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**SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION
OF THE INTERNATIONAL COVENANT ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS**

**Day of general discussion on article 6 of the Covenant: the right to work
(Monday, 24 November 2003)**

**Comments on the draft general comment on the right to work (article 6 of
the International Covenant on Economic, Social and Cultural Rights)
(E/C.12/2003/7)***

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* Published as received, in the language of submission only.

** The opinions expressed in the present document are those of the author and do not necessarily reflect those of the United Nations.

1. I fully agree with the main ideas outlined in the draft general comment prepared by Mr. Texier (version of 30 August 2003). The document sets out the fundamental issues pertaining to the right to work embodied in article 6 of the Covenant and provides a good basis for discussion. I congratulate Mr. Texier on the draft that he has presented, which is modelled on the other general comments adopted hitherto by the Committee. This is an appropriate approach, which also helps to standardize the structure of general comments. Some remarks and suggestions on the draft are to be found below.

I. GENERAL REMARKS

2. I think that a little more stress could be laid on the “genetic” link between article 23, paragraph 1, of the Universal Declaration of Human Rights and article 6, paragraph 1, of the Covenant. This link could be briefly explored along the lines suggested hereunder:

(a) Article 6 of the Covenant follows on from and gives practical expression to article 23, paragraph 1, of the Universal Declaration. Eighteen years after the Universal Declaration was adopted, the Covenant shows how far the world has succeeded in implementing the Declaration;

(b) Article 6 represents, at the global level, the fullest and most prestigious recognition of the right to work to be found in an international treaty, the ratification of which gives rise to legal obligations for the States parties thereto;

(c) Article 6 not only recognizes the right to work, but also, and for the first time, determines its normative content (see the comments in section II). It separates the right to work from the conditions of work referred to in article 23, paragraph 1, of the Universal Declaration, in order to highlight the differences in their normative content and establish their individual legal identity, while demonstrating the close relationship between them (articles 6 and 7 of the Covenant).

3. The right to work is an **evolving right**. It is no longer the right which was proclaimed by Louis Blanc during the 1848 revolution and which then took its first steps towards implementation. No more is it exactly the same right as was set out in article 6 of the Covenant almost 40 years ago. It is already a right enriched by the contemporary development of economic and social relations in the twenty-first century.

4. In my opinion, therefore, one of the purposes of the general comment under discussion should be to further update and enrich the definition of the right to work by incorporating some of the new elements apparent now, at the beginning of the twenty-first century: the right to work as the right to decent work, an expression of human dignity, an important means for ensuring the economic, social and cultural development of nations in an era of globalization, and a way for individuals not only to earn their living, but also to realize their potential and use their talents. For millions of people, it is also a way out of marginalization and poverty.

5. In addition to the link between the right to work and the other fundamental rights enshrined in the Covenant - a link to which the draft (No. 1) rightly refers - it might perhaps be appropriate, in my view, to include mention of the close link that exists between the right to work and other human rights and fundamental freedoms, such as the prohibition and abolition of forced labour (article 8, paragraph 2, of the International Covenant on Civil and Political Rights), the right of everyone to liberty and security of person (art. 9, para. 1) and the right to respect for the inherent dignity of the human person (art. 10).

6. If we accept the Covenant's division of human rights into economic, social and cultural rights and its grouping of them into distinct categories, then the right to work is an "economic right". In my view, it might therefore be interesting and useful to reflect on the right to work as an "economic right". I wonder whether the economic nature of the right to work does not derive from the fact that one of the main spheres in which it is realized is in the economy, as well as in other areas outside the economic arena (management, education, culture, public health, etc.), in which work is a medium for the accomplishment of all these activities. Real and productive use of work determines the effectiveness of activities in all areas of public life, which are increasingly integrated by human labour.

II. PRACTICAL SUGGESTIONS

A. Normative content of paragraphs 1 and 2 of article 6

7. I suggest adding a brief statement in the text of paragraphs 7-20 on the purpose of article 6 of the Covenant.

8. Paragraph 1 is intended to ensure the recognition of the right to work in the international legal order to define its scope and, through ratification of the Covenant, to create the *vinculum juris* which renders the Covenant binding on all the States parties thereto.

9. As for the normative content of the right to work, one can identify at least four key elements as a basis for discussion:

(a) The right to work is an individual right which belongs to everyone. It is this characteristic that is stressed in article 1 (of the Covenant), where this is defined as the "right of everyone". It is equally a right of all human beings. In this sense, "equality" means the right of everyone, without discrimination of any kind, to engage in work;

(b) The right to work is the possibility of finding work and pursuing an occupation. This defines the broad scope within which the right to work is realized. It includes all forms of work performed, regardless of the mode of organization, the legal status of the employment contract and the forms of payment. It may be self-employment, dependent employment, work carried out in different areas and spheres (agriculture, industry, services), a liberal profession, public administration or domestic employment. The work that an individual does in exercise of his or her right to work must be decent and fairly remunerated and must be carried out in just and favourable conditions (article 7 of the Covenant);

(c) The work must be freely chosen or accepted. Freedom of labour is guaranteed by the prohibition and abolition of forced or compulsory labour. Freedom of labour goes well beyond the nature of the employment relationship, whatever it may be, and implies that it is an integral part of the individual's freedom within society;

(d) Protection and promotion of work. "Protection" is assured by creating conditions that are favourable to its realization. Article 7 of the Covenant establishes the prerequisites for protection. "Promotion" means preventing any violations and infringements of the right to work. Here, one might refer to legal protection of the right to work and stress the justiciability of the right to work within the framework of an employment relationship.

10. A paragraph could be added here, or at any other convenient place in the text on protection of the right to work, on the subject of employment termination regulations in order to stress the importance of the ILO Termination of Employment Convention, 1982 (No. 158), and Recommendation No. 166 on the same subject, and of legal protection against unlawful dismissal. Without legal rules that offer effective protection against employment termination, any genuine application of the right to work is doomed to fail.¹

11. The aim of paragraph 2 is to define the measures that each State party ratifying the Covenant must take to give effect to the right to work. By way of illustration, paragraph 2 lists the three main categories of these measures, as follows:

(a) Development of vocational guidance and technical training. We have taken the example of these two areas of national education policy because of their close connection with direct participation in work and the implementation of the right to work. They include the establishment and resourcing of vocational guidance services, vocational education institutions, and so on (general comment No. 13: The right to education);

(b) The design of programmes, policies and methods for achieving steady and continuous economic, social and cultural development. Here, it would be useful to refer to the ILO Convention concerning Employment Policy, 1964 (No. 122), and Recommendation No. 169 concerning employment policy (supplementary provisions) of 1984, for the formulation of national employment policies for the active population. These programmes and policies must provide for the creation of new jobs;²

(c) Guarantees of full and productive employment. This mainly consists in the creation of a sufficient number of jobs. Job creation is the first real step towards the implementation of the right to work;³

(d) The design and implementation of employment programmes and policies must safeguard fundamental political and economic freedoms to the individual.

12. I think that it might be useful, for the purposes of systematic interpretation of article 6, to define the relationship between paragraphs 1 and 2 of article 6 of the Covenant as one between an objective (para. 1) and the ways and means by which it is achieved (para. 2).

B. Obligations of States parties

13. In paragraph 21 of the general comment, it might perhaps be appropriate to underline the fact that the main obligation (i.e. to take action progressively to ensure the full exercise of the right to work, which means moving as quickly as possible towards the objective of full employment) is a **complex** obligation. It is an obligation which encompasses a set of practical obligations, requiring the State to undertake and apply such measures as will lead to the effective application of the right to work.

14. The taking of such measures is an obligation to “act”. These measures can be divided into three categories:

(a) Legislative measures: these are expressed in the establishment of a basic legislative framework for the conduct of labour relations, the adoption of a draft law to regulate recruitment and minimum standards on the rights and duties of the parties, conditions of work, employment termination rules, and so on. Within this normative framework, an appropriate place must be found for collective agreements, consultation between Governments, trade unions and employers’ organizations and for free participation by workers and employers in occupational organizations;

(b) Administrative measures: depending on local conditions and traditions, provision should be made for the creation of labour administration bodies to monitor the application of labour legislation and follow up on the implementation of the right to work. They should be provided, inter alia, with an adequate number of labour inspectors, suitable local offices, transport facilities, equipment and supplies. Here, one needs to demonstrate the importance of the International Labour Organization (ILO) conventions concerned with labour administration and labour inspection (Convention No. 150 and Recommendation No. 158 concerning Labour Administration: Role, Functions and Organisation, 1978, the Convention concerning Labour Inspection in Industry and Commerce, 1947 (No. 81), and the Convention concerning Labour Inspection in Agriculture, 1969 (No. 129), etc.);

(c) Financial measures: employers should be encouraged to take on job-seekers in the most vulnerable and marginalized categories - the disabled, persons belonging to minorities, unemployed youth, the long-term unemployed, women, migrants, and so on - through tax reductions, protection measures, budget financing and financial assistance from the United Nations Development Programme (UNDP), international financial institutions, and so on.

15. Helping individuals to exercise their right to work. This includes creating special services to supply and disseminate information about job vacancies, recruitment criteria and opportunities for vocational and continuous training and helping employers and job-seekers to establish contacts with one another that will lead to the negotiation and signing of labour contracts.

16. Main obligations of the States parties to the Covenant. At least the **core content** of the right to work and the other rights recognized in the Covenant must be ensured (general comment No. 3). I suggest, by way of example, that the following elements of the core content of the right to work be discussed:

- (a) The adoption of a national economic development strategy aimed at creating new jobs;
- (b) Giving national priority to an active employment policy;
- (c) Establishing a basic administrative infrastructure for the management of human resources and labour relations (a ministry of labour, labour inspection, etc.);
- (d) Laying the legal foundations for the regulation of labour relations: an employment act or other set of national norms placing labour relations within a regulatory framework;
- (e) Conducting surveys on the size of the country's active population and the number of persons who are unemployed and seeking work;
- (f) Guaranteeing employment for at least 75 per cent of country's active population between the ages of 16 and 60.

C. Obligations of actors other than States parties

17. Paragraph 36 of the draft rightly acknowledges the role of "enterprises" in the realization of the right to work. In my view, greater emphasis could be given to the **important role of employers** in the realization of the right to work: in the final analysis, it is they who create and shed jobs, who decide whether to increase or reduce output and who grant people access to work or dismiss workers and managers. The right to work cannot be realized without the active participation of employers.

18. Paragraph 37 of the draft rightly stresses the role of the International Labour Organization (ILO). I should like, if I may, to make two brief suggestions on this subject:

- (a) The general comment should highlight the positive and historic role that tripartism, which was invented by ILO, has played in the drafting and adoption of labour conventions and recommendations from the beginning of the twentieth century (1919) until the present time. It is an impressive illustration of the "global civil society" at work. For 85 years, since the era when the very notion of civil society was little more than a philosophical construct formulated by Emanuel Kant, ILO has been a tireless and successful promoter of tripartism;
- (b) The general comment should emphasize the role of the ILO monitoring mechanisms (the Committee of Experts on the Application of Conventions and Recommendations (1926) and the Committee on the Application of Standards at the annual

sessions of the International Labour Conference), two bodies which undertake periodic (annual) monitoring of the application of ILO conventions and recommendations by the Organization's States members. This follow-up mechanism, with its reporting system and establishment of an expert body to monitor implementation, has set the standard for the establishment of monitoring bodies in other international organizations (the United Nations, the Council of Europe, etc.).

D. Recommendations to States parties

19. I suggest that the general comment should strongly recommend the development of **social dialogue**, tripartism and a policy of consultation between representatives of the State, employers' organizations and trade unions, as well as with other civil society organizations, in the formulation and implementation of a national policy on full, productive and freely chosen employment that forms part of national policy for the realization of the right to work.

Notes

¹ E. Sims, Employment security, in *International labour standards: a global approach*, ILO, Geneva, 2002, pp. 247-253.

² Ibid., pp. 217-221.

³ Ibid., pp. 233-235.
