

## **CEACR:**

### **Individual Observation concerning Convention No. 29, Forced Labour, 1930 Japan (ratification: 1932) Published: 1997**

The Committee has noted the information supplied by the Government in reply to earlier comments in its reports dated 31 May 1996 and 30 October 1996, as well as the comments made by the Japanese Trade Union Confederation (JTUC-RENGO) in a communication dated 30 September 1996, a copy of which was transmitted to the Government on 14 October 1996.

In its previous observation, the Committee took note of observations of the Osaka Fu Special English Teachers' Union (OFSET) dated 12 June 1995 concerning the application of the Convention during the years prior to the Second World War and during the war. The allegations referred to gross human rights abuses and sexual abuse of women detained in so-called military "comfort stations", and OFSET asked for appropriate compensation to be made.

The Committee had noted that the abuses referred to fell within the absolute prohibitions contained in the Convention. The Committee further considered that such unacceptable abuses should give rise to appropriate compensation, since the Convention had provided, even for forms of compulsory service that could be tolerated under Article 1(2) during a transitional period after its coming into force, that the persons called up for such service were to be paid compensation and entitled to disability pensions under Articles 14 and 15.

The Committee had, however, noted that under the Convention and the Committee's terms of reference, it did not have the power to order the relief sought. This relief could be given only by the Government and, in view of the time that had elapsed, the Committee expressed the hope that the Government would give proper consideration to the matter expeditiously.

In its report dated 31 May 1996, the Government indicates that, irrespective of whether or not there was a violation of the Convention, regarding the issues of reparations and/or settlement of claims relating to the war, including those of former wartime "comfort women", Japan has sincerely fulfilled its obligations according to the relevant international agreements and, therefore, the issues have been legally settled between Japan and the parties to those agreements.

The Government indicates that it has been expressing its feeling of apologies and remorse on the issue of wartime "comfort women". As a way of demonstrating such feelings, the

Government has been working to face squarely the facts of history, including the issue of wartime "comfort women", in order to ensure that they are properly conveyed to future generations and thus promote better mutual understanding with the countries and areas concerned. In this context, the Government has inaugurated a "Peace, Friendship and Exchange Initiative".

In addition, the Government reports that it has been providing its maximum support to the Asian Women's Fund, which was established with the aim of achieving the atonement of the Japanese people for former wartime "comfort women" and protecting women of today from menaces to the honour and dignity of women in full cooperation with the Japanese people at large including both employers and workers. The Government states that, through these efforts, Japan has been sincerely addressing the issue of wartime "comfort women". The Committee also notes that in its comments on the application of the Convention, the Japanese Trade Union Confederation (JTUC-RENGO) considers that these measures, in which it has been actively participating, could constitute significant progress for the compensation of the victims, if carried out smoothly.

In its report of 31 May 1996, the Government further states that the Committee's observation was based solely on the letter dated 12 June 1995 from the Osaka Fu Special English Teachers' Union (OFSET) and that the Government was not given appropriate notice to comment on that letter, contrary to established practice. Also prior to the submission of the letter by OFSET, a separate representation had already been made in March 1995 by the Federation of Korean Trade Unions (FKTU) to the International Labour Office under article 24 of the ILO Constitution regarding the same issue, and the Government considers that the Committee's observation was made while the examination of the separate representation was in progress.

The Committee has taken due note of these indications. As regards the representation made on 20 March 1995 under article 24 of the ILO Constitution by the FKTU, the Committee notes that the ILO Governing Body did not examine the substance of the representation, nor take a decision on its deceptibility by the time the FKTU withdrew the representation by letter of 30 May 1996.

As regards the question of whether or not there was a violation of the Convention, the Committee also has noted the discussion that took place at the 48th Session of the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities in

August 1996 on the issue of systematic rape, sexual slavery and slavery-like practices during wartime. During the discussion, a question was raised regarding the relevance of the Convention to the issue of wartime "comfort women" in the light of the exemptions in Article 2 of the Convention.

In this regard, the Committee refers to the explanations provided in paragraph 36 of its General Survey of 1979 on the abolition of forced labour concerning the exemption made in Article 2(2)(d) of the Convention for "any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population". The Committee has pointed out that the concept of emergency - as indicated by the enumeration of examples in the Convention - involves a sudden, unforeseen happening calling for instant counter-measures. To respect the limits of the exception provided for in the Convention, the power to call up labour should be confined to genuine cases of emergency. Moreover, the extent of compulsory service, as well as the purpose for which it is used, should be limited to what is strictly required by the exigencies of the situation. In the same manner as Article 2(2)(a) of the Convention exempts from its scope "work exacted in virtue of compulsory military service laws" only "for work of a purely military character", Article 2(2)(d) concerning emergencies is no blanket licence for imposing - on the occasion of war, fire or earthquake - any kind of compulsory service but can only be invoked for service that is strictly required to counter an imminent danger to the population.

The Committee concludes that the present case does not fall within the exemptions contained in Article 2(2)(d) and 2(2)(a) of the Convention, and clearly therefore there was violation of the Convention by Japan.

The Committee recalls that, under Article 25 of the Convention, the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying the Convention to ensure that the penalties imposed by law are really adequate and strictly enforced. The Committee notes that, under sections 176 and 177 of the Penal Code of Japan (Act No. 45 of 24 April 1907) indecency through compulsion and rape are punishable offences.

The Committee has taken note of the detailed information supplied by the Government in its report of 30 October 1996 on measures it has taken to express its apologies and remorse to the "wartime comfort women" and to support the whole operational cost of, and provide all

possible assistance to, the "Asian Women's Fund" set up to offer atonement money to the former "comfort women", as well as medical and welfare support through the use of governmental resources. The Committee trusts that the Government will continue to take its responsibility for the measures necessary to meet the expectations of the victims and will provide information on further action taken.