

WOMEN'S RIGHTS IMPLEMENTATION STUCK IN TIME
AND HINDERED BY TRADITION:
Analyzing Japan's Persistent Commitment/Compliance Gap Regarding Women's Right to
Work Through the Lens of a "Spiral Model" of Feminist Norm Diffusion

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Chapter 1. Introduction

In 2017, the world was swept by a wave of sexual assault and sexual harassment accusations against many of Hollywood's powerful men. These were the first big impact of the #metoo movement, which allowed women to use social media to share their experiences and call their abusers out (Davey, 2019). Even while facing some pushback, the movement continued spreading to many countries in different forms and intensities. In Japan, it took a while to be acknowledged, because of the traditional media's reluctance in reporting on the topic, based on society itself treating rape and abuse as taboo. However, the efforts of internationalized and less conventional digital media outlets and the courage of some women to come out and name high profile abusers, such as journalist Shiori Ito¹, allowed the movement to slowly show its face within Japanese society (Ito, 2018).

This was the biggest achievement of the movement: it clearly showed to the whole world that the power imbalance existent everywhere in our male-dominated society was as alive as ever, especially in the workplace. Not only when it came to sexual harassment and abuse, this gender inequality also could be seen translated into the gender-pay gap, lack of women in positions of power, discrimination related to pregnancy and maternity leave and other discriminatory attitudes. It broke through the general illusion that the decades of apparent advances in international human rights law, particularly in the protection of women's rights, had solved this kind of problem. While it is true that some states have managed to reach better gender equality, others have been stuck in time and so-called traditional gender roles.

Japan is a prime example of this situation. It is a highly economically developed country, with the necessary material resources to fully implement women's rights protection provisions. It also is one of the leading nations in international society, being part of groups like the G7, having ratified all the most relevant UN human rights treaties (such as the International Bill of Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women – CEDAW), and even creating domestic law to nationalize the provisions of such documents. Proving how close

¹ For uniformity, in this thesis the names of Japanese people will be written in “first name/ last name” order.

is the relationship between the state and the treaty bodies, a Japanese woman has even been the chairperson of the CEDAW Committee before. Lastly, the Japanese government has been for a long time extremely vocal about its plans of creating a gender equal society “where all women can shine”. Regardless, Japan remains low in international gender equality indexes when it comes to female economic and political empowerment. There is a clear gap between Japan’s legal commitments and its compliance with these legal provisions, which has impeded Japanese women from fully enjoying their rights.

This commitment/compliance gap in the implementation of women’s rights is the focus of my work. Thus, in this thesis I aim to understand the reasons for such a lack of implementation of internationally sanctioned women’s rights in the case of Japan. The core research question is as follows:

- What are the causes for Japan’s commitment/compliance gap when it comes to the women’s right to work?

Supplementing this core question, I identify a list of sub-questions that will help answer the core question and shape the chapter structure of the thesis. They are as follows:

- What is the spiral model of norm diffusion? What are its strengths, weaknesses and relevance to this thesis?
- How has the UN human rights system been dealing with the protection of women’s rights?
- How has Japan domestically applied international human rights treaties, with special attention to the CEDAW, the ILO documents and NGOs?
- What are the major issues that arise from a commitment/compliance gap in the implementation of women’s rights in Japan? How can case studies illustrate these issues?
- Making use of interviews, how can I apply the “spiral model” to the Japanese case?
- Based on this analysis, can I suggest ways of bridging the commitment/compliance gap?

Such sub-questions are not only useful to help visualize the formal organization of the thesis, but also to identify the research’s starting point when it comes to its material contents. Therefore, before reaching a conclusion concerning these questions, I can use them to proceed to the development of

tentative answers on what has been causing this lack of implementation when it comes to the women's right to work, in the form of propositions.

First, I see that the influence of cultural and social conditions in this lack of implementation is highly relevant, even more when looking at women's work-related situation. Problems such as the M-shaped curve of women's employment, the gender-pay gap of 24.5% (Yamaguchi, 2019), the existence of a discriminatory system of dual career paths that locks women into clerical work without growing perspectives, the fact that most working women get shunned into part-time positions, the continuous and normalized subjection of workers to cases of sexual and power harassment, and the lack of women in both public and private positions of power show that indeed society plays a huge part in the persistence of this issue. There is still this strong idea, (sadly externalized and internalized by people of both genders) of how women should behave, and this influences their life choices and opportunities.

Second, Japan has been criticized by domestic and international actors for its tendency of downplaying the importance of international law, which influences how both decision makers and the general population tend to not have working knowledge concerning the content of such laws, and consequently of their own rights. Despite being a part of all the main human rights related international treaties, Japan has also been harshly criticized by the CEDAW Committee for continuously not implementing the Committee's previous recommendations and for refusing to ratify the CEDAW Optional Protocol, thus not recognizing the competence of the Committee to receive and consider complaints from individuals or groups in its jurisdiction. The ILO (International Labour Organization) has made declarations in the same sense, specially because in this case Japan refuses to even ratify or follow some of the most basic equality-related conventions and recommendations.

Lastly, as the third proposition, I have the fact that discrimination persists because Japanese domestic laws and policies created to implement treaties or to put in practice national policies are inadequate, poorly constructed and lack any real sanction for the actors who do not follow them. In the same sense, Japanese courts are basically an illustration of gender inequality, with very few female judges and law operators. Plus, they tend to not apply international law or human rights

concepts in their judgements, taking a backseat when it comes to creating chances for any significant societal change to be achieved.

Following the setting of research questions and propositions, I must think of how can I demonstrate the validity of such ideas. Thus, there is the need to decide on the best possible research design. In the present thesis, the main question deals with what causes the implementation gap in the Japanese context, and thus I must work with the always inextricably linked causal and descriptive types of analysis (Gerring, 2001). Furthermore, using the teachings of Christopher Lamont in the field of research tailored specifically for international relations, I may situate the research design epistemologically within the empiric/interpretive spectrum as pending to the side of interpretivism, but with important influences of empiricism (Lamont, 2015). The reason for that is the approach taken to the research question, since even though the research question asks about a causal relationship, it tends to focus more in leading us to better understand identities, norms, ideas and culture, criticizing the status quo. Thus, the best research design in this case was to mainly utilize qualitative methods, with a focus on two main points: Collecting data through preexistent literature, both from primary and secondary textual sources; and carrying out semi-structured interviews (Lamont, 2015, p. 84) with actors actively involved in the issue of women's right to work.

All this data collection and interviews will be carried out taking into consideration positionality theory and how it affects my research. According to Kezar and Lester, it is a concept that originated in postmodern feminist theory (late 80s and early 90s), as an addendum to Sandra Harding's standpoint theory, and suggests that identity is fluid, dynamic and affected by historical and social changes. Composed by three main components, which are *intersecting identities*, *power relations* and *context*, positionality allows researchers to focus on the intersection of various aspects of a person's identity, and how they are incredibly relevant to form the position every researcher has, and how this position builds and reinforces individual perspectives that affect the research itself (Kezar & Lester, 2010, pp. 165-166).

As a foreign researcher studying the inner workings of another society, I must be aware of my own positionality and how I may be perceived by the people I interview. Although I have lived in

Japan for 7 years, speak Japanese fluently and have included myself in the spaces Japanese women use to discuss their labour rights, that does not change the fact that I am still a Brazilian woman that had her main educational formation in Brazil, under a legal and cultural approach to women's rights that is highly different than the Japanese one. The study of human rights and of the role of supranational legal organizations in Latin America (and in other areas of the world), who play a key part in the enforcement and interpretation of human rights provisions, was unavoidable and essential in my undergraduate years, and it definitely gave me a unique view of the issue.

That said, this awareness of positionalities and contexts which differ for me and for my interviewees does not change my approach that there are universal human rights, guaranteed by international treaties and which must be successfully implemented. Plus, at the same time I respect and take into account the impact positionality can have in my research, especially considering how I am the primary decision maker and the dominant figure in the research process (Vanner, 2015, p. 2), I use the "spiral model" of norm diffusion in an attempt to anticipate and screen out these concerns.

A similar point can be made in regards to the question of tradition and culture being used by key actors as defense mechanisms against norm diffusion, since these ideas overlap with the understanding of positionality to some degree. I emphasize that this research is based on the "spiral model", which is a social scientific model, and that it aims to analyze the extent to which an internationally agreed upon model of women's rights is or is not being successfully implemented. In the case of Japan, although the situation of implementation is undeniably "messy" and the cultural defense mechanism may be found in the statements of a variety of actors, it is a fact that the state has signed up to the majority of the most relevant international documents on women's rights, and has also actively worked on introducing a many of those into its domestic legislation. Thus, it can be said that, regardless of the discussion concerning their actual implementation, Japan has accepted the validity, the relevance and the legitimacy of these rights, in the form of a universal human rights paradigm, both in softer and harder legal mechanisms. That considered, I approach both positionality and the argument of culture and tradition carefully, when I analyze the content the interviewees provided me, and letting them use this platform to raise their voices.

Then, concerning the collection of data through the compilation and examination of literature itself, to analyze the commitment/compliance issue I will use a theoretical approach based on Risse, Ropp and Sikink's "spiral model" of norm diffusion, with some complementary aspects taken both from other models of norm diffusion and from different theories altogether. I chose this model of describing the socialization processes through which international norms are internalized for the following reasons: its organized framework, created in 1999 but updated in 2013, has had good explanatory power for different individual cases; it made possible to generalize the different phases of human rights change across different types of political regimes, socio-economic systems, and cultural regions; it has a high number of citations in other studies, which shows that academia has been fruitfully engaging with it; and it provides a rich conceptual framework within which to analyse the commitment/compliance gap.

It is also important to point out that the "spiral model" offers an ideal-typical conceptualization, a framework indicating what happens when the human right in question is being successfully diffused. Making use of that essential characteristic of the model, it becomes easier to identify in the situation of specific states what is not going according to plan. In other words, the model is extremely helpful in identifying the "messy" points existent in the workings towards the domestic implementation of human rights, and in guiding us towards possible ways of overcoming such "messiness". In that sense, if it is found that what is happening in a state when it comes to human rights implementation does not match the model's framework, this is in no way detrimental to the use of the model itself, but it is instead valuable, as the model is helping us to identify the specific situation of the state. It is not a question of the model not working correctly, or being wrong about such situation, but that it is showing us what is happening in the process of diffusing human rights norms in a particular state.

In Chapter 2, I will present this "hybrid" approach to the "spiral model", dividing the processes of human rights implementation in five distinct phases, based on the interaction between domestic and transnational actors and states. Put simply, in the first phase of *repression* the state tries to actively stop any opposition group from bringing human rights norms to the light. In phase two, *denial*, the state continues refusing to recognize the validity of human rights norms, but the process

of international socialization has started. Phase three of *tactical concessions* sees the state using concessions to get the international human rights community to stop pressuring it, which empowers domestic advocacy groups. During phase four of *prescriptive status*, the state discourse shifts and the state ratifies human rights treaties and conventions. Lastly, in phase five, *rule-consistent behavior*, the state changes its behavior and complies constantly with international human rights, which leads to implementation both domestically and internationally.

I also include references to three theories that can make the model even more well adapted to be applied to the Japanese case. First, I introduce Checkel's theory of different types of socialization. Checkel divides socialization processes in three types: Strategic calculation, in which a state focuses on incentives and rewards to reach the best situation for itself; Role playing or Type I socialization, which sees actors adopting certain roles because they are appropriate in a particular setting and because it is the easier thing to do; Normative suasion, persuasion or Type II socialization, where agents present arguments in order to convince each other, through active and reflective internalization, being guided by a logic of appropriateness.

Second, I read the "spiral model" together with theories of norm localization, particularly Acharya's work. This theory highlights the importance of the domestic legal structure as the one that will transpose international law into practice within national borders. Thus, there is the need to develop a respectful dialogue between local beliefs and foreign norms, so as to find congruence between both sides and make it easier for states to accept external influence when necessary. There is no forceful domestic implantation of international principles understood as universal, but an adaptation based in the active construction of foreign ideas by local actors, which results in congruence between international norms and local beliefs and practices. This approach can be related to positionality theory, in the sense that it takes into account the intersectional background and context that shape a state and its citizens. It is also particularly important for the Japanese case in relation to the women's right to work, because it is an Asian state which highly values many traditional gender role aspects, such as women being responsible for taking care of the home and children, (even having to abandon their careers completely to do so), while men are only responsible

or working, being unrelated to domestic or child-rearing responsibilities. To avoid Japan raising culture-based objections before international pressure to comply, it might be necessary to apply concepts of norm localization to this case.

Third, I need to include a feminist approach to the topic, since it deals with women's rights. Two related points will be brought up in this sense: the need to address the conflict existent between protection of women's rights according to feminism and multiculturalism, and the productive engagements feminist scholars have had with constructivist ideas and norm contestation. Concerning the first point, as mentioned in relation to norm localization, it is common for violations to women's rights to be hidden behind the excuse of protecting a group's cultural rights. I can also avoid such claims of neocolonialism by arguing that not only minority cultures, but even powerful nations are full of power imbalances between women and men. Thus, it is not a matter of right or wrong cultural practices, but of cultural practices that go against internationally guaranteed rights, and therefore must be overcome. It cannot be forgotten that there is also a legal impediment to such neocolonialism allegations, since reservations that go against the objective and purpose of the treaty are not allowed and openly criticized (United Nations, 1969).

Concerning the second point, feminist researchers have given much focus to ways that power and gender impact on the context of international norms. They have brought up that the diffusion of norms is not dependent only on states, in the same vein in which the "spiral model" also looks at domestic and transnational organizations. They also emphasize and the fact that the social construction of power, which clearly favors men over women, must be criticized and rethought, because it directly affects the creation and the implementation of norms, particularly the ones guaranteeing women's rights. Jacqui True is a representative author that clarifies the fact that norms are dynamic and not power-neutral, with complex processes at work, which affects the way they are internalized and their consequences felt in different states. This fluidity and the recognition of these power relations could be useful to help fully persuade norm implementing actors.

After presenting the theoretical framework, I will introduce the background information needed to understand how has the protection of the women's right to work evolved in international

legal documents. Chapter 3 will be used for this purpose, and there I will present the origins of human rights protection with a historical recapping of the relationship between sovereignty and human rights within international law, and a general explanation of the contemporary protection of women's rights based on the analysis of provisions included in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). I will focus on referencing the specific articles that deal with this topic, and, since my research is based on the importance of norm implementation, I will also analyze the implementation methods used by the Human Rights Committee.

Since the previous chapter deals with women's rights in a comprehensive manner, without specifying the women's right to work, I will use Chapter 4 for such detailed analysis. This part presents and explains the contents of the most relevant provisions concerning gender equality and the women's right to work included in the International Covenant on Economic, Civil and Social Rights (ICECSR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and from the ILO. With this exposition, I will provide a robust knowledge of the contents of the international law treaties, which serve as base to diffuse international norms on the women's right to work within Japan.

After looking towards international law, I can finally turn my focus to gender equality inside of Japanese society. I focus my efforts on the CEDAW because of its status as the most relevant international treaty for the protection of women's rights, and because of the long history it has of interacting with Japan and Japanese civil society actors. Thus, in Chapter 5 I will look at how the CEDAW Committee has been trying to convince Japan to improve the implementation of its provisions and how the Japanese government and judicial courts have reacted to that, based on the periodic report system and the Concluding Observations that it originates. Continuing in that context, in Chapter 6 I focus on laws and policies Japan has introduced in an attempt to overcome this situation of intrinsic and continuous and gender inequality, pointing out their pros and cons. I will also present some recent and relevant judicial cases involving complaints about the gender pay gap, discrimination due to the dual career track system and maternity harassment, which represent the

lack of efficient attitude from Japanese courts towards the protection of women's rights implementation. Lastly, I apply the "spiral model" and analyze the extent to which Japanese and international actors interact in the case study, particularly looking at how Japanese women's rights NGOs have interacted with the CEDAW when attempting to bridge the gap between commitment and compliance.

Aiming to enrich the document-based data with direct insight from people and organizations involved in the realization of the women's right to work, I decided to carry out semi-structured interviews with NGO representatives and other Japanese actors familiar with the domestic human rights situation, be it because of their academic background, their field of work or real life experience. In Chapter 7, I detail the interview process, explain the aspects related to the selection of the final 12 interviewees and the creation of an initial and a follow-up question list, analyze the answers according to a norm diffusion perspective and present conclusions focused on making connections to the "spiral model" and other complementary theoretical approaches.

Lastly, in the conclusion, I will first recapitulate the main points stated in each chapter, and compare my separate findings with the propositions concerning the lack of implementation of the women's right to work I made in this introduction. With that, I can see how similar or different these tentative answers were to the more robust reasons I hope to become aware of after a deep and comprehensive analysis of the collected data, using the hybrid "spiral model" as the guiding framework. I intend to look at the issue mainly from a legal and social point of view, but also include political and economic aspects, since they are inseparable from labor rights issues. Then, after this investigation, I will try to suggest some feasible and clear ways of helping Japan overcome the obstacles that have kept it stuck in a situation of minimum commitment and improve the implementation of the women's right to work, consequently enhancing Japanese women's empowerment and participation in a society that is theirs too.

Chapter 2. The “Spiral Model” of Human Rights Change: Merits, Demerits and Possibility of Application to the Protection of Women’s Rights

Within the study of international human rights norms, understanding how they are brought to life in the international community through the processes of elaborating international instruments is not enough to guarantee that they will be followed by signatory states’ domestic governments. Thus, knowing about how these norms are accepted, adapted and internalized by countries that are so essentially different of each other is one of the most basic points when researching about norm implementation. In this context, theories of norm diffusion, in other words, theories that attempt to explain how the diffusion of human rights norms works and who has the normative power to perform such diffusion, are in the core of the constructivist view concerning international relations.

Within these theories, the highly influential “spiral model” is the work that represents the state of the art in the research field that aims to understand the socializing effects of international society, specially focusing in the interactions of international and domestic institutions. It is undeniably a very well-known and vastly cited theory,² which shows its relevance in the context of the study of norm implementation. Furthermore, it has been applied successfully by scholars in many diverse case studies that have analyzed the situation concerning the adoption and the implementation of human rights in a wide range of countries from all around the globe. Thus, the spiral model will be used as the base of this analytical framework, albeit coupled with some improvements taken from other relevant approaches to norm diffusion. Specifically, this hybrid theory incorporates scope conditions, mechanisms of diffusion and modes of action from Ian Manners’ Normative Power Europe and Borzel and Risse’s Europeanization/diffusion paradigm.

² According to Google Scholar, both books presenting and discussing the model, “The Power of Human Rights” (1999) and “The Persistent Power of Human Rights” (2013) have, respectively, 3496 and 411 individual citations.

Considering this, and that the objective of this work is to understand and suggest ways of improving the processes that move Japan from a situation of relative disregard towards women's rights to one of compliance, with special attention to the difficulties faced by the country when trying to move beyond a status of simple commitment to international norms, it is easy to conclude that this hybrid model must receive special attention. Therefore, it will be the main subject dealt with in this chapter.

In regards to its structure, this part will first introduce the basic characteristics of the model and how they have changed through the years. The focus is on introducing how the "spiral model" works in describing the socialization processes through which international norms are internalized until the point of a state reaching behavioral compliance. The initial point that will be brought up is an introduction of the different types of socialization it identifies, the scope conditions under which this socialization happens, and the direct and indirect mechanisms of diffusion and modes of action used to make states reach a status of norm internalization.

In addition to that, I will present and explain in detail the five phases of human rights implementation suggested by the model, which are named as:

- Repression;
- Denial;
- Tactical concessions;
- Prescriptive status;
- Rule-consistent behavior

Next, the chapter will point out and clarify some shortcomings and omissions of the theory, in a critical way that allows for the future improvement of the model as a whole. One of the criticisms that is fundamental for this research is the fact that the phases of prescriptive status and rule-consistent behavior, in other words, the phases consisting respectively of creating laws and policies and adhering to them, are still underspecified by the "spiral model". In addition to that, within the theory there is still room for a better development of the processes necessary to move from the former phase to the latter. In fact, Japan's approach to women's rights is a good example of this, and could

also be used to help pinpoint parts of the model that would benefit from more clarification. The country actively dialogues with international women's rights organizations and has a domestic environment that has allowed laws and policies that deal with women's rights to be made, but these developments have not been satisfactorily translated into effectively improving the situation of Japanese women. In other words, Japan remains stuck in a prescriptive status, failing to reach rule-consistent behavior even though it has favorable scope conditions. In relation to that, this chapter will tackle the distinction between persuasion and socialization, which is another under specification of the model that might be playing a role in the fact that a great number of countries do not reach the phase of compliance. Taking these and other topics into consideration, this thesis aims to be of help in understanding and improving the application of this model, as the analysis carried out in the next chapters allows for process tracing of norm implementation and consequently for theorizing what may be the causes of this gap between both phases.

The last part of the chapter will bring up complementary ideas on how to improve the mainly constructivist view present in the model. It will do that not only by showing the benefits of using specific positive points existent in other traditional theories of norm diffusion, but also by trying to connect the application of the "spiral model" with a feminist approach to international relations and international law, focusing on the ideas of gender mainstreaming and transnational dialogue including women, nongovernmental organizations and governmental institutions. Based on that, it will be generally suggested how should the model be adapted so it can be more effectively applied to understanding the process of human rights' norm diffusion in each different case. The rest of the research in the following chapters will be guided by these findings, aiming to reach a conclusion where it will be possible to suggest ways of specifically improving the promotion and the protection by Japan of women's rights and its implementation of international treaties' provisions that deal with gender-related discrimination and gender equality, all in the context of the right to work. In other words, this chapter's final objective is to be the base for developing process that might help in shrinking the gap between commitment and compliance in the context of the women's right to work in Japan.

2.1 Introducing the basics of the “spiral model” of human rights change

I will start this chapter with the definition of the “spiral model” of human rights change and its main characteristics, which are the central pillars that support the contents of and the analysis included in the books “The Power of Human Rights” (1999), and in its follow up “The Persistent Power of Human Rights”, edited by authors Risse, Ropp and Sikkink (2013).³ At first, the model was mainly used for describing the socialization processes through which international norms were internalized into the domestic practices of various authoritarian states during the Cold War years. Then, in their second edited volume, the authors took into consideration the economic, political and historical developments that happened in the decade separating both books, bringing up the concept again and expanding it. This improved and relatively recent study renews the information on the various causal mechanisms and conditions which produce behavioral compliance, broadens the range of rights-violating actors, and it also dialogues with many of the other criticisms made to the first work. This shows that its analysis is a relevant and contemporary need when researching about norm diffusion, and justifies it being the focus of this chapter and the basis of this work.

However, the spiral model would benefit from using a mixed approach, including topics brought out in other theoretical lines. This hybrid theory incorporates elements from all the three major theories in this field: the already mentioned Risse, Ropp and Sikkink’s spiral model of norm diffusion (Risse, Ropp and Sikkink, 1999; Risse, Ropp and Sikkink, 2013); Ian Manners’ Normative Power Europe (Manners, 2002); and Borzel and Risse’s Europeanization/diffusion paradigm (Borzel and Risse, 2012). Since my focus will be on the spiral model and on its framework, I will not dive deep into every content of the theories of Normative Power Europe or Europeanization. Regardless, it is necessary, for clarification concerning the parts of those last two theories I will use in this thesis, to at least mention their theoretical bases.

³ The main contents of this chapter are a critical compilation of the ideas developed in these two books and in other related published research.

The Normative Power Europe focuses its explanatory efforts in the European Union (as shown by its name), and this specificity is why I will not be able to apply some of its characteristics in this work. According to the theory, the normative basis the EU is built on makes it inclined to also act in a normative way in world politics. This normativity, combined with the EU's historical strength, would give the organization the power to outline and spread the values and actions considered "normal" in the stage of world politics.

The limitations of the theory, exemplified by its emphasis in explaining the EU's identity instead of its actions, ended up making other authors distance themselves from the idea of normative power and move towards the notion of civilian power in the following theories. This is present not only in the spiral model's focus on the relationship between transnational networks and domestic civilian action, but also in Borzel and Risse's Europeanization/diffusion paradigm. The biggest limitation of this latter is its application, since it is used to look only at developments within the EU, concerning acceding states, in the neighborhood areas, or in relation to other regional organizations. However, it is still a complete and powerful theory when it comes to its framework, which warrants the use of some of its points, especially when it comes to mechanisms of diffusion and modes of action.

Considering the pros and cons present in all these norm diffusion theories, I can understand why a hybrid theory focusing in more than just norm diffusion in the EU and its neighboring foreign area and context would be welcome. Thus, basing myself in the more robust spiral model and including pertinent additional points present in the other two theories, next I will proceed to introducing a hybrid norm diffusion framework. However, since the model is still substantially based on the spiral model, in this thesis I will keep using this nomenclature to refer to the hybrid theory here applied.

It is important to note that the "spiral model" is originally built upon the theory of the "boomerang effect", previously proposed by Margaret Keck and Kathryn Sikkink in their important work *Activists Beyond Borders* (see Keck & Sikkink, 1998, 1999). This theory, in its turn, relies heavily on the concept of transnational advocacy networks, which are diverse groups (including

research and advocacy groups, intergovernmental organizations, local social movements, foundations, the media and others) that communicate, share information and services, circulate personnel, and exchange funds, working in tandem to influence policies (Keck & Sikkink, 1999, pp. 91-92). Through these networks, groups in one country appeal to citizens of another and these citizens pressure their own government to pressure the offending regime. As a consequence of that, states that at first try to resist international and national pressures risk becoming the aim of greater future pressure, since domestic activists can attempt to enter into powerful transnational alliances. Thus, by initially avoiding compliance or contributing to impunity, states might actually be setting themselves up for a situation where they receive even heavier criticism later on. In the next part, I will proceed to the exposition of the main points of this “spiral model”, starting with the way it deals with the processes behind states’ actions and relationships.

2.1.1 The “spiral model’s” approach to the logics of action and socialization processes

The “spiral model” made use of views concerning the causal relationships and processes between various state and non-state actors in order to come up with a more specified conceptualization of them. Concerning the contents of such concepts, the theory brings up the different logics of action towards the implementation and enforcement of human rights law, namely the logic of consequences and the logics of appropriateness and persuasion, which are actually a concept that originates from the types of socialization processes explained in the first part, i.e. instrumental adaptation, argumentation and habitualization.

According to the work of March and Olsen, the logic of consequences sees political action and outcomes as the product of rational calculating behavior designed to maximize a specific set of preferences. The logic of appropriateness, on the other hand, understands political action as a product of rules, roles and identities that stipulate appropriate behavior in given situations. In other words, while one logic works by asking the question “how can I maximize my interests?”, the other works by asking “who am I and how should I act based on that?” (Krasner, 1999, p. 5). These two logics, which characterize all political and social environments, are not mutually incompatible, but their

importance does tend to vary depending on the situation the state and its representatives find themselves in. According to the present approach of the “spiral model”, in an ideal situation the logic of consequences is thought to be often embedded in and overlapping with the logic of appropriateness, and thus, instead of being pitted against each other, all those mechanisms and sequences by which the various modes of social action interact could be systematically examined. However, a look at the present reality shows that these logics have often been treated separately by the states, and used depending on what which situation calls for, balancing each other (Risse & Ropp, 2013, pp. 13-16).

Moreover, especially because states are still the main subjects of norm diffusion, it is relevant to notice that the way these logics of action are applied by them have a huge influence in how sovereignty is perceived and dealt with. More specifically, this refers to international legal sovereignty and Westphalian sovereignty, which are two of the four distinctive but non-exhaustive attributes of sovereignty introduced by Krasner in his “Sovereignty: organized hypocrisy” book (1999). He explains domestic sovereignty as the state’s capacity to maintain the monopoly of the use of violence within its territory and interdependence sovereignty as the ability of a government to control the intra-borders movements of any kind, but in the context of logics of action his focus is maintained only in international legal sovereignty and Westphalian sovereignty, as they are the ones that represent the pivotal expressions of the principle of sovereignty. He defines the former as international recognition from states, and the latter as the principle of non-interference in a given territory. In other words, both of them are defined by clear rules that say that they should, respectively, recognize juridically independent territorial entities and exclude external authority structures from the territory of the state. Based on these rules and principles, state governments know what is the “appropriate” action to take.

However, as already mentioned, the logic of appropriateness does not work alone, and thus the rules based on it have been often mitigated by the compelling logics of consequences. In their attempts to obtain their maximized interests and protect their own sovereignty, states’ rulers have realized that sometimes it is worth breaking the rules, be it through mutual agreement between nations or through the use of coercion (Krasner, 1999, pp. 3-8). Examples of the basic rule of

international legal sovereignty being dishonored are nonrecognition, which has been used as an instrument of policy like in the case of the Chinese Communist regime until the 1970s, and recognition of entities that lack specific necessary characteristics, like the case of Ukraine and Byelorussia being members of the United Nations even when they did not have formal juridical autonomy. Westphalian sovereignty, on its turn, has had its logic of appropriateness largely mitigated in actual practice too. Rulers often say one thing, but exercise another when needed. For example, they might ensure nonintervention to nationalist groups that aim to the end of external influence at the same time that they give the International Monetary Fund (or other international organization) a role in domestic policy formation (Krasner, 1999, pp. 8-9).

On the other hand, the contrary is also true, in the sense that sometimes the logic of consequences and cost-benefit calculations that maximize utility end up being transformed into a logic of appropriateness. For example, private companies or public governments might initially comply to human rights norms just for instrumental reasons, like consumer boycotts or international society pressure, but these pressures might lead to these entities finally incorporating norms of appropriate human rights behavior (Risse & Ropp, 2013, p. 13). Therefore, it is better to look at the analysis of the logic of consequences, manifested through rational choice informed egoism, and the logic of appropriateness, manifested through norm-guided behaviour, in a sequential manner, observing the ways in which the various modes of action of the “spiral model” interact in its different stages (Risse & Ropp, 2013, pp. 7).

The incorporation of these ideas related to the different logics is also especially relevant in the context of Japan, as it fits well as an example of a state that has clearly been abiding to a logic of appropriateness that is still very much limited by an underlying logic of consequences. Internationally, the government has been ratifying treaties and participating in discussions aiming for the protection of women’s rights, and domestically it has created legislation and maintained a proactive discourse towards women empowerment, with Prime Minister Abe’s “womenomics” being the material manifestation of that. Thus, in a sense Japan seems to be aware of what it needs to do to improve the rights of its female citizens, even if this awareness might come from the fact that the

state does not want to be the aim of foreign criticism, or that it has been strengthening its discourse on women's rights so that it can help solve other domestic issues such as the declining birthrate. In other words, the most likely primary reason for Japan's policies is not an internalized belief that protecting women's rights is the right thing to do, but instead it is the positive consequences originating from that action that it can enjoy as a country. However, this kind of attitude towards rights shows its negative side when looking at reality and realizing that there is still much less progress when it comes to the actual implementation of all these governmental laws, programs and ideals. Japan has been progressively "talking the talk" and that it understands very clearly that there is a logic of appropriateness, which is shown by the laws it has approved and the treaties it has signed. However, it cannot seem to satisfactorily "walk the walk", in other words, it is not implementing these laws satisfactorily, which suggests that Japan may not be completely sincere in its commitments, prioritizing a logic of consequences. This lack of sincerity will be investigated later in this thesis.

Then, based on these logics, the model has identified three distinct, but interconnected types of socialization processes, named instrumental adaptation, argumentation and habitualization. In other words, no matter how much their underlying logic or mode of social action and interaction may differ, they are all considered necessary for enduring change in the human rights area to happen.

The first process of instrumental adaptation concerns the adaptation of governments to domestic and international pressure, and how they make use of strategic bargaining, as its name indicates. Under this kind of socialization, states accused of not complying to human rights norms usually try to avoid criticisms and pressure by making concessions, bargaining their way out of the spotlight, or even by starting to "talk the talk" of human rights in the international scene, led by United Nations (Risse & Sikkink, 1999, p. 12).

The second process, named argumentation, concerns argumentative discourses in the Habermasian sense, emphasizing processes of communication, argumentation and persuasion, all based on moral discourse. This kind of discourse is different than simple daily communicative practices, surpassing being just an exchange of information and focusing instead in raising questions about this exchanged information. Because of that, it is usually raised by governments when they

attempt to challenge the validity claims inherent in the definition and the contents of a material situation, or even the validity claims of the definition of the human rights norms themselves (Risse & Sikkink, 1999, pp. 13-14).

Lastly, as the “spiral model” admits that these two processes are not enough to make norms be fully internalized, it sees the need to bring in a third kind, called habituation, to the table. It means that the internalization of domestic practices can only be accomplished by the gradual institutionalization of norms, when actors comply with them irrespective of considerations of instrumental character or of individual beliefs about their validity. In this last stage of socialization process, these norms are simply taken for granted (Risse & Sikkink, 1999, pp. 16-17).

This original formulation has been targeted with enough criticism that it warranted updates by the spiral model’s own authors and other scholars researching the topic. The best reorganization of such socialization processes comes from Borzel and Risse in their work on Europeanization theory of norm diffusion. They divide the processes again into three different categories. The first is named instrumental rationality (logic of consequences), and explains that actors can be understood as mostly self-interested utility maximizers who select their actions based on cost–benefit calculations. On the other hand, the second one, called normative rationality (logic of appropriateness), sees actors as rule followers who “do the right thing” because they want to be part of a particular community and because they have been socialized into doing so. Lastly, the third kind of process, named communicative rationality (logic of arguing), sees actors arguing (by giving and discussing reasons and challenging the legitimacy of norms) and trying to persuade each other about the validity claims intrinsic to causal or normative statements. (Borzel & Risse, 2012, p. 5).

There was an inversion in the order of the logics of action, with persuasion and moral argumentation moving to the last item while socialization remained on the second one. In this sense, communicative rationality would be a stronger manifestation of the logic of appropriateness, going beyond just the socialization of actors into following rules and actions just because there is a dominant idea telling them what is the right thing to do. They instead would need to believe that a norm is substantively true or correct, being deeply persuaded.

In order to better understand this difference between the concepts of socialization and persuasion, as well as the importance of deep socialization processes for the successful diffusion and implementation of human rights, I must explain and apply Checkel's theory of different types of socialization to the "spiral model". This additional analysis will be included in part 2.4, which deals with the improvements that could be made to the present model of norm diffusion concerning its application to women's rights in general, and specifically to women's right to work.

2.1.2 The scope conditions identified by the "spiral model"

The "spiral model's" scope conditions serve as the contextual background on which socialization processes and logics of action work in each different case. These conditions are different characteristics identified in states and non-state actors, under which mechanisms of diffusion and their associated modes of social action would be expected to encourage compliance with human rights. This theoretical point was already present in the original "spiral model" framework, but could be improved with features present in the theories applied in the hybrid model.

The scope conditions can be listed as follows:

- Analysis of the amount of domestic incentives existent, in the sense of how much power do domestic actors in politics and society have to call for institutional change (Borzel & Risse, 2012, p. 11);
- The kind of statehood (consolidated or limited) the state has in that moment. This is relevant because limited statehood states might have to deal with lack of state capacity when implementing human rights norms, in addition to just a governmental refusal of doing so (Borzel & Risse, 2012, pp. 11-12);
- Considering if states are under democratic or authoritarian regimes. This condition is important because democratic countries are considered more likely to implement human rights norms than authoritarian regimes (Borzel & Risse, 2012, p. 12);
- The centralization or decentralization of rule implementation within the states. The degree of centralization makes a difference because greater compliance tends to be connected with

norms being administered by central authorities, who are more easily monitored and held accountable. (Risse & Ropp, 2013, pp. 18-19);

- The state's material vulnerability, because this is directly connected to which states will be strongest against external economic pressure (Risse & Ropp, 2013, p. 20);
- The state's social vulnerability, since states that care about their international standing and reputation are more susceptible to "shaming" techniques than authoritarian states (Risse & Ropp, 2013, pp. 20-21);
- The presence of overt-diffusion, which happens when the physical presence of the EU through its local delegations (overt diplomacy) affects the process of norm diffusion (Manners, 2002, p. 245).

From this explanation, knowing which conditions I am working under is essential, because they affect not only the propensity to move from commitment to compliance, but also which would be the most efficient diffusion mechanisms to be applied in that specific case. In the next part and following this line of thought, I will introduce these mechanisms of diffusion and their modes of action.

2.1.3 The "spiral model's" mechanisms of diffusion and their modes of action

The hybrid theory based on the "spiral model" identifies different types of mechanisms and their respective modes of action, dividing them in direct or indirect depending on if the mechanism comes from transnational actors or from domestic actors, respectively.

For the direct mechanisms, according to Risse and Ropp (2013, pp. 13-16), they are:

- Conditionality manifested as sanctions (negative incentives) and rewards (positive incentives);
- Capacity building, meaning the education, the training and the building up of administrative capacities necessary to enforce human rights, specially in those areas of limited statehood where there is a lack of state capacity to enforce human rights norms;
- Socialization, in the sense that actors would try to act by meeting social expectations in each situation, through complex learning and habituation;

- Persuasion and discourse, usually combined with the aforementioned negative and positive incentives.

I must be noted that the mechanism of coercion, meaning the use of force and legal enforcement, is not included in this hybrid model, since it would not be relevant in the case of women's rights in Japan.

There are also the indirect mechanisms, in the form of competition, lesson drawing and mimicry, which are the emulation of institutional models in different regional contexts (Borzel & Risse, 2012, pp. 5-10). They are defined as follows:

- Competition, which involves speedy change in behavior by the actors as they compete over meeting certain performance criteria, in this case set by the EU. Here, states passively receive ideas or solutions from abroad.
- Lesson-drawing is very alike to competition in the sense that in both actors look to others for effective policies and rules. However, lesson-drawing is said to be set off when actors are faced with a political or economic problem which needs institutional change to be solved, and they then look around for suitable institutional solutions.
- Normative emulation or mimicry happens when actors emulate others for normative reasons, for example to increase their legitimacy, or because the appropriateness of doing so is taken for granted.

These additional scope conditions and mechanisms of action are worthy of being integrated as theoretical arguments into the larger literature on diffusion, bringing to the forefront an agency-centered approach over a structure-based one (Borzel & Risse, 2012, pp. 7-11).

Through the analysis of material cases, it is possible to identify which would be the most efficient social mechanisms to be applied in each specific situation, and maybe suggest which should be used to improve compliance in other instances. In other words, they can be used to think about how international human rights norms can be diffused to the domestic context more effectively. For that analysis to be complete, however, there is also need to understand the following five diffusion stages of the "spiral model", which will be introduced in the next part.

2.1.4 The five phases of the “spiral model”

According to the “spiral model”, all the aforementioned processes, conditions and mechanisms work together during of a set of five different phases of accepting and implementing international human rights norms. This is the most characteristic and revolutionary part of the “spiral model”, and will be the basis for my analysis of the Japanese case.

The initial phase is called *repression* (phase 1) and consists of authoritarian regimes’ attempts of stopping any opposition groups of bringing human rights norms to the light. The next phase, *denial* (phase 2), starts if transnational groups manage to start the advocacy process with the information they have on the rights violations. While these domestic groups might still be hindered from fighting for themselves, the lobbying from international human rights organizations and from other nations is already strong enough to evoke denying claims from the abusing government. And although the state continues refusing to recognize the validity of such norms, this phase is relevant as it is the one that kick starts discursive engagement and the process of international socialization. In the third phase, *tactical concessions* (phase 3), the violating state starts using concessions to get the international human rights community to stop pressuring it. Even though these actions are motivated by an instrumental logic, in the end they empower domestic advocacy groups and cause them to rapidly increase in mobilization. However, this is also rather risky, as the state could react to this empowerment either in a complying way, or in a repressive way. Moving on to the next phase, it happens when the state discourse shifts and it starts granting human rights norms *prescriptive status* (phase 4) through a defined set of state actions and associated practices. Lastly, in the final phase of *rule-consistent behavior* (phase 5), the state shows clear behavioral change and sustained compliance with international human rights. It means that at both domestic and international levels, there is now actual implementation of prescriptively validated norms. A better look at these phases, their characteristics and their position within written research can be seen in Figure 1 and Table 1 (designed based on Risse, Ropp & Sikkink, 1999, 2013).

Figure 1. Phases of the “spiral model”

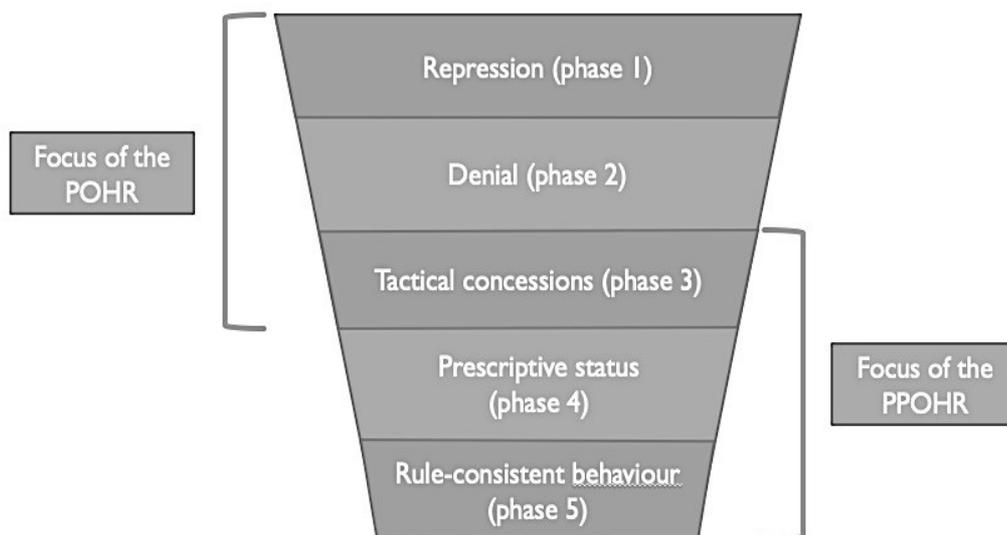


Table 1. The spiral model explained		
Characteristics	Phases	Books
The State try to stop any opposition group of bringing human rights norms to the light.	Repression	Bigger focus in “The Power of Human Rights”
The State continues refusing to recognize the validity of human rights norms, but the process of international socialization has started.	Denial	
The State uses concessions to get the international human rights community to stop pressuring it. This empowers domestic advocacy groups.	Tactical Concessions	
The State discourse shifts and it starts granting human rights norms prescriptive status through set of state actions and associated practices.	Prescriptive Status	Bigger focus in “The Persistent Power of Human Rights”
The State changes its behavior and complies constantly with international human rights. There is implementation at both domestically and internationally.	Rule-consistent Behavior	

These core contents of the model have remained relatively constant during the almost two decades since the theory was formally first publicized. Thus, it is necessary to keep them in mind in

order to understand how this theoretical construction has adapted itself to the changes in the international society and in human rights law, how it has interacted with other theories, and how it has developed itself from being applied in diverse case studies. In the following part, I will take a deeper look into the more recent improvements made to the model.

2.2 The “spiral model” then and now: innovations of the Persistent Power of Human Rights

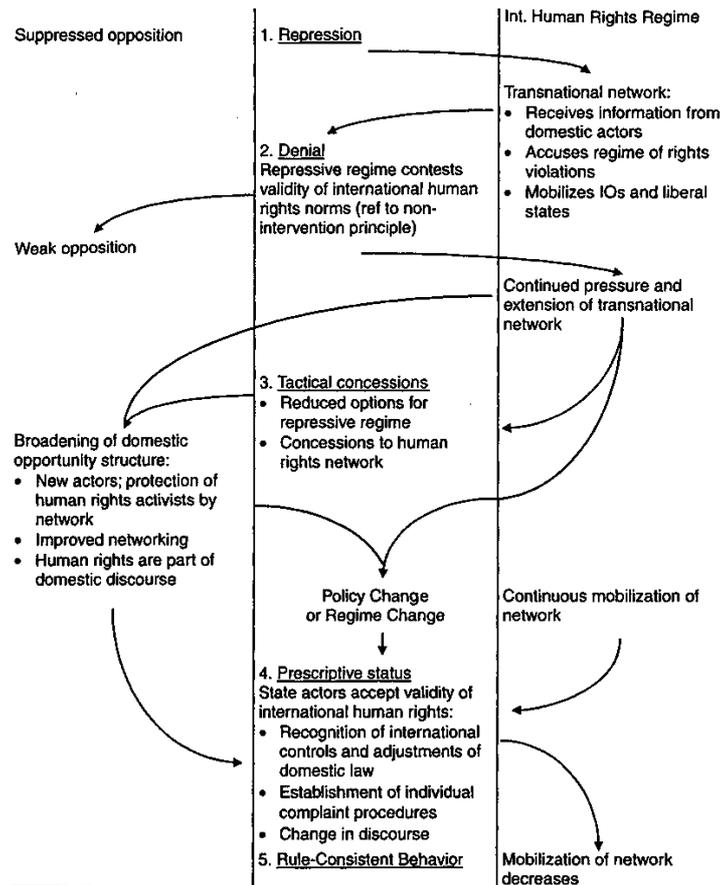
Almost twenty years have passed since the first formulation of the “spiral model” until now, making it obvious that human rights policies have changed remarkably during this long time. There was the emergence of a new model of criminal accountability to hold individuals responsible for human rights violations, by making use of the International Criminal Court; the advent of the Responsibility to Protect (R2P), as a new international norm; the recognition in the human rights field that weak or limited statehood has become a major obstacle when it comes to domestic implementation and compliance (Borzel & Risse, 2012, pp. 11-12);⁴ the increasing commitment of private actors to complying in a direct way with international human rights standards; and the evolving of human rights scholarship, with the use of quantitative methods and the blending of social and political science with law (Risse & Ropp, 2013, pp. 3-4). These developments, together with the fact that the “spiral model” has been constantly researched, reviewed and applied to real scenarios in case studies, need to be considered when looking at the evolution of the theory and when applying it to present material situations.

Still, the core of the theory remains the same, and the spiral-shaped mutual interaction between states, international society and domestic society, as it evolves through the model’s phases, has helped identify a pattern of human rights progress within an apparently asymmetric and

⁴ According to the authors, even though it is not clear how limited statehood affects the various diffusion mechanisms, the fact is that institutional and administrative capacity of states and degrees of statehood in general do have an influence in the transformative power of the EU when it comes to domestic change. Plus, considering that areas of limited statehood are not a rare thing, this characteristic can be understood as something even more hindering when making state actors adopt and adapt to EU demands.

asynchronous phenomenon. This interaction between the different phases can be seen in the following figure 2 (reproduced from Risse & Ropp, 2013, p. 8).

Figure 2. Representation of the “spiral model”



What has undoubtedly changed, however, is the focus of the theory. In the approach taken in the first book, considering the way international society had still been dealing with human rights related issues until the end of the nineties, the theory’s main objective was how to change from the moment of *repression* (phase 1) to the one of *tactical concessions* (phase 3), highlighting the first three phases of the model and explaining state commitment to international human rights.

However, after it became clear that most countries were capable of reaching that third phase, specially with the increase in human rights treaties encompassing the most diverse topics and the raise in the number of nations ratifying these international documents, there came the need to understand why states seemed to have so much difficulty in reaching the other following stages. In this sense, the Persistent Power of Human Rights focuses its efforts in understanding how subjects

may move from *tactical concessions* (phase 3) to *rule-consistent behavior* (phase 5), including in this analysis the difficulties of surpassing a simple *prescriptive status* (phase 4). The authors then suggest that more attention must be paid to the importance of actors other than states in actions towards commitment and that the different ways these non-state actors can be used to help countries move on from that commitment-only status that characterizes *tactical concessions* and *prescriptive status*, and reach the full compliance of *rule-consistent behavior*, should be analyzed.

In other words, many researchers started to focus their studies in the question of what can be done in order to improve the application of the mechanisms of these final phases of the model so that states can evolve from an already accomplished situation where “actors accept international human rights as valid and binding for themselves” to one where “sustained behavior and domestic practices that conform to the international human rights norms” are a reality (Risse & Ropp, 2013, pp. 9-10). The present thesis is another example of this academic tendency, as it will focus on the issues Japan has been facing when it comes to moving from commitment (phases 3 and 4) to compliance (phase 5) when it comes to the women’s empowerment and to their right to work. Based on the previous suggestion that giving special attention to the efforts of non-state actors might be helpful in understanding this implementation gap, this study will also work on bringing to the forefront the work of the civil society, domestically and transnationally, and of adding a new feminist lens through which I contemplate the implementation of women’s rights.

2.3 Accolades and criticisms towards the “spiral model”

As it can be perceived from its characteristics and application, the “spiral model” is a highly relevant way of understanding the processes involved in the adoption and in the implementation of human rights norms. Consequently, the model is also helpful for improving such processes and bringing change. It has been established in many material cases that the socialization mechanisms for turning international law into domestic practices found in the model hold up well in empirical tests, having been put to test by quantitative and qualitative studies and still survived the scrutiny. The case of Indonesia, which showed that public shaming by the UN Human Rights Commission

had positive effect in the attitudes of a norm-violating government towards compliance, is a pertinent example (Clarke, 2013, pp. 125-144). Risse and Ropp argue that they managed to prove the model's success through a "comparative case study method", in which they selected paired country cases of human rights "success" and "failure" from various world regions and were able to find out the various factors that made a difference when related to the phases of the model. As examples of "success stories" during the 1980s, they raise Chile, South Africa, the Philippines, Poland, and the former Czechoslovakia, and as more difficult cases, they cite Guatemala, Kenya, Uganda and others. They also mention as a positive aspect of the model that scholars have been able to extend their analysis to other relevant states such as China, Egypt, Turkey and Israel (Risse & Ropp, 2013, p. 7). With the present study, I hope to be able to better understand Japan's attitude towards the women's right to work, and suggest mechanisms that in the future might allow it to be included in the roster of states that successfully reached the phase of *rule-consistent behavior*.

The authors are rightfully very proud of their accomplishments, concluding that the socializing mechanisms of change that were built into the "spiral model" in "The Persistent Power of Human Rights" had "a good deal of explanatory power for most of the individual cases" and that apparently it was possible to generalize the different phases of human rights change "across different types of political regimes, socio-economic systems, and cultural regions" (Risse & Ropp, 2013, p. 7). The usefulness of the theory is proven even further through the fact that some of the processes between commitment and compliance that are consistent with the "spiral model" have also been brought up in other relevant studies, such as judicial action enabled by human rights treaties and popular mobilization being analyzed within the work of Beth Simmons in "Mobilizing for Human Rights: International Law in Domestic Politics" (2009).

It can be said that these positive points of the model lack some measure of constructive self-criticism, though. Some authors recognize demerits, taking note that the model seems to "smuggle in" a hidden ideological agenda and that there was an associated teleological twist to the analysis. Problems with the measurement and operationalization of key variables, cases of clashes between the empirical evidence and the application of the model, and inadequate treatment of human rights

situations where competing norms were involved have been cited too (Risse & Sikink, 1999, p. 8; Jetschke & Liese, 2013, p. 26-42). Other than these sins of commission, sins of omission have also been pointed out, such as the initial assumption that only fully functioning states would be under analysis, which prompted the suggestion that compliance with human rights norms was a matter of state commitment and willingness more than of institutional capacity. However, this was not proven to be true when compared to reality, and thus the need to consider limited statehood cases was acknowledged.

As mentioned in part 2.1.2, the original model omitted some complementary scope conditions and diffusion mechanisms, which is remedied by using the present hybrid theory. In addition to that, Jetschke and Liese also bring to the table pertinent criticism towards the model. They sum up that some studies have concluded that the “spiral model” has been vigorously criticised for being “teleological”, “deterministic”, “overly optimistic”, and “linear, even tautological” (Jetschke & Liese, 2013, p. 33). This criticism is a valuable acknowledgement that the theory is an ideal-typical conceptualization, a framework that help researchers identify what is not going to plan in the processes of norm diffusion and domestic implementation. As such, and according to Thomas Risse himself,⁵ the model should be understood in some senses as a product of its time, particularly when it comes to its formulation in the “Power of Human Rights”. Regardless of this understanding, the value of the model is certainly not undermined. If an exercise of reflexivity is done, with awareness and recognition of these matters being dutifully shown, the “spiral model” is still a theoretical approach as useful and valuable today as it was during its formation years. In that sense, Jetschke and Liese affirm that the model assumed the existence of a core group of developed democracies that respected human rights and thus could make norm-violating ones respect them the same way, but ignored the fact that these developed states could also be the actors violating these norms (Risse &

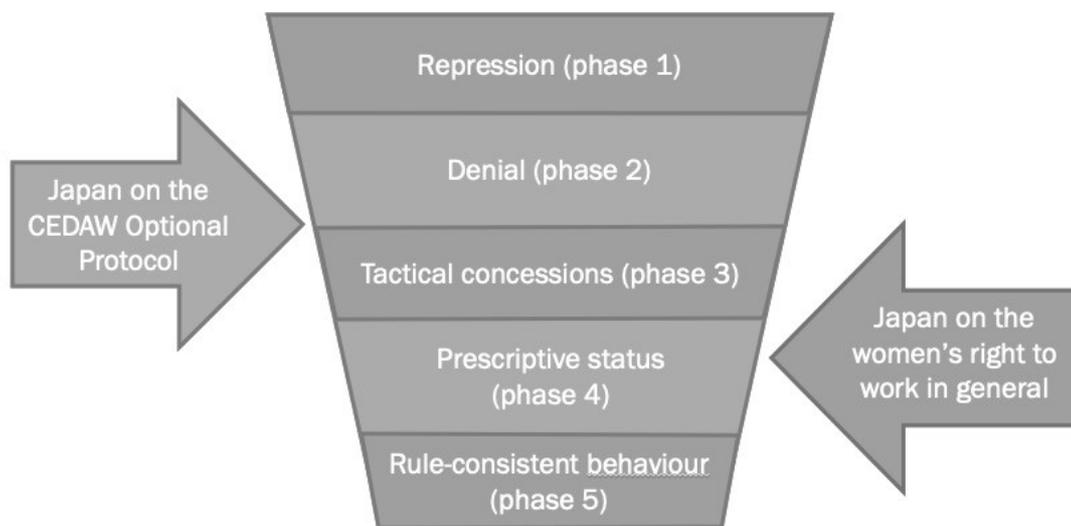
⁵ In his oral comments at the JSPS Core-to-Core Seminar “The European Union and Japan in a Fluid Global Liberal Order: Diffusion of Liberal Norms and Inter-Regional Studies”, held on October 30th, 2018, at Waseda University.

Sikkink, 1999, p. 9). Also, the “spiral model” did not anticipate that norm-violating governments would be able to provide largely accepted good reasons and counter-strategies to minimize the external pressure of the international society and of human rights networks when it comes to the criticism towards their own human rights violations (Jetschke & Liese, 2013, p. 28).

The main object of this research, Japan, is a pertinent example of both situations explained above, and it proves that the model is as relevant as ever. As a developed democratic country, it has succeeded in providing women of a range of rights wider than other countries that are commonly criticized for being rights’ violators. For example, in theory it does provide women of freedom and equal political, economic and social rights, and it is undeniable that the majority of Japanese women have access to good education and health care. Making use of these good points, Japan presents itself as a defender of women’s rights in the international arena, but this position crumbles under stronger scrutiny of the implementation of its domestic policies. When one takes a deeper look into Japanese society, it is easy to identify many situations where discrimination against women is still rampant, both in the private and the public realms. In fact, as will be better explained in the following chapters, openly discriminatory provisions remain even in Japanese law. Based on that, when it comes to women’s right to work in general, it is possible to put Japan mainly in the phase of *prescriptive status* (phase four), as a state that has created protective domestic law to an extent, but still uses excuses to explain the lack of material efficiency of its policies. In addition, the fact that some characteristics of the phase of *tactical concessions* (phase 3) can be found in different areas of rights’ protection, such as the lack of a legal definition for discrimination must be considered. Based on these remaining aspects of phase three, the country can be represented in a mixed position that has slightly surpassed *prescriptive status* in some cases, but is in general much closer to *tactical concession* than to *rule-consistent behavior*. On the other hand, in the specific case of the CEDAW Optional Protocol and other relevant international instruments the country still refuses to ratify, it can be said that it remains stuck in the phase of *denial*, but very close to *tactical concessions*, considering that Japan has acknowledged the existence and value of these treaties. This explanation is illustrated in Figure 3.

Furthermore, the model also failed to recognize divisions within civil society, specially between NGOs themselves, and between NGOs and other civil groups (like religious ones), and it did not explain the failure within democratic states of mobilizing comprehensively against human rights violations. In the end, its weak point is that it gave too much credit to democracies, assuming they would be good examples of human rights protection just because of their system of government, when in reality states can come up with excuses for their passive inefficiencies or active violations regardless of them being democratic or not.

Figure 3. The suggested position of Japan



This overlooking leads into the biggest so-called “problem” of the “spiral model”, which is the under specification of the processes that span from phases three to five. In other words, it has been said that the model has a lot of difficulty in explaining the move of states from commitment to compliance, and the processes that happen in that gap. This is because the same causal mechanisms used in the first three phases of the model ended up not being at work in its last two phases, and thus there would be the need to rethink the commitment to compliance background processes in the most recent approaches to the theory, especially when it comes to explaining the behavior of democracies (Jetschke & Liese, 2013, pp. 30-32). Here I bring up again that within the model there was a lack of interest in considering the issues that might arise concerning the lack of compliance by powerful democratic states, of which the USA, Israel and also Japan are examples. However, while the model could possibly benefit from a clearer division between the phases, specially in relation to phases three

to five, and from better guidelines on how to classify countries amongst them, this is not a fatal issue that undermines the theory. Instead, this “problem” could also be understood as a strength of the theory, as it helps in the identification of commitment/compliance gaps and in pointing out what is wrong with the implementation processes being used by different countries.

In the same sense, and subjected to the same counter-arguments as the “problem” aforementioned, it is said that there was a lack of attention paid to and an under-theorization of instances where states could not get past the phase of *prescriptive status* and reach all the way to the level of sustained *rule-consistent behavior*, which culminated in an under-specification of the processes and scope conditions by which and under which states as well as private actors could be moved from commitment to human rights to actual compliance to them (Risse & Sikkink, 1999, p. 11). While it might seem that treaty ratification at phase four would lead naturally into norm internalization and compliance at phase five, the application of the model has proven that to be untrue, and it also lacked in specifying how much pressure is actually needed and what would be the best conditions for a state to reach the final phase (Jetschke & Liese, 2013, p. 32). In fact, one must keep in mind that to reach rule-consistent behavior, to have fully institutionalized international human rights norms and norm compliance as a habitual practice enforced by the rule of law, there must be continuous pressure and mobilization both from below (domestically) and from above (internationally) (Risse & Sikkink, 1999, p. 33). This point is crucial for the case study of the Japanese government in the context of the women’s right to work, since the state has been actively creating norms and policies to improve a situation of gender inequality, with a lack of satisfactory results. Using Japan as a case study, this research aims to make use of this aspect of the theory to better understand the problems plaguing women’s rights implementation in Japanese society, and then attempt to apply these useful findings by suggesting ways of improving the level of Japan’s domestic compliance to international human rights norms.

Additionally, Jetschke and Liese point out an overestimation of the domestic effects of transnational advocacy in theory, since when looking at material examples it can be seen that there are a number of nuances, such as lack of political, societal and monetary support for certain local

human rights organizations, which influence on how domestic mobilization might be effective or not. Also, while domestic mobilization and the influence of international actors is a key variable explaining progress towards the phase of *prescriptive status*, this mobilization “can be hard to come by and sustain” after that (Jetschke & Liese, 2013, p. 29). This can be because of changes in the government (regardless if it is a democratic or authoritarian one), because the state has learned how to develop counter-strategies to minimize the pressure of human rights networks, or because these international actors themselves make mistakes when interacting with domestic organizations. Maybe, in order to improve the real understanding of the process that goes from commitment to compliance and to overcome the difficulties concerning the under-specification of the transition between phases four and five of the model, it will be necessary to bring down the idealistic and perhaps apolitical perspective of both of them. Also, considering how relevant this key point concerning the domestic mobilization is for the theory, there is a need to ask about this question to my interviewees from NGOs, since they are exactly the center of this national bottom-up pressure for women’s rights change. The findings related to how this issue has been playing out in society will be presented in Chapter 7.

In this sense, a shift in the way scholars have been paying attention to the model has already been happening. Instead of focusing only in compliance mechanisms and in the role of foreign organizations, they have been also raising questions related to legal plurality, local customs and norms and to the importance of domestic courts (Jetschke & Liese, 2013, p. 29). Cultural expressions, combined with the allegation of sovereignty, have given origin to many normative conflicts and they have been consistently used as excuses for not complying to human rights, so they need to be faced directly. The model’s focus on the attitudes of norm senders over understanding the reasoning of norm takers, which underestimates the importance of the elements of dialogue, interaction and adaptation that exist in the process of norm diffusion, has clearly been contributing to these issues and hindering the full extent of the model’s application. Thus, there is the need to think about the process of localization in the context of norm implementation. Acharya’s work is a reference in this context, explaining how universal values may be successfully adapted to domestic realities and how

local beliefs may need to be seriously considered in order to fulfil the objective of raising a state's acceptance of foreign norms (Acharya, 2004, pp. 239-275).

This different approach, together with other helpful theories, is incredibly important for the improvement of the "spiral model" and for it to be applied more efficiently to a wider range of case studies. In the next part, I will delve deeper into them and suggest which parts could be useful to overcome the cited shortcomings of the model.

2.4 Going beyond using only the "spiral model": interaction with theories concerning types of socialization, norm localization and feminism

When looking just at the amount of the aforementioned shortcomings, they might seem overwhelming and capable of undermining the "spiral model". However, they are in fact very useful in the sense that they demonstrate problems that happen within domestic societies, and it is by correctly identifying these problems that they can begin to be solved. Thus, even with such criticism, the workings of the "spiral model", and the "boomerang effect", together with some helpful developments from its interactions with other theories, do have much to contribute when it comes to the understanding of conditions and mechanisms that contribute to the realization of human rights. In the next three parts, I will present additional theories that are necessary in order to make the hybrid "spiral model" more adapted and useful not only to the Japan situation concerning the women's right to work, but to other difficult case studies involving actors culturally and physically distant from western powerful nations.

2.4.1 Checkel's theory of different types of socialization

One point that is intrinsically connected with the "spiral model's" underdevelopment of the processes that move states from phase three to five is its take on the different types of socialization. In the "Power of Human Rights", the authors are interested specially in looking into the connection between the instrumental adaptation and argumentative rationality. Because of that, they end up leaving the phase of habitualization, and consequently the one of complete internalization of norms

somewhat underspecified. On the other hand, in the “Persistent Power of Human Rights”, there is an attempt of solving this issue by citing Jeffrey Checkel’s theory of different types of socialization (Checkel, 2005, pp. 801-826), which is extremely relevant for this study and thus will be explained in detail in the forthcoming paragraphs. However, the authors’ approach to the topic in the book and in their following research (in the form of the aforementioned division between normative rationality and communicative rationality) is also not without criticism. Their conclusion is that it is irrelevant whether target actors comply to human rights because they are completely and truthfully persuaded or because they just believe they must do so for other reasons, including instrumental ones. This, however, is an oversimplification that might hurt the explanatory power of the model, specially concerning phases four and five and the processes of compliance.

At this point, to fully understand why the conclusion made in “The Persistent Power of Human Rights” is problematic, it is necessary to also understand how and why Checkel divides socialization into different types, according to their different mechanisms of socialization. These are viewed as “a set of hypotheses that could be the explanation for some social phenomenon”, based on the interaction between different individual or plural actors. Furthermore, the reason for this approach is to bridge the delay between the socialization done by international institutions and the result of this socializing process at the individual or state level (Checkel, 2005, p. 808). Three different mechanisms are then presented: strategic calculation, role playing and normative suasion.

Strategic calculation has roots in rationalist social theory, which means that it deals with how incentives and rewards (material or social) are relevant to the socialization process. The most important point is that strategic calculation by itself is not considered to bring socialization and internalization, because here there is no change from a logic of consequences to a logic of appropriateness. Here, the actors just calculate what kind of attitude would be more profitable for themselves only in each situation. Thus, this mechanism is more of a first step that can lead to sustained compliance, if it is combined with other processes that go beyond instrumental rationality (Checkel, 2005, pp. 808-810).

Role playing is a mechanism based in organization theory and cognitive social psychology, which understands actors as rational beings that are not able to calculate the costs and rewards of every and each action, and thus end up relying in certain cues and shortcuts given to them by organizational environments. They adopt certain roles because they are appropriate in a particular setting and because it is the easier thing to do, not because there was a calculation of the benefits they would get or because they internalized the correctness of this action. This is the beginning of the shift from a logic of consequences to one of appropriateness, and the outcome of this socialization mechanism is called Type I internalization (Checkel, 2005, pp. 810-812).

However, conscious acts of persuasion are only present in the third mechanism, normative suasion. Being based on Habermasian social theory with influence of social psychology, it adds a communicative understanding to the other mechanisms, claiming that agents present arguments in order to convince each other. In other words, this mechanism has agents actively and reflectively internalizing what is considered to be appropriate, being completely guided by a logic of appropriateness. This is true persuasion at play, resulting in what is called Type II internalization (Checkel, 2005, pp. 812-813).

Although Checkel argues that there is a tendency to think of changes in the implementation of human rights brought by persuasion are deeper and more stable than the other mechanisms, he also points out that this progressive linear hierarchy is not unquestionable and does not flow in only one way. Research has showed that internalization can occur from a process that started with incentive-based arguments, specially in cases that have target actors cooperating within international institutions. Sometimes, cognitive dissonance and self-persuasion are the keys for this change, without any proactive attitude from other agents. Thus, it is better to think of the mechanisms as nominal categories whose application can be more effective depending on each situation (Checkel, 2005, pp. 813-815).

Regardless, the final objective of socialization could be said to be to reach a more enduring status of Type II internalization, since if states do not fully internalize the importance of human rights' protection they tend to get stuck in the gap between commitment and compliance. This culminates

in the fact that there must be persuasion at some extent, be it from internal or external influences towards the agent. Based on this, Checkel openly criticized the initial take of the “spiral model” on socialization, saying that it focused too much in the necessity of social mobilization to jumpstart strategic and rational reactions from target actors (Checkel, 2005, p. 807).

As already mentioned, Risse and Sikking address this criticism in the “Persistent Power of Human Rights”, where they still affirm that actors reaching Type I socialization is enough for compliance (Risse & Sikking, 2013, pp. 284-285). Their approach to socialization can be seen represented in Table 2 (Souza, 2019). While this idea might be true in some specific cases, it does not solve the general problem of under specification of the socialization processes leading to persuasion. Especially since the biggest obstacle of the “spiral model” now is to characterize the processes that influence in changing a state’s situation from commitment to compliance, it can be said that persuasion mechanisms that culminate in Type II socialization need instead to be brought to the forefront, together with the other mechanisms.

That considered, I suggest a framework that includes Checkel’s idea of how to socialization or persuasion could affect how actors move between the “spiral model” phases, so the movement (or lack of thereof) between phases three to five may be understood.

First, based on the way actors have acted before the international community when it comes to commitment and compliance, a differentiation could be made in phases three and four. In phase three, there are two kinds of instrumental concessions made by actors: one based on calculations of benefit and/or just so they can end or stall criticism from others, and other legitimacy-based, with actors actually basing their opposition speech in somewhat valid reasoning, for example by bringing up specific cultural and traditional justifications or prioritizing the implementation of some human rights over others.

This initial division branches out to phase four, where it creates situations in which states act because they were truly persuaded, or because they are just following a social script without internalizing it. These branches, which I divide respectively in “sincere” ratification and “tactical” ratification, could help explain situations where phase four is more of an extension of phase three,

and states who find themselves there would consequently have more difficulty to proceed to phase five.

Second, I suggest that phase five could be divided in three separate stages of norm implementation: partial implementation, substantial implementation and comprehensive implementation. With this division, it would become easier to analyze case studies, identifying specific issues and suggesting the most efficient modes of action and mechanisms of diffusion for each specific situation.

Even though this framework is still under development, I believe it can become a helpful way to dissect the last three phases of the model and the processes happening there, maybe allowing us to shed some light on the issue concerning the commitment/compliance gap.

Table 2. Some Approaches Concerning Socialization		
The Persistent Power of Human Rights	Checkel's theory of different types of socialization	Definition
Socialization	Type I internalization	Actors know what is socially expected of them and behave accordingly (role-playing). There is no need for deeply believing in the validity of the rule.
Persuasion	Type II internalization	Needs normative persuasion and deep attitudinal change. Actors believe that a norm is true, and thus are convinced that complying is the right thing to do.

2.4.2 Acharya's theory of norm localization

In this same context of trying to reach the phase of *rule-consistent behavior*, another point is that the "spiral model" should be read together with theories of norm localization. While it is

undeniable that international norms play a huge role in influencing actors to abide by human rights protection, the domestic legal structure is the one that will effectively put these norms into practice within national borders. Thus, there is the need to be more focused on how principles and norms understood as universal should be adapted according to different cultures and customs, taking into consideration the different positionalities of groups and individuals instead of counterproductively just forcing states to accept such principles and norms at face value.

Acharya's remarkable work on the topic raises exactly this question, prioritizing respectful dialogue between local beliefs and foreign norms. He argues that the first wave of norm diffusion scholars was excessively fond of the moral cosmopolitanism perspective, prioritizing the "good" global norms over the "bad" local ones. For them, the transnational agents had the responsibility of teaching the right way of acting, which in turn diminished the role of local actors. On the other hand, he cites a second perspective, which in turn stresses extremely the importance of domestic actors and the congruence between foreign and national norms. However, he makes it clear that both these perspectives are overly static and centered in finding "differences" or "matches" between principles, and argues that localization goes further than that (Acharya, 2014, pp. 242-244). Defined as "the active construction (through discourse, framing, grafting, and cultural selection) of foreign ideas by local actors, which results in the former developing significant congruence with local beliefs and practices" (Acharya, 2014, p. 245), localization brings all adaptive processes together in a framework that respects the role of local actors without disregarding the importance of foreign actors in this dialogue. Here, Acharya could also be understood as talking about the point concerning tradition as a defense mechanism, since there is a clear link between his take on localization as a method of bridging universally accepted human rights' paradigms and local traditional positions concerning such rights.

That considered, the relevance of considering aspects of norm localization when making use of the tools of the "spiral model" is clear when looking at the Japanese case in the context of the protection of women's labor rights. Japan's society still keeps many traditional aspects, such as women being the main or even sole responsible for taking care of the home and children, many times

having to abandon their careers completely to do so. The persistence of an M-shaped curve in the statistics that show female labor force participation rate by age group (Government of Japan, 2017), which indicates that women usually leave their jobs after marriage or childbirth and then rejoin the labor force years later, usually in part-time positions (Organization for Economic Co-operation and Development, 2017), is the proof of that phenomenon. Other exemplificative data related to that is that while married Japanese men spend only 44 minutes daily in housework related activities, women spend 3 hours and 28 minutes doing so (Government of Japan, 2016a). To make matters worse, even if men wanted to help more, that would be difficult, considering Japan's draining work culture maintained by long and inflexible working hours. In other words, Japanese society must deal with two ingrained issues: strictly assigned gender roles and a work culture, which combined stop women from advancing in the workplace and taking leading positions in society, hinders the possibility of introducing concepts of work-life balance.

Considering that Japan, at least for the past three decades since the Equal Employment Opportunity Law (EEOL), has consistently tried to implement new norms to solve this gender inequality in labor and society, all without considerable success, it can be said that the problem goes beyond the law. The aforementioned legitimate group of domestic social norms, which is part of Japanese values and stems from cultural and corporate tradition, cannot be disregarded only as an instrumental obstacle for not complying with women's rights. Instead, it might be necessary to apply concepts of norm localization to this case, and not to try to force feed the state with universal principles. It might be helpful to the understanding of the processes towards achieving compliance if the "spiral model" paid more attention to localization as a dynamic social process that takes into account domestic principles while aiming to redefine an actor's values and priorities.

2.4.3 Approaching norm diffusion through feminist and norm contestation theories

Given some possible improvements, one can say that the "spiral model" is very pertinent for understanding the workings and processes related to change in the realization of human rights generally, and specifically of women's rights too. Contesting sexual politics across national borders

is an inherently complex process, that involves a balance between protecting women when needed, and empowering them through gender equality. It implicates a change in the whole internalized construction of gender roles, in how men (and women, to an extent) think, in male-dominated institutions and patriarchal logics (Brysk, 2013, p. 262).

Moreover, women's rights protection is usually done in a decentralized manner and within the private sphere. This is true especially in the context of labor rights, whose norms are generally created by a centralized government but have their compliance in a decentralized level, because the ones who apply it are private actors at large. States are responsible only for standard-setting, resource provision and some symbolic enforcement. Considering that, according to the model, compliance is said to be more easily assured in a centralized environment, this decentralization of the application of labor rights norms causes not only difficulties in the implementation of norms, but also in the assessment of such implementation.

Plus, it also affects the application of the "boomerang" model. Since gender related rights violations are a blend of state-sponsored, state-delegated and private wrongs, the model's traditional concept, which moves from local to global to local again, may not be seen in all cases. For example, in the case for ending female genital mutilation, a multi-level frame contest and a dialectical reconstruction, which makes the interactions between advocacy networks remain relevant instead in a global - local - global development (Brysk, 2013, p. 263), can be observed. However, if this criticism is thought through the lens of localization, it can be said that in the process of achieving its objective of mapping the changes in the behavior of states, the model still ends up giving women protection and implementing their rights. Through the work of transnational and domestic advocacy networks that carry out a dialogue between national and international norms, the "boomerang" effect may generate much needed support for women's causes.

In that sense, the "spiral model" is a fruitful way to understand and improve the process of women's rights' implementation. It argues that victims of repression reach out for international support based on legal and rational grounds, but that only is not enough. As mentioned beforehand, in the context of the difference between types of socialization and of the need for persuasion, there

needs to be a deep change in society itself, and thus significant framing efforts by experts, advocates, the media and cultural figures also prove to be incredibly relevant and necessary (Brysk, 2013, p. 263).

Lastly, when thinking about the implementation of women's rights, paying attention to the feminist view on the topic is a must. Although not commonly recognized, there is undoubtedly a conflict between the protection of women's rights according to feminism and multiculturalism. In other words, the beliefs that women should not be disadvantaged by their sex, that they should be recognized as having human dignity equally with men, and that they should have the opportunity to live their lives as fulfilling and as freely as men can often clash against the idea that minority groups may claim for group rights beyond the individual rights of its members (Okin, 1998b, pp. 661-663). This tension between both sides tends to end with the sacrifice of norms that protect women in favor of the protection of "societal cultures", because the leading nations do want to avoid the criticism towards the "Western powers" trying to impose their views and the loud cries of "neocolonialism" coming from the minority groups. The application of norm localization in these cases might be helpful to avoid this kind of complete rejection by states that are not leading the movement for women's rights.

In addition to that, even considering the limited and apparently more balanced view that the defense of group rights should be only granted to groups that are internally liberal, this does not automatically mean that there will be no violation of women's rights behind the veil of sovereignty. Most cultures (even the so called "culture of the internationally powerful majority") are full of practices and ideologies concerning gender, which endorse and facilitate the control of men over women and thrive in disparities in power between the sexes. And this is even more exacerbated because of the tendency to focus on cultural groups as uniform entities, and for the lack of attention to the private sphere, where violations of women's rights tend to concentrate. Still, even though virtually all the world's cultures have this patriarchal past, it is a fact that Western liberal cultures have tended to separate themselves from these ideas more than others, thus becoming the frontline of the movements for women's rights change (Okin, 1999, pp. 7-24). This all needs to be brought to

light in the discussion, so as states may improve their true compliance to international human rights in general, and in specific to women's rights.

The feminists' work has been the pillar that helped begin the questioning of the traditional, male-dominated international and domestic law, thus also being necessary for solving the issue of bridging the gap between law and reality. Feminists have had, in fact, very productive engagements with constructivist ideas, which the spiral theory is a part of. Both fields draw on concepts of social construction to inform their theorizing, and both favor the idea that identities and interests can be constructed through social interaction. However, constructivist ideas are not without some well-intentioned criticism from feminists, as they diverge from feminist ideas in the way they treat power and gender. Constructivists have under-theorized the social construction of power, and when they paid attention to it, they have described it separately from social construction. Furthermore, they tend to focus on the state as the most relevant actor to the diffusion of norms. Because of these factors, feminist scholars raise issues such as that constructivists lack the tools to explain how gender and power are interconnected, and that they gloss over the fact that societal change and the persuasion of individual perpetrators are also a must to change practices that harm women's rights (Pearce, 2015, pp. 423-426).

Building on this concept, an important point of intersection is the relation between international norms, constructivism and feminism. Jacqui True is one of the authors that tries to go further than simple constructivism, focusing on norms being more than just ideas materialized and understood as major influences on international relations like other material factors. According to her (True, 2013, p. 76):

From a feminist perspective there are three main problems with constructivist approaches to international norms: (1) norms are not fixed rules, but are plural and dynamic in their content and in the degree to which they are internalized; (2) norms are not power-neutral – implementing them might create new patterns of domination and marginalization and feminists are skeptical that the process of internalizing norms will effectively bring about normative change

and; (3) norms do not stand above power but result from global power relations and thus can reproduce them.

By understanding norms as something disconnected, that remains fairly stable in terms of their content, constructivists tend to simplify them too much, ignoring that they can be distinguished in different types and are “often plural in their constitution and implementation” (True, 2013, p. 77). Even though they are the same as the feminists in the sense that both are “concerned with understanding normative change”, the latter are at the same time additionally concerned with bringing about normative change. Thus, the main point of a feminist analysis would be to instead of following the status quo and just applying the traditional theoretical basis of constructivism, using critical methods to trouble old and new norms, breaking with the process of normalization that makes certain ideas and relations to be taken for granted and used to force conformity of subjects (True, 2013, pp. 73-77). Feminists do not want simply the implementation of international norms, with their fixed boundaries and lack of internal contradictions, they actually wish for norms to be acknowledged as dynamic, with complex processes at work when they are adopted and translated into practice (Krook & True, 2012, p. 104).

Considering my aim of looking into the implementation gap issue and of suggesting ways to allow states to reach the phase of *rule-consistent behavior*, it is interesting to consider incorporating these feminist challenging ideas to my study of norm diffusion and of the “spiral model”, since it has a tendency to spread normalized, static, male-centered and discriminatory ideas concerning gender equality and to harm both males and females. While it might seem that including this somewhat fluid and evasive nature of norms would complicate even more this task, it actually would be useful for explaining why norms emerge and appear to diffuse fast up to a certain point, at the same time that they rarely achieve their final goals in terms of effectiveness. True was right in her contention that “norms diffuse precisely because — rather than despite the fact that — they may encompass different meanings, fit in with a variety of contexts, and be subject to framing by diverse actors” (Krook & True, 2012, p. 105). However, to the extent that this diffusion is done without aiming for full persuasion of the actors, it will remain stuck without ever reaching a level of full norm compliance.

The approach to norm diffusion, if combined with characteristics of norm localization and feminist critique, could be a way of understanding how to reach that level. In this sense, her suggestion of applying a more discursive approach to the constructivist framework, and of trying to perceive norms less as a commitment written into international treaties or instruments and more as something anchored in language and revealed by repeated speech acts, with an ongoing constitution that evolves internally and externally over time (Krook & True, 2012, p. 105), are very much welcome, but still not enough. In other words, citing again Checkel's different types of socialization, it can be said that True's ideas are close to Type I socialization, as they bring up discourse but lack in the aspect mutual convincing by the actors. This work suggests that more than just repeated discourse, in order to reach full compliance, there is a need for using conscious acts of persuasion, which then culminate in true norm internalization. In addition to that, the focus given by Krook and True to the work of non-state actors and to how actors as a whole may not all have the same capacity of defining problems and solutions due to structures of social, economic and political inequality, is also pertinent to my original statement in regards to how much influence civil society, national and transnational organizations have on the protection of women's rights (Krook & True, 2012, p. 105).

In conclusion, the "spiral model" as a theory of norm diffusion, with its due criticisms, has great potential of explaining and possibly helping find ways of bridging the gap between the legal protection of women's rights and their implementation in reality. Investigating the extent to which a particular set of norms – in this case, women's rights as human rights - have been successfully diffused in a specific country – in this case, Japan - by institutions like the European Union (EU), the United Nations (UN) and its specific organs, is the first step for improving their implementation. For that, there is the need to understand the progress achieved through international treaties and other legal documents, which will be the focus of the next chapter.

However, this model will not be able to move forward without the complement of other ideas. The fact that gender bias and gender roles remain deeply embedded the most different domestic societies, as well as even in the international system, and that many groups resist any kind of change to this situation needs to be addressed. Examples of the international society attempting to change

this internalized bias do exist. Aiming to guarantee gender equality and the empowerment of women around the world, the UN has created the UN Women, which in its turn has created initiatives like He For She, a “solidarity movement for gender equality (which) provides a systematic approach and targeted platform on which men and boys can engage and become change agents towards the achievement of gender equality” (UN Women, 2016). This latter is specially relevant in the context of breaking gender roles and stereotypes, as it takes a proactive approach to breach into the male-centered international society, including men as partners of women in the fight for equality and making them understand that it is an issue that also affects them.

In the end, gender, global politics and power are intrinsically connected, and they clearly influence how norms are formed, their content and how they are locally implemented. Thus, in order to accomplish the goal of suggesting mechanisms for overcoming the compliance gap, one must first understand how gender works as a social process through looking at different case studies, and then based on these findings attempt to adapt norms (cultural and legal) built on masculinity and femininity. This revolution of concepts can become the start point of a mutual influence, based on constructivism mitigated by dialogue and localization, between domestic and international institutions, culminating in pressure over the actors going against norm compliance so that they will be more open to rethinking their original values.

Chapter 3. Understanding Women's Rights in the UN Human Rights System: From the Origins of Human Rights Protection to the International Covenant on Civil and Political Rights

Even though human rights in general, and specifically women's rights and gender equality, have been in theory subject of international protection since the advent of the United Nations in the 1940s, gender-based discrimination and crimes against women remain rampant in the present society. The many treaty provisions and other international legal instruments concerning women's rights have undoubtedly evolved through time, but they remain unable to be satisfactorily reflected in today's reality. Women are the primary victims of gender based violence, their participation in positions of power and in decision making is still much smaller than men, the gender pay gap remains, sexual and maternity harassment in the working environment persist, stereotyped gender roles keep being pushed by society. The issues are varied and worrying, but they all lead to the fact that women do suffer discrimination just for being born female.

As a researcher, witnessing, and to a certain extent living with these issues daily made defining the objective of this work easy. The aim is to understand better the processes that lead actors to complying with international women's rights, and as a result to improve the implementation of these rights in Japan, with special attention to the right to work, to female empowerment and to their social, political and economic participation.

The women's right to equal employment and to be able to effectively work itself is broadly protected by Article 11 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, which included varied aspects of the concept of "work". There are many ways to approach the topic, but this research will limit itself to focusing on the issues that are more apparent in the case of Japanese women, which includes: a) the lack of equal employment opportunities; b) inequality in promotion opportunities, job security and all benefits and conditions of service; c) the persistence of the gender pay gap and of unequal treatment despite of work of equal value; d) the many cases of dismissal, discrimination or harassment on the grounds of any gender-related characteristic, such as pregnancy, maternity or marital status; e) the deficiency of the system

of parental leave and the lack of child-care facilities, together with insufficient promotion of the idea that family obligations and that work-life balance is a concept that matters for both genders.

All this considered, I chose to focus on the right to work specifically not only because of its historical importance in the feminine struggle of breaking away from their traditional and stereotypical role of caretaker of the home, but also because of the characteristic of intersectionality the topic has. When talking about the women's right to work, I realize it has to do not only with improving labor laws, but also with cultural issues like sexual and power harassment, how pregnancy is socially understood, male participation in child rearing and housework, amongst others. Other than these cultural aspects, it also obviously has a huge influence in the economic situation of the state and of its nationals, which makes it a relevant both in a macro and micro perspectives.

Moreover, my selection of the Japanese society as a study case is based in the fact that there is a clear contrast between the Japanese legal and political rhetoric and the effective introduction of these norms and principles in society. As already mentioned in Chapter 2, in the context of the "spiral model" and socialization, Japan is found in a position that clearly shows a huge gap between commitment and compliance to international law, proving that the state has not been successfully persuaded to implement such norms. The data collected during the three decades between Japan becoming a member state of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and now show that, when facing external pressures, the country attempts to show a proactive image, but this does not fully translate in its domestic advances.

Thus, it may be said that the Japanese case is a clear example of the problem concerning the gap existent between international commitment and domestic compliance, and therefore there is a need to use an analysis model that makes it easier to recognize and understand this situation. Regarding this research, the most useful model is considered to be the aforementioned "spiral model" and it will be applied as the basis for understanding the persistence of the implementation gap issue, and how it can be overcome. To use the language of the model itself, Japan is stuck in a situation where it has somewhat reached a status of *prescriptive status* (phase four), with even some occasional characteristics of *tactical concessions* (phase three), but unable to move on to achieving *rule-*

consistent behavior (phase five). In other words, it has created some protective laws and policies, but there are little significant results coming from their application. The “spiral model” identifies this issue, and offer tools for this research to analyze the processes and mechanisms that exist between these two phases. However, as explicated in Chapter 2, although the model is undeniably a highly valued theory of norm diffusion, and arguably the best one in the present academic context, it is not perfect. Because of that, in this work I also attempted to complement it with other theories, especially ones that take up norm localization, understandings about socialization and a feminist approach, so that I could find the necessary balance that would allow international women’s rights to be satisfactorily internalized by states.

That said, after using the previous chapter to present my findings concerning the “spiral model” and before using the following chapters to delve into the Japanese situation in specific, the legal and historical foundation for this work must be laid out, through the introduction of the history of international human rights, women’s rights and how they came to be protected by an organization such as the United Nations. In this chapter and in the next, I will cover these points, respectively bringing up civil and political rights and economic and social rights. In addition to that, I will make a brief but sufficient presentation of the main international treaties and of their provisions that protect the women’s right to work, gender equality and nondiscrimination in the field of employment, like the International Bill of Human Rights and the CEDAW. I will also mention the International Labour Organization (ILO) and its legal instruments (conventions and recommendations), as they too are very specific to the topic.

3.1 The origins of human rights protection: balancing sovereignty and human rights within international law

When one thinks of human rights protection, documents such as the Magna Carta (1215) and the French Revolution’s Declaration of Rights of Man (1789) come to mind as the first ones to give a kind of state-guaranteed protection to citizens, even if the subjects of these rights were limited to certain specific kinds of human beings. Also, because traditional international law prioritized the

respect for state sovereignty, the idea that human rights protection was an issue of national law rather than international law prevailed at the time those instruments were drafted.

This way of thinking about sovereignty is widely accepted to be rooted in the historical events of the Peace of Augsburg (1555), the Peace of Westphalia (1648) and the Westphalian System of International Law that derived from the latter. Augsburg was pivotal in settling religious conflicts between Protestant German Princes and the Catholic Emperor, and largely contributed to the increase in focus towards the separate polities existing within the Empire. Although this first attempt of resolution was very much flawed and was already crumbling by the end of the 16th century, it became the base for the treaties that originated from the Peace of Westphalia. The original principle that the monarch could determine the religion of their domain persisted in the new regime established on religious practice and denominational matters, albeit with some relevant limitations (Beaulac, 2004, p. 195). Despite being mostly remembered for bringing about a general territorial redistribution amongst the various sovereigns, the treaty also granted certain concessions to minorities. Even though these religious rights that were provided might not have been the same as the concept of minority rights used in the present, it is undeniable that they were an initial political formulation of the idea of freedom of religion. This is especially relevant considering that religion was the sharpest dividing characteristic between European communities of the seventeenth and eighteenth centuries, leading to the conclusion that the granting of these kinds of rights to political outsiders within a sovereign jurisdiction is a part of the contents of the Peace of Westphalia that should undeniably also be remembered as an important advancement (Preece, 1997, pp. 75-77).

In fact, this system composed of a balance between sovereignty and legally based limitations is said to be the concrete expression of the international society propounded by Hugo Grotius, the intellectual father of this first general peace settlement of modern times (Bull, 1990, p. 75). At large, the Grotian view of the Westphalian model is said to have had a profound effect on the course of history, and even now just a reference to “Westphalia” will make any scholar automatically think of a legally-empowered image of the international system as an association of sovereign states (Beaulac, 2004, p. 212). In other words, the idea of an authority or organization above sovereign states was to

be replaced by the notion that they all form a worldwide political system or that, at any rate, the ones from Western Europe form a single political system. Ironically, after this first phase of the creation of the modern state system, even though initially the European inventors of the principle of sovereign territorial rule denied the same principle to non-European subject territories, these latter ended up turning it against their masters to obtain their independence. This process contributed to the expansion of the Westphalian order through the globe (Inoguchi & Bacon, 2001, p. 290), with international law and the balance of power as the base of this new system, and with law and power operating between states, rather than above them (Gross, 1948, p. 29).

Even though the aspect of state sovereignty tends to be exacerbated by most interpretations of Grotian works, there are critics that, based in historical and legal facts, question how much of a paradigm shift the Peace of Westphalia was (Beaulac, 2004). It is said that the landscape of Europe did not change dramatically before and after the Peace of Westphalia, and that it was actually only one important event in a process of change towards understanding sovereignty as a territoriality matter, which had already began five hundred years before (Inoguchi & Bacon, 2001, p. 289). Moreover, whether researchers concur that the Peace brought more or less change, it is clear that it gave form to an embryonic idea of human rights through religious rights, at the same time that it also influenced in the way state sovereignty was understood and prioritized, setting off the processes that culminated in the rise of state voluntarism over universality and the unity of humankind. These latter, which were originally relevant in Grotius' work (together with the attention he gave to natural law and the role of reason), should not be forgotten in the context of contemporary international law (Trindade, 2013, pp. 9-15). The evolution suffered by the environment surrounding the original Westphalian idea of sovereignty should not be understated. From the destruction of medieval society to the advent of the nuclear age, international society, the relations of states and several norms have changed immensely. These norms specifically continue to change with the emergence of new supporting norms or proto-norms, such as ideas of peacekeeping and humanitarian interventions (which are also examples of legal mitigation of sovereignty) (Inoguchi & Bacon, 2001, pp. 293-294). Such ongoing processes of social construction relate closely to norm-focused constructivist theories.

Showing how resilient it is, the Westphalian model of society retained its significance, with many of its characteristics and resources still being used. However, it is undeniable that there has been an erosion of state sovereignty with the advent of globalization and the global civil society (Inoguchi & Bacon, 2001, pp. 294-295). Thus, while it cannot completely be suggested that Westphalian sovereignty is the working principle supporting international relations today, it also cannot be affirmed that this logic is being totally replaced by the emergence of institutional norms and global governance (Inoguchi & Bacon, 2001, p. 289). The fact is that, the more globalized international society gets, the more it depends on the states acting together with other non-governmental actors (Inoguchi & Bacon, 2001, p. 301). Consequentially, the traditional concept of sovereignty has been mitigated by liberal influence on states, therefore making them focus more in the concept of popular sovereignty, create a complex interdependence with other states, and be less likely to take claims of sovereign statehood as seriously as states under Westphalian sovereignty principles (Inoguchi & Bacon, 2001, pp. 294-295).

Through this liberal influence, I observe a constantly tense relation between the concepts of sovereignty and human rights. At the same time that they might be seemingly polar opposites, each hindering the full realization of the other, they are also complementary parts of the whole of contemporary international law. The existence of human rights is “the greatest modern challenge” to the states’ continued exercise of national sovereignty the way it was conceptualized in Westphalia, but these rights also legitimize the survival of the idea of sovereignty, to a certain extent. Even though it was faint, the guarantee of religious rights that was in the background of Westphalia must not be forgotten. Instead of annulling one or the other, sovereignty and human rights must meet in the middle, through a legitimate collective of state and non-state actors working to develop a less state-centric system, which allows the pursuance of human rights (Albahary, 2009, pp.514-517). Sovereignty cannot afford aiming to protect just territories anymore, but peoples and human rights too. In the next sections, I will focus on how this concept evolved through time, specially after the end of the Second World War, and on how the modern view on human rights and women’s rights in

the context of the right to work and non-discrimination, based on the efforts of the United Nations and its agencies, came to be.

3.2 The contemporary protection of the women's right to work and of gender equality based on the United Nations and the International Covenant on Civil and Political Rights

With the constant evolution of the international system and of the values of humankind, the long period when states and only one class of people - the male individuals with monetary and political power - were exalted began to change. International law that matched this new way of thinking also developed, going from having as its subjects only equal sovereign countries to aiming to unite the whole globe under universally accepted principles. Consequently, the protection of human rights on the international level also changed. From the 19th century, international law started spreading itself across national borders and having a say on what happened with citizens in their relations with their government. At the same time, the workings of international organizations were brought to the foreground and special importance was given to the conclusion of treaties with a wide range of objects, such as minorities and race discrimination, and that had effects not only in relations between states, but also between people.

These ideas were reconstructed and, finally, completely embedded in international society in the middle of the 20th century, after the regret and reflection brought by the atrocities of the Second World War. Originating from this scenario, the United Nations (hereinafter UN) was established through its Charter in 1945. The document is the base for the establishment of the main international organization for the protection of the general peace, which was attained after much difficulty, and it was also the first instrument to bring up this concept of human rights protection in many of its articles. Remarkably, its Article 1, paragraph 3 establishes that one of the institution's purposes is "to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" (United Nations, 1945). At this point, a broad reference both to human rights and to a prohibition of

discrimination in the grounds of sex, not only in the context of civil and political rights, but also concerning economic, social and cultural rights.

After that, the United Nations Human Rights System only expanded. The promulgation of the Universal Declaration of Human Rights of 1948, which included common principles that evolved to be treated as customary international law,⁶ was the starting point of this legal development, and served as basis for other instruments, such as the International Covenants on Human Rights. In addition to these treaties and their respective treaty-based bodies, the United Nations' principal political organs that originated from the UN Charter also introduced many subsidiary bodies, programmes, specialized agencies and other offices.

Among the many varied protection topics that have been contemplated in this UN human rights expansion, gender equality, specially in the context of women's empowerment and their right to work, has always been extremely relevant. The fact that the right to work is related to social and economic empowerment, as well as to the development of women within both the public and private spheres of society, justifies the focus that shall be given to it in this work. Accordingly, my efforts will be concentrated in introducing the main treaties, treaty bodies and agencies that work towards the realization of women's labor rights, and in analyzing how have these instruments been applied. In this part, I will focus in the political and civil aspects of the International Bill of Human Rights, by analyzing the International Covenant on Civil and Political Rights, and leaving for the next chapter the analysis of the Bill's economic and social rights with my focus on the International Covenant on

⁶ It is important to note that this notion is not undisputed, with a number of authors disagreeing that human rights should be considered international customary law. "However, since the 1970s, a wide range of newer non-traditional scholarship has emerged arguing against a strict adherence to state practice and *opinio juris* in determining customary international law and advocating instead a more relaxed interpretive approach. Within this vein, other scholars have gone further, arguing that widely ratified multilateral conventions or treaties which have established human rights prohibitions against genocide, torture, and slavery actually form confirmation of customary international law binding upon all states, not just the signatories." (from Baker, 2010, p. 174).

Economic, Social and Cultural Rights can already be seen. In addition to that, I will also pay attention then specifically to presenting relevant points of the Convention on the Elimination of All Forms of Discrimination Against Women and of the conventions related to gender equality from the International Labour Organization.

3.2.1 Introducing the approach to the women's right to work in the ICCPR

The International Bill of Human Rights, composed of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), is the most basic group of international instruments guaranteeing the protection of women and their right to work. The Declaration has a general provision in its preamble reaffirming the people's faith in the equal rights of men and women,⁷ and it also brings up everyone's equal right to work in its Article 23 (United Nations, 1948):

Article 23.

(1) *Everyone* has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) *Everyone*, without any discrimination, has the right to equal pay for equal work.

(3) *Everyone* who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) *Everyone* has the right to form and to join trade unions for the protection of his interests. (emphasis added)

⁷ “Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, (...)” in the Preamble of the United Nations Universal Declaration of Human Rights (1948).

Reading both provisions together, the expression “everyone” that is repeatedly used in Article 23 gives margin to the understanding that it includes all people regardless of sex. This article and the preamble are, however, extremely general provisions, based on the formal concept of equality that dominated the first period of the construction of human rights norms. Thus, there was the need to adopt conventions which would define specific rights and their limitations, facilitating their implementation, and the advent of the ICCPR and the ICESCR was to be the first step in order to solve this problem. The former has, according to paragraph 7 of General Comment 24 (1994):

The object and purpose...to create legally binding standards for Human Rights by defining certain civil and political rights and placing them in a framework of obligations which are legally binding for those States which ratify; and to provide an efficacious supervisory machinery for the obligations undertaken.

Based on these guidelines, the ICCPR goes on to embrace the principle of equality and non-discrimination generally in the following articles (United Nations General Assembly, 1966a):

Article 2.

(1) Each State Party to the present Covenant undertakes to respect and to ensure to *all individuals* within its territory and subject to its jurisdiction the rights recognized in the present Covenant, *without distinction of any kind*, such as race, colour, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status. (emphasis added)

Article 3.

The States Parties to the present Covenant undertake to ensure the *equal right of men and women* to the enjoyment of all civil and political rights set forth in the present Covenant. (emphasis added)

Article 26.

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against

discrimination on any ground such as race, colour, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status.

(emphasis added)

It is important to note that all three articles include sex as one of the characteristics that shall not be raised as reason for discrimination. Moreover, in this context, Article 3 is especially relevant, as it forbids sex discrimination specifically, and it seems to incorporate more positive obligations towards the affected individuals than the other parts of the text (Joseph & Castan, 2013, p. 761). This goes to show how much importance was given to gender equality by the international community at the time, at least in principle and on paper.

Concerning the other relevant topic of this research, the protection of the right to work, although there is a small mention of forced or compulsory labor in its Article 8, paragraph 3 (a), the scope of the ICCPR does not go as far as encompassing it in full. However, that lack of reference is not farfetched, considering that the object of the treaty is civil and political rights and that it leaves the regulation of other basic rights, which include labor, to the ICESCR.

3.2.2 Implementing treaty provisions: a look into the Human Rights Committee, its views and the reporting process

Regarding the ways these treaty provisions have been implemented, the Human Rights Committee (HRC) is the body responsible for promoting state participation within the standards of the ICCPR. Through General Comments and Concluding Observations to state reports, the members of the Committee express their views and suggest ways of improving the application of the treaty. General Comments consist on the interpretation of the content of human rights treaty provisions, covering a wide range of subjects, including the interpretation of specific articles and general guidance of what kind of information should be submitted in State reports (United Nations Office of the High Commissioner for Human Rights, 2018). They also deal with general issues such as the role of national human rights institutions and the rights of minorities.

Additionally, it is important to notice the status, relevance and utility assigned to General Comments, specially by domestic courts. Generally, they have agreed that treaty bodies' findings are relevant and useful in some contexts, regardless of the fact that they do not originate from international courts. Still, states and their courts have been hesitant to conclude that they are obliged to follow treaty body interpretations, be it from more general expressions such as General Comments and Concluding Recommendations, or more specific ones, such as when a treaty body gives it direct opinion on a unique case or law from that state (International Human Rights Law and Practice Committee, 2004, p. 3). In other words, governments have given considerable importance to the views of treaty bodies, while at the same time they tend to not consider them to be formally binding interpretations of the respective treaties. They usually give them some attention, but not effect and implementation (International Human Rights Law and Practice Committee, 2004, p. 5).

There are many states and domestic courts whose attitudes go against this rhetoric, however. Especially when it comes to the executive, but not excluding actions from the judiciary, there are many occasions in which states accept, contest, interact and dialogue with General Comments, considering them as questions of law. This is backed up by an extensive list of examples compiled by the International Human Rights Law and Practice Committee, in their 2004 Berlin Conference Report. It includes cases such as *Residents of Bon Vista Mansions v Southern Metropolitan Local Council*, a South African case, in which the High Court stated that “General Comments have authoritative status under international law” (International Human Rights Law and Practice Committee, 2004, p. 3). Also, a bill of rights adopted in the Australian Capital Territory in 2004 defined international law as including “general comments and views of the United Nations human rights treaty monitoring bodies”, and provided that “international law, and the judgments of international and foreign courts and tribunals, relevant to a human rights may be considered in interpreting the human right” (International Human Rights Law and Practice Committee, 2004, p. 4).

Still, the consensus is that, while national courts have generally not been prepared to accept that General Comments and committee interpretations of treaty provisions are formally binding, most agree that considerable weight must be given to them, especially when it comes to determining the

meaning of rights and the existence of a violation (International Human Rights Law and Practice Committee, 2004, p. 43). It is undeniable that these Comments are adopted and circulated to states parties, being subjected to their scrutiny and interpretation concerning their correctness. Thus, it is possible to argue that, because states parties discuss and accept those statements, because they tend to refer to general comments or recommendations together with case law in their submissions to treaty bodies and to other actors, and because they report on and reply to specific matters listed in these kinds of treaty bodies' findings, states have been clearly giving General Comments and other views political and legal relevance (International Human Rights Law and Practice Committee, 2004, p. 6). The words of the Norwegian Ministry of Foreign Affairs in the Report No. 21 to the Storting (1999-2000) sum up this conclusion well:

“These comments are not legally binding but are of great significance when interpreting the conventions, and may contribute to the development of customary international law”.

Lastly, considering that this work focuses on the Japanese situation, it is interesting to note how the state has been considering treaty bodies' views. In a judgement of June 1996, the Osaka High Court followed the general consensus explained above, by stating that the “general comments” and “views” should be relied upon as supplementary means of interpretation of the ICCPR. And it went even further, by saying that contents of an international convention of a similar kind such as the European Convention on Human Rights and jurisprudence under it can also be treated as such supplementary means of interpretation. However, since then Japanese courts have changed their tone, dismissing arguments based not only in General Comments and other views, but even barely mentioning the international treaties themselves. For example, in judgements of 1999 and 2001, the Tokyo District Court dismissed any arguments based on General Comments 19 and 15, respectively, stating that “the General Comment (19) has no binding force in Japan” and “the General Comment (15) neither represents authoritative interpretation of the ICCPR nor binds the interpretation of the treaty in Japan” (International Human Rights Law and Practice Committee, 2004, pp. 21-22). This

is a worrying position, which I will give more attention to in the following chapter dealing specifically with the Japanese legal situation.

This considered, and following the theme of this research, two of the ICCPR Comments that deal with the concept of equality must be brought up. General Comment No. 18 is relevant because it tackles directly the meaning given to “non-discrimination”, including there the principles of equality before the law and equal protection of the law without any discrimination. Basing itself on the definitions existent in the International Convention on the Elimination of All Forms of Racial Discrimination and in the CEDAW, it sets the term “discrimination” in the ICCPR as something that:

...should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms (United Nations Human Rights Committee, 1989, paragraph 7).

It goes on to reinforce other general requirements and characteristics of the principle, such as the understanding that the enjoyment of rights and freedoms on an equal footing does not mean identical treatment in every instance (United Nations Human Rights Committee, 1989, paragraph 8) and the possibility of affirmative action by the States parties being required in order to promote non-discrimination (United Nations Human Rights Committee, 1989, paragraph 10).

On its turn, General Comment No. 28 deals with equality within the specific topic of gender, and brings to light what should be the updated interpretation of Article 3 of the ICCPR, in order to improve the situation of inequality. Replacing the 20 year old General Comment No. 4, it goes over all the articles of the covenant, highlighting the points that have to do with inequality between women and men, identifying some of the factors affecting the equal enjoyment by women of the rights under the Covenant and spelling out the related information that needs to be informed to the Human Rights Committee (United Nations Human Rights Committee, 2000, paragraph 6). Its text is very extensive

and comprehensive, but some of its paragraphs are worth of mention for their relation to this research. Paragraph 3 of the General Comment No. 28 (2000) is relevant in the sense that it emphasizes the need for states to take positive action towards empowering women, and their obligation to provide information about women's situation and its progress:

(...)The State party must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women. States parties must provide information regarding the actual role of women in society so that the Committee may ascertain what measures, in addition to legislative provisions, have been or should be taken to give effect to these obligations, what progress has been made, what difficulties are encountered and what steps are being taken to overcome them.

This trend of demanding proactive actions from the states continues in paragraph 4, as it focuses on the needs for "all steps necessary" to be taken. Its reference to the existence of discrimination both in the public and the private sector (United Nations Human Rights Committee, 2000, paragraph 4) is also important, especially because most violations against women occur in this latter, which makes it harder to identify and eliminate:

Paragraph 4

States parties are responsible for ensuring the equal enjoyment of rights without any discrimination. Articles 2 and 3 mandate States parties to take all steps necessary, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions, both in the public and the private sector, which impair the equal enjoyment of rights.

Branching away from a strictly legal aspect, paragraph 5 (United Nations Human Rights Committee, 2000) considers the cases where culture and customs might be used as excuses for states to not follow the treaty provisions and maintain a situation of discrimination:

Paragraph 5

Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes. The subordinate role of women in some countries is illustrated by the high incidence of prenatal sex selection and abortion of female fetuses. States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights. States parties should furnish appropriate information on those aspects of tradition, history, cultural practices and religious attitudes which jeopardize, or may jeopardize, compliance with article 3, and indicate what measures they have taken or intend to take to overcome such factors.

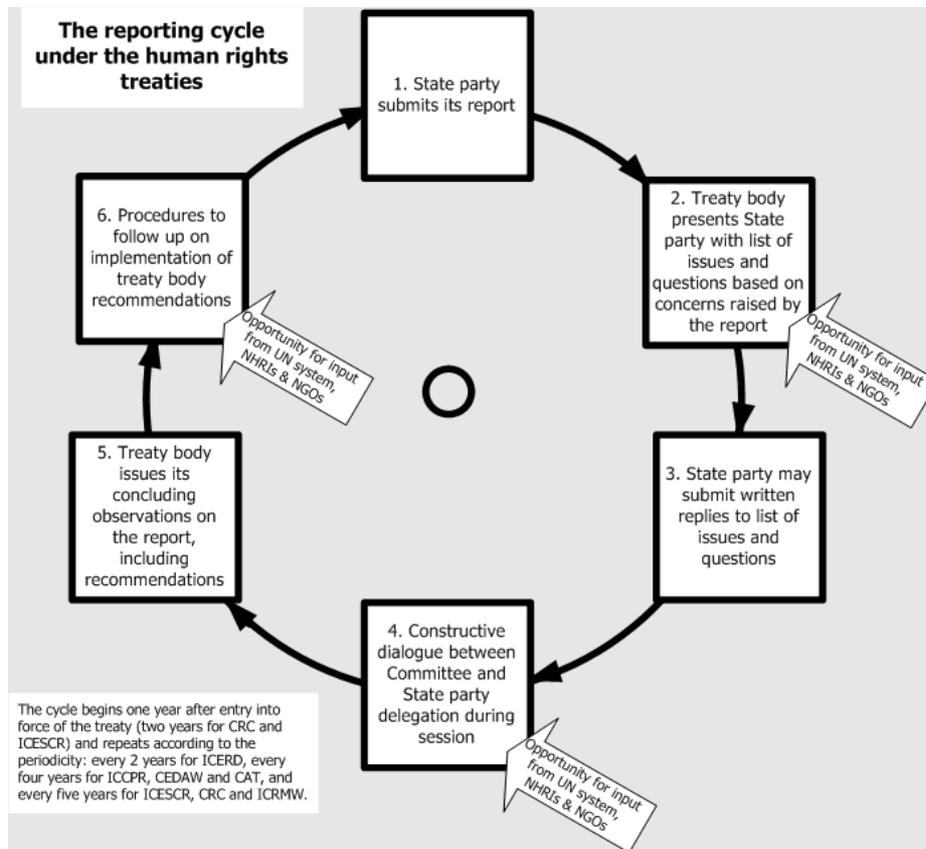
Moving on to the Concluding Observations, according to the text of Article 40 of the ICCPR, they are the result of the examination done annually on the reports periodically submitted by states parties, indicating "the measures they have adopted which give effect to the rights recognized herein (in the Convention) and on the progress made in the enjoyment of those rights" (United Nations General Assembly, 1966a). They contain the concerns and recommendations of the Committee to that specific state party, becoming the guidelines for government representatives to act on areas where improvement is necessary, or to commend the state for any progress in the implementation of ICCPR principles.

Concerning this procedure of state reporting under the ICCPR, it requires member states of the Covenant to submit an initial report detailing progress in the domestic treaty implementation, specifically addressing every Article in its Parts I, II and III, particularly the constitutional and domestic legal framework for the implementation of Covenant rights, and explaining with how is the situation of the access to remedies for any violations of them. Then, they must issue another updated report every three to five years (depending on the treaty body), focusing this time in discussing the problematic provisions identified in the previous Concluding Observations, the progress on enjoyment of ICCPR rights and areas in which there has been significant development since the last submission. The state is supposed to send a delegation to appear before the Human Rights Committee

to discuss the report in a process similar to a dialogue. Afterwards, based on the report, the dialogue, and any other relevant information submitted by groups like national human rights institutions or non-governmental organizations, the above-mentioned concluding observations on each state are created.

The following image, provided by the OHCHR website (United Nations Office of the High Commissioner for Human Rights, 2019a), illustrates this cycle.

Figure 4. Diagram of the reporting cycle



The aim of these reports is to be more than a simple procedure, and instead to provide “an opportunity for an individual State party to conduct a comprehensive review of the measures it has taken to bring its national law and policy into line with the provisions of the treaties to which it is a party” (United Nations Secretariat, 2006, paragraph 8). In other words, it is a system that works to promote state compliance with the treaty principles and provisions. This process of reporting and evaluating can actually be taken as an example of the diffusion of norms through the “spiral model”, since it is a framework that requires continuous interaction between domestic actors and international

organizations towards the goal of reaching a status of *rule-consistent behavior*. Therefore, it should consist of an “honest appraisal of their (state’s) conformity to the treaty obligations” (Smith, 2015, p. 154), and include information from sources other than the official governmental ones.

In this sense, information provided by non-governmental organizations in their particular reports becomes vital for the functioning of human rights implementation, as they are usually disaggregated from the governmental pressure of showing material results of norm compliance, and because they allow for an assessment on the state of civil, social and political rights and considers such assessments from the point of view of subjects that are directly affected by ICCPR principles. This information must be thus valued accordingly, as an effective way of giving the public an opportunity to keep in check the government's implementation of the Covenant.

Furthermore, some formal points concerning the participation of NGOs in the procedure process are worth mentioning. As seen in figure 4, NGOs and other organizations may present their reports after the state parties send in their original reports, and separately from them. This is relevant because it gives the NGOs the chance to interact with the state report, be it to criticize, correct, complement or agree with it. Considering that the majority of state party reports are known for prioritizing information about legislative advances and for overlooking the analysis of practical challenges and measures taken for implementation, independent NGO reports become especially important. They should then focus on presenting good practices and identifying gaps and challenges in the implementation of legislation, programmes and policies. Also, this time difference is positive because it ensures that the Committee has the most up-to-date information at the time of the state review. Needless to say, this information must also be specific, reliable and objective, and preferably sent in as a comprehensive report. If possible, it is preferred that NGOs send their observations as a joint report, by forming a representative coalition of organizations that deal with different topics within the treaty, since this allows for more effective monitoring at national level (Child Rights Connect, 2015).

Concerning the structure and content of the alternative NGO reports, they should contain an introduction with the methodology used, a list of NGOs which contributed to the report, and can

include information about the general situation of the state. It then needs to have a substantive analysis of the state report, which goes section-by-section according to the clusters present in the official reporting guidelines. This part should include information about the extent to which legislation, policies and practice of the state complies with the treaty provisions. Finally, at the end of each section there needs to be conclusions and recommendations, which the Committee might use in its final recommendations (Child Rights Connect, 2015, pp. 9-16). Lastly, it is worth mentioning that the Committee may also answer to individual complaints against countries which have ratified the first Optional Protocol to the treaty, acting directly in implementing treaty provisions that are being violated.

Although these mechanisms may sound fail proof in theory, they are far from being perfect. The whole system suffers with the failure of states parties to submit the reports before their deadline, with inaccurate or incomplete reports when they do get turned in, and with lack of staff and resources. Hard data exemplifies this, since as many as 59 out of 172 state parties (making up for 34.3% of the total) are overdue with their reports. Among these states with pending obligations, 15 countries have initial reports that are still overdue, and if broken down by time overdue, 28 countries have reports overdue less than five years, 11 have them overdue between five and ten years, and 20 have them overdue more than ten years (United Nations Office of the High Commissioner for Human Rights, 2019b). That shows a lack of commitment to the structure of the system, regardless of how it may be justified. Even more worrying is that these problems are not only contained to the HRC. In fact, all major Committees have their activities hindered by it to bigger or lesser extent. To mention the situation of the bodies that will be explained in this research, The Committee on Economic, Social and Cultural Rights has 76 overdue reports out of 169 state parties (44.9%), while the CEDAW Committee has 56 of them out of 189 state parties (29.6%).

Another issue is that the views of the Human Rights Committee (and of all the other Committees) do not have the formal quality of judgements, thus being seen as not legally binding and without the possibility of enforcement. In fact, this binding quality has been rejected by Spanish, Irish, Sri Lankan and many other national courts (European Commission for Democracy through

Law, 2014, paragraph 76). The object of this research, Japan, regardless of the fact that Article 98, paragraph 2 of its Constitution clearly states that “the treaties concluded by Japan and established laws of nations shall be faithfully observed”, also tends to follow this trend of not having the Committee’s views nor the Covenant’s rights actively considered by its courts. Paragraph 6 of the Concluding observations on the sixth periodic report of Japan, which talks about the applicability of the Covenant rights by national courts, exemplifies this issue:

While noting that treaties ratified by the State party have the effect of domestic law, the Committee is concerned at the restricted number of cases in which the rights protected under the Covenant have been applied by courts (art. 2) (United Nations Human Rights Committee, 2014, paragraph 6).

However, as mentioned in the excerpt above, the legal norms accepted by the state parties themselves when they become signatories of a human rights treaty are binding obligations, and thus it can be said that the views of treaty bodies should be seen as more than simple recommendations that can be readily disregarded without a valid cause. Member states not only of the ICCPR, but of all other human rights treaties are under the obligation the views of their respective treaty-based bodies into consideration in good faith (European Commission for Democracy through Law, 2014, paragraph 78). Also, the Human Rights Committee routinely asks states about the use of the Covenant before their national courts, which is an indicative that it believes they are required to use the treaty provisions as domestic law (Quigley, 1993, pp. 1293-1297).

Nevertheless, analyzing what happens in reality, domestic implementation of the Covenant usually gets hindered by how internal institutions of the state interpret and submit to the obligations imposed to them. The case of the USA is very telling in this context. American courts may occasionally refer to the rules codified by the ICCPR, but they have repeatedly held it to be unenforceable domestically and unavailable to litigants as a legal basis for causes of action. This is mostly because the United States made it explicit in its reservations, at the time of ratification, that the Covenant is non-self-executing (Kaye, 2013, pp. 95-96), and thus it may only be enforced in the courts if there is prior domestic legislation implementing it (Vazquez, 1995, pp. 695-696). Regardless

of the considerable academic politically based criticism regarding the validity of that position, as well as of many other reservations, understandings and declarations made by the US and other state parties, the worrying fact is that nations keep mitigating their obligations through such instruments that are clearly incompatible with the object and purpose of its respective human rights treaties (Venetis, 2011, pp. 107-109). This bends the contents of Article 19 (c) of the Vienna Convention on the Law of Treaties, which spells out that:

Article 19

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty; (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or (c) *in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.* (emphasis added)

Thus, reservations that do not match the “objective and purpose of the treaty” are one of the many obstacles to the implementation of its provisions. In the context of human rights treaties, the problem is that even though the meaning of such “objective and purpose” seems to clearly consist of giving legal protection to human rights, this point is actually the subject of different interpretations by state parties, according to their own political, economic and cultural characteristics and interests. These interpretations are usually hard to refute, and thus this clash between theory and reality persists, culminating in the misuse and devaluation of treaty provisions.

In conclusion, in this chapter I took a deeper look into the history of human rights protection and into one of the most basic documents that guarantees such rights, the ICCPR. Keeping my focus in the issues concerning gender equality and discrimination on the grounds of sex, I also attempted to link aspects of the treaty and of its corresponding treaty body to my main object of study, which is Japan. In the next chapter, I will continue this analysis, switching its object to economic and social rights, by delving into the ICESCR, the CEDAW and the ILO.

Chapter 4. The Women's Right to Work in the Context of the ICECSR, the CEDAW and the ILO: Analyzing Gender Equality with a Focus on Economic and Social Rights

Building upon the previously introduced content concerning the history of human rights protection, the creation of the UN Human Rights system, and specially on the guarantee of gender equality in the context of the ICCPR, this chapter will continue paving the background needed for this thesis. This time, however, the focus will be given to the protection of women's rights in regards to economic and social rights, bringing to the forefront specifically the women's right to work, the main topic of this research. Starting with an analysis of the International Covenant on Economic, Social and Cultural Rights (ICESCR) (United Nations General Assembly, 1966b), I will dedicate one part to understanding the singularities of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Then, I will finish by presenting the focused efforts of the ILO to contribute to the end of discrimination in the grounds of sex existent in society as a whole.

4.1 Gender equality and the women's right to work in the ICESCR: Analyzing relevant treaty provisions and treaty bodies' findings

Keeping in mind that many of the considerations made in the last chapter about the ICCPR can be applied to the ICESCR, I move on to its analysis. The treaty aims to make possible the ideal of free human beings enjoying freedom from fear and want, and living enjoying their inherent dignity as human persons. As the focus here is people's economic, social and cultural rights, attention was obviously paid to both the principle of equality and to the right to work. The former is included in Article 2 (2) and Article 3, through which it respectively sets to states parties the following duties:

Article 2

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status. (emphasis added)

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of *men and women* to the enjoyment of all economic, social and cultural rights set forth in the present Covenant. (emphasis added)

As it was in the ICCPR, the treaty openly guarantees the equal protection of rights and their realization regardless of the subject's sex. It also has a separate article specifically focusing on this trait, reinforcing its importance. On its turn, the right to work is contained in the intertwined contents of Article 6 and Article 7. Article 6 presents the right to work itself, as it follows:

Article 6.

1. The States Parties to the present Covenant recognize the right to work, which includes the right of *everyone* to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. (emphasis added)

This is a general provision that is important to bring up because of its use of the expression “everyone”, which includes all sexes, and because it values the capacity of people to choose their own work. Building on this, Article 7 repeats the fact that everyone has the right to the enjoyment of just and favourable the conditions of their chosen work, while being way more specific in recognizing what kinds of characteristics deserve special focus:

Article 7.

The States Parties to the present Covenant recognize the right of *everyone* to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides *all* workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, *in particular women* being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

- (b) Safe and healthy working conditions;
- (c) Equal opportunity for *everyone* to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. (emphasis added)

Moreover, the fact that women are singled out in the article above shows that the member states, when drafting the text, were already aware of the prevalence of discrimination against females in the area of employment. This necessity of guaranteeing the rights of women, and even more specifically of women dealing with motherhood, is also brought up in paragraph 2 of Article 10:

Article 10.

The States Parties to the present Covenant recognize that:

- 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

To make sure these treaty provisions are being followed correctly, the ICESCR (similar to the ICCPR) also has a monitoring committee that makes General Comments, Concluding Observations to state reports, and answers to complaints of states that opted into its Optional Protocol. It is the already mentioned Committee on Economic Social and Cultural Rights (hereinafter CESCR). Although its functions are equal to the ones of the Human Rights Committee, for a long time many commentators were keen on the idea that while civil and political rights were subject to immediate application, economic, social and cultural rights required progressive realization, and thus different implementation measures were needed. However, the CESCR has issued several General Comments aiming to crush that idea, and it has found that states do have a duty to ensure the immediate enjoyment of a minimum level of the rights to food, shelter, health, education and finally, employment (Committee on Economic, Social and Cultural Rights, 1999a, 1999b, 2000, 2003, 2006).

I agree with this position, especially with the considerations that these rights are undoubtedly more concrete and easier to physically measure than civil and political rights.

Other than these General Comments, some others must be mentioned for their connection with the topic of equality and the right to work. General Comment No. 16 (Committee on Economic, Social and Cultural Rights, 2005) starts by setting the definitions of “equality” and “non-discrimination” that should be applied when reading the treaty. From paragraphs 6 to 9, it clarifies that equality between men and women needs to be understood comprehensively, both as *de jure* (or formal) equality and *de facto* (or substantive) equality. In other words, it shows awareness that only creating laws or policies that treat both genders in a neutral manner is not enough to stop inequality, and thus there is the need to pay attention to the effects of these creations, so that they effectively lessen the issues women are faced with. These paragraphs also note that states parties must respect both the principle of equality in the law and of equality before the law (Committee on Economic, Social and Cultural Rights, 2005, paragraphs 6-9).

Concerning the principle of non-discrimination, it is described as “the corollary of the principle of equality” (Committee on Economic, Social and Cultural Rights, 2005, paragraph 10), and discrimination against women is singled out in paragraph 11 as:

“any distinction, exclusion or restriction made on the basis of *sex* which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by *women*, irrespective of their marital status, *on a basis of equality of men and women*, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”. Discrimination on the basis of sex may be based on the differential treatment of women because of their biology, such as refusal to hire women because they could become pregnant; or stereotypical assumptions, such as tracking women into low-level jobs on the assumption that they are unwilling to commit as much time to their work as men. (emphasis added)

It is interesting to observe that both examples given in this paragraph are of cases of discrimination in the workplace, which shows again how relevant the topic is in the context of women's rights.

In addition to these basic definitions, the General Comment differentiates the states parties' duties into general legal obligations and specific legal obligations, these latter which in turn were divided into obligation to protect, respect and to fulfill. Based in these categories, it goes on to detail the interpretation of Article 3 of the ICESCR in relation to each specific right guaranteed in its text, through different examples of its application. The right to work, as protected by Articles 6 and 7, is taken upon paragraphs 23 and 24. Paragraph 23 gives a general example of how the implementation of Article 3, in relation to article 6:

(...) requires inter alia, that in law and in practice, men and women have *equal access* to jobs at all levels and all occupations and that vocational training and guidance programmes, in both the public and private sectors, provide men and women with the skills, information and knowledge necessary for them to benefit *equally* from the right to work. (emphasis added)

Paragraph 24, on the other hand, is way more specific in its exemplification, following the tone of the text of Article 7. It raises various important work-related issues that are born from gender discrimination, going as far as requiring that the state party's government needs to be aware of the levels of compliance by the private sector.

Paragraph 24

Article 3, in relation to article 7 requires, inter alia, that the State party identify and eliminate the underlying causes of pay differentials, such as gender-biased job evaluation or the perception that productivity differences between men and women exist. Furthermore, the State party should monitor compliance by the private sector with national legislation on working conditions through an effectively functioning labour inspectorate. The State party should adopt legislation that prescribes equal consideration in promotion, non-wage

compensation and equal opportunity and support for vocational or professional development in the workplace. Finally, the State party should reduce the constraints faced by men and women in reconciling professional and family responsibilities by promoting adequate policies for childcare and care of dependent family members.

Together with General Comment No. 16, General Comment No. 20 (Committee on Economic, Social and Cultural Rights, 2009) also aims to explain the way non-discrimination, as included in Article 2, paragraph 2, should be understood and applied in conjunction to the rest of the ICESCR. It starts by defining, in paragraph 7, that:

(...) non-discrimination is an immediate and cross-cutting obligation in the Covenant. (...) It is to be noted that discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights. Discrimination also includes incitement to discriminate and harassment. (emphasis added)

This definition is interesting in the sense that it adds incitement to discriminate and harassment to the contents of discrimination, amplifying the concept. The Comment also does a good job in covering various relevant conceptual bases, by mentioning and describing important approaches towards discrimination, such as the differences between formal/substantive discrimination and direct/indirect discrimination, the existence of discrimination in the private sphere and of systemic discrimination (Committee on Economic, Social and Cultural Rights, 2009, paragraphs 8, 10-12). Lastly, it then goes on to break down the different grounds on which this discrimination is forbidden, updating the interpretation of each of them. The prohibition of discrimination in the grounds of sex, which guarantees the rights of women, is explained in paragraph 20:

Paragraph 20

The Covenant guarantees the equal right of men and women to the enjoyment of economic, social and cultural rights. Since the adoption of the Covenant, *the notion of the prohibited ground “sex” has evolved considerably to cover not only physiological characteristics but also the social construction of gender stereotypes, prejudices and expected roles, which have created obstacles to the equal fulfilment of economic, social and cultural rights.* Thus, the refusal to hire a woman, on the ground that she might become pregnant, or the allocation of low-level or part-time jobs to women based on the stereotypical assumption that, for example, they are unwilling to commit as much time to their work as men, constitutes discrimination. Refusal to grant paternity leave may also amount to discrimination against men. (emphasis added)

The most important point of this interpretation is the fact that “sex” is also now understood as including the socially constructed concept of “gender”. This change is valuable for it includes situations that go beyond biological sex and helps build a better society not only for women that do not wish to conform themselves to stereotypical roles, but for all people. It is also under this kind of approach that this thesis uses “sex” and “gender” with the same general meaning, unless it is clearly specified that one or the other is meant specifically. Moreover, it is interesting to note that the examples give in this paragraph are also related to work, showing the impact gender has in these situations.

Furthermore, specifically related to the right to work, the Committee on Economic, Social and Cultural Rights has adopted General Comments No. 18 and 23, which respectively focus on Articles 6 and 7 of the Covenant. General Comment No. 18 (Committee on Economic, Social and Cultural Rights, 2006) presents the interpretation of the article and sets how it should be applied. Since it is a document that delves comprehensively and deeply into the topic of work, including definitions, normative content, state obligations, violations and implementation, this research will limit itself to including mentions only to the main paragraphs that deal with non-discrimination and the right to work for women. Paragraph 12 is relevant, as it details the elements necessary for the full

exercise of the right to work. Its text combines the application of Articles 2, 3 and 6 of the treaty emphasizing the accessibility of the labor market to everyone:

Paragraph 12

The exercise of work in all its forms and at all levels requires the existence of the following interdependent and essential elements, implementation of which will depend on the conditions present in each State party:

(b) Accessibility. The labour market must be open to *everyone* under the jurisdiction of States parties. Accessibility comprises three dimensions: (...)

(i) Under its article 2, paragraph 2, and article 3, the Covenant prohibits any discrimination in access to and maintenance of employment on the grounds of race, colour, *sex*, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, or civil, political, social or other status, which has the intention or effect of impairing or nullifying exercise of the right to work on a basis of equality. (...)(emphasis added)

Here, the prohibition of discrimination on the grounds of sex is included in a broader context that includes and puts on the same level all the other characteristics that should not give origin to discriminatory acts. However, the General Comment also gives more specific attention to women and the right to work (Committee on Economic, Social and Cultural Rights, 2006, paragraph 13):

Paragraph 13

Article 3 of the Covenant prescribes that States parties undertake to “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights”. The Committee underlines the need for a comprehensive system of protection to combat gender discrimination and to ensure equal opportunities and treatment between men and women in relation to their right to work by ensuring equal pay for work of equal value. In particular, pregnancies must not constitute an obstacle to employment and should not constitute justification for

loss of employment. Lastly, emphasis should be placed on the link between the fact that women often have less access to education than men and certain traditional cultures which compromise the opportunities for the employment and advancement of women.

Still, the approach of this General Comment had margin for improvement. This evolution is seen in General Comment No. 23 on the right to just and favorable conditions of work, a fairly recent document which follows the tendency set by its predecessors in giving detailed interpretations of an article's normative content – in this case, Article 7 of the ICESCR – and thus contributing to its full implementation. It innovates in the context of the definition of non-discrimination and equality by explicitly saying that the expression “everyone” used in the treaty refers to workers in all settings, regardless of gender or any other characteristics, in addition to it reinforcing the references to these principles in the texts of Article 2, paragraph 2, Article 3 and Article 7 (Committee on Economic, Social and Cultural Rights, 2016, paragraph 5).

Concerning the specific struggles and rights of women in the labor market, it is present in every part of Article 7 and highlights many different issues: the disadvantaged position of women in the context of equal remuneration (Article 7 (a)); the necessity for special health protection for women in situations related to pregnancy (Article 7 (b)); the requirement that hiring, promotion and termination must not be discriminatory towards any workers, with special mention to women and others, such as workers with disabilities, workers from certain ethnic, national and other minorities, lesbian, gay, bisexual, transgender and intersex workers, older workers and indigenous workers, so that equal opportunity for everyone is guaranteed (Article 7 (c)); and the need for a workplace that provides people of the tools to achieve work-life balance, with special mention to the fact that these measures should not reinforce stereotyped gender roles, such as that men are the ones responsible for the family income and that women should be responsible only for the household (Article 7 (d)). It also makes a point of singling out the right of workers to freedom from all forms of harassment, including sexual harassment, which tends to affect women more (Committee on Economic, Social and Cultural Rights, 2016, paragraph 48).

Lastly, the General Comment No. 23 summarizes perfectly the situation of working women in its paragraph 47 (a), which is worth quoting:

Paragraph 47

The right to just and favourable conditions of work relates to specific workers:

(a) Female workers: Progress on the three key interrelated indicators for gender equality in the context of labour rights — the “glass ceiling”, the “gender pay gap” and the “sticky floor” — remains far from satisfactory. Intersectional discrimination and the absence of a life-cycle approach regarding the needs of women lead to accumulated disadvantages that have a negative impact on the right to just and favourable conditions of work and other rights. Particular attention is needed to address occupational segregation by sex and to achieve equal remuneration for work of equal value, as well as equal opportunity for promotion, including through the introduction of temporary special measures. Any assessment of the “value” of work must avoid gender stereotypes that could undervalue work predominantly performed by women. States parties should take into account the different requirements of male and female workers. For example, specific measures might be necessary to protect the safety and health of pregnant workers in relation to travel or night work. Day-care services in the workplace and flexible working arrangements can promote equal conditions of work in practice. Workers benefiting from gender-specific measures should not be penalized in other areas. States parties must take measures to address traditional gender roles and other structural obstacles that perpetuate gender inequality.

Even though it is, without a doubt, hard to determine violations of and compliance with all these aforementioned rights in general, especially because of the ambiguity in the definition of common expressions such as “the maximum of available resources” and “progressive realization”, usually present in the covenants and in its interpretations, this must not be used as an excuse for non-compliance by states. As an example proving this point, General Comment No. 18, on its paragraph

19, affirms that the Covenant “also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to work, such as the obligation to ‘guarantee’ that it will be exercised ‘without discrimination of any kind’ (Article 2, paragraph 2) and the obligation ‘to take steps’ (Article 2, paragraph 1) towards the full realization of article 6. Such steps must be deliberate, concrete and targeted towards the full realization of the right to work” (Committee on Economic, Social and Cultural Rights, 2006, paragraph 19).

However, regardless of these words, in reality the many obstacles concerning the implementation of Articles 6 and 7 in numerous states keep being a point of concern. Other problems also sprout from the general lack of attention given to economic, social and cultural rights (Alston, 1992, p, 474), and from the fact that the CESCR was established under a resolution of the Economic and Social Council and it thus intrinsically connected to it (Shaw, 2008, p. 309). For example, the vagueness of the principles of the treaty, relative lack of legal texts and decisions related to it, ambivalence of many states in addressing economic, social and cultural rights, comparatively few non-governmental organizations focused on the area and problems with obtaining relevant and precise information can all be cited.

From the treaties presented here and their definition of human rights, equality and non-discrimination, it can be understood that women are entitled to enjoy the same rights and fundamental freedoms as other individuals. Also, as a particularly vulnerable group, they need to have special protection within the international human rights system. Although it seems like it should be clear that women’s rights should be considered an intrinsic part of that system, this has actually required considerable rethinking of the concept of human rights itself and challenges to some cultural, familial and religious institutions (Okin, 1998a, p. 32). No matter how much the expression “gender equality”, understood as “equal rights, responsibilities and opportunities of women and men and girls and boys” (Office of the Special Advisor on Gender Issues and Advancement of Women, 2001), was name-dropped in general human rights treaties, it still did not guarantee that women are entitled to the full and equal enjoyment of all their human rights, without any form of discrimination. There was a need

for more focused protection, a need for creating a treaty that contemplated women as the sole subjects of the rights there contained, and that could contribute to the achievement of gender equality.

4.2 Specific protection for women both in international and domestic societies: the advent of the CEDAW and the right to work in its context

The answer the UN General Assembly found to the extensive gender discrimination that continued to exist in the world regardless of the existence of the International Bill of Human Rights was the creation of the Convention on the Elimination of All Forms of Discrimination against Women of 1979 (CEDAW), together with its Optional Protocol, as the leading UN treaties that deal specifically with discrimination in the area of sex and gender (Cusack & Pusey, 2013, pp. 54-92). As the CEDAW Committee General Comment 28 (2010), paragraph 4 confirms, the objectives aimed for in the document are to give equality of opportunity and treatment to women, adopting a completely gender conscious position. It does not aim simply for a gender-neutral future, or for a formal equality, but for a future that considers gender appropriately and thoroughly when building its legal and social structures. This includes, of course, the equal access to opportunities concerning employment. Article 1 defines the meaning of discrimination for the treaty's purposes:

Article 1

For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The right to work is included in the different fields of human rights and fundamental freedoms that are to be given to women, according to this article. In addition to that, building on this definition, Article 2 spells out the means to eliminate discrimination and guarantee gender equality, listing the obligations the states' parties must carry out if they wish to comply with the CEDAW:

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) *To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;*
- (e) *To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;*
- (f) *To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;*
- (g) To repeal all national penal provisions which constitute discrimination against women. (emphasis added)

Although these means are all equally important, in the context of this study, and thus of the Japanese society, some of them will be taken up with more care in the following chapters. The need to ensure the practical realization of the principle of the equality of men and women, that already is present in the Constitution of Japan, will be found in the background of every analysis, since it is

also the final objective of the research. As ways if guaranteeing such realization, considering the criticisms Japan seems to receive from international organizations more often, there must be focus on the inclusion of sanctions in the parts of the national legislation that are needed and appropriate, on the modification or abolishment of existing laws, regulations, customs and practices which constitute discrimination against women, and on the repealing of all national penal provisions which are also gender discriminatory. Not only when it comes to legislation, Japan also faces issues concerning the effective protection of women by competent national tribunals and other public institutions, especially if you consider the lack of female agents in such environments. Most importantly, since the biggest challenge when talking about the realization of the right to work is the relationship between the public and private sectors, the duty of taking all appropriate measures to eliminate discrimination against women by any person, organization or enterprise must be also kept in mind.

Complementing the general concept and definition, Article 15 of the CEDAW is responsible for giving women equality with men before the law, legal capacity (and the opportunities to exercise that capacity) identical to men in civil matters, equal rights to conclude contracts and to administer property and equal treatment in all stages of procedure in courts and tribunals. It also refers to the impossibility of the creation of “contracts and all other private instruments that are directed at restricting the legal capacity of women”, and to the equality in rights “with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile”.

Furthermore, talking more deeply about rights related to women’s empowerment and their participation in society, Article 5 is the base for protection:

Article 5

States Parties shall take all appropriate measures:

- (a) *To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;*

(b) To ensure that family education includes a proper understanding of maternity as a social function and the *recognition of the common responsibility of men and women in the upbringing and development of their children*, it being understood that the interest of the children is the primordial consideration in all cases.

(emphasis added)

From the article's take on the issue of states raising culture and tradition as reasons for non-compliance, and from the already mentioned feminist criticism towards this attitude, it can be said that this is not an acceptable practice. To the extent that some customs are extremely damaging to women's enjoyment of their rights, they need to be reexamined and adapted according to the evolution in the principles valued by the international society. This adaptation of values can also be applied to basically the whole concept of women's rights, which must not be understood as something that matters only to women anymore. Not only the concept of motherhood, as exemplified in Article 5 (b), but all facets of women's rights and their implementation are crucial for the betterment of society, and thus need to be taken seriously by men and women alike.

Finally, in the context of the protection of the right to work specifically, Article 11 of the CEDAW is the one that addresses the obligation of states to eliminate discrimination against women in employment and occupation (Raday, 2012, p. 281):

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) *The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;*

(c) *The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive*

vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) *The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;*

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) *To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;*

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) *To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;*

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary. (emphasis added)

As it can be seen, its paragraphs 1 and 2 encompass both the need to secure equal employment opportunity for women, as well as to ensure their effective right to work, taking particularly female characteristics such as pregnancy in consideration (Raday, 2012, p. 284). Paragraph 3, on its turn, maintains the whole article relevant even in the passing of time, by ordering the constant review of norm related to it.

Additionally, the article is broad, including many different but intertwined aspects of the concept of “work”. However, this research will focus in the points that are more apparently lacking in the case of Japanese women, considering the cultural and legal situation of the country, as well as the status of its actual implementation of the CEDAW provisions. Thus, more attention will be given to: the right to the same employment opportunities; the right to promotion, job security and all benefits and conditions of service; the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; the prohibition of dismissal or discriminatory attitude on the grounds of pregnancy, maternity leave or marital status; the need to improve the system of parental leave and child-care facilities, together with promoting the idea that family obligations involve both parents, and that work-life balance is a concept that matters for both genders.

It is a fact that these provisions by themselves were not enough to make the international community to uniformly classify women’s rights as human rights, since even after the advent of the CEDAW gender-related abuse kept being a much neglected and challenging field of human rights. However, the Convention did set off this process of global recognition, bringing to the forefront a feminist view towards the human rights concept, that began to show concern for the lives of women all over the world (Bunch, 1990, pp. 486-498). Then, after two decades of continuous work, the complete acceptance of women’s rights as human rights by the international community finally came during the 1990’s, when this message started being spread by the participation of NGOs dealing with the protection of women in the Vienna World Conference on Human Rights of 1993 (Yamashita, 2005, p. 54). The Vienna Declaration and Programme of Action (World Conference on Human

Rights, 1993), the document that was born from the conclusions of the Conference, presents women's rights as "a part of human rights":

Paragraph 18.

The human rights of women and of the girl-child are an *inalienable, integral and indivisible part of universal human rights*. The full and equal participation of women in political, civil, economic, social and cultural life, at the *national, regional and international* levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from *cultural prejudice* and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. (...) (emphasis added)

This paragraph also brings up "cultural prejudice" as something that cannot be used as basis for inflicting gender-based violence, albeit in a more roundabout manner. However, the interpretation of this reference together with paragraph 5 of the Vienna Declaration should have solved all possible confusion concerning the topic, at least in a strictly legal sense:

5. All human rights are universal, indivisible and interdependent and interrelated.

The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, *regardless of their political, economic and cultural systems*, to promote and protect all human rights and fundamental freedoms.

Arguably, human rights are universal, indivisible and interdependent and interrelated, and the duty of states, regardless of their political, economic and cultural systems, is to promote and protect them. Then, since women's rights are a part of these human rights, logically these

characteristics must also be applied to them. Nevertheless, to put an end to any doubt that was left, afterwards this finally was categorically included in paragraph 14 of the Beijing Declaration of 1995: “women’s rights are human rights”.

Regrettably, this process was not without backlash from some nations, which saw the movement for women’s rights specifically – and for human rights in general - as a manifestation of mainly western views, and the fact that it included a clear and strong rejection of “cultural” justifications for violating women’s human rights as a defiance to some aspects of their culture, notably family structures and religious practices. Consequently, regardless of the legal prohibition of such violations, many nations continue to abuse of their right to treaty reservations to protect cultural aspects that are harmful to women and girls, claiming the need of states to respect cultural differences and specially criticizing the hegemony of Western values.

Although to a certain extent this might be a valid point, the international community must emphasize that valuable or neutral cultural aspects are undoubtedly to be safeguarded, while the ones that nullify women’s rights in practice must not be so. As Susan Moller Okin (1999) teaches, when thinking about the protection of group rights for minorities, one must also consider the differences of people that form this group and the situation of the group’s private sphere, because even non-Western minority cultural groups are also deeply gendered and most of women’s rights violations occur outside of the public arena. These cultural practices tend to concentrate in regulating personal, sexual and reproductive life functions, and to expect women to stay in the domestic arena. Thus, carelessly prioritizing such customs over other rights, just because the former are cultural manifestations, means causing a much bigger negative impact in the lives of women and making it possible to perpetuate a situation where women are controlled by men. Furthermore, it must not be forgotten that cultural practices of Western nations themselves have also been changed over time, which shows that this evolution regarding women’s rights is not something that is unilaterally

imposed just by the Western side, but instead gradually constructed as a way to improve women's lives.

This clash between cultural practices and women's rights is sometimes easily identified, such as in cases where religion plays a huge role in the governmental and social institutions and states clearly raise it as an impediment for full treaty compliance. On the other hand, the influence of culture is occasionally implicit in other explanations given. This is the case of the object of this research, Japan. When justifying its persistent issues in women's rights implementation, specially in the context of the right to work, the Japanese government does not openly use arguments based in unchangeable cultural customs, but this does not mean that persistent discriminatory practices have nothing to do with them. Japanese gendered working culture and the societal pressure that women are to stay at home while men are to be the sole breadwinners contribute heavily to inequality. There is thus a need for deep change in this mentality, one that will probably require a level of persuasion from the international society and civil domestic groups. As explained in the context of the "spiral model", in order to make Japan move from the phase of simple commitment to the final one of full compliance, simple socialization might not be enough. Instead, there is the need for a deeper level of dialogue between the state, civil society and international society, in the form of persuasion that modifies the Japanese present predominant understanding about women's rights and equality.

Lastly, in the context of carrying out treaty obligations, the CEDAW also has the CEDAW Committee as the one responsible for its interpretation, as well as the monitoring of states' efforts to protect and promote women's human rights and to comply to its duties. Through its General Recommendations (specially No. 25 and 28, concerning discrimination and equality in the context respectively of temporary special measures and of the Core Obligations of States Parties under Article 2), its Concluding Observations deriving from the process of receiving states' reports on their performance and commenting on them, and its judgments on complaints against countries which have opted into its Optional Protocol, the Committee develops and updates the contents of the convention, and contributes for its domestic implementation. The CEDAW General Recommendations actually differ from the ICCPR and ICESCR ones in two important points: first,

and rather obviously, they focus only in the protection of the rights of women, thus attempting to tackle the guarantee of human rights from a point of view that gave priority to females; second, the Committee does not limit itself to explaining its interpretation of the obligations assumed under the Convention and how should they be applied, but also tackling present issues affecting women and recommending that States parties devote more attention to them. Since the point of compliance to women's rights norms needs special attention, this research will dedicate a following chapter to focusing on the relationship between Japan and the CEDAW, and move on to introducing the work of other relevant UN organization, the International Labour Organization in the next part.

4.3 The International Labour Organization and women's rights: focused efforts for gender equality in the workplace

Differently from the previously explained UN treaties, the International Labour Organization (ILO), established under the Treaty of Versailles in 1919, is the sole UN tripartite organization that brings together governments, employers and workers representatives of 187 member states, to set labour standards, develop policies and devise programmes promoting decent work for all women and men. By tripartite, it means that it gives an equal voice to workers, employers and governments to ensure that the views of the social partners are closely reflected in all its means of action (International Labour Organization, 2019a), which are comprised of the adoption and monitoring of international labor Conventions and Recommendations, dissemination of information and research on employment, social protection and related issues, and cooperation with governments and other actors (Trebilcock, 2014, p. 265).

Regarding Conventions and Recommendations, it is important to know that the former are legally binding international treaties, effective upon ratification by states, while the latter are non-binding guidelines. Also, even when it comes to the binding Conventions, it has been pointed out frequently by authors and the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) that most of their provisions are considered to be non-self-executing. This non-self-executing characteristic can be either blatantly understood, when the conventions

specifically refer to the need for national laws or regulations to be adopted by the government, or more subdued, when they include mentions to a "competent authority" to be responsible for their implementation. In addition to that, provisions that require the adoption of penal sanctions are also usually said to not be self-executing (Leary, 1982, pp. 96-98).

Still, regardless of the way it is expressed, this tendency towards non-self-execution hinders the domestic compliance to the principles promoted by the ILO, thus requiring attention to and probably a deep reevaluation of these documents by States parties' legislative, executive and judiciary powers. Considering that, at least in monist systems, provisions that are of a self-executing character must be directly implemented and can be used as grounds of a judicial action without the need of interference from the legislative or the executive, compliance to them is arguably more easily achieved, which makes them more useful than its non-self-executing counterparts. Moreover, although some states are conscious of this advantage and have been proactive in implementing ILO instruments, such as the case of Argentina finding Article 2 of Convention No. 100 to be self-executing despite it being often considered as a promotional obligation only (Leary, 1982, p. 87), many have not taken this approach. Regrettably, Japan is included in these, and I will tackle this issue more carefully when talking specifically about gender equality in the Japanese context.

Regardless of this approach by the states, the fact is that the ILO is a leading institution in striving for the protection of gender equality and the women's right to work, having given life to many Conventions on the topic. The key ones are the following:

- a) Convention No. 100, which deals with the issue of equal remuneration for men and women workers for work of equal value;
- b) Convention No. 111, which talks about equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof;
- c) Convention No. 156, about the need of each member state to make it an aim of national policy to enable persons with family responsibilities (women and men both) who are engaged or wish to engage in employment to exercise their right to

do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities;

d) Convention No. 183, about the consideration of the circumstances of women workers and the need to provide protection for pregnancy, which are the shared responsibility of government and society (this Convention is a follow-up to and an improvement of related Conventions No. 3 and 103, which are still in force in some countries).

These four Conventions are resources that help in understanding gender gaps and might be used in regional and domestic courts to guarantee women's rights. The examples of this application are many and diverse, going from older cases focusing in the application of Convention No. 100 (Supreme Court of India, *Mackinnon Mackenzie v. Audrey D'Costa and another*, 26 March 1987 [India]; Turin Court of Appeal, *Lanificio Tallia Gruppo v. Ceria Mary*, 29 May 1964 [Italy]), to more recent ones making use of a larger number of Conventions (Constitutional Court, *Actions calling for legal protection (tutela) lodged individually by 33 women v. various individuals and legal entities*, 13 February 2013 [Colombia]).⁸ It is important to note that there are no Japanese positive examples to be added here, as Japan has been continuously criticized for its passiveness in the ratification of Conventions and in the application of their provisions. This criticism is even more relevant considering that Japan is a founding member state of the ILO and has maintained a close relationship with the organization, excluding the period of the Second World War. Presently, it even holds one of the ten permanent government seats on the ILO Governing Body, and has actively collaborated with programs such as the Future of Work Initiative (International Labour Organization, 2019b).

The problem is that Japan is proactive in giving technical and financial support to the organization, as well as engaging in dialogue with it, but does not display the same effort in integrating essential recommendations in its domestic working environment. Specially in the context

⁸ More decisions organized by subject can be found at the International Training Centre of the International Labour Organization. Compendium of court decisions. Retrieved from <http://compendium.itcilo.org/en/decisions-by-subject>.

of gender equality, it has not yet ratified Conventions No. 111 and No. 183, which are part of the core Conventions on the topic. In addition to that, it has not even successfully implemented the instruments it is a part of, Conventions No. 111 and No. 156, since the problems of gender pay gap and lack of work life balance policies for both genders still persist. If it wants to fully contribute for the betterment of labor standards, instead of focusing only in giving help to other nations, Japan must also focus on the improvement of its internal work system.

In conclusion, as an international organization the ILO has not lost track of its objectives, even though it has clearly renewed its labor standards with the passing of time and the changes in the international legal and societal landscape and in the nature of employment relationships taking place in industrialized and developing countries in the last couple of decades (Sankaran, 2002, p. 856). For example, the organization's initiative to adopt labor standards that deal with "atypical" employment, and to provide comparable benefits to those who are engaged in work outside formal employment relationships, indicates a growing concern facing people, many of whom are women, that work in the informal economy (Sankaran, 2002, pp. 868-869).

From this tendency, as well as from previous exposition concerning the other UN instruments for human rights protection, it is easy to reach the conclusion that gender equality and the women's right to work are in the center of international society's attention, and thus are being thoroughly materialized. This is, however, just a comfortable assumption that does not hold up when observing the lacking domestic reality of states, which are the same ones that draft, sign and join these apparently effective human rights treaties and organizations. It is possible to identify a clear compliance gap between the international legal system, international organizations' policies and their implementation. By taking a closer look at this phenomenon, and by analyzing it with the teachings of the "spiral model" as a background, I can begin to understand this persistent substantial problem and suggest methods to attempt to overcome it. In the next chapters, I will take deeper look into this model of norm diffusion, and at how Japan has been trying to implement foreign law into its domestic environment.

Chapter 5. Gender Equality in Japan: The Implementation of Women's Rights through the CEDAW

In the previous chapter, I have introduced the general human rights protection system that the international society has been making use of since the middle of the 20th century, and have pointed out its most important provisions that deal with gender equality, discrimination and the women's right to work. In this context of protecting women's rights, as already noted, the text of the CEDAW and the activities of its Committee deserve special attention. Thus, following up on this past exposition, in this chapter I will take a deeper look at the present situation of Japanese women, and at how Japan has been attempting to implement the rights guaranteed to females by the CEDAW in its domestic legal and social environment.

To the untrained eye, Japan might seem as a state where women's rights are well protected. Indeed, in comparison to other countries that make headlines for their widespread violence and discrimination against women, Japan is on the better side of the spectrum: there are laws against gendered violence, and these crimes are not considered to be religiously and culturally accepted; the Constitution of Japan, in its Article 14, explicitly guarantees equality between men and women, by legislating that "all of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin"; according to different indexes of global gender equality, Japan ranks high and has almost no inequality detected in areas such as access to health and education.⁹

⁹ For example, the United Nations Development Programme – Human Development Reports, on its Gender Development Index, places Japan on 19th place out of 189 countries, with high life expectancy at birth and long expected years of schooling. The World Economic Forum Global Gender Gap Report also gives high scores to Japan in its sub-indexes of educational attainment and health and survival. See "Table 4: Gender Development Index (GDI)", United Nations Development Programme. (2018). Retrieved from <http://hdr.undp.org/en/composite/GDI>; and World Economic Forum. (2018). *The Global Gender Gap Report 2018*, pp. 13-14.

However, one must not be fooled by this apparently positive situation, which is masqueraded by existing protective legislation, signed international treaties and selected categories of human development indexes. Taking a deeper look at Japanese society, things are clearly different than what they seem to be. Japanese women remain very much excluded from participating in decision-making processes, they are underrepresented in governmental offices, and they are less likely to be able to receive promotions and to attain seats at managerial positions within private companies. Moreover, in the public workplace the gender-pay gap, sexual, power and maternity harassment all persist, while in their own private homes, division of housework is unbalanced, falling mostly on female shoulders, and domestic violence cases remain high. These issues have been brought to light and to the media by Japan ranking in 110th place in the Global Gender Gap Report 2018, an annual gender equality index produced by the World Economic Forum (WEF). As it can be seen in figure 5 (World Economic Forum, 2018, p. 139), it stands way below average when looking at the distribution of countries by score.

Figure 5. The general position of Japan



The Report is a renowned document that ranks 149 countries on their progress towards gender parity on a scale from 0, meaning imparity, to 1, meaning parity. It evaluates the States across four fundamental sub-indexes, namely Economic Participation and Opportunity, Educational Attainment, Health and Survival, and Political Empowerment, and through these comparative rankings it aims to create global awareness of the challenges posed by gender gaps and the opportunities created by reducing them (World Economic Forum, 2017, p. VII, 3). Regarding its construction methodology, which has remained stable since 2006, the whole process is divided in four steps (World Economic Forum, 2017, pp. 5-7):

- a) All data is converted to female-to-male ratios, to ensure that the gaps between women and men's attainment levels are captured;

- b) The ratios are truncated at the “equality benchmark” considered to be 1 (except for two health indicators), meaning equal numbers of women and men. Plus, considering that the Index aims to prioritize data concerning gender equality, it uses a one-sided scale, which measures how close women are to reaching parity with men;
- c) Next, it calculates the weighted average of the indicators within each sub-index to create their scores;
- d) Finally, it calculates the final scores, binding them between 1 and 0, or equality and inequality.

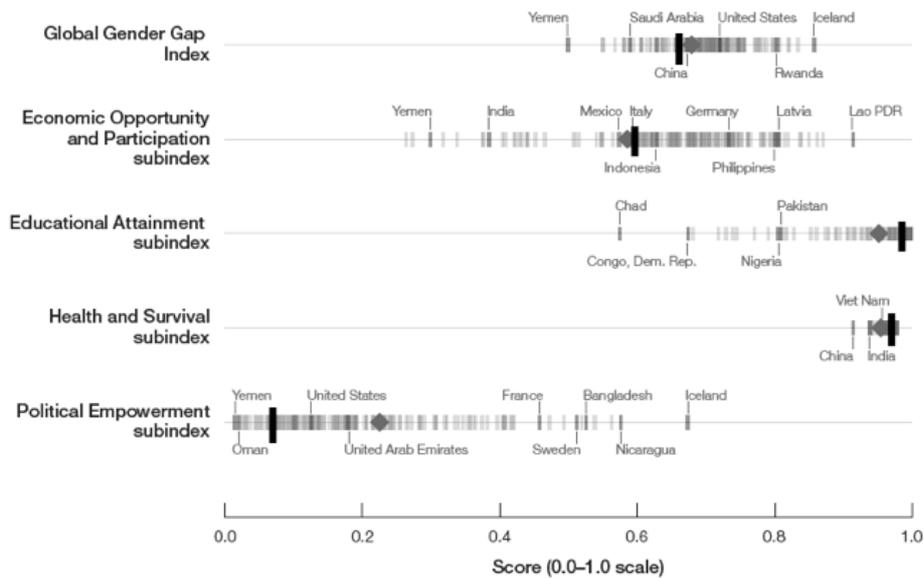
This process is consistent with the three concepts that the Index bases itself in, which are its focus on measuring gaps rather than levels, in capturing gaps in outcome variables rather than gaps in input variables, and in ranking countries according to gender equality rather than women’s empowerment.

With this information in mind, it is interesting to compare how Japan has placed in relation to other countries. A comprehensive visual representation of the Japanese position in relation to many varied nations can be found in figure 6 (World Economic Forum, 2018, p. 12), but it is important to point out some specific comparisons between Japan and states that it has relevant relationships with. First, one cannot talk about Japan without considering where it stands its geographical, political and cultural aspects. Thus, how Japan fares in comparison to other powerful Asian countries that it shares common cultural values with must be observed. For example, South Korea ranks a little lower than it, as no. 115, while China gets a slightly better result and comes in no. 103. It is interest to observe that the three of them can be found in the lower half of the comprehensive ranking including all East Asia and the Pacific countries, regardless of them being considered nations with good and relatively stable economic and political situations, that are usually ranked above other less developed States. This goes to show that a nation’s economic development does not necessarily grows parallel to the betterment of women’s social situation, especially when it comes to political empowerment and economic participation and opportunity.

On the other hand, it must also be noted how Japan performs when compared to Western developed nations that traditionally hold the image of being proactive protectors of human rights and gender equality. In this case, it ranks incredibly lower. Germany and the UK come in the higher places, respectively in no. 14 and no. 15. The US comes lower in no. 51, but even this placement is more than 2 times better than the Japanese one. Also, it becomes more remarkable if the fact that the US is not a State party of the CEDAW, while Japan is. Another relevant point of comparison is to notice where Japan stands within the other G20 nations. Again, it is ranked extremely low, in front only of South Korea, Turkey and Saudi Arabia. Considering that both Turkey and Saudi Arabia are Muslim countries, whose governments and laws receive huge religious influence and consequently tend to limit the possibility of women to grow freely economically, politically and socially, it is even more worrying that states like Korea and Japan, which are not under this religious pressure, rank as worse as them.

Figure 6. The position of Japan in different subcategories

Figure 3: Range of scores, Global Gender Gap Index and subindexes, 2018



Source: Global Gender Gap Index 2018.
 Note: Blue diamonds correspond to population-weighted averages.

The black markings represent the approximate position of Japan. Editing by the author.

Another worrisome point is that the Japanese ranking has mostly been decreasing in the latest years. Although it managed to slightly rise from no. 114 (2017) to no. 110 (2018), before that it had

been in a downward route, sliding down 3 positions when compared to the 2016 results and 13 positions from the 2015 results. That considered, it can be said that there has been no material progress in the gender equality front for at least the past 4 years. This is even worse when considering that, at the same time, the Japanese government has been loud in making its efforts towards the protection of women's rights known. As of 2019, the Abe administration has been pushing gender equality and women's empowerment, specially in the workplace, as one of the key pillars of its "Abenomics". The expression "building a society in which women can shine", coined by Prime Minister Abe in 2013, can actually be found all over the government's official websites and declarations, and policies for the betterment of women's situation, such as increasing women in the workforce, improving the precarious daycare situation and actively appointing women to governmental senior management positions, dubbed as "womenomics", have been continuously put forward (Assmann, 2014, pp. 1-2).

One must wonder why, then, with all these statements being said, and policies being implemented, the situation of Japanese women refuses to improve considerably, at least according to the measurements of the WEF and also to the Japanese official statistics. In this chapter, I will attempt to suggest answers to this question, while keeping my research focused on the realization of the women's rights to work, since the deficiency of its implementation is closely related to the gender equality gaps Japan seems to have the biggest difficulty in bridging: women's lack of economic participation, empowerment and opportunities. Thus, I need to start by providing an overview of the relationship between Japan and the concept of gender equality, brought to light specially after the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter, CEDAW). Through this analysis, I shall identify what are the main problems recognized in the past Japanese state reports and the following Concluding Observations, concentrating my efforts in the latest combined seventh and eighth periodic reports. I will also include relevant information concerning the Japanese domestic legislation on the topic of the right to work and on the state's efforts towards the implementation of international women's rights provisions. Lastly, as a

complementary point related to the matter of labour, I will touch upon the application of ILO Conventions related to gender equality in the Japanese context.

5.1 Delving deeper into the CEDAW: Basic concepts and problems with implementation

The CEDAW, created in 1979, together with its Optional Protocol of 1999, is one of the leading United Nations (hereinafter the UN) human rights treaties, dealing specifically with discrimination concerning sex and gender. It can be said that it is the answer of the UN General Assembly to the extensive gender discrimination that continued to exist in the world even after the adoption of the treaties that compose the International Bill of Human Rights. The organ responsible for its interpretation, which is done directly by the adoption of General Recommendations, as well as for the monitoring of states' efforts to protect and promote women's human rights, which is done through the reporting procedure, is the CEDAW Committee (hereinafter also called the Committee). These activities have a direct influence on how effective a tool the CEDAW is for advancing women's rights, collectively and individually (Cusack & Pusey, 2013, pp. 54-92).

Concerning its objective, the CEDAW aims to eliminate all forms of discrimination against women so that they can enjoy their human rights fully, and have equal access to opportunities in all areas, including, but not limited to, political and public life, health, education and employment. In this sense, paragraphs 4 and 5 of General Recommendation No. 28 (Committee on the Elimination of Discrimination Against Women, 2010) are extremely relevant as recent and updated interpretations of the treaty's objectives. Paragraph 4 makes explicit that the focus of the document utilizes a view of gender equality that prioritizes issues that women tend to face, so that they can attain equality of opportunity and treatment.

Paragraph 4

The objective of the Convention is the elimination of all forms of *discrimination against women on the basis of sex*. It guarantees *women* the equal recognition, enjoyment and exercise of all human rights and fundamental freedoms in the

political, economic, social, cultural, civil, domestic or any other field, irrespective of their marital status, and on a basis of equality with men.

The underlined parts illustrate the female focus of the Convention. Furthermore, the meaning of this “female” focus is set by Paragraph 5, as it expands the understanding of the work “sex” used by the CEDAW.

Paragraph 5

Although the Convention only refers to sex-based discrimination, interpreting article 1 together with articles 2 (f) and 5 (a) indicates that the Convention covers gender-based discrimination against women. The term “sex” here refers to biological differences between men and women. The term “gender” refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community. The application of the Convention to gender-based discrimination is made clear by the definition of discrimination contained in article 1. (...) (emphasis added)

The paragraph is clear when it affirms that any discrimination against “women” or “females” is supposed include not only discriminatory actions based on biological aspects, but also the ones based on socially constructed gender roles and prejudices. To reach that conclusion, it explains that the interpretation of the definition of the term “discrimination against women” present in Article 1 of the CEDAW must not be restricted, but instead it must be built on the meaning of Articles 2 (f) and 5 (a). In other words, when Article 1 says that the “term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex”, the expression “sex” is supposed to be read together with the following provisions:

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, *customs and practices* which constitute discrimination against women;

Article 5

States Parties shall take all appropriate measures:

(a) *To modify the social and cultural patterns of conduct* of men and women, with a view to achieving the elimination of *prejudices and customary and all other practices* which are based on the idea of the inferiority or the superiority of either of the sexes or on *stereotyped roles* for men and women; (emphasis added)

Both articles mention social and cultural practices, prejudices and customs, and stereotyped roles, which allowed the Committee to conclude that the word “sex” in the context of the CEDAW also includes the meaning of gender. From this definition, the importance of the work of the Committee can be witnessed first-hand, as it is the organ that breathes life into the words of the Convention, and is responsible for making sure that it is always evolving together with the values of the international society. It also means that there is another legal document taking the same approach concerning the definition of “sex” and “gender” that I do on this thesis.

Furthermore, in the context of this research, Article 11 of the CEDAW¹⁰ exemplifies very well the focus of the Covenant in the rights of women, by making the scope of the right to work to include specifically the requirement of the elimination of discrimination against females, instead of the common gender-neutral prohibition of sex discrimination. The expression “discrimination against women” is present in its paragraphs 1 and 2, and this latter also includes protection

¹⁰ Full text of Article 11 can be found in Chapter 4.

concerning maternity and pregnancy, which are situations characteristic of women. This interpretation can be applied to the whole document, and thus it may be said that it doesn't aim simply for a gender-neutral future, but for a future that considers gender appropriately and thoroughly when building its legal and social structures.

In addition to that, and in consonance with the recent interpretations of the ICCPR and the ICESCR, the way the Committee interprets the range of equality and discrimination included in the CEDAW nowadays contains the application of formal and substantive concepts of equality, covering everything from the elimination of direct and indirect discrimination to structural discrimination and gender stereotyping, including mentions to the existence of intersectional discrimination.¹¹ Attention is constantly brought to the need of tackling issues not only on the public, but also in the private sphere, and that both actions and omissions from states configure a breach of their obligations towards women (Committee on the Elimination of Discrimination against Women, 2010, paragraphs 10, 13, 16, 24).

In theory, the CEDAW is supposed to be covering all its bases in the fight for guaranteeing women's human rights. However, as already mentioned, the Convention's application is not without problems. Even with the broad and comprehensive interpretation given to its text internationally, domestically the realization of formal and substantial equality remains incomplete, as a high number of state parties still haven't reached a satisfactory level of protection of women's rights. This lack of implementation is even more apparent when it comes to the prohibition of discrimination in the right to work and other economic rights, as can be apprehended from the existence of a bigger and more

¹¹ According to paragraph 18 of the CEDAW Committee General Recommendation No. 28 (2010), intersectionality in the context of discrimination of women means that “discrimination based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity” and thus it “may affect women belonging to such groups to a different degree or in different ways to men”. This kind of discrimination must also be prohibited, as it is highly likely to bring an even stronger negative impact on women.

varied body of jurisprudence concerning issues like reproductive health and gender-based violence (Cusack & Pusey, 2013, p. 83), in comparison to cases of blatant discrimination in the workplace, for example.

The key reason for this difference is in the way the Committee itself applies the rights to equality and to non-discrimination in material cases, making use of weaker or stronger gender analysis. There is undoubtedly a more carefully constructed, robust and consistent gender analysis when interpreting such rights in cases that focus on specific health needs of women, or in cases that concern socially sanctioned gendered violence against women. On the other hand, when it comes to cases dealing with civil, political or economic rights of women, this gender analysis becomes looser and less consistent, which results in the Committee as a whole failing to guarantee their rights many times (Cusack & Pusey, 2013, p. 84). Intrinsically related to this phenomenon is the fact that the focus of the majority and the most widespread part of the feminist legal and international relations scholars' work is on reproductive health and violence related violations of rights. An example of this situation is the *Nguyen v Netherlands* case, in which dissenting opinions considered the implications that a gendered division of labor and the disproportionate effect of disadvantageous part-time conditions have specifically on women, but this was not enough to raise a positive conclusion from the Committee (Cusack & Pusey, 2013, p. 85). Thus, even within the work of the Committee problems can be found, and this research aims to take one step closer to solving them, by strengthening the gender analysis in the context of the right to work and its implementation.

Another set-back to the CEDAW is the fact that the effects of its Optional Protocol, which permits individuals to have the chance of attaining their rights through a communications procedure, depends on the willingness of states to ratify that protocol. From the consideration of these two problems, I realize that, at the same time that the protection given by the CEDAW can be considered more well focused, pro-active and comprehensive than other treaties, this also ended up becoming an impediment to its realization, for it sometimes causes confusion even within the Committee and also exacerbates the already lengthy discussions between state parties when it comes to the treaty's content and how to implement it.

Moreover, this broader protection is also the reason many signatory states make stricter reservations to the CEDAW articles, especially ones that are related to the duty given to governments of improving the situation of discrimination within cultural, familial and religious spheres. A reservation may be defined as a statement that “purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State” (United Nations, 1969, Article 2). It is made when ratifying a treaty and can be withdrawn in a later date. They are a common occurrence when it comes to human rights treaties, with the ICCPR having 66 out of its 170 state parties to make some kind of reservation or declaration upon ratification, and the ICESCR having 51 out of its 167 state parties doing so. The CEDAW regrettably also has been subject to a large amount of them, with 77 out of 189 state parties having made reservations upon ratification. However, it should be noted that, in comparison to other treaties, more reservations to the CEDAW have been modified or removed (Keller, 2014, p. 311). While 16 of its states parties have removed these impediments, only 3 of the ICCPR and 5 of the ICESCR have done so. Furthermore, reservations are legally permitted by the text of Article 28 of the CEDAW, as long as they are not considered to be incompatible with the object and purpose of the Convention. Thus, considering that the biggest chunk of reservations is done to Article 29, that deals with the procedural topic of dispute resolution and specifically allows States to enter a “opt-out” kind of reservation, not much discussion is held regarding them. China is one of the countries that has made a reservation in that sense.

Regardless of these easy to overlook reservations, the problem here is the persistence of reservations to materially relevant, core articles of the Convention. Such reservations attempt to base and justify themselves in the fact that national law, tradition, religion or culture are not congruent with Convention principles. For the CEDAW, the “worst offenders” in this sense are the reservations to Article 2 and Article 16. Article 2,¹² by spelling out that the “states parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women”, and by listing up various duties these states must

¹² The full text of the CEDAW Article 2 can be found in Chapter 4.

undertake, represents the whole meaning of the CEDAW. Article 16 is also a core provision of the treaty, since it protects women's rights on a basis of equality of men and women in the realm of marriage and family relations:

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Both articles are not simple procedural provisions. They are core parts of the CEDAW that guarantee equality to women and forbid discrimination against them in all forms, and thus should not be target of reservations. To make reservations to articles like these means to disregard the “soul” of the treaty. Still, examples of the states that have made these kinds of reservations are varied, including South Korea and the UK.¹³ Reservations to these two articles have been explicitly called impermissible by the Committee, which has made clear that they would not allow a state party to avoid their implementation and has repeatedly asked states to reconsider these and many other self-imposed limitations. It does so through its statement on reservations (Committee on the Elimination of Discrimination Against Women, 1998, pp. 47-50) and its General Recommendations No. 4 (1987), No. 20 (1992) and No. 28 (2010). General Recommendations No. 4 and No. 20 are concise and deal specifically with the topic of reservations. The former expressed “concern in relation to the significant number of reservations that appeared to be incompatible with the object and purpose of the Convention”, and encourages the states parties to reconsider them. The latter, in its second paragraph, recommends that states parties should:

- (a) Raise the question of the validity and the legal effect of reservations to the Convention in the context of reservations to other human rights treaties;
- (b) Reconsider such reservations with a view to strengthening the implementation of all human rights treaties;

¹³ As a side note, even though Japan has not made any reservations to the Convention, and thus should have even less excuses for its non-compliance, it maintains legislation and customs that go against it, such as the Civil Code prohibition of women to remarry within 100 days of their divorce date, and the custom of women being the spouse that should change their name after marriage.

(c) Consider introducing a procedure on reservations to the Convention comparable with that of other human rights treaties.

In addition to these more general provisions, the General Comment No. 28, in its paragraph 41, brings up the problem of reservations specifically to Article 2, which it considers “to be the very essence of the obligations of States parties under the Convention”. Thus, the Committee judges that such reservations should be considered, at least in principle, “incompatible with the object and purpose of the Convention” and should not be permitted. Even in the cases where states parties attempt to justify the need for these reservations, they should inform the Committee of how they influence on the implementation of the CEDAW, and should always strive to withdraw them. Adding to this pressure, state parties to the Convention may also challenge others’ reservations through their observations, which could be seen a mechanism of socialization to improve domestic implementation.

It may be said that if a state would follow these guidelines set by the Committee, it would transmit the message that they are determined to remove the hurdles to women's full equality and are committed to ensuring that women are able to participate fully in all aspects of public and private life, contributing immensely to achieve both formal and substantive compliance to the Convention (UN Women, 2019). However, these reservations do persist in great number, and this culminates in the clear contradiction of having a treaty created with the aim of eliminating discrimination, but in truth still allowing member countries to prioritize customs and policies that are obviously harming to women, to the point of mitigating even the most basic and relevant content of the CEDAW. To make matters worse, even the states that have not openly made reservations, such as Japan, still avoid following some of the provisions and end up not reaching satisfactory treaty compliance. Thus, the blame for this situation cannot be pinned in only one factor. I suggest that this lack of implementation is arguably the result of a combination of issues that start in the way the international human rights system dialogues with states, and that culminate in the way these states allow women to suffer domestically with inequality and discrimination instead of adapting themselves to the requirements of human rights principles.

In conclusion, in this part I presented the basic international legal background on the structure of the CEDAW and on how it deals with equality and non-discrimination. Based on this, on the next part I take a step further and apply this general information to the specific case of Japan, in an attempt to understand the circumstances surrounding the country's deficiency on women's rights implementation.

5.2 The relationship between CEDAW and Japan: understanding a three-decade long interaction

In this part, I will introduce general information concerning how the Japanese executive, legislative and judiciary have reacted to the advent of the CEDAW, in order to understand the relationship built between the state and the Convention over the past decades. The treaty was signed and ratified by Japan respectively in 1980 and 1985, and the country was among the ones that had voted for the CEDAW's adoption in 1979, which shows an apparent interest and proactivity of the state towards becoming a guarantor of women's rights. To be effective, however, this attitude taken on the international stage then needed to be introduced to the civil society, translated into domestic laws and policies, and applied by national courts. By looking into the developments made by Japan under the guidance of the CEDAW Committee and of the international community, this work will attempt to clarify the background that culminated in the present Japanese situation.

5.2.1 Japan's incorporation of the CEDAW and the insufficiency of its application by the judiciary

As an instrument of international law, the way the CEDAW is applied domestically by its signatory states varies according to their legal specificities. Thus, some fundamental information on how Japan incorporates international human rights treaties is warranted here. According to the Japanese Constitution in its Article 98 (2), Japan is of monist legal tradition, and thus self-executing treaties ratified by the Cabinet and promulgated in the official gazette have automatic legal binding force and shall be faithfully observed, prevailing even over statutes and inconsistent domestic law (Hayashi, 2013, p. 343). On the other hand, the treaties that are not considered as self-executing

require legislative or administrative action before becoming part of the national legal system (Goodman, 2008, pp. 170-172). Two issues must be raised here.

First, this theoretical monist approach does not translate into reality, as Japan technically supports this “internationalism” but still insists in applying only domestic laws to domestic matters, closing itself off (Goodman, 2008, pp. 173). Related to this tendency, the second and most important point is that it is crucial to determine whether treaty provisions are considered self-executing or not for Japan. The general opinion of Japanese scholars is that treaties are self-executing, but that statement is met with many contradicting opinions, both from government officials and academics themselves, and is promptly disregarded in courts.¹⁴ Moreover, Japan adds to this already confusing concept the idea of direct applicability, which requires a treaty to specifically require that its terms take effect immediately. If its terms are only directional and take form over time, it is said to be a treaty of progressive realization (Goodman, 2008, p. 173). Thus, a treaty could even be considered self-executing, but still not directly applicable, which is a practical escape route for the Japanese government to justify any action that might be criticized by the international community.

For Japan, even though it has not been explicitly said so, it is possible to conclude that the CEDAW fits in this definition of non-direct applicable treaties. The government has taken the position that it is a treaty of “progressive character”, and thus does not prevail over domestic law or must be obligatorily applied in courts (Goodman, 2008, p. 174). In fact, CEDAW provisions have been invoked by plaintiffs before Japanese courts several times, including in labor law cases, but these courts have not been very receptive of the arguments raised (Conforti & Francioni, 1997, pp. 252-253).¹⁵ In addition to that, even though it appears eager to follow global trends and to join the

¹⁴ The inconsistent views of the Japanese government towards the nature of the ICCPR illustrate this point, according to Conforti, B. & Francioni, F. (Eds.). (1997). *Enforcing international human rights in domestic courts*. The Netherlands: Martinus Nijhoff Publishers, pp. 239-246.

¹⁵ The authors also cite as examples of such disregard for the arguments using the CEDAW the Judgement of 4 July 1990, Tokyo District Court, (case number Showa 55(WA)1866), and the Judgement of 4 December 1986, Tokyo District Court, (case number Showa 53 (WA) 587). In addition to these, the more recent Konami

international discussion on the protection of women's rights, Japan is still adamant on disagreeing to give individuals access to international individual complaint mechanisms, and thus it has refused to sign the Optional Protocol to the CEDAW, like it did (and still does) with all other UN human rights treaties protocols of similar content (Hayashi, 2013, p. 342). With these attitudes, Japan has been quite successful in disassociating its national judiciary environment from international influence.

In the same sense, when it comes to Japanese courts, they have been shying away from the application of the ILO Conventions that deal with gender quality, and have been even accused of not observing them. The report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) that was set up to examine the representation alleging non-observance by Japan of the Equal Remuneration Convention (No. 100), published in 2011 (International Labour Office, 2011), is a perfect illustration of how this lack of action even reached higher levels within the ILO. Further criticism is warranted from the fact that Japan has ratified only Conventions No. 100 and No. 156 out of the key ones, and that there are many observations made by employers and worker's organizations pending a response from the government, CEACR comments still under examination, and requested reports and replies to CEACR comments still due in the following years.

The lack of proactive consideration of international instruments by Japanese courts, specially of the CEDAW and its principles, has been continuously criticized both by national and international voices. Because this theme is extremely broad, the ways the CEDAW Committee, as well as Japanese judges, scholars and NGOs have dealt with this issue will be brought up again in many other instances throughout this work.

5.2.2 Japanese attempts of introducing the CEDAW provisions domestically through its legislation

Digital Entertainment Case (Rodo Hanrei. (2011). Tokyo High Court. Judgement of December 27, issue n. 1042, p. 15.), in which the court also promptly dismissed the plaintiff's argument that included the CEDAW and its provisions, can be brought up.

The many problems concerning the deficiency in the implementation of the CEDAW through the judiciary needed – and still need - to be addressed. In the aforementioned context of reluctance of Japanese courts to apply international norms in their judgements, the logical development to improve the implementation of the CEDAW within Japan's jurisdiction would be for the state to create new domestic laws and to modify already existing provisions, all based on the international women's rights principles protected by the CEDAW and the international community. This approach gave and continues to give origin to sparse changes made to discriminatory norms existent in the Japanese Civil and Criminal Law throughout the more than 30 years since the adoption of the Convention. Some of them were very relevant, such as the change in Japan's Nationality Act, which in 1984 granted Japanese nationality to children of Japanese women and foreign fathers, and the much necessary reform given in 2017 to the definition and punishment of the crime of rape presented in the Criminal Code. On the other hand, many legal modifications meant to bring gender equality were incomplete or virtually useless, such as the problems brought by the maintenance of a period of prohibition of remarriage required solely for women or by the fact that the apparently non-discriminatory requirement for Japanese couples to share one surname actually means that 96% of women end up giving up their last name (Rich, 2016).

In addition to these changes, the adoption of the CEDAW in Japan kick started a considerable revolution in the field of the women's right to work. In an attempt to comply with Article 11 of the CEDAW and to bring the discussion about gender equality to the realm of labor law, the Japanese government created in 1985 the Equal Employment Opportunity Law (hereinafter, EEOL). Specially after its two revisions, in 1997 and 2006, the EEOL can be considered the main provision for the protection of women in the workplace. Other relevant laws that have been guiding the path towards non-discrimination within Japanese society are the 1999 Basic Act for a Gender-Equal Society, which focuses on the importance of gender equality and of sharing responsibilities between men and women in order to create a society that thrives with equal participation of both sexes, and the Basic Plan for Gender Equality, which tries to solve the problem of the lack of female empowerment and the small rates of their participation in roles that require decision making, such as faculty and

leadership positions. However, the positive effects of these legal instruments are at least questionable, when one considers that regardless of their promulgation the actual number of women in positions of power remains low, and that they still must face various hurdles in their workplace.

Even with all the setbacks that still remain, it can be said that some of the most important changes brought by the CEDAW to the Japanese society were indeed materialized through legislation. Especially when it comes to labor rights and empowerment policies, the Japanese legislative has been slowly taking action and attempting to improve its laws. Thus, in order to give this topic all the attention it needs, this work will dedicate its Chapter 7 to explaining specifically about these laws, with special focus on the EEOL, and on how the civil society has welcomed and criticized them.

5.2.3 Dialogues between the Japanese government and the CEDAW Committee: The importance of the periodic report system

In this context of persistent gender-based discrimination within Japan, a tool that has been fundamental to address the roots of inequality and the legislation and policies that need to be amended is the country report system of the CEDAW. Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice, and under its Article 18, they also have the duty to submit national reports, at least every four years, clarifying the measures they have taken to comply with their treaty obligations. Concerning the details of the procedure, the CEDAW Committee receives the country reports and holds a meeting with state parties in public. There is input also from NGOs and the civil society, and the Committee may make questions and ask for clarifications, making the analysis of the documents similar to a conversation, with multiple contributors. The review of a state report ends with the release of Concluding Observations, in which the Committee makes specific recommendations to the state concerned, and initiates a follow up procedure, in which it requests the state to provide information in its next periodic report on how it has been implementing the recommendations and to submit additional information on pressing issues (United Nations Office of the High Commissioner for Human Rights, 2019c). From 1985 until now, Japan has experienced such constructive dialogues with the CEDAW Committee five times, with its

first report being evaluated in 1988, its second and third ones in 1994, the fourth and fifth ones in 2003, the sixth one in 2009 and most recently, the seventh and eight ones in 2016.

In these two latest reports, presented in 2014, the Japanese national government, through dialogues with citizens, NGOs and local governments, and hearings with intellectuals and related ministries and agencies, identified advances in ways of solving persistent legal and social problems that have been pointed out by the CEDAW Committee in the previous reports. Regarding progress made on the policies related to gender equality, the report brought up the enactment of the aforementioned 1999 Basic Act for a Gender-Equal Society and the efforts based on the Basic Plan for Gender Equality, explaining that this latter sets the basic direction of governmental policies and specific measures to be adopted to foster gender equality-related measures in a comprehensive and planned manner based on the Basic Act. However, as it was already established, such efforts have until now only reached incomplete and unsatisfactory results, especially when it comes to fulfilling the “30% by 2020” target goal (meaning the objective of increasing the share of women in leadership positions to at least 30% by 2020 in all fields in society) set by the government, which has culminated in the need for continuous reforms of the Basic Plan. Now on its fourth formulation, the most recent version of the plan, put into practice in 2016, focuses on the improvement of the following four items (Government of Japan, 2016, p. 3):

- to reform labor practices that are based on male-oriented and fixed working styles, since for women to contribute actively to the workplace and enjoy fulfilling working lives, it is key to ensure that they can choose from a variety of flexible working styles;
- to foster measures to increase the recruitment and promotion of women and develop female human resources who will be in managerial positions in the future with an eye to expanding women’s participation in all fields of society;
- to establish an environment in which women can live with peace of mind by giving careful consideration and support to women faced with difficult situations;
- and to enhance measures to eliminate violence against women.

As it can be seen, the Basic Plan has attempted to prioritize the guarantee of women's rights in the workplace, female empowerment and the expansion of their participation in all fields of society. Furthermore, in addition to the Basic Plan, other policies have been added to the Japanese roster of measures to "build a society where women can shine" and to change the persistent situation of inequality. The 2018 Intensive Policy to Accelerate the Empowerment of Women, which is a yearly compilation of the government's priority measures, included "empowerment" and "full participation" in its basic topics, engaging with the concept from various points of view, such as economy, career, safety and security (Gender Equality Bureau Cabinet Office, 2019c, pp. 26-27).

In the same empowerment context, but focusing on the right to work, the 2016 Act on Promotion of Women's Participation and Advancement in the Workplace emphasizes the fact that it is increasingly important that women are able to pursue a work life of their own volition, one that they can fully show their capabilities. For that, this temporary 10-year act bases itself in providing work-related opportunities to women (all while considering the impact that traditional practices and gender roles have in women's lives), in making sure that work-life balance is being guaranteed and in that women have their individual will respected. It has worked in evaluating the efforts of companies to provide a less discriminatory working environment for women, certifying them publicly and making databases available (Gender Equality Bureau Cabinet Office, 2019c, pp. 28-29). However, this creates a focus on having as enforcement measures only the feeble awarding of certifications, the awarding of extra points in situations of evaluation for public procurement and the appeal to the idea that Japanese companies prefer to avoid being publicly shamed, the same way that other Japanese law that deals with women's rights, like the Equal Employment Opportunity Law (EEO), tends to do. Instead of contributing for the improvement of an inherently discriminatory situation, it ends up giving companies opportunities for non-compliance, and thus this enforcement method, or better said, lack of thereof, has been constantly criticized as insufficient to bring change.¹⁶

¹⁶ This work will tackle this issue more thoroughly in Chapter 6, when talking specifically about the EEO.

All these laws and policies have been developed and managed by the Japanese government through the Council for Gender Equality, an essential part of the Framework for Promotion of Gender Equality.¹⁷ Existing under this same name since 1994, the new Council for Gender Equality came to life in 2001, as a result of the administrative reform the central government went through. It expanded the functions of the previous Council, which was more of an advisory body, and became the organ responsible for monitoring the implementation of gender-related policies and for studying their impact on society. Furthermore, not only it has a direct connection with the Gender Equality Bureau of the Cabinet Office, which is the responsible for creating and coordinating gender equality policies, but now it also has a bigger involvement with other related ministries too, since it is formed by both intellectuals and cabinet ministers (Government of Japan, 2003, p. 1).

As it can be seen, at least on theory the Japanese government has been creating a national machinery for the guarantee of women's rights and had been giving special attention to the promotion of women's empowerment and active participation in society, emphasizing that the "expansion of women's participation in policy decision-making processes is an urgent issue in Japan, especially in the fields of politics and the economy" (Government of Japan, 2014, paragraph 228). These two are not the only fields that concern should be openly given to, though. When it comes to education, the reports have shown that the biggest issue is the lower number of women advancing to higher education institutions, and the unbalanced proportion of men and women depending on specific subjects. While women occupy the majority of seats in subjects like home economics, arts, humanities and education, their proportion is low in social sciences, agriculture, science, and engineering. Furthermore, this trend amongst female students repeats itself in regards to female educators. For example, junior colleges have around 50% of women in their teaching staff, at the same time that universities have only 21%. Colleges of technology, in an even more worrisome figure,

¹⁷ A map of the whole framework can be found at Gender Equality Bureau Cabinet Office. (October 16, 2019c). Women and Men in Japan 2019. Retrieved from http://www.gender.go.jp/english_contents/pr_act/pub/pamphlet/women-and-men19/pdf/3-1.pdf

have merely 7.7%. Even though it is true that this difference is overall on the decrease, more efforts are necessary to accelerate this process (Government of Japan, 2014, paragraphs 263-286).

The situation concerning women's employment and their empowerment through work has problems very similar to the ones concerning their public participation in positions of power in areas other than labor. In a society in which the work culture is centered on men, Japanese working women struggle to reach the same level of relevance given to their male counterparts. The Japanese report attempts to soften this issue, and it focuses on how the number of women in the labor force has been on the rise, in general and for women that are married and have children (Government of Japan, 2014, paragraphs 17-18, 21), and how the existence of a dual career ladder system is not a discriminatory practice in itself. The text of paragraph 293 (Government of Japan, 2014) is exemplificative of this last point.

Paragraph 293

Such systems as the dual career ladder system are not problematic under the Equal Employment Opportunity Act, as long as they do not treat workers differently by gender but categorize them depending on their duties and specialties and treat them accordingly by category in their deployment and promotion. However, companies adopting the dual career ladder system tend to have fewer female main career track employees with lower female ratios or to lack reasonableness and transparency in differences in the details of duties and treatment for each category.(...)

As it can be seen, the Japanese Government flips the blame for the lack of women in the main career track towards the companies, and not on the dual career ladder system itself. However, by focusing in the aforementioned issues, it glosses over the whole problem of indirect discrimination on the workplace, the fact that employment rates in all age groups remain lower for women than for men, that most of these working women are in more precarious and lower positions than men, that they are more prone to take low paying, part-time jobs, that the wage discrepancies between men and women prevail, and that the M-shaped curve in the ratio of women's participation in the labor force

when tracked by age group in Japan persists (Gender Equality Bureau Cabinet Office, 2019c, pp. 8-10). Specially the existence of this M-shaped curve, in other words, the phenomenon that a great number of Japanese women tend to abandon their jobs after marriage and pregnancy, to return to the labor market only years later when their child rearing responsibilities lessen, usually to part-time or lower positions, contributes immensely to the fact that women cannot grow in their careers and reach the same level of managerial positions as men.

Despite the lack of improvement, Japan does seem to be aware of these problems. In the reports, it brings up the problem of the considerable wage difference between men and women (an average rate of 73.4% by 2016) (Gender Equality Bureau Cabinet Office, 2019c, pp. 8-10), and how it worsens in relation with the workers age.¹⁸ Also, it points out that despite formal protection existing, amongst consultations received by the Equal Employment Opportunity Department, those citing sexual harassment and the detrimental treatment due to marriage, pregnancy and childbirth, etc. remain respectively occupying the first and second positions (Government of Japan, 2014, paragraph 299). The government also understands that it urgently needs to further facilitate support for balancing work and child raising, and has done so through legislation by promulgating the Act to Partially Revise the Act on the Welfare of Workers who Take Care of Children or Other Family Members, Including Child Care and Family Care Leave and the Employment Insurance Act in 2009. Regardless, in reality the number of men taking childcare leave remains as low as 5.14% by 2017, which shows that society has not been willing to adapt its ways (Gender Equality Bureau Cabinet Office, 2019c, pp. 11-12).

The seventh and eight reports also cite progresses and problems related to all other articles of the CEDAW, but giving them much less relevance. Clauses in the Japanese Civil Code that have been heavily criticized for creating unreasonable discriminatory situations in women's lives. For example, the difference in the marriageable age between men and women (which still persists despite

¹⁸ Government of Japan, *Seventh and Eighth Periodic Reports on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women* (2014), paragraph 315.

a recent attempt at a legal update by the government) is criticized for enabling the existence of abuse towards teenaged girls (Government of Japan, 1986).

(婚姻適齢)

(Marriageable Age)

第七百三十一条 男は、十八歳に、女は、十六歳にならなければ、婚姻をすることができない。

Article 731 A man who has attained 18 years of age, and a woman who has attained 16 years of age may enter into marriage.

Another issue that is the provision forbidding a husband and wife to adopt separate surnames of their own accord, which recently in 2015 was considered to be constitutional by the Japanese Supreme Court (Government of Japan, 1896).¹⁹

(夫婦の氏)

第七百五十条 夫婦は、婚姻の際に定めるところに従い、夫又は妻の氏を称する。

(Surname of Husband and Wife)

Article 750 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.

This decision basically ignored the reality that shows women as comprising 96% of the spouses that change their names, and the social implications that brings. With the same lack of tact

¹⁹ English coverage of the decision can be found at Soble, J. (2015, December 16). Japan's Top Court Upholds Law Requiring Spouses to Share Surname. Retrieved from <https://www.nytimes.com/2015/12/17/world/asia/japan-court-ruling-women-surnames.html>

The full text of the decision, in Japanese, can be found at Minshuu [Repository of Civil Judgements]. (2015). Tokyo High Court. Judgement of December 16, 2014. Vol. 69, n. 8, p. 2586. Retrieved from http://www.courts.go.jp/app/files/hanrei_jp/546/085546_hanrei.pdf

and regardless of it recently have been shortened from 6 months to 100 days (Umeda, 2016), the existence of a period of prohibition of remarriage required solely for women has also been maintained. The only way a woman does not have to wait to remarry is if she can produce an official document from a doctor to prove she is not pregnant at the time of divorce, which is a sexist and discriminatory condition (Government of Japan, 1896).

(再婚禁止期間)

第七百三十三条 女は、前婚の解消又は取消しの日から六箇月を経過した後でなければ、再婚をすることができない。

(Period of Prohibition of Remarriage)

Article 733 (1) A woman may not remarry unless six months have passed since the day of dissolution or rescission of her previous marriage.

These issues and many others only continue to be hidden and excused by the government behind feeble allegations like the lack of citizen's awareness, effective discussion and consensus, and even like the need to determine the paternity of the child in an early stage, concerning the matter of the remarriage prohibition (Government of Japan, 2014, paragraphs 383-386).

However, it must not be forgotten that the periodic reports, despite being an important primary font for research and statistical data, are still a one sided document made by the Japanese government. Thus, the information contained there must be taken with a grain of salt, and read together with other related reports by different organizations. Within these, the text of the Concluding Observations of the CEDAW Committee are essential for the good understanding of the states' situation.

5.2.4 The importance of the Concluding Observations: Criticisms towards Japan that continue to make a difference

Overall, the whole text of the report is obviously more optimistic than what has in fact been happening within Japanese society, as the Concluding Observations publicized in March of 2016 show us. The document does list several positive points that agree with the improvements brought

up by the Japanese government, starting with welcoming the progress achieved in the field of legislative reforms by Japan since the analysis given to its sixth periodic report back in 2009. For example, revisions to the Part-time Labor Act were important for women, since most workers of that category are female. The adoption of new law, like the Anti-Stalking Act in 2013 and, in the context of the right to work, of the Act on the Promotion of Women's Participation and Advancement in the Workplace, in 2015, show that attempts of change have slowly been made. In addition to legislation, policies were also created and revised, such as the continuous changes brought to the Basic Plan for Gender Equality, as it evolved through its third and fourth versions, respectively in 2010 and 2015. Lastly, Japan showed its will of complying to international norms by ratifying some important international instruments, such as The Convention on the Rights of Persons with Disabilities, in 2014.²⁰

However, when compared to the Japanese reports, the Concluding Observations are much more incisive in its criticisms. Dividing its text into principal areas of concern and recommendations, they start by stressing the importance of the legislative power in ensuring the implementation of the CEDAW, showing concern that the Convention has not been applied to its full extent, that previous recommendations remain not implemented, and that in 2014, the High Court of Tokyo ruled that it cannot recognize the Convention as directly applicable or self-executing. This decision, made on the matter of the unconstitutionality of previously mentioned Article 750 of the Civil Code, which deals with the surname system in Japan, went on to become the base for a final decision by the Supreme Court of Japan that completely disregarded the principles of the CEDAW and the advice of the Committee (Minshuu, 2015), concluding that the provision was constitutional regardless of clear proof that in reality the majority of people changing their surnames are women and that they face many difficulties because of such system.

²⁰ A detailed description of all the advances made by Japan can be found in Committee on the Elimination of Discrimination Against Women. (2016) *Concluding observations on the combined seventh and eighth periodic reports of Japan*, paragraphs 4-6.

Considering there is still no explicit intention from Japan towards ratifying the CEDAW Optional Protocol, this refusal to apply it in its decisions is a clear withdraw of the judiciary when it comes to protecting women against discrimination. Moreover, even after 30 years since its ratification, the CEDAW provisions are yet not sufficiently known by the public, which hinders people's chances of fighting for their rights, and there is not even a domestic comprehensive definition of discrimination against women encompassing direct and indirect discrimination in both the public and private spheres of life, or a comprehensive anti-discrimination law that covers intersectional discrimination against women belonging to various minority groups.

At the same time, discriminatory provisions persist in legislation as relevant as the Civil Code, as it was specified above by showing the articles that regulate marriageable age, the period of prohibition of remarriage and a couple's surname. Another discriminatory provision that directly affects children and indirectly affects their mothers is the fact that rules such as the obligation of including in the family register a written notification that specifies whether the child is born in or out of wedlock (Article 49, paragraph 2, number 1) have been maintained in the Family Register Act. In addition to legal instruments, the state also lacks statutory temporary special measures to address the under-representation of women, insisting in using less effective voluntary incentives instead of statutory quotas to increase the participation of women in decision-making positions.

Lastly, the creation of an independent national human rights institution is still pending, and thus the state remains uncompliant with the Paris Principles (United Nations General Assembly, 1993). Adopted by the United Nations General Assembly in 1993, these principles identify the international guidelines which national human rights institutions must abide to so they can be accredited by the Global Alliance of National Human Rights Institutions. These institutions must "protect human rights, including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities, and promote human rights, through education, outreach, the media, publications, training and capacity building, as well as advising and assisting the Government" (Global Alliance of National Human Rights Institutions). Although Japan has created a basic

framework within its government to deal with issues of gender equality, it remains far away from having an independent national human rights institution.

Moving away from the government and the law and looking at the issues within society, it is noted that patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and in society persist, being reflected in the media and educational textbooks. Women keep being shown and perceived as either sex-objects or caregivers, which limit their educational and life choices and creates a vicious circle of inequality. This also influences in the way violence against women is dealt with. Issues existent in the Penal Code, such as the narrow definition of the crime of rape, were analyzed by a reviewing committee. This specific example culminated in the 2017 reform of the Article 177, but even with such revision many criticisms remain, like the fact that the new law does not include provisions to lighten the burden of proof that falls on the victim, and that violent assault or intimidation that make it extremely difficult for the victim to resist the abuse are still required for a charge of rape. In addition to that, the CEDAW Committee remains concerned with other related problems, for example that marital rape has not been explicitly criminalized and that the age of sexual consent remains low, at 13 years.

Concerning other kinds of violence, the Committee is concerned that Japan remains a source, transit and destination country for trafficking in persons, in particular women and girls, for purposes of labor and sexual exploitation (Committee on the Elimination of Discrimination against Women, 2016, paragraph 26). Within the country, Japanese women are still subjected to sexual exploitation in the entertainment industry, particularly for prostitution and pornographic film production. It has been reported that some model and actor agencies use fraudulent recruitment techniques to make women sign vague contracts and then force them through threats to engage in sexual acts to produce pornographic materials. Runaway teenage girls, children of foreign and Japanese citizens who have acquired citizenship, their foreign mothers, and women in poverty or with mental disabilities, are the preferred victims of these schemes. They are also the biggest targets of sex trafficking operations lead by organized prostitution networks, that prey on vulnerable women and girls. In addition to being a provider, Japan is also said to be a source of demand, as reports have shown that Japanese

men are still consumers of child sex tourism in Asia. Furthermore, the Industrial Training and Technical Internship Programme, regardless of its good intentions as a policy, has created a situation where many women and girls that come to Japan to work end up being made to do forced labor and are sexually exploited. For these reasons, the State has been considered not only as a source and transit country, but also as a major destination for human trafficking (U.S. Department of State, 2014).

The same way that Japan shows awareness of such issues in its reports, the Concluding Observations bring up the lack of female participation in political and public life, and the situations of inequality persistent in the areas of education and employment. The low participation of women is rampant in basically all positions of power, be it in the legislative, ministerial, local government levels, in the judiciary, diplomatic service and in academia. Examples of this inequality are very easy to find: According to the Ministry of Internal Affairs and Communications Statistics Bureau, as of 2018 only 13% of the total Diet Members were female (Government of Japan, 2018, p. 190); According to the Government of Japan, as of 2013 only 10.5% of the Japanese Ministers were female (Government of Japan, 2014, annex 46); Also according to the government, as of 2012 only 6.2% of senior posts above director level in local governments were occupied by women (Government of Japan, 2014, annex 30), and as of 2013 women were 31% of the Japanese judges, and 14% of Japanese prosecutors (Government of Japan, 2014, annex 48,49); Lastly, according to the Ministry of Internal Affairs and Communications Statistics Bureau, as of 2017 only 31% of graduate school students were women (Government of Japan, 2018, p. 174). Additionally, and in the same sense of this last example, men remain dominating the higher teaching and management seats in universities and graduate schools, specially in fields of studies such as science, technology engineering and mathematics.

Following this tendency, in terms of employment, women tend to occupy low paid and part-time sectors, with 55.5% of female workers having part-time positions, against only 21.9% of men (Government of Japan, 2018, pp. 128-129). Also, the gender pay gap keeps being wide (as seen in

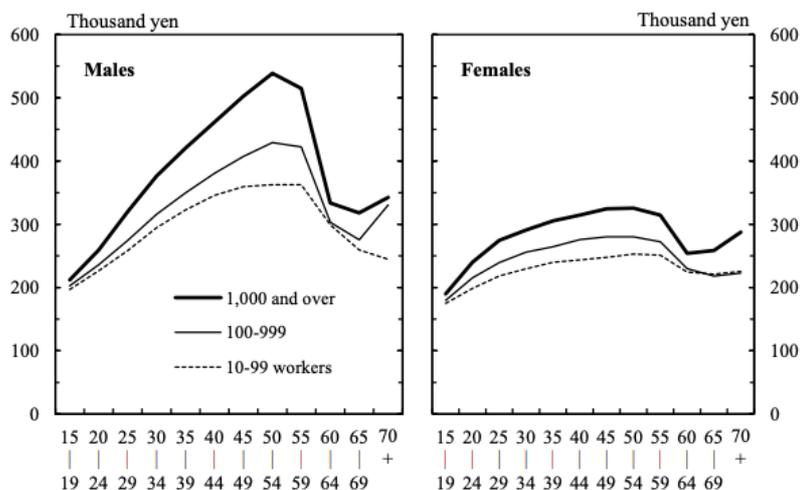
Figure 7, reproduced from Government of Japan, 2014, p. 135),²¹ there is a lack of adequate prohibition and sanctions for sexual harassment, and Japan has not ratified the ILO Convention No. 111 concerning discrimination in respect of employment and occupation. To make matters even worse, there are no temporary special measures aimed at changing these situations, and this under-representation and other issues are way more pronounced when it comes to women from minorities such as Ainu, Buraku and Zainichi Korean, as they have to deal with discrimination originating from their cultural backgrounds in addition to the discrimination they suffer just for being women (Committee on the Elimination of Discrimination against Women, 2016, paragraphs 30-35).

Another way of showing how urgent is the inequality problem in Japan is to compare these statistics on representativeness with data from other economically strong East-Asian nations, from other developed nations that are leaders in equality, and with the world average. For example, when looking at the proportion of seats held by women in national parliaments, Japan is reported to compute only 10%, falling way behind Asian countries like South Korea and China, which have 17% and 25% respectively. It also has a lower percentage than the world average of 23.9%, not to mention when compared to gender equality leaders such as Sweden, which boasts 46% (Inter-Parliamentary Union, 2017). When it comes to positions in education, South Korea and China also overcome Japan in the number of female university professors, with 20.2% (data of 2012) (Government of the Republic of Korea, 2015) and 46.48% (data of 2010) (Government of China, 2012, paragraph 151) against only 13.4% (data of 2012, from Government of Japan, 2014, annex 7). Even Iceland, which receives some criticism for its lack of female lecturers despite having the majority of its tertiary education students being women, is way above Japan, with 25% (data of 2010, from Heijstra, O'Connor, & Rafnsdottir, 2013, pp. 324-341). Knowing this information, it becomes even clearer that the Japanese situation of gender inequality must be seriously tackled, so that Japan can at least begin approaching the level of other nations.

²¹ Refer also to Government of Japan. (2014). *Seventh and Eighth Periodic Reports on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women*, annex 13.

Figure 7. Differences in male and female monthly contractual earnings

**Figure 12.8
Monthly Contractual Cash Earnings by Size of Enterprise (2017)**



Source: Ministry of Health, Labour and Welfare.

One issue which is almost ignored by the periodic reports, but is brought up in the Concluding Observations, as well as in other UN human rights mechanisms such as the Committee on the Elimination of Racial Discrimination, is the unresolved problem of the so called “comfort women”. The Committee acknowledges the Japanese efforts to resolve the issue, but it regrets specially that the state has not implemented the recommendations from other mechanisms. It also criticizes the Japanese position that this problem does not fall within the mandate of the Committee, justifying it by the fact that these women’s rights violations occurred before the CEDAW entered into force for the state party in 1985. In paragraph 97 (Government of Japan, 2014) of the report, it claims that:

Paragraph 97

As this Convention does not apply to any issues that occurred prior to Japan’s conclusion thereof (1985), the Government of Japan considers that it is not appropriate for this report to take up the comfort women issue in terms of the implementation of State Party’s duties regarding the Convention.

This goes against the interpretation of the Committee, which focuses in the continuous effect of the crimes committed towards these women. This is reiterated in paragraph 29 of the Concluding Recommendations (Committee on the Elimination of Discrimination against Women, 2016).

Paragraph 29

The Committee reiterates its previous recommendations (CEDAW/C/JPN/CO/6, paras. 37 and 38) and observes that the issue of “comfort women” gives rise to serious violations that have a continuing effect on the rights of victims/survivors of those violations that were perpetrated by the State party’s military during the Second World War given the continued lack of effective remedies for these victims. The Committee, therefore, considers that it is not precluded *ratione temporis* from addressing such violations, (...)

Regardless of this other valid interpretation, Japan bases itself only in its own allegation and regretfully glosses over the issue, refusing to reference the problem of the lack of mention to the situation of “comfort women” in textbooks and to adopt a victim centered approach to the matter. It also refuses to accept criticism towards the 2015 Japan-South Korea accord on the matter, regardless of all the issues that have been pointed out concerning it (“Tokyo insists 2015 Japan-S. Korea ‘comfort women’ accord ‘irreversible’,” 2017).

Lastly, to a smaller extent, the document brings attention to other specific points: health related concerns like problems related to radiation following the Fukushima Dai-Chi Nuclear Power Plant accident in 2011 and the high ratio of abortion - which is aggravated by the fact that spousal consent is needed for its performance - and suicide among teenage girls and women;²² poverty among women; low participation of rural women in decision making, particularly when it comes to

²² Although in 2014 female suicides made up for only 30.9% of the total cases, the number of suicides in Japan have been consistently high, being at 19.7 suicides per 100000 people in 2015, which is almost double the global average. Data from the World Health Organization. (2016). Suicide crude rates per 100000 population.; and World Health Organization. (2014). Suicide Prevention, Country Profiles - Japan.

policies that are directly related to their interests; low participation of women in leadership roles in the area of disaster risk reduction and management at the national and local level; persistence of multiple and intersecting forms of discrimination towards women of indigenous, ethnic and sexual minorities; lack of legislation that governs the distribution of property upon dissolution of marriage and other issues related to marriage and family relations.

In this chapter, I aimed to clarify the long relationship between the CEDAW and Japan, bringing up the influence the former has had in various parts of Japanese society. Needless to say, this is not meant to be a complete account of all the Japanese attempts of implementing the CEDAW through courts, laws and policies, as that would be an unnecessarily extensive account, possibly even counterproductive to the final objective of this work. In the same sense, there was also the need to make a focused summary of the documents cited, especially when one considers their length and depth. As was already explained before, and was again reinforced in this part, what guides the exposition here made are two of the biggest issues identified in the present Japanese society: the lack of female empowerment and the inequality women continue to face in their work environment. Without straying away from these topics, this basic background information on the CEDAW and Japan will serve as an introduction and be expanded in the next chapter, with a focus in the Japanese government's efforts towards guaranteeing empowerment and implementing the right to work for women through specific policies and legislation, and in the way the Japanese society has reacted to such attempts.

Chapter 6. The Dialogue Between the CEDAW, Japan's Domestic Labor Legislation and NGOs: Laws, Policies and the Role of the Civil Society in the Implementation of Women's Rights

In Chapter 5, the relationship between Japan and the CEDAW was analyzed in a general manner, including basic information about how the state has been attempting to implement the treaty in its domestic environment. The successes and shortcomings of this long and arduous process have been recorded through the work of the CEDAW Committee, which makes use of the periodic report system to receive communications concerning the application of the treaty provisions and principles within the state, and to give advice to state parties. From the examination of the latest Japanese periodic reports and the Committee's Concluding Observations, it can be concluded that there is still much to be done domestically for the realization of women's rights, especially when it comes to legally guaranteeing their empowerment and their right to work.

Building on that, in this chapter I will delve deeper into what Japan has achieved and in what can still be improved in the area, focusing in the way its laws and policies have changed through the decades. Following an introductory section that clarifies, through Criminal Law examples, the gendered issues persistent in the Japanese society, special attention will be given to the Equal Employment Opportunity Law (hereinafter, EEOL), the Basic Act for a Gender-Equal Society and the Basic Plan for Gender Equality, specifically its contemporary fourth formulation. Lastly, this legal information will be put in a social context, through a consideration of how the Japanese civil society, by making use of the strength of NGOs, has been interacting with the CEDAW as an international instrument and with the Japanese domestic laws and policies. This all will be used as a spring board to the analysis, in the following chapters, of the status of international norm diffusion in Japan and how it can be improved, which will be done by applying the contents of the "spiral model" to the reality concerning female empowerment and labor rights in Japan.

6.1 Japan's deep rooted gender inequality and the CEDAW: The contribution of legal provisions for the constant marginalization of women

Even before the advent of the CEDAW, the common way of legally accomplishing gender equality has been to treat women and men in the same way when enacting legislation, mostly by using sexually neutral language. However, this passive approach, which remains until this day and is based on an illusion that guaranteeing formal equality would be enough to solve the Japanese problems concerning inequality, has only served to maintain a gendered status quo. This idea, which is in accordance with the text of the Constitution of Japan, still pervades the country's legislation, especially when it comes to the Civil Code, influencing norms related to education, family, social security and labor law. On the other hand, Japan also maintains in its legislation many instances where women are clearly treated differently and worse than men, which contributes to the maintenance of gender inequality even more than the state's feeble attempts to solve the issues by giving women formal equality only. As already mentioned, Japanese law is peppered by cases where women are subjected to discriminatory circumstances, such as the prohibition of remarriage within a certain period of time. Moreover, even when this different treatment was supposed to improve the situation of women, it was done in such a way that it only contributed to female segregation, as it can be exemplified by the first version of the EEOL and its consequences for working women.

To further make clear how deeply rooted the issues in Japanese law and society are, the Criminal Code, that includes double standard provisions concerning rape, abortion and prostitution, should be brought up. For example, until the year 2017, the article that criminalized rape read as follows:

Article 177 (Rape)

A person who, through assault or intimidation, forcibly commits sexual intercourse with a female older than thirteen years of age commits the crime of rape and shall be punished with a sentence of a minimum of 3 years in prison. The same shall apply to a person who commits sexual intercourse with a female under thirteen years of age.

It had continuously been harshly criticized for having a restrict definition of rape and a very small punishment for such a terrible crime, until when, in July of 2017, it was finally changed. Some of the most relevant changes include the raising of the minimum penalty to 5 years of imprisonment,

the inclusion of males as possible victims, the broadening of the definition of the criminal act to include acts other than vaginal penetration by male genitalia, and, as a result of this latter, the changing of the name of the crime to “forced sexual intercourse”. Even though these changes were revolutionary in a sense, as they were actually the first amendment of the Criminal Code in 110 years. The fact that it took so long for any change to happen is incredibly worrisome, since it shows how reluctant Japan is to adapt itself even in cases that involve the direct safety of its female (and, to a lesser extent, male) citizens.

Concerning the crime of abortion, Article 212 of the Criminal Code says that “a pregnant woman who has an abortion with the use of medical substances or with other methods, will be punished with a prison sentence of one year or less”. There have always been critics of the criminalization of the act of aborting, since in a way it is a limitation of women’s reproductive rights, but the case of Japan is worse than just that. Specially during the Japanese expansion era and the Second World War, women were seen as tools for enhancing the country’s population, a way of thinking that was legally backed up by the criminalization of abortion (Ohashi, 2003, pp. 16-18). Then, after the end of the war, the creation of the Eugenic Protection Law of 1948 made medical abortions available at clinics, under certain circumstances. But while this seemed like an advance in women’s reproduction rights, it was actually an act motivated by the need for population control and it aimed to stop disabled and sick women of giving birth, validating even their sterilization. To get away from this historical background, a “new face” was given to the law in 1996 and excluded its eugenic purpose, culminating in the Maternal Protection Law. However, regardless of this law’s intentions, it is still highly criticized, including by the CEDAW Committee (Committee on the Elimination of Discrimination against Women, 2016, paragraph 38), because its Article 14 sets up many difficult conditions that must be met for an abortion to be possible, and it also requires women to get consent from their spouses in order to be able to do the procedure. In Japanese law, women’s bodies are still controlled by men.

Prostitution is another criminalized act that has many gendered implications. The Criminal Code itself, in its Article 182, only defines inducement to promiscuous intercourse, which means that

“a person who, for the purpose of profit, induces a female without a promiscuous habit to engage in sexual intercourse,” will be punished criminally. On the other hand, the Anti-Prostitution Law of 1956 is more encompassing and criminalizes both the sale and the purchase of sexual intercourse (Government of Japan, 1956, Article 3), but it lacks in the fact that it does not define a judicial penalty for the act and it does not forbid the commercialization of any other kind of sexual acts. This makes the law easy to bend, and guarantees little to no protection at all for Japanese women that might find themselves involved, willingly or not, with the broad, booming and male controlled sex industry of Japan. This issue is even noted by the CEDAW in paragraph 26 of the Concluding Observations on the combined seventh and eighth periodic reports of Japan:

Paragraph 26

(...) The Committee is, however, concerned that (...)

- (a) Women continue to be subjected to sexual exploitation in the entertainment industry, particularly for prostitution and pornographic film production; and
- (b) Women and girls coming to the State party under the Industrial Training and Technical Internship Programme continue to be subjected to forced labour and sexual exploitation.

All these laws and many others contribute to the maintenance of the status quo of women as culturally and socially belonging to a supporting role in comparison to male protagonists. From this situation, it has become clear that Japan’s attempts to create *de jure* equality for women has not been enough to bring *de facto* equality, especially when one realizes how much the legal status of women is still connected to their perceived social roles. In fact, most Japanese people of the time of the advent of the CEDAW themselves understood that men and women were not treated substantially equally, with women being viewed primarily as homemakers and secondarily as a supplemental workforce (Kamiya, 1986, p. 447, 452, 458), but nothing had been actively done to change this situation. It would have depended then on the government to take the first step towards changing this perception and this reality, and to actually create appropriate legal and social measures to eliminate gender discrimination.

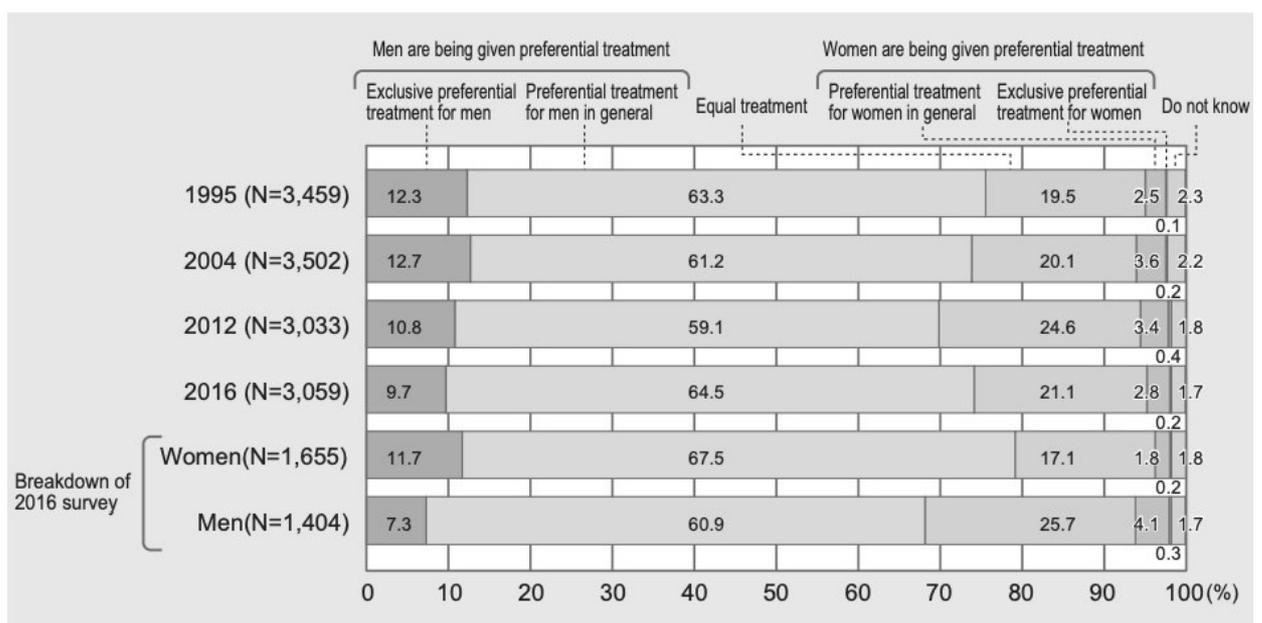
In this sense, the CEDAW was a welcomed breath of fresh air, being the trigger for women's issues to be brought to the forefront of the public's and the government's attentions, and causing Japan to finally bend to the pressures of the international community. In addition to this external impact, domestic demands and manifestations also had an influence in the acceptance of the Convention. Some of the most noteworthy ones are the Women's Liberation movement (a female-led movement coming from the civil society that embraced feminism and tried to achieve political, economic, cultural and social rights for women in the 1970's) and an NGO network created and led by feminist politician Fusae Ichikawa, which was a highly respected organization that represented many women's voices (Flowers, 2009, p. 78).

Yet, without major general public support or strong administrative, parliamentary and judiciary backing, the efforts of these national social movements towards the implementation of the CEDAW and the transformation of Japanese traditions ended up being not sufficient by themselves to bring enough change to the treatment given by Japan to questions related to gender equality. Thus, even after the small evolution that happened in the 1980s, many of the issues existent before the implementation of the Convention, especially the ones founded in the social role attached to women and the lack of attention given to feminist movements in Japan, persisted then and to this day. The opinion of society itself, concerning whether men or women get more preferential treatment, shows us how little impact those policies and changes have had. As can be seen in Figure 8 (Gender Equality Bureau Cabinet Office, 2019c, p. 18), in the minds of most of both Japanese men and women believe that men continue to receive preferential treatment.

Still, it cannot be said that absolutely nothing has improved since then. Just after the advent of the CEDAW, influenced by the World Plan of Action for the Implementation of the Objectives of the International Women's Year (1975) and other workings part of the United Nations Decade for Women (1976-1985), the Japanese government finally started reviewing its policies and legislation, and creating a new plan of action. Aiming to bring changes in areas such as education, employment, health care, and to improve female participation in policy and decision making, the government created organs like the Headquarters to Plan and Promote Women's Issues, made amendments to and

promulgated new legislation (Kamiya, 1986, p. 459). Just before ratifying the Convention, the government amended the Nationality Law, which was incompatible with its Article 9. The amendment expanded the law's *jus sanguinis* approach and finally enabled Japanese women to pass their Japanese nationality on to their children regardless of the nationality of their husband. It also leveled the requirements for spouses of Japanese people to naturalize, ending the period when it was almost impossible only for husbands of Japanese women to do so. In addition to that, in 1989, the Ministry of Education amended the national curriculum and made it so that home economics became compulsory to all students, and just not only to girls. Other significant laws, such as the Fundamental Law on Gender Equality (1999) and the Law on Prohibition of Spousal Violence and Protection of Victims (1999), have also been adopted in a variety of fields (Hayashi, 2013, pp. 343-344), amongst which labor law and women's empowerment are found to be some of the most discussed ones. As these relevant themes are necessary for the development of any society and for the realization of other fundamental rights, they will be the guidelines limiting the range of this work, and the analysis of the main legal and policy-related endeavors will be the focus of the next part of this chapter.

Figure 8. Sense of equality in terms of the status of men and women



6.2 Japan's application of the CEDAW in the context of the right to work: The Equal Employment Opportunity Law and labor related policies

The Equal Employment Opportunity Law was created in 1985, as a way of complying with the work-related content of the previously mentioned Article 11 of the CEDAW and to overcome the lack of the term “sex” as one of the illegal grounds of discrimination mentioned in Article 3 of the Japanese Labor Standards Law. Its enactment was no easy feat, marked by controversies between women's civil organizations wishing for equality, and the business community unwilling to lose any previously owned perks. While the law was promulgated by the government allegedly as a compromise good enough to follow the requirements of the Convention, there was plenty of pertinent criticism against it. For example, its lack of effective enforcement measures, as it does not have any sanctions in case employers fail to take the measures it suggests, and it only offers conciliation and administrative guidance as solutions, both of which are not enforceable in courts.²³ In fact, it has even been called just a guideline for companies, rather than a law that provides policies that can be enforced (Assmann, 2014, p. 7). The EEOL's loose standards when dealing with the obligation to not discriminate, as illustrated by the use of the weak expression “endeavor to promote the full working lives of workers,” are also a problem.²⁴ Some women at the time also were vocal against the maintenance of the idea that family responsibilities fall to women, as there is no legal mention concerning men taking on parental duties (Kamiya, 1986, pp. 460-461). Adding to that the fact that Japanese courts are very reluctant in using international treaties in its judgements, a law with so many issues was bound to not only fail to improve women's situation, but even contribute to worsening it.

²³ Refer to Government of Japan. (1985). *Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment (Equal Employment Opportunity Law)*. Articles 11-13, Article 14, and to Articles 18-27.

²⁴ As written in Government of Japan. (1985). *Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment (Equal Employment Opportunity Law)*. Article 2, paragraph 2.

To try and make the law more effective, revisions were made to its text in 1997 and 2006. Based on social pressures and in the government's worries concerning the declining in the birthrate – and consequently in the number of available workers in the country – that began in the 1990's, the first revision of the EEOL in 1997 was arguably more of a way of avoiding a downturn in the economy by making it easier for women to join the work force. Backed up by the creation of the Office of Gender Equality in 1994, the changes in the law tackled the protection of women's rights indirectly, since their final aim was not to give them protection based on their status as women, but instead it was to solve the birthrate/working force problem.

However, regardless of its aim, the revision did manage to strengthen the EEOL in some ways. It targeted discrimination in all stages of employment such as recruiting, hiring, job placement, and promotion, by clearly saying that employers were prohibited from discriminating against women. Furthermore, also began recognizing sexual harassment as a form of gender discrimination, even placing an affirmative duty on employers to prevent sexual harassment in the workplace (Starich, 2007, p. 559). Most importantly, it also worked in strengthening the law's enforcement mechanism, albeit only slightly. Now, it granted the employee the right to force her employer into mediation, by which the Ministry of Health Labor and Welfare was responsible. And, in a form of public shaming, if a company failed to comply to the mediation, its name could be released to the media by the Ministry.

Nevertheless, this punishment was not effective enough, as it only consisted of administrative guidance and of putting too much emphasis in the fact that Japanese employers tend to value their reputations and to strive for maintaining group harmony. Even worse, it completely ignored the strong influence that these employers themselves have in the creation of labor legislation. In addition to that, the changes also failed to address the law's one-sidedness, and it remained being applied exclusively to women even when it would be more interesting to include protection to men in some situations, such as the ones related to child rearing. Lastly, it also left the issue of indirect discrimination unaddressed, specially contributing to the maintenance of women being confined to

lower jobs and having less opportunities of growth, supported by the widespread use of the dual career ladder system by companies (Starich, 2007, p. 560).

These remaining problems prompted the Japanese government to review the law again in 2006. While the concerns related to the declining birthrate and its economic effect were still predominant, this time the revision was also a reaction to international pressure lead by the United Nations and to the rise of domestic lawsuits claiming gender discrimination. The most relevant changes made dealt with the issues of indirect discrimination, adverse treatment for taking childcare leave, the lack of enforcement measures for sexual harassment, and the unwarranted one-sided language of the previous law, which contemplated only women (Starich, 2007, p. 561).

Concerning indirect discrimination, it was finally defined as a situation when “1) an employer seemingly adopts gender-neutral conditions or criteria and applies these equally to both men and women, but 2) these conditions or criteria result in being disadvantageous for one gender (predominantly for women), and 3) these conditions lack reason or justification, are not based on rational grounds, and are not related to the specific needs of a company” (Shibata, 2007, p. 179). Acts that fell under these characteristics became, to a limited extent, forbidden by the text of the reviewed law. This prohibition, laid out in Article 7 of the new EEOL (Government of Japan, 1985, Article 7), was welcomed specially since it gave origin to ordinances of the Ministry of Health Labor and Welfare that attempted to challenge the traditional dual track career system that exists in the majority of Japanese corporations, as well as to forbid other indirect forms of segregating women, such as the inclusion of conditions like height or weight in hiring requirements and the obligation of people to accept mobility and transfer clauses in order to advance in their careers (Assmann, 2014, p. 8). Additionally, these ordinances are not exhaustive, as they end with an open “etc.” indicating that the Ministry intended on at least leaving open the opportunity to, in the future, set further instructions and prohibitions related to the topic. However, it must be noted that in reality companies continue to make use of these now forbidden practices, and some of the legitimate, but ultimately false justifications they give end up even being accepted by the courts and the Ministry of Health,

Labour and Welfare itself (Starich, 2007, p. 562). That can clearly be seen in the recent and high profile legal cases that I will cite in part 6.3.

Regardless, it is undeniable that the 2006 revision of the EEOL expanded the applicability of the law, at least on paper. First, it enhanced the prohibition of employers from giving employees disadvantageous treatment, which includes specifically protection for women workers against termination based on their situation of pregnancy (and even within one year after giving birth) or childcare leave (Starich, 2007, p. 564).²⁵ Second, according to Starich (2007, pp. 561-562) it broadened the reach of the law by making it be applicable to employees of both genders. The EEOL Article 2 now reads as:

第二条 この法律においては、労働者が性別により差別されることなく、また、女性労働者にあつては母性を尊重されつつ、充実した職業生活を営むことができるようにすることをその基本的理念とする。

Article 2

The basic principle of this law is that workers be enabled to engage in a full working life without discrimination based on sex, with due respect for the maternity of female workers.”

With this expansion, it might be easier to start arguing against work practices that are also prejudicial to men, and to bring the topics of labor rights and work-life balance even more to the forefront. In addition to that, Articles 5 and 6 also had their wording modified to fit this new basic concept of equality. Thanks to that, it could now be said that after 20 years the Japanese law had finally reached the standard of application that had already been present in other developed countries.

第五条

²⁵ Read together with the Government of Japan. (1985). *Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment (Equal Employment Opportunity Law)*. Article 9.

事業主は、労働者の募集及び採用について、その性別にかかわらず均等な機会を与えなければならない。

Article 5

With regard to the recruitment and hiring of workers, employers shall provide equal opportunities for all persons regardless of sex.

第六条

事業主は、次に掲げる事項について、労働者の性別を理由として、差別的取扱いをしてはならない。

Article 6

With regard to the following matters, employers shall not discriminate against workers on the basis of sex. (...)

This was important because it evolved the concept of equality present in the law, managing to now give much needed protection to all people in diverse discriminatory situations while still contemplating women in special. For example, thanks to this expansion, sexual harassment of both genders became illegal (Government of Japan, 1985, Article 11), and previously accepted attitudes such as using the protection of female workers' welfare as an excuse for employing only women under part-time positions and segregated jobs were explicitly forbidden (Nakakubo, 2007, p. 12).

Third, additional forms of gender-based employment discrimination concerning the actions of demotion, alteration in employment status, and coercion to make an employee to retire or quit were included to the already existent list of forbidden actions, and the term "job assignment" was expanded to include the distribution of tasks and the grant of authority (Starich, 2007, pp. 562-565).

With all this considered, it may be said that this latest revision did improve the text of the EEOL and its application to a certain extent, specially in situations related to indirect discrimination towards female employees in a situation of pregnancy or motherhood. They are also important because, as journalist Kaori Shoji puts it, "as with most things in Japan, things never change unless they change in the workplace" (Shoji, 2008). Regrettably, however, this legal protection is still limited, and an expansion of its interpretation depends on how the Japanese courts and the Ministry

of Health, Labour and Welfare decide to deal with cases that go beyond the circumstances clearly stated in the law and in Ministry ordinances (Starich, 2007, p. 565). Also, it must not be forgotten that just these small changes took more than 20 years to be made, and they worked only to a very little extent, creating ambiguity and leaving many problems unsolved until the present day. This is a clear indicator of how much background work and pressure was necessary, and continues to be so, to transform Japanese traditional employment practices and social values.

After the advent of the EEOL, many other laws and policies that aimed for the betterment of the inclusion of women in society were put into motion. One of the most fundamental ones, as its name says, is the Basic Act for a Gender-Equal Society, which was created in 1999 and put into legislation the significance of gender equality and of sharing responsibilities between men and women all areas of life including family and professional life, so that a society in which both participate equally can be created. It was designed first and foremost as a guideline, and thus as a legal form, it is a general law that does not overrule other laws. However, in reality, it is considered to be superior to other laws in the area, as it shapes the most relevant policy measures (Yanagimoto, 2003, p. 5).

The Act specifies what is its definition of a gender-equal society in a very broadly manner, as a “society in which both men and women, as equal members, have the opportunity to participate in all kinds of social activities at will, equally enjoy political, economic and cultural benefits, and share responsibilities” (Assmann, 2014, p. 8). However, the approach of the bill towards the issue, specifically the motives for the law’s creation and the wording used there, has been criticized by Japanese scholars. First, it is argued that the Act was deemed as necessary primarily not because the Japanese government and lobbying businesses saw that women deserved equal rights. Instead, it was because they understood that without women becoming a pure domestic labor source, they would not be able to overcome political problems such as the declining birthrate, the aging of Japanese society and the economic recession enhanced by these factors. At least, they would not be able to do this without opening the country to immigrants. When it included the expression “people of the nation”

in its Article 10, the Basic Act made it clear that including Japanese women as human labor assets was the indicated way for achieving particular political agendas (Yanagimoto, 2003, p. 7).

Second, but still related to the first topic, the way the Act puts into words its goals and obligations allows it to also be criticized as a legal document that differs completely from the aims of the CEDAW, and instead tries to just integrate women into a nationalist agenda, using them just as tools to solve economic and political issues. Yukako Yanagimoto spells this out clearly, by exemplifying that the text of the law cites “men and women being cooperative,” not “men and women as equals” as its goal; that it strives for the “securing of opportunities” rather than “equality in reality”; that even though it defines “the obligation to ensure the equal right of men and women,” it does not have measures to eliminate discrimination against women as stated in the CEDAW; that it reinforces traditional gender roles, by making its goal the “balance of home and other activities”; and that it allows the possibility of human rights being sacrificed depending on socio-economic conditions (Yanagimoto, 2003, p. 8). Considering all these distorted motivations, it becomes easier to understand why the Basic Act has not been able to actively create a more equal society in Japan. It is also possible to suggest that this is another proof that the state still finds itself following a strict logic of consequences, which has made it stay stuck in the *tactical concession/prescriptive status* phases of the “spiral model” and has been hindering the development of the protection of women’s rights in reality.

Thus, it is not a surprise that Japan’s attempts of creating some concrete progress in the form of continuously churning out Basic Plans for Gender Equality have been lackluster, as they are based on the same motivations the Basic Act was and follow its principles. This is clear just by looking at the results of the 2010 Third Basic Plan for Gender Equality, which tried to concretely respond to women’s low participation rates in faculty and leadership positions in other professional roles. In theory, it sought to establish numerical targets and deadlines, specifically to achieve 30% of female participation in all leadership positions by 2020. For that, it claimed it would focus on positive action programs, on eliminating social structures based on discriminatory and stereotypical assumptions about gender roles, and on encouraging government agencies to work on policies in the area. It also

gave a nod to the international community, by vowing to act according to its expectations (Assmann, 2014, p. 9). However, these so-called efforts again fizzled when it came to their application. According to Assmann, universities as famous as the University of Tokyo made claims of raising the number of their female academics, but years after their self-proposed deadlines, the number of women in leading academic positions remains as low as ever. Men continue to dominate also in the academic workforce.

Witnessing these bad results, the Japanese government went on to approve the Fourth Basic Plan for Gender Equality, in 2015. According to the statement by the head of the delegation of Japan to the CEDAW Committee, the Plan set a basic and comprehensive direction of governmental policies and measures in order to foster gender equality. Again, it was based on the contents of the Basic Act, but it attempted to give civil society a louder voice in the dialogue, considering and incorporating public comments, public hearings and the knowledge of experts in its contents. Considering this, it sets four targets to create a more gender equal society (Gender Equality Bureau Cabinet Office, 2016, pp. 29-30; Government of Japan, 2016, pp. 2-3):

- To strive for a society made vibrant and rich in diversity, giving the chance to men and women of making their own choices and making the best of their individual abilities;
- To build a place where the human rights of men and women are respected and where they can live with dignity. Specifically, it needs to be an environment in which women can live with peace of mind and find themselves supported with careful consideration when they are facing difficult situations, including here all situations of violence against women;
- To focus on realizing work-life balance of both women and men through changing the country's male focused working culture, which takes for granted working long hours, overtime and transfers, and instead offering a variety of flexible working styles, so that all workers can contribute with all their potential, but without sacrificing other aspects of their lives to the labour

market. Furthermore, there is the need to actively expand female participation, by creating positive actions to increase the recruitment and promotion of women, giving them substantially equal access to managerial positions;

- To focus on making the Japanese society one that is recognized internationally for gender equality.

In these objectives, attention is given to diversity, dignity and empowerment specially through work. Also, there is a clear mention to raising Japan to a position of respect within the international society, in the context of gender equality. This is an important point, as it may serve as a suggestion on what should be considered in the Japanese case when thinking about how to improve the domestic implementation of international provisions. Maybe a stronger external push towards compliance, aimed not only at government officials, but also towards the civil society, by giving them information and support concerning their rights, would be helpful to change Japan's approach to the issue and give better implementation results.

Following the creation of the Fourth Basic Plan, and aiming to concretize the targets there stated, the Japanese Diet passed in 2016 the Act on Promotion of Women's Participation and Advancement in the Workplace, a law requiring large corporations in private and public sectors to disclose their gender diversity goals. By doing so, it aims to promote the participation and advancement of women in the work force, reinforcing the targets already explained in the latest Basic Plan: to create opportunities to hire and promote women; to improve the Japanese working environment, so that women and men can achieve a good work-life balance; and to respect women's choices concerning career and family.

Specifically, the law focuses its efforts only in collecting and analyzing data on issues of gender, provided by government agencies, local government and private sector corporations with more than 300 employees. Following guidelines by the national government, some examples of this information are the rate of newly hired female employees, the gender gap in the length of continuous employment, working hours and the number of women in managerial positions. Then based on these analyzed figures, the companies must create and present to their staff and to authorities definite action

plans to improve gender equality in the workplace. Lastly, they are made to release all the data regarding women's participation and advancement, since it contributes to women's career decisions (Gender Equality Bureau Cabinet Office, 2019b). This whole procedure culminated in the creation of the Eruboshi system of qualification, which certifies companies in three levels of proactivity in the promotion of women's participation in the workplace. Until now, it has certified more than 775 companies in total (Gender Equality Bureau Cabinet Office, 2019c, pp. 28-29).

These high numbers are deceptive, however, and this advancement is not without criticism. First, it took 30 years after the creation of the EEOL and 17 years after the Basic Act for a policy like this to begin gaining traction. In addition to that, it must not be forgotten that it is still a temporary act, scheduled to last only for 10 years, and there aren't any specified numerical targets to be reached, because of the strong opposition of the industrial lobby. This allows for the law to be interpreted in way too many ways, which consequently makes it possible for it to be overlooked and misused. In this same context, the classification made by lawyer and politician Mizuho Fukushima sheds some light into the problem of creating and implementing gender-related law in Japan. She suggests that in Japanese society, legislation related to women's rights can be divided into three categories: (a) issues involving a victim, (b) issues so abstract that no one understands the meaning, and (c) issues in which women are being audacious. She affirms that the first two types of bills are relatively easy to pass, while the last one has almost no chance of being accepted, and exemplifies them all respectively: the Domestic Violence Prevention Law is in category (a); the Basic Act for a Gender-Equal Society would fit into category (b); the struggle of women that fight for the right of separate surnames for married couples would be in category (c) (Yanagimoto, 2003, p. 6). This is an interesting classification, and if the Act on Promotion of Women's Participation and Advancement in the Workplace is analyzed through those lens, one could say that it fits category (b). This is because of the above-mentioned lack of specification and a variety of interpretations that exist within the law, as well as for its unsatisfying sanctions. Thus, although its text appears to attempt to be clear and concise in its meaning, in the end it lacks strength and the Eruboshi certification ends up being just another form of legal lip-service. This is proven by the fact that even certified companies find it hard

to continuously keep the standards that make for an equal workplace and end up being unable to retain and promote female employees.

Another recent legal development that has shown only limited success is the Act on Promotion of Gender Equality in the Political Field (Government of Japan, 2018). Aiming to effectively and positively promote gender equality in the political field by making the numbers of male and female candidates for national and local elections as even as possible, from the beginning the enactment of the bill was had to face resistance from the leading party, the Liberal Democratic Party (LDP). In fact, it is said that it only passed because it is nonbinding, and thus there are no penalties at all even if the legal goals are not achieved, and because of a concurrent media uproar over the sexual harassment of a female reporter by an ex-Finance Ministry bureaucrat, and the downplaying of the criminal situation by Finance Minister Taro Aso (Osaki, 2018).

This obstruction by the leading party also showed itself in the results of the bill, one year after its enactment. While opposition parties showed a lot of commitment to the cause, achieving near-parity with 49.6%, the ruling coalition averaged only about 13%. This low number is backed up by the mentality of the members of the leading party. In a research conducted in spring 2019, 41% of the respondents from the LDP blamed the lack of women on them not considering politics an attractive career choice, while only 11% were able to do some self-reflecting and replied that the main reason was because the parties are not committed to recruiting and fostering female candidates. Of course, the excuses from the LDP do not hold up against reality, because the political parties are the ones that nominate candidates themselves, and because of the attested success of other parties in increasing the number of women in their ranks according to their targets (Miura, 2019). In addition to that, another survey conducted by the Cabinet Office with about 4000 local assemblywomen has corroborated this conclusion, as they replied that the factors that most contribute to the lack of political participation of women in Japan are difficult achieving work-life balance (78.6%), the lack of understanding from family (73.4%) and the deeply ingrained stereotype that politics is the domain of men (59.1%) (Osaki, 2018). In other words, what is stopping women's empowerment is not their own decisions, but society's mindset and structure which keeps favoring men.

In this part, I focused on showing how Japanese legal initiatives have failed to bring significant improvements to the situation of women. All these laws without any actual innovative objectives have spilled their lack of effectiveness to other institutions too, specially the judiciary. In the next part, I will briefly give some examples of how this situation has been causing real damage to the implementation of women's right to work in Japan.

6.3 The lack of attitude from Japanese courts towards women's rights implementation

Since the advent of the EEOL and of other labor related protective laws, women that had their rights infringed have constantly turned to Japanese domestic courts for the resolution of such conflicts. These domestic decisions are even more important specially considering that Japan is not a signatory of the CEDAW Optional Protocol or of any other protocols that guarantee access to human rights-related international decision-making organs through individual complaints.

The problem is that until now, Japanese women have not been able to count on courts to homogeneously decide such disputes. In the field of women's labor rights, for as many cases that have been decided in favor of working women, you can find others that, albeit similar in factual and legal content, have been decided instead in favor of the employer. For example, you can find positive decisions where a reassignment order causing inconvenience to family life was understood as an abuse of rights (Nestlé Japan (Reassignment Main Action) Case - Rodo Hanrei, 2006), or where discrimination in promotion was understood to be an effect of the personnel management system being divided in male and female courses (Sumitomo Metal Industries Case - Rodo Hanrei, 2005; or the Kanematsu Case - Rodo Hanrei, 2008). Even more difficult cases, for example the ones where the company has an objectively gender-equal personnel management system, have had instances of the court acknowledging discrimination (Showa Shell Sekiyu K.K. Case - Rodo Hanrei, 2009). However, decisions that go completely against these trends continue to be given by higher courts, making Japanese women unable to trust judicial precedents.

In this part, I will introduce some recent and relevant cases that exemplify this lack of consideration of Japanese courts towards the implementation of the internationally-guaranteed

women's right to work. I will focus on three major issues: the gender pay gap, direct and indirect discrimination brought by a gendered career track system and maternity harassment.

6.3.1 The Chuugoku Denryoku Gender Pay Gap Case

The first case is the Chuugoku Denryoku (or Chugoku Electric Power) Case (Rodo Horitsu Junpo, 2013). Concerning the facts, the plaintiff X claimed that she had been discriminated in promotions and upgrades of job ranks because of her being a woman. She asked for monetary compensation for such discriminatory treatment, payment of her attorney's fees and to be promoted to job rank she was supposed to be in, in comparison to her male colleagues. However, even though she could prove male workers were clearly making more money than female workers, all her claims were rejected. The Supreme Court also rejected the appeal in 2015.

The Hiroshima court gave some main reasons for such decision. First, it said that the defendant Y's procedures for personnel evaluation was objective. They based that on the allegation by the defendant that the valued both each employee's own performance and their ability and performance in promoting workplace unity and improving teamwork. Under these standards, they had found X's performance to be unsatisfactory in terms of ability to improve cooperative relationships and leadership skills. Related to this point, the court raised its second argument, agreeing with Y that X's abilities were indeed low. Lastly, the court argued that there is a "tendency for women to shy away from appointments to management posts, (and that) voluntary retirement is not uncommon among women", taking into consideration also the protective, but discriminatory and excluding, provisions of the Women's Protection Act, which was in effect until 1999.

These arguments do not hold up when facing the facts, though. It was clear (and admitted by the court) that was considerable gender disparity in upgrades and promotions made by Y. If the court had looked at the collectivity of workers, they should not have been able to deny that the discriminatory undertones of the promotion standards of that company were a violation of public policy, regardless of the discretion allowed to companies when handling their employees. They completely ignored the existence of indirect discrimination in an apparently objective system. The

evaluation standards used by the company were also highly abstract, so the court should have pointed out whether that was fair towards the employees. The most legally upsetting, however, is the use of the Women's Protection Act and its "protective" dispositions forbidding women to work overtime or during the night to justify the treating them prejudicially. This goes completely against the spirit of the law itself.²⁶

As it can be seen from this case, the lack of definition concerning discrimination, especially indirect discrimination is extremely harmful for women, and decisions like this one just serve to hide even more the discriminatory nature of the Japanese work environment.

6.3.2 The Towa Industries Career Track Discrimination Case

The second case is the Towa Industries Career Track Discrimination Case (Rodo Hanrei, 2015). Concerning the facts, the plaintiff X was hired as a clerical worker by the defendant company Y in 1987, but from 1990 her responsibilities changed and she started working as an industrial designer, even getting the certifications for it. Then, in 2002 the defendant substituted the wage system separated by gender and introduced a dual track system, like many other Japanese companies did. However, all men got automatically included in the main career track (総合職), while the women were relegated to the clerical track (一般職).

This is when the issue started. X was the only female in the design department, and she was also the only one to be designated to the clerical track, receiving a lower salary despite doing exactly the same job as her male coworkers and having way more qualifications. In fact, her wages were even lower than the ones of her unqualified male juniors. She then filed a lawsuit because her pleas to be reclassified as an employee in the main career track were completely refused by the company.

Concerning the judgement, both the District Court of Kanazawa and the Kanazawa branch of the Nagoya High Court gave very similar decisions. In 2015, the former did order Y to pay X the difference in wages, other premiums and consolation money, acknowledging a violation of Article 4

²⁶ This case introduction is based on the full judgement and on Aizawa (2017); and Kanno (2016).

of the Labor Standards Act. However, even though discriminatory treatment was perceived by the court, it did not recognize a violation concerning difference in wages based on ability evaluations, which had been one of the plaintiff's main complaints.

Answering to X and Y's appeals, in 2016 the Kanazawa branch decided that de facto gender discrimination had occurred thanks to the dual career track system not considering the employees tasks and responsibilities. The same discrimination was not acknowledged in Y's system of evaluation of professional ability, and the court prioritized the company's discretion when it came to pay raises and promotions based on personnel evaluations. Lastly, X appealed to the Supreme Court in 2017, but her case was dismissed.

This case is a clear-cut illustration of the struggles women went through before the advent of the EEOL. And even though nowadays the discrimination is usually more indirect, as in the Chuugoku Case, cases like this, where female employees are the target of typical and exposed inequality in the Japanese workplace, are still common. With the forbidding of discriminatory treatment against women in the workplace with the 1997 EEOL revision, Japanese companies found in the dual track career system an easy way to fake compliance. In the case of company Y, it took them until 2012 to introduce a new career system, and only in 2013, after X had already resigned, was the first woman hired for the main career track.

Other than this blatant failure to give equal opportunities and treatment to women and men, another complication is that the career track system concept is very different than the concept of "job title". Instead of considering employees' individual responsibilities and capacities, the track system slaps a general tag in people working in both tracks: main career track workers have a broader range of duties and can be relocated, while clerical track workers have limited duties and cannot be relocated. The same is true for labor law, which also ignores the concept of job title and gives too much importance to the discretion of the employer, contributing to the continuation of unfair attitudes in the workplace and misguided judicial decisions like this, especially when it comes to the gap in

wages based on widely varied and sometimes even arbitrary kinds of ability evaluation.²⁷ These court-endorsed practices give fuel to the employer's mindset that there are no qualified women for higher positions, while in reality what is happening is that biased evaluations stop women that work well from receiving fair appraisals.

6.3.3 Konami Digital Entertainment Maternity Harassment Case

The third case is the Konami Digital Entertainment Maternity Harassment Case (Rodo Hanrei, 2011). Concerning the facts, the plaintiff X was removed from her original position after coming back from maternity and child care leave. Because of the demotion, she lost her previous role of overseas licensing, being limited to domestic licensing, and her role grade was also reduced, which caused her salary to also be lowered. Not only that, her days of leave were not counted for the calculations of her bonus payment, which meant she was paid much less that year than before getting pregnant. Because of that, X began the lawsuit.

Then, in 2011, the Tokyo High Court decided that such demotion by the employer Y was illegal because it infringed X's employment contract and was disadvantageous to the worker's career, ordering the defendant to pay compensation based on her remuneration of the previous year. In other words, the court recognized the general illegality of connecting role grades and remuneration grades (some limited exceptions were accepted), and understood that a vast reduction in wages was unlawful. Despite this small victory, the court still did not stop companies from discretionarily changing women's work duties, and it also refused, without a substantive reason, to respond to the plaintiff's claim regarding violation of the CEDAW.

For a career woman who is also a new mother, getting her salary immensely cut and being unable to do the job she loves just because she had a child, something that regardless of personal fulfillment is incredibly beneficial to Japanese society, is a situation that only adds up to the stress and responsibility of motherhood. Also, knowing that there is a high possibility of being treated this

²⁷ This case introduction is based on the full judgement and on Aizawa (2017); and Hamaguchi (2018).

way by their company and having to go to court to protect their rights (without even the guarantee of winning the case), influences a lot in the decision of working women to get pregnant in the first place. Additionally, because there are no provisions that can guarantee women – and men - will be reinstated to their pre-leave jobs, this can easily affect the decision of such employees to take leaves too. This flaw should be corrected in the future, be it by the law or the courts themselves.²⁸

Considering all these cases and the legal documents presented, it is undeniable that Japanese law continues to be lacking and suffering from the influence of parts of society that have no interest in truthfully committing to improving women's rights. The same can be said for the work of Japanese courts, which has collaborated immensely for the lack of women's rights implementation. If Japan wants to change that situation and reap the benefits of having women actively participating in the labor force, it will need to face the problem head on and stop relying on weak legislation and sporadic good judicial decisions only. It is necessary to create actual positive long-term actions, like the institution of rules concerning the minimum numbers of female workers in high level positions, such as managers and directors on company boards. But most importantly, there needs to be a change in the mentality of the whole country, brought to life through stronger and more defined initiatives to promote women's involvement in the workplace and the establishment of a trend for companies and the government, both national and local, to naturally and actively strive for female advancement.

I suggest that this change in mentality may be prompted by joint efforts of international and domestic groups of influence. As mentioned in the context of the Basic Act, Japan wants its society to be recognized internationally for gender equality. It recognizes that there is a logic of appropriateness, and as a result wants to be seen as if fulfilling the terms of the global script even if it runs counter to the logic of consequences, whereby Japan does not necessarily means to uphold these international standards. It can be said that the logic of appropriateness in masking the underlying logic of consequences existent here, which allows us to identify an example of a state acting conform Krasner's organized hypocrisy theory. What must be done is to gradually change that

²⁸ This case introduction is based on the full judgement and on Kanno (2016).

into a logic of appropriateness based on persuasion, so that the issue may be tackled in its core. For that to happen, the work of the Japanese civil society organizations cannot be overlooked. Specially NGOs are of essential importance in the fight for women's rights implementation, as they can offer a localized perspective that makes their ideas easier to be accepted than something completely external as an international convention. Thus, in the next part, I will go deeper into how Japanese NGOs have been interacting with the international society, more specifically through the CEDAW.

6.4 Japanese women's rights NGOs and their relationship with the CEDAW: How civil society cooperates in bridging the gap between commitment and compliance

Previously in this work, the report system constantly used by UN treaty committees and the documents that originate from these dialogues between the organizations and their member states has been introduced, with special focus on the CEDAW, on its Committee and on Japan. In this part, I resume this analysis, but now concentrating my efforts in entities that are not part of the government, but still represent Japan before the international society: The non-governmental organizations.

This whole reporting process, from the production of the reports to them being sent to and analyzed by the Committee, needs to be complemented by the input of various NGOs and civil society groups that work for the implementation of the CEDAW. With that, the UN can have a better insight on how the people have been understanding and how are they being affected by the convention's provisions, and a richer dialogue can be established both domestically and internationally. The Japan NGO Network for CEDAW (hereinafter, JNNC), "a coalition of some 40 NGOs²⁹ that aim to reflect the Convention on the Elimination of All Forms of Discrimination against Women in Japanese policies" (Japan NGO Network for CEDAW, 2016, p.1), is the main player of this field, in the Japanese context. Other than having submitted the written information for the Pre-

²⁹ Full list of members in Japanese and English can be found at Japan NGO Network for CEDAW. (2015). List of Issues and Questions from NGOs For the Japan Seventh and Eighth Periodic Reports. Retrieved from http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/JPN/INT_CEDAW_NGO_JPN_20839_E.pdf

Sessional Working Group for the 63rd session, it also was responsible for the Japanese NGO Joint Report with regard to the consideration of the combined seventh and eighth periodic reports of Japan sent to the aforementioned session itself, in which it provides updated information and suggested recommendations from their member NGOs.

Even just a quick overview of the document is enough to show that the organization is extremely more incisive than the Japanese government in the way that it approaches issues concerning the CEDAW. Just in its introduction, some of its clear worries can already be quoted, as it points out that “the stance of the current Abe administration has had the tendency to introduce policies that bring about new discrimination towards women since its start” and that it is concerned that the reason Japan has not as much progress in the last thirty years after the CEDAW’s ratification “is that the Japanese government makes light of the Convention and does not work on the realization of the idea seriously” (Japan NGO Network for CEDAW, 2016, p.1).

In each section of the JNNC report, different member NGOs answer to different parts of the questions proposed in the “List of issues in relation to the seventh and eighth periodic reports of Japan”, encompassing all the areas that have been afflicted by implementation problems.³⁰ Within these, special mention is given to the groups which strive for the implementation of labor rights, and thus it is worth citing that the Japanese Association of International Women’s Rights, the Action to Eliminate Gender Discriminatory Remarks by Public Officials, the New Japan Women’s Association and others were the organizations responsible for writing about stereotypes and harmful practices, while the Working Women’s Network, the Equality Action 21, the National Confederation of Trade Union Women's Bureau and others are the ones that dealt with the area of employment. Comparing the government official answers with the ones from the JNNC report is especially interesting, as it gives us two extremely different perspectives of the implementation of the same international instrument. The work of NGOs is even more relevant when considering this gap between the

³⁰ The full list is included in annex 1 of the Japan NGO Network for CEDAW. (2016). *NGO Joint Report (Japan) with regard to the consideration of the combined seventh and eighth periodic reports of Japan for the sixty-third session of the Committee on the Elimination of Discrimination against Women*, pp. 88-91.

provided information and how, logically, the Japanese government would have more incentives to enhance its achievements and blur its issues in order to demonstrate compliance. In addition to that, more than 20 other different NGOs (refer to Annex 1 in the end of the chapter) also sent their own individual reports and participated in briefing meetings during the process, making for a very diverse compilation of data.

Unfortunately, the differences between the official report and the JNNC one are too numerous to be all mentioned in this work. However, raising some of them as examples is interesting so as to create an illustration of how has the civil society's understanding and acceptance of governmental actions been up until recently. First, concerning the equal participation of women in the political and public activities, the first point raised by the report is that, regardless of the existence of the Basic Plans, no voluntary action by political parties had actually been taken to achieve the target by accepting the request from the government. It also slams the government's slogan of making the "promotion of active participation of women" one of its fore of policies, by simply pointing out that, by 2015, the number of female Cabinet ministers was of only three people. It goes on to finally raise the fact that sexist behaviors and customs remain within all levels of the government, with sexist remarks and sexual harassment being are widespread and usually easily covered up (Japan NGO Network for CEDAW, 2016, pp. 35-36).

Second, concerning the position of women in academics and education in general, the report does a good job in clearly showing the low numbers of women in positions of power, such as school principals and university or college presidents. For example, the rate of female primary school principals is of just 18.5%, the one of female junior high school principals is only 5.6%. The percentage rises as little for senior high school principals and for university or college presidents, being respectively of 6.5% and 8.7%, but that is still ridiculously low. Although the official governmental report touches on the issue, it is nowhere as incisive as that.

Lastly, on the topic of employment, the JNNC report starts by claiming that the Japanese comprehensive policies to promote employment equality between women and men had always been insufficiently developed. Concerning the Act on Promotion of Women's Participation and

Advancement in the Workplace, it criticizes the fact that very important issues, such as wage disparity and numbers and proportions of female and male employees promoted to upper job grades, are not included in its four obligatory items of consideration, but only in the twenty-one optional items from which companies and local governments are required to select as needed and establish action plans on. Thus, if companies choose to not bother with these problems, they are legally allowed to do so, as they can freely select which and how many optional items they want. Furthermore, a key point of the whole Act is that only companies with over 300 employees are required to follow its provisions, with the rest only needing to make efforts towards improving the situation. However, companies with 300 employees or less actually account for 90% of Japanese companies, and thus are exempted from the above-mentioned obligations, basically nullifying any effect the law might have. That considered, it is unlikely that the law will bring effective change to this situation of gender inequality (Japan NGO Network for CEDAW, 2016, p. 42).

The report also refutes any excuse the Japanese government might have for maintaining a dual track system of employment. Pointing out that only 5.6% of women was in the main career track and the overwhelming majority continued to be treated as general track workers, it clarifies the gendered unfairness of the system, since only workers in the main career track get opportunities for promotion to managerial positions (Japan NGO Network for CEDAW, 2016, p. 43). Since men keep dominating the main career track, which requires workers to do long hours and to deal with location transfers, and the Japanese culture has been long perpetuating the idea that this is a female responsibility, it is only obvious that men will not take time to care for their children or the housework. Thus, there is no surprise in the fact that the report points out that there has been no big increase in male child-care leave percentages, with only 2.03% in private and 2.77% in public sector male employees taking leave (numbers as of the 2016 report). Because of that, women are made to keep bearing excessive family responsibility, having often to quit their jobs or change to part-time positions, closing this vicious circle of inequality (Japan NGO Network for CEDAW, 2016, p. 48). Furthermore, the report also reinforces the point that has already been made in this work, concerning the attitude of Japanese courts towards international women's rights treaties: That judicial rulings in

Japan have hardly been effective in guaranteeing compliance with international conventions, namely the CEDAW and the ILO Convention No. 100 (Japan NGO Network for CEDAW, 2016, p. 53).

From these examples, the importance of the role of NGOs in keeping the government in check and fighting for the compliance to internationally guaranteed rights is already noticed. Together with scholars and other parts of civil society, they are in the frontline of women's rights protection, and they deserve due attention in the equation aiming to improve such rights' implementation.

In conclusion, taking in what can be understood from all the different reports and from analyzing enacted legislation and policies, it is undeniable that the government of Japan needs to improve the efficiency of its actions. And although all issues are without a doubt highly relevant to Japanese women, it can be said that, for its intersectionality with almost all other areas, its historical relevance in the process of guaranteeing women's rights, and the difficulty of influencing private organizations, the problems related to the fundamental guarantee of the right to work and to female empowerment need to be the object of this study. Employment and career paths of men and women, female participation in academia, law and politics, the rise of women in part-time positions, the gender-pay gap, work-life balance and combining work and childcare for both genders are all interconnected aspects of this right, which spill over other areas like social security and poverty. Thus, the effective guarantee of the right to work is the basis for allowing women to attain social and economic empowerment and development in both the public and private spheres of society, which on its turn influences in the growth of the state itself. Even though there is the need to be careful to not reduce women's rights and gender mainstreaming only as something necessary to the economic betterment of the country (a mistake that it might be said that the Japanese government continues to make), it is undeniable that this economic growth will be an appreciated consequence of the correct implementation of the rights present in the CEDAW, which increases the need for the topic to be tackled. Furthermore, this pressure over Japan for the realization of gender equality in the realm of work has been a focus not only of the UN. Internationally, the European Union (through direct action such as programs of its Delegation to Japan and the production of research like the EU-Japan

Comparative Report on Women's Economic Empowerment, as well as indirectly through trade policies) and the International Labour Organization (by reinforcing the importance of Japan to ratify its Conventions related to women's rights) have also been active players. On the other hand, domestically there are NGOs continuously putting pressure on the Japanese government, as their participation in the CEDAW reporting procedures proves, and also the will of the government itself to have Japan recognized internationally as a state that thrives in gender equality.

If all these points concerning the implementation of the women's right to work are analyzed thoroughly and correctly, it might be possible to propose ways of solving some issues, especially the ones related to the difficulty women face to achieve the same results as men when it comes to reaching positions of power and decision making and to earning the same wages for work of equal value, including there the discrimination they suffer on the grounds of pregnancy and motherhood, which are inherent characteristics of women that can become a reason for stereotyping and prejudice against them.

The aim here is to overcome the present lack of true governmental effort to create a gender-equal society, which has been hiding behind a rhetoric concerning gender equality and discrimination which masquerades as if based on a logic of appropriateness, but in fact is based on an economy-driven logic of consequences. For that, the traditional social and cultural attitude towards women who take active roles in all levels of society needs to change, and gender equality needs to be perceived as a universal right, not as a response to economic or demographic pressures (Assmann, 2014, p. 17). Together with creating better and more efficient legislation and policies, that surpass the level of recommendation and are actually enforceable, there is also the need to engage with the civil society in a grassroots movement mindset that works from the bottom to the top. Thus, in addition to the more traditional analysis of academic literature, this study draws extensively on information provided directly by NGOs active in the field of the right to work, such as the Working Women's Network, and in the more general goal of ending stereotyping and harmful practices, such as the Japanese Association of International Women's Rights. This information was obtained through the realization of semi-structured interviews with representative members of these civil society

organizations. Another angle of analysis that was undertaken was conversing with female Japanese scholars in the field of the right to work and feminism, such as Mutsuko Asakura. I hope to be able to shine a light on the bleak situation of Japanese working women, giving the necessary regard to their actual experiences and ideas and distancing ourselves from the prevailing Japanese concept of gender equality that prioritizes the pre-existing male focused structure of society and labor.

Annex 1 - List of Shadow Reports sent to the 63rd Session and to the Pre-Sessional Working Group (PSWG) by Civil Society Organizations

Association to Achieve True Equality between Men and Women (submission for the session)
Coalition of Three Parties for Communicating Historical Truth (submission for the session)
Gay Japan News and ILGA (submission for PSWG)
Happiness Realization Research Institute (submission for the session)
Japan Family Value Society (submission for the session)
Japan Federation of Bar Associations (submission for PSWG)
Japan Federation of Women's Organizations (submission for the session)
Japan National Group of Mentally Disabled People (JNGMDP) and CPAO (Child Poverty Action Osaka) (submission for the session)
JNDMDP and CPAO joint submission (for PSWG)
JNNC joint submission (for PSWG)
Join NGO submission (for the session)
Kaleidoscope HumanRights Foundation and DLA Piper (submission for the PSWG)
Minority Women, Indigenous Ainu, Buraku and Zainichi Korean (joint submission for the session)
Nadeshiko Action (submission for the session)
Nadeshiko Action, Japanese Women for Justice and Peace (JWJP) (submission for PSWG)
New Japan Women's Association (submission for the session)
NGO GAHT-US Corporation (submission for the session)
Ninohashi Club (submission for the session)
OutRight Action International (submission for the session)
Researchers of History on Modern Japan (submission for the session)
Solidarity Network with Migrants Japan (submission for the session)
Space Allies (submission for PSWG)
The Korean Council (submission for the session)
Women's Active Museum on War and Peace (submission for the session)
Working Women's Network (submission for the session)

Chapter 7. Analyzing the Interview Results: A Look at the Women’s Right to Work through the Eyes of Japanese Women

After looking at the theoretical particularities of the “spiral model”, there came the need to apply its framework to the reality of Japanese society. To do that, after careful consideration I decided to conduct face-to-face semi-structured interviews with a variety of people who are intrinsically connected with the issue of gender inequality in the Japanese workplace, specifically domestic NGO representatives, established scholars, young students, female workers and government officials. The main reason for approaching the topic through such a method is because I could benefit from the located expertise of Japanese women, living this commitment/compliance gap in their daily lives could give me a clear picture of how Japan has been dealing with (or rather, not dealing with) its discrimination issues. Thus, it is clearly of significant benefit to reach out to them and get their input in the usefulness of the “spiral model” framework to help understand the Japanese case study.

This chapter is structured as follows. In part one, I will explain the details related to the selection of subjects and the creation of a question list. Moving on to part two, I will analyze the answers obtained from the interviews according to a norm diffusion point of view. Lastly, in part three I will present the conclusions that can be reached from such analysis, focusing on its relation to the “spiral model” of norm diffusion and other complementary theoretical approaches. Particularly concerning the structure of the interview analysis in part two, I will focus on five main points, each based on the questions that were asked to every interviewee. The following table fully illustrates this structure, showing the division of part two into the aforementioned main points, how these points are divided into subtitles for clarification, and which questions form the base for each subtitle.

Table 3. Structure of the interview analysis
1. Who are the interview subjects and what is their relation to the feminist movement and feminist theoretical approaches? (Discussed in section 7.2.1 below)
<i>7.2.1.1 The interviewees’ background information</i>
<u>The answers are a response to interview questions including:</u>

- Please introduce yourself/your organization and your main activities. What was the main reason for establishing an organization/focusing on this topic?

7.2.1.2 Interviewee relationships with feminism and the Japanese feminist movement

Question included:

- The Japanese government has been trying to deal with a deeply gender unequal society since the 1980s. Were you/your organization active in that period? What are your conclusions considering the actions taken by the government in that period, and its reaction to feminist movements? What about society's reaction to the situation?

2. Level of interaction of interview subjects with other organizations or individual actors, both domestic and international (Discussed in section 7.2.2 below)

The answers are a response to interview questions including:

- In this thesis, I aim to use the “spiral model” (an influential theory of norm diffusion which attempt to explain how the diffusion of human rights norms works and who has the normative power to perform such diffusion) to try to understand the socializing effects of international society, specially focusing in the interactions of international and domestic institutions. Specifically, I will analyze the Japanese case concerning the women's right to work through these lenses.

So, based on that, I want to ask what are the organizations or individuals that inspire you/your NGO? Are any of them from outside of Japan? Do you also get domestic incentives?
- Do any other actors, especially non-Japanese actors, give funding, ideas or help of any kind to you/your organization? To what extent do they act like this?
- How would you relate this Japanese situation to the phases of the “spiral model” and to Japan's intentions of continuing to be part of the developed international society (in other words, to its level of social vulnerability)? Do you agree that this shows a lack of persuasion, or even of socialization of the Japanese government and society?

- Looking at the interaction process between the national and the international in the context of creating change in the women's rights protection, do you think any point of this process can be identified in the case of Japan, specially in the protection of women's right to work? (linear process of the spiral model – Figure X – used as reference)*
- Do you think your organization has been relevant in any phase of this process? If yes, how so?*

3. What are the interviewee opinions concerning the spiral model framework? Do they consider the spiral model to be a helpful framework through which to understand Japan's issues? (Discussed in section 7.2.3 below)

7.2.3.1 Japan's attitude towards women's rights situated in the spiral model phases

The answers are a response to interview questions including:

- The spiral model is divided into five phases of human rights implementation: *repression* (phase 1); *denial* (phase 2); *tactical concessions* (phase 3); *prescriptive status* (phase 4); *rule-consistent behavior* (phase 5). Phase 1 consists of active attempts by authoritarian regimes to stop any opposition groups of bringing human rights norms to the light. Phase 2 begins if transnational groups manage to start the advocacy process with the information they have on the domestic rights violations. They help domestic groups that still might not be able to fight for themselves, through international lobbying and pressure that are strong enough to evoke denying claims from the abusing government. Here there is a discursive engagement and international socialization. In phase 3, the violating state starts using concessions to get the international human rights community to stop pressuring it. This instrumental logic empowers domestic advocacy groups and makes them increase in mobilization, and this could lead the state to react in a complying way or in a repressive way. Phase 4 happens when the state discourse shifts and it starts granting human rights norms prescriptive status through a defined set of state actions and practices, such as laws and policies. Lastly, in phase 5 the state shows clear behavioral change and sustained

compliance with international human rights. It means that at both domestic and international levels, there is now actual implementation of prescribed norms.

Based on this explanation, could you identify in which phase of the model would Japan belong, in the context of the gender equality in labor? Why?

7.2.3.2 *The Japanese society's relationship with the processes of socialization and persuasion*

The answers are a response to interview questions including:

- Within the spiral model, there are five scope conditions under which one would expect socialization mechanisms to encourage compliance with human rights by both state and non-state actors. Thus, there is a need to identify where the state under study fits in the following categories: democracy or autocracy; consolidated or limited statehood; centralized or decentralized rule implementation; high or low material vulnerability; high or low social vulnerability.

Considering where a state is categorized in these conditions, some socialization mechanisms might be more effective than others. In general, the spiral model identifies the following mechanisms: *Coercion*, by force and legal enforcement; *Conditionality*, which is manifested in the form of sanctions (negative incentives) and rewards (positive incentives), that change the cost-benefit calculations of actors; *Persuasion* and *discourse*; *Capacity building*, meaning the education, training and the building up of administrative capacities necessary.

In a follow up work, other mechanisms are also brought up: *Socialization*, meaning that actors start acting in order to meet specific social expectations; *Competition*, which involves change by actors competing over meeting a certain performance criteria; *Lesson-drawing*, when actors facing a political or economic problem look to other actors for effective policies and rules; *Mimicry*, which happens when actors emulate others for normative reasons.

The next questions will have these scope conditions and mechanisms of diffusion, applied to the Japanese situation, as their background.

- Do you think that Japan has been through socialization (just acting to meet international social expectations), but not yet persuasion (actually internalizing international norms that say that gender equality must be guaranteed)? For example, do you think that there are enough efforts being made to allow men to understand and put into practice that they too need to balance work, child rearing and home making obligations with women? How important do you think this point is to implementing gender equality in Japan?
- Japan is said to be a high context culture, where verbal communication is often given less importance when compared to implicit social exchanges. Do you think this high context characteristic might have some influence in the perpetuation of women's rights violations within Japan?*

7.2.3.3 The importance given by Japan to its position in international society and its approach to international law

The answers are a response to interview questions including:

- Do you think such policies (for gender equality) are unique to Japan, or that they were based in experiences of other countries? In other words, has Japan used mimicry or lesson-drawing to create any of its laws and policies on gender equality? If yes, how successful were they?

4. How has the commitment/compliance gap been addressed by the Japanese government?

What are the issues that have been persisting because of this gap? (Discussed in section 7.2.4 below)

7.2.4.1 Opinions concerning the Abe government's policies aiming for gender equality

The answers are a response to interview questions including:

- Most recently, the Abe Cabinet has pushed gender equality as one of its most important pillars for development, going as far as to talk about "womenomics". What do you think about the effectiveness of these current Japanese national policies and norms? Would you suggest any changes to them?

- Do you believe there is an active attempt at hindering female empowerment in Japan, specifically by the men currently in power? If so, why do you think that happens?*

7.2.4.2 The lack of strength of Japanese labor law in the context of the women's right to work

The answers are a response to interview questions including:

- Still concerning the gender equality policies created by the Japanese government, the situation of their implementation has been highly decentralized. This is because of the nature of gender equality rights related to labor and the fact that full compliance to them depends mainly on different companies, which have not satisfactorily abided to them. What do you think are the reasons for this problem? How could this be changed?

7.2.4.3 Japan's continuous low position in the WEF Gender Gap Index

The answers are a response to interview questions including:

- It is a fact that Japan is constantly in the lower tiers of gender equality indexes. Do you think these results have been publicized and considered enough, especially when it comes to the general population? Would you link this to a lack of internalization concerning the importance of guaranteeing gender equality in the Japanese society?

7.2.4.4 The insincere Japanese approach to international treaties dealing with women's rights

The answers are a response to interview questions including:

- Japan has tried to take a proactive approach internationally too, by becoming a signatory of treaties that deal directly with gender discrimination, such as the CEDAW and the ILO Conventions. However, it has made reservations or refused to sign important treaty terms such as the Optional Protocol to the CEDAW. What do you believe are the reasons and the consequences of this refusal?
- Do you believe Japan has been sufficiently implementing international treaties, such as the aforementioned ones? If not, what do you think are the hurdles that have been creating this gap in the implementation of international norms?

7.2.4.5 The passive role of Japanese courts in women's rights' implementation

The answers are a response to interview questions including:

- Concerning the Japanese judiciary, what are your thoughts concerning the approach usually taken by judges in cases that deal with gender inequality, especially in cases that deal with labor rights and indirect discrimination? Do you believe Japanese courts should make more use of internationally sanctioned norms, or they should keep relying only on original domestic law and on international norms transposed into national law?

7.2.4.6 Observing other topics of relevance within the interviewees' answers

5. What are the perspectives of interview subjects on the future, both concerning their organizational activities and the evolution of Japanese society? Do the interviewees have any suggestions to improve the present situation? (Discussed in section 7.2.5 below)

The answers are a response to interview questions including:

- Lastly, what are the biggest difficulties you/your organization has been facing in your activities? Do you think the introduction of some of the aforementioned mechanisms of diffusion might ease these issues?
- Do you have any data or knowledge about how many Japanese women actually think their present situation in society is unfair?*

*These are questions which were asked during follow-up interviews

Also, in addition to including my own analysis when explaining the subjects' answers, I will include as background information some commentary related to the atmosphere of the interviews or some extra topics that were discussed during these conversations, so as to clarify as much as possible every relevant point that was brought up. Such interjections will be identified separately to avoid any confusion related to who is responsible for each point.

7.1 The decision-making process concerning the interviews: What, whom and how to ask

The first step after deciding to conduct interviews was to make a question list, which would serve as a regulating guideline for the conversations. The first draft was finalized by the end of 2018, including 15 questions that touched upon the interview subjects' backgrounds, their opinions on how

the spiral model could explain Japanese case, their views on the current situation of Japan, their approval of domestic policies for gender equality, their prospects for the future, amongst other related topics. After going through several rounds of revision and refinement, the official question list including 16 questions was finalized (refer to Table 3 for the questions included in the list).

Then, I proceeded to deciding who would be the interview targets. The most important attribute of the interviewees was that they should be Japanese actors familiar with the situation of this lack of women's rights implementation, be it because of their academic background, their field of work or real life experience. This condition prompted a translation of the question list to Japanese in order to facilitate communication. In other words, nationality (or at least the geographical field of activity) and the women's right to work being the focus of the subjects' work or interest were the deciding factors, particularly to enhance the data collected from the interviews. Other than these conditions, the initial search for subjects did not have any limitations concerning age, gender, experience or social position, which allowed us to have a wide but well-defined range of contacts.

As a result of this methodology, in total 12 individuals from 8 different organizations were interviewed (refer to Table 4). However, as it can be seen from the lack of their information in the table, one of the interviewees who was related to a governmental office did not want to be identified and asked for their answers to not be included in the text of this thesis. Thus, I will use the insight provided to me through that interview just as a base for my own conclusions. Other than that, all other interviewees consented to the use of their name and answers, which can be proven by collected interview consent forms easily accessible upon request. Concerning how the interviews were carried out, I favored a face-to-face direct approach, where I could shift the interview questions according to the course of the conversation. With the exception of the Union Bochi Bochi, which I interviewed through a teleconference, I met with all the other interviewees in places of their choice and I talked for around 40 minutes to one hour.

After finishing the first round of interviews and reviewing their answers, I decided that since the interviewees had provided us with highly insightful answers, it would be helpful for the understanding of the topic to go back for follow up interviews. Although all participants had greatly

contributed to this research, interviewees 1, 2, 3, 4 and 11, because of their academic backgrounds and real-life experiences, were incredibly helpful and showed a great grasp of the “spiral model”, norm diffusion and of the Japanese present and historical situation concerning the implementation of the women’s right to work. This allowed us to ask them more focused questions related to such topics. The follow-up question list included questions related to the participation of the interviewees organizations in the process of norm diffusion and concerning other possible propositions for why the commitment/compliance gap exists. The list of additional questions, divided according to the topic they are related to, can be seen in Table 3.

Here, there is the need to bring up the positionalities of these interviewees and how they might have reacted to my questions, taking into consideration my position as a Brazilian researcher studying the Japanese work environment through the eyes of Japanese women. Even though I tried to take a step back and let the interviewees speak freely, even sometimes going off-topic, there is always the possibility that they might have given me answers, based on their positionalities, that are different from what they would have given a Japanese researcher. I cannot guarantee that they were more or less open with me, but it is a fact that they were very welcoming of my presence and of the questions (our interviews often run over time and veered into other topics), that they agreed with the idea that there is a universal paradigm on the production of women’s rights, and that they even invited me to join many of their events and lobbying activities, where I was usually the only westerner, if not the only foreigner. This points to the high possibility that the interviewees trusted me and communicated openly with me regardless of my nationality or cultural background, which likely contributed to the candor of their answers. Furthermore, by creating interview questions that operationalize a theory of universal human rights and of norm diffusion in as value-neutral way as possible, I attempted to anticipate and screen out the possibility of the interviewees’ positionality and my own positionality affecting the answers beyond acceptable bias.

With these formalities clarified, I can move on to relaying and analyzing the contents of the interviews, looking into specially on how they can help us have a better insight on the Japanese situation and the actions that might be needed from now on to revert the present issues.

Table 4. Details Concerning the Interviewees		
NGO	Name of the Interviewee	Interview Reference
Gender= (NPO 法人ジェンダーイ コール)	Kurumi Shinohara	Interviewee 1
Mutsuko Asakura (浅倉むつ子)	Mutsuko Asakura	Interviewee 2
JNNC (日本女性差別撤廃条約 NGO ネットワーク - Japan NGO Network for CEDAW)/ Equality Action 21 (均等待遇アク ション 21)	Yasuko Yunoki (responsible for both organizations)	Interviewee 3
WWN (ワーキング・ウィメン ズ・ネットワーク - Working Women's Network)	Shizuko Koedo	Interviewee 4
	Kinuko Ishida	Interviewee 5
Union Bochi Bochi (関西非正規等 労働組合ユニオンぼちぼち)	Hinaka Ozaki	Interviewee 6
Students from the Shinagawa Joshi Gakuin (品川女子学院)	Anna Katou	Interviewee 7
	Hanano Fukuhara	Interviewee 8
	Kanako Nakashima	Interviewee 9
	Hanae Iriyama	Interviewee 10
Zenroren (全国労働組合総連合)	Yuri Nagao	Interviewee 11

7.2 Analyzing the interviews: The points of view and experiences from Japanese women

As already mentioned, this chapter and the analysis of the interviews will be divided into five parts, following a logical structure that will be essential to clarifying and organizing the voices of so many subjects. I will start with introducing their backgrounds, to illustrate what is the basis of their activities, and then I will move on to focusing on how the “spiral model” framework can be identified and applied to their situations. Finally, I present their perspectives on the future and suggestions that could possibly be effective in improving the current situation.

7.2.1 Who are the interview subjects and what is their relation to the feminist movement and feminist theoretical approaches?

In this part, I will introduce the interviewees, presenting their and their organization’s backgrounds and their view towards feminism, with a focus on the Japanese feminist women’s liberation movement of the late 60s and 70s.

7.2.1.1 The interviewees’ background information

My first interview was with Gender = (pronounced as “gender equal”), a group that was created in 2016 and became an NPO in 2017. The creators are mothers that got to know each other because their children were in the same class in preschool, the majority of them women working full time. Looking at their own situations, they started questioning the fact that only they were responsible for taking care of the children daily. Even more, they started questioning why this was seen as such a natural situation by society.

The interviewee Shinohara (Interviewee 1) felt special aware of this issue, as she had the opportunity to go to graduate school and of studying abroad in the USA, thus experiencing other approaches to gender there. As someone who had always studied in the same level as men in the field of science and joined a company in the main career track (総合職), she was incredibly aware of her change of status as soon as she had a child. Even her relationship with her husband, which had been somewhat equal before, changed shockingly and the role of mother and housemaker was suddenly enforced on her.

Interviewee 1 pointed out that her company treated her differently after she became a mother by lowering her importance as an employee and acting like they were doing a favor to her by allowing her to stay in the company. She and the other organization members did not want other women (she specifically worried about the future of her three daughters) to feel alone and to go through the same hardships, which became the reason for the group's creation.

My next interview was with Professor Asakura (Interviewee 2). When asked about why she decided to specialize in labor law, she answered that when she was a university student in 1967, the discrimination against women was a given at the Japanese companies, and no one went against it. As a person studying law, she wanted to change that situation. And even before entering university, in high school, she was inspired by a book by Goto Shoujiro on judicial cases with false charges and realized how important human rights were for society. The Sumitomo Cement case (Hanrei Times, 1967) and its good outcome were also a major influence for her. (Interviewee 2)

My third interviewee was Yunoki (Interviewee 3), who is both the representative of Equality Action 21, an NGO started in 2000 to help female workers guarantee their rights before their employers and to end indirect discrimination, and the joint representative of the JNNC. She answered my questions focusing on her work for the Equality Action 21, as this is her main organization.

The group started by offering a series of lectures aiming to let people know about gender discrimination issues, and then the project evolved to an official organization. Their first name was Equality Action 2003, because they believed they would have made enough progress by then, but when that clearly did not happen they decided to change it to 21, to represent the 21st century. They are planning on continuing their activities for more 2 years and then reviewing their results. They have also made many pamphlets and newsletters through the years, including information about their activities and about issues related to CEDAW and the ILO conventions, both those Japan has signed and those it has not, which she kindly provided me. (Interviewee 3)

Particularly about her interest in these topics, Interviewee 3 mentions that the Showa Shell cases (Rodo Hanrei, 2003, 2009), were the trigger for her activities, both because of her own discriminatory experiences at the company and because she had been deeply involved in the court

procedures as a union leader. Concerning the former, she used to work for Shell, which was an international company and thus had very good work conditions, with the industrial union holding consistent activities, such as holding a strike in 1972 aiming for better payment. To break those activities, the company tried to split the union and create a different organization to weaken the complaining workers. In that belligerent context, the merger between Shell and Showa happened, and Showa, as a national company which was listed in the stock exchange, was made the continuing main company. The president of Showa declared the company would use a Japanese business model, which according to her meant that women were treated as “cheap tools” with no importance in the office. For example, there were tea cupboards and dish cloth holders in all offices of the Showa company before the merger, and women had to make and serve tea four times a day (first thing in the morning, at 10am, at noon, and at 3pm). This was inexistent in Shell, where the tea services were outsourced. The work women did at Showa was also only assistance work, which shocked female workers from Shell. Even more shocking was the fact that these women from Showa were not getting pay raises or promotions. To make matters worse, the pay was higher in Shell, but with the merger only the men from Showa got a pay raise to match this amount, while the women did not receive the same benefit. The Shell female workers also were excluded from getting incentives for qualifications, which became a reason used to not raise their salaries, contributing to the growth of this gender pay gap and leading 12 workers, including her, to sue. (Interviewee 3)

Concerning the her experience as an union leader, a member of another union, Nozaki, had her compulsory retirement in 1992, and complained to her union about all the aforementioned discriminatory issues. Interviewee 3 and other experienced members were called to help, and complained to the authorities, with no success. Seeing the company just denying the discriminatory acts without any proof or documents, Nozaki decided to sue in 1994, which turned into the famous Showa Shell case. She won her case in the first instance in 2003, with the court deciding that the company had a written policy for the career of males and another completely discriminatory policy for women. Even with the company’s appeal, the final decision was still a win, especially because the court branded the company as a company that discriminated against women. (Interviewee 3)

However, even with some significant wins, Interviewee 3 realized that the Japanese courts were unreliable, and thus decided that the better approach was for Japanese women to be able to use the individual complaint system in the CEDAW. She is now fighting for its ratification.

After that, I interviewed Koedo (Interviewee 4) and Ishida (Interviewee 5), from the WWN (Working Women's Network). Interviewee 4 is the main representative of the WWN, which was created back in 1995 by around 50 women and had as its background the Beijing World Conference on Women and the Sumitomo Cement case. They held a very successful workshop in Beijing concerning the lawsuit, where they could feel the support of other women from many different places towards their case. They did not want their work to end with their participation on the Sumitomo Case decision, so they decided to continue fighting and helping working women guarantee their rights by merging with three other already existing groups and creating the WWN. (Interviewee 4)

Interviewee 5 got involved in this fight for women's rights because she was a plaintiff in the Sumitomo Case (a lawsuit that aimed to end gender discrimination in the workplace) as a worker from Sumitomo Kagaku, which was one of the companies involved in the case. The first case to be judged was from Sumitomo Denkou in 2000, and the result was a non-favorable decision that said that even though there was disparity between men and women, that did not go against labor laws at the time. The same result was given in the case of Sumitomo Kagaku, in which she and the WWN were more involved. They appealed in both cases to the Supreme Court, which ended with the same result: a settlement was reached, allowing the plaintiffs to be moved to managerial positions and advising the Japanese government to revise its position on the matter. Although this kind of settlement can be counted as a win, it makes it difficult to build precedents, and thus she and the other plaintiffs wanted to actively keep being involved in the cause and use that result to help other people. (Interviewee 5)

Next, I interviewed Ozaki (Interviewee 6), from Union Bochi Bochi. Concerning her interest in the topic of gender equality, she explained that she is a transgender woman, and that around the year 2010 she was unfairly dismissed by her employer for that reason. The organization that helped her at that time was Union Bochi Bochi, and her wanting to pay it forward to other women was the

beginning of her relationship with the Union. Also, in her specific case, she used to be a sex worker. According to her, in Japan sex workers and “night workers” (women working in cabarets and hostess clubs) tend to have very weak or non-existent labor unions. Interviewee 6 wants to try improving this situation, and the Union has helped her do so, for example by organizing a workshop around 2014 to teach how sex workers could make better use of labor unions. Although there have not been many societal changes in this matter, they want to keep tackling these issues.

About the Union itself, it started in 2005, after the original members were dismissed from their jobs in a convenience store and decided to create their own union to fight against this unfair treatment. They grew their numbers first by inviting friends to join, so it can be said that this is a very private and grassroots union, where individual people support and help other individuals solve their problems. (Interviewee 6)

After interviewing so many older women, I had the chance to talk to Katou (Interviewee 7), Fukuhara (Interviewee 8), Nakashima (Interviewee 9) and Iriyama (Interviewee 10), four teenage high school students from the Shinagawa Joshi Gakuin. Their activities were introduced to us by Interviewee 1, who had helped them with research before. These four interviewees explained that their interest on the topic started because of a project included in the subject of home economics, called CBL (challenge based learning). Basically, each class had to choose a topic and research about it, offering solutions for the issues found. Interviewee 7 and Interviewee 8 explained that at first they researched about discrimination in society in general, but then decided, since they were women, to focus a more deeply on the issue of discrimination against women. They also wanted to be prepared for the kind of discrimination they might face in the future, and to understand the things their mothers still go through. Concerning the different kinds of discrimination against women present in society, their focus is in helping change the position of women in the workplace and the gender-pay gap, mainly because they think it’s unfair to study the same as men and still receive less pay. Also, even though their activities were originally just schoolwork, they wanted to expand it and thus they became a union-like extracurricular group. (Interviewee 7)

Lastly, I went to the Zenroren (全労連 or National Confederation of Trade Unions) office to interview Nagao (Interviewee 11), who is a vice-chairman of the organization. Concerning the organization's history, it welcomed its 30th anniversary in November 2019. Plus, the division Interviewee 11 is responsible for, the women's bureau (女性部 in Japanese), will turn 30 in April 2020. However, the organization has been active since before the Second World War, only under another name. Back in 1989 the 総評, or General Council of Trade Unions of Japan, was separated into the Rengo (連合 or Japanese Trade Union Confederation) and the Zenroren, for political reasons and also because of specific labor policies of the time. (Interviewee 11)

Interviewee 11 got involved in the organization around the year 1979. After graduating university, she worked as a teacher in Osaka, but soon after that she got married and had children, which made her need to use the services offered by the Zenroren in order to be able to work and raise her family at the same time. She said that she was only able to do so because of their help and the women's rights they had fought for, and thus she wanted to give back to the organization by working there. For example, at first only three kinds of professions were allowed the benefit of childcare leave: teachers, nurses and nursery school teachers. One of her first jobs as a member of the Zenroren was to fight for the expansion of this right to include the women working in private companies and men, through the creation of a law regulating childcare leave. Thanks to their efforts, taking such a leave has become a legally guaranteed right for both genders, even though sadly the number of men making use of it is still very low. (Interviewee 11)

These very different women, who all share the same will of improving the lives of other women and ending gender discrimination, form the group of interviewees who will give this thesis the necessary insight into the plight of working women in Japanese society.

7.2.1.2 The interviewee relationships with feminism and the Japanese feminist movement

In this part, I will present the relationship between the interviewees, their organizations and feminism in Japan. This analysis is important to measure the connection – or lack of connection - between labor-related movements and feminist approaches, and if they influenced each other in any

way. Also, it gives us an indication on how much feminism is present and relevant in contemporary Japanese society, and if it could affect the difficulty of norm diffusion and implementation in the domestic stage.

In Interviewee 1's experience, the change in attitude of her company and husband after her pregnancy made her painfully aware of discrimination, changing even her views towards feminism. Before, she used to think that feminists were complaining just because they didn't have the ability to compete with men, but then, when no one around her listened to her complaints concerning a clearly unfair situation, she finally could empathize with them. Still, she was doubtful of the relevance of her situation for a long time, only understanding how valid her concerns were after self-teaching herself through books, which took around three years.

Also, when asked about feminism in Japan, particularly the women's liberation movement, Interviewee 1 said she didn't identify herself with the movement. She pointed out that it is difficult for Japanese people to raise their voices and fight for their rights, as shown by the lack of social impact the "#metoo" movement had in Japan. For her, this is because in Japan the people and the culture are more uniform than when compared to Western nations. Additionally, according to the activities of her NPO, she affirmed that cultural aspect of uniformity remains even in the younger generation. However, she does think that the situation got a little better because of the possibility of women using the internet and social networks to raise their voices and spread information.

For Interviewee 2, when it came to understanding the feminist movements in Japan around the 70s, she admits she didn't understand or connect deeply with them at the time. She believes sociologists like Chizuko Ueno and other writers and psychologists were the force behind this movement, as they took the first step in questioning society. On the other hand, law scholars were the last to understand it. According to her, in Japan the law is seen as a power tool used by the state to control citizens, and thus the new ideas of feminism were not even brought up in her university classes. Although she knew about it and agreed with some points of the movement, she still thought it didn't apply to her studies. Plus, the Japanese government was very vocal about being against it,

and consistently discredited the movement's members with conservative claims about family and society, which also affected the perception of the public towards feminism. (Interviewee 2)

Interviewee 2 linked this point with the creation of the Equal Employment Opportunity Law (EEOL) in 1985, which was just a way of the Japanese government to stop the international pressure brought over itself by the signature of the CEDAW (Convention on the Elimination of All Forms of Discrimination against Women), not taking the law seriously at all and continuing to support the unwillingness of companies to actually hire and treat women fairly. Regardless of the flaws in this law, the actions of those women fighting for their rights cannot be overlooked, and they definitely contributed a lot for this kick-off pressure towards the government (Interviewee 2). Interviewee 3 shares a similar position. She knew of the works of Chizuko Ueno, but she did not understand them at all. Even if she was involved in cases of gender discrimination and saw some of the protests, she did not see herself as a part of the movement. Other members of the Equality Action 21 dealing with other gender inequality issues also had the same feeling of not being an active part of the feminist movement.

Interviewees 4 and 5 from the WWN also thought the same. Interviewee 4 said that there was a general feeling that it was a movement to make women superior to men and they did not follow it very closely, since what the feminist movement was doing felt extremely distant from what working women were fighting for. She mentioned that working women in general did not question their position in the workplace until the EEOL came and gave origin to the double track system, which prompted them to study the issue, finally deciding that lawsuits were the most effective solution. In other words, their movement started from their reality. Interviewee 5 said that at the time she thought the feminist movement was not a movement coming from the workplace, from and for the workers, in addition to not being as strong in Osaka, where the WWN is based.

According to Interviewee 6, because the Union was created more recently, they do not have a strong connection to the original feminist movement in Japan, but they do consider feminist approaches when gender issues come up in individual cases of women being treated unfairly in their jobs. They actually need to understand feminist points of view to a somewhat deep extent, since even

though they do not advertise their union directly to women, the majority of women work in irregular employment and thus end up asking often for the Union's help. In fact, more than half of the union's cases involve women (Interviewee 6). On the other hand, Interviewee 6 herself identifies as a feminist. Even though she has not studied it officially and treats it more as a hobby, she has used feminist teachings and logic in her approach to real life issues. However, she sees her feminism as something completely different than the Japanese past take on feminism, as she identifies more with the teachings of Judith Butler and other authors that deal with gender identity, and less with the ideas of the women's liberation movement in Japan. In fact, she tends to read more international works than Japanese ones.

In the same sense, Interviewee 11 replied that her and the Zenroren were not very connected to the women's liberation. Of course, the organization also aimed to raise women's social status, but their activities towards such goals were not directly related, as the feminist movement was more connected to sociology and sociologists than labor activists. Their connection only went as far as them reading works by movement leaders such as Chizuko Ueno and inviting them to give lectures. Still, more than seeing the feminist movement members as equal comrades in a fight, it was more of a feeling of joining hands (Interviewee 11). She emphasized that this is her view on the issue, and that no official position was ever taken by the Zenroren. However, she acknowledged that it is a fact that many of the things they both fought for were the same, such as allowing women to keep working after marriage and increasing the number of women in management positions. According to her, the Zenroren was just a bit more practical and wanted more concrete general policies and results. But after some thought Interviewee 11 concluded that now the Zenroren has been fighting more and more for individual rights, such as in harassment cases, which shows that in fact they ended up having more things in common with the feminist movement that she thought at first.

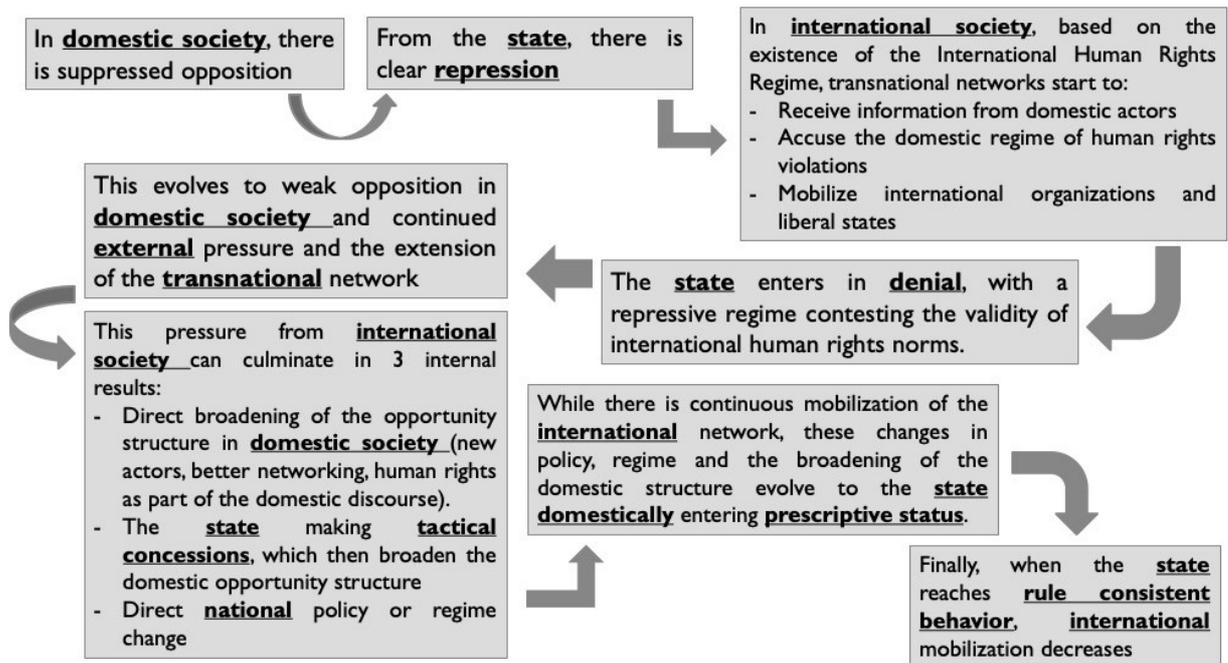
Lastly, mirroring the tendency seen in the responses to this question, Interviewees, 7, 8, 9 and 10 did not actively identify with feminist theories and approaches either. From this general picture, it can be inferred that even though the feminist movement that spanned through the end of the 60s to the 80s was influential in many societal changes and the way that a lot of women saw

themselves inside of Japanese society, when it came to a direct relation to work rights' movements it was not so strong. This was a counterintuitive finding, because generally the equality basis of feminist theories seems to be very much aligned with the fight for the women's right to work. From the interviewees responses, it seems likely that the image of the movement transmitted to the public made it difficult for people to associate themselves with it. Even though that changed to an extent, as some of the interviewees now actively identify themselves as feminists, many others still keep a distance from such classification. Moreover, viewing this situation through the lens of the "spiral model" and through my understanding of persuasion based on Checkel's theory, this separation between feminists and the people fighting for the women's right to work becomes a problem. This is because feminists, by attempting to change people's views on gender roles and on what constitutes discrimination, are the ones more likely to engage in promoting persuasion domestically. Thus, a disassociation between these two groups may contribute to Japan being stuck in this status of barely committing to international law. By connecting the women's right to work, norm diffusion and feminism in this thesis, I intend to clarify and improve the connection between these topics in the Japanese context.

7.2.2 Level of interaction of interview subjects with other organizations or individual actors, both domestic and international

This next part will focus linking the interviewees' activities with the "spiral model" of norm diffusion, by taking a look at the connection between them or their organizations and other actors in the field of the realization of the women's right to work. This question is important because it helps me recognize to what extent I can apply the framework of the model to the Japanese case and identify points that could explain the difficulty Japan has in implementing women's right to work. As a reference to help the interviewees visualize the processes of the spiral model, I used the diagram in Figure 9, which is a linear representation of the five phases of the model and of the relationships between the state, domestic actors and transnational actors.

Figure 9. Linear representation of the processes of the “spiral model” framework



When asked about the relationship of her organization with international actors, Interviewee 1 said that Gender= didn't receive any influence from other organizations specifically. She herself had no interest in gender issues when she was in New York for her studies, and thus did not make significant connections at the time. Also, except for one of them, the founding members have also never officially studied law, gender issues or politics (Interviewee 1). However, she believes that this is their strength: that they are only a group of normal Japanese women wanting to change an unfair situation through a grassroots movement. Regardless, she does intend to go abroad to expand her ideas someday. About national connections, they do not have many either. One example of this lack of support given by her was a recent crowdfunding that was not as successful as expected, and that some friends put some distance between them and the members after they started the organization. For her, there is a general misconception that Japanese society is already fair and equal, which makes people think that fighting for equality means fighting to make women superior to men, and consequently makes the topic of gender equality and feminism something that not many people want to support, regardless of gender. As a group, they want to change this aspect of Japanese culture in a way that allows women to fight for their rights.

On the other hand, Interviewee 2 has had a very fruitful interaction with international actors. She first went abroad when she was already an assistant professor. Through her connections with the Japan Lawyers International Solidarity Association (日本国際法律家協会), she went to Cambridge to participate in an international meeting about women's rights, because there was no one else in the Japanese ranks that could do a presentation on the topic. There, she could meet people from many different cultures and listen to many varied ideas, including the equality-based socialist view which was strong among the participants. However, even the participants from socialist countries shared their stories of being discriminated, which made her aware of how reality was different from theory. Even though she had some knowledge on the topic, this conference was her first real contact with the theme on a deeper level and what made her aware of the gap between law and reality (Interviewee 2). Furthermore, concerning funding, she said she never received any from abroad, although she did receive from MEXT and the Japanese British Council the opportunity to do short international exchanges.

Interviewee 3 focused in the point that members of labor unions in Japan do not have a lot of knowledge related to international treaties or organizations, which makes the JNNC and Equality Action 21 to strive for the implementation of these instruments by visiting their offices, dialoguing and sending reports to the commissions of the CEDAW and the ILO, specially. However, she feels hopeless regarding the position of the government in these matters, as even during the short-lived period the Democratic Party of Japan was in power there was not a considerable change. Concerning Japan's attitude towards external organization and the international society, Interviewee 3 affirmed that the country is aware that if it wants to be treated as a developed country, it has to follow the standards of other developed countries. She thinks this could become a method of attack to make the government bend. However, as seen in the previous chapters of this thesis, Japan has a track record of refusing to sign relevant international legal documents and Japanese courts also refuse to interpret the treaties the way international society has been pushing for, which shows that in the Japanese case this compliance through international pressure has not been easy to accomplish.

Interviewees 4 and 5 from the WWN shared that they received a lot of guidance from external groups. Interviewee 4 talked about how she went to New York as early as 1992, wanting to share their plight with the UN. After having their story heard, they kept receiving a lot of support from the organization, even going to the CEDAW offices and constantly interacting with international and national groups, including the media. They have been keeping their movement extremely grassroots too, lobbying for their objectives and trying to educate people about the issue through many different ways instead of just fighting against the government. (Interviewee 4)

In contrast, according to Interviewee 6 Union Bochi Bochi does not receive any kind of influence or help from international organizations. Their legal identity is of a labor union between people of the same industry (in Japanese, 上部団体), which does not have a relation with other kinds of big organizations such as the Rengo or the CEDAW. She was also not sure about the number of other organizations like Union Bochi Bochi, and she mentioned that many union members, herself included, are not well connected or informed in that sense, with the exception of some groups on the Kansai area. They do have some union members that are not Japanese, but the majority are indeed Japanese and their workings are clearly more domestic than international (Interviewee 6). The same is true for Interviewees 7, 8, 9 and 10 of Shinagawa Joshi Gakuin, who have as their biggest supporter and influence Gender=.

Lastly, according to Interviewee 11 the Zenroren has many connections to international organizations, such as with the France's CGT and, in the context of the UN, with the ILO general assembly. However, they have only attended the meetings, while the Rengo has sent representatives to speak. Regardless of their difficulties to express their opinions, they can use the things they have learned there in their work back in Japan (Interviewee 11). She also mentioned doing lobbying activities, attending the CEDAW meetings where the Japanese reports are analyzed, and producing counter reports to contest the information provided by the Japanese government. In fact, she said that the union has been very relevant in the production of reports to international organizations that have influenced the recommendations given from such organs to the Japanese government, recommendations which on their turn influenced in the Japanese NGOs requests to the government.

This shows their interaction with transnational actors, especially in the movement from Japan's denial to the ratification of treaties and the creation of domestic norms. Concerning the influence they receive from these external organizations, they want to keep following and striving to reach international guidelines and standards and indexes, particularly in points that Japan has been lagging behind, such as the limitation of working hours. In this context, she stated that the organization has been fighting to make Japan finally ratify the most relevant ILO conventions, debunking the excuses given by the government to refuse to do so, which specially focus on alleged conflicts between the conventions and domestic law. The same is true for the CEDAW optional protocol and the individual complaint system, which the government has not even tried to simply explain to the population or even post translated information on their website (Interviewee 11).

In addition to these questions about the general relationship of interview subjects with other actors, I asked some interviewees a follow-up question concerning the relevance of their organization and their activities particularly on the interaction process between the national and the international in the context of creating change in the protection of the women's right to work. Overall, this was a difficult question for most interviewees, but their answers gave us much information of other aspects of Japanese society and how it deals with pressure from the international society.

For Interviewee 3, she reiterated that Equality Action 21 was relevant domestically mainly to support women who decided to go to court, with one of the most disputed issues nowadays being pay inequality. As already mentioned in the item concerning the activities of Japanese courts, these are not easy cases, since they tend to not see the gender based discrimination included in discretionary evaluation made by the company. She also gave more insight on how external pressure has not been very successful concerning this judicial issue. Since the beginning of the 2000s, Japanese judicial disinterest has been shown to the CEDAW committee, which has continuously criticized Japan on that point, but no change has been made (Interviewee 3). In short, Japan and its passive, male-dominated courts have been ignoring criticisms from international society, such as from the CEDAW and the ILO, and have remained unable to consider and measure equal pay for equal work. There is no measuring of the value of work based on international standards, because knowledge concerning

international treaties and human rights is not a priority in the first place. Interviewee 3 concluded that there was basically no progress in the area in the past 20 years, and cited the Chugoku Denryoku Case decision in 2016 as a clear example of the courts disregard for facts, lamenting that there was no clamor for changing these retrograde views of the court.

Confirming what had already been mentioned by Interviewee 11 and Interviewee 2 in relation to the way Japan closes itself off against external pressure and international models, Interviewee 3 pointed out the fact that in the work reform of 2018, the government ended up adopting a “Japan style” equal pay for equal work policy, which meant that people under different managements can receive different pay, even if they do exactly the same work. Based on the persistence of these setbacks to women’s rights, I asked what would be more productive for civil organizations to do if they wanted to aim for change: call for more international help or to focus on domestic action. Interviewee 3 replied that they are acting in both fronts, and that the most effective is to change the current government’s mindset, which has been the same since basically the 50s. They only validate the work of women who repeat the existing working process of men, and disregard other forms of work or any change that could be made to the current working situation in Japan (Interviewee 3). Even if there is no change in the leading party, in her opinion soon there must be at least some acknowledgement by these leaders that the way things are happening now is not good.

Interviewee 1 also had difficulty in placing Gender= in this transnational/domestic interaction, finally settling on the idea that since the organization’s main object is to try and change people’s mindset starting from the bottom to the top, they are found on the domestic, neighborhood scene. Thus, they do not have so much direct interaction with international actors, focusing on pressuring the government from the inside of the country.

Lastly, Interviewee 2 answered that her participation is mainly through the activities of the JAIWR (Japanese Association of International Women's Rights) and other NGOs in the process of creating and applying law that protect the rights of Japanese women, based on the influence of international documents and treaties. She exemplified her participation through the CEDAW, which enjoyed the participation of NGOs not only during its ratification but also continues to do so during

the reporting and review process that happens every four years, in a process that allows the closed off Japanese society to face international society and open itself up. This is also true concerning the right to work, since this process helped identify the limitations that the EEOL has. In that sense, I can conclude that she has had a direct role in the process of norm diffusion according to the “spiral model” since the phase of repression, a role that continues to this day.

To summarize, these rich answers, with the help of the “spiral model” framework, allow me to see distinct, but interconnected and relevant roles played by members of the Japanese civil society in the process of realizing the women’s right to work. I can also understand how differently other actors influence each interviewee and draw some conclusions. First, the biggest and more traditional organizations such as the WWN were able to reach international actors more easily, especially because when they became active Japan was still very much closed off in terms of women’s rights and pressure from external organizations was necessary to make the government act. In other words, applying the “spiral model” framework here, I can identify characteristics of the phases of *denial* (phase two) and *tactical concessions* (phase three), with continuous interaction between the transitional network and domestic organizations aiming for the adoption of international standards concerning women’s rights.

On the other hand, the most recently formed groups seem to not interact as much with international organizations, at least when it comes to direct interaction, instead focusing on working in the domestic realm. Also, even the interviewees that have had transnational interactions still carry them out in a limited manner, since most of the active members of Japanese NGOs fighting for women’s right to work are elderly women who usually cannot speak enough English to completely assert themselves in an international stage. They also tend to not use social network sites, relying a lot in printed out materials that might not be as appealing or accessible for younger generations. To make matters worse, young workers in Japan now are not as interested in fighting for their rights, because of reasons such as lack of education concerning these matters, lack of stable employment, lack of a cultural tradition of raising their voices in complaint. In addition to that, since Japan still has not ratified many international treaties (such as the CEDAW Optional Protocol), the domestic

NGO movement tends to focus their efforts on the legal area, which shifts their already limited manpower from compliance to commitment in the first place.

Lastly, the “spiral model” assumed that there would be a dynamic, forward moving domestic NGO base which the international community could engage with, predicting demobilization of domestic and transnational actors only after reaching compliance in the phase of *rule-consistent behavior* (phase five). However, interestingly I see in the interviewees’ answers and in the present Japanese situation an unintentional demobilization of domestic actors after the phases of *tactical concessions* (phase three) and *prescriptive status* (phase four), before reaching full compliance. It must be considered that the model predicts a strong, continuous interaction between actors, and that it identifies extensive and coherent domestic NGO mobilization as a key variable explaining the success of norm diffusion. Yet, in the Japanese case there is a general lack of effective, profound and continuous engagement and a tendency within the domestic NGO base to be dissolving, mainly because the people involved in these organizations are elders and there is immense difficulty in recruiting younger members. Perhaps this is one of the reasons why Japan has been finding it so challenging to move on from a situation of barely committing to international women’s rights norms.

7.2.3 What are the interviewee opinions concerning the spiral model framework? Do they consider the spiral model to be a helpful framework through which to understand Japan’s issues?

As can be seen from the conclusion of the previous part, the spiral model framework is identifiable in various aspects of the Japanese situation. In this part, I will clarify how the interviewees understood the model and applied it to their own realities, breaking it down into their take on where Japan is presently situated in the phases of the “spiral model” when it comes to women’s right to work, whether they saw the difference the concepts of socialization and persuasion can make in reality, and on the relation between Japan’s desire for a good image and position in international society and the way the government approaches norms protecting international women’s rights.

7.2.3.1 Japan's attitude towards women's rights situated in the spiral model phases

I found that, once the “spiral model” was carefully explained so that it became accessible to people not so familiar with the topic, it successfully fit their lived experiences. Three of the interviewees were able to greatly relate the framework to their realities and had insightful answers concerning the model's application to Japan's case. Interviewee 1 associated the model and the commitment/compliance gap with her own experiences, in the sense that even though policies and laws have been created, their effectiveness does not reach the people they should and end up being useless. She exemplified that by her situation in her first company, which was a very traditional Japanese manufacturer and clearly had a career track for women and one for men, regardless of existing law forbidding discrimination between genders. According to her, this mirrored the persistent idea that women belong in the home and men belong in the workplace, maintained both by people in positions of political and economic power and the common citizens. The implementation gap was also very clear to her, which consequently put Japan on the lower levels of the phase of prescriptive status. (Interviewee 2)

Interviewee 2, as a legal expert, was able to easily link the five phases of the “spiral model” to different times of Japan. Phase one of *repression* would be pre-Second World War; phase two of *denial* would be when the Japanese Constitution was created; phase three of *tactical concessions* would be during the 80s, when Japan finally created legislation to avoid extreme criticism from international society. Concerning the present situation of Japan, it would be situated between phase three and phase four, but closer to *prescriptive status* (phase four) (Interviewee 2). This analysis matches my suggestion that sometimes states commit to international treaties without any intention of complying to them, which creates an overlap between the end of phase three and the start of phase four. In other words, sometimes ratification of international treaties itself is a form of *tactical concession*, and thus even though this commitment can be understood as a goal in itself in the process of reaching compliance (in the form of phase four of *prescriptive status*), it can also be a commitment done in cynical way, which hinders the process of reaching full compliance. Accordingly, she believes Japan fits that description, and is still far from phase five (*rule-consistent behavior*) and full

implementation. Concerning the Optional Protocol to the CEDAW, she situated it on phase three of *tactical concessions*, as Japan refuses to ratify all protocols involving human rights in fear it would affect national judicial decisions. She brought up a lack of reflection concerning the issue from the government, and its fear of having issues like the comfort women cases brought up and decided on by international organizations, both which makes her believe that Japan will not ratify it in the near future to avoid the possibility of any kind of confrontation with the international society.

Interviewee 11 is more pessimistic than the others, as she put Japan between phases two (*denial*) and three (*tactical concessions*) when it comes to the women's right to work, considering that the government has continuously denied some of the existent issues and refused to abide by international law. She exemplifies this with the case of the discussion concerning the ILO convention on harassment, when Japan kept saying that recommendations were not needed and that other important points of the document should be suppressed, since making a more complete convention would cause complaints from domestic organizations, specially related to business circles. The part of the administration responsible for labor law has clearly been taking the side of big economic powerhouses, committing only to a minimum instead of focusing on workers' rights as they should (Interviewee 11). Even worse, the same thing has been happening in other issues, such as with the women's fight for the right to have separate surnames between spouses.

As can be seen, the tendency of the answers was that Japan found itself unable to fully complete phase four (*prescriptive status*) when it comes to the women's right to work. In addition to that, I could form educated conclusions similar to these, based on the responses from other interviewees even when they could not answer this question directly. This result is in line with my initial analysis of the Japanese situation according to "spiral model", which put Japan in the phases of *tactical concessions* (phase three) and *prescriptive status* (phase four), depending on the rights taken into consideration. Furthermore, it shows how the model's framework is useful to situate theoretically the Japanese issues with the lack of women's rights' implementation.

7.2.3.2 *The Japanese society's relationship with the processes of socialization and persuasion*

In addition to the localization of Japan among the five “spiral model” phases, I also asked the interviewees if they could see the different results of the processes of socialization and persuasion in Japanese society. Here again I had valuable and insightful answers which showed that the model is relevant as a framework. Interviewee 1 answered that she believes that people’s mindset is gradually changing and more people from her generation onwards are beginning to be truly persuaded of the need for gender equality. However, she worries that old fashioned ideas of gender are still transmitted through picture books and animations, which perpetuates a retrograde view on society and culture and stops the persuasion process of changing people’s minds and ideas.

Interviewee 2 saw the difference between both socialization/persuasion processes and emphasized the need to go deeper than just socialization in the case of Japan. According to her, the Japanese main political, legal and economic actors in the field of women’s rights protection do not feel the need to truly change themselves and the society we live in, using only palliative socialization means that are not effective in the long run. In the same sense, for Interviewee 11 it was clear that, at this point, Japan had only been subjected to socialization. She said this was obvious when looking at how the government has signed international treaties, but domestically it keeps taking actions that go against such commitments. The CEDAW officials are also aware of this contradictory attitude, which shows that Japan has only been committing to women’s rights protection to the extent that it is needed to keep its positive reputation within global leading nations (Interviewee 11). She agreed that if this situation persists, Japan will never reach phase five (*rule-consistent behavior*) of the spiral model, in other words, *rule-consistent behavior* will not be attained. To her, unless the Japanese mindset that believes “men work and women take care of the home and children” and has been in place since the Meiji Era is not fixed, no Japanese law or policy will ever be effective enough.

In this context of lack of persuasion, I went back to ask some interviewees about their ideas concerning how high-context communication could influence in socialization processes and consequently in the perpetuation of women’s rights violations in Japan. All interviewees were certain the high-context communication (Hall, 1976) influenced in the difficulty Japanese women felt to complain about unfair situations.

Interviewee 3 focused on how this implicit obligation to follow the attitudes of older generations and of the rest of society, which still maintain this idea that women are supposed to be subordinated to and dependent on men, have been obviously detrimental to the situation of women. Interviewee 1 went further to explain how Japanese expressions such as “read the air” (空気を読む) and “follow your right” (右へなれ) are used to exemplify this kind of “Japanese-like” model of attitude that is subjected to the actions of other members of society. According to her, when there is high-context communication, there is difficulty to verbalize problems, which then become invisible. Consequently, it becomes impossible to turn a proposition like “gender discrimination is a social problem that should be solved by the whole society together” into knowledge shared by all. In that context, it is understandable how people – specially women – could not unite and form a movement to end disparity in Japanese society until now, and just perpetuated women’s lower position before men. (Interviewee 1)

However, regardless of these difficulties of high-context communication, Interviewee 1 believes that whether there are men being discriminated against too changes the way society deals with and understands such discrimination. As an example, since the number of men working in irregular employment has started to rise in Japan, she cites that the disparity in the workplace has finally become an issue and was acknowledged as a social problem. On the other hand, the female low social and economic position in Japanese society is tolerated, if not treated as invisible. Particularly, she thinks that there is a high harmful internal (coming from women themselves) and external (coming from society/men) resistance towards women raising their voices in Japan (Interviewee 1).

For Interviewee 2, the high-context communication culture has the effect of making positive or negative evaluations in a given society ambiguous, even though they are supposed to be fair standards. She exemplifies her point with the human resources evaluation standards in traditional companies. A lot of Japanese big corporations hire people from the same educational background and same age, but the majority of female employees are excluded from advancing in their careers and end up having to sue. However, at the courts, this situation is not easily identified as discrimination. This

is because the standards for promotion are ambiguous and their use is left to the discretion of the superiors in the company, mostly men. While there are some standards such as “Performance/Results” that cannot be manipulated, ambiguous and abstract standards like “Cooperativeness” or “Ambition” are easily affected by the superior’s gender bias. In the implicit workplace culture, if the person who defies a company principle is a man, this is valued as “someone that has the ambition to change the industry”. However, if it is a woman, it is valued as “someone who has no cooperativeness and cannot interact well with others”. In other words, ambiguity facilitates biases. (Interviewee 2)

Lastly, Interviewee 11 brought up the difficulty women have in raising their voice as a worry of the union, and compared how Japan and South Korea are very similar when it comes to the lack of implementation of the women’s right to work, but the female reaction to this issue is very different, with South Korean women being more vocal for their rights. This can be explained by the fact that even though both countries are high-context countries, Japan is the highest one in the whole world, which makes South Korea seem low-context in comparison (Meyer, 2014, pp. 39-40, based on Hall, 1976, pp. 85-125).

The assertiveness of the interviewees when talking about this topic helps us conclude that this high-context communication cultural aspect is one of the biggest barriers for the implementation of women’s right to work. To address it, the “spiral model” may be used in combination with theories of norm localization, aiming not to force international women’s rights on the Japanese society, but to try to adapt the implementation of these rights (which are considered more western-based) to the lack of explicit communication between people and to ingrained traditional ideas concerning gender roles. This localization approach also influences the realization of persuasion within Japanese society. If a simple process of socialization, without any deep changes to the mindset of society and without any adaptation in international norms to facilitate an initial acceptance of them by the state, was enough to reach satisfactory compliance, there would not be such a huge gap in Japan concerning women’s rights to work. Considering that more than three decades have passed since Japan committed to an international treaty on the topic and internalized these rights through domestic law with no considerable progress, there is a need for the persuasion of the government and civil society

in order for the country to reach phase five (*rule-consistent behavior*) of the “spiral model”. This concept was easily grasped by the people dealing with this reality every day.

7.2.3.3 The importance given by Japan to its position in international society and its approach to international law

In this part, I will focus on the answers related to how much Japan values its leading position in international society, and how much it is willing to bend its “traditional values” in order to follow the international women’s rights trends and to not suffer reprisals from other nations. In other words, this answers give us insight on how much Japan has been “talking the talk” of women’s rights, inspiring its domestic policies in international norms, and to what extent is it actually “walking the walk”.

Concerning Japan’s feelings about its position in international society, Interviewee 1 answered that she believes Japan does not care about that nowadays, albeit that might be different in specific cases, such as concerning its economic situation. However, in a general sense (and specially when it comes to neighboring countries), Japanese people still think of themselves as culturally superior to other nations. It also puts a big distance between itself and others when it comes to law, using reasons based on geographical isolation and social/cultural differences. Not even globalization or the advent of the internet could completely change that argument yet, as it can be seen from the lack of impact international social movements like the “#metoo” had in Japan. This sense of uniqueness also results on the lack of legal inspiration from other countries. Thus, even though Japan has continuously been under external pressure to adapt itself to international norms, it keeps publicizing, nationally and internationally, the misleading idea that it is a gender equal country and ignoring important recommendations from transnational actors. This culminates in both the Japanese civil society and political leaders believing that there is no immediate need to implement effective gender equality policies, as long as the Japanese economic crisis hasn't reached its peak. (Interviewee 1)

Interviewee 2, with her legal background, affirmed that the legislature studies what other nations are doing in the topic, specially looking at Europe and America, and most recently Korea. However, they end up arranging this information nicely to fit it to the “Japanese way”, taking just the points they want. The words “protecting the Japanese traditions” will definitely show up in the justifications for doing so, and things like the system of lifetime employment or the inexistence of wages based on job evaluation will definitely be maintained regardless of what other states are deciding. In other words, the practices of corporations keep being protected over international policies, giving benefits only to the government and the companies and ignoring the harm to the workers. She exemplified that with the fact that in 2006 indirect discrimination was included in the text of the EEOL (Equal Employment Opportunity Law), but was limited to three specific situations, which basically cancelled its applicability in Japanese companies. (Interviewee 2)

Interviewee 2 also touched on the same point as Interviewee 1 when she talked about the continuous Japanese refusal to sign the most relevant and basic ILO (International Labour Organization) conventions, maintaining this legal gap between itself and international society, answering only to a lot of external pressure or advice related to economy. This originated the Abe government plans of using women and foreigners in the workforce, just to try to improve the economic situation that has been worsening since 2009. However, the exclusively economic base for these policies is actually what makes them so ineffective and harmful to human rights (Interviewee 2). This point of view is shared by Interviewee 3, who affirmed that even though some companies aiming to participate in the international stage must make themselves more gender equal in the eyes of other nations, they do not believe they have to do so because it is the right thing to do. It is a purely tactical decision, which shows again that Japan has only experienced socialization. Interviewee 5 from the WWN followed this line of thought and added that constant change in governmental personnel keeps restarting any negotiation concerning the adoption of treaties or policies that might be beneficial to women. Interviewee 11 noted that she had never heard any kind of external influence in the Labor Policy Assembly (労働政策審議会), who discusses bill before adoption, corroborating the narrative that the Japanese government is still extremely closed off.

From these answers and an analysis of the Japanese government's attitude towards external pressure, it becomes clear that Japan will not bend easily just to international recommendations. Unless there is a domestic, generalized mindset change, or the country's economy reaches a point of crisis that makes it impossible to ignore or minimize the importance of gender equality for the economic, social and political health of a nation, there will be no significant bridging of the gap between commitment and compliance.

7.2.4 How has the commitment/compliance gap been addressed by the Japanese government?

What are the issues that have been persisting because of this gap?

In the previous chapters, I have introduced many issues that originate from and thus prove the existence of a commitment/compliance gap in the women's right to work in Japan. In this part, through the answers of the interviewees, I will look at how this gap has been dealt with by the Japanese government and compile the societal problems that persist and worsen because of it. With that, I aim to shed some light into the main issues in need of undertaking, which might clarify ways of realistically improving the situation.

7.2.4.1 Opinions concerning the Abe government's policies aiming for gender equality

The numerous policies created by the Abe government and aiming to improve the situation of gender inequality in Japanese society are unanimously criticized by the interviewees. They all agree that the government does not believe in their rhetoric and does not want to comply to their own policies, as they refuse to create impactful solutions, such as a quota system to increase the number of women in positions of power within the government. Interviewee 1 shared that her previous company was known for being a good company for women to work at, even receiving governmental appraisal. However, actually it was completely discriminatory, inflating the number of women in management positions by creating a random department that had no importance at all and filling it with women. Regardless of the rising number of working women, the reality is that they are still marginalized either as full-time or irregular workers. (Interviewee 1)

Interviewee 3 gave many other examples of cases where the government's discourse and its actions do not match. Claiming for a society "where women can shine" while maintaining different salaries for people that do the same work, refusing to raise minimum salaries and ignoring issues created by the growing discrimination and economic disparity shows that the government has only been doing lip service. This complaint is backed up by Interviewees 4 and 5 from the WWN, who added that deaths related to overwork and the calling for foreign workers without any previous social plan to include them in the Japanese society will only worsen the already bad situation. Interviewee 6 illustrated these cumulative issues well when she said that the existing policies are extremely limited to creating a better workplace only for a limited number of Japanese women (and even then, they still fail), ignoring the situation of women from other countries, particularly South East Asia, that come to Japan and end up having to work as sex workers.

Another criticism of the policies is the lack of promotion they have been getting, which was illustrated by the four interviewees from Shinagawa Joshi Gakuin. Even though they are actively researching gender equality in Japan, they were not aware of any details concerning policies created to try to improve the cooperation of companies or about the EEOL, for example. Even their female teachers, who were supervising the interview, did not know about them, which demonstrates how much the lack in publicity.

Problems appear even in the language used in the official texts. As Interviewee 11 explained, the expression "女性を活用する", which translates to "use women", is commonly applied. In short, it is clear that they only wanted to use women to fill the gap in the labor force. Again, there is the fact that Japan has only been socialized to follow international women's rights norms interfering negatively in its policies, since there is no internalization by the government of the idea that they must guarantee women's right to work because this is the right thing to do as a society. The commitment to women's rights is purely instrumental. In addition, the laws that have been adopted mostly consist of guidelines, with no duties or sanctions included in the provisions. For anyone who pays attention, the government's intent to use women while keeping these inequalities in place is crystal clear.

On the other hand, Interviewee 2 is a little more positive about the topic. As a legal scholar, she doesn't think having laws and policies is a negative thing per se, but she does concede that the present laws all have clear limits. This is because the Abe administration has no idea of what to do to promote women's participation and keeps getting stuck in empty frameworks. Particularly on the topic of violence both in the workplace and in the domestic environment, more focused efforts are clearly needed, but the government acts like it is enough to just make women work without any change to the workplace itself. In Interviewee 2's words, "this is an administration that thinks women should take three years of maternity and childcare leave, hold their babies for that limited amount of time, and then just go back to work like nothing had happened". She affirmed that if the government wanted to change things, they should start by changing the way Japanese men work too, but that has not been seriously considered. Another one of her suggestions is to look at an alternative policy from South Korea, where an average standard of gender equality is set according to the size of the company, and the ones that do not achieve it receive guidance until they do so. Instead of Japan just giving incentives to the big companies that comply to policies, she believes that the companies that do not comply are the ones that need more attention and instruction. Here, an interviewee is actively suggesting the use of emulation or lesson-drawing by Japan, using as a base another East-Asian, non-western country that has been facing similar problems in women's rights implementation.

As the biggest flaw of these policies, I can cite Interviewee 11 and her irritation over the fact that Japan has continuously been advised by the CEDAW to create a comprehensive domestic law against discrimination, to no avail. If Japan will not even do something as basic as create a unified legal definition of discrimination, nothing much else can be expected of other approaches to the issue. This disregard is one of the pillars that has been sustaining the commitment/compliance gap in Japan.

Considering the strong reaction against Abe's policies, I questioned some interviewees on whether they believed there was an active attempt by the men in power to hinder female empowerment in Japan. Interviewee 3 was sure that the men in power do not want to change women's position in society. Again, she raised the example of the lack of efficacy of Abe's policies, which have been in place for far too long now without any real results. According to her, they are only a

façade that uses public money to show a good picture, and the reason for that lack of real action is that men are afraid of losing their position in society.

Pessimistically, she thinks that their mindset will not be changed easily, since the kind of education all these generations have received focuses on separating girls and boys and differentiating the ways they should act. She does believe teenagers and young adults could theoretically be able to research for themselves and change the way they think, but considering the results of Mieko Takenobu's recent work (2017), which has shown how these university students do not know anything about the labor market, labor law, and how they think workers' unions are not positive organizations, the probabilities are not very high. (Interviewee 3)

Interviewee 1 was less strong in her criticism, saying that, in her own experience, men tend to give women support and cheer them on as long as women remain in a lower position than theirs. Interviewee 2 added to this idea, when she said that men in power do not even think that women are their "equivalent enemies in society", and instead are look down on them. For her, even if they are not actively trying to stop women from climbing up in society, they are still only seeing women as people who should focus on staying home, supporting men, and using only their remaining energy and time to contribute to society. Interviewee 1 complemented this line of thought, saying that as soon as women reach a point where they can threaten this "male superiority", most men would take an offensive stance that stops women's growth. She thinks this attitude is clear in the way the Abe government has been actively promoting "a society in which women can shine", but as soon as a woman gets to a high position, they are bombarded with an attitude that screams prejudice and presupposes that they only reached their position because they are a woman, meaning that they used their body or other "dirty" ways to get there. (Interviewee 1)

For both interviewees, the point is that men just do not see women as equals. Even more worrying is that, according to them and to Interviewee 4, this attitude tends to also be present in women that reached high positions in Japan, because they believe they got to raise their status thanks to their hard work only and thus start looking down on other women, blaming them for their situation. Specifically, Interviewee 1 believes in the importance of changing this mindset through education,

from elementary school, by warning the students that in society everyone is not treated equally and they should be prepared to fight that discrimination. Instead of putting in women's minds that they can succeed if they try hard enough (which ends up only making them blame themselves when met with unfair treatment), they need to be aware that this prejudice exists and to be given the weapons to fight against it (Interviewee 1). This lack of awareness of Japanese women concerning the unequal situations they face is an obstacle to the effective application of norm localization, since as already established the "spiral model" assumes a strong mobilized domestic base, but in the case of Japan there is not even a domestic reference point to use when adapting international law to the national level. In the same sense, the poor education women receive concerning their rights (and men concerning gender inequality) is perhaps connected in a vicious circle to Japan having experienced only socialization, and not full persuasion. Without basic and quality education on the topic, the chances of Japanese society's mindset truly changing in the future, and of the state reaching a phase of compliance are extremely low.

As an addendum, Interviewee 11 mentioned that the present government has many people that are part of an extreme right-wing conservative group of assembly members called Nihon Kaigi (日本会議), who actively scorn women. She said that their intentions can be seen through their strong feelings of rejection concerning the possibility of the existence of a female empress, for example (and corroborating what Interviewee 1 had said on the importance of this topic before, concerning gender). According to these interviewees, while men in power keep saying Japan needs to change when it comes to the activities of women, in reality they do not want their beloved "traditional beautiful Japanese values" to change.

Conclusively, according to the interviewees, even if there is no proactive shunning of women from reaching positions of power by all men all the time, at least this idea of "male superiority" seems to have taken root in Japanese society, and it influences the creation and implementation of governmental policies. Together with the barriers that Japan creates by being a high-context communication society, which prides itself in its uniqueness and tradition, this way of thinking is extremely harmful and should be understood as another factor contributing to not only to the

commitment/compliance gap, but to the fact that Japan does not even commit to some international laws in the first place.

7.2.4.2 The lack of strength of Japanese labor law in the context of the women's right to work

Above I mentioned in passing the problem of Japanese labor law consisting only of guidelines, with no sanctions or duties. I also established that the more partial the state's commitment is, the more it inhibits full compliance. In this part, I will dive deeper into these issues that perpetuates the lack of women's rights' implementation. Interviewee 1 brought up the point that it is difficult to create legislation because of the power the economic sector has in the creation of these norms. She thinks it might be more effective to give Japanese companies a good example of growth brought by striving for a more gender equal workplace, or by using a quota system implemented by the government. As the Interviewee 9 mentioned, the ones responsible for following the law are the companies, so the spotlight should also be put on them for not complying.

On the other hand, Interviewee 2 and Interviewee 11 believe that, even though the mentality of people making and applying labor law needs to change indeed, the penalties are still essential for norm implementation and to control abuses by companies. Interviewee 2 said that it is regretful that cases based on the Labor Standards Act, where fines are set for companies and criminal action is carried out, are both extremely rare. In Japan, the sole inclusion of penalties might not be enough, since cases end up depending on ineffective administrative guidance, but they are still extremely important as another possibility for women to fight for their rights. (Interviewee 2)

Still concerning the topic of penalties, Interviewee 11 emphasized that small and medium size companies make up the biggest percentage of Japanese companies but are generally excluded from these policies, which is another big obstacle towards implementation. Furthermore, for the past 30 to 20 years there has been a constant lack of public officers that can tackle supervision activities and answer to complaints and reports from workers, a situation that has plagued the Ministry of Health, Labor and Welfare and its organs in particular (Interviewee 11). It can be seen that the lack for workforce in Japan is not an issue just for the civil organizations.

Other aspects of the legislation can also be criticized. The Interviewees 4 and 5 from the WWN mentioned that the EEOL is often seen just as an administrative law without power, and Interviewee 6 complained about the limited number of legal protections she could actually use as an irregular worker, when negotiating her pay and other basic conditions. Plus, most people in her union do not have the education to understand such legal concepts, being excluded from their protection. Lastly, she cited the lack of strength of these legal guidelines to protect women even from the most basic forms of workplace violence, such as sexual and power harassment. As a weapon against the frail “protection” granted by the legal system, Interviewee 6 explained that the union tends to focus in using the fact that they can spread information about the bad behavior of the companies to the media and newspapers as leverage, appealing to the way society views these companies.

In conclusion, it is the government’s duty to proceed with the necessary reforms aimed to fill the palpable lack of strength of Japanese labor law, which is an issue that illustrates the difficulties of creating meaningful domestic legislation in the first place. Not only women, but all Japanese workers deserve to have efficient ways to safeguard their rights before their employers, and to not fall victim of the implementation gap.

7.2.4.3 Japan’s continuous low position in the WEF Gender Gap Index

There is a consensus among the interviewees that Japan’s low position in the World Economic Forum Gender Gap Index represents reality accurately. With the exception of Interviewee 6, who believes the discussion about a lack of women in positions of power is out of her and her union’s daily worries and thus does not dwell on the topic, the rest of the interviewees agreed that this kind of information concerning the statistically demonstrated substandard Japanese situation is not taken completely seriously by the government (which according to Interviewee 2 tends to brush it off as women not being interested in taking such high positions in society), nor being shared enough with society. And even if the information is shown in the media, people do not pay enough attention to it and do not take it as a problem (Interviewee 1). Some reasons were raised for this lack of interest,

with Interviewee 1 and Interviewee 3 saying the educational system is to blame, since it creates a situation of false equality for the kids, who then do not have any interest in these topic in the future.

However, positive points were also brought up. Interviewee 1 mentioned an increase in the media mentioning the results, especially because of many of cases of discrimination being shown in mass media. Interviewee 11 talked about how labor unions have been publicizing such results as much as they can, to cover for the lack of press coming from the government. Interviewee 2 cited the recent new legislation claiming for a larger number of women to be included as candidates for political positions, even though it has not been successfully applied to all parties. These constructive developments must be used as a first step towards making the Japanese government and businesses understand that this situation of gender inequality will not solve itself naturally, and that they must act on these issues if they want to bridge the commitment/compliance gap and create a society where all individuals “can shine”.

7.2.4.4 The insincere Japanese approach to international treaties dealing with women’s rights

Taking into considerations that the key point of the “spiral model” of norm diffusion in the interaction between domestic and international institutions and the catalyst to the creation of national law based on international norms, Japan’s attitude towards international treaties is specially worrying. Not only there is a glaring lack of information accessible to the public, as Interviewee 1 proved by answering that she had no idea what was the CEDAW Optional Protocol and that Japan had been refusing to ratify it, this lack of ratification itself, which persists regardless of the constant international requests for Japan to do so shows how little the government cares about the topic. The same has been happening with ILO conventions and recommendations, which Japan has refused to ratify even the most basic ones, according to Interviewees 4 and 5 of the WWN.

Interviewee 11 clarified that this refusal is usually based on allegations of conflict with national law, or on a supposed “will of the population”, as happened with the decision concerning the case of allowing different surnames for married people. She went on to add that even the treaties that have already been ratified are not implemented, which is why NGOs all over Japan have been

focusing their efforts on lobbying for the ratification of the Optional Protocol, through the project group called "Action to implement the CEDAW" (in Japanese, 女性差別撤廃条約実現アクション). Although the participants are trying to not get their hopes up, not only because of the aforementioned resistance of the politicians but also because of practical reasons such as the constant changes in the personnel responsible for the ratification, they are moving forward towards their goal of giving Japanese women a route through which they can actively fight for their rights before institutions that care about women's rights.

7.2.4.5 The passive role of Japanese courts in women's rights' implementation

It is already clear by now that Japan has not been putting enough effort into internalizing women's rights norms into its domestic legal, economic and social environments. The same is true for the judiciary, which is extremely passive and tends to focus on applying national law only, as explained by Interviewee 1. This passiveness is relevant because decisions by courts may include references to norms and principles of international law and with that spark social change and improvements in norm implementation. Interviewee 2 complemented Interviewee 1's criticism with the fact that Japan's courts remain only in their strict judicial area and do not involve themselves with what the government does. She said the same happens for their relationship with international law, where courts could claim treaty violations but do not do so. If it is not a very clear and self-executing treaty, the judiciary tends to not act at all. Unfortunately, the CEDAW is included in these cases of inactivity. This passiveness was blatant in the recent case requesting the right for different surnames for married couples, where the courts almost completely ignored the relationship between international law and domestic law despite the situation being clearly unfair towards women (Interviewee 2). Furthermore, she pointed out that the executive plays a bigger part than the judiciary in implementing law in Japan, since the former directly deals with the companies and can lobby for legal change. According to Interviewee 11, the courts tend to only give judgements that appease the government or follow its line of thought, prioritizing the spirit of policies than the spirit of constitution, domestic norms and international treaties.

In the same sense, Interviewee 3 brought up the fact that these passive courts aim for settlements, which do not create strong precedents and usually do not include declarations of discrimination by the companies. Plus, on a more basic reasoning for discrimination, these unapproachable courts are formed mainly by men, who according to her are not informed about international instruments protecting women's rights in courts, as they do not care for or consider these documents necessary. Interviewee 11 followed the same logic and went even further, by affirming that the role of the judiciary in implementation has been worsening and decreasing in the past twenty years.

In fact, trying to win a case related to the women's right to work in a Japanese court is a gamble. According to Interviewees 4 and 5 from the WWN, the Sumitomo Kagaku Case ended in a favorable settlement, which allowed workers from that company to reach managerial positions more easily (albeit this rising in ranks did not translate to their salaries, maintaining a gender pay gap). They explained that the judge was aware of their group's activities with the UN and took that into consideration when writing his opinion, which was good for its social impact, as it was even included in a high school textbook. On the other hand, according to Interviewee 3, the Chuugoku Denryoku Case proved a clear situation of discrimination in payment, but the court dismissed it saying that it was unclear if there was gender discrimination or not. For them, unless there was an open division in men and women, explicit in the company policies, it was not discrimination. Plus, the judges prioritized the freedom of the company to create internal regulations more than the fact that these regulations cause inequality. (Interviewee 3). Basically, any sign of indirect discrimination was ignored and in this situation the Optional Protocol to the CEDAW would be able to give the plaintiff another chance of having their case analyzed. Even worse than this, other individuals do not even have the privilege to go to court, as Interviewee 6 explained. The Union Bochi Bochi tends to make use of offices that supervise the application of labor law (in Japanese, 労働基準監督署), which usually ends in a discussion and a settlement.

With the judiciary also contributing to the maintenance of the commitment/compliance gap within Japanese society, I can see that Japan indeed finds itself in a situation compatible with the

phase of tactical concessions, where state actors might say they accept the validity of international human rights, but do nothing to translate them to the domestic society. In that context, I reiterate the need not only for the ratification of the Optional Protocol to the CEDAW, but also for the education of Japanese judicial actors, including judges, prosecutors and lawyers, so that they can finally help society “walk the walk” of the women’s right to work.

7.2.4.6 Observing other topics of relevance within the interviewees’ answers

In the conversations held with each interviewee, there were comments that were not explicitly related to the framework of the spiral model. However, these points are important to enlighten us concerning some specificities of Japan and its views on gender stereotypes and gender equality. First, Interviewee 1 pays a lot of attention to gender stereotypes existent in daily life, and emphasizes the need to break down these ideas. She also specifically wanted to bring up the imperial system in Japan as something that is the worst evil in terms of maintaining a discriminatory mindset. She regretted that all the discussion about having a female successor was promptly dismissed as soon as a male successor was born as she believes that this image of only men in power within the Imperial Family is even more damaging than the inactivity of the Abe government, as it sends a direct message that only men can lead. Second, another interesting point was that Interviewee 6 was clear about feeling extremely alienated from the concept of international law, as it directly does not affect her daily life. After hearing that, I realized again the importance of making the topic of the women’s right to work in international law accessible to all kinds of people, as most probably share her view on this topic.

Lastly, the four interviewees from Shinagawa Joshi Gakuin gave us an interesting observation in relation to the use of social networks as a tool for spreading women’s rights related information in the Japanese context. They brought up the idea that it is easier for people to not even think about changing their mindset, just following the status quo. Thus, they believe the most important thing would be to make people actually think about social issues, regardless of the conclusion they reach. According to them, one good way of triggering young people into realizing

the importance of thinking about and questioning society is to have famous people speak up publicly about current topics. However, in Japan this kind of “influencer” are not very common, going against the international trend. They used the example of the “#metoo” movement, which was not very popular in Japan, staying concentrated only on social networks and barely being covered in traditional media (which tends to not cover these kinds of crimes against women effectively). However, they did mention that Rola, a famous female artist in Japan, tends to pick up on these topics and comment about them on her Instagram account, which encourages them, as her followers, to search more information. However, the four interviewees noted that she is not a “full Japanese”, since one of her parents is a foreigner, and thus it is easier for her to criticize these aspects and raise her voice. Their take on it being easier for a “half” Japanese to express herself can be linked to the aforementioned concept of high-context communication in Japanese culture and how it harms the process of norm implementation.

7.2.5 What are the perspectives of interview subjects on the future, both concerning their organizational activities and the evolution of Japanese society? Do the interviewees have any suggestions to improve the present situation?

Until this point, the interviews helped clarify the issues that have been persistently happening in Japanese society in the present. In addition to that, consonant to my use of the spiral model to analyze the Japanese situation and possibly suggest ways of improving norm implementation, it is necessary to know more about the interviewees perspectives for the future of the country and their organizations, and their ideas on how to fix existent issues.

For Interviewee 1, the biggest concern is finding efficient ways to change peoples’ minds, or at least to make them a little more open to learning about gender-related issues. For example, in the beginning of the organization some mothers would encourage them only behind the scenes, without raising their voices, which did not contribute to the cause. Most recently, Interviewee 1 has also been thinking that true change should not be treated as a denial of people’s traditions and customs, but as an evolution from these starting points to improve society together as people. This is

an approach very similar to the contents of norm localization theory, in the sense that it believes that some adaptation of international women's rights norms to domestic customs might be more effective than forcing them upon states without any change. Interviewee 1 also reinforces the idea that what their organization wants is not for all women and men to necessarily divide all housework equally, or force all women to work, but just for everyone's starting point to be equal, so that people in general and women in particular may make their own informed choices without being forced to act in a specific way.

Interviewee 2 will focus her efforts on the law, working on continuing to help on individual lawsuits until these can move the Diet to action and pressure the legislative to work on a comprehensive law against discrimination. With that, she hopes to centralize the various specific laws against discrimination that already exist and make it easier for these rights to be protected and understood by people. She also wants this legal change to make people think more deeply about what are human rights and what is discrimination.

Interviewee 3, Interviewee 4, Interviewee 5 and Interviewee 11 have more realistic concerns about the future of their organizations. They all cited as their biggest worry the fact that the members are getting old and there are not enough younger people interested in following up on their work or creating their own movements. For example, the WWN at its peak had around 800 members, but now that has fallen to around 400. The organization members have been interviewing young workers and introducing the organization to them, but that has not given enough results, especially because of changes in the workplace, the lack of support from labor unions (who are constantly attacked by the government), and the rise in irregular, overworked employees. The same is true for Equality Action 21, which according to Interviewee 3 has seen a decrease in their activities and in people fighting for their labor rights. She complained that the deterioration of working conditions has been making it harder and harder to get people to worry and fight for these issues, and the small number of irregular workers' organizations is not enough. That is why the members of Equality Action 21 now are trying their best to leave written records of everything they accomplished, for future reference. Interviewee 3 also thinks university movements deserve more support, and that university

students need to be taught about the issues they might encounter when working in the future (an idea that is shared by Interviewee 11 and other leaders of the Zenroren).

As a suggestion for improvement, Interviewee 11 said that the Zenrouren has been trying to return Japan to the point where it was a society made mainly of regular employees. Additionally, Interviewee 3 pointed out that more than a return to regular employment, the traditional Japanese long working hours need to be changed for Japan's economy to grow. This is because the present situation has made it so women cannot physically follow these labor standards while taking care of the home, and men subjected to these working conditions cannot carry out their responsibility of sharing housework either (Interviewee 11). For her, it is a basic problem that affects everyone and holds society back.

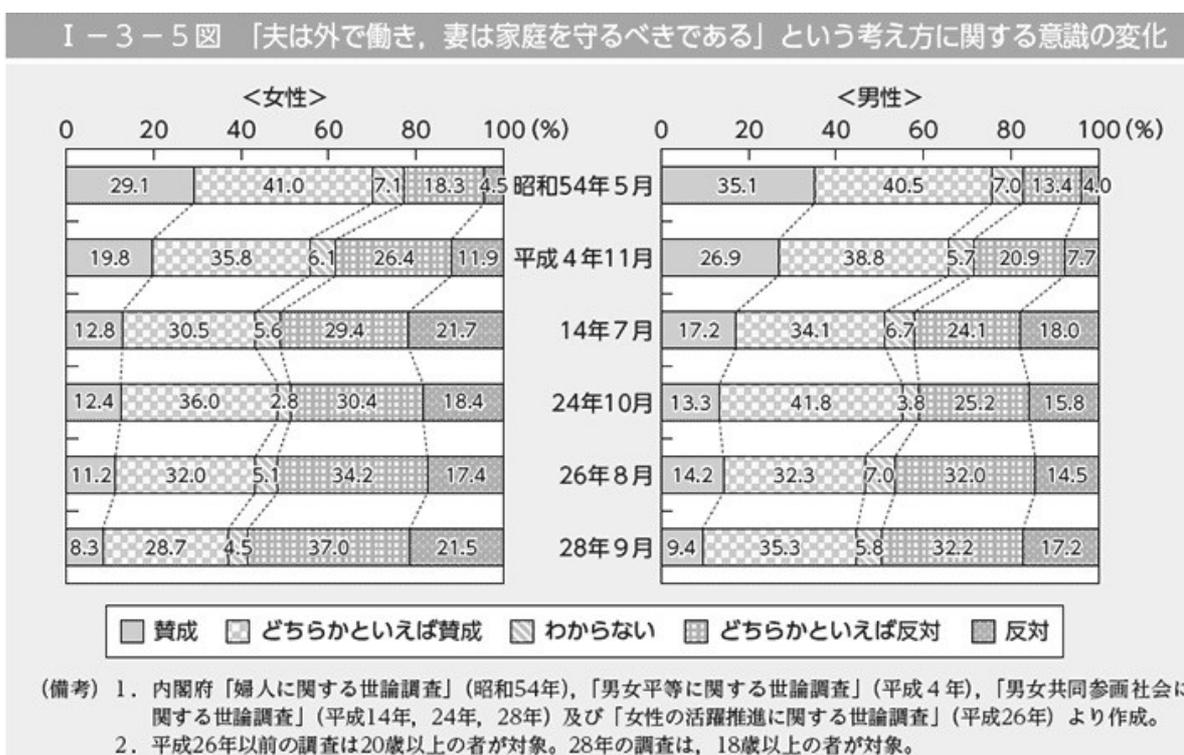
According to Interviewee 6, Union Bochi Bochi also suffers with the lack of manpower and overworked contributors, which is exacerbated by the fact that they have as members people that are even more marginalized than women, such as people with disabilities and working non-conventional jobs. This is related to Interviewee 6's personal worries, as she mentions the difficulties in connecting and cooperating with other night workers through a tighter union. Plus, their organization has difficulty in retaining members, as people usually part ways after dealing with a specific case. (Interviewee 6)

Interviewees 7, 8, 9 and 10 from Shinagawa Joshi Gakuin also faced the issue of lack of interest in the topic by their peers, but in a different context. Even though the school has around 1200 female students, the four of them were the only ones discussing gender equality openly. They wish they could spread information and discuss with other people inside and outside the school. Lastly, they feel that it is still difficult to raise their voices in Japanese society, something that can be seen in a micro scale in their homes, where their mothers usually cannot go against their fathers' words. The interviewees expressed the wish to change this and other unfair situations by climbing to top positions themselves in the future, in a top-down approach, at the same time they understand the need of a more bottom-up approach, which allows other women to start questioning their position in society.

Considering the common concern existent among these interviewees in relation to the lack of people interested enough in the topic of gender equality and women's right to work to join their ranks, I questioned them on their thoughts concerning the reasons for such disinterest. In addition to confirming the factors already mentioned, such as the difficulty Japanese people have to externalize their ideas, the fact that irregular employment and prejudicial working practices have impeded people from thinking about their own precarious situation, and the lack of information openly shared with the bulk of society by the government, I asked whether the subjects had any concrete data on how women understand their present position in Japanese society.

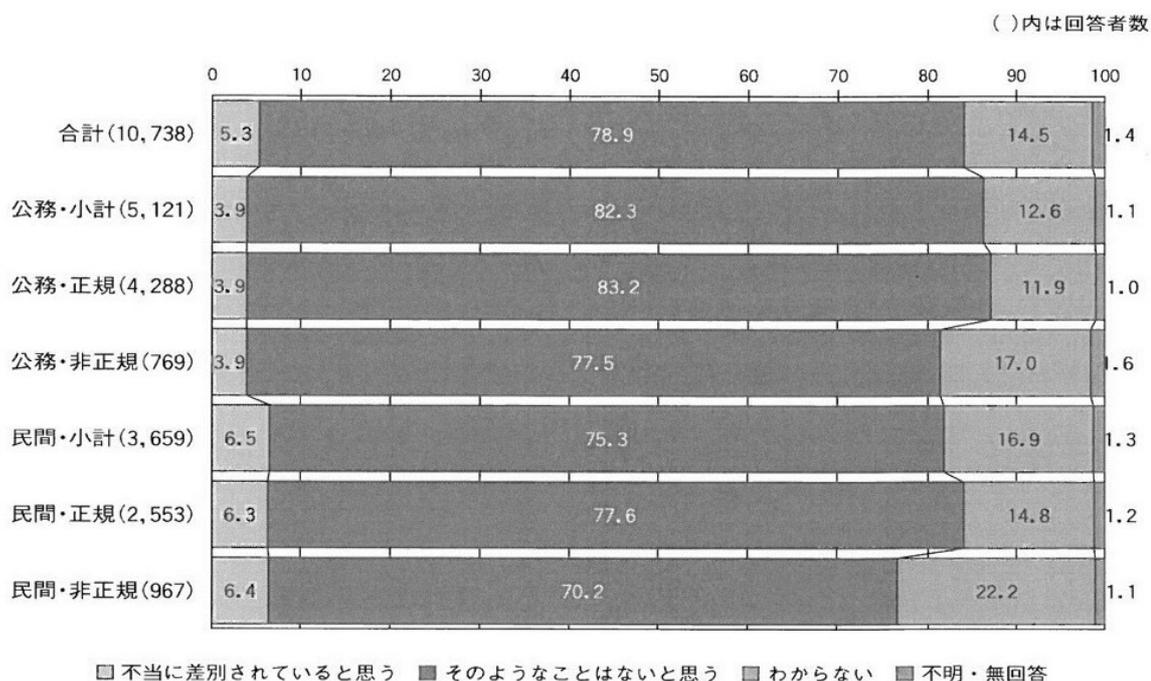
In that sense, both Interviewee 3 and Interviewee 11 showed me the results of the Gender Equality Bureau Cabinet Office 2018 White Paper on Gender Equality (in Japanese, 男女共同参画白書), which has work-related data in its third chapter. For example, Image I-3-5 (represented here as Figure 10) shows the thoughts of women (left column) and men (right column) concerning the idea that "men work outside, women take care of the home". From top to bottom, we have the progression of years, starting with 1979 (year 54 of the Showa Era) and passing through 1992, 2002, 2012, 2014 and ending 2016. Concerning the table's legend, from left to right we have: people who agree with the idea that "men work outside, women take care of the home"; people who agree with that idea if they have to choose an alternative; people who do not know how to answer; people who disagree with that idea if they have to choose an alternative; people who disagree with the idea that "men work outside, women take care of the home". Although there is a predominantly downward trend on the number of people that agree with the idea completely (in the most recent data, 8.3% for women and 9.4% for men), considering these numbers together with the number of people that replied they would agree with that proposition if they had to choose an answer (in the most recent data, 28.7% for women and 35.3% for men), the situation becomes very alarming. Seeing how strongly the opinion of Japanese society is concerning these kind of values helps us understand why women's rights commitment and compliance is so difficult in the country.

Figure 10. Thoughts of women and men on the traditional gender roles



In addition, Interviewee 11 provided data from a questionnaire carried out with more than ten thousand female workers and published in the Zenroren magazine. In Figure 11, we have the graph included in the original periodical. Concerning the legend, from left to right we have: the percentage of women who feel discrimination; the percentage of women who do not feel discrimination; the percentage of women who do not know; the percentage of women who did not answer. The vertical column represents the different kinds of industries they work at and the number of people who replied to the survey. From top to bottom, we have: the full number of participants; the subtotal of public servants; the number of public servants who are regular workers; the number of public servants who are irregular workers; the subtotal of private-sector workers; the number of private-sector regular workers; the number of private-sector irregular workers.

Figure 11. Perception of women concerning discrimination in the workplace



When questioned if they felt that women were discriminated against when compared to men, the results were that only 5.3% of women feel discrimination in the workplace. Just from this result, some could conclude that there is no discrimination in the Japanese workplace, then. However, according to the Zenroren research (Zenroren Women’s Committee, 2016), the number of women realizing the discriminatory actions against them has been growing. In addition to that, Figure 8 of Chapter 6 showed a survey by the Japanese government which has shown most Japanese people believe men continue to receive preferential treatment over women in general. Considering that I have already established that it is incredibly difficult for women to raise their voices against discrimination, and that they do not receive any education on how to realize what is discriminatory or not, the low percentage of women vocalizing the unfairness against them makes more sense. Perhaps working women are just now becoming more aware and vocal of the discriminatory situations they have to face. As time goes by and these topics are more discussed, there will probably be an even higher increase in these numbers.

Lastly, Interviewee 1 gave the example that in kindergartens, even though both parents are working and thus they need to leave their kids there during the day, the teachers always send letters

addressed only to the mother, as if it is their sole responsibility to care for the child. Interviewee 1 mentioned that the teacher at her child's kindergarten only realized the issue after she pointed out the discriminatory undertone of this situation. Based on that, according to Interviewee 1 the main issue should not be the lack of women's rights per se, as commitment has reached a somewhat comfortable level, but instead the lack of knowledge concerning these rights, the low number of people who make use of them (mainly because of high-context societal pressure to conform), and the low awareness of what kind of situations are discriminatory. Women especially do not realize their rights are being infringed, and when these women beat all the odds and rise to a position of power, they end up creating an infinite spiral of disregard, blame and non-compliance. (Interviewee 1)

Although this lack of awareness of Japanese women (and men) concerning gender equality paints a bleak picture of the future, not all is lost. As already mentioned, due education could work very well to raise awareness concerning gender issues. In addition, Interviewee 1 raised the point that, with the advent of the internet, she is optimistic that people will find people going through the same discriminatory situations and support organizations, and thus will become more prone to raising their voices against unfairness.

7.3 Conclusion

In this chapter, I presented the results of the interviews carried out with a variety of Japanese women who are involved, in different levels and from diverse perspectives, in actions to reach better women's rights protection. After introducing the methodology used to prepare the interview setting, the interviewees list and the question list, I looked at the answers given by the interviewees through the "spiral model" of norm diffusion, applying together with this theoretical concept aspects of norm localization, of different types of socialization and of feminist theory, in order to better understand the Japanese domestic views on the commitment compliance gap and the general lack of implementation of women's right to work.

First, I presented the interviewees backgrounds and their relationship with feminist movements. A relevant find was the distance between Japanese women, even the ones actively

involved in the fight for the protection of women's rights, and feminist theories. Interestingly most subjects, and specially the older ones, did not participate in or identify with Japanese feminist movements, usually strictly separating both their activities. By introducing a feminist approach of norm contestation to the "spiral model", it might be possible to bring activism aiming to realize women's right to work closer to feminist theories criticizing the male-centric international society and how this male-dominance spills over into legal, political, economic and social institutions, which obviously include work-related customs. In addition, since feminist activists are more prone to actively try to change people's views on gender roles and discrimination through theoretical and hands-on approaches, they are consequently more involved in promoting persuasion domestically, and thus their association with the people striving to guarantee the protection and the realization of the women's right to work would be an important way of helping Japan move on to a status of better compliance. In conclusion, this exercise would broaden the horizons of and strengthen the protection of the women's right to work, creating intersections with other relevant issues (as the ones raised by Interviewee 6, in relations to marginalized workers) and bring fruitful results both to research and to society.

Secondly, I found that the "spiral model" framework is very useful to analyze Japanese society. Concerning the model's characteristic relationship between domestic and international actors, I saw that the interviewees had distinct experiences. While some more traditional national organizations had had productive interactions with international ones, particularly when Japan was dealing with its first steps towards committing to international women's rights (phase two/phase three of the "spiral model), newer groups do not have the same level of direct exchange with transnational actors. I also concluded that even the interviewees that interacted with international organizations had limitations in such communication, because of lack of language skills, advanced age, technological proficiency, lack of manpower. Another essential factor was Japan's refusal to ratify many international treaties, which makes the organizations focus on commitment instead of compliance. I suggest all this might influence in the demobilization of Japanese domestic

organizations before reaching compliance, and thus in the state getting stuck in phases 3 and 4 of the “spiral model”, having difficulty in committing to international women’s rights norms.

Third, the “spiral model” framework, when explained concisely, allowed people that had no previous contact with this theory to place Japan into its phase structure and identify in their experiences many theoretical points, such as the differentiation between socialization and persuasion and the effects this might have for implementation. The interviewees mostly placed Japan in between phases three (*tactical concessions*) and four (*prescriptive status*) of the model, matching my original analysis, with some particular cases of refusal to ratify international treaties putting it down on phase two (*denial*). Also, there was a consensus among the interviewees that Japan has not gone through persuasion, which could one explanation for why the country finds itself with such a huge commitment/compliance gap.

Fourth, important insight was earned on how the Japanese governmental, economic and social institutions, despite the ratification of international documents protecting women’s rights, remain unable to prevent the perpetuation of some social practices that weaken international pressure and continue to enable discrimination against women, harming specifically female empowerment and gender equality, and generally the growth of society itself. Plus, since the aspect of high-context communication predominates in Japan, it is usually difficult for women to raise their voices against such discrimination and inequality. These women should be able to enjoy a legal and judicial protection network, but because of insufficient legal strength, the Japanese laws and policies created to implement the women’s right to work are continuously and unanimously criticized. In the same sense, the judiciary is also not helpful in its approaches to topics related to gender equality, thus contributing to this maintenance of the commitment/compliance gap within Japanese society.

Lastly, I can combine with these factors data that shows how much women and men still have gender roles internalized and the lack of people interested in partaking in the fight for gender equality. All this contributes to impeding Japan from reaching, or at least getting closer to a phase of rule-consistent behavior in the women’s right to work. In this context, I can understand how important using persuasion as a type of socialization and taking into consideration the Japanese individualities

and applying notions of norm localization is to change the way Japan interacts with and internalizes international treaties as domestic laws and policies. Compiling the aforementioned conclusions, some main points can be identified, as follows:

- There is a strong presence of traditional gender roles within Japanese society, which needs to be considered when trying to make Japan comply with international women's rights law.
- There is a distance between the interviewees and feminist movements, which limits the NGOs protection of the women's right to work and affects the effectiveness of their being able to change society's views on gender and discrimination.
- There is a lack of awareness of Japanese women concerning their being discriminated against and a lack of education concerning women's rights, which may be connected to Japan not experiencing persuasion.
- There is a generational gap within the NGOs, with a majority of elderly members and an insufficiency of newer, younger members, which is contributing to the inadvertent early dissolution of domestic mobilization.

In conclusion, the worsening situation of Japanese economy, the increase in poverty and social stratification, the shrinking population and other factors all have been contributing to lowering the Japanese standing amongst other leading members of international society and creating domestic friction too. This makes us consider until when can Japan keep stayed attached to past "traditions" and keep up with the changes in the world. If the present laws, policies, attitudes towards gender inequality and the importance of women for a healthy society are not reconsidered soon, Japan will slowly but surely become a place where not even men "can shine".

Chapter 8. Conclusion

In this thesis, I aimed to identify the causes for Japan's commitment/compliance gap when it comes to the women's right to work. To reach that goal, I used the "spiral model" of norm diffusion as my guiding theoretical approach, adding to it some complementary characteristics taken from other theories of norm diffusion. Emphasis should be given to the fact that the model is an ideal-typical conceptualization of what happens when the processes of norm diffusion work well, which helps researchers identify and make sense of the "messy" points that might exist in the way towards norm implementation. It is also undeniably a product of its time, but with the necessary awareness and reflexivity over this characteristic the "spiral model" can still be highly valuable today. That considered, I adapted the "spiral model" to the Japanese case in question, by linking it to Checkel's theory of different types of socialization, Acharya's norm localization theory, and to feminism, particularly to a feminist view of norm creation, diffusion and implementation, through theories of norm contestation. Throughout such approach, as an underlining guide, I took into consideration positionality theory and the cultural/traditional argument, made occasionally by political and economic key players, which suggests that Japanese "culture" or "tradition" would be incompatible with some aspects of women's right to work, being consistently aware of how biases and assumptions held by me and my interviewees, formed as a result of the context of our life experiences, intersecting identities and power relations, could affect the research. To the extent that it is true that it is impossible (and maybe even prejudicial) to completely avoid such predispositions, I focused on the understanding that there are women's rights that warrant universal protection. It is important to notice that such understanding was clearly shown and shared by all the interviewees, and that Japan's positions and actions as a state, both in the international and domestic legal stages, corroborate the idea that it also accepts this universal protection paradigm. That considered, I concentrated my efforts on using the hybrid "spiral model" as a way of anticipating and mitigating the possible effects of positionality and of resistance to norm diffusion arguments, based on recourse to culture and tradition.

After introducing the theoretical basis of this model, I proceeded to present the historical, legal and social background that culminated in the present lack of women's rights implementation in

Japanese society. First, I introduced the legal protection given to women's rights, focusing on the treaties that guarantee the right to work, such as the International Bill of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and International Labour Organization (ILO) documents related to the topic. Then, I considered how Japan tried to domestically apply such international women's rights provisions, looking at mainly at the work of the executive and the legislature, but also touching upon the way the judiciary applied laws and principles related to the topic in their decisions. It was possible to conclude then that the rights based UN process approach has not been so successful in Japan, especially in comparison to other regions of the world, such as Latin America.

Following the document analysis, referring to both primary and secondary sources, I could identify the major commitment and compliance issues existing in Japanese society, and start to analyze this data through the "spiral model". However, I needed to go deeper into these problems to be able to form more reliable answers to my original research question and to confirm if the model was truly a valid framework to use in the case of Japan. Thus, I interviewed a selected group of Japanese NGO representatives and other actors that worked with, researched and/or experienced gender discrimination at the workplace daily. After compiling their answers to a variety of questions, focusing on their thoughts on the "spiral model" as applied to the Japanese situation, and including questions about their personal experiences as Japanese working women and their views on Japanese culture, I finally had enough information to define a strong, but not limited, list of reasons for the lack of implementation of women's right to work in Japan. In this conclusion, in addition to summarizing these findings, I will also identify other topics of interest, and finally suggest tentative ways for the government to bridge the commitment/compliance gap.

Initially, I had three main propositions for why the commitment/compliance gap has persisted so strongly in Japan, even with continuous government rhetoric on making society a more gender equal place. The first one was the influence that cultural and social conditions have in the lack of implementation, particularly when it comes to women and the workplace. Japan, in an attempt to protect traditional values, has maintained the idea that "men work and women take care of the

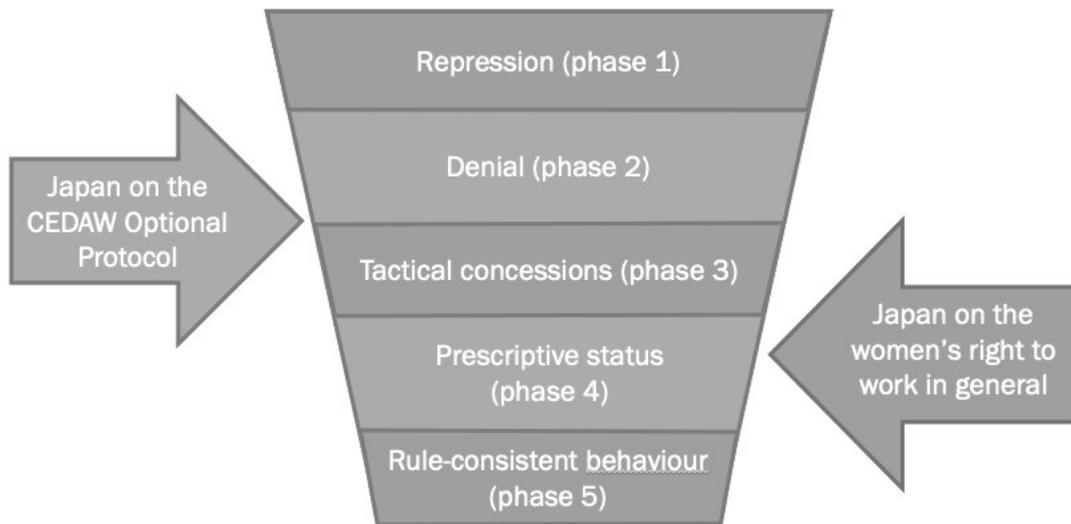
home” alive in the minds of its citizens and of people in powerful positions. Because of this mentality (internalized and externalized by both women and men, albeit in different proportions), workplace issues damaging to women’s careers and lives, such as the gender-pay gap, sexual and power harassment and the fact that women tend to be forced into part-time or clerical positions, also persist strongly in Japan. The second proposition is related to how Japan has been criticized by domestic and international actors for downplaying the importance of international law over domestic law. The state has continuously avoided implementing repeated recommendations from international organizations and publicizing such information nationally, which affects the level of knowledge of the general population concerning such norms and rights. The third proposition deals with the fact that even Japanese domestic labor laws and policies that were supposed to implement international treaties lack strength, mostly consisting of guidelines without any duty or sanction. This allows companies and courts, both dominated by men, respectively to avoid complying and to prioritize the discretionary power of business over the rights of female workers.

All these three tentative propositions were clearly confirmed in my deeper document and interview-based analysis. However, I also found more layers to these problems, particularly after applying the “spiral model” to the Japanese situation. First, I could unmistakably situate Japan within the five phases of the “spiral model”. My original conclusion was that, considering the characteristics of each phase and the present situation of Japan in relation to women’s right to work, the situation in Japan with regard to the women’s right to work could be located in between the end of the phase of *tactical concessions* (phase three of the “spiral model”) and the beginning of the phase of *prescriptive status* (phase four of the “spiral model”). This is because even though the Japanese legislature and the executive have signed some international treaties on the topic and created domestic laws and policies aiming to revert the situation of gender inequality, these have continuously not reached their original goals. Also, when it comes to some other important international treaties and conventions, such as the Optional Protocol to the CEDAW and ILO Conventions no.111 and no.183 (which are key to guarantee equality in the workplace), Japan has refused to even ratify them, ignoring advice from international actors. This puts the country, in relation to these specific situations, even lower in

the phase of *denial* (phase two of the “spiral model”). These classifications were confirmed by the interviewees, who were adamant that Japan was nowhere clear the level of *rule-consistent behavior* (phase five of the “spiral model”). This can be seen in Figure 12, and can be related to the theory of organized hypocrisy in the sense that reaching phase four is actually a form of tactical concession for Japan. The state is recognizing that there is an international women’s rights script it should follow and thus it is adjusting its logic of appropriateness to an extent by creating legislation even when it has no intention of implementing it satisfactorily. The interviewees were highly aware that this lack of compliance feels almost tactical, which shows that they are aware of Japan masking its logic of consequences under a logic of appropriateness, and that the “spiral model” framework was useful to identify and name processes of non-compliance in this case.

I was also able to place Japan within Checkel’s theory of different types of socialization. Based on his division between role playing (Type I socialization) and persuasion (Type II socialization or normative suasion) and on the logics of action behind these kinds of socialization, I could place Japan in a situation of strategic calculation and/or following the lead of other international players just to avoid making such calculations. In other words, Japan has not been truly persuaded about the need and the importance of guaranteeing the women’s right to work. It might be “talking the talk” to some extent, but it is not “walking the walk”. Analogously to the point concerning Japan’s place in the “spiral model’s” phases, the interviewees also corroborated this classification, affirming that the Japanese government and business have been recognizing that there is an international script they should follow (under a logic of appropriateness), but they still make instrumental decisions (under a logic of consequences) to try to quickly solve issues such as the worsening economy and the lack of workers. This contributes to the general lack of understanding concerning gender equality in the workplace, and consequently stops Japan from going beyond a low level of norm implementation.

Figure 12. The suggested position of Japan (reproduction from page 34)



Other relevant points related to the “spiral model” and complementing theories were also brought up by some interviewees. Interviewee 1 pointed out that true change should not be come from a denial of people’s traditions and customs, but as an evolution of these ideas aiming to improve society. This approach can be linked to Acharya’s norm localization theory, in the sense that adapting some of international women’s rights norms to domestic customs might initially be more effective than just forcing them upon states. Although I had already considered this possibility when adding the concept of norm localization to the model, since it would help us avoid complaints of neocolonialism, in particular by non-Western states like Japan, it was interesting to see this mentioned and confirmed by one of the interviewees without any prompting.

The answers related to the relation between the Japanese feminist movement and the work of the interviewee were surprising. Considering most people fighting for the women’s right to work are women themselves, my initial thought was that the women’s liberation movement of the 70s or even more modern views on feminism would have been intrinsically connected to their activities. However, most interviewees had no connection to the movement and feminist theory, usually seeing it as more of a sociological approach that could not be of use for their activities. This finding allows us to suggest that introducing a feminist approach to the “spiral model” was useful not only to theoretically criticize the male-centric international society that spills over into legal, political, economic and social institutions, but also to enhance the relationship between feminism and Japanese

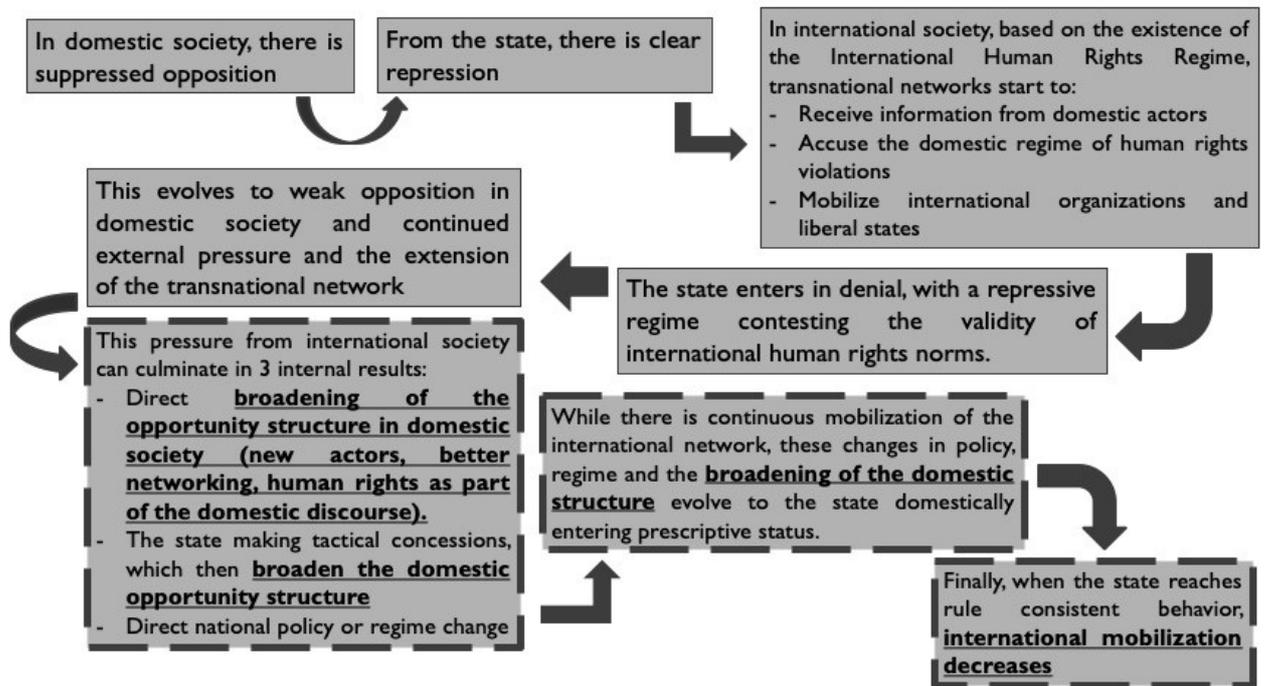
women, particularly female activists. This could be used to materialize such feminist theories into activism aiming to realize women's right to work, thus broadening the limits of the protection of the women's right to work and creating intersections such as the one suggested by Interviewee 6, related to marginalized workers.

The insight from the interviewees also contributed to my analysis of Japanese society and how it evolved concerning the mobilization for the realization of the women's right to work. The model assumes that there will be a constant interaction between domestic and international actors until the phase of complete implementation. However, the interviewees did not have uniform experiences of such interaction. Some more traditional national organizations had enjoyed fruitful interactions with international actors, particularly when Japan was starting to commit to international women's rights (phase two/phase three of the "spiral model"), while more recently formed groups and older groups in their recent activities do not have the same level of connection. From the interviewees answers and from my observations when participating in women's rights events, I could also notice limitations in transnational communication deriving from the activists' lack of language skills, advanced age, lack of technological proficiency, lack of manpower, too much focus on commitment instead of compliance (caused by Japan's aforementioned refusal to ratify many international treaties). I concluded that all these obstacles influence in the inadvertent demobilization of Japanese domestic organizations before reaching compliance, and this adds to the explanation of why the state has such difficulty to commit and comply to international women's rights norms. This demobilization is represented in Figure 13, with focus on how the "spiral model" assumed that domestic society structure and the pressure coming from it would continuously broaden during phases three (*tactical concessions*) and four (*prescriptive status*), decreasing only after phase five (*rule-consistent behavior*) was completed.

I must point out that the fact that this standard process could not be identified in Japan does not diminish the relevance of the "spiral model" in any sense. As previously mentioned, the "spiral model" works as a framework illustrating what happens if the process works well, and deviation from this model only demonstrates how useful the theory is when it comes to identifying which cases

diverge from the model, and how and when they do so. Thus, in turn, this knowledge allowed me to make better sense of the Japanese situation, and consequently to suggest more accurate ways to improve implementation and to move Japan towards phase five.

Figure 13. Linear representation of the processes of the “spiral model” framework with focus on the last phases of the “spiral model” and on the broadening of domestic structure



Social and cultural aspects of Japan were consistently brought up by the interviewees. They incisively relayed their experiences and knowledge of how traditional values are used by the Japanese governmental, economic and social institutions as excuses to resist international pressure, thus perpetuating (possibly intentionally, or at least without realizing) a strict view on gender roles and harming the empowerment of women in particular, and the growth of society in general. This is aggravated by the high-context communication cultural characteristic of Japan, which focuses on the importance of following implicit social and customary clues and ends up making it more difficult for women to raise their voices against discrimination and inequality that is intrinsic in society. Data has proven this tendency, showing that both Japanese women and men still have gender roles internalized, possibly because of a lack of education on the matter, or because of this cultural tendency of following in the footsteps of past generations without questioning (as mentioned by Interviewee 1).

To make matters worse, from the analysis of court cases and the insight from interviewees that had participated in these legal battles directly, I learned that in Japan women can enjoy neither a legal protection network, nor a judicial one. As already mentioned, Japanese laws and policies aiming to implement the women's right to work were continuously and unanimously criticized for their insufficient awareness of societal issues and lack of legal strength. Similarly, the judiciary has been failing women who come to it to guarantee an application of the law based on principles of gender equality, since the courts' approach to cases dealing with the women's right to work has been prioritizing the discretionary power of the employees, unless there is a clear manifestation of discrimination that is explicitly mentioned in the workplace. This is another reason that contributes to burying women's voices and to the maintenance of the commitment/compliance gap within Japanese society.

Lastly, a common worry of all the interviewees was the low number of people interested in fighting for gender equality. A group of previously mentioned factors, such as the job instability faced by newer generations, the lack of information offered to them on labor rights, the cultural fear of standing out with their complaints and breaking the implicit communication social rules has been contributing to people not being interested on joining activism groups or even their own labor union. Consequently, Japan remains far away from reaching satisfactory levels of compliance, remaining at phases three (*tactical concessions*) and four (*prescriptive status*) of the "spiral model" concerning the women's right to work.

In conclusion, after looking at all these possible reasons for Japan's lack of compliance, I can suggest some ways of improving the situation. First, following the "spiral model" framework and its diffusion techniques, I can look at which mechanisms of action would be able to push Japanese society forward more effectively. Considering that Japan has been focusing only on a reward model to get companies to comply to labor laws, without any real success, I suggest that *conditionality* should be used instead in the form of domestic legal sanctions for such companies. It is past time Japanese law becomes stronger. *Capacity building* is another welcome mechanism, since from this research it has become clear that there is not enough information being shared or education being

given on the topic, even to the most relevant governmental actors. From the idea offered by Interviewee 2, I may suggest that looking at the laws and policies created by other nations, particularly East-Asian nations that rank better than Japan in international gender indexes, through the mechanisms of *lesson-drawing* and *mimicry* could also be useful.

However, the most important suggestion is for international and national civil society actors to strive to persuade Japan of the importance of guaranteeing the women's right to work. Japan has been stuck in an instrumentalist view of such rights, trying to get women in the workforce just to fulfill economic goals and without adapting its traditional and harming work-related views to this new configuration of society. While it is important to take into consideration the Japanese individualities and apply notions of norm localization to norm suasion, norm diffusion actors need, through discourse and persuasion, to change to some extent the way Japan interacts with and internalizes international treaties as domestic laws and policies. If this change does not arrive soon, the shrinking population of Japan, the intensifying social stratification, the worsening of the economy and the increase in poverty will lead to new domestic problems and the lowering of Japan's standing within international society. Considering these dangers, senior Japanese decision-makers must reconsider their attachment to traditions that are clearly only harming society. I hope this research can be a starting point for future studies not only in the matter of norm diffusion for women's right to work, but also used to help Japan adapt its unique social aspects and traditional views to the demands of a new societal structure that will not wait for it to catch up. Japan has been stuck in time and hindered by so-called cultural differences for too long. If it does not keep up with the changes in both international and its own domestic society, Japan will never be able to overcome this persistent commitment/compliance gap.

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