Excerpt from the Report on the Thirtieth and Thirty-First Sessions (E/C.12/2004/22 - E/C.12/2003/14), paras. 577-601

B. Day of general discussion: the right to work (art. 6 of the Covenant)

1. Introduction

577. At its thirty-first session, on 24 November 2003, the Committee on Economic, Social and Cultural Rights held a day of general discussion on the right to work, as provided for in article 6 of the Covenant.

578. The discussion was intended to lay the groundwork for the elaboration of a general comment on the right to work.

579. Participants in the day of general discussion included: Ms. Constance Thomas (Chief, Equality and Employment Branch, ILO), Mr. Wataru Iwamoto (Director, Division of Secondary, Technical and Vocational Education, UNESCO), Mr. Richard Siegel (Professor, Department of Political Science, and Faculty Associate, Grant Sawyer Centre for Justice Studies, University of Nevada, United States of America), Mr. Vassil Mratchkov (Professor, Institute for Legal Studies at the Bulgarian Academy of Sciences, Sofia, and former Rapporteur of the Committee on Economic, Social and Cultural Rights), Mr. Akmal Saidov (Director, National Human Rights Centre of Uzbekistan, Tashkent), Ms. Olga Krylova (Centre of Social and Labour Rights, Moscow), Mr. Janek Kuczkiewicz (Director, Department of Trade Union Rights, International Confederation of Free Trade Unions), Ms. Shanthi Dairiam (Executive Director, International Women's Rights Action Watch (Asia Pacific)), Ms. Machteld Inge Van Dooren (Researcher, Human Rights Office, Amersfoort, The Netherlands) and Mr. Pal Malik Özden (Europe-Third World Centre).

580. The Committee had before it the following papers:

(*a*) Discussion paper submitted by Mr. Philippe Texier, member of the Committee: "General comment on the right to work (art. 6) of the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2003/7);

(*b*) Background paper submitted by Mr. Richard Siegel, Professor, Department of Political Science, and Faculty Associate, Grant Sawyer Centre for Justice, University of Nevada, United States of America: "Towards a general comment on the right to work: core elements" (E/C.12/2003/8);

(*c*) Background paper submitted by Ms. Elena Gerasimova, Director, Centre for Social and Labour Rights, Moscow, and Ms. Anna Gvozditskikh and Ms. Olga Krylova: "The right to work: regulatory content" (E/C.12/2003/9);

(*d*) Background paper submitted by Mr. Akmal Saidov, Director, National Human Rights Centre of Uzbekistan, Tashkent: "The right to work: towards a general comment on article 6 of the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2003/10);

(*e*) Background paper submitted by Mr. Vassil Mratchkov, Professor, Institute for Legal Studies at the Bulgarian Academy of Sciences, Sofia, and former member of the

Committee on Economic, Social and Cultural Rights: "Comments on the draft general comment on the right to work (art. 6 of the International Covenant on Economic, Social and Cultural Rights)" (E/C.12/2003/11);

(*f*) Background paper submitted by Ms. Machteld Inge Van Dooren, Researcher, Human Rights Office, Amersfoort, The Netherlands: "The right to work" (E/C.12/2003/12).

2. Opening remarks

581. Ms. Bonoan-Dandan, Chairperson of the Committee, opened the day of general discussion by underlining that the Committee's recent general comments had focused on specific provisions of the Covenant with a view to providing clarification both for States parties and members themselves. She expressed appreciation for the assistance from various experts in preparing this first draft general comment on the right to work. She said that all contributions would be studied carefully and taken into account in the preparation of the final version.

582. Mr. Texier, in presenting his preliminary draft general comment on the right to work (art. 6 of the Covenant) (E/C.12/2003/7), welcomed the fact that after many years the Committee was preparing its first general comment on the right to work and hoped that this would mark the beginning of a series of general comments on the other labour rights (arts. 7 and 8) and the right to social security (art. 9). He said that the draft general comment had been prepared in close collaboration with ILO and acknowledged the contributions of various experts and the support of the Friedrich Ebert Foundation. He pointed out the difficulties that had arisen during the drafting process, such as the indivisibility of articles 6 to 8 of the Covenant. The right to work was directly linked to the right to just and favourable conditions of work and to the right to form trade unions and to strike. However, as it would not have been feasible to elaborate one general comment dealing with all three articles, the best solution would be to have several general comments related to these articles. The second problem related to the issues to be included under the right to work. For example the prohibition of child labour overlapped with article 10 (protection and assistance to the family). The third difficulty related to conceptual problems such as the distinction between formal and informal work, and whether to refer to the self-employed or only to employees.

3. Statements and discussion

583. Mr. Iwamoto (Division of Secondary, Technical and Vocational Education, UNESCO) pointed out that UNESCO had played an important role in the realization of the right to work. It had made significant efforts to provide technical and vocational education and training in all member States in cooperation with ILO and had adopted the Convention on Technical and Vocational Education in 1989. The concept of a job for life was largely a thing of the past and people were now obliged to anticipate engaging in several jobs during their working lives. Consequently, a person's right to work implied a right to receive the training and retraining necessary to engage in productive work in a labour market that was in constant evolution.

584. Mr. Siegel (Professor, Department of Political Science, and Faculty Associate, Grant Sawyer Centre for Justice Studies, University of Nevada, United States of America) said that the Committee's general comment must emphasize the relationship between the right to work and anti-poverty measures, as there was a tendency to examine the right to work only in the

context of industrialized countries. He argued that the draft general comment should include concepts such as forced labour and child labour as well as the concept of full employment.

585. With regard to the issue of full employment, members of the Committee inquired how this could be achieved in countries facing serious economic problems, including lack of foreign investment. Mr Siegel replied that irrespective of economic difficulties all States should be held accountable for the realization of the right to work of their citizens. States should take steps to review their trade policies and resources management to promote the right to work paying special attention to the most vulnerable groups. He also highlighted the important role of international financial institutions and donor States in this context.

586. Commenting on the issue of justiciability, Mr. Siegel said that the right to work should be broken down into its more and less justiciable elements. The right to work that is freely chosen, including protection against slavery, forced labour, child labour and trafficking, was justiciable. Rights related to security and arbitrary dismissals were also justiciable although they required more effort to enforce. The right to full employment, on the other hand, should not be considered by normal courts but rather be monitored by the Committee.

587. Mr. Mratchkov (Institute for Legal Studies at the Bulgarian Academy of Sciences, Sofia) congratulated Mr. Texier for the draft general comment which set out the fundamental issues regarding the right to work embodied in article 6 of the Covenant and provided a good basis for discussion. He pointed out that the right to work had developed and been enriched, gaining from having absorbed elements of the realities of today's work. In defining the right to work, the general comment should take into account the new elements currently apparent such as the right to decent work. It should also reflect the social dimension of the right to work, as the right not only had implications for individuals but also for society as a whole. He also suggested reflecting on the right to work as an economic right as it was a basis for economic development. Furthermore, he stressed the need to ensure the justiciability of the right to work in national legislation and to move towards a greater protection of the right at international level. He noted that economic, social and cultural rights currently did not enjoy the same degree of protection as civil and political rights owing to the lack of an optional protocol to the Covenant.

588. Mr. Saidov (Director, National Human Rights Centre of Uzbekistan, Tashkent) said that the right to work should be seen as a human right that was fundamental to the enjoyment of other human rights. The right to work comprised three elements: the right to the opportunity to gain a living by working, the right to freely chosen work without discrimination and the right to protection against arbitrary dismissals by employers. He emphasized the importance of taking into account the general comments or recommendations of other United Nations treaty bodies, such as general comment No. 18 (1999) on non-discrimination of the Human Rights Committee and general recommendation No. 16 on unpaid women workers in rural and urban family enterprises of the Committee on the Elimination of Discrimination against Women.

589. Mr. Kuczkiewicz (Director, Department of Trade Union Rights, International Confederation of Free Trade Unions) commended the Committee on Economic, Social and Cultural Rights for involving representatives of trade unions in discussions on the general comment. He noted, however, that he would have preferred the general comment to address articles 6 to 8 of the Covenant at the same time given the interrelatedness of these articles. Mr. Kuczkiewicz was pleased that the draft general comment made reference to the issue of

globalization and suggested that the effect of globalization on the right to work be further clarified. With regard to the issue of discrimination, he suggested that trade unionists and migrant workers be included among the categories of groups vulnerable to discrimination. When dealing with the issue of forced labour he proposed that the text give more attention to working conditions in prisons. Furthermore, he recommended that mention be made of the tripartite system and its essential role for the protection of the right to work and that ILO case law and instruments be reflected with more emphasis.

590. Ms. Dairiam (Executive Director, International Women's Rights Action Watch (Asia Pacific)) said the respect for and protection and fulfilment of the right to work needed to take place within the framework of equality and non-discrimination in accordance with articles 2, paragraph 2, and 3 of the Covenant. She said that special attention should be given to the elimination of discrimination against women, because women generally lagged behind men in the enjoyment of the right to work. She underlined that, to ensure equality between men and women, States needed to analyse carefully the factors that impeded women's access to the labour market. Laws and policies should be sensitive to the disadvantages that women faced as women, to ensure substantive equality, including by providing adequate maternity benefits, social policies for child care and other measures for combining family responsibilities with work responsibilities. Ms. Dairiam pointed to the need for temporary special measures to enable women to achieve de facto equality. She argued that States should be obligated to gather data on the relative positions of women and men in the labour market and develop equality plans setting indicators and benchmarks for the progressive realization of equality rights in all aspects of work.

591. Ms. Dairiam read out a statement on behalf of the Canadian organization Women's Economic Equality Project. The statement reiterated that the right to work had different implications and ramifications for women given women's social and economically disadvantaged position in most societies. It also argued that the globalization process accentuated women's disadvantaged position with an increasing number of women working in low-paid part-time contract jobs, in the informal sector, as domestic workers, ragpickers, home-based pieceworkers, etc., or being trafficked into prostitution. The Project also reiterated that laws and policies needed to take into account the economic and social disadvantages of women to achieve de facto equality between men and women.

592. Ms. Thomas (Chief, Equality and Employment Branch, ILO) said ILO welcomed the Committee's initiative to prepare a general comment on the right to work. She recommended that the draft general comment further elaborate upon the facets of globalization that might affect the right to work as well as upon the close linkage between the right to work and poverty. Moreover, she proposed that the draft make reference to ILO Convention No. 122 (1964) and ILO Recommendation No. 169 (1984) both concerning Employment Policy, which affirm the right to work that is freely chosen and the obligation of States to combat forced labour. Ms. Thomas also suggested that the general comment should underline States' obligation to take adequate measures in the area of job creation. Moreover, she agreed with the view of UNESCO that the full realization of the right to work required the promotion of the right to education and training.

593. With regard to the issue of discrimination, Ms. Thomas said the Committee could use the definitions in ILO Convention No. 111 (1958) concerning Discrimination in Respect of Employment and Occupation, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of Discrimination against Women. She recommended that the Committee give the term "work" a broad definition in

the general comment so as to include all forms of activity that represented a means of subsistence. Concerning groups vulnerable to discrimination, Ms. Thomas underlined the importance of not presenting these groups only as victims, but also as members of society who contributed positively to the economy. With regard to women's right to work, she suggested that the text briefly mention some of the protection measures (maternity leave, child care, protection against sexual harassment) and place more emphasis on positive measures, or affirmative action to address inequalities.

594. Concerning child labour, Ms. Thomas suggested that the general comment make reference to ILO Conventions Nos. 138 (1973) concerning Minimum Age for Admission to Employment and 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour). She recommended that the general comment mention agricultural workers, which she saw as a particularly important category of workers. She found interesting the way the concept of decent work had been incorporated into the draft general comment. She said that the concept was part of ILO terminology and implied that whatever the situation in a given country was, the right to work could not justify abusive employment. She pointed to ongoing work within the organization to define the term more clearly and noted that the report of the World Commission on the Social Dimension of Globalization, due to be released in December 2003, might introduce new language.

595. With regard to the issues of discrimination and positive measures, a Committee member inquired about the ILO view on protective measures, such as different retirement ages and forbidding women from working on night shifts and carrying heavy weights, which might be seen as discriminatory. Ms. Thomas replied by referring to the resolution on equal of opportunities and equal treatment for men and women in employment, adopted on 27 June 1985 by ILO according to which any special measures which imposed restrictions or prohibitions on women in the name of protection needed to be reviewed in the national context taking into account the views of workers and women themselves. Ms. Thomas said that restrictions in the name of equality might be good in some circumstances and some countries, but not be warranted in others and might keep women out of the labour market. Ms. Dairiam (Executive Director, International Women's Rights Action Watch (Asia Pacific)) noted in this regard that protective measures were no longer the norm and should be distinguished from positive measures in the form of affirmative action. The latter aimed at achieving equality, as provided for under international human rights treaties, by bringing disadvantaged groups up to the level of other groups.

596. The view that the issues of equality between men and women, direct and indirect discrimination as well as positive measures be given more emphasis was supported by a number of Committee members. A member suggested that the draft general comment emphasize the importance of measures to ensure that parents are able to combine work responsibilities with family life and that the interrelatedness of article 9 (right to social security) with articles 6, 7, 8 of the Covenant should be reflected in the draft.

597. Ms. Van Dooren (Human Rights Office, Amersfoort, The Netherlands) suggested making clearer that the list of grounds for discrimination in the draft general comment was illustrative and not exhaustive. With regard to the obligations of State parties, she argued that a fourth category should be added to the obligations to respect, protect and fulfil, namely the obligation to redress (a notion borrowed from Mr. Asbjørn Eide, Chairperson-Rapporteur, Working Group on Minorities, Sub-Commission on the Promotion and Protection of Human Rights). Though the right to work did not imply the right to get a job, Ms. Van Dooren argued that States were under an obligation to redress the economic situation with a view to

creating favourable conditions for employment. It should also be made clear which obligations were of immediate effect and self-executing.

598. Mr. Özden (Europe-Third World Centre Europe) noted that no State was able to realize the goal of full employment. He also argued that the general comment should not refer to the Global Compact Initiative of the Secretary-General, but rather to the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights adopted by the Sub-Commission on the Promotion and Protection of Human Rights in its resolution 2003/16 of 13 August 2003. Mr. Özden furthermore suggested that the problem of inadequate protection of workers in *maquiladora* assembly plants be mentioned in the general comment.

599. Adding to the many ideas and suggestions that had been made by the invited experts, Committee members made a number of comments on the draft general comment. It was suggested that it be made clear that the right to work covered the right to independent work and to engage in self-employment, also after retirement. It was also argued that the typology of obligations as well as what would constitute a failure to protect the right to work could be further clarified. Furthermore, it was suggested that the general comment should mention the notion of the right to work as part of a person's identity. Other suggestions made were to include references to relevant recent United Nations world summits and documents, including the World Summit for Social Development (held in Copenhagen on 6-12 March 1995) and the Millennium Development Goals,[1] as outlined in the Millennium Declaration, and to make a reference to the responsibilities of private companies.

600. Mr. Texier said that all submissions and comments made would be taken into consideration, as would any additional written comments submitted before May 2004. He stressed that the concept of decent work in the context of the general comment was not used in a moral sense, but rather referred to work which was in conformity with the provisions of the Covenant. He mentioned some of the main suggestions made, including that the issue of discrimination should be given more prominence, that the issue of globalization should be developed further, that a number of ILO instruments should be referred to in the text, and that mention could be made of the problem of anti-union activities. He appreciated the participation of representatives of trade unions in the discussions and regretted that trade unions only very rarely participate in the work of the Committee. Mr. Texier said he would strive to incorporate all comments into the final draft that was scheduled to be adopted at the thirty-second session of the Committee (26 April-14 May 2004).

601. Concluding the discussion, the Chairperson thanked participants for their contributions, which would help the Committee improve its general comments. She also underlined the importance of preparing the final draft general comments in close cooperation with ILO.

[1] A/56/326, annex.