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REPORT BY THE DIRECTOR-GENERAL ON ALLEGATIONS RECEIVED BY THE JOINT ILO/UNESCO COMMITTEE OF EXPERTS ON THE APPLICATION OF THE RECOMMENDATIONS CONCERNING TEACHING PERSONNEL (CEART)

SUMMARY

In accordance with 154 EX/Decision 4.4, the Director-General hereby submits to the Executive Board the interim report of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART) on allegations received by CEART from teachers' organizations regarding non-observance of the Recommendations.

There are no financial or administrative implications.

Action to be taken by the Executive Board: proposed decision in paragraph 7.

1. The Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART) was established by parallel decisions of the Governing Body of ILO and the Executive Board of UNESCO in 1967. Its mandate is to monitor and promote application of the Recommendations on teachers of 1966 and 1997.¹ It therefore examines formal allegations from international and national teachers' organizations that provisions of one or both of the Recommendations are not being applied in Member States. CEART meets every three years in Paris or Geneva. Its procedures also allow for the preparation of interim reports on cases between the regular meetings, so as to ensure a more timely response in the consideration of allegations and their resolution in support of constituents in Member States.

2. At its 176th session, the Executive Board examined the report of the Ninth Session of CEART,² held at ILO in Geneva from 30 October to 3 November 2006. Expressing its appreciation of the work of the Joint Committee in stimulating action to promote greater awareness and wider application of the two Recommendations concerning the status of teaching personnel, the Board invited the Director-General to assist the Joint Committee in carrying out its next cycle of work and "to transmit the report of the Joint Committee, together with any observations by the Executive Board to Member States and their National Commissions, international teachers' organizations and other relevant international organizations maintaining relations with UNESCO, and to encourage

¹ The Recommendation concerning the Status of Teachers, 1966, and the Recommendation concerning the Status of Higher-Education Teaching Personnel, 1997.

² CEART/INT/2008/1.

them to continue to intensify their efforts to apply all provisions of both normative instruments in order to improve the status of the teaching profession and to guarantee academic freedoms in higher education” (176 EX/Decision 32).

3. The interim report of September 2008 examines further developments in the three cases from Australia, Ethiopia and Japan currently under consideration by CEART. Concerning Australia, additional information from the government and the National Tertiary Education Union received after CEART’s Ninth Session has been examined, and findings and recommendations made to both the government and the teachers’ union to help bring national legislation and practice in the tertiary education sector into better conformity with the 1997 Recommendation’s provisions.

4. In the case of Ethiopia, Education International, on behalf of the Ethiopian Teachers’ Association, has supplied limited information at the request of CEART since its last session. However, the government has not replied to the invitation. Accordingly, CEART recommends suspending further consideration pending more information on the issues first considered by CEART in 1994.

5. Regarding Japan, the interim report is based largely on the report of the CEART fact-finding mission to Japan in April 2008. This mission, the first of its kind in the history of CEART, was undertaken in accordance with its mandate and procedures at the parallel invitation of the Government of Japan and teachers’ organizations. These latter included the All Japan Teachers and Staff Union (ZENKYO) which had initially requested CEART to examine the issues in 2002. The purpose of the mission was to gain a greater understanding of the situation and context of education in Japan as it affects the main issues – teacher assessment and disciplinary systems, merit assessment and compensation, and relevant social dialogue practices. It involved meetings with government education and labour authorities, as well as national and prefecture-level teachers’ organizations, national employers’ and workers’ organizations, representatives of parents, and independent education and labour experts. The mission has commended the government, organizations of teachers, employers and workers, and other stakeholders in Japan for their excellent cooperation and willingness to engage in dialogue in the course of this precedent-setting mission, which resulted in a greater understanding of the key issues as the basis for the findings and recommendations presented in the interim report.

6. The attached interim report is submitted to the Executive Board for consideration.

Action expected of the Executive Board

7. The Executive Board may wish to consider a draft decision along the following lines:

The Executive Board,

1. Recalling 154 EX/Decision 4.4,
2. Having examined document 181 EX/30,
3. Takes note of the interim report of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART) on allegations received from teachers’ organizations on non-observance of the Recommendations of 1966 and 1997 concerning teachers;
4. Invites the Director-General to communicate the report to the Governments of Australia, Ethiopia and Japan and to the National Tertiary Education Union of Australia, the Ethiopian Teachers’ Association, Education International and teachers’ organizations in Japan that participated in meetings with the CEART fact-finding mission in April 2008, and to invite them to take the necessary follow-up action as recommended in the report.

International Labour Organization

United Nations Educational, Scientific
and Cultural Organization

Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART)

Geneva, September 2008

**Interim report on allegations received from
teachers' organizations on non-observance
of the Recommendations of 1966 and 1997
concerning teachers**



ILO – Geneva

UNESCO – Paris



Introduction

1. The Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART) was established by parallel decisions of the ILO Governing Body and the UNESCO Executive Board in 1967. It is mandated by the ILO and UNESCO executive bodies to monitor and promote application of the international recommendations on teachers – the ILO–UNESCO Recommendation concerning the Status of Teachers, 1966 (hereafter the 1966 Recommendation), and the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, 1997.
2. The CEART’s work is based on a variety of information sources, among which communications from national and international teachers’ organizations on the state of application of one or both Recommendations. Where such information addresses conditions in a particular country, the information may be treated as an allegation that one or more provisions of the recommendation in question are not being applied. In such cases if the CEART considers that the criteria for receivability of the information in accordance with procedures approved by the ILO and UNESCO executive bodies have been met, it requests the observations of the Government from the country in question as well as those of the relevant teachers’ organization(s). Based on the information received and other relevant sources of information on the allegations, the CEART reports to the ILO and UNESCO executive bodies with its findings and recommendations on how the problems raised might be resolved so as to fully apply the Recommendation(s).
3. At its Seventh Session in 2000, the CEART introduced a measure to enhance its methodology for dealing with allegations by appointing a member in a fact-finding or “direct contacts” capacity to investigate the circumstances of an allegation under certain conditions. Such a procedure depends on acceptance by both a government and relevant teachers’ organization(s) in the country, which is the object of an allegation. This procedure has been used for the first time in the case concerning Japan addressed in this report.
4. This interim report is submitted to the Governing Body of the ILO and the Executive Board of UNESCO in accordance with the mandate approved by the two executive bodies, namely that such reports may be prepared and submitted between the Joint Committee’s regular sessions held every three years, so as to help resolve difficulties with the application of the Recommendations in a more timely manner.

Further developments in relation to allegations previously received by the CEART

1. Allegation received from the National Tertiary Education Union (NTEU) of Australia

Background

1. Details of the allegations presented by NTEU and initial observations on them by the Government of Australia are set out in the report of the Joint Committee at its Ninth

Session (2006).¹ These allegations concern the application of the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, 1997 (hereafter the 1997 Recommendation). The report records that since it was not possible before the conclusion of its 2006 session to receive full information and complete examination of these allegations in accordance with its procedures, the Joint Committee deferred examination to an interim report.

Further developments

2. On the eve of the Ninth Session, the NTEU submitted its second set of observations on the issues, commenting on the Government's initial reply. These points may be summarized as follows:
 - (1) The Government's assertions that universities are not required to comply with the National Governance Protocols and the Higher Education Workplace Relations Requirements (HEWRRs) that are considered to contravene provisions of the 1997 Recommendation are not credible. Declining government investment in universities has meant that universities cannot afford not to comply. The NTEU submission contends that Australia, alone among OECD countries, has decreased its public expenditure on tertiary education over the period 1995–2003. On the other hand, those institutions that do comply receive additional funding.
 - (2) The Government (Department of Education Science and Training – hereafter “the Department”) undermined provisions of the 1997 Recommendation on collective bargaining by deliberately favouring the choice of individual employment agreements (Australian Workplace Agreements – AWAs) to be concluded with new employees over existing collective agreements through its advice to higher education institutions. Furthermore, the Department required that drafts of collective agreements negotiated with the NTEU and other staff representatives be submitted to it for comment, and possible amendments, if higher education institutions wanted to have a reasonable chance of being judged in compliance with the HEWRRs. Accompanying information illustrated a concrete example of department advice to an employer to delete clauses from draft collective agreements providing staff with a genuine and informed choice between an AWA and the collective agreement.
 - (3) Universities were expected to meet requirements to offer all existing and new staff AWAs that overrode or entirely displaced the guarantees for rights set out in collective agreements. The requirements included the ability to make employment and promotion conditional upon acceptance of AWAs. Such requirements potentially undermined guarantees of academic freedom by way of university managements omitting clauses in the AWAs on academic freedom, tenure, and normal due process for disciplinary action and dismissal that existed in the collective agreements. Such pressure to remove academic freedom provisions, often called intellectual freedom clauses, and related employment security guarantees from collective agreements was particularly pernicious given that no clear common law or statutory protection existed for academic freedom. A concrete example of such advice and pressure on institutions was cited in the NTEU information.
 - (4) The Government's policy guidance on institutional adherence to its National Governance Protocols contravened institutional autonomy and collegiality provisions of the 1997 Recommendation by imposing a “one size fits all” approach to university

¹ Document CEART/9/2006/10, Appendix II.

governance through the required composition of governing bodies, as well as the establishment of “conflict of interest” requirements which limited the right of staff and students to participate in university governance.

- (5) The Government undermined the principles of academic freedom to carry out research freely by means of undue interference in Australian Research Council (ARC) decisions on research funding.
3. In December 2006, the Australian Government submitted its final set of comments on the NTEU assertions. The main points are as follows:
- (1) Government funding for tertiary education was not significantly below OECD country averages as the NTEU asserted, when adjustments were made for substantial investments in vocational and technical education, student loans and more recent increases across the board to support reforms. In return, the policies at the heart of the allegations provided assurances that the funds were used in the most efficient and effective fashion through appropriate university governance and management.
 - (2) The HEWRRs emphasized choice for employees and universities and encouraged universities and their employees to use bargaining to tailor working arrangements to their particular needs and circumstance. The requirements did not express a preference for one form of agreement over another, rather they encouraged universities with collective agreements to negotiate and use collective agreements as part of a suite of options to promote more flexible work arrangements. Moreover, the Department provided comments on draft workplace agreements to those universities that requested it, but such advice was not binding on the university.
 - (3) Changes in the National Governance Protocols were designed to enhance the role of governing bodies in determining the distinctive mission and strategic direction of the institution, not to diminish it. They would not restrict staff and student participation in governing bodies, even if such participation was to be reconsidered, and each university determined how conflict of interest provisions in relation to institutional governance would apply.
 - (4) The Australian Research Council peer review processes have not been changed by legislation adopted in 2006, and the Minister for Education, Science and Training was precluded from taking decisions on research funding requests without recommendations from the assessment process as set out in the ARC’s funding rules.
4. At the invitation of the Joint Committee following its 2006 session and report, the NTEU provided an update on the issues in August 2007, most of which concerned a parallel complaint to the Committee on Freedom of Association of the ILO Governing Body, and is therefore outside the remit of the Joint Committee. Some points nevertheless relate to the issues before it. These include that the effect of legislation passed in 2005 was to deprive institutions of their previously legislated level of funding if they did not comply with the HEWRRS, by implication limiting their autonomy. Moreover, AWAs reflected a standardized approach to institutional workplace arrangements, and were not individually tailored, thereby undermining collective bargaining in accordance with the 1997 Recommendation’s provisions on negotiation of terms and conditions of employment. The NTEU presented details on how AWAs operated in practice to buttress its argument.
5. In December 2007, elections led to a change of government in Australia. The new Government has to date not submitted any additional information in response to the Joint Committee’s invitation. At the same time the Joint Committee is aware that the Government has launched a major review of Australia’s higher education system, which will examine and report on the future direction of the higher education sector.

Findings

6. The Joint Committee notes that the issues at stake in the allegations concern key provisions of the 1997 Recommendation on institutional autonomy, institutional accountability, academic freedom, self-governance and collegiality, and negotiation on terms and conditions of employment, the latter in accordance with the standards of the ILO.
7. The Joint Committee is also conscious of the possibility that the Government elected in December 2007 may have or develop different policies on these issues, which would alter the nature of the allegations. In the absence of information concerning such changes, however, the Joint Committee's findings are directed towards the problems originally signalled and what it understands to be prevailing policies and practices in relation to the 1997 Recommendation.
8. Concerning institutional autonomy and its corollary, institutional accountability, the crux of the matter is the degree to which funding decisions by the Government that are tied to provisions of institutional compliance with the HEWRRs impact on the institutions' autonomy. Paragraph 17 of the 1997 Recommendation defines autonomy thus:

Autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education regarding their academic work, standards, management and related activities consistent with systems of public accountability, especially in respect of funding provided by the State, and respect for academic freedom and human rights.

9. The 1997 Recommendation recognizes that the nature of institutional autonomy may differ according to the type of establishment. The standard nevertheless assigns a high value in its paragraph 18 to autonomy as "the institutional form of academic freedom and a necessary precondition to guarantee the proper fulfilment of the functions entrusted to higher-education teaching personnel and institutions." The 1997 Recommendation at the same time calls for a balance between autonomy and accountability in its paragraph 22, which states: "In view of the substantial financial investments made, member States and higher education institutions should ensure a proper balance between the level of autonomy enjoyed by higher education institutions and their systems of accountability."
10. The viewpoints of the NTEU and the Government differ substantially on this important relationship. The 1997 Recommendation does not contest the authority of governments as funding sources to insist on public accountability for these funds, especially in the context of an increasingly globalized information and knowledge environment that continues to alter the teaching and research environment for higher education. At the same time, the notion of institutional autonomy would be emptied of its content if governments were to impose decisions on institutions in return for funding necessary for their continued functioning. Considering the information provided to it, the Joint Committee considers that there is not enough evidence to conclude that the Government has contravened the 1997 Recommendation by establishing requirements through HEWRRs and the National Governance Protocols in return for extra funding. Institutions are free to apply such requirements or not. The available evidence does not show that refusal means institutions would be unable to continue effective decision-making regarding their academic work, standards, management and related activities. The information provided indicates that extra funding made available or not amounts to 5–7.5 per cent of an institution's base funding. No evidence has been presented to show that any institutions either cease to function or see their operations substantially weakened if they choose not to comply. This does not mean that the Joint Committee is fully confident that such cases have or could not arise in the future, simply that the balance sought by the 1997 Recommendation between institutional autonomy and accountability for public funds has not been substantially infringed to date by the new requirements.

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- 11.** At the same time the close linkage between additional funding, which could be important for some institutions to maintain their mission at a high standard of excellence, and detailed requirements on governance and workplace agreements introduces a disturbing element of direct intervention in decisions that are at the core of institutional autonomy. Two considerations merit attention. First, the evidence presented does not clearly demonstrate that the linkage is justified in terms of the sought after “efficient use of resources”, one of the 1997 Recommendation’s criteria for accountability, as the Government insists. The intention of the new requirements is to increase workplace flexibility and higher productivity through individual performance agreements. The evidence presented does not sustain such a view. There is no a priori evidence that these new requirements would “promote higher productivity and reward higher individual performance in the higher education sector” as the Government contended in its first submission. Second, the Joint Committee notes that decisions on compliance are solely the prerogative of the Minister for Education, Science and Training, with no possibility of appeal to an independent arbiter. The potential for politically motivated decisions without such a procedural check is therefore considerable in the opinion of the Joint Committee.
- 12.** Concerning the issue of academic freedom, the central question is whether the requirement to offer individual AWAs to higher education staff undermines the employment security and procedural guarantees that help underpin academic freedom. The 1997 Recommendation defines academic freedom for higher education staff in terms of “the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies” (paragraph 27 with additional explanations in paragraphs 28–30). The international standard closely associates this fundamental right with the need to guarantee security of tenure or its functional equivalent when it declares (paragraph 45):
- Tenure or its functional equivalent, where applicable, constitutes one of the major procedural safeguards of academic freedom and against arbitrary decisions. It also encourages individual responsibility and the retention of talented higher-education teaching personnel.
- 13.** In its 2006 report, the Joint Committee expressed its concern over the international trend in the proliferation of part-time and temporary contracts that undermine tenure. It considers that changes in employment relationships that diminish employment security and procedural guarantees in the particular environment of higher education would not enhance, and would likely weaken, the full exercise of academic freedom and therefore one of the fundamental pillars of excellence in teaching and research. It notes that the Government has remained largely silent on this point in its submissions.
- 14.** Notwithstanding, the information presented to it does not convince the Joint Committee that the offer of a choice of an individual contract by an institution as set out in the HEWRRs automatically undermines employment security and procedural guarantees necessary to protect academic freedom. The NTEU has cited advice from the Department that suggests the requirements could make jobs and promotions conditional upon acceptance of an AWA. The Government denies such is the language or intent of the requirements. The Joint Committee notes that staff may choose not to accept such arrangements but opt for the presumably greater security and procedural guarantees for employment that the NTEU suggests are available in collective agreements. Moreover, the Joint Committee has not examined the content of such individual agreements in relation to existing collective agreement guarantees. It cannot therefore judge the comparative value of one or the other in relation to employment security and by extension defence of academic freedom.

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- 15.** In the view of the Joint Committee, however, the incentives to have greater recourse to individually negotiated agreements may contribute to less security at Australian higher education workplaces if such practices effectively make employment and promotion conditional upon their acceptance, and at the same time largely replace collective negotiations. It is well known from decades of workplace experience that the bargaining power of individual workers is less than their collective strength. Whether this applies to highly skilled university professors is another matter. Entry-level teaching and research staff and those in less prestigious institutions with little or no tenure guarantees however almost certainly do not enjoy the highest guarantees. If individual workplace agreements, which did not contain the necessary employment, career and disciplinary guarantees advocated by the 1997 Recommendation, were to become the norm, especially for young and/or newly hired academic staff, the trend towards part-time and temporary contracts that concerned the Joint Committee in its 2006 report would inevitably accelerate in Australian higher education. In the absence of other statutory guarantees of academic freedom, such a trend would do little to reassure the defence of this key principle.
- 16.** On the issue of self-governance and collegiality, the 1997 Recommendation (paragraphs 31 and 32) encourages higher education teaching and research staff to participate in a wide range of internal decision-making structures and practices as part of their rights and responsibilities. The standard establishes a benchmark for their participation in academic matters in that they should have the right to “elect a majority of representatives to academic bodies within the higher education institution”.
- 17.** In terms of the specific situation before it, the Joint Committee concurs with the Government that the use of the National Governance Protocols, challenged by the NTEU on grounds that they reduce collegial self-governance, does not contravene the provisions of the 1997 Recommendation, which supports the right to a staff majority on academic bodies, not governing bodies. The Joint Committee is concerned that a more far-reaching issue is the effect that the term “conflict of interest” in the Protocols has on staff participation in governing bodies. The Government contends that the Protocols do not define the term, and that this is a matter for determination by institutions without interference from the Government. The NTEU provides information that indicates a government policy geared towards a more targeted interpretation of the Protocols by institutions that has resulted in staff being excluded from participating in particular aspects of their institutions’ governance. The available information does not establish a clear picture on this matter, but the Joint Committee notes that the reduction of staff participation in at least some of the country’s institutions, accepted as fact by both parties, suggests a chilling effect on staff participation that is at odds at least with the spirit of the 1997 Recommendation.
- 18.** On the matter of negotiation of terms and conditions of employment, the Joint Committee recalls that the 1997 Recommendation (paragraphs 52–54) recommends a process of voluntary negotiation between higher education employers and organizations representing higher-education teaching personnel on all matters related to terms and conditions of employment. The effect of HEWRRs on respect for these provisions at institutional level is no doubt a key consideration, but in light of its mandate and the parallel complaint on these questions before the Committee on Freedom of Association of the ILO Governing Body, the Joint Committee defers to the competent ILO bodies in terms of decisions and recommendations on these issues.²

² See ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), observation, 96th Session of the International Labour Conference, 2007: <http://webfusion.ilo.org/public/db/standards/normes/libsynd/index.cfm?hdroff=1> and Report of the

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- 19.** Regarding allegations of government interference in decisions to fund research as an infringement of academic freedom, the Joint Committee notes that paragraph 29 of the 1997 Recommendation speaks to higher education teaching personnel's "right to carry out research work without any interference, or any suppression, in accordance with their professional responsibility and subject to nationally and internationally recognized professional principles". The standard does not directly address the question of how funding decisions may promote or abrogate such rights, though the Joint Committee remarks that government or institutional decisions regarding the funding of research in practice have a large influence on higher-education staffs' ability to do research. Nevertheless, to the extent that the Government respects the guarantees for peer review in the funding regulations of the Australian Research Council, the Joint Committee cannot conclude that the Government has taken politically motivated decisions that would infringe on the relevant provisions of the 1997 Recommendation.

Recommendations

- 20.** For the reasons cited above, the Joint Committee recommends that the Government review policies linking additional funding for higher-education institutions to compliance with National Governance Protocols and Higher Education Workplace Relations Requirements so as to ensure that a proper balance is struck between respect for institutional autonomy and institutional accountability in terms of the 1997 Recommendation. The Government is urged to cooperate closely with institutional heads and with the teachers' organizations representing the collective voice of higher-education staff, of which the NTEU, so as to agree on policies and practices that address the concerns expressed in these allegations.
- 21.** The Joint Committee also recommends that the Government review and, as necessary, modify provisions in the HEWRRs that encourage greater recourse to individual AWAs in so far as such agreements may reduce tenure and disciplinary guarantees at institutions and in the process undermine the exercise of academic freedom.
- 22.** The Joint Committee recommends that the Government collaborate with the teachers' organizations to define more clearly the concept of "conflict of interest" in the National Governance Protocols so as to remove ambiguities that could inhibit effective higher-education staff participation in institutional governing bodies as recommended by the 1997 Recommendation.
- 23.** The Joint Committee further recommends that the Government review and where necessary modify national legislation and policy which may have the effect of undermining the provisions of the 1997 Recommendation on negotiation of terms and conditions of employment in higher-education institutions, and in the process take account of the relevant conclusions and recommendations of ILO supervisory bodies on these matters.
- 24.** The Joint Committee recommends further that the Governing Body of the ILO and the Executive Board of UNESCO:
- (1) take note of its findings and recommendations as indicated above;
 - (2) request the Government of Australia and the NTEU to keep the Joint Committee apprised of progress and difficulties on the above, notably by providing an update on recent developments to the Joint Committee prior to its Tenth Session in 2009, as well

Conference Committee on the Application of Standards 2007: <http://www.ilo.org/ilolex/english/conf2007E.htm>.

as to consider further technical and policy advice of the Joint Committee and its joint secretariat on these matters that might be considered helpful to the resolution of any difficulties.

2. Allegation received from Education International (EI) and the Ethiopian Teachers' Association (ETA)

Background

1. The most recent examination of the allegations presented by Education International (EI) and the Ethiopian Teachers' Association (ETA) is set out in the report of the Joint Committee at its Ninth Session (2006).³ In that report, the Joint Committee deferred consideration of the most recent information from the teachers' organizations until the Government of Ethiopia could provide further observations, though it noted that the long history of questions brought to it indicated that there were serious and continuing difficulties between the Government and teachers and their organizations in the country. The Joint Committee further invited the Government, EI and ETA to consider additional fact-finding, technical advisory services and capacity building for greater social dialogue in education as a means to overcome the persistent difficulties.

Further developments and findings

2. The Government has not responded to a subsequent request to provide any information on recent developments. In a communication in December 2007, EI informed the secretariat of the Joint Committee about additional information concerning teachers in the country but subsequently decided not to provide additional details as requested.
3. The Joint Committee deeply regrets that the Government has not seen fit to reply to its invitations since 2004 to provide further information on any progress made to resolve the difficulties encountered in applying various provisions of the 1966 Recommendation. These difficulties, it should be recalled, date back more than ten years. As evidenced by continuing complaints against Ethiopia before the Committee on Freedom of Association of the ILO Governing Body,⁴ it appears that problems persist that contravene provisions on consultation and negotiation with teachers' organizations advocated in the 1966 Recommendation. Nevertheless, in view of the paucity of recent information, including from EI and ETA, the Joint Committee considers it necessary to suspend any further consideration of the allegations until such time as one or more of the parties provide such information.

Recommendations

4. The Joint Committee recommends that the Governing Body of the ILO and the Executive Board of UNESCO take note of the decision of the Joint Committee to suspend any further

³ Document CEART/9/2006/10, Appendix II.

⁴ See most recently ILO Governing Body Committee on Freedom of Association: Case No. 2516, Report Nos 348 (Nov. 2007), 349 (Mar. 2008) and 350 (June 2008).

consideration of the allegations until such time as one or more of the parties provide relevant information on recent developments.

3. Allegation received from the All Japan Teachers' and Staff Union (ZENKYO) and the Nakama Teachers' Union

Background

1. Details of the ZENKYO allegation and its treatment are set out in reports of the Joint Committee at its Eighth and Ninth Sessions (2003 and 2006), and in an interim report (2005).⁵ In the 2006 report, the Joint Committee decided that assertions of the Nakama Teachers' Union of Osaka prefecture on many of the same issues should be taken up in the wider context of the issues raised by ZENKYO. Therefore the Joint Committee has considered the information supplied by the Nakama Teachers' Union along with that of other national and prefecture teachers' organizations to the April 2008 fact-finding mission in the present interim report.

Further developments

2. At its Ninth Session held in Geneva in October–November 2006, the Joint Committee examined separate submissions from both ZENKYO and the Government of Japan, through the Ministry of Education, Sports, Culture, Science and Technology (MEXT), which, inter alia, invited the Joint Committee to consider a mission to Japan to examine the existing situation around the allegations presented by ZENKYO. In the report of its Ninth Session, reviewed and approved for distribution by the ILO and UNESCO executive bodies in 2007, the Joint Committee noted its intention to undertake such a mission, supported by its secretariat, and to make proposals for resolution of the identified problems to all concerned parties. After agreement with the Government of Japan on terms of reference, the mission took place from 20 to 28 April 2008, composed of two CEART experts supported by senior headquarters officials of the ILO and UNESCO and ILO officials in Japan. Meetings were organized in Tokyo, Osaka and Takamatsu with relevant government ministries, prefecture boards (hereafter "boards"), teachers' organizations, national employers' and workers' organizations, representatives of parents' and teachers' associations and independent experts that the mission requested to meet. The mission's report is available separately from the CEART web site maintained by the ILO.⁶

Findings

3. The Joint Committee has taken careful note of the fact-finding mission's (hereafter the mission) report in determining its own findings and recommendations for the resolution of the problems initially raised in the allegations and examined in the previous Joint Committee reports. As the mission report notes, in the course of its examination of this case since the initial communication from ZENKO in 2002, the CEART has dealt with three main areas touching upon provisions of the 1966 Recommendation:

⁵ Documents CEART/8/2003/11, CEART/INT/2005/1 and CEART/9/2006/10.

⁶ <http://www.ilo.org/public/english/dialogue/sector/techmeet/ceart08/ceartffr.pdf>.

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- teacher competence and assessment, including professional development measures, rewards and disciplinary measures;
 - merit assessment in relation to teacher salaries;
 - consultation and negotiations as forms of social dialogue on these policies and practices.

Teacher assessment, competence and disciplinary measures

4. In terms of the first set of issues, the allegations concern the operation of the teacher evaluation system especially in relation to those teachers determined to be “incompetent” or “without sufficient ability”, procedural guarantees for such teachers and measures for their professional development, support or retraining.
5. As indicated by the mission report, the Joint Committees notes that all stakeholders who were interviewed share a desire for a high standard of teaching and learning in the schools of Japan and that all acknowledge the key role of teachers in quality education: there is wide acceptance of the need for an effective teacher appraisal system as one contribution to realizing the objectives. The Guidelines on the Personnel Management System for Teachers providing Inadequate Instruction (hereafter “the Guidelines”) recently developed and issued by MEXT recognize the importance of a comprehensive programme that enables teachers to enhance their abilities and aptitudes required for their work. There are divergent views, however, on the orientation of teacher evaluation. The Government and prefecture employing authorities stress the need to retrain, reassign or dismiss a small number of teachers judged not to meet high professional standards. Most of the teachers’ organizations seek to aide weaker teachers to develop professionally without imposing many of the disciplinary options proposed by authorities.
6. The Joint Committee recalls that the 1966 Recommendation does not preclude an effective teacher appraisal system, but in applying what it refers to as “systems of inspection or supervision”, it emphasizes the centrality of encouragement and help to teachers to carry out their professional tasks so as not to diminish their “freedom, initiative and responsibility”. On the face of it, the Joint Committee considers that the teacher evaluation systems advocated by MEXT and now in operation in most, if not all, prefectures do not undermine those basic principles, provided that care is taken in making assessments that are as objective as possible and other procedural guarantees are in place to protect individual teachers against potential abuses. The crux of the matter is whether emphasis is put on giving the necessary professional support and retraining rather than seeking strong disciplinary actions of a punitive nature except in cases of gross professional misconduct where such discipline is clearly merited in the interests of learners and the education system as a whole.
7. The Joint Committee also recalls that as a counterpoint to the emphasis placed in the Guidelines and the prefecture boards systems on the need to respond to parental criticisms, the 1966 Recommendation makes clear (paragraph 67) that while close cooperation between teachers and parents is in the interests of pupils, teachers should be protected against unfair or unwarranted interference by parents on “matters which are essentially the teachers’ professional responsibility”. If the “freedom, initiative and responsibility” of teachers that is central to a high professional standing for teaching as a whole is to be respected, the teacher appraisal systems should reconcile these competing demands in ways that safeguard teacher professionalism in the interests of a stronger overall education system rather than individual parental concern.

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- 8.** The heart of the allegations concern teacher appraisals leading to the designation of those termed “incompetent teachers”, “without sufficient ability” or “providing inadequate instruction”, various terms communicated to the Joint Committee over the years in translations of official documents and communications. The Joint Committee recognizes that improvements have been made to the system reflected in the Guidelines produced by MEXT, dated February 2008, for which the Government is to be commended. The Guidelines aim to enhance objectivity and a consistency of standards especially using definitions of quality, skills, knowledge and teaching methods and more detailed criteria to be applied in evaluation decisions. For example the Guidelines recommend more guarantees based in other legislation and medical practices on the use of mental illness as a criterion, previously criticized by teachers’ organizations as inappropriate. Similarly they provide for more opportunity for the views of other teachers in the school and external experts to be heard.
 - 9.** The Joint Committee concurs with the teachers’ organizations that the introduction and management of such a personnel management system based on individual appraisals, particularly as it may lead to disciplinary actions up to and including dismissal from teaching, should involve consultation between the Government and the teachers’ organizations. The 1966 Recommendation is clear on the desirability of such consultation. The evidence presented to the mission and its findings, however, lead to the conclusion that the Guidelines prepared at national level and the systems introduced at prefecture have been introduced without full dialogue and engagement with, and support of, the teachers and their organizations. More is said about this question in the section below on social dialogue.
 - 10.** The Joint Committee also notes that most of the teachers’ organizations, although acknowledging that their views and comments had been addressed to some extent in the Guidelines, contend that important questions remain as to the nature of the evaluation systems. These relate to the basic orientation of the personnel management system for teachers alleged to be providing inadequate instruction and to the manner of its application, including the criteria for determining “incompetent” teachers, the roles and responsibilities of the parties involved and the right of the teachers to hearings and appeals.
 - 11.** The Joint Committee agrees that certain criteria remain too vague or difficult to apply objectively in terms of professional performance, at least as they appear to be utilized in some prefectures based on the available information. For instance, according to information made available to the mission, some prefecture boards still admit considerations related to the private lives of teachers, which, if confirmed in practice, could produce an irrelevant or subjective assessment.
 - 12.** The Joint Committee is also persuaded, based on the mission’s report, that the procedures for designation of such teachers continue to lack the necessary transparency. Evidence presented to the mission that initial reports of school management are not always disclosed to teachers, and teachers lack the opportunity to respond or be heard, does not at all suggest a cooperative or professional environment at the critical first step of such an appraisal. The Joint Committee is not reassured either by information suggesting that local boards sometimes forgo hearings with managers who make assessments and with teachers during the second stage if they do not consider such hearings as necessary. Moreover, teachers’ organizations have informed the mission that only a few prefectures accept teacher representation on the assessment committees at board level. The authorities have contended that former teachers with considerable experience often are included, but the Joint Committee would not consider this to be an adequate substitute for practising teachers who would normally have the greatest understanding of classroom challenges and performance standards. If confirmed, the Joint Committee would find this all the more surprising in view of its comments already in 2003 that such practices are inexplicable and

contrary to normally accepted approaches to fundamental issues of professional competencies.

13. Furthermore, the appeals processes should be strengthened further in the interests of due process and wider acceptance by teachers. This would mean ensuring the individual teacher's right to be heard and represented before any recommendation is made, and guaranteeing the impartiality and sensitivity of the appeals procedure. It would be difficult to accept a procedure as legitimate when no appeals have been successful as the mission reported. Taken as a whole, such procedures may compound errors at the initial assessment stage and in any case undermine confidence in due process on matters that affect professional performance and standing.
14. The Joint Committee commends the emphasis on remedial training as the first option for addressing problems associated with designations of insufficient teaching. Revisions of the Special Law for Public Education seem to reinforce such tendencies. Notwithstanding the information from MEXT and the boards that counselling and training are well-resourced and of excellent quality, the mission report notes contrary information from teachers and teachers' organizations, including indications that a very low number of teachers undergoing training return to their teaching jobs afterwards. Therefore, the Joint Committee considers that such training could be better adapted to the identified needs of the teachers for whom it is prescribed. MEXT and some boards accept the need for improvements as part of the efforts to enable teachers designated as insufficient in their teaching skills and aptitudes to return to the classroom. This could include taking steps to reduce perceived stigma associated with the training that was reported to the mission. It is to be hoped that such improvements will be actively pursued in the future so long as such teacher assessment schemes remain valid.
15. The Joint Committee notes the information provided to the mission that in a relatively small number of cases where remedial training is judged not to be successful and a teacher is to be reassigned outside of teaching or dismissed, such actions in the latter case are carried out under the local Public Service Law and its relevant procedures. The Joint Committee has no comment to make on such decisions beyond recalling the need expressed in previous reports and elsewhere in this report for due process to be followed in the interests of the individuals concerned and for education as a whole. The Joint Committee trusts that the relevant legislation and procedures respect these principles in line with the 1966 Recommendation.
16. The Joint Committee considers that differing perceptions as to the rationale, processes and procedures for the evaluation systems and the interrelationship between them are partly due to the relative newness of the processes, the insufficient level of involvement of the teacher organizations in their development, and the differing interpretation of the Guidelines at board of education level. The Joint Committee therefore highlights the need for information sharing in order to ensure understanding of an evaluation system dealing with teacher competence by all parties concerned.

Merit assessment and salary determination

17. The original allegations and subsequent information supplied by ZENKYO have contended that the central Government and prefecture boards have steadily transformed the teacher evaluation system into a performance or merit-based system linked to salary increases and bonuses (diligent allowances) to reward superior teacher performance, that the merit-rating evaluation system undermines teacher collegiality and individual professionalism, that it is not objective nor is it buttressed by the proper procedural guarantees and that, above all, it has not been subject to effective consultations with, and acceptance by, the teachers' organizations. The Government has previously contended that

the evaluation systems in place are not merit-rating systems to determine salaries or working conditions, rather have been set up to develop and improve teachers' skills in the interests of better learning. Moreover, evaluations are fair and objective according to the Government since based on training of supervisors undertaking the evaluations and classroom observation. Assessment results are shared with teachers in private meetings and there are procedural guarantees for appeal. Teachers' views have been sought in the development of these systems, but Japanese law places these issues within the definition of management and operational matters that preclude negotiations with teachers' organizations.

- 18.** Considering the mission report, the Joint Committee notes that the 1966 Recommendation does not deny the responsibility of education authorities to respond to the desires of learners, parents and other stakeholders such as employers for a quality education. In that sense, the 1966 Recommendation explicitly recognizes the responsibility and the challenges posed by societal change to educational authorities charged with organizing and delivering the most appropriate education services. Teacher assessment is an integral part of such responsibilities as already stated above with regard to teacher competence. Moreover, the Joint Committee has noted in its 2003 report on the present case that the 1966 Recommendation accepts that an employing authority can develop and implement a fair merit assessment system, which may be the basis for salary preferences. At the same time, the 1966 Recommendation's guidelines for professional teaching and successful learning rely on teachers' academic freedom, judgement, initiative and responsibility as highly trained professionals. For this reason, inspection or supervision of teachers according to the 1966 Recommendation should be designed to help teachers improve their performance, and not work against their freedom, initiative and responsibility.
- 19.** The mission has found an increasing tendency to structure teacher evaluation systems in Japan around quantifiable objectives and criteria that will yield quantifiable rewards based on assessed merit. These may supersede the professional freedom and responsibility of well-trained and self-motivated teachers that is advocated by the 1966 Recommendation. The Joint Committee concurs with the finding of the mission regarding teacher attitudes to the merit or performance assessment systems. Many teachers simply see little benefit and much to criticize in linking teacher evaluation to financial awards. The rewards are slight, and the effects on performance are mixed at best. This is a worrying trend that merits more careful reflection, based for instance on in-depth surveys of teacher attitudes to merit-rating whose results are made available within the teaching profession and to all education stakeholders. Depending on the results of more extensive investigation into the questions, a reorientation of policy to align with the balance between standards legitimately set by authorities and individual professionalism that is sought in the 1966 Recommendation may be appropriate. In this respect, the Joint Committee recalls the findings in its 2006 report that the work of international institutions such as the ILO and the OECD in recent years has pointed to negative effects of merit pay on teamwork and school administration, and concluded that merit pay at an individual level is not justified in terms of attracting and retaining teachers.
- 20.** Based on the results of the mission, the Joint Committee concurs that improvements in procedures for assessing teachers and their application have been made since the allegations first came to its attention in 2002. The improvements include greater disclosure of results to teachers and clear appeals procedures for teachers who receive less than satisfactory assessments affecting their remuneration. The improvements render the performance assessment systems operating in selected prefectures more transparent and less subjective, thereby better responding to key provisions of the 1966 Recommendation. The authorities are to be commended for taking steps to improve processes.
- 21.** Nevertheless, a number of weaknesses remain to be addressed, among which:

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- the criticisms expressed by teachers and principals about the validity of many assessments;
 - the difficulties that principals and their deputies who undertake assessments have in fulfilling their tasks in large schools and more complicated learning environments (special education notably);
 - the apparent lack of consideration for the time constraints of large numbers of women teachers; and
 - the relative nature of assessments imposed by employing authorities through quotas that limit the percentage of highly performing teachers.

The Joint Committee confirms that much more needs to be done to render the procedures and criteria for merit assessment as objective, transparent and fair as possible according to the provisions of the 1966 Recommendation.

- 22.** With regard to the key link established by the 1966 Recommendation between merit assessment, and consultation with and acceptance by, teachers' organizations, the Joint Committee notes and confirms the mission's finding that the decision-making processes for such systems quite clearly contravene the 1966 Recommendation. They thus require amendment for reasons previously cited in the Joint Committee's reports. More specific recommendations along these lines are made in the references to consultation and negotiation below. In the absence of proper consultation between the employing authority and the teachers' organizations leading to acceptance of a merit assessment scheme by teaching professionals represented through their organizations, a key provision of the 1966 Recommendation will remain unobserved in Japan. The ultimate objectives of merit assessment for better learning may not be fully achieved in these conditions.

Consultation and negotiation

- 23.** The consultation and negotiation (social dialogue) questions raised in the original allegations touched upon the lack of appropriate consultation or negotiation between the relevant employing authority and teachers' organizations acting on behalf of teachers. In its 2006 report, the Joint Committee noted contentions from ZENKYO that despite some modest progress at prefecture level, only limited dialogue with employing authorities had taken place over the issues first raised in 2002. The Osaka-based Nakama Union also alleged a lack of proper dialogue on the introduction of the new evaluation system in Osaka prefecture. The 2006 report equally considered the viewpoints of the Government (MEXT, on behalf of national and local prefecture authorities) that dialogue on the relevant issues with ZENKYO had occurred, followed by provision to all prefecture boards of information on the Joint Committee's 2005 interim report and its position on the issues. At the same time the Government reiterated its earlier contention that the matters of teacher incompetence and merit assessment are essentially matters of local management for which local boards have no obligation to enter into dialogue with teachers' organizations (unions), although in practice consultations were widespread on proposed new measures. As noted above, the Government has consistently contended that Japanese law places these issues within the definition of management and operational matters that preclude negotiations with teachers' organizations.
- 24.** Considering the mission report, the Joint Committee recalls the extensive references in the 1966 Recommendation to the importance of consultation and, as appropriate to the issues, negotiation between competent authorities and teachers' organizations in determining educational policies as a positive contribution to the functioning of the system as a whole. Such roles for teachers' organizations may differ according to the policy, but the 1966

Recommendation explicitly urges such consultations on “school organization, and new developments in the education service”. The Joint Committee understands that the principle behind the 1966 Recommendation, adopted unanimously on 5 October 1966 at the Special Intergovernmental Conference on the Status of Teachers, held in Paris, in which representatives of the Government of Japan and observers from teachers’ organizations participated, is that such consultations are essential to the success of reforms.

- 25.** The Joint Committee has carefully considered the mission’s various findings, in particular a widespread understanding among many of the parties in Japan that the notions of negotiation and consultation (with “negotiation” leading to a bargained agreement and “consultation” being a more fluid and less conclusive process) are not necessarily qualitatively different. The Joint Committee appreciates that this may mean that the parties in Japan interact at several points on a spectrum ranging from simple discussion through to more concrete consensus building or even agreement, without making any categorical distinction as to the nature of the interaction. As the mission correctly points out, however, the 1966 Recommendation itself does make a distinction. Moreover, it is the understanding of the Joint Committee as already recommended in its 2005 interim report that consultation should be built on “ongoing discussions in good faith” since the Recommendation envisages that the parties “will approach processes in a spirit of cooperation”, whether or not a consensus or agreement emerges from that process.
- 26.** In this light, the Joint Committee finds that the process of consultation between the national Government (essentially MEXT) and prefecture boards on the one hand, and teachers’ organizations, on the other, is at most pro forma. Based on the mission’s findings, the process of consultation differs somewhat among the prefectures, as might be expected in a decentralized educational system. Procedures rely more on personal than institutional links in some cases, and vary in the amount of information exchanged with teachers’ organizations. Generally speaking though, employing authorities regarded their roles as limited to responding to opinions and questions when possible, often in the framework of input at public hearings open to all education stakeholders, and not extending to seeking closer relations with teachers’ organizations that might lead to improved outcomes. Educational authorities, national and prefecture, consider that hearings with teachers’ organizations are sufficient, whether or not proposed policies or decisions already taken are altered as a result. There is little expectation on the part of employing authorities that they should change policies on teacher evaluation as a result of teacher organization’s viewpoints. However, the 1966 Recommendation calls for a consultative process that involves more than just public hearings or meetings with teachers’ organizations limited to hearing their opinions.
- 27.** The Guidelines prepared by MEXT to help prefecture boards more equitably apply the appraisal systems established for teachers subject to appraisal for “insufficient ability” mark a significant advance in relation to the teacher evaluation system, in the sense that they make for greater uniformity across the 47 prefectures. At the same time, there is little evidence that the provisions of the 1966 Recommendation concerning social dialogue (consultation and negotiation) have been taken into account in developing and applying the Guidelines.
- 28.** To date, the evidence presented to the Joint Committee and to the mission points to a process which is limited by the legal provisions of Japan’s public service laws and their interpretation. Referring to this legal barrier and to available evidence, the Joint Committee notes not only that prefecture boards do not negotiate policies, criteria and procedures of teacher appraisal, but also that their engagement in consultations with teacher organizations in the spirit of cooperation envisaged by the 1966 Recommendation on this subject has not been clearly demonstrated. This is the case, whether the appraisal systems concerned either involve a determination that teachers do not have sufficient competence to teach, or are more generally part of performance assessment systems. The Joint

Committee considers that such a failure to consult, as it has previously affirmed, is inconsistent with the letter and spirit of the 1966 Recommendation.

- 29.** The Joint Committee notes that the mission did not find evidence of “established mechanisms for consultation with and exchange among education authorities and teacher organizations”. Consultations that occur are seldom in an institutionalized form. The general lack of established mechanisms for consultation led to considerable misunderstandings among the parties, and no doubt helps explain the often diametrically opposed views of employing authorities and teachers’ organizations throughout the history of this case before the Joint Committee. The parties did not have mutual expectations of the process for social dialogue, so the divergence in their views of the outcomes of discussions that did occur was not surprising.
- 30.** While the outcomes of merit assessment systems affecting teachers’ salaries and other employment terms clearly fall within the framework of matters which may be subject to negotiation, the Joint Committee notes a continuing and significant divide between the parties on matters regarded as management issues outside the scope of consultation with teachers’ unions, on the one hand, and questions of conditions of employment that might be the subject of negotiation under the 1966 Recommendation, on the other. The employing authorities cited to the mission the Public Sector Law without any supporting citations or evidence of the application of this provision elsewhere in the public service. Teachers’ organizations did not appear to accept this limitation, although they acknowledged that their employers did not have the right under Japanese law to negotiate written collective agreements. The Joint Committee notes that the relevant paragraphs of the 1966 Recommendation applicable to negotiation on salaries and working conditions of teachers are based on ILO principles of collective bargaining, and defers to the competent ILO bodies in that respect.⁷
- 31.** The Joint Committee concludes from the above findings that as consultation and negotiation procedures foreseen by the 1966 Recommendation operate only to a limited and imperfect extent in Japan, a widespread feeling of frustration and marginalization exists on the part of teachers’ organizations concerning the teacher evaluation system specifically, and education policy and other aspects of the profession referred to in the 1966 Recommendation, more generally. This is the case at the national and prefecture levels. The lack of a significant role in the teacher evaluation process in turn has a negative effect on the transparency and legitimacy of those processes, particularly in the eyes of the teachers themselves. Some evidence exists that such frustrations are compounded in the heavily feminized teaching profession by the fact that women are seriously under-represented at all levels and on all sides (government and teachers’ organizations) in social dialogue exchanges and thus in the determination of policies and guidance concerning the teacher evaluation system in particular. The Joint Committee concurs with the mission’s findings that this may evidence as yet unappreciated forms of discrimination in contradiction with paragraph 7 of the 1966 Recommendation, as well as the simple absence of women teachers in the discussions and dialogue that do take place concerning their work and profession.

⁷ See, in particular: ILO Committee of Experts on the Application of Conventions and Recommendations: individual observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Japan (ratification: 1965) published: 2008; individual observation concerning Right to Organise and Collective Bargaining Convention, 1949 (No. 98) Japan (ratification: 1953) published: 2008. Also ILO Governing Body Committee on Freedom of Association: Case No. 2177, Case No. 2183, Report No. 350, Report No. 340, Cases Nos. 2177 and 2183; Report No. 328, Case No. 2114.

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32. The net effect is to compromise the application of basic principles of consultation and negotiation that underpin cooperation and the chances of success in education reforms for greater quality and relevance in Japan.

Recommendations

Teacher assessment, competence and disciplinary measures

33. The Joint Committee recommends that the Government, both at ministry level and prefecture boards, should take steps to address poor perceptions of teacher evaluation systems as they apply to teachers considered to “have insufficient ability” or providing “insufficient instruction”. These steps would include ongoing review and modification as needed of the national Guidelines and their use by prefecture boards particularly with regard to their influence on professional standards, responsibilities, initiative and autonomy in the classroom.
34. The Joint Committee recommends that a review and modification in the Japanese context should draw on the country’s own reputed ethos of collegiality and professional collaboration. Greater emphasis could be placed on school-based systems and mentorship, with external training deployed to consolidate daily experience, to address more general areas and to provide the opportunity to establish peer networks and support groups, with other teachers thus designated.
35. The Joint Committee further recommends that objective criteria and procedures guaranteeing due process to determine whether teachers may be designated as not having sufficient aptitudes or skills to carry out their teaching responsibilities and require remedial training or reassignment should be strengthened in line with the findings in this report. This would mean ensuring the individual teacher’s right to be heard and represented before any recommendation is made, and guaranteeing the impartiality and sensitivity of the appeals procedure.
36. It also suggested that such processes ensure opportunities for the boards to share experiences and good practices and for teachers and their organizations to actively contribute through a process of full and effective dialogue with a view to making sustainable improvements, widely accepted by all education stakeholders, including parents and students.

Merit assessment

37. The Joint Committee recommends that the Government, both at ministry level and prefecture boards, should thoroughly evaluate the teacher assessment systems that have emerged as they relate to teacher remuneration and motivation. Such a review should be based on more comprehensive surveys of teacher attitudes, motivation and impact in the classroom, as well as advice from a range of experts on how best to utilize evaluation systems in the interests of quality learning on the foundation of strong teacher professional standards, responsibilities, initiative and autonomy.
38. In this connection, and within a context of consultation and negotiation on such systems, the Joint Committee recommends to the employing authorities a certain number of principles advanced by the teachers’ organizations. The recommendations are to:

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- make pay increment decisions in ways that avoid wider pay differences among teaching staff which have the potential for creating tensions that work against effective teamwork;
 - allow more training and time for assessors to carry out their task so as to reduce subjective or superficial evaluations;
 - place greater emphasis on multidimensional assessment criteria;
 - ensure that assessments are non-discriminatory in regard to race, colour, sex, religion, political opinion, national or social origin, or economic condition as set out in the 1966 Recommendation, as well as considerations of a private nature; and
 - seek joint agreement on an appeals (or grievance) procedure in which teachers’ organizations are represented and the procedures are thoroughly known to all teachers. In line with recommendations made concerning teacher competence above, the educational authorities should consider how peer evaluation and whole school evaluations in use in, for example, other OECD countries, which avoid the negative aspects of individual merit assessment schemes, would not better suit the future needs and objectives of Japanese education. The Joint Committee, through its secretariat, would be prepared to assist with identification of such practices, if requested.

39. In line with more detailed provisions below, the Joint Committee recommends that employing authorities immediately take steps to subject the further design and implementation of performance assessment schemes that impact on salary increments and bonuses to a process of good faith consultation and agreement with the all representative teachers’ organizations of the authority concerned.

Consultation and negotiation

40. The Joint Committee recommends that the Government, both at ministry level and prefecture boards, should reconsider their approach to consultation and, as appropriate to the issues in question, negotiation with teachers’ organizations in line with the provisions of the 1966 Recommendation. Consultations on teacher assessment criteria, the procedures for assessment, guarantees of due process for individual teachers and the operation of merit or performance appraisal systems should be the object of good faith consultations. Similarly, matters affecting teacher remuneration and working conditions derived from merit assessment in particular should be the object of negotiations leading to an agreement.

41. The Joint Committee understands that reforms to achieve these objectives imply a change in the organizational culture to accept that decisions could be made or altered based on the substantive inputs of teachers and their organized representatives. The Joint Committee further recommends steps to create stronger institutionalized systems of consultation and negotiation according to the relevant issues for the teaching profession. To accompany these efforts, the Joint Committee recommends that capacity-building measures be adopted along the lines of the Guidelines developed by MEXT for many local employing authorities, and for teachers’ organizations, to ensure that the roles and responsibilities of both parties are sufficiently understood and successfully applied towards agreed outcomes. As the mission was informed, there would appear to be several instances of good practices in this respect at different levels, which could be analysed more specifically and used as models for more widespread application.

42. The Joint Committee has previously noted that the 1966 Recommendation does not presume to remove certain issues from managerial authority. At the same time, respect for the numerous provisions of the 1966 Recommendation on consultation with teachers’

organizations cannot be achieved in an environment whereby no contentious issues are subject to real consultation or negotiation on the basis of legal constraints considered applicable broadly to all public servants. The Joint Committee therefore recommends that the authorities apply relevant recommendations previously made by ILO supervisory bodies in this connection.⁸

43. The Joint Committee recommends further that the Governing Body of the ILO and the Executive Board of UNESCO:

- (1) take note of its findings and recommendations as indicated above;
- (2) communicate to the Government of Japan, and through it to prefecture boards, the Joint Committee's commendation respectively for the Guidelines issued by MEXT on teacher assessment and on steps taken by prefecture boards to improve procedural guarantees of teacher appraisal systems;
- (3) request the national Government and all prefecture boards to make further improvements in teacher appraisal systems, including merit or performance related criteria and procedures, in line with the relevant paragraphs of the 1966 Recommendation and identified good practices in Japan or elsewhere;
- (4) request the national Government and all prefecture boards to review and, as needed, revise relevant legislation and practices so as to more fully apply the provisions of the 1966 Recommendation in matters of consultation and negotiation with all representative teachers' organizations, national and local;
- (5) request the boards of education to ensure that the procedures for appeal of decisions by teachers whose performance is deemed to be insufficient are compatible with the principles of the 1966 Recommendation; and
- (6) request the Government of Japan and all representative teachers' organizations to keep the Joint Committee apprised of progress and difficulties on the above, as well as to consider further technical and policy advice of the Joint Committee and its joint secretariat on these matters that might be considered helpful to the resolution of any difficulties.

⁸ See reports of the ILO Committee of Experts on the Application of Conventions and Recommendations and the ILO Governing Body Committee on Freedom of Association cited previously.