



## Economic and Social Council

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### Committee on Economic, Social and Cultural Rights

#### **Concluding observations on the third periodic report of Japan, adopted by the Committee at its fiftieth session (29 April-17 May 2013)**

1. The Committee on Economic, Social and Cultural Rights considered the third report of Japan (E/C.12/JPN/3) at its 3<sup>rd</sup> and 4<sup>th</sup> meetings (E/C.12/2013/SR.3-4), held on 30 April 2013, and adopted, at its 28<sup>th</sup> meeting, held on 17 May 2013, the following concluding observations.

#### **A. Introduction**

2. The Committee welcomes the timely submission by Japan of its third periodic report, which is in conformity with the Committee's reporting guidelines and provides an update on the implementation of several recommendations made by the Committee in its preceding concluding observations. The Committee also welcomes the submission of the Common Core Document (HRI/CORE/JPN/2012).

3. The Committee takes note with satisfaction of the detailed written replies which it received to its list of issues (E/C.12/JPN/Q/3/Add.1) and the constructive dialogue held with the State party's high level inter-ministerial delegation.

#### **B. Positive aspects**

4. The Committee welcomes the State party's ratification of the following instruments since the last dialogue with the State party in 2001:

(a) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflicts, respectively on 24 January 2005 and 2 August 2004;

(b) The International Convention for the Protection of All Persons from Enforced Disappearance on 23 July 2009.

5. The Committee notes with satisfaction the withdrawal of the State party's reservation to sub-paragraphs (b) and (c) of paragraph 2 of article 13 on the progressive introduction of free education.

6. The Committee takes note with appreciation of the State party's efforts to promote the implementation of economic, social and cultural rights, which have included:

- (a) The recognition of Ainu as indigenous people;
- (b) The introduction of the tuition-waiver programme up to secondary education;
- (c) The implementation of the ‘Strategy to Reduce the Number of Children on Waiting Lists for Childcare to Zero’;
- (d) The revision of the Nationality Act enforced in 2009 which now enables children born out of wedlock to acquire the nationality of the Japanese father.

### **C. Principal subjects of concern and recommendations**

7. The Committee reiterates its previous concern that the State party has not given effect to the provisions of the Covenant in its domestic legal order. This situation has led to decisions by courts in the State party that the provisions of the Covenant are not applicable. The Committee is also concerned that the State party construes the obligations under the Covenant as not of immediate effect. (art. 2(1))

**The Committee urges the State party to take the necessary measures to give the Covenant full effect in its domestic legal order, including by enacting relevant laws when Covenant provisions are viewed by the State party as not self-executing. In this regard, the Committee refers the State party to its general comment No. 9 (1998) on the domestic application of the Covenant.**

Moreover, referring to its general comment No. 3 (1990) on the nature of States parties’ obligations, the Committee reminds the State party that the Covenant rights carry minimum core obligations of immediate nature, and that the term ‘progressive realisation’ imposes an obligation to achieve full realisation of the Covenant rights as expeditiously and effectively as possible.

**The Committee also calls on the State party to ensure that the curricula at the Legal Training and Research Institute of Japan as well as the training programmes for judicial professionals and lawyers adequately cover the justiciability of economic, social and cultural rights, bearing in mind the Committee’s jurisprudence and general comments.**

8. The Committee notes with concern that a national human rights institution has still not been established in the State party.

**Reiterating its previous recommendation in this regard, the Committee urges the State party to expedite the establishment of a national human rights institution in conformity with the Paris Principles. The Committee refers the State party in particular to its general comment No. 10 (1998) on the role of national human rights institutions in the protection of economic, social and cultural rights.**

9. The Committee notes with concern that significant cuts to budget allocations for social assistance have negatively impacted the enjoyment of economic and social rights, in particular for disadvantaged and marginalised groups of the population. (arts. 2(1), 2(2), 9, 11)

**Recalling its general comment No. 3 (1998) on the nature of States parties’ obligations, the Committee calls on the State party to ensure that retrogressive measures are taken only in the context of the full use of the maximum available resources. Moreover, the Committee calls on the State party to monitor the impact of social benefits cuts on the recipients’ enjoyment of the Covenant rights. The Committee also draws the attention of the State party to paragraph 42 of general comment No. 19 (2007) on the right to social security as well as to the letter of 16 May 2012 from the Committee’s**

**Chairperson to States Parties regarding Covenant obligations in the context of the world economic and financial crisis.**

10. The Committee notes with concern that provisions which are discriminatory towards women, children born out of wedlock and same-sex couples, continue to exist in the State party's legislation in so far as Covenant rights are concerned, in spite of the State party's efforts for ensuring compliance with its obligations under the Covenant when undertaking legislative revisions. (art. 2(2))

**The Committee urges the State party to review in a comprehensive manner and, where necessary, amend its laws to ensure that they do not directly or indirectly discriminate in relation to the exercise and enjoyment of the Covenant rights.**

11. The Committee notes with concern that the State party's legislation does not provide full protection against discrimination on the grounds prohibited by the Covenant, in spite of the existence of legislative provisions on non-discrimination in such areas as employment. (art. 2(2))

**The Committee calls on the State party to ensure that its laws effectively prohibit and provide sanctions for discrimination in all fields of economic, social and cultural rights in line with the Covenant provisions. In this regard, the Committee encourages the State party to adopt a comprehensive legislation on non-discrimination aiming at eliminating formal and substantive discrimination and providing for the implementation of special measures. The Committee also refers the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.**

12. The Committee notes with concern that the State party's legislation on employment does not fully protect against discrimination on the basis of disability. Moreover, the Committee is concerned that there is no legal obligation to provide reasonable accommodation in the workplace when required. The Committee also notes with concern that, in spite of measures taken such as those aimed at improving accessibility to work, persons with disabilities experience de facto discrimination in employment, including their placement in sheltered employment under sub-standard conditions. (art. 2(2))

**The Committee calls on the State party to expedite the adoption of a revised Basic Act for Persons with Disabilities prohibiting discrimination against persons with disabilities in all aspects of employment and also establishing the obligation to provide reasonable accommodation in the workplace when required. The Committee also calls on the State party to apply labour standards to persons with disabilities working in sheltered facilities and to continue to promote opportunities for productive and gainful employment in the labour market for them, including through the application of quotas. The Committee furthermore encourages the State party to ratify the Convention on the Rights of Persons with Disabilities.**

13. The Committee is concerned that the entrenched gender roles stereotypes in the State party continue to prevent women's equal enjoyment of economic, social and cultural rights. The Committee also notes with concern that, in spite of steps taken such as the adoption of the consecutive Basic Plans for Gender Equality, no sufficient measures have targeted a change of attitude on gender roles in the society at large. Moreover, the Committee is concerned that, in spite of the commendable efforts by the State party, progress is slow, as shown by the still drastic vertical and horizontal gender segregation in the labour market and the high percentage of women who had to leave work or move to part-time employment after childbirth. The Committee regrets the conservative targets set by the State party in the Third Basic Plan for Gender Equality which will not accelerate the achievement of equality in the exercise of the Covenant rights. (art. 3)

The Committee urges the State party to:

- (a) carry out awareness-raising campaigns to change the society's perception of gender roles;
- (b) educate girls and boys about equal career opportunities with a view to promoting their pursuance of education in fields other than those traditionally dominated by either sex;
- (c) adopt bolder goals, targeting both men and women in the Basic Plans for Gender Equality, and implementing temporary measures, such as quotas, in fields of education, employment and political and public decision-making;
- (d) abolish practices, such as the career track system and dismissal on the ground of pregnancy, which discriminate against women; and
- (e) accelerate the achievement of zero waiting list for day care and make day care affordable.

The Committee requests that the State party include in its next periodic report the statistical data disaggregated by sex, income level and educational background in the enjoyment of the Covenant rights, as announced by the delegation during the dialogue, and explain how this data has informed policy-making on gender equality.

14. The Committee notes with concern that the State party's Penal Code provides for imprisonment with assigned work as one of the penal sentences, in breach of the Covenant's prohibition of forced labour. (art. 6)

**The Committee calls on the State party to abolish forced labour either as corrective measure or as penal sentence, and amend or repeal relevant provisions in line with its obligation under article 6 of the Covenant. The Committee also encourages the State party to consider ratifying the ILO Convention No. 105 on abolition of forced labour.**

15. The Committee reiterates its recommendation to the State party to consider ratification of ILO Convention No. 111 concerning discrimination in respect of employment and occupation.

16. The Committee is concerned at abuse of fixed-term contracts by employers as well as at the vulnerability of workers with such contracts to unfavourable conditions of work, in spite of the incentives offered by the State party encouraging employers to use the same system evaluation and qualification for all employees irrespective of the nature of their contracts. The Committee is also concerned at cases where employers avoid the conversion of fixed-term contracts into open-ended contracts, as introduced under the revised Labour Contract Act, by not renewing them. (arts. 6, 7)

**The Committee recommends that the State party take measures to prevent the abuse of fixed-term contracts, including by establishing clear criteria applicable to them. Referring to the State party's obligation to ensure equal remuneration for work of equal value, the Committee also recommends that the State party monitor whether the system of financial incentives achieves the objective of preventing unequal treatment of workers with fixed-term contracts. Furthermore, the Committee calls on the State party to strengthen and monitor the enforcement of the Labour Contract Act so as to prevent that contracts of fixed-term workers are unfairly not renewed.**

17. The Committee notes with concern that a significant number of workers continue to work for excessively long hours, in spite of the measures taken by the State party to encourage employers to take voluntary actions. The Committee is also concerned that deaths caused by overwork and suicides due to psychological harassment in the workplace continue to occur. (art. 7)

**The Committee recommends that, in line with its obligation under article 7 of the Covenant to protect workers' right to safe and healthy working conditions and to reasonable limitation of working hours, the State party strengthen measures to prevent long working hours and ensure that deterrent sanctions are applied for non-compliance with limits on extensions to working hours. The Committee also recommends that the State party, where necessary, adopt legislation and regulations aimed at prohibiting and preventing all forms of harassment in the workplace.**

18. The Committee is concerned that the average level of minimum wage throughout the State party falls short of the minimum subsistence level, the public welfare benefits and the increase in the cost of living. (arts. 7, 9, 11)

**The Committee urges the State party to review the factors taken into consideration when deciding the level of the minimum wage with a view to ensuring that it enables a decent living for the workers and their families. The Committee also requests that the State party provide in its next periodic report information on the percentage of workers who are paid below the minimum wage.**

19. The Committee notes with concern that the pay gap, in particular between men and women, remains considerable in the State party, in spite of progress made. (art. 7)

**The Committee calls on the State party to raise awareness of the illegality of the application of different rates for men and women for work of equal value and of the obligation of employers in this regard; to provide accessible and effective remedies in case of discrimination in remuneration; The Committee also recommends that the State party train labour inspectors in the application of the principle of equal remuneration for work of equal value and take other measures to ensure an effective enforcement of applicable legislation.**

20. While noting an increased awareness of sexual harassment in the workplace since the 2006 revision of the Law on Securing of Equal Opportunity and Treatment between Men and Women in Employment, the Committee notes with concern that sexual harassment is not legally prohibited. (art. 7)

**The Committee urges the State party to introduce in its legislation an offence of sexual harassment, in particular in the workplace, which carries sanctions proportionate to the severity of the offence. The Committee also recommends that the State party ensure that victims can lodge complaints without fear of retaliation. The Committee recommends that the State party continue to raise the public awareness against sexual harassment.**

21. The Committee is concerned at reports of unfair treatment of migrant workers, including those with irregular migration status, asylum-seekers and refugees, in spite the fact that they are protected by the same labour laws as nationals. (art. 7)

**The Committee recommends that the State party reinforce its laws and regulations so as to eliminate unequal treatment of migrant workers, including those with irregular migration status, asylum-seekers and refugees. The Committee also calls on the State party to raise awareness of the applicability of labour laws to all workers, irrespective of their migration status.**

22. The Committee is concerned at the incidence of poverty among older persons in the State party, especially among those who do not receive pensions and low-income pensioners. The Committee is particularly concerned that poverty affects primarily older women whose pension contribution did not meet the eligibility criteria and that stigma discourages older persons from applying for public welfare benefits. The Committee is further concerned that the changes introduced in the Act on Partial Revision of the National

Pension Act to Support Securing of Income for Those Later in Life through National Pension and Corporate Pension leave many older persons without pension benefits. (art. 9)

**The Committee reiterates its previous recommendation calling on the State party to introduce a minimum guaranteed pension in the national pension system. The Committee also calls on the State party to take measures to simplify the procedures for applying for public welfare benefits and to ensure that applicants are treated with dignity. The Committee also recommends that the State party educate the population with a view to eliminate the stigma attached to public welfare benefits. The Committee requests the State party to provide in its next periodic report information on the situation of older persons, including *hibakusha*, disaggregated by sex, source and level of income. The Committee refers the State party to its general comments No. 6 (1995) on the economic, social and cultural rights of older persons and No. 19 (2008) on the right to social security.**

23. The Committee notes with concern that, while violations of restraining orders against violent spouses are punished under the revised Act on the Prevention of Spousal Violence and the Protection of Victims, spousal violence and marital rape are not explicitly criminalized. (art. 10)

**The Committee urges the State party to criminalize spousal violence, including marital rape. The Committee requests the State party to update the Committee in its next periodic report on the establishment of Spousal Violence Counselling and Support Centres and the implementation of basic plans by municipalities as well as their impact on reducing spousal violence.**

24. Noting the complexity of relief response to the consequences of the Great East Japan Earthquake and the Fukushima nuclear accident, the Committee is concerned that the specific needs of disadvantaged and vulnerable groups, such as older persons, persons with disabilities, and women and children were not sufficiently met during the evacuation and in the rehabilitation and reconstruction efforts. (art. 11, 2(2))

**Noting that the lessons learned from the consequences of the Great East Japan Earthquake and the Fukushima nuclear accident have led to the adoption of new arrangements to better respond to the needs of affected communities, including vulnerable groups, in future relief and reconstruction efforts, the Committee recommends that, the State party adopt a human rights based approach to disaster response, risk mitigation and reconstruction efforts. In particular, the Committee recommends that the State party ensure that disaster management plans do not discriminate or lead to discrimination in the enjoyment of economic, social and cultural rights.**

**The Committee requests the State party to provide in its next periodic report comprehensive information, including statistical data disaggregated by sex and vulnerable group, on the management of the consequences of the Great East Japan Earthquake and the Fukushima nuclear accident as well as on victims' enjoyment of economic, social and cultural rights during the evacuation and in the rehabilitation and reconstruction works. The Committee also requests the State party to include information on how victims' right to justice has been guaranteed.**

25. The Committee reiterates its concern about the lack of transparency and disclosure of necessary information regarding the safety of nuclear power installations and at the insufficient nationwide community preparation for the prevention and handling of nuclear accidents which, in the case of the Fukushima nuclear accident, has led to negative impact on the enjoyment of economic, social and cultural rights of victims. (art. 11, 12)

The Committee recommends, once again, that the State party increase transparency on issues relating to the safety of nuclear power installations and step up its preparedness to nuclear accidents. In particular, the Committee urges the State party to provide the population with comprehensive, credible and accurate information on potential hazards, preventive measures and response plans, and to ensure prompt disclosure of all information when disasters occur.

The Committee encourages the State party to implement the recommendations of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health from his recent visit to the State party.

26. The Committee is concerned about the lasting negative effects of the exploitation to which 'comfort women' were subjected on their enjoyment of economic, social and cultural rights and their entitlement to reparation. (art. 11, 3)

**The Committee recommends that the State party take all necessary measures to address the lasting effects of the exploitation and to guarantee the enjoyment of economic, social and cultural rights by 'comfort women'. The Committee also recommends that the State party educate the public on the exploitation of 'comfort women' so as to prevent hate speech and other manifestations that stigmatize them.**

27. The Committee is concerned at the exclusion of Korean schools from the State party's tuition-waiver programme for high school education, which constitutes discrimination. (art. 13, 14)

**Recalling that the prohibition against discrimination applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination, the Committee calls on the State party to ensure that the tuition-waiver programme for high school education is extended to children attending Korean schools.**

28. The Committee notes with concern that a large number of foreign children do not attend school. (art. 13, 14)

**The Committee urges the State party to apply the monitoring of compulsory education to all children in the territory of the State party, including non-nationals, and irrespective of their legal status.**

29. **The Committee recommends that the State party include as soon as possible in its tuition-waiver programme the entrance fees and textbook costs so as to progressively providing fully free secondary education in accordance with article 13(b) of the Covenant.**

30. The Committee remains concerned that, in spite of the recognition of Ainu people as indigenous people and other progress achieved, Ainu people remain disadvantaged in the enjoyment of economic, social and cultural rights. The Committee is particularly concerned that the Ainu language may be at risk of disappearance. (arts. 15, 2(2))

**The Committee recommends that the State party intensify efforts to improve the standard of living of Ainu people and implement additional special measures, in particular in the field of employment and education. The Committee recommends that these measures be also extended to Ainu persons residing outside the prefecture of Hokkaido. The Committee requests the State party to include in its next periodic report information on the results of measures taken to preserve and promote the Ainu language.**

31. The Committee thanks the State party for the information provided during the dialogue on the right to enjoy the benefits of scientific progress and its applications. In this context, the Committee requests the State party to include in its next periodic

report more detailed information and specific examples on how this rights is being implemented in practice. (art. 15)

32. The Committee, while acknowledging the contribution of the State party to official development assistance, encourages it to expeditiously increase the level of its contribution with a view to achieving the international standard target of 0.7 per cent and to pursue a human rights based approach in its development cooperation policy in which the rights contained in the Covenant are fully incorporated.

33. The Committee requests the State party to include in its next periodic report sufficiently disaggregated statistical data on the fulfilment of its Covenant obligations.

34. The Committee encourages the State party to withdraw its reservations to articles 7(d) and 8.1 (d) of the Covenant.

35. The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the Covenant on Economic, Social and Cultural Rights.

36. The Committee requests the State party to disseminate these concluding observations widely at all levels of society, and particularly among public officials, judicial authorities and civil society organizations, and to inform the Committee in its next periodic report on the steps taken to implement them. It also encourages the State party to continue to engage civil society organizations, including those who have manifested their interest in the review of the present report, in the discussions to be held at the national level prior to the submission of its next periodic report.

37. The Committee requests the State party to submit its next periodic report in accordance with the guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 31 May 2018.

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