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**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

**Promotion and protection of all human rights, civil  
political, economic, social and cultural rights,  
including the right to development**

## Realization of the right to work

### Report of the United Nations High Commissioner for Human Rights

#### *Summary*

The present report, prepared pursuant to Human Rights Council resolution 28/15, presents an overview of the scope of and applicable standards relative to the right to work; an overview of the recognition of this right in international human rights and international labour law and of its interpretation by United Nations treaty bodies and the International Labour Organization; as well as examples drawn from national experiences.



## I. Introduction

1. In its resolution 28/15, the Human Rights Council requested the United Nations High Commissioner for Human Rights to prepare a report in consultation with States, United Nations agencies, funds and programmes, particularly the International Labour Organization, as well as the treaty bodies, special procedures, civil society and other relevant stakeholders on the realization of the right to work, in accordance with their respective obligations under international human rights law and the relevant major challenges and best practices in that regard, and to submit the report to the Human Rights Council prior to its thirty-first session.

2. The Office of the High Commissioner for Human Rights (OHCHR) solicited submissions from States, United Nations agencies, trade unions, employers' associations and non-governmental organizations (NGOs) and, as of 7 December 2015, 26 responses had been received from States,<sup>1</sup> the International Labour Office and the NGO ESCR-Net.

3. The report offers an overview of the scope and content of the right to work, drawing on applicable human rights instruments, the work of the human rights treaty bodies, international labour standards and doctrine of the International Labour Organization (ILO), and the submissions received.

## II. Normative recognition of the human right to work

4. Since the beginning of the twentieth century, the recognition of the right to work has been affirmed in national constitutions, international treaties and non-binding instruments. The establishment of ILO in 1919 was an important step in this process, establishing the basic principle that "labour is not a commodity", as stated in the Treaty of Versailles and reaffirmed in the Declaration concerning the aims and purposes of the International Labour Organization (Declaration of Philadelphia) of 1944. Article III (a) of the Declaration recognizes the "solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve full employment and the raising of standards of living".

5. This recognition is underpinned by the belief that work is a means for human beings to transform the world and themselves through individual and collective production; to access socially produced assets; to organize basic structures for living together; to learn from each other and build solidarity; to contribute to the common well-being and to self-realization; and to develop a personal and collective identity. Work should not be viewed as a commodity for sale subject to the laws of the marketplace, as this risks treating people as mere economic resources and violating their right to live in dignity. On account of the link between work and a dignified life, the simple recognition of the freedom to work is inadequate. In order to fully accord work its central role in the context of human rights, the right to work should include positive duties and correlative entitlements.

6. International law has progressively incorporated the understanding that work is not purely a means of generating income. The right to work implies just and favourable work conditions<sup>2</sup> and full and productive work should be promoted under conditions safeguarding fundamental political and economic freedoms to the individual.<sup>3</sup> These enable

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<sup>1</sup> Austria, Azerbaijan, Bahrain, Brazil, Bulgaria, Egypt, Fiji, France, Greece, Guatemala, Hungary, Kazakhstan, Malta, Mauritania, Mexico, Oman, Paraguay, Peru, Qatar, Serbia, Slovenia, Spain, Turkey and Uzbekistan.

<sup>2</sup> Universal Declaration of Human Rights, art. 23; International Covenant on Economic, Social and Cultural Rights, art. 7.

<sup>3</sup> International Covenant on Economic, Social and Cultural Rights, art. 6.

the development of workers' capacities for their personal fulfilment and the common well-being<sup>4</sup> and signify that work is not merely an instrument for achieving personal and collective economic goals. Work, as a human right, is not only essential for realizing other human rights, but is an inseparable and inherent part of human dignity.<sup>5</sup>

7. The right to work has been recognized more broadly at the international level since its inclusion in the Universal Declaration of Human Rights (arts. 23 and 24), the International Covenant on Economic, Social and Cultural Rights (arts. 6, 7 and 8) and the International Covenant on Civil and Political Rights (art. 8 (3) (a)). It is recognized in the International Convention on the Elimination of All Forms of Racial Discrimination (arts. 5 (e) (i)), the Convention on the Elimination of All Forms of Discrimination against Women (art. 11 (1) (a)), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (arts. 11, 25, 26, 40, 52 and 54) and the Convention on the Rights of Persons with Disabilities (art. 27).

8. At the regional level, the European Social Charter of 1961 and the revised Charter of 1996 devote considerable attention to the right to work. The Charter of Fundamental Rights of the European Union addresses the right to work in articles 15, 23, 31 and 34. It is also the subject of article 14 of the American Declaration of the Rights and Duties of Man of the Organization of American States (OAS); article 6 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador); article 15 of the African Charter on Human and Peoples' Rights; and article 34 of the Arab Charter on Human Rights.

9. In fulfilment of its mandate to support the realization of the right to work, ILO has produced a substantial body of international labour standards in this area, even if the customary language of human rights is not always utilized.<sup>6</sup> Of particular importance are the Employment Policy Convention, 1964 (No. 122), the Human Resources Development Convention, 1975 (No. 142), the Termination of Employment Convention, 1982 (No. 158), the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168) and the Decent Work Agenda, which is organized into four major strategic objectives: employment, social protection, social dialogue and rights at work.<sup>7</sup>

10. At the World Summit in 2005, States Members of the United Nations agreed to make the goals of full and productive employment and decent work for all, including for women and young people, a central objective of their relevant national and international policies as well as their national development strategies.<sup>8</sup> The recently adopted Sustainable Development Goals include the promotion of full and productive employment and decent work for all, with specific targets.<sup>9</sup> At the national level, the right to work has been recognized in many constitutions throughout the world.<sup>10</sup>

11. Despite this extensive normative recognition, the realization of the right to work continues to be a challenge, particularly in the current global economic crisis. As noted by ILO, it is necessary to "put the aim of full and productive employment and decent work at the heart of the crisis responses".<sup>11</sup>

<sup>4</sup> ILO Declaration on Social Justice for a Fair Globalization (2008).

<sup>5</sup> Committee on Economic, Social and Cultural Rights, general comment No. 18 (2005) on the right to work, para. 1.

<sup>6</sup> International Labour Office submission, p. 1.

<sup>7</sup> ILO Declaration on Social Justice for a Fair Globalization.

<sup>8</sup> General Assembly resolution 60/1, para. 47.

<sup>9</sup> General Assembly resolution 70/1, goal 8.

<sup>10</sup> ILO, *General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III (Part 1B) (Geneva, 2010), paras. 14-18 and 29.

<sup>11</sup> ILO, *Recovering from the Crisis: A Global Jobs Pact* (2009), para. 11.

### III. Scope and content of the right to work

12. The clarification of the scope and normative content of the right to work is essential to its realization and to overcoming any uncertainty as to its legal character. A right to accessible work which ensures the satisfaction of human needs and values is central to a dignified life and has several dimensions. General comment No. 18 on the right to work, adopted by the Committee on Economic, Social and Cultural Rights in 2005, reviews these normative dimensions in light of the interdependence of articles 6, 7 and 8 of the Covenant and constitutes an important starting point for the clarification of its content. ILO standards and declarations, other international and regional standards as well as national constitutions and practices set out key components which reinforce the right to work as a whole.

13. The right to work may be interpreted as encompassing the following interdependent and mutually reinforcing aspects:

(a) The right of every person to productive and freely chosen work that ensures a dignified life for him- or herself and his or her family, without discrimination;

(b) The right to economic and environmental conditions in the workplace that are conducive to meeting the needs of the individual and to realizing associated freedoms, including the right not to be arbitrarily deprived of work;

(c) The material conditions related to safety, security and dignity in the workplace;

(d) The social conditions relating to labour rights, family leave and gender equality.

#### A. The freedom and opportunity to work

##### 1. Right to work and employment policies

14. Article 6 (2) of the International Covenant on Economic, Social and Cultural Rights emphasizes the link between the right to work and full employment, identifying a non-exhaustive list of measures to ensure its realization. These include policies and techniques to achieve steady economic, social and cultural development and full and productive employment. Drawing on article 23 (1) of the Universal Declaration, article 1 of the ILO Employment Policy Convention, 1964 (No. 122) provides that policies to ensure the availability of full, productive and freely chosen employment must guarantee that (a) there is work for all who are available for and seeking work; (b) such work is as productive as possible; and (c) there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin. Paragraph 1 of the ILO Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169) defines full employment as “a means of achieving in practice the realization of the right to work”, noting that deterioration in job opportunities can provoke social tension and thus create conditions which can endanger peace and prejudice the exercise of the right to work.

15. According to the Committee on Economic, Social and Cultural Rights, the right to work should not be understood as an absolute and unconditional right to obtain employment.<sup>12</sup> Nevertheless, States parties have an immediate obligation to move as expeditiously and effectively as possible, to the maximum of their available resources, towards adopting policies aimed at attaining full employment. Policies should also aim to

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<sup>12</sup> General comment No. 18 (2005), para. 6.

ensure that everyone benefits from a protection system that promotes equal access to employment under just and favourable conditions and that no one is unfairly deprived of work.<sup>13</sup>

16. The ILO Committee of Experts on the Application of Conventions and Recommendations, in its 2010 General Survey, recommended that States adopt the following approach: (a) a policy commitment to obtaining full employment, reflected in legislation; (b) the establishment of institutions focused on full employment, such as job services, social dialogue mechanisms and professional and technical training, and initiatives to foster small and medium enterprises and cooperatives; (c) deploying the best possible efforts of these institutions and structures in macroeconomic, trade, investment and industrial promotion policies, with regular monitoring. In the light of article 3 of Convention No. 122, the Committee stressed the importance for representatives of those affected, especially representatives of employers and workers, to be consulted prior to the formulation and during the application of these policies, including representatives of the rural sector and of the informal economy.

17. Although international law does not prescribe any particular economic model, policies towards full and productive employment should meet the qualitative requirements of just and favourable conditions<sup>14</sup> or conditions safeguarding fundamental political and economic freedoms to the individual<sup>15</sup> so that individuals can develop and update the necessary capacities and skills they need to enable them to be productively occupied for their personal fulfilment and the common well-being.<sup>16</sup>

18. Consequently, policies that result in the proliferation of precarious jobs would not be in line with the right to work.<sup>17</sup> The mere reduction of unemployment does not always fulfil the right to work, as policies need to meet qualitative requirements in relation to just and favourable conditions and content of work.<sup>18</sup> The Committee on Economic, Social and Cultural Rights has stressed that the State should ensure that measures aimed at increasing the flexibility of the market do not undermine workers' rights.<sup>19</sup> Human rights norms proscribe the adoption of retrogressive measures on labour protection under the guise of creating jobs, the effectiveness of which has been persuasively discredited by recent ILO studies.<sup>20</sup> States have a duty to take into account their legal obligations when concluding bilateral or multilateral agreements with other States, international organizations and multinational entities.<sup>21</sup> Full employment must include non-salaried forms of employment

<sup>13</sup> Ibid., paras. 4, 6 and 20.

<sup>14</sup> Universal Declaration of Human Rights, art. 23.

<sup>15</sup> International Covenant on Economic, Social and Cultural Rights, art. 6 (2).

<sup>16</sup> ILO Declaration on Social Justice for a Fair Globalization.

<sup>17</sup> ILO, *World Employment and Social Outlook 2015: The Changing Nature of Jobs* (Geneva, 2015), preface.

<sup>18</sup> See, for example, Committee on Economic, Social and Cultural Rights, concluding observations on the Plurinational State of Bolivia (E/C.12/BOL/CO/2) and Ethiopia (E/C.12/ETH/CO/1-3), stating that economic growth had not been used to create decent jobs and recommending the adoption of firm and sustained measures to tackle precarious employment. The Committee recommended that Spain avoid any step backwards in the field of employment, including with regard to the protection of labour rights (E/C.12/ESP/CO/5). It also recommended that the Czech Republic assess the impact of the economic and fiscal measures taken during the financial and economic crisis on the labour market and on the enjoyment of the right to work (E/C.12/CZE/CO/2).

<sup>19</sup> General comment No. 18, para. 25. In its submission Brazil emphasizes the integration of macroeconomic employment policies with labour, social and educational policies around the Decent Work Agenda, while Mexico incorporated the concept of decent work into its labour law.

<sup>20</sup> ILO, *World Employment and Social Outlook*, pp. 118-129.

<sup>21</sup> General comment No. 18, para. 33.

such as cooperative work and self-employment, without undermining the protection of salaried workers.<sup>22</sup>

## 2. Freedom to choose work and to practise a profession

19. Article 23 of the Universal Declaration and article 6 of the International Covenant on Economic, Social and Cultural Rights emphasize that freedom to work is a fundamental component of the right to work. The freedom to work involves both prohibitions (such as those on forced labour and unjustified or discriminatory obstacles to work) and positive duties (including the adoption of measures of promotion of conditions conducive to freedom and opportunity).

20. While freedom to work does not imply an absolute right to a specific job, it does entail the right to pursue professional options under equal conditions without unjustified barriers that prevent those choices. The freedom to exercise a profession requires that any limitation must be objectively justified, proportional, strictly necessary and provided for by law.

21. The right to freely choose a job involves a prohibition on being compelled to accept work. Forced or compulsory labour is defined as “all work or service which is exacted from any person under the menace of any penalty and for which said person has not offered himself voluntarily”,<sup>23</sup> which includes being forced to remain in employment against one’s will even if the initial acceptance was voluntary. States have an immediate obligation not to trade in forced labour and to abolish, eradicate and punish the use of forced labour in all its forms. It is one of the most extreme forms of human rights violation and it affects millions of people, especially vulnerable populations, such as migrant workers.<sup>24</sup> When reviewing States parties’ reports, the Committee on Economic, Social and Cultural Rights has identified forced labour practices in many countries.<sup>25</sup> The ILO Committee of Experts has called for increased resources for labour inspection services, for law enforcement and judicial authorities to combat forced labour practices and for the imposition of administrative, criminal and economic sanctions to ensure that victims receive support and compensation.<sup>26</sup>

22. There are strong links between forced labour and trafficking in persons. Employment agencies can perpetrate abuses by promoting or facilitating the forced labour of migrant workers. Consequently, States must cooperate to regulate, license and monitor labour recruiters and employment agencies and eliminate the charging of recruitment fees to workers to prevent debt bondage and other forms of economic coercion.<sup>27</sup> The exploitation of immigrants forced to work illegally, including in domestic work, merits special attention and inspection.

<sup>22</sup> Ibid., para. 44, underlining that employment policies 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.

<sup>23</sup> ILO Forced Labour Convention, 1930 (No. 29), art. 2 (1); ILO Abolition of Forced Labour Convention, 1957 (No. 105).

<sup>24</sup> ILO, Protocol of 2014 to the Forced Labour Convention, 1930, preamble.

<sup>25</sup> See concluding observations on Paraguay (E/C.12/PRY/CO/4), Peru (E/C.12/PER/CO/2-4), Brazil (E/C.12/BRA/CO/2), the Plurinational State of Bolivia (E/C.12/BOL/CO/2), Ecuador (E/C.12/ECU/CO/3), Mauritania (E/C.12/MRT/CO/1), Ukraine (E/C.12/UKR/CO/6) and Serbia (E/C.12/SRB/CO/2). Concern about forced labour of detainees in the Russian Federation (E/C.12/RUS/CO/5) and the Netherlands (E/C.12/NL/CO/4) was mentioned.

<sup>26</sup> ILO, *General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008*, Report III (Part 1B) (2012), Part III, para. 326. Malta highlights that its inspectorate is empowered.

<sup>27</sup> ILO, Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), para. 4 (i).

### 3. Employment services

23. The existence of specialized services to assist workers to access appropriate work, using information networks at the relevant level, is a necessary component of the employment policies required for fulfilling the right to work.<sup>28</sup> The importance of these services increases in times of crisis; they are vital for vulnerable groups, such as migrants and long-term unemployed workers, facilitating their placement.<sup>29</sup> Consequently, specialized services must be adequately equipped to fulfil their mandates without discrimination, thus promoting equality and accessibility.<sup>30</sup>

24. States have a duty to provide free public employment services and, when registering or licensing private services, to ensure the regulation and monitoring of their activities to prevent abuses. No cost or fee should be charged directly or indirectly to workers benefiting from public and private employment services,<sup>31</sup> which should respect fundamental rights such as freedom of association and the prohibition of discrimination, forced or child labour and trafficking in persons.<sup>32</sup>

### 4. Technical and vocational education and guidance

25. Technical and vocational education and guidance is another essential component of measures required to create equal conditions in the labour market, since unequal access to opportunities for training and capacity-building results in inequalities in the labour market. Acquiring, developing and updating skills and knowledge is a key part of personal development and self-fulfilment through professional life, and all aspects are core to the right to work.<sup>33</sup> Articles 23 and 26 (1) of the Universal Declaration and articles 6 (2) and 13 (2) of the International Covenant on Economic, Social and Cultural Rights link the right to work to the right to education as a means for personal development and meaningful participation in society, since technical and vocational guidance and training are part of education in general.<sup>34</sup> Technical and vocational training should be promoted, together with equality and accessibility, for both those seeking work and those seeking to improve their skills in a trade or profession.<sup>35</sup>

26. For members of minority and vulnerable groups, barriers to equal access to education and guidance and technical-professional training reduce professional and job opportunities.<sup>36</sup> Special measures are essential for these groups to combat inequality.<sup>37</sup>

<sup>28</sup> General comment No. 18, paras. 12 and 26.

<sup>29</sup> See Committee on Economic, Social and Cultural Rights, concluding observations on Bosnia and Herzegovina (E/C.12/BIH/CO/2), noting that persons working in the informal sector are sanctioned by still having their registration with the employment bureaux suspended for a period of six months.

<sup>30</sup> Committee on the Rights of Persons with Disabilities, general comment No. 2 (2014) on accessibility, para. 41.

<sup>31</sup> See ILO Convention No. 181, art. 7 and ILO, *General Survey* (2010), chap. III.

<sup>32</sup> See observations of the ILO Committee of Experts regarding Conventions Nos. 88 and 181 in *General Survey* (2010), chap. III.

<sup>33</sup> See ILO Human Resources Development Convention, 1975 (No. 142), art. 1 (4) and (5).

<sup>34</sup> Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education, paras. 15-16.

<sup>35</sup> Bulgaria, Egypt, Fiji, Hungary, Kazakhstan, Slovenia and Spain highlight good practices in their training programmes for work.

<sup>36</sup> See also Declaration of Philadelphia, art. III (j).

<sup>37</sup> The Committee on Economic, Social and Cultural Rights has expressed concern about unequal access to professional training for minority and vulnerable groups and recommended the adoption of measures to El Salvador (E/C.12/SLV/CO/3-5), Bosnia and Herzegovina (E/C.12/BIH/CO/2), Bulgaria (E/C.12/BGR/CO/4-5), Norway (E/C.12/NOR/CO/5), Ukraine (E/C.12/UKR/CO/6), Armenia (E/C.12/ARM/CO/2-3), Austria (E/C.12/AUT/CO/4), Morocco (E/C.12/MAR/CO/3),

27. The failure to establish adequate technical and professional programmes may constitute a violation of the right to work. Training and employment policies should be coordinated and implemented with the participation of stakeholders, as emphasized by the ILO Committee of Experts.<sup>38</sup>

## 5. Equal access to work opportunities

28. Equality and non-discrimination are fundamental human rights principles and they apply to the right to work.<sup>39</sup> Ensuring equality and non-discrimination in access to work is crucial as the labour market reflects the social prejudices and disadvantages that undermine equality and dignity.<sup>40</sup> Full employment is a function of the achievement of equal access to work opportunities and self-realization.

29. The Committee on Economic, Social and Cultural Rights has stressed the need for measures to combat discrimination and promote equality in relation to minorities and disadvantaged groups, which constitute immediate obligations.<sup>41</sup> It is the duty of States to ensure equal access to work while respecting and providing equal conditions, removing barriers to access and protecting workers against discrimination. Measures that could have the effect of increasing discrimination or weakening the protection of disadvantaged groups must be avoided. Action plans aimed at removing discrimination in access to work must be developed in a participatory manner, with special attention given to the concerned groups in their formulation and monitoring.<sup>42</sup>

30. Equality and non-discrimination are among the fundamental rights of workers identified in the ILO Declaration on Fundamental Principles and Rights at Work and the subject of Conventions Nos. 100 and 111. Recommendation No. 169 provides that in the context of an overall employment policy, Members should adopt measures to respond to the needs of all categories of persons frequently having difficulties in finding lasting employment, such as certain women, certain young workers, persons with disabilities, older workers, the long-term unemployed and migrant workers lawfully within their territory (para. 15).<sup>43</sup> The general objectives of full employment should be articulated, taking into account the needs of specific groups experiencing discrimination. While recognizing other bases for inequality and discrimination, the following sections will focus on women, migrants and refugees and persons with disabilities in order to illustrate the scope of the prohibition on discrimination in access to work opportunities.

31. The right of women to equal access to work is pivotal to the full enjoyment of all their human rights. Violence and gender discrimination are too often present in the work environment. Women bear a disproportionate share of the most precarious working conditions, including little or no legal protection, lower levels of remuneration and

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Cameroon (E/C.12/CMR/CO/2-3), the Congo (E/C.12/COG/CO/1), Egypt (E/C.12/EGY/CO/2-4), the Republic of Moldova (E/C.12/MDA/CO/2), Romania (E/C.12/ROU/CO/3-5), Latvia (E/C.12/LVA/CO/1), France (E/C.12/FRA/CO/3) and Afghanistan (E/C.12/AFG/CO/2-4).

<sup>38</sup> See ILO, *General Survey* (2010). See also Convention No. 142 and Recommendation No. 195.

Bulgaria, Oman and Slovenia mention their tripartite dialogue mechanisms.

<sup>39</sup> Universal Declaration, art. 2; International Covenant on Economic, Social and Cultural Rights, art. 2 (2).

<sup>40</sup> Azerbaijan, Bulgaria and Serbia mention their labour legislation to combat discrimination based on wide variety of grounds.

<sup>41</sup> General comment No. 18, paras. 12-19, 23, 31 and 33.

<sup>42</sup> Good practices in combating discrimination were mentioned for Brazil (E/C.12/BRA/CO/2) (sexual orientation), Costa Rica (E/C.12/CRI/CO/4), the Dominican Republic (E/C.12/DOM/CO/3), Mexico (E/C.12/MEX/CO/4), Nicaragua (E/C.12/NIC/CO/4), Uruguay (E/C.12/URY/CO/3-4), Algeria (E/C.12/DZA/CO/4), Benin (E/C.12/BEN/CO/2), Ukraine (E/C.12/UKR/CO/6), Slovenia (E/C.12/SVN/CO/2) and Liechtenstein (E/C.12/LIE/CO/1).

<sup>43</sup> Bulgaria stresses its active policy of employment focused on vulnerable groups.

temporary and part-time employment. Beyond ensuring equal pay for work of equal value, it is important to ensure equal access to opportunities and to give equal value to women's skills and contribution to production through a global system of protection against gender discrimination and the promotion of equality of opportunity and treatment.<sup>44</sup> Pregnancy, for instance, should not pose obstacles to the right to be hired and to remain in employment and the right to paid maternity leave should not result in discrimination.<sup>45</sup>

32. Persons with disabilities represent about 15 per cent of the world's population. Even though a high percentage are able to work, their employment rate is much lower than that of the general population. Persons with disabilities in employment are frequently subject to less favourable conditions of pay, precarious work regimes and poor career prospects. Data show that there is a high correlation between disability and poverty.<sup>46</sup>

33. Persons with disabilities face environmental, social and economic barriers in accessing work and within work, as well as in education and training. Prejudice and physical, communication and attitudinal barriers limit the availability of workplaces, many of which neglect the potential of persons with disabilities and restrict their opportunities for earning a living through their capabilities.

34. Article 27 of the Convention on the Rights of Persons with Disabilities recognizes the right to work of persons with disabilities, on an equal basis with others, in a work environment that is open, inclusive and accessible. The provision details measures to be taken to realize the right, including measures to ensure equal opportunities, equal remuneration for work of equal value and protection from harassment. It prohibits forced labour and discrimination due to disability, in the context, among others, of hiring arrangements, continuation of employment, career advancement and safe and healthy working conditions. It also requires respect for labour and trade union rights, access to vocational and continuing training, and the promotion of the acquisition of work experience and career advancement opportunities for persons with disabilities. Furthermore, it expands the concept of work to include forms of self-employment, entrepreneurship and cooperative arrangements. Opportunities must be prioritized in the open labour market to ensure inclusion and accessibility. Thus, sheltered or segregated forms of employment might not be appropriate for fulfilling the right to work.

35. The Convention includes a non-exhaustive list of duties focused on removing structural and institutional obstacles that hinder equality of opportunity for persons with disabilities in the labour market (see A/HCR/22/25 and Corr.1, para. 10). Among these duties is the provision of reasonable accommodation in the workplace. Denial of reasonable accommodation is explicitly considered to be a form of discrimination. Article 4 (3) of the Convention calls for the effective participation of persons with disabilities and for consultation with their organizations in the development and implementation of legislation and policies relevant to their concerns, including the right to work.

<sup>44</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights.

<sup>45</sup> See Committee on Economic, Social and Cultural Rights, concluding observations on Kenya (E/C.12/KEN/CO/1), Austria (E/C.12/AUT/CO/3) and Canada (E/C.12/CAN/CO/4) (recommending increase of the parental or maternity leave period). See also the Committee's concluding observations on Algeria (E/C.12/DZA/CO/4), Brazil (E/C.12/BRA/CO/2), Nicaragua (E/C.12/NIC/CO/4) (concerns about workers in a precarious contract without maternity leave or sick leave entitlements) and Jamaica (E/C.12/JAM/CO/3-4). Regarding Finland, the Committee expressed concern about reported information about dismissals, non-recruitments or non-renewals of labour contracts owing to pregnancy, childbirth or maternity leave (E/C.12/FIN/CO/6).

<sup>46</sup> See World Health Organization, *World Report on Disability* (Geneva, 2011).

36. The search for work is an important driver of migration today.<sup>47</sup> Whether migration from the place of origin is determined by the lack of decent work or by other reasons such as persecution, conflict, poverty, discrimination or environmental degradation, work is an essential condition for integrating in the host country.<sup>48</sup> Migration is also a key factor for the interdependent economic and social development of countries of origin, transit and destination.<sup>49</sup> Migrant workers and their families often find themselves in vulnerable situations in the State of employment,<sup>50</sup> which may be aggravated by factors such as gender, ethnicity, religion, language or legal status. Many suffer abuse and discrimination, including low wages, lack of decent working conditions, lack of social protection and denial of basic rights and freedoms. Non-discrimination on the basis of national origin also applies to the right to work.<sup>51</sup> States must take immediate steps to prevent migrant workers from being victims of discrimination and exploitation while adopting special measures to facilitate their access to the labour market. Articles 17-19 of the 1951 Convention relating to the Status of Refugees include specific provisions to ensure access to work opportunities for refugees, which entail, at a minimum, the removal of legal barriers to refugees engaging in gainful employment.

37. Asymmetries between national immigration policies and economic and social pressures influencing emigration result in millions of migrant workers remaining undocumented<sup>52</sup> and vulnerable to discrimination, violations of their fundamental rights and exploitation at work. Migrants who are unable to access safe and regular channels for labour migration will often end up in an irregular situation. Article 25 (3) of International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides that States parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.<sup>53</sup> Even people who have not been granted authorization to work because of their migration status are entitled, once they are employed, to protection from exploitative or forced work or discrimination in the enjoyment and exercise of their human rights, including those related to employment.<sup>54</sup> Migrants who are in a regular situation can, similarly, be vulnerable to abuse and exploitation, such as when their work and residence permits are tied to one employer.

## 6. Right to work and child protection

38. Certain norms and standards in the area of the right to work are relevant for children and adolescents. On the one hand, there is an important connection between the right to

<sup>47</sup> See ILO, *International Labour Migration: A Rights-Based Approach* (Geneva, 2010).

<sup>48</sup> Thus, the Committee on Economic, Social and Cultural Rights is concerned about the situation of States parties such as Bulgaria, where asylum seekers are not allowed to work during the first year of their stay in the State party (E/C.12/BGR/CO/4-5).

<sup>49</sup> Egypt highlights this aspect in its contribution, while Guatemala and Serbia underscore their legislative measures regarding migrant labour.

<sup>50</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, preamble; Commission on Human Rights resolution 2002/62, preamble.

<sup>51</sup> International Covenant on Economic, Social and Cultural Rights, art. 2 (2); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 25.

<sup>52</sup> European Union Agency for Fundamental Rights, *Fundamental Rights of Migrants in an Irregular Situation in the European Union* (Vienna, European Union, 2011); Parliamentary Assembly of the Council of Europe, resolution 1509 (2006) on human rights of irregular migrants.

<sup>53</sup> See OHCHR, *The Economic, Social and Cultural Rights of Migrants in an Irregular Situation*, United Nations publication, Sales No. E.14.XIV.4, chap. VI.

<sup>54</sup> Inter-American Court of Human Rights, *Juridical condition and rights of undocumented migrants*, advisory opinion OC-18/03 of 17 September 2003, paras. 133-134.

education, the specific right to technical and vocational education and guidance and the right to work, as one of the functions of education is preparation for professional life.<sup>55</sup> On the other hand, the State duty to protect children entails protection against all forms of labour and exploitation or violence that could interfere in their education, development and health, which involves minimum age requirements for entry into the labour market and the appropriate regulation of hours and conditions of employment.<sup>56</sup>

39. ILO considers the abolition of child labour as one of the four fundamental rights and principles at work that are considered mandatory for all States members of the organization.<sup>57</sup> There is a strong association between child labour, poverty and the violation of other human rights, since working during childhood may be detrimental to the development of the child. In 2010, 215 million children were still engaged in unlawful, mostly unpaid, hazardous, compulsory labour or in the informal economy.<sup>58</sup> According to article 2 (3) of the Minimum Age Convention, 1973 (No. 138), the minimum age of employment shall not be less than the age of completion of compulsory schooling.<sup>59</sup> The State should ensure effective access to education and vocational programmes at least up to that minimum age for all children.<sup>60</sup>

## 7. Protection against unemployment

40. While the right to work is interdependent with and indivisible from all other human rights, it is important to underscore the particular complementarity of State obligations regarding the rights to work and to social security. As noted above, the right to work does not entail an absolute and unconditional right to obtain employment. This constitutes a recognition that, while States have a duty to adopt proactive employment policies, the provision of employment for each individual may be beyond their control. Thus, the positive obligation to take steps to promote an economic environment conducive to the creation of jobs should be seen as an obligation of conduct, rather than as an obligation of result.<sup>61</sup>

41. However, while unemployment and underemployment rates are a function of multiple causes and may not be directly attributable to the State, the failure to fulfil the right to work invokes more exacting obligations in relation to the right to social security. Indeed, the Committee on Economic, Social and Cultural Rights has recognized that the right to social security includes both contributory and non-contributory schemes<sup>62</sup> and has identified — in line with Convention No. 102 — unemployment as a contingency that should be covered by social security: “In addition to promoting full, productive and freely chosen employment, States parties must endeavour to provide benefits to cover the loss or

<sup>55</sup> See International Covenant on Economic, Social and Cultural Rights, art. 13, especially 13 (2) (b); Convention on the Rights of the Child, art. 28 (1) (d).

<sup>56</sup> See Convention on the Rights of the Child, art. 32 (2) (b) and, generally, arts. 32-36.

<sup>57</sup> See ILO Declaration on Fundamental Principles and Rights at Work; Minimum Age Convention, 1973 (No. 138); and Recommendation (No. 146); Worst Forms of Child Labour Convention, 1999 (No. 182) and Recommendation (No. 190); and ILO, *General Survey* (2012), Part IV.

<sup>58</sup> ILO, *General Survey* (2012), Part IV, para. 328.

<sup>59</sup> The Committee on Economic, Social and Cultural Rights has expressed concern about mismatches between the minimum age to work and the period of compulsory education. See concluding observations on Mexico (E/C.12/MEX/CO/4), Cameroon (E/C.12/CMR/CO/2-3) and Rwanda (E/C.12/RWA/CO/2-4).

<sup>60</sup> See Convention No. 138, art. 8.

<sup>61</sup> See, for example, ILO Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), art.7: “Each Member shall declare as a priority objective a policy designed to promote full, productive and freely chosen employment by all appropriate means, including social security.”

<sup>62</sup> General comment No. 19 (2007) on the right to social security, para. 4.

lack of earnings due to the inability to obtain or maintain suitable employment.”<sup>63</sup> The Social Protection Floors Recommendation, 2012 (No. 202) takes a similar approach by recommending that nationally adopted social protection floors should comprise, at a minimum, among other elements, basic income security, at least at a nationally defined minimum level, for persons in active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability (para. 5 (c)).

42. The interdependence of the right to work and the right to social security has multiple applications. Both Convention No. 168 and Recommendation No. 202 build on the idea that social security should serve as a means of promoting full, productive and freely chosen employment and support active labour market policies, requiring an active coordination of social security benefits with other means of employment and with social policies serving the goal of employment promotion. Conversely, the correlation between suitable employment and freedom of choice of employment means that entitlements to unemployment benefits and employment services cannot be made conditional on the acceptance of any type of work. Similarly, the imposition of compulsory work requirements as a condition for receiving unemployment benefits would not qualify as suitable employment.

43. The failure to ensure the full realization of the right to work for reasons beyond the State’s control — such as financial or economic crisis or downturn — requires States to adopt appropriate measures to promote the creation of jobs and to take steps to extend social protection to those who are not able to obtain or maintain suitable employment.<sup>64</sup> Monitoring the fulfilment of the right to work through adequate indicators should, at the same time, serve as the basis for identifying those in need for social protection purposes.

## **B. Just and favourable conditions**

44. The right to work is not only the right to employment, but to work that respects the fundamental rights of the person and worker and ensures just and favourable conditions of work, safeguarding the fundamental political and economic freedoms of individuals (including the freedom to organize trade unions and collective bargaining) and their personal development and fulfilment. This implies norms giving rise to a number of duties and entitlements, including equality in working conditions throughout the employment or occupation relationship.<sup>65</sup>

### **1. Legal protection of decent work**

45. As with all human rights, the right to work entails duties to respect, protect and fulfil. Many of these duties require the adoption of legislative measures<sup>66</sup> establishing labour regulations, the protection of workers’ rights against any unfavourable balance of power as well as institutional guarantees of inspection and implementation.<sup>67</sup> These standards and institutions are usually provided for under national labour laws. Workers in the informal economy or those on the margins of legal protection are subject to more hardship and discrimination<sup>68</sup> and are more likely to be victims of precarious employment,

<sup>63</sup> Ibid., para. 16. See also Convention No. 168, art. 10 (1).

<sup>64</sup> See Convention No. 168, arts. 7, 8 and 10.

<sup>65</sup> Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 3.

<sup>66</sup> Ibid.

<sup>67</sup> Kazakhstan reports on its new legal framework , including administrative and criminal measures and incentives to prevent labour law violations.

<sup>68</sup> ILO, *Extending the Scope of Application of Labour Laws to the Informal Economy: Digest of Comments of the ILO’s Supervisory Bodies Related to the Informal Economy* (Geneva, 2010).

low productivity, low aggregate demand and low job creation.<sup>69</sup> According to the 2008 ILO Declaration, the importance of the employment relationship should be recognized as a means of providing legal protection to workers. In order to ensure equal protection of the law, the State must take measures to compel employers to respect labour legislation and declare their employees, thus enabling the latter to enjoy all the rights of workers.<sup>70</sup>

46. Articles 6, 7 and 8 of the International Covenant on Economic, Social and Cultural Right are strongly interdependent. For instance, a decent living wage,<sup>71</sup> safe and healthy working conditions,<sup>72</sup> rest, leisure and limitation of working time,<sup>73</sup> freedom to form and join trade unions and collective bargaining are key elements of the right to work. While dealing exhaustively with all aspects of articles 7 and 8 is beyond the scope of the present report, it is important to highlight certain aspects to demonstrate just and favourable conditions as an integral part of the right to work.

## 2. Mechanisms for promoting formalization

47. Approximately 60 per cent of jobs are in the informal economy and unevenly distributed around the world.<sup>74</sup> Formalization is the first step to decent work. To attain this, 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.<sup>75</sup> Such measures include laws, policies and programmes to deal with the factors responsible for informality, to extend protection to all workers and to remove the barriers to entry into the mainstream economy.<sup>76</sup> In accordance with Recommendation No. 204, they should encompass an integrated policy framework with strategies adapted to the unique situation of each country. This includes preventive and sanctioning mechanisms that reinforce labour inspections and monitoring mechanisms;<sup>77</sup>

<sup>69</sup> ILO, *World Employment and Social Outlook 2015*.

<sup>70</sup> General comment No. 18, para. 10.

<sup>71</sup> Universal Declaration, art. 23 (3); International Covenant on Economic, Social and Cultural Rights, art. 7 (a) (ii).

<sup>72</sup> International Covenant on Economic, Social and Cultural Rights, art. 7 (ii) (b). See general comment No. 18, para. 7. In its contribution France stresses that national legislation and jurisprudence affirm the employer's obligation not only to prevent accidents and occupational diseases but also to ensure the health of workers, involving all the risks they may be exposed to, including psychosocial risks.

<sup>73</sup> International Covenant on Economic, Social and Cultural Rights, art. 7 (ii) (d).

<sup>74</sup> ILO, *World Employment and Social Outlook 2015*. See also the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), paras. 2-5.

<sup>75</sup> Committee on Economic, Social and Cultural Rights, general comment No. 18, para. 10. The Committee has expressed concern about the high percentages of workers in the informal economy and recommended extending social protection to include them. See concluding observations on Bosnia and Herzegovina (E/C.12/BIH/CO/2), Monaco (E/C.12/MCO/CO/2-3), Ukraine (E/C.12/UKR/CO/6), the Republic of Moldova (E/C.12/MDA/CO/2), the Russian Federation (E/C.12/RUS/CO/5), Serbia (E/C.12/SRB/CO/2), Armenia (E/C.12/ARM/CO/2-3), Paraguay (E/C.12/PRY/CO/4), Brazil (E/C.12/BRA/CO/2), Colombia (E/C.12/COL/CO/5), Costa Rica (E/C.12/CRI/CO/4), the Dominican Republic (E/C.12/DOM/CO/3), Ecuador (E/C.12/ECU/CO/3), Mexico (E/C.12/MEX/CO/4), Nicaragua (E/C.12/NIC/CO/4), Egypt (E/C.12/EGY/CO/2-4), Ethiopia (E/C.12/ETH/CO/1-3), Mauritania (E/C.12/MRT/CO/1), Rwanda (E/C.12/RWA/CO/2-4), the United Republic of Tanzania (E/C.12/TZA/CO/1-3), Cambodia (E/C.12/KHM/CO/1), China (E/C.12/CHN/CO/2), Indonesia (E/C.12/IDN/CO/1) and the Islamic Republic of Iran (E/C.12/IRN/CO/2).

<sup>76</sup> Resolution concerning decent work and the informal economy adopted by the ILO General Conference (2002), para. 21.

<sup>77</sup> The Committee on Economic, Social and Cultural Rights was concerned at the lack of any form of monitoring of conditions of work in the informal economy and at the absence of opportunity for social security affiliation for workers therein (concluding observations on Mauritania (E/C.12/MRT/CO/1), para. 14).

reduce administrative and tax burdens to encourage formalization,<sup>78</sup> especially in small and medium enterprises; facilitate financial services and international cooperation; and give special attention to disadvantaged groups. Lack of formalization in relation to an employment contract or the employer's activity cannot be a reason for depriving a worker of the rights provided to formally hired workers, including trade union rights.<sup>79</sup>

### 3. Prevention of fraud and discriminatory exclusions

48. The State's duty to ensure equal enforcement of the legal standards protecting the rights of workers constitutes an immediate obligation. The applicability of labour laws should not be subject to the discretion of employers or authorities, waived by the employee,<sup>80</sup> or circumvented by fraudulent mechanisms designed to conceal factual employment status (such as falsely attributing a non-working character to a contract or hiding the true employer). Inspectorates and access to legal remedies must be made readily available. Moreover, the law itself must respect equal treatment. The arbitrary exclusion by law of certain types of workers from the general definition of employment constitutes a violation of the right to work. As highlighted by the Committee on Economic, Social and Cultural Rights, legislation must ensure that domestic and agricultural workers receive the same level of protection as other workers.<sup>81</sup>

### 4. Self-realization and content of work

49. The interdependence of the rights to work, health and the full development of the human personality calls for attention to the qualitative aspect of employment. Decent work should provide reasonable opportunities for self-realization and the enhancement of self-esteem. The Declaration of Philadelphia declares as a goal in article III (b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being. In its 2008 Declaration, ILO refers to work in which individuals can develop their skills in order to achieve personal fulfilment and the common well-being.

50. The right to work includes basic requirements of qualitative content of the activity, which should not be meaningless or excessively repetitive or exhausting. Workplace conditions<sup>82</sup> that enhance self-realization include respect for the fundamental political and economic freedoms of the individual; the possibility of cooperation and dialogue between workers and with the organization's management; recognition of the worker's contribution; career prospects and professional development;<sup>83</sup> the promotion of the physical and mental health of the worker; respect for individuality and morality; the absence of discrimination and sexual and moral harassment; and respect. It is the duty of the State to implement and protect this right and to enforce the duty of employers to respect it.

### 5. Protection against unfair deprivation of work

51. The right to work entails a right not to be deprived of work unfairly. Failure to protect workers against unlawful dismissal is a violation of the obligation to protect the right to work.<sup>84</sup> The Committee on Economic, Social and Cultural Rights has recalled ILO

<sup>78</sup> Mexico reports recent initiatives in this regard.

<sup>79</sup> ILO, *General Survey* (2012), para. 53.

<sup>80</sup> Guatemala, Paraguay and Serbia stress in their contributions that, under their national constitutions, workers' rights are not subject to waiver or limitation by contract.

<sup>81</sup> See ILO, *General Survey* (2012), para. 742.

<sup>82</sup> Hungary underlines the State's duty to ensure the legislative, organizational and institutional conditions of occupational health and safety.

<sup>83</sup> International Covenant on Economic, Social and Cultural Rights, art. 7 (ii) (c).

<sup>84</sup> General comment No. 18, paras. 4, 6 and 35.

Convention No. 158, which imposes the requirement to provide valid grounds for dismissal connected with the capacity or conduct of the worker or with the operational requirements of the undertaking, such as economic, technological, structural or similar reasons. The aim of Convention No. 158 and its accompanying Recommendation No. 166 is to ensure the employer's right to dismiss a worker for a valid reason and the worker's right not to be deprived of work unfairly. The purpose of the instruments is therefore to provide a balance between the interests of the employer and those of the worker and to promote the use of social dialogue as a means of achieving that balance.<sup>85</sup>

52. The absence of a legal burden on the employer to provide a valid reason for dismissal exposes the worker to threats, discrimination and abuse. Adequate safeguards should consider a distinct treatment between dismissals based on an objective reason where a severance allowance system and/or unemployment insurance exists, on the one hand, and dismissals without any reason or based on unfair grounds, where the violation of workers' rights is more severe, on the other hand. Adequate protection in the latter cases may include reinstatement and/or the payment of compensation. Fair procedures and access to an impartial body are also required as a guarantee of defence in the event of alleged justifications of dismissal based on performance or the employee's conduct; additional procedures in case of collective dismissal include the notification to a competent authority, such as the labour inspectorate.<sup>86</sup>

## 6. Recognition and protection of self-employed work

53. The right to work encompasses all forms of work, whether independent work or dependent, wage-paid work.<sup>87</sup> Human work is worthy of social value in its various forms.<sup>88</sup> Although some rights, such as paid holidays, are specific to wage-paid workers, self-employed and cooperative workers also have the right to just and favourable conditions of work.<sup>89</sup> The appreciation of other forms of work depends on two conditions: (a) that it does not undermine the definition or the protection of waged work; and (b) that regardless of the different protection schemes applicable to unwaged workers, they should enjoy just and favourable conditions of work equivalent to wage-paid workers.

54. The national employment strategy must respect and protect self-employment as long as it enables workers and their families to enjoy an adequate standard of living.<sup>90</sup> Self-employed and cooperative workers should also have the right to protection against discrimination, safe and healthy occupational conditions, maternity protection, freedom of association, freedom of disposal of their remuneration and protection from unemployment.

<sup>85</sup> See report of the Tripartite Meeting of Experts to Examine the Termination of Employment Convention, 1982 (No. 158), and the Termination of Employment Recommendation, 1982 (No. 166).

<sup>86</sup> France, Serbia and Turkey underline their legal protection against unfair dismissal, including the right of defence prior to dismissal on the basis of the worker's conduct or performance.

<sup>87</sup> General comment No. 18, para. 6.

<sup>88</sup> Committee on Economic, Social and Cultural Rights, concluding observations on Chad (E/C.12/TCD/CO/3): "The Committee is concerned that the State party's social security system does not provide universal coverage and that a large number of vulnerable and marginalized groups, such as casual workers and the self-employed, are excluded" (para. 18).

<sup>89</sup> Committee on Economic, Social and Cultural Rights, concluding observations on Ecuador (E/C.12/ECU/CO/3): "The State party [should] develop mechanisms for monitoring the implementation of the Labour Rights Protection Act and the Act in Support of Retailers, Self-employed Persons and Microentrepreneurs in order to ensure that working conditions for all persons in the State party are fair and decent" (para. 15).

<sup>90</sup> General comment No. 18, para. 44.

#### **IV. Conclusions: towards a better protection of the right to work**

55. The mapping of the various normative dimensions of the right to work provides guidance for its comprehensive implementation. At the same time, the gap between the realities of work in the world today and the normative standards of the right to work clearly demonstrate the need to further strengthen its protection.

56. Work is key to equality, dignity, justice and human development and is important for social participation and individual and collective self-realization. Decent work is also a means to stimulate the type of economic activity that will contribute to overcoming the global economic crisis. Increased productivity and sustainability of demand depends on the improvement of existing working conditions.

57. In addition to the provisions included in ILO conventions, human rights instruments require States to respect, protect and fulfil the right to work as a whole. As shown in the present report, the mutual reinforcement of international labour and human rights standards and the complementarity of their respective supervisory mechanisms contribute to a better understanding of the right to work and should be strengthened further. The observations of the monitoring mechanisms illustrate both good examples and the important gaps in the realization of the right.

58. States have an obligation to put in place comprehensive policies and to take legislative and administrative measures necessary to ensure the full realization of the right to work. Adequate means also include the coordination of international policies relevant to work, such as trade and migration, and the reinforcement of international cooperation mechanisms.

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