

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN JAPAN

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

(Geneva, 15 and 17 February, 2011)

EXECUTIVE SUMMARY

Japan has ratified six of the eight core ILO labour Conventions. However further 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 ILO's Declaration on Fundamental Principles and Rights at Work and its 2008 Social Justice Declaration.

The right to organise, collectively bargain and strike are recognised, except for civil servants and employees in state-run enterprises and "Public Welfare Undertakings" who are partially excluded from such rights. Organising and collective bargaining are further undermined due to the increase in the number of non-regular workers such as dispatched agency workers and fixed-term contract workers who in practice face significant difficulties in exercising their right to organise.

Discrimination in employment and remuneration is prohibited but present in Japan. There is a considerable gender wage gap and serious under-representation of women in managerial posts.

Child labour does not generally occur in Japan and legislation is well enforced. However, the law's scope of application excludes family undertakings and domestic workers.

Forced labour is prohibited and in general does not take place in Japan. However trafficking, mainly of women and girls, for sexual exploitation remains a problem. There are reports of forced labour and debt bondage in Japan's foreign trainee programme.

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 WTO 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 and in the Declaration on Social Justice for a Fair Globalisation adopted unanimously by the ILO in 2008.

The ITUC affiliate in Japan is the Japanese Trade Union Confederation (JTUC-RENGO) which has a membership of 6,663,881 persons covering various areas of employment in Japan.

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 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.

In the public sector many restrictions on the right to organise, the right to strike and the right to collective bargaining are in place. 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 self-defence forces. In 2009, the government revised the Order of the Organisation and Operation of the Fire Defence Personnel Committee to include the establishment of a system of liaison facilitation, the Fire Defence Personnel Committee system. JTUC-RENGO has indicated that the committee has played an important role in improving the working conditions and environment of firefighters, but the right to organise has yet to be granted. In local government, trade

union registration for local public employees requires separate unions to be created in each municipality. Moreover, administrative and clerical workers do not have the right to bargain or conclude collective agreements at local or national level and their wages are set by law and regulations.

Public sector workers do not have the right to strike. The National Public Service Law and the Local Public Service Law provide that public employees who incite strike action can be fined, sentenced to up to three years' imprisonment, 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.

In the private sector, 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 who are employed in what the government defines as "essential services" have to give a ten day advance notice. "Public Welfare Undertakings" are defined so as to include electric power generation and transmission, water and gas supply, transportation and railways, telecommunications, medical care and public health, and postal services.

The increased use of non-regular workers is creating great obstacles to unions seeking to organise. The Labour Force Survey conducted by the Ministry of Internal Affairs and Communications (July - September 2010) found that 34.5 per cent of Japanese employees are non-regular workers including part-timers. The number of atypical workers, including part-time employees, indirectly employed, dispatched agency workers, fixed-term contract workers, and the number of individuals working on a contract basis is growing. This happens because legal provisions protecting these workers are barely adequate. For example, fixed-term contracts can be concluded for up to three or five years, depending on a worker's skills level, but there are no other legal provisions for use of fixed-term contracts. The increased use of non-regular workers undermines regular employment and thus undermines the right to organise. In the manufacturing sector in particular, disguised contract labour has serious implications also for working conditions and health and safety of workers.

The practice of undertaking business through holding companies and investment funds, which are not recognised as employers under Japanese law, has led to significant difficulties for trade unions seeking to conduct collective bargaining in such companies.

The right to organise has been further undermined by the abusive use of the Industrial Training Programme (ITP) and the Technical Internship Programme (TIP), which provide three year visas to unskilled foreign workers for training. 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. Despite promises of being provided training in technological skills, many of the workers end up in sweatshops where they are forced to work long hours under dangerous conditions and for as little as half the minimum wage. Employment agencies add to the abuse by providing inferior employment contracts. The

government amended the “Immigration Control and Refugee Recognition Act” in July 2009 (which entered into force in July 2010), revising the ITP and TIP and including new provisions. The full impact of the amendments has yet to be seen.

The right to organise, collectively bargain and strike are recognised, except for civil servants and employees in state-run enterprises and “Public Welfare Undertakings” who are partially excluded from such rights. Organising and collective bargaining are further undermined due to the increase in the number of non-regular workers who in practice find it extremely difficult to utilise their right to organise.

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. Despite the stipulations of the Equal Employment Opportunities Law, 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’s participation in the labour force stands at 69 per cent and their average monthly wage in 2009 was 226,100 yen, while men earned 333,700 yen. Women are underrepresented in senior and managerial posts and overrepresented in clerical and technical jobs. In terms of school enrolment and education both genders are equal. 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, including in the workplace, and a system of identification of companies that fail to protect their employees from sexual harassment is in place. However, the system does not include any enforcement provisions. In practice, sexual harassment in the workplace remained widespread. In 2008 the Ministry of Health, Labour, and Welfare received 13,529 consultations, mostly from female workers. The government also operates hotlines which handle consultations on sexual harassment.

The law prohibits discrimination against persons with physical and mental disabilities in employment, education and access to health care, and stipulates that companies and public services must hire minimum proportions of disabled persons. In practice, there exists discrimination against persons with disabilities and the effectiveness of the Disabled Persons Fundamental Law is unclear. Public employment of persons with disabilities exceeds the minimum, but according to government statistics the private sector lags behind significantly. In a survey of private companies with more than 56

workers, only 1.6 per cent of their employees were persons with disabilities contrary to the legal obligation to employ at least 1.8 per cent.

Although the law prohibits discrimination on the grounds of race, nationality and ethnic background, the UN Special Rapporteur on the Human Rights of Migrants has found that migrants in Japan face discrimination, exploitation and other forms of mistreatment, including in the workplace, education and healthcare. Many of these persons are second generation migrants.

Although the cast system was abolished almost two centuries ago, the descendants of the former lower cast – the Burakumin - continue facing societal discrimination. There are three million such persons who are reported to have less access to employment opportunities. The Japan Times quoted sources saying that the descendants of this cast are often barred from jobs and face other forms of discrimination. The Ainu indigenous group is also reported to be discriminated against in terms of access to employment opportunities. A 2009 Hokkaido University survey showed that “household incomes among Japan's 50,000 Ainu are only 60 per cent of the national average, and college advancement rates are half those of other Japanese people.”

It is not reported that homosexuals faced discrimination in employment.

There were no reports of discrimination in employment against persons living with HIV/AIDS.

Discrimination in employment and remuneration is prohibited but present in Japan. There is a considerable gender wage gap and serious under-representation of women in managerial posts. Members of the Ainu ethnic group, descendants of the former lower caste and migrants are reported to face discrimination in employment.

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.

Children under the age of 18 are not allowed to perform hazardous work in Japan. Children between the age of 13 and 15 are allowed to perform light work. Education is free and compulsory until the age of 15.

The law is well enforced and child labour does not generally occur. However, the law excludes from its application employment of children, including hazardous work, in family undertakings and domestic workers. Indeed there is no legal provision in terms of labour standards for family undertakings and domestic workers so that adults as well as children are not covered by law in that regard.

Child prostitution and pornography are illegal and punished with imprisonment with labour for up to three years and by fines. However, the relatively new trend of “enjo-

kōsai”, which means “compensated dating”, needs special attention. Women and girls arrange dates with adult men usually through online dating services. Although compensated dating does not always involve sexual intercourse, it is a paid activity that can harm the morals of children and as such it constitutes self-employment in hazardous work. The government has indicated to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) that it has taken measures under the National Youth Development Policy and based on the Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting to eliminate child prostitution. The government has also amended the Online Dating Site Regulation Act, “so as to take measures regarding the promotion of private sector activities preventing children from using Internet dating businesses, as well as to strengthen regulations, including the introduction of a notification system to Internet dating business operators.”

Child labour does not generally occur in Japan and legislation is well enforced. However, the law’s scope of application excludes family undertakings and domestic workers, as there is no legal provision in terms of labour standards for family undertakings and domestic workers.

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. Japan does not have a specific anti-trafficking law and therefore such crimes are prosecuted under other laws. The Criminal Code, amended in 2005, prohibits the buying and selling of human beings and establishes penalties of up to seven years’ imprisonment. The Immigration Control and Refugee Recognition Act was also amended so as to ensure that victims of trafficking would not be subject to deportation even if they had been engaged in prostitution.

Forced labour does not generally occur. However, there are reports that some employers who make use of the Industrial Training Programme (ITP) and the Technical Internship Programme (TIP) to employ foreigners for traineeship confiscate the workers’ work permits and travel documents, apply restrictions on the workers’ movement, and coerce them into forced labourers. The *Trafficking in Persons Report 2010* reveals that “women typically faced debt upwards of \$49,000 upon commencement of their contracts [between the trainees and trainee-sending agencies of the sending countries], and had to pay employers fees for living expenses, medical care, and other necessities, leaving them predisposed to debt bondage. “Fines” for misbehaviour added to their original debt, and the process that employers used to calculate these debts was not transparent.” The authorities fail to adequately enforce the law regarding the foreign trainee programme and there have been hardly any investigations or prosecutions of offenders.

Trafficking for the purpose of forced prostitution or forced labour is prohibited, however it remains a problem. Reports show that Japanese women and girls increasingly

fall victims of sex trafficking within the country. In 2009, the authorities prosecuted five persons for trafficking, however, there is no information whether they were sentenced and to what punishment. Data show that most convicted offenders receive suspended sentences. The authorities identified 17 victims in 2009, a figure that is lower than in any of the past five years. Among those, there was no male victim, and furthermore, there are no official data for identified child victims for the interval 2009-2011. The 17 victims were granted shelter and medical and psychological care, but their freedom of movement was restricted.

The authorities encourage victims' participation in the prosecution process, but they do not provide special incentives, like work permits, for such assistance. Japan has however granted victims special residence permits if they wish to stay in Japan.

The government released its Action Plan for Countermeasures against Human Trafficking in December 2009. Training on trafficking in human beings is part of the curriculum in the police academy and the IOM provides assistance in these trainings. Japan cooperates with some sending countries, e.g. Thailand, to support victims' reintegration in home.

Forced labour is prohibited and does generally not exist in Japan. However trafficking, mainly of women and girls, for sexual exploitation or forced labour remains a problem. There are reports of forced labour and debt bondage in Japan's foreign trainee programme.

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 should allow the rights to organise, collectively bargain and strike to all civil servants and employees of state-run companies, in line with ILO Conventions No. 87 and No. 98 and the recommendations of the ILO Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations.
3. The government should formulate a new law that protects employment and working conditions of fixed-term contract workers so that they are able to benefit from the right to organise.
4. Holding companies and investment funds should be considered employers under Japanese law.
5. The government needs to take measures to abolish societal norms and legal regulations which permit the “dual career ladder” system to be the dominant system for advancing careers. In addition, the government should take specific measures to close the gender pay gap.
6. The system of identification of companies that fail to protect their employees from sexual harassment should be reformed in order to include enforcement provisions.
7. The authorities should provide incentives and other measures to enforce the minimum rate of employment of persons with disabilities in the private sector
8. The government should make further efforts in changing societal norms towards the descendants of the former lower caste and the Ainu and take measures to provide them with improved employment opportunities.
9. The labour law, including its child labour regulations, should be amended in order to apply in family undertakings and domestic servitude.
10. The government should undertake large scale investigations and enforce the law in the country’s foreign trainees’ programme, because reports show that there are grave abuses of human and labour rights and cases of forced labour and debt bondage.
11. Japan should adopt a specific anti-trafficking law. The authorities need to make more progress in investigating cases of trafficking, identifying victims, prosecuting offenders and punishing them strictly.
12. In line with the commitments accepted by Japan at the Singapore and Doha WTO Ministerial Conferences and their obligations as members of the ILO, the government of Japan should provide regular reports to the WTO and the ILO on their legislative changes and implementation of all the core labour standards.

13. The WTO should draw to the attention of the authorities of Japan to the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. 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.

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