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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

THE RIGHT TO WORK: REGULATORY CONTENT*
(suggestions for the draft general comment on article 6 of the Covenant)

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*“Furtherance and Protection of Social and Economic Rights in the Russian Federation
using International Instruments”, a network of non-governmental organizations
currently encompassing 85 NGOs, endorses these proposals*

* Issued as submitted.

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

1. The right to work enshrined in article 6 of the International Covenant on Economic, Social and Cultural Rights needs to be looked at in the context of other groundbreaking international agreements, in particular the Universal Declaration of Human Rights, article 23 of which establishes the right of everyone to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. One cannot define the regulatory content of the right to work without determining the objective to be attained through its realization. Work should help to define who a person is and the place he or she occupies in society: it performs an important social function. People obtain satisfaction from the demands of their jobs. Exercise of the opportunity to work defines the social role and status of the individual, and has an influence on the recognition of his or her place in society. The right to work is of fundamental importance to people's sense of dignity and self-respect and affects their future ability to take advantage of and exercise other political and social rights. People must also exercise their right to work under conditions that are not demeaning to their dignity but, rather, conducive to the full, harmonious development of the personality. The opportunity to work thus cannot be regarded in isolation from the conditions in which people can take advantage of it. As the report of the Director-General of the International Labour Organization (ILO) for 1999 states, "the quantity of employment cannot be divorced from its quality". Full exercise of the right to work needs to be given substance through the creation of opportunities for men and women to obtain decent and productive work, in conditions of freedom, equity, security and human dignity.
3. The notion of work needs to be considered in the light of the concept of "decent work", the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill entertainments and make their greatest contribution to the common well-being, as the Philadelphia Declaration put it. While decent work is the objective, it is at the same time also a guiding beacon under whose light the right to work, and efforts by States to give effect to it, should be examined.
4. It will be remarked that articles 6 and 7 are inseparably linked, and in enabling people to exercise their right to work States must at the same time provide decent working conditions:
 - fair wages and equal remuneration for work of equal value without discrimination;
 - a guaranteed decent living;
 - safe and healthy working conditions;
 - scope for career development; and
 - the right to rest, leisure and limited working hours.
5. Giving effect to the right to work as outlined by the concept of "decent work" scarcely seems possible without giving effect to the so-called fundamental labour rights enunciated in the ILO Declaration on Fundamental Principles and Rights at Work:
 - freedom of association and the effective recognition of the right to collective bargaining;

- the elimination of all forms of forced or compulsory labour;
- the effective abolition of child labour; and
- the elimination of discrimination in respect of employment and occupation.

The latter three principles stem directly from the definition of the right to work given in article 6, paragraph 1, of the Covenant.

“... the right of everyone ...” (art. 6, para. 1)

6. The State must ensure equality of opportunity to exercise the right to decent work. Every State must promote equal opportunities and treatment by formulating and pursuing national policies designed to eradicate discrimination of any kind in matters of work and employment. They must repeal all laws and regulations that are incompatible with such policies, bring in legislation and encourage public education programmes that will ensure that the national policy of true equality of opportunity in labour-related matters is adopted and adhered to. In matters of labour and employment, this policy should be conducted under the direct supervision of the State authorities.

7. The policy must embrace effective means of protection for individuals facing discrimination. For the purposes of the article in question, protection against discrimination should not be restricted to people who have already found work and employment. The Covenant guarantees everyone freedom of access to work, employment, and the training without which it is impossible to find a job. Thus equal opportunities need to be afforded in the following areas:

- equal access to institutions offering vocational guidance and job placement;
- equal access, at individuals’ own choosing, to training and work on the basis of their own inclinations;
- equal opportunity for advancement depending on individual character, competence and effort;
- equal guarantees of steady employment;
- equal pay for work of equal value;
- equal working conditions, including working hours, rest periods, annual paid leave, work health and safety facilities, social welfare provision and amenities and work-related benefits.

8. Protection against discrimination in the work and employment field must not be confined simply to hired labour. The field of application of the Covenant encompasses any kind of work and any occupation, including work assignments and access to unpaid labour, paid labour, governmental service and workers’ and employers’ organizations. The principle of equal

opportunities and treatment does not mean that everyone is entitled to do any kind of work they choose, regardless of their professional qualifications and other conditions; it does guarantee everyone the right to have their job applications considered without preconceptions or discrimination on any of the grounds listed in the Covenant.

9. Where established practice is an impediment to equal opportunity to exercise the right to decent work, it is both possible and necessary to arrange for special protection and assistance for individual vulnerable categories. The only condition should be that such special arrangements must not be disproportionate and should be designed to bring about genuine equality of opportunity. This is especially true of such special arrangements as might be made for indigenous peoples and peoples living in tribes, for the disabled and for the elderly, and arrangements made to protect mothers and women's health which are frankly acknowledged to be non-discriminatory.

10. In parallel with efforts to secure full equality between men and women, it should be borne in mind that a number of provisions which currently apply to women, so as to allow them to bring up children, should be extended to men in keeping with the thinking behind ILO Convention No. 156 of 1981 concerning Workers with Family Responsibilities. The fact that such benefits are no longer extended only to women should gradually make women more competitive on the job market.

“... work which he freely chooses or accepts ...” (art. 6, para. 1)

11. The right to free choice of employment encompasses the following aspects:

- (i) The availability of a free, independent choice to work or not to work. Hence the imposition of a general obligation to work would seem to be impermissible.
- (ii) Free choice of the nature of one's occupation or profession: this implies a number of obligations on the State when it offers the choice:
 - the availability of varied employment, backed up by a policy of creating as many jobs as possible in different branches of the economy;
 - vocational guidance providing accessible information for all on the various types of employment available. As a rule, the main purpose of vocational guidance is to provide young people and adults with professional assistance in selecting an occupation, using a variety of methods such as the distribution of information about different occupations, recommendations made in the light of personal inclinations, and the needs of society;
 - access to any kind of vocational training so that people can later have a choice of occupation. If, therefore, one category of the population have no access to a particular form of training that is available to the remainder, the distinction will influence their opportunities to find jobs and make it impossible for them to exercise their right to decent work;

- the right of workers to quit without prior permission. An ILO committee of experts has pointed out that a worker's right freely to choose work is an inalienable right. Hence forbidding workers to quit without their employers' permission, or without the permission of the authorities, is a breach of the principles of ILO conventions. National laws can prohibit employees to quit if exceptional circumstances arise. Such a prohibition is regarded as work or service required under exceptional circumstances.

Prohibition of forced labour

12. In determining what obligations States are under to eradicate forced labour, one should be guided by ILO Conventions Nos. 29 and 105 and use the definition of forced labour proposed by ILO: "Forced or compulsory labour' shall mean 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."

"... the right of everyone to the opportunity ..." (art. 6, para. 1)

13. Training and vocational guidance are exceptionally important since they determine whether individual people have the opportunity to obtain work. Quite often, uneven access to vocational training leads to a lack of equal opportunities in all other areas. Vocational guidance has an important role to play in purging many occupations of stereotypes and outmoded notions that, for example, only people of a particular sex are employable in certain jobs.

14. An inseparable rider to the opportunity to obtain work and employment is a ban on child labour. The reasons for limiting children's access to work and, in some cases, banning child labour under legal ILO decisions are chiefly a desire to ensure that children can grow up healthy and develop normally, to prevent adverse effects on their health, and to give them the chance to obtain an education which will later enable them to earn their living by work which they have freely chosen.

15. As ILO has pointed out, eliminating child labour is an essential element in the goal of "decent work for all". Ensuring that parents have decent work can prevent the worst forms of exploitation of child labour. But while "decent work for all" is still only a goal, States must take at least the minimum steps necessary to prohibit child labour, especially in its worst forms. ILO Convention No. 138, concerning Minimum Age for Admission to Employment, is fundamental to the prohibition of child labour: its implementation is a long-term undertaking. Prohibiting and eradicating the worst forms of child labour, however, requires immediate action. Convention No. 182 and recommendation No. 190, concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, both of which were adopted in 1999, are intended for this purpose. Convention No. 182 tersely states (art. 1) that States must "take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency".

16. The right to freedom of association and collective negotiation serves at the same time to guarantee the right to work. Complete attainment of the right to decent work is not possible while all opportunities to influence its attainment are in the hands of the State and workers have no opportunity of their own to stand up for their rights. Unlike many other rights, the

involvement of a third party - employers - is a feature of the exercise of the right to work. Workers' associations (trade unions) can constantly monitor the exercise of the right and take steps to defend and further it. If freedom of association is guaranteed and respected, workers' representatives can take part in collective negotiations and consultations on the creation of additional jobs, suitable hiring conditions, protection against unwarranted dismissal and many other aspects of the right to work. Recognition by the State and assistance to workers in the exercise of the right to associate and engage in collective bargaining, as guaranteed under article 8 of the Covenant, is of especial importance here.

17. The right to work consists of two basic elements: the right to enter into employment and the right not to be unjustly deprived of work.¹ It may be concluded from article 6, paragraph 1, that the right to enter into employment implies the right of everyone to earn his living by means of his own work and the right to an unrestricted, non-discriminatory choice of the type and form of work done. This being so, the right to work in all its forms and at all levels encompasses the following basic, interlinked elements whose precise application will depend on the circumstances prevailing in each State party.

Availability

of employment

- The availability of actual jobs for people to do. With this in view, States must develop their economies, taking steps to create jobs in the private sector through support for self-employment (providing backing for small business ventures, including fiscal measures, removing administrative barriers to small business growth etc.). There is a need to develop a State sector that can provide additional jobs and reduce unemployment to a minimum. There is also a need to provide businesses and organizations with a legislative, administrative and fiscal environment that gives employers the incentive to create legitimate jobs and establish legitimate labour relationships with their employees.
- People who cannot immediately find work are afforded protection including both the opportunity to seek work and a modicum of State support. This implies that States must have employment services that will propose suitable jobs. If suitable work cannot be proposed, the State must offer minimum social safeguards - welfare support, publicly supported housing, retraining opportunities and the chance to learn an occupation in which there are jobs to be had. State policy needs to be finely balanced, on the one hand supporting those who are looking for and prepared to take work but are prevented from doing so by the state of the jobs market, while on the other hand not affording additional protection to those who, for whatever reason, have no desire to work.

18. As the situation on the jobs market may change, State regulatory mechanisms need to be flexible enough to respond to change as it occurs.

of protection against unwarranted dismissal

- people in work enjoy safeguards against losing it. In other words, the State must legislate for safeguards against unwarranted dismissal and provide effective judicial and other defence mechanisms for use in the event of unwarranted dismissal. Judicially, the means of protection available should encompass not only compensation but also the possibility of reinstatement.
- provision must be made for measures that can help workers keep their jobs in the event of threatened mass layoffs or the closure of large businesses if the result would be the risk of unemployment for relatively large groups of workers. These may take the form of negotiations with workers' representatives over the timing of and procedure for layoffs; obligations imposed by legislation or by decision of the State or local government authorities, by agreement with the workers' representatives, to offer jobs to some or all of the previous workforce if an enterprise or organization undergoes restructuring; or agreement on the need to retrain workers if it is clear that they will be unable to find fresh jobs in their former trades near where they live.

Accessibility

19. Accessibility means the possibility of obtaining work; it includes a number of elements. To begin with, work may only be accessible if citizens have the opportunity to obtain the primary, secondary and specialized education they need to secure a particular kind of employment thereafter. Hence the right to work is inseparable from the right to education.

Non-discrimination implies that work in all its component forms is available to all work-capable citizens without discrimination on any grounds regarded as impermissible under the criteria established by ILO. The State must arrange for special protection for vulnerable population groups whose standing in the jobs market is less stable than ordinary citizens' (invalids, the elderly, the very young, people with family obligations and so forth). For more details, see paragraph 7 above.

Physical accessibility implies that people can work wherever they live and irrespective of any physical disabilities limiting their mobility. The economy, including the State sector, must be developed in such a way as to give people in all parts of the country access to jobs. States with far-flung regions need to ensure that there are employment possibilities there. If people cannot find work in such regions and new jobs cannot be created there, the State must provide an opportunity for people to move to where there is a possibility of finding work, by, for example, financing removal costs or providing social assistance for the initial period after moving to take up a job.

20. Another condition of physical accessibility is the development of transport communications and public transport. In some cases the State or local government authorities may need to lay on special transport to the workplace and home again for workers; alternatively, employers may be required to do so. When new industries are being developed and new jobs created in sparsely populated regions, it is helpful for the State to bear some of the costs associated with the removal and installation of workers and their families, making it easier for them to settle in their new surroundings.

21. The physical accessibility of jobs for people with physical disabilities is also one aspect of this question (for more details, see paragraphs 20-27 of general comment No. 5). Moreover, physical accessibility means accessibility of the judicial institutions to which workers can turn for protection against unwarranted dismissal: there must be branches in the areas where the workers live or work, and the rules must specify that workers can apply to the branches covering the areas where they live or where their employing enterprise or organization is based.

Affordability

22. There are a number of elements to affordability. First, the education which guarantees exercise of the right to work must be affordable. In matters relating to such aspects of the right to work as the promotion of self-employment (small business ventures, one-man businesses etc.) the State must not impose terms which would be too expensive for citizens, thus obstructing self-employment. The fees and charges for registering a one-man business should not be too high, for example, and licences to engage in particular sorts of individual venture should not be too expensive.

23. Another element of the right to work is freedom to choose one's form and type of work, which is impossible if the State does not guarantee a minimum working wage that can cover subsistence needs. If wages in some economic sectors (such as those supported by the State budget - health care and education, for example) are so low that people are forced to take other kinds of work or occupation because otherwise they cannot earn a living, they do not truly have freedom of choice. Affordability thus entails the establishment of a defined minimum wage. The right not to be subjected to unwarranted dismissal imposes the need to establish a relatively inexpensive and accessible procedure for seeking protection from unwarranted dismissal.

Accessibility of information

24. Accessibility of information means that information on existing employment opportunities in modern society - so that young people have the opportunity to choose their education and future occupations - and on existing vacancies, is available and is made available. Information on vacancies and employment opportunities should be provided through governmental employment services and private personnel agencies with due regard for all the principles relating to the inadmissibility of discrimination (see references to discrimination). Accessibility of information also covers the need to inform workers about their working conditions, including the presence of workplace hazards, terms of remuneration and all other matters, and about their rights to protection of their labour rights. Workers need to be given access to information about labour legislation, the standards and bylaws that govern their employment, and the possibilities for judicial and other means of defending labour rights. Accessibility of information should also mean that people are entitled to distribute information about their working conditions and means of upholding labour rights.

Acceptability

25. In developing an employment and job-creation programme in either the State or the private sector, account must be taken of the educational levels, previous work experience and skills of those needing jobs (for example, when a business is restructured and new jobs are

created to replace those that have vanished); of historical traditions in development and the resulting notions of what constitutes a decent, well-regarded, demanding job; and of current moral, ethical and religious standards in society. On the other hand, it is not only the notions of acceptable working conditions (see art. 7, para. 1 (b)) found in the society concerned (including environmental standards and safe working conditions) that must be taken into consideration, but also those taking shape in the world community.

26. When tackling the problem of employment for vulnerable population groups, special account must be taken of the acceptability of particular kinds of work (in terms of stress, the need for a physical presence, the physical effort required, intensity of effort etc.) for the group concerned.

Quality

27. In considering the quality of employment, article 6 must be looked at in close conjunction with article 7, which guarantees everyone the right to “*just and favourable conditions of work, in particular:*

“(a) *Remuneration which provides all workers, as a minimum, with:*

- (i) *fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
- (ii) *A decent living for themselves and their families in accordance with the provisions of the present Covenant.”*

28. The opportunity to work afforded by the State must be such that everyone taking advantage of it can thereby earn a living. This implies a State policy of guaranteed wages so that wage levels correspond to workers’ essential minimum living requirements. Practice has shown that, for the time being, the establishment of a minimum wage guaranteed by the State is an effective mechanism for this purpose.

29. As States differ in their economic capacity and living standards it is not possible to lay down a hard-and-fast definition of what the minimum wage should be. At all events, States should honour the following minimum requirements in setting the minimum wage:

- the guarantees offered by the State should be as wide-ranging as possible and non-discriminatory;
- the minimum wage should be legally binding and not subject to reduction by agreement between private individuals or corporations;
- the needs of workers and their families must be taken into account so that the minimum wage enables people to earn a living and provide a decent living for themselves and their families.

30. Equal pay for work of equal value, without distinction of any kind, implies that the State must:

- establish a system and machinery for determining the value of work so that work can be compared;
- set up an effective State system to monitor compliance with this requirement by private employers;
- make available effective protective and compensatory mechanisms (especially the right to legal protection) for those whose right to equal remuneration for work of equal value is flouted.

“(b) Safe and healthy working conditions;”

31. States must pass laws, regulations or other provisions establishing minimum conditions of occupational health and safety. They must ensure that these are fully observed in practice. They should seek to ensure that the largest possible number of citizens engaged in socially useful work are covered by minimum conditions of occupational health and safety, whatever their chosen forms and types of employment. In particular, States should pursue policies designed to prevent occupational disease and industrial accidents. If workers are injured on the job or contract occupational diseases, the State should afford them effective protection, support and opportunities to retrain. Special attention must be paid to vulnerable groups. As the Committee has pointed out, States parties have a responsibility to ensure that disability is not used as an excuse for creating low standards of labour protection or for paying below minimum wages (general comment No. 5, para. 25).

“(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;”

“(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”

Action to be taken by States parties

32. The steps which States must take to achieve the full realization of the right to work are set forth in article 6, paragraph 2, of the Covenant:

- conduct technical and vocational guidance and training programmes;
- apply policies and techniques to achieve steady economic, social and cultural development;
- pursue policies aimed at the attainment of full and productive employment;
- safeguard fundamental political and economic freedoms to the individual.

33. States must bear in mind that this list is not exhaustive: they themselves must draw up lists of the action required, guided by the examples and principles enunciated in article 6, paragraph 2, as indicated in general comment No. 3, paragraph 4.

Technical and vocational guidance and training programmes

34. Technical and vocational training is an element of both the right to education and the right to work. This point is covered by general comment No. 13, paragraphs 15 and 16 of which discuss technical and vocational education in the context, inter alia, of the right to work.

Policies and techniques to achieve steady economic, social and cultural development

35. This obligation derives from the general commitments assumed by States under article 2 of the International Covenant on Economic, Social and Cultural Rights. The right to work cannot be fully realized in a society that is not striving to develop and improve living standards. At the same time, steadily increasing exercise of the right to work by the largest possible number of would-be workers promotes economic, social and cultural development.

Full and productive employment

36. The International Labour Organization has drafted a series of documents on employment policy, among them Convention No. 122 concerning Employment Policy. As it points out, “the promotion of full, productive and freely chosen employment ... should be regarded as the means of achieving in practice the realization of the right to work”. The promotion of such employment “should be the priority in, and an integral part of, economic and social policies of Members”.² State policy should be directed towards the attainment of full employment, which should be understood as the situation within society whereby all who wish to be engaged in socially productive work can be enlisted in activities giving them sufficient income to live at a level judged adequate within that society. Hence States must strive not only to give all who wish to work the opportunity to engage in socially useful work, but also to ensure that such employment extends over the full working period so that the working day can be taken up with useful work, and the work done can bring in an income appropriate to its quantity and quality. Employment which is necessarily restricted in duration, content or income earned thus cannot be regarded as full employment. On the other hand, where less than full employment results from a State policy designed to preserve the maximum number of jobs it may be regarded as justified. Such a policy should not, however, entail any restriction on the rights of part-time workers.

37. One aim of State policy should be to minimize the amount of time spent in looking for work and optimizing the outcome of the search.

38. Work must be productive, i.e. people’s occupations should be judged by society as bringing positive benefit, such as socially useful work. The notion of productive work is closely bound up with the ILO objective of attaining “decent work”.

39. Besides traditional employment policy mechanisms (announcing job vacancies, professional selection, occupational training and retraining), States need to look for new ways of engaging the largest possible number of job-seekers in labour relations. In this they need to be guided by the ILO recommendations on the subject.

40. Policies that encourage overmanning on economic and other grounds (low wages) may hamper the attainment of full productive employment.

Conditions safeguarding fundamental political and economic freedoms to the individual

41. States must fully acknowledge, respect and uphold human political and economic freedoms. As the World Conference on Human Rights stated in the Vienna Declaration, “all human rights are universal, indivisible and interdependent”. Civil and political rights “can never be attained unless all basic necessities of life - work, food, housing, health care, education and culture - are adequately and equitably available to everyone”.³ The right to work can be most completely attained in conditions that guarantee political and economic freedoms.

42. Limits on economic freedom, including various administrative obstacles, suppress social development and hamper people’s realization of their full potential, including their ability freely to choose their kind and form of work. If everyone is to be given a genuine opportunity to earn a living through work which he has freely chosen or accepted, States must make it possible for their citizens to exercise their economic freedoms to the fullest possible extent. States must be mindful that the right to free choice of work cannot be exercised in a society where political freedoms, among them freedom of association and freedom of speech, cannot be fully exercised.

Notes

¹ Committee on Economic, Social and Cultural Rights, Fact Sheet No. 16.

² International Labour Conference, Recommendation 169 concerning employment policy, dated 26 June 1984.

³ Committee on Economic, Social and Cultural Rights, Fact Sheet No. 16, Geneva, 1996, p. 3.
