Committee on Economic, Social and Cultural Rights
General Comment #23 – Just and favourable conditions of work (Art 7)
March 2016

During its 57th session in March 2016, the Committee on Economic, Social and Cultural Rights, after a relatively swift gestation period, adopted its General Comment 23[1] on Article 7 of the Covenant, on just and favourable conditions of work.

The General Comment provides a comprehensive elaboration of the substantive content of Article 7 and States parties' obligations under that Article. Whilst there are some issues that we might have expected to receive greater attention, such as the importance of unions/workers organisations, workers with disabilities and access to remedy, given the strict page limit, the document does a good job at highlighting all the key issues.

The General Comment begins by situating Article 7 within the context of the Covenant, emphasising the interrelatedness with other rights such as Articles 6 (right to work), 8 (trade union rights), 9 (social security), 3 (equality between men and women) and 11 (adequate standard of living, including housing, food etc). The importance and complementarity of the ILO Conventions and Recommendations are also underlined throughout the General Comment with continuous cross-referencing of relevant ILO standards.

By way of introduction the Committee also regrets the significant erosion of workers' rights across the world, even in times of economic growth, the persistence of discrimination and inequalities in working conditions and the overall failure to realise this right. Further, the General Comment acknowledges that the concepts of 'work' and 'workers' are evolving and thus it includes consideration of issues perhaps not foreseen at the time of drafting of the Covenant, such as unpaid workers, the informal economy and migrant workers.

In discussing the 'Normative Content' of Article 7, the General Comment emphasises that it applies to 'everyone', meaning 'all workers in all settings' and that the list in Article 7 of fundamental elements to guarantee just and favourable conditions of work, is 'non-exhaustive' and will include other relevant factors including: prohibition of forced labour,

[1] Committee on Economic, Social and Cultural Rights, General Comment No. 23 (2016) on the Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), UN Doc E/C.12/GC/23, 8 March 2016

exploitation of children, freedom from violence and harassment at work and paid parental leave.[2]

Particularly pleasing is the very strong gender-perspective throughout the General Comment and the emphasis on women's substantive equality. The text repeatedly highlights both direct and indirect discrimination against women in the workplace, the de facto impact of laws and policies on women and the negative impact of stereotyped gender roles. For instance, in relation to rest, leisure, holiday and working hours, the Committee emphasises that policies should not reinforce stereotyped gender roles. In relation to flexible working arrangements, it treads carefully noting they 'could contribute towards a better balance between work and family responsibilities', but cautions that they should not be 'used to undermine the right to just and favourable conditions of work'.[3] States are also encouraged to be aware of inter-sectional discrimination against women, to take a life cycle approach to the needs of women workers, to ensure access to adequate sanitation facilities that meet women's specific hygiene needs[4], to address occupational segregation by sex and the under-valuing of work traditionally performed by women and to take positive measures, including 'special measures' to address 'structural obstacles that perpetuate gender inequality'.[5]

Significant attention is given to the issue of 'remuneration' and a 'living wage'. The General Comment emphasises that the minimum criteria for remuneration are: fair wages; equal remuneration for work of equal value; and provide a decent living for workers and their families.[6] It also stresses that the notion of a fair wage is not static and must be assessed against a range of factors and in the relevant context, including for instance: the position of women workers; the precariousness of contracts; and job insecurity. Whilst some may have hoped for a stronger statement on this, the Committee confirms that: 'For the clear majority of workers, fair wages are above the minimum wage'.[7]

The General Comment helpfully unpacks the concept of 'equal remuneration for work of equal value' and provides guidance to States on how to objectively evaluate jobs to avoid

[2] Paragraphs 5 & 6
[3] Paragraph 46
[4] Paragraph 30
[5] Paragraph 47, 61
[6] Paragraph 9
[7] Paragraph 10

indirect discrimination (including across sectors) and measures, including targets, to eliminate discrimination in this context.[8]

The concept of remuneration that provides a decent living is also discussed in detail and distinguished from 'fair wages' and 'equal remuneration' on the basis that the former is determined 'by reference to outside factors such as the cost of living and other prevailing economic and social conditions'[9] and must be 'sufficient to enable the worker and his or her family to enjoy other rights in the Covenant...'. In this respect the Committee explains that Article 7 requires States to adopt via legislation, in consultation with workers and employers, a periodically reviewed minimum wage, indexed to cost of living (and other factors) which is non-discriminatory applies 'systematically', is enforced, including via labour inspections and is subject to penalties and sanctions.[10]

Other subjects discussed under the heading of 'Normative Content' of Article 7 include: safe and healthy working conditions; rest, holidays and working hours; and equal opportunity in promotion.

The specific guidance to States on the legal obligations under Article 7 is also provided. States' 'General Obligations' are described in detail, emphasising 'core obligations', the immediate obligation to take deliberate, concrete and targeted steps towards realisation of Article 7 and the obligation to 'identify indicators and benchmarks to monitor the implementation of the right'.[11] The Committee explains that States have a 'Core Obligation' 'to ensure the satisfaction of, at the very least, minimum essential levels of the right' and then outlines what this entails, including: a legislatively enshrined, non-discriminatory and non-derogable minimum wage; a comprehensive national policy on occupational safety and health; a national policy and laws prohibiting harassment at work, including sexual harassment; and legal guarantee of non-discrimination in respect of the exercise of the right.[12] Finally, an outline of States' 'Specific legal obligations' is provided using the 'respect, protect, fulfil (facilitate, promote, provide)' framework.[13] Importantly the General Comment

[8] Paragraphs 11 - 17
[9] Paragraph 18
[10] Paragraphs 20-24
[11] Paragraph 55
[12] Paragraph 65
[13] Paragraphs 58 - 64

underlines the State obligation to protect, by, inter alia, ensuring the private sector does not interfere with the enjoyment of the right and comply with their obligations.[14]

The General Comment identifies a number of 'Special topics of broad application' which highlight the unique issues relating to certain groups of workers. In addition to the usual groups such as women, workers with disabilities and young and older workers, the General Comment includes the categories: informal sector workers, migrant and refugee workers and domestic workers.[15] The inclusion of these categories is important as it acknowledges the work and situation of hundreds of millions of workers around the world who have frequently been excluded from national laws and policies on working conditions, are often not counted in labour statistics and are therefore highly vulnerable to exploitation, abusive labour practices and harassment and violence in the workplace. The General Comment reminds States that these groups of workers have a right to just and favourable conditions of work on a basis of equality with other workers and the objective should be to formalise all work and in the meantime, to ensure these workers are afforded the same legal protections as all other workers.

Non-State actors are also addressed in the General Comment, specifically in relation to business enterprises, trade unions and international organisations.[16] The roles and responsibilities of business are elaborated, whilst emphasising that the Covenant obligations rest ultimately with States. The implications for workers and working conditions, of the cross-border nature of business is also recognised. The General Comment notes a State's obligations to realise Article 7 rights in respect of the overseas operations of enterprises where the State owns or controls the enterprise or provides substantial support or services to the enterprise.[17] In addition, States should take measures to require enterprises domiciled in their territory to respect the right throughout their operations extra-territorially and to ensure accountability and access to remedy for victims. States should provide guidance to employers and enterprises in this respect.[18] The General Comment does not directly address the responsibility of business to ensure that Article 7 rights are

[14] Paragraph 59
[15] Paragraph 47
[16] Paragraphs 74 - 76
[17] Paragraph 69
[18] Paragraph 70

respected throughout the supply chain. It does, however, require States to 'refrain from procuring goods and services from individuals or enterprises who are abusing the right'.[19]

The General Comment also includes strong statements on international organisations, including international financial institutions and in relation to international agreements, such as bilateral, regional and multilateral trade and investment agreements, highlighting the importance of ensuring these actors and agreements do not negatively affect the enjoyment of Article 7. Specifically the General Comments says States should take Article 7 into account in lending policies and structural adjustment programs.[20]

Throughout the General Comment there is an important reiteration of the importance of consultation[21] with workers and workers' organisations and of the role of such groups in monitoring working conditions 'without fear of reprisals'.[22] There is specific reference to human rights defenders, noting that 'States parties should respect, protect and promote the work of human rights defenders and other civil society actors towards the realisation of the right'.[23] Importantly, the paragraph adds that this includes facilitating access to information and enabling the exercise of their rights to freedom of expression, association and assembly, and public participation'.

This General Comment is a very helpful addition to the Committee's jurisprudence as it provides concrete guidance to States about their obligations under Article 7. It also advances the human rights understanding of just and favourable conditions of work and of the issues and groups requiring particular attention to ensure the full realisation of Article 7.

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[19] Paragraph 59
[20] Paragraph 71
[21] See for instance paragraphs 20, 25, 26, 56
[22] Paragraph 26
[23] Paragraph 49