

**FOR DECISION**

EIGHTH ITEM ON THE AGENDA

Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART): Report on allegations submitted by teachers' organizations

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 and the Executive Board of UNESCO in 1967. Its mandate is to monitor and promote application of the international Recommendations on teachers of 1966 and 1997.¹ As part of its mandate, the CEART examines communications in the form of allegations from international and national teachers' organizations that provisions of one or both standards are not being applied in member States. It meets every three years in either Paris or Geneva for its work, including consideration of such cases. Its procedures also call for the preparation of interim reports on cases between the regular meetings. The CEART reports are submitted to the Governing Body and to the Executive Board of UNESCO for their separate action. In line with past practice, at the request of the CEART the allegations of the recently concluded Tenth Session are submitted to the Committee for its review with a view to communicating the results in a timely manner to the concerned governments and teachers' organizations as part of ongoing dialogue contributing to the resolution of difficulties encountered in applying the international Recommendations on teachers as part of national policy and practice. The full report of the Tenth Session will be submitted to the March 2010 session of the Governing Body.
2. The appendix contains the CEART's examination of one new case from Denmark and continued review of cases from Australia, Ethiopia and Japan that were considered at its Tenth Session, which concluded at UNESCO headquarters in Paris on 2 October 2009. The cases of Australia, Ethiopia and Japan were reported in the interim report on allegations that was reviewed by the Governing Body at its 303rd Session (November 2008),² following previous examination by the CEART at its Ninth Session in October–November 2006.³

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

² GB.303/12.

³ CEART/9/2006/10.

3. In the case of Denmark, the CEART did not find that the Danish legislation called into question by the Danish teachers' organization, Dansk Magisterforening (DM), and Education International (EI) in supporting information is in violation of the 1997 Recommendation's provisions regarding major issues such as academic freedom, self-governance and collegiality and collective bargaining on terms and conditions of employment. The CEART recommended that the Government and the DM engage in social dialogue on issues of university governance and performance contracts for individual universities and to report further to the Joint Committee on the results of their discussions, progress made and any difficulties encountered.
4. Concerning Australia, the report commends the Government for its reforms of legislation and policies that serve to better apply key provisions of the 1997 Recommendation, but the CEART requests the parties to keep the Joint Committee apprised of further progress and any continued difficulties on matters such as extension of procedural guarantees concerning dismissal to all institutions and employees, should the need arise.
5. With regard to Ethiopia the Joint Committee expressed its concern over the continued lack of respect by the Government for social dialogue on education matters affecting teachers, requested UNESCO to communicate the outcomes of actions by its Director-General, use her good offices to improve communications between the Government and teachers' organizations, and requested the Government, the National Teachers' Association (formerly ETA) and EI to keep the Joint Committee apprised of any progress and continued difficulties.
6. In the further review of developments in Japan since the 2008 interim report, the CEART recommended: that the Government and teachers' organizations use the advisory services of the ILO and UNESCO to access good practices on systems of consultation and social dialogue, teacher evaluation and merit assessment, which might serve as models for improvement, and cooperate with the ILO and UNESCO to prepare a mutually acceptable understanding of the text of the 1966 Recommendation in Japanese; that the Government transmit the CEART reports to prefecture boards of education with its comments; and that the Government, as well as all representative teachers' organizations keep the Joint Committee apprised of any progress and continued difficulties.

7. *The Committee may wish to recommend that the Governing Body:*

- (a) take note of the relevant parts of the report of the Tenth Session of the CEART relating to allegations on the non-observance of certain provisions of the ILO–UNESCO Recommendation, 1966, in Australia, Ethiopia and Japan, and the UNESCO Recommendation, 1997, in Denmark;***
- (b) authorize the Director-General to communicate the report to the Governments of Australia, Denmark, Ethiopia and Japan and to the National Tertiary Education Union of Australia, the National Teachers' Association (formerly Ethiopian Teachers' Association), EI, the All Japan Teachers' and Staff Union (ZENKYO), Nakama Union and other representative teachers' organizations in Japan, and to invite them to take the necessary follow-up action as recommended in the report.***

Geneva, 23 October 2009.

Point for decision: Paragraph 7.

Appendix

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

(Tenth Session, Paris, 28 September–2 October 2009)

2. Progress in promotion and use of the 1966 and the 1997 Recommendations

A. Allegations on non-observance of the Recommendations

Allegations received since the Ninth Session, 2006

73. Since the Ninth Session in 2006, the Joint Committee received one allegation from the Dansk Magisterforening (DM), a Danish organization that represents academic personnel, concerning the application of the 1997 Recommendation. Education International (EI) also supported the allegation. This allegation was found to be receivable under the terms of the Recommendation. The Government of Denmark responded fully with information on the points raised by the allegation, and the DM responded to the Government's communications. According to the procedures of the Joint Committee, its Working Party on Allegations reviewed all information provided concerning the allegation. The report of the Working Group on Allegations was approved by the Joint Committee and is found in Annex 2 of this report.

Review of further developments in allegations previously received

74. Following the last report of the Joint Committee in 2006, the Government of Japan, the All Japan Teachers and Staff Union (ZENKYO) and Nakama Union provided additional information concerning the matters set out in the case examined in more detail in Annex 2.
75. In accordance with the procedures of the Joint Committee, the Working Party on Allegations examined these communications. The Government of Japan continued to assert that it was prohibited by law from complying fully with the provisions of the 1966 Recommendation and in any case was meeting with teachers' organizations as appropriate. ZENKYO argued that the report of the Joint Committee's 2008 Fact-Finding Mission to Japan had not been distributed to prefectural school boards and little social dialogue was occurring. The Working Party on Allegations reviewed these materials, and the Joint Committee approved a report including recommendations that the parties continue efforts to collaborate on matters discussed in the report of the Fact-Finding Mission and in the interim report of the Joint Committee. The full report of this matter is contained in Annex 2.
76. The Joint Committee further reviewed an allegation received from Education International (EI) and the Ethiopian Teachers' Association. The Joint Committee's interim report in 2008 expressed regret that the Government of Ethiopia did not provide further information on this allegation as the Joint Committee had previously requested. The Joint Committee suspended further consideration of the allegation until more information became available.
77. The UNESCO Executive Board requested the Director-General in April 2009 to use his good offices to improve communications between the Ethiopian authorities and the teachers' organizations concerned. Moreover, the Committee on Freedom of Association of the ILO Governing Body in March 2009 examined a complaint from workers' organizations and among other matters noted that the Government of Ethiopia required

teachers to perform duties unrelated to education (participation in a population census) without any consultation with teachers' organizations.

78. The Joint Committee reviewed these developments and prepared a report that is contained in Annex 2.
79. Also at its Ninth Session, the Joint Committee examined an allegation from the National Tertiary Education Union (NTEU) of Australia that was submitted in 2006. Details of the allegation were included in the report of the Joint Committee in its 2006 report and an interim report issued in 2008. Since the interim report, the Joint Committee received additional information from the Government of Australia and the NTEU. Stated briefly, the legislation that gave rise to many of the allegations has been repealed. However, the NTEU asserted that, while progress has been made, conditions at some institutions still contravened the provisions of the 1997 Recommendation.
80. The Joint Committee examined the materials received since the interim report and issued a report that is contained in Annex 2.

Annex 2 of the CEART report

Allegations received from teachers' organizations

A. *Allegations received since the Ninth Session, 2006*

1. Allegation received from the Dansk Magisterforening (DM) of Denmark

Background

1. The Dansk Magisterforening (DM) addressed an allegation of non-observance of the 1997 Recommendation to the Director-General of UNESCO on May 22, 2008.
2. The DM allegation asserted that “the University Act” (the “Act”), passed in 2003, violated the 1997 Recommendation in three areas: freedom of research, institutional autonomy and collegial governance. In addition, the DM asserted that working conditions of its members who are teaching personnel in Danish universities did not permit them to carry out their duties as set out in the 1997 Recommendation.
3. The DM is a registered trade union with approximately 36,000 members, comprising a majority of researchers and teachers in the Danish system of higher education. It has the right to bargain collectively on behalf of its members with the Finance Ministry. The DM allegation stated that the Danish Government did not regard the 1997 Recommendation as a normative influence. Instead, OECD standards were appropriate for Denmark. However, the DM acknowledged that the current Minister of Science, Technology and Innovation, who is responsible for higher education, has declared that Danish legislation and policy complies with the 1997 Recommendation.
4. The DM allegation asserts that sections 2.2 and 17.2 of the Act violate sections 26–30 of the 1997 Recommendation, which protect academic freedom. Furthermore, the DM argued that section 10.8 of the Act, which describes “performance contracts” between universities and the Ministry. Section 2.2 of the Act states: “The university has freedom of research and shall safeguard this freedom and ensure the ethics of science”. Section 17.2 states:

The Head of Department shall undertake the day-to-day management of the department, which includes planning and allocation of tasks. The Head of Department may allocate specific jobs to specific employees. Members of the academic staff are free to conduct research within the strategic framework laid down by the university for its research activities to the extent they are not requested to address jobs allocated to them by the Head of Department.
5. The DM allegation objects to the wording of section 2.2 because it does not refer explicitly to institutional autonomy, only to “freedom of research” and “ethics”. According to the DM, institutional autonomy and academic freedom are interrelated, and the Act fails to recognize this fact by referring only to freedom of research and ethics.
6. The DM objects to section 17.2 because it implies that academic staff are free to conduct research only “within the strategic framework laid down by the university”. Furthermore, the wording of the section means that research is a residual duty for academic staff, undertaken only after duties assigned by department heads are completed. The strategic framework is contained in the development contract between the university and the Ministry, so in effect, the Ministry must approve areas of research open to faculty members.
7. Apart from the text of the Act, the DM alleges that funding for Danish universities has become more subject to political control. Research is directed towards fields that promote

links with industry and “short-term commercial effect”. The DM also asserts that it has been involved in cases in which members have been dismissed or threatened with dismissal because their research filed did not fit into the strategic framework of their university under its contract with the Ministry.

8. In addition to the Act, another statute, the Act on inventions at public research institutions, restricts the right of academic staff to publish an invention produced as part of their work for a university or other institution. The DM asserted that this provision also violates the 1997 Recommendation.
9. As noted above, in section 10.8 of the Act, universities must enter into “development contracts” with the Ministry, which the DM regards as a restriction on institutional autonomy. According to the DM, these contracts obligate each university to achieve quantitative contracts for educational programmes, including the number of degrees granted, research activity, including the number of publications, patents and citations. Each university must confine its work to the areas of research and education contained in the development contract.
10. Beginning in 2006, a number of academic and research institutions were merged into 11 universities and a number of other institutions. The DM alleges that the universities had no real choice about participation in the merger process, which it alleges is a violation of section 22 of the 1997 Recommendation.
11. The Act stipulates that a majority of university academic boards must be external members. Academic councils also exist, but they have little executive powers, while many other decisions are decided by the Government or Parliament. The effect of these systems is that academics do not have the power to decide such issues as what to teach, what academic standards apply to an institution, how to ensure quality in academic work, hiring of academic staff and the like. Many decisions are made by senior administrators, and the only requirement for their appointment is that they be researchers in good standing. In practice, at least some appointments are based on administrative or industry experience, undermining collegiality. The previous law regulating universities provided that such positions were filled through elections, so that the views of faculty were regarded carefully.
12. The DM further alleges that terms and conditions of employment of Danish academics do not reflect their status and importance to Danish society. In particular, they lag behind colleagues in Europe and North America. Although a collective agreement concluded in March 2008 may improve this situation, universities have refused to introduce a system of sabbaticals as provided in the 1997 Recommendation.
13. By a communication of 6 August 2009, Education International (EI) submitted additional information in support of the DM allegations concerning provisions of the 1997 Recommendation that relate to individual freedom of research within Danish universities, loss of collegiality and lack of meaningful involvement of personnel in decision-making bodies, as well as non-recognition of the value of services provided by part-time higher education teaching personnel, their non-representation in negotiations with teachers’ organizations, and their lack of entitlement to pension benefits. EI contended that the Danish situation was symptomatic of that which prevailed in many countries around the world, with institutions operating as if they had no knowledge of the 1997 Recommendation. Freedom of research principles were being violated by more liberal and competitive forms of research funding and as more university decision-making bodies were constituted along managerial lines, with a concomitant loss of collegial governance. University staff were increasingly casual and short term, suffering restrictions on academic freedom, and worsened conditions of work and benefits, especially in the current economic crisis. In contrast to the Danish practices, EI referred to a case of good practice from Ireland by which an Irish Labour Court decision had reasserted employment protection and research personnel control over their own research, and urged a negotiated agreement with a teachers’ organization on the approach to academic research and therefore freedom.

14. In accordance with its procedures, the Joint Committee requested the Minister for Science, Technology and Innovation of Denmark to submit its observations on the DM allegation.
15. The Ministry noted that the DM allegation reflected its dissatisfaction of current government policy with regard to universities. The Government's position is that these policies do not conflict with the 1997 Recommendation.
16. The Minister maintained that a government that allocates public funds to be managed by universities each year should establish some rules for the use of those funds. The Minister did not accept that the mergers of 2007 in any way curtailed academics' freedom of speech. The Constitution guarantees freedom of speech for all, and universities have an obligation from the Ministry to encourage their employees to take part in public debate. Data show that university staff express their views on public issues more often than other professionals.
17. The Act establishes a system for employees to exert influence in areas of their special academic competency. The Act requires deans and heads of departments to involve employees in decisions on the activities of universities. Staff are represented on the university board, the most senior authority in the university.
18. The Minister's view on the protection of academic freedom is that the Act establishes the obligation to safeguard academic freedom. It does not define the meaning of "university" and leaves it up to the management of an institution to determine how to protect academic freedom. The meaning of section 17(2) of the Act is that academic staff are free to conduct research, so an individual researcher has a statutory right to conduct such research, a right the university must respect. In 2006, the DM commissioned a survey of its members which revealed that 12 per cent of state-employed researchers, including universities, research institutions, and archives/libraries and museums, have been ordered to carry out specific research tasks.
19. In the view of the Government, section 17(2) of the Act means that a strategic framework laid down by a university for its research activities should be broadly interpreted and covers the entire profile of the university, so it is hard to imagine this condition to be restrictive. Performance contracts contain descriptions of a university's strategic aims and action areas on a general level. The contracts should not be used to restrict academic freedom. Moreover, development contracts are prepared in a process that includes open discussion at the university, including the academic council.
20. The majority of research funds are allocated through competitions held by various councils and foundations in the research advisory system. Researchers prepare their own proposals. The Danish Council for Independent Research funds projects initiated by researchers, and the Danish Council for Strategic Research funds research in priority areas defined by the Government. Members of both councils are researchers.
21. If research is partially or fully funded from public sources, there is an obligation to publish the results under the Act. The time of publication will depend on specific circumstances, including protection of intellectual property rights. A statute regulating inventions at public research institutions provides that an institution may order a researcher not to publish an invention for up to two months if further evaluation is necessary. The institution may also order a delay if publication may obstruct possible commercial exploitation, including time necessary for the university to secure a patent right. The same law gives the institution the right to exploit inventions produced by employees as part of their work. The employee is entitled to reasonable payment from the institution if it obtains revenue from commercial exploitation of an invention. The Minister believes that Danish practice in this area conforms to international norms.
22. The Minister takes the position that a balance between self-governance and autonomy and accountability is necessary in universities, and Danish legislation meets those requirements.

23. Development contracts are a framework for institutional self-governance and autonomy of universities, based on university proposals. They are not legally binding.
24. The university mergers that occurred in 2007 have not changed the framework for freedom of speech, either in the Constitution or the of the University Act. The DM's own survey found that university researchers express their views more often than other groups in the association to which the DM is affiliated.
25. Career structures were simplified after the university mergers in 2007. This change followed a dialogue between an organization representing universities and the association to which the DM belongs. The Minister states that no ministerial document can alter statutory rights. The Ministry normally consults with the DM and other groups before issuing new rules, but it is not obligated to accept the position of the DM or any other organization before issuing a new policy.
26. The Minister states that salaries and working conditions of academic personnel are comparable with other universities in Europe. Pay scales are determined through collective bargaining, so the parent organization to which the DM belongs has agreed to current salaries.
27. In its comments on the information submitted by EI, the Government contends that fixed-term higher education staff in Denmark enjoy the same rights as full-time staff through the collective agreement and the University Act, including academic freedom, freedom of research, salary levels and pension rights. The extension of the collective agreement's coverage in 2008 to employment of less than 21 hours a week meant that part-time staff enjoyed the same rights as full-time staff in equivalent positions. The conditions in Ireland referred to by EI were not directly transferable to Denmark since an agreement on workload models did not exist in Denmark, nor did the 1997 Recommendation refer to such agreements. Institutional responsibility to safeguard freedom of research prevailed in Denmark in accordance with the 1997 Recommendation's provisions. Assertions by EI on the loss of collegiality in violation of the 1997 Recommendation's provisions contradicted those of the DM and in any case appeared to be politically motivated. On the contrary, provisions in the University Act concerning staff representation on academic bodies and the governing board were not deemed to be in contravention of the 1997 Recommendation. The Government rejected the assertion that working conditions of part-time higher education personnel were worse than those of full-time staff; all such working conditions were negotiated, the majority through collective bargaining, formalized in collective agreements.

Findings

28. The Joint Committee supports the statement attributed to the Minister that Danish law and policy should comply with the provisions of the 1997 Recommendation. The Joint Committee recognizes that possibilities exist for disagreement about the proper application of the principles of the 1997 Recommendation. The Joint Committee also notes that according to the Recommendation (paragraphs 22 and 24) there should be a proper balance between the level of autonomy enjoyed by higher education institutions and their systems of accountability without harming academic freedom.
29. The Joint Committee remarks that this allegation is not based on specific actions of any university or the Government of Denmark. Rather, it reflects the DM's dissatisfaction with some of the terms of the Act passed in 2003.
30. The 1997 Recommendation is necessarily framed in general terms and broad principles. Individual nations and academic institutions are able to organize their activities consistent with national practices to ensure conformance with the principles of the Recommendation. For instance, section 17 of the 1997 Recommendation sets out the principles to govern institutional autonomy. The final sentence states, "However, the nature of institutional autonomy may differ according to the type of establishment involved".

31. Similarly, the Act governing the operation of Danish universities contains many general statements concerning academic freedom (section 2.2), research activities (section 17.2) and governance and “performance contracts” (section 10.8).
32. The DM correctly notes that section 2.2 of the Act does not refer to institutional autonomy. But the Joint Committee notes that this provision contains a strong statement that requires universities to protect academic freedom. The text of the 1997 Recommendation, especially sections 28 and 29, focuses first on the rights of academic personnel to teach and carry out research work “without any interference”, subject to professional principles.
33. While the guarantees of section 2.2 of the Act could be stated more fully, as they are in the 1997 Recommendation, this legislative provision does not in itself violate the principles of the Recommendation.
34. Section 17.2 of the Act states that academic staff are free “to conduct research within the strategic framework laid down by the university ...”. The language of this provision is open to various interpretations. It is possible that a strategic framework could restrict the provisions of section 29 of the 1997 Recommendation, but the Joint Committee has no evidence that the legislation has in fact limited the freedom of academic staff to carry out their research. The Minister states that “the notes on the University Act” refer that a strategic framework for research activities in a university should be broadly interpreted and that it covers the entire profile of the university. Under these circumstances, the Joint Committee cannot conclude that the existence of strategic frameworks per se limit the freedom of academic staff to conduct research. It further acknowledges that the possibility of such conflicts exists. The DM alleges that staff have been threatened with reprisal because their research did not fit within the strategic framework of their university. Such cases might violate the principles of section 29 of the Recommendation and should be regarded seriously by all parties concerned. In the absence of more information the Joint Committee recommends that the DM and the Ministry examine the possibilities that strategic plans could impinge on the freedom of research with the goal of agreeing on a policy to prevent such occurrences.
35. The Joint Committee noted the principles of the Act on inventions at public research institutions and the Minister’s description of its operation. This legislation refers principally to inventions, a specific form of research. The 1997 Recommendation does not mention inventions or the commercial exploitation of the results of academic research. The Joint Committee acknowledges that these issues are important in many universities and have resulted in benefits to research personnel, their universities and in some cases, students. The 1997 Recommendation contains strong statements about the freedom of academic personnel to publish the results of their research without interference. The Recommendation anticipates publication in traditional outlets, i.e., books, journals and databases. The restrictions in the Act on inventions are limited to short periods to permit registration of copyrights. This provision does not limit the right of academics to publish their work where they choose. The Joint Committee further notes that normal delays in traditional publications often exceed two months. Therefore, lacking any evidence that the interests of researchers are compromised by the limits in the Act on inventions, the Joint Committee cannot conclude that the restrictions violate the 1997 Recommendation.
36. The 1997 Recommendation addresses self-governance and collegiality in sections 31–32. In particular, section 31 states that teaching personnel should be able “to elect a majority of representatives to academic bodies within the higher education institution”. The evidence presented to the Joint Committee is that external members must be a majority on the academic boards of each university (The Universities Act, section 12), and the chair must be an external member. In addition to the academic board, each university has at least one “academy council” which is comprised of academic personnel, graduate students and academic administrators. It appears that academic personnel can comprise a majority in these bodies. Council duties include the distribution of funds within the university. Other bodies regulate PhD programmes and study boards. Study board members are equally

divided between academic personnel and students, and the chair must be an academic member.

37. The Joint Committee notes that academic personnel are well represented in the governance of Danish universities. The Joint Committee also notes that it is not uncommon for universities to be governed by a senior body that oversees non-academic functions of a university. The Joint Committee notes that the academic boards in Danish universities do not fall under the definition of “academic bodies”, in section 31 of the 1997 Recommendation. It further recommends that the DM and representatives of universities and the Ministry discuss the operation of governance structures in universities with a view to clarifying any misunderstandings on the proper functions of the relevant bodies.
38. The Joint Committee lacks data to assess the economic situation of DM members. However, it notes that salaries and conditions of employment are subject to collective bargaining. It would be inappropriate for the Joint Committee to express an opinion on the results of voluntary collective bargaining, as envisioned in section 53 of the 1997 Recommendation.

Recommendations

39. The Joint Committee recommends that the Governing Body of the ILO and the Executive Board of UNESCO:
 - (1) take note of the situation described above;
 - (2) communicate to the Government of Denmark and the DM its recommendations concerning the value of discussions of university governance among the relevant parties;
 - (3) urge the Government of Denmark and the DM to engage in effective social dialogue around performance contracts between the Government and individual universities; and
 - (4) request the Government and the DM to report on the results of their discussions, progress made and any difficulties encountered to the Joint Committee.

B. Further developments in relation to allegations previously received

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

Background

1. Details of the allegation and its treatment are set out in reports of the Joint Committee at its Ninth Session (2006) and in its interim report of 2008. The 2008 interim report of the Joint Committee called upon the Government:
 - to cooperate with institutional heads and teachers’ organizations in reviewing its policies on funding of higher education institutions so as to ensure a proper balance between respect for institutional autonomy and accountability in terms of the 1997 Recommendation;
 - to review and modify as necessary provisions in the Higher Education Workplace Relations Requirements (HEWRR) that might reduce tenure, disciplinary guarantees and thereby academic freedom at institutions;
 - to collaborate with the teachers’ organizations to remove ambiguities in legislation that could inhibit effective higher education staff participation in institutional governing bodies as recommended by the 1997 Recommendation; and

- to review and as necessary modify national legislation and policy that had the effect of undermining the 1997 Recommendation's provisions on negotiation of terms and conditions of employment in higher education institutions, in accordance with the relevant conclusions and recommendations of ILO supervisory bodies.

Further developments

2. The Joint Committee has now considered additional information provided by the Government on 24 February 2009, as well as additional information submitted on 25 June 2009 from the NTEU.
3. The Government informed the Joint Committee that the previous HEWRR legislation and related institutional governance protocols that were at the heart of the allegations had been abolished by new legislation. This legislation took effect in September 2008 and resolved the issues raised by the NTEU in the opinion of the Government.
4. The NTEU provided information on the new labour laws in relation to disciplinary measures and negotiation on terms of employment, recent policy changes affecting academic freedom and autonomy through the peer review process, new funding policies with implications for institutional autonomy and changes in the social dialogue environment. The major points of reform according to the NTEU included:
 - progress achieved by the repeal of the HEWRRs and governance protocols has been minimal until previously agreed collective agreements reached under the abolished legislation are renegotiated, a process that could take some years and delay improvements in other areas;
 - procedural guarantees concerning disciplinary actions (dismissals) have been restored, although limited to workplaces with more than 15 employees and not applicable to casual employees and those engaged on contracts of less than one year;
 - a reaffirmation by the Government of the importance of academic freedom as a core requirement for all institutions following a national inquiry in which the NTEU made submissions along with other stakeholders;
 - changes in government policy on funding for research that accords greater protection to standards of academic freedom and institutional autonomy within broad standards of accountability, notably new legislation under consideration to strengthen the independent peer review process and reduce direct government interference by strengthening the independence of the Australian Research Council, and by the introduction of a formal charter supported by the Government to ensure freedom of inquiry in research carried out by public research agencies; and
 - new policies to increase funding provisions that provide more guarantees for access to higher education.

Findings

5. Recalling the recommendations of its 2008 interim report, the Joint Committee notes with satisfaction and commends the Government for reforms in legislation that better apply the provisions of the 1997 Recommendation concerning negotiation on terms and conditions of employment in higher education and in particular on disciplinary measures, and by extension tenure and academic freedom. At the same time, it notes that improvements in procedural guarantees on dismissal have not been extended to all institutions and employees.
6. The Joint Committee also notes and commends improvements in policies and funding measures that ensure greater respect for core principles of the 1997 Recommendation on academic freedom and institutional autonomy in accordance with a balance of such principles with the Recommendation's guidelines on institutional accountability.

7. The Joint Committee further observes a substantial improvement in the climate for social dialogue created by the legislative and policy reforms. The NTEU's voice on behalf of higher education teaching personnel, and that of other higher education stakeholders, appears to be more prominent in the consultative processes leading up to the indicated changes, as well as its ability to engage in more effective negotiation on terms and conditions of employment, principles and practices that are also at the heart of an effective application of the 1997 Recommendation.

Recommendations

8. The Joint Committee recommends that the Governing Body of the ILO and the Executive Board of UNESCO:
 - (1) take note of the findings above;
 - (2) communicate these findings and recommendations to the national Government, and to the NTEU, commending the Government for its reforms of legislation and policies that serve to better apply key provisions of the 1997 Recommendation;
 - (3) request the parties to keep the Joint Committee apprised of further progress and any continued difficulties on these matters, in particular regarding extension of procedural guarantees concerning dismissal to all institutions and employees, should the need arise.
2. Allegation received from Education International (EI) and the Ethiopian Teachers' Association (ETA)

Background

1. In its interim report of 2008 the Joint Committee deeply regretted that the Government had not seen fit to reply to provide any further information since 2004 on progress made to resolve the difficulties encountered in applying various provisions of the 1966 Recommendation that dated back more than ten years. Nevertheless, in view of the lack of recent information, including from EI and ETA, the Joint Committee considered it necessary to suspend any further consideration of the allegations until such time as one or more of the parties provided relevant information on recent developments.

Further developments

2. The Joint Committee noted that in examining its interim report, at its 181st Session in April 2009, the Executive Board of UNESCO requested the Director-General to use his good offices to try to improve communication between the Ethiopian authorities and the concerned teachers' organizations. At the same time, in addition to ongoing concerns over freedom of association in Ethiopia previously noted by the Joint Committee, the ILO Governing Body Committee on Freedom of Association in March 2009 also observed that required activities unrelated to their jobs as teachers (participation in population censuses in some regions resulting in heavier workloads for many according to the teachers' organizations) was decided without any consultation with these organizations.

Findings

3. Taken together, the above developments again raised the question about the lack of appropriate social dialogue in education in Ethiopia in respect of the 1966 Recommendation's provisions. The Joint Committee reiterates its call for greater respect for this key concept of consultations with teachers' organizations, stated in paragraph 10(k) of the 1966 Recommendation. Teachers' commitment to education reform is closely linked to the process of social dialogue. The Joint Committee looks to the Government and international organizations, including the ILO and UNESCO, to address these issues.

Recommendations

4. The Joint Committee recommends that the Governing Body of the ILO and the Executive Board of UNESCO:
 - (1) take note of the concerns over the continued lack of respect for social dialogue on education matters affecting teachers by the Government;
 - (2) request UNESCO to communicate to the Joint Committee the outcomes of actions by its Director-General to use her good offices to improve communications between the Government and teachers' organizations; and
 - (3) communicate these findings and recommendations to the Government of Ethiopia, to the National Teachers' Association (formerly ETA) and to EI, requesting them to keep the Joint Committee apprised of any progress and continued difficulties on these matters.
3. Allegation received from the All Japan Teachers' and Staff Union (ZENKYO) and the Nakama Teachers' Union

Background

1. Details of the allegation and its treatment are set out in reports of the Joint Committee at its Eighth and Ninth Sessions (2003, 2006) and in its interim reports of 2005 and 2008. The 2008 interim report of the Joint Committee took note of the report of the Joint Committee's Fact-Finding Mission which took place from 20 to 28 April and made a number of recommendations in the light of the 1966 Recommendation concerning in particular the Government's approach to improvements in the teacher appraisal system, merit assessment and salary determination and consultation and negotiation with teachers' organizations on these matters.

Further developments

2. The Joint Committee has now considered additional information provided by the Government on 24 August 2009, as well as additional information dated 30 July 2009 from ZENKYO and 9 September 2009 from the Nakama Union. The Joint Committee also noted comments received from the Japan Teachers' Union (JTU or NIKKYOSO) and Education International as reported to the ILO Governing Body in November 2008.
3. The Government reiterates that certain rights, such as making a statement during administrative appeal, are allowed to teachers facing unfavourable discharge on the ground that their teaching abilities have not improved even after special training. Otherwise, teachers deemed to be providing inadequate instruction do not suffer undesirable changes in employment status, so that administrative appeal is not applicable and the same rights do not apply. The Government confirms also that the teacher assessment system is regarded as an administration and management item not appropriate for negotiation with teachers' organizations. It requests the Joint Committee to reconsider some of its recommendations with a better understanding of the Japanese legal system. It considers that it duly respects the spirit of the Recommendations.
4. ZENKYO has promoted study of the report of the Fact-Finding Mission and the interim report among its affiliates, following which representations have been made to education boards in 13 prefectures. Such representations can in some instances lead to improvements in industrial relations. Meanwhile, it indicates that the Government has not translated those reports or provided information to the local education boards. ZENKYO relates the present question to the more general one of the basic labour rights of public personnel, which is dealt with by the ILO Committee on Freedom of Association.
5. The Nakama Union states that the Osaka Board of Education has not received the Joint Committee's report and has not agreed to meet with them. It describes the way in which

the merit bonus and appeals system is being operated, which it finds discriminatory and in violation of human rights.

Findings

6. The Joint Committee refers to the recommendations contained in its 2008 interim report concerning teacher assessment, competence and disciplinary measures; merit assessment; and consultation and negotiation. It wishes to record again its appreciation of the positive attitude of the Government in enabling the Fact-Finding Mission to take place, thanks to which the Joint Committee has been able to obtain a very clear view of the situation in regard to the implementation of the relevant provisions of the 1966 Recommendation.
7. In this respect, it would draw attention in particular to section VII of the Recommendation concerning teachers' employment and career: the need for adequate protection against arbitrary action affecting their professional standing (paragraph 46); and the need for procedural safeguards when disciplinary proceedings do take place (paragraphs 47 to 52). Given further the marked under-representation of women in relevant bodies as found by the Fact-Finding Mission (paragraph 68 of its report), the Joint Committee remains concerned as to the implementation of the Recommendation's provisions on non-discrimination (paragraph 7) and women teachers with family responsibilities (paragraphs 54 to 58).
8. As regards the questions of consultation and negotiation, the Joint Committee wishes to underline that these are two related but essentially different concepts. It recalls that, according to paragraph 82 of the Recommendation, salaries and working conditions for teachers should be determined through the process of negotiation between teachers' organizations and the employers of teachers, and the Recommendation cites the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), as an instrument concerned with basic human rights applicable to teachers: on this point, the Joint Committee defers entirely to the ILO Committee on Freedom of Association. The Recommendation also, however, calls for close cooperation between the competent authorities, organizations of teachers, employers and workers and others for the purpose of defining educational policy and its precise objectives (paragraph 10(k)). As indicated in the 2008 interim report, the Joint Committee therefore looks for a process of good faith consultation – not necessarily formal negotiation – at the levels of ministry and prefectural boards of education with teachers' organizations concerning policy in the matters raised.

Recommendations

9. The Joint Committee recommends that the Government and teachers' organizations make use of the advisory services and good offices of the ILO and UNESCO, in order to obtain information on systems of consultation and social dialogue, teacher evaluation and merit assessment, and access good practices which might serve as a model.
10. The Joint Committee invites the Government and teachers' organizations to cooperate with the ILO and UNESCO to prepare a mutually acceptable understanding of the text of the 1966 Recommendation.
11. The Joint Committee also invites the Government to transmit the interim report and the report of the Fact-Finding Mission to the prefecture boards of education for information, together with any comments which the Government itself wishes to formulate.
12. The Joint Committee further recommends that the Governing Body of the ILO and the Executive Board of UNESCO:
 - (1) take note of the findings above;
 - (2) communicate these findings and recommendations to the national Government, prefecture boards of education and teachers' organizations concerned, requesting the Government, as well as all representative teachers' organizations, to keep the Joint Committee apprised of any progress and continued difficulties on these matters.