INTERNATIONAL LABOUR OFFICE

Governing Body
312th Session, Geneva, November 2011

GB.312/INS/15/3

Institutional Section

INS

FIFTEENTH ITEM ON THE AGENDA

Report of the Director-General

Third Supplementary Report: 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

I. Introduction

1. In a communication dated 17 September 2009, the Zensekiyu Showa-Shell Labor Union addressed a representation to the Office, in accordance with article 24 of the ILO Constitution, alleging non-observance by the Government of Japan of the Equal Remuneration Convention, 1951 (No. 100), ratified by Japan in 1967. The Convention is in force in Japan. The representation was submitted on behalf of the Zensekiyu Showa-Shell Labor Union, the Women's Union for Workers of Trading Company and the Union Pay Equity.

2. The following provisions of the Constitution of the International Labour Organization relate to representations:

Article 24

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the

latter shall have the right to publish the representation and the statement, if any, made in reply to it.

3. In accordance with article 1 of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization, as revised by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of the representation, informed the Government of Japan and brought it before the Officers of the Governing Body.

4. At its 307th Session (March 2010), the Governing Body found the representation to be receivable and appointed a committee to examine the matter. The Committee consisted of Mr Vines (Government member, Australia), Mr Anderson (Employer member, Australia) and Mr Adyanthaya (Worker member, India). At its 312th Session (November 2011), the Governing Body appointed Ms Williams (Government member, Australia), replacing Mr Vines.

5. On 30 July 2010, the Government of Japan submitted its written observations concerning the representation.

6. In a letter of 7 May 2010, Zensekiyu Showa-Shell Labor Union forwarded additional information, which was received by the Office on 3 August 2010.

7. The Committee met on 11 November 2011 to examine the case and adopt its report.

II. Consideration of the representation

The complainant's allegations

8. In its communication of 17 September 2009, the complainant alleges that the Government of Japan failed to secure the effective observance of the Equal Remuneration Convention, 1951 (No. 100). The allegations and recommendations made by the complainant are summarized below.

9. The complainant submits that since the ratification of the Convention by Japan in 1967, violations of the provisions of the Convention have persisted and most gender discrimination with respect to wages has been left uncorrected. When ratifying the Convention, the Government had relied on section 4 of the Labour Standards Law No. 49 of 1947, which provides that "an employer shall not engage in discriminatory treatment of a woman as compared with a man with respect to wages by reason of the worker being a woman". According to the complainant, the competent administrative authority and the judiciary have not been implementing and interpreting section 4 of the Labour Standards Law to apply to wage differentials between men and women performing different tasks and occupations.

10. The complainant further states that problems with the application of section 4 of the Labour Standards Law were exacerbated following the enactment of Equal Employment Opportunity Law No. 45 of 1985 (hereinafter, the "EEOL"), as it influenced the interpretation of section 4. The complainant indicates that the EEOL only addresses the situation in which wage differentials are to be considered gender discrimination when occurring between men and women in the same employment management category (referring to the practical category by occupation, work type, employment contract, career development, etc). The complainant states that since the EEOL entered into force in 1986,

career-tracking systems were introduced in most of the companies, whereby the seniority-based wage system by gender was replaced by a seniority-based wage system by occupation, though the previous gender discriminatory wages were maintained in the new systems.

11. With respect to the interpretation by the courts of section 4 of the Labour Standards Law, the complainant refers to, and submits summaries of, the following court cases, which it considers to be in breach of the Convention: *Nozaki* v. *Showa-Shell Sekiyu Inc.*, (Tokyo High Court, 28 June 2007), and the Decision of the Supreme Court of 22 January 2009, dismissing the appeal against the decision of the High Court; *Mori et al.* v. *Kanematsu* (Tokyo High Court, 31 January, 2008; *Yuzuki et al.* v. *Showa-Shell* (Tokyo District Court, 29 June 2009), and *Yakabi* v. *Kyo-gas* (Kyoto District Court, 20 September 2001). The complainant also refers to *Ogiwara et al.* v. *Maruko Alarm Inc.*, Ueda Br. (Nagano District Court, 15 March 1996), without providing a summary of this case.

12. According to the complainant, the abovementioned judicial decisions are contrary to the Convention, as they determine, in the absence of a gender-neutral job evaluation, that there is no violation of section 4 of the Labour Standards Law even though the existing wage differential is acknowledged to be due to gender segregation into different employment management categories. In addition, the complainant considers that the judicial decisions rejecting a request for wage correction, despite acknowledging a violation of section 4, are contrary to the Convention.

13. With regard to these decisions, the complainant states that in *Nozaki* v. *Showa-Shell Sekiyu Inc.* (hereinafter, the "Showa-Shell Sekiyu (Nozaki) Case") the Supreme Court confirmed the Tokyo High Court's decision that there was no gender discrimination with respect to wages under the "ability ranking system" concerning wage differentials between a woman engaged in Japanese typing and a man engaged in international telex operation, without a gender neutral job evaluation having been undertaken to support its decision. Furthermore, the complainant states that the High Court considered that Japanese typing (as well as English typing) required a certain period and effort to become skilled, but once the skill was acquired, the work was of little difficulty. In holding this point of view, the High Court did not acknowledge that the value of the work was equal to that of telex operation done by a man who entered the company in the same year as the plaintiff and stayed in a non-managerial position. The complainant asserts that basing itself only on this one determining factor, the court denied the gender discriminatory nature of the wage differentials. The complainant further states that the decision recognized Japanese typing work only as that of a routine assistant, and determined that most of the women in Showa Sekiyu were engaged in routine assistant tasks, on the basis of which it decided that there was no illegality with respect to wage differentials regarding the period before 1985. According to the complainant, the court assigned a lower value to women's tasks compared to similar tasks in which men were engaged, without using clear criteria for assessing whether the work was of equal value. The complainant submits information on the results of a job evaluation conducted by Union Pay Equity after the High Court decision, which was submitted to the Supreme Court, showing that the value of the job of Japanese typewriting is not lower than that of telex operation.

14. Similarly, the complainant states that in *Mori et al.* v. *Kanematsu* (hereinafter, the "Kanematsu Case"), the Tokyo High Court held, without undertaking a job evaluation of the work performed by the plaintiffs, that the wage differentials that existed between men and women in 1985 and before under career tracking systems organized by gender (Scale A (male) and Scale B (female)) did not constitute gender discrimination in violation of section 4 of the Labour Standards Law. The complainant states that since in Japan clear criteria for gender-neutral job evaluation have yet to be established, courts tend to assume that women normally engage in routine assistant work and easily judge unequal wages to

be legal without showing the basis for this. For the period after 1985, however, the complainant indicates that the High Court ruled that the wage differentials in different career tracks under the assignment-based wage system (Scale A for General Job) and (Scale B for Clerical Job) constituted gender discrimination and violated section 4 of the Labour Standards Law. However, the complainant adds that with regard to this period, the court nonetheless determined that for two out of the six plaintiffs there had not been any gender discrimination. In this regard, the complainant provides a copy of one of the job evaluations that were submitted by the plaintiffs during the court proceedings. The complainant further maintains that providing for a career tracking system dividing jobs into "core and decision-making" and "routine assistant work" and treating them differently is in itself discriminatory, as it leads to dividing jobs for men and women, or segregating jobs for those who "assist", and those who are "assisted" reflecting a gender division of labour.

15. The complainant further submits that, in *Yuzuki et al.* v. *Showa-Shell* (hereinafter, "the Showa-Shell (Yuzuki) Case"), *Yakabi* v. *Kyo-gas* (the "Kyo-gas Case") and the Kanematsu Case, the courts failed to order correction of the total wage difference while at the same time recognizing that the wage differentials were due to gender discrimination. With respect to the Showa-Shell (Yuzuki) Case, the complainant states that the Tokyo District Court, while recognizing that the actual wage inequalities constituted gender discrimination, rejected the request for total wage recovery on the ground that a clear standard for ranking could not be determined, and it was difficult therefore to calculate the concrete amount of the damages equivalent to the wage differential. With respect to the Kyo-gas Case, the complainant states that this was the first time that the court accepted a job analysis and an objective evaluation of the different jobs being performed by men and women that had been conducted by the plaintiff, and acknowledged the existence of gender discrimination. Nonetheless, even though the court determined that the jobs were of the same value, it went on to hold that the total amount of damages equivalent to the wage differential to be paid to the plaintiff should be only 85 per cent of the total salary of the male worker with whom she had been compared. Similarly, the complainant states that in the Kanematsu Case, while acknowledging that work carried out under different employment management categories was "work to be presumed to have the same quality in the sense that the job contents and degree of difficulty could not be easily distinguished from those of the appellant's" and that "female employees presumed to have been doing the same jobs with the same degree of difficulty as male employees in former general positions", the court determined that the wages of the female workers should constitute only 70 per cent of the male workers' wages.

16. The complainant considers the courts' judgments to be unfair as they deny recovery of differential wages based on the argument that employers have a certain discretionary power in determining wages, although the courts have recognized, at the same time, clear distinctions between job ranks and large differentials in the base salaries of men and women on the different career tracks. According to the complainant, the root cause of such judicial rulings is the lack of institutional criteria for conducting a job appraisal system designed to investigate the illegality of wage differentials.

17. The complainant refers to a statement by the Japanese Government to the Diet in 1967 when ratifying Convention No. 100, that it was unnecessary to amend Labour Standards Law No. 49 of 1947 since it was considered that section 4 sufficiently reflected the principle of equal remuneration for work of equal value, that the Convention was an integral part of the legal order and that the principle of gender equality stipulated in

article 14 [1] of the national Constitution, also incorporated the principle of equal remuneration for work of equal value. The complainant invokes a "Commentary on Labour Standards Law" (published 10 July 1948) by the section head of the Labour Standards Inspection Office, presumably reflecting the intentions of the legislation, which states that section 4 does not necessarily insist on equal remuneration for work of equal value but that it is expected that the principle would be applied to determine the rationality of the inequality. The complainant submits, therefore, that when examining gender discrimination, a legal basis for conducting a job appraisal methodology should not be neglected and is essential to implement the principle of equal remuneration for work of equal value.

18. The complainant, referring to the observation of the Committee of Experts on the Application of Conventions and Recommendations, published in 2003, on the application by Japan of Convention No. 100 – which states that, under the Convention, levels of remuneration are to be compared through objective job appraisal including for part-time and non-regular work, free from gender bias – further submits that the number of non-regular workers has drastically increased since the 1990s, and that currently 54 per cent of non-regular workers are women receiving wages below a living wage. The complainant considers such widespread situations of unduly low wages among non-regular workers to be in itself a violation of the Convention.

19. The complainant requests that the Government take the following steps: (i) ensure that section 4 of the Labour Standards Law is applied to wage differentials between men and women performing different tasks and in different occupations; (ii) ensure that the EEOL and section 4 of the Labour Standards Law are implemented in such a manner that wage differentials between men and women in different employment management categories are considered discriminatory where the work performed is of equal value; (iii) establish an obligatory job evaluation system to determine whether men and women performing different tasks or in different occupations are performing work of equal value, and to remove large wage differentials between men and women working under different employment management categories; and (iv) where gender-based discrimination in wages is found, to ensure that the total wage difference is corrected and proper measures are taken to correct future inequalities.

The Government's response

20. In its reply, the Government provides information on the evolution between 1986 and 2009 of the existing wage disparities in hourly scheduled cash earnings between male and female workers and refers in this regard to the "Fundamental Statistical Survey on Wage Structure" conducted by the Ministry of Health, Labour and Welfare. The Survey indicates that in 2009 the average scheduled cash earnings (regular salary) of female general workers [2] was 69.8 per cent of those of male workers. Compared with the same employment status, the average scheduled cash earnings of female regular staff was 72.6 per cent of those of male workers. While acknowledging that the average wage disparities between men and women are still large, the Government emphasizes that wage disparities have been reduced by 10 per cent since the EEOL entered into force in 1986.

[1] Article 14 of the Japanese Constitution provides for equality under the law and prohibits discrimination in political, economic and social relations on the basis of a number of grounds, including sex.

[2] The Government provides information indicating that a "general worker" refers to a worker other than a short-term worker, and a "regular company staff/employee" refers to anyone a business establishment assumes to be a regular company staff/employee.

21. Referring to research undertaken by the Research Committee concerning Wage Disparities between Men and Women in Changing Wage and Employment Management Systems (2010) (hereinafter, "2010 Research on Wage Disparities"), the Government indicates that rank at work and length of continuous employment are the factors with the largest impact on the wage disparities between men and women. The average length of continuous employment in 2009 was 12.8 years for men and 8.6 years for women. With regard to managerial positions, 10.5 per cent of the subsection chiefs, 3.6 per cent of section managers and 2 per cent of department directors were women. The Government states that a seniority system is used in Japan and it is recognized that the shorter length of continuous employment of women leads to their lower ratio in managerial positions.

22. With respect to the application of the principle of equal remuneration for men and women for work of equal value, the Government refers to *Articles 1(b)*, *2(1)* and *3(1)* of the Convention, and states that the wording of the Convention is understood to mean that the requirement of the Convention is fulfilled by the prohibition of any discriminatory treatment based on sex with respect to wages only for the reason of the worker being a woman, without regard to whatever wage system is being used. The Government considers that section 4 of the Labour Standards Law precisely prohibits any such treatment and thus fulfils the requirement of the Convention. The Government states that this interpretation has been retained since the ratification of the Convention by Japan in 1967. According to the Government, section 4 of the Labour Standards Law was intended to prohibit discriminatory treatment with respect to wages not only when it is based on being a woman, but also "on the basis of any prejudice or because of the average woman's situation, including the fact that women's average length of continuous employment is shorter than that of men and the fact that the majority of women are not the main income earners of their households".

23. With respect to the EEOL, the Government states that the Law regulates any discrimination based on sex that significantly affects wage determination in the various aspects of employment management, including recruitment, employment, assignment, promotion and training. Sections 5 and 6 prohibit discrimination on the basis of sex with regard to recruitment and employment of workers, assignment (including allocation of duties and grant of authority), promotion, demotion and training, certain range of fringe benefits, change in job type and employment status, encouragement to retire, mandatory retirement age, dismissal and renewal of labour contract. The EEOL also prohibits certain forms of indirect discrimination (section 7) and prohibits disadvantageous treatment by reason of marriage, pregnancy and childbirth, etc. (section 9). The EEOL also provides for state assistance to employers that implement positive action programmes (section 14). The Government further refers to the provisions of the EEOL regarding assistance in the resolution of disputes by the directors of the Prefectural Labour Offices (section 17) and conciliation by the Disputes Adjustment Commission (section 18). Sections 29 and 30 provide for competence in the collection of reports and issuing of advice, guidance and recommendations, and publication of company names in the event they do not follow any recommendations made. Section 33 provides for the imposition of a fine if the employer does not submit the report requested.

24. With respect to the enforcement of the legislation, the Government refers to the possibility of lodging a claim for the application of section 4 of the Labour Standards Law with the labour standards inspector under section 104. It also refers to the mandate of the labour standards inspectors to undertake regular workplace inspections to investigate the wage system, including with a view to establishing whether wage disparities between men and women at a particular workplace are due to the fact that the worker is a woman or due to job duties, efficiency or skills. Labour standards inspectors may provide the necessary guidance if they consider that section 4 has been violated. The Government states that, in 2009, the Labour Standards Inspection Authority undertook regular workplace inspections

in a total of 100,535 cases, and provided guidance in six cases regarding violations of section 4 of the Labour Standards Law.

25. Furthermore, the Government states that, since its enactment in 1985, the EEOL was amended in 1997 and in 2006 to improve protection. With respect to the enforcement of the EEOL, the Government provides the following information regarding the cases handled by the Prefectural Labour Office: in fiscal year 2009, the Equal Employment Offices of the Prefectural Labour Office received 23,301 cases for consultation. In addition, they dispatched officials to workplaces to collect reports on compliance with the EEOL and provided administrative guidance. In fiscal year 2009, guidance was provided in 208 cases of violations pertaining to recruitment and employment and on 116 cases of violations pertaining to assignment, promotion, demotion and training. In addition, the directors of the Prefectural Labour Offices received seven cases pertaining to recruitment and employment and 27 cases pertaining to assignment, promotion, demotion and training involving representations for assistance in resolving disputes. The Disputes Adjustment Commission received three cases pertaining to assignment, promotion, demotion and training involving applications for conciliation.

26. The Government indicates that the Labour Standards Law and the EEOL are predicated on the system used to determine working conditions and wages in Japan. These conditions and wages are determined through negotiations between employers and workers at each company, rather than cross-company units, for example, industrial or occupational groups. The Government nonetheless considers that, while institutional discrimination based on sex within companies is decreasing, certain issues including women's job categories not being expanded, the short length of continuous employment and the lower ratio of women in managerial posts, still need to be resolved before substantial equality can be achieved. According to the Government, these are the reasons why wage disparities between men and women continue to exist.

27. The Government states further that many companies still determine the base salary – which is the basis for payment of wages – largely by factors such as the age and the length of continuous employment of the employee. In addition to the base salary, companies usually pay subsistence allowances, including family allowances and housing allowances. Referring to the 2010 Research on Wage Disparities, the Government provides statistical information on the percentage of companies paying various allowances, indicating that a much higher percentage of male company staff are receiving executive, duty or achievement allowances; considerable differences exist between male and female staff with respect to the amount of allowances received, particularly as regards the executive allowance. The Government states that companies adopt a wage system on the basis of the idea that companies guarantee the livelihood of workers. The law permits such a type of wage system as long as there is no discriminatory treatment between men and women in its application.

28. The Government states that it is committed to implementing actively the measures it is taking and which are considered effective in realizing substantial equality of opportunity between men and women and decreasing gender wage differentials. The Government underlines the importance of increasing the length of continuous employment of women and their rank at work and indicates that, to achieve this, it is conducting strict administrative guidance in accordance with the EEOL and the Labour Standards Law as well as measures aimed at promoting an environment enabling a decrease in the number of women resigning from employment due to childbirth and child care, and promoting positive action measures by companies.

29. With regard to measures to assist women to remain in the workforce, the Government refers to the amendment of the EEOL in 2006 aimed at including provisions for the

prohibition of disadvantageous treatment for reasons of pregnancy and childbirth, and the adoption of the Child Care and Family Care Leave Law and its amendment in 2009, promoting paternity leave and a shorter working hour system. The Government also refers to the guidance provided by the Equal Employment Offices in accordance with the EEOL and the Child Care and Family Care Leave Law, the assistance in dispute resolution provided by the directors of the Prefectural Labour Offices, and the conciliation by the Disputes Adjustment Commission.

30. With regard to promoting positive action by companies with a view to eliminating differences between male and female workers, the Government describes the specific measures that companies are meant to take. It also indicates that for companies implementing employment management differentiated by career tracking, the Equal Employment Offices are providing advice on facilitating women's conversion of career tracks to allow them to be assigned to job duties relating to the backbone of the business operations by setting up a flexible system that allows conversion between tracks or divisions.

31. The Government further states that with a view to decreasing wage disparities between men and women that are common within companies, guidelines for workers and employers to decrease any wage disparities between men and women were created in 2003, and pamphlets were distributed through organizations of workers and employers. The Government indicates that on the basis of the report on the 2010 Research on Wage Disparities, new guidelines regarding wages and employment management systems were being developed and promoted.

32. With regard to the application of the principle of equal remuneration for men and women for work of equal value by the judiciary, the Government provides summaries of the following judicial decisions regarding the application of section 4 of the Labour Standards Law: the decision of the Tokyo High Court in the Kanematsu Case of 31 January 2008, appeal against which was dismissed by the Supreme Court on 20 October 2009; the decision of the Tokyo High Court in the Showa-Shell Sekiyu (Nozaki) Case of 28 June 2007, appeal against which was dismissed by the Supreme Court on 22 January 2009; the decision of the Tokyo District Court in the Showa-Shell (Yuzuki) Case on 29 June 2009; the decision of the Kyoto District Court in the Kyo-gas Case on 20 September 2001 (on which a settlement was reached on 8 December 2005); the decision of the Ueda Branch of Nagano District Court in *Ogiwara et al.* v. *Maruko Alarm* (hereinafter, the "Maruko Alarm Case") on 15 March 1996 (a settlement was reached in November 1999); the decision of the Tokyo District Court in *Nomura* v. *the Nisso-Tosho* (hereinafter, the "Nisso-Tosho Case") on 27 August 1992, and the decision of the Okayama Branch of the Hiroshima High Court in *Ishihara et al.* v. *Uchiyama Industrial* (hereinafter, the "Uchiyama Industrial Case") on 28 October 2004 (appeal against which was dismissed by the Supreme Court on 13 July 2007).

33. With regard to the complainant's request to ensure the application of section 4 of the Labour Standards Law to wage differentials between men and women performing different tasks and different occupations, the Government states that, in determining whether there has been a violation of section 4 of the Labour Standards Law, a judgment is needed as to whether the wage disparity of men and women can be explained as being caused by the content, authority, responsibility, etc., of the job and differences in efficiency, skills, etc. The application of section 4 is not excluded simply because of a difference in job duties or types of job. The Government submits that the judiciary has been effectively applying section 4 of the Labour Standards Law to wage disparities between men and women performing different tasks and in different occupations, and cites in this regard the Nisso-Tosho Case, the Kyo-gas Case, the Uchiyama Industrial Case and the Kanematsu Case.

34. With regard to the complainant's requests to ensure that, under the EEOL and section 4 of the Labour Standards Law, wage differentials between men and women working under different employment management categories but performing work of equal value are considered to be gender discrimination, and to establish objective job evaluation, the Government refers to *Articles 2(1)* and *3(1)* of the Convention and states that it is understood that it is left up to each country whether it introduces job evaluation criteria or not.

35. The Government submits that job evaluation criteria do not necessarily facilitate the implementation of the Convention in Japan because most companies follow an employment practice in which human resources development is endeavoured on a long-term basis by employing new graduates without specific job duties, and enabling them to gain a wide variety of work experience through relocation of personnel within the same company. The Government states that, under this type of employment practice, a system of human resource development and treatment is determined using categories set by job type and employment status rather than job duties at a specific time. The widely adopted wage system is a wage system based on performance ability in which the vocational qualification of each worker is determined according to the level of ability to achieve duties. The Government further states that, under this wage system, the range of job duties to which a worker of a specific vocational qualification can be appointed is quite vast, thus resulting in a loose connection between work duties and wages. While a sizeable minority of companies place importance on work duties, very few companies are expected to determine wages using work duties only. The Government maintains that the employment practice in Japan, composed of a long-term employment system, a wage system including components such as a seniority system, and labour unions organized by company, is rational and is effective in building trust between employers and workers.

36. The Government further maintains that, in the context of such employment management, any judgment based on the results of job evaluation criteria to job duties at a specific point in time is inappropriate. It maintains that the EEOL therefore prescribes that discrimination on the basis of sex shall be judged within the individual employment management categories. The Government refers to the definition of "employment management category"[3] included in the *Guidelines on Ways for Employers to take Appropriate Measures with regard to Items Stipulated in the Provisions concerning the Prohibition of Discrimination against Workers on the Basis of Sex, etc*. (Public Notice No. 614 of the Ministry of Health, Labour and Welfare, 2006) (hereinafter, the "Guidelines").

37. The Government also indicates, however, that it would be inappropriate to deny automatically that there had been any discrimination between male and female workers belonging to different categories of employment management. Therefore, as a result of discussions in a tripartite advisory council, the abovementioned Guidelines were drafted, and were endorsed by unions and the employers' organizations. The Government indicates that, according to the Guidelines, whether or not a category of employment management to which a worker belongs is the same as the category to which another worker belongs shall be judged based on whether there is objective and reasonable difference, based on the actual situation, in terms of the content of the duties, range and frequency of personnel changes including job relocations, etc., of the workers who belong to the category concerned. The Government therefore maintains that, in accordance with the EEOL, judgments regarding sex discrimination can be made taking into account the employment management categories described above. The Government also submits that section 4 of

[3] According to the Guidelines, employment management category means "the category of workers by job type, qualification, employment status, working pattern, etc. that has been established with the intention of implementing the employment management of workers who belong to one category separately from the management of workers who belong to other categories".

the Labour Standards Act does not exclude consideration of employment management categories.

38. The Government states that, at present, the use of job evaluation criteria is not being uniformly enforced by the national government. The Government considers that with a view to preventing women from suffering from discrimination with respect to wages, discrimination in the individual aspects of employment management that affect wages should be eliminated, including with respect to merit ratings, placement and job assignments. It would also be important to increase the length of continuous employment of women and to raise their rank in order to decrease wage disparities between men and women.

39. With regard to the complainant's request to ensure that where gender-based discrimination in wages is found, the total wage difference is corrected and proper measures are taken to correct future inequalities, the Government states that where section 4 of the Labour Standards Law has been violated, administrative guidance can be provided to an employer for the payment of the equivalent of the wage difference within the range of the workers' claim. Where a wage disparity results from sex-based discrimination with respect to placement, promotion and advancement violating the provisions of the EEOL, measures can be taken, including assistance in the resolution of disputes by the Directors of Prefectural Labour Offices and conciliation by the Disputes Adjustment Commission. The employer may then be requested to pay the equivalent of the wage difference or to correct the wage disparity, including through promotion, advancement and reconsideration of placement in the future. The Government, referring to the summaries of the court cases, states that the judiciary has taken measures in specific cases of various nature, including cases where there are clear criteria for wages to be applied if discrimination had not occurred, cases where there are no clear criteria because of an accumulation of promotion and advancement for a long period of time or various special cases and where an allowance system exist, cases where extinctive prescription of a worker's claim is invoked, and cases where the claims and the necessary proof of an employee are incomplete. The Government, therefore, considers that the correction of wage disparities is being attempted in an appropriate manner in accordance with the specificities of each case and the variety of systems.

40. With regard to the complainant's allegation that the judicial decisions are not in accordance with the Convention, the Government considers that the administrative body is not in a position to comment on whether judicial decisions are appropriate or not. The Government therefore considers it cannot make any comments on the allegation regarding the appropriateness of the judicial decisions. However, the Government points to what it considers to be misinterpretations of the facts of some of the court decisions cited by the complainant, including the Showa-Shell Sekiyu (Nozaki) Case, the Kanematsu Case and the Kyo-gas Case. For example, with regard to the Kanematsu Case, the Government states that the court judged the rationality of the wage disparity between men and women using the following factors: (i) whether it is a disparity between male and female employees of the same age and presumed to have a similar length of continued employment; and (ii) whether it is a disparity between female and male employees with homogenous job duties and difficulties who repeatedly take over each other's jobs, or whether the content of job duties require expertise and/ or skills in negotiation and language, and by comparing the job duties of male general workers and female clerical workers over each period of time. With regard to the Kyo-gas Case, the Government states that the court considered that, while there were no particular differences in the value of their duties, where wages were determined using not only this factor but also various other reasons, including individual abilities and service performance, with the plaintiff having the burden of proof, this point had not been fully disclosed. The Government states that the court had therefore determined the woman's wage to be 85 per cent of the man's wage.

41. With respect to the complainant's allegation that the employment management system classified by career tracks is to be considered discriminatory, the Government submits that such an employment management system is one in which plural courses based on, inter alia, an employee's occupational group and qualifications are set up and different employment management such as assignment, promotion, and training are applied in each track; typically such tracks include, one engaging in services such as planning, sales, research and development and other key matters relating to the employer's business management, and another engaging in routine work. The Government states that, an employment management system classified by career tracks as described above, the system in which job duties are divided in two parts, namely "main decisive jobs" and "supplementary routine work", is not immediately in itself illegal. However, if the system is operated, for example, by assigning "main decisive jobs" to men only and "supplementary routine work" to women only, the Government states that this does constitute discrimination on the basis of sex and violates the EEOL, and strict measures including administrative guidance and recommendations would be taken.

42. Finally, with regard to the application of the Convention to non-regular workers, the Government states that the treatment of non-regular workers (i.e., part-time workers, fixed-term contract workers and dispatched workers) is decided according to their various working conditions, and it considers that the issue of treatment of non-regular workers is not related to the application of the Convention. The Government nonetheless provides information on the measures taken to address the situation regarding these workers, including the Labour Standards Law and the Minimum Wages Law, as well as other legislative measures to improve their situation.

III. The Committee's conclusions

43. The Committee notes that the representation raises two main issues: (i) whether section 4 of Labour Standards Law No. 49 of 1947 and Equal Employment Opportunities Act No. 45 of 1985 (EEOL) give effect to the principle of equal remuneration for men and women for work of equal value set out in Convention No. 100; (ii) whether the Labour Standards Law and the EEOL have been implemented in practice to give effect to the principle of equal remuneration for men and women for work of equal value.

44. The Committee considers that the issues raised in the representation relate to the application of *Articles 1*, *2* and *3* of the Convention. These provisions of the Convention read as follows:

> *Article 1*
>
> For the purpose of this Convention –
>
> (a) the term ***remuneration*** includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;
>
> (b) the term ***equal remuneration for men and women workers for work of equal value*** refers to rates of remuneration established without discrimination based on sex.
>
> *Article 2*
>
> 1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.
>
> 2. This principle may be applied by means of –
>
> (a) national laws or regulations;

(b) legally established or recognised machinery for wage determination;

(c) collective agreements between employers and workers; or

(d) a combination of these various means.

Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.

3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

45. On the issue of whether section 4 of the Labour Standards Law and the EEOL give effect to the principle of equal remuneration for men and women for work of equal value, as set out in *Articles 1* and *2* of the Convention, the Committee notes that the Government appears to have intended to apply the Convention through laws, as provided for in *Article 2(2)(a)* of the Convention, and the Government considers that the requirements of the Convention are fulfilled by section 4 of the Labour Standards Law. The Government also considers that the EEOL is relevant in this regard, as it regulates discrimination based on sex that significantly affects wage determination in various aspects of employment management, including recruitment, employment, assignment, promotion and training.

46. The Committee notes that section 4 of the Labour Standards Law provides that "An employer shall not engage in discriminatory treatment of a woman as compared to a man with respect to wages by reason of the worker being a woman". The relevant provisions of the EEOL provide as follows:

5. With regard to the recruitment and employment of workers, employers shall provide equal opportunities for all persons regardless of sex.

6. With regard to the following matters, employers shall not discriminate against workers on the basis of sex.

(i) Assignment (including allocation of duties and grant of authority), promotion, demotion, and training of workers;

(ii) Loans for housing and other similar fringe benefits as provided by the Ordinance of the Ministry of Health, Labour and Welfare;

(iii) Change in job type and employment status of workers; and

(iv) Encouragement of retirement, mandatory retirement age, dismissal, and renewal of the labour contract.

7. An employer shall not take measures which concern the recruitment and employment of workers, or any of the matters listed in the preceding section, and apply a criterion concerning a person's condition other than the person's sex, and which is specified by the Ordinance of the Ministry of Health, Labour and Welfare as measures that may cause virtual discrimination by reason of a person's sex, considering the proportion of men and women who satisfy the criterion and other matters, except in a case where there is a legitimate reason to take such measures, such as a case where such measures are specifically required for the purpose of performing the relevant job in the light of the nature of that job; or a case where such measures are specifically required for the purpose of employment management in the light of the circumstances of the conduct of the employer's business.

47. The Committee notes that the EEOL, while addressing aspects that may affect wage determination, does not directly deal with equal remuneration between men and women for work of equal value. The Committee also notes that, with respect to the Labour Standards Law, while prohibiting direct discrimination based on sex with respect to wages, it does not on its face encompass the concept of "work of equal value". In this regard, the Committee notes that the Committee of Experts on the Application of Conventions and Recommendations has already addressed this point, stating that section 4 of the Labour Standards Law:

> ... does not fully reflect the principle of the Convention, as it does not refer to the element of equal remuneration for work of equal value. This element of the Convention's principle is crucial because it requires consideration of the remuneration received by men and women who are performing different jobs or work, on the basis of an evaluation of the content of the different jobs being performed …[4]

48. The Committee notes that the issue then arises whether the legislation has been interpreted and applied in line with the Convention. The Committee notes that the complainant considers that the legislation has not been implemented and interpreted to apply to wage differentials between men and women performing different tasks and in different occupations, nor to allow for comparisons between different management categories. In this context, the complainant stresses the importance of objective job evaluation to determine whether men and women performing different tasks or in different occupations are performing work of equal value.

49. The Committee notes that the Government submits that the application of section 4 of the Labour Standards Law is not excluded because of a difference in job duties or type of job, and that it does not exclude consideration of employment management categories. The Government, while acknowledging that under the EEOL discrimination on the basis of sex is to be judged within the individual employment management categories, indicates that it would be inappropriate to deny automatically that there had been any discrimination between male and female workers belonging to different employment management categories. As a result, the *Guidelines on ways for employers to take appropriate measures with regard to items stipulated in the provisions concerning the prohibition of discrimination on the basis of sex, etc.* (2006) were adopted.

50. With respect to the interpretation by the courts of section 4 of the Labour Standards Law, the Committee notes that section 4 has been applied to different tasks and occupations in only a limited number of cases, namely two district court decisions. [5] It also appears that in none of the court decisions cited has a comparison been made between men and women performing different jobs under different employment management systems which were nonetheless considered of equal value. Where a comparison appeared to have been made between different employment management systems, it does not appear that the court compared jobs that were different but of equal value. [6]

51. The Committee also notes, from the information provided by the Government, the low number of cases covered by workplace inspections (six cases in 2009 out of 100,535 cases) in which the Labour Standards Inspection Authority provided guidance regarding violation of section 4 of the Labour Standards Law, the lack of particulars on the nature of the violations (i.e., whether these dealt with work of equal value) and regarding the guidance

[4] CEACR, Japan, observation, 2007. Similar comments are made in the observation of 2008.

[5] Kyo-gas Case and the Uchiyama Industrial Case.

[6] Kanematsu Case.

provided. The Committee also notes the lack of particulars regarding the methodologies used to identify instances of wage discrimination where men and women are engaged in work of a different nature, which is nonetheless of equal value, as well as the lack of particulars regarding the contents of the guidance provided by the Prefectural Labour Offices with respect to the violations of the EEOL and the conciliation by the Disputes Adjustment Commission, in particular whether these dealt with cases of wage discrimination.

52. The Committee notes that the concept of "work of equal value" as set out in the Convention ensures a broad scope of comparison: "'Work of equal value' includes but goes beyond equal remuneration for 'equal', the 'same' or 'similar' work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value".[7] The Committee notes that, while the Government asserts that the application of section 4 is not excluded because of a difference in job duties or type of job and does not exclude the consideration of different employment management categories, there is an absence of information to demonstrate that section 4 is being applied in practice to different job duties, types of jobs, and between employment management categories. The Committee concludes, therefore, that it does not appear that a broad scope of comparison, going beyond the same job duties, type of jobs and employment management categories, is being applied generally in practice, in the implementation of the legislation in force.

53. On the issue of the role of job evaluation in determining whether work is of equal value, the Committee notes that the Government indicates that it is not uniformly enforcing the use of job evaluation criteria, and rather focuses on discrimination in the individual aspects of employment management that affect wages, including with respect to merit ratings, placement and job assignments, the length of continuous employment and rank. It also states that job evaluation criteria do not necessarily facilitate the implementation of the Convention in Japan since human resources development is based on categories of job type and employment status. However, the Government also acknowledges that, in determining whether there has been a violation of section 4, a judgment is needed as to whether the wage disparity can be explained as being caused by the content, authority, responsibility, etc. of the jobs and differences in efficiency and skills, etc. The Government does not provide details, however, regarding how such an assessment is to be made.

54. The Committee notes that "the notion of paying men and women in accordance with the value of their work necessarily implies the adoption of some technique to measure and compare objectively the relative value of the jobs performed",[8] though the Convention does not prescribe any specific method for such an examination. The Committee notes that objective job evaluation is raised in *Article 3(1)* of the Convention, which refers to the taking of measures for objective appraisal of jobs on the basis of the work to be performed, "where such action will assist in giving effect to the provisions of this Convention". *Article 3(3)* then allows for differential rates of remuneration if they correspond, without regard to sex, to differences as determined by such objective appraisal of jobs. The Committee concludes that the information provided has not indicated how the relative value of jobs is determined with a view to determining if jobs are of equal value.

55. The Committee notes that the Government acknowledges the large wage disparities between men and women, and that there is a need for a range of issues to be addressed before substantial equality can be achieved between men and women. The Committee welcomes the range of measures that are being taken to address the issues underlying such disparities, including with respect to balancing work and family responsibilities, and

[7] CEACR, ILC, 2007, pp. 271–272.

[8] General Survey on equal remuneration, 1986, para. 138.

providing advice on facilitating women's conversion from one career track to another, and adopting guidelines to decrease wage disparities.

56. With respect to the complainant's allegation that the situation of unduly low wages among non-regular workers is a violation of the Convention, the Committee notes that no specific information was provided by the complainant in this regard; therefore, it will not address this point.

57. Based on the above considerations, the Committee concludes that further measures are needed, in cooperation with workers' and employers' organizations, to promote and ensure equal remuneration for men and women for work of equal value, in law and practice, in accordance with *Article 2* of the Convention, and to strengthen the implementation and monitoring of the existing legislation and measures, including measures to determine the relative value of jobs.

IV. The Committee's recommendations

58. ***In light of the conclusions set out in paragraphs 43–57 above concerning the issues raised in the representation, the Committee recommends that the Governing Body:***

(a) approve the present report;

(b) invite the Government to take due note of the matters raised in the above conclusions and to include detailed information thereon in its next report under Article 22 in respect of the Equal Remuneration Convention, 1951 (No. 100);

(c) entrust the Committee of Experts on the Application of Conventions and Recommendations with following up the matters raised in this report with respect to the application of the Equal Remuneration Convention, 1951 (No. 100); and

(d) make this report publicly available and close the procedure initiated by the representation of the Zensekiyu Showa-Shell Labor Union alleging non-observance by Japan of the Equal Remuneration Convention, 1951 (No. 100).

Geneva, 11 November 2011

Point for decision: Paragraph 58

(Signed) Ms Williams

Mr Anderson

Mr Adyanthaya