

## Universal Period Review, 3<sup>rd</sup> Cycle, 2017-2021

### Japan

Stakeholder submission by:

#### **The International Centre for Trade Union Rights**

And:

#### **Zenroren (National Confederation of Trade Unions)**

1. The Universal Declaration of Human Rights makes it clear that “everyone has the right to form and to join trade unions for the protection of his interests”<sup>1</sup>. In addition, under various international treaties, Japan has accepted an obligation to implement and respect trade union rights. In 1979 Japan ratified the International Covenant on Economic, Social and Cultural Rights obliging State parties to ensure the right to form and join trade unions of their own choice, including at national and international level<sup>2</sup>. The Covenant further states that trade unions have the right to function freely and to take strike action<sup>3</sup>. The same year, 1979, Japan also ratified the International Covenant on Civil and Political Rights, which stipulates that, “everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”<sup>4</sup>. Japan ratified ILO Conventions No.98 (Right to Organise and Collective Bargaining, 1949) in 1953 and No.87 (Freedom of Association and Protection of the Right to Organise, 1948) in 1965<sup>5</sup>. Further obligations to uphold the principles of freedom of association also stem directly from Japan’s membership of the ILO<sup>6</sup>.

2. On the whole Japan has an industrial relations culture that respects core trade union rights, and the trade unions are well developed and participate in workplace negotiations. The Constitution establishes a right to freedom of association and collective bargaining, and this is broadly respected in the private sector<sup>7</sup>. However, many local and national civil servants, and all firefighters and prison officers face significant restrictions on their rights, including a total ban on trade union organising in the case of firefighters and prison officers. All employees in sectors governed by the National Public Service Act<sup>8</sup> and the Local Public Service Act<sup>9</sup> are

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<sup>1</sup> Universal Declaration of Human Rights, Article 23(4)

<sup>2</sup> ICESCR, Article 8, but note that on ratification, Japan entered a Reservation against the provisions of sub-paragraph (d) of paragraph 1 of Article 8, indicating its intention to limit the effect of that paragraph to ‘the sectors in which the right referred to in the said provisions is accorded in accordance with the laws and regulations of Japan at the time of ratification of the Covenant by the Government of Japan’ . The Government of Japan also made a Declaration that ‘members of the police’ (paragraph 2 of Article 8, ICESCR and paragraph 2 of Article 22, ICCPR) should be interpreted ‘to include the fire service personnel of Japan’

<sup>3</sup> *ibid.*

<sup>4</sup> Japan entered a reservation against that instrument in respect of Article 22, concerning freedom of association.

<sup>5</sup> When ratifying ILO Convention No. 87, Japan indicated its view that ‘the police’ (9, ILO Convention No. 87) ought to be interpreted ‘to include the fire service of Japan’.

<sup>6</sup> Universal Declaration of Human Rights, Article 23(4); Constitution of the ILO; and ILO Declaration of Fundamental Principles and Rights at Work, Article 2 (‘all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organisation to respect, to promote and to realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining’)

<sup>7</sup> Constitution of Japan, Article 28

<sup>8</sup> National Public Service Act (Act No.120, 1947)

denied the right to strike. Shockingly, those who ‘incite’ strike action in breach of these provisions faces a risk of criminal prosecution – anyone calling a strike by public service workers is liable to be dismissed, and may be fined up to one million yen or imprisoned for up to three years.

3. Working conditions generally are of concern in relation to non-regular workers, migrant workers, and in relation to minimum wage levels. There are also serious concerns around equality and discrimination, and health and safety at work (including overtime). Several of these issues in relation to working conditions have been discussed previously within the UPR process, and we understand that other civil society organisations are addressing several of these issues within the current UPR cycle. The focus of the present submission therefore concerns core trade union rights issues, but touches also on the situation of migrant workers and minimum wage setting.

### **Our concerns**

4. Our primary concerns with respect to trade union rights in Japan are:

- **fire fighters and prison officers have no freedom of association rights: there is a total ban on all trade union rights for these workers**
- **public servants have no right to strike, and those who call a strike by public servants face the risk of dismissal, a large 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’**

5. We are further concerned by the following issues:

- **the situation for migrant workers**
- **fragmented and low-level minimum-wage setting, and pay inequality between men and women**

### **Previous UPR cycle**

6. Within the previous UPR cycle concerns were raised around the Reservations Japan maintains in respect of human rights treaties<sup>10</sup>. In reply, expressing particular concern around labour rights, and the right to strike, Japan indicated that it would reserve the right not to be bound by Article 8.1(d) of the International Covenant on Economic, Social and Cultural Rights<sup>11</sup>. We note that this response suggests that Japan remains out of step with the position expressed by the ILO’s expert committees, who continue to call on Japan to implement full freedom of association for public service workers (as is discussed in more detail below). However, we are encouraged to note that Japan accepted to follow-up recommendations that it should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)<sup>12</sup>. We look forward to a report on progress towards this goal. We note also comments following the previous UPR cycle calling for Japan to take action on migrant workers and minimum wage setting<sup>13</sup> and on pay inequality between men and women<sup>14</sup>.

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<sup>9</sup> Local Public Service Act (Act No. 261, 1950)

<sup>10</sup> A/HRC/22/14, para.17.1

<sup>11</sup> A/HRC/22/14/Add.1 (see response to 147.1)

<sup>12</sup> A/HRC/22/14/Add.1 (see responses to 147.19 and 147.20)

<sup>13</sup> A/HRC/22/14/Add.1 (see responses to 147.147.92, and 147.162 - 147.166)

<sup>14</sup> A/HRC/22/14/Add.1 (see responses to 147.147.67 - 147.77)

Our concerns in the present submission are addressed in turn below:

### **Right to organise: situation of firefighters and prison officers**

7. For many decades Japan has sought to prevent trade union organisation by these groups of workers, arguing that their crucial role should be understood as a branch of police activity. Firefighters 'must not establish or join an organisation that aims at maintaining and improving working conditions and that negotiates with the authority of local public organisation concerned'<sup>15</sup>. Prison Officers 'shall not organise or join an organisation which has as its purpose the maintenance and improvement of their working conditions and which conducts negotiations thereon with the proper authorities'<sup>16</sup>. These all-out exclusionary provisions contradict the position under Article 28 of the Constitution of Japan, which states simply that 'the right of workers to organise and to bargain and act collectively is guaranteed', and they fall well below the standard required by international concepts of freedom of association.

8. In 1973 the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) stated that 'one could not consider the functions of the firefighters as justifying an exclusion under Article 9 of the Convention. We hope that the government will take appropriate measures to ensure the right to organise for personnel in this category'. The Committee on Freedom of Association (CFA) agreed that: '[t]he functions exercised by firefighters do not justify their exclusion from the right to organise. They should therefore enjoy the right to organise'<sup>17</sup>. According to Public Services International, since 1994, Japan is the 'only country in the world that has ratified Convention No. 87 but which also continues to deny trade union rights to firefighters'<sup>18</sup>.

9. In respect of prison officers the CFA has been clear, emphasising that: '[p]rison staff should enjoy the right to organise'<sup>19</sup>. Also in respect of prison officers, in 2012 the CEACR noted that Japan 'has not initiated any specific examination on the issue of granting the right to organise to prison officers, the Government states that it has re-examined the right and concluded not to include it in the Reform Bills. The Government reiterated that prison officers are considered to be included in the police and are therefore denied the right to organise in accordance with Article 9 of the Convention'. In response to this assessment, the CEACR emphasised 'once again that the functions exercised by prison officers should not justify their exclusion from the right to organise'<sup>20</sup>. In 2016 the ILO's CFA again 'urged' the Government 'to ensure' that public sector labour rights reforms were implemented 'without delay' and that they should include '(ii) fully granting the right to organise and to collective bargaining to firefighters and prison staff'<sup>21</sup>.

10. Limited moves to permit firefighter organising in 'personnel committees' were introduced in 1996. In 2010 the Ministry of Internal Affairs and Communications launched a study into the question of granting organising rights to firefighters in the context of public safety and service efficiency. This Committee reported, in December 2010, that 'no practical obstacles in terms of fire service operations could be identified which might arise as a result of granting the right to organise and considered five different methods of restoring the right to

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<sup>15</sup> Article 52 of the Local Public Service Act

<sup>16</sup> Article 108-2(5) of the National Public Service Law

<sup>17</sup> *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fifth Edition, 2006, paras. 231

<sup>18</sup> <https://psiasipacificsectoralnetwork.files.wordpress.com/2015/08/zenshokyo-national-council-of-japanese-firefighters-and-ambulance-workers.pdf>  
<https://psiasipacificsectoralnetwork.files.wordpress.com/2015/08/zenshokyo-national-council-of-japanese-firefighters-and-ambulance-workers.pdf>

<sup>19</sup> *Digest*, para. 232

<sup>20</sup> Observation (CEACR) - adopted 2011, published 101st ILC session (2012) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Japan

<sup>21</sup> ILO Committee on Freedom of Association, Interim Report - Report No 378, June 2016, *Case No 2183 (Japan)*

organise'<sup>22</sup>. Following the report of the Internal Affairs Committee and the comments of the ILO supervisory bodies, a Bill on Labour Relations of Local Public Service Employees was drawn up in 2011. The Bill would have introduced a right to organise for firefighters, but it – along with other public service reforms – failed to pass in the legislature.

### **Law on industrial action and strikes for public sector workers**

11. Article 98. (2) of the National Public Service Law establishes that public officials 'shall not strike', and Article 110 (1) makes it a criminal offence, punishable by up to three years imprisonment or a fine of up to one million yen, to instigate or to incite violations of Article 98 (ie – it is a criminal offence to call for strikes in sectors covered by the Act<sup>23</sup>. Under the DJP's period in government (2009 – 2012) a number of significant reforms were initiated to address the situation of trade union rights for public sector workers. In 2011 four civil service reform related bills ("the Reform Bills"<sup>24</sup>) were submitted to the Diet, but ultimately stalled. Subsequently only a much more limited set of reforms were adopted in 2014, which trade unions view as ineffective in addressing their concerns. Even the earlier set of more far-reaching reforms did 'not recognise the right to strike of public servants', but merely noted an intention to 'examine the right to strike for public service employees', and this was only contained as a note in the Supplementary Provisions<sup>25</sup>. What the reforms did introduce was a compulsory arbitration process, which is in fact a barrier to good labour-management relations<sup>26</sup>.

12. In 2016 the ILO's CFA once again 'urged' the Government 'to ensure' that public sector labour rights reforms were implemented 'without delay' and that they should include '(iv) ensuring that those public employees who are not exercising authority in the name of the State can enjoy the right to strike, in conformity with freedom of association principles, and that union members and officials who exercise legitimately this right are not subject to heavy civil or criminal penalties'. The ILO CEACR supervisory committee has issued clear guidance that any restriction on the right to strike for civil servants should be strictly limited to those who are 'exercising authority in the name of the State'. Furthermore, the CEACR has confirmed that 'public employees who may be deprived of this right should be afforded appropriate compensatory guarantees'<sup>27</sup> – but as the following section reveals, this is clearly not the case in Japan. The National Personnel Authority (NPA) serves as a compensatory measure for public service workers who are denied the right to strike, but the trade unions view the NPA as inadequate and defective in this role<sup>28</sup>.

### **Public sector pay setting and collective bargaining**

13. In recent years pay setting has been the subject of much concern as in many cases public sector pay has been cut unilaterally and with no or little consultation. Pay cuts have been imposed unilaterally on public service workers around Japan. Workers affected are deprived during this process of the opportunity to be represented in collective bargaining pay negotiations by a trade union, and they have no right to strike. ILO principles require that denial of collective bargaining rights can only be made in relation to a small subset of public

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<sup>22</sup> Observation (CEACR) - adopted 2011, published 101st ILC session (2012) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Japan

<sup>23</sup> Article 110 (1) xvii

<sup>24</sup> Amendment Bill for the National Public Service Employees Law, Draft Act on Labour Relations of National Public Service Employees, Draft Act for Establishment of the Civil Service Office and Draft Act on Arrangement of Relevant Acts Incidental to Enforcement of the Amendment Bill for the National Public Service Employees Law

<sup>25</sup> CEACR 2012 and Supplementary Provision 11 of the Draft Act on Labour Relations of National Public Service Employees

<sup>26</sup> Observation (CEACR) - adopted 2011, published 101st ILC session (2012) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Japan

<sup>27</sup> *ibid.*

<sup>28</sup> Observation (CEACR) - adopted 2014, published 104th ILC session (2015) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Japan

service workers - those who exercise authority in the name of the State - and that where such limits are placed on these workers, they must be offered 'compensatory guarantees', which is generally understood as an impartial body responsible for pay and conditions, which enjoys the support of the parties. This has traditionally been the role of the National Personnel Authority (NPA), with its obligation to ensure overall welfare standards for public service workers. However, many NPA powers have now been transferred to the Cabinet Bureau of Personnel Affairs (although the Bureau is obliged to 'take into consideration' the 'opinion of the NPA')

14. More recently, unions have complained that NPA announcements echoing Government policy show that the NPA is no longer a third-party organ independent from the Cabinet, but has become subordinated to the employer, the Government. The system is therefore not a sufficient compensatory measure for the restriction of the basic labour rights of public service workers, which in any case involves a violation of their rights under freedom of association principles. A recent report by the CEACR noted 'with regret' that the earlier package of four reform bills 'was ultimately not adopted and as a result, a number of public servants not engaged in the administration of the State remain deprived of their collective bargaining rights'. The Committee requested that the Government 'bolster its efforts in dialogue with the social partners to review the current system so as to ensure in the very near future collective bargaining rights for all public servants not engaged in the administration of the State'<sup>29</sup>.

### **Migrant workers**

15. The situation of migrant workers in Japan is another area of concern. We recall that Japan does not formally offer a scheme to attract low-skilled workers and that, in the absence of such a scheme, companies hiring in manufacturing, agriculture, and construction, among other industries, continue to make use of the Technical Intern Training Program (TITP) immigration scheme. The foreign trainees program is supposed to be a system devoted to making international contributions that would help transfer to developing countries skills, technology and knowledge developed in Japan. But it is really a vehicle for securing a cheap labour force. A recent report from the ILO's CEACR notes that of the 846 entities employing interns, 'in 157 the number of interns makes up half of their staff, and 34 only employ interns'<sup>30</sup>.

16. Under the scheme, low-skilled migrant workers enter the country and work for one to three years under the somewhat misleading classification of 'interns'. In reality these workers perform key roles in vital sectors, and their jobs are heavy and tiring, and may involve night-work or substantial overtime. We note heavy workloads, unpaid wages, and human rights violations. Despite revisions in 2010, labour agencies continue to collect so-called 'pre-training' or 'transport' fees. We note that during the course of the 'internship' migrant workers cannot change employer, a situation that leaves them vulnerable to exploitation by the employer. The government admits that there are many labor disputes over excessively heavy workloads, unpaid wages, and human rights violations. The Labor Union of Migrant Workers reported to the ILO that 'the number of deaths among foreign interns is unusually high for persons who are young and healthy'<sup>31</sup>. While numerous violations are observed by the Labour Standards Inspection Office, few of these are referred to the Public Prosecutor's Office.

17. We recall that in the previous Review process Japan accepted to follow-up recommendations that it should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)<sup>32</sup>. However, we note

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<sup>29</sup> Observation (CEACR) - adopted 2014, published 104th ILC session (2015) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Japan

<sup>30</sup> Observation (CEACR) - adopted 2015, published 105th ILC session (2016) Forced Labour Convention, 1930 (No. 29) - Japan

<sup>31</sup> *ibid.*

<sup>32</sup> A/HRC/22/14/Add.1 (see responses to 147.19 and 147.20, *et al*)

that Japan had also accepted this recommendation under the first UPR cycle, and that as we enter the third cycle no obvious progress has been made. We look forward to a report on progress towards this goal. We add that Japan should also ratify ILO conventions concerning immigrants, namely Convention No. 97 (Migration for Employment Convention (Revised)) and Convention No. 143 (Migrant workers (Supplementary provisions)).

### **Minimum wage fixing**

18. Japan is one of the richest countries in the world, and yet it has a serious problem with poverty and inequality, and it has only a fragmented minimum wage system, which fails to meet the cost of living. In the absence of a national uniform minimum wage system, 47 prefectures set their respective minimum wages. An additional industrial minimum wage is applicable to workers in certain industries. This system, which exacerbates inequality, should be abolished and replaced with a national uniform minimum wage system. Japan must drastically improve its minimum wage system in order to prevent dumping of wages.

19. The key instrument from the ILO states that minimum wage setting must take into account the needs of workers and their families, the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups, and also economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment<sup>33</sup>. However, the current minimum wage standard cannot cover the minimum cost-of-living for a family; it even falls short of that required for a single worker.

20. We note that in its 2013 consideration of the situation in Japan the UN Committee on Economic, Social and Cultural Rights expressed concern 'that the average level of minimum wage throughout the State party falls short of the minimum subsistence level, the public welfare benefits and the increase in the cost of living'. The Committee urged the State party 'to review the factors taken into consideration when deciding the level of the minimum wage with a view to ensuring that it enables a decent living for the workers and their families'<sup>34</sup>. The Committee also requested that the State party provide in its next periodic report information on the percentage of workers who are paid below the minimum wage<sup>35</sup>.

21. Finally, in the context of pay levels, we add our voice to those calling for action on equality and non-discrimination in the workplace and we recall that the Committee, in 2013, expressed 'concern that the pay gap, in particular between men and women, remains considerable in the State party', and called for action to address continuing problems of discrimination in remuneration. We note that Japan has, as yet, failed to ratify ILO Convention No. 111 (1958) concerning Discrimination in Respect of Employment and Occupation, which is one of the ILO's core instruments. We recall further that all ILO member States are required to 'promote and to realise' these rights<sup>36</sup>.

### **Recommendations**

22. The submitting organisations call on Japan to:

#### **Freedom of association for firefighters and prison officers**

- make appropriate revisions to Article 52 of the Local Public Service Act to permit firefighters to organise trade unions

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<sup>33</sup> Article 3 of ILO Convention No. 131, which Japan has not ratified

<sup>34</sup> E/C.12/JPN/CO/3

<sup>35</sup> E/C.12/JPN/CO/3

<sup>36</sup> ILO Declaration of Fundamental Principles and Rights at Work, Article 2 ('all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organisation to respect, to promote and to realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions.

- make appropriate revisions to Article 108-2(5) of the National Public Service Law to permit prison officers to organise trade unions

#### **Law on industrial action and strikes for public services workers**

- make appropriate revisions to Article 98. (2) of the National Public Service Law so that participation in strike action is no longer banned for workers in public services, with the possible very limited exceptions noted by the ILO
- repeal Article 110 (1) of the National Public Service Law so that instigating strikes contrary to Article 98 ceases to be a criminal offence

#### **Public sector pay setting and collective bargaining**

- introduce effective systems to ensure that public employees not engaged in the administration of the State have the right to bargain collectively and to conclude collective agreements
- for those employees whose bargaining rights can be legitimately restricted (ie – public servants who exercise authority in the name of the State) ensure that they enjoy adequate compensatory procedures, in which they - and their unions - have confidence

#### **International treaties and agencies**

- withdraw the Reservation in respect of ICESCR, Article 8(1)d
- withdraw the Declaration concerning ICESCR, Article 8(2) and ICCPR, Article 22(2)
- affirm that the concept of 'the police' under ILO principles of freedom of association, and in ILO Convention No. 87 in particular cannot properly be interpreted to include firefighting service
- ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)
- ratify ILO Convention No. 97 (Migration for Employment Convention (Revised)) and Convention No. 143 (Migrant workers (Supplementary provisions))
- ratify ILO Convention No. 111 (1958) concerning Discrimination in Respect of Employment and Occupation

#### **Consultation**

- to plan and implement the above reforms in full consultation with the national trade union centres Zenroren and Rengo and their affiliated unions, and in particular with unions working with firefighters, namely Zenroren's affiliates Jichiroren and Kokororen and the Firefighters Network; and with Jichiro and Zenshokyo of Rengo
- invite the assistance of the ILO in developing effective public sector bargaining systems and industrial relations law