

Presentation 3

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## **Interpreting the ILO Convention: Is Wartime Labor a Violation of the Forced Labor Convention?**

Those who oppose the registration of the Sado gold mines as a UNESCO World Heritage site argue that Korean wartime labor was a violation of the International Labor Organization's (ILO) Forced Labor Convention. The basis for this, they claim, is that the annual report of the ILO's Committee of Experts on the Application of Conventions and Recommendations (hereinafter referred to as "the Committee") found that Japan had violated the Convention. Therefore, they argue, the Sado mines, where Korean laborers were employed, were also in violation of the Forced Labor Convention and thus cannot qualify for UNESCO listing.

The annual reports of the Committee are available on the ILO official website database (1), so I looked up the actual findings of these reports in all editions between 1994 and 2022.

Comfort women were first mentioned in the 1996 edition, while conscripted laborers from China and Korea are first described as wartime industrial forced labor in the 1999 edition. Since then, the two issues of wartime comfort women and industrial forced labor have been combined and treated as a violation of the Forced Labor Convention for more than 20 years. The information provided to the Committee was provided by workers' organizations and reflected in its annual reports. These organizations submitted information to the Committee that "Chinese and Koreans were forced to work in harsh conditions without compensation, and many died as slaves". In response to this, rather than refute these allegations of forced labor and slavery, the Japanese government continued to express its remorse and explain its efforts to make amends.

When the NGOs first sparked the issue at the UN, claiming that the comfort women of the Japanese military were forced sex slaves, the Japanese government failed to object. This facilitated the spread of the sex slave theory, which has now spread from the UN to the rest of the world. The path by which the forced labor theory acquired widespread credence is strikingly similar.

### **1. Proponents of the Forced Labor Theory - Grounds for Violation of the ILO Convention**

- The following paragraph is from a paper presented at the academic seminar "Response to the Forced Registration of Japan's Sado Mines as a World Heritage Site and its Connotations" hosted by the Northeast Asian History Foundation in Seoul, Korea, earlier this year on

February 16. (2)

“In its “Annual Report” of March 1999, the ILO's Committee of Experts on the Application of Conventions and Recommendations had already found Japan to be in violation of the Forced Labor Convention, stating: “This Committee considers that the massive conscription of labour to work for private industry in Japan under such deplorable conditions was a violation of the Convention””.

- The underlined section can be found on p. 130 of the 1999 report.
- Under the Forced Labor Convention, conscripted labor does not constitute a violation of the Convention. Article 2, paragraph 2: “for the purposes of this Convention, the term forced or compulsory labour shall not include, (a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character”.
- On April 27, 2021, the Japanese government issued a cabinet decision concerning the expressions “forced mobilization” and “forced labor” in which it affirmed, “We do not believe that labor performed through “recruitment”, “official mediation”, or “conscription” falls under the category of “forced labor” as stipulated in the said Convention, and that the term “forced labor” is subsequently inappropriate”.
- So, why did the Committee include this subject in its 1999 Report? Why did it rule that Japan was in violation of the Forced Labor Convention? What exactly were these “deplorable conditions”?

## **2. ILO Structure - Committee of Experts on the Application of Conventions and Recommendations and Its Annual Reports**

ILO Member States: 187 countries

Conventions 190 ⇒ legally binding; 49 Japan ratified conventions

Recommendation 206 => not legally binding

Observations => not legally binding. Words used in the annual report of the Committee. Since Committee observations are adopted as a result of deliberations by internationally authoritative experts, they are perceived as having a certain political and social weight.

[\*See Appendix 1. The annual reports of the Committee are shown in Figure 4].

### **2.1 System for Supervising the Application of Standards - Committee of Experts on the Application of Conventions and Recommendations (5)**

- The Committee of Experts on the Application of Conventions and Recommendations examines the application of conventions and recommendations in ILO member countries.
- Twenty members serve three-year terms. The Committee is comprised of highly esteemed

experts (university professors, judges, and technocrats) of various nationalities in labor law, international law, and international human rights law.

- Member States shall report to the ILO Secretariat on the status of implementation of the international labor conventions they have ratified (in principle every five years, and every three years for the eight fundamental conventions and the four governance conventions).

## **2-2. Committee of Experts on the Application of Conventions and Recommendations: Annual Reports**

- The Committee convenes for approximately three weeks from November to December each year at the ILO Headquarters in Geneva. The Committee examines the large volume of reports submitted by member governments and comments from employers and workers' organizations, compiles observations on the application of ratified conventions by country and convention, and issues an annual report between February and March.

- The report is used as deliberation material for the General Assembly Committee consisting of government, labor, and management, which convenes between May and June (see Figure 5 in Appendix 1). According to the International Division of the Ministry of Health, Labor and Welfare:

1. There are no special qualifications or examinations for workers' organizations, and any workers' organization may submit opinions.
2. The report sent by the Japanese government to the ILO and the opinions of workers' organizations are not released by the Ministry.
3. Japanese members do not participate in the Japan review.

## **3. Analysis of the Annual Reports - Reflecting Information from Workers' Organizations**

We examined the sections of the Committee's opinion on the application of the Japanese Forced Labor Convention (No. 29, ratified by Japan in 1932) in the Annual Report of the Committee of Experts on the Application of Conventions and Recommendations between 1994 and 2022, and tabulated the workers' organizations that submitted opinions to the Committee starting with the 1996 edition when the comfort women issue was first addressed. (\*Appendix 2)

The report also lists the names of the workers' organizations that provided information and opinions on which the Committee's views were based, the dates and contents of those opinions, as well as the contents and dates of the government reports.

### **3-1. Contents of the 1999 Report, Which first addressed Wartime Industrial Forced Labor**

- Information from workers' organizations
  - All Japan Shipbuilders and Engineering Union: 700,000 people from Korea and 40,000 people from China were conscripted into forced labor and worked in mines, factories, and

construction sites. Many died due to the harsh working conditions. Despite the fact that conditions were supposed to be the same for all workers, they were paid less than their Japanese counterparts or received no wages at all.

-Tokyo Local Council of Trade Unions: According to the 1946 Ministry of Foreign Affairs report "Survey of Chinese Labourers and Working Conditions in Japan", 17.5% to 28.6% died due to the harsh working environment and brutal treatment.

#### Japanese Government's View

-We have acknowledged the damage and suffering inflicted on Korea under colonial rule and repeatedly expressed our regret and remorse.

-We are deeply aware of the serious damage inflicted on the Chinese people by the war.

-We have endeavored to achieve friendship with both China and South Korea.

-We have legally settled the issue of war compensation through the 1965 Treaty on Basic Relations between Japan and the Republic of Korea and the 1972 Treaty of Peace and Friendship between Japan and China.

-We have provided economic assistance to both countries.

#### The Committee's Position

-The Government does not refute the general contents of the MOFA report but instead points out that it has made payments to the respective governments.

-The Committee considers that the massive conscription of labour to work for private industry in Japan under such deplorable conditions was a violation of the Convention.

-Intergovernmental assistance alone is not adequate as a remedy for the victims.

-As with the "comfort women", the Committee has no authority to order the Japanese government to provide relief to the victims but would prefer that the government accept responsibility for its actions and take steps to meet the expectations of the victims.

### **3-2. The 2001 Edition and Subsequent Editions**

#### The Committee's Position

-The Government of Japan is correct in its view that the issue of compensation has been legally settled by international treaties (bilateral treaties and the Treaty of San Francisco).

-The Committee has no authority to decide on the legal validity (individual compensation) of bilateral and multilateral international treaties.

-There is a lot of information provided by workers' organizations. (-Which we are obliged to take up.)

-We seek information on the Japanese government's response, including the development of court cases.

-We hope that this long-standing issue does not need to be dealt with in future sessions.

- The Japanese government has continued to repeat its explanation since the first report in 1999. The Committee's recognition of wartime industrial labor as a “violation of the Forced Labor Convention” remains unchanged.

- The information provided by workers’ organizations never ceases to run out of material on both comfort women and forced labor. Various additional information – including UN Special Rapporteurs, recommendations of UN human rights treaty bodies, numerous forced labor and comfort women trials in Japan and South Korea, the Supreme Court of Korea’s decision, and the Japan-South Korea agreement – has been submitted to the Committee every year along with criticism of the Japanese government.

### **3-3. 1946 Ministry of Foreign Affairs Report: “Survey of Chinese Labourers and Working Conditions in Japan”**

This report was produced by the Administration Bureau of the Ministry of Foreign Affairs on March 1, 1946, and compiles reports on 135 factories, mines, construction sites, ports, and other business establishments throughout Japan where Chinese laborers (6) worked. The report consists of five volumes spanning 648 pages in total. A copy is stored at the Foreign Ministry Archives.

From the summary of the report: “The total number of deaths among Chinese laborers since embarking from local ports for Japan and securing employment at various workplaces until their departure from Japanese ports upon repatriation is 6,830, which is 17.5% of the total 38,935 who were repatriated – a considerably high mortality rate”. (7)

### **4. The Japanese Government’s Quandary: No Response to Forced Labor**

- The Japanese government was mistaken in its choice of explanation when the Committee first raised the issue in the 1999 report. The wording “we are deeply remorseful and have apologized (for this)” and “the issue has been legally resolved” led the Committee to understand that the Japanese government must have done something wrong, essentially being interpreted as an admission of forced labor.

Was the slave-like treatment reported by these workers’ organizations really true? Were they taken away and forced to work? What was the conscription, recruitment, and official mediation through which workers from the Korean peninsula – a part of Japan at the time – came to the home islands? What kind of contracts did each stage involve, and what were the working conditions and environment like? What exactly was a comfort woman? What was the contractual relationship between the comfort women and the brothels, which were an extension of the public prostitution contract? The Japanese government offered no explanation concerning these points in the report.

- The Committee claims that because both comfort women and Chinese and Korean laborers were forcibly brought to Japan, where they were coerced into working like slaves under harsh conditions without proper wages and many of them died, this constitutes a violation of the Forced Labor Convention. With no information forthcoming from the Japanese government to refute the claim, the Committee has little option but to understand it this way. The same may be said of the UN's interpretation of comfort women to mean sex slaves.

- The Committee's report is only an observation. It does not have the authority to make an official interpretation of the Convention, and its views are not binding on Member States. (8)

- The report also included the view of the Committee that there was no need to dwell on this issue any further, which has already been dealt with for many years, suggesting that it would like to see the issue put to an end. The Japanese government has also stated that this is not an issue to be dealt with by the Committee.

- The Tripartite Committee of the Committee on the Application of Standards has never discussed Japanese wartime forced labor and comfort women.

## **5. Summary and the Future of the Issue**

- In relation to the questions raised earlier, the following points have been clarified:

‘Why did the Committee raise the issue in its 1999 report?’ → ‘Because it had received information from workers’ organizations’.

‘Why did the Committee determine that Japan had violated the Forced Labor Convention?’ → ‘Because the Japanese government neither denied nor refuted the allegations’.

‘What did the Committee mean by “under such deplorable conditions”?’ → ‘Forced to work, not paid the promised wages, and many died from brutal treatment in harsh conditions.’

- The Japanese government should draw on the results of private-sector research in carefully explaining the historical fact that there was no violation of the Forced Labor Convention. The Committee members are experts in law; it is surely not beyond their comprehension.

- The Japanese government, which had continued to “express its heartfelt apologies and remorse” over the comfort women, denied that the women were forced to work for the first time in its 2019 report, in response to the opinions of a South Korean workers’ organization. “In its response to the joint observations of the FKTU and the KCTU, the Government also indicates that it has conducted a full-scale fact-finding study on the “comfort women” issue since early 1990’s, and that the “forceful taking away” of “comfort women” by the military and government authorities could not be confirmed in any of the documents that the Government was able to identify in the abovementioned study.” (10)

This objection should have been asserted when the issue was first raised.

If workers’ organizations continue to submit information and observations to the Committee,

the issue of wartime forced labor will continue to be reflected in its annual report. We cannot dismiss the possibility that South Korean workers' organizations will also raise the issue of the Sado gold mines. At that time, the government must not make the mistake of responding – as it has hitherto – with “regret” and “remorse” .

The International Affairs Division of the Ministry of Health, Labor, and Welfare is responsible for dealing with the ILO. Because it is unlikely that they are experts on the issue of historical awareness, there should be a system for information sharing and cooperation between the Ministry of Foreign Affairs and private research institutions.

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(1) [ Reports of the Committee of Experts on the Application of Conventions and Recommendations

1932 - 2017 edition <http://www.ilo.org/public/libdoc/ilo/P/09661/>

2018 edition - available at <https://bit.ly/34ujKqU>].

(2) Presentation 1: “Focusing on the Purpose, Course, and Recent Developments of the Sado Mines’ World Heritage Registration” (Hisashi Kobayashi, Deputy Director-General of the Network for Research on Forced Labor Mobilization) P33-34 <https://bit.ly/3q3zAjI>]

The underlined section can be found on p. 130 of the 1999 report.

(3) [Forced Labor Convention (No. 29) [https://www.ilo.org/tokyo/standards/list-of-conventions/WCMS\\_239150/lang--ja/index.htm](https://www.ilo.org/tokyo/standards/list-of-conventions/WCMS_239150/lang--ja/index.htm)]

(4) Cabinet Minutes No. 94, April 27, 2021

Written answer to a question submitted by Mr. Nobuyuki Baba, a member of the House of Representatives, concerning the expressions “forced mobilization” and “forced labor”.

[https://www.shugiin.go.jp/internet/itdb\\_shitsumon.nsf/html/shitsumon/b204098.htm](https://www.shugiin.go.jp/internet/itdb_shitsumon.nsf/html/shitsumon/b204098.htm)

(5) Committee of Experts on the Application of Conventions and Recommendations [https://www.ilo.org/tokyo/events-and-meetings/WCMS\\_423760/lang--ja/index.htm](https://www.ilo.org/tokyo/events-and-meetings/WCMS_423760/lang--ja/index.htm)

(6) “Regarding the Transfer of Chinese Laborers to Japan” Cabinet Decision, November 27, 1942 <https://rnavi.ndl.go.jp/politics/entry/bib00428.php>

(7) Chinese laborers were Chinese workers hired by Japanese companies from mainland China to come and work in Japan, where there was a labor shortage at the time.

“Report on the Incident of Forced Mobilization of Chinese Workers, Vol. 3: Circumstances of the Forced Mobilization and Martyrdom of Chinese Workers” (Issued by the Executive Committee for the Joint Creation of a List of Chinese Martyrs, April 1961) p.340

(8) Cabinet Minority Affairs No. 169, No. 61, February 19, 2008

Written reply to a question submitted by Mr. Ritsuo Hosokawa, a member of the House of

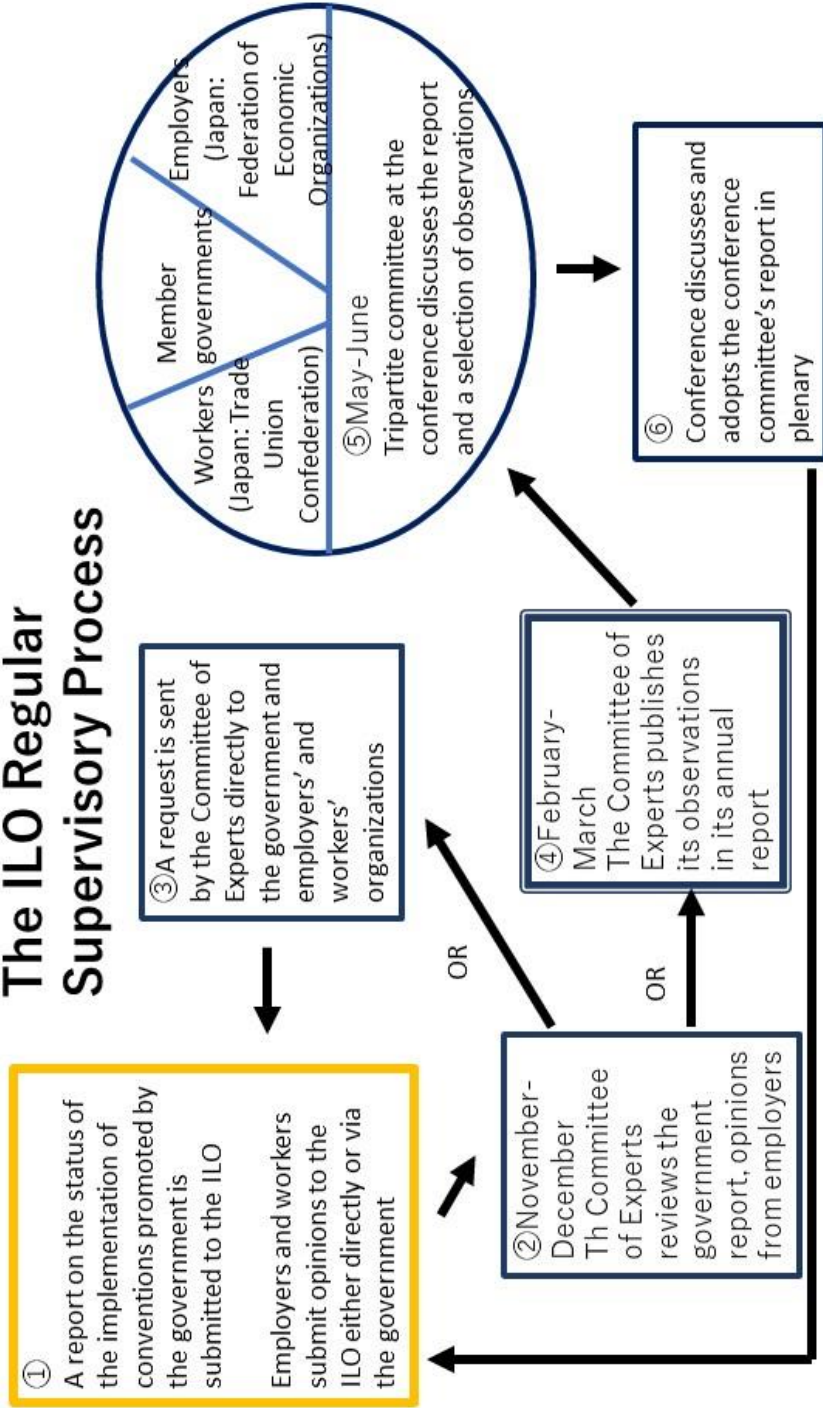
Representatives, concerning the report of the ILO Committee of Experts

[https://www.shugiin.go.jp/internet/itdb\\_shitsumon.nsf/html/shitsumon/b169061.htm](https://www.shugiin.go.jp/internet/itdb_shitsumon.nsf/html/shitsumon/b169061.htm)

(10) Original text: “Annual Report of the Committee of Experts on the Application of Conventions and Recommendations, 2019” p. 222



# The ILO Regular Supervisory Process



Document 2

**Annual Reports of the ILO Committee of Experts on the Application of Conventions and Recommendations: 1996 - 2022**

**Worker's Organizations That Submitted Comments to the Committee Concerning the Application of Japan's Forced Labor Convention (No. 29)**

Edition /Period	Labor organization that gave an opinion	Issue	Information Obtained from the Organization/Key Matters in Bold
1996 83	The Osaka Fu Special English Teachers' Union	Gross human rights abuses and sexual abuse of women detained in so-called military "comfort stations" during wartime	<b>Comfort women raised for the first time</b> Compensation for Forced Labor
1997 85	Japanese Trade Union Confederation The Osaka Fu Special English Teachers' Union Federation of Korean Trade Unions	Gross human rights abuses and sexual abuse of women detained in so-called military "comfort stations" during wartime	Comfort Women: A UN Human Rights issue
1998 86	Federation of Korean Trade Unions Japanese Labour Unions		
1999 87	All Japan Shipbuilding and Engineering Union Japanese Trade Union Confederation The Korean Confederation of Trade Unions The Osaka Fu Special English Teachers' Union Tokyo Local Council of Trade Unions	Wartime "comfort women" Wartime industrial forced labour	<b>Chinese and Korean conscripted laborers raised for the first time</b> Comfort Women: Criticism from the Asian Women's Fund (AWF); domestic court cases Forced Labor: 1946 MOFA Report
2000 88	All Japan Shipbuilding and Engineering Union Federation of Korean Trade Unions The Korean Confederation of Trade Unions Osaka Fu Special English Teachers' Union		
2001 89	Federation of Korean Trade Unions Japanese Trade Union Confederation The Korean Confederation of Trade Unions Netherlands Trade Union Confederation Telecommunication Workers Union	Wartime "comfort women" Wartime industrial forced labour	Forced labor: compensation for slave laborers, domestic and international trials Comfort women: AWF; UN; domestic trials
2002 90	All Japan Shipbuilding and Engineering Union	Wartime "comfort women" Wartime industrial forced labour	Forced labor: compensation for slave laborers; domestic and international trials

2003 91	All Japan Shipbuilding and Engineering Union The Korean Confederation of Trade Unions Federation of Korean Trade Unions Tokyo Local Council of Trade Unions	Victims of wartime sexual slavery Wartime industrial forced labour	Comfort women: AWF; UN; domestic trials Forced labor: domestic trials; individual compensation claims
2004 92	The Korean Confederation of Trade Unions Federation of Korean Trade Unions Tokyo Local Council of Trade Unions All Japan Shipbuilding and Engineering Union	Military sexual slavery “comfort women” Wartime industrial forced labour	<b>The 2003 Tripartite Committee at the Conference did not address the issue</b>
2005 93	The Korean Confederation of Trade Unions Federation of Korean Trade Unions All Japan Shipbuilding and Engineering Union Japanese Trade Union Confederation	Sexual slavery (so-called “comfort women”) Industrial slavery	<b>Refused to take up the Committee's comments in the 2004 Tripartite Committee at the Conference</b> Comfort women: domestic trials Forced labor: domestic trials
2006 95	The Korean Confederation of Trade Unions Federation of Korean Trade Unions All Japan Shipbuilding and Engineering Union		
2007 96	The Korean Confederation of Trade Unions Federation of Korean Trade Unions All Japan Shipbuilding and Engineering Union Tokyo Local Council of Trade Unions	Industrial forced labour Sexual slavery	Forced labour: trials in Japan and China Comfort women: domestic trials
2008 97	All Japan Seamen's Union All Japan Shipbuilding and Engineering Union All Toyota Labor Union Federation of Korean Trade Unions The Confederation of Korean Trade Unions Heavy Industry Labor Union International Trade Union Confederation Japan Dockworkers Union Nagoya Branch Netherlands Trade Union Confederation Tokyo Local Council of Trade Unions	Military sexual slavery (so-called “comfort women”) Wartime industrial forced labour	Forced labour: domestic trial; trial in China Comfort women: domestic trials; statement by Prime Minister Abe

2009 98	<p>All Japan Shipbuilding and Engineering Union  Japan Dockworkers Union Nagoya Branch  Federation of Korean Trade Unions  The Korean Confederation of Trade Unions  Heavy Industry Labor Union  International Trade Union Confederation  Teacher's Union Nagoya Municipal High School  Tokyo Local Council of Trade Unions  Aichi Union Seibonoie Branch  Japanese Trade Union Confederation</p>	<p>Wartime sexual slavery (so-called "comfort women")  Industrial slavery</p>	<p>Forced labor: domestic trials  Comfort women: UN, foreign resolutions: domestic local assembly report</p>
2010 99	<p>All Japan Shipbuilding and Engineering Union  The Korean Confederation of Trade Unions  Federation of Korean Trade Unions  Teacher's Union Nagoya Municipal High School  Netherlands Trade Union Confederation</p>		
2011 100	<p>All Japan Shipbuilding and Engineering Union  The Korean Confederation of Trade Unions  Federation of Korean Trade Unions  International Trade Union Confederation  Japanese Trade Union Confederation  National Federation of Construction Engineering Workers' Unions of Japan  Teacher's Union Nagoya Municipal High School  Netherlands Trade Union Confederation  Labor Union of Migrant Workers</p>	<p>Wartime industrial slavery  Sexual slavery (so-called "comfort women")  The Industrial Training and Technical Internship Programme ("Foreign Trainee" Programme)  Trafficking in persons</p>	<p><b>The issues of the Industrial Training and Technical Internship Programme ("Foreign Trainee" Programme) and human trafficking raised for the first time</b>  Forced labor: domestic trials  Comfort women: UN, local assembly report; domestic trials</p>
2012 101	<p>All Japan Shipbuilding and Engineering Union  The Korean Confederation of Trade Unions  Federation of Korean Trade Unions  National Confederation of Trade Unions  Labor Union of Migrant Workers</p>		

2013 102	All Japan Shipbuilding and Engineering Union The Korean Confederation of Trade Unions Federation of Korean Trade Unions National Confederation of Trade Unions Labor Union of Migrant Workers	Wartime industrial forced labour Sexual slavery (so-called "comfort women") The Industrial Training and Technical Internship Programme ("Foreign Trainee" Programme) Trafficking in persons	Comfort women: AWF, 2011 Korean Constitutional Court decision; UN, local council report Forced labor: 2012 Korean Supreme Court decision
2014 103	Labor Union of Migrant Workers		
2015 104	All Japan Shipbuilding and Engineering Union Labor Union of Migrant Workers		
2016 105	Japanese Trade Union Confederation All Japan Shipbuilding and Engineering Union Labor Union of Migrant Workers	Victims of wartime sexual slavery or industrial forced labour The Industrial Training and Technical Internship Programme ("Foreign Trainee" Programme)	Forced labor: 2012 Korea Supreme Court decision Comfort women: UN
2017 106	The Korean Confederation of Trade Unions Federation of Korean Trade Unions Labor Union of Migrant Workers		
2018 107	Labor Union of Migrant Workers		
2019 108	The Korean Confederation of Trade Unions Federation of Korean Trade Unions Japanese Trade Union Confederation	The Industrial Training and Technical Internship Programme ("Foreign Trainee" Programme) Comfort women	<b>Japanese government denies forced mobilization of comfort women</b> Comfort women: 2015 Japan-Korea agreement; South Korean court case
2020 109	The Korean Confederation of Trade Unions Federation of Korean Trade Unions		
2022 110	Labor Union of Migrant Workers		

< Supplementary Information on Workers' Organizations

◆ Korean Workers' Organizations

· The Korean Confederation of Trade Unions (KCTU)

19 industrial unions (including industrial organizations + Hyundai Group Council of Trade Unions, Daewoo Group Council of Trade Unions); 968,000 members (2018).

· Federation of Korean Trade Unions (FKTU)

26 industrial organizations (5 industrial unions, 21 industrial organizations) as of September 2014; 933,000 members (2018).

◆ Japan Trade Union Confederation - Takes the position that the issue of comfort women and forced labor are not issues that should be discussed by the Committee.

◆ Netherlands Trade Union Confederation - Opinion on the issue of comfort women.

◆ Labor Union of Migrant Workers - Opinion on the "Foreign Trainee Program".