International Organisation of Employers
Organisation Internationale des Employeurs
Organización Internacional de Empleadores

30 July 2015

Office of the UN High Commissioner for Human Rights
Committee on Economic, Social and Cultural Rights
Palais des Nations,
8-14 Avenue de la Paix,
CH-1211 Geneva 10
Switzerland

Dear Committee on Economic, Social and Cultural Rights,

Re: Employers' comments to the General Comment on Article 7 of the International Covenant on Economic, Social and Cultural Rights

The International Organisation of Employers (IOE) commends the Committee for this initiative that will provide guidance to the States parties in fulfilling their reporting obligations under the Covenant.

The IOE deems it necessary to revise the draft so as to better reflect the general comments provided upon its reading. Subsequently, a second round of discussion, similar to the one that took place on 16 June 2015, would be highly relevant to better address the concerns raised by the various respondents.

Introduction

In general terms, the IOE notes that while this draft provides good guidance on the reporting obligations of the States under the Covenant, it is still far from providing sound assistance to the States in putting this guidance into action. Notably, the draft does not properly acknowledge the value that businesses add to employment and working conditions as well as the need to count on a proper business environment to achieve so. This makes it still challenging to render this draft fit for purpose in the world of work as it becomes in many occasions too theoretical. Nevertheless IOE is looking to continue collaborating with the OHCHR to improve its impact in a constructive manner.

General comments

The IOE would like to propose some general comments to the draft submitted for its attention.

1. Inadequate definition of concepts included in the Covenant

The terms of the Covenant such as "just and fair", "fair wage", "reasonable hours", remain ambiguous in this draft. These concepts contain important subjective components which tend to confuse rather than provide more clarity. Given that the draft seeks to be practical in recommending ways in which "just and fair" working conditions can be achieved, it is important to refer to existing minimum wages or existing working time regulations and to provide better clarity on these concepts with a realistic and pragmatic approach.

2. Confusion over concepts

The draft creates further confusion when referring the term "**remuneration**" to "**income**".

Remuneration, by definition, is payment received for one's services or employment. While the draft initially defines remuneration correctly (Paragraph 8), it sometimes tends to use it interchangeably with the notion of income, which includes remuneration as well as other public contributions or benefits. This appears to put the onus on employers and shift the responsibility of public institutions on employers.

In addition, confusion occurs around the following three concepts: "**fair wage**" (Paragraph 11), "**living wage**" (Paragraph 20-27) and "**minimum wage**" (Paragraph 21-27). As there is no clear distinction amongst the three concepts and the draft also does not properly highlight the differences, the IOE proposes, as a more certain alternative, referring to the concept of "minimum wage", which has been agreed and adopted by the ILO constituents and is contained in ILO Convention 131.

The fair wage concept, as referred to in Paragraph 11 of the draft, is based on a Committee of Experts General Survey on "Minimum Wage Systems" (2014), which in itself, quotes from another study by Vaughan-Whitehead (2010; Paragraph 58). None of these studies have been discussed in the only tripartite agency of the United Nations, the International Labour Organisation, which would have provided them with the necessary legitimacy and certainty.

Minimum wages is the lowest level of pay to be paid by virtue of a contract of employment. Minimum wages are established through a minimum wage fixing system. According to the Minimum Wage Fixing Convention, 1970 (No. 131): *"The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include:*

(a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;

(b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment."

The minimum living wage referred to by the ITUC in its comment is not in line with ILO Convention 131. Though reference to the living wage was made in the Preamble to the ILO Constitution, there is no consensus among ILO Constituents nor a discussion on what exactly constitutes a living wage.

Finally, remuneration in the form of minimum wages has been referred as the solution to social problems of inequality (both in the case of income inequality and gender inequality). (Paragraph 25). Focusing mainly on minimum wages to address inequality is misguided. Minimum wages are designed to assure that specific workers are not below a socially acceptable level in terms of remuneration, but not to efficiently resolve an entire societal challenge of income inequalities, which have other more complex components.

3. Confusion over the role of the State, employers and other institutions

While the Guiding Principles on Business and Human Rights clearly define the roles and responsibilities of the State and that of the employers, the draft seems to confuse these responsibilities. By insisting that the remuneration is meant to be paid to an individual for his services and should cover living expenses for him and his family, it confuses again this concept with income as referred in our previous comment. This places on the employers the role of providing income to the whole population, regardless of whether the population has an employment relationship. In addition, empowering various stakeholders such as national human rights institutions to assume inspection services for labour violations risks again shifting duties and responsibilities that only the State can assume and also disregards the consolidated role that Social Partners play in collaborating with inspection authorities.

4. Application of the Covenant, supporting the Comment from the Australian Government

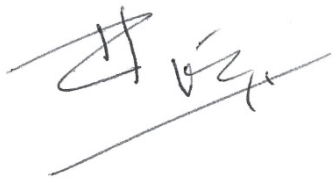
In line with the comment from the Australian Government, Paragraphs 68 and 69 of the draft General Comment set out the Committee's views as to the nature of the obligations in Article 7 with respect to the actions of nationals and domestic enterprises outside of the territorial jurisdiction of a State Party. The Guiding Principles on Business and Human Rights are a set of principles (not standards) aimed at preventing and addressing the risk of adverse human rights impacts linked to business activity. Indeed, they do not reflect per se the legal obligations set out in the Covenant.

The Covenant does not contain a specific scope of application provision. However, as Australia correctly pointed out, the Covenant is primarily territorial in nature. States Parties have little or no control over the actions of nationals or domestic enterprises operating extraterritorially, nor do they exercise control over the law of the countries in which such actions may be occurring. The draft, thus, needs to better reflect the legal status of the Covenant.

Specific comments

In addition, some specific comments have been added to the draft for easiness of reading (the draft of the General Comment is attached).

Yours faithfully,



Roberto Suarez Santos

Deputy Secretary-General