

Measures to prepare for ratification of the Abolition of Forced Labour Convention enacted

Before Japan can ratify Convention No. 105 it has had to reform laws that allowed for prison with hard labour as a punishment for strike organisers

On 9 June 2021, the National Diet (parliament) of Japan enacted a Bill to prepare legislative measures to pave the way for Japan’s ratification of the International Labour Organisation Abolition of Forced Labour Convention, 1957 (No. 105), following approval by a majority vote in the House of Councillors (the Diet’s Upper House). ILO Convention No. 105 is one of the eight core ILO Conventions, and Japan has been criticised internationally for failure to ratify it. Article 1 of the Convention requires every ratifying member State:

- to suppress and not to make use of any form of forced or compulsory labour—*
- (a) *as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;*
 - (b) *as a method of mobilising and using labour for purposes of economic development;*
 - (c) *as a means of labour discipline;*
 - (d) *as a punishment for having participated in strikes*

ILO Convention No. 105 and the Asia-Pacific region

Just 11 ILO member States have not ratified ILO Convention No. 105, and they are all in the Asia Pacific region. They are: Brunei Darussalam; China; Japan; Lao; Marshall Islands; Myanmar; Palau; South Korea; Timor-Leste; Tonga; and Tuvalu. Two further States ratified and then denounced the Convention: Malaysia and Singapore, also both ILO member States in the Asia-Pacific region. North Korea is not an ILO member State but is yet another country in the region outside of the Convention. But not all countries in the region have this approach: Australia (1960); New Zealand (1968); Philippines (1960); and Indonesia (1999) have all ratified the Convention. Recently signatories such as the Solomon Islands (2012), Cook Islands (2015), and Vietnam (2020). If they can adopt the instrument then it is certainly time for Japan to embrace the Convention. In 2021 the governments of both Japan and South Korea have been discussing this issue. South Korea took a big step this year with the ratification of Conventions No. 87, 98, and 29 (on freedom of association, collective bargaining and forced labour), but it has so far not approved ratification of Convention No. 105.

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Reform of hard labour punishment for public sector strikers

Japan’s National Public Service Law (Act No. 120 of 1947) and the Local Civil Service Law (Act No. 261 of 1950) were in conflict with Article 1(a) and 1(d) because they restrict political rights and also prohibit central and local public employees from organising and participating in strike action (Article 98 of the National Public Service Law and Article 37 of the Local Civil Service Law). Disciplinary action is always taken against civil servants who engage in industrial action contrary to these provisions, but the conflict with ILO Convention 105 arose not just because of these restrictions but because the laws also established a basis to impose terms of imprisonment for up to 3 years *with hard labour* for those found guilty of inciting strike action (Article 110, National Public Service Law and Article 62 / 63 Local Civil Service Law).

The Bill, enacted as the Law on the Development of Relevant Laws for the Conclusion of the Convention on the Abolition of Forced Labour (No. 105) (Act No. 75 of 2021), changes the penalties applicable in these circumstances. The Act contains provisions to amend the National Civil Service Law, the Local Public Service Law, and the Mail Law, and changes the penalty for public service employees participating in strikes or political activities from one of imprisonment with hard labour to imprisonment *without* hard labour. This changes the *type* of punishment for public service employees to remove barriers to Japan’s ratification. But punishment exists *per se*, and the Bill thus provides no solution to the fundamental problems.

The Diet enacted the law so as to pave the way for the ratification of ILO Convention No. 105, and the measure was approved by a majority vote in the House of Councillors. However, while the types of punishment are reformed, the law does not remove the basic provisions that penalise strikes and political activities. Although public service workers’ political activities that take advantage of their status may have to be restricted, barring them from using off-duty hours to participate in political activities (which are part of their personal freedom) should not be subject to punishment. Penalising such activities amounts to restricting fundamental human rights. Such penalties should be abolished.

Trade and investment implications

The Bill was submitted not just because the Convention is a basic treaty that has already been ratified by 176 out of 187 ILO Member States, but also because it has positive impacts on international economic activities. Economic partnership agreements call for efforts to ratify the ‘core’ ILO Conventions. The ILO’s core Conventions are now considered as part of an international code of conduct and are used selectively for Environmental, Social, and Governance (ESG) investment decisions. This shows that they have important bearings on various economic activities. In this respect, the new law only made a minor change, specifically replacing imprisonment with hard labour with imprisonment without hard labour. This makes no real change to the basic position of the restriction of labour rights for public service workers. It should be taken as an amendment made merely with the aim of removing obstacles to international business activities.

Could ‘necessary work’ still mean forced labour?

Meanwhile, the Penal Code is expected to be amended to institute a new penalty by abolishing imprisonment with hard labour in favour of imprisonment without hard labour. The new penalty is defined by the Legislative Council of the Ministry of Justice as one that ‘can make a prisoner to do necessary work or give necessary guidance’. The ILO Convention No. 105 prohibits forced labour for strikes or political activities, and it is concerning that the new penalty, which can still make a prisoner perform ‘necessary’ work, could be forced labour.

Conclusions

Still, it’s good to see Japan moving toward ratifying the Abolition of Forced Labour Convention. We expect that it will be ratified at the earliest possible time as the consensus of the Diet. We also urge the government to take the necessary step toward ratifying the ILO Convention No. 111 (Discrimination in Employment and Occupation), which will then be the only ILO core Convention not yet ratified by Japan.

Zenroren’s liaison council of public service workers and unions will continue to make efforts to help restore basic labour rights for public sector workers, and to improve their livelihoods as well as public services and education. It will do its utmost with friends across the country to advance the various demands by linking them with such national tasks of fighting against adverse constitutional revision and of strengthening measures to prevent disaster and infectious diseases.

For trade union rights in Japan, however, we remain concerned that major problems are still in place:

- Public servants still have no right to strike, and those who call a strike by public servants can still face the risk of dismissal, a fine, or imprisonment of up to three years
- public servants have no collective bargaining rights, and have no confidence in the independence of the body providing ‘compensatory guarantees’
- firefighters and prison officers have no freedom of association rights: there is a total ban on all trade union rights for these workers.

The reform is welcome but changes only the penalty from one of imprisonment *with* hard labour to imprisonment *without* hard labour

