

Časlav PEJOVIĆ\*

## CHALLENGES OF AN AGING JAPAN: HOW TO MAINTAIN THE WORKFORCE?

*Abstract:* In addressing the impact of population aging on the employment system, this paper analyzes reforms in employment policies/legislation aimed at remedying problems arising from the shrinking workforce. The focus is on the government policy and law reforms aimed at increasing participation in the workforce of older employees, foreigners, and women. The paper tries to identify factors that play important role in the process of implementation of these law reforms and make assessment of efficiency and limitations of those reforms. The example of Japan and its strategy in handling these complex issues may serve as a reference for other countries, as the aging problem is becoming the global problem.

The employment system is one of the most distinctive features of the Japanese economic model. During the period of economic expansion, the employment system — with a high job stability and low unemployment rate — was praised as a key factor of Japan's success story. As long as the economy was growing rapidly and Japan had a large young workforce, the employment system worked well. After the bubble burst in the early 1990 s and the economic recession left many companies with a huge excess of employees, the employment system came under criticism as one of the obstacles to economic recovery. The merits of the traditional employment practices have become a burden under falling economic growth and a rapidly aging population.

---

\* Prof. Časlav Pejović, Faculty of Law, Kyūshū University, Japan.

The author is grateful to Thomas Klassen from York University and Sean McGuinty from Nagoya University for their very helpful comments and suggestions.

Nowadays one of the most serious challenges facing Japan's employment system is related to the rapid aging of its population. Population decline is likely to create a serious workforce shortage and put pressure on the pension system. While the aging problem is not limited to Japan, it is the most drastic here.

In addressing the impact of demographic factors on the employment system, this paper analyzes reforms in the employment system aimed at remedying problems arising from the shrinking workforce. The main focus is on how policy and law can be used to address the demographic problems. The paper tries to identify factors that play an important role in the process of implementation of the law reforms and make an assessment of the efficiency and limitations of those reforms. Specifically, the paper analyzes how the degree of the commitment of the government and the level of compatibility of legislation with social norms impact the implementation of law reforms.

The paper is divided into separate sections for older workers, foreigners and women, as the legislative responses to each group have been different. The paper follows developments in each of these groups starting from the impact of demographic changes on these three categories, followed by the government actions and regulations, and concluding by a discussion on possible future directions. The paper in its final part contains analysis and assessment of the law reforms and their implementation.

While focusing on Japan, the paper may also be of some interest for other countries facing similar problems. The example of Japan and its ways in handling the impact of aging on the employment system may serve as a reference for other countries, as population aging problem is a global phenomenon.

### IMPACT OF DEMOGRAPHIC CHANGES

The labor market in Japan is undergoing a dramatic change under the pressure of an aging society and shrinking workforce. The population of the working-age group— defined as those between 15 and 64 years old — increased consistently during the post-war years, reaching its peak at 87.26 million in the 1995 population census. Since then, it entered a period of decline and it has fallen to 81.73 million according to the 2010 census and is expected to fall below 70 million in 2027, 50 mil-

lion in 2051, and eventually drop to 44.18 million by 2060.<sup>1</sup> According to UN data, the working age population of Japan is projected to decline continuously from 87.2 million in 1995 to 57.1 million by 2050.<sup>2</sup> The ageing process is expected to continue, driven by high life expectancy and low fertility rates, with the demographic dependency ratio reaching 77 by 2075 (OECD Pensions at a Glance 2015).

Japan has become the world's most aged nation and has been categorized as a hyper-aged society (*chōkōrei shakai*).<sup>3</sup> This raises a number of serious issues, such as the shrinking workforce. In 2013, there were 1.2 million new entrants to the working-age population and 2.2 million retiring older workers. As a result, in 2013 the workforce shrank by roughly 1 million people (Miyamoto: 2014). The problem that Japan is facing is a lack of workers rather than a lack of jobs. Or, maybe even worse: there are too many pensioners and not enough workers to support them.

Another serious issue relates to the sustainability of the pension system. Due to the long life expectancy and low fertility in Japan, the pyramid-like model is losing its shape. That amplifies economic strains, such as the shrinking number of workers to support the growing ranks of retirees. The ratio of working age persons to the elderly is predicted to fall from 2.8 in 2010 to 1.3 in 2060.<sup>4</sup> The impact of an aging society is worrisome: the future of the pension system in Japan does not seem bright, particularly for young Japanese.

Although it is difficult to reverse the declining trend of Japan's working population, the labor shortage problem can be remedied by employing workers more efficiently. Possible remedies include creating better opportunities for the employment of the elderly, foreigners, and women. Such changes may also require a greater diversification of the employment system, since different working profiles need different rules of employment.

#### *a. Older employees*

One of the essential segments of the Japanese system of long-term employment is the contractual mandatory retirement age under which

---

<sup>1</sup> National Institute of Population and Social Security Research, Population Projections for Japan (January 2012): 2011 to 2060.

<sup>2</sup> <http://www.un.org/esa/population/publications/migration/japan.pdf>

<sup>3</sup> Hyper-aged society means the stage at which those aged 65 and older account for at least 21% of the total population. See, Higo & Klassen (2013: 146).

<sup>4</sup> [http://www.ipss.go.jp/site-ad/index\\_english/esuikai/ppfj2012.pdf](http://www.ipss.go.jp/site-ad/index_english/esuikai/ppfj2012.pdf)

the employees are provided with employment security until the mandatory retirement age. This age is set by the rules of a firm, and not by the law, and is enshrined in the employment contract of individual workers.

The system of mandatory retirement age represents an overt discrimination on the basis of age which would be unlawful in many jurisdictions. For example, the mandatory retirement age would be prohibited under the Age Discrimination in Employment Act, 1967 of the US (as amended in 1978, 1986, and 1991). However, age-based contractual mandatory retirement is legal under Japanese law since age discrimination is not prohibited. Japanese Constitution Article 14 prohibits discrimination based on race, creed, sex or social status of family origin, without mentioning age. Japan's Labor Standards Act article 3 also omits age discrimination. One exception is found in the Revision of the Employment Measures Act, 2007 which imposed a duty on employers to give equal opportunities in recruitment and hiring regardless of age (this law was aimed at protecting older people who faced difficulties in getting jobs due to their age).

Japan's approach can be properly understood only in the context of the distinction between regular and non-regular employees: the mandatory retirement age applies primarily to the former. This approach follows the character of the seniority system (*nenko chingin*),<sup>5</sup> under which age represents an important factor for determining wages and promotions. Age-based measures are not considered to be illegal under that system.<sup>6</sup> The employer pays less than employee's contribution to the firm when employees are young and pays more when they are old which results in the personal costs of a company increasing the longer an employee spends in the company. In order to make this system sustainable for employers the mandatory age retirement is necessary (Lazear, 1979: 1261).

The system offers employment security to regular employees until the mandatory age is reached, which is particularly important for older employees who would otherwise face serious difficulties in finding jobs

---

<sup>5</sup> Sometimes only the first component of the term — *nenko* is used as reference to the seniority wage system, because the Chinese characters used in this term may serve to indicate its meaning: *nen*=seniority and *ko*=merits. In fact, *ko* tends to mean „merits of long service”.

<sup>6</sup> It is important to note that wage system of non-standard employees is very different. While standard employees are paid a monthly salary which incorporates the element of seniority, non-standard employees are paid on an hourly wage basis not affected by the seniority factor, but are influenced by the external labor market.

in the labor market. This system also allows the firm to gradually introduce younger employees and maintain a balanced age structure in its workforce. Since every year a number of employees have to retire from the firm, it can make plans for recruiting young graduates, which also contributes to the rather low unemployment rate in Japan.<sup>7</sup>

Japanese people enjoy the world's highest life expectancy rate.<sup>8</sup> Compared with previous generations the elderly today are physically more capable of working beyond the retirement age.<sup>9</sup> Considering their capabilities and desire to work more flexibly, establishing working conditions to meet their needs may be necessary. One option would be to introduce a system which would formally allow employees to continue to work beyond retirement age. An additional rationale for promoting a policy that would allow older employees to remain longer in the labor force is that this can contribute to reducing the fiscal burden of age-related social expenditures. Spending on public pensions more than doubled as a share of GDP over the last twenty years, from 4.8% in 1990 to 11.2% during the years 2010–2015 (OECD Pensions at a Glance 2015). As result of such needs, mandatory retirement age that was set at the age of 55 until the early 1970 s was eventually raised to the age of 60 in the 1990 s.

#### *b. Foreigners*

One possible solution for the Japan's shrinking workforce is to accept more foreign workers. According to the UN report, if Japan wishes to keep the size of its population at the level registered in 2005, the country would need a net total of 17 million immigrants up to the year 2050, or an average of 381,000 immigrants per year between 2005 and 2050. Under such a scenario by 2050 the immigrants and their descendants would total 22.5 million and comprise 17.7 per cent of the total population of the country.<sup>10</sup>

Raising the number of foreign workers would mitigate to a certain extent the falling labor force. There was an experiment with encourag-

---

<sup>7</sup> Unemployment rate in May 2016 was 3,2%. Source: Statistics Bureau of the Ministry of Internal Affairs and Communications.

<sup>8</sup> According to the last report by the World Health Organization (WHO), the life expectancy of the Japanese people is 83,7 years and it is the highest in the world: <http://apps.who.int/gho/data/node.country>

<sup>9</sup> In 1950 life expectancy of men was 59,57 and of women 62,97. In 2014 it was raised to 80,50 for men and 86,83 for women.

<sup>10</sup> <http://www.un.org/esa/population/publications/migration/japan.pdf>

ing the Japanese diaspora (*nikkeijin*) from Latin America, mainly Brazil and Peru to come and work in Japan in the time of the bubble. However, those people who came from a different culture, despite their Japanese ancestors, have found it difficult to integrate into Japanese society. After the bubble burst and during the recession that followed the Japanese government offered financial incentive to those people to return to their countries under „pay-to-go” policy (Masters 2009). After this failed experiment it may be even more difficult to open the labor market to foreign workers.

*c. Women*

Japan has an important asset available at home — women. Raising female employment rates is of essential importance in addressing the labor shortage problem. It is estimated that raising the participation rate to equal men could boost Japan’s GDP by 15 per cent and provide some 8 million more workers for Japan’s ageing economy (Macnaughtan: 2015). Unfortunately, the participation of women in the labor market was unsatisfactory so far.

The gap in labor force participation rates between females and males in Japan is much larger than that in the US and European countries. The labor force participation rate of women for ages 15–64 was 65% in 2015, which is about 20% lower than that of men. The share of women in 55–64 age group working is 56%, and is much lower than of the men in the same age group which stands at 82% (OECD Pensions at a Glance 2015). According to the World Economic Forum’s Global Gender Gap Report 2015, out of 145 countries Japan is ranked 101, the last among developed countries.<sup>11</sup> According to that report there is a huge gap between the level of education of Japanese women and their participation in workforce. In the matter of literacy Japanese women are top ranked, while in workforce participation they sit at 82<sup>nd</sup> place. A particularly poor ranking is that of proportion of women as senior officials and managers: Japan is ranked 116<sup>th</sup>. Women hold only 2.1% of seats on boards of directors in Japan, compared with 36% in Norway, around 30% in France and Finland and about 20% in Canada and the United States (OECD Economic Surveys Japan 2015).

---

<sup>11</sup> It is interesting to note another gap: Japanese women are ranked number 1 when it comes to enrollment in secondary education, and number 106 in enrollment in tertiary education.

The reasons for the insufficient participation of women in the labor market are complex. Several factors have contributed to this situation. The participation of women in the labor market is closely associated with the traditional family patterns and employment practices. The typical pattern is that the husband works full time while the wife stays at home to look after the family. While in many countries there is the possibility for middle income earners to hire low-cost foreign maids to handle children and housekeeping, in Japan this option is virtually not available, so the burden falls on women.<sup>12</sup>

Regular employment in Japan is to a great extent reserved for male employees. Long working hours and job rotations to which regular employees are subjected effectively excludes many women from that labor market. Even if women start their working career in regular jobs, due to workplace culture and social norms they are often expected to leave them upon the birth of their first child. After the children reach the school age, many women decide to re-enter the labor market creating in this way „M”-shaped pattern of labor market participation. Those women when they re-enter the labor market after a period of childrearing usually enter non-regular categories of employment, as part-time workers or under a fixed contract, and receive lower benefits than regular employees. Maternity leave effectively terminates their hopes of having professional careers comparable to men. Such practices combined with the workplace culture that distinguishes male and female types of employment makes it extremely difficult for women to follow professional careers and hold regular jobs. Workplace practices have to change to make it more attractive for women to resume their labor participation upon having children.

Women who do work typically earn much less than their male counterparts. The gender pay gap is closely linked to men being more often in regular employment than women, with greater access to employer-provided training and benefits, as well as age and tenure-related pay increases. Given these conditions, it is no surprise that women will think twice about having children and leaving regular employment. One of the problems is that companies' expectations regarding the roles of women are rather limited and women are often seen as performing work that sup-

---

<sup>12</sup> A survey conducted by Nomura Research Institute in 2014 found that only 3% out of 40,000 respondents were currently making use of housekeeping services: <http://www.nippon.com/en/column/g00346/>

ports that of men. Such attitudes have adverse effects on women's ambitions, creating a vicious circle (Takeishi 2016: 33).

While greater participation of women in the workforce is certainly positive from the perspective of reducing problems related to the workforce, it may also lead to a lower fertility as more women will increasingly becoming busy with their careers. The difficulties of combining work and family life have actually contributed to low birth rates. The total fertility rate has been very low, even though there have been some signs of recovery in recent years.<sup>13</sup>

#### *d. Robots*

Japan is increasingly resorting to automation and robots for handling various processes in industry in order to replace employees. This is a way to deal with both the shrinking workforce and production costs.<sup>14</sup> However, this issue is outside the scope of this paper, since labor law is not applicable to robots — no strikes, no disputes about wages, no trade unions, nor dismissal related issues arise here. There can be maintenance and liability issues, but those issues lie outside labor law.

### EFFECTS OF THE GOVERNMENT POLICY

#### *a. Older employees*

With the continuing and accelerating trend of aging society syndrome, the government has realized that it was inevitable to further extend the mandatory retirement age. In order to address this issue, setting the mandatory retirement age below 60 was prohibited by the Law Concerning Stabilization of Older Persons adopted in 1985 and then revised in 1994. Initially this law provided that employers „shall endeavor” to set the mandatory age at 60 years or older. If a company would not comply with this recommendation, the Ministry could resort to making public the name of such company which was an instrument of pressure on companies. On the other hand, the companies which complied with the recommendation were entitled to get subsidies.

One of the problems that appeared and had to be resolved was the gap between the pensionable age (the period when the employees reach

---

<sup>13</sup> Compared to the lowest rate of 1,26 recorded in 2005, in 2014 the fertility rate rose to 1,42 (Source: Ministry of Health, Labor, and Welfare, Vital Statistics).

<sup>14</sup> An example is ASIMO multi-functional robot developed by Honda: <https://en.wikipedia.org/wiki/ASIMO>



the legally stipulated age at which a person is allowed to receive a pension), and the mandatory retirement age when the employees actually retire. Namely, employees are forced to retire from their regular employment before they can receive old age pension benefits (Higo & Klassen 2015: 1). The government managed to extend the pensionable age from 60 to 65 in 2000, with the pensionable age to be extended by one year every three fiscal years. In 2001 the pensionable age was set at 61 and it was extended to 65 in 2013. On the other hand, the mandatory retirement age in many companies was still 60. The problem that has arisen was that during this period, after being retired and before becoming entitled to receive a pension the employees may face serious difficulties in finding jobs, so they may not be able to receive either a salary or a pension. This raised a debate on the need to close this gap.

To address this issue the government adopted a policy to make it compulsory for firms to extend the mandatory retirement age to 60 and to link the pensionable age to the retirement age through revision of the Law Concerning Stabilization of Older Persons in 2004. Under this law, employers were obliged to introduce a system under which the employees would be entitled to continue employment up to the pension eligibility age. After receiving a lump-sum retirement allowance, employees are then rehired as a kind of non-regular employees. The purpose of this revision was to promote employment of elderly persons through comprehensive measures related to the retirement age and to enable them to earn a higher income in the period after their mandatory retirement age. The law provided for three options: 1. Extension of mandatory retirement age; 2. Re-employment of persons who reached the mandatory retirement age (usually 60) until they reach 65; 3. Abolishing the mandatory retirement age (Article 9 of the Law Concerning Stabilization of Older Persons).

Among these three options, the second one has been most widely used.<sup>15</sup> Under this option employees are re-employed typically on the basis of a fixed one year contract with wages substantially lower than before retirement. This measure, in fact, extended the retirement age, so that the mandatory retirement was transformed into retirement from regular employment, while employees were allowed to continue working but under new conditions. In exchange for the obligation to retain em-

---

<sup>15</sup> Option 2 was adopted by 81,2% of companies. Option 1 was adopted by 16% and option 3 by 2,8% of companies.

ployees beyond the retirement age, employers are given the discretion to change the terms of employment and reduce the wages and other benefits of employees who decide to remain in the company. The other two options have been less appealing for employers because they were more financially burdensome.

The Law Concerning Stabilization of Older Persons was amended in 2012 by imposing on employers a duty to employ all willing employees on the condition that they are in good health. The Revision of the Law Concerning Stabilization of Older Persons 2012 prohibits employers from setting criteria for re-employment and they are required to re-employ all employees who want to be re-employed.

The Law Concerning Stabilization of Older Persons was aimed at securing income for elderly employees, but it may also have other positive effects. Promoting the labor force participation of the elderly would not only help solving the labor shortage problem, but would also provide some relief in the face of the increasing social security burden.

From the perspective of the government policy to enhance employment of elderly employees, the approach based on directly requiring employers by law to hire older persons proved to be a success, so that now the rate of employment of elderly employees in Japan is higher than in most developed countries.<sup>16</sup>

A question that can be raised from the perspective of older employees is: Is it really positive if elderly people work? This depends on another question; do they really want to work, or is it that they have to work? The answer to these questions lies in replies given by elderly persons: most of them replied that they had to work. The main reason for their desire to work beyond the retirement age is economic, while many elderly persons also want to continue to work because they want to be active in a society. According to the survey conducted by the Japan Institute for Labor Policy and Training (JILPT), among male employees aged between 60 and 64, economic reasons for working in that age were dominant (73.2%), followed by a desire to enrich their life or participate in society (7.8%), being asked to work (5.5%), health reasons (4.4%), having spare time (3.8%), and others (2.9%). „Economic reasons” is rather ambiguous cri-

---

<sup>16</sup> The male employment rate of employees between 60 and 64 in Japan it reached 78,9% in 2015. In comparison, in the US that rate is 60,5%, the UK 58,7%, Germany 61,7%, Italy 36,5%, and France 26,4%. Currently 82% of men aged 55–64 are employed compared to 66% in the OECD on average (OECD Pensions at a Glance 2015).

teria, as it may mean different things, not necessarily related to poverty. It may mean that people want to enjoy a comfortable life, to travel, buy a new car or new house, etc. The situation would be clearer if this criteria is defined in a more precise way to leave less doubt as to what percentage of older employees actually has to work to meet their basic needs.<sup>17</sup>

*b. Foreigners*

Despite facing an imminent labor shortage as its population ages, Japan has been reluctant to open itself up to foreign workers. According to the Statistic Bureau, in 2014 there were 2,121,831 foreigners living in Japan (Japan Statistical Yearbook 2016). This is slightly above 1.5% of Japan's population, and far less than in the most of other developed nations. In comparison in France there are 11.8 million people with an immigrant background representing 19% of the country's population, while in Germany that number is 16.3 million people accounting for around 20% of the population. Foreign workers account for less than 2% of Japan's labor force, compared to 10% in Europe and 16% in the United States (OECD Surveys Japan 2015).

The government has taken several measures aimed at allowing a greater number of foreigners to come and work in Japan by launching a number of programs that would provide more opportunities for foreigners in specified areas. The policy was selective targeting particular types of foreign workers. One of the selected groups are foreigners who possess specific skills. In 2012 the Japanese government adopted the policy of preferential immigration treatment for highly skilled foreign professionals. The Revised Immigration Control and Refugee Recognition Law states that foreigners with advanced skills will be eligible for permanent residency after staying in Japan for three years instead of the current 10 years. This law is aimed at attracting highly skilled foreigners such IT experts, engineers, company managers, scientists and researchers. Thus far the results have been below expectations. According to the Ministry of Justice, after the first 20 months of implementation, the government had issued a total of 900 visas to highly skilled professionals, averaging approximately 50 visas per month, which was far short of the target (Green 2014). A more recent figure shows that 1,500 foreigners have

---

<sup>17</sup> Regarding economic condition of elderly persons in Japan, the poverty rate among the elderly Japanese declined from 22% in the mid-2000 s to 19% in 2011, still well above the OECD average (OECD Pensions at a Glance 2015).

been admitted under this system (OECD Surveys Japan 2015). On the other hand, Japan does not accept low-skilled workers, although foreign trainees can stay for three years.

Another way to increase the number of foreign workers is through bilateral agreements that Japan signed with some Asian countries. Under Economic Partnership Agreements (EPA) Japan agreed to accept nurses and certified care workers from Indonesia, Vietnam and Philippines. The problem of this program is that under the EPA program, only the candidates who pass the national exam to qualify as nurses and caregivers can continue working in Japan. The Japanese language is a serious obstacle and only a small number of candidates were able to pass this exam. This means that most of those entering Japan under these bilateral agreements will not be able to remain in Japan on long-term basis. By the end of the fiscal 2015, 2,069 candidates have taken exams, out of which 317 passed the exam (Aoki 2016).

The Japan Revitalization Strategy set a goal of making Japan ‘a society where foreigners can perform well’.<sup>18</sup> However, no specific details regarding numbers are given. This may serve as illustration of a rather cautious approach of the government; foreigners are welcome, but only certain categories and not in large numbers.

### *c. Women*

The position of women in Japanese society is undergoing gradual, but significant changes. The gender gap reports still rank the position of women in Japan as low. However, relying on numbers may be misleading. Nowadays women in Japan have a much greater variety of options than in the past. While most women continue to work as non-regular employees, an increasing number of women are pursuing professional careers similar to men. And many women have changed their own attitudes. In the past women did not have much choice and had to marry.<sup>19</sup> Nowadays many women decide not to marry early, or not at all. Family has lost the role it once had in society. Japan is not an exception.

Even though there is much discussion of employment policies/legislation to change workplace dynamics and position of women, there is a

---

<sup>18</sup> <http://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/honbunEN.pdf>

<sup>19</sup> A woman who would not marry by the age of 25 was once called „Christmas Cake”, as no one would like to ‘buy’ her once she is 26. This saying became a part of the past.

lack of evidence that could suggest improvement of the position of women in the labor market. It is true that the percentage of women who enter the labor market is rising, but that can be attributed to a number of other factors, such as the increase in non-regular employment, the shift from manufacturing to service industries, and a significant increase of demand in health and welfare industries associated with population aging (Tsutsui 2016: 80). Since women account for a high proportion of care worker providers, it can be concluded that population aging has contributed to a rise in the employment rate of women.<sup>20</sup>

The policy of the government aimed at improving the position of women in the labor market has achieved mixed results. A number of pieces of legislation failed to achieve their objectives. As an illustration, the Equal Employment Opportunity Act for Men and Women enacted in 1986 (amended in 1997 and 2006) has failed to result in actual equal opportunity. The key reason for this failure lies in the lack of policy measures that would allow the women to benefit from the law.

There are several factors that have prevented more active participation of women in the labor market. Some factors are structural, some institutional, and some are related to social norms. The long working hours, the shortage of childcare facilities, in combination with social norms as reflected in the company culture represented too high an obstacle for many women (Yamada & Higo 2015: 66). The low rate of female workforce participation during child-rearing age is caused by institutional problems, such as a shortage of childcare facilities. This contributes to capacity constraints, high fees and waiting lists for many childcare facilities.

In addition, the tax and benefit system provides strong financial incentives for spouses to work part-time in non-regular employment and limit their earnings. In 2013, spouses with earnings below 1.05 million yen were exempt from income tax. Moreover, if their earnings were below 1.3 million yen (about a quarter of average earnings) they are covered by pension, health and long-term care insurance without making

---

<sup>20</sup> According to the Ministry of Health, Labour and Welfare (MHLW) „Employment Referrals for General Workers,” the annual new job openings-to-applicants ratio for positions in the social welfare sector was 0.16 in 1996 but had risen to 1.33 just 15 years later in 2011. According to the MHLW’s Survey of Institutions and Establishments for Long-term Care, the number of care workers combining full-time with part-time work increased from 549,000 to 1,334,000 between 2000 and 2010.

contributions. Many women therefore prefer to take part-time jobs so that they can get these tax benefits and spend more time at home. To achieve greater gender equality it is necessary to ensure that the tax and social security systems do not reduce work incentives for second earners in households.

The main obstacle to the greater participation of women in the workforce and their failure to climb to leadership positions are the implicit constraints imposed by the existing corporate culture and practices (Macnaughtan 2015). Until those invisible impediments change, the government's statements and gender-equality policies will have only a limited effect.

### NEW DIRECTIONS OF THE GOVERNMENT POLICY

The Japan Revitalization Strategy amended on June 24, 2014 provides for new measures aimed at remedying the shrinking workforce by promoting increased participation of women, elderly persons, foreigners, and other „underrepresented groups”.<sup>21</sup> This may serve as an indication of the direction of government policy in the coming years.

#### *a. Older employees*

As the aging problem is becoming more serious, it attracts more attention to the factors contributing to it. Taking into consideration the long life expectancy and generally good health condition of elderly people in Japan, the mandatory retirement age of 60 may be too low. In Japan there is already a discussion on extending the pensionable age from 65 to 68. In 2012, the government established the Council for the Total Reform of Social Security and Government Financial Systems, which has already raised the possibility of extending the pensionable age. This kind of raise of the mandatory retirement age may not require substantial changes in labor market practice, as there is already a culture of employing older workers. If the government decides to pursue this strategy, based on the previous practice it can be presumed that the pattern will most likely be the same as until now. After first extending the pensionable age to 68 (or 67), firms would be asked to extend the retirement age, first in a non-binding way in the form of the „best endeavours” model, and then eventually replacing this model with mandatory norms.

---

<sup>21</sup> <http://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/honbunEN.pdf>

Another option is prohibiting age discrimination. Abolishing the mandatory retirement age — one of the options adopted by the Law Concerning Stabilization of Older Persons 2004 — may be a sign of such attitude. Revision of this law adopted in 2012 further enhanced the opportunities of older employees. By offering opportunities to older persons to work beyond retirement age, if they wish to do so, these new tendencies may eventually lead to realization of the concept of „lifetime employment” in its literal sense.

One possible obstacle to an extension of the mandatory retirement age or its abolition is the long term employment system. Firms may find adopting this model very difficult (expensive), unless the government agrees to support it through subsidies. Such changes would require a comprehensive reform of the employment system which would further undermine the present system based on long term employment. This is not likely to happen in the foreseeable future, as the large majority of regular employees would oppose such a drastic change, and it is very likely that many firms would oppose it too.

#### *b. Foreigners*

While immigration would help mitigate the decline in labor force, realistically, foreigners are not a solution to this problem. At best, they may serve as a supplement to other measures aimed at remedying the problem of the shrinking workforce. This reality has been reflected in the cautious approach of the government which has been selective and careful when designing the policy regarding the employment of foreigners. While there has been some rhetoric about opening Japan to foreigners, the reality is that it continues to follow a very cautious policy regarding immigration.

Nevertheless, some moves towards opening the gates of Japan wider can be identified. Japan seems to be prepared to take further steps to liberalize the employment of foreigners. There is discussion under way to facilitate employment of foreign maids, initially in designated special economic zones, such as Kanagawa and Osaka (Kodera 2016). This measure may not be very effective, however, because Japanese are traditionally reluctant to employ maids in their homes. The main reason is not the expense of employing a maid, but the traditional attitude of Japanese regarding the idea of allowing outsiders entering their homes. This kind of hesitation is usually much stronger in the case of foreigners.

Some measures have been taken to facilitate longer stays of nurses and caregivers. With respect to foreign nurses qualified through Japan's national examinations, their acceptance will be expanded by easing the present restrictions that limit their stay for training purposes in Japan to four years.<sup>22</sup> What is also necessary is to ease the requirements regarding national exams, as so far the results of the tests have not been encouraging. Otherwise, instead of having foreign nurses and caregivers on a long term basis, they will come on a rotating short term basis. This may be, in fact, the real goal of the present policy.

*c. Women*

The government has taken several measures to improve the position of women. Prime Minister Abe has announced that his government will promote „womenomics” as a policy, making a number of promises aimed at giving women equal participation in the labor market. One of such promises is the pledge to appoint women to 30% of senior management positions in governmental agencies and to encourage Japanese corporations to have women in 30% of top managerial positions by 2020. In August 2015 the Diet passed the Act of Promotion of Women's Participation and Advancement in the Workplace requiring that such targets be set in companies with 300 employees or more. However, the legislation only requires that targets be set, not met, which creates serious doubts regarding enforcement. Nevertheless, the new law, together with other measures and initiatives, may eventually lead to improvement of the status of women in the labor market. Despite skepticism, female labor participation has risen sharply to a record high of 66% (Matsui: 2016).

The government has also pledged to help working mothers by increasing the number of nursing schools.<sup>23</sup> The efforts of the government to increase the number of child care facilities, longer maternity leave and shorter working hours may bring positive results and improve the position of women in the labor market.

Japanese policy generously provides for one year of paid leave to both parents as an individual entitlement, with two bonus months if both par-

---

<sup>22</sup> The Ministry of Justice Report: <http://www.moj.go.jp/ENGLISH/information/bpic3rd-03.html>

<sup>23</sup> To facilitate work by mothers, Japan plans to boost the number of childcare places by about 0.4 million by March 2018 and to create 0.3 million places in after-school care for older children by March 2020 (OECD Economic Surveys Japan 2016).



ents participate. Women on maternity leave have had an increase of their disposable income as they have been exempt from employees' pension contributions since April 2014. However, less than 3% of fathers took parental leave in 2015 (Narula 2016).

The government is also pursuing a policy aimed to reduce differences in the treatment between regular and non-regular workers. One of the strategies promoted by the government is the expansion of limited regular employment (*Gentei Seishain*) as a new type of employment contract, which should serve as an intermediate layer between regular and non-regular employment. This is the proposal to formally introduce a new category of regular employees with weaker guarantees and fewer obligations. Common examples include employment limited by location (limited to one location, no transfers), by job (duties are limited), and by hours of work (no or low overtime). Employees under these contracts „would accept less employment protection than regular workers but would receive higher wages than non-regular workers.” (Jones & Urasawa 2011: 18)). Even if limited in some respects of their work, limited regular employees should enjoy all, or most of them.

This limited type of regular employment may play an important role in creating greater flexibility by bridging the gap between regular and non-regular employees. For many women this may be even more attractive than regular employment. Long working hours are common among regular employees, and families with both parents working may have different needs: they may prefer less overtime and no job relocation, even if that means less job security. Limited type regular employment could also facilitate the greater participation of women in the workforce. (Shimada 2015: 57).

There is an opinion that most limited regulars will be women, and that this category will constitute another form of indirect discrimination against women (North (2014: 1). The most important factor, however, is what women really want, and not what others think they should want. Of course, women may wish different things, and that is why they should be offered various options. It is beyond doubt that many women would welcome this type of employment.

## REFLECTIONS ON REFORMS

The government has been very active in trying to remedy the impact of the aging population on the labor market. It has taken action in dif-

ferent areas trying to promote more efficient use of older employees and women, and also opening more possibilities for foreigners. In order to promote these policies, the government has heavily relied on regulations (laws). In many cases, however, the problems don't lie in regulations but in their implementation. Both efficiency and effectiveness are critical in analyzing employment legislation. Efficiency is important in the sense of how to achieve compliance at minimal cost to the State, and effectiveness in ensuring the widest possible compliance. Of course, there are trade-offs between efficiency and compliance.

The way Japan has been dealing with the aging problem provides several important insights, particularly with respect to the implementation of legal reforms. The fact that those reforms have achieved mixed results can be explained by several reasons. The conclusion that can be drawn on the basis of the success rate of legal reforms is that success directly depends on the degree of commitment of the government and the level of compatibility of legislation with social norms.

The efficiency of the implementation of law in Japan is directly related to the level of commitment of the government. In situations where the government made efforts to enforce implementation, the level of success was high. The government often uses a „stick & carrot” strategy combining incentives (e. g. tax incentives, or subsidies) and sanctions (e. g. fines) to encourage people to do or refrain from doing something. The „stick & carrot” strategy is widely discussed in theory (Bemelmans-Vidéc Rist, & Vedung 2010; Balch 1980: 35). The government in Japan has tended to use both subsidies and public shaming (publishing the names of companies for doing, or failing to do, a desired act) to encourage compliance. Probably subsidies have been more effective than shaming, but a mix of the two is certainly more effective than subsidies alone.

Another important aspect is related to the way regulations are used. The government has often relied on gradual implementation of regulations typically starting by the use of soft law and then switching to binding law. The way the Law Concerning Stabilization of Older Persons was implemented provides an excellent illustration of the success of this gradual approach in combination with the „stick & carrot” strategy. This strategy proved to be successful with a large majority of companies extending the mandatory retirement age to 60 by the end of 1990 s. Once positive results were achieved by the 1985 legislation, making the mandatory age of 60 years „socially acceptable”, the government moved one

step further by the amendment of this law in 1994, making the mandatory age of 60 compulsory for all firms.

The use of soft law in the form of „duty to endeavor” proved to be effective in changing the attitudes of companies and in building social consensus. Once such consensus was achieved, the government resorted to binding law. This proved to be a very effective way, since the first stage served to prepare the ground and build consensus, which is very important in any society, but maybe particularly in Japan. Once consensus is achieved, it is much easier to adopt and implement binding laws. This way of active participation by the government demonstrated a high level of commitment which contributed to the success of this law reform.

Relying on compromise also played an important role in the adoption and implementation of regulations. For example, in the case of reforms providing for rise of the mandatory retirement age, the government tried to make a compromise with employers, since their interests were at stake. The Law Concerning Stabilization of Older Persons is again an example of such strategy, where the government obtained consent from the employers to rise the mandatory age in exchange for granting them discretion in determining the terms of employment of older employees in the period after the mandatory retirement age (60–65). On one hand, the employers by agreeing to rehire employees have provided an important service to the government by significantly reducing the financial burdens of the State. On the other, by allowing them substantial discretion in setting the terms of re-employment, the government has shown understanding for their financial difficulties. This kind of compromise contributed to the success of this legislation.

It has been argued that policymakers have adopted reforms that reflected the preferences of employers rather than that of employees (Klassen & Higo 2015: 164). The interests of employees are not entirely ignored, however. Under the existing administrative system, the issues relating to labor policy, including legislation drafts are discussed by a tripartite advisory council (*shingikai*) established by the MHLW, which involves representatives of the labor unions and the employers, as well as independent experts; this represents an *institutionalized* form of participation of various interest groups. This should be kept in mind in the context of compromises made in the process of adopting employment related legislation.

This leaves us to another important factor: compatibility of laws with social norms. The compatibility factor is particularly relevant in Japan,

since its whole legal system has been transplanted from a very different environment with different social norms and values. The problem with legal transplants is that they may operate in the new environment in a very different way from the place of origin.

The classic example of a law that failed in its implementation as a consequence of contradiction with the social norms is the law on paternity leave. In that case there was also a lack of commitment by the government, which refrained from resorting to the „stick & carrot” strategy. In the end, Japan produced very liberal legislation granting generous benefits to fathers, but very few of them have used those benefits. Less than 3% of fathers use the right of parental leave that is guaranteed by law. One of the major reasons for this is the fear of troubles they may have in the company if they used this right. A new word „*patahara*” (abbreviation of „parental” and „harassment”) has been invented to denote harassment of men who decide to use parental leave. It is easy to guess who the perpetrators of such harassment may be.<sup>24</sup>

Among the three groups — elderly employees, foreigners and women — using the elderly is probably the easiest option in terms of social norms, while the other two face more problems in this regard.

In the case of foreigners, the message has generally been that they are welcome, but in limited numbers. The reasons for such attitude towards foreigners are complex. The roots can be found in the history of Japan and the homogenous character of its population (Burgess: 2014). This attitude has been reflected in regulations regarding foreign workers. The regulations took selective approach providing for a number of limitations. It is not surprising that the results of such a cautious approach were modest.

The most intriguing issues are related to women, as those issues involve the interplay of two key factors: the government’s commitment and social norms. The strongly patriarchal and male dominated workplaces, as well as government bureaucracies that design policy, are not fully committed to implementing regulations aimed at gender equality. Having more women in these key positions would probably contribute to design-

---

<sup>24</sup> The image of paternity leave in Japan has also been tarnished by Kensuke Miyazaki, a politician from the governing Liberal Democratic Party (LDP), who used paternity leave to spend time with his mistress: <http://www.japantimes.co.jp/news/2016/02/12/national/politics-diplomacy/paternity-leave-ldp-lawmaker-admits-adultery-quits-post/>

ing better balanced policies. Nevertheless, as a part of the „womenomics” rhetoric, the government seems to be committed to adopt and implement laws aimed at improving the status of women in Japan (notwithstanding the actual reasons and motives for that). On the other hand, some of those regulations may not be compatible with social norms. This kind of conflict will make it interesting to observe how the Act of Promotion of Women’s Participation and Advancement in the Workplace will be implemented in practice. It is obvious that it will not be easy to reach the target of having 30% of women in senior management positions in government agencies and corporations by 2020. One likely scenario is that the companies will make efforts to formally comply with requests from the government by appointing a number of women to senior management positions. However, many of those women would not hold the real power and would merely play a decorative role as the „parsley on the fish”. This kind of implementation of law would not be unusual in Japan.

#### FINAL REMARKS

A general impression of the government policy regarding older employees, as argued by Higo, is that the government seemed to have been concerned primarily with promoting *quantity of employment* trying to achieve high employment rates, rather than *quality of employment* in later life (Higo 2015: 87). On the other hand, in the case of foreign workers the government has taken opposite attitude: the *quality of foreign workers* is given priority over *the number of foreign workers*. As a result, Japan has issued visas and work permits to a number of foreigners who possess required skills, but their number is rather modest.

In the case of women the situation seems to be most complex. The government seems to promote both *quantity* and *quality*. The government promotes the idea of greater participation of women generally, while also promoting the idea that a larger number of women should enter into high positions in both the government agencies and companies. Serious doubts regarding the actual effects of the Japanese version of „womenomics” lie in the fact that behind these formally adopted measures is a view that „allocates productive roles to men and reproductive roles to women” (Macnaughtan 2015: 1). As a matter of principle, gender equality should be treated as a universal right, rather than as a response to economic or demographic problems; without such an approach, real gender equality cannot be achieved despite any legal measures taken (Assmann 2014: 2).

## CONCLUSION

The Japanese economy faces serious challenges. Economic recession and the aging population are only some of the problems that may affect its future. The challenges Japan is facing are universal. The manner in which these challenges are dealt with differs from nation to nation.

Over the last two decades, the stagnation of the Japanese economy, the ageing population and changes in the international economic environment have led to reforms of many Japanese institutions, including the employment system. The Japanese labor market has been adversely affected by a number of demographic, macro-economic, and structural pressures, which have gradually changed traditional Japanese employment practices.

Law reforms regarding elder employees have been the most extensive and most successful so far, at least from the government's point of view. Increasing the retirement age has the obvious benefit of reducing the fiscal burden on the government. This success story has another side which relates to the interests of elderly employees. As a matter of principle, a policy to enhance the employment of elderly employees should come in the form of creating opportunities, rather than duties. With the acceleration of the aging of society and the further strains on the pension system it causes, many elderly persons may have to work in order to sustain families and their own well-being. Finding a proper balance is the key factor in designing a policy to increase the employment of elder employees.

Regarding foreigners, legislation has been very limited with little change on the ground. The fact is that immigration would likely bring economic benefits, given the labor shortage that faces Japan. On the other hand, there are concerns about the possible impact a large number of immigrants would have on Japanese society. While Japan may become more open to the prospect of immigration, this is a delicate issue and it should take a cautious approach. The government policy of promoting greater acceptance of foreigners is a positive move, but it is far from sufficient. In order to achieve the expected objectives, skills will have to be combined with numbers. The number of foreigners entering the labor market in Japan is likely to increase, but it is hard to expect a significant increase in their number.

Lastly, legislative activity related to the role of women has been extensive and dynamic recently, but it is still too early to make predictions

as to their outcome. While there is now a broad acceptance that Japan's economy needs women in the workforce, institutional models and social norms still need to catch up. Reforms towards gender equality have faced problems related to the fact that they have tried to address this problem through the lenses of gender equality. Instead of such approach, competition should be open and should depend on quality rather than gender. Japanese women are very capable and they just need opportunities that are based on competition under equal conditions. Women's participation in the workforce can be enhanced by appropriate social infrastructure that would allow them to replace their traditional role of housewife by playing a more active role in the economy. To achieve greater gender equality in employment, Japan needs to change the workplace culture to ensure that women have access to regular employment and career track systems in the same way that men do. The real challenge is how to change behavior based on traditional social norms. Breaking these barriers may not be easy. Time is needed for such changes.

So far the legal reforms have achieved mixed results and they face various kinds of obstacles. Some of them cannot be removed by legal action, and particularly difficult is changing traditional attitudes that create invisible impediments which cannot be changed by introducing new laws. Experience with implementing legal reforms in the area of the employment system has demonstrated that sometimes law can be used as an efficient tool in enforcing government policies and can guide changes in desired direction, while sometimes the law has shown its limitations. This should be kept in mind when designing law reforms. And not only in Japan, because the problems discussed in this paper are becoming a common problem facing most of the developed countries.

#### REFERENCES

- [1] Aoki, Mizuhi (2016) „Nursing care workers hard to find but in demand in aging Japan” *Japan Times* 27 June
- [2] Assmann, Stephanie (2014) „Gender Equality in Japan: The Equal Employment Opportunity Law” 12 *Asia-Pacific Journal* 2.
- [3] Balch, George I. „The Stick, The Carrot, and Other Strategies” (1980) *Law and Policy Quarterly* 35
- [4] Bemelmans-Videc, Marie-Louise, Rist, Ray C. & Vedung, Evert (eds.) *Carrots, Sticks & Sermons*. (2010) New Brunswick, New Jersey; Transaction Publishers, 5 th. Ed.

- [5] Burges, Chris (2014) „Japan’s ‘no immigration principle’ looking as solid as ever” *Japan Times* June 18
- [6] Green, David (2014) „Japan’s Highly Skilled Foreign Professional Visa: an early assessment” 3. *Meiji Journal of Political Science and Economics*
- [7] Higo, Masa (2015) „Experiencing Mandatory Retirement — The Perspective of Older Workers in Japan,” in T. Klasen & M. Higo, *Retirement in Japan and South Korea The Past, the Present and the Future of Mandatory Retirement*. New York, NY. Routledge
- [8] Higo, Masa and Klassen Thomas R. (2015) „Retirement in Japan and Korea in an era of rapid population aging,” in T. Klasen & M. Higo, *Retirement in Japan and South Korea*
- [9] *The Past, the Present and the Future of Mandatory Retirement*. New York, NY. Routledge.
- [10] Higo, Masa & Klassen, Thomas R. (2013) „The future of retirement,” in T. R. Klassen and Y. Yang (eds.) *Korea’s Retirement Predicament: The Aging Tiger*, New York, NY: Routledge
- [11] *Japan Statistical Yearbook 2016*: <http://www.stat.go.jp/english/data/nenkan/1431-02.htm>
- [12] Jones, R. S., & Urasawa, S. (2011) „Labour Market Reforms in Japan to Improve Growth and Equity” OECD Report 18
- [13] Klassen, Thomas R. & Higo, Masa „The Future of Mandatory Retirement — A Japan-Korea Comparison and Policy Lessons,” in T. Klasen & M. Higo, *Retirement in Japan and South Korea The Past, the Present and the Future of Mandatory Retirement*. New York, NY. Routledge
- [14] Kodera, Atsushi (2016) „Osaka moves to allow foreign housekeepers”, *Japan Times* January 18
- [15] Lazear, Edward. P. (1979) „Why is There Mandatory Retirement?” 87 *Journal of Political Economy* 1261
- [16] Macnaughtan, Helene (2015) „Abe’s womenomics needs to include men too”, *East Asia Forum* 28 January
- [17] Macnaughtan, Helene (2015) „Womenomics for Japan: Is the Abe’s Policy for Gendered Employment Viable in an Era of Precarity?” 13 *Asia-Pacific Journal*
- [18] Masters, Coco (2009) „Japan to immigrants: Thanks, But You Can Go Home Now”, *TIME magazine* 20 April.
- [19] Matsui, Kathy (2016) „‘Womenomics’ continues as a work in progress”, *Japan Times* 25 May
- [20] Miyamoto, Hiroaki (2014) „Japan must work hard to solve labour crisis”, *East Asia Forum* 5 August
- [21] Ministry of Health, Labor, and Welfare. Vital Statistics: <http://www.mhlw.go.jp/english/database/db-hw/populate/dl/02.pdf>
- [22] Miyoshi, Koyo (2014) „The Labor Market and Marriage Decisions in Japan,” 11 *Japan Labor Review* 52
- [23] National Institute of Population and Social Security Research, *Population Projections for Japan (January 2012): 2011 to 2060*: [http://www.ipss.go.jp/site-ad/index\\_english/esuikei/ppfj2012.pdf](http://www.ipss.go.jp/site-ad/index_english/esuikei/ppfj2012.pdf)
- [24] North, Scott (2014) „Limited Regular Employment and the Reform of Japan’s Division of Labor” 12 *The Asia-Pacific Journal* (15) 1.



- [25] OECD Economic Surveys Japan 2015 <http://www.oecd.org/eco/surveys/japan-2015-overview.pdf>
- [26] OECD Pensions at a Glance 2015.
- [27] Shimada, Yoichi (2015) „Labor Mobility and Employment Policy” 12 *Japan Labor Review* 49
- [28] Statistics Bureau of the Ministry of Internal Affairs and Communications: <http://www.stat.go.jp/english/data/roudou/results/month/>
- [29] Takeishi, Emiko (2016) „An Analysis of Organizational Factors That Increase Women’s Ambition for Promotion” 3 *Japan Labor Review*
- [30] Thomas. R. Klassen and Y. Yang (eds.) *Korea’s Retirement Predicament: The Aging Tiger*, New York: Routledge
- [31] Yamada, Atsuhiko & Higo, Masa (2015) „Mandatory Retirement in Japan — An Overview of the Past and the Present”. in T. Klasen & M. Higo, *Retirement in Japan and South Korea The Past, the Present and the Future of Mandatory Retirement*. New York, NY. Routledge

Часлав ПЕЈОВИЋ

ИЗАЗОВИ СТАРЕЊА ПОПУЛАЦИЈЕ ЈАПАНА:  
КАКО САЧУВАТИ РАДНУ СНАГУ?

*Апстракт*

Текст се бави последицама које старење популације Јапана изазива у односу на смањење радноспособног становништва и пензиони систем. У тексту се анализирају реформе које су предузете с циљем да се ублаже ове последице, с фокусом на мјере које се спроводе како би се смањење радне снаге надомјестило повећањем учешћа старије популације, странаца и жена. Поседна пажња је посвећена анализи фактора који утичу на ефикасност имплементације тих реформи, указујући на разлоге који позитивно утичу на ефикасност реформи, као и на оне који отежавају њихову имплементацију. Искуства Јапана са мјерама да се ублаже последице које доноси старење становништва могу бити значајна за остале земље, будући да овај проблем убрзано постаје глобални проблем.