

The Japanese Labour Administration System in the Light of International Practice

Introduction

1. This paper examines the Japanese labour administration system in the light of international law and practice. Given that the subject matter is potentially very broad, this paper focuses on select issues that are considered particularly relevant in the intended implementation of a series of labour market reforms known as Work Style Reform (WSR). It is hoped, however, that the paper's findings will be relevant in any future national labour policy reforms.
2. After a short introduction that looks at the conceptual framework and international labour administration practice, the paper provides a brief overview of existing legal and institutional frameworks that shape the Japanese national labour administration system. The paper then focuses on key labour market challenges, Japanese labour market policies and the main features of WSR. The second part of the paper explores different aspects of labour governance that may affect the implementation of Japan's reform agenda, especially with regard to collective labour relations, collective bargaining, tripartism, labour dispute settlement, labour inspection and research in labour matters. To conclude, thoughts regarding implementation challenges are outlined and conclusions and recommendations are given.
3. This paper argues that, in recent decades, the legal and institutional framework for national labour policy in Japan has evolved in a rather systematic and consistent manner, but that additional support and innovation are required to ensure the success of planned labour market reforms. In order to change deeply entrenched corporate and employment practices, the active engagement of both employers and workers is necessary. Collective labour relations, which have lost much of their relevance in recent decades, will have to be promoted. Concurrently, enhancing the application of labour legislation will require improved compliance frameworks. The paper also offers insights concerning how the Japanese labour administration system could be further improved through the use of innovative technologies and by taking into account recent applicable international practice.

I. Conceptual framework for labour administration

4. Since countries' ministries of labour and relevant public bodies play a key role in all stages of policy making, the effective functioning of a national labour administration system is one of the preconditions for labour policy implementation. The labour administration system must provide for the following: collection and analysis of data, policy development, drafting legislation, implementation of appropriate measures, enforcement of laws and the settlement of labour related disputes, evaluation of impacts, and reporting to legislative bodies and the public. Labour administration is also a tool for building healthy and stable labour relations through cooperation with representative employers' and workers' organizations.
5. Conducting an international comparison of national institutions and their performance is challenging since these institutions are deeply entrenched in national practices and traditions and are often shaped by short-term political needs. For example, while labour relations evolved

in rather distinct regional patterns, national labour administration systems are much more country specific and regional trends are less obvious. Instead of comparing Japan to one or two specific countries, it is more interesting to look at international practices as enshrined in international instruments, including, in particular, the conventions and recommendations of the International Labour Organization (ILO).

6. The conceptual framework used in this paper is based on the Labour Administration Convention, 1978 (No. 150) and the accompanying ILO Recommendation No. 158 concerning Labour Administration: Role, Functions and Organization [Labour Administration Recommendation, 1978], which provide the only internationally recognized definitions of key notions such as “labour administration” and “national labour administration systems”, as referred to in this paper Labour administration is defined as, “public administration activities in the field of national policy¹”, while the term national labour administration systems refers to “all public administration bodies responsible for and/or engaged in labour administration – whether they are ministerial departments or public agencies, including parastatal and regional or local agencies or any other form of decentralized administration – and any institutional framework for the coordination of the activities of such bodies and for consultation with and participation by employers and workers and their organizations.²”
7. These two international instruments also enshrine key organizational principles that have evolved over the 150-year existence of labour related institutions, and these principles are widely respected in national labour administration systems. The aforementioned Convention and Recommendation are not merely normative texts; they are based on vast international comparative research³ that explored national administrations in the 1970s as part of the preparatory work for their elaboration. Although forty years have elapsed since the adoption of those instruments, the essential principles of labour administration functionality that they refer to have not changed
8. It should be noted that, while Convention No. 150 uses the term “national labour policy”, States have considerable leeway to decide which national labour policies to adopt. However, ILO Recommendation No. 158 underscores that labour standards, labour relations, employment and research in labour matters are core components. Since the 1970s, labour policy has become much more integrated into national economies and new policies have evolved. The concept of labour policy is certainly broader today than it was forty years ago.
9. The main principles of Convention No. 150 that are widely considered to be foundations of good governance in labour matters are as follows:
 - (a) The obligation of a party to Convention No. 150 to, “...ensure the organization and effective operation in its territory of a system of labour administration, the functions and responsibilities of which are properly coordinated” (article 4). The Convention thus emphasizes the effectiveness and coordination of public bodies in charge of labour matters. It is not considered adequate to simply create a national labour administration system; the system must be effective, and, in fact, the establishment of effective management regimes is probably the greatest challenge facing ministries of labour worldwide.
 - (b) The obligation to engage with social partners, including employers and workers and their respective organizations. The Convention sets forth various modalities for such engagement, some of which are not mandatory and depend on national conditions, such as the delegation of

¹ Labour Administration Convention, 1978 (No. 150).

² Ibid.

³ See for example the ILO Report V(1) Labour Administration: Role, Functions and Organisation, ILC, 61st Session, 1976

certain labour administration competencies to non-governmental organizations (article 2). However, the Convention outlines a clear obligation to, "...make arrangements appropriate to national conditions to secure, within the system of labour administration, consultation, co-operation and negotiation between the public authorities and the most representative organizations of employers and workers, or, where appropriate, employers' and workers' representatives" (article 5). There is also an obligation to provide these organizations with services to promote consultations as well as to provide any necessary technical advice. Thus, the Convention views social partners not only as political interlocutors and partners, but also as beneficiaries of government services. The role of a labour administration is to assist partners in their respective roles as representatives of both parties within an employment relationship, and furthermore, to promote healthy industrial relations.

(c) The obligation to provide the national labour administration system with suitably qualified staff that have access to training and that are independent of improper external influences so that they have, "the status, the material means and the financial resources necessary for the effective performance of their duties." (article 10). Here again, the Convention requires labour administration bodies to be at proper capacity so that they are functional and operational. Neither the Convention nor the decisions of the ILO supervisory framework provide for quantitative or numeric capacity indicators. Instead, these must be assessed within the context of the economic and social development of the country in question.

10. Although the ILO international labour standards on labour administration are now 40 years old, they are nevertheless very much in line with the 2015 Sustainable Development Goals that States are called on to achieve in the context of their domestic policies.⁴

II. International practice

11. As highlighted above, national labour administration system frameworks are intricately linked to national and local traditions, administrative practices and political needs.⁵ However, some similarities between countries may be observed.

12. Firstly, all countries have a central authority or authorities, typically a ministerial department or departments in charge of labour matters. Ministries' mandates usually include agendas regarding labour, employment, vocational training and social security. Under a central authority's supervision, various public bodies may exist side by side to take part in the implementation of government policies and may enjoy a certain amount of autonomy. These bodies may be public employment offices, labour inspection bodies, vocational training institutions, social security offices and other specialized administrative, advisory, research or training institutions.

13. In approximately 90 per cent of countries, a specialized national-level body or bodies have been established to liaise between government authorities and organizations representing employers and workers. Many of these bodies, as is the case in Japan, have strong links to ministries of labour: they advise the Minister of Labour on policy making and they are also supported, both financially and technically, by the Ministry. In some countries, however, the mandate of the

⁴ Goal 16 calls, inter alia, for building effective, accountable institutions at all levels.

⁵ Rychly, L. (2013). *Ministries of Labour: Comparative Overview, Database, Organograms*. ILO Action, ILO. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_216424.pdf.

specialized national-level body may be much broader and will cover issues beyond labour, often including issues under the purview of other ministries, such as the industry, finance, education and agriculture ministries. They may also enjoy greater political, administrative and financial autonomy. These bodies, frequently called economic and social councils, have a specific role in the national constitutional system: their funding is approved by parliament and is not related to the budget of any specific ministerial department.

14. Ministries of labour are usually comprised of technical departments responsible for implementation of a core mandate (industrial relations, labour, employment), management support units (human resources, planning) and administrative units. The minister's cabinet includes his deputies, policy advisors, experts on strategic planning and legal advisors. Internal auditors, who often work in ministries of labour, usually report directly to the minister.
15. While labour ministries or their functional equivalents are at the core of national labour administration systems, certain labour-related activities often fall under the purview of other ministries, including the ministries of social affairs or social development, education, migration, domestic affairs, finance, health, and youth. For example, labour inspection duties may be divided among various ministries, including the ministries of labour, mines and mineral resources, merchant marine, transport or railways, and some duties regarding occupational health may be assigned to the ministry of health. Labour migration issues are also often shared among the ministries of foreign affairs (international matters), the interior (security, citizenship) and labour (including labour market quotas for foreign labour, work permits and social security for migrant workers). It is therefore essential to foster strong cooperation, both formal and informal, among these institutions in the development and implementation of policies. It should be emphasized that, in recent years, innovative technologies have helped to forge stronger institutional relationships and closer collaboration by facilitating the sharing of information in electronic databases and enabling more informal communication between staff members.
16. To understand current labour administration challenges, it is essential to take into account public administration trends in general. Some of these trends are reflected in Japan's approach to deregulation. Many of these trends have been associated with the new public management (NPM) agenda.⁶ The core principle of NPM is that systems in public administration may be strengthened through the adoption of "micro-management" practices generally associated with the private sector. NPM places an emphasis on improving the performance of government departments and other public bodies through decentralization, target setting and outcome evaluation, improved accountability and a focus on the efficient delivery of services. Despite the doubts voiced since the early 2000s about the universal applicability of NPM as a means to improve performance in public administration because of a lack of strong administrative mechanisms especially in developing countries, NPM continues to guide labour administration reforms in many parts of the world. NPM has led certain countries to outsource government services, such as job matching, to other public bodies or private sector organizations. Since the early 2000s, a "whole government approach" that provides for enhanced coordination among institutions and more coherence in their policies, complemented and somehow rebalanced NPM's decentralization prescriptions.⁷ While certain countries have decentralized, outsourced

⁶ Hood, C. (2015). *A public management for all seasons?* The Oxford Handbook of Classics in Public Policy and Administration. Available at:
<http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199646135.001.0001/oxfordhb-9780199646135-e-25>

⁷ Laegreid, P. Verhoest, K. (2010). *Governance of Public Organizations: Proliferation, Autonomy and Performance*. International Institute of Administrative Sciences, Palgrave Macmillan.

or even privatized their employment services, other countries, including Japan, have maintained strong links between employment services and a central public authority.

17. Outsourcing is not a completely new and uniquely “post-NPM” development. Indeed, job placement, vocational training, occupational health and safety, mediation and arbitration, and the administration of certain social protection schemes have been entrusted to parastatal bodies since the immediate post-war period. These “agencies” may enjoy limited or considerable autonomy in terms of management, funding and delivery of services. There has also been a growing trend to “outsource” delivery of certain labour administration services, not only to public but also to private sector providers, through various contractual arrangements⁸. This is the result of long-term trends in public services and labour administration. There has been, in fact, an ongoing debate about a perceived “agencification” of public services. Convention No. 150 acknowledges that delegation of those services could occur, but it also underscores that the ministry of labour enjoys the right to ascertain that these agencies, “...are operating in accordance with national laws and regulations and are adhering to the objective assigned to them” (article 9). In Japan, the Ministry of Health, Labour and Welfare (MHLW) had previously taken a rather cautious stance; implementing bodies and agencies are under the control of a central authority, and there is only a limited scope for private sector initiatives in labour administration, even though pressures for outsourcing exist.
18. Over the past two decades, substantial developments have occurred in the structure and management of national labour administration systems, especially in terms of enhancements to the effectiveness of service delivery in areas such as labour, employment and social protections. These developments have often occurred as a consequence of attempts by national governments to improve performance, transparency and accountability within the public sector. The tightening of public finances after the 2008 crisis provided an additional impetus due to budget reductions and cost cutting. This ultimately gave rise to new management methods and, most importantly, greater use of new technologies in all aspects of labour administration. While these trends are potentially very interesting for Japanese labour administrators, they are beyond the scope of this paper.⁹

III. Legal framework

19. Japanese labour law seems to mirror changes in the Japanese labour market, labour relations and the social and economic needs of society in general that have occurred over the last few decades.¹⁰¹¹ It is therefore interesting to examine these laws not as something static, but as a relatively flexible framework shaped by changing economic, social and ideological factors.
20. Labour law principles, established during the post-war democratization process, are enshrined in the Constitution of Japan. In a departure from the general principles of the welfare state (article 25), the Constitution goes on to explain the right and obligation to work (article 27, para. 1), the policy for establishing labour standards (article 27, para.2) and the right of workers to organize and to bargain collectively (article 28). These constitutional provisions do not have purely legal implications; they provide the political foundation and legal justification for the

⁸ Sol, E. Westerveld, M. (2005). *Contractualism in Employment Services*. Kluwer Law International.

⁹ Heyes, J. Hastings, T. (2016). *Comparative developments in labour administration*. ILO.

¹⁰ For details please see: Sugeno, K. (2002). *Japanese Employment and Labor Law*. English translation of the fifth edition, Carolina Academic Press.

¹¹ English texts of most Japanese labour laws are available at the Japan Institute of Labour Policy and Training (JILPT) website: <http://www.jil.go.jp/english/laws/index.html>.

Government's labour market policies. For example, given that article 27, para. 1 of the Constitution states that, "all people shall have the right and the obligation to work", Sugeno¹² states that this should be understood to mean, "make full employment a major policy concern of the Government in light of the experience that employment of workers had been sacrificed in the fluctuations of labour supply and demand in the free market economy... and therefore established the fundamental principles with respect to the regulation of the labour market".

21. The foundations of Japanese labour law were established in the immediate post-war period when the "traditional" Japanese labour laws were adopted, including the Labour Union Act and the Labour Relations Adjustment Act that governed collective labour relations. The year 1947 was a critical one: minimum working standards were established with the adoption of the Labour Standards Act and, in order to address significant labour market challenges, the Employment Security Act, the Unemployment Allowance Act and the Unemployment Insurance Act were also adopted. That same year, a new framework for labour administration was put in place with the establishment of a central authority, namely the Ministry of Labour.
22. All of these acts were amended in subsequent decades. The welfare state, envisaged in article 25 of the Japanese Constitution, was consolidated through the adoption of new legislative instruments, including the Minimum Wages Act (Act No. 137 of 15 April 1959) and the Safety and Health Act (Act No. 57 of 1972) during a period of extraordinary economic growth that continued until the early 1970s. Later, the labour law system was modified in order to strengthen employment policies following the first oil crisis, adjust to structural changes in the labour market and meet the needs that resulted from progressive globalization and enhanced international competition. The growing importance of individual labour relations was reflected in the adoption of the Labour Contract Act in 2007 (Act No. 128 of December 5, 2007), which establishes basic rules concerning an individual employment relationship¹³. The Labour Contract Act was revised in 2013 through amendments concerning fixed-term employment. While that act was adopted in response to calls for a general law that would integrate and clarify the rules governing employment contracts, there has been criticism that, although it addresses changes to work rules, the act is rather limited in scope.¹⁴
23. In addition, specific legislation concerning several "atypical" categories of workers, especially part-time workers and dispatch workers, has developed over time. Greater awareness regarding the equal treatment of those in the labour market is reflected in the Equal Employment Opportunity Act (1986) and its subsequent revisions, and in the Act on Promotion of Women's Participation and Advancement in the Workplace (2016). In order to encourage compliance with this legislation, the latter act requires specific "promotional" action by the Japanese labour administration, particularly in prefectural labour offices, through close cooperation with companies that have more than 300 employees, and which are obliged to draft an action plan that includes numerical targets for hiring.
24. More recently, Japanese legislators have focused on the implementation of policies and actions required within the framework of WSR. Adoption of the bill amending eight individual acts would constitute a major legislative breakthrough that would address several long-standing societal problems. This is especially the case in the revision of regulations on working hours and the phenomenon of dualism within the Japanese labour market. Action on these topics

¹² Sugeno, K. (2002). *Japanese Employment and Labor Law*. English translation of the fifth edition, Carolina Academic Press.

¹³ Yamakawa, R. (2009). *The Enactment of the Labor Contract Act: Its Significance and Future Issues*, Japan Labor Review.

¹⁴ Nakakubo, H. (2009). Japan Labour Review, Vol. 6, No. 2.

Available at: http://www.jil.go.jp/english/JLR/documents/2009/JLR22_all.pdf

would resolve issues on which employers and workers have failed to find common ground over the past three decades.

25. In order to address the issue of working hours, the Labour Standards Act should be amended to introduce regulations on maximum working hours by adopting a maximum cap on overtime. However, there seems to be significant exemptions for workers such as drivers, construction workers, researchers and white collar workers. In principle, overtime should be limited to 45 hours per month and 360 hours per year. In special cases where there is a temporary increase in the number of working hours, maximum overtime should be limited to 100 hours per month and 720 hours per year. In these exceptional cases, average monthly overtime over a period of two to six months must not exceed 80 hours.
26. Concerning the fair treatment of workers regardless of employment type, legal amendments should prohibit “irrational” differences in working conditions between non-regular (part-time, fixed-term and dispatch workers) and regular employees. Employers would be obliged to explain the reasons for any discrepancies in treatment.¹⁵ Concurrently, the Act should strengthen the Japanese Government’s ability to create policies that will advance reform, inter alia, by amending the Employment Measures Act and the Industrial Safety and Health Act and through the promotion of alternative dispute resolution mechanisms.
27. To support the adoption of the WSR Implementation Action Plan, significant legislative steps were taken already in 2015 and 2016 with a view to addressing labour market dualism and the fact that a significant number of workers leave the workforce permanently in order to take care of children or other family members. The Dispatch Workers Act was amended in 2015 so as to introduce the “deemed employer offer rule.” According to this rule, if any employer action falls into certain categories of illegal dispatch, the employer will be deemed to have offered an employment contract that outlines working conditions identical to those in the dispatch workers’ contracts. In 2016, the rules governing family care were amended significantly through the revision of the Child Care and Family Care Act and the Equal Employment and Opportunity Act. These amendments make caregiver leave feasible and allow for 93 days of leave as well as opportunities for part-time work, flexible hours, staggered working hours and the possibility of employer-provided financial assistance for family care. They also oblige employers to ensure that employees are not subject to a hostile working environment due to family care issues. Top priority issues that must be addressed include the treatment of older workers, the treatment of non-regular workers, and deaths caused by excessive work, the latter being a topic that is particularly important in Japan.¹⁶
28. In addition to national labour laws, Japan is required to comply with a number of international labour standards. Japan has ratified 49 ILO labour conventions, including six of the eight fundamental Conventions.¹⁷ Some of the aforementioned conventions have a direct bearing on the subject of this paper, especially those regarding governance, including: the Labour Inspection Convention, 1947 (No. 81), the Employment Policy Convention, 1964 (No. 122) and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). In contrast, however, Japan has not ratified the Labour Administration Convention, 1978 (No.

¹⁵ Several interlocutors raised concerns regarding the generally accepted interpretation of this concept. There are some precedents, such as the 2016 *Hamakyorex Case*, in which the Osaka High Court upheld the notion that not giving various allowances to contract employees due to their fixed-term employment status is considered as an unreasonable difference.

¹⁶ The *Dentsu Case*, on which a court judgment was finally passed in 2017, assigned the employer a fine of 500.00 Y, equivalent to \$4,400. However, this amount was considered ludicrously low by several interlocutors that the author of this paper interviewed during his stay in Japan.

¹⁷ Japan has not ratified two fundamental conventions: C105 - Abolition of Forced Labour Convention, 1957 (No. 105) and C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

150) and the overall number of conventions ratified by Japan (49), of which only 34 are in force, is lower as compared with other highly developed countries. However, within the Asia/Pacific region, Japan has ratified the second highest number of ILO conventions.¹⁸

29. The evolution of Japan's labour law framework to being in line with societal needs is attributable to various factors that stem from traditional values in Japanese society, including building on traditions and traditional values, finding consensual solutions and avoiding social conflict. However, it appears that the legislative "technique" itself has contributed to these developments, especially the involvement of stakeholders from academia in all stages of the legislative drafting process and the engagement of academia with the Japanese tripartism system. Firstly, academics, including, in particular, experts in labour law, contribute to research on possible solutions from the very early stages of legislative drafting and they often draw on the experience of the international community. The role of the Japan Institute for Labour Policy and Training (JILPT) and the services it provides to the MHLW, as well as collaboration among stakeholders from various scientific disciplines is particularly noteworthy. Secondly, scholars traditionally act as mediators between the social partners and the Government within the Labour Policy Council (LPC) and its subcouncils. Thirdly, academics are part of dispute settlement bodies at all levels, including Labour Relations Commissions, and they therefore contribute to the interpretation of the law and the creation of jurisprudence, thereby providing well-respected guidelines. Such research, tripartite discussions, policy making, dispute settlement, interpretation and case law help maintain the flow of information and feedback from the practical application of legislation to policy making and vice-versa. The consistency of reforms is also supported by the country's bureaucracy, which maintains a long institutional memory through in-house training, its provision of long-term data and its analytical capacity, all this embodied in series of traditional and easily accessible reports and other publications. This is most clearly evidenced by the role played by the JILPT, as well as by the engagement of social partners at all levels, such as study groups, subcommittees and plenary sessions of the Labour Policy Council, minimum wage councils and labour tribunals.

IV. Institutional framework

30. It is very likely that strategic reforms planned by the Japanese Government will affect the country's competitiveness and its capacity to provide a high standard of living to its citizens in coming years. Thus, implementation of these reforms is crucial. While the broad WSR policy directives were initiated at the highest political level, transforming them into day to day policies and implementing them accordingly will largely depend on the institutional capacities of relevant Government offices, especially those concerned with labour administration.
31. As is the case in most other countries, the central authority for labour administration in Japan falls under the purview of a specific Government body, namely the Ministry of Health, Labour and Welfare (MHLW). As its title suggests, the Ministry covers multiple areas. At Ministry's Headquarters, labour matters are overseen by several specialized technical units. These units include the Labour Standards Bureau, the Employment Security Bureau, the Employment Environment and Equal Employment Bureau and the Child and Family Policy Bureau, as well as by the Directorate-General for Human Resources Development and the Directorate-General

¹⁸ Spain (133), France (127), Italy (113) and Belgium (111) have the highest number of ratifications among the OECD member States. In the Asia/Pacific region, Japan is second after Australia (58) and before India (47).

for General Policy and Evaluation. The Directorate-General for Statistics and Information Policy oversees labour statistics and IT services.

32. The MHLW is a large institution that employs approximately 32,000 officials and has an operating budget of approximately 30 trillion yen, which is almost 55 per cent of national public expenditure.¹⁹
33. The MHLW is overseen by a Minister, who since the summer of 2017, also holds the title of Minister for Work Style Reform. Two State Ministers and two Parliamentary Vice-Ministers assist the Minister.
34. As is the case with most labour ministries worldwide, the internal structure of the MHLW is comprised of management support services, technical units and administration units. Several management support and administrative services are provided by offices in the Ministry secretariat. For the purposes of this paper, the most significant of these offices are as follows:
 - (a) Personnel Division – oversees career development and training. A primary objective of this division is to promote a balance between work and childcare, as well as to increase the participation of fathers in childcare duties.
 - (b) General Coordination Division – responsible for general coordination among Government departments, but also for providing a final review of legislative bills and draft regulations. It is also responsible for ensuring application of WSR within the Ministry. The Division also reports to the National Diet (the country’s bicameral legislature).
 - (c) Finance Division – responsible for the coordination of budget requests and compiling budgets. It also oversees account settlements, audits, property management (including Ministry buildings) and employee benefits.
 - (d) Regional Administration Bureau – provides general supervision of regional Health and Welfare Offices and Prefectural Labour Bureaus and their Labour Standard Inspection Offices, as well as public employment security offices. There are approximately 23,000 employees working in field offices.
 - (e) International Affairs Division – responsible for promoting international cooperation, gathering relevant overseas information, developing Japan’s presence abroad and technical cooperation projects in developing countries. The Division oversees bilateral collaboration and coordinates Japan’s participation in international organizations such as ILO, the World Health Organization (WHO), the Organization for Economic Cooperation and Development (OECD) and the Association of Southeast Asian Nations (ASEAN).

Key technical units for labour matters are organized either as Bureaus or Directorates-General.

- (a) Directorate-General for Policy Planning and Evaluation (labour section) – responsible for the implementation of comprehensive and strategic labour policies, general coordination within the Ministry and cooperation with relevant ministries and agencies. The Directorate-General also facilitates the compilation of expert views and studies on various aspects of the Japanese labour market and publishes the annual “White Paper on the Labour Economy”. The Directorate-General also endeavours to analyse future trends in the world of work and designs strategies including with regard to environmental changes, declining birth rates, an aging population and the advancement of technologies, including the Internet of Things (IoT) and Artificial Intelligence (AI). The unit also supports tripartite consultations with employers and workers within the LPC and assists the Central Labour Relations Commission and the prefectural Labour Relations Commissions in order to prevent and resolve labour-related disputes.

¹⁹ MHLW website. Available at: <http://www.mhlw.go.jp/english/>.

- (b) Directorate-General for Statistics and Information Policy – responsible for implementing key statistical surveys vital to the administration of health, labour and social welfare services, including surveys on employment, wages and working hours. The Statistics and Information Policy unit also conducts international comparisons of statistical data and coordinates international statistical analysis in cooperation with international bodies such as WHO, OECD and ILO. The unit is also responsible for the establishment, operation and development of ministerial information platforms, including the Ministry’s website.
 - (c) Labour Standards Bureau – responsible, primarily, for establishing minimum standards concerning working hours, wages and industrial safety, and ensuring that applicable legislation is enforced through labour inspections. The Bureau also determines worker accident compensation as well as compensation for work-related illnesses. Its main policies include ensuring minimum working standards, promoting the reduction of working hours and preventing industrial accidents.
 - (d) Employment Security Bureau – responsible for job placement, employment consultation and other services provided by Hello Work Offices, matters related to employment insurance, labour market analysis, adjustment of supply and demand as well as coordinating policies concerning foreign workers. Its primary policies support the productivity of enterprises and job creation at the regional level in Japan.
 - (e) Equal Employment, Child and Family Policy Bureau (as of July 2017 this is divided into the Employment Environment and Equal Employment Bureau and the Child and Family Policy Bureau) – promote equal opportunity employment, work/life balance, employment conditions for fixed-term and part-time workers, domestic worker rights and facilitate access to day care, and childcare support and family welfare services.
 - (f) Directorate-General for Human Resources Development (known as the Human Resources Development Bureau prior to July 2017) – oversees the national vocational training system, supports worker career development, and facilitates human resource development for enterprises, inter alia, by certifying vocational training systems.
35. At the regional level, the Ministry comprises 47 Prefectural Labour Bureaus. At the local level, two types of services are provided: labour inspection is done by the Labour Standards Inspection Offices (LSIO) and employment promotion, mediation and counselling activities are undertaken by Public Employment Security Offices, also known as Hello Work Centres. Local public employment offices (Hello Work Centres) provide services to both workers and enterprises, including employment referrals, implement measures related to unemployment insurance and provide other types of guidance, including with regard to specific categories of job seekers such as older workers and workers with disabilities. Labour Standard Inspection Offices (LSIO) provides for example advice on working conditions, promotes healthy and safe working conditions, investigates work related accidents, implement labour inspection visits and proceeds with necessary follow-up and deals with agenda related to occupational injury insurance.
36. Role of Prefectural Labour Bureaus, Labour Standard Inspection Offices (LSIO) and Public Employment Security Offices (Hello Work) are discussed in chapters dealing with labour market challenges, respectively with labour inspection matters. Internal structure of these bodies is documented in four Annexes to this paper²⁰.
37. In addition to ministerial bodies, certain public institutions fall under the Ministry’s purview, including, the Central Labour Relations Commission (which monitors dispute settlements and

²⁰ Annex 1: Tokyo Labour Bureau; Annex 2: Services provided by Tokyo Labour Administration; Annex 3: Labour Standards Inspection Office; Annex IV: Hello Work Office

unfair labour practices), and the Labour Policy Council (a tripartite consultative body) as well as the Central Minimum Wage Council (responsible for minimum wage determination). All three bodies have offices at both the prefectural and national levels. There are also several research institutions attached to the Ministry and the Ministry works very closely with the autonomous Japan Institute of Labour Policy and Training (JILPT). These bodies are discussed in more detail in subsequent sections of this paper.

V. Labour market dualism and other challenges

38. It is widely recognized that to address challenges related to Japan's labour market situation and the accompanying social and economic situation, significant reforms and radical changes to corporate practices are needed. The paper provides a short description of these challenges and examines policies currently in place in Japan, particularly with regard to the MHLW. Extensive academic literature is devoted to Japanese post-war economic developments.²¹ Those studies focus on the country's post-war recovery and the unprecedented economic growth that began in the 1950s and continued until the late 1980s. This "economic miracle" was actively supported by Japan's public authorities through targeted monetary, fiscal and other measures. Academic studies also address the impact of the significant fall in real estate prices in the early 1990s. The bursting of the country's real estate bubble was followed by a "lost decade", characterized by negative economic growth until 2002.
39. More recently, the global financial crisis that started in 2008, had severe consequences for the Japanese economy, especially due to the resulting drastic decline in exports. In terms of unemployment rates, however, temporary workers were the workers who were primarily affected, while regular workers were largely protected through various policy measures such as employment adjustment subsidies. In 2009 already exports began to increase, not only due to a recovery in emerging economies, but also because of an increase in consumption by individuals and the adoption of policy measures such as tax breaks and the promotion of environmentally-friendly automobiles. It has been noted that the, "negative impact of the crisis on employment was smaller in Japan than [in] most other OECD countries."²² This was partly due to the use of a short-term work buffer, and partly because of Government policies. As discussed in a previous ILO study,²³ companies protected their workers during the crisis and in return, employees remained faithful to the company, creating a veritable "social contract".
40. In line with long established Japanese traditions of interventionist policies, the Government played a very proactive role in responding to the crisis. A series of employment measures were enacted between August 2008 and April 2009. Those measures, worth approximately 3,087.8 billion yen (equivalent to \$33 billion), provided for the implementation of various initiatives to assist non-regular workers, including the provision of wage and training subsidies, lower employment insurance premiums and strengthened employment safety nets. The expansion of employment adjustment subsidies and re-employment support programmes, enacted in April 2009, was by far the largest in financial terms and reflected the protracted character of the crisis. The measure included many elements such as an increase in employment adjustment subsidies for employers trying to avoid layoffs, support for re-employment and vocational skills training,

²¹ For a detailed study with useful references on labour market developments, please see: JILPT. (2017). *Labour Situation in Japan and its Analysis*. Available at: <http://www.jil.go.jp/english/lsj/>

²² OECD, (2017). *Employment Outlook*. Available at: <http://www.oecd.org/japan/Employment-Outlook-Japan-EN.pdf>

²³ King, C. (2013). *Active labour market policies and programmes in Japan and the USA: will East meet West?* Available in: Heyes, J. Rychly, L., *Labour Administration in Uncertain Times*, ILO and Edward Elgar.

the introduction of job creation measures and a radical 741.6 billion yen capacity building programme for staff at public employment offices (Hello Work Centres). Additional measures were enacted in late 2009 and early 2010 in an effort to further boost the Japanese economy. Action was taken mainly in the form of subsidies for private employers in order to help them retain workers, and the awarding of public work contracts by local governments.

41. The post-crisis recovery was complicated by the Great East Japan Earthquake and accompanying tsunami, which occurred in March 2011. This affected several prefectures on the main island and was the most costly natural disaster in modern human history. Japan's nuclear energy production was severely affected, as was the country's car industry. The disaster also had a huge impact on the country's infrastructure. It is notable that, while this natural disaster was managed, primarily, through an extraordinary mobilization by the country's national authorities and a number of large-scale public programmes, it was also addressed through a solidarity movement involving the population at large.
42. As shown by the aforementioned examples, the Government has played an ongoing and proactive role in the labour market, especially during critical periods. The same is true at the present time: Government policies are based on the "three arrows" principle, namely fiscal stimuli, flexible monetary policy and the promotion of private investment, with a view to addressing structural problems that pose very serious challenges for Japan's future. The most serious challenges relate to demographic developments: the working age population began to decline in 1998 and the total population peaked in 2007. Increasing the employment rate and enhancing labour productivity seem to be preconditions for any prospective future economic growth and here again, measures to achieve these two objectives fall, at least partially, within the scope of labour policy.
43. Another societal challenge, also within the area of labour policy, is the need to promote social cohesion. According to recent OECD studies,²⁴ Japan faces the challenges of high poverty rates and high income inequality. The country's relative poverty rate in 2012, calculated as the proportion of the national population with an income of less than half the national median, was the sixth highest among OECD countries. This was behind countries such as Mexico, Israel, Turkey, Chile and the United States of America. One of the reasons for entrenched poverty among working-age individuals and children is due to the fact that 80 per cent of social security benefits are earmarked for the provision of care for elderly persons over the age of 65²⁵. Another reason is directly related to the labour market situation: the rising number of non-regular workers has been identified as the major cause of inequality by the MHLW in its recent labour economy reports. It is therefore, "essential to attack the root causes of relative poverty and inequality, notably labour market dualism"²⁶ in order to promote social cohesion in Japan. Labour market dualism is also seen as one of the contributing factors for low labour productivity in Japan, since non-regular workers are paid low wages and receive little training. Indeed, compared to other developed countries, labour productivity remains approximately 25 per cent lower than it is in the top half of OECD countries.
44. OECD Employment Outlook 2017 presented a comparative scoreboard on labour market performance that went beyond the typical review of employment and unemployment rates and included measures of employment quality (including pay, employment security, working environment) and labour market inclusiveness (including income equality, gender equality, employment of disadvantaged groups). Japan labour market scores reflect strong performance

²⁴ Jones, R. Fukawa, K. (2015). *Achieving fiscal consolidation while promoting social cohesion in Japan*, OECD.

²⁵ Ibid.

²⁶ Ibid.

in certain areas with weaker performance in others. For example, the country scores very well in the quantity of employment, with the lowest unemployment rate among OECD countries, relatively high employment rates and a very low level of labour market insecurity. However, at the same time, there are obvious weaknesses in job quality and labour market inclusiveness, especially due to factors such as job strain, long working hours, large gender gaps and a high proportion of persons with low-income jobs. The OECD recommendation in that regard was therefore: remove obstacles to employment for women, improve work-life balance and end labour market dualism.²⁷ OECD also recommended that the minimum wage be raised, unpaid overtime be reduced, childcare capacity should be increased and pension eligibility should be raised to over the age of 65.²⁸ Not surprisingly, OECD believes that dualism within the labour market should be addressed not only by expanding social security coverage and training for non-regular workers, but also by, “relaxing employment protection for regular workers”, a step that is not considered relevant by many mainstream researchers in Japan. On the contrary, it seems that the majority of scholars consider employment protection mechanisms in Japan to be comparable to those of other developed countries.²⁹ Measures are being taken to enhance labour legislation on individual employment relationships and compliance mechanisms. Institutions such as dispute settlement bodies and labour inspection units are also being strengthened as discussed in this paper.

45. Addressing all the aforementioned challenges will require an ambitious reform agenda that is largely within the mandate of Japan’s labour administration authorities. Some of the measures already implemented in recent years have been in line with that goal and include: the expansion of employment support services, the enhancement of work incentives such as the introduction of benefits for people leaving the Basic Livelihood Protection Programme (BLPP) or certain tax regimes, an increase in public financing within the framework of an interest-free scholarship loan programme, the creation of 500,000 new childcare places between 2013 and 2017, a revision of labour legislation so that companies are required to retain workers who wish to work until the age of 65, and the provision of subsidies for companies that expand job opportunities for older workers. Furthermore, the 2012 amendment of the Childcare and Family Care Act provides for shorter working hours for parents of young children and family care leave for all employees in all companies nationwide. Measures have also been implemented to address the two key problems of long working hours and the employment conditions of non-regular workers as part of the Action Plan for the Implementation of WSR, as approved by the Commission for the Implementation of the Work Style Reform in March 2017.
46. The situation of non-regular workers deserves a special mention, since addressing their working conditions is one of the biggest challenges that the Japanese labour administration faces. Due to their severe under-representation in work-related forums and bodies and a lack of negotiated regulations on their employment, the Government is taking action to strengthen legal protections for non-regular workers with a view to combating discriminatory treatment against them. The term “non-regular worker” in Japan includes part-time, fixed-term and temporary contract workers, temporary agency workers, as well as workers with specific work arrangements, including those who are telecommuting or have home offices, independent contractors, and others whose dependent employee versus self-employed status is unclear. While women represent the overwhelming majority of part-time workers at around 90 per cent

²⁷ OECD. (2017). *Employment Outlook*. Available at: <http://www.oecd.org/japan/Employment-Outlook-Japan-EN.pdf>

²⁸ OECD. (2017). *Economic Survey: Japan 2017*, Executive summary. Available at: <https://www.oecd.org/eco/surveys/Japan-2017-OECD-economic-survey-overview.pdf>

²⁹ Sugeno, K. Yamakoshi, K. (2014). *Dismissals in Japan*, JILPT. Available at: http://www.jil.go.jp/english/JLR/documents/2014/JLR42_sugeno_yamakoshi.pdf

of the total, they are not in the majority in the other categories. Part-time staff (referred to as “arbeit”) work mostly for small companies that employ less than 100 workers.

47. This difficulties faced by non-regular workers are not new, but their growing numbers over the last three decades, as well as the diversification of the workforce that has taken place since the late 1990s has created a social problem in Japan. One of the major reasons that companies employ non-regular workers is due to fluctuations in short-term demand and the need to hire competent workers who can immediately contribute to the needs of a company. As noted by Hamaguchi and Ogino,³⁰ the practice of non-regular employment, “has become structurally incorporated into [the] corporate hiring system in the quest to address economic globalization, changes in the industrial structure and business environment, and other factors.” It also appears that the proportion of “involuntary” non-regular workers has increased over the years, especially among fixed-term contract workers and dispatch workers.
48. There are also major differences in employment conditions between regular and non-regular workers, especially in terms of wages for among older workers. Indeed, there is little growth in wages for non-regular workers, while regular full-time workers see their wages rise as they get older. Non-regular workers also work considerably longer hours compared to regular workers.
49. The financial crisis that began in the fall of 2007 also had different impacts on regular and on non-regular workers. Since non-regular workers were more often targeted in retrenchments, this group of workers was a veritable “cushion”, protecting those with regular jobs. As a result, the proportion of non-regular workers, including dispatch workers, within the workforce declined sharply to 33.4 per cent in 2009. However, this decline was only temporary as their proportion of the total workforce reached 37.4 per cent in 2014. Not surprisingly, measures to improve working conditions for non-regular workers constitute major pillars of WSR. These measures include new legislation on equal pay for equal work, various types of allowances, welfare and educational training and efforts to address the working conditions of dispatch workers.

VI. Delivery of labour market policy and Work Style Reform

50. These examples of Government interventions during different periods of the post-war era demonstrate that Labour Market Programmes (LMPs) have been one part of broader economic and industrial policies. The Japanese model reflects an enterprise-centred, industry-driven labour market, which is very different from the American approach, for example, which tends to downsize the active labour market programmes and to devolve responsibility for these programmes to state and local governments. As noted by King,³¹ in contrast to Japan, “...the United States has historically provided more limited support for labour market policies of any type and has long favoured passive over active policies. Moreover, within the category of active policies, since the early 1980s, it has tended to promote and support less intensive interventions” including job search assistance or very short-term training rather than direct job creation or skill-building strategies. In contrast, the central Government of Japan has taken a proactive approach, particularly during recessions, and it has also implemented expansive

³⁰ Hamaguchi, K. Ogino, N. (2011). *Non-regular work: Trends, labour law policy, and industrial relations developments – the case of Japan*. Working Paper 29, ILO. Available at: http://www.ilo.org/ifpdial/information-resources/publications/WCMS_166735/lang--en/index.htm

³¹ OECD. (2017). *Economic Survey: Japan 2017*, Executive summary. Available at: <https://www.oecd.org/eco/surveys/Japan-2017-OECD-economic-survey-overview.pdf>

macroeconomic fiscal policies even if this has resulted in a significant increase in the country's budget deficits.

51. While seeking consensus is very helpful in creating stable policies that are consistent over the long term, it can also make the negotiation process particularly protracted. Deep divisions among the parties involved can make a consensus on the most critical issues difficult to reach. A prime example of this is overtime regulation, in which efforts to reach an agreement in industry was unsuccessful for more than two decades. However, the Government does have the power to make rapid decisions in emergencies, as was the case during the 2008-2009 financial crisis and following the 2011 earthquake.
52. The adoption process for WSR was unusual: it was a high-level political process overseen by the Prime Minister and his Office. The process aimed to achieve compromise agreements on a series of rather complicated issues such as overtime pay and the treatment of non-regular workers, and in areas where there was potential for disagreement not only between employers and workers, but also between Government departments. An exceptional procedure was therefore adopted. This procedure enabled the adoption of relevant policies outside the usual channels, including tripartite LPC. Most interviewees agreed that this type of exceptional procedure done through the auspices of the Council for the Realization of the Work Style Reform and chaired by the Prime Minister was necessary in order to break the deadlock on working hours. However, there was also a general agreement that implementation of the reform process itself and its follow up should take place within traditional frameworks under the leadership of the MHLW and with the involvement of social partners and representatives from academia.
53. Japanese labour market policies are rather centralized and largely controlled by the central Government, in line with long-standing traditions and the prevailing culture of discipline, consensus and collective decision making. This approach is fully reflected in administrative arrangements: central government policies are cascaded down to prefectures where they are adapted to meet local needs, often in consultation with social partners and other local stakeholders. The regional and local components of the delivery chain, the Prefectural Labour Bureaus and the Hello Work Centres are integral parts of the MHLW.
54. As in many other developed countries, there has been discussion in Japan concerning the possible decentralization of employment labour market policies and of outsourcing certain delivery functions, while also taking into account the experiences of other OECD member States, including Canada, Denmark, Germany, Netherlands and the United States of America.³² However, the conservative view seems to have prevailed so far. For example, most stakeholders presumably have doubts about the possible benefits of involving the private sector in job mediation, particularly if the specific characteristics of the Japanese labour market with its historically low unemployment are taken into account. In all prefectures the number of job vacancies is higher than the number of job seekers, which means that there is not truly an urgent need to foster cooperation with the private sector to promote long-term unemployment placement, in contrast to the situation in countries where this type of service is outsourced. It

³² For example, Giguere and Higuchi (2005) found that results in the West were mixed. They highlighted that, while the partnership with local governments helped in the design of local strategies, it was not clear whether these reforms have allowed for a more integrated approach to economic, employment and social development. At the same time, they recommended, inter alia, to scale down some aspects of decision making to lower levels within the central administration while the delivery of services and programmes should remain within the purview of public agencies. At the same time, they also recommended stronger cooperation with other policy areas, local governments, businesses and civil society, as well as further capacity building and the fostering of leadership initiatives for civil servants, economic development practitioners and local elected officials.

should be noted that Hello Work Centres share data with private employment agencies and sometimes refer job seekers to them.³³

55. At the MHLW level, employment policies are overseen by the Employment Security Bureau and its Employment Development Department³⁴. The main policy areas covered by its mandate include job placement through Hello Work Centres, the administration of employment insurance, the implementation of employment measures that seek to promote higher labour market participation among certain sectors of the workforce, including women, young people, older workers and persons with disabilities, and the analysis of the labour market and the impact of labour market regulations.
56. Vocational training matters are the purview of the Directorate-General for Human Resources Development³⁵. The main policies pursued by that body are the enhancement of vocational training, with a special emphasis on non-regular workers and women of childbearing age, support for individual workers so as to facilitate voluntary evaluation of their skills and career development, including by empowering workers to respond to rapid technological change, as well as addressing regional disparities through employment creation projects to promote regional revitalization that focus on developing innovative practices and boosting labour productivity. Vocational training provided by public authorities and support for the private sector has become particularly critical given that there has been a significant reduction in employer-provided training since the early 1990s, largely because employers have become less keen to invest in training for non-regular workers since those workers are less likely to become lifetime employees. Special attention is also being paid to Industry 4.0 through the hiring of top IT specialists and the provision of basic IT training to all employees. Vocational training policies are developed by approximately 100 staff members at MHLW headquarters and are subsequently implemented by 8,000 training centre employees. The Ministry works closely with the Ministry of International Trade and Industry (certification of courses), the Japan Organization for Employment of the Elderly, Persons with Disabilities and Job Seekers (training for the elderly and the disabled) and with private sector providers. Social partners are involved in the adaptation of training programmes both at the national and prefectural level through their respective tripartite bodies. Inter-ministerial coordination also takes place in order to enhance cooperation and avoid the duplication of programmes. The total budget available for vocational training activities for the 2017-2018 fiscal year is 1.886 billion yen. This is primarily funded through the employment insurance account, although a small sum (10 billion yen) from the general account is used to provide training for those without work experience and persons with disabilities.
57. At the regional level, employment policy measures are implemented through the 47 Prefectural Labour Bureaus (which run special employment security departments and equal employment units), 544 local employment offices, (Hello Work Centres), and 857 smaller centres that provide a limited number of services and mobile offices. Nearly 200 offices located within prefectural government offices provide assistance to job seekers receiving locally-provided welfare benefits. In contrast to the situation in many other countries, Hello Work Centres do not share premises with local inspection offices (Labour Standard Inspection Offices). Their respective staff within each prefecture is higher than the number of staff of labour standards inspection offices.

³³ At the same time, Hello Work Centres have a supervisory role regarding the functions of the private employment agencies.

³⁴ In July 2017, some functions of the Employment Security Bureau were transferred to the newly created Bureau for Employment Environment and Equal Employment.

³⁵ Before the organizational restructuring in July 2017, the unit was called the Human Resources Development Bureau.

58. Hello Work Centres provide services that are comparable to the services provided by similar offices in other developed countries, including job mediation, employment and career counselling, registration of jobseekers and the payment of unemployment benefits. They also seek to uphold the principle of equal treatment and monitor the implementation of the newly adopted Act on Securing Equal Opportunity and Treatment between Men and Women in Employment. Obviously, these services are customized for the Japanese labour market, which is characterized by very low unemployment rates and a historically high number of vacancies. Employment centres endeavour to successfully place job seekers in employment and to that end are obliged to take proactive measures, to work closely with employers seeking to hire workers, to mediate between employers and job seekers regarding the details of working conditions and to promote competition among labour market stakeholders. Hello Work Centres have proven to be relatively successful in fulfilling this mandate. For example, Shibuya Hello Work Centre successfully placed approximately 5,000 of some 29,000 job seekers in employment in 2016. Evidence would suggest that the main obstacles impeding efforts to placing job seekers in employment is the fact that the skills offered by a worker are often quite different from those required to perform the jobs on offer, and a lack of child care services available for those with small children. Women's employment rates demonstrate a distinct "M shape" in graphs, meaning that women are able to return to the labour market only once their children can be left at home unsupervised.
59. The services provided by Hello Work Centres are labour intensive. Hello Work Centre staff members establish direct personal contacts with both job seekers and employers with a view to addressing an array of topics, including counselling, payment of employment insurance benefits, interview scheduling and workplace visits. Specific advice is provided to the elderly, persons with disabilities, mothers, young people, and in some prefectures, to foreigners. Furthermore, specialized staff in municipalities facilitate the return of those on welfare benefits to the workforce. Group sessions, which have proven successful, are organized for part-time workers in order to motivate them to obtain full-time jobs, and seminars are held for mothers returning from maternity leave. To ensure that these services are offered to as many people as possible, a large number of centres have been opened, and these have long opening hours so that individuals currently in employment can come in for career advice. The centres also provide child care facilities for mothers with their small children.
60. As compared with other countries, including the United States of America, in which direct communication with job seekers and other clients is being replaced by phone calls or electronic communication to cut costs, Japanese employment services prefer to maintain this intensive personal contact. This enables them to provide services that are more tailored to the needs of individuals. The general public enjoys online access to a digitalized database of job vacancies and the employment offices provide access to computers for clients who would like further information on job opportunities. Job seekers can contact any Hello Work Centre in the country to discuss all employment matters, with the exception of unemployment benefits.
61. Hello Work Centre staff are comprised of civil servants and a significant number of contractual workers. The role of these contract employees has changed over time and employment services are now heavily dependent on them. Indeed, although they were initially hired as support staff to help perform administrative tasks at low cost, today they mostly perform professional and technical tasks and are even employed to deliver particular services for certain job seekers affected by current employment policies.
62. Employment service staff are highly motivated and strive diligently to promote equal treatment. Hello Work Centres support companies in the drafting of their equal treatment action plans

although no penalties are imposed if established targets are not achieved³⁶. As is the case in other areas of policy, the promotion of equal treatment often means using the power of public opinion. Employment services also make use of a number of motivational instruments, including employment insurance-funded subsidy regimes to alter the behaviour of companies and involve them in efforts to achieve Government employment targets. Such subsidies may be used to encourage companies to improve working conditions, increase minimum wages, provide additional staff training and employ innovative technologies with a view to boosting productivity. The subsidy system is administratively rather complicated, which makes it difficult for small and medium-sized enterprises to apply, although those enterprises are officially targeted as potential recipients by WSR.

63. In March 2017, the Council for the Realization of Work Style Reform adopted the Action Plan for the Realization of Work Style Reform, which sets forth 19 measures and is intended to cover a period of ten years (2017-2026). WSR is a radical reform package and establishes the following objectives whose achievement will address key problems in Japanese contemporary economic and social life:

(a) Improving the working conditions of non-regular workers.

The purpose of the proposed measures is to reduce labour market dualism, as described in Chapter V of this paper, particularly through: the elimination of “irrational gaps” in the treatment of regular and non-regular workers, the promotion of the principle of equal pay for equal work, and the improvement of working conditions for non-regular workers and their prospective transition to regular positions.

(b) Boosting wages and productivity.

64. The overall objective in this regard is to increase labour force pay checks by using a greater proportion of corporate earnings to fund pay increases. Concrete measures for this involve raising the minimum wage annually by approximately 3 per cent, while taking the GDP growth rate into account. To accomplish that objective, productivity growth must be promoted through legislative changes as well as through tax and budgetary measures, with a special focus on small and medium-sized enterprises. It is anticipated that productivity targets will be incorporated into employment-related subsidy regimes.

(c) Reducing working hours, inter alia, by setting limits on overtime work.

65. A series of measures is proposed to address the problem of long working hours, which are higher than working hours in Europe and have remained unchanged for the last 20 years, and to improve working conditions and labour-management relationships. The practice of long hours is considered to be a structural problem related to deeply entrenched cultures within companies. In addition to important legislative steps taken to address overtime, including the Labour Standards Act and various by-laws, both labour and management are expected to take the lead in changing work cultures, including by combating harassment in the work place and taking steps to preventing “karoshi” (the risk of death by overwork). A sufficient preparatory period will be necessary to ensure that companies, including, in particular, small and medium-sized enterprises, are not forced to make drastic changes overnight. On the other hand, company

³⁶ According to the Act on Securing Equal Opportunity and Treatment between Men and Women in Employment, all companies with 301 or more workers are supposed to enact an action plan and provide information on certain human resources measures, such as the number of women hired, for example, or the proportion of women versus men in management positions.

corporate headquarters offices should take company-wide measures in cases when long working hours are found to be illegal. On site inspection will need to be conducted to monitor this and the names of companies in which serious cases of illegal working hours have occurred will be disclosed. Specific measures will be taken in industries that are currently exempted from the Ministerial ordinance on overtime work limits to address the situation of taxi drivers, those working in construction, doctors, those working in the research and development of new technologies and other relevant employees. Various types of consultations will take place and the application of the amended Labour Standards Act will be reviewed five years after coming into effect.

(d) Promoting flexible work.

66. A balance must be struck between the need to promote flexible working arrangements, which affect many individuals working in telecommuting, supplemental jobs or multiple jobs, and preventing these new types of employment from adversely affecting employees' working hours and other working conditions. The promotion of flexible working conditions must be accompanied by elaboration of guidelines for companies. Similarly, it will be necessary to regulate non-employment telecommuting situations, such as crowd sourcing activities, which have expanded rapidly in recent years. Concurrently, discussion must be held regarding the fair application of employment and social insurance, the management of working hours and workers' accident compensation for those working in multiple types of employment.

(e) Adopting measures to aid women and young people.

67. Society must be empowered to benefit for the employment potential of women and young people, especially those working outside the regular job market. A series of measures is suggested to enhance access to education and skills as well as to provide support to companies encouraging the return of employees who may have been absent from the workforce for some time.

(f) Striking a balance between medical treatment and work.

68. Particular attention must be given to those workers who continue working while receiving medical treatment. It is important to enhance awareness among company managers of that issue, provide clear guidelines for management, and appoint coordinators to help workers achieve a balance between their medical treatment and their work. These coordinators will work closely with various medical professionals, including doctors working in industry. This will enhance the status of those doctors and promote their independence and neutrality. Consultations should be provided in cases of "karoshi."

(g) Providing appropriate childcare, nursing care and employment for disabled persons.

69. The purpose of this initiative is to create better conditions for parents with children so they can achieve a balance between their family and work responsibilities. The proposed measures would make childcare accessible to more parents, reduce the burden of childcare and household affairs and create a more favourable atmosphere for both working women and men in which they can make use of childcare leave and other benefits. Employment for persons with disabilities will be promoted through stricter legislation and the adoption of positive employment incentives.

(h) Supporting career changes and re-employment.

70. A single-track career path is to be replaced by a multi-track one, enabling various choices after graduation or in cases in which an individual returns to the labour market. This will enhance labour market flexibility, productivity, and the labour participation rate. Incentives and detailed guidelines for companies allowing such flexibility will be introduced. It is hoped that companies will be motivated to evaluate workers according to their capabilities rather than their seniority. The job matching function performed by the Employment Stabilization Centre will be strengthened and information on jobs and the qualifications necessary to take up those jobs will be provided. A website detailing companies that provide a supportive working environment for women and young people will also be established.
- (i) Promoting an education system that provides opportunities for everyone.
71. It is important to facilitate access to quality and free higher education for everyone. A scholarship system will be established, the repayment of loans will be made less expensive and free early childhood education will be expanded.
- (j) Employment for older persons.
72. Since the population of Japan is declining and steps must be taken to sustain economic growth, measures are suggested to enhance the employment rates of older persons, including the provision of support to companies that employ older workers, providing senior workers with necessary skill sets and offering part-time jobs and support for senior citizen entrepreneurs.
- (k) Policy towards foreign workers
73. The Action Plan also aims to create an attractive working environment for highly skilled foreign workers, and discusses the possibility of establishing a Japanese Green Card regime and other incentives for such workers. The potential immigration of other categories of foreign workers will also be reviewed by ministries with a view to adopting a clear and unambiguous policy that will take both broader societal factors and the popular consensus into account.
74. Turning the WSR Action Plan into concrete policy measures, new regulations, guidelines and achieving tangible results in key areas such as working hours and labour market dualism will require much effort at the federal level in Tokyo as well as in the regions. Implementation of labour related matters, that belong under the purview of the MHLW, will be done through the network of regional bodies of the MHLW both within prefectures, and their respective Prefectural Labour Bureaus, as well as at the local level and their respective Labour Standard Inspection Offices and Hello Work Centres, as discussed elsewhere in this paper.³⁷ It is also clear that the Ministry will be unable to alter deeply entrenched practices and employment customs without involving key stakeholders, including employers, workers and their respective organizations. The general feeling expressed in interviews of staff at both the Ministry and regional offices, is that the implementation of WSR will result in a much higher workload for Hello Work Centres, and to a lesser extent, for Labour Standard Inspection Offices.

³⁷ It should also be noted that the Minister of the WSR became the Minister of Health, Labour and Welfare in the summer of 2017. This decision clearly implies which ministry will have primary responsibility in the implementation process.

VII. Development of collective labour relations

75. As discussed earlier, managing labour relations is an essential part of the mandate of labour ministries worldwide. Numerous potential links between a country's national labour administration system and its social partners are apparent from the text of Convention No.150:

Labour administration and social partners

- Consultative bodies are part of national labour administration systems
- Consultation, cooperation and negotiation between the public authorities and the most representative organizations of employers and workers or employers' and workers' representatives at national, regional and local levels should be promoted (article 5)
- Certain labour administration activities can be delegated to social partners (article 2)
- Particular labour administration activities can be regulated by direct negotiations between employers' and workers' organizations (article 3)
- Labour administrations should provide services and technical advice to employers and workers and their organizations (article 6c and d)

76. Understanding current developments in Japan's industrial relations is essential if stakeholders are to understand the regulatory options that the Japanese labour administration authorities can employ to achieve the goals established by WSR. Discussion of this matter is particularly important at the present time as collective labour relations in Japan have been weakened by declining trade union membership and, consequently, the public authorities' lack of interest in engaging with workers organizations.
77. Industrial relations in Japan are characterized by many specific and highly contextual features. While many concepts may sound familiar to a foreign observer, they may not have exactly the same meaning as they do elsewhere. Beginning with the "Meiji" modernization of the late 19th century, and intensifying after World War II, the country established institutions that had been successful in other parts of the world, especially in Europe and the United States of America. However, these same institutions, when confronted with the reality of local political, social and economic life, evolved into institutions that were better adapted to the situation on the round in Japan. Even the key notion of tripartism has its own specific meaning in Japan and one that is different from the same notion in other countries. The same can be said about bipartite relations between employers and workers, since the relationship between collective bargaining and labour management consultations differs from the models in practice in other industrialized countries, thereby reflecting Japan's specific corporate practices. As in other countries, employers and workers are organized at the national,³⁸ sectoral and enterprise levels, but these levels do not necessarily correspond to those in other countries.
78. Japanese industrial relations, as they are today, are the product of both World War II and post-war democratization. As noted by Tsuneki and Matsunaka, typical Japanese employment

³⁸ Two trade union centres exist at the national level. The most representative of these is Rengo (Japanese Trade Union Confederation), followed by the much smaller and left leaning Zenronen (National Confederation of Trade Unions). The Japanese Business Federation (JBF) is a major organization that articulates the concerns of Japanese business interests at the national and international level. Although JBF is not directly involved in collective bargaining, it plays a coordinating role in this regard by providing its members with general guidelines for annual negotiations.

customs (JEC),³⁹ “...did not exist from the beginning of the Japanese economy. Broad economic regulations to reinforce a planned economy during World War II formed the basis of JEC and were maintained through a democratization programme by the Allied High Command that strengthened the position of labourers during the occupation era. Before the 1940s, the Japanese economy had a classical market system with a competitive market that facilitated the highly frequent turnover of workers. The possibility of permanent employment and participation of labour in management was very limited, and labour unions were industry-based, not enterprise-based unions, as observed in other developed countries.” Learning from the experience of other countries and adapting that experience to specific Japanese conditions used to be and remains a typical approach adopted by policy makers when drafting labour policies.

79. As discussed by Kaufmann in his seminal work on industrial relations around the world⁴⁰, being a latecomer to industrialization provided Japan with the opportunity to learn from the West regarding both what to do and what not to do in order to promote successful development. Japan therefore adapted practices from different cultural environments. For example, from Germany it acquired its emphasis on social order, harmony and belief in the need for active engagement and oversight by the State, as well as the need for a strong and capable bureaucracy. Japan learned from the approach taken by the United States of America with regard to the organization and management of industrial enterprises as well as its fundamental framework for industrial relations, including, in particular, United States’ legislation recognizing and encouraging trade unions and collective bargaining.⁴¹ However, even in the very early stages of the adoption of the Trade Union Act in the late 1940s, these imported rules had to be adapted to meet local needs. In reaction to social unrest, restrictive regulations had to be passed, with at least a partial return to the pre-war pattern of company level collective bargaining. In subsequent decades, the institutions established pursuant to post-war legislation became increasingly distinct from the models they had been based on. For example, the system of National Labour Relations Commissions (NLRC) in Japan cannot truly be compared to the National Labour Relations Board (NLRB) in the United States of America. While both deal with unfair labour practices, the Japanese Commissions are less political, more neutral, and better-suited to the less conflict-ridden labour relations system in Japan, which, over several decades, has successfully reached maturity and achieved stability. It is, moreover, possible that those Commissions will play new, innovative roles in the future.
80. The post-war industrial relations system in Japan has been the subject of numerous academic studies. Many of these have sought to identify parallels with developments that have taken place in other industrialized countries. Gould⁴², for example, believes that, in 1983, the Japanese and American systems of industrial relations differed substantially, both at the company and national levels. While in the United States trade unions tended to negotiate uniform rates and conditions of employment, Japanese trade unions remained intricately linked to companies and negotiated for percentage wage increases without giving much attention to the concept of “equal wages for equal work.” Individual companies are given substantial scope for manoeuvre in such negotiations. Gould also finds that there is a much closer relationship between trade unions and management in Japan, resulting in a greater spirit of egalitarianism between blue collar and white collar workers. This has a significant impact on trade union practices. A stark contrast is also found at the national level, including, for example, in the caseload of the NLRB,

³⁹ Tsuneki, A. Matsunaka, M. (2011). *Labor relations and labor law in Japan*. Pacific Rim Law & Policy Journal Association. Available at: <http://workspace.unpan.org/sites/Internet/Documents/UNPAN93857.pdf>

⁴⁰ Kaufman, B. (2004). *The global evolution of industrial relations*, ILO.

⁴¹ Ibid.

⁴² Gould, W. (1984). *Labor law in Japan and the United States: A comparative perspective*. Berkeley Journal of Employment and Labor Law, Vol. 6, issue 1.

which is many times higher than that of the NLRC. Gould sees the fundamental reason for this as being a difference in the attitudes of workers and their unions, as Japanese workers "...being company oriented like their unions, are more concerned about the real prospect of job losses if the unions become too strident or undisciplined". A similar comparative analysis is offered for example by Gospel,⁴³ who concludes that Japanese industrial relations represent an "internalized" model, which is in some ways the polar opposite of the model adopted at British firms and very different from the one adopted at American companies. He notes that, while Japanese workers had, at one time, sought to organize trade unions by trade or industry or along political lines, that pattern did not prevail. "After the high level of strike activity in the early 1950s the large Japanese firms were the major influence creating the pattern of enterprise-based unions and enterprise-level collective bargaining that exists today." A similar analysis of this topic can be found in other academic works.

81. Some more recent studies have focused on issues related to worsening economic and social conditions resulting from the economic crisis in the early 1990s and the impact of globalization, which have posed challenges for many traditional Japanese industries. Honda⁴⁴ suggests that unions can play a crucial role in supporting business recovery if they can analyse business management and if business managers then act in good faith. In his study, Honda states that the fact found in a survey that "the greater [the] assistance given by [an] industry union to [a] company union, the better [the] results produced, [and this] begs the question how firms with no company labour unions secure the commitment of employees to the process of business revitalization." Honda concludes that, with unionization rates currently below 20 per cent among Japanese firms, steps must be taken to design a system and establish practices that will fill the void created by the absence of trade unions.
82. The Japanese system of industrial relations constitutes a unique national arrangement, the salient features of which were described by Suzuki⁴⁵ as: (a) a decentralized bargaining structure in which collective bargaining almost always takes place at the enterprise level with no industry-wide or national level bargaining that can contribute to solidarity between management and labour. This structure can, however, give rise to large wage differences among enterprises of varying size; (b) a non-confrontational attitude and a near total absence of strikes, which is partially explained by the realistic demands of trade unions, but is also explained by the accessibility of information on inflation, the competitiveness of enterprises and wage demands in rival companies; (c) institutional stability, which is probably related to the origins of free industrial relations as a component of the post-war democratization process as well as the tradition of annual spring negotiations, which has proven resistant to drastic economic and social changes that have occurred over the years and, in its formal contemporary form, remains a "cornerstone of Japanese industrial relations"⁴⁶.
83. Tsuneki and Matsunaka⁴⁷ consider the following elements to be characteristic of Japanese employment customs: a long-term employment relationship, seniority (especially in terms of wages), company-based unions and a dual labour market for regular and non-regular workers. However, they also note that some of these features exist in other industrialised countries to a certain extent and that the differences found between Japan, the United States and Europe are actually decreasing. For example, they note that although long-term employment relationships

⁴³ Gospel, H. (1986). *Comparative patterns of labor-management relations: Great Britain, the U.S. and Japan*.

⁴⁴ Honda, N. (2005). *How social dialogue works to protect workers and their companies in time of restructuring in Japan*, Japan Labor Review.

⁴⁵ Suzuki, H. (2013). *Japanese industrial relations from an international perspective*.

⁴⁶ Ibid.

⁴⁷ Tsuneki, A. Matsunaka, M. (2011). *Labor relations and labor law in Japan*.

also exist in countries such as Germany and France, and even more so in the United States of America, Japanese workers tend to stay at the same firm for longer periods and the turnover rate is lower. They also argue that, while seniority is still important, lifetime income earned by different workers can vary greatly due to variations in how quickly a worker is promoted, which depends on merit. While the Japanese labour market has a dual nature, this dual nature is universally observed in other developed capitalist countries, where the issue causes similar problems and challenges related to labour market segmentation, unfair treatment and difficulties in labour law enforcement⁴⁸. Additionally, in Japan there is a clear distinction between regular and non-regular workers at the time of hiring, and these two categories of workers may follow very different career paths.

84. An analysis similar to the one described above is provided by Firkola.⁴⁹ Lifetime employment, seniority and enterprise unions are management practices that are characteristic of Japanese companies and different from non-Japanese companies, and they largely remain the same despite a certain shift to a global style of management. They offer both advantages and disadvantages for workers and employers, but they seem to be more adapted to periods of economic growth. For example, lifetime employment can be cost-effective while a company is growing, since more low-cost younger workers can be hired, thus keeping labour costs low. Seniority systems deter workers from changing companies, since they would lose their seniority. This lack of turnover is cost-effective for the company since it saves money on recruitment and retraining. It also helps with human resources and enables companies to retain their talented and well-trained staff. There are also undeniable advantages for the worker in terms of job security, increasing wages that match the needs of those with growing families, as well as the prospect of other benefits such as housing. All this strengthens the bond between employers and workers, encourages their mutual cooperation and contributes to favourable industrial relations. However, these practices seem to be less advantageous during unfavourable parts of the economic cycle when many companies are not able to grow and are furthermore not able to lower their costs by hiring younger, less expensive workers rather than making use of the senior staff members. During a downturn, Japanese management practices can thus limit the capability of companies to adjust. It is not surprising that, after the bursting of the economic bubble in the early 1990s, these practices were seen as dysfunctional. Facing severe global competition, companies adopted various measures to cut their labour costs, including wage cuts, hiring fewer new graduates, encouraging workers to take early retirement, sending workers to secondment at other companies, and hiring more non-regular workers. Trends indicate that larger companies placed less emphasis on seniority and more emphasis on merit based on performance in terms of promotions and wages.⁵⁰
85. A certain amount of convergence between Japan and other industrialized countries can be also seen in the field of collective bargaining and wage setting patterns⁵¹. In Japan, in-house labour

⁴⁸ Please see: *Has atypical work become typical in Germany?* (2013). ILO Employment Working Paper No. 145. According to this study, the major issue of concern is, “to reduce the regulatory gap between standard and non-standard types of jobs without making the German labour market overly rigid again, thus paving the way to smooth the transition between jobs, and realize the full potential of flexible jobs as stepping stones to permanent positions.” Similarly, *An anatomy of the French labour market*. (2013). ILO Employment Working Paper No.142, concludes that labour market segmentation, “...traps workers in a recurring sequence of frequent unemployment spells, favours unequal repartition of risks between workers, enhances inequalities and produces uncertain effects on economic outcomes.” It also highlights that French labour legislation is extremely complex, very difficult to enforce and should therefore be, “modernized and reformed in great depth.”

⁴⁹ Firkola, P. (2006). *Japanese management practices past and present*. Economic Journal of Hokkaido University, Vol. 35.

⁵⁰ Ibid.

⁵¹ Regarding wage setting patterns please see: Nishimura, I. (2017). *Changes in the wage system in Japan: circumstances and background*.

Nishimura argues that important changes were initiated in Japan following the introduction of the performance based system in the 1990s. With regard to determining qualification grades, “Japan is in line with the rest of the world when it comes to posts and specific duties playing a larger role, and in a sense, can be said to be drawing closer to Europe and the U.S.”

management relations play a key role because this is the context in which working conditions such as annual wage increases, lump-sum benefits, working hours, welfare issues, and other relevant topics are decided, either through collective bargaining supplemented by or implemented through consultations on management policies, production plans, etc.⁵² The traditional spring labour offensive (Shunto), in which employers and workers set bargaining patterns in line with industry federation guidelines, particularly with regard to annual wage increases, appears to have weakened as a result of more competitive markets and the necessity to reflect corporate profitability through more flexible wages and benefits. As highlighted by the JILPT, “in contrast to the period when wage hikes could be guaranteed thanks to high-speed growth, international corporate competition has intensified, and the increasingly severe corporate management environment [means] we have entered a period in which labour conditions could be lowered. Japan’s labour unions are tested [as to] whether they can regain their power and influence and demonstrate their presence in the labour market⁵³”. This seems like a rather optimistic expectation in a country where trade union membership dropped from more than 50 per cent of workers in the late 1950s to 17.5 per cent in 2014.

VIII. Impact of weakening collective labour relations

86. As underscored in ILO Convention No. 150, Governments may delegate certain labour administration tasks to non-governmental organizations, particularly employers’ and workers’ organizations, and they may consider certain national labour policy activities as being matters to be regulated through direct negotiations between employers’ and workers’ organizations. In other words, Governments may look upon employers’ and workers’ organizations as guarantors for meeting the objectives of national labour policy. Rather than requiring direct government intervention, objectives can be met through the autonomous action of social partners. Indeed, such delegation may be beneficial for all those involved, since social partners can also achieve a desirable balance among their respective interests. Agreed courses of action are also more likely to be respected and implemented than when they are directed by a third party. This approach only works when both parties are committed to finding a mutually agreeable solution. However, such an approach has become significantly less common in Japan in recent decades. While stakeholders at the enterprise level have demonstrated their firm desire to make necessary compromises, it has been impossible to agree on mutually acceptable solutions to issues pertinent to the core WSR agenda, including, in particular, the issue of working hours. It also seems that collective labour relations are not as high a priority for the MHLW as they were in the immediate post-war years.
87. More importantly, and as has occurred in many industrialized countries, a steep decline in trade union membership has taken place in Japan in recent decades. Indeed, membership has declined in absolute terms since 1994, despite an increase in the country’s workforce participation rate. In 2014, the estimated trade union participation rate was only 17.5 per cent, equivalent to approximately 9.849 million workers out of the total Japanese workforce of 56.17 million workers. There are, moreover, huge disparities between industries, ranging from 66.5 per cent participation in the electricity, gas, heat supply and water industries to 2.2 per cent in the agriculture, forestry and fishery sectors. The largest numbers of unionized workers are in

However, he also discusses undeniable differences, including: the fact that differences in specific job duties are not emphasized, and wage standards are set by labour and management at the company level, and therefore Japanese companies have more stringent control over pay increases.

⁵² JILPT. (2016). *Labor situation in Japan and its analysis: general overview*.

⁵³ *Ibid.*

traditional manufacturing; they comprise 26.7 per cent of trade union members in Japan. More than 36 per cent of Government employees are unionized. As is the case in many other countries, the unionization rate is much higher in large corporations, with about 45 per cent of workers participating in companies with 1000 employees or more, while the participation rate is extremely low (a mere 1 per cent) in companies with less than 100 employees.

88. Two main factors responsible for the falling rates of unionization are the growing service economy and the diversification of employment. It also seems that trade union membership is less popular among younger employees than among those who are retiring. As highlighted by Fujimura⁵⁴, based on a 2008-2009 survey, "...there are good relations between labour and management, but interest in labour union activities among union members has declined, discussions at workplace union meetings are sluggish, and one can see a reduction in workplace labour union activities." Unions are losing ground not only because of changes in the economy and society, but also because of union policies. Unions are often perceived as being largely incapable of organizing non-regular workers, being unable to foster solidarity among workers from different companies, lacking the tools to strengthen day-to-day labour union activities and unable to act as a respected partner that can engage with professional management structures⁵⁵. Indeed, several interviewees have underscored that trade unions must play a more active and assertive role in order to increase their "real" representativeness. One of the steps that must be taken as a matter of priority is the "professionalization" of trade union activities, so that trade union representatives become less dependent on their employers, can dedicate more time to trade union work, and can communicate more effectively, not only with management but also with rank-and-file union members. It seems, moreover, that the effectiveness of unions is not only a concern at the enterprise level, but also within national level tripartite bodies, where trade unions are sometimes unable to meet the professional standards adopted by other participants. This is especially the case in negotiations with academics representing public-sector interests and experienced and competent ministerial officials.
89. While the overall trade union structure in Japan is comprised of three standard levels (company, industry and national), the trade union landscape is largely dominated by enterprise-level trade unions. Enterprise unions do not usually grant membership to non-regular workers. On the other hand, they represent all regular staff without any distinction being made between blue collar and white collar employees. Despite the overall decline in trade union membership in Japan, membership for non-regular workers has increased in recent years, and reaching 6.7 per cent in 2014. Enterprise-level trade unions seek to negotiate and consult with management, provide members with services, influence the political environment and communicate effectively with the public. Industry-level trade unions seek to consolidate workers' demands in key areas such as wages and working hours, and to provide enterprise trade unions with various services and information. These may include services such as life insurance, pensions or medical insurance. Industry organizations also coordinate their negotiation strategies with one another.
90. As highlighted by several authors, the decline of the unionization rate in Japan has also meant that the negotiating power of trade unions and their general influence in society has weakened remarkably⁵⁶. Nearly 90 per cent of Japanese trade unions are enterprise based but only 10 per

⁵⁴ Fujimura, H. (2012). *Japan's labor unions: past, present, future*. Japan Labor Review.

⁵⁵ It is interesting to note a specific role in human resources departments. Such departments are not only taking on wide-ranging responsibility with regard to traditional personnel matters (hiring, career development, training), but are expanding into the area of collective bargaining. This role also involves consultation with competitors within the same industry (Suzuki, 2013).

⁵⁶ For an example of this, please see: JILPT. (2013). *Labour situation in Japan and its analysis: detailed exposition 2012/2013*, and the chapter entitled, *Shrinking of trade unions and need for a new collective influential voice system in Japan*. Available at: <http://www.jil.go.jp/english/lj/detailed/2012-2013/all.pdf>

cent of enterprises with 10 or more workers have a trade union, leaving more than 90 per cent of workers without one.⁵⁷ This means that a large majority of Japanese workers are deprived of the most powerful method of protection available to workers, and are thus dependent on services provided by the State in the form of minimum legal standards and other assistance made available to help resolve disputes arising from an individual relationship between a worker and an employer. The relative importance of collective and individual labour relations is very clearly reflected in statistics: while the number of collective disputes peaked at 10,642 in 1974, this has fallen to approximately 600 per year in recent years.⁵⁸ Similarly, the number of working days lost due to strikes went from nearly 10 million in 1974 to below 10,000 in the 2000s.⁵⁹ Over this same time period, the number of individual labour disputes increased sharply. This trend will be discussed later in this paper.

IX. Collective bargaining and labour-management consultations

91. Given that labour laws in Japan are rather general in scope, collective agreements are important for labour regulation, especially at the enterprise level. According to article 14 of the Trade Union Act, collective agreements are concluded between a trade union and an employer or an employers' association. The Trade Union Act requires negotiation in good faith. As discussed later, the law does not require that a collective agreement is necessarily the result of a collective bargaining procedure; such agreements can, in fact, be reached using other forms of negotiation or consultation. It also seems that in Japan, comprehensive agreements addressing general working conditions are less frequent than agreements focused on specific issues, such as wages, working hours and retirement benefits.
92. Collective agreements primarily apply to the union members. However, if in one workplace, three-quarters of comparable workers are part of a collective agreement, that agreement applies to all workers of the same category at that workplace (Trade Union Act, article 17). A collective agreement may have the power to be generally binding for the whole locality (article 18), but in practice this is exceptional since it requires a resolution of the Labour Relations Commission, a request by both parties and a decision by the MHLW.
93. Collective agreements have a normative impact on work rules and labour contracts: work rules must not violate collective agreements and any labour contract provision that contravenes the standards established by a collective agreement is null and void (Trade Union Act, article 16). Collective agreements not only establish duties and rights for the parties, but often impose an obligation to consult with the trade unions in question, thus extending the scope of dialogue at the enterprise level.
94. While the collective bargaining process is still an important source of labour market regulation in Japan, that framework is under significant pressure and, in reality, the role of collective bargaining is now very different from the role it played up until the 1980s. Japan not only suffers from a declining unionization rate, but since Japanese trade unions do not defend the interests of all workers but rather only their constituencies, the interests of large groups of workers are ignored. Those workers include non-regular workers and those who work for

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

subcontractors. Trade unions are therefore increasingly seen as representative of privileged and wealthy groups that already enjoy much better wages and working conditions.

95. Japan's low rate of trade union membership is not exceptional, but is similar to that in Australia, Germany, the Netherlands, New Zealand, Portugal, Singapore, Spain and Switzerland and much higher than the rate in France and the United States of America. However, the major difference between Japan and other countries is collective bargaining coverage, which, even in countries with similar or lower unionization rates, is much higher than it is in Japan thanks to the labour policies adopted by certain Governments. In Austria, Belgium, Denmark, France, Italy and Sweden, for example, more than 80 per cent of workers benefit from collective bargaining.⁶⁰ On the other hand, collective bargaining has come under pressure in many countries since the 2008 financial crisis.⁶¹ Indeed, collective bargaining has become increasingly decentralized as national general agreements have expired, labour-supportive policies have been reversed, extension provisions in collective bargaining agreements have been suspended, rules for workers' representation have changed, increasing use has been made of opening clauses, and policies encouraging decentralization have been adopted. The labour reforms introduced by the Government of President Macron in France are by the latest examples of such steps. However, some government policies have efficiently enhanced collective bargaining. These include general agreements at the national level (Finland), and the expansion of collective bargaining or an extension or enhancement of coverage (the Netherlands, Switzerland and Norway). It seems quite obvious that, "countries in which collective bargaining coverage remained stable or increased are those that supported inclusive collective bargaining through a range of policy measures."⁶²
96. While there are no official data that would allow for the comparison of collective bargaining coverage in Japan and other developed countries, several surveys provide information about the number of trade unions involved in collective bargaining and the substance of the agreements they reach. According to a 2007 survey of 3,700 trade unions with 30 or more members, 69.5 per cent of trade unions had been engaged in collective bargaining in the preceding three years. The highest percentage was in the service sector, including information and telecommunication (89.1 per cent), real estate (88.3 per cent), education (87.1 per cent), medical and welfare services (83.1 per cent) and hotels and restaurants (81.4 per cent). On the other hand, traditional industries had relatively low numbers. These included construction (50.8 per cent), mining (59.5 per cent) and manufacturing (73.9 per cent). Collective bargaining appears to be the most important instrument for altering employment relations in companies with less than 500 workers, where union membership is sometimes as high as 80 per cent. This seems to be of lesser importance in large corporations with more than 5,000 workers, where rates are below 40 per cent. Most collective bargaining issues concerned wages (61.0 per cent), employment and personnel matters (42.6 per cent) and working hours (39.2 per cent). On the other hand, only a small proportion of collective agreements addressed the use of non-regular workers, including part-time and contract workers (6.7 per cent) and dispatch workers (4.2 per cent). Equal treatment for men and women did not seem to be very high on the agenda either (9.3 per cent). Neither were child care leave issues (18.6 per cent). The low rates of collective bargaining in addressing issues closely associated with WSR, and especially issues pertinent to non-regular workers, underscore that, unless collective bargaining is substantially enhanced through the joint efforts of the Government and relevant employers' and workers'

⁶⁰ Hayter, S. (2015). *What future for industrial relations*. International Labour Review, Vol. 154, issue 1.

⁶¹ Ibid. Examples include Greece, Portugal, Ireland, and Romania.

⁶² Ibid.

organizations, the use of collective bargaining as a tool for the implementation of this particular reform agenda will remain limited.

97. Company-level collective bargaining is enhanced by a system of joint consultations between management and employees, especially in large enterprises. According to the same 2007 survey cited above, joint consultation is the most important measure used to resolve labour related issues for approximately 52.6 per cent of trade unions. For 49.5 per cent of trade unions, collective bargaining is the prevailing method, particularly in companies employing between 30 and 99 workers. As the size of a company grows, joint consultations become increasingly important.
98. These types of consultations, which first emerged in the 1950s and 1960s, are aimed at improving communication with unions and workers with a view to avoiding industrial conflict and boosting a company's productivity. The consultations cover a wide range of issues and promote transparency regarding the economic prospects of the company, human resource issues, working conditions and safety at work. The purpose of these consultations is not to replace collective bargaining, although there is an obvious link between the two. The consultation and collective bargaining participants are often the same stakeholders, and more importantly, information sharing has an impact on wage demands addressed in the bargaining process, with these demands being informed by and based on shared data. Sometimes, however, consultations replace negotiations and focus on issues that would normally be addressed by collective bargaining. In other cases, the consultations address issues that are distinctive to collective bargaining, especially those related to management and production. A number of mechanisms are used, including hearings, conferences and reports. As noted by Sugeno, "... a majority of collective agreements are concluded through a procedure of labour and management consultation prior to collective bargaining, and many are concluded as a result of consultation procedures only. Labour-management consultation systems have become a central feature in the conduct of Japanese labour-management relations at the enterprise level⁶³".
99. Consultations between labour and management are legally based on article 28 of the Constitution, which provides for the autonomy of employers and workers but also allows for a great deal of creativity. The question of statutory workers' representation has been raised several times by various investigators but it seems that labour unions (Rengo) are internally divided on how to approach the relationship between union and non-union representation. It is interesting to note that labour legislation on employee representation evolved gradually as laws were amended in the light of new circumstances and needs. As highlighted by Verret Roussel,⁶⁴ due to the continuous decline in trade unionization rates worldwide since the 1970s, lawmakers in France and Japan have tried to compensate for this lack of trade unions. In Japan, the Labour Standards Act of 1947 introduced a system in which majority representatives and elected employees represented workers instead of trade unions. Later on, this system was expanded through successive amendments of various laws, and in 1998 the amended Labour Standards Act introduced another system of non-union employee representation, namely labour management committees comprising equal numbers of labour and management representatives. This amended Act was adopted as a compromise between labour and business representatives, and the creation of labour management committees was a concession granted by employers as part of their efforts to establish new discretionary work scheme introducing exceptions to limits on working hours. As noted by Verret Roussel, "Contrary to the majority representative, the labour management committee is expected to play [a] more general role. This committee is

⁶³ Verret Roussel, I. (2006). *Collective employee representation systems in Japan and France*.

⁶⁴ Ibid.

entitled to investigate and deliberate on matters related to working conditions...the decision of the committee adopted by at least four-fifths of the members can replace [a] labour-management agreement as to working hours or annual paid leaves. Nevertheless, [rather like] a workplace labour-management agreement, the decision of a labour management committee does not have a normative effect on individual labour contracts like collective agreements... hence the non-union representation system did not compensate for the lack of trade unions.”

100. This is in sharp contrast to the French system, where negotiating power was transferred to elected representatives in the absence of trade unions, and where an alternative system of employee representation exists. Another difference can be seen in the relationship between collective bargaining and consultation. While there is a clear functional distinction in France between these two actions, in Japan, this distinction is rather vague. Because unionized companies' labour unions perform both communication and advisory functions through joint consultation mechanisms and by exercising their collective bargaining powers, this consultation function seems to have, "...privilege over collective bargaining. Therefore Japanese enterprise unions are acting in a similar way to the French Works Councils.”⁶⁵
101. International practice with regard to statutory representation systems provides a variety of solutions reflecting very specific national traditions, and it is evident that none of those systems are “ready-to-use”, so to speak. In companies of a certain size in many countries, elected works councils investigate and consult with other stakeholders on labour-related matters, and monitor enterprise-related affairs. In Switzerland, for example, pursuant to the Participation Act, employees may elect a works council in companies with at least 50 employees. Works councils must be kept up to date with regard to all matters considered relevant to their mandates, and they must be consulted on occupational health and safety matters, collective dismissals, occupational pension funds and planned transfers. At least once a year, the employer must provide information to the works council regarding the impact of the business on employees. In the Netherlands, works councils enjoy the right of initiative, the right to access general and specific financial information, the right to provide advice as well as the right to offer prior approval. The company must therefore seek the works council's advice in respect to certain planned economic decisions and, if the advice given by the works council does not support the intended decision, that decision may be delayed by one month, during which time the works council may lodge an appeal with a competent court. If the company intends to implement, change or withdraw employee benefits, it needs to obtain the prior approval of the council. If the council fails to obtain prior approval, it must obtain the approval of a cantonal court; if the cantonal court does not grant its approval, the decision becomes null and void.
102. A sophisticated and unique method by which workers engage with their employers has been established in Germany. Works councils in that country may be elected in companies that have at least five employees, although there is no legal obligation to do so. However, if employees decide to elect a works council, the employer cannot prevent them from doing so. The power of works councils are far reaching and involve rights to information, consultation and even negotiation, with the latter being known as codetermination rights. The councils are particularly important in cases of downsizing and retrenchment. Employers are obliged to pay works council salaries and to cover the costs of external training. They must also provide works councils with offices, technical equipment and cover the costs of external advisors hired to promote the smooth functioning of a works council. An additional way that workers are involved in the decision-making process is through representation on supervisory boards for corporations that have between 501 and 2,000 employees. This is based on the Codetermination

⁶⁵ Ibid.

Act, pursuant to which, one third of supervisory board seats (or one half in companies with more than 2,000 employees) must be filled by workers' representatives. The supervisory boards exercise considerable power, including in relation to the appointment and removal of management board members.

X. Japanese tripartism

103. As is the case in many other countries, Japan has established an institutionalized system that allows employers' and workers' organizations to participate in labour policy creation, "...to ensure that, in the process of consensus building on policy, the position of workers and employers is duly reflected⁶⁶". Japanese tripartite institutions are particularly important in drafting labour policies and elaborating related legislation (the LPC and other consultative bodies that include social partners),⁶⁷ in setting minimum wages (Minimum Wage Councils) and in settling disputes (Labour Relations Commissions). The LPC was established in 2001 following the merger of the Ministries of Health, Labour and Welfare and the reorganization of ten advisory committees. Consultative labour councils also exist at the prefectural level and are similar in their structure.
104. The mandate of the LPC, as well as its internal structure and functions are regulated by the Cabinet Order on the Labour Policy Council. That mandate reflects the mandate of the MHLW (article 9, Part 2 of the Act on the Establishment of the MHLW, 2001) and is therefore restricted to labour-related matters⁶⁸. The LPC is composed 30 members, all appointed by the Minister, with an equal representation of ten members each for employers, workers and academics acting in the public interest. The president of the council is selected by the other council members. There are seven subcouncils that deal with specific issues, including working conditions, industrial health and safety, employment security, employment of persons with disabilities, the employment environment and equal opportunity, work life balance and human resources development. Those subcouncils are also tripartite, with their members appointed by the Minister. The LPC can also establish working parties, whose members are appointed by the LPC president. The quorum necessary for a decision to be adopted is two thirds of all members, with one third participating from each of the three sides, namely, the employers, workers, and academics acting in the public interest. Decisions are made by the majority consensus of those members attending. The LPC is supported both technically and financially by the MHLW. The LPC secretariat is provided by the Secretary General for Labour Policy for plenary sessions, and by the respective MHLW bureaus for subcouncil meetings. Members pay dues of 20,000 yen, although the payment of dues may be waived for certain members.
105. The legislative process within the LPC usually starts with the creation of a study group, comprised of academics and other experts. The study group's report is then submitted to the LPC, which discusses that report and then submits a formal proposal to the Minister. A draft legislative text is then elaborated by the relevant ministerial departments and then submitted back to LPC, which, after reviewing the draft text, submits its views thereon to the Minister. The Ministry then finalizes the draft text and, if necessary, holds consultations with other

⁶⁶ JILPT. (2016). *Labour situation in Japan and its analysis: general overview 2015/2016*. p. 111.

⁶⁷ Examples include: the temporary Council for the Implementation of the Work Style Reform (2017) or the previously existing Industry-Labour Consultation Body "Sanroku" (created in 1970 to enable consultation on industrial relations issues) and the Employment Policy Tripartite Council (1998).

⁶⁸ In many countries, similar consultative bodies may also be responsible for related economic affairs, thereby making their mandate much larger.

ministries. The final draft is submitted through the standard Cabinet Legislative Council screening process prior to its submission to the Diet for approval.

106. While the Japanese Government is not directly represented in the LPC, the MLHW supports its financial and logistical functions. The subcouncils have counterparts within individual technical units of the Ministry that oversee document management with a view to ensuring that the LPC functions effectively. Most of those interviewed agree that the LPC and its subcouncils play a very important role in establishing links between the world of work and the Government, and they believe that the LPC is a unique instrument for achieving consensus between parties involved in the decision making processes. However, several policy drafters⁶⁹ and those interviewed expressed concerns about the impact of the Government's deregulation policy.⁷⁰ The limited capacity of the LPC to achieve consensus on critical policy issues was also underscored by the decision of the Prime Minister to hand over responsibility for critical parts of WSR to a council created specifically for that purpose, rather than to the LPC. Another serious limitation of the LPC is its exclusive focus on labour-related matters. In fact, in many other countries, national consultative bodies bring together representatives of other government departments to strengthen their capacity to address more significant societal issues⁷¹.
107. The Minimum Wage Council (MWC) and prefectural minimum wage councils were created to establish criteria for a minimum wage and to submit proposals regarding minimum wage increases. Similarly to the LPC, these councils are comprised of employers, workers and academics. The history of minimum wage rates in Japan is another example of a case of step-by-step reforms that were implemented to align legislative and institutional mechanisms with social and economic developments as well as developments in industrial relations and tripartism. The Labour Standards Act of 1947 contained provisions that allowed administrative authorities to establish a minimum wage for certain industries and occupations, but these provisions were often not invoked. The Minimum Wage Act of 1959 was enacted during a period of rapid economic growth, and established various mechanisms for setting a minimum wage, including the "trade agreement method". That method violated ILO standards because it was based on unilateral decisions by employers, and the Act was therefore amended in 1968. The revised Act provided for two mechanisms, namely a regional minimum wage established through the extension of local collective agreements, and a minimum wage established by a council. However, the extension method proved to be ill adapted to Japan's decentralized collective bargaining system and so the council method prevailed. Further incremental revisions to the system were enacted, and particular focus was placed on achieving consistency among regional minimum wages through the adoption by the Central Minimum Wage Council of guidelines in that area for prefectural level councils. The most recent revision of the Minimum Wages Act occurred in 2007. This reform abolished the possibility of establishing regional minimum wages through the extension of collective bargaining agreements. The council method is now the only method by which minimum wages can be established. According to the revised Act, minimum wages must be established in each prefecture, and must take into account the cost of living as well as the ability of companies to pay. Criminal penalties for infringements of that Act have been increased considerably. The current Government is promoting regular

⁶⁹ Examples include: the work of Verret Roussel and Nakamura, K. (2009). *The process of formulating policy in labor matters: Derailment? Or transformation?* Japan Labor Review.

⁷⁰ The deregulation process began in 1995 with a deregulation subcommittee, which was created to exist within the Administrative Reform Committee.

⁷¹ Please see: R113 - Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), ILO.

increases in minimum wages in order to stimulate domestic demand and it provides subsidies that further boost incomes.

XI. Resolution of labour disputes

108. The development of labour dispute settlement mechanisms in recent decades provides further examples of how Japanese policy makers have revised legal and institutional frameworks in line with a changing environment. Such settlement mechanisms are designed to ensure adequate access to expedient and affordable justice for both workers and employers.
109. Several distinguished authors (Sugeno, Yamakawa, Doko) have recently analysed post-war changes to labour dispute resolution mechanisms and have raised questions about the future of those mechanisms. The labour relations commission system was established just after World War II, when collective labour disputes were of the highest importance. For several decades, Labour Relations Commissions (LRCs) were the only existing statutory labour dispute settlement institutions. The focus on collective labour relations during the post-war years was quite understandable. Democratization policies, including a new Constitution and the Labour Union Act of 1946, laid the groundwork for the growth of labour unions in an environment where the economy remained weak and radical rationalization had resulted in large scale dismissals. LRCs played a key role in resolving divisive industrial conflicts. After two decades of confrontation, labour-management relations underwent a qualitative change in the 1960s when moderate unions, concerned about the competitiveness of their companies, developed more cooperative relationships with management. However, more radical unions, which promoted more adversarial policies, continued to file numerous labour practice complaints with LRCs, particularly in regard to discriminatory practices perpetrated against minority unions and their members. As noted by Sugeno,⁷² LRCs contributed greatly to the transformation of enterprise labour relations during this period. LRCs also helped to manage industrial relations during the 1985-86 reform of the National Railway System. That reform sought to transform the national transportation system in a radical manner and, “marked the start of the privatization of nearly all national public enterprises.”⁷³ The settlement of cases related to the reform took almost three decades and was only completed in the late 2000s.
110. With the pivotal spring wage offensive of 1977, in which railway unions stopped asking the Central LRC to mediate their wage disputes, a new trend of autonomous settlement developed between the two sides within industry. As a result, the number of strikes has decreased sharply since the late 1970s, as has the number of complaints of unfair labour practices and requests for mediation. Concurrently, and particularly since the economic difficulties that began in the early 1990s, the number of individual disputes concerning working conditions such as unpaid wages, termination of employment and the validity of changes in working conditions considered to be negative, has multiplied. Aside from the economic reasons that have given rise to redundancy hiring suspension, promoted retirement and led to wage stagnation, other factors, including the diversification and individualization of workers in the labour market and the rising trend of part-time and other non-standard workers have had a profound effect in that regard. The steady decline in union membership (from about 35 per cent of the workforce in the 1970s to less than 18 per cent today) is another key factor that has led to a decline in the number of collective

⁷² Sugeno, K. (2015). *The significance of labour relations commissions in Japan's labour dispute resolution system*. Japan Labour Review.

⁷³ Ibid.

labour disputes and an increase in individual labour disputes. As highlighted by Sugeno,⁷⁴ “in the light of [the] conspicuous phenomenon of increasing individual labour disputes, it became obvious that the post-war labour dispute resolution system lacked institutions specializing in such disputes. In creating demand for the construction of specialized services to deal informally and expeditiously with individual labour conflicts, what was missing was, in the first place, a nationwide counselling service to be offered for various kinds of complaints brought in by individual workers. The agency in charge of this service would also offer an expeditious conciliation services if the party so requested.”

111. The aforementioned developments led the MHLW to draft the Act on Promoting the Resolution of Individual Labour Related Disputes in 2001. This ended the LRC’s monopoly on labour dispute settlement. The Act also provided for a new statutory scheme involving administrative bodies and 47 prefectural labour offices for the provision of counselling and conciliation services to parties in labour-related disputes. The same Act also stipulated that local government offices should endeavour to provide similar services. Per this stipulation, prefectural LRCs therefore offered conciliation services, primarily through a panel of three members representing the public interest, employers and workers. LRCs therefore entered a new sphere and their current success rates in conciliation services tend to be higher than the success rates of ministerial services, in spite of the fact that the number of individual cases heard by LRCs is still relatively low and their expertise in this field has not been fully established. According to Sugeno,⁷⁵ “...while maintaining and utilizing their accumulated expertise in collective labour relations, LRCs have to form and promote strategies to expand their activities in resolving individual labour disputes, which will surely continue to be the centrepiece of labour disputes in the future”. This view is shared by certain authors⁷⁶ and interviewees researched for this paper, but is opposed by some others.
112. The prolonged labour dispute mechanism reform process was completed with the creation of a new judicial system for the resolution of individual labour disputes pursuant to the Labour Tribunal Act of 2004. The adoption of that Act was made urgent by a lack of expeditious procedures within the court system to deal with unresolved labour disputes cases. Japan had traditionally lacked courts that specialized in labour disputes. In the early 2000s, however, there was an opportunity for large-scale justice system reform, and the “labour tribunal procedure” was created. According to this procedure, individual labour disputes brought before the district courts by any party in an employment relationship are assessed by a tribunal composed of one professional judge and two experts in labour relations who typically represent trade unions and management. In the event that the mediation efforts fail, the tribunal will issue a judgement decision. That decision is non-binding and can be appealed in an ordinary civil procedure court. This new system has worked well over the past decade: the tribunals have processed cases in a timely fashion and less than 10 per cent of cases brought before that tribunal have subsequently been transferred to a civil procedure court.
113. The current labour dispute resolution system is rather complex. It involves judicial authorities (ordinary civil courts) and administrative authorities, including dispute settlement commissions, prefectural labour directorates and local labour relations commissions, with all stakeholders providing conciliation services. Although there is no specific legal texts stipulating how tasks should be shared among for those bodies, according to Yamakawa, an unofficial

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Examples include: Suwa, Y. (2015). *The present situation and issues of the labour relations commissions system*, Japan Labor Review.

division of roles and a protocol for interactions between the judicial and administrative authorities has been established⁷⁷:

- (a) There are no specialized labour courts in Japan. However, since the adoption of the Labour Tribunal Act in 2004, a special labour tribunal procedure has existed alongside ordinary civil procedure mechanisms and temporary relief procedures. However, the labour tribunal procedure can only be used to resolve individual labour disputes⁷⁸. If a party appeals the judgement handed down by the labour tribunal, the case is transferred to ordinary civil procedure mechanisms. It is also possible to request temporary relief in emergency cases. Dismissals and unpaid wage disputes are usually handled by the labour tribunal, while more complicated cases, including cases extending beyond the scope of an individual dispute, such as those involving group dismissals or discrimination, are usually dealt with by the ordinary civil courts.
- (b) Various options exist on the administrative side, pursuant to either the Labour Union Act of 1945 (LRCs) or the Individual Labour Disputes Act of 2001 (Prefectural Labour Bureaus). While LRCs perform adjudicatory functions in relation to unfair labour practices, Prefectural Labour Bureaus provide either conciliation through dispute adjustment commissions or guidance and recommendations. Prefectural Labour Bureaus address almost all individual labour disputes. Each year, they hear around 5,000 conciliation cases and provide administrative guidance with regard to 10,000 cases. In addition to those cases, consultation and information is provided every year regarding approximately 250,000 cases.⁷⁹
- (c) Although labour inspectors have no official mandate to undertake dispute settlement activities, in practice, there is a close relationship between labour dispute settlement mechanisms and labour inspection services. Firstly, some disputes are solved when labour inspectors compel employers to take appropriate corrective measures. Secondly, close contact exists between the two services, since both dispute settlement bodies and labour inspection offices are located in prefectural labour offices. Such proximity fosters collaboration on certain cases.
- (d) LRCs were established as independent public bodies in March 1946, pursuant to the adoption of the Trade Union Act, with a view to resolving collective labour management disputes and adjudicating cases involving unfair labour practices. LRCs are tripartite administrative agencies that comprise members with responsibility for safeguarding the public interest, an employees' and employers' representatives. A Central Labour Relations Commission, affiliated with the MHLW, is comprised of 45 representatives, as well as 47 local LRCs that are part of prefectural offices and likewise have representatives from the three groups.
- (e) LRCs have played a crucial role throughout their existence: they have helped stabilize the Japanese economy, particularly during post-war periods of high inflation, and they determined wages after spring offensives by organized labour organizations. The Central Labour Commission's mission is to protect workers' rights and to promote the fair adjustment of labour relations. The primary functions of the Commission are to consider charges of unfair labour practices, in accordance with the Trade Union Act, and to promote the fair settlement of labour disputes under the Labour Relations Adjustment Act. The Commission examines unfair labour practice cases that affect more than two prefectures as well as cases that have national significance, and it resolves labour disputes through mediation and arbitration. Prefectural

⁷⁷ Ebisui, M. Cooney, S. Fenwick, C. (2017). *Resolving individual labour disputes, a comparative overview*, ILO.

⁷⁸ As is the case in many countries throughout the world, Japan makes a distinction between "individual" disputes between an individual employee and an employer, and "collective" disputes that involve organized workers (trade unions). Similarly, this distinction is also made between "rights" disputes, i.e., the determination of legal rights and obligations of the parties, and "interests" disputes in cases of diverging economic interests.

⁷⁹ It should be noted that administrative labour dispute mechanisms do not apply to most Government employees due to the fact that specific procedures have been established for public servants according to the National Public Service Act (No.120 of October 21, 1947 as last amended by Act No.42 of 2012).

LRCs are established in each prefecture so that initial examinations and steps to resolve cases involving unfair labour practices take place within the geographical area for which the prefecture in question is responsible.

XII. Labour inspection

114. Labour inspection is a vital part of the labour administration system. Its primary role is to enforce labour law compliance, especially if other measures to achieve that objective are unsuccessful. Labour inspection system functions⁸⁰ are defined in Labour Inspection Convention, 1947 (No. 81), which was ratified by Japan in 1953. As is the case in many other developed countries, labour inspection in Japan is an integral part of the mandate of the MHLW, which acts as a central authority for the coordination of labour inspection activities⁸¹. Management of the labour inspection system is undertaken by the Labour Standards Bureau Supervision Division, while the Industrial Safety and Health Department within the same Bureau oversees occupational health and safety issues. The implementation of labour inspection policies is carried out by the Prefectural Labour Bureaus as well as by Labour Standard Inspection Offices (LSIO). The system is hierarchical: the Prefectural Labour Bureaus are territorial units of the MHLW and the LSIOs are supervised and operated by the Prefectural Labour Bureaus.
115. Most individuals interviewed agreed that the number of inspectors is low as compared to the overall population of the country and the number of enterprises and workers that need to be inspected. While direct international comparisons are difficult to make due to the different mandates of inspectors, the ratio of approximately one inspector per 20,000 employees is relatively low compared to the ratio in many other developed countries⁸². Inspectors' heavy workloads mean that they find it difficult to carry out all their duties under the law. The insufficient number of labour inspectors has recently been raised by ILO supervisory bodies.⁸³
116. According to ILO Convention No. 81⁸⁴, inspection staff are public servants whose status and conditions of service are independent of changes of government, such that they are assured stability of employment and are isolated from improper external influences. Japanese labour inspectors are civil servants who are guaranteed job tenure and are protected from dismissal.⁸⁵ While they can be transferred between different LSIOs, these transfers are limited to one prefecture. Their salary is either comparable or slightly higher than that of an official working for a Prefectural Labour Bureau, but lower than a tax inspector's salary.⁸⁶
117. The aforementioned Convention also stipulates that labour inspectors must be recruited purely on the basis of their qualifications and their relevance to the performance of their duties. These qualifications should be ascertained by a competent authority and labour inspectors should be adequately trained so that they can perform their duties effectively.⁸⁷ In Japan, only those who are finishing their undergraduate degree are able to participate in the examination for a labour inspector position, which includes written tests and oral interviews. These tests may assess the candidate's grasp of social sciences (law and economics), or their knowledge of engineering.

⁸⁰ Three key functions are identified by Convention No. 81: enforcement of legal provisions, supply of technical information and advice to employers and workers regarding bringing incidents of defects and abuses not specifically covered by existing legal provisions of the Convention to the attention of the competent authority.

⁸¹ Convention No. 81, article 4.

⁸² For an example, please see: International Labour Conference (ILC), 95th session. (2006). Report III, Part 1B.

⁸³ Please see the observation of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) adopted in 2015 (ILC 2016). Note the Government's indication concerning the recruitment of new labour inspectors in 2014 and 2015 and the request for the continuation of measures to ensure a sufficient number of labour inspectors so as to secure an effective discharge of the inspectorate's duties.

⁸⁴ Convention No. 81, article 6.

⁸⁵ Labour Standards Law (Law No. 49 of 7 April 1947 as amended through Law No. 107 of 9 June 1995), article 97, para. 5.

⁸⁶ Sakuraba, R. (2013). *Effectiveness of labour law and labour inspection in Japan*. Kobe University Law and Policy Journal, No. 47.

⁸⁷ Convention No. 81, article 7.

Newly recruited labour inspectors then receive three months of basic training, while the rest of their first year in service is spent doing on-the-job training. Later on in their careers, inspectors have access to continuous training courses. Traditionally in the Japanese civil service, a great deal of importance is placed on training provided by senior co-workers and supervisors. Formal training is also provided in-house by the Labour College of the Japan Institute for Labour Policy and Training (JILPT).

118. The mandate of Japan's labour inspection services is quite extensive; those services enforce compliance with the 1947 Labour Standards Act, the 1959 Minimum Wage Act, the 1972 Industrial Safety and Health Act, the 1976 Security of Wage Payment Act and the 1970 Industrial Home Work Act. On the other hand, labour inspectors are not responsible for enforcing the equal treatment legislation⁸⁸, the 1949 Labour Union Act or the 2007 Labour Contract Act. In other words, Japanese labour inspectors, as their title suggests, ensure compliance with minimum standards established for working conditions. In 2008, however, their mandate was expanded pursuant to the Industrial Accident Compensation Insurance Act and labour inspectors are now responsible for determining whether injured or sick workers are eligible for compensation under that Act. As is the case in most other countries, the MHLW is not responsible for ascertaining labour conditions on boats; responsibility for this lies with the Mariners Labour Inspection Service, in accordance with the 1937 Mariners Act. The 1947 National Public Service Act also sets forth further exemptions for labour inspectors. Furthermore, domestic workers, workers employing only relatives who live together, and most Government employees are not covered by the labour inspection regime.
119. As is the case for their counterparts in other countries, labour inspectors in Japan have the power to enforce labour legislation. However, some authors in this topic area believe that these powers are still limited⁸⁹ because while, "labour inspectors have the authority to order suspension of the use of equipment and facilities, etc., they do not have the authority to order employers to correct the practices which violate labour laws...the real strength of labour inspectors depends on how effective the threat of criminal proceeding is."⁹⁰ In other words, if labour inspectors find that employers are in violation of the law, they may issue a recommendation for correction, which will probably be complied with. The recommendations they issue are voluntary, however, and are therefore treated as "administrative guidance". Fines may not always be imposed on a non-compliant employer. In accordance with the Industrial Safety and Health Act of 1972, mandatory administrative orders may be issued only at the discretion of inspectors.⁹¹ According to the guidelines set forth in that Act, the inspector can take all necessary measures to prevent industrial accidents, including halting work and suspending or altering the use of buildings. These orders are subject to the law and an employer may lodge an appeal against an order with an administrative body that outranks the labour inspector services.
120. The question of a labour inspector's power was thoroughly discussed with labour inspectors and other stakeholders interviewed. There are two major problems and these are related. Firstly,

⁸⁸ This is the role of prefectural Labor Bureaus.

⁸⁹ The issue of an inadequate enforcement policy was raised by the ILO tripartite mission that visited Japan in 1991. In the document, *Report of the tripartite mission on the effectiveness of labour inspection in Japan*, the following was recommended: "The LSB [Legal Services Board] should consider adopting a harder enforcement policy, possibly selectively in relation to the really uncaring employers in the areas of priority concern." The Report went on to say, "the LSB should review the adequacy of the legal powers available to inspectors to enforce the proper protection of dangerous parts of machinery, as well as the clarity of the legal requirements."

⁹⁰ Sakuraba, R. (2013). *Effectiveness of labour law and labour inspection in Japan*. Kobe University Law and Policy Journal, No. 47.

⁹¹ Industrial Safety and Health Act of 1972, article 98.

labour inspectors in Japan, as compared to their colleagues in many other countries,⁹² do not have the authority to impose administrative fines that would have an immediate impact on an employer who is grossly in violation of the law or who does not respect an inspector's instructions concerning compliance with labour standards. Secondly, inspectors must rely on the process of prosecution filing, a lengthy and time consuming procedure with uncertain results. Labour inspectors, who are under pressure regarding visits and related tasks, may be reluctant to initiate prosecution procedures, especially if they are not supported in this by other staff members. Meetings with Prefectural Labour Bureaus as well as LSIOs, confirmed that the number of prosecutions in this area remain low and that these procedures result in a successful prosecution only in a minority of cases.⁹³ Inspectors may be also be discouraged from filing a suit by astonishingly low penalties imposed on perpetrators of labour offences by the courts, even in cases in which it is clear that violations have resulted in serious repercussions for the health and lives of workers, as evidenced by the Dentsu case.⁹⁴

121. The number of inspections has declined over time. The most precipitous decline in their numbers occurred in the 1970s and 1980s. In fact, the number of inspectors fell from 237,770 in 1965 to 158,662 in 1991. As of 2015, the total was 169,236, and inspection rates stood at 4 per cent, a relatively low number compared with the 1965 figure of 10.9 per cent. Not surprisingly, this decline mirrors an increase in labour-related violations. In 2015, there were 133,116 periodic inspections, 22,312 complaint-based inspections and 13,808 re-inspections. Working hours accounted for the largest share of those violations, followed by safety standard violations and overtime wages for working on holidays and on nightshifts. 85.1 per cent of new complaints concerned the non-payment of wages, while complaints regarding dismissals comprised 15.3 per cent.
122. The number of judicial cases declined from 1,126 in 1965 to 1,036 in 2014. In 2015, the most recent year for which data has been made available, labour standard inspections resulted in 966 cases being referred to prosecutors. More than half of those cases concerned violations of the Industrial Safety and Health Act. A total of 402 cases concerned violations of the Labour Standards Act. Violations of the Minimum Wage Act accounted for only 14 cases. However, data showed that less than half of all those cases resulted in prosecution.
123. There is considerable scope for strengthening the labour inspection system and bolstering cooperation between that system and the judiciary. In that regard, there are numerous examples at the international level that could be researched for their potential practical applications. For example, some countries have established specific mechanisms to foster collaboration between the inspections and the judicial systems and, in certain countries, dedicated units within labour

⁹² For example, in the European Union, Governments typically use a combination of criminal and administrative sanctions. Administrative sanctions are the main enforcement tool in Austria, Denmark, Germany, Italy, Portugal, Slovakia and Spain, for example. Until 2004 The Netherlands treated breaches of working conditions legislation as criminal offences, but since that time they have changed to an administrative law approach regarding labour law violations, which includes allowing inspectors to issue on-the-spot sanctions. This decision was made, in part, due to the heavy workload of courts and a backlog of cases. Similarly, in Denmark the Working Environment Authority has had the power to issue administrative fines without a judicial decision since 2002. While the level of fines varies considerably between the EU member states, in order for penalties to be effective deterrents, they must be in proportion to the violation. For further information see: Vega, M., Robert, R. (2013). *Labour inspection sanctions: law and practice of national labour inspection systems*. ILO.

⁹³ Please see footnote 46. The 1991 ILO tripartite mission also recommended, "that the LSB investigates, with the relevant legal authorities, possible ways of streamlining the procedure for submitting prosecution cases with a view to saving inspector resources."

⁹⁴ Please see footnote 21.

ministries have been established, inter alia, to support labour inspectors when they initiate legal proceedings.⁹⁵

124. In addition to their inspection functions, labour inspectors in Japan undertake preventive activities, as per the provisions of the Industrial and Safety Act⁹⁶, and provide advice on the application of legal provisions under their jurisdiction, especially those outlined in the Labour Standards Act and its amendments. This advice is provided by the Prefectural Labour Bureaus or by LSIOs either to individual employers or to employer groups in the form of “collective guidance”. The labour inspection system also promotes the practice “self-inspection” through the distribution of questionnaires to establishments in targeted industries, and the analysis of the answers helps the inspectorates to set their own inspection priorities. Recently, with the assistance of the national and local media, the MHLW also expanded public service campaigns regarding fair working conditions. It is expected that the WSR process will substantially increase the burden on inspectors, who will be required to provide advice on aspects of WSR, particularly with regard to working hours.
125. The labour inspection regime in Japan, at least in terms of implementation in prefectures and regions, resembles the “integrated” labour inspection models common in Europe. In practice, this means that the same group of inspectors is responsible for both general labour conditions and health and safety matters. While new recruits for the labour inspection system selected to pursue one of two different tracks, by focusing on either the social or technical sciences, in practice labour inspectors are expected to be able to cover both specializations. In contrast to many other countries, Japan does not need to address staffing challenges resulting from the recruitment of the occupational health and safety personnel by the more competitive private sector companies. “Integrated” labour inspection models provide for specialization areas, especially at the national level where health and safety matters are coordinated by a dedicated department for industrial safety and health. That department, which is part of the Labor Standards Bureau, oversaw implementation of the 2013-2017 five year Occupational Safety and Health Plan, which was drawn up pursuant to the Industrial Safety Act of 1972.⁹⁷ Specialized units for occupational health and safety exist also at the prefectural level as well as at the level of labour standard inspection offices (LSIO) as it is obvious from the annexes to this report.
126. The country’s labour inspection system and social partners collaborate in a productive manner. At the national level, employers’ and workers’ organizations ensure that LPCs function correctly. They hold consultations on various labour-related matters, including the implementation of and compliance with labour laws. One of the LPC subcommittees focuses exclusively on occupational health and safety matters. Consultations and other types of cooperation exist at the regional level as well, where social partners provide feedback regarding identified labour inspection priorities. A significant proportion of labour inspections take place following complaints made about companies. In 2015, a total of 22,312 out of the total of 169,236 inspection visits took place following the filing of a complaint.
127. A specific Japanese practice that purportedly contributes to a higher compliance with labour and social security legislation is the existence of a group of labour and social security attorneys

⁹⁵ As noted by the ILO CEACR, the effectiveness of measures taken by the labour inspectorate, “depend to a large extent on the manner in which the judicial authorities deal with cases referred to them by, or at, the recommendation of labour inspectors.” Furthermore, these measures should be taken, “to raise the awareness of judges concerning the complementary roles of the courts and the labour inspectorate.” Please see CEACR. (2008). *General observations concerning Convention 81*, ILO. p.97.

⁹⁶ Industrial and Safety Act, articles 88 and 89.

⁹⁷ This is the 12th plan of this kind. The first one was adopted in 1957.

known as Sharoushi. Sharoushi started to provide their services pursuant to the adoption of the Act Concerning Labour and Social Security Attorneys of 1968 (the Sharoushi Act). According to the Act, “a Sharoushi shall contribute to the smooth implementation of labour and social security related laws as well as to the welfare of employees and the sound growth of industries.” Historically, Sharoushi primarily assisted with the application of social security legislation, which was introduced during the period of rapid economic growth in the 1960s. Today, their services include the preparation and submission of documents required by law, bookkeeping necessary for calculating social security premiums and assessing labour conditions, as well as the provision of legal advice on personnel management and payroll calculation. Pursuant to the adoption of new legislation in 2001, they now also play an important role within alternative dispute resolution systems, where they act as a mediation proxy for one of the involved parties or as mediators themselves. In addition to assisting employers and workers, Sharoushi have a close relationship with the Government in that they contribute to raising awareness about laws pertaining to labour and social insurance. In addition, they also cooperate with regional branches of the MHLW including LSIOs, Hello Work Centres and pension offices. There are two types of Sharoushi: those who are self-employed and manage their own businesses, and those who work as “in-house Sharoushis” for a specific employers or employers. Candidates for a Sharoushi position must undergo a thorough examination by the MHLW and only 3 per cent of these candidates pass those exams each year.

128. Efforts by Sharoushi to support compliance with labour and social security legislation become particularly important when the number of labour inspectors is relatively low and they are able to visit only a tiny proportion of the total number of companies every year. Recently, there have been discussions, especially within the Government deregulation council, about the possibility of outsourcing certain labour inspection functions. Most of the respondents who were asked about the future prospects of outsourcing mentioned the possible role of Sharoushi in gathering information for labour inspections, conducting research on compliance matters or extending their advisory, training or awareness-raising activities. However, there was consensus on the fact that, as per the requirements of Convention No. 81, the labour inspection authority is and must remain a public body and its mandate cannot be transferred to any private-sector entity.

XIII. Data and research

129. There is a general expectation that national labour policies in developed countries should be based on reliable, clear and comprehensive research. Labour ministries should be able to anticipate the impact of proposed policies and use this information when selecting from a range of possible solutions, in addition to subjecting policies and programmes to rigorous processes of evaluation⁹⁸. ILO Recommendation No. 158 concerning Labour Administration: Role, Functions and Organization stipulated that, “for the fulfilment of its social objectives, the system of labour administration should carry out research as one of its important functions and encourage research by others.” Since then, expectations have expanded. Objective and reliable data are needed so that stakeholders can evaluate the effectiveness of policies and measure the performance of institutions and individuals involved in policy making.
130. The capacity to produce and analyse statistical and administrative data in order to inform policy making is certainly one of the characteristic features of the Japanese labour administration system. Labour force surveys, published by the Statistics Bureau, are used in studies that are

⁹⁸ Heyes, J. (2016). *Comparative developments in labour administration*, ILO.

regularly made available on the MHLW website. This includes publications such as the “White Paper on the Labour Economy” or the annual “Health, Labour and Welfare Report.”

Among the statistical surveys⁹⁹ conducted by the Ministry, the relevant ones concerning labour matters include:

- a) Monthly Labour Survey
- b) Survey on Employment Trends
- c) Surveys on Employment Structure (eight specific surveys on different categories of workers)
- d) Survey on Labour Disputes
- e) General Survey on Labour Relations¹⁰⁰
- f) Survey on Labour-Management Communication
- g) Basic Survey on Wage Structure
- h) Survey on Wage Increases
- i) General Survey on Working Conditions
- j) Special Survey on Industrial Safety and Health
- k) Basic survey of Human Resources Development
- l) Other specific surveys concerning the following: occupational health and safety, occupational accidents, minimum wages, labour costs, employment measures for specific categories of workers, gender equality in employment and management.

131. The Japan Institute of Labour Policy and Training (JILPT), which is headed by a President assisted by Executive Directors for Administration, Research and Training, plays a specific role in labour research and has autonomous status. The JILPT is divided into two major units: the Research Institute for Labour Policy and the Labour College.¹⁰¹ It is fully funded by the MHLW and its research activities are strictly related to major policy topics concerning the Ministry, including employment systems, employment policies relevant to demographic and employment changes, the impact on employment of technological innovations, corporate behaviour strategies and WSR, vocational skills development and youth employment, career development support, conditions of employment and labour-management relations.

132. The JILPT conducts comprehensive research on labour policies, collects and analyses data, and seeks to establish strong relationships with domestic and foreign researchers and research institutions. The JILPT is also very active in disseminating its results, findings and policy proposals. The results of its research activities are published on the JILPT website, in newsletters and research reports and discussed during labour policy forums. The institute therefore contributes to more open and transparent discussions of policy options. JILPT is often asked to provide a foreign perspective on certain policy issues; it produces comparative reports and organizes workshop to compare international experiences, and often responds to specific requests concerning issues that are debated at the national level. The JILPT user-friendly website provides a wealth of information and provides access to a wide range of databases, research papers, research project outcomes, academic publications and labour statistics. A lot

⁹⁹ Available at: <http://www.mhlw.go.jp/toukei/itiran/eiyaku.html>

¹⁰⁰ It should be noted that while this survey contains detailed information regarding labour dispute settlement, it elaborates much less on labour-management consultation and does not include any data at all on collective bargaining.

¹⁰¹ The Labour College provides training to the employees of the MHLW. This training includes: courses for newly appointed supervisors, general training for new recruits and advanced training for established officials who are in their fifth year of service, in addition to specialized training for officials in the Labour Standards Inspection Offices and for officials involved in job placement. The JILPT also offers a wide range of training and career guidance tools.

of that material is available in English, and the website is therefore an excellent resource for international stakeholders interested in Japan's labour legislation.

133. The current status of labour issues in Japan is described and analysed in two major publications, "General Overview" and "Detailed Exposition." These two publications are based on studies by JILPT researchers who were assisted by officials from relevant MHLW departments. The traditional "Japan Labour Review," which published articles by Japanese and international authors, was replaced by a new journal entitled "Japan Labour Issues" in 2017. In addition to featuring conventional research papers, it aims to provide up-to-date information on current labour trends and developments in Japan. Other publications include, "International Labour Comparison", a booklet that contains a selection of labour indicators and "Japanese Working Profile", which provides select economic and labour statistics. Labour-related publications from all over the world are available at the JILPT library.

XIV. Some implementation challenges related to the WSR and beyond

134. As discussed previously, low unionization rates and the weakening of collective labour relations mean that the social partners alone cannot ensure decent working conditions for all workers. Other means are needed to achieve this. In many countries where trade union membership has declined and the ability of unions to defend labour standards has weakened, governments have been obliged to take other measures to ensure that workers are protected.¹⁰² The main essential elements for guaranteeing such protection are: an appropriate legal framework, competent labour inspection systems and effective dispute settlement institutions and procedures.
135. Since many existing legal provisions in Japan have never been fully implemented in the past, it would be naïve to think that a new WSR law alone will have a sudden and profound impact. Long-standing customs and attitudes that have developed in Japan over many decades must evolve as well. A certain type of corporate culture and traditional employment patterns have deeply penetrated the mind-set of the Japanese population, including their understanding of the role of work in their lives. For example, the law already provides for a certain number of paid leave days, but workers rarely utilize those days in full. On the contrary, the number of paid leave days taken has declined. A similar phenomenon can be seen with respect to maternity leave: not all women have fully utilized their right to paid maternity leave, and only a fraction of men have taken advantage of their right to paternity leave. Also the policy trying to reduce working hours is not entirely new, but the measures taken so far have had limited success. Despite figures indicating a shortening of working hours in Japan, these hours are still extremely long as compared with other industrialized countries, especially for non-regular workers. Also the wage gap between men and women has narrowed, but it is still rather wide despite legislative efforts. In sum, there is still a long road ahead to modify such deeply rooted habits and corporate practices.
136. Given these factors, it is clear that the WSR must be supported by non-legislative steps, if it is to be truly successful. The core measure foreseen under WSR is the adoption of a comprehensive bill amending existing laws. In total, eight laws will be affected, including the Labour Contract Act, the Part-time Workers Act and the Dispatch Workers Act. The adoption of this bill will be followed by adoption of new administrative guidelines or revisions to existing ones. However, legal reform is necessary but not sufficient to achieve real progress, especially given the relative weakness of the public labour inspection system and the quite low levels of compliance that go along with this. Other requirements include the full involvement and engagement of Japan's non-governmental partners, especially employers and workers and their respective organizations. The implementation of key WSR measures including, for example, measures to reduce working hours, will occur only if employers alter their outlook, take meaningful steps to change working environments and adapt business methods through a coordinated effort to avoid unfair competition of those who will stick to old standards. Therefore, a campaign to raise public awareness, along with various forms of political pressure on companies, needs to be implemented.
137. While the traditional methods for ensuring compliance with labour legislation include preventative measures, such as the provision of advice and assistance, awareness-raising

¹⁰² For example, in Australia trade unions previously had a very active role in enforcing labour standards according to the awards system. This enabled them to bring court cases and represent affected employees, thereby allowing the Government to focus its own enforcement efforts on the industries where unionization rates were low. In the 1980s however, when unionization rates declined and industrial relations were decentralized, the Government had to create a system of workplace ombudsmen in order to fill the enforcement gap and strengthen cooperation between the ombudsman and trade unions.

campaigns, the imposition of criminal penalties and sanctions for non-compliance, there are many other complementary ways to promote compliance. As noted by Yamakawa,¹⁰³ “...traditional methods are often insufficient today due to the change in the labour and employment relationship...therefore, it is necessary to consider new measures for implementing labour policies more sufficiently....the Government should consider mixed utilisation of these various measures and traditional measures. For this purpose, it is necessary to evaluate [the] effectiveness of each measure as well as the best combination of various measures.”¹⁰⁴

138. Some such measures are already incorporated into existing laws, through the use of positive and negative incentives. One example is The Act for Measures to Support the Development of the Next Generation under which a certificate is granted to companies that draw up action plans consistent with the Ministry’s guidelines. Another is the Act on the Promotion of Women’s Active Participation in Employment, where companies that take action to promote women’s participation in the workforce may receive subsidies. Economic incentives, such as subsidies based on the Employment Insurance Act, may be given to companies, which take action to stave off staff dismissals. Such action might include employee training, the transfer of affected staff members to related companies or the payment of “leave” allowances to workers made redundant. Subsidies may also be provided to companies that invest in new technologies or increase their staff’s wages. Negative incentives (disincentives) include the increasing number of provisions which allow for the public release of employers’ names if they fail to comply with specific laws, such as those on the employment of persons with disabilities and older persons, child and family care leave, part-time work, dispatch workers and safety and health at work.
139. The WSR Implementation Action Plan demonstrates clearly the Government’s understanding that a combination of policy measures is needed to address complex societal issues. The Plan’s objective is to create conditions for sustainable economic development by addressing several major bottlenecks such as: stagnating private demand, low productivity, a lack of innovation and the need to increase the labour force participation rate in order to confront the declining birth rate and aging population.
140. The Action Plan insists on certain requirements for companies. For example, the guidelines on equal pay for equal work require that companies take practical steps to improve the treatment of non-regular workers and to prevent excessive overtime. These requirements may be underpinned by positive economic incentives such as tax cuts or subsidies like those mentioned above. The Plan also outlines the need to make better use of existing moral rewards, such as those that reward exemplary compliance with laws to promote women’s participation and advancement, the employment of young people and the provision of childcare leave.
141. The Action Plan places considerable emphasis on spurring major changes in corporate culture and indeed in the very understanding of the role that work plays in the life of an individual. Yet the Government does not seem to expect these changes to come about as a result of collective bargaining between employers and workers at the industry or company level. This fact is rather revealing of the state of collective labour relations in Japan. The Government has chosen to rely on the unilateral adoption of administrative guidelines on how to interpret the new law, rather than perceiving this as an opportunity to encourage the social partners at the company and industry levels to reach consensus-based agreements on how to implement Action Plan provisions. Several interviewees suggested, in fact, that the only way to bridge the gap between

¹⁰³ Yamakawa, R. (2015). *Rethinking measures of implementation of labor laws and policies*. A Comprehensive Study on Measures for Implementing Labour Laws. Japan Society for the Promotion of Science, KAKENHI.

¹⁰⁴ Ibid.

the two sides of industry was through political pressure from top government officials as happened, for example, in the case of the agreement on overtime regulations. It was also asserted that companies traditionally follow the wishes of Government; Prime Minister's Abe call for wage increases in order to support economic growth was cited as an example of this.

142. Less attention is given in the Action Plan to more traditional enforcement using labour inspection mechanisms. It envisages investigations into serious cases of overwork (karoshi) and there is also a section on improving occupational health and safety at work, including by enhancing the status of industry doctors and strengthening their independence and neutrality. However, the Action Plan does not address how the labour inspection system as a whole could be strengthened. This may imply that the Government is placing more emphasis on “soft” measures; hence, the implementation periods indicated in the Annex of the Act (Achievement of Work Style Reforms) are long and extend to the year “2027 or later”. Indicators are either limited to the year 2020, or are vague, which makes evaluating the impact of the individual reforms rather problematic.
143. Yet there are some precedents for Japanese authorities to attempt to find solutions using persuasion rather than enforcement, and based on consensus rather than on third party decisions. This approach is reflected in cautious methods of policy implementation, and the prioritizing of persuasion and positive incentives over sanctions. Labour relations issues are regarded as complex problems with conflicting interests at play, and for which solutions are not always “black or white”. This approach is apparent in Japan's choice of regulatory mechanisms: the law is often quite general in scope, leaving a great deal open to interpretation by the administrative and judicial bodies. By definition, WSR cannot be imposed and successfully implemented exclusively through a top-down approach.

XV. Conclusions and recommendations

144. The measures envisaged by the WSR project and future challenges in the world of work will require a focused approach by the national labour administration system, further mobilization of human and material resources and the building of partnerships. This paper suggests a range of topics for further discussion and consideration.
145. While the planned reforms concern both sides of industry, namely employers and workers, the WSR Action Plan grants them only a limited role in implementation. WSR has been designed by the highest authorities in the State, and the usual tripartite consultation channels were at times circumvented in order to avoid the roadblocks that had impeded progress for decades. Nonetheless, if it is to be successful, the WSR requires the full engagement of employers and workers at the workplace level, as it needs to be applied in corporate practices, internal rules, collective agreements and individual contracts. Therefore, the MHLW should implement a strategy, in collaboration with representative organizations of employers and workers, to revitalize collective labour relations, which have been – also within the MHLW - in decline since 2001.
146. While the capacity of social partners to regulate labour conditions autonomously has weakened in recent decades, the importance of labour laws seems to be growing. WSR requires the amendment of eight pieces of legislation. It is essential that this legislation is implemented and compliance with it monitored. A discussion is needed concerning measures to enhance labour compliance in both the near and long term. This should address not only the human and

technical capacity of Labour Standard Inspection Offices, but also the enforcement methods to be used, including the powers of labour inspectors and collaboration between the labour inspection system and the judiciary. Other means of policy implementation should also be discussed, since the behavioural and societal changes envisaged by WSR cannot be achieved through legal measures alone.

147. A feature of the labour administration framework in Japan has been its capacity to reform itself and adjust to new circumstances in a coherent manner. Improvements to the labour administration system and its accompanying institutional and legal frameworks have been fairly constant over several decades; this has been possible in large part to the high quality of staff at MHLW headquarters and its regional offices, the systematic involvement of academics in its work and a relatively stable institutional framework. However, accelerating change related to the organization of work, the use of new technologies and the challenges posed by globalization¹⁰⁵ may require both a rapid adaptation of policies and greater flexibility for decision-making at lower levels of Government. Results-based management should be introduced throughout the whole labour administration system. Lower level managers and officials should be given more space to take initiative and adapt policies to local needs and circumstances. At the same time, greater attention should be given – also by Japanese scholars – to evaluation of the past policies. The government should use more systematically the existing research potential to assess implementation gaps.
148. Information and Communications Technologies (ICTs) have enormous potential not only to enhance the efficiency of the labour administration, but also to contribute to a closer relationship between Government authorities and the other stakeholders involved (employers, workers and the public). While Japan was a pioneer in the field of ICT since the 1970s, many other countries have recently made significant progress in this area, as described in recent ILO studies.¹⁰⁶ There is a huge potential for information exchange between Japan and other countries. Innovative practices have been applied to all branches of labour administration, and most notably in the area of labour law compliance. The Japanese labour administration should study and test these innovations with a view to their possible application in Japan.
149. The Japanese labour administration is able to generate statistical and administrative data that are consistent over long time frames. Compared to many other national labour administration systems, the capacity at the Ministry, the JILPT and other research institutions to analyse these data is remarkable. This analytical capacity supports policy making and it also allows for comparative analysis with other countries in the region and worldwide. The JILPT should be granted sufficient autonomy to carry out research in areas beyond those directly linked to ongoing policy projects. There are many long-term challenges related to the future of work that merit research, even though they may not require immediate policy action. A part of JILPT's budget should consistently be earmarked for such future-oriented research.
150. Innovative thinking, especially with respect to policy making, will be necessary if Japan is to prepare itself successfully to confront profound change in the world of work. Recent discussions and studies related to ILO's Future of Work Agenda have demonstrated that specific areas of labour policy, such as labour law, social security, labour relations and vocational training, need to be reconsidered in the light of changes related, amongst other

¹⁰⁵ Examples include: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-tokyo/documents/genericdocument/wcms_564682.pdf

http://www.ilo.org/global/topics/future-of-work/news/WCMS_613362/lang-en/index.htm

¹⁰⁶ Examples include: Galazka, A. (2015). *Report on the global survey into the use of information and communication technologies in national labour administration systems*, ILO.

Galazka, A. (2017). *Challenges to the use of information and communication technologies in labour administration*, ILO.

things, to technological advances, including artificial intelligence. Such efforts will also facilitate smooth transitions in individuals' working lives and the productive utilization of the work force through these times of change, while further improving working and living conditions and promoting harmonious relationships between employers and workers.