese feudal system. Even after the hierarchical system was over, '*Buraku* Lists' circulated to private companies have denied this group access to contractual employment and exposed them to discrimination in society. CERD Cttee, 'Summary Record of the 1443rd Meeting' (CERD/C/SR.1443, 15 March 2001) <<https://digitallibrary.un.org/record/438749?ln=en>> accessed 15 September 2023.
- 157 CERD Cttee, 'Summary Record of the 1444th Meeting' (CERD/C/SR.1444, 11 June 2001) <<https://digitallibrary.un.org/record/438765?ln=en>> accessed 15 September 2023.
- 158 CERD Cttee, 'Concluding Observations of the Committee on the Elimination of Racial Discrimination: Japan' (CERD/C/304/Add.114, 27 April 2001) <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CERD%2FC%2F304%2FAdd.114&Lang=en> accessed 15 September 2023.
- 159 There has been no reference to the issue of *Buraku* in Japan's state reports to CERD so far. See OHCHR, 'Reporting Status for Japan' <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?Country Code=JPN&Lang=EN> accessed 15 November 2020.

drove Japanese activists for *Burakumin's* rights to take action for international solidarity. The *Buraku* and Dalit organisations in India worked together and actively lobbied at the Asian Regional Meeting and the Durban Conference in 2001 to have the Durban Declaration and Action Plan clearly state that the reason for racial discrimination is 'caste' and '*Buraku*' discrimination.¹⁶⁰ Although this did not happen in the end after intense arguments, the process drove activists and organisations for *Buraku* rights to actively lobby at the CERD Cttee for the development of General Recommendation 29 on article 1, paragraph 1 of the Convention (Descent) in 2002.¹⁶¹ In this context, the passage of the Act on the Promotion of the Elimination of *Buraku* Discrimination in December 2016 should not be considered as a direct impact of CERD but rather as a consequence of a mixture of international and national pressures on the legislature. The *Buraku* Act sets out the basic principles and responsibilities of the state and local governments in relation to the elimination of *Buraku* discrimination without establishing penalties in the case of non-compliance.¹⁶² The *Buraku* Act of 2016 does not contain any language of CERD provisions or

160 Comments from international human rights CSO staff on 30 May 2020.

161 CERD Cttee, 'Sixty-First Session (2002), General Recommendation XXIX on Article 1, Paragraph 1, of the Convention (Descent)' <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7501&Lang=en> accessed 12 January 2021. In the meantime, the Subcommittee on Human Rights started to develop principles and guidelines on the topic of discrimination based on work and descent. IMADR and other CSOs contributed to the research and development of the report of Special Rapporteurs on the topic of discrimination based on work and descent, including Japanese international law expert Yozo Yokota. A draft of the principles and guidelines was submitted to the newly-established Human Rights Council, but it was never submitted to the Human Rights Council as a draft resolution due in large part to the strong opposition of the Indian government. See the final report published for the Human Rights Council session in June 2009 (A/HRC/11/CRP.3, 18 May 2009); Comments from international human rights CSO staff on 30 May 2020.

162 Government of Japan, 'Act on the Promotion of the Elimination of Buraku Discrimination' <https://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?lawId=428AC100000109> accessed 15 November 2020; IMADR, 'Act on the Promotion of the Elimination of Buraku Discrimination' <<https://imadr.net/wordpress/wp-content/uploads/2016/12/Act-on-the-Promotion-of-the-Elimination-of-Buraku-Discrimination-2.pdf>> accessed 15 November 2020. It obliges the central and local government to establish consultation systems and undertake surveys into *buraku* discrimination, as well as raise awareness against *buraku* discrimination. Act on the Promotion of the Elimination of Buraku Discrimination <<https://imadr.net/wordpress/wp-content/uploads/2016/12/Act-on-the-Promotion-of-the-Elimination-of-Buraku-Discrimination-2.pdf>> accessed 1 February 2020. While *buraku* discrimination was also advocated by civil society as a violation of the rights protected under CERD, the government of Japan does not agree to deal with it as racial discrimination.

recommendations, nor any human rights treaties, although it acknowledges that discrimination against *Buraku* communities exists and declares that it is the government's responsibility to root it out based on the principle of fundamental human rights.¹⁶³

5.1.2 Reliance by Judiciary

CERD had a significant impact as interpretative standards on some discrimination cases between private parties. For example, the Shizuoka District Court applied CERD to private relations in 1999.¹⁶⁴ In 2002, the Sapporo District Court further acknowledged that the actions of private persons could constitute racial discrimination under CERD.¹⁶⁵ It used international law as an interpretative standard to recognise the tort of racial discrimination.¹⁶⁶ These lawsuits have helped blur the public-private divide that traditionally insulated people from international law. The application of CERD to the private sphere marked a critical passage in Japan's ongoing integration of international law norms into its domestic law.¹⁶⁷ In part, this development may be because Japan had introduced no new legislation to implement CERD after its accession.¹⁶⁸ In the absence of domestic legislation, judges can step in to fill a legislative void and often rely on international law.¹⁶⁹

The rulings of the Kyoto Korean School case from 2013 to 2015 follow these precedents within the existing legal framework, but with further references to CERD.¹⁷⁰ The courts condemned hateful demonstrations against Korean residents in Japan as 'racial discrimination' as defined by article 1(1) of CERD and ordered the xenophobic individuals and groups who conducted hostile demonstrations to pay a weighted amount of compensation, being informed

163 See Government of Japan, 'Act on the Promotion of the Elimination of Buraku Discrimination' <<https://www.japaneselawtranslation.go.jp/en/laws/view/4080/en>> accessed 11 September 2023.

164 Shizuoka District Court, Hamamatsu Branch, Judgment, 12 October 1999, 1045 *Hanrei Times* 216, 217.

165 Sapporo District Court, Judgment, 11 November 2002, 1150 *Hanrei Times* 185. In this case a plaintiff sued a bathroom that refused entry to non-Asian looking foreigners for racial discrimination and the Otaru municipal government for not taking adequate measures to ban racial discrimination.

166 *ibid.*

167 Webster (n 77) 245.

168 *ibid* 267.

169 *ibid.*

170 A Hatano, 'Can Strategic Human Rights Litigation Complement Social Movements? A Case Study of the Movement Against Racism and Hate Speech in Japan' (2019) 14 *University of Pennsylvania Asian Law Review* 228, 4.

by CERD.¹⁷¹ Furthermore, the trial court decision by the Kyoto District Court, in this case, made it clear that the national courts have a 'direct obligation' to interpret domestic laws to conform with CERD, referring to articles 2(1) and 6 of the Convention.¹⁷² It is considered that this landmark decision demonstrates a positive attitude among the judiciary towards acknowledging its own role in realising international human rights law in the form of judicial redress for victims.¹⁷³ These cases align with the argument that the Japanese court has gradually warmed up to claims brought under international law and have applied CCPR and CERD in domestic litigation to hold acts of racial discrimination illegal, even though no domestic law specifically proscribes such conduct.¹⁷⁴ The rulings took Japan farther along a path reflecting a gradual change in the attitude of the Japanese judiciary towards international law, even if those cases may not have drastically changed the existing framework of jurisprudence.

5.1.3 Impact on and through Non-state Actors

While Japan's decision to accede to the Convention in 1995 occurred nearly 30 years after CERD was adopted, the ascent of the domestic movement for *Buraku* liberation played a pivotal role in driving this accession.¹⁷⁵ The accession of CERD and its state reporting process have encouraged civil society groups to work proactively in advocating the human rights of foreigners and racial

171 The trial court ruled that when a tort is racially discriminatory or racially motivated, the intangible damage the court determines would be 'aggravated based on the direct influence of the ICERD on the interpretation of the Civil Code' and that 'the amount of compensation should be enough to ensure effective protection and remedy against the racial discrimination' under art 6 of CERD, which is specifically addressed to national courts. This is also in line with CERD General Recommendation 26. See A Hatano, 'The Internalization of International Human Rights Law: The Case of Hate Speech in Japan' (2018) 50 *New York University Journal of International Law and Politics* 637; Kyoto District Court, Judgment, 7 October 2013, 2208 Hanrei Jihō 74; Osaka High Court, Judgment, 8 July 2014, 2232 Hanrei Jihō 34; Supreme Court, Judgment, 9 December 2014, TKC 25505638; Hatano 2019 (n 170).

172 The trial court also referred not only to treaty provisions but also to the COs in the review of the government reports before CERD. K Teraya, '*Heito Supichi Jiken* (Hate speech case)' (2014) 1466 *Jurist* 292, 293.

173 T Saito, 'The Situation of Domestic and International Laws Over the Measures Against Hate Speech' (2016) 19 *Quarterly Jurist* 91, 94.

174 Webster (n 77) 263.

175 Buraku Liberation and Human Rights Research Institute, 'Success in implementing the Convention on the Elimination of Racial Discrimination in Japan and the World Conference on Anti-Racism and the Elimination of Discrimination!' <https://blhri.org/old/info/koza/koza_0021.htm> accessed 15 November 2020.

minorities in Japan, including the *Buraku* people, Ainu indigenous people, Ryukyu-Okinawan people,¹⁷⁶ and resident Koreans. The NGO Network for the Elimination of Racial Discrimination Japan (ERD Net), a nationwide network of CSOs and individuals working on issues of racial discrimination, was founded in 2007.¹⁷⁷ In addition, active organisations and groups were developed against racial discrimination with the impact of CERD accession and review process. For example, *Gaikokujin Jinkenhō Renrakukai* (Association for the Protection of the Human Rights of Foreigners) was formed in 2015 by lawyers, activists, and researchers with an aim to realise the basic principle of CERD.¹⁷⁸

CERD's influence on domestic legislation and policy transformation through non-state actors is exemplified by the development of the aforementioned Hate Speech Elimination Act. Since hate speech emerged as a social issue in Japan around 2009, CSOs and anti-racist activists have actively involved in advocating for treaty compliance. This engagement encompasses the submission of relevant information to committees and active participation in the review processes of government reports.¹⁷⁹ These efforts were reflected in the

176 The *Ryukyu-Okinawan* are a group of population with its origin in the Ryukyu Islands located in the southmost of Japan. The islands used to constitute the independent Ryukyu Kingdom before their annexation to Japan in 1872. While some argue that the *Ryukyu-Okinawan* are a group of indigenous peoples, the Japanese government does not recognise them as indigenous nor minority group. Minority Rights Group, 'Ryukyuan (Okinawans)' <<https://minorityrights.org/minorities/ryukyuan-okinawans/>> accessed 19 November 2022.

177 ERD Net was founded with strong support and commitment of the International Movement Against All Forms of Discrimination and Racism (IMADR), an international non-profit, non-governmental human rights organisation devoted to eliminating discrimination and racism and the Buraku Liberation League, a burakumin's rights group in Japan. As of April 2012, 84 organisations and 29 individuals are members of ERD Net. The International Movement Against All Forms of Discrimination and Racism is a facilitating organisation of the network. ERD Net, '*Jinshu Sabetsu Teppai NGO Nettowaku no Gaiyō* (Overview of General Description on ERD Net)' <https://imadr.net/wordpress/wp-content/themes/imadr2017/pdf/p_erd01.pdf> accessed 26 May 2019. According to the human rights advocate from a CSO, IMADR and the Buraku Liberation League made efforts to develop a network of a variety of minority groups and civic associations, including the resident Koreans, Ainu, and Ryukyu-Okinawan peoples. Comments from international human rights CSO staff on 30 May 2020.

178 There is an observable influence of CERD on the foundational purpose of the organisation, which says 'towards the realisation of a multi-ethnic and multicultural society, we aim for the enactment of the Basic Law for the Human Rights of Foreign and Ethnic Minorities and the Law on the Elimination of Racial Discrimination and the realisation of a National Human Rights Institution'. Association for the Protection of the Human Rights of Foreigners, 'About Us' <<https://gjh.net/about/>> accessed 15 November 2020.

179 Y Morooka, *Heitosupichi Towa Nanika* (What Is Hate Speech) (Iwanami Shoten 2013) 18, 74–78.

recommendations on hate speech in 2010 and 2014 by the CERD Cttee and in 2014 by the HRCttee.¹⁸⁰ Civil society groups have engaged in a wide range of activities, not only requesting relevant ministries to implement the recommendations by treaty bodies but also organising study groups, supporting counter-demonstrations against hateful rallies, establishing links with domestic and foreign groups, supporting legal battles against hate crime and defamation, and disseminating anti-racism advertisements.¹⁸¹ The JFBA, the largest civic organisation of lawyers in Japan, actively engaged in the movement with a statement that asked the government to implement measures against hate speech based on the principles of CERD.¹⁸² The above-mentioned advocacy effort leveraging the treaty bodies' recommendations and engaging members of parliament reached an agreement through the adoption of the Hate Speech Elimination Act at the National Diet in 2016, in particular its direct reference to CERD in the supplementary resolutions.¹⁸³ Moreover, in June 2018 the Tokyo Bar Association requested that local authorities enact an ordinance for the elimination of racial discrimination following international standards and proposed a draft model ordinance of racial discrimination with points of concern based on the recommendations of the human rights treaty body.¹⁸⁴ Kawasaki City, inhabited by many people of foreign heritage including *Zainichi*

180 CERD/C/JPN/CO/3–6, 6 April 2010; CERD/C/JPN/CO/7–9, 25 September 2014; CCRP/C/JPN/CO/6, 20 August 2014.

181 Some argue that this advocacy movement can emerge from networks of 'invisible civil society' stemming from the social movement of the new-left in 1960s Japan. See D Shibuichi, 'The Struggle Against Hate Groups in Japan: The Invisible Civil Society, Leftist Elites and Anti-Racism Groups' (2016) 19 *Social Science Japan Journal* 1, 71, 78; Norikoe Net, <<https://norikoenet.jp>> accessed 7 March 2019.

182 JFBA, '*Jinshutōwo Riyuto Suru Sabetsuno Teppaini Muketa Sumiyakana Shisakuwo Motomeru Ikensho* (Statement of Opinion for Speedy Measure for the Abolition of Discrimination on the Basis of Race)' (7 May 2015) <http://www.nichibenren.or.jp/activity/document/opinion/year/2015/150507_2.html> accessed 26 May 2019.

183 Interview with Human Rights CSO staff (Tokyo, Japan, 27 July 2016). This law is criticised as it mainly focuses on awareness raising, and CSOs keep calling for a more comprehensive ban on discrimination with a reference to CERD. See JFBA, '*Honpōgai Shushshinsha ni Taisuru Futō na Sabetsuteki Gendō no Kaishō ni Muketa Torikumi no Suishin ni Kansuru Hōritsuan no Ichibu Kaisei o Motomeru Kaichō Seimei* (President's Statement Calling for Partial Revision of the Hate Speech Elimination Act)' <<https://www.nichibenren.or.jp/activity/document/statement/year/2016/160510.html>> accessed 26 May 2019.

184 Tokyo Bar Association, '*Chihō Kōkyō Dantai ni Jinshu Sabetsu Teppai Jōrei no Seitei o Motome Jinshu Sabetsu Teppai Moderu Jōreian o Teiansuru kotonni Kansuru Ikensho* (Statement of Opinion about Asking Local Governments to Establish the Racial Discrimination Abolition Ordinance and Proposing the Racial Discrimination Abolition Model Ordinance Draft)' (8 June 2018) <<https://www.toben.or.jp/message/pdf/180608ikensho.pdf>> accessed 26 May 2019.

Koreans, enacted in December 2019 Japan's very first ordinance imposing criminal penalties on hate speech, which is informed by international human rights treaties.¹⁸⁵ This shows that local municipalities play important roles as key actors in implementing human rights treaties.

5.1.4 Impact of State Reporting

Japan submitted the first and second combined report in 2000, the third to sixth combined report in 2008, the seventh to ninth combined report in 2013, and the tenth and eleventh combined report in 2017. The CERD Cttee adopted the Concluding Observation for each report in 2001, 2010, 2016, and 2018. The state party's reports on their follow-up to COs were also submitted in 2011, 2016, and 2019.

The process of state reporting has facilitated dialogue between the government and the CERD Cttee. In the case of the technical intern training programme for migrant workers, which has come under scrutiny for alleged labour rights violations, occupational health and safety issues and lax administrative oversight, the Committee recommended in its COs for the seventh to ninth combined report that the state party reinforces its legislation to protect the trainees.¹⁸⁶ Against this background, the government stated in its tenth

185 Kawasaki City, 'Kawasaki shi Sabetsu no nai Jinken Sonchō no Machzukuri Jōrei (Kawasaki City Ordinance on Respecting Human Rights without Discrimination)' <<https://www.city.kawasaki.jp/shisei/category/60-1-10-0-0-0-0-0-0.html>> accessed 8 September 2023; S Saito, 'Kawasaki Eyes Criminal Action for Those Who Stir Hate Speech' *Asahi Shimbun* (25 June 2019) <<http://www.asahi.com/ajw/articles/AJ201906250041.html>> accessed 26 June 2019; 'Kawasaki Enacts Japan's First Bill Punishing Hate Speech' *The Japan Times* (12 December 2020) <<http://www.japantimes.co.jp/news/2019/12/12/national/crime-legal/kawasaki-first-japan-bill-punishing-hate-speech/#.XjelPWj0LPY>> accessed 2 February 2020. As is noted later in the chapter, civil society and human rights advocates played an important part in the development of this anti-hate ordinance in Kawasaki.

186 The technical intern training programme was established in 1993 to promote international development by transferring skills, technologies, and knowledge from Japan to foreign workers from developing countries. However, the government-run program has been criticized as it is used to counteract the lack of low-skilled workers around the business sector and trainees are often subject to abusive labor conditions. In the COs on the Combined Seventh to Ninth Periodic Reports of Japan, the CERD Cttee expressed its concern "about reports that the rights of foreign technical interns are violated through the non-payment of proper wages, subjection to inordinately long working hours, and other forms of exploitation and abuses". See Japan International Trainee & Skilled Worker Cooperation Organization (JITCO), 'What is the Technical Intern Training Program?' <<https://www.jitco.or.jp/en/regulation/>> accessed 19 November 2022; Global Skills Partnership, 'Technical Intern Training Program (TITP)' <<https://gsp.cgdev.org/legalpathway/technical-intern-training-program-titp/>> accessed 19 November 2022;

and eleventh combined report that it had taken several steps, including the enactment of the Act on Proper Technical Intern Training and Protection of Technical Intern Trainees in November 2017.¹⁸⁷ In its COs for the latest report, the CERD Cttee evaluated the legislative measure as a positive aspect but, at the same time, requested information on the implementation and impact of the act in the state party's next periodic report.¹⁸⁸ Following this recommendation, the government provided relevant information, including the Organization for Technical Intern Training (OTIT)'s on-site inspections of supervising organisations and implementing organisations, bilateral agreements with countries that intend to send technical intern trainees, and surveys by a project team that studied cases of disappearance and death of technical intern trainees and reviewed the operation status of the current system.¹⁸⁹ While acknowledging the efforts indicated in the follow-up report, the Committee considered that the response to this recommendation was only partially satisfactory and voiced concerns that the licensing system introduced by the Act was not strictly enforced, had insufficient human and financial resources allocated to the OTIT for its on-site inspections, and had poor working conditions for technical intern trainees.¹⁹⁰

CERD Cttee, COs on the Combined Seventh to Ninth Periodic Reports of Japan (CERD/C/JPN/CO/7-9, 26 September 2014) para 12 <https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/CERD_C_JPN_CO_7-9_18106_E.pdf> accessed 19 November 2022; U.S. Department of State, 'Trafficking in Persons Report 2016' <<https://2009-2017.state.gov/j/tip/rls/tiprpt/2016/index.htm>> accessed 19 November 2022. See also Business and Human Rights Resource Center, 'Japan: NGO publishes new report on migrant women's pregnancy and maternity, revealing 71% of surveyed technical trainees experience constraints' <<https://www.business-humanrights.org/en/latest-news/japan-ngo-publishes-new-report-on-migrant-womens-pregnancy-and-maternity-revealing-71-of-surveyed-technical-trainees-experience-constraints/>> accessed 19 November 2022.

187 CERD Cttee, 'Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Tenth and Eleventh Periodic Reports of States Parties Due in 2017, Japan' (CERD/C/JPN/10-11, 14 January 2017) <<https://undocs.org/en/CERD/C/JPN/10-11>> accessed 11 July 2021, paras 46–51; MOJ, 'Act on Proper Technical Intern Training and Protection of Technical Intern Trainees' <<https://www.moj.go.jp/content/001223425.pdf>> accessed 13 October 2022.

188 CERD Cttee, 'Concluding Observations on the Combined Tenth and Eleventh Periodic Reports of Japan' (CERD/C/JPN/CO/10-11, 26 September 2018) <<https://undocs.org/en/CERD/C/JPN/CO/10-11>> accessed 11 July 2021 paras 31–32.

189 MOFA, 'Comments by the Government of Japan regarding the Concluding Observations of the Committee on the Elimination of Racial Discrimination' (CERD/C/JPN/CO/10-11) <<https://www.mofa.go.jp/files/000514197.pdf>> accessed 11 July 2021, paras 8–11.

190 OHCHR, 'Letter Dated 24 September 2020' <https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CHN/INT_CERD_FUL_CHN_43684_E.pdf> (CERD/101 st session/FU/MJA/ks, 24 September 2020) accessed 11 July 2021.

5.1.5 Impact of Other Measures

Early warning measures and urgent procedures under CERD were used by civil society groups, which submitted information to the CERD Cttee in March 2012 concerning the construction of new US military bases in Okinawa.¹⁹¹ The report claimed that it was racial discrimination against the Ryukyu-Okinawan people to construct new US military bases there, given that the prefecture already hosted most of the existing US military bases in Japan.¹⁹² In response, the CERD Cttee requested the Japanese government to provide information under the early warning procedure on 9 March 2012.¹⁹³ The government responded that it does not recognise the Ryukyu-Okinawan people as ‘indigenous’ under CERD; thus, it is not an issue covered by the treaty.¹⁹⁴ The Committee followed up on 31 August 2012 reiterating the concerns expressed in its COs and those by the Special Rapporteur on Contemporary Forms of Racism regarding the persistent discrimination suffered by the people in Okinawa and asked the government to provide detailed and updated information in its seventh, eighth and ninth periodic reports.¹⁹⁵ However, these periodic reports do not

191 OHCHR, ‘Letter Dated 9 March 2012’ <https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/CERD_Japan.pdf> accessed 9 March 2021.

192 *ibid.*

193 OHCHR, ‘CERD Early Warning Letter’ <https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/CERD_Japan.pdf> accessed 1 February 2020.

194 The government stated that ‘[r]egarding Article 1(1) of the Convention, the Government of Japan understands “racial discrimination” as discrimination against groups of people or individuals belonging to the groups who are generally considered to share biological characteristics, and groups of people or individuals belonging to the groups who are generally considered to share cultural characteristics ... the Government of Japan does not consider that there is a prevailing view in Japan that the people living in Okinawa prefecture or born in Okinawa have different biological and cultural characteristics from other Japanese citizens. Therefore, the Government of Japan understands that they could not be covered by “racial discrimination” as provided for in the Convention.’ The response letter contains a detailed explanation of the US military base plan in Okinawa. MOFA, *Jinshu Sabetsu Teppai Jōyaku* (Convention on the Elimination of Racial Discrimination) <<https://www.mofa.go.jp/mofaj/gaiko/jinshu/index.html>> accessed 16 January 2021; MOFA, ‘Response to the Request for Information from the Committee on the Elimination of Racial Discrimination Dated March 9, 2012 Based on Article 9 of the Convention on the Elimination of Racial Discrimination and Article 65 of the Procedure Regulations of the Committee on the Elimination of Racial Discrimination’ (31 July 2012) <https://www.mofa.go.jp/policy/human/pdfs/req_info_120731_en.pdf> accessed 16 January 2021.

195 CERD/C/JPN/CO/3-6; E/CN.4/2006/16/Add.2; OHCHR, ‘CERD Early Warning Letter’ <<http://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Japan31082012.pdf>> accessed 1 February 2020. It must be noted that the Japanese government does not recognise the Ryukyu-Okinawan people as indigenous and does not formally accept this being discussed under the framework of CERD, as mentioned above.

contain information on the Okinawan people, and in its tenth and eleventh periodic reports the government repeated its view that it does not recognise the Okinawan people as indigenous, and ‘the recommendations by the UN treaty bodies which regard the people of Okinawa as “indigenous people” are regrettable and they should be retracted’.¹⁹⁶ Thus, the measures taken by CERD under the early warning measures and urgent procedures in this case have not been as effective as intended.

5.1.6 Other Forms of Impact

Regarding the *Buraku* issue, the Law for the Promotion of Human Rights Education was enacted in 2000 to eliminate discrimination against the *Buraku* people. This action was taken as the laws providing positive measures against *Buraku* discrimination were set to expire and be abolished.¹⁹⁷ The Law for the Promotion of Human Rights Education is important for the implementation of human rights treaties, but it was allegedly developed not as a direct impact of the recommendations but rather because of the strong demand of the Buraku Liberation League out of concern that the discrimination would not disappear before the expiration of the time-limited laws.¹⁹⁸ The indirect impact of the treaties can be seen as the Buraku Liberation League has been actively engaged in international advocacy through IMADR. However, this example shows that some legal and policy developments that appear to be the direct implementation of the treaty may be a result of domestic circumstances including civic group’s advocacy and public opinions rather than a direct effect of the reporting procedure and recommendations. Thus, the indirect impact of treaties on the general public cannot be overlooked. For instance, before the development of the aforementioned Hate Speech Elimination Act, CERD and its recommendations regarding hate speech gained greater recognition among the general populace, serving as a symbol of the anti-racism and anti-hate movement.¹⁹⁹

196 Eg, CERD Ctee (n 71) paras 34–36.

197 MEXT, ‘*Jinken Kyōiku Oyobi Jinken Keihatsuno Suishinni Kansuru Hōritsu (Heisei 12 Nen 12 Gatsu 6 Ka Hōritsu Dai 147 Gō)* (Act on the Promotion of Human Rights Education and Human Rights Awareness-Raising (Act No 147 of December 6, 2000))’ <https://www.mext.go.jp/a_menu/shotou/jinken/siryō/1318152.htm> accessed 16 January 2021.

198 Interview with Human Rights CSO staff (Tokyo, Japan, 27 July 2016).

199 When Tokyo Anti-Discrimination March filled downtown streets in Tokyo in September 2013, participants adopted a resolution calling for the Japanese government to act in good faith with CERD. See ‘Anti-Hate Speech March Fills Streets Around Shinjuku’ *Mainichi* (23 September 2016) <<http://mainichi.jp/english/english/newsselect/news/20130923p2a00mona01000oc.html>> accessed 28 April 2019.

5.1.7 Brief Conclusion

There is a direct and indirect impact of the recommendations by the CERD Cttee in terms of enhancement of the indigenous Ainu's rights, the development of measures against hate speech and racial discrimination against *Zainichi* Koreans, and legislative measures on the issue of foreign workers, particularly technical intern trainees. However, the state has excluded some issues, such as the *Ryukyu-Okinawan* people and *Buraku* people, from the scope of CERD. Even though some measures have been implemented, they are not regarded as fully aligning with the recommendations of the CERD Committee. This is because they are often soft policy instruments – such as encouraging efforts against racial discrimination, promoting human rights education, and raising awareness – without binding regulations accompanied with punishments for non-compliance. The state does not consider the development of a comprehensive anti-discrimination law. The relatively frequent application of CERD in cases of discrimination against foreigners by the judiciary may be against the background that there is no basic domestic law to define racial discrimination.

In this situation, the impact of CERD recommendations is leveraged more indirectly through civic groups' domestic advocacy efforts, supported and informed by CERD. Some examples shown in this section demonstrate the observed symbolic impact of CERD and other treaties to sensitise and encourage civil society groups and the general public, as well as to push local authorities to develop regulations. However, this symbolic impact or impact at the local municipality and community level is difficult to fully capture in the state reporting system.

5.2 *International Covenant on Civil and Political Rights*

5.2.1 Incorporation and Reliance by Legislature and Executive Powers

The government has maintained a supportive attitude toward CCPR on the ground that the Covenant is very well aligned with the Japanese constitution and the domestic laws. It has explained in its initial report to the HRCttee that 'almost all the rights provided for in the Covenant are guaranteed by the Constitution of Japan', and 'the rights referred to in the Covenant, including rights not specifically mentioned in the Constitution, are guaranteed under domestic legislation'.²⁰⁰ However, in addition to the legislative revision of family law following the judicial reviews mentioned below, CCPR seems to play a unique role at the domestic level regarding some emerging issues that the government might not have had in mind when it ratified CCPR in 1979, such

200 CCPR/C/10/Add.1, 24 October 1980, para 1.

as the aforementioned case on anti-hate speech legislation and SOGI-based discrimination.²⁰¹

Regarding prisoners' rights, Japanese CSOs and human rights lawyers have long lobbied for the amendment of the Prison Act as a series of mistreatment and extreme correctional treatment of prisoners in Japanese prisons under the outdated law enacted in 1908.²⁰² They have provided parallel reports to the HRCttee and the CAT Cttee since the 1990s, conducting research and advocacy on prisoners' rights in Japan in light of international human rights treaties. In 1998, the HRCttee in its COs showed its concern about the frequent use of protective measures, such as leather handcuffs, which may constitute cruel and inhuman treatment at the fourth periodic review of the Japanese government's report.²⁰³ In 1999, the MOJ issued a new directive regarding appropriate use of 'protection cells' and leather handcuffs, after which the use of handcuffs decreased sharply.²⁰⁴ The case where inmates at Nagoya Prison had been injured and died from the use of leather handcuffs in 2002 sparked intense discussion on the revision of the Prison Act, with an eye to aligning the law

201 CCPR Cttee and HRCttee's recommendation in 2014 on hate speech have been referenced in the development of the Hate Speech Elimination Act and its supplementary resolutions with CERD, as mentioned above.

202 MOJ, 'Penal Institutions (Prisons/Juvenile Prisons/Detention Houses)' <http://www.moj.go.jp/EN/kyousei/kyousei_kyouseo3.html> accessed 9 March 2021.

203 Centre for Prisoners' Rights Japan, 'Submission to the Human Rights Committee the Task Forces for the Sixth Periodic Report by the Japanese Government 109th session (14 October–1 November 2013)' <http://cpr.jca.apc.org/sites/all/themes/cpr_dummy/Doc/ICCPR_Japan_CPR20130809.pdf> accessed 9 March 2021; Centre for Prisoners' Rights Japan, 'Prison and the Death Penalty in Japan: Stakeholder's Information Report for the 14th Session of the Working Group on the UPR – April 2012' <http://cpr.jca.apc.org/sites/all/themes/cpr_dummy/Doc/FIDH-CPR%20UPR%20submission%20April%202012%20-%20FINAL%20202.pdf> accessed 9 March 2021; Centre for Prisoners' Rights Japan, 'The Alternative Report on the Fifth Periodic Reports of the Japanese Government under Article 40 of the International Covenant on Civil and Political Rights' (September 2008) <http://cpr.jca.apc.org/sites/all/themes/cpr_dummy/Doc/reportOct2008.pdf> accessed 9 March 2021; Centre for Prisoners' Rights Japan, 'Human Rights Situation in Japanese Prisons: Alternate Report Submitted to HRC' (September 1998) <http://cpr.jca.apc.org/sites/all/themes/cpr_dummy/Doc/1998SepfourthICCPR_English.pdf> accessed 9 March 2021.

204 House of Councillors, 'Sangiin Giin Fukushima Mizuhokun Teishutsu Kōkin Shisetsuni Okeru Kawatejō Oyobi Hogobō Shiyouni Kansuru Shitsumonni Taisuru Tōbensho (Written Response to the Questions from Member of House of Councillors Mizuho Fukushima on the Use of Leather Handcuffs and Protection Cells)' (26 May 2000) <<https://www.sangiin.go.jp/japanese/johoi/kousei/syuisyo/147/touh/t147o21.htm>> accessed 9 March 2021. For instance, in the Fuchu Prison in Tokyo, the use of leather handcuffs dropped from 191 in 1995 to three in 1999.

with international standards and the recommendations of the HRCtee.²⁰⁵ This triggered the MOJ to establish the Investigation and Review Committee on Execution Management with the submission of the study report on measures to prevent the recurrence of such cases to the report to the Correctional Administration Reform Council in April 2003.²⁰⁶ The Council's discussion, which was informed by the recommendations of the HRCtee, played a central role in the development of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees enacted in 2005 with the establishment of a third-party monitoring mechanism.²⁰⁷

Concerning asylum seekers and undocumented immigrants, complementary protection based on international human rights law was proposed by the expert committee to the MOJ to clarify the scope of protection, but has not yet been introduced.²⁰⁸ Article 53 of Japan's Immigration Control Act prohibits the extradition against article 33(1) of the 1951 Refugee Convention, article 3(1) of CAT and article 16(1) of CED but not CCPR.²⁰⁹ The HRCtee expressed its concern that the principle of non-refoulement is not implemented effectively in practice with reported cases of ill-treatment during expulsion and detention of

205 JFBA, 'Chairman's Statement on Assault and Atrocities in Nagoya Prison' <https://www.nichibenren.or.jp/document/statement/year/2002/2002_16.html> accessed 9 March 2021. In 2010 the Nagoya District Court ruled that the guards of Nagoya Prison should pay damages in connection with the fatal abuse of prisoners. Nagoya District Court, Judgment, 25 May 2010 <https://www.courts.go.jp/app/files/hanrei_jp/529/080529_hanrei.pdf> accessed 11 July 2021.

206 House of Councillors Committee on Judicial Affairs, '*Kangokuhōno Zenmen Kaisei* (The Full Revision of the Prison Act)' <https://www.sangiin.go.jp/japanese/annai/chousa/rippou_chousa/backnumber/2006pdf/2006072110.pdf> accessed 9 March 2021. MOJ, '*GyōkeiKaikakuKaigi(DaiiKai)niOkeruHōmuDaijinAisatsu* (Remarks by the Justice Minister at the First Meeting of the Correctional Administration Reform Council)' <http://www.moj.go.jp/shingū/kanbou_gyokei_kaigi_gaiyou01-01.html> accessed 9 March 2021.

207 Government of Japan, 'Act on Penal Detention Facilities and Treatment of Inmates and Detainees' <<http://www.japaneselawtranslation.go.jp/law/detail/?vm=04&re=01&id=142>> accessed 9 March 2021. According to the comments on 4 December 2020 by a human rights lawyer working on this prisoners' right, there is a significant impact on the process of revision of the Prison Act.

208 Expert group on refugee recognition system, '*Nanmin Nintei Seidono Minaoshino Hōkōseini Kansuru Kentō Kekka (Hōkoku)* (Results of Examination on the Direction of Review of the Refugee Recognition System (Report))' <<https://www.moj.go.jp/isa/content/930003065.pdf>> accessed 8 September 2023.

209 Government of Japan, 'Article 53, Paragraph 3, Immigration Control and Refugee Recognition Act, Revised 2009' <<http://www.japaneselawtranslation.go.jp/law/detail/?vm=2&re=02&lvm=02&id=173>> accessed 22 March 2021.

asylum seekers and undocumented immigrants.²¹⁰ While the HRCttee as well as other treaty bodies repeatedly urge the government to ensure that detention is resorted to for the shortest appropriate period and only if the existing alternatives to administrative detention have been duly considered, the Immigration administration practice has been based on the principle that all suspected undocumented foreigners shall be detained in immigration facilities in the system which allows indefinite detention after the issuance of a deportation warrant.²¹¹ It is severely criticised by CSOs for violating international human rights standards, given that there are numerous suspected cases of deaths attributed to the ill-treatment or negligence of immigration officers at the detention facilities.²¹²

5.2.2 Reliance by Judiciary

The previous impact study criticised 'the poor record and quality of rulings rendered by the Japanese judiciary with regard to the Covenant'.²¹³ However, there were two significant Supreme Court cases in 2008 and 2013.

Nationality Act case (2008): Under the *jus sanguinis* principle, the Nationality Act did not allow a child born out of wedlock to a Japanese father and a non-Japanese mother to acquire Japanese nationality without legal marriage of the parents.²¹⁴ In the *Nationality Act* case, the Grand Bench of the Supreme

210 CCPR/C/JPN/CO/6, 19 August 2014, para 19; CERD/C/JPN/CO/10-11, 26 September 2018, para 36; CAT/C/JPN/CO/2, 28 June 2013, para 9.

211 Article 39(1) of the Immigration Control Act stipulates 'An immigration control officer may, if he has reasonable grounds to believe that a suspect falls under any of the items of Article 24, detain the suspect pursuant to a written detention order'. This provision is interpreted in practice as that all suspected cases shall be detained. Government of Japan, 'Immigration Control and Refugee Recognition Act' <<https://www.japaneselawtranslation.go.jp/en/laws/view/1934/en>> accessed 14 November 2023.

212 As of May 2021, at least 24 detainees were reported to have died since 1997, including the death of a Nigerian man on hunger strike in a detention centre in June 2019, and the death of a Sri Lankan woman after immigration officers' negligence and ill-treatment of her health in March 2021. These incidents fuelled outrage for critics of Japan's immigration system among human rights defenders as well as publics. 'Japan Is Shaken After a Detainee, Wasting Away, Dies Alone in Her Cell' (*New York Times*, 25 June 2019) <<https://www.nytimes.com/2021/05/18/world/asia/japan-refugee-wishma-rathnayake.html>> accessed 22 November 2022. See also Human Rights Now, 'Nyūkanshisetsu ni okeru shūteki shūyō no haishi oyobi hōteki kaizen o motomeru seimei (Statement calling for the abolition and legal improvement of arbitrary detention in immigration facilities)' (18 October 2019) <<http://hm.or.jp/wpHN/wp-content/uploads/2019/10/c973721f4723730c9804e01b635b5bdb-1.pdf>> accessed 22 November 2022.

213 C Heyns and F Viljoen, *The Impact of the United Nations Human Rights Treaties on the Domestic Level* (Martinus Nijhoff Publishers 2002) 398.

214 At this time, the Nationality Act provided that '[a] child who has acquired the status of a child born in wedlock as a result of the marriage of the parents and the acknowledgment

Court of Japan invalidated a part of article 3(1) of the Nationality Act as it violated article 14(1) (equality clause) of the Constitution. In this reasoning, the Court referred to CCPR and CRC as persuasive authority, which is considered ground-breaking in light of the conventional practice of the Court, which has been reluctant to adjudicate using international human rights law. The Court held that '[o]ther states are moving toward scrapping the law's discriminatory treatment against children born out of wedlock; in fact, the ICCPR and the CRC, which Japan has ratified, also contain such provisions to the effect that children shall not be subject to discrimination of any kind because of birth.'²¹⁵ Justice Izumi further discussed in his concurring opinion:

The gist of the provision of Article 3, para 1 of the Nationality Act is to grant Japanese nationality to children who were born to Japanese citizens as their fathers or mothers and are ineligible for application of Article 2 of the said Act,²¹⁶ and the 'marriage of the parents' is merely one of the requirements to be satisfied to achieve this. Therefore, the gist of the provision should be maintained to the greatest possible extent even if the part requiring the 'marriage of the parents' is unconstitutional, and this is what the lawmakers would have intended. Furthermore, applying Article 3, para 1 of the Nationality Act in this manner conforms to the gist of Article 24, para 3 of the CCPR which provides that 'every child has the right to acquire a nationality' and that of Article 7, para 1 of the CRC.²¹⁷

While conducting interpretation consistent with the existing treaties, Justice Izumi also carefully paid attention to the relationship between the judiciary and the legislature by mentioning that this construction 'may not be permissible when there is a clear probability that the Diet, from the legislative perspective, will not maintain the provision of said paragraph'.²¹⁸

by either parent ... may acquire Japanese nationality ... if the father or mother who has acknowledged the child was a Japanese citizen at the time of the child's birth, and such father or mother is currently a Japanese citizen'. See art 3(1) of the Nationality Act (prior to its revision in 2018). Government of Japan, 'Nationality Act' <http://www.japaneselawtranslation.go.jp/law/detail_main?re=02&vm=04&id=185> accessed 1 February 2020.

215 Supreme Court, Judgment, 4 June 2008, 62-6 Minshu 1367, ILDC 1814 (JP 2008) <http://www.courts.go.jp/app/hanrei_en/detail?id=955> accessed 1 February 2020.

216 Art 2(1) of the then Nationality Act provided that a child was a Japanese citizen if the father or mother was a Japanese citizen at the time of birth. Government of Japan (n 214).

217 Supreme Court (n 215).

218 *ibid.*

Children born outside of wedlock case (2013): Article 900(4) of the Civil Code grants half inheritance to children born out of wedlock, compared to what is inherited by their siblings born in wedlock.²¹⁹ The Supreme Court ruled that provision on children born out of wedlock as constitutional in 1995 (Grand Bench decision) and then in 2000, 2003, 2004, and 2009. The 1995 decision of the Supreme Court stated that the provision reconciles respect for legal marriage and the protection of illegitimate children, and it could not be said to be discrimination without reasonable grounds or violate equality under the provision of article 14 of the Constitution. However, on 4 September 2013, the Grand Bench of the Supreme Court overturned its previous rulings in its unanimous decision and invalidated this statutory law by referring to the views and recommendations issued by the HRCtee and the CRC Cttee.²²⁰ In response to this decision, in December 2013 the Civil Code was revised to eliminate these provisions. The case demonstrated that the UN human rights system has made a significant difference in the field of family law through CCPR and CRC.²²¹

Prisoners' rights cases: CCPR also had a significant impact on lower court cases concerning prisoners' rights. For example, the Chiba District Court in its judgment of 2000 referred to CCPR articles 7 and 10(1) when declaring excessive usage of leather handcuffs illegal under Japanese prison law.²²²

5.2.3 Impact on and through Non-state Actors

CCPR and the work of the HRCtee have had a significant impact on the work of many non-state actors to advocate a variety of human rights issues to the committee in light of broad issues covered by the Covenant.²²³ For example,

219 Japanese Civil Code, art 900 stipulates as follows: 'If there are two or more heirs of the same rank, their shares in inheritance shall be determined by the following items ... (iv) if there are two or more children, lineal ascendants, or siblings, the share in the inheritance of each shall be divided equally; provided that the share in inheritance of a child out of wedlock shall be one half of the share in inheritance of a child in wedlock, and the share in inheritance of a sibling who shares only one parent with the decedent shall be one half of the share in inheritance of a sibling who shares both parents.' Government of Japan, 'Civil Code (Part IV and Part V (tentative translation))' <<http://www.japaneselawtranslation.go.jp/law/detail/?id=2252&vm=2&re=02>> accessed 9 March 2021.

220 Supreme Court, Judgment, 4 September 2013, 67–6 Minshu 1320, ILDC 2060 (JP 2013).

221 For example, a lower court declared a decision of deportation illegal by referring to the spirit of article 23 of CCPR. Tokyo District Court, Judgment, 12 November 1999, TKC 2541005.

222 Chiba District Court, Judgment, 7 February 2000, TKC 28072863.

223 In the review of the 6th state reporting in 2014, more than 50 CSOs submitted alternative reports to the committee. See the aforementioned 'Number of information submissions (reporting cycle, year)'.

in the above mentioned case of children born out of wedlock, there were active advocacies of the plaintiff and civic groups who brought the issue into the review of the committee through the state reporting system after they had failed in the domestic justice mechanism. In 1988, some groups of advocates started to seek justice for discrimination against children born out of wedlock and remedy it in domestic administrative and legal procedures.²²⁴ As domestic litigation was not successful, one of the groups, including the plaintiff in the litigation, started lobbying international treaty bodies, namely, the HRCttee, and the CESCR, CRC and CEDAW Cttees. In addition to submitting information to the committees on occasions of review of state reports, these advocates visited Geneva to directly engage with committee members. Their efforts over decades resulted in over a dozen recommendations in the Concluding Observations of those committees.²²⁵ They made significant use of these recommendations in their domestic advocacy and subsequent allegations in litigation. This resulted in tangible outcomes, including the previously mentioned shift in judicial decisions, the submission of petitions by local municipalities to the central government, urging the eradication of discrimination and unjust treatment towards children born out of wedlock, and changes in pertinent laws and policies.²²⁶

5.2.4 Impact of State Reporting

Japan submitted its first report in 1980, the second report in 1987, the third report in 1991, the fourth report in 1997, the fifth report in 2006, and the sixth report in 2012. The HRCttee adopted the COs for each report in 1982, 1988, 1993, 1998, 2008 and 2014 respectively. In the COs in 2014, the HRCttee positively assessed legislative and institutional steps such as the amendment of the Nationality Act in 2008 and of the Civil Code in 2013 which, with the influence of judicial decisions examined above, removed discriminatory provisions

224 Interview with members of the Society for Abolishing the Family Registration System and Discriminations against Children Born out of Wedlock (AFRDC) (Geneva, Switzerland, 17 January 2019). See *Nakusou Koseki to Kongaishisabetsu Kōryukai* (Group for Abolishing the Discrimination Against Children Born out of Wedlock) <<http://www.grn.janis.or.jp/~shogokun/>> accessed 22 March 2021.

225 HRCttee's recommendation in 1993, 1998, and 2008; CRC Cttee's recommendation in 1998, 2004, 2013, and 2019; CESCR Cttee's recommendation in 2001 and 2013; and CEDAW Cttee's recommendation in 2003, 2009, and 2016. Even after the 2013 judicial decision and revision of the Civil Code the government have sought to maintain the distinction between legitimate and illegitimate children in the family register system.

226 Interview with members of AFRDC (Geneva, Switzerland, 17 January 2019). They mentioned that '[w]e felt confidence about a tangible result from local authorities when we lobbied them with accumulated recommendations by the human rights treaty bodies'.

against children born out of wedlock.²²⁷ However, in the review process, Mr Nigel Rodley, the chairperson of the HRCttee, did not hide his frustration and concern about the persistence of serious human rights issues, stating that ‘from one review to the next, the State party did not take account of the Committee’s concerns and recommendations’, and ‘the continued applicability of the system of substitute detention (*Daiyo Kangoku*),²²⁸ despite its flagrant incompatibility with the Covenant and repeated calls by the Committee and the international community for its abolition, was particularly telling in that regard.’²²⁹ COS required the government to provide additional information regarding several key points and assessed the government’s actions based on its reply, namely, the issues of the interrogation system, the death penalty, so-called ‘comfort women’ and ‘substitute detention system’ and forced confessions, which have not seen any progress since the start of the periodic review of state report in the 1980s.²³⁰

Furthermore, the HRCttee, along with other committees, has strongly recommended that Japan adopt comprehensive anti-discrimination legislation that prohibits discrimination on all grounds and provides victims of discrimination with effective and appropriate remedies, which has not been met with a concrete response by the state.²³¹

Against the recently-developed Conspiracy Law and specifically the Designated Secrets Act, CSOs and journalists have raised more concerns about the threats and attacks on freedom of expression, freedom of the press, freedom of assembly, and right to know and have become active in lobbying the HRCttee.²³²

227 CCPR/C/JPN/CO/6, 20 August 2014, paras 3–4.

228 *Daiyō kangoku* are detention cells found in police stations that are used as legal substitutes for detention centres or prisons. They are seen as problematic in light of separation between the functions of investigation and detention.

229 CCPR/C/JPN/CO/6, 20 August 2014.

230 *ibid.*

231 *ibid* para 11.

232 The law constitutes a key element of ex-PM Abe’s agenda to strengthen its national security. In essence, it aims to increase the power of authorities over information control for the sake of security and may allow police to seek wiretap warrants to investigate more crimes with supposed links to terrorism. Freedom House, ‘Japan’ <<https://freedomhouse.org/country/japan/freedom-net/2017>> accessed 19 November 2022. Japan is ranked 67th (problematic situation) in the 2019 World Press Freedom Index. See Reporters without Borders, ‘Japan’ <<https://rsf.org/en/japan>> accessed 27 February 2020; NGO Coalition for Free Expression and Open Information in Japan, ‘Joint NGO Report on the International Covenant on Civil & Political Rights (CCPR) Articles 18, 19 & 21: For the 7th Periodic Review of Japan at the UN Human Rights Committee Session’ (30 September 2020) <<https://sites.google.com/view/ncfoj>> accessed 22 March 2021.

The impact of state reporting can also be seen in the area of treatment of asylum seekers. The COs in 2014 expressed concerns on reported cases of ill-treatment during deportations, insufficient implementation the non-refoulement principle, the lack of an independent appeal mechanism with suspensive effect against negative decisions on asylum, as well the prolonged periods of administrative detention without adequate giving of reasons and without independent review of the detention decision.²³³ In the subsequent COs in 2022, the Committee welcomed the information on the development of an improvement plan on treatment in detention facilities, and the revision of the deportation procedure establishing the scheduled date of deportation to be at least two months after the delivery of notification on the decision, as well as the State party's willingness to consider measures to avoid long-term detention.²³⁴

5.2.5 Impact of Other Measures

The impact of the treaty is demonstrated in the civic groups' active use of recommendations of the HRCttee in ongoing litigation on discrimination against LGBT persons. The Committee expressed concerns about discrimination against LGBT people in its COs in 2008.²³⁵ In the following COs in 2014, the Committee showed its disappointment with the non-implementation in the first place and put stronger recommendations to urge the state to take measures to prevent stereotypes, prejudice and harassment, as well as remaining discriminatory practices against LGBT persons in housing services.²³⁶ These recommendations, together with the recommendation by the CESCR Cttee in 2013,²³⁷ have been referred to in the complaints to support the allegation of the plaintiff for the right to same-sex marriage in ongoing strategic litigation for marriage equality in Japan filed across the country in 2019.²³⁸ It is noteworthy

233 CCPR/C/JPN/CO/6, para 19.

234 CCPR/C/JPN/CO/6, 3 November 2022, para 32.

235 CCPR/C/JPN/CO/5, 18 December 2008, para 29.

236 CCPR/C/JPN/CO/6, 20 August 2014, para 11.

237 E/C.12/JPN/CO/3, 10 June 2013, para 10.

238 Four suits were filed in Osaka, Nagoya, Sapporo and Tokyo on 14 February 2019. 'Same-sex marriage lawsuits to be filed on Valentine's Day by 13 couples nationwide' *Mainichi* (4 February 2019); 'LGBT couples speak of their suffering in lawsuit seeking marriage for all in Japan' *Japan Times* (15 April 2019) <<https://www.japantimes.co.jp/news/2019/04/15/national/lgbt-couples-speak-suffering-lawsuit-seeking-marriage-japan/#.XPMNK9NKjX8>> accessed 9 March 2021. On 5 September 2019 another lawsuit was filed in Fukuoka. Call4, 'Marriage for All Litigation (Same-Sex Marriage Litigation)' <[https://www.call4.jp/search.php?type=material&run=true&items_id_PAL\[\]=match+comp&items_id=10000031](https://www.call4.jp/search.php?type=material&run=true&items_id_PAL[]=match+comp&items_id=10000031)> accessed 9 March 2021.

that unlike in previous domestic human rights litigation, the complaints and expert opinions for the strategic litigation for marriage equality contained numerous references to the human rights treaties and other international human rights instruments. The plaintiffs refer to articles 2(1), 17 and 26 of CCPR, COs of the HRCttee and CESCR Cttee, General Comments or recommendations of the HRCttee, the CESCR Cttee and the CEDAW Cttee,²³⁹ and views of the HRCttee related to LGBT rights,²⁴⁰ to bolster their argument that banning same-sex marriage constitutes unfair treatment.²⁴¹

5.2.6 Other Forms of Impact

The WGAD gave opinions on the issues surrounding penal, preventive and immigration detention in Japan with reference to the relevant provision of CCPR, General Comments, and views of the HRCttee.²⁴²

5.2.7 Brief Conclusion

The CCPR, considered together with the CRC, has had a significant impact on the Japanese judiciary and legislative change in the field of family law and child rights, such as the revision of the Civil Code provision on children born outside of wedlock and the Nationality Act. Some gradual changes and revisions of the criminal justice system and practice were observed, including the decline in the use of solitary confinement and leather handcuffs in alignment with CCPR and the recommendations by the HRCttee. However, persistent gaps remain between the recommendations of treaty bodies and state practices regarding civil and political rights. Although the HRCttee repeatedly called for the abolition of the death penalty, the government maintains that international law does not prohibit the death penalty and performed consecutive executions of death row inmates, citing that the vast majority of its nationals support the death penalty.²⁴³ As such, there has been no significant

239 HRCttee General Comment 28 (CCPR/C/21/Rev.1/Add.10, 29 March 2000); CESCR Cttee General Comment 14 (E/C.12/2000/4, 11 August 2000), 15 (E/C.12/2002/11, 20 January 2003), 18 (E/C.12/GC/18, 6 February 2006), 20 (E/C.12/GC/20, 2 July 2009); CEDAW General Recommendation 29 (CEDAW/C/GC/29, 30 October 2013).

240 CCPR/C/81/D/901/1999, 26 August 2004; CCPR/C/89/D/1361/2005, 14 May 2007; CCPR/C/50/D/488/1992, 31 March 1994; CCPR/C/78/D/941/2000, 18 September 2003.

241 Call 4, 'Written Claim About the Situation, Vol. 2, for the Second Lawsuit in Sapporo' (30 September 2019) <<https://www.call4.jp/file/pdf/201910/6923167f649510gabcea96d24212461b.pdf>> accessed 9 March 2021.

242 See the previous section on the WGAD.

243 For example, in 2018 a total of 15 death row inmates were executed, including *Aum Shinrikyo* cult founder Shoko Asahara. As of December 2019, Japan has 110 inmates on death row. These inmates have limited access to legal counsel and are only notified of their execution

progress in the controversial issues with diplomatic, historical or political backgrounds, including comfort women, the substitute detention system and the ill-treatment of asylum seekers and undocumented immigrants in the detention and asylum process, on which the state maintains that they are a matter of government policy discretion.²⁴⁴

There was active and persistent advocacy and engagement of civic groups behind the successful incorporation of the HRCttee's recommendations in the *Nationality Act* case and *Children born outside of wedlock* cases, as well as other legal and policy changes. These examples illustrate that it takes a long time with accumulative recommendations and strong civic group advocacy to bring the recommendations into real practice in Japan.

5.3 *International Covenant on Economic, Social, and Cultural Rights*

5.3.1 Incorporation and Reliance by the Legislature and Executive Powers
Japan ratified CESCR without taking any new legislative development because the government considered economic, social, and cultural rights under the Convention to be already well protected by the Constitution or by existing

on the day it takes place. Some were even executed after their lawyers had filed requests for retrials. MOJ, 'Hōmu Daijin Rinji Kisha Kaikenno Gaigyō (Justice Minister Press Conference Overview)' <https://www.moj.go.jp/hisho/kouhou/hisho08_01083.html> accessed 26 January 2020; Human Rights Watch, 'Japan Events of 2019' <<https://www.hrw.org/world-report/2020/country-chapters/japan>> accessed 26 January 2020. The state repeats in its latest report that '[w]hether to retain or abolish the death penalty is basically an issue that should be determined by each country at its discretion with careful examination from various viewpoints, such as the realisation of justice in society, taking public opinion into full account. The majority of citizens in Japan consider that the death penalty is unavoidable for extremely malicious and atrocious crimes. In light of the current situation in Japan, where there is no sign of decline in atrocious crimes such as mass murder and robbery-murder, it is considered unavoidable to impose the death penalty on the offender who has committed an atrocious crime and bears serious criminal responsibility. Therefore, the Government is of the view that it is not appropriate to abolish the death penalty.' CCPR/C/JPN/7, 30 March 2020, para 67. According to the survey of the Cabinet Office, in 2019, over 80% accepted the death penalty in Japan as inevitable. Government of Japan, 'Shikei Seidoni Taisuru Ishiki (Awareness of the Death Penalty)' <<https://survey.gov-online.go.jp/r01/r01-houseido/2-2.html>> accessed 22 March 2021.

²⁴⁴ The so-called 'hostage' justice system, in which criminal suspects are held for long periods under harsh conditions to coerce a confession, came under international criticism. The issue received renewed attention after Carlos Ghosn, a former head of Renault and Nissan, was arrested in November 2018 for alleged financial misconduct. Brad Adams, 'Japan's Hostage Justice System' *The Diplomat* (10 January 2019) <<https://www.thediplomat.com/2019/01/japans-hostage-justice-system/>> accessed 26 January 2020.

legislation.²⁴⁵ Despite the fact that many of its provisions are reflected in the Constitution, it was a concern of the CESCR Cttee that the state party had not given effect to the provisions of the Covenant in domestic law in a satisfactory manner.²⁴⁶ The government interprets the obligations under article 2 of the Covenant as not having an immediate effect, which has led to significant cuts to budget allocations for social assistance guaranteed under articles 9 and 11 thereof.²⁴⁷

5.3.2 Reliance by Judiciary

Given the negative attitudes of the legislative and executive powers as backdrop, domestic courts in the state party have made decisions that restrict the applicability of the Covenant's provisions.²⁴⁸ In the *Shiomi* case the Supreme Court stated that '[a]rticle 9 of CESCR ... does not provide for a concrete right to be granted to individuals immediately'.²⁴⁹ Following this logic, Japanese courts are extremely restrained in exercising judicial power over economic, social, and cultural rights cases.²⁵⁰ However, the Osaka High Court, in dealing with the case regarding the abolition of the old-age assistance addition system, noted that 'the contents of CESCR should be reflected in the interpretation of constitutional and legislative provisions' in terms of article 98(2) of the Constitution.²⁵¹ Furthermore, the Court recognised the prohibition of retrogressive measures by referring to General Comments 3 and 19 of the CESCR Cttee, although the abolishment in question was evaluated as in conformity with the constitutional and legislative standards.²⁵²

245 K Yakushiji, 'Implementation of Human Rights Convention in Japan' (2003) 46 Japanese Annual International Law 1, 2.

246 E/C.12/JPN/CO/3, 17 May 2013, para 7.

247 *ibid* paras 7, 9.

248 *ibid* para 7.

249 Supreme Court, Judgment, 2 March 1989, 741 *Hanrei Times* 87, 90.

250 Eg, despite the recommendations of the CESCR Cttee on the discrimination against children born out of wedlock, the aforementioned Supreme Court judgment, which made a reference to CCPR and CRC, made no reference to CESCR.

251 This case concerns the abolishment of special additional welfare support reserved for low-income populations aged 70 and above. Osaka High Court, Judgment, 25 December 2015, TKC 25543687.

252 *ibid*.

5.3.3 Impact on and through Non-state Actors

Although it was once called the ‘forgotten human rights treaty’, CESCR has received more attention from civil society groups and human rights activists since the 2000s.²⁵³

In the state reporting process, many civic groups have submitted their reports and information to the Committee on a wide range of issues such as children born out of wedlock; civil servants’ rights; homeless people; victims of disasters; domestic violence; comfort women; labour rights, including migrant and foreign workers’ labour conditions and ratification of ILO treaties; and discrimination on various grounds, including race, gender, marital status, nationality, and SOGI. In particular, after the Great East Japan earthquake and the Fukushima nuclear accident in 2011, the issue of rights to relief and healthcare has become a major concern among civic groups.²⁵⁴

The JFBA is concerned about the lack of follow-up procedure and pointed out that the 2013 recommendations of the CESCR Cttee about ‘reported incidents in nuclear power stations and the lack of transparency and disclosure of necessary information regarding the safety of such installations, and also the lack of advance nationwide and community preparation for the prevention and handling of nuclear accidents’ were not reflected in legal and policy measures at the time of the 2011 earthquake.²⁵⁵

5.3.4 Impact of State Reporting

Japan submitted its first report in 1982, the second in 1998, and the third in 2009. The CESCR Cttee adopted the COs for each report in 1982, 2001, and 2013.

253 In 2001, Japan’s government underwent its second review under CESCR, a process that garnered significant attention and active participation from civil society. On the other hand, little is known about the first review, as there were almost no efforts by CSOs. Behind the fact that the Covenant has continued to be a ‘forgotten human rights treaty’ in Japan is the classical understanding and interpretation of social rights (and the Covenant) based on the dichotomy of human rights and extremely restrictive application in courts, which led to the indifference of CSOs. Hurights Osaka, ‘Challenges and Potential of the Covenant on Social Rights’ <<https://www.hurights.or.jp/archives/newsletter/section2/2001/11/post-62.html>> accessed 22 March 2021.

254 *ibid.* Many non-state actors addressed these issues in their parallel reports for the third state reporting cycle and the committee’s review in 2013 for providing relief and reconstruction efforts for communities affected by the Great East Japan Earthquake and the Fukushima nuclear accident.

255 JFBA, Shakaikenkiyakuiinkai Sokatsushoken no Ikashikata to Kongo no Kadai (‘CESCR: How to Make use of the Concluding Observations and Future Challenges’) <https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/society_rep3_pam.pdf> accessed 22 March 2021.

In the COs of the third periodic report, the CESCR Cttee welcomed the state party's ratification of human rights instruments relating to children's rights and enforced disappearance. It also showed its satisfaction with the withdrawal of the state party's reservation to article 13(2)(b) and (c) of CESCR on the progressive introduction of free education.²⁵⁶ However, the Committee did not hesitate to express its concern regarding significant cuts to budget allocations for social assistance that have negatively impacted the enjoyment of economic and social rights, particularly for disadvantaged and marginalised groups of the population.²⁵⁷ Notwithstanding this concern, independent experts under the Special Procedures of the Human Rights Council criticised this move as failing the requirements of retrogressive measures under CESCR.²⁵⁸ As was warned by the Special Rapporteurs and independent experts under the special procedures of the HRC, the retrogressive effect reviewed a series of planned benefit cuts threatening minimum social protection for the poor. In particular, the lack of support for those with disabilities, single parents and their children, and older people was aggravated by the subsequent measures taken in 2018.²⁵⁹

There have been repeated recommendations by the CESCR, CERD, and CRC Cttees to call for the state to stop discriminatory treatment of Korean schools, excluding them from the state's tuition fee waiver programme for high school education.²⁶⁰ However, despite repeated calls from civil society groups working for minorities, this recommendation has been neglected. The government explained that this was due to a lack of agreement among Japanese nationals, as those schools are alleged to have a close relationship with North Korea, which abducted a number of Japanese people.²⁶¹

256 E/C.12/JPN/CO/3, 17 May 2013, paras 4–6.

257 *ibid* para 9.

258 H-B Shin, '*Jinken Jōyaku Tekigōtekina Kokunaihō Kaishaku* (Consistent Interpretation of Domestic Law in Conformity with Human Rights Treaties)' in S Taira, T Umeda and T Hamada (eds), *Kokusaihōno Furontia (The Frontier of International Law)* (Nihon Hyoronsha 2019) 195, 209–214.

259 OHCHR, 'Japan: Benefit Cuts Threaten Social Protection of the Poor, UN Rights Experts Warn' (24 May 2018) <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23124&LangID=E>> accessed 9 January 2021.

260 E/C.12/JPN/CO/3, 17 May 2013.

261 Korean high schools lodged lawsuits against the state for stopping the exclusion of the schools from the tuition fee waiver programme, but the Japanese courts were not in favour of the schools and ruled that the treatment was legitimate within the scope of the government discretion. The Osaka District Court decision in favour of schools was nullified by the September 2018 judgment of the Osaka High Court, and in August 2019, the Supreme Court rejected appeals. House of Councillors, 'Questionnaire Regarding the Application of Free High School Tuition to Korean School'

5.3.5 Brief Conclusion

The impact of CESCER on the Japanese legal order has been limited, especially in the public domain. The Supreme Court adopted a narrow interpretation of the right to social security under the Covenant. Political branches are also unwilling to actively pursue the advancement and improvement of social security in line with the recommendations put forth by the CESCER Cttee. Societal challenges, including disparities in minority access to social protection, inequality, and health issues arising from disasters and nuclear incidents, are increasingly apparent in the twenty-first century. CSOs actively participate in a dialogue with the Committee, critiquing the government's economic, social, and cultural policies in light of CESCER standards. However, in some areas, such as the discriminatory treatment of Korean schools, comfort women, and issues regarding nuclear power plants and policies, there has been no progressive implementation of the CESCER Cttee's recommendations. The reluctance to address these matters may stem from their classification as highly diplomatic or political issues intertwined with national interests or national pride.

5.4 *Convention on the Elimination of All Forms of Discrimination against Women*

5.4.1 Incorporation and Reliance by Legislature and Executive Powers

Upon ratification of CEDAW, the state made significant changes in domestic laws and policies. The Equal Employment Opportunity Law was enacted in 1985; the Nationality Law was also amended in the same year so that people of matrilineal Japanese descent can acquire Japanese nationality; and the curriculum guideline of the Ministry of Education, Culture, Sports, Science and Technology for the subjects of technology and home economics at school was revised in 1989.²⁶²

<<https://www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/176/syuh/s176123.htm>> accessed 22 March 2021; Supreme Court, Judgment, 27 August 2019; Hatano 2021 (n150) 293.

262 Y Iwasawa, *International Law, Human Rights, and Japanese Law* (Clarendon Press 1999) 21–31; Government of Japan, 'Act on Securing, Etc of Equal Opportunity and Treatment between Men and Women in Employment' <<http://www.japaneselawtranslation.go.jp/law/detail/?id=60&vm=04&re=01>> accessed 22 March 2021; Government of Japan, 'Nationality Act' <<http://www.japaneselawtranslation.go.jp/law/detail/?vm=04&re=01&id=1857>> accessed 22 March 2021; Gender Equality Bureau, Cabinet Office, '*Gakushū Shidō Yōryōni okeru Gijutsu Katei Hoken Taiikuno Hensen* (Transition of Technology, Home Economics, and Health and Physical Education in the Courses of Study)' <https://www.gender.go.jp/about_danjo/whitepaper/r01/zentai/html/column/clm_02.html> accessed 20 November 2022.

Subsequently, the Beijing Declaration and Platform for Action adopted on 15 September 1995 complements the implementation of CEDAW with national mechanisms for gender equality established under the framework.²⁶³ The Basic Act for Gender Equal Society was established in 1999 and has been the basis for the Basic Plan for Gender Equality as well as for public policies for women.²⁶⁴ National machinery for gender equality promotes the advancement of gender equality in law and policy, while also raising awareness of CEDAW in Japanese society.²⁶⁵

One of the normative impacts advocated by CEDAW is the internalisation of the concept of 'indirect discrimination'. In 2006, a provision concerning indirect discrimination was inserted into the revised Equal Employment Opportunity Law article 7.²⁶⁶ Further, there were several legislative developments in line

263 United Nations, 'Beijing Declaration and Platform for Action' <https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf> accessed 3 February 2020. The Headquarters for the Promotion of Gender Equality, established within the cabinet, has the Prime Minister as president and the cabinet ministers as members. The Council for Gender Equality, an advisory organ to the Prime Minister, is chaired by the Chief Cabinet Secretary/Minister of State for Gender Equality and is composed of ministers designated and intellectuals appointed by the Prime Minister, monitoring the implementation of these policies and surveying the effects of government measures. An expert mentioned that the machineries are not functional. Interview with an International Human Rights Law Expert (Online, Paris, France, 17 February 2019).

264 The Basic Plan for Gender Equality, initially launched in 2000, lays out the government's political priorities for gender equality. While the Basic Act for Gender Equal Society was groundbreaking, it is also criticised by some civil society groups who question the concept of gender equality in this legislation. They allege that the Japanese term *danjo kyōdō sankaku*, which the government uses to correspond to the term 'gender equality', literally means 'equal participation of men and women' in English. According to the JNCC report submitted to the Committee, 'the expression "equal participation of men and women" signifies in the text of the "Basic Act for Gender Equal Society" equal enjoyment of interests and equal sharing of responsibilities between men and women, ensured primarily by equality in opportunity of participation. While Article 3 of this Act stipulates that the Act is aimed at eliminating discrimination against women, there is no provision directly defining the guarantee of equality or the prohibition of discrimination. Moreover, the definition of discrimination in the Act is narrower than that of the Convention.' JNCC, *List of Issues and Questions from NGOs For the Japan Seventh and Eighth Periodic Reports* (JNCC 2015) <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/JPN/INT_CEDAW_NGO_JPN_20839_E.pdf> accessed 3 August 2020.

265 Gender Equality Bureau, 'The Organisational Structure of the National Machinery in Japan' <https://www.gender.go.jp/english_contents/about_danjo/lbp/basic/toshin-e/org-e.html> accessed 22 March 2021.

266 Y Hayashi, *Josei Sabetsu Teppai Jōyaku: zonenmeno Seikato Kadai* (Convention on the Elimination of All Forms of Discrimination Against Women – Achievements and Agendas at the 30th year) (2010) 21 *Kokusai Jinken* (International Human Rights) 100.

with the recommendations of CEDAW, such as the enactment of the Childcare Leave Law (1991) and its revisions (1995, 2001).²⁶⁷

The CEDAW recommendations also promoted legislation on violence against women, such as the enactment of the Stalker Regulation Act (2000) and the Domestic Violence Prevention Act (2001). CEDAW paved the way for the significant revision of the provision of the Penal Code on sexual violence in 2017 for the first time since its establishment 110 years ago.²⁶⁸ Hayashi, a Japanese lawyer and former CEDAW Cttee member, holds that the recommendations of CEDAW helped to internalise the concept of ‘violence against women’ in Japanese society and led to a series of legal developments on sexual and gender-based violence.²⁶⁹

The response to the problem of human trafficking serves as an illustrative example of the combined impact of the CEDAW and other international pressures on legislative and policy development. Early in 2003, CEDAW urged the state to increase its efforts to combat the trafficking of women and girls.²⁷⁰ When Japan faced further severe criticism in the US Trafficking in Persons Report for its handling of trafficking issues in 2014, the Japanese government heeded the call for action. This response encompassed the commencement of cross-ministerial meetings, the development of comprehensive action plans to combat trafficking, and the incorporation of criminal penalties for human trafficking via the revision of the Penal Code in 2005.^{271, 272} From 2006 to 2007 the MOJ

267 Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members (Act No. 76 of 1991) <[https://www.japaneselawtranslation.go.jp/en/laws/view/3543/en#:~:text=Article%2016%2D5\(1\),caregiver%20leave%22\)%20upon%20application%20to](https://www.japaneselawtranslation.go.jp/en/laws/view/3543/en#:~:text=Article%2016%2D5(1),caregiver%20leave%22)%20upon%20application%20to)> accessed 18 September 2023.

268 Then committee member Yoko Hayashi and women’s rights activist and lawyer Yukiko Tsunoda had played an important role as norm entrepreneurs who internalised CEDAW recommendations and norms into the discussion for revision of legislations on gender-based violence as members of expert committees for the government. See A Hatano, ‘A Study on Penal Code Revision and Social Movements on Sexual Violence in Japan: From the Viewpoint of Internalization of International Human Rights Norms’ (2020) Asian Gender Culturology Res 73; Y Tsunoda, *Jendāto Hōritsu (Gender and Law)* (Iwanami Shoten 2013); Y Tsunoda, *Jendā Sabetsuto Bōryoku (Gender Discrimination and Violence)* (Yuhikaku 2001).

269 Y Hayashi, ‘*Kōenroku 21 Seikini Okeru Kokusaijinkenhōno Yakuwari: Josei Sabetesu Teppai Inkaino Katsudō Reito Shite* (Lecture Record: Role of International Human Rights Law in the 21st Century: Taking the Activities of the Committee on the Elimination of Discrimination Against Women as an Example)’ (2015) 11 Niben Frontier 2–6.

270 The CEDAW Cttee already showed its concern about the sexual exploitation of migrant women in Japan early in its review of the second and third state reports. See A/50/38, 31 May 1995, para 635; A/58/38(SUPP), 17 December 2003, paras 363–364.

271 US Department of State, ‘Trafficking in Persons Report 2004’ <<https://2009-2017.state.gov/documents/organization/34158.pdf>> accessed 22 March 2021. Japan was placed in Tier 2 watch list.

272 Penal Code 2005, arts 226, 227.

revised its requirements for the 'entertainer visa' because of the large number of victims entering Japan on such visas. Ultimately, these actions represent the fulfillment of recommendations from treaty bodies such as the CEDAW Cttee, the HRCttee, and the CAT Cttee. Nevertheless, it is crucial to acknowledge that external influences, including pressures from the United States, and broader factors such as the global initiative against human trafficking exemplified by the adoption of the United Nations Convention against Transnational Organized Crime in 2000, might have played a significant role in shaping these actions. The interplay of these factors likely contributed to propelling these development.

Certain legislative changes were prompted by judicial decisions. Subsequent to a Supreme Court judgment discussed in the following section, the Diet amended article 733 of the Civil Code in 2016. This revision addressed the prohibition that previously prevented women from remarrying within six months after divorce, a practice that the CEDAW Cttee had consistently called upon Japan to abolish.²⁷³ Under the revised provision, women are subject to a shorter remarriage prohibition period of 100 days, which minimises the interval where the father of a child may be redundantly presumed to be either the previous husband or the current husband at the time of the birth of a child.²⁷⁴

Japan has also enacted laws to promote the equal participation of women in economic and political fields, namely, the 2015 Act on Promotion of Women's Participation and Advancement in the Workplace and the 2018 Act on Promotion of Gender Equality in the Political Field.²⁷⁵ The enactment of the former was spurred by the economic recovery policy of the government, rather than the CEDAW recommendation to increase women in leadership positions. On the other hand, the latter was the result of the active advocacy by women's rights groups that have been encouraged by the CEDAW Cttee's call for more women in political leadership and have actively engaged in the law development process with the Non-Partisan League on the Promotion of Gender Equality in the Political Field, which led the drafting process for the 2018 Act.²⁷⁶ Since both

273 K Ishibashi, 'Further Developments in Fukushima and Other New Movements for Implementing International Human Rights Law in Japan' in S Lee and HE Lee (eds), *Asian Yearbook of International Law, Volume 21* (Brill 2015).

274 Civil Code 2015, art 733.

275 Act on Promotion of Women's Participation and Advancement 2015; Act on Promotion of Gender Equality in the Political Field 2018.

276 The Association Promoting the Quota System, or the Q Association for short, has played an active role in development process of the 2018 Act. The Q Association was established in June 2012 by Ryoko Akamatsu, former Minister for Education and former CEDAW Cttee member who had been actively working to increase the number of female Diet members and for the incorporation of a global gender equality agenda in Japan. In the fall of 2011, she called on major women's groups across the country to work on the quota system. Nine organisations, including the Japan's Association of International Women's Rights, became

laws have neither strong enforcement mechanisms nor binding instruments, the legal design requires a strong commitment of stakeholders to monitor and promote the implementation for the laws to perform to purpose.

5.4.2 Reliance by Judiciary

The impact of CEDAW on domestic judicial examinations and rulings is limited.²⁷⁷ In 2015 and 2021 the Supreme Court upheld the constitutionality of the law that requires married couples to adopt the same surname.²⁷⁸ Article 750 in the Civil Code is criticised as discriminatory law by the CEDAW Cttee, which urged the Japanese government to revise the article in order to enable women to retain their maiden surnames in its COs on the combined seventh and eighth periodic reports of Japan. In the 2015 ruling, five justices, including all three female judges, submitted their opinions that the Civil Code provision was incompatible with article 24 of the Japanese Constitution, which stipulates matrimonial equality. One of these opinions made reference to the ratification of CEDAW and its associated recommendations.²⁷⁹ In the 2021 decision, dissenting opinions referred to CEDAW and pronounced the Civil Code unconstitutional. Although the Court urged the legislature to discuss this issue, discussions among lawmakers have not progressed due to the strong backlash by some conservative groups.²⁸⁰

the core members of the association at the request of Akamatsu. The association has enthusiastically engaged in lobbying activities while meeting with Diet members.

- 277 It is also noteworthy that in the aforementioned *Children Born out of Wedlock* case the Supreme Court did not refer to CEDAW, despite its recommendations on that issue.
- 278 Supreme Court, Judgment, 16 December 2015, 69–8 Minshu 2586; Supreme Court, Decision, 23 June 2021, 1488 *Hanrei Times* 94. Article 750 of Japan's Civil Code states that "A husband and wife shall adopt the surname of the husband or wife in accordance with that which is decided at the time of marriage." In reality, approximately 95.5% of the couples choose the husband's surname when getting married. Japanese Law Translation, 'Civil Code (Act No. 89 of 1896; Act No. 94 of 2013)' <<https://www.japaneselawtranslation.go.jp/en/laws/view/2252>> accessed 21 November 2022; Ministry of Justice, '*Sentakuteki Fūfu Bessei Seidoni Tsuite* (About the Selective Surname System for Married Couples)' <<https://www.moj.go.jp/MINJI/minji36.html#Q4>> accessed 21 November 2022; CEDAW/C/JPN/CO/7–8, 10 March 2016, para 12–13.
- 279 Y Hayashi, '*Josei Sabetsu Teppai Jōyakuto Nihonno Kazokuhō* (CEDAW and Japanese Family Law)' in S Ninomiya and S Watanabe (eds), *Kokusaikato Kazoku* (Internationalisation and Family) (Nippon Hyoronsha 2020) 25; Association Supporting the Separate Surname Litigation, 'Top Page' <<http://www.asahi-net.or.jp/~dv3m-ymsk/>> accessed 13 June 2021.
- 280 Since 2018 several new lawsuits over the same surname were brought before the courts. Association Supporting the Separate Surname Litigation <<https://bessei2018.wixsite.com/bessei2018>> accessed 22 March 2021.

In 2015, the Supreme Court of Japan ruled that the provision of Civil Code 733(1) was partially unconstitutional as it prohibited women from remarrying for a period longer than 100 days.²⁸¹ Although one Supreme Court justice mentioned the recommendations by the CEDAW Cttee and the HRCttee in a separate opinion, the majority opinion did not refer to the CEDAW Cttee,²⁸² even though UN bodies had adopted repeated recommendations on the issue.²⁸³

5.4.3 Impact on and through Non-state Actors

Empowered by the global momentum of the women's rights movement, Japanese civil society groups have been actively engaged in the state reporting system for CEDAW. This involvement, facilitated by organizations like the Japan NGO Network for CEDAW (JNNC), has allowed the coordination of diverse groups addressing various women's issues and promoting gender equality.²⁸⁴ JNNC submits a comprehensive report to both the pre-session working group and the main session, and they appoint a representative to deliver oral presentations, frequently organizing a separate briefing session with committee members.²⁸⁵

CSOs not only champion specific issues concerning different groups of women but also emphasize the intersectionality of discrimination, encompassing gender and other factors, as well as the underlying structural causes and discriminatory social norms prevalent in Japan. The groups have leveraged the CEDAW recommendations in their domestic advocacy for legislative and policy changes and monitored the implementation of the recommendations. However, it is also pointed out that more follow-up activities with strategic domestic

281 Supreme Court (n 278); see also Waseda University Institute of Comparative Law, 'The Case in Which a Part of Article 733(1) of the Civil Code, Stipulating a Prohibition Period for Remarriage Specific to Women, was Ruled as Unconstitutional' <<https://www.waseda.jp/foiaw/icl/news/2017/03/29/5721/>> accessed 22 March 2021.

282 Supreme Court (n 278).

283 Eg, A/49/38, 12 April 1994, paras 35–6 and CEDAW/C/JPN/CO/6, 7 August 2009, paras 17–8, which is also highlighted in their follow-up procedure. Hayashi (2020) points out that even though the Supreme Court did not make explicit mention of those recommendations, the international trend that the court considered in its judgment includes the existence of those recommendations. Hayashi (n 115) 23.

284 JNNC, a coalition of Japanese CSOs, was established on 23 December 2002, in alignment with the consideration of the 4th and 5th periodic reports of Japan at the 29th session of CEDAW in 2003.

285 Y Yamashita, 'Tokushu – Josei sabetsu teppai jōyaku 30 shūnen NGO no shiten kara: Sōron – Jikkosei Kakuho to NGO no Yakuwari (General Comment – How to Secure Effectiveness of CEDAW and the Role of NGOs – Special Edition: 30 Years Anniversary of CEDAW from the NGO Perspective)' (2015) 29 Kokusai Josei (International Women) 38.

movement, rather than focusing on obtaining recommendations from CEDAW, are necessary for effective implementation of the recommendations.²⁸⁶

The international lobbying efforts of civil society groups had a significant impact on empowering plaintiffs in gender discrimination cases.²⁸⁷ In 1994, two women who had endured workplace discrimination based on their gender received support from a civil society group to attend a session of the state report review. During this session, they presented their case as a stark illustration of gender inequality in the Japanese workplace. This experience and the recommendation of CEDAW declaring this issue as an 'indirect discrimination' encouraged the two women to bring the case to the domestic court.²⁸⁸ This move, and the public appeal they made for their case in front of the Japanese media, marked a significant step in their subsequent activities to seek gender equality.

There have been continuous legal efforts to address gender-based unfair treatment utilizing CEDAW. In 2000, when asked about the legality of the wage gap between men and women, the Osaka District Court in the first instance turned down the plaintiff's claims based on CEDAW, asserting that the Convention did not have a retroactive effect on cases predating its ratification.²⁸⁹ However, for the examination of the appealed case in the Osaka High Court, many legal experts, scholars specialising international human rights law, provided their opinions criticising the judgment of the first court. CSOs appealed to the general public in and outside of the country about the gender discriminatory practices of Japanese companies and the gender bias in the Japanese judiciary.²⁹⁰ The plaintiffs also participated in the CEDAW session for Japan's state reporting in July 2003 to lobby the Committee and deliver a discussion on the judicial examination back home.²⁹¹ The COs by CEDAW Cttee in

286 Interview with an International Human Rights Law Expert (Geneva, Switzerland, 11 February 2019).

287 The *Sumitomo Electric* case. Osaka High Court, Recommendation of Reconciliation, 24 December 2003; see also Kelly Barret, 'Women in the Workplace: Sexual Discrimination in Japan' (2004) 11 HRB 5.

288 Y Yamashita, *CEDAW and Japan* (Shogakusha 2010) 316–7.

289 Osaka District Court, Judgment, 31 July 2000, 1080 *Hanrei Times* 126. The Equal Employment Opportunity Law and CEDAW do not allow a company or the state party to redress the practice prior to their entry into force.

290 See the Working Women's Network, 'WWIN News NO.13 Sept. 7. 2003' <<http://wwn-net.org/english/2008/10/10>> accessed 21 November 2022.

291 M Miyachi, 'Tokushu 1–Daisankai Nihon Repōto Shingi Forōappu (5) Sumitomo Denkō Danjo Chingin Sabetsu Soshō Shori Wakai de Kaiketsu (Special Edition 1 Follow-up to the 3rd Review of the State Report of Japan (5): Sumitomo Electric Case on the Discriminatory Wage Gap Between Men and Women)' (2004) 18 Kokusai Josei (International Women) 67.

August 2003 recommended that the Japanese government take action to close the existing wage gap and prevent direct and indirect discrimination against women.²⁹² The CEDAW Cttee recommendations played a pivotal role in providing a foundation for the plaintiffs to build their cases during court-mediated settlement discussions.²⁹³ Consequently, the settlement record from the Osaka High Court issued on 1 December 2003 emphasized the global consensus that strives for an egalitarian society for both men and women. The record encapsulates the idea of women cultivating their skills and abilities without encountering discrimination, ensuring every woman's right to benefit from reforms aimed at eradicating gender discrimination, including the ratification of CEDAW and the enactment of the Equal Employment Opportunity Law.²⁹⁴

5.4.4 Impact of State Reporting

The CEDAW state reporting had a significant impact on cases regarding the dual-track employment system practised by the corporate sector, which indirectly discriminated against women in terms of promotion and wages. Encouraged by the moral support of the Committee during the session for state reporting in 1994, female employees working for *Sumitomo Electric* filed a lawsuit against the company, seeking compensation for indirect discrimination against them in 1995.²⁹⁵ In the following years, *Sumitomo Chemical* and *Sumitomo Metal* also faced similar lawsuits from female employees.²⁹⁶ In this case of *Sumitomo Group*, the complainants also sued the Japanese government for failing to implement article 2 of CEDAW. This lawsuit, the first case in which the Japanese court interpreted CEDAW, attracted considerable media attention, which exerted pressure on the Japanese government to take measures against gender discrimination in the workplace.

In its COs adopted in 2003, 2006, 2009, and 2016, the CEDAW Cttee expressed its concern over gender inequality in family law, whose wording has become stronger as time passed. In the follow-up procedure for the COs, the Committee

292 A/58/38(SUPP), 18 Aug 2003.

293 MOJ (n 107).

294 Working Women's Network, 'Wakai Kankoku (Settlement Recommendation)' (1 December 2003) <<http://wwn-net.org/wp-content/themes/WWN/pdf/07.pdf>> accessed 3 February 2020.

295 See L Savery, *Engendering the State: The International Diffusion of Women's Human Rights* (Routledge 2007) 147–85.

296 M Miyachi, 'Sumitomo Mēka Danjo Chingin Sabetsu Soshō Kara Mita Kaisei Kintōhōno Mondaiten (Problems of the Revised Equal Employment Law as Seen in the Sumitomo Group Gender-based Wage Discrimination Case)' (2006) 20 Kokusai Josei (International Women) 128.

highlighted gender equality upon marriage.²⁹⁷ The Committee took as a positive change that a Bill was submitted in March 2018 to the National Diet with a proposition to raise the legal age for marriage for women to 18 years, making 18 the marriageable age for both men and women, in alignment with the 2009 CEDAW Cttee recommendation. The Committee also welcomed the adoption of the Act for the Partial Revision of the Civil Code, which shortened the period of prohibition of remarriage from six months to 100 days. However, the CEDAW showed its concerns as Japanese government has taken no legislative steps to allow optional separate surnames for married couples and to abolish the period for prohibition of remarriage for women. This suggests that CEDAW recommendations have initiated incremental changes in family law. However, certain legislative adjustments might necessitate waiting for a shift in social norms, which often requires persistent efforts through multi-layered awareness-raising campaigns and sensitization, coupled with human rights litigation, to reach the tipping point in public opinion.

CEDAW's recommendation in its COs adopted in March 2016 on forced sterilisation under the old Eugenic Protection Act also became a trigger for nationwide discussions and lawsuits.²⁹⁸ The recommendation, which called for the clarification of facts, the prosecution and punishment of perpetrators, and remedies for victims, gained traction within the Diet. Subsequently, the Ministry of Health, Labour, and Welfare initiated interviews with the alleged victims.²⁹⁹ This development prompted the victims to file lawsuits seeking redress for illegal forced sterilizations under the now-defunct Eugenic Protection Act. Starting with the pioneering case filed in the Sendai District Court in January 2018, several similar lawsuits have since emerged across the country.³⁰⁰ The bipartisan parliamentary group and the working group of the

297 CEDAW/C/JPN/CO/7-8/Add.1.

298 Under the Eugenic Protection Act (effective from 1948–1996) the state sought to prevent births of children with diseases or disabilities and, as a result, subjected persons with disabilities to forced sterilisation. This recommendation of CEDAW made clear the intersectional forms of discrimination of women with disabilities.

299 IMADR, 'Yūsei Hogohō Mondaiga Nagekakeru Mono (What the Eugenics Protection Act Issue Highlights)' <https://imadr.net/books/199_2/> accessed 22 March 2021.

300 A total of 20 people have filed lawsuits in seven district courts across Japan demanding compensation for the treatment they suffered under the law. The first ruling of the Sendai court in May 2019 held that the old eugenics law was unconstitutional, but it rejected damages for victims. 'Japan Court Rules Old Eugenics Law Unconstitutional, but Rejects Damages for Victims' *Mainichi* (28 May 2019) <<https://mainichi.jp/english/articles/20190528/p2a/00m/ona/013000c>> accessed 11 July 2021; S Yoshimoto, 'Forced Sterilisations in Japan: The Push for Justice' (7 August 2018) <<https://www.nippon.com/en/currents/doo421/>> accessed 13 June 2021.

ruling party to address this issue were quickly established. In April 2018, the ‘Law on a Lump Sum Payment to those who underwent eugenic surgery based on the former Eugenic Protection Law’ was enacted.³⁰¹

5.4.5 Other Forms of Impact

Alongside the movement for gender mainstreaming, the 2000s was also the period when so-called ‘backlash’ surged against the gender equal law and policy which had advanced after the ratification of CEDAW.³⁰² Conservatives became proactive in opposition to feminism, the 1999 Basic Act for Gender Equal Society, and the recommendations by the CEDAW Committee, deeming them excessively radical and potentially undermining traditional values. This anti-feminist movement has grown and intertwined with nationalist agenda, often resulted in statements against the CEDAW and its recommendations, particularly concerning issues related to national history, such as the so-called comfort women.³⁰³ The CEDAW Cttee criticised the 2015 agreement between Japan and the Republic of Korea on the comfort women issue as it considered the agreement to have dismissed the views of the victims.³⁰⁴ In response, right-wing groups in Japan launched retaliatory actions then-Japanese CEDAW member Yoko Hayashi. In 2016, *Ianfuno Shinjitsu Kokumin Undō* (‘Truth of Comfort Women’ National Movement) submitted a petition to the MOFA asking for her immediate dismissal from the position under the auspices of a member of the House of Councillors.³⁰⁵

5.4.6 Brief Conclusion

CEDAW made a substantial impact on shaping law and policy for gender equality under the national machinery for the promotion of gender equality despite gender backlash from conservative politicians and civil society actors. Even

301 This is the law concerning lump sum payment to those who have undergone eugenic surgery based on the former Eugenic Protection Law 2019. This quick measure was appreciated at large, however, the victims lamented that the amount of 3,2 million yen per person is not at all sufficient. IMADR (n 299).

302 Japan Women’s Study Association and others, *Q&A Danjo Kyōdō Sankaku Gendā Furi Basshingu* (Q&A Gender Equality Gender Free Bashing) (Akashi Shoten 2006).

303 See n 89. Those official statements against international human rights and gender norms have gained the support of conservative civic groups.

304 CEDAW/C/JPN/CO/7-8, paras 28–29.

305 Sankei Shimbun, ‘Kokuren Nihonjin Iinchō Sokuji Kaininseyo Ianfu Mondai Futō Kenkai Kokumin Undōga Gaishō Ateni Shomei Teishutsu (UN) Japanese Chair “Must be Immediately Dismissed” over Unjust Views on Comfort Women Issue: ‘National Movement’ Submitted Petition to Foreign Minister’ (28 November 2016) <<http://www.sankei.com/politics/news/161128/pl161128006-n1.html>> accessed 25 January 2020.

indirectly, it exerted a significant influence on the discourse within the women's movement as a legitimate guideline, empowering women, feminists, and civil society groups to be change agents in advocacy and lobbying for gender equality at both international and domestic levels. Despite certain legislative advancements, the adoption of a gender perspective has not yet become mainstream within Japan's judicial system. Consequently, CEDAW's impact on the judiciary remains limited, with only a few cases directly referencing CEDAW in a favourable manner within their judgments. Despite Japanese women having attained some legal equality in these legislative advancements, deep-rooted cultural and social norms have, in practical terms, hindered greater progress in gender equality, resulting in the country lagging behind in numerous areas.³⁰⁶ Article 5 of CEDAW stipulates that to make a legal framework effective to ensure gender equality, there must be a shift in social and cultural patterns of behavior away from entrenched stereotypes and prejudices. As illustrated in this section, further realisation of this goal will require both legal advocacy and social awareness campaigns to internalise the principle of gender equality outlined in CEDAW at the domestic level.

5.5 *Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*

5.5.1 Incorporation and Reliance by Legislature and Executive Powers
The Constitution of Japan prohibits torture.³⁰⁷ After the ratification of CAT, article 3(1) (*non-refoulement* principle) was explicitly incorporated into the Immigration Control and Refugee Recognition Act article 53(2) in its revision in 2009.³⁰⁸ However, as is examined in the part on CCPR, the recommendation regarding criminal justice issues such as the death penalty, the substitute detention system and the improvement of the conditions of detention have not seen a positive response by the government.³⁰⁹

306 See World Economic Forum (n 8).

307 Constitution of Japan, art 36 ('The infliction of torture by any public officer and cruel punishments are absolutely forbidden').

308 Y Ando, 'Gaikokujinno Taikyo Kyōseini Okeru Gōmontō Kinshi Jōyakuno Nonrufuruman Gensokuno Katsuyō (How to apply the principle of *non-refoulement* under the Convention against Torture concerning deportation of foreigners)' (2010) 2 Migration Policy Review 90.

309 See the part of general attitude towards the UN treaty system. See also the part of CRC for the revision of law on corporal punishment.

5.5.2 Reliance by Judiciary

CAT article 3 (*non-refoulement*) has a tangible impact on the Japanese judiciary. For example, the Osaka High Court referred to the spirit of CAT article 3 when declaring the deportation of a refugee illegal.³¹⁰ In another case, the Osaka High Court referred to the Immigration Control and Refugee Recognition Act article 53(2), which incorporates CAT article 3(1) when declaring that an Iranian national ‘cannot be deported’ to Iran.³¹¹

5.5.3 Impact on and through Non-state Actors

Various CSOs submit their reports to CAT for a review of state reports.³¹² The information covered various torture-related issues, including asylum-seeking processes, prisoners’ rights, criminal investigation methods, domestic violence, violence against children, abortion, detention of people with disabilities, workers’ rights, minority rights, and the so-called comfort women issue. In the CSO reporting to CAT, in particular about issues in the criminal justice system, JFBA lawyers played a central role. They incorporated the CAT recommendations into their domestic advocacy, but their efforts and activities have not garnered widespread support from the general public. Consequently, they did not witness significant legal and systemic changes aligned with the CAT recommendations.³¹³

5.5.4 Impact of State Reporting

While the government had to submit a report within one year after joining the treaty in 1999, the initial report had been submitted with a delay in 2005. The broad range of recommendations issued in 2007 did not progress further and were repeated in the second COs in 2013.³¹⁴ In particular, in the follow-up procedure for COs considering the 2nd report, the Committee highlighted some important issues. A positive advancement regarding inadmissibility in court of confessions obtained under torture and ill-treatment, the Code of Criminal Procedure was revised in 2017 to include an obligation to take audio-video recordings of the entire process of interrogations in line with the CAT Cttee’s recommendations. The domestic impact of the COs has been harshly limited because of the conservative position of the government. In relation to the CAT Cttee’s recommendations regarding the comfort women issue, the

310 Osaka High Court, Judgment, 15 June 2005, TKC 28111464.

311 Osaka High Court, Judgment, 27 November 2015, 2015WLJPCA11276001.

312 OHCHR (n 159).

313 See JFBA, *Gomon Kinshi Jōyaku Houkokusho Shinsa* (Review of CAT State reports, <https://www.nichibenren.or.jp/activity/international/library/human_rights/torture_report.html>

314 COs on the second periodic report of Japan, adopted by the Committee at its 50th session (6–31 May 2013). CAT/C/JPN/CO/2, 28 June 2013.

cabinet expressed its position that those ‘recommendations are not legally binding and ... do not impose an obligation on States Parties to the Convention to follow them.’³¹⁵

5.5.5 Brief Conclusion

Some positive impacts of CAT are observed in the legislative and judicial incorporation of *non-refoulement* clauses. Nonetheless, the executive body restricted the normative significance of the CAT Cttee recommendations by rejecting the legal bindingness of the COS.

5.6 *Convention on the Rights of the Child*

5.6.1 Incorporation and Reliance by Legislature and Executive Powers

At the time of the ratification of CRC, there was no development of a new law or revision of the existing law, as the government considered that there was no inconsistency between CRC and domestic laws.³¹⁶ After the ratification of CRC, several legislations were enacted, including the Act on Promotion of Development and Support for Children and Young People (2009).³¹⁷ The Act was enacted to support the government’s efforts to respect the best interests of children and young people with reference to CRC in its very first section.³¹⁸ In 2016, the government enacted and implemented the revised Child Welfare Act, of which article 1 clearly states that it embraces the principles of ‘the Convention of the Rights of the Child’.³¹⁹ The Child Welfare Act attempts to protect children’s rights and the rights of persons with disabilities in alignment

315 House of Councillors, ‘*Tōbensho Daiin8Gō* (Written Response No 118)’ <<https://www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/183/toup/1183118.pdf>> accessed 9 January 2020.

316 M Ishikawa and A Morita (eds), *Jidōno Kenri Jōyaku: Sono Naiyō Kadaito Taiō* (Convention of the Rights of the Child: Its Content, Challenges and Response) (Ichiryusha 1995).

317 Headquarters for Promotion of Development and Support for Children and Young People, ‘Vision for Children and Young People’ (Cabinet Office, July 2010) <http://www8.cao.go.jp/youth/suisin/pdf/vision_english.pdf> accessed 26 January 2020. An expert commented that the law was enacted when the DPJ was in power and has been weakened since the conservative LDP returned to power. This may explain how political dynamics affect the implementation of the treaty obligations and recommendations. Interview with an International Human Rights Law Expert (Geneva, Switzerland, 17 February 2019).

318 Cabinet Office, ‘*Kodomo Wakamono Ikusei Shien Suishinhō* (the Act on Promotion of Development and Support for Children and Young People)’ <https://www8.cao.go.jp/youth/whitepaper/h22honpenhtml/html/honpen/sanko_01.html> accessed 26 January 2020.

319 Government of Japan, ‘*Jidō Fukushi Hō* (Child Welfare Act)’ <https://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?lawId=322AC0000000164_20180402_429AC0000000069&openerCode=1#A> accessed 25 January 2020.

with international human rights law.³²⁰ A number of municipal governments set ordinances on children's rights to implement the principles of CRC in their local context.³²¹

5.6.2 Reliance by Judiciary

CRC has had a significant impact on the Japanese judiciary. For example, the Supreme Court referred to CRC together with CCPR for children born out of wedlock and the *Nationality Act* case.³²² It is noteworthy that the Supreme Court also referred to the recommendations of the CRC Cttee. Article 3 of CRC (best interests of children) was referred by a lower court in a case that nullified the deportation of children of illegal immigrants to Iran.³²³

5.6.3 Impact on and through Non-state Actors

Many CSOs have provided parallel reports to the CRC Cttee at the state report review on various issues regarding children's rights.³²⁴ However, the CSOs are not coordinated in the development and submission of their reports and lobbying the CRC Cttee in the sessions, particularly when compared to such engagement with the CEDAW Cttee.³²⁵

Some major CSOs actively promote CRC and its Committee's recommendations at the domestic level. For example, as part of the advocacy effort of prohibiting corporal punishment, Save the Children Japan conducted a survey and events and campaigns to raise public awareness.³²⁶ These efforts led to the amendment of the law on corporal punishment in line with the recommendations of the CRC Cttee.³²⁷

320 The 'family-based care' principle of the 2016 Child Welfare Act guarantees a family setting, such as adoption and foster care, for children unable to live with their birth parents; laws to ban corporal punishment against children by parents and other guardians; revision of the basic law to protect the rights of people with disabilities in 2011. See the revision of the Child Abuse Prevention Act and the Civil Code in line with CRC in the following section.

321 General Research Institute of the Convention of the Rights of the Child, '*Kodomo no Kenri Jōreitō wo Seiteisuru Jichitai Ichiran* (List of Local Governments that Enact Child Rights Ordinances, etc)' <http://npocr.a.la9.jp/siryoy/siryoy_jyorei.htm> accessed 22 March 2021.

322 For the *Nationality Act* case, see the section above on reliance by judiciary under CCPR.

323 Tokyo District Court, Judgment, 19 September 2003, TKC 28082829.

324 See OHCHR (n 159).

325 Interviews with an International Human Rights Law Expert (Geneva, Switzerland, 11 February 2019), and a Child Rights Advocate (Geneva, Switzerland, 17 January 2019).

326 Save the Children Japan, '*Sankō Shiryō Ichiran* (Reference List)' <<https://www.savechildren.or.jp/lp/phpreference/>> accessed 22 March 2021.

327 See the next section on the impact of state reporting.

The UNICEF National Committee and the UNICEF Tokyo Office also engaged in awareness-raising activities of CRC in Japan. In particular, the UNICEF National Committee has published more than 13 reports on child poverty in developed countries, including Japan, and engaged in research and advocacy for issues regarding children's rights.³²⁸ However, while in developing countries, recommendations from the CRC Cttee may be incorporated into programmes of support and cooperation by UNICEF and other UN agencies and international CSOs, such opportunities and processes are very limited in developed countries such as Japan.³²⁹

5.6.4 Impact of State Reporting

The COs had a great impact on the discussion for the revision of domestic laws by raising questions on various legal provisions that the government did not consider to be a problem in terms of CRC, or which it did not even discuss at the time of ratification. One of the observable impacts of the CRC Cttee recommendations is the ratification of the Hague Convention on the Civil Aspects of International Child Abduction.³³⁰ Against the background of increasing pressure at the international level and the CRC Cttee's COs on the second periodic report of Japan, the government took legislative measures to ratify the Convention in 2013.³³¹ Otani, a Japanese lawyer, international human rights law expert and CRC Cttee member, points out that the amendment of the Hague Convention Implementation Act in 2019 was also in line with the recommendations of the CRC Cttee on the combined fourth and fifth periodic report.³³²

328 UNICEF National Committee, 'Kodomono Hinkon Mondai (Issue of Child Poverty)' <https://www.unicef.or.jp/about_unicef/advocacy/about_ad_poverty.html> accessed 2 February 2020.

329 Interview with an international human rights law expert (Geneva, Switzerland, 11 February 2019).

330 Hague Conference on Private International Law, '28. Convention on the Civil Aspects of International Child Abduction' (concluded 25 October 1980) <<https://assets.hcch.net/docs/e86d9f72-dc8d-46f3-b3bf-e10291c8532.pdf>> accessed 21 November 2022.

331 M Otani, 'Kodomono Kenri Jōyaku' ('The Convention on the Rights of the Child') in Syuhei Ninomiya (ed), *Gendai Kazokuhō Kōza: Kokusaikato Kazoku (Contemporary Family Law: Internationalisation and Family)* (Nihon Hyoronsha 2021) 29–55.

332 *ibid* 45. See also MOFA, 'Outline of Amendment of the Hague Convention Implementation Act' <<https://www.mofa.go.jp/mofaj/files/100039100.pdf>> accessed 22 March 2021; CRC Cttee, 'Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Japan' (CRC/C/JPN/CO/4–5, 5 March 2019) para 31.

In the COs on the combined fourth and fifth periodic reports of Japan, the CRC Cttee urged the government to prohibit all corporal punishment in law, particularly in the Child Abuse Prevention Act and the Civil Code,³³³ referring to their General Comment 8³³⁴ on the right of the child to be protected from corporal punishment and other cruel or degrading forms of punishment and reiterating their previous recommendation to Japan.³³⁵ This was followed by the amendment of the Child Welfare Act and the Child Abuse Prevention Act in 2019 to strengthen measures to prevent child abuse ‘in accordance with the international progress in the protection of children’s rights’.³³⁶ On 24 May 2019, the House of Representatives approved the revised Act, along with a supplementary resolution, which urges the government to take appropriate measures to ‘develop guidelines that provide concrete examples with reference to the CRC at an early stage in promoting parenting that does not involve corporal punishment’.³³⁷ Likewise, the House of Councillors adopted another supplementary resolution, including the same text, along with the revised Act on 19 June 2019.³³⁸ The CRC Cttee’s COs on the fourth and fifth periodic reports regarding corporal punishment were also expressly cited in the discussion for reviewing article 822 of the Civil Code on parental discipline.³³⁹

333 CRC Cttee (n 332) para 26.

334 CRC Cttee, ‘General Comment No 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment’ (CRC/C/GC/8, 2 March 2007).

335 CRC Cttee, ‘Concluding Observations on the Third Periodic Report of Japan’ (CRC/C/JPN/CO/3, 20 June 2010) para 48.

336 House of Representatives, ‘*Jidō Gyakutai Bōshi Taisakuno Kyōkawa Hakarutameno Jidō Fukushi Hōno Ichibuwo Kaiseisuru Hōritsuanni Taisuru Futai Ketsugi* (Supplementary Resolution on the Revision on the Child Welfare Act and the Child Abuse Prevention Act)’ <http://www.shugiin.go.jp/internet/itdb_rchome.nsf/html/rchome/Futai/kourouAA374A90540C32634925840400355A30.htm> accessed 9 January 2021; CRC Cttee (n 332) paras 25–6. See art 14 of the revised Act on the Prevention, etc of Child Abuse promulgated on 26 June 2019, and which entered into effect on 1 April 2020. Government of Japan, ‘*Jidō Gyakutaino Bōshitōni Kansuru Hōritsu* (Act on the Prevention, etc of Child Abuse)’ (promulgated on 26 June 2019) <https://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?lawId=412AC1000000082> accessed 9 January 2020.

337 House of Representatives, ‘198th Diet Session, House of Representatives’ Committee on Health, Labour and Welfare’ (24 May 2019) <<https://kokkai.ndl.go.jp/#/detail?minId=119804260X02120190524&spkNum=284&single>> accessed 9 January 2020.

338 House of Councillors, ‘198th Diet Session, House of Councillors, Main Conference, No 27’ (19 June 2019) <<https://kokkai.ndl.go.jp/#/detailPDF?minId=119815254X02720190619&page=36&spkNum=60¤t=3>> accessed 9 January 2020.

339 House of Representative, ‘198th Diet Session, Plenary Session of the House of Representative, No 23’ (5 June 2019) <<https://kokkai.ndl.go.jp/#/detail?minId=119815254X02320190605¤t=1>> accessed 12 November 2022; Legislative Council of the Ministry

There have been other revisions of the domestic legislation and policies in line with the provisions of CRC and the recommendations of the CRC Cttee.³⁴⁰

5.6.5 Other Forms of Impact

While nearly all junior high and high school textbooks introduce the principles of CRC, this introduction remains limited and falls short of fostering systematic participation of children in safeguarding their own rights through the utilization of human rights treaty mechanisms and principles.³⁴¹ The Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography visited Japan in 2015 as part of her work to draft a report on the sexual exploitation of children in Japan. In her statement on the 31st session of the Human Rights Council on 8 March 2016, she urged the government to fully ban the so-called JK business, which targeted high school-aged girls, potentially leading to their sexual abuse and exploitation, with reference to OP-CRC-SC.³⁴² Responding to the surge of criticism of the “JK business”, the Tokyo metropolitan government adopted relevant ordinances in 2017 with the police conducting surveys and the investigations into the issue.³⁴³

of Justice, Working Group on Civil Code, 2nd session (10 September 2019) <<https://www.moj.go.jp/shingii/shingio4900402.html>> accessed 12 November 2022.

340 For example, the revision of the Civil Code in 2018 that sets the minimum age of marriage at 18 years for both women and men; the amendment to the Penal Code in 2017; the amendment of the Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography and the Protection of Children, in 2014, which now criminalises the possession of child pornography; the law development in 2016 and revision of the Civil Code in 2019 on child adoption; the revision of the Civil Enforcement Law in 2019 on child support; and the Domestic Relations Case Procedure Act 2011 to ensure the right of children to have their views heard. For the influence on family law, see Otani (n 331) 29–55.

341 S Yamagishi, ‘*Kodomo (jidou) no kenri joyaku (CRC)*’ (1996) 2 Journal of Child Study 131.

342 OHCHR, ‘Statement by Ms Maud De Boer-Buquicchio, Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography at the 31st Session of the Human Rights Council’ (8 March 2016) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19975&LangID=E>> accessed 25 January 2020; her statement that 13% of schoolgirls in Japan had experienced *Enjo Kosai* (compensated dating) was severely criticised as clueless by Japan’s MOFA and so was her report. MOFA, ‘Reply from the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography’ (11 November 2015) <http://www.mofa.go.jp/press/release/press4e_000915.html> accessed 25 January 2020. A/HRC/31/58/Add.1, 3 March 2016; A/HRC/31/58/Add.3, 7 March 2016.

343 Tokyo Metropolitan Government Human Rights Division, ‘The Issue of Children’s Rights’ <<https://www.fukushi.metro.tokyo.lg.jp/jicen/annai/keriyougo.html>> accessed 15 September 2023; Tokyo Metropolitan Government, ‘*Tokutei Isei Sekkyaku Eigyōtōno Kiseini Kansuru Jōrei* (The Ordinance on Business with Specific Service to the Customer of the Opposite Sex)’ <https://www.keishicho.metro.tokyo.jp/about_mpd/keiyaku_horei_kohyo/horei_jorei>

5.6.6 Brief Conclusion

The influence of the CRC is evident across various domains, especially through its integration and reliance by the legislature and executive authorities to safeguard the rights of children. This is exemplified by the revisions made to numerous laws and policies pertaining to child rights. Domestic advocacy and awareness-raising campaigns of civil society groups have promoted the government's implementation of CRC and the Committee's recommendations. However, a survey has revealed that only a limited number of individuals are familiar with CRC and its content.³⁴⁴ This underscores the need for increased efforts to raise awareness about CRC.

5.7 *International Convention for the Protection of All Persons from Enforced Disappearance*

5.7.1 Incorporation and Reliance by Legislature and Executive Powers

Japan signed CED in 2007 as the first state to do so in the Asia-Pacific region and ratified it based on the unanimous approval of both the House of Representatives and the House of Councillors in 2009. The state has shown great interest in raising international awareness of the issue of enforced disappearances against the background of the abductions of Japanese citizens by North Korea.³⁴⁵ In 2009, together with CAT and the 1951 Refugee Convention, article 16(1) of CED was incorporated as grounds for non-extradition in the revised Immigration Control and Refugee Recognition Act.³⁴⁶

Despite its political appeal at the international level, the Japanese legal system has not been fully consistent with the Convention's standards. Some measures were taken in line with the Convention in the field of trafficking in persons and child prostitution and pornography.³⁴⁷ However, the Committee, in its COs on the first report submitted by Japan,³⁴⁸ expressed its concerns

[/jkbusiness_reg.files/jorei.pdf](#)> accessed 12 July 2021; National Police Agency, "*JK Bijinesu no Eigyo Jittaitono Chosa Kekka* (Results of the Survey on the Situation of "JK Business")" <<https://www.npa.go.jp/safetylife/syonen/R1all-JK-chosa.pdf>> accessed 12 July 2021.

344 See Save the Children Japan (n 96). The survey indicates only 8,9% of children and 2,2% of adults know the content of CRC, and 31,5% of children and 42,9% of adults have never heard about CRC.

345 CRC, Consideration of reports submitted by state parties under article 29 (1) of the convention, reports of state parties due in 2012 (CED/C/JPN/1, 25 August 2016) paras 2–3.

346 Government of Japan (n 211) art 53, para 3.

347 COs on the report submitted by Japan under art 29(1) of the Convention, CED/C/JPN/CO/1, 19 November 2018. However, as examined in the previous parts, it is not clear whether these developments are an impact of CED and the CED Cttee's recommendations.

348 CED/C/JPN/CO/1, 5 December 2018, paras 11–44.

over a number of issues.³⁴⁹ In particular, the Committee showed concerns on the lack of an absolute prohibition of enforced disappearance, the offence of enforced disappearance and fundamental legal safeguards in domestic law. The Japanese government was requested to provide information on its implementation of recommendations within one year after the issuance of the COs.³⁵⁰

The extensive list of issues highlighted in the COs reveals the ambivalence of the government's attitude in international and domestic arenas. The discord between international and domestic discourses can also be seen at a more fundamental level. For example, international law scholar and former CED member Kimio Yakushiji has drawn attention to the disparity between the CED and the Japanese government regarding the definition and criminalisation of enforced disappearance. Yakushiji emphasizes that the Japanese government asserts that its existing legal framework is comprehensive enough, and additional provisions are unnecessary to define enforced disappearance as a standalone crime. However, this stance is considered insufficient by the CED Committee.³⁵¹

5.7.2 Reliance by Judiciary

The Osaka High Court referred to the Immigration Control and Refugee Recognition Act 53.3, which incorporates CED 16(1) when declaring that an Iranian national 'cannot be deported' to due to the high risk of the complainant being sentenced to death in Iran.³⁵²

349 *ibid.* The issues highlighted in the COs include: the lack of legislative and executive measures in the prohibition and offence of enforced disappearances; appropriate penalties and mitigating and aggravating circumstances; criminal responsibility of superiors and due obedience; statute of limitations; jurisdiction over offences of enforced disappearances; reporting and investigating cases of enforced disappearances; judicial cooperation in criminal matters; expulsion, return, surrender and extradition mechanisms; fundamental legal safeguards; remedies concerning the lawfulness of a detention; registers of persons deprived of liberty; training on the Convention; the definition of 'victim' and the right to obtain reparation and prompt, fair, and adequate compensation; the legal situation of disappeared persons and their relatives, and legislation concerning the wrongful removal of children.

350 CED/C/JPN/CO/1, 5 December 2018, para 48.

351 K Yakushiji, 'Kyōsei Shissō Jōyakuni Okeru "Kyōsei Shissō" no Teigito Sono Kokunai Hanzaika Gimu (Definition of "Enforced Disappearance" under the Convention on Enforced Disappearances and Obligation of Domestic Criminalisation)' (2019) 24 Kenkyū Kiyō (Research Bulletin) 1 <<https://khrii.or.jp/publication/docs/201907024001%281.102KB%29.pdf>> accessed 22 November 2022.

352 Osaka High Court, Judgment, 27 November 2015, 2015WLJPCA11276001. In the Osaka High Court judgement, the deportation of the Iranian man itself was held to be lawful but the part of the ruling of the first instance that Iran was the destination of repatriation was declared illegal and ordered to be annulled.

5.7.3 Impact on and through Non-state Actors

There were three submissions from CSOs for the first review of the state party report in 2018.³⁵³ In addition to the JFBA, which addressed criminal justice issues as they did with the HRCttee and the CAT Cttee, other CSOs requested the CED Cttee to urge the state to conduct thorough fact-finding research into so-called comfort women issues and to ensure the rights to truth and reparations of the victims/survivors.³⁵⁴ The CED Cttee urged the Japanese government to take action on this issue.³⁵⁵

5.7.4 Impact of State Reporting

Japan submitted its first report in 2016, and the CED Cttee adopted the COs for this report in 2018. Additional follow-up information was provided by the government in 2020.

In responding to the COs, the government representative sent a letter to the chairperson of the Committee to raise opposition to their view pertinent to comfort women.³⁵⁶ The Japanese government showed a grave concern regarding the recommendation, as it holds that the issue should not be examined by the Committee *ratione temporis* under article 35(1) of the Convention.³⁵⁷ Further, it maintains that the COs include factual errors on the issue and do not reflect the information provided by the Japanese government to the Committee. The Japanese government holds that it is inappropriate for the CED Cttee to express regret regarding the agreement between Japan and South Korea on the comfort women's issue that the issue was resolved finally and irreversibly.³⁵⁸

5.7.5 Brief Conclusion

Despite its generally plausible attitude toward ratification of international treaties in general, Japan has shown its willingness to ratify CED at an early

353 For example, WAM, 'Japan's Military Sexual Slavery Issue' <https://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/JPN/INT_CED_CSS_JPN_32734_E.pdf> accessed 2 February 2020.

354 *ibid*; Korean Council for the Women Drafted for Military Sexual Slavery by Japan, 'Written Submission by The Korean Council for the Women Drafted for Military Sexual Slavery by Japan for the Committee on Enforced Disappearances (CED) 15th Session (05–16 November 2018), Japan' <https://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/JPN/INT_CED_CSS_JPN_32759_E.pdf> accessed 22 March 2021.

355 CED/C/JPN/1, 25 August 2016, paras 25–6.

356 MOFA, 'Letter to the CED Chair' (30 November 2018) <<http://www.mofa.go.jp/mofaj/files/000424972.pdf>> accessed 2 February 2020.

357 *ibid*.

358 *ibid*.

instance and has made active efforts to raise international awareness about enforced disappearances by promoting other countries to ratify CED. The Convention has exerted domestic impacts in Japan by transforming some national legal schemes in conformity with its criteria, such as the revision of the Immigration Control Act. The impact on judicial decisions has been observed in the application of the domestic legal provisions incorporating CED. However, when it comes to politically sensitive issues such as comfort women, the government does not hesitate to take an opposing position against the CED Cttee. The number of CSOs to submit information to the Committee in the state periodic report has been smaller than for other treaties, which may be due to the limited scope of the Convention. Given the small number of CSOs engaged, as well as the fact that most of the issues dealt with by CED are highly sensitive, long-standing, unresolved matters also related to other treaty bodies, it remains unclear whether CED would have a unique impact on the progress of those issues at the domestic level.

5.8 *Convention on the Rights of Persons with Disabilities*

5.8.1 Incorporation and Reliance by Legislature and Executive Powers

Japan signed CRPD in September 2007, one year after its adoption by the UN General Assembly. However, its ratification was delayed until 2014, due to requests from the disability rights movement, urging the government to prioritize substantial legal and policy reforms in alignment with the CRPD before proceeding with ratification.³⁵⁹ A progressive government came into power in September 2009, which, in its manifesto, committed to earnestly working on harmonising with the CRPD before finalising the ratification. The ministerial board of disability policy reform, headed by the Prime Minister, stood out for its unique composition: the majority of its 24 members represented organisations of persons with disabilities, along with representatives from organisations of family members of persons with disabilities, and almost half of the members themselves were persons with disabilities.³⁶⁰ In addition, disability rights leaders joined the government as staff members of the Committee secretariat. With this robust engagement of the disability rights movement, various reforms were implemented, such as the revision of the Basic Act for

359 Interview with an expert on the rights of the persons with disabilities (Geneva, Switzerland, 10 April 2019); the disability rights movement did not support 'cosmetic' ratification and thus successfully blocked the ratification in March 2009. O Nagase, 'Challenges of the Harmonization and Ratification of Convention on the Rights of Persons With Disabilities by Japan' (2013) 10(2) *Journal of Policy and Practice in Intellectual Disabilities* 93–5.

360 *ibid.*

Persons with Disabilities in 2011, the revision of the Services and Supports for Persons with Disabilities Act in 2012, the enactment of the Act for Eliminating Discrimination against Persons with Disabilities, and the revision of the Act for Employment Promotion of Persons with Disabilities in 2013.³⁶¹

The revision of the Basic Act for Persons with Disabilities is noteworthy for expanding the definition of ‘persons with disabilities’ to incorporate the concept of the so-called social model. This revision marked the inclusion of provisions related to reasonable accommodation, as outlined in article 2 of CRPD, within Japan’s domestic laws for the first time.³⁶² Also, the Commission on Policy for Persons with Disabilities, established as a monitoring mechanism in article 33 of CRPD, oversees the implementation of the Basic Programme for Persons with Disabilities.³⁶³ The adoption of CRPD led to the further development of special needs education in Japan. Schools for children with special needs were urged to take measures for reasonable accommodation in line with the requirements of the Act for Eliminating Discrimination against Persons with Disabilities which was enacted in 2013.³⁶⁴

5.8.2 Reliance by Judiciary

The impact of CRPD in Japanese courts is not evident as courts tend to depend on domestic laws for their judgments rather than directly referring to CRPD. For example, in the Osaka District Court, a plaintiff with autism and a mental handicap, who was rejected for re-employment, submitted a CRPD-based claim for the confirmation of status as an employee and compensation. However, the trial court denied the plaintiff’s claim, holding that the rejection of re-employment does not conflict with CRPD.³⁶⁵ However, the settlement has been reached on appeal in this case. The defence lawyers’ group believes

361 The Revised Basic Act for Persons with Disabilities 2011, the revision of the Services and Supports for Persons with Disabilities Act 2012, the enactment of the Act for Eliminating Discrimination against Persons with Disabilities, and the revision of the Act for Employment Promotion etc of Persons with Disabilities 2013.

362 Government of Japan, ‘Act for Eliminating Discrimination Against Persons with Disabilities’ <<http://www.japaneselawtranslation.go.jp/law/detail/?id=3052&vm=04&re=02>> accessed 10 October 2020.

363 See Cabinet Office, ‘Policy for Persons with Disabilities’ <<http://www8.cao.go.jp/shougai/english/index-e.html>> accessed 2 February 2020; Cabinet Office, ‘Commission on Policy for Persons with Disabilities (Overview)’ <<http://www8.cao.go.jp/shougai/english/pdf/pc-1.pdf>> accessed 2 February 2020.

364 Japanese Law Translation, ‘Act for Eliminating Discrimination against Persons with Disabilities’ <<https://www.japaneselawtranslation.go.jp/en/laws/view/3052/en>> accessed 21 November 2022.

365 Osaka District Court, Judgment, 13 February 2019, 2019WJLPCA 02136001.

that the court actively promoted the settlement in this case because of the change in environment surrounding the employment of persons with disabilities, including the ratification of the CRPD, the revision of the Basic Law for Persons with Disabilities, the establishment of the obligation to provide reasonable accommodation through the revision of the Act to Facilitate the Employment of Persons with Disabilities, and other advancements in the legal system concerning persons with disabilities.³⁶⁶

5.8.3 Impact on and through Non-state Actors

The disability rights movement, represented by the Japan Disability Forum (JDF), which includes 13 organisations of and for persons with disabilities, played a major role in the aforementioned disability policy reform before ratification of the treaty. The JDF has engaged in the negotiation process of the development of CRPD at the UN and collaborated at the domestic level with the bipartisan parliamentary league on the international standards for the rights of persons with disabilities.³⁶⁷ Under the slogan of ‘nothing about us without us’, the disability rights movement ardently advocated for legislative and policy reforms, recognising that as it saw that the country was not adequately prepared for an effective implementation of CRPD.³⁶⁸ They also believed participation of persons with disabilities in the reform process has been critical, ultimately resulting in a paradigm shift in laws and policies pertaining to persons with disabilities.³⁶⁹

After ratification, CSOs such as the Japan National Assembly of Disabled Peoples International (DPI-Japan), which is connected to international CSOs,³⁷⁰ actively use the treaty mechanism for their domestic advocacy by

366 Minshu Hōritsu Kyōkai, ‘*Suitashi Chiteki Shōgaisha Kōmuin Kekkaku Jōkō Yatoidome Jikennno Kōsai Wakaini Tsuite* (About the High Court Settlement of the Case concerning Suita City’s Clause on the Termination of Employment of Persons with Mental Disorders as Public Civil Servants)’ <<https://www.minpogyo.org/incident/2019/11/6675/>> accessed 21 November 2022.

367 Disability Information Resources, ‘“*Shōgaisha Kenri Jōyaku*” *Hijunto Seido Kaikaku* (Ratification of the Convention on the Rights of Persons with Disabilities and Institutional Reform)’ <https://www.dinf.ne.jp/doc/japanese/rights/rightafter/131204_JDF/mori.html> accessed 22 March 2021.

368 Interview with the expert on the rights of the persons with disabilities (Geneva, Switzerland, 10 April 2019). See JDF, ‘Top Page’ <<http://www.normanet.ne.jp/~jdf/en/>> accessed 2 February 2020.

369 *ibid.*

370 DPI-Japan was founded in 1986 as a national organisation of Disabled Peoples’ International (DPI). Persons with disabilities play a central role in the activities of the organisation with the aim of realisation of an inclusive society. As of February 2021,

facilitating cooperation and policy consolidation of diverse groups working for various needs of persons with disabilities.³⁷¹ An expert also reiterates the significance of the convention as a ‘weapon’ in consultation with domestic authorities to promote the policy for persons with disabilities.³⁷²

5.8.4 Impact of State Reporting

The initial state report of the Government of Japan was submitted in 2016 for the first reporting cycle under CRPD. Significantly, Japan’s inaugural periodic report to the CRPD Committee explicitly underscored its openness to opinions from a diverse spectrum, encompassing persons with disabilities. The report also acknowledged the intersectionality of discrimination, a distinction not commonly observed in other reports.³⁷³ Even in the first round before the issuance of a letter of intent, a number of parallel reports were provided by CSOs, reflecting a heightened level of attention within civil society. In September 2019,³⁷⁴ around 30 activists from JDF engaged in lobbying efforts with the CRPD Cttee in Geneva, providing inputs for the Committee to develop a list of issues for the Japanese government. The process of consolidating the parallel reports and lobbying endeavours themselves serves to unite the voices of diverse organisations and enhance cooperation for effective advocacy.³⁷⁵

5.8.5 Impact of Other Measures

Jun Ishikawa, who served as a CRPD Cttee member from 2017 to 2020, played an important role in connecting international standards to domestic policy.

DPI-Japan is a coalition of 93 organisations nationwide. See DPI-Japan <<http://dpi-japan.org/en/about/>> accessed 2 February 2021.

371 Comments from staff of a CSO advocating the rights of persons with disabilities on 27 February 2021. However, there are still some challenges in coordinating and collaborating with the organisation for persons with psycho-social disabilities and in addressing the intersectional discrimination.

372 Interview with an International Human Rights Expert (Geneva, Switzerland, 10 April 2019). He mentions that ‘CRPD is the strongest weapon when they consult with the domestic authorities, even though it has its limit with indirect application at the domestic level.’

373 See the initial report submitted by Japan under art 35 of the Convention (CRPD/C/JPN/1) para 3. ‘Based on the recognition that the implementation of the Convention requires sustained effort, the Japanese government has committed itself to implementing policies *while receiving opinions from persons with disabilities as well as other relevant persons ... as well as cross-sectional challenges such as “women with disabilities” and “statistics concerning persons with disabilities”*’ (emphasis added).

374 Comments from staff of a CSO advocating the rights of persons with disabilities on 27 February 2021.

375 *ibid.*

He was also actively involved in domestic policy-making, serving as the chairperson of both the Commission on Policy for Persons with Disabilities and the Commission on Disability Policy at the Cabinet Office.³⁷⁶

5.8.6 Brief Conclusion

The ratification process of CRPD had a significant impact on the reform and development of disability laws and policies, as well as their implementation mechanism, with active engagement of the CSOs of and for persons with disabilities and their families. CRPD brought a shift from the old individual and charity models of disability to the social model, empowering persons with disabilities as agents of change. The internalisation of 'reasonable accommodation' is also seen as a significant paradigm change in disability policies. The state reporting mechanism works as a platform for cooperation among CSOs focusing on different kinds of disabilities, fostering opportunities for cross-learning and breaking down informational silos.

6 Conclusion

From 1999 to 2019, Japan ratified three international human rights treaties and two optional protocols. Alongside these ratifications, Japan revised several existing laws and enacted legislation in alignment with international human rights standards. Further, the courts began to actively refer to international human rights laws in some areas, including racial discrimination and children's rights. Civil society's engagement has grown not only in terms of the number of organisations participating in state reporting mechanisms, but also in the scope and impact of their involvement in international human rights legal mechanisms and their domestic application.

However, in contrast to the period from 1979 to 1999, when the surge in ratification of major human rights treaties had a direct and clear impact on Japanese legal and policy framework,³⁷⁷ the impact of the UN human rights treaties observed during the period from 1999 to 2019 was much more diverse, obscure, and rather moderate. In general, despite some tangible progress seen

376 *The Japan Times*, 'Blind Activist Elected to UN Disability Committee' <<https://www.japantimes.co.jp/news/2016/06/15/national/blind-activist-elected-u-n-disability-committee/#.XX33cSj7RPY>> accessed 2 February 2020. He says that he would like to raise awareness of the challenges people with disabilities face through the implementation of CRPD. Aiming for the Tokyo 2020 Olympic Games, he advocated greater inclusion of persons with disabilities in culture and sports.

377 See the previous study, Heyns and Viljoen (n 62) 395.

in these years regarding the rights of women, children, persons with disabilities, and racial minorities, the change has come at a very gradual pace. Limited progress has been evident in specific domains, particularly those entailing highly politically sensitive issues linked to national security or history, such as the 'comfort women' matter, or in human rights matters lacking substantial public support for change, such as the death penalty. This situation persists despite recurrent recommendations from various treaty bodies, causing significant frustration among committee members. Then-HRCttee member Sir Nigel Rodley, for example, remarked 'from one review to the next, the State party did not take account of the Committee's concerns and recommendations ... Japan was, in many ways, a country that respected human rights ... but it remained concerned by the persistence of serious problems that adversely affected human rights'.³⁷⁸

The gradual pace of change can be attributed, in part, to the cautious approach within Japan's bureaucratic apparatus regarding the execution of international obligations. The Cabinet Legislation Bureau in Japan tends to conduct careful and meticulous reviews of its domestic law and policy before formally accepting international legal obligations to maintain legal stability and consistency with existing domestic law. On the one hand, this approach ensures the implementation of human rights obligations in good faith once it is incorporated into the domestic framework. On the other hand, it may also hinder immediate and drastic changes in domestic laws and active judicial review due to the cautious and legally coherent process.

In combination with this careful procedure for legislative change and development, the long-lasting rule of the conservative party, particularly during most of the period under review, may also explain the reluctance of implementation of treaty bodies' recommendations. As observed in this study, human rights issues have not been prioritised in the political sphere or even faced strong opposition or backlash, particularly in cases involving sensitive matters perceived to be linked to national interests or 'traditional Japanese values.' Against this background, even if legislation for human rights protection is agreed and passed in the Diet, it is often a product of compromise such as a mere declaration of principle with non-binding obligations for efforts, without stipulating any punishment for non-compliance. With this 'soft-law approach' often taken to form non-binding flexible guidelines instead of legally binding

378 United Nations, 'Comment of the Chairperson of the Human Rights Committee (Sir Nigel Rodley) at the session of the Human Rights Committee' (16 July 2014) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/088/30/PDF/G1408830.pdf?OpenElement>> accessed 5 May 2022.

rules, the impact of the international human rights treaties has been observed only obscurely in legislation.

In principle, the judiciary tends to defer to the discretion of the political branch in the implementation of human rights treaties. Thus, the impact of human rights treaties is not conspicuous in judicial decisions. However, certain cases have shown some substantial impact of the UN human rights treaties, utilising them as guiding principles and interpretative tools for domestic law. Especially in the context of *CCPR*, *CERD*, and *CRC*, the Supreme Court has recently adopted a more active approach by referring to international human rights law and recommendations as persuasive authorities when interpreting domestic law.

While Japanese civil society has traditionally been considered relatively weak, during the period covered by this research, it has become increasingly active in the field of human rights. This research found a tangible impact of treaty mechanisms on and through civic groups. Examples include the active participation of civil society in legislative and policy reform before the ratification of *CRPD* and the persistent efforts of women's and children's rights movement against discriminatory treatments in law and policy. These movements have leveraged treaty provisions and recommendations as legitimate guiding principles for their advocacy. As the individual complaints mechanism with treaty bodies is not available, CSOs and activists take advantage of the state reporting system by submitting parallel reports and directly lobbying treaty body members to draw recommendations. In a sense, the impact of international human rights treaties is not limited to their direct incorporation into policies, legislation, and court judgments. Rather, the state reporting process and the recommendations of treaty bodies have acted as catalysts for policy action and social change by influencing people's behaviour and social norms from a universal perspective of human rights. Despite the gap between active CSOs and the general public in terms of direct knowledge of international human rights treaties, the standards and norms derived from these treaties have spread through social movements and campaigns, facilitated by the Internet. Increasingly, references to international standards and treaties are being made in human rights litigation and movements addressing various human rights issues. In Japan, there is limited political leadership and proactive judicial intervention regarding the use of international human rights treaties. However, democratic government or even courts consider public opinion and sentiments. Given this situation, civil society's intervention and advocacy play a pivotal role in making the human rights treaty system effective on the ground.

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