

Working Women's Network
Shizuko Koedo. Chairperson
1-5-6-403 Ootemae Chuo-ku, Osaka, 540-0008 Japan
Tel & Fax +81-(0)6-6941-8700
Email: ks44@ares.epnet.me.jp
URL: <http://wwn-net.org/>

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To: The Committee on the Elimination of Discrimination against Women

Alternative Report

Presented by

Working Women's Network (Japan)

We are sending herewith the Alternative report regarding Article 11 regarding Employment. WWN would like to inform you of the real situation about the working women. And we raise, also, what we believe, is the most important issue to solve the discrimination between men and women at work. We will appreciate it greatly, if you could see, in particular, the deceptive nature of the employment management category of the Guideline under the Equal Opportunity Law,



Alternative Report

For the examination of the report of Japan at the 44th session of CEDAW

Article 11: Elimination of Discrimination in Employment

(b) same employment opportunities

(d) equal remuneration for work of equal value

Working Women's Network (WWN) requests the government of Japan to comply with and implement the Convention on the Elimination of All Forms of Discrimination against Women and presents its report on the situation of working women and proposals for promoting equality for men and women. We request that the Committee engage in vigorous discussions with the Japanese government in the 44th session on legal and other measures to eliminate discrimination in employment and to raise the issue in the concluding recommendations as well as consider it as a matter for the follow-up after two years.

Proposal by WWN:

1. Deletion of the term "employment management category" in the Guideline under the Equal Employment Opportunity Law (EEOE).
2. Include an explicit prohibition of indirect discrimination in domestic law
3. Legislation of the principle of equal pay for work of equal value



Proposal 1 Deletion of the term “employment management category” in the Guideline under the EEOL

(Background)

1. Part of the Guideline under the EEOL is an obstacle to equality

The “employment management category” defined in the Guideline under the Equal Employment Opportunity Law (EEOL) leads to the concentration of women in low-paying jobs with fewer opportunities for promotion, under the pretext of difference in the kind of jobs or forms of employment. It is an obstacle to equality between men and women in Japan. This provided an opportunity for companies to introduce the career-track based personnel system, and even today, after more than 20 years since the enactment of the EEOL, the percentage of women in the career tracks leading to management positions is just 5.1%. (Ministry of Health, Labor and Welfare, 2004),

Under the Guideline, discrimination based on sex within the same types of jobs (career track jobs) is prohibited, but would not be illegal if it was between different type of jobs. Therefore, different treatment between men and women, who were deemed to be in different employment categories, would not be within the scope of the prohibition, and the employers would not be found in violation, as long as they establish different employment categories. Although the EEOL was amended in 2007, the name and substance of the category remained unchanged. We therefore believe that the term “employment management category” in the Guideline leads to indirect discrimination, which should be deleted.

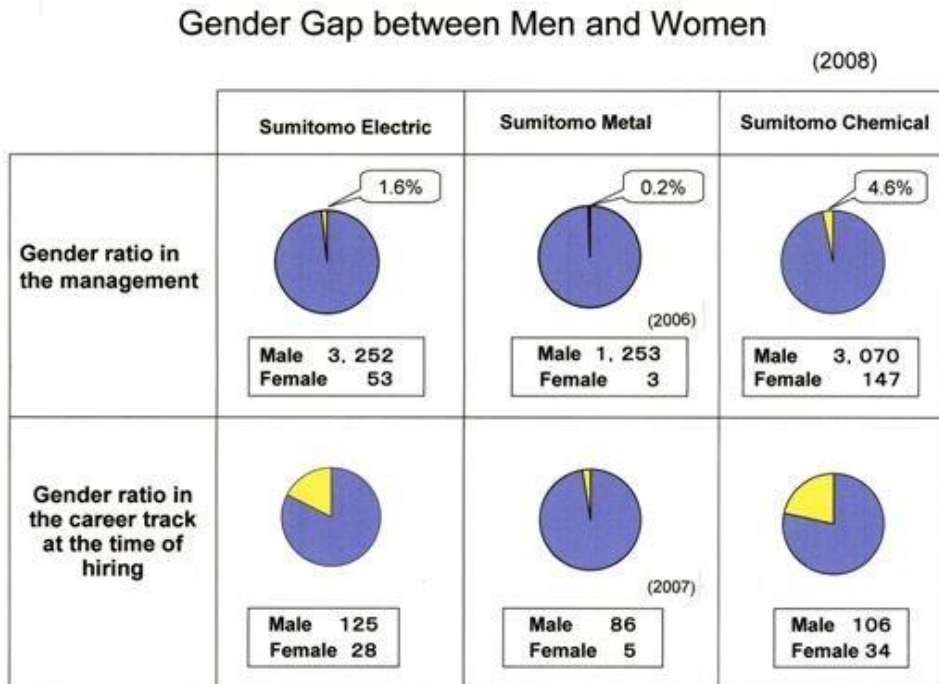
Article 5 of the EEOL prohibits discriminatory treatment based on sex in recruitment and hiring. And Article 6 does so in assignment, promotion, demotion and training, etc. We believe that Article 5 and 6 should be used. By complying with these Articles, equality for men and women in employment would be ensured, opening the way for capacity development for women.

Comparison of the EEOL and the Guideline

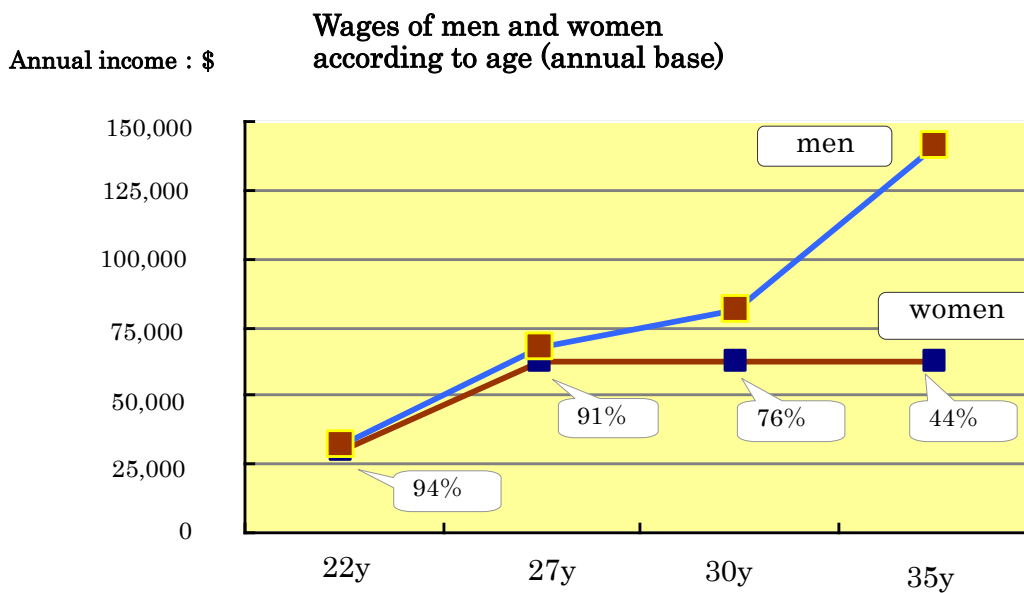
EEOL	Guideline
(Article 5) prohibition of discriminatory treatment in recruitment and hiring on grounds of sex	(related to Article 5) prohibition of exclusion of either men or women from recruitment and hiring, <u>in a single employment management category</u>
(Article 6) prohibition of discriminatory treatment in assignment, promotion, demotion, training, etc. on grounds of sex	(related to Article 6) prohibition of exclusion of either men or women from promotion to positions of certain levels <u>in a single employment management category</u>

Situation of discrimination Against women due to the track based system

(Material 1)

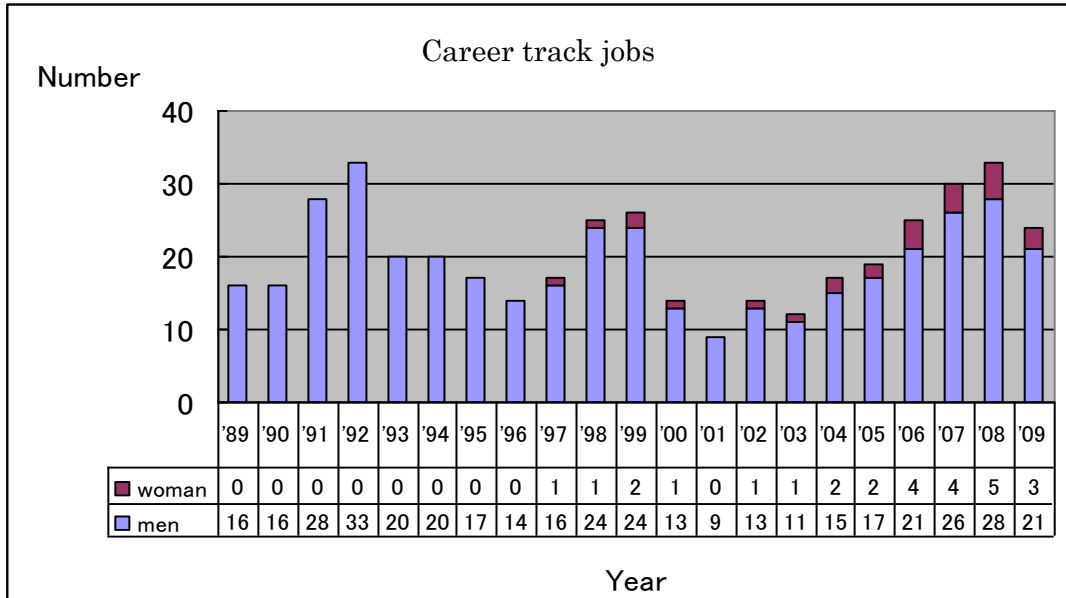


(Material 2) In the case of a major trading company, M,
55 year old Female employees will not earn more than what a 27 year old male(2007 survey)



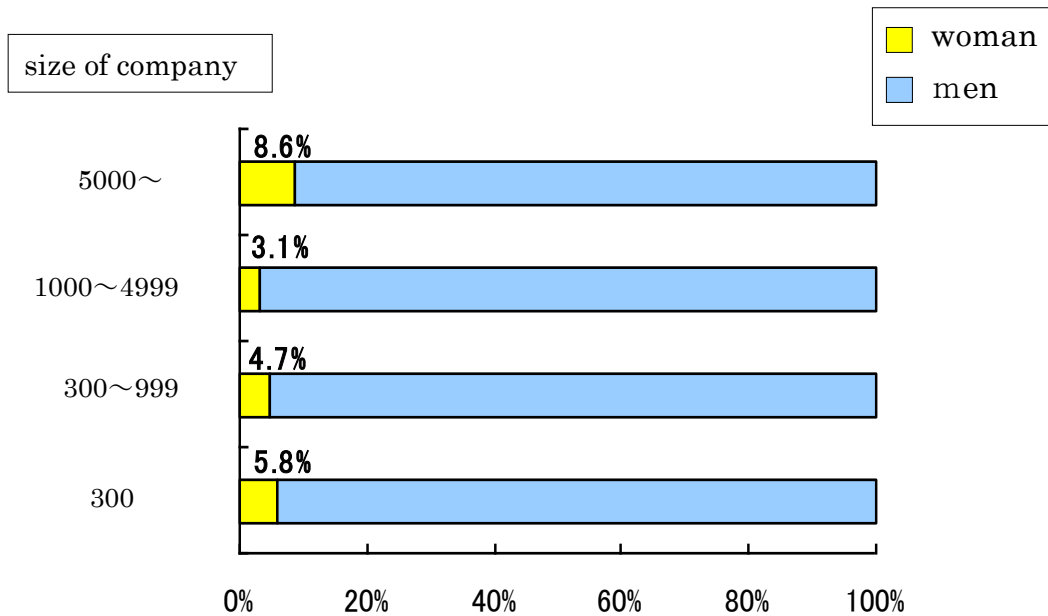
(Material 3)

Proportion of men and women in the *Career track jobs* at trading company A
(2009 survey)



(Material 4)

Percentage of women in the Career track jobs
according to size of company,
The average rate of women is 5.1%
(Ministry of Health, Labor and Welfare, 2004 survey)



Proposal 2 Include an explicit prohibition of indirect discrimination in domestic law

(Background)

1. The measures constituting indirect discrimination should not be in an exhaustive list; the list should be broadened to reflect the actual situation

3. In its previous concluding comments (see A/58/38, sect. IV, para. 357), the Committee expressed concern about the lack of any specific definition of discrimination in the domestic legislation and recommended that a definition of discrimination against women, encompassing both direct and indirect discrimination in accordance with article 1 of the Convention, be included in the domestic legislation. Please indicate what measures the Government has taken in response to the Committee's recommendation.

The inclusion of the concept of indirect discrimination for the first time in Japan in the EEOL, based on the above Recommendations from CEDAW can be appreciated as progress. However, there is no explicit mention of indirect discrimination anywhere in the EEOL. It should be explicitly included in domestic law. Also, that the scope of the prohibition is limited to the three measures in the Ministerial Ordinance shown below, is far removed from the situation of the workplace.

The three measures are (1) height, weight and physical strength requirement, (2) availability for assignment requiring relocation regarding recruitment and hiring in *career track jobs* and (3) requiring past experience of having been reassigned to a workplace other the current one for promotion.

As long as these measures are avoided, indirect discrimination does not come into question. There should be a broader definition on indirect discrimination instead of the current exhaustive list. At least, the four measures shown below, which the "Study Group on Policy regarding Equal Employment Opportunity for Men and Women" organized by the Ministry of Health, Labor and Welfare proposed in June 2004, should be explicitly listed as measures constituting indirect discrimination.

The Study Group had proposed seven, and the four measures should not have been excluded.

(1) requiring applicants to have certain degrees or to have graduated from certain faculties (departments) , in hiring and recruitment,

(2) requiring applicants to be registered as heads-of-household in the family register, in the application of welfare benefits or provision of family allowances

(3) difference in treatment between men and women due to advantageous treatment for regular workers (full-time workers hired for an indefinite period), substantial difference in the job content or personnel system between regular and part-time workers (as well as difference in treatment between management career-track and clerical track workers)

(4) difference in the provision of welfare benefits and family allowances between men and women due to exclusion of part-time workers

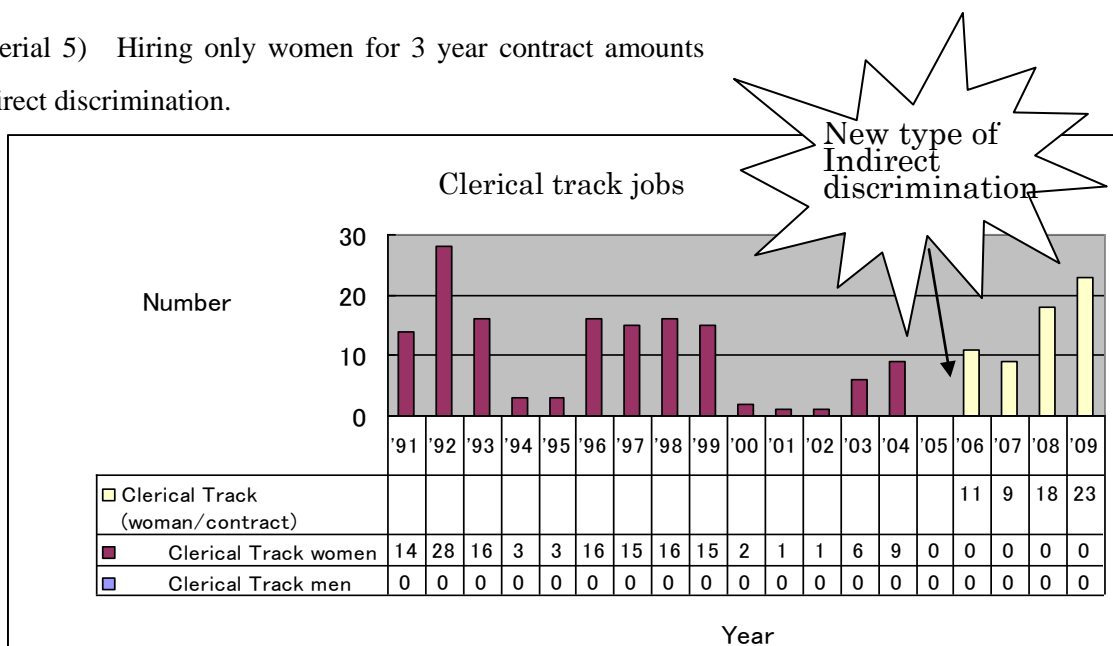
2. Hiring only women for 3 year contracts is indirect discrimination

According to the Labor Survey by the Statistics Bureau of the Ministry of Internal Affairs and Communications, the total number of people in employment was 55.23 million, of which 22.97 million were women. The number of non-regular employees was 17 million, of which 70% was women. The female employees, excluding executives, consist of 10.39 million regular employees, 1.7 million part-time employees and 2.85 million workers employed in other forms (fixed term contract workers, temporary workers, ‘dispatch’ or agency workers).

In this report, we would like to raise the issue of fixed term contract workers among the non-regular employees. Many women reluctantly choose to be non-regular workers, when they can find no regular positions available after graduating universities and colleges. But there are no remedies even under the EEOL or any other laws for dismissals after the end of fixed term contracts, such as 3 year contracts. The courts would also dismiss any claims, telling them that they had agreed to the contracts.

The situation is a revival of the early retirement system for women, which existed in companies 40 years ago. When we asked an official of the Equal Opportunity Commission in London, whether fixed term contract was indirect discrimination, the response was that it was not discrimination, as it was a contract between the person concerned and the employer. We asked about a case of a major trading company, which stopped hiring new recruits in *clerical jobs* and instead started to hire employees under 5 year contracts. The response then, that it was indirect discrimination, if the company hired women exclusively under 3 to 5 year contracts. The case is shown in the graph below.

(Material 5) Hiring only women for 3 year contract amounts to indirect discrimination.



(Material 6)

Excerpt from the Individual Observation concerning Equal Remuneration Convention, 1951 (No. 100)
Published: 2008, Committee of Experts on the Application of Conventions and Recommendations,
ILO

7. Indirect discrimination

JTUC-RENGO raised doubts as to the conformity w. The Working Women's Network also submits that a broader definition of indirect discrimination should be applied. Recalling that in accordance with the Convention all forms of indirect discrimination in respect of remuneration should be addressed, the Committee asks the Government to provide detailed information on the application of section 7 of the EEOL and section 2 of its Enforcement Ordinance.

8. Career tracking systems.

Both JTUC-RENGO and the Working Women's Network state that career tracking systems continue to be used in practice as gender-based employment management. They also state that the EEO Guidelines issued by the Government created an opening for this, because they restrict the application of the prohibition of gender discrimination to men and women within each "employment management category", which excludes comparisons between men and women employed in different categories, in contradiction with the principle of equal remuneration for work of equal value.

Proposal 3 Legislation of the principle of equal pay for work of equal value

(Background)

1. What happened immediately after the EEOL amendment

Many trading companies, including Kanematsu Corp., whose wage discrimination case is pending at the Supreme Court, introduced a career track-based system after the enactment of the EEOL, and changed the existing gender-based wage system to a job-based wage system. The male employees were transferred automatically to *career track jobs*, while all female employees were placed under the label of *clerical track jobs*. Women were able to take transfer tests with recommendations from their superior officers, which was a requirement for women only, and only a few women became *career track jobs* employees.

2. Wage discrimination cases under the track-based system

In 1995, six women working for Kanematsu Corp., a trading company, filed suit against the wage

gap, in which a 55 year old female employee could not earn more than a 27 year old male employee. The case is in its 14th year, and is pending at the Supreme Court. The Tokyo District Court held, inexplicably, that the wage difference was in violation of the Constitution, but not public order and good morals, and the plaintiffs lost their case. At the Appeals Court, they conducted a job evaluation, based on the gender neutral procedures under the Pay Equity Act of Ontario, and the principle of equal pay for work of equal value. The results were submitted to the Court.

The plaintiffs compared and analyzed their work, and the work done by their male colleagues in the same sections. As a result, their work was valued at 111, 102, 100, 95, 92 to their male colleagues' 100 respectively, showing that the work they did were more or less equivalent to their male colleagues work.

Meanwhile, the plaintiffs' wages were at most 67% of the male employees in the career track jobs. Some were paid only 48%. The evaluation report concluded that the wages had to be improved in proportion to the job evaluation results. The Appeals Court held that the track-based personnel system was a violation of Article 4 of the Labor Standards Act. The judgment was a ground-breaking one, although there were some parts which suggested residual gender bias of the judges.

3. The need for legislation of the principle of equal pay for work of equal value

The case of women working for the Sumitomo manufacturers, took the plaintiffs 8 to 11 years to resolve the wage gap of 240,000 yen a month, compared with their male colleagues, who had the same educational background, and who were employed in the company in the same year as the women. 14 years have passed since the beginning of the above mentioned Kanematsu case, and the plaintiffs are paying huge mental as well as economic sacrifice because of the long duration of the judicial process. If the principle of equal pay for work of equal value had been explicitly provided for in law, we believe that these cases would have been resolved much earlier.

In the workplace today, the system has already changed from the seniority based to merit based one. There is dissatisfaction even among male employees towards arbitrary evaluation by their superiors. They begin to wonder why their pay is lower than their colleagues' leading to a decrease in motivation towards work. The principle of equal pay for work of equal value is not just a tool for redressing the wage gap between men and women, but is also an indispensable rule to realize equal treatment for non-regular workers compared with regular workers. The establishment of a fair job evaluation system and the legislation of the principle of equal pay for work of equal value is urgently needed.

We request that the Japanese government take legislative measures to provide for the principle in compliance with CONVENTION.

(Material 7)

Duration of judicial process in wage discrimination cases

Case	Number of plaintiffs	Start of process	Conclusion of process	Duration
Nomura Securities	13	1993	2004	11 years
Sumitomo Electric	2	1995	2003	8 years
Sumitomo Chemicals	3	1995	2004	9 years
Sumitomo Metal	4	1995	2006	11 years
Okaya & Co.	2	1995	2006	11 years
Kanematsu Corp	6	1995	Pending (Supreme Court)	Over 14 years

(Material 8)

Excerpt from the Individual Observation concerning Equal Remuneration Convention, 1951 (No. 100) Published: 2008, Committee of Experts on the Application of Conventions and Recommendations, ILO

4. Work of equal value.

The Committee recalls that section 4 of the Labour Standards Law, which provides that in respect of wages an employer shall not engage in discriminatory treatment of a woman, as compared to a man, by reason of the worker being a woman, does not fully reflect the principle of the Convention, because it does not refer to the element of equal remuneration for work of equal value.

5. The Committee notes that JTUC-RENGO calls for the revision of section 4 of the Labour Standards Law and the EEOL to ensure that both Laws prohibit gender-based wage discrimination. The Working Women's Network stated that there was only one final judgement based on section 4 of the Labour Standards Law which held that the female plaintiff's work was "work of equal value" to that of a male comparator. Highlighting the length of the equal pay proceedings, the Network argues that enforcing the principle of equal remuneration for men and women for work of equal value would be more effective if the principle was stated in the legislation.

6. The Committee therefore asks the Government to take steps to amend the legislation to provide for the principle of equal remuneration for men and women for work of equal value.

(Material 9)

The track-based system in Japan is indirect discrimination

(By Koshi Endo, Professor, Meiji University)

Since the mid-1980s, seniority-based HRM for university graduates sometimes took the form of “track-based personnel management.” In the “track-based personnel management” the employer establishes two employment tracks, the *career track jobs (sogo-shoku)* and *clerical track jobs(ippan-shoku)*. During campus recruiting, the employer lets the applicants choose which track they would like to apply for (self selection).

An employee in the *career track* has opportunities for promotion. But the employee would be required to work by the employer longer hours, and would have to transfer often anywhere in Japan or the world to different jobs according to the instructions from the employer. (Refusing an employer’s instruction is legitimate grounds for dismissal under Japanese law.)

Therefore, when a *career track jobs* employee marries, someone else must support the care of their children, and other matters regarding the home and neighborhood. That someone else in many cases is the spouse, or more accurately, the housewife. In other words, the *career track* is a track, which is sustainable, when the employee is a couple with a housewife.

Women in the *career track* must remain single, or if she marries, must find someone, who will support her. In many cases, this is difficult. Because this can be expected, few women apply for *career track jobs* Also, the minority of women, who chose *career track jobs* and started to work, cannot be supported by their spouses when they marry, and therefore in many cases would leave the company after marrying.

The *career track*, or the track-based personnel management, is a gender-neutral system on its surface, but in substance, it is indirect discrimination.