



FOURTEENTH ITEM ON THE AGENDA

**Report of the Director-General**

**Sixth Supplementary Report:  
Report of the Committee set up to examine  
the representation alleging non-observance  
by Japan of the Vocational Rehabilitation  
and Employment (Disabled Persons)  
Convention, 1983 (No. 159), made under  
article 24 of the ILO Constitution by  
the National Union of Welfare and  
Childcare Workers**

**I. Introduction**

1. In a communication dated 15 August 2007, the National Union of Welfare and Childcare Workers, referring to article 24 of the ILO Constitution, addressed to the International Labour Office a representation alleging non-observance by Japan of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), ratified by Japan on 12 June 1992. The Convention is in force in Japan.
2. The following provisions of the Constitution of the International Labour Organization relate to representations:

*Article 24*

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

*Article 25*

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

3. In accordance with article 1 of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization, as revised by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of the representation, informed the Government of Japan and brought it before the Officers of the Governing Body.
4. At its 300th Session (November 2007), the Governing Body found the representation to be receivable and appointed a committee to examine the matter. The Committee consisted of Mr Imson (Government member, Philippines), Mr Tabani (Employer member, Pakistan) and Mr Ahmed (Worker member, Pakistan). At its 303rd Session (November 2008), the Governing Body appointed Mr Smythe (Government member, Australia) to chair the Committee, replacing Mr Imson.
5. On 28 March 2008, the Government of Japan submitted its observations concerning the representation. It forwarded additional information on 12 June 2008 and on 5 February 2009.
6. The Committee met on 18 March 2009 to examine the case and adopted its report.

## **II. Consideration of the representation**

### **Allegations of the complainant**

7. By its communication of 15 August 2007, the complainant alleges that the Government of Japan failed to secure the effective observance of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159). The allegations and recommendations made by the complainant are summarized below.

### ***Definition of persons with disabilities***

8. The complainant states that, taking into account the definition of persons with disabilities contained in Article 1 of the Convention, the recipients of vocational rehabilitation and employment services should be those who have impairments substantially hindering them from living a productive and satisfying working life. The complainant acknowledges section 1(1) of the Act for Employment Promotion, etc., of the Disabled (No. 123 of 1960) (hereinafter “Act No. 123”) which provides that “persons with disabilities” are “those who, because of physical or intellectual disabilities or mental disorder (hereinafter referred to generically as ‘disabilities’), are subject to considerable restriction in their vocational life, or who have great difficulty in leading a vocational life, over a long period of time”. However, the complainant states that the specific grade of disability was determined in terms of medical types of impairments rather than in terms of the actual ability to work. In this regard, the complainant refers to table 5 entitled “Degrees of Physical Disabilities” attached to the Enforcement Regulations of the Act for the Welfare of Persons with Physical Disabilities, which establishes six grades of disability according to type and extent of impairment. Without providing any further particulars, the complainant alleges that the same applies to determination of intellectual and mental disability.

9. The complainant alleges that, by relying on such a determination of disability grades, the Japanese employment policy falls short of measuring ability for work, despite the former Administrative Inspection Bureau having recommended to the Government as early as 1996 to redefine persons with severe disabilities according to their actual ability to work. The complainant alleges that the manner in which grades of disability are determined resulted in many persons with disabilities hardly needing assistance being eligible for government support, while others, actually requiring assistance, lacked support.

### ***Equal treatment of all persons with disability***

10. The complainant indicates that persons with disabilities who are not employed in the open labour market are engaged in so-called welfare work (*jusan shishetsu*). According to the complainant the objective of “welfare workshops” was initially to provide persons with disabilities facing employment difficulties with work preparation and jobs. The complainant submits that, in the early 1960s, some 30 per cent of persons with disabilities who went through rehabilitation programmes in welfare workshops succeeded in finding employment on the open labour market. However, by the 1980s the transition rate had dropped to 1 per cent. The complainant therefore considers that the workshops had ceased to function as vocational rehabilitation facilities and instead became workplaces for severely disabled persons. The complainant further indicates that, as of 1972, so-called “welfare factories” were established which employed persons with disabilities on a long-term basis.
11. Citing a national survey carried out by the National Council for Social Employment, the complainant states that in 2006 welfare work was performed by 111,822 persons with disabilities in 3,506 welfare workshops, and by 3,400 persons with disabilities in 119 welfare factories. In that year, the rate of transition of persons with disabilities from welfare work to open employment was 2 per cent for workshops and 1.6 per cent for welfare factories, according to the complainant.
12. In comparing the conditions in welfare workshops and welfare factories, the complainant states that persons with disabilities working in welfare factories enjoyed the protection of the labour laws, while those in workshops did not. According to the abovementioned national survey, the average monthly pay in workshops in 2006 was 14,252 yen (US\$119), whereas it was 138,189 yen (US\$1,152) in welfare factories. The complainant points out that pay received for welfare work decreased over the years.
13. With regard to the above, the complainant invokes Article 3 of the Convention which, in its view, calls for services and support to be provided equally to all persons with disabilities, regardless of their classification. The complainant alleges that, contrary to Article 3, a situation where persons with disabilities in welfare factories are protected by the labour laws and while those in workshops are not, results in discriminatory treatment between persons with disabilities in respect of working conditions, including wages and benefits.
14. In addition, the complainant states that the Services and Support for Persons with Disabilities Act (No. 123 of 2005) (hereinafter “SSPDA”) introduced a flat-rate fee of 10 per cent of the total cost of welfare services to be paid by persons with disabilities receiving these services, including those performing welfare work which are not covered by the labour laws. The complainant alleges that for some persons with disabilities performing such welfare work the amount of the service fee exceeded the wage they earned. Due to the considerable loss of income caused by the fee, many persons with disabilities lost interest in participating actively in society. However, the complainant acknowledges that the Ministry of Health, Labour and Welfare agreed to reduce the fee, while the underlying legislation remained in place. In the complainant’s view, the

introduction of such service fees indicates that Japan's current policy for the vocational rehabilitation and employment under the Convention discriminates against less productive persons with disabilities.

### ***Sheltered employment***

15. The complainant refers to Paragraph 11(b) of the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168), which identifies "appropriate government support for the establishment of various types of sheltered employment for disabled persons for whom access to open employment is not practicable" as one of the measures that should be taken to promote employment opportunities for disabled persons. The complainant considers that the notion of "sheltered employment" refers to a form of employment preparing persons with disabilities "for employment under normal conditions" and that it should "facilitate transition to the open labour market", citing Paragraph 11(c) and (m) of Recommendation No. 168. The complainant also refers to the Vocational Rehabilitation (Disabled) Recommendation, 1955 (No. 99), which provides that sheltered workshops should provide "for useful and remunerative work ... and whenever possible, transfer to open employment" (Paragraph 33) and that "[w]here and to the extent to which statutory regulation of wages and conditions of employment applying to workers generally is in operation it should apply to disabled persons employed under sheltered conditions" (Paragraph 35).
16. The complainant underlines that the vast majority of persons with disabilities engaged in welfare work were engaged in programmes which, in practice, did not function as rehabilitation facilities, with only very few of them eventually succeeding to find work in the open labour market (see paragraph 10 above). Furthermore, the wages paid in these programmes have decreased over the years. Given that the number of persons with disabilities working in welfare factories was very low, the complainant considers that the Government has failed to put in place sheltered employment centres in accordance with the Convention and the abovementioned provisions of Recommendations Nos 168 and 99.

### ***Equality of opportunity and treatment between persons with disabilities and workers generally***

17. The complainant alleges that the Government failed to ensure equal opportunities for persons with disabilities with regard to obtaining training and employment, as required under Article 4. In this regard, the complainant also refers to Paragraph 10 of Recommendation No. 168 which provides that measures should be taken to promote employment opportunities for disabled workers which conform to the employment and salary standards applicable to workers generally.
18. In this regard, the complainant states that Japan has never reached the statutory quota concerning the employment of persons with disabilities provided for under Act No. 123 of 1960, ever since the quota system was introduced in 1976. In the complainant's view, the failure to achieve the quota demonstrates that the employment policy regarding persons with disabilities in place is insufficient. The complainant refers to information from the Government that the 2.1 per cent quota for the public sector was achieved in 2006. The complainant alleges, however, that this was not the case in reality because persons with severe disabilities are double counted for the purpose of fulfilling the quota. As regards the private sector, for which the quota is set at 1.8 per cent, the complainant states that the rate of 1.52 per cent reported for 2006 was misleading for the same reason.

19. The complainant states that the employment quota was set at too low a level as a result of the practice of excluding persons with severe disabilities from the total number of unemployed persons with disabilities which is used in the calculation of the quota. According to the complainant, the number of unemployed persons with disabilities used for calculating the quota is that of unemployed persons with disabilities registered as jobseekers with the Public Employment Security Office (PESO). In this context, the complainant alleges that persons with severe disabilities covered by welfare services “are not ... allowed to register as jobseekers at the PESO”, and, consequently, persons with disabilities working in the welfare workshops, many of them being persons with severe disabilities, are excluded. Given that the number of unemployed persons with disabilities used for the calculation of the quota influences the level of the quota, the complainant argues that persons with severe disabilities are thus excluded from the employment policy and left with no choice than to work in welfare work programmes.
20. The complainant alleges that employers have exhausted the pool of persons with disabilities that can be employed easily without further assistance and that the Government has failed to provide employers with sufficient support and incentives to hire additional persons with disabilities, and to provide for reasonable accommodation.

### ***Vocational training and employment assistance***

21. The complainant provides statistical information indicating that the number of persons with disabilities registered as jobseekers with the PESO has been increasing in recent years, indicating that there were some 154,000 registered jobseekers with disabilities in 2004. According to the complainant, the high number of registered jobseekers with disabilities indicates that they are not provided with effective plans and support.
22. The complainant alleges that, because persons with severe disabilities covered by welfare services “are not ... allowed to register as jobseekers at the PESO”, they are not considered as unemployed and thus excluded from receiving “the usual unemployment benefits, including vocational rehabilitation services”. At the same time, they have to pay service fees for vocational rehabilitation provided through the welfare programmes. In this connection, the complainant invokes Article 7 of the Convention, and also refers to Paragraphs 5, 7, 9, 21(b), 22(2) and 23 of Recommendation No. 99, as well as to Paragraph 11(a) of Recommendation No. 168.

### ***The complainant's recommendations***

23. In order to ensure the full application of the Convention, the complainant recommends that the Government take the following measures: repeal the SSPDA and abolish welfare service fees for persons with disabilities; recognize all working persons with disabilities as workers and apply labour laws and policies to them; allow persons with disabilities to register as jobseekers with the PESO and legally recognize those engaged in welfare work as unemployed to enable them to have access to unemployment benefits such as retraining and rehabilitation; open vocational rehabilitation centres for persons with severe disabilities and incorporate a provision concerning reasonable accommodation into labour laws and policies; raise the employment quota for persons with disabilities to an appropriate level; and abolish the double counting of persons with severe disabilities.

### **Observations of the Government**

24. In its reply, the Government provides detailed information on the laws, policies and programmes relating to vocational rehabilitation and employment of persons with

disabilities. The Government states that it is promoting the realization of a cohesive society through the implementation of comprehensive policies under the Basic Act for Persons with Disabilities (Act No. 84 of 21 May 1970) and the Basic Programme for Persons with Disabilities (2002–12). The Five-Year Plan for Implementation of Priority Measures (2008–12) sets out a range of measures and targets, including in the area of vocational rehabilitation and employment of persons with disabilities.

25. The Government estimates there are some 1.34 million persons with physical disabilities, 0.34 million persons with intellectual disabilities and 1.92 million persons with mental disabilities, falling within the age bracket from 18 to 64 years (a total of some 3.6 million)<sup>1</sup>.
26. The Government indicates that the Act for Employment Promotion, etc., of the Disabled (No. 123 of 25 July 1960) and the related Basic Policy on Measures for Employment of Persons with Disabilities provide the framework for employment policies and measures for persons with disabilities in line with the abovementioned Basic Act and Programme (see paragraph 24 above). These policies and measures include the implementation of a quota, levy and grant system concerning the employment of persons with disabilities and vocational rehabilitation programmes tailored to the particular situation of the individual person. Persons with disabilities are also eligible for vocational training under the Human Resources Development Promotion Act (No. 64 of 1969).
27. The Government states that a Headquarters for Promoting Measures for Persons with Disabilities chaired by the Prime Minister was set up in 2001 to ensure comprehensive and effective implementation of relevant policies and measures. The Government also undertakes campaigns and initiatives to raise awareness of the issues of employment of persons with disabilities among employers and the public at large, for instance, educational events and awards for model enterprises.
28. The Government emphasizes that it has periodically reviewed and further developed its policies and measures for the employment of persons with disabilities, in accordance with Article 2 of the Convention. Following the ratification of the Convention, Act No. 123 was revised three times in five-year intervals (1993, 1998, 2002). Further amendments were made in 2005 to enhance employment measures for persons with mental disabilities, the support for persons with disabilities working at home, and coordination between employment and welfare measures. Taking into account the growing desire to work among persons with disabilities, the Diet passed further amendments to Act No. 123 on 19 December 2008 which extend the levy and grant system in stages to small and medium-sized enterprises<sup>2</sup> and provides for the counting of persons with disabilities employed as part-time workers for the purpose of complying with the quota as from 2010.
29. The Government states that the SSPDA, which has been fully enforced as of 1 October 2006, establishes an integrated scheme of services for persons with different categories of disabilities and designates the local municipalities as centralized service providers. The SSPDA provides for new programmes to support persons with disabilities desiring to work, aiming at the transition of persons with disabilities from institutions to an independent life in their communities, including access to open employment. The range of different programmes under the SSPDA is built on the premise that appropriate support

<sup>1</sup> Appendix 12 of the Government's observations.

<sup>2</sup> Currently, the levy and grant system applies to enterprises employing 301 regular employees or more. Under the 2008 amendments, it will apply as of 2010 and 2015 to enterprises with 201 and 101 or more regular employees, respectively.

should be offered to persons with disabilities at the different stages in their transition from “welfare to employment”.

30. According to the Government, under the SSPDA, the Support Programme for Transition to Work (SPTE) is designed to support persons with disabilities who wish to find employment by offering them training over a defined period of time to improve employment-related skills and knowledge. The Support Programme for Continuation of Work (SPCW) supports those who face difficulties to be employed in regular workplaces. The Government explains that, under the SSPDA, two types of programmes exist, i.e. “Type-A SPCW” and “Type B-SPCW”. It indicates that Type-A and Type-B facilities approximately correspond to the workshops and welfare factories, respectively, as referred to by the complainant, although these workshops and factories no longer formally exist under the SSPDA.
31. The Government specifies that consultations on policy reviews, including legislative amendments, are being held at the Subcommittee on Employment of Persons with Disabilities of the Labour Policy Council, which is an advisory body to the Minister of Health, Labour and Welfare, in accordance with Article 5 of the Convention. The Subcommittee is comprised of representatives of employers’ organizations, workers’ organizations, academia, as well as representatives of persons with disabilities nominated by relevant organizations, namely the Japanese Federation of the Blind, Inclusion Japan (Japanese Association of People with Intellectual Disabilities), the National Federation of Families with Mentally Ill in Japan, and the Japanese Federation of Organizations for Persons with Physical Disabilities.
32. The Government’s observations on the allegations and recommendations made by the complainant are set out below.

### ***Definition of persons with disabilities***

33. The Government maintains that it is implementing a national policy on vocational rehabilitation and employment of persons with disabilities in compliance with Article 2 of the Convention. It indicates that providing adequate support to all persons having difficulty in leading a vocational life because of disabilities is a principle of the national policy, in full conformity with Article 1 of the Convention. The Government maintains that the definition of “persons with disabilities” contained in section 2(1) of Act No. 123 ensures that persons with physical, intellectual or mental disabilities, as well as persons with other disabilities, such as developmental disabilities, are eligible to receive services under the Act.
34. As regards the quota system, the Government indicates that the obligation to employ persons with disabilities is restricted to persons with physical and intellectual disabilities because it is necessary to ensure, in this context, that the scope of the disability is “unambiguous and measurable”, although employers may count persons with mental disabilities when establishing the rate of employment of persons with disabilities in their undertakings.
35. With regard to the determination of who is considered as having a physical, intellectual and mental disability under Act No. 123, the Government refers to the Act for the Welfare of Persons with Physical Disabilities (No. 283 of 1949) which defines “persons with physical disabilities” as “persons of the age of 18 or more who have physical disabilities,

and hold Certificates of Physical Disabilities issued by the prefectural governor”.<sup>3</sup> Under the Act for the Mental Health and Welfare of Persons with Mental Disabilities (No. 123 of 1950), “persons with mental disabilities” are persons who have mental illnesses such as integration dysfunction syndrome, acute intoxication or addiction from psychotropic agents, intellectual disabilities or a psychopathic personality. The existence of a mental disability is recognized through certificates issued by the prefectural governor. The Act for the Welfare of Persons with Intellectual Disabilities (No. 37 of 1960) does not provide for a definition of persons with disabilities. However, persons found to have an intellectual disability at a Rehabilitation and Counselling Centre for Persons with Intellectual Disabilities are issued with Certificates of Intellectual Disabilities as well.

36. As regards the 1996 report of the former Administrative Inspection Bureau referred to by the complainant, the Government explains that the report recommended to the then Ministry of Labour that “an arrangement be made by which Local Vocational Rehabilitation Centres for Persons with Disabilities identify ‘severe disabilities’ according to the individual’s vocational capacities and employment support provided to those who are thus identified as having severe disabilities, in addition to those with severe disabilities under the current definition ...; and that deliberations be made to establish original criteria for identifying persons with severe disabilities by PESO, on the basis of the experience of the abovementioned identification of severe disabilities”.
37. In this context, the Government maintains that all persons with disabilities are eligible to receive vocational rehabilitation services irrespective of whether they hold a certificate and of the grade of their disability. It also states that employment barriers are identified on an individual basis and tailored assistance is provided. Further, the Government states that subsidies for employment of persons with severe disabilities are not limited to those having severe disabilities as assessed by the disability grade.

### ***Equal treatment for all persons with disabilities***

38. The Government maintains that its national policy on vocational training and employment of persons with disabilities aims at ensuring that all persons with disabilities can receive appropriate support suitable to the particular situation of each individual, as required under Article 3. It reiterates that vocational rehabilitation services under Act No. 123 and the Human Resources Development Promotion Act, 1969, including vocational capability evaluation, vocational guidance, vocational training and job placement are available to all persons with disabilities. As regards the promotion of employment opportunities, the Government recalls the quota, levy and grant system.
39. In respect of the issues raised in relation to “welfare work”, the Government states that Type-A programmes under the SPCW are designed for persons with disabilities considered already being able to work under an employment relationship offering an opportunity to work under an employment contract. By contrast, the Type-B programmes are designed for those facing difficulties working under an employment relationship, while nevertheless offering them opportunities for production activities. Therefore the application of the labour legislation is not envisaged as regards Type-B programmes. Accordingly, “workshop pay” received by the recipients was not considered as a wage in the sense of the Labour Standards Act. The Government further refers to section 201(1) of Ministry of

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<sup>3</sup> According to the *Employment Guide for Employers and Persons with Disabilities* published by the Japan Organization for the Employment of the Elderly and the Disabled (JEED), 2008, the term “physically disabled person” under Act No. 123 of 1960 refers to a person who has one disability of grade 1–6, as set out in the List of Degree of Physical Disabilities attached to the Enforcement Regulation of the Law for the Welfare of Persons with Physical Disabilities.



Health, Labour and Welfare Ordinance No. 171 of 29 September 2006 regulating Type-A and Type-B Support for the Continuation of Work which prescribes that operators of such programmes “shall pay to the recipients the sum of money which is equivalent to the amount obtained by subtracting the cost of maintaining the operation of production activities from the revenue of the operation of production activities”. The Government states that operators of Type-B SPCW facilities are therefore unable to make profits and the production activities were not performed for the benefit of others.

40. The Government nevertheless recognizes that the workshop pay received by persons with disabilities performing welfare work under Type-B SPCW facilities, its monthly average being 12,222 yen (US\$110) in 2006, is too low to enable the persons concerned to be independent, even if combined with a disability pension. The Government states that each prefecture is required to develop and implement a “Five-Year Plan to Double Workshop Pay” between 2007 and 2011.
41. The Government further states that the operation of Type-B SPCW programmes must be in compliance with the conditions set out in the Ministerial Circular concerning the Employee/Non-Employee Status of the Recipients of the Support Programme for Continuation of Work (No. 1002003 of 2 October 2006). These conditions are the following: (a) recipients must be left free to choose their attendance, hours of activity and quantity of activity, etc; (b) no disciplinary measures, such as deducting workshop pay, withdrawing support personnel, and taking away recipient’s titles, should be taken, even if the predetermined quantity of activity has not been met by the deadline; (c) support in the process of production activities should be limited to technical guidance concerning the activities, and must not amount to instruction and control; (d) no distinction in workshop pay shall be made according to the skills of the recipients. The circular also provides for a procedure for the resolution of grievances and doubts concerning the application of these conditions.
42. Finally, the Government states that, with regard to recipients of services other than SPCW, the application of the labour legislation depends on the overall situation of the individual case. If there is a relationship of supervision and subordination, the persons with disabilities concerned are regarded as workers and the Labour Standards Act applies, as do the Minimum Wage Act, 1959, the Occupational Health and Safety Act, 1972, the Equal Employment Opportunities Act, 1972, the Part-time Work Act, 1993, the Workers’ Accident Compensation Insurance Act, 1947, and the Trade Union Act, 1949.

### ***Sheltered employment and production workshops***

43. The Government states that, if the notion of “sheltered employment” was understood as employment under an employment relationship, employment in “special subsidiaries”<sup>4</sup> and Type-A SPCW facilities would fall into this category. The Government indicates that in 2005 some 2,000 persons with disabilities were engaged in the former welfare factories, while the number of those engaged in Type-A SPCW facilities is expected to reach 36,000 by 2011. However, if the term “sheltered employment” was taken to mean work in “sheltered workshops” under a non-employment relationship, the SPTE and Type-B SPCW facilities would qualify.

<sup>4</sup> “Special subsidiaries” are subsidiaries set up by enterprises that give special consideration to the employment and stabilization of employment of persons with disabilities.

**Equality of opportunity and treatment between persons with disabilities and workers generally**

44. The Government maintains that its national policy aims at ensuring equal opportunity of disabled and non-disabled workers, as required under Article 4. It states that the purpose of the quota, levy and grant system under Act No. 123 is to provide persons with physical and intellectual disabilities with equal opportunities to become regular employees, to the same extent as workers generally.
45. The Government refers to section 43(2) of Act No. 123 which regulates the calculation of the statutory employment quota as follows:
- The employment quota for persons with disabilities under the preceding paragraph shall be fixed on the basis of the ratio of total workers with physical and intellectual disabilities (including persons with physical or intellectual disabilities who are in circumstances where they cannot obtain a steady job, despite the will and ability to work ...) out of the total number of workers (including persons who are in circumstances where they cannot obtain a steady job, despite their will and ability to work ...), and such rate shall be prescribed by Cabinet Ordinance at least every five years ....
46. The Government states that the number of unemployed persons with disabilities used for the calculation is based on the Survey on the Actual Employment Status of Persons with Disabilities which is conducted every five years. This survey counts as unemployed all persons with disabilities indicating that they wish to find a job in open employment, even if they are recipients of Type-B SPCW or other welfare programmes and irrespective of whether they are registered as jobseekers with the PESO.
47. The Government states that double counting of persons with severe disabilities under the quota system contributes to expanding employment opportunities for this category.<sup>5</sup> It further explains that double counting was introduced in 1977 in response to an opinion of the Labour Policy Council in order to address the slow progress in the employment of persons with severe disabilities. The Government indicates that the Labour Policy Council's opinion was based on requests by organizations of persons with disabilities, at the time. The Government acknowledges that, more recently, some trade unions and organizations of persons with disabilities have requested the abolition of the practice of double counting of persons with severe disabilities.
48. The Government indicates that persons with severe disabilities are counted double not only for the purpose of satisfying the quota, but also when the total number of unemployed persons with disabilities is established for the purpose of calculating the quota. The overall fulfilment of the quota, calculated in such a manner, would therefore mean that all persons with disabilities counted as unemployed, including those with severe disabilities, would have found employment. In addition, the Government states that this method ensures that persons with disabilities other than severe forms have equal opportunities.
49. The Government states that overall the number of persons with disabilities in employment has been increasing. Statistical data provided indicates that the number of persons with disabilities employed by enterprises with 56 or more employees increased from 181,000 on 1 June 2002 to 224,000 on 1 June 2007. The share of persons with severe disabilities, as defined for the purposes of the quota system, remained at around one third since 1998, and

<sup>5</sup> Persons having grade 1 or 2, or two or more grade 3 disabilities are deemed to be "persons with severe physical disabilities" for the purpose of double counting. See JEED, op. cit, footnote 2.

fell slightly to 31.3 per cent in 2007.<sup>6</sup> However, the Government acknowledges that the employment of persons with disabilities in small and medium-sized enterprises has been declining.

- 50.** The Government further states that legal protection from discrimination based on disability is available under section 3(3) of the Basic Act for Persons with Disabilities.<sup>7</sup> It also intends to ratify the Convention on the Rights of Persons with Disabilities adopted by the General Assembly of the United Nations on 13 December 2006, which provides for equality and non-discrimination based on disability, including in respect of work and employment.<sup>8</sup>
- 51.** With regard to the issue of reasonable accommodation, the Government refers to the levy and grant system under Act No. 123 which requires enterprises which failed to fulfil the statutory quota to pay a levy, while those satisfying it are provided with adjustment allowances or rewards.<sup>9</sup> In addition, subsidies are provided to employers establishing or improving work facilities to prepare for the employment of persons with disabilities or arranging for workplace assistants for persons with severe disabilities. The Government also provides administrative guidance to private employers on management of disability in the workplace.
- 52.** The Government further indicates that it is planning to organize a study group on the issue of reasonable accommodation involving relevant parties, including organizations of persons with disabilities, workers and employers.

### ***Vocational training and employment assistance***

- 53.** The Government submits that vocational rehabilitation and employment services provided to persons with disabilities under Act No. 123 and the Human Resources Development Promotion Act are in accordance with Articles 2 and 7 of the Convention.
- 54.** In this regard, the Government points out that Human Resources Development Centres for Persons with Disabilities, established in 19 locations, provide special vocational training for persons with disabilities who need support in becoming independent, including persons with severe mental disabilities who need nursing care in daily life, as well as persons with intellectual, mental and developmental disabilities. At the same time, the general Public Human Resources Development Centres have been enhanced to accommodate more persons with disabilities, including through improving barrier-free access and offering specialized courses for persons with intellectual or developmental disabilities. Training programmes have also been commissioned to private entities in all prefectures. Through these various means a total of 7,490 persons with disabilities received vocational training in 2006. In addition, the Government refers to a number of specialized vocational rehabilitation centres at the national, area and local levels under the Japan Organization for the Employment of the Elderly and Persons with Disabilities (JEED).

<sup>6</sup> These figures do not include the number of employed persons with severe physical and intellectual disabilities working at least 20 hours but less than 30 hours per week, and the number of persons with mental disabilities.

<sup>7</sup> Section 3(3) provides that “no one shall be allowed to discriminate against persons with disabilities or violate their rights and benefits on the basis of disability”.

<sup>8</sup> Convention on the Rights of Persons with Disabilities, Articles 5 and 27.

<sup>9</sup> According to the Government, 43.8 per cent of private enterprises were in compliance with the quota as of 1 June 2007.

55. The Government recognizes that further progress needs to be made in terms of facilitating the transition of persons with disabilities “from welfare to open employment” and indicates that it expects to reach a total of 9,000 transitions per year by 2011, as compared to some 2,000 in 2005. The Government outlines a number of measures taken to assist persons with disabilities to move towards securing a job in the open labour market. For instance, a network of 135 Employment and Livelihood Support Centres for Persons with Disabilities function as focal points for coordination between the employment, welfare and educational institutions concerned.
56. The Government indicates that the PESO, in 576 locations throughout the country, registers persons with disabilities seeking employment and provides vocational counselling, job placement and support for settling in the workplace through expert staff, in a manner that is tailored to the needs of the individual jobseeker. The Government states that in 2006 the number of persons registered as jobseekers with disabilities was 103,637 and 43,987 of them found a job during that year, which was a record high. In its communication of 12 June 2008, the Government indicates that the number of persons with disabilities that found a job via the PESO in 2007 further increased to 45,565. The number of persons with severe disabilities that found a job through the PESO increased from 12,847 in 2006 to 12,925 in 2007.
57. The Government states that section 8 of the Employment Security Act and section 26 of Act No. 123 ensure that vocational counselling and job placement services through the Vocational Rehabilitation Centres for Persons with Disabilities and the PESO are provided to persons with disabilities free of charge. Vocational training for jobseekers with disabilities was ensured under section 23(1) of the Human Resources Development Promotion Act.
58. The Government states that it considers it necessary to ask recipients of Type-B SPCW to pay a service fee, as provided for under the SSPDA, as they received “support for establishing lifestyle habits and improving work capability”. According to the Government, the basic rate of 10 per cent of the service cost is reduced on a case-by-case basis according to the level of income of each recipient. Following the enforcement of the SSPDA in 2006, the Government decided to grant additional service fee reductions until the end of 2008. The Government’s reply also indicates that there are plans to revise the service fees further, reducing them to approximately 3 per cent as part of a package of “emergency measures” in the context of efforts to review the SSPDA.
59. The Government states that recipients of Type-A SPCW that meet certain conditions are insured under the Employment Insurance Act (No. 116 of 1974) and could therefore qualify for unemployment benefits, while this does not apply to recipients of Type-B SPCW. The Government underlines that non-coverage by unemployment insurance does not exclude them from receiving vocational rehabilitation services and training. Vocational rehabilitation is not considered a “usual unemployment benefit” as stated by the complainant.

### **III. The Committee’s conclusions**

60. The conclusions are based on the Committee’s review of the complainant’s allegations and the observations transmitted by the Government in the present procedure.
61. The Committee recalls that ratifying Members undertake, in accordance with national conditions, practice and possibilities, to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of persons with disabilities (Article 2). It recalls that the Convention lays down the principles for such a policy

(Articles 2 to 5) and that it prescribes the specific action to be taken at the national level (Articles 6 to 9). Definitions and scope are addressed in Article 1. In addition, the Committee notes that the provisions of Recommendations Nos 99 and 168 inform and guide the action to apply the Convention.

62. The Committee also notes that the complainant alleges that the relevant national law and practice does not give effect to Articles 1, 3, 4 and 7 of the Convention.

**Article 1 – The definition of the term “disabled persons” for the purpose of the Convention**

63. The complainant alleges that by relying on a method of defining disability based on types of impairment rather than actual ability to work, the national law and practice regarding the determination and recognition of disabilities fails to give effect to Article 1(1) of the Convention. The complainant refers to table 5 attached to the Enforcement Regulations of the Act for the Welfare of Persons with Physical Disabilities, which establishes six grades of disability in terms of types of impairment and which is the basis for the issuing of disability certificates. It is alleged that this method of determining disability results in the exclusion of some persons with disabilities from support measures.

64. The Committee recalls that Article 1(1) provides as follows:

For the purposes of this Convention, the term “disabled person” means an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognised physical or mental impairment.

65. The Committee notes that Article 1(1) defines the target group that must be covered by the national policy adopted in accordance with Article 2. For this purpose, it defines the term “disabled person” as an individual whose occupational prospects are reduced as a result of a “duly recognised” impairment. The provision leaves it to each ratifying Member to adopt appropriate methods to determine the extent to which a given impairment reduces occupational prospects of the individual concerned.<sup>10</sup> However, the Committee notes that ratifying Members must ensure that all men and women falling under the definition of Article 1(1) are effectively covered by the national policy.
66. The Committee notes that Act No. 123, which is Japan’s main legal framework regarding vocational rehabilitation and the promotion of employment of persons with disabilities, provides in section 2(1) that “persons with disabilities” are “those who, because of physical or intellectual disabilities or mental disorder (hereinafter referred to generically as “disabilities”), are subject to considerable restriction in their vocational life, or who have great difficulty in leading a vocational life, over a long period of time”. The Committee also notes the Government’s statements to the effect that vocational rehabilitation and employment assistance is available to all persons with disabilities, irrespective of the grade, or extent of disability, or the holding of a certificate. The Committee takes due note of the Government’s statement that the competent authorities study and assess the particular needs of persons with disabilities on a case-by-case basis.
67. Based on the above, the Committee finds that, based on the information before it, the national policy on vocational rehabilitation and employment of disabled persons adopted by Japan does not appear to fall short of addressing the situation of those individuals

<sup>10</sup> International Labour Conference, 86th Session, 1998, Report III (Part 1B), General Survey on the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159), and Recommendation (No. 168), 1983, paras 7 and 72.

whose occupational prospects are reduced as a result of a duly recognized physical or mental impairment, as envisaged under Article 1(1) of the Convention.

**Articles 1(3) and 3 – National policy to aim at ensuring appropriate vocational rehabilitation for all categories of disabled persons**

68. The Committee notes that the complainant alleges that the different conditions and modalities which apply to work performed by persons with disabilities in “welfare workshops” and “welfare factories” raise issues under Article 3 of the Convention, which, in the complainant’s view, calls for services and support to be provided equally to all persons with disabilities, “regardless of their classification.” In this regard, the complainant alleges that the persons with disabilities working in welfare workshops, many of whom have severe disabilities, are treated less favourably than those working in welfare factories. Particular reference is made to the fact that work performed in workshops is not protected by the labour legislation and that pay is very low.
69. Before examining Article 3 in the context of the present case, the Committee notes that on 15 August 2007, the date when the representation was received by the ILO, the facilities referred to by the complainant as “welfare workshops” and “welfare factories” no longer formally existed due to the reforms implemented through the SSPDA which was adopted in 2005 and fully enforced as of 1 October 2006. However, the Committee also notes the Government’s indication that under the SSPDA, Type-A and Type-B facilities under the Support Programme for the Continuation of Work (SPCW) approximately correspond to the workshops and welfare factories under the former system. Further, the Committee infers from the Government’s explanations that the features of the former welfare workshops and factories criticized by the complainant continue to exist under the Type-A and Type-B SPCW.
70. On this basis, the Committee recalls that Article 3 reads as follows:
- The [national] policy shall aim at ensuring that appropriate vocational rehabilitation measures are made available to all categories of disabled persons, and at promoting employment opportunities for disabled persons in the open labour market.
71. The Committee notes that Article 3 is concerned with ensuring that the national policy provides appropriate vocational rehabilitation and employment measures to all categories of disabled persons, without distinction of any kind. This principle is also reflected in Article 1(4) which states that the provisions of the Convention shall apply to all categories of disabled persons. The Committee notes that this principle recognizes that no person with a disability should be left behind based on the type of his or her disability.<sup>11</sup>
72. Given the fact that persons with disabilities are not a homogenous group, the Committee notes that Article 3 recognizes that the support and assistance provided should be appropriate in responding to the situation of each category of disabled persons. However, care must be taken that distinctions made regarding the provision of services and support to different categories are reasonable and fair.

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<sup>11</sup> cf. General Survey of 1998, para. 206, where the Committee of Experts held that national legislation leading to differential treatment of disabled persons, in particular based on the origin of the disability, may infringe the principle of equality of opportunity and treatment reaffirmed in Articles 3 and 4 of the Convention.

73. The Committee notes that the objective of Type-A as well as of Type-B programmes, both conceived as welfare services, is to provide persons who have difficulties to be employed at ordinary workplaces with opportunities for work as well as training for improving their knowledge and skills to enter the workforce.<sup>12</sup> However, while Type-A facilities “employ” persons with disabilities under a labour contract, Type-B facilities offer “opportunities for productive activities” without establishing an employment relationship and, accordingly, the labour legislation does not apply. The Committee notes the Government’s explanation that persons with disabilities involved in Type-B programmes are those considered as being not yet able to work under an employment relationship. In this regard, the Committee takes due note of the conditions for the operation of Type-B programmes set forth in the Ministerial Circular concerning the Employee/Non-Employee Status of the Recipients of the Support Programme for Continuation of Work (No. 1002003 of 2 October 2006). In this context, the Committee is unable to ascertain how, in the present case, the distinction between work under an employment relationship and other work operates in practice. It notes that further information would be required on the implementation of Ministerial Circular No. 1002003, as well as information on the criteria used to determine whether a person with disabilities is considered to be able to “work under an employment relationship”.
74. The Committee further notes that work performed by men and women with disabilities in sheltered production workshops with a view to vocational rehabilitation, irrespective of whether it is performed under an employment relationship, should meet certain minimum standards if it is to contribute effectively to the Convention’s objective of social and occupational integration of persons with disabilities.<sup>13</sup> Such minimum standards and the methods of implementing them would need to be established according to national conditions, and in consultation with workers’ and employers’ organizations, as well as organizations of and for persons with disabilities.
75. While the standards applicable to work performed in sheltered workshops need to take national conditions into account, the Committee notes that they should also be in line with the principles of the Convention, including the principle of equality of opportunity and treatment (Article 4). The Committee concludes that, from the perspective of the Convention’s objective of the social and economic integration of persons with disabilities into the community and wider society, and with a view to the full recognition of the contribution made by persons with disabilities, bringing work performed by such persons in sheltered workshops within the scope of labour legislation, to the extent appropriate, would appear to be crucial.
76. With regard to the particularly low level of pay received under Type-B SPCW, the Committee notes that the Government acknowledges that workshop pay at present is at too low a level. It notes the adoption of the Five-Year Plan to Double Workshop Pay, and

<sup>12</sup> Sections 185 and 198, Ministry of Health, Labour and Welfare Ordinance concerning the Implementation of Services and Support for Persons with Disabilities Act, No. 19 of 2006.

<sup>13</sup> Preamble, para. 5, and Article 1(2) of the Convention. Paragraph 33 of Recommendation No. 99 provides that sheltered workshops should provide for useful and remunerative work. Paragraph 25 of the same instrument provides that disabled persons (including those in receipt of disability pensions) should not as a result of their disability be discriminated against in respect of wages and other conditions of employment if their work is equal to that of non-disabled persons. Paragraphs 10 and 11(f) of Recommendation No. 168 provide that measures to promote employment opportunities for disabled persons, should include appropriate government support for the establishment and development of small-scale industry, cooperative and other types of production workshops by and for disabled persons, provided that such workshops meet defined minimum standards.

hopes that progress will continue to be made to bring workshop pay to an adequate level and requests that further information be provided in this regard.

77. Noting that persons with disabilities involved in Type-B SPCW receiving training for the purpose of vocational rehabilitation are required to pay a service fee, the Committee notes that the Convention does not explicitly address the issue of the financing of rehabilitation services. However, keeping in mind Paragraph 22(2) of Recommendation No. 99 which recommends the provision of free vocational rehabilitation services, and the Convention's objective of achieving the integration of all disabled persons into society, the Committee notes the efforts mentioned by the Government to reduce such fees and expresses its hope that all efforts will be made to ensure that no person with disabilities is discouraged or excluded from becoming involved in such programmes, and gaining eventual access to open employment. The Committee invites the Government, when examining these issues, to take into account that persons with disabilities already financially contribute to the costs of maintaining the operation of production activities under Type-B programmes, as provided for under the Ministry of Health, Labour and Welfare Ordinance No. 171 of 29 September 2006 (see paragraph 39 above).

### ***Articles 3, 4 and 7 – Equality of opportunity between persons with disabilities and workers generally***

78. The Committee recalls that the national policy to be adopted under the Convention must address the areas of vocational rehabilitation and the promotion of employment opportunities for persons with disabilities in the open labour market, as outlined in Articles 2 and 3 of the Convention. Article 7 requires ratifying Members to take measures to enable persons with disabilities to secure, retain and advance in employment, and provides a non-exhaustive list of such measures. Article 7 also provides that existing services for workers generally shall, wherever possible and appropriate, be used with necessary adaptations. Article 4 provides for equality of opportunity and treatment between disabled workers and workers generally as a principle that national policy is to promote and respect, and refers to special positive measures as a means to achieve effective equality.
79. The Committee notes that, under Act No. 123 and the Human Resources Development Promotion Act, persons with disabilities are entitled, free of charge, to vocational rehabilitation and employment services through the PESO, including those explicitly mentioned in Article 7 of the Convention. However, the Committee reiterates the concerns expressed with regard to the introduction of a fee for participants in Type-B SPCW programmes for the services received under such programmes, including vocational rehabilitation.
80. The Committee notes that the number of disabled persons that found employment through the PESO has been increasing in recent years. The Committee notes that the Government aims at enhancing cooperation and coordination between the welfare and employment institutions with a view to bringing about an increased transition of persons with disabilities "from welfare to employment". Nevertheless, it concludes that further and updated statistical information is required to assess the impact of these measures against the targets set by the Five-Year Plan for Implementation of Priority Measures (2008–12), particularly as regards the number of men and women with disabilities that are to move from Type-B SPCW to sheltered work protected under the labour legislation and eventually to open employment.
81. The Committee notes that the Convention does not prescribe the kinds of special positive measures that should be taken. However, issues could arise under the Convention in cases where the design or operation of such measures would in fact run counter to the objectives



and principles of the Convention. This could be the case, for instance, when a special positive measure would in fact constitute an obstacle rather than improving access of women and men with disabilities to employment.<sup>14</sup> Based on the information before it, the Committee finds that no such issues appear to arise in relation to the quota system under Act No. 123 which has generally contributed to improving access of persons with disabilities to employment, although progress has been uneven. However, in this connection, the Committee invites the Government to examine the impact of the quota system's current limitation to persons with physical and intellectual disabilities on the employment opportunities of persons with other disabilities, keeping in mind that the Convention applies to all categories of disabled persons.

- 82.** The Committee notes that on the basis of the information before it, the practice of double-counting of persons with severe disabilities in relation to the quota system does not appear to run counter to the objectives and principles of the Convention. However, the Committee invites the Government to examine the impact of this practice in order to ascertain its effectiveness.
- 83.** The Committee emphasizes that reasonable accommodation is indispensable in promoting and ensuring respect for the principle of equality of opportunity and treatment between workers with disabilities and workers generally. While noting that the Government has provided guidance and financial assistance to employers regarding the management of disability in the workplace, including workplace adaptation, the Committee welcomes the planned study group on the issue of reasonable accommodation, and expresses its hope that this initiative will contribute to the strengthening of the Convention's application. In this regard, the Committee considers it important that the obligations of employers with regard to providing reasonable accommodation are clarified.

### ***Article 2 – Implementation and periodic review of the national policy***

- 84.** The Committee, while concluding that Japan is making efforts to give effect to provisions of the Convention, encourages the Government to continue to periodically review the national policy as a means to assess its effectiveness, and to adapt or complement it, as necessary, in consultation with workers' and employers' organizations and organizations of and for persons with disabilities. It welcomes the Government's ongoing efforts in this regard and expresses its hope that such efforts will effectively contribute to the progressive elimination of obstacles for the social and occupational integration of all men and women with disabilities and to promoting and ensuring their equality of opportunity and treatment in employment and occupation, on an equal footing with workers generally.

## **IV. The Committee's recommendations**

- 85. *In the light of the conclusions set out in paragraphs 60 to 84 above concerning the issues raised in the representation, the Committee recommends to the Governing Body:***

***(a) that it approve the present report;***

<sup>14</sup> General Survey of 1998, para. 112.

- (b) that it invite the Government to take due note of the matters raised in the above conclusions and to include detailed information thereon in its next report under article 22 in respect of the Convention due in 2010;*
- (c) that it entrust the Committee of Experts on the Application of Conventions and Recommendations with following up the questions raised in this report with respect to the application of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159); and*
- (d) that it make this report publicly available and close the procedure initiated by the representation of the National Union of Welfare and Childcare Workers, alleging non-observance by Japan of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).*

Geneva, 18 March 2009.

*(Signed)* Mr James Smythe  
Chairperson

Mr Ashraf W. Tabani

Mr Khurshid Ahmed

*Point for decision:* Paragraph 85.