

CEACR:

Individual Observation concerning Convention No. 29, Forced Labour, 1930 Japan (ratification: 1932) Published: 2001

1. The Committee recalls that in several recent sessions, it has considered the application of the Convention to two situations which occurred during the Second World War: that of wartime "comfort women" and of wartime industrial forced labour. It notes that since the last such examination, there has continued to be considerable volume of correspondence from workers' organizations, requesting the Committee to examine the case further, as well as substantial replies from the Government recalling the reasons for which it considers the questions to be closed.

2. In its report, the Government states that it "has made it clear from the outset that Japan has already settled the issues of reparation, property and claims relating to the last war with the governments concerned, and that the issues raised by the Committee of Experts are within the scope of these issues which have been settled. Accordingly, the Government of Japan considers that they should not be taken up for deliberation by the ILO". In this regard, the Government refers to the San Francisco Peace Treaty, bilateral peace treaties, and other relevant treaties and agreements between Japan and Indonesia, China, the Republic of Korea and the United States, all of which included provisions foreclosing individual claims against Japan by citizens of those countries. The Government also refers to various formal expressions of apology, as well as to substantial development assistance to a number of the countries concerned. The Government adds that: "It is quite clear that ... these issues hold no relevance to the ILO as current topics for deliberation. The Government of Japan therefore strongly hopes that this will be the last time for the Committee of Experts to take up and deliberate on these issues." The Government also refers to the comments of the Japanese Trade Union Federation (JTUC-Rengo), in a letter dated 20 October 2000, indicating that "Rengo supports the report of the Japanese Government" and that "Rengo insists also strongly that it is appropriate for the Committee to close deliberations on these cases".

3. The Committee recognizes that, as a matter of law, the Government is correct in stating that compensation issues have been settled by treaty. It feels, nonetheless, that it is important to continue to deal with the extensive comments of trade unions on this subject, to note developments in how claims for compensation are handled, and to provide information on how the Government views the question. It hopes that it will be unnecessary to do so again at future sessions.

4. The Committee notes that in addition to the workers' organizations' observations it discusses below, it has also received observations from Tokyo Local Council of Trade Unions - Tokyo-Chihyo, in a letter dated 1 November 2000. This communication has been sent to the Government for any comments it may wish to make, and will be examined when any such comments arrive.

I. Wartime "comfort women"

5. In its previous observations, the Committee has noted the gross human rights abuses and sexual abuse of women detained in so-called military "comfort stations" during the Second World War and the years leading up to it, when the women concerned were forced to provide sexual services to the military. The Committee has found that this was contrary to the requirements of the Convention, and that such unacceptable abuses should give rise to appropriate compensation, while noting also that it did not have the power to order relief. The Committee has stated that this relief could only be given by the Government as the responsible body under the Convention and that, in view of the time elapsed, it hoped that the Government would give proper consideration to the matter expeditiously. The Committee notes that the Worker members of the Conference Committee on the Application of Standards stated in 1998 that, while the case was not to be discussed in full by the Conference Committee, they hoped that the Government would meet with the trade unions and the representative organizations of the women concerned, as well as with other governments, to find an effective solution which met the expectations of the majority of the victims.

6. The Committee has also noted in previous observations that the Government has indicated that, while it was not directly liable for compensation to these women, it has provided the maximum possible support to the "Asian Women's Fund" (AWF), which was established in 1995 with the aim of achieving the atonement of the Japanese people and providing funds to the women concerned. The Committee also noted the Government's indication that it has also provided considerable medical and welfare support to countries in which the victims live through the use of government resources. The organizations which have asked for additional measures from Japan have taken the position that the AWF is not a sufficient response, as there has been no compensation paid to victims directly by the Government and no apology based on an acknowledgement of legal responsibility towards the victims. They have noted that most of

the women concerned have not availed themselves of the assistance of the AWF, though the Government has indicated some 170 cases in which assistance from this fund has been accepted.

7. Further comments have been received on this question from several workers' organizations. The Federation of Korean Trade Unions and the Korean Confederation of Trade Unions, in a letter of 8 September 2000, forwarded information on the consideration by the United Nations Sub-Commission on the Promotion and Protection of Human Rights of the issue of wartime sexual slavery, in particular the report by Ms. Gay McDougall, Special Rapporteur on systematic rape, sexual slavery and slavery-like practices (UN doc. E/CN.4/Sub.2/2000/21) and the resolution on the same issue adopted by the Sub-Commission in 2000. (Similar references have been made by other organizations, but will not be repeated below.) The Government has noted that although the report did deal in part with Japan, the resolution makes no mention of Japan, but refers instead to ongoing and more recent situations. The Committee notes, however, the opinion expressed in the resolution on an earlier report of the Special Rapporteur that "the rights and obligations of States and of individuals referred to in the present resolution cannot, as a matter of international law, be extinguished by treaty, peace agreement, amnesty or by any other means" (UN document E/CN.4/Sub.2/RES/1999/16).

8. The two unions also indicate that eight lawsuits are being examined by Japanese courts in which wartime "comfort women" are demanding compensation and formal apologies from the Government. The Government has indicated that - as noted by the Committee in its previous comment - in April 1998 the Shimonoseki Branch of the Yamaguchi District Court (the lowest of three tiers of courts) ordered the Government to pay consolation money to each of three plaintiffs who had brought lawsuits in Japan, as state compensation for failure to legislate a necessary law, but that this was appealed to the Hiroshima High Court in May 1998, and is still under examination. The Government states that the reasoning behind the earlier ruling was rejected by the Tokyo High Court in another lawsuit in August 1999. In three of the cases mentioned by the two unions which are pending in high courts, lower courts ruled in favour of the State; the five others are still under examination by district courts. The Committee requests the Government to keep it informed of developments regarding these lawsuits.

9. In another communication, the Netherlands Trade Union Confederation (FNV), by a letter of 23 November 1999, submitted documentation provided to it by the "Foundation of Japanese Honorary Debts". The Government has questioned the validity of this communication as the information did not originate with the workers' organization; but the Committee recalls that it has always considered that information provided by trade unions in these circumstances falls within the bounds of its practice in dealing with workers' and employers' comments. The

FNV communication indicates that Japan has not provided compensation to women of Dutch nationality who were forced to become "comfort women". The Government has stated in reply that as the identification of wartime "comfort women" in the Netherlands has not been carried out by the Dutch authorities, the Government of Japan and the AWF, "in consultation with the Dutch people concerned", have explored projects to be implemented in the Netherlands, including, for instance, the provision of goods and services in the medical and social welfare areas. The Government also refers to expressions of appreciation for these actions made by the Dutch Prime Minister during Japan-Netherlands summit talks on 21 February 2000.

10. The Committee notes the considerable number of claims and actions still under way. In view of the fact that many of the claimants do not consider the AWF compensation to be acceptable, the Committee hopes the Government will find an alternative way, in consultation with them and the organizations which represent them, to compensate the victims before it is too late to do so, in a manner that will meet their expectations.

II. Wartime industrial forced labour

11. In this case as well the Committee has previously found forced conscription of many thousands of persons from other Asian countries to work in Japanese wartime factories to have been contrary to the Convention. The Government indicates in its response that all legal claims were settled by treaties after the Second World War, and by formal apologies by the Government, and that no further individual claims are admissible. It has detailed relations with several governments in this regard, including China, Indonesia, the Republic of Korea and the United States. The Government indicates that in this case as well, court actions are proceeding in Japan, and that seven cases raised by Korean nationals and seven others by Chinese nationals are in the courts. In two cases by Korean nationals and two by Chinese nationals, the lower courts ruled in favour of the Government and appeals are now pending, while the ten others are being examined by district courts. Three other cases raised by Korean nationals have been settled out of court, without any recognition of legal responsibility by the companies concerned pertaining to the conscription of these persons.

12. The Committee understands, however, that during its session a settlement was reached in one of the pending court cases, by which the contracting firm Kajima agreed to establish a 500 million yen (approximately \$4.5 million) fund to compensate survivors and relatives of conscripted Chinese labourers who died at its Hanaoka copper mine during the war, with the

fund to be administered by the Chinese Red Cross. The Committee requests the Government to provide additional information on this case, and its impact on similar lawsuits against other firms.

13. The Committee notes that the two Korean trade unions which submitted comments compared the response of the Government and of Japanese companies to that of governments and companies in Europe and North America that were asked to compensate former wartime slave labourers. The Government indicates that it is difficult and inappropriate to simply compare and evaluate actions taken by different countries since they involve different historical, social and economic backgrounds and circumstances. It notes, for instance, that Germany did not conclude any treaties which covered questions of reparations, property and claims in a comprehensive manner, because it was divided into two countries after the war.

14. The Kanto Regional Council of the All Japan Shipbuilding and Engineering Union submitted comments in a letter of 1 October 1999, referring to actions taken in the US State of California. It indicates that the state adopted a law in June 1999 which extended the statute of limitations for forced labour victims from the Second World War to bring claims. The Government indicates in response that Japan and the United States are in full agreement that the two countries have already settled the issues concerned by the San Francisco Peace Treaty. It notes that several former United States prisoners of war filed a series of suits against Japanese companies and their subsidiaries in the United States, but that on 21 September 2000, the United States District Court for the San Francisco Division of the Northern District of California dismissed the claims on the grounds that the Peace Treaty waived all the reparations claims against Japan by the United States and its nationals. Other similar suits are pending but have not yet been resolved. The Committee has also received information on other lawsuits which have been brought in the United States in this regard, but has not been notified of their disposition. The Engineering Union has also stated, however, that some lawsuits brought against companies in Japan which benefited from wartime forced labour (or are successors of those companies) have resulted in settlements by the companies without a recognition of liability.

15. As concerns claims by Indonesian survivors of forced labour in Thailand and Myanmar, the Government repeats that this issue has also been settled by a comprehensive treaty of peace with the Government of Indonesia. There are also indications of the conscripted labour of more than 8,000 children from Taiwan under Japanese rule in Japanese fighter plane factories. In this instance the Government indicates that the Taiwanese authorities were to deal with the issues of property and claims, but that it became impossible for Japan to deal with the issues after it normalized relations with China. The Government indicated that it provided "condolence

money" under special legislation to Taiwanese people who were soldiers or civilian workers in the Japanese military.

16. In the light of the information referred to above, it is apparent that a number of former prisoners and others still feel that they were not adequately compensated by inter-state peace agreements and other arrangements, and that there are still a number of claims pending in different instances. In view of the age of the victims, and the rapid passage of time, the Committee again expresses the hope that the Government will be able to respond to claims of these persons in a way which is satisfactory both to the victims and to the Government.