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

**Interim report of the Joint ILO–UNESCO Committee of Experts
on the Application of the Recommendations concerning Teaching Personnel**

Allegation received from the All Japan Teachers and Staff Union (ZENKYO)

Geneva, 2016

UNESCO – PARIS

ILO – GENEVA

1. Background

1. On 8 January 2014, the Joint Committee received from the All Japan Teachers and Staff Union (ZENKYO) an allegation on non-observance of the provisions of the ILO-UNESCO Recommendation concerning the Status of Teachers, 1966, by the Government of Japan in relation to the overtime work of the teaching personnel and temporary appointments in public schools. Further details were provided by the union in an additional submission on 2 July 2014. As per the Joint Committee's procedures, the allegation and additional information were successively sent to the Government of Japan. In a letter dated 17 October 2014, the Ministry of Education, Culture, Sports, Science and Technology of Japan (MEXT) provided information in response to the initial allegation. The Government response was then transmitted to the union. Further comments were received from the union on 3 February 2015, to which the Government responded on 9 March and 12 May 2015.

2. Substance of the allegation

2. The submissions of both ZENKYO and the Government addressed a number of topics and situations which, in essence, relate to two core issues:
 - (a) long working hours of teachers and other staff leading to occupational health problems and de-professionalization;
 - (b) temporary appointments in public schools.

Both issues are examined successively. A further section examines common social dialogue aspects of both issues.

Long working hours of teachers and other staff affecting their professional skills

3. In essence, ZENKYO alleges that overtime work of teachers – both at school and at home – is widespread and goes against the principles set out in paragraphs 6, 70 and 85 of the Recommendation. While Japanese legislation sets out the principle that a teacher cannot be ordered to work overtime (under normal circumstances), the union argues that, in fact, overtime work reaches substantial levels. According to a survey on working conditions that the union conducted in 2012, extracurricular activities, student guidance, club activities, coaching, emergency duties, and the preparation of documents, statistics and reports require teachers to work overtime. Moreover, in the eyes of the union, measures taken to increase academic achievement without increasing the number of teaching posts have also resulted in heavier workloads. The introduction of working time on Saturdays is reported to have aggravated the situation. Teachers have the obligation to be present when students are at school and even though, in principle, they should receive compensatory days off, in practice they do not.
4. According to the union, long working hours for teachers result in three main types of negative consequences that undermine the principles of paragraph 8 of the Recommendation. First, heavy workloads and long overtime cause higher stress levels, reduce rest periods and affect teachers' health (including illness and mental disorders), resulting in sick leave, absenteeism and early retirement, and even death (*karoshi*). The union adds that the situation particularly affects women teachers, as they usually bear heavy family responsibilities. Second, inadequate teaching hours and preparation time

adversely impact the quality of education and the time spent with students. Third, long working hours leave too little time for professional training, therefore leading to de-professionalization of the teaching personnel. In the view of the union, the Government does not comply with a number of paragraphs of the 1966 Recommendation – including paragraphs 8, 9, 82, 89, 90, 92 and 102.

5. The union claims that no effective measure has been taken to accurately check and control long working hours. In addition, the union stresses that legal provisions regarding overtime pay do not apply to teachers, as they do not receive an overtime allowance proportional to hours worked outside duty hours, but instead an across-the-board rate adjustment equivalent to 4 per cent of the basic salary that cannot be considered as compensation. It calls upon the Government to ensure that overtime work is accurately calculated, controlled and compensated.
6. In its response to the allegation, the Government of Japan restates its commitment to the spirit of the 1966 Recommendation, within the scope of domestic legislation, as it considers that the Recommendation contains elements that do not necessarily suit Japanese domestic legislation and the current situation. Overall, the Government refutes the allegation, saying that many of the points raised are based on misunderstandings, factual errors and facts not accurately conveyed.
7. The Government recognizes that reducing teachers' overtime work is an important issue. However, it challenges both the methodology used for the survey conducted by ZENKYO and its results. The Government considers that boards of education are following legal provisions limiting overtime work to extraordinary or emergency needs. Regarding Saturday classes, the Government "believes that local government took measures" to ensure compensation of weekly days off, such as the extension of the period allowed to take a compensatory day off. The Government claims that steps have been taken to reduce the workload of education personnel (especially the number of surveys), including guidance to boards of education, so that sufficient time can be dedicated to class planning and preparation. The Government promises to continue to provide guidance (through notification, training and other means) and to encourage accurate monitoring of working hours. The Government also pledges to:
 - enhance the necessary leadership structure;
 - strengthen the clerical functions of schools;
 - improve the assignment of staff with specialized knowledge.
8. Regarding compensation for the overtime work, the Government argues that the teaching adjustment of 4 per cent of basic salary compensates for the absence of overtime allowances. It also stresses that many duties are conducted away from the school and on a voluntary basis (in particular for clerical work, reports, student guidance, coaching and directing extracurricular activities), which makes it difficult for managers to ascertain the working time of teachers.
9. Regarding training, the Government asserts that efforts are being made to cooperate with local governments to improve training for teachers. In July 2014, the Central Council of Education was consulted on ways to improve school environment for teachers and personnel and the Government of Japan announces that appropriate action will be taken. No substantial comments are provided by the Government on the outcome of the consultation.

Temporary teachers in public schools

10. ZENKYO claims that, further to a decrease in State contributions to the costs of teaching personnel born by prefectures, an important and increasing number of temporary teachers (working full time or part time) are hired to fill out posts for regular full-time teachers. According to the union, the situation deviates from standards laid down in paragraphs 5, 10(e), 31 and 85 of the Recommendation. While recognizing some progress, the union regrets the absence of a government plan to increase the number of permanent posts. The union asserts that notifications issued by the Government are not uniformly applied across prefectures and local governments, and that the practice of renewing temporary contracts persists.
11. ZENKYO further alleges that the practice of relying on a series of temporary fixed-term contracts instead of open-ended contracts affects teachers' working conditions and the quality of education and leads to discriminatory treatment between permanent and temporary teachers on several grounds:
 - Unlike their regular peers, temporary teachers are not required to pass hiring requirements, even though they hold similar responsibilities for teaching and directing extracurricular activities, which has a negative impact on the quality of education. In addition, as the necessity of temporary positions is considered every year, the continuity of education is affected, while paragraph 45 of the Recommendation sets out the principle of stability of employment and security of tenure.
 - Temporary teachers, and particularly part-time teachers, do not have access to the same training opportunities as regular teachers. Some of them are also denied the opportunity to be later hired as regular teachers and are deliberately left out of the hiring process.
 - Disadvantages suffered by temporary teachers are numerous and include instability of employment. Part-time teachers are particularly vulnerable, as they are paid on an hourly basis, have less paid leave and slimmer prospects of contract renewals. Fixed-term contracts are frequently renewed several times, with interruption periods in between, which causes gaps in social security protection (particularly insurance coverage, sickness leave, maternity protection and pension), as well as paid annual leave and levels of remuneration, which is not in line with a number of paragraphs including paragraphs 94, 101, 130, 125 and 126. The union also reported cases of termination or non-renewal of fixed-term contracts of pregnant women teachers, which goes against paragraph 55 of the Recommendation.
12. In response, the Government indicates the general rules which apply to temporary contracts, including the limitation of the use of such contracts, and its consideration that prefectural boards of education were following them. According to the Government, prefectural boards of education received information on the need to be in line with applicable legislation and regulations, as well as guidance and advice. In addition, the Government mentions a draft plan to increase the fixed number of teachers, although no specific decision or policy was indicated.
13. Regarding employment contracts, the Government recalls that, as each temporary appointment is, in principle, limited to one year and the necessity of the position examined each year, there should be no expectation of renewal. On the alleged unequal treatment (especially salary scales, salary limits and leave) between temporary and regular staff, the Government provides only general comments and notes that, to its understanding, conditions are generally the same. However, the Government concedes that non-regular teachers face unstable employment and have no guarantee of equal treatment with regular teachers.

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14. With regard to insurance and benefits, the Government recognizes that in the case of a brief gap between a series of contracts, coverage for pension and health insurance coverage should be guaranteed, as such a break does not constitute an interruption of the continued employment relationship. The Government reports on action taken, including awareness raising for boards of education and individual local governments on this matter. The Government denies the allegation of termination or non-renewal of fixed-term contracts of pregnant women teachers but admits possible difference of treatment between regular and temporary teachers, such as unpaid special maternity leave. The Government also acknowledges that in this area, law and practice differ from principles laid down in the Recommendation.
 15. With regard to the appointment process for temporary teachers, MEXT does not provide detailed comments on the reported cases of temporary teachers deliberately left out from the selection process and their limited opportunity to gain regular employment status. On the alleged lack of training opportunities for temporary teachers, MEXT notes that boards of education are providing training, but without giving more information.

Social dialogue

16. ZENKYO regrets in its allegation the lack of opportunities for negotiation and consultation with the Government. It calls upon the Government to ensure social dialogue, in particular as regards the main issues of overtime work and temporary teachers. The union complains that some matters that should be discussed between MEXT and teachers' organizations are considered to be "administration and management matters" in some prefectures and therefore not open to social dialogue. The union points out that this does not respect paragraphs 9, 71 and 82 of the Recommendation. The union also stresses the need to hold consultations and negotiations in good faith.
17. MEXT refutes this claim and argues that consultations on working conditions were held, and that a dialogue with teachers' organizations is taking place at prefectural level. On this point, the Government notes that, according to applicable legislation, local governments should negotiate on issues relating to remuneration, working hours and other working conditions, which are their responsibility. However, as far as management and administration matters (such as implementation measures) are concerned, consultation will be limited to exchange of opinion. MEXT indicates having responded to calls for discussion, but holds that some issues are considered to be management and administrative matters, and therefore not open to negotiation.

3. Findings

18. The union's submission to the Joint Committee alleges that the abovementioned elements violated numerous principles set out in the 1966 Recommendation.
19. In essence, these principles relate to the working environment (paragraphs 6, 8, 70, 85, 86, 90, 91, 92, 93), status of employment (paragraphs 45, 55) in relation to salaries, social security, maternity protection, leave, holidays, training (paragraphs 31, 32, 55, 94, 101, 102, 116 to 119, 125, 126) and social dialogue (paragraphs 9, 71, 82).

Long working hours of teachers and other staff affecting their professional skills

20. The Joint Committee first notes that the Recommendation establishes, as a guiding principle, that “working conditions for teachers should be such as will best promote effective learning and enable teachers to concentrate on their professional tasks” (paragraph 8). The Joint Committee also notes that both the union and the Government agree on the existence of overtime work for teachers, especially for extracurricular activities. However, no agreement was found on the scale of overtime work or on its voluntary or obligatory nature. Specifically on the issue of hours of work, the 1966 Recommendation provides in paragraph 90 that:

In fixing hours of teaching account should be taken of all factors which are relevant to the teacher’s work load, such as:

- (a) the number of pupils with whom the teacher is required to work per day and per week;
 - (b) the necessity to provide time for adequate planning and preparation of lessons and for evaluation of work;
 - (c) the number of different lessons assigned to be taught each day;
 - (d) the demands upon the time of the teacher imposed by participation in research, in co-curricular and extra-curricular activities, in supervisory duties and in counselling of pupils;
 - (e) the desirability of providing time in which teachers may report to and consult with parents regarding pupil progress.
21. On the magnitude of overtime work, the Joint Committee notes the information and data supplied by the union and the comments from the Government denying such evidence. As many of the points of view and data are contradictory, the Joint Committee at this stage has no basis for establishing the full facts of this allegation. However, the Joint Committee notes that both the union and the Government agree that extracurricular activities and coaching are factors for overtime work. As paragraph 91 and 92 of the Recommendation set out, necessary time should be provided to teachers for taking part in in-service training programmes and their participation in extracurricular activities should not constitute an excessive burden. In view of the above, the Joint Committee notes that particular attention should be given to ensuring that sufficient time is allocated to the preparation and planning of classes and for in-service training to ensure an education of good quality. Other standards established by the Recommendation, such as paragraphs 31, 32, 85, 86, 87 and 93, are highly relevant to the issue.
22. Acknowledging the decentralized nature of the education system in Japan, the Committee considers that the Government should take further action to ensure that local government and schools respect provisions on overtime. The Government should exercise appropriate supervision to ensure good teaching and learning environments. Observations communicated by ZENKYO and local unions and responses from prefectures show that different practices prevail in the application of relevant legal provisions and regulations depending on the prefecture. Therefore, noting paragraphs 9 and 82 of the Recommendation, the Joint Committee considers that further negotiation and dialogue between the Government and teachers’ unions on this point is highly desirable.

Status of employment for temporary teachers

23. A second question is whether the status of employment for temporary teachers is in line with the principles laid out in the 1966 Recommendation.

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- 24.** First of all, the Joint Committee recalls that, during its 12th Session in April 2015,¹ it noted that there was a general trend in increasing number of teachers on short-term, temporary contracts, rather than on open-ended, tenured contracts. This instability of such employment relationships raised serious concerns about the quality of education and equity in the educational system, and was associated with lack of time for planning and reflection, and for collaboration with colleagues; limited opportunities to provide sufficient support to students and to interact with parents; and the necessity of taking on additional jobs due to low salaries and benefits.
- 25.** The Joint Committee notes that all teachers are covered by the standards laid down in the Recommendation, as paragraph 1(a) does not make any distinction based on the nature of the employment relationship.
- 26.** The Joint Committee recalls that paragraph 45 of the Recommendation sets out:
- Stability of employment and security of tenure in the profession are essential in the interests of education as well as in that of the teacher and should be safeguarded even when changes in the organization of or within a school system are made.
- 27.** The Joint Committee regrets that no information was provided on regulations or policies concerning the use of consecutive fixed-term contracts of employment and contract interruption periods. The instability of employment and interruptions of contracts can deprive temporary teachers of their rights, including among others, equal remuneration, equal paid leave, social security (particularly medical care, sickness benefit, unemployment benefit, pensions, employment injury benefit and maternity benefit). Regulations and practices should be in line with other related standards set out in the Recommendation, including paragraphs 116 to 119 (salaries), paragraph 94 (annual holidays with pay) and paragraph 101 (sick leave and maternity leave) to ensure that temporary teachers are not treated in a discriminatory manner.
- 28.** As regards social security, the Recommendation sets out that “All teachers (...) should enjoy the same or similar social security protection. (...)” in paragraph 125 and further adds in paragraph 126, that:
- (1) Teachers should be protected by social security measures in respect of all the contingencies included in the International Labour Organisation Social Security (Minimum Standards) Convention, 1952, namely by medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors’ benefit.
 - (2) The standards of social security provided for teachers should be at least as favourable as those set out in the relevant instruments of the International Labour Organisation and in particular the Social Security (Minimum Standards) Convention, 1952.
 - (3) Social security benefits for teachers should be granted as a matter of right.
- 29.** As regards termination of contracts on the ground of pregnancy or maternity, the Joint Committee notes the general principle set out in paragraph 55 of the 1966 Recommendation: “Employers should be prohibited from terminating contracts of service for reasons of pregnancy and maternity leave”. In addition, paragraph 102 of the Recommendation provides that “Effect should be given to the standards laid down by the International Labour Organisation in the field of maternity protection, and in particular the

¹ Final Report of the 12th Session of the Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel, Paris, 2015, pp. 8–10, available at: www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/meetingdocument/wcms_399569.pdf.

Maternity Protection Convention, 1919, and the Maternity Protection Convention (Revised), 1952, as well as to the standards referred to in paragraph 126 of this Recommendation.” In view of ILO standards on maternity protection, the Joint Committee notes that in Article 8(1) of the Maternity Protection Convention, 2000 (No. 183)² lays down the principle that:

It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.

30. The Committee notes that “this Convention applies to all employed women, including those in atypical forms of dependent work”, as provided in Article 2(1). The Joint Committee also takes notes of Article 6(1) of Convention No. 183 provides that “Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on leave referred to in Articles 4 or 5”, and Article 9(1) that sets out that “Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment [...]”
31. In view of the above, the Joint Committee considers that the Government should ensure that rules that apply to temporary contracts are duly respected by local governments and that they exert due supervision and monitoring of the situation, with respect to the decentralized nature of the education system.
32. The Joint Committee notes that paragraph 10(1) of the 1966 Recommendation sets out that “as the achievement of the aims and objectives of education largely depends on the financial means made available to it, high priority should be given, in all countries, to setting aside, within the national budgets, an adequate proportion of the national income for the development of education.” The Joint Committee appreciates information shared by the Government on the drafting of a new plan aimed at improving fixed numbers of teaching personnel and requests more information on this draft plan. The Joint Committee also welcomes the efforts reported by the Government on information sharing and guidance provided to prefectural boards of education and encourages pursuing these efforts. However, the Joint Committee considers that further efforts should be undertaken to consult and negotiate with teachers’ organizations on this issue.

Negotiation and consultation (social dialogue)

33. The union repeatedly referred to a lack of consultation and negotiation with the Government. It also alleged that, on multiple occasions, negotiation was refused on the ground that these issues related to management and administration matters. The Government indicated that consultation and negotiation were conducted with teachers’ organizations, even though implementation measures were limited to exchange of opinion.
34. The Joint Committee recalls that consultation and negotiation questions were already discussed in a previous allegation submitted by ZENKYO in 2002 and that it was extensively addressed in its 2003 report. In its 2008 interim report, further to the

² http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312328:NO.

fact-finding mission, the Joint Committee had underscored that “The 1966 Recommendation calls for a consultative process that involves more than just public hearings or meetings with teachers’ organisations limited to hearing their opinions.”³ The Committee had also noted “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”.⁴ The Joint Committee recommended 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.” The Joint Committee underlines the relevance of this recommendation to the present case.

35. In line with the standards provided in paragraphs 9, 71 and 82, the Joint Committee considers that consultation *and* negotiation in good faith should occur between the Government and teachers’ organizations on these matters.

Recommendations

36. The Joint Committee recommends that the Governing Body of the ILO and the Executive Board of UNESCO encourage the Government of Japan and ZENKYO to:
- (a) Engage in specific dialogue around the development of policy for contract and working time issues, including review of pertinent legislation and the establishment of effective monitoring mechanisms at the local level, with due respect given to ensuring that negotiations and consultations take place in good faith and in a spirit of cooperation;
 - (b) Consider joint fact-finding to be part of the process to ensure a common understanding of the issues and to facilitate constructive dialogue and work towards resolving the difference of views expressed by both parties;
 - (c) Keep the Joint Committee informed of further developments within one year, in particular in relation to the development and implementation of relevant policies, to allow for monitoring of the situation and further consideration by the Committee.

³ 2008 Interim Report p. 15, para. 26.

⁴ 2008 Interim Report p. 16, para. 30.