

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN JAPAN

REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF JAPAN

(Geneva, 18 and 20 February 2009)

EXECUTIVE SUMMARY

Japan has ratified six of the eight core ILO labour Conventions. In view of restrictions on the trade union rights of workers, determined measures are needed to comply with the commitments Japan accepted at Singapore, Geneva and Doha in the WTO Ministerial Declarations over 1996-2001, and in the 1998 ILO Declaration on Fundamental Principles and Rights at Work.

Japan has ratified the ILO core Convention on the Right to Organise and Collective Bargaining and the Convention on Freedom of Association and Protection of the Right to Organise. However many workers are excluded from the right to organise, the right to collective bargaining and the right to strike, in particular public sector workers. In practice this right to organise and collective bargaining is further undermined by the increase in precarious contracts and an increase in the number of holding companies and investment fund companies.

Japan has ratified the core ILO Convention on Equal Remuneration but not the Convention on Discrimination. Although progress has been made, discrimination between men and women in employment and remuneration continues, due to a concentration of women in part-time and temporary employment but also due to the two-track personnel administration system.

Japan has ratified the ILO core Convention on the Worst Forms of Child Labour and the Convention on Minimum Age. Child labour does generally not occur in Japan and education is free and compulsory up to the age of fifteen.

Japan has ratified the Convention on Forced Labour but not the Convention on the Abolition of Forced Labour. Forced labour is prohibited but there remain problems with trafficking of people into Japan for the purpose of forced prostitution and forced work, as well as forced labour practices among foreign workers and trainees.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN JAPAN

Introduction

This report on the respect of internationally recognised core labour standards in Japan is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

The ITUC affiliate in Japan is RENGO. 18.1% of the Japanese labour force was unionised in 2008.

I. Freedom of Association and the Right to Collective Bargaining

Japan ratified ILO Convention No. 87 on the Freedom of Association and Protection of the Right to Organise in 1965, and Convention No. 98 on the Right to Organise and Collective Bargaining in 1953.

The Constitution recognises the right to organise and the right to collective bargaining. However, this right is restricted in particular for civil servants and for employees of state-run companies and private companies that provide so-called essential services.

Three major labour laws govern the employment status of private sector workers. These are the Trade Union Law (TUL), which guarantees the right to organise and collective bargaining, the Labour Relations Adjustment Law (LRAL), which covers dispute settlements, and the Labour Standards Law (LSL), which deals with working conditions.

Workers have the right to bargain collectively and collective bargaining is widespread in Japan, but mainly at enterprise level.

Workers have the right to strike but those that are employed in the "essential services" have to give a ten day advance notice. These essential services include businesses involving electric power generation and transmission, transportation and railways, telecom, medical care and public health, and postal services.

In practice organising in Japan has become increasingly difficult due to the growing number of precarious non-regular workers. One third of the Japanese employees are part-timers

and other non-regular workers. Disguised contract labour, in particular in the manufacturing sector, has serious implications for working conditions and health and safety of workers.

Also, the practice of undertaking business through holding companies and an increase in the number of investment fund companies have led to difficulties for trade unions to conduct collective bargaining with such companies, which are not legally considered as employers.

The Industrial Training Programme (ITP) and the Technical Internship Programme (TIP), which provide three year visas to unskilled foreign workers for training, have been abused by employers. Work permits are required and while workers have the right to organise, that right is indirectly undermined, mostly through contracts between the trainees and trainee-sending agencies of the sending countries. Many of these workers end up in sweatshops where they are forced to work long hours, under dangerous conditions and below minimum wages. Employment agencies add to the abuse by providing inferior employment contracts.

In the public sector many restrictions are in place on the right to organise, the right to strike and the right to collective bargaining. Public sector workers have the right to organise with the exception of members of the police force, fire fighting services, penal institutions, the maritime safety agency and the self-defence forces. However trade union registration for local public employees requires separate unions to be created in each municipality, which contradicts “freedom of association”. Administrative and clerical workers do not have the right to bargain or conclude collective agreements at local or national level. Their wages are set by law and regulations.

Public sector workers do not have the right to strike. Under the National Public Service Law and the Local Public Service Law, trade union leaders who incite strike action in the public sector can be dismissed and fined or imprisoned for up to three years.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has made particular comments and requests with regard to the denial of the right to organise of fire fighters, the prohibition of the right to strike of public servants, and the right to organise of prison staff. According to the CEACR, fire fighters should have the right to organise. Civil servants who are not exercising authority in the name of the state and workers who are not working in essential services within the strict meaning of the term should be ensured the right to strike too. However, many of these ILO Committee recommendations regarding public sector workers have been ignored.

Some of the Public Agencies in Japan have been transformed into Independent Administrative Institutions (IAIs). There are specified IAIs and non-specified IAIs. All employees in IAIs have the right to organise and collective bargaining, however, only workers in non-specified IAIs have the right to strike. A plan for restructuring of IAIs was adopted in December 2007.

Conclusions

The right to organise, collective bargaining and the right to strike are recognised in Japan but serious restrictions exist, in particular for civil servants and employees in state-run enterprises and essential services. In practice the right to organise and collective bargaining is

further undermined due to the increase in the number of non-regular workers as well as in the number of holding companies and investment fund companies.

II Discrimination and Equal Remuneration

Japan ratified Convention No. 100 on Equal Remuneration in 1967 but has not ratified Convention No. 111 on Discrimination (Employment and Occupation).

The law prohibits discrimination on the basis of race, gender, disability, language and social status. However, discrimination remains a problem in Japan.

Despite the existence of the Equal Employment Opportunities Law and a reduction in direct discrimination, indirect discrimination against women remains a problem in Japan. One of the causes is the “dual career ladder” system which encourages male employees along the professional career track and women towards the general or clerical track.

Women are underrepresented in senior and managerial posts. Discrimination against women in wages and employment occurs in almost all sectors, although less regarding specialists, professionals, skilled workers and the like. The gender wage gap is highest among full time regular employees with women earning 67% of male wages in 2007. While the wage of women is 89% that of men among part-time non regular employees, this somewhat small gap is explained mainly by the fact that part-time non regular employees are mostly women.

The Japanese labour market is further characterised by a three-tier employment pattern with a small number of permanent managerial posts, a number of experts in certain fields and a large group of non-permanent, part-time or outsourced workers. Most women fall in this third category which is not addressed sufficiently by the Equal Employment Opportunities Law.

The law prohibits sexual harassment. However, sexual harassment remains a problem in Japan. In 2006 there were 11,102 reports of sexual harassment.

The law prohibits discrimination against persons with physical and mental disabilities in employment, education and access to health care. However, the effectiveness of the Disabled Persons Fundamental Law is unclear and, in reality, there exists discrimination against persons with disabilities. For example, the number of private companies which fulfilled the statutory employment rate for persons with disabilities remains low and stood at just 43.8% in 2007.

Conclusions

Discrimination in employment and remuneration is prohibited but widespread in Japan. There is a high gender wage gap, serious under-representation of women in managerial posts and a high level of indirect discrimination. Sexual harassment is a problem as well.

III. Child Labour

Japan ratified Convention No. 138, the Minimum Age Convention in 2000 and Convention No. 182, the Worst Forms of Child Labour in 2001.

The minimum age specified in the Convention is 15 years. Children under the age of 18 are not allowed to work in dangerous or harmful jobs. Children between the age of 13 and 15 are allowed to perform light work. Children under the age of 13 may be employed in the entertainment industry only. The law is well enforced and child labour does not generally occur.

However, the law excludes from its application employment of children in family undertakings and domestic workers. Moreover, the law restricting hazardous work by children does not apply to children employed in family undertakings.

Furthermore, a number of migrant children in Japan, mainly of Brazilian origin have been found working in factories.

Education is free and compulsory until the age of 15.

Conclusions

Child labour does not generally occur in Japan and legislation is well enforced.

IV. Forced Labour

Japan ratified Convention No. 29, the Forced Labour Convention in 1932 but has not ratified Convention No. 105, the Abolition of Forced Labour.

Forced labour is prohibited by law and does not generally occur. There are reports that some companies force foreign workers to work illegal overtime, control their movements and travel documents, and force them to make deposits in company controlled accounts.

The National Public Service Law and the Local Public Service Law, referred to in Section I above, provide that public employees who incite strike action can be fined or sentenced up to three years' imprisonment, or possibly dismissed, reprimanded with a pay cut or disciplined. This is not in line with Convention No. 105 which prohibits penal servitude as a punishment for having participated in a strike.

Trafficking for the purpose of forced prostitution or forced labour is prohibited, however trafficking remains a problem. Japan is a destination and transit country for men, women, and children trafficked for the purposes of commercial sexual exploitation, pornography and forced labour. The trafficked women and children for forced prostitution mainly come from China, South Korea, Southeast Asia, Eastern Europe, Russia, and, to a lesser extent, Latin America. Japan is also a transit country for persons trafficked from East Asia to North America. Forced labour also occurs through training programmes that are characterised by fraudulent terms of employment, debt bondage, restrictions on movement and withholding of salary payments.

Conclusions

Forced labour is prohibited and does generally not exist in Japan. However trafficking, mainly of women and girls, for sexual exploitation or forced work remains a serious problem. There are also abuses among foreign workers and trainees.

Final Conclusions and Recommendations

1. The government of Japan must ratify ILO Convention No. 111 on discrimination and ILO Convention No. 105 on the Abolition of Forced Labour, and implement measures to ensure an effective transposition into national law.
2. The government has to bring legislation in line with Conventions No. 87 and No. 98 and eliminate restrictions on the right to collective bargaining and the right to strike for public sector workers, including all administrative and clerical staff. The government has to adopt the recommendations of the ILO Committee on Freedom of Association and the Committee of Experts on the Application of Conventions regarding these issues.
3. The National Public Service Law and the Local Public Service Law, which stipulate that public servants who incite strike action can be imprisoned, must be amended.
4. Wage inequalities and inequalities in access to employment continue to exist between men and women. The government must implement affirmative actions to ensure equal representation of women in managerial and regular posts. The government has to take measures to address indirect discrimination and to extend protection to non-permanent workers. It must furthermore increase efforts and measures to ensure equal pay for work of equal value.
5. The government has to extend labour legislation (including on hazardous labour), inspection and enforcement to children employed in family undertakings and domestic work.
6. There is a need for increased labour inspection, enforcement of legislation and prosecution in the area of forced labour including trafficking of people for forced labour.
7. In line with the commitments accepted by Japan at the Doha WTO Ministerial Conference and its obligations as a member of the ILO, the Government of Japan should therefore provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.
8. The WTO should draw to the attention of the authorities of Japan the commitments they undertook to observe core labour standards at the Doha Ministerial Conference. The WTO should request the ILO to intensify its work with the Government of Japan in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

References

- ITUC, *Annual Survey of violations of trade union rights*, 2008
- ILO, Committee (CEACR) reports 2004-2007
- ILO, Ratification of Core Labour Standards
- The Japan Times, Women's group aims to narrow wage gap, 4 October 2008
- Kyodo News/The Japan Times , Gifu firms warned on Brazilian child labor, Saturday, Dec. 30, 2006, <http://search.japantimes.co.jp/mail/nn20061230a1.html>
- RIETI, Kazuo Yamaguchi, Measures for narrowing male-female wage gap: support for work-life balance, 2008.
- US Department of State, Trafficking in Persons Report, June 4, 2008
- US Department of State, Country Reports on Human Rights Practices - 2007 Released by the Bureau of Democracy, Human Rights, and Labor, March 11, 2008
