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To UN Human Rights Committee

Alternative Report to the Human Rights Committee for the Consideration of the Sixth Periodic : Japan

The Report by Working Women's Network

Contents:

★On Question 4 of the List of Issues

Legislation and recent decisions on discrimination

The Government explains that equality is protected by laws and regulations based on Article 14 of the Constitution, but as shown below, equality is not ensured by the laws.

1) Article 14 in the workplace

・THE CASE OF SUMITOMO ELECTRIC INDUSTRIES

In August 1995, two women working for Sumitomo Electric Industries started legal action against their employers claiming discrimination in wages and promotion, compared with the male employees, who had the same educational background and the same number of years in employment as they did. Unlike their female counterparts, those male employees were all promoted to management positions after 17 years in the company, and the difference in wages would amount to 240,000 yen a month at maximum. In 2000, the Osaka District Court held that there was discrimination that violated the spirit of Article 14 of the Constitution, but dismissed the claims as it was not against the public order and good morals provided for in the Civil Code, or the public welfare, taking into consideration the social understanding of the time the plaintiffs were hired.

・THE CASE OF CHUGOKU ELECTRIC POWER, INC

In a further gender discrimination case against the Chugoku Electric Power, Inc., the Hiroshima District Court held in March 2011, that there was discrimination against women in promotion, but referred to an opinion survey of female employees taken 14 years ago to dismiss the plaintiff's claims. In a survey conducted by the company in 1997quoted by the Court, 75% of women were reluctant about being promoted, because they thought it would be difficult to balance their careers with household work. The plaintiff appealed, but the judgment issued in July 2013 followed the lower court decision, and the case is now being appealed to the Supreme Court.

・THE CASE OF TEMPORARY WORKERS IN TOKYO METROPOLITAN GOVERNMENT

Tokyo Metropolitan Government has employed many the temporary workers. But the temporary workers are dismissed on only two months.

In the Law of local civil servant, the temporary workers are supposed to occupy only a temporary job. However, they are working on a permanent work in the same

way as regular public officials. Most of the temporary workers in Tokyo Metropolitan Government have repeatedly the dismissal and adoption every two months. This is a very unstable working condition. And they must be layoff for one month after working for six month. This is very unreasonable. The temporary workers are not given any social security from the Tokyo Metropolitan Government. They are not given living wages. They are not given even one paid holiday. They are not given even health insurance. There are major difference between regular workers and them. Though, they are worked same work.

Tokyo Metropolitan Government uses the temporary workers as very cheap workers.

2) The Equal Employment Opportunity Act does not promoted gender equality

The Equal Employment Opportunity Act was designed to realize equality in opportunity and not equality of results. It does not include any definition of discrimination. It has a provision on indirect discrimination, but it covers only three measures stipulated in the Ordinance[1]. Any other measure would not be considered illegal under the Act, and therefore there is no progress in the elimination of indirect discrimination. A notable example is the career-track based system. Career tracks with the main track leading to management positions (women representing 5.6%) and clerical tracks (consisting mostly of women), which do not lead to promotion, were introduced in many companies, including major financial and

[1] (i) Measures which concern the recruitment and employment of workers and which apply a criterion concerning the worker's height, weight or physical strength;
(ii) Measures which concern the recruitment and employment of workers (limited to measures taken for the personnel track intended for workers who engage in planning, sales, research and development, and other key matters related to the business of the employer concerned, when the employer establishes multiple personnel tracks for its employed workers based on the type of job, qualifications, etc. of the workers, and implements a different form of employment management according to the personnel track) and which apply a criterion concerning the worker's availability for reassignment that results in the relocation of the worker's residence; and
(iii) Measures which concern the promotion of workers and which apply a criterion concerning the worker's experience of having been reassigned to a workplace other than the workplace where the worker had formerly worked.
Ordinance for Enforcement of the Act on the Securing, Etc. of Equal Opportunity and Treatment of Men and Women in Employment

trading companies.

The introduction of the track system was supported by the provision of "employment management categories" in the Guidelines under the Equal Employment Opportunity Act.

Under the Guidelines, discrimination within a single employment category is prohibited, but not between categories. This led to the indirectly discriminatory situation, in which many women were placed in tracks with low paying positions with no prospects for promotion. (According to the Guidelines, an "employment management category" is a category based on type of jobs, qualifications, forms of employment etc. or other category of workers. Workers belonging to a category are subject to a different employment management from workers belonging to other categories. Type of jobs refers to the positions in the main or clerical tracks, and forms of employment refers to part-time or regular employment.)

WWN's Proposal and further information

Discrimination against women should be explicitly defined as being "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of the rights by women" in line with Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, and indirect discrimination as any measures or criteria which appear gender neutral, but have disproportionate, disadvantageous impact on the members of one sex in comparison with the members of the other sex.

The Government should also amend the measures listed in the Ordinance to include the other four measures[2] raised in the Policy Study Group on Equal Employment Opportunity for Men and Women. The list of measures should be non-exhaustive.

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[2] Four measures that were not included in the Ordinance as examples of indirect discrimination

1. Requirement of a certain academic degree or having graduated from a certain faculty, in recruitment and hiring
2. Head-of-household requirement in application of benefits and provision of family allowances
3. Difference in treatment between men and women, resulting from advantageous treatment to full-time employees. Difference in work content, personnel system and management between full-time and part-time workers
4. Difference between men and women, resulting from the exclusion of part-time workers from the application of welfare benefits and provision of family allowances

3) Article 4 of the Labor Standards Act is insufficient, as it does not explicitly provide for the principle of equal pay for work of equal value, as pointed out by the ILO (see below)

The Japanese Government takes the position that Article 4 of the Labor Standards Act fully covers the principle of equal pay for work of equal value, and refers to the Kanematsu case as an example[3], but the case was only successful after using tremendous energy and funds to organize a job evaluation committee to prove the value of the plaintiffs' jobs.

The factors leading to the success of the Kanematsu case

Six employees of Kanematsu, a trading company, started the legal action against their employer in August 1995, claiming wage discrimination. The Supreme Court dismissed the appeal in October 2009 fourteen years later, and the Appeals Court decision upholding part of the plaintiffs' claims became final. It held that the track-based system, in which the pay for a 55 year old woman would never exceed that of a 27 year old male employee, was a violation of Article 4 of the Labor Standards Act. The plaintiffs had organized a job evaluation committee, consisting mainly of expert academics, and using the pay equity standards of Ontario, Canada, carried out a job evaluation with their male colleagues or male co-workers in senior positions as comparators.

The results of the job evaluation showed that one of the plaintiffs was valued 111 to her counterpart's 100 while she was earning 48% of his pay. Another was valued 100, on a par with her counterpart, while earning 67% of his pay. The plaintiffs were able to break through the current lack of explicit provision on the principle of equal pay for work of equal value, using the gender neutral job analysis or evaluation. Their efforts made it possible for the judges to understand the situation, showing the effectiveness of the job evaluation in closing the gender wage gap.

WWN has been asserting that the Kanematsu case took this long, and the three gender discrimination cases against the Sumitomo manufacturers took more than

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[3] ILO: Report of the Committee set up to examine the representation alleging non-observance by Japan of the Equal Remuneration Convention, 1951 (No. 100), made under article 24 of the ILO Constitution by the Zensekiyu Showa-Shell Labor Union (GB.312/INS/15/3) paragraph 32.
http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:2507465,en:NO

ten years, because there are no legal rules stipulating the principle of equal pay for work of equal value, or requiring gender-neutral job evaluation. We have raised this argument at the ILO and CEDAW.

In response, ILO Committee of Experts on the Application of the Conventions and Recommendations asked "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" in March 2008[4].

CEDAW has also raised its concern "about the absence in the Labour Standards Law of a provision recognizing the principle of equal pay for equal work and work of equal value in accordance with the Convention and ILO Convention No. 100" in the Concluding Observations in August 2009.

★On Question 6 of the List of Issues

The Third Basic Plan for Gender Equality

1) Raising the representation of women in decision-making positions in the field of employment

The Government has published a target of increasing the proportion of women in management positions to 30%, and a minimum of 1 female executive in every publicly listed company by 2020. At the moment, the proportion of female executive is 1%, at the lowest level in the world. The proportion of women in management positions in the 1,150 publicly listed companies is at an average of 4.9% and has not progressed compared with other industrialized countries.

(see excerpt from Nikkei Shimbun dated March 1, 2014 below *P10)

WWN conducted a survey consisting of in-depth interview with 140 female regular employees, street interviews (145 respondents) and interviews with private companies (32, mainly members of the UN Global Compact), and the results showed that the major factor holding women back was the career-track system.

The track-system places many women in positions without any prospects of being promoted to "decision-making" positions.

In companies that maintain career-track systems, only 6% of employees in the main

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[4] See also Observation (CEACR) - adopted 2012, published 102nd ILC session (2013), Equal Remuneration Convention, 1951 (No. 100) – http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3076050

career track are women, while most of the employees in the clerical track are women. Also, 70% of non-regular employees, who are excluded from promotion, are women.

2) The wage disparity between men and women remain wide.

The Government figures do not include part-time workers. The wage ratio by WWN calculations, including pat-time workers, would be 100 for men to 58 for women, indicating that the wage disparity is still considerable.

The figures provided by the Government on the wage disparity cover only general workers (regular employees and non-regular employees who work full-time, not including part-time workers) and do not include part-time workers, who comprise approximately 30% of the workforce. So the figures cover only a part of the workforce.

Part-time workers (13.84 million) represent 26% of the workforce, and of those, 70% are women (9.53 million) The part-time female workers earn 988 yen per hour, while male part-time workers earn 1,092 per hour, indicating that even among part-time workers, women earn less compared with their male counterparts.

According to our calculations based on the survey by the Ministry of Health, Labor and Welfare published in February 2013, the women earned 58, to the men's 100.

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Calculations based on the Basic Survey on Wage Structure (national) (Ministry of Health, Labor and Welfare) for 2011 published on February 22, 2013

Calculation method:

((the number of general (full-time) workers x wages of general (full-time) workers) + (the number of part-time workers x hourly pay for part-time workers x working hours per day of part-time workers x working days per month of part-time workers)) / the total number of workers = wages /month

Men =((25.76 million x 328,300) + (4.31 million x 1,092 x 5.4 x 15.9)) /30.07 million = 294,683 (100)

Women ((12.84 million x 231,900) + (9.53 million x 988 x 5.2 x 17.3)) / 22.37 million = 170,971 (58)

The ILO Committee has also noted on the wage gap[5].

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[5] Observation (CEACR) - adopted 2012, published 102nd ILC session (2013) Equal Remuneration Convention, 1951 (No. 100) – http://www.ilo.org/dyn/normlex/en/fp=1000:13100:0::NO:13100:P13100_COMMENT

2) The Equal Employment Opportunity Act does not prevent sexual harassment

*PRADA GENDER DISCRIMINATION CASE

In 2010, the Tokyo Head office of Prada Group, an Italian multi-national enterprise, ordered punitive dismissal of a female Senior Operations Manager, Ms. Rina Bovrisse.The reason of the punitive dismissal was that in 2009, Ms. Bovrisse, who was relocated from New York to Tokyo, reported to Milan Headquarters regarding the sexual harassment and discrimination by the local CEO and Senior HR Manager towards female employees. The company engaged in multiple maltreatments against her.

Ms. Bovrisse started legal action at Tokyo District Court in 2010 and the case was covered by global media in 2010. The reason the company gave for her punitive dismissal reasoning, was that “Expressing her opinion against sexual harassment and discrimination damaged Prada’sreputation”.In addition, Prada Group filed a defamation case at Tokyo District Court against her for damaging Prada's honor and "P R A D A" logo asking for USD800,000 damages.

In 2012, plaintiff Ms. Bovrisse lost her sexual harassment case at the Tokyo District Court. The judgment confirmed that sexual harassment had happened, “but it could not be determined if it created any mental damage to an extent to require apologies by compensation. Under Article 15 of the Labor Contract Act of Japan, punitive dismissal are allowed on *objectively reasonable grounds* and the reason for the dismissal that the victim’s expressing her opinion damaged Prada's honor, was considered “objectively reasonable.”

In 2013, the Tokyo District Court again sided with Prada Group and ruled that she had to pay USD33,000 and legal expense. The ruling for the appeal at the Tokyo High Court was the same. The defamation case was appealed to the Supreme Court of Japan on June 4, 2014.

These are civil cases, but under the Penal Code Article 230 paragraph 1 ofJapan, a person can be convicted for defamation even if the person had spoken the truth, if it was determined that she/he had damaged the reputation of another, including a company. Therefore, even after the civil defamation case ruling, it is possible for the

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Prada Group to press charges for defamation as a crime to stop the victim from expressing her opinion. Article 230-1 of the Criminal Code of Japan: "(1) A person who defames another by alleging facts in public shall, regardless of whether such facts aretrue or false, be punished by imprisonment with or without work for not more than three (3) years or a fine of not more than 500,000 yen."

*****The Equal Employment Opportunity Act merely places an obligation on employers to take measures to prevent sexual harassment. It does not ban sexual harassment, and when a victim wants to take legal action, she/he can do so only by using Article 709 of the Civil Code of claims of compensation for unlawful acts. Sexual harassment in the workplace should be a crime, and to eliminate such acts, penalties should be provided for in the Equal Employment Opportunity Act, and an anti-discrimination law including an explicit prohibition on sexual harassment is necessary.

*In April 2013, WWN brought a case to the attention of the Committee on Economic, Social and Cultural Rights,.in which a former employee unsuccessfully brought a case of sexual harassment against Prada Japan The Committee stated in its Concluding Observations that "the Committee notes with concern that sexual harassment is not legally prohibited (art. 7).
The Committee urges the State party to introduce in its legislation an offence of sexual harassment , in particular in the workplace, which carries sanctions proportionate to the severity of the offence. The Committee also recommends that the State party ensure that victims can lodge complaints without fear of retaliation."

<u>Proposed WWN's recommendations</u>

1. The targets for the proportion of women in the people being hired, in management positions, and in executive positions should be 50%, 30% and 10% respectively.
2. The term "employment management category" in the Guidelines under the Equal Employment Opportunity Act, which tolerates the use of indirectly discriminatory career-tracks should be eliminated.
3. The inclusion of an explicit provision on the principle of equal pay for work of equal value in the law and the establishment of a gender neutral job evaluation

system is necessary.

4. The recent amendment of the Worker Dispatching Act may increase the proportion of non-regular workers, of which 70% are women. The Act should be revised to stop the increase of non-regular workers.

(*Excerpt from Nikkei Shinbun dated March 1, 2014)
Proportion of women in management positions

Type of industry	%	Type of industry	%
Insurance	19.4	Glass and related products	3.1
Human resource and related service	12.8	Electricity/gas	3.0
Non-banking finance	11.3	Forestry/fishery	2.5
Air transport	10.9	Rubber products	2.3
Banking	10.1	Petroleum/coal	2.3
Retail	8.8	Land transport	2.2
Securities	8.5	Electric appliance	2.1
Information/communication	7.1	Precision machinery	2.0
Maritime transport	6.4	Non-ferrous metal	1.9
Real estate	6.3	Paper pulp	1.4
Warehousing/transport related	5.4	Steel	1.4
Chemical	5.2	Machinery	1.3
Pharmaceutical	4.9	Construction	1.2
Food	4.1	Mining	1.2
Printing and related products	4.0	Transport machinery	1.1
Textile	3.4	Metal products	0.9
Wholesale	3.3		

◎Method of survey

The Cabinet Office publishes the proportion of women in management positions and other data of 1,150 publicly listed companies (32.4% of total of 35,552 companies) on their website that aims to make women's active participation visible. The figures were compiled by the Cabinet Office and Toyo Keizai Shinpo. The Nikkei Shinbun calculated the overall percentage and trends by industry.

★ On the Act on the Protection of Specially Designated Secrets

WWN calls for the withdrawal of the Act on the Protection of Specially Designated Secrets

The Act, which was adopted on December 6, 2013, puts the foundation of democracy at risk, and also makes the realization of a gender equal society more difficult. We therefore call for its swift abolishment.

* The Act violates international human rights standards regarding freedom of expression and access to information. We have the right of access to information under the International Covenant on Civil and Political Rights. The Government has an obligation to protect the right under the International Covenant, and the Act, which does not comply with the international obligation, must be abolished.

* Under the Act, 'what is designated is also secret.' The Act is also said to be used to monitor the citizens of the country. There is a possibility that discussions and consultations within political parties, labor unions and NGOs may be held liable and punished as "conspiracy" under the Act.

* Since it is the Government ministries and agencies that will determine what is secret under the Act, there is a possibility that information such as government data including survey results may not be disclosed even when they are requested to do so, when they pose disadvantages for the Government. This means that there is a risk that disclosure of information, for example, during a wage discrimination trial process, may be left to the determination of the Government, making disclosure of information, which they had to comply with before the Act, even more difficult.