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**THE RIGHT TO WORK**

**General comment No. 18**

**Adopted on 24 November 2005**

**Article 6 of the International Covenant on Economic, Social and Cultural Rights**

## I. INTRODUCTION AND BASIC PREMISES

1. The right to work is a fundamental right, recognized in several international legal instruments. The International Covenant on Economic, Social and Cultural Rights (ICESCR), as laid down in article 6, deals more comprehensively than any other instrument with this right. The right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity. Every individual has the right to be able to work, allowing him/her to live in dignity. The right to work contributes at the same time to the survival of the individual and to that of his/her family, and insofar as work is freely chosen or accepted, to his/her development and recognition within the community.<sup>1</sup>
2. The ICESCR proclaims the right to work in a general sense in its article 6 and explicitly develops the individual dimension of the right to work through the recognition in article 7 of the right of everyone to the enjoyment of just and favourable conditions of work, in particular the right to safe working conditions. The collective dimension of the right to work is addressed in article 8, which enunciates the right of everyone to form trade unions and join the trade union of his/her choice as well as the right of trade unions to function freely. When drafting article 6 of the Covenant, the Commission on Human Rights affirmed the need to recognize the right to work in a broad sense by laying down specific legal obligations rather than a simple philosophical principle.<sup>2</sup> Article 6 defines the right to work in a general and non-exhaustive manner. In article 6, paragraph 1, 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, States parties 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, 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. Since the adoption of the Covenant by the General Assembly in 1966, several universal and regional human rights instruments have recognized the right to work. At the universal level, the right to work is contained in article 8, paragraph 3 (a), of the International Covenant on Civil and Political Rights (ICCPR); in article 5, paragraph (e) (i), of the International Convention on the Elimination of All Forms of Racial Discrimination; in article 11, paragraph 1 (a), of the Convention on the Elimination of All Forms of Discrimination against Women; in article 32 of the Convention on the Rights of the Child; and in articles 11, 25, 26, 40, 52 and 54 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Several regional instruments recognize the right to work in its general dimension, including the European Social Charter of 1961 and the Revised European Social Charter of 1996 (Part II, art. 1), the African Charter on Human and Peoples’ Rights (art. 15) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (art. 6), and affirm 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. 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 (art. 6).

4. The right to work, as guaranteed in the ICESCR, 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 underlines 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 importance of work for personal development as well as for social and economic inclusion. International Labour Organization Convention No. 122 concerning Employment Policy (1964) speaks of “full, productive and freely chosen employment”, linking the obligation of States parties to create the conditions for full employment with the obligation to ensure the absence of forced labour. 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 factors beyond the control of States which hinder the full enjoyment of article 6 in many States parties.

5. 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. IV), and implementation at the national level (chap. V), while the obligations of actors other than States parties are covered in chapter VI. The 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 OF THE RIGHT TO WORK

6. The right to work is an individual right that belongs to each person and is at the same time a collective right. It encompasses all forms of work, whether independent work or dependent wage-paid work. The right to work should not be understood as an absolute and unconditional right to obtain employment. Article 6, paragraph 1, contains a 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. It includes the right of every human being to decide freely to accept or choose work. This implies not being forced in any way whatsoever to exercise or engage in employment and the right of access to a system of protection guaranteeing each worker access to employment. It also implies the right not to be unfairly deprived of employment.

7. Work as specified in article 6 of the Covenant must be *decent work*. This is work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration. It also provides an income allowing workers to support themselves and their families as highlighted in article 7 of the Covenant. These fundamental rights also include respect for the physical and mental integrity of the worker in the exercise of his/her employment.

8. Articles 6, 7 and 8 of the Covenant are interdependent. The characterization of work as decent presupposes that it respects the fundamental rights of the worker. Although articles 7 and 8 are closely linked to article 6, they will be dealt with in separate general comments. Reference to articles 7 and 8 will therefore only be made whenever the indivisibility of these rights so requires.

9. 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”.<sup>3</sup> The Committee reaffirms the need for States parties to abolish, forbid and counter all forms of forced labour as enunciated in article 4 of the Universal Declaration of Human Rights, article 5 of the Slavery Convention and article 8 of the ICCPR.

10. High unemployment and the lack of secure employment are causes that induce workers to seek employment in the informal sector of the economy. States parties must take the requisite measures, legislative or otherwise, to reduce to the fullest extent possible the number of workers outside the formal economy, workers who as a result of that situation have no protection. These measures would compel employers to respect labour legislation and declare their employees, thus enabling the latter to enjoy all the rights of workers, in particular those provided for in articles 6, 7 and 8 of the Covenant. These 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 as a matter of choice. Moreover, domestic and agricultural work must be properly regulated by national legislation so that domestic and agricultural workers enjoy the same level of protection as other workers.

11. ILO Convention No. 158 concerning Termination of Employment (1982) defines the lawfulness of dismissal in its article 4 and in particular imposes the requirement to provide valid grounds for dismissal as well as the right to legal and other redress in the case of unjustified dismissal.

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

(a) *Availability*. States parties must have specialized services to assist and support individuals in order to enable them to identify and find available employment;

(b) *Accessibility*. The labour market must be open to everyone under the jurisdiction of States parties.<sup>4</sup> Accessibility comprises three 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. According to article 2 of ILO Convention No. 111, 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”. Many measures, such as most strategies and programmes designed to eliminate employment-related discrimination, as emphasized in paragraph 18 of general comment No. 14 (2000) on the right to the highest attainable standard of health, 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, disadvantaged and marginalized individuals and groups must be protected by the adoption of relatively low-cost targeted programmes;<sup>5</sup>

- (ii) Physical accessibility is one dimension of accessibility to employment as explained in paragraph 22 of general comment No. 5 on persons with disabilities;
- (iii) Accessibility includes the right to seek, obtain and impart information on the means of gaining access to employment through the establishment of data networks on the employment market at the local, regional, national and international levels;

(c) *Acceptability and quality.* Protection of the right to work has several components, notably the right of the worker to just and favourable conditions of work, in particular to safe working conditions, the right to form trade unions and the right freely to choose and accept work.

### **Special topics of broad application**

#### *Women and the right to work*

13. Article 3 of the Covenant prescribes that States parties undertake to “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights”. The Committee underlines the need for a comprehensive system of protection to combat gender discrimination and to ensure equal opportunities and treatment between men and women in relation to their right to work by ensuring equal pay for work of equal value.<sup>6</sup> In particular, pregnancies must not constitute an obstacle to employment and should not constitute justification for loss of employment. Lastly, emphasis should be placed on the link between the fact that women often have less access to education than men and certain traditional cultures which compromise the opportunities for the employment and advancement of women.

#### *Young persons and the right to work*

14. Access to a first job constitutes an opportunity for economic self-reliance and in many cases a means to escape poverty. Young persons, particularly young women, generally have great difficulties in finding initial employment. National policies relating to adequate education and vocational training should be adopted and implemented to promote and support access to employment opportunities for young persons, in particular young women.

#### *Child labour and the right to work*

15. The protection of children is covered by article 10 of the Covenant. The Committee recalls its general comment No. 14 (2000) and in particular paragraphs 22 and 23 on children’s right to health, and emphasizes the need to protect children from all forms of work that are likely to interfere with their development or physical or mental health. The Committee reaffirms the

need to protect children from economic exploitation, to enable them to pursue their full development and acquire technical and vocational education as indicated in article 6, paragraph 2. The Committee also recalls its general comment No. 13 (1999), in particular the definition of technical and vocational education (paras. 15 and 16) as a component of general education. Several international human rights instruments adopted after the ICESCR, such as the Convention on the Rights of the Child, expressly recognize the need to protect children and young people against any form of economic exploitation or forced labour.<sup>7</sup>

#### *Older persons and the right to work*

16. The Committee recalls its general comment No. 6 (1995) on the economic, social and cultural rights of older persons and in particular the need to take measures to prevent discrimination on grounds of age in employment and occupation.<sup>8</sup>

#### *Persons with disabilities and the right to work*

17. The Committee recalls the principle of non-discrimination in access to employment by persons with disabilities enunciated in its general comment No. 5 (1994) on persons with disabilities. “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 substandard conditions.”<sup>9</sup> States parties must take measures enabling persons with disabilities to secure and retain appropriate employment and to progress in their occupational field, thus facilitating their integration or reintegration into society.<sup>10</sup>

#### *Migrant workers and the right to work*

18. The principle of non-discrimination as set out in article 2.2 of the Covenant and in article 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families should apply in relation to employment opportunities for migrant workers and their families. In this regard the Committee underlines the need for national plans of action to be devised to respect and promote such principles by all appropriate measures, legislative or otherwise.

### **III. STATES PARTIES’ OBLIGATIONS**

#### **General legal obligations**

19. The principal obligation of States parties is to ensure the progressive realization of the exercise of the right to work. States parties must therefore adopt, as quickly as possible, measures aiming at achieving 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.<sup>11</sup> States parties have immediate obligations in relation to the right to work, such as 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.<sup>12</sup> Such steps must be deliberate, concrete and targeted towards the full realization of the right to work.

20. The fact that realization of the right to work is progressive and takes place over a period of time should not be interpreted as depriving States parties' obligations of all meaningful content.<sup>13</sup> 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.

21. As with all other rights in the Covenant, retrogressive measures should in principle not be taken in relation to the right to work. If any deliberately retrogressive steps are taken, States parties have 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 States parties' maximum available resources.<sup>14</sup>

22. Like all human rights, the right to work imposes three types or levels of obligations on States parties: the obligations to *respect*, *protect* and *fulfil*. The obligation to *respect* the right to work requires States parties to refrain from interfering directly or indirectly with the enjoyment of that right. The obligation to *protect* requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to work. The obligation to *fulfil* includes the obligations to provide, facilitate and promote that right. It implies that States parties should adopt appropriate legislative, administrative, budgetary, judicial and other measures to ensure its full realization.

### **Specific legal obligations**

23. States parties are under the obligation to *respect* the right to work by, inter alia, prohibiting forced or compulsory labour and refraining from denying or limiting equal access to decent work for all persons, especially disadvantaged and marginalized individuals and groups, including prisoners or detainees,<sup>15</sup> members of minorities and migrant workers. 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 measures to combat discrimination and to promote equal access and opportunities.

24. With regard to the obligations of States parties relating to child labour as set out in article 10 of the Covenant, States parties must take effective measures, in particular legislative measures, to prohibit labour of children under the age of 16. Further, they have to prohibit all forms of economic exploitation and forced labour of children.<sup>16</sup> States parties must adopt effective measures to ensure that the prohibition of child labour will be fully respected.<sup>17</sup>

25. Obligations to *protect* the right to work include, inter alia, the duties of States parties to adopt legislation or to take other measures ensuring equal access to work and training and to ensure that privatization measures do not undermine workers' rights. Specific measures to increase the flexibility of labour markets must not render work less stable or reduce the social protection of the worker. The obligation to protect the right to work includes the responsibility of States parties to prohibit forced or compulsory labour by non-State actors.

26. States parties are obliged to *fulfil* (*provide*) the right to work when individuals or groups are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal. This obligation includes, inter alia, the obligation to recognize the right to work in national legal systems and to adopt a national policy on the right to work as well as a detailed

plan for its realization. The right to work requires formulation and implementation by States parties 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”.<sup>18</sup> 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 parties. The Committee emphasizes the need to establish a compensation mechanism in the event of loss of employment, as well as the obligation to take appropriate measures for the establishment of employment services (public or private) at the national and local levels.<sup>19</sup> Further, the obligation to fulfil (provide) the right to work includes the implementation by States parties of plans to counter unemployment.<sup>20</sup>

27. The obligation to *fulfil (facilitate)* the right to work requires States parties, inter alia, to take positive measures to enable and assist individuals to enjoy the right to work and to implement technical and vocational education plans to facilitate access to employment.

28. The obligation to *fulfil (promote)* the right to work requires States parties to undertake, for example, educational and informational programmes to instil public awareness on the right to work.

### **International obligations**

29. In its general comment No. 3 (1990) the Committee draws 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. 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 articles 6, 7 and 8 of the Covenant is given due attention.

30. To comply with their international obligations in relation to article 6, States parties should endeavour to promote the right to work in other countries as well as in bilateral and multilateral negotiations. In negotiations with international financial institutions, States parties should ensure protection of the right to work of their population. 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 programmes and international measures of these institutions. The strategies, programmes and policies adopted by States parties under structural adjustment programmes should not interfere with their core obligations in relation to the right to work and impact negatively on the right to work of women, young persons and the disadvantaged and marginalized individuals and groups.

### **Core obligations**

31. In general comment No. 3 (1990) the Committee confirms that States parties have a core obligation to ensure the satisfaction of minimum essential levels of each of the rights covered by the Covenant. 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, and can have a considerable impact on the work situation of individuals and groups. Accordingly, these core obligations include at least the following requirements:

- (a) To ensure the right of access to employment, especially for disadvantaged and marginalized individuals and groups, permitting them to live a life of dignity;
- (b) To avoid any measure that results in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalized individuals and groups or in weakening mechanisms for the protection of such individuals and groups;
- (c) To adopt and implement a national employment strategy and plan of action based on and addressing the concerns of all workers on the basis of a participatory and transparent process that includes employers' and workers' organizations. Such an employment strategy and plan of action should target disadvantaged and marginalized individuals and groups in particular and include indicators and benchmarks by which progress in relation to the right to work can be measured and periodically reviewed.

#### IV. VIOLATIONS

32. A distinction should be drawn between the inability and the unwillingness of States parties to comply with their obligations under article 6. This follows from article 6, paragraph 1, which guarantees the right of everyone to the opportunity to gain his living by work that he freely chooses or accepts, and article 2, paragraph 1, which places an obligation on each State party to undertake the necessary measures "to the maximum of its available resources". The obligations of States parties must be interpreted in the light of these two articles. States parties that are unwilling to use the maximum of their available resources for the realization of the right to work are in violation of their obligations under article 6. Nevertheless, resource constraints may explain the difficulties a State party may encounter in fully guaranteeing the right to work, to the extent that the State party demonstrates that it has used all available resources at its disposal in order to fulfil, as a matter of priority, the obligations outlined above. Violations of the right to work can occur through the direct action of States or State entities, or through the lack of adequate measures to promote employment. Violations through *acts of omission* occur, for example, when States parties do not regulate the activities of individuals or groups to prevent them from impeding the right of others to work. Violations through *acts of commission* include forced labour; 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 practice; and the adoption of legislation or policies which are manifestly incompatible with international obligations in relation to the right to work.

##### **Violations of the obligation to respect**

33. Violations of the obligation to respect the right to work include laws, policies and actions that contravene the standards laid down in article 6 of the Covenant. In particular, any discrimination in access to the labour market or to means and entitlements for obtaining 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 principle of non-discrimination mentioned in article 2, paragraph 2, of the Covenant is immediately applicable and is neither subject to progressive implementation nor dependent on available resources. It is directly applicable to all aspects of the right to work. The failure of States parties to take into account their 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 their obligation to respect the right to work.

34. As for all other rights in the Covenant, there is a strong presumption that retrogressive measures taken in relation to the right to work are not permissible. Such retrogressive measures include, *inter alia*, denial of access to employment to particular individuals or groups, whether such discrimination is based on legislation or practice, abrogation or 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 international legal obligations relating to the right to work. An example would be the institution of forced labour or the abrogation of legislation protecting the employee against unlawful dismissal. Such measures would constitute a violation of States parties' obligation to respect the right to work.

#### **Violations of the obligation to protect**

35. Violations of the obligation to protect follow from the failure of States parties to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to work by third parties. They include omissions such 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; or the failure to protect workers against unlawful dismissal.

#### **Violations of the obligation to fulfil**

36. 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 funds which results in the non-enjoyment of the right to work by individuals or groups, particularly the disadvantaged and 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; and the failure to implement technical and vocational training programmes.

### **V. IMPLEMENTATION AT THE NATIONAL LEVEL**

37. In accordance with article 2, paragraph 1, of the Covenant, States parties are required to utilize "all appropriate means, including particularly the adoption of legislative measures" for the implementation of their Covenant obligations. Every State party has a margin of discretion in assessing which measures are most suitable to meet its specific circumstances. The Covenant, however, clearly imposes a duty on each State party to take whatever steps are necessary to ensure that everyone is protected from unemployment and insecurity in employment and can enjoy the right to work as soon as possible.

### **Legislation, strategies and policies**

38. States parties should consider the adoption of specific legislative measures for the implementation of the right to work. Those measures should (a) establish national mechanisms to monitor implementation of employment strategies and national plans of action and (b) contain provisions on numerical targets and a time frame for implementation. They should also provide (c) means of ensuring compliance with the benchmarks established at the national level and (d) the involvement of civil society, including experts on labour issues, the private sector and international organizations. In monitoring progress on realization of the right to work, States parties should identify the factors and difficulties affecting the fulfilment of their obligations.

39. Collective bargaining is a tool of fundamental importance in the formulation of employment policies.

40. United Nations agencies and programmes should, upon States parties' request, assist in drafting and reviewing relevant legislation. The ILO, for example, has considerable expertise and accumulated knowledge concerning legislation in the field of employment.

41. States parties should adopt a national strategy, based on human rights principles aimed at progressively ensuring full employment for all. Such a national strategy also imposes a requirement to identify the resources available to States parties for achieving their objectives as well as the most cost-effective ways of using them.

42. The formulation and implementation of a national employment strategy should involve full respect for the principles of accountability, transparency, and participation by interested groups. The right of individuals and groups to participate in decision-making should be an integral part of all policies, programmes and strategies intended to implement the obligations of States parties under article 6. The promotion of employment also requires effective involvement of the community and, more specifically, of associations for the protection and promotion of the rights of workers and trade unions in the definition of priorities, decision-making, planning, implementation and evaluation of the strategy to promote employment.

43. To create conditions favourable to the enjoyment of the right to work, States parties must also take appropriate measures to ensure that both the private and public sectors reflect an awareness of the right to work in their activities.

44. The national employment strategy must take particular account of the need to eliminate discrimination in access to employment. It must ensure equal access to economic resources and to technical and vocational training, particularly for women, disadvantaged and marginalized individuals and groups, and should respect and protect self-employment as well as employment with remuneration that enables workers and their families to enjoy an adequate standard of living as stipulated in article 7 (a) (ii) of the Covenant.<sup>21</sup>

45. 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 compliance with 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.

### **Indicators and benchmarks**

46. A national employment strategy must define indicators on the right to work. The indicators should be designed to monitor effectively, at the national level, the compliance by States parties with their obligations under article 6 and should be based on ILO indicators such as the rate of unemployment, underemployment and the ratio of formal to informal work. Indicators developed by the ILO that apply to the preparation of labour statistics may be useful in the preparation of a national employment plan.<sup>22</sup>

47. Having identified appropriate right to work indicators, States parties are invited to set appropriate national benchmarks in relation to each indicator. During the periodic reporting procedure the Committee will engage in a process of “scoping” with the State party. Scoping involves the joint consideration by the State party and the Committee of the indicators and national benchmarks which will then provide the targets to be achieved during the next reporting period. During the following five years the State party will use these national benchmarks to help monitor its implementation of the right to work. Thereafter, in the subsequent reporting process, the State party and the Committee will consider whether or not the benchmarks have been achieved and the reasons for any difficulties that may have been encountered. Further, when setting benchmarks and preparing their reports States parties should utilize the extensive information and advisory services of specialized agencies with regard to data collection and disaggregation.

### **Remedies and accountability**

48. 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 the national level. At the national level trade unions and human rights commissions should play an important 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 a guarantee of non-repetition.

49. Incorporation of international instruments setting forth the right to work into the domestic legal order, in particular the relevant ILO conventions, should strengthen the effectiveness of measures taken to guarantee the right to work and is encouraged. The incorporation of international instruments recognizing the right to work into the domestic legal order, or the recognition of their direct applicability, significantly enhances the scope and effectiveness of remedial measures and is encouraged in all cases. Courts would then be empowered to adjudicate violations of the core content of the right to work by directly applying obligations under the Covenant.

50. Judges and other law enforcement authorities are invited to pay greater attention to violations of the right to work in the exercise of their functions.

51. States parties should respect and protect the work of human rights defenders and other members of civil society, in particular the trade unions, who assist disadvantaged and marginalized individuals and groups in the realization of their right to work.

## VI. OBLIGATIONS OF ACTORS OTHER THAN STATES PARTIES

52. While only States are parties to the Covenant and are thus ultimately accountable for compliance with it, all members of society - individuals, local communities, trade unions, civil society and private sector organizations - have responsibilities regarding the realization of the right to work. States parties should provide an environment facilitating the discharge of these obligations. Private enterprises - national and multinational - while not bound by the Covenant, have a particular role to play in job creation, hiring policies and non-discriminatory access to work. They should conduct their activities on the basis of legislation, administrative measures, codes of conduct and other appropriate measures promoting respect for the right to work, agreed between the government and civil society. Such measures should recognize the labour standards elaborated by the ILO and aim at increasing the awareness and responsibility of enterprises in the realization of the right to work.

53. The role of the United Nations agencies and programmes, and in particular the key function of the ILO in protecting and implementing the right to work at the international, regional and national levels, is of particular importance. Regional institutions and instruments, where they exist, also play an important role in ensuring the right to work. When formulating and implementing their national employment strategies, States parties should avail themselves of the technical assistance and cooperation offered by the ILO. When preparing their reports, States parties should also use the extensive information and advisory services provided by the ILO for data collection and disaggregation as well as the development of indicators and benchmarks. In conformity with articles 22 and 23 of the Covenant, the ILO and the other specialized agencies of the United Nations, 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 to implement the right to work at the national level, bearing in mind their own mandates. International financial institutions 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 (1990), particular efforts should 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.

54. Trade unions play a fundamental role in ensuring respect for the right to work at the local and national levels and in assisting States parties to comply with their obligations under article 6. The role of trade unions is fundamental and will continue to be considered by the Committee in its consideration of the reports of States parties.

### Notes

<sup>1</sup> 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."

<sup>2</sup> Commission on Human Rights, eleventh session, agenda item 31, A/3525 (1957).

<sup>3</sup> ILO Convention No. 29 concerning Forced or Compulsory Labour, 1930, article 2, paragraph 1; see also paragraph 2. ILO Convention No. 105 concerning the Abolition of Forced Labour, 1957.

<sup>4</sup> Only some of these topics feature in articles 2.2 and 3 of the Covenant. The others have been inferred from the practice of the Committee or from legislation or judicial practice in a growing number of States parties.

<sup>5</sup> See general comment No. 3 (1990), The nature of States parties' obligations, paragraph 12.

<sup>6</sup> See general comment No. 16 (2005) on article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights, paragraphs 23-25.

<sup>7</sup> See the Convention on the Rights of the Child, 1989, article 32, paragraph 1, reflected in the second preambular paragraph of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. See also article 3, paragraph 1, of the Protocol, on forced labour.

<sup>8</sup> See general comment No. 6 (1995) on the economic, social and cultural rights of older persons, paragraph 22 (and paragraph 24 on retirement).

<sup>9</sup> See general comment No. 5 (1994) on persons with disabilities, including other references in paragraphs 20-24.

<sup>10</sup> See ILO Convention No. 159 concerning Vocational Rehabilitation and Employment (Disabled Persons), 1983. See article 1, paragraph 2, on access to employment. See also the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, proclaimed by the General Assembly in its resolution 48/96 of 20 December 1993.

<sup>11</sup> See general comment No. 3 (1990) on the nature of States parties' obligations, paragraph 1.

<sup>12</sup> *Ibid.*, para. 2.

<sup>13</sup> *Ibid.*, para. 9.

<sup>14</sup> *Ibid.*, para. 9.

<sup>15</sup> If offered on a voluntary basis. On the question of the work of prisoners, see also the Standard Minimum Rules for the Treatment of Prisoners and article 2 of the ILO Convention (No. 29) concerning Forced or Compulsory Labour.

<sup>16</sup> See Convention on the Rights of the Child, article 31, paragraph 1.

<sup>17</sup> See ILO Convention on the Worst Forms of Child Labour, article 2, paragraph 7, and the Committee's general comment No. 13 on the right to education.

<sup>18</sup> See ILO Convention No. 122 concerning Employ Policy, 1964, article 1, paragraph 1.

<sup>19</sup> See ILO Convention No. 88 concerning the Organization of the Employment Service, 1948.

<sup>20</sup> See ILO Convention No. 88 and, similarly, ILO Convention No. 2 concerning Unemployment, 1919. See also ILO Convention No. 168 concerning Employment Promotion and Protection against Unemployment, 1988.

<sup>21</sup> See general comment No. 12 (1999) on the right to adequate food, paragraph 26.

<sup>22</sup> See ILO Convention No. 160 concerning Labour Statistics, in particular, its articles 1 and 2.

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