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The issue regarding the Imperial House Act

Regarding the “List of issues and questions prior to the submission of the ninth periodic report of Japan (CEDAW/C/JPN/QPR/9)” dated March 11th 2020, submitted to the Japanese Government, we have learned that Paragraph 2 stated: “Regarding the Imperial House Act, the provisions of which currently exclude women from succeeding to the royal throne, please provide details on the steps envisaged to enable female succession to the throne.”

We request the Committee to retract and rescind the issue regarding the Imperial House Act and “female succession to the throne.” It is not an issue of elimination and discrimination against women, and inappropriate to be discussed in the Committee. We would like to state the reason and the significance of the male succession below.

I . “Succession to the Imperial Throne by paternal-lined male” is a purely domestic issue related to a nearly two thousand years old Imperial Family tradition and is totally outside the jurisdiction of any international organization

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1. “The succession of the Imperial Throne” in Japan is an intrinsic, domestic affaire and is outside the jurisdiction of the Convention on the Elimination of All Forms of Discrimination against Women. Any kind of intervention in domestic affairs is inadmissible.

(1) Succession to the Imperial Throne is an important and purely domestic issue, concerned with Japan’s national character and fundamental national regime. Therefore, no international organization, however prestigious or authoritative, is allowed to meddle with the intrinsic domain of Japan, a sovereign state. This is clearly guaranteed by the Charter of the United Nations of 1945 Article 2, Paragraph 7 “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.”

(2) The Convention on the Elimination of All Forms of Discrimination against Women addresses “gender equality” and women’s rights. However, succession to the Imperial Throne has nothing to do with either “women’s rights” or “human rights”.

The Emperor is not allowed to engage in national administration, following Article 4 of the Constitution [The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government], and as the symbol [Article 1 The Emperor shall be the symbol of the State and of the unity of the people], he is required to be politically neutral and does not have freedom of political speech. The Emperor has neither the right to vote nor eligible for election. Furthermore, the Emperor has no freedom to choose and change his residence or to choose his occupation, unlike every other Japanese person as stipulated in Article 22, 1.

Moreover, Article 88 stipulates, “All property of the Imperial Household shall belong

to the State. All expenses of the Imperial Household shall be appropriated by the Diet in the budget,” and in Article 8, “No property can be given to, or received by the Imperial House, nor can any gifts be made therefrom, without the authorization of the Diet.” The Imperial House is restricted in receiving property. The Emperor is denied the freedom to exercise his property rights.

The Emperor, unlike the rest of the people, does not fully enjoy rights guaranteed by the Constitution and yet is burdened with various duties. The status of the Emperor exists in a totally different dimension from that of human rights.

Therefore, it is a mistake to connect the “succession to the Imperial Throne” with women’s rights or human rights.

- (3) Presidents of many countries have various political functions, freely conduct their political activities and have property rights and freedom to choose and change their residence. However, the Emperor of Japan, with a history of nearly two thousand years, has had no political power and greatly differs from republican Presidents in terms of both status and role. The Emperor, who has no right to vote nor to be selected through election, is hereditarily enthroned. Therefore, it is wrong to consider succession to the Imperial Throne in the same light as presidential elections, wherein women can freely run for president and the president is elected through a national election and equally.
- (4) Likewise, monarchs found all over the world possess their own private property and “the succession to the Throne” means succession to their property. By contrast, Japan’s Imperial Family has no private property, in terms of tradition and with respect to the Constitution. It is not at all proper to compare, by the same criteria, foreign monarchs, who are secular figures, with Japan’s Emperor, who is essentially a master of rituals.
- (5) The Japanese Government regards the status of the Emperor as beyond the jurisdiction of the Convention on the Elimination of All Forms of Discrimination against Women. The Foreign Minister at the time, ABE Shintaro, stated at a House of Representatives Committee on Foreign Affairs on May 29, 1985:

The traditional rule that the succession to the Imperial Throne is strictly restricted

to paternal-lined male members of the Imperial Family does not constitute discrimination against women as stipulated in the Article 1 of this Convention.

Discrimination against women as defined by the Convention refers to infringement on women's fundamental freedom and rights, due to distinction based on sex. [However], the qualification to succeed to the Imperial Throne is not included in the fundamental human rights. The traditional rule stating that those qualified for the succession to the Imperial Throne are exclusively restricted to paternal-lined male members of the Imperial Family does not necessarily mean to violate women's fundamental rights. Therefore, imperial rule does not constitute discrimination against women, the elimination of which is required by the Convention.

- (6) Incidentally, the Pope, the Head of the Vatican City State, is exclusively held by men. Is the United Nations Committee on the Elimination of Discrimination against Women courageous and determined enough to hold the Pope accountable as an example of discrimination against women? Here is another example: succession of the King of Saudi Arabia is by “paternal descendants” according to the Fundamental Law (Constitution) enacted in 1992. Likewise, is the U.N. Committee on the Elimination of Discrimination against Women ready to demand that Saudi Arabia “eliminate discrimination against women” regarding the succession of their kings?

2. The Constitution of Japan stipulates the “Imperial Throne” as heredity. [Article 2; The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.] And “dynastic” here means “paternal,” which is confirmed by the Imperial House Law Article 1: The Imperial Throne shall be succeeded to by paternal-lined male belonging to the Imperial dynasty. This law was stipulated based on “Imperial tradition,” which has been maintained for nearly two thousand years since the foundation of Japan. Succession to the Imperial Throne is outside of the jurisdiction of any international organization.

- (1) The “succession to the Imperial Throne” has been the practice inherited for nearly two thousand years since national foundation and thus is an indispensable tradition of the Imperial House.

As the “Imperial pedigree” clearly shows, the Imperial Throne has not always been

succeeded to by the direct lineage. From the first Emperor Jimmu to the 13th Emperor Seimu, and from the 119th Emperor Kokaku near the end of Edo Period to the current 126th Emperor Naruhito, the Throne was directly passed on from father to son. However, during other reigns, the direct-lined succession was not maintained for such a long time and successions involved many complications.

Sometimes brothers succeeded to the Throne, and at other times from uncle to nephew, or from nephew to uncle. When there were no direct-line males, the Imperial Throne was succeeded to a distant collateral. These efforts were made to maintain the “paternal-lined” succession since the first Emperor Jimmu.

Major crises of being unable to find paternal-lined male successor to the Imperial Throne occurred four times. The first time was during the reign of the 25th Emperor Buretsu (498-506). The Emperor Buretsu had no children. Then, a top official named Otomo no Kanemura made a desperate search for a “paternal male,” and after tremendous efforts, finally found one in the far-away land of Echizen, currently Fukui Prefecture, who became the Emperor Keitai (507-531). He was ten degrees of relationship away from the Emperor. In other words, first, they traced back five reigns to Emperor Ojin from two hundred years earlier and then came up again five reigns to a paternal-lined male descendant, the Emperor Keitai.

The second time was during the reign of the 48th Empress Shotoku (764-770). Buddhist priest Dokyo, who basked in the Emperor Shotoku’s favor, tried to rob her of the Throne, but his ambition was crushed by Wake no Kiyomaro and the Throne was protected. Thus, the Emperor Konin (770-781) succeeded to the Throne, who was eight degrees of relationship and one hundred thirty years away from the previous Emperor.

The third crisis occurred at the time of succession from the 101st Emperor Shoko (1412-1428) to the 102nd Emperor Go-Hanazono (1428-1464). There were eight degrees of relationship and one hundred years between them.

The fourth time was when the 118th Emperor Go-Momozono (1770-1779) was succeeded by the 119th Emperor Kokaku (1779-1817). The latter was seven degrees of relationship and seventy years away from the former.

This is how the “Imperial House tradition” has been maintained ever since Japan was founded. Therefore, it is a profoundly important task entrusted to us Japanese living today to keep the Imperial dynasty of “paternal-lined male,” which has been preserved through incessant efforts of our ancestors for such a long time from the first Emperor Jimmu to the present 126th Emperor. Such long-standing heritage is to be found nowhere else in the world and no international organization should be allowed to intervene in this high and noble heritage, for no matter what reason.

- (2) It is a historical fact that among one hundred and twenty-six Emperors, there were eight (ten reign-wise) “female Emperors.” However, female Emperors temporarily held the Throne before a suitable male successor to the Throne was found. In the Meiji period and onward, revising the irregular practice, the “principle of paternal-lined male succession” was clearly established by the Imperial House Law of Meiji. The present Imperial House Law was enacted based on Meiji Law.
- (3) In Japanese history, exceptional cases of “female Emperors” were conditional, that they be either “unmarried” or “widowed.” This was by way of caution to prevent the establishment of “maternal-lined Emperor” in advance.

As the case of the English Royal Family clearly shows, the advent of a “maternal line” signaled a change in dynasties. English dynastic changes took place in the York dynasty (1461-1485), the Tudor dynasty (1485-1603) and the Stuart dynasty (1603-1714), when “maternal-lined kings” came to reign.

In this respect, in Japan, the paternal-lined male succession has been sustained since the first Emperor Jimmu and an unbroken Imperial line has been preserved for ages, which is unprecedented in the world. Japan has never experienced a change of dynasties because the tradition of the paternal-lined male succession has been faithfully observed.

- (4) Regarding the fact that the Imperial House Law prohibits a “female Emperor” [Article 1: The Imperial Throne shall be succeeded to by a male offspring in the male line belonging to the Imperial Lineage.], both the Government’s view and Constitution scholars’ commonly accepted theory state that the law does not violate “equality under the law” and is in accordance with the Constitution.

“Equality under the law” means that the State cannot discriminate against its citizens.

On the other hand, the Constitution allows for the presence of a hereditary Imperial Family, based on a principle which is different from the constitutional principle of “equality under the law,” as the Constitution clearly states at the beginning: Chapter 1 The Emperor. Therefore, the heredity-based succession to the Imperial Throne is a matter of a different dimension from the concept of “equality under the law,” and an exceptional case that the Constitution allows. Therein, Imperial House Law stipulates, following the “Imperial Family tradition,” the succession to the Throne by the “paternal-lined male,” as already explained.

To prohibit a “female Emperor” does not violate the Constitution and is constitutional, which has been the consistent interpretation of the Japanese Government and the popular theory among constitutional scholars.

Therefore, discussion of prohibiting a “female Emperor” and at the same time “discrimination against women” or “women’s rights” makes no sense at all.

- (5) As we have stated so far, the Imperial House Law restricts the “succession to the Throne” exclusively to “paternal-lined male.” On the other hand, the Imperial House Law treats “women” in equal terms in a certain area, far from totally excluding women—Regency is assumed by female members. Article 17 stipulates: The Regency shall be assumed by a member of the Imperial Family of age according to the following order: 1. The Crown Prince or Emperor Grandson, 2. Prince or Prince of the third degree or further, 3. The Empress, 4. Empress Dowager, 5. Grand Empress Dowager, and 6. Princess. The third order and thereafter refer to “female members,” which means that women are entitled to assume regency.

According to the Article 15 of the Law, “Any person outside the Imperial Family and his or her descendants shall not become a member thereof except in the cases when a female becomes Empress or marries a member of the Imperial Family. The Article 15 admits that a civilian female may become a member of the Imperial Family by marrying a member of the Imperial Family, but not vice versa. One could say that this is reverse discrimination against women.

3. There are a lot of misunderstanding and problems involved when it comes to contemplating the possibility of a “female Emperor.”

- (1) It is true that the report submitted by the “Expert Committee on the Imperial House Law” in 2005 contemplated a female Emperor and maternal-lined Emperor. However, the report has been shelved after Prince Hisahito was born to Prince and Princess Akishino-no-miya in 2006.

Formerly, the Expert Committee was obliged to contemplate a “female Emperor” and further “maternal-lined Emperor,” considering the situation in which no baby boy was born after Princess Aiko was born to the Crown Prince and Princess in 2001. However, the birth of Prince Hisahito changed the entire situation—the fearful prospect of no heir to the Throne in the immediate future. Now that things changed, it would be natural to think that the report is no longer valid.

- (2) According to public opinion polls, the majority of Japanese people support the idea of a “female Emperor.” However, more than half of the entire population cannot tell the difference between a “female Emperor” and a “maternal-lined Emperor” and do not know what “female Emperor” really means. (Public opinion polls conducted by the Sankei/FNN on May 13 and November 19, 2019 and by NHK on October 21, 2019.) The principle of “succession to the Throne by the paternal-lined male” is clearly stated in the Constitution and the Imperial House Law. It is totally unwise to try to change these through public opinion, as the public does not have basic knowledge of the Imperial House.

On the other hand, according to a questionnaire to Diet members, a mere 29% were for a “female Emperor” and equally 29% for a “maternal-lined Emperor.” (*The Weekly Asahi*, November 11, 2019 issue.) Which is more reliable, ambiguous and flippant “public opinions” or the opinion of Diet members who represent the people? The answer is plain.

II. The Significance of the Y-chromosome and Paternal-Line Male Succession to the Japanese Imperial Throne

AKEUCH Kumiko, Ethologist

In Japan, the Emperor, the master of Shinto rituals, has been succeeded by the paternal line. This tradition has not changed since the first Emperor, Jimmu, to the current 126th Emperor.

To be precise, there were exceptions during the 126 reigns—eight female Emperors with ten reigns (among the eight, two became Emperor two times). However, all eight female Emperors held the Throne temporarily under such circumstance as paternal line successors were too young to be Emperor. The interim female Emperors never imposed on male linked succession.

Such a long-standing tradition of Imperial secession, by a paternal line male, means, in the biological sense, passing down the Y sex chromosome almost intact for generations. Genes exist in chromosomes. In humans, there are twenty-two pairs of autosomes (chromosomes present regardless of sex) and one combination of sex chromosomes. The male human has a chromosome combination of XY, while the female has XX. In the process of creating new cells, when autosomal and sex chromosomes X pair with another autosomal and sex chromosomes X, crossover phenomena occur, and then X chromosomes are changed. So over generations, genes found on autosomal and sex chromosomes X are markedly changed from that of the first generation. However, basically, there is no crossover between an X and a Y chromosome. So, the almost identical Y-chromosome passes on from father to son.

Thus, the current Emperor has inherited, almost completely, the first Emperor Jimmu's Y-chromosome. The current Emperor's younger brother, Prince Akishino no Miya and his son, Prince Hisahito, have the same Imperial Y-chromosome.

Of course, people in ancient times had no knowledge of chromosomes. Nevertheless, ancient people stood with Imperial succession based on the paternal line male. Ancient people could have thought, "There is something inherited solely from father to son." This is likely not speculation. It is of most importance for all creatures on earth, including humans, to discern between kin and strangers and how close or distant relationships are. It is spectacular that humans possess the ability to perceive that there is something that connects father and son.

The British Royal Family is often headed by a queen. And when the queen's son succeeds her, the Dynasty changes and a new Dynasty is named after the queen's husband. It is possible that the British instinctively realized that the Y-chromosome of the new King is directly from that of the queen's husband, changing the name of the dynasty name accordingly.