

Episode 9: Work Rights

This episode focuses on work rights. These rights – which are sometimes referred to as labour rights – are set out in Articles 6 to 8 of the International Covenant on Economic, Social and Cultural Rights. They consist of the rights to work, to just and favourable conditions of work, and to form, join and take action as part of a trade union. The UN Committee on Economic, Social and Cultural Rights has said that Articles 6 to 8 are interdependent. Our main focus here is on the right to work and the right to just and favourable conditions of work.

The Committee has made clear that the right to work does not mean that people have an absolute and unconditional right to a job. It does, however, mean that everyone has the right to decide freely to accept or choose work. This means that states must prohibit forced or compulsory labour. The right to work also implies the right of access to a system of protection guaranteeing each worker access to employment. We'll return to this point later on in the episode when we talk about the duty to fulfil. Finally, having the right to work implies the right not to be unfairly deprived of employment.

But what is 'work'? Crucially, to qualify as 'work' in international human rights law terms, work must be decent. Decent work is work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work, safety and remuneration. It must also provide an income that is sufficient to enable workers to support themselves and their families.

In providing guidance to states about how to give effect to the right to work the Committee has said that work must be available. This means that states must have specialised services to assist and support people so as to enable them to identify and find available employment. Work must be accessible, with the labour market open to everyone. This means that there must be no discrimination in recruitment, for instance. Work must also be physically accessible – for example to disabled people – and governments must guarantee the right to seek, obtain and impart information on how to gain access to employment.

The principal duty of states in terms of Article 6 is to ensure the progressive realisation of the exercise of the right to work. Therefore, governments must adopt, as quickly as possible, measures aimed at achieving full employment. As is the case with all economic and social rights, governments have a duty to avoid interfering with enjoyment of the right to work – that is, they have a duty to respect the right to work. Amongst other things, this requires governments to refrain from denying equal access to decent work for all persons. Governments have a duty to protect the right to work by preventing third party interference with that right. This means, for example, that states must adopt and enforce legislation to ensure that employers don't discriminate against people in recruitment, promotion or dismissal on the basis of race, disability or gender, for example.

The duty to fulfil the right to work requires governments to take positive measures to help individuals to enjoy the right to work and to implement technical and vocational education plans to facilitate access to employment. States must also monitor the realisation of the right to work at the national level, for example, by identifying right-to-work indicators and benchmarks. And states must also take measures necessary to ensure that the public is

aware of the right to work. Finally, governments are required to fulfil the right to work when individuals or groups are unable, for reasons beyond their control, to realise that right themselves. And in doing so governments will have to recognise the right to work in national legal systems, and to adopt a national policy on the right to work, as well as a detailed plan for the realisation of that right.

Turning to the right to just and favourable conditions of work, the first thing to note is that it applies to all workers in all settings. That includes workers in the informal sector, migrant workers, workers from ethnic and other minorities, domestic workers, self-employed workers, agricultural workers, refugee workers and unpaid workers.

When we look at the wording of Article 7, we see a number of elements that must be satisfied if just and favourable conditions of work are to be guaranteed. These include: fair wages and equal remuneration for work of equal value without distinction of any kind. In particular, women must be guaranteed conditions of work that are not inferior to those enjoyed by men, with equal pay for equal work. Article 7 also calls for safe and healthy working conditions; equal promotion opportunities; and rest, leisure, reasonable limitation of working hours and periodic holidays with pay. Importantly, the wording of Article 7 makes clear that the list of conditions it outlines isn't an exhaustive one. So, for instance, the Committee has made clear that governments must ensure freedom from harassment, including sexual harassment.

Discrimination is a major problem when it comes to enjoyment of work rights in practice. For example, while many countries have taken measures to protect older workers from discrimination, the young must be protected also. For instance, from wage discrimination,

from an excessive use of unpaid internships and training programmes, as well as from short-term and fixed-term contracts that negatively affect their job security, career prospects, and social security benefits. Women in most countries currently suffer from some or all of the 'glass ceiling', the 'gender pay gap' and the 'sticky floor'. The right to equal remuneration for work of equal value is crucial to women and the Committee has made clear that assessments of the 'value' of work must avoid gender stereotypes that could undervalue work predominantly performed by women. For instance, caring or domestic work.

Moving beyond discrimination, the obligation to respect the right to just and favourable work conditions means that employers should not introduce salary scales which discriminate against female, disabled or other groups of workers. They should also respect collective agreements aimed at introducing and maintaining just and favourable conditions of work. The obligation to protect requires states through effective laws, policies and adjudication to prevent, investigate, punish and redress abuse committed by third parties.

The obligation to fulfil requires states to adopt the measures necessary to ensure the full realisation of the right to just and favourable conditions of work. This includes introducing measures to facilitate, promote and provide that right, including through collective bargaining and social dialogue. It also includes the establishment of mechanisms to assess systematically the level of the minimum wage, fair wages, and the gender pay gap in the public and private sectors.

I want to finish with the question of how violations of the right to just and favourable conditions of work should be addressed. Anyone who has experienced a violation of that right must have access to effective judicial or other appropriate remedies. Legal assistance for obtaining remedies should be available and, where people are unable to pay, it should

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be free. Thus employment tribunal fees that serve as an obstacle in terms of access to justice in a work context are not consistent with the Covenant.