

In response to
the Questionnaire of the Special Rapporteur on the Human Rights of Migrants
on Good practices and initiatives of gender-responsive migration legislation,
policies, and practices

Solidarity Network with Migrants Japan (SMJ)

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Questions:

- How do/es the country/ies on which your organisation is working define “gender responsiveness”?

There is no official definition on “gender responsiveness” in Japan.

- Please provide information on any existing or forthcoming good practices or initiatives of gender-responsive migration legislation, policies or practices in the country/ies your organisation is working on. (Should you provide information on legislation or policy, kindly submit the original text, accompanied by an English translation if it is in a language other than the six official UN languages.)

There are no identifiable practices or initiatives of gender-responsive migration legislation, policies or practices in Japan.

- Please indicate any challenges and/or obstacles in the implementation of gender-responsive migration legislation and/or policies?

The Labor Standards Law (article 3) which stipulates working conditions, states that no employer shall discriminate against or favor any employee by reason of nationality or other status with regard to wages, working hours or other working conditions. The same may be said of related labor laws, for example, the Equal Employment Opportunity Act. The article 9 of the Act provides the prohibition of the unfair treatment due to reasons such as marriage, pregnancy and childbirth. However, recently there have been significant cases of infringement on the reproductive health/rights of migrant women who live and work as technical intern trainees in Japan. According to reports from the civil society sector, many pregnant technical intern trainees are being forced to make a tough decision by their employers and supervising organizations when they get pregnant.

There is even a case, reported by the newspaper Asahi Shimbun in December 2018, that the supervisor of a pregnant trainee urged her to get an abortion, giving her as a second option the forced return to Vietnam. In the contract that she signed with the sending organization, there was a condition that she had to agree to return in case of pregnancy.

On January 2019, a Chinese woman who was working in a food-processing factory as a technical intern trainee was arrested since she left her baby at someone’s house just after she gave a birth at her dormitory alone. She stated that she could not be able to continue to work in Japan while having a baby. She also revealed that she had heard a warning that pregnancy or childbirth is prohibited at the induction program before her coming to Japan. She was sentenced to one and a half years in prison with 4 years suspension of sentence.

The government has warned companies participating in the technical intern training program against dismissing or unfairly treating technical intern trainees who get pregnant while working in the country, pointing to the Equal Employment Opportunity Act, on 11 March 2019.

The government also stated that: "It is illegal and not supposed to be approved that the

supervising organizations and implementing companies force technical intern trainees to go home in their countries against their will because of pregnancy, childbirth and marriage." However, the information has not reached to the trainees themselves, as evidenced by the fact that a similar incident happened in April 2019.

The civil society sector requests the Government to widely deliver the information based on the labor related laws to the technical intern trainees and enforce the strict regulation to the violation of the supervising organizations and implementing companies. Furthermore, there is a concern that the same situation could happen to those who work under the designated skilled visa, which started in April 2019, since the structure of the new system is very similar to the technical intern training program.

- Based on the experience accumulated with these interventions so far; as well as the lessons learned, what would have to be done differently to maximise the gender responsive impact of these interventions?

Despite the existence of labor related laws, lack of knowledge of migrant women, including technical intern trainees, causes difficulties. The government should provide the information on the labor related laws and raise awareness of reproductive health/rights to migrant women, including technical intern trainees, who suffer from multiple forms of discrimination.

The government also should fully implement the Act in order to prevent the practice of illegal dismissal and treatment of women in cases of pregnancy and childbirth.

In addition, the government should establish a better system and environment in which migrant women can continue to work while raising children.

- What support could other stakeholders (other than governments) provide to make migration policies, legislation, and practices more gender responsive?

The civil society sector could provide flexible and multiple support to improve gender-responsiveness through the strong connection and cooperation among human rights groups through the national migrant support network, Solidarity Network with Japan (SMJ).

References:

“Expectant trainees told to end pregnancy or leave Japan” (The Asahi Shimbun, December 2, 2018)

<http://www.asahi.com/ajw/articles/AJ201812020027.html>

“Japan warns firms not to fire pregnant foreign trainees, as interns fear impact on work status” (The Japan Times, March 14, 2019)

<https://www.japantimes.co.jp/news/2019/03/14/national/social-issues/japan-warns-firms-not-fire-pregnant-foreign-trainees-interns-fear-impact-work-status/#.XOfFuxb7SUk>

“Chinese trainee on Japan's technical intern program gets suspended prison term for abandoning baby” (The Japan Times, March 22, 2019)

<https://www.japantimes.co.jp/news/2019/05/22/national/crime-legal/chinese-trainee-japans-technical-intern-program-gets-suspended-prison-term-abandoning-baby/#.XOfuTBb7SUK>

The Equal Employment Opportunity Act

(Prohibition, etc. of Disadvantageous Treatment by Reason of Marriage, Pregnancy, Childbirth, etc.)

Article 9 (1) Employers shall not stipulate marriage, pregnancy or childbirth as a reason for retirement of women workers.

(2) Employers shall not dismiss women workers for marriage.

(3) Employers shall not dismiss or give disadvantageous treatment to women workers by reason of pregnancy, childbirth, or for requesting absence from work as prescribed in Article 65, paragraph 1, of the Labor Standards Act (Act No. 49 of 1947) or having taken absence from work as prescribed in the same Article, paragraph 1 or 2, of the same act, or by other reasons relating to pregnancy, childbirth as provided by Ordinance of the Ministry of Health, Labor and Welfare.

(4) Dismissal of women workers who are pregnant or in the first year after childbirth shall be void. However, this shall not apply in the event that the employers prove that dismissals are not by reasons prescribed in the preceding paragraph.