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To the Universal Periodic Review

Report on the Situation of Working Women in Japan

Working Women's Network

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1. Working Women's Network (WWN) was established in 1995 in support of the plaintiffs in the cases against Sumitomo manufacturers on discrimination against women. Its goal is the improvement of status of working women in Japan, prohibition of indirect discrimination and the principle of equal pay for work of equal value.

2. In this report, we provide the information on the current situation since summer 2003.

It includes the present situation of working women in Japan as well as proposals to the Japanese Government to eliminate discrimination, in particular, related to the relevant Concluding Comments on employment and equality from the various treaty bodies.

3. The CEDAW Concluding Comments in July 2003 called for an inclusion of **indirect discrimination** in the domestic legislation¹.

4. The explicit ban on indirect discrimination included in the amended Law on Securing, etc., of Equal Opportunity and Treatment between Men and Women in Employment (Equal Employment Opportunity Law) for the first time in this country, based on the Recommendations by CEDAW was a welcome development. However, only three examples of indirect discrimination were listed in the Ordinance of the Ministry of Health, Labour and Welfare (note 1), and the list is insufficient to respond to the discrimination in the work place shifting forms in various ways.

The four remaining examples raised by the report by the Study Group on Gender Equal

¹ CEDAW Report A35/38, para. 358

Employment Policy (note 2) should also be included in the Law. And for the amended Equal Employment Opportunity Law to be effective, the difference in treatment between the “employment management categories” in the Guideline under the Equal Employment Opportunity Law should be seen as indirect discrimination, and its reasonability and necessity must be strictly examined.

5. The Guideline sets forth a definition of the term, “employment management category” regarding “direct discrimination,” while listing prohibited treatment regarding “recruitment and hiring,” “assignment,” “promotion,” “demotion,” “training” and “welfare and benefits” under the precondition that the prohibition applies only “for each employment management category.” This means that difference in treatment between men and women, whose employment management categories were considered separate, would not be within the scope of the prohibition under the Guideline. Employers would not be held responsible for violating the Equal Employment Opportunity Law, as long as they create separate employment management categories.

Therefore, the phrase, “for each employment management category,” should be deleted, and there should be no definition of the term in the Guideline.

6. A question was raised by a Member of CEDAW during the examination of the Japanese Government Report under the Convention in 2003 regarding the employment management categories.

7. She pointed out that the Guideline under the Equal Employment Opportunity Law tolerated different management categories, and asked whether the categories created indirect discrimination. She explained that in most advanced countries, situations, in which women were concentrated in low paying work with few promotions, were considered indirect discrimination.

8. At the Diet session, in which the draft Amendment to the Equal Employment Opportunity Law was passed, we lobbied Diet Members, resulting in opposition Members raising the issue in the debate, but the government ignored the question, saying that it was a question raised in CEDAW.

note 1. 3 examples of indirect discrimination included in the Ministerial Ordinance

(1) height and weight – requiring certain physical height or weight in recruitment and hiring, resulting in many women being disadvantaged, and when such requirement is not necessary in performing the work

(2) nation-wide mobility – requiring nation-wide mobility in recruitment and hiring for management track course, resulting in many women being disadvantaged, and when there are no reasonable grounds for the requirement, such as that transfers are indispensable for building capacities as executives

(3) transfer experience – requiring past experience of transfers involving changes of residence for promotion, resulting in many women being disadvantaged, and when such requirement is not related to the performance of the work

note 2. 4 remaining examples of indirect discrimination in the report of the Study Group on Equal Employment Opportunity Policy

(1) requiring certain level of academic degree or degree from certain faculties in recruitment and hiring

(2) registered head of household requirement (or being the main bread-winner, having dependents) for application of welfare measures, family and other benefits

(3) difference in the job content as well as system and operation of utilization of personnel, between regular employees and part-time workers (or between management track and clerical track employees)

(4) excluding part-timer workers from application of welfare measures, family and other benefits

9. With increasing number of cases involving career track systems pursued by working women, as well as the recommendations from the ILO and CEDAW, expressing concerns that the system may be indirect discrimination, and the move towards the amendment of the Equal Employment Opportunity Law, some companies revised their career track systems. However, they brought forth new forms of indirect discrimination, as the specific cases below indicate.

10. Furthermore, the terms “form of employment, form of working” that defined the employment management categories, led to an increase in part-time and ‘dispatch’ workers.

11. Most of these non-regular workers are women. In particular, no law, including the Equal Employment Opportunity Law, provides remedies for the termination of contracts, which are renewed every couple of years.

12. They cannot win in the courts, as they are told that they agreed to the contract. But as the Okaya & Co. and M Trading Company cases indicate, is not the form of employment of three or five year contracts indirect discrimination itself? We would like to report these new trends in

the workplaces.

13. The ILO Committee of Experts on the Application of Conventions and Recommendations in its Individual Comments recommended in 2007 that the **principle of equal pay for work of equal value** be reflected in the legislation².

14. As the Committee indicated in its Views, the existing Article 4 of the Labour Standards Act is insufficient in eliminating the pay difference between men and women, and it is clear that if the principle of equal pay for work of equal value had been introduced into legislation, the Kanematsu pay gap case, the most recent case on career-track system and pay gap, would not have taken 12 years to conclude.

15. There is a judicial judgment (final) in this country, which held that the female plaintiff's work was "work of equal value" to that of her male comparator. The decision was held by the Kyoto District Court in the Kyo Gas case in 2001. In this case, the plaintiff submitted an expert opinion to the Kyoto District Court, proving, based on the principle of equal pay for work of equal value, that a job held by a female clerical employee working on calculating and accepting estimates for gas construction works, was of equal value with that of a male comparator, a supervisor of the gas construction works. The court accepted the opinion as evidence, and confirmed that there was no considerable difference in value between the clerical and the supervisory job. It then held that the pay difference in this case was "in violation of Article 4 of the Labour Standards Act, and illegal."

16. This decision, however, was insufficient, in that it stated that deciding factors in pay were not just the value of the job, but consideration would be given also to "individual competence, performance, etc.," and awarded only 85% of the supervisor's pay for the plaintiff's work of equal value. The insufficiency of the first instance decision was not rectified even at the Appeals level, and the judicial proceedings concluded with a settlement based on the amount decided at the District Court.

17. Still pending (at the time of preparing this report) is the Kanematsu case involving pay

² CEACR: Individual Observation concerning Equal Remuneration Convention, 1951 (No. 100) Japan (ratification: 1967) Published: 2007, para. 4.

discrimination against women in the Tokyo Appeals Court. The plaintiffs, who are members of the Trading Company Women's Union, set up a Kanematsu Job Evaluation Committee, consisting of a researcher specializing in job evaluation based on the principle of equal pay for work of equal value, as well as former female employees, who had been working in the management track-course in trading companies. It compared and analyzed the job held by the plaintiffs and those by male employees in the same workplace, to conduct a job evaluation. The result was submitted to the Tokyo Appeals Court as an expert opinion on July 5, 2005.

18. According to the expert opinion evaluation, if the value of management track jobs held by male employees were valued at 100, the value of the clerical jobs held by the plaintiff female employees would be: in comparing Toshimitsu (male) to Sakai (plaintiff), 100:92, Takai (male) to Mori (plaintiff) 100:111, Shimogamo (male) to Kimura (plaintiff), 100:95, Hirasawa to Koseki (plaintiff), 100:100, and Bando (male) to Oda (plaintiff), 100:102. It showed that the plaintiffs were engaged in jobs that were no less inferior to those held by the male employees that these were compared with. Meanwhile, the pay the plaintiffs received were 67% at most of that of male employees in the clerical track, and in lower cases, 48%. The expert opinion concludes that it was necessary to rectify the pay in proportion to the job value mentioned above.

19. The government explains that job evaluation is not well suited to the employment practice in Japanese companies. However, now that the basis of the pay system has changed from seniority to merit, fair job evaluation and an evaluation system for that purpose is required. For this reason, we believe that an immediate legislation of the principle of equal pay for work of equal value is necessary, not just for eliminating the pay difference between men and women, but also for realizing equal treatment for part-time workers in comparison to full-time regular workers.

WWN's proposal : Legislation of the principle of equal pay for work of equal value

- * Eliminating the pay gap between men and women
- * Equal treatment for regular and non-regular employees
- * Fair job evaluation and building an evaluation system for that purpose