

USALI Perspectives

CEDAW's Impact in East Asia: Part I

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The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has received almost universal ratification, with 189 states parties. Yet there is vigorous debate on whether the treaty has been successful in promoting gender equality. Sceptics point to the large number of reservations and to the soft enforcement framework, which relies upon governments to self-report to the UN Committee on the Elimination of Discrimination against Women. Like other UN human rights treaty-monitoring bodies, the CEDAW Committee has no coercive enforcement powers and it is woefully under-resourced. But it diligently reviews every state report, engages in dialogue

with government delegations, and issues concluding observations on the extent to which each state party is complying with the treaty. The CEDAW Committee also actively engages with civil society and encourages “shadow reports” from non-governmental organizations, generating critical information that governments might omit from their reports.

Recent scholarship documents that active participation in the CEDAW reporting process is associated with improvements in gender equality, at least when assessed over the long term. For example, [Professors Creamer and Simmons](#) examined 621 reports submitted from 1982 to 2014 and found

a statistically significant relationship between the frequency and quality of a government's engagement with the CEDAW Committee and women's rights. [Ellinore Ahlgren's recent study](#) confirms this, even for states that filed significant reservations upon ratification.

To date, however, there has been relatively little comparative research on the impact of CEDAW in East Asia, a region that continues to be affected by Confucianism and entrenched gender hierarchies. This essay assesses the impact in three countries in the region: Japan (which ratified in 1985), South Korea (which ratified in 1984), and China (which ratified in 1980). For comparative purposes, I also consider Hong Kong, which became bound by CEDAW in 1996, and Taiwan, which incorporated CEDAW into its domestic law in 2007 and has created its own quasi-international reporting process.

Given that all five of these jurisdictions have secular legal systems, modern economies, and high levels of educational attainment, they certainly have the capacity to implement CEDAW. On the other hand, there are significant differences among their political and legal systems, the attitudes of government officials and judges, and the extent to which women's organizations can participate in the CEDAW reporting process and advocate for gender equality. While a

more in-depth comparative study is required to draw any firm conclusions, my preliminary analysis suggests that certain factors enhance the impact of CEDAW. These are: (1) the extent to which the government genuinely wants to implement the treaty (or at least be perceived as doing so by the international community), (2) the extent to which the judiciary looks to CEDAW for guidance when interpreting and applying domestic laws, and (3) the extent to which civil society can engage in the periodic review process and promote compliance with the treaty.

Japan

Japan ratified CEDAW in 1985. It is a stable democracy and women's organizations can freely participate in the CEDAW reporting process, as evidenced by the [large number of critical shadow reports](#) filed with the CEDAW Committee. Yet Japan is widely considered to be one of the worst jurisdictions in East Asia for gender equality. The [World Economic Forum's Global Gender Gap Report](#) ranks it at 125 out of 146 nations. Women are seriously underrepresented in the legislature and the government is reluctant to adopt quotas and or other positive measures to promote equality. The judiciary is also notoriously conservative and rarely cites CEDAW (although human rights treaties ratified by Japan should be

directly enforceable in court, as Japan is a [monist system](#)).

Does this mean that CEDAW has failed in Japan? I would argue the opposite because much of the limited progress that has been made can be directly linked to CEDAW and its reporting process. In 1981, when Japan first signed CEDAW, it had many discriminatory laws on the books, including a nationality law that followed the principle of patrilineal descent (which meant that a Japanese woman could not pass citizenship to her child if the father was foreign). That law was changed in preparation for Japan's ratification of CEDAW. Over time, other discriminatory laws have been gradually reformed, including the unequal age of marriage (which originally allowed girls to be married as young as 16) and a required "waiting period" before a divorced woman could remarry. CEDAW also inspired Japan to enact its first law promoting gender equality in employment, although the law was extremely weak when enacted and still lacks truly effective enforcement mechanisms.

For the women's movement, the law reform process has been painfully slow. But it almost certainly would have been even slower without CEDAW. Japan does have a constitutional right to gender equality but Japan's Supreme Court almost never invalidates a law on constitutional

grounds. A good example is the Civil Code provision requiring married couples to use a common surname. The Supreme Court has upheld it twice, most recently in 2021 (see [here](#) and [here](#)). The CEDAW Committee has repeatedly criticized the law, giving women's organizations some leverage when lobbying for law reform. Indeed, in the 2021 case before Japan's Supreme Court, the dissenting justices also relied upon the CEDAW Committee's Concluding Observations as support for their opinion that the same-surname requirement is unconstitutional. The Committee's "[list of issues prior to reporting](#)" for the next review of Japan included a pointed question regarding the government's plans to redress this discriminatory law. [The government's replies](#) (which, under the simplified reporting system, serve as Japan's ninth periodic report to the CEDAW Committee) promise only to continue to study the issue. But [public support](#) for allowing a married couple to retain their separate surnames has steadily increased. This will make it more difficult for the government to defend the same-surname law when the CEDAW Committee conducts its public review of Japan's ninth report. If the law is eventually reformed, there is little doubt that the CEDAW reporting process will have played a role.

South Korea

South Korea ratified CEDAW in 1984 and initially filed reservations to Article 9 and Article 16(1) (c), (d), (f) and (g). South Korea is a good example of why reservations do not necessarily indicate that a country will not take its obligations seriously. In some cases reservations indicate that the government's lawyers have studied the treaty and know that the country cannot immediately comply with it. South Korea has gradually amended its laws and has now withdrawn its reservations to all but Article 16(1)(g).

In many respects, South Korea has taken a more assertive approach to implementing CEDAW than Japan. Ironically, this may be partly due to South Korea's authoritarian past – once it finally democratized, the government had a strong incentive to improve its reputation by participating actively in the UN human rights system. In addition to amending numerous discriminatory laws, South Korea also adopted a quota system to increase women's political participation and established a National Human Rights Commission, which can investigate violations of women's rights. The World Economic Forum's Global Gender Gap Report now ranks South Korea at 105 out of 146 nations. While this is not a brilliant ranking, it is 20 points higher than Japan.

The South Korean judiciary has also demonstrated more interest in CEDAW

than judges in Japan. For example, the Korean Constitutional Court invalidated the practice of awarding veterans extra points on civil service examinations, citing CEDAW and noting that women have fewer opportunities than men to serve in the military. The Constitutional Court also invalidated the [patriarchal “hoju” system](#), under which a male-led family was the basic legal unit in society, and a provision in the Civil Code that required children to use their father's family name.

These achievements have not been supported by everyone, as evidenced by the election of President Yoon Suk-yeol in 2022. He openly courted “anti-feminist” voters and [threatened to close the Ministry of Gender Equality and Family](#). Yet, as of July 2023, [the ministry was operating](#) and had announced a “slight reduction” in the incidence of [domestic violence](#). This has been a severe and pervasive problem in South Korea and a frequent topic in its dialogue with the CEDAW Committee.

It would be an awkward time for the Yoon government to close the ministry or to backslide on any other policy measures designed to implement CEDAW. South Korea filed its ninth periodic report to the CEDAW Committee in August 2022, describing many steps it has taken in response to the CEDAW Committee's Concluding Observations of 2018. If the Yoon

administration were to undo those measures before the CEDAW Committee holds the public review, then South Korea's international reputation would surely suffer. Moreover, South Korea acceded to CEDAW's Optional Protocol in 2006. This means that women can file individual communications with the CEDAW Committee after exhausting their domestic remedies. This extra layer of international enforcement should help to entrench South Korea's commitments to comply with CEDAW.

Mainland China

China ratified CEDAW in 1980 and filed no reservations (apart from a statement that it would not be consider itself bound by Article 29(1), which is procedural in nature rather than substantive). Given that the Chinese Communist Party was publicly committed to gender equality, CEDAW should be one of the easier human rights treaties for it to implement. Indeed, during the CEDAW Committee's first review of China, the Committee members congratulated the government on its success in eradicating feudal customs such as arranged marriages and in promoting women's education and workplace participation. Since then, the Chinese government has continued to enact and expand upon laws that purport to promote gender equality, often drawing on suggestions from the CEDAW Committee. But women have

suffered during the privatization of China's economy and **gender inequality has actually increased** in recent years. China is now ranked at 107 in the World Economic Forum's Global Gender Gap Report – above Japan but slightly below South Korea.

What accounts for this poor performance? As Rangita de Silva de Alwis concluded, China's reports and legislative projects reflect the "rhetoric" of CEDAW, but **Beijing seems to lack the political will to truly implement CEDAW**. It has resisted many straightforward recommendations, such as adopting a clear definition of unlawful discrimination in its law. This has allowed employers to discriminate against women with impunity. Moreover, when feminists tried to fill the enforcement gap, either through strategic litigation or by using social media to "name and shame" employers, **they were not well received**. Under the rule of Xi Jinping, there has been a **well-documented crackdown** on civil society and human rights lawyers, making it far more difficult to undertake such rights advocacy.

It is clear that the CEDAW reporting process matters to the Chinese government on some level, as it frequently adopts a new law just prior to a review by the CEDAW Committee. For example, in October 2022, China amended the Law on the

Protection of Women's Rights and Interests. The new provisions went into force on January 1, 2023, just a few months before the CEDAW Committee's public review of China's ninth periodic report. The revisions at least partly address past concerns of the Committee. For example, the law now specifically prohibits certain discriminatory actions, such as restricting a job to males or requiring a newly hired employee to undergo a pregnancy test. China has also strengthened the provisions prohibiting sexual harassment and [increased the potential penalties](#) (including possible criminal penalties) for employers who fail to take reasonable steps to prevent sexual harassment. The CEDAW Committee welcomed these amendments in its May 2023 Concluding Observations on China. However, the Committee also reiterated many longstanding concerns, including the lack of a comprehensive definition of unlawful discrimination and the absence of special measures to increase women's representation in government, the judiciary, and other public institutions.

The CEDAW Committee also expressed concerns regarding a number of politically sensitive issues, including restrictions on non-governmental organizations and harassment of human rights defenders. It called upon China to halt non-voluntary "vocational training" programs and other forms of intersectional discrimination against Tibetan and Uyghur women. [China's response](#) to this particular recommendation was predictable: it issued a lengthy statement denying the allegations and chiding members of the Committee for relying on "false information" regarding Xinjiang and Tibet. This is just one example of China's increased hostility to critical comments from treaty bodies. Indeed, some organizations maintain that China is actively trying to undermine the UN's human rights monitoring system. Thus, in this particular situation, [increased engagement with the CEDAW Committee may not be a positive factor](#) in promoting gender equality.

[To be continued in Part II.](#)



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