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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: right to work
(Monday, 24 November 2003)**

Draft

**General comment on the right to work (art. 6) of the International
Covenant on Economic, Social and Cultural Rights**

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on Economic, Social and Cultural Rights**

The views expressed in this document are those of the author and do not necessarily reflect those of the United Nations.

Key

The notes in italics are clarifications of the text (largely citations of articles from International Labour Organization conventions) and will not appear in the final text. In addition I have on occasion in referring to an international instrument included the full text for easier understanding; this will not appear in the final text.

I. INTRODUCTION AND BASIC PREMISES

1. The right to work as a fundamental right is recognized in several international legal instruments. The International Labour Organization (ILO) itself is based on the idea that labour is not a commodity, and that poverty anywhere constitutes a danger to prosperity everywhere.¹ The International Covenant on Economic, Social and Cultural Rights deals more comprehensively than any other instrument with this right, enunciated in its articles 6, 7, and 8. The right to work is a fundamental right per se, and one of the keys to the exercise of other rights inherent in the human person.² Every individual has the right to be able to work, allowing him to live in dignity. The right to work contributes [both] to the survival of the individual and to that of his family, but also, inasmuch as work is freely chosen or accepted, to his development and recognition within his community.³ The right to work determines enjoyment of a group of rights enunciated in the International Covenant on Economic, Social and Cultural Rights.

2. The International Covenant on Economic, Social and Cultural Rights enunciates the right to work in a general sense in its article 6, and explicitly develops the individual dimension of the right to work through its recognition in article 7 of the right of everyone to the enjoyment of just and favourable conditions of work, and in particular to safe working conditions, and the collective dimension of the right to work in article 8, by enunciating the right of everyone to form trade unions and join the trade union of his choice, and the right of trade unions to function freely. In the drafting of article 6 of the Covenant, the Commission on Human Rights affirmed the need to recognize the right to work in a broad sense [preceding articles 7 and 8] by enunciating specific legal obligations and not a simple philosophical principle.⁴ Article 6 defines the right to work in a general and non-exhaustive manner. In article 1 of paragraph 6, States parties recognize “the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right”. In paragraph 2, they recognize that “to achieve the full realization of this right” the steps to be taken “shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual”.

3. These objectives reflect the fundamental purposes and principles of the United Nations, as defined in Article 1, paragraph 3, and Article 55 of the Charter of the United Nations. The essence of these objectives is also reflected in article 23, paragraph 1, of the Universal Declaration of Human Rights, which states that “everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment”. Since the adoption of the Covenant by the General Assembly in 1966, several international and regional human rights instruments have recognized the right to work. At the

international level, the right to work is enunciated in article 5, paragraph (e) (i), of the International Convention on the Elimination of All Forms of Racial Discrimination⁵ and in article 11, paragraph 1 (a), of the Convention on the Elimination of Discrimination against Women.⁶ Several regional instruments recognize the right to work in its general dimension,⁽⁷⁾ including the European Social Charter of 1961 (art. 1⁸) as amended, and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (art. 6⁹), which recognize the principle that respect for the right to work imposes on States parties an obligation to take measures aimed at the realization of full employment.⁽¹⁰⁾ Similarly, the right to work has been proclaimed by the United Nations General Assembly in the Declaration on Social Progress and Development, in its resolution 2542 (XXIV) of 11 December 1969 (article 6¹¹). Realization of the right to work can be assured through various complementary measures, including the formulation of policies on training, on access to employment, on countering unemployment, and on the provision of unemployment benefits, as recommended and further developed by the International Labour Organization, or the adoption of specific legal instruments. Further, the right to work includes certain elements compliance with which is guaranteed by law, in particular the principle of non-discrimination in access to employment, hiring, career progression, and dismissal, a right guaranteed by law in many national jurisdictions.

4. In accordance with the principle enunciated in paragraph 5 of the Vienna Declaration and Programme of Action, “all human rights are universal, indivisible and interdependent and interrelated”. The right to work is closely linked to and is interdependent with other human rights, and is thus dependent on their realization: this includes both social and civil and political rights. [These rights and freedoms, in particular, are intrinsic components of the right to work.] The right to work is inseparable from the inherent dignity of the human person, and is essential to the realization of other fundamental rights enunciated in the International Bill of Human Rights. The Committee, in paragraph 3 of its general comment No. 15, on the right to water, emphasizes that article 11, paragraph 1, of the Covenant recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing”. Use of the word “including” indicates the non-exhaustive nature of the list of rights. The right to work clearly falls within this list of rights.

5. Throughout the world, 180 million people are unemployed, 41 per cent of them young men and women.¹² The right to work, as enunciated in the International Covenant on Economic, Social and Cultural Rights, affirms the obligation of States parties to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly. [This definition illustrates the fact that respect for the individual and his dignity is expressed through the freedom of the individual regarding the choice to work, while emphasizing the role of work in the personal development of the individual, but also more generally by including the individual in society.] Nevertheless, for millions of human beings throughout the world, full enjoyment of the right to freely chosen or accepted work remains a remote prospect. The Committee recognizes the existence of structural and other obstacles arising from international and other factors beyond the control of States which hinder the full implementation of article 6 in very many States parties.

6. With the aim of helping States parties to implement the Covenant and discharge their reporting obligations, this general comment deals with the normative content of article 6 (chap. II), the obligations of States parties (chap. III), violations (chap. V), and implementation

at the national level (chap. VI), while the obligations of actors other than States parties are covered in chapter IV. The present general comment is based on the experience gained by the Committee over many years in its consideration of reports of States parties.

II. NORMATIVE CONTENT (paras. 1 and 2) OF ARTICLE 6

7. The right to work should not be understood as an *individual and (unconditional) right to obtain employment*. The right to work implies both freedoms and rights. Paragraph 1 of article 6 contains an incomplete definition of the right to work, and paragraph 2 cites, by way of illustration and in a non-exhaustive manner, examples of obligations incumbent upon States parties. The freedoms include the right of every human being to decide freely to accept or to choose work, which implies not being forced in any way whatsoever to exercise or engage in employment. The Committee reaffirms the prohibition of all forms of forced labour and the need for consent of the individual, however given.

8. [Access to decent work is one aspect of realization of the dignity of the person. Work as enunciated in article 6 of the Covenant must be such as to be *decent work*. *Decent work* is any work which respects the fundamental rights of the human person as well as the rights of workers, and which provides an income allowing the worker to earn a living for himself and his family. These fundamental rights include respect for the physical and mental integrity of the worker in the exercise of employment. By way of example, the Committee affirms its concern at sexual and psychological harassment, affecting for the most part women, and including the practice of surveillance and remote surveillance of workers.] In addition, among these rights are included the right of access to a system of protection guaranteeing each worker access to employment, and not to be unfairly deprived of employment, thereby affording him a living for himself and his family and contributing to his personal satisfaction. The Committee recalls ILO Convention No. 158 on Termination of Employment, which defines the lawfulness of dismissal in its article 4.¹³

9. Emphasis must be placed on the interdependence of articles 6, 7 and 8 of the Covenant, and in particular article 7 in its definition of the concept of *decent work*. The characterization of decent work as understood by the Committee supposes that the work respects the fundamental rights of the worker. These rights are protected in part by article 7, enunciating the rights of workers in terms of conditions of work, safety and remuneration. Articles 7 and 8 will be the subject of separate general comments.

10. The Committee reaffirms the need for States parties to abolish, forbid and counter all forms of forced work, as enunciated in the Universal Declaration of Human Rights (art. 4)¹⁴, article 5 of the Slavery Convention¹⁵ and article 8 of the International Covenant on Civil and Political Civil Rights.¹⁶ The International Labour Organization defines forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.¹⁷

11. High unemployment and the lack of secure employment are responsible for flexible practices inducing workers to take employment in the black economy. The State party must take the requisite legislative and administrative measures to reduce to the fullest extent possible the number of workers outside the formal economy, who as a result of that situation have no

protection. Such measures must compel employers to respect labour legislation and declare their employees, thus enabling them to gain access to enjoyment of all the rights of workers, in particular those provided for in articles 6, 7 and 8 of the Covenant as implemented by States parties. The underlying approach to such measures must reflect the fact that people living in an informal economy do so for the most part because of the need to survive rather than out of choice. The Committee insists on the need for policies to encourage businesses to assume responsibility, and to promote microenterprises and self-employment. Governments must formulate and implement comprehensive policy approaches that will help the informal sector and workers to overcome the obstacles to the benefit of the security that legal recognition would give to businesses and to the creation of decent employment. Similarly, domestic work must be properly regulated by national legislation so that domestic workers enjoy the same level of protection as other workers.

12. The right to work in all its forms and at all levels implies the existence of the following interdependent, essential elements, implementation of which will depend on the conditions present in each State party:

(a) *Availability*. In each State party there must exist specialized services whose role it is to assist and support individuals to enable them to have access to the labour market and find (stable) employment;

(b) *Accessibility*. The labour market must be accessible to everyone under the jurisdiction of the State party. Accessibility comprises three intersecting dimensions:

(i) Under its article 2, paragraph 2, and article 3, the Covenant prohibits any discrimination in access to and maintenance of employment on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, or civil, political, social or other status, which has the intention or effect of impairing or nullifying exercise of the right to work on a basis of equality. It is appropriate to reaffirm the principle set forth in article 2 of ILO Convention No. 111 that States parties should “declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof”.¹⁸ As emphasized in paragraph 18 of general comment No. 14, on the right to health, many measures, such as most strategies and programmes designed to eliminate employment-related discrimination, can be pursued with minimum resource implications through the adoption, modification or abrogation of legislation or the dissemination of information. The Committee recalls that, even in times of severe resource constraints, vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes;¹⁹

- (ii) The right to work as defined in article 6 of the Covenant considers work as a constituent element in a life with dignity for the individual, in that it provides the economic resources to live. Physical accessibility is one dimension of accessibility to employment, as enunciated in paragraph 22 of general comment No. 5, on persons with disabilities. The State party has a duty to take the requisite measures for physical access by disabled persons to their employment so as to ensure that all have access to employment;²⁰
- (iii) Accessibility of information: accessibility includes the right to research and to be informed of means of gaining access to employment through the establishment of information networks on the employment market at the local, regional and national levels;

(c) *Acceptability and quality.* As the Committee has already stated (paragraph 2 of the general comment), protection of the right to work incorporates several dimensions. Facilities, the workplace and more generally speaking the conditions of work of the worker are protected by the Covenant in articles 7 and 8.

Special topics of broad application

Disabled persons and the right to work

13. The Committee recalls the principle of non-discrimination in access to employment by disabled persons enunciated in its general comment No. 5, on persons with disabilities, and in particular paragraphs 20 to 24 relating to article 6, in particular the need for States parties to give active support to the integration into the regular labour market of persons suffering from disabilities. In fact “the ‘right of everyone to the opportunity to gain his living by work which he freely chooses or accepts’ is not realized where the only real opportunity open to disabled workers is to work in so-called ‘sheltered’ facilities under sub-standard conditions”.²¹ States must take measures allowing disabled persons to secure and retain appropriate employment and to progress in their occupational field “according to their capabilities,”²² and thus to facilitate their integration or reintegration into society.²³ [The Committee affirms the need to implement a national programme for the adoption of measures, in particular legislative measures, affirming the right of the disabled to work and have the status of workers.]

Older persons and the right to work

14. The Committee recalls its general comment No. 6, on the economic, social and cultural rights of older persons, and in particular the need to take measures to prevent discrimination on the ground of age in employment and occupation.²⁴ [The Committee emphasizes the right of all workers to retirement beyond a certain age determined by the State party and the need to establish retirement preparation programmes and to ensure a decent end to their working life allowing older workers to cope with their new life.]

Women and the right to work

15. In the terms of article 3 of the Covenant, States parties undertake to “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights”.²⁵ The Committee recalls, in

order to break the vicious circle of poverty and discrimination against women which is transmitted from one generation to another, the need to formulate and implement a comprehensive national strategy to promote non-discrimination and equality of treatment of women in their right to work. In particular, the situation of pregnant women must not constitute an obstacle to employment and should not constitute justification for loss of employment. Lastly, emphasis must be placed on the link between the fact that women have less access to education than men and certain traditional cultures which compromise the opportunities for the employment and advancement of women.

Young people and the right to work

16. Passage to adulthood and access to a first job constitute an opportunity to escape poverty. Nevertheless, young women have more difficulty than young men in finding employment. States parties should implement national measures to promote and support young people, in particular young women, in access to employment.

Migrant workers and the right to work

17. The principle of non-discrimination and equality of treatment is set forth in particular in article 25 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.²⁶ In addition, ILO Convention No. 143 concerning Migrant Workers of 1975 strongly encourages States parties to “declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation (...) for persons who as migrant workers or as members of their families are lawfully within its territory”.²⁷

Children and the right to work

18. The protection of children at work falls under article 10 of the Covenant, which defines protection and assistance for the family, in particular young people and children. However, international human rights instruments adopted after the International Covenant on Economic, Social and Cultural Rights, such as the Convention on the Rights of the Child, have recognized the need to protect children and young people against any form of economic exploitation or forced labour.²⁸ ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 1999, and in particular its article 3, which enumerates the worst forms of child labour,²⁹ completes the international machinery on the prohibition of child labour. Lastly, the Committee recalls its general comment No. 14, and in particular paragraphs 22 and 23 on the right to health of children, and emphasizes the need to protect children from forms of work that are likely to interfere with the child’s development or physical or mental health.

19. The necessity must be reaffirmed of protecting children from economic exploitation and allowing them to pursue their full development through the measures indicated in article 6, paragraph 2, such as technical and vocational training. In this connection the Committee recalls its general comment No. 13, in particular the definition of technical and vocational education (paras. 15 and 16),³⁰ which should be understood as a component of general education.³¹

20. *Limitations*

[The Committee reaffirms the principle enunciated in article 4 of the Covenant that the rights enunciated in the Covenant may be subject only to such limitations as are determined by law only insofar as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.]

III. STATES PARTIES' OBLIGATIONS

General legal obligations

21. The principal obligation is to ensure the progressive realization of the full exercise of the right to work, which imposes the obligation to progress as quickly as possible towards the objective of full employment. While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect.³² States parties have immediate obligations in relation to work freely chosen or accepted: for example, the obligation to “guarantee” that it will be exercised “without discrimination of any kind” (art. 2, para. 2) and the obligation “to take steps” (art. 2, para. 1) towards the full realization of article 6.³³ Such steps must be deliberate, concrete and targeted towards the full realization of the right to work.

22. The fact that realization of the right to work takes place over a period of time, that is that realization is “progressive”, should not be interpreted as depriving States parties’ obligations of all meaningful content. It means that States parties have a specific and continuing obligation “to move as expeditiously and effectively as possible” towards the full realization of article 6.

23. As with all other rights in the Covenant, there is a strong presumption that retrogressive measures taken in relation to the right to work, and in particular to dismissal, are not permissible. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party’s maximum available resources.³⁴

24. The right to work, like all human rights, imposes three types or levels of obligation on States parties: the obligations to *respect*, *protect* and *fulfil*. The obligation to fulfil contains obligations to facilitate exercise of the right and the obligation to promote it. The obligation to respect the right to work requires States to refrain from interfering directly or indirectly with enjoyment of the right, while the obligation to fulfil the right to work requires the State to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to ensure its full realization.

25. The obligation to respect the right to work requires States parties to avoid measures that hinder or prevent enjoyment of the right. The obligation to protect the right places the protection and promotion of employment at the centre of national policy, and requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to work. The obligation to facilitate exercise of the right to work requires States to take positive measures that enable and assist individuals and communities to enjoy the right to work. Finally, States parties have an obligation to provide the right to work. As a general rule, States parties are obliged to provide a specific right in the Covenant when an individual or group is unable, for reasons beyond their control, to realize the right themselves by the means at their disposal. [However, the extent of this obligation is always subject to the text of the Covenant.]

Specific legal obligations

26. In particular, States are under the obligation to *respect* the right to work by, inter alia, refraining from denying or limiting equal access for all persons, especially vulnerable or marginalized individuals, including prisoners or detainees (on a voluntary basis), members of minorities, and migrant workers, to decent work. In particular, States parties are bound by the obligation to respect the right of women and young persons to have access to decent work, and thus to take measure to combat discrimination and to promote equal access and opportunity. The obligation to respect the right to work includes the responsibility of States to prohibit forced or compulsory labour, and respect therefor by non-State actors.

27. With regard to the obligations of States parties relating to child labour, protected by article 10 of the Covenant, the Committee recalls paragraph 55 of general comment No. 13, on the right to education, in which it declares that “States parties have an obligation to ensure that communities and families are not dependent on child labour. The Committee especially affirms the importance of education in eliminating child labour and the obligations set out in article 7, paragraph 2, of the Worst Forms of Child Labour Convention, 1999 (Convention No. 182).³⁵ Additionally, given article 2, paragraph 2, States parties are obliged to remove gender and other stereotyping which impedes the educational access of girls, women and other disadvantaged groups”.

28. Obligations to *protect* include, inter alia, the duties of States to adopt legislation or to take other measures ensuring equal access to work, to ensure that privatization measures do not undermine employment, and to ensure that the general economic situation of the country and the region does not constitute a threat to the availability, accessibility, acceptability and quality of work. Further, the obligation to protect includes the implementation by the State of technical and vocational education plans to facilitate access to employment, as well as plans to counter unemployment.³⁶ Lastly, specific measures to increase the flexibility of labour markets must not make work less stable or reduce social protection of the worker.

29. The obligation to *fulfil* require States parties, inter alia, to give sufficient (central) recognition to the right to work in national political and legal systems (preferably by way of legislative implementation), and to adopt a national policy on the right to work and a detailed plan for realizing that right. [States are bound to implement and ensure the development of technical and vocational training and education for young people in particular but also for the retraining of workers and improvement of their skills and knowledge through continuous training.³⁷] Lastly, implementation of the right to work requires formulation and implementation

by the State party of an employment policy with a view to “stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment”.³⁸

30. The obligation to *facilitate* requires States inter alia to take positive measures that enable and assist individuals to enjoy the right to work. States parties are also obliged to provide a specific right contained in the Covenant when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal. The obligation to promote the right to work requires States to undertake actions that create, maintain and restore the right to work of the population. It is in this context that effective measures to increase the resources allocated to reducing the unemployment rate, in particular among women, the disadvantaged and marginalized, should be taken by States. [Further, the Committee emphasizes the need to establish a compensation mechanism in the event of loss of employment, as well as the obligation to take the requisite measures for the establishment of employment services (public or private) at the national and local levels.³⁹]

International obligations

31. [Globalization as an economic phenomenon is not in itself negative. Nevertheless, the Committee recalls the need for States parties to take appropriate additional measures to mitigate the negative effects of globalization, in particular, with regard to the right to work of particularly vulnerable persons.⁴⁰]

32. In its general comment No. 3, the Committee drew attention to the obligation of all States parties to take steps, individually and through international assistance and cooperation, especially economic and technical, towards the full realization of the rights recognized in the Covenant, such as the right to work. In the spirit of Article 56 of the Charter of the United Nations and specific provisions of the Covenant (arts. 2.1, 6, 22 and 23), States parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to work. States parties should, through international agreements where appropriate, ensure that the right to work, as set forth in article 6 and also in article 7, including in the context of multinational corporations and production line work, is given appropriate attention [and consider the formulation of new international legal instruments to that end].

33. To comply with their international obligations in relation to article 6, States parties must respect enjoyment of the right to work in other countries, and prevent third parties from violating the right in other countries [if they are able to influence these third parties by way of legal or political means in accordance with the Charter of the United Nations and applicable international law]. In negotiations with financial institutions, States parties must ensure protection of the right to work of their population. Similarly, States parties that are members of international financial institutions, in particular the International Monetary Fund, the World Bank and regional development banks, should pay greater attention to the protection of the right to work in influencing the lending policies, credit agreements (structural adjustment plans) and international

measures of these institutions. The Committee emphasizes that the minimum obligations in connection with structural adjustment programmes suppose that the strategies, programmes and policies chosen do not have a disproportionate and negative impact on vulnerable groups, particularly women and young people.

Core obligations

34. Certain measures to be taken at the various levels of obligation of States parties are immediate, whereas others are long term, so as to progressively ensure full exercise of the right to work.

35. In its general comment No. 3, the Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant, including the right to work. In the context of article 6, this “core obligation” encompasses the obligation to ensure non-discrimination and equal protection of employment. Discrimination in the field of employment comprises a broad cluster of violations affecting all stages of life, from basic education to retirement. All discrimination can have a considerable impact on the work situation of individuals and groups. Accordingly, in the Committee’s view, these core obligations include at least the following obligations:

(a) To ensure the right of access to employment, especially for vulnerable or marginalized groups, permitting them to earn the means for a life with dignity;

(b) To avoid any measure [and in particular arbitrary measures] with the effect of increasing discrimination and unequal treatment in the private and public sectors or of weakening mechanisms for the protection of vulnerable individuals;

(c) To adopt and implement a national employment strategy and plan of action, based on and addressing the concerns of all workers, to be devised and periodically reviewed on the basis of a participatory and transparent process (inclusion of trade unions); they should comprise methods (indicators ...) by which progress can be measured; the process by which the strategy and plan of action are devised, as well as their content, should pay particular attention to all vulnerable or marginalized groups.

IV. OBLIGATIONS OF ACTORS OTHER THAN STATES PARTIES

36. While only States are parties to the Covenant and thus ultimately accountable for compliance with it, all members of society - individuals, families, local communities, non-governmental organizations, civil society and private sector organizations - have responsibilities regarding realization of the right to work. The State must provide an environment which facilitates the discharge of these responsibilities. Private enterprises - national and multinational - while not bound by the Covenant, have a particular (fundamental or increasing) role to play in job creation, hiring policies, dismissals and non-discriminatory access to work. They must conduct their activities on the basis of a code of conduct or ethical charter promoting respect for the right to work, drawn up by joint agreement with government and civil

society. Such codes of conduct or ethical charters should recognize the labour standards enunciated by ILO and aim at increasing the awareness and responsibility of enterprises in the realization of the right to work.

37. The role of the United Nations agencies and programmes, and in particular the key function of the International Labour Organization in defence and realization of the right to work at the international, regional and country levels, is of particular importance. When formulating and implementing their national strategies on the right to work, States parties should avail themselves of the technical assistance and cooperation of the International Labour Organization. Further, when preparing their reports, States parties should use the extensive information and advisory services of ILO for data collection and disaggregation, and the development of indicators and benchmarks. In conformity with articles 22 and 23 of the Covenant, the International Labour Organization and the other specialized agencies of the United Nations (the United Nations Development Programme, the World Health Organization, the United Nations Children's Fund, the United Nations Development Assistance Framework), the World Bank, regional development banks, the International Monetary Fund, the World Trade Organization and other relevant bodies within the United Nations system should cooperate effectively with States parties in relation to the implementation of the right to work at the national level, with due respect for their individual mandates. In particular, the international financial institutions, notably the International Monetary Fund and the World Bank, should pay greater attention to the protection of the right to work in their lending policies and credit agreements. In accordance with paragraph 9 of general comment No. 2, a particular effort must be made to ensure that the right to work is protected in all structural adjustment programmes. When examining the reports of States parties and their ability to meet their obligations under article 6, the Committee will consider the effects of the assistance provided by actors other than States parties. The adoption of a human rights-based approach by United Nations specialized agencies, programmes and bodies will greatly facilitate implementation of the right to work.

38. Trade unions [in accordance with article 8 of the Covenant] play a fundamental role in ensuring respect for the right to work at the local and national levels and in assisting States to discharge their obligations under article 6. The role of trade unions is fundamental, and will be considered by the Committee in its consideration of the reports of States parties.

V. VIOLATIONS

39. It is important to distinguish the inability from the unwillingness of a State party to comply with its obligations under article 6. This follows from article 6, paragraph 1, which enunciates the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and article 2, paragraph 1, of the Covenant, which places an obligation on each State party to undertake the necessary measures "to the maximum of its available resources". The obligations of a State party must be interpreted in the light of these two articles. A State which is unwilling to use the maximum of its available resources for the realization of the right to work is in violation of its obligations under article 6. Nevertheless, resource constraints may justify partial implementation of article 6, to the extent that the State demonstrates that it has used its resources to the maximum to discharge its obligation. Violations of the right to work can occur through the direct action of States or other entities regulated by States, or through a paucity of measures to promote hiring. Violations through *acts*

of commission include the formal repeal or suspension of legislation necessary for continued enjoyment of the right to work; denial of access to work to particular individuals or groups, whether such discrimination is based on legislation or is proactive; the adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations in relation to the right to work; and the fact that the State does not regulate the activities of individuals or groups so as to prevent them from impeding the right of others to work.

Violations of the obligation to respect

40. Violations of the obligation to respect are those State actions, policies or laws that contravene the standards enunciated in article 6 of the Covenant and are likely to result in infringements of the right to work. In particular, any discrimination in access to the labour market or to means and entitlements for the obtaining of employment on the grounds of race, colour, sex, language, age, religion, political or other opinion, national or social origin, property, birth or any other situation with the aim of impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant. The prohibition in article 2, paragraph 2, of the Covenant is neither subject to progressive implementation nor dependent on available resources; it is directly applicable without reservation to all aspects of the right to work and is valid on all grounds on which international law prohibits the exercise of any discrimination whatsoever. The failure of the State to take into account its legal obligations regarding the right to work when entering into bilateral or multilateral agreements with other States, international organizations and other entities, such as multinational entities, constitutes a violation of its obligations.

41. The adoption of retrogressive measures in State policy on hiring may constitute a violation of article 6, and an infringement of the right to work - as may abrogation, denial of access to employment to particular individuals or groups, whether such discrimination is based on legislation or is proactive, suspension of the legislation necessary for the exercise of the right to work, or the adoption of laws or policies that are manifestly incompatible with pre-existing domestic or international legal obligations relating to the right to work (for example, institution of forced labour or the abrogation of legislation protecting the employee against unlawful dismissal).

Violations of the obligation to protect

42. Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements by third parties of the right to work. This category includes such omissions as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to work of others; the failure to protect workers; the failure to implement technical and vocational training procedures.

Violations of the obligation to fulfil

43. Violations of the obligation to fulfil occur through the failure of States parties to take all necessary steps to ensure the realization of the right to work. Examples include the failure to adopt or implement a national employment policy designed to ensure the right to work for everyone; insufficient expenditure or misallocation of public resources which results in the

non-enjoyment of the right to work by individuals or groups, particularly the vulnerable or marginalized; the failure to monitor the realization of the right to work at the national level, for example, by identifying right-to-work indicators and benchmarks.

Right-to-work indicators and benchmarks

44. Can a national employment strategy define indicators and benchmarks on the right to work? The indicators should be designed to monitor at the national level the discharge by the State party of its obligations under article 6, and should be based on international ILO indicators (rate of unemployment, underemployment, ratio of formal to informal work ...). ILO has developed a number of benchmarks applicable to the preparation of labour statistics;⁴¹ these may be useful in the preparation of a national employment plan.

VI. RECOMMENDATIONS TO STATES PARTIES

45. The most appropriate ways and means of implementing the right to work will inevitably vary significantly from one State party to another. Each State will have some latitude⁴² in choosing its own approaches, but the Covenant clearly requires that each State party take whatever steps are necessary to ensure that everyone is free from unemployment and instability in employment, and as soon as possible can enjoy the right to work. Hence the need for a national strategy aimed at ensuring enjoyment by all of the right to work, that is the objective of full employment for all, the objectives of the strategy being defined on the basis of human rights principles and the need to define policies as well as indicators and benchmarks to measure exercise of the right to work. Such a national strategy also imposes a requirement to identify the resources available to the State for attainment of the objectives defined as well as the most cost-effective means of using them.

46. States parties, once they have defined appropriate indicators, are invited to define national benchmarks for each indicator. The Committee, during its consideration of the periodic report, will conduct a kind of assessment study with the State party. That is, the Committee and the State party will, together, consider the set of indicators and the national benchmarks defining the objectives to be attained over the period covered by the following report. Over the following five years the State party will be able to use these national benchmarks to monitor implementation of article 6 more effectively. Then, during consideration of the report, the State party and the Committee will see whether or not the benchmarks have been attained and reasons for any difficulties.

47. Formulation and implementation of a strategy and national plan of action on employment must in particular respect the principles of non-discrimination and broad participation. Specifically, the right of individuals and groups to participate in decisions affecting development must be an integral part of all policies, programmes and strategies intended to implement the obligations of the State under article 6. The promotion of employment necessarily involves effective involvement of the community, and more specifically associations for the defence of the rights of workers and trade unions in the definition of priorities, taking of decisions, planning, and implementation and evaluation of the strategy to promote employment. It is possible to implement well-functioning employment assistance services only if the State involves the population.

48. The formulation and implementation of national strategies on the right to work involve full respect for the principles of responsibility, transparency, participation by the people, decentralization, efficiency by the legislature and independence of the judiciary. Good governance is essential to the realization of all human rights, including the elimination of poverty and guarantee of a satisfactory standard of living permitting the development of every individual. To create a climate propitious to enjoyment of the right to work, States parties must take appropriate measures to ensure that both the private and public sectors reflect an awareness of the right to work in their activities and of the importance it merits. Implementation of such a strategy will facilitate coordination between ministries and regional and local authorities and ensure that related policies and administrative decisions are in compliance with the obligations under article 6 of the Covenant.

49. The strategy must take particular account of the need to prevent discrimination in access to employment. It must offer guarantees of full and equal access to economic resources, and to technical and vocational training, particularly for women, individuals in difficulty in society, the vulnerable and the marginalized, and measures to ensure respect for and protect self-employment and employment providing a level of remuneration offering a decent living for employees and their families⁴³ (as stipulated in article 7 (a) (ii) of the Covenant).

50. In implementing the country-specific strategies referred to above, States should set verifiable benchmarks for subsequent national and international monitoring. [In this connection States should consider the adoption of legislation as a major instrument in the implementation of the national strategy concerning the right to work. The legislation should establish national mechanisms to monitor implementation of the strategy and national plan of action on the right to work. It should contain provisions on numerical targets and a time frame for implementation; on means of ensuring compliance with the benchmarks established at the national level; on the involvement of civil society, including experts on labour issues, the private sector and international organizations; and on institutional responsibility for implementation of the national strategy and plan of action, and possible recourse procedures. In monitoring progress in realization of the right to work, States parties should identify the factors and difficulties affecting the implementation of their obligations. States parties should also actively involve civil society organizations in formulating these benchmarks and legislation.]

51. Appropriate United Nations programmes and agencies should assist, upon request, in drafting the legislation and in reviewing sectoral legislation. ILO, for example, has considerable expertise and accumulated knowledge concerning legislation in the field of employment. (UNICEF has equivalent expertise concerning legislation on child labour).⁴⁴

Monitoring

52. States parties should develop and maintain mechanisms to monitor progress towards the realization of the right to freely chosen or accepted employment, to identify the factors and difficulties affecting the degree of implementation of their obligations, and to facilitate the adoption of corrective legislative and administrative measures, including measures to implement their obligations under articles 2.1 and 23 of the Covenant.

Remedies and accountability

53. Any person or group who is a victim of a violation of the right to work should have access to effective judicial or other appropriate remedies at both the national and international levels. Victims should also enjoy the right to reparation. At the national level trade unions and human rights commissions must play a key role in defending the right to work. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition.

54. Incorporation in the domestic legal order of international instruments setting forth the right to work, in particular the relevant ILO conventions, should strengthen the effectiveness of measures taken to guarantee the right to work, and is to be strongly encouraged. This makes the courts competent to rule on violations of the right to work, in particular where national legislation is defective. The incorporation in the domestic legal order of international instruments recognizing the right to work, or recognition of their applicability, can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases. Courts would then be empowered to adjudicate violations of the core content of the right to work by direct reference to obligations under the Covenant.

55. Judges and other members of the legal profession are invited to pay greater attention to violations of the right to work in the exercise of their functions.

56. States parties should respect and protect the work of human rights advocates and other members of civil society, in particular the trade unions protected under article 8 of the Covenant, which assist vulnerable groups in the realization of their right to work.

Notes

¹ See the Philadelphia Declaration, 1944.

² *Alternative formulation: "Work is a fundamental right of every human being, essential to the exercise of the other rights of the human being."*

³ See the preamble to ILO Convention No. 168, 1988: "(...) the importance of work and productive employment in any society not only because of the resources which they create for the community, but also because of the income which they bring to workers, the social role which they confer and the feeling of self-esteem which workers derive from them".

⁴ Commission on Human Rights, eleventh session, agenda item 31, A/3525/(1957).

⁵ Article 5, paragraph (e) (i) of the International Convention on the Elimination of All Forms of Racial Discrimination: "(...). States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without discrimination as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (...) The rights to work, to free choice of employment, to

just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration”.

⁶ Article 11, paragraph 1 (a), of the Convention on the Elimination of Discrimination against Women: “States parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings.”

⁷ *African Charter on Human and Peoples’ Rights: sole reference to the right to work is in article 15, in its individual dimension, corresponding more to article 7.*

⁸ European Social Charter, article 1, as amended: “With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake: 1. To accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment; 2. To protect effectively the right of the worker to earn his living in an occupation freely entered upon; 3. To establish or maintain free employment services for all workers; 4. To provide or promote appropriate vocational guidance, training and rehabilitation.”

⁹ American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, article 6: “1. Everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity. 2. The States parties undertake to adopt measures that will make the right to work fully effective, especially with regard to the achievement of full employment, vocational guidance, and the development of technical and vocational training projects, in particular those directed to the disabled. The States parties also undertake to implement and strengthen programs that help to ensure suitable family care, so that women may enjoy a real opportunity to exercise the right to work.”

¹⁰ See “*The right to work: core minimum obligations*”, p. 24, R. Lewis Siegel, who affirms that the link between the right to work and the obligation to realize full employment is primarily regional.

¹¹ Article 6 of the Declaration on Social Progress and Development, United Nations General Assembly resolution 2542 (XXIV) of 11 December 1969: “Social development requires the assurance to everyone of the right to work and the free choice of employment. Social progress and development require the participation of all members of society in productive and socially useful labour and the establishment, in conformity with human rights and fundamental freedoms and with the principles of justice and the social function of property, of forms of ownership of land and of the means of production which preclude any kind of exploitation of man, ensure equal rights to property for all and create conditions leading to genuine equality among people.”

¹² ILO: United Nations initiative on youth employment, Governing Body document GB.286/ESP/5, 286th session, Geneva, March 2003. And ILO: Global employment trends (Geneva, 2003), cited in “*Working out of poverty*”, 2003, ILO, p. 25.

¹³ ILO Convention No. 158, 1982: Definition of lawful dismissal (art. 4): “The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.” See also articles 7 and 8:

“Article 7: The employment of a worker shall not be terminated for reasons related to the worker’s conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.”

“Article 8:

1. A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

2. Where termination has been authorized by a competent authority the application of paragraph 1 of this article may be varied according to national law and practice.

3. A worker may be deemed to have waived his right to appeal against the termination of his employment if he has not exercised that right within a reasonable period of time after termination.”

¹⁴ Article 4 of the Universal Declaration of Human Rights: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”

¹⁵ Slavery Convention, entry into force 9 March 1927, in accordance with article 12, article 5:

“The High Contracting Parties recognise that recourse to compulsory or forced labour may have grave consequences and undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.

It is agreed that:

(1) Subject to the transitional provisions laid down in paragraph (2) below, compulsory or forced labour may only be exacted for public purposes.

(2) In territories in which compulsory or forced labour for other than public purposes still survives, the High Contracting Parties shall endeavour progressively and as soon as possible to put an end to the practice. So long as such forced or compulsory labour exists, this labour shall invariably be of an exceptional character, shall always receive adequate remuneration, and shall not involve the removal of the labourers from their usual place of residence.

(3) In all cases, the responsibility for any recourse to compulsory or forced labour shall rest with the competent central authorities of the territory concerned.”

¹⁶ Article 8 of the International Covenant on Civil and Political Rights:

“1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term ‘forced or compulsory labour’ shall not include:

- (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
- (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
- (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- (iv) Any work or service which forms part of normal civil obligations.”

¹⁷ ILO Convention No. 29 concerning Forced or Compulsory Labour, 1930, article 2, paragraph 1. List of limitations in paragraph 2. And ILO Convention No. 105 concerning the Abolition of Forced Labour, 1957.

¹⁸ See article 2 of ILO Convention No. 111 concerning Discrimination in respect of Employment and Occupation, 1958.

¹⁹ See general comment No. 3, on the nature of States parties’ obligations, paragraph 12.

²⁰ *This principle is closely linked to the rights set forth in article 7.*

²¹ See general comment No. 5, on persons with disabilities, paragraphs 20-24.

²² Declaration on the Rights of Disabled Persons, proclaimed by the General Assembly in its resolution 3447 (XXX) of 9 December 1975, paragraph 7: “Disabled persons have the right to economic and social security and to a decent level of living. They have the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.”

²³ See ILO Convention No. 159 concerning Vocational Rehabilitation and Employment (Disabled Persons), 1983. See article 1, paragraph 2, on access to employment.

²⁴ See general comment No. 6, on the economic, social and cultural rights of older persons, paragraph 22 (and paragraph 24 on retirement).

²⁵ See *general comment No. 16* (after its adoption by the Committee).

²⁶ See article 25, paragraphs 2 and 3:

“2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.

“3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.”

²⁷ See ILO Convention No. 97 concerning Migration for Employment, 1949, and article 10 of ILO Convention No. 143 concerning Migrant Workers (Supplementary Provisions), 1975.

²⁸ See the Convention on the Rights of the Child, 1989, article 32, paragraph 1, reflected in the second preambular paragraph to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography: “1. States parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” See also article 3, paragraph 1, on forced labour of the Protocol.

²⁹ Article 3 of ILO Convention No. 182 on the Worst Forms of Child Labour, 1999: “For the purposes of this Convention, the term *the worst forms of child labour* comprises: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict: ... (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

³⁰ Paragraph 15 of general comment No. 13: “Technical and vocational education (TVE) forms part of both the right to education and the right to work (art. 6 (2)). Article 13 (2) (b) presents TVE as part of secondary education, reflecting the particular importance of TVE at this level of

education. Article 6 (2), however, does not refer to TVE in relation to a specific level of education; it comprehends that TVE has a wider role, helping ‘to achieve steady economic, social and cultural development and full and productive employment’. Also, the Universal Declaration of Human Rights states that ‘[t]echnical and professional education shall be made generally available’ (art. 26 (1)). Accordingly, the Committee takes the view that TVE forms an integral element of all levels of education.” (*General comment No. 13, footnote 8: A view also reflected in the Human Resources Development Convention 1975 (Convention No. 142) and the Social Policy (Basic Aims and Standards) Convention 1962 (Convention No. 117) of the International Labour Organization.*)

³¹ *In this connection the Committee recalls paragraph 16 of the general comment: “An introduction to technology and to the world of work should not be confined to specific TVE programmes but should be understood as a component of general education. According to the UNESCO Convention on Technical and Vocational Education (1989), TVE consists of ‘all forms and levels of the educational process involving, in addition to general knowledge, the study of technologies and related sciences and the acquisition of practical skills, know-how, attitudes and understanding relating to occupations in the various sectors of economic and social life’ (art. 1 (a)). This view is also reflected in certain ILO Conventions. Understood in this way, the right to TVE includes the following aspects:*

(a) *It enables students to acquire knowledge and skills which contribute to their personal development, self-reliance and employability and enhances the productivity of their families and communities, including the State party’s economic and social development;*

(b) *It takes account of the educational, cultural and social background of the population concerned; the skills, knowledge and levels of qualification needed in the various sectors of the economy; and occupational health, safety and welfare;*

(c) *Provides retraining for adults whose current knowledge and skills have become obsolete owing to technological, economic, employment, social or other changes;*

(d) *It consists of programmes which give students, especially those from developing countries, the opportunity to receive TVE in other States, with a view to the appropriate transfer and adaptation of technology;*

(e) *It consists, in the context of the Covenant’s non-discrimination and equality provisions, of programmes which promote the TVE of women, girls, out-of-school youth, unemployed youth, the children of migrant workers, refugees, persons with disabilities and other disadvantaged groups.”*

³² See general comment No. 3, paragraph 1.

³³ See general comment No. 3, paragraph 2.

³⁴ See general comment No. 3, paragraph 9.

³⁵ According to article 7, paragraph 2, “(e)ach Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to: [...] (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour” (ILO Convention No. 182, Worst Forms of Child Labour, 1999).

³⁶ See ILO Convention No. 88 concerning the Organization of the Employment Service, 1948: obligation of the State party to provide or ensure the provision of a free public employment service (and, similarly, ILO Convention No. 2 concerning Unemployment, 1919):

“Article 1: 1. Each member of the International Labour Organisation for which this Convention is in force shall maintain or ensure the maintenance of a free public employment service. 2. The essential duty of the employment service shall be to ensure, in co-operation where necessary with other public or private bodies concerned, the best possible organisation of the employment market as an integral part of the national programme for the achievement and maintenance of full employment and the development and use of productive resources. Article 2: The employment service shall consist of a national system of employment offices under the direction of a national authority.”

See also ILO Convention No. 168 concerning Employment Promotion and Protection against Unemployment, 1988, which sets forth the obligation of the State party to establish a system of compensation in the event of unemployment: “Noting that the provisions concerning unemployment benefit in the Social Security (Minimum Standards) Convention, 1952, lay down a level of protection that has now been surpassed by most of the existing compensation schemes in the industrialised countries and, unlike standards concerning other benefits, have not been followed by higher standards, but that the standards in question can still constitute a target for developing countries that are in a position to set up an unemployment compensation scheme, and

Recognising that policies leading to stable, sustained, non-inflationary economic growth and a flexible response to change, as well as to creation and promotion of all forms of productive and freely chosen employment including small undertakings, co-operatives, self-employment and local initiatives for employment, even through the redistribution of resources currently devoted to the financing of purely assistance-oriented activities towards activities which promote employment especially vocational guidance, training and rehabilitation, offer the best protection against the adverse effects of involuntary unemployment, but that involuntary unemployment nevertheless exists and that it is therefore important to ensure that social security systems should provide employment assistance and economic support to those who are involuntarily unemployed.”

³⁷ See ILO Convention No. 140 concerning Paid Educational Leave, 1974, in particular, article 3:

“That policy shall be designed to contribute, on differing terms as necessary:

- (a) to the acquisition, improvement and adaptation of occupational and functional skills, and the promotion of employment and job security in conditions of scientific and technological development and economic and structural change;
- (b) to the competent and active participation of workers and their representatives in the life of the undertaking and of the community;
- (c) to the human, social and cultural advancement of workers; and
- (d) generally, to the promotion of appropriate continuing education and training, helping workers to adjust to contemporary requirements.”

See ILO Convention No. 142 concerning Vocational Guidance and Vocational Training in the Development of Human Resources, 1975, in particular, article 1:

“Article 1

1. Each Member shall adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services.
2. These policies and programmes shall take due account of:
 - (a) employment needs, opportunities and problems, both regional and national;
 - (b) the stage and level of economic, social and cultural development; and
 - (c) the mutual relationships between human resources development and other economic, social and cultural objectives.
3. The policies and programmes shall be pursued by methods that are appropriate to national conditions.
4. The policies and programmes shall be designed to improve the ability of the individual to understand and, individually or collectively, to influence the working and social environment.
5. The policies and programmes shall encourage and enable all persons, on an equal basis and without any discrimination whatsoever, to develop and use their capabilities for work in their own best interests and in accordance with their own aspirations, account being taken of the needs of society.

Article 2

With the above ends in view, each Member shall establish and develop open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training, whether these activities take place within the system of formal education or outside it.

Article 3

1. Each Member shall gradually extend its systems of vocational guidance, including continuing employment information, with a view to ensuring that comprehensive information and the broadest possible guidance are available to all children, young persons and adults, including appropriate programmes for all handicapped and disabled persons.

2. Such information and guidance shall cover the choice of an occupation, vocational training and related educational opportunities, the employment situation and employment prospects, promotion prospects, conditions of work, safety and hygiene at work, and other aspects of working life in the various sectors of economic, social and cultural activity and at all levels of responsibility.

3. The information and guidance shall be supplemented by information on general aspects of collective agreements and of the rights and obligations of all concerned under labour law; this information shall be provided in accordance with national law and practice, taking into account the respective functions and tasks of the workers' and employers' organizations concerned."

³⁸ See ILO Convention No. 122 concerning employment policy, 1964, article 1, paragraph 1:

"1. With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment, each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen unemployment.

2. The said policy shall aim at ensuring that:

(a) there is work for all who are available for and seeking work;

(b) such work is as productive as possible;

(c) there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

3. The said policy shall take due account of the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices.”

³⁹ See ILO Convention No. 88 concerning the Organization of the Employment Service, 1948.

⁴⁰ See “*Globalization and Economic, Social and Cultural Rights*”, statement by the Committee on Economic, Social and Cultural Rights, May 1998 (E/C.12/1998/SR.50); retain reference in final text?

⁴¹ See ILO Convention No. 160 concerning Labour Statistics. See, in particular, articles 1 and 2:

“ Article 1

Each Member which ratifies this Convention undertakes that it will regularly collect, compile and publish basic labour statistics, which shall be progressively expanded in accordance with its resources to cover the following subjects:

(a) *economically active population, employment, where relevant unemployment, and where possible visible underemployment;*

(b) *structure and distribution of the economically active population, for detailed analysis and to serve as benchmark data;*

(c) *average earnings and hours of work (hours actually worked or hours paid for) and, where appropriate, time rates of wages and normal hours of work;*

(d) *wage structure and distribution;*

(e) *labour cost;*

(f) *consumer price indices;*

(g) *household expenditure or, where appropriate, family expenditure and, where possible, household income or, where appropriate, family income;*

(h) *occupational injuries and, as far as possible, occupational diseases;*

and

(i) *industrial disputes.*

Article 2

In designing or revising the concepts, definitions and methodology used in the collection, compilation and publication of the statistics required under this Convention, Members shall take into consideration the latest standards and guidelines established under the auspices of the International Labour Organization.”

⁴² *Or a margin of discretion in choosing which measures are best adapted to its specific situation.*

⁴³ See general comment No. 12, paragraph 26.

⁴⁴ See general comment No. 13, on the right to education.
