THE RIGHT TO WORK

A fundamental human right affirmed by the United Nations and recognized in regional treaties and numerous national constitutions

Part of a series of the Human Rights Programme of the Europe - Third World Centre (CETIM)

CETIM

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THE RIGHT TO WORK

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Brochure prepared by

Melik Özden, Director of the CETIM's Human Rights Programme and permanent representative of the CETIM to the United Nations

Part of a series of the Human Rights Programme of the Europe-Third World Centre (CETIM)

INTRODUCTION

Work is essential for everybody in the organization of contemporary society. It not only contributes to the formation of the individual, but it is also necessary if one is to be able to support oneself and one's family, make and keep social contacts and fulfill one's duties toward society.

However, in our times, work, for hundreds of millions of persons, has become a rare experience or a source of suffering or danger for those who are "lucky enough" to work.

In fact, according to the statistics of the International Labor Organization (ILO), there are at least 270 million work-related accidents and 160 million cases of work-related illness from which some 2 million persons die every year; 12.3 million persons are victims of forced labor in various forms: servitude for debt, human trafficking and other forms of modern slavery; 200 million children are forced to work at an activity that puts their mental, physical and emotional development in danger; 86 million migrants workers (with their families, some 200 million persons) are confronted with multiple problems (non-respect of their basic rights, hard labor, precarious employment, discrimination, trafficking in women and children, indeed modern slavery); there are (officially) almost 200 million unemployed,[1] not to mention hundreds of millions of precarious job situations or those in sectors euphemistically called "informal". And the tendencies – with multiple crises (food, energy, financial, climatic etc.) – are negative for the years to come.

However, for more than a century, *labor law* (labor relations and working conditions) has been codified, and employment policies have been drafted within the ILO. Of course, these regulations have allowed a definite improvement in working conditions in certain regions of the world, in particular in Europe during the period following the second World War (often referred to as the thirty glorious years). Nonetheless, even this part of the world is not free from the problems cited above, and it is in full regression in these areas (v. Chapter III.B).

The source of these problems can be found in the organization of production and the orientation of economic policies. Three decades of neo-liberal policy, implemented on a world-wide basis and called globalization, have exacerbated the continuing crises. By putting workers as well as countries in competition with each other, and by excluding more and more of economic policy making from the arena of political activity (where some sort of democratic oversight is possible), neo-liberal globalization has had a detrimental and regressive effect on legislation regulating labor relations, with a concomitant weakening of the union movement.

[1] In the statistics of the ILO, with even one or two hours of paid work per week, a person is considered employed.

In this context, if *labor law* is known to all, *the right to work* is less known. The legal regulation of labor relations is extremely important, but the requisite to enjoying that right is a job.

The *right to work*, recognized at the international level and in most national legislation, corresponds to this requisite. As a human right, it brings to the discussion of these questions a dimension rarely encountered and not taken into account in the drafting of policies and strategies intended to fight unemployment and underemployment.

The present brochure aims precisely to clarify this dimension, without neglecting labor rights.

Thus, the brochure presents the effects of globalization on the right to work and labor rights (Chapter I); the content and the scope of the right to work and its corollaries; the pertinent norms at the international and regional level (Chapter II); the obligations of governments as well as examples of implementation at the national level (Chapter III); and control mechanisms at the national, regional and international levels (Chapter IV).

I. GLOBALIZATION AND THE RIGHT TO WORK AND ITS COROLLARIES

The globalization that one speaks of today is the result of neo-liberal economic policies put into place throughout the world over the past three decades. It has profoundly modified the overall economic environment as well as labor relations, resulting in, most notably, a distinct reinforcement of the already disproportionate powers of transnational corporations (TNCs) and the domination of the financial sector over the real economy.

This neo-liberal globalization has had as it main consequence the creation of competition among workers of the world and a weakening of state sovereignty. As a result, peoples and citizens have little say over their future.

Thus, the relocation of industries and jobs to another country, anti-union practices, precariousness in employment, unemployment – all have become almost routine and "acceptable", just as has the regression, indeed the dismantling, of labor rights legislation. Parallel with this, the tax breaks accorded to TNCs, their practices amounting to financial crime, as well as "stock market crises", also contribute to the degradation of the work world and an increase in unemployment.

Over eight years ago, the former president of the Swiss-Swedish industrial group Asea Brown Boveri (ABB), Percy Barnevik, summed up in a speech the TNC strategy within the context of globalization. This strategy has become reality almost everywhere in the world and now rarely shocks anybody: "I would define globalization as the freedom for my group to invest where it pleases, when it pleases, in order to produce what it wants by getting supplies and selling wherever it wants, supporting as few constraints as possible regarding workers' right[s] and social conventions."[2]

Although employing (directly) only 3.7% of the world's total work force, TNCs control and orient the major part of production, all while amassing colossal capital. The volume of business of the biggest TNCs equals, or is greater than, the gross domestic product (GDP) of many countries, and a half dozen of them have a volume of business greater than the GDP of the 100 poorest countries combined.[3]

In this context, it is not surprising to notice an increase in violations of human rights and labor rights. It is undeniable that globalization has caused or at

[2] Percy Barnevik, quoted in Greenfield, Gerard (2000) The Success of Being Dangerous: Resisting Free Trade and investment Regimes", President of the ABB Industrial Group, *Focus on Global South:* http://www.focusweb.org/publications/2000/The%20Success%20of%20Being%20Dangerous.htm

[3] In this regard, see the CETIM brochure *Transnational Corporations and Human Rights*, Geneva: November 2005: http://www.cetim.ch/en/publications_details.php?pid=130

least exacerbated large scale human rights violations and a deterioration of working conditions. Obviously, within the scope of this brochure, it is not possible to describe all the effects of this phenomenon on the world of work. Thus, we shall mention here only some of its aspects that most affect the right to work and labor rights: repression of union rights and of union leaders and members; wide spread dismissals (owing to privatization of public sectors, monopolistic concentration, relocation of production plants out of the country etc.); a lengthening of the work day and an increase in the pace of work; precariousness of employment; extreme flexibility in employment contracts (on-call availability, work at home etc.); child labor; forced labor; creation of free-trade zones; deterioration of workers' health; negligence in matters of on-the-job safety resulting in the death of thousands of workers; financial crime; immigration and brain drain (v. Chapter IV.B).

Today, more and more voices are being raised in criticism of neo-liberal globalization, including those of former supporters such as Joseph Stiglitz, a former chief economist at the World Bank. Moreover, he has announced the end of neo-liberalism in these terms: "Neo-liberal market fundamentalism was always a political doctrine serving certain interests. It was never supported by economic theory. Nor, it should now be clear, is it supported by historical experience. Learning this lesson may be the silver lining in the cloud now hanging over the global economy."[4]

Nonetheless, it is indisputable that, for the time being at least, there is no notable change in the economic policies at the global level and that large scale human rights violations continue.

At the same time, in post-modern society, one questions the meaning of work totally oriented to the individual, the cult of performance, the cult of the acquisition of wealth, of rampant consumerism…

Illustration No 1

Anti-Union Strategy

The anti-union strategy of business enterprises, and especially of TNCs, starts with hiring. Being a union member is often an obstacle to being hired. Certain employers use any and all means at their disposal (especially legal and political) to avoid recognizing the unions in their sectors. If these means fail, they recur to mergers, bankruptcies or any other type of financial manipulation to sideline unions, when they don't make outright use of paramilitaries to assassinate union leaders, as in Colombia.[5] Worse, such anti-union practices are very often supported by governments (v. Chapter IV.B).

[4] http://economistsview.typepad.com/economistsview/2008/07/stiglitz-the-en.html

[5] Colombia holds the sad world record for union activists killed each year: http://survey07.ituc-csi.org/getcontinent.php?IDContinent=0&IDLang=EN

The Example of CIFTCI-SEN in Turkey

Following the creation in recent years of numerous unions of small farmers and livestock raisers (family businesses) in Turkey, these unions set up the Confederation of Small Farmers Unions (CIFTCI-SEN) on 21 May 2008. However, not only dies the CIFTCI-SEN face major administrative obstacles in its attempt to obtain official recognition, but its member unions are harassed and threatened with closure.

Thus, the Turkish courts, arguing that the small farmers do not have the right to organize unions by virtue of law 2821 on unions, have filed law suits against several member unions of the CIFTCI-SEN in flagrant violation of Turkish legislation in force and of international conventions to which the country is party.

In fact, Articles 11, 49 and 51 of the Turkish constitution protect unequivocally all workers and make official the right of citizens of Turkey to set up unions, to belong to them etc. Moreover, Article 90 recognizes the primacy of ratified international conventions over Turkish legislation. In this regard, one might recall that Turkey has ratified both international human rights conventions protecting the right of association and the right to establish unions, as well as ILO Conventions 11 (dating from 1921: right of association and of coalition of agricultural workers), 87 (from 1947: freedom to organize and protection of union rights) and 141 (from 1975: farm workers' organizations).

Although the Ministry of Labor tends to acknowledge these rights, union members of the CIFTCI-SEN are subject to legal action because prohibited from activity at the initiative of governors and security directors. The unions in question are the TUTUN-SEN (tobacco producers union), the FINDIK-SEN (nut producers union) and the CAY-SEN (tea producers union). For the latter two, the matter is pending before the appeals court. It should be noted that, among the members of the CIFTCI-SEN, the livestock raisers union (HAY-YET-SEN) has already ceased activity as of March 2006, but it has brought legal action before the European Human Rights Court.

Illustration No 2

Relocations

In our times, relocation of business enterprises to countries where labor is cheap and where legislation affecting TNCs is less strict, inexistent or unenforced is common practice. Such relocations are a race to the exhaustion of a country's resources before moving on to the next country. No region of the world has been spared: even China, "the world's workshop", has had to face the loss of TNC plants migrating to other Asian countries where labor costs are "more attractive".

In this regard, it is interesting to examine two European examples (France-Romania and Germany-Romania), for this continent is home to many TNCs that are the source of a major part of the relocations throughout the world. "With their labor force known for being frugal, the countries of the former Soviet block

constitute a paradise for industrial relocations. Not only are the jobs destroyed in the West being recreated in the East without their social benefits, but such relocations are exerting downward pressure on pay scales in the West – thus pitting European workers against each other. Enough! Even the best known and most used mechanisms are breaking down: in Romania, workers of transnational corporations [Renault] are getting higher wages, in spite of the threat of… relocation."[6] (v. Chapter IV.B.3)

In January 2008, the Finnish Company Nokia announced that it was relocating its Bochum, Germany, factory to Romania, putting out of work 2,300 German workers. For Nokia, this factory was not sufficiently competitive. The problem is that the state of North Rhein-Westphalia demanded that Nokia pay back the € 60 million in subsidies it had received to build this factory and carry on research at Bochum. An agreement was reached in July 2008 according to which Nokia agreed to pay € 20 million.[7]

In April 2007, "the affair caused a scandal just before the referendum on the European constitutional treaty: the Sem-Suhner company of Schirmeck (France) proposed that several women workers whom it had laid off should go work in its Medias (Romania) plant for € 110 per month [the minimum wage in France is € 1,300]. All refused. However, Stéphane Luçon, editor-in-chief of the Romanian edition of the *Monde Diplomatique*, requested that several men and women workers go. It was an instructive encounter. The Romanians are also having great difficulty making ends meet, contrary to what the company is saying. It is of no importance to the company, however: after having relocated from Alsace (France) to Romania, it is now preparing to move again… to India."[8]

Illustration No 3

Vampirization of companies

The financialization of the economy reaches its peak when speculative money, from banks, insurance companies, private investment funds and pension funds, all perfectly legally (!), buys out companies with the sole purpose of making a quick profit. Some US$ 725 billion worth of such operations took place in 2006, thus threatening to undermine the real economy.[9]

For this reason, the the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) brought

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[6] Stéphane Luçon, "Renault's Romanian Fairytale suspended", *Le Monde Diplomatique*, English edition, June 2008: http://mondediplo.com/2008/06/08romania

[7] www.journaldunet.com/breve/29887/noika-va-verser-1-3-million-d-euros-a-l-etat-allemand.shtml (available in French only).

[8] *Le Monde diplomatique*, August 2007: http://www.monde-diplomatique.fr/2007/08/A/15030 (French edition only).

[9] http://www.iuf.org/cgi-bin/dbman/db.cgi?db=default&uid=default&ID=4231&view_records=1&ww=1&en=1

out last year a brochure, “A Workers’ Guide to Private Equity Buyouts”, to explain this phenomenon to the lay person.[10]

According to this brochure, the mechanism works as follows: 1. the funds in question provide 10 to 20% of the required capital for the buy out and the rest is guaranteed by the assets of the company that is bought; 2. this “debt” is attributed to the purchased company, which must then assume its service costs and repayment; 3. very often, a large portion of the assets of the acquired company is distributed immediately – in the form of shares – to the new owners and to upper-level management of the company; 4. the new owners stop all long-term productive investment for the further development of the company after the buy out; 5. the expected return on investment having been set at 20-25% (in some cases as high as 40%), wage cuts, lay offs, even recourse to further debt (called “dividend recapitalization” or “dividend recaps”) are necessary to finance the dividends and bonuses; 6. the above mentioned operation lasts in general two to five years, and the company is sold off to… another private investment fund (“secondary buyout”); 7. the new investment fund finds other ways of generating cash flow, through new debt and asset stripping (selling assets and emptying cash reserves); 8. when a company makes the rounds from fund to fund, job cuts increase with debt levels.

The Danish Telecom Example

In 2005, Danish telecommunications operator TDC was taken over by a group of five of the biggest private equity firms – Permira, Apax. Blackstone Group, KKR and Providence Equity – for € 12 billion. Over 80% of the purchase price was financed by debt. As a result, the company’s debt to asset ratio jumped from 18% to over 90%. The equivalent of over half the company’s assets was then immediately distributed in shares to the new owners and top managers. To pay off the debt, cash reserves that the company had set aside for long-term development were quickly depleted. The owners plan to sell the company within five years of its purchase.

It is estimated that 40% of companies world-wide belonging to private investment funds are in a second – of third or further – buyout situation, tied up in the financial labyrinth with no way out.

[10] Ibid.

II. RIGHT TO WORK AND ITS COROLLARIES

A. Definition and Content

Although several articles of the *Universal Declaration of Human Rights* are devoted to the right to work and its corollaries, it is Article 25.1 that best expresses everybody's overall elementary needs, including social protection in case of unemployment or other of life's misfortunes:

> *"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."*

The right to work is specifically affirmed by Article 23 of the *Universal Declaration* and confirmed by the *International Covenant on Economic, Social and Cultural Rights (ICECSR)*. It constitutes a fundamental right indispensable to the exercise of other human rights and comports a double dimension, individual and collective, given that it should allow an individual to assure his own survival and that of his family and that collective organization is necessary for the defence of this right and its corollaries.

Thus, Article 23.1 of the *Universal Declaration* states: "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment."

The *International Covenant on Economic, Social and Cultural Rights (ICECSR)*, in Article 6.1, affirms "the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts."

Moreover, the states parties to this covenant, by recognizing this right as an inalienable human right in Article 6.2, commit themselves to taking steps "to achieve the full realization of this right" among which are:

> *"technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."*

The right to work, recognized as universal, means non-discrimination of women, migrants, displaced persons, refugees, the sick, the handicapped… (Article 7 of the *Universal Declaration* and Article 2.2 of the *ICECSR*).

For the Committee on Economic, Social and Cultural Rights (CESCR; v. Chapter IV.C.2), the right to work includes:

> *"the right of every human being to decide freely to accept or choose work. This implies not being forced in any way whatsoever to exercise or engage in*

employment and the right of access to a system of protection guaranteeing each worker access to employment. It also implies the right not to be unfairly deprived of employment."[11]

The CESCR states moreover that exercising the right to work necessitates the following interdependent and essential elements: 1. availability (there should be within the state party to the ICECSR specialized services to help and support individuals in order to allow them to find work; 2. accessibility (the labor market should be accessible to everybody within the jurisdiction of the state party); 3. acceptability and quality (protection of the right to work has several facets, in particular the right of a worker to just and favorable conditions of work such as on-the-job safety, the right to unionize and the right to choose and freely accept a job).

ILO Convention 122[12] designates as a major goal for states parties the formulation and implementation of "an active policy designed to promote full, productive and freely chosen employment." (Article 1.1)

ILO Convention 88[13] on the organization of the employment service, requires states parties to "maintain or ensure the maintenance of a free public employment service." (Article 1.1)

ILO Convention 142[14] on the development of humans resources requires that states parties:

"adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services" (Article 1).

ILO Convention 158[15] on termination of employment makes any such termination conditional on the existence of valid motives (Article 4) and provides for compensation in cases of unjustifiable termination of employment (Article 10).

1. Decent Work

In conformity with Article 7 of the *ICECSR*, work should be decent, in other words it should respect the basic rights or the human person. Workers should benefit from conditions of on-the-job safety in their workplace, a remuneration that allows them to live and support their families, and respect for their physical and mental integrity in carrying out their activities.[16]

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[11] Committee on Economic, Social and Cultural Rights, *General Comment No 18*, §6: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.GC.18.En?OpenDocument

[12] Adopted 9 July 1964 during the 48th session of the ILO Conference in Geneva and entered into force 15 July 1966.

[13] Adopted 9 July 1948 during the 31st session of the ILO Conference in San Francisco and entered into force 10 August 1950.

[14] Adopted 23 June 1975 during the 60th session of the ILO Conference in Geneva and entered into force 19 July 1977.

[15] Adopted 22 June 1982 during the 68th session of the ILO Conference in Geneva and entered into force 15 July 1966.

[16] Committee on Economic, Social and Cultural Rights, *General Comment No 18*, §7: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.GC.18.En?OpenDocument

For the ILO, decent work sums up:

> *"the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men."*[17]

2. The Right to Remuneration, Limit to the Work Day and the Right to Social Protection

According to the *Universal Declaration*, "Everyone, without any discrimination, has the right to equal pay for equal work" (Article 23.2). Also, "Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection" (Article 23.3).

Article 7 of the *ICECS* stipulates that:

> *"The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; … (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."*

The following ILO conventions are devoted to: equality of earnings (Convention 100); minimum wages (Conventions 26, 99, 131, 135); the length of the working day (Conventions 1, 30, 43, 46, 47, 49, 51, 61, 67, 153); night work (Conventions 4, 20, 41, 89); weekly rest (Conventions 14 and 106); paid vacations (Conventions 52, 101, 132, 140).

3. The Right to Safe and Healthy Working Conditions

Article 7.b of the *ICECS* states that "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular: (b) Safe and healthy working conditions."

The ILO, for its part, has adopted a considerable number of conventions dealing not only with the health and safety of workers (Convention 155), but also with protection from particular risks or in certain areas of economic activity (Conventions 13, 27, 32, 62, 115, 120, 127, 136, 139, 148, 152).

[17] http://www.ilo.org/global/Themes/Decentwork/lang--en/index.htm

4. The Right of Association and to Form and Join Trade Unions

In virtue of Article 8.1.a of the *ICECS*, "the right of everyone to form trade unions and join the trade union of his choice" is guaranteed.

Also guaranteed is "the right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations" (Article 8.1.b).

Further, Article 8.1.d. guarantees the right to strike.

The *International Covenant on Civil and Political Rights* further guarantees the right of association and the right to organize (Article 22), the right to assembly (Article 21) and the right to freedom of opinion and expression (Article 19).

The right to organize is at the heart of the ILO provisions. Thus, many ILO conventions deal with this right (Conventions 11, 87, 98, 135, 141, 151).

5. Prohibition of Slavery, Servitude and Forced Labor

The *International Covenant on Civil and Political Rights* prohibits slavery, servitude, and forced labor (Article 8).

Forced labor is also prohibited by ILO Conventions 29 and 105.

6. The Right to Social Security

The *Universal Declaration of Human Rights* stipulates that everybody has a right to "social security" (Article 22).

Article 9 of the *ICECS* states: "The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance."

The ILO has established many conventions in this area, dealing with such aspects as social security in general (Conventions 102, 118, 157), heath care insurance (Conventions 24, 25, 130), benefits in case of work-related accidents and illnesses (Conventions 12, 17, 18, 19, 42, 121), unemployment compensation (Convention 44) or maternity leave (Conventions 3 and 103).

In its *General Comment No 19*, the Committee on Economic, Social and Cultural Rights specifies that:

> *"The right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage, whether obtained publicly or privately, as well as the right to equal enjoyment of adequate protection from social risks and contingencies."*[18]

The Committee further states that "it should be borne in mind that social security should be treated as a social good, and not primarily as a mere instrument of economic or financial policy". Further, while recognizing that the constituent elements of the right to social security may vary in function of a situation, the Committee considers that the following essential factors are indispensable in all

[18] CESCR, *General Comment No 19*, §9, adopted 23 November 2007, E/C12/GC/19: http://daccessdds.un.org/doc/UNDOC/GEN/G08/403/97/PDF/G0840397.pdf?OpenElement

circumstances: 1. availability; 2. coverage for social risks and contingencies (health care; sickness; old age; unemployment; on-the-job injury; family and child support; maternity; disability; survivors; orphans); 3. adequacy; 4. accessibility (coverage; eligibility so established that "qualifying conditions for benefits are reasonable, proportionate and transparent"; affordability; participation of beneficiaries in the administration of the system and access so as to "ensure the right of individuals and organizations to seek, receive and impart information on all social security entitlements in a clear and transparent manner"; physical access), 5. the necessity of taking additional measures to "complement the right to social security" by assuring the other rights listed in the *ICESCR* (e.g. child care and welfare; disease prevention through the improvement of health service facilities; crop or natural disaster insurance for small farmers).[19]

B. Applicable Norms

1. At the International Level

Besides the international norms already mentioned relative to the right to work and worker's rights, the following instruments are an integral part of the legal structure at the international level.

The 1944 *Philadelphia Declaration*, which clarifies the aims and purposes of the ILO and is incorporated into the ILO constitution, states that:

> *"(a) labor is not a commodity; (b) freedom of expression and of association are essential to sustained progress; (c) poverty anywhere constitutes a danger to prosperity everywhere; (d) the war against want requires to be carried on with unrelenting vigor within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare."*[20]

In Article 55.a of its ***Charter***, the United Nations Organization (UN) sets out for itself as objectives "higher standards of living, full employment, and conditions of economic and social progress and development". The member states of the UN "pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55" (Article 56).

The ***International Convention on the Elimination of All Forms of Racial Discrimination*** prohibits any discrimination in the enjoyment of the following rights: "economic, social and cultural rights, in particular: (i) the rights to work, to free choice of employment, to just and favorable conditions of work,

[19] Ibid. §§ 10 to 28.

[20] Annex to the ILO Constitution, "Declaration concerning the aims and purposes of the International Labor Organization (DECLARATION OF PHILADELPHIA)" Article 1: http://www.ilo.org/ilolex/english/iloconst.htm#annex

to protection against unemployment, to equal pay for equal work, to just and favorable remuneration" (Article 5.e.i).

The ***Convention on the Elimination of all Forms of Discrimination Against Women*** aims to "eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) the right to work as an inalienable right of all human beings" (Article 11.1.a).[21] Moreover, it requires that governments "take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise" (Article 2.e).

Article 32.1 of the ***Convention on the Rights of the Child*** establishes, inter alia, "the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development". It also provides for "a minimum age or minimum ages for admission to employment;… appropriate regulation of the hours and conditions of employment;… appropriate penalties or other sanctions to ensure the effective enforcement of the present article" (Article 32.2).

The ***International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*** prohibits slavery, servitude and forced labor (Article 11) and all discrimination, in particular discrimination in remuneration and working conditions (Article 25). It recognizes the right of association (Articles 26 and 40) and equality of treatment in protection against dismissal and in unemployment benefits (Article 54), but it does allow governments to restrict – in certain conditions – the free choice of a job (Article 52).

Article 27.1 of the ***Convention on the Rights of Persons with Disabilities*** obliges states parties to the convention to "recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labor market and work environment that is open, inclusive and accessible to persons with disabilities".

The United Nations General Assembly ***Declaration on Social Progress and Development***[22] states that "social development requires the assurance to everyone of the right to work and the free choice of employment" (Article 6.1).

[21] Articles 10 and 11 of this convention are devoted entirely to the right to work and its corollaries such the right to training, to social security, the prohibition of dismissal on the grounds of pregnancy or maternity leave etc.

[22] Resolution 2542 (XXIV), 11 December 1969: http://www2.ohchr.org/english/law/progress.htm

The ***Declaration on the Right to Development***[23] requires that states parties undertake "all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income" (Article 8.1).

Through Commitment 3 of the ***Copenhagen Declaration on Social Development***,[24] governments commit themselves "to promoting the goal of full employment as a basic priority of our economic and social policies, and to enabling all men and women to attain secure and sustainable livelihoods through freely chosen productive employment and work" (Article 29).

It should be noted that the ***Program for Action*** of the Copenhagen summit devotes an entire chapter (Chapter III, §§ 42 to 64 of the *Program*) to the subject of the growth of productive employment and the reduction of unemployment. In this chapter, the governments commit themselves to improving access for everybody to adequately and appropriately remunerated jobs as the best way to combat poverty and to promote social integration. It encourages establishing the problems of unemployment and underemployment as priorities in national and international policy making as well as the regulation and improvement of remuneration of certain work such as child care and domestic labor (§§ 42 and 65).

2. At the Regional Level

Europe

Out of 31 articles in the ***European Social Charter (1961, revised in 1996),*** 29 deal with the right to work and to social security. It is unnecessary to list them all here. We limit ourselves to mentioning only the first article of the *Charter*, which deals with the right to work.

> *"With a view to ensuring the effective exercise of the right to work, the Parties undertake: to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment; to protect effectively the right of the worker to earn his living in an occupation freely entered upon; to establish or maintain free employment services for all workers; to provide or promote appropriate vocational guidance, training and rehabilitation."*

It is worth noting that out of the 47 members that the Council of Europe comprises, 39 have ratified the *Social Charter*, the exceptions being: Bosnia, Monaco, Montenegro, Russia, San Marino, Serbia and Switzerland. On the other hand, only 14 countries[25] have accepted the *Additional Protocol to the*

[23] Resolution 41/128, 4 December 1986: http://www2.ohchr.org/english/law/rtd.htm

[24] Adopted at the end of the World Summit for Social Development, Copenhagen, 6-12 March 1996: http://www.un.org/documents/ga/conf166/aconf166-9.htm

[25] Belgium, Bulgaria, Croatia, Cyprus, Finland, France, Greece, Ireland, Italy, Netherlands, Norway, Portugal, Slovenia, Sweden (v. *Conclusions XVIII-2* of the European Committee of

European Social Charter providing for a system of collective complaints (v. Chapter IV.B.2).

Africa

While the ***African Charter on Human and Peoples' Rights*** does not explicitly recognize the right to work, it does states that "Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work" (Article 15).

However, through Article 60, the Charter provides that governments should realize the rights that they have recognized at the international level. Thus, states parties to the International Covenant on Economic, Social and Cultural Rights have committed themselves to the realization on the national level of the right to work.

Moreover, almost all the countries of Africa have ratified the main international human rights instruments dealing with the right to work, and they have even incorporated this right into their national legislation. For example, Article 19 of the constitution of Burkina Faso states that "the right to work is recognized and is equal for all persons".[26] The first article of the Senegal Work Code states that "the right to work is recognized for every citizen as a sacred right. The government shall take all necessary measures to help each citizen find a job and keep it when he has gotten it."[27] The same holds for Gabon, Cameroon and Mali.

It is also worth emphasizing that, by adopting the *Statement on Economic, Social and Cultural Rights in Africa*,[28] the African Commission on Human and Peoples' Rights declared that:

> *"the right to work in Article 15 of the Charter entails among other things the following:*
>
> - *Equality of opportunity of access to gainful work, including access for refugees, disabled and other disadvantaged persons;*
> - *Conducive investment environment for the private sector to participate in creating gainful work;*
> - *Effective and enhanced protections for women in the workplace including parental leave;*
> - *Fair remuneration, a minimum living wage for labor, and equal remuneration for work of equal value;*

Social Rights, December 2007, vol. 1, p. 16: http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/Year/XVIII2Vol1_en.pdf)

[26] www.legiburkina.bf/codes/constitution_du_burkina_faso.htm#TITRE%201

[27] www.senegalaisement.com/NOREF/legislation_travail_senegal.html

[28] Article 6, Pretoria, 17 September 2004: http://64.233.183.104/search?q=cache:u3_trwSMMgkJ:www.interights.org/doc/20040920%2520Pretoria%2520ESC%2520Workshop%2520final%2520declaration.doc+Declaration+of+the+Pretoria+Seminar+on+Economic,+Social+and+Cultural+Rights&hl=en&ct=clnk&cd=2&gl=ch

- *Equitable and satisfactory conditions of work, including effective and accessible remedies for work place-related injuries, hazards and accidents;*
- *Creation of enabling conditions and taking measures to promote the rights and opportunities of those in the informal sector, including in subsistence agriculture and in small scale enterprises activities;*
- *Promotion and protection of equitable and satisfactory conditions of work of women engaged in household labor;*
- *The right to freedom of association, including the rights to collective bargaining, strike and other related trade union rights;*
- *Prohibition against forced labor and economic exploitation of children, and other vulnerable persons;*
- *The right to rest and leisure, including reasonable limitation of working hours, periodic holidays with pay and remuneration for public holidays."*

The African Charter of Human and Peoples' Rights has been ratified by all 53 countries of Africa.

The Americas

The states parties to the ***Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"*** recognize the right to work (Article 6), just, equitable and satisfactory conditions of work (Article 7), trade union rights (Article 8) and the right to social security (Article 9).

Article 6 dealing with the right to work, states:

> *"1. Everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity.*
>
> *"2. The States Parties undertake to adopt measures that will make the right to work fully effective, especially with regard to the achievement of full employment, vocational guidance, and the development of technical and vocational training projects, in particular those directed to the disabled. The States Parties also undertake to implement and strengthen programs that help to ensure suitable family care, so that women may enjoy a real opportunity to exercise the right to work."*

This protocol also provides for the right of the elderly to:

> *"to engage in a productive activity suited to their abilities and consistent with their vocations or desires" (Article 17.b) and for the right of the handicapped to "work programs consistent with their possibilities and freely accepted by them or their legal representatives, as the case may be" (Article 18.a).*

The *Protocol of San Salvador* has been ratified by 14 countries. Five others have signed it, whereas 16 countries, including the United States and Canada, have done nothing about it since its adoption in 1988.[29]

[29] V. http://www.cidh.org/basicos/english/basic6.prot.sn%20salv%20ratif.htm

III. OBLIGATIONS OF GOVERNMENTS AND IMPLEMENTATION AT THE NATIONAL LEVEL

A) Obligations of Governments

The right to work is not an aspiration or philosophical affirmation but a legal duty for governments. As a human right, the right to work requires that governments respect it, protect it and implement it. Given that we have already discussed the basic principles of these three levels of government obligations in earlier brochures,[30] we shall limit ourselves to mentioning certain specific obligations of governments relative to the right to work, such as laid out by the Committee on Economic, Social and Cultural Rights:

1. recognize the right to work in the national judicial system and adopt a national labor policy as well as a detailed plan to give effect to this policy;
2. progressively assure the full enjoyment of this right;
3. guarantee that the right to work will be enjoyed "without discrimination of any kind" (*ICESCR*, Article 2.2);
4. assure the right of women and the young to a decent job, and thus take measures to fight against discrimination and to promote equality of access and of opportunity;
5. assure equality of access to work and to job training;
6. assure that privatization measures do not weaken worker's rights;
7. assure that particular measures taken to increase labor market flexibility do not end up making employment precarious and diminishing social protection for the worker;
8. assure that no retrograde measure should, in principle, be adopted regarding the right to work;
9. prohibit forced or compulsory labor by refraining from denying or limiting equal access to decent work for all persons, especially disadvantaged and marginalized individuals and groups, including detainees, members of minorities and those under 16 years of age;
10. prohibit the work of children under 16 years of age;
11. prohibit all forms of economic exploitation and the forced labor of children;
12. prohibit forced or compulsory work for non-state workers.[31]

[30] V. the brochures on *The right to food*, *The right to health*, *The right to adequate housing*: www.cetim.ch/en/publications.php

[31] V. CESCR *General Comment No 18*, §§ 19-28, adopted 24 November 2005, E/C.12/GC/18: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.GC.18.En?OpenDocument

Failure of Governments to Comply with Their Obligations

The Committee on Economic, Social and Cultural Rights makes the distinction between the inability and the unwillingness of governments to implement the right to work. It also distinguishes between failures of "omission" and of "commission":

> *"Violations through acts of omission occur, for example, when States parties do not regulate the activities of individuals or groups to prevent them from impeding the right of others to work. Violations through acts of commission include forced labor; the formal repeal or suspension of legislation necessary for continued enjoyment of the right to work; denial of access to work to particular individuals or groups, whether such discrimination is based on legislation or practice; and the adoption of legislation or policies which are manifestly incompatible with international obligations in relation to the right to work."*[32]

The Committee further lists a series of examples of failures on the part of governments to respect, to protect and to implement – by fulfilling their obligations – the right to work. The following are several extracts of the Committee's remarks:

- *"Violations of the obligation to **respect** the right to work include laws, policies and actions that contravene the standards laid down in Article 6 of the Covenant" (v. Chapter II.A).*
- *The failure of States parties to take into account their legal obligations regarding the right to work when entering into bilateral or multilateral agreements with other States, international organizations and other entities such as multinational entities constitutes a violation of their obligation to respect the right to work."*
- *Violations of the obligation to **protect** follow from the failure of States parties to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to work by third parties."*
- *Violations of the obligation to **fulfill** occur through the failure of States parties to take all necessary steps to ensure the realization of the right to work. Examples include the failure to adopt or implement a national employment policy designed to ensure the right to work for everyone; insufficient expenditure or misallocation of public funds which results in the non-enjoyment of the right to work by individuals or groups, particularly the disadvantaged and marginalized; the failure to monitor the realization of the right to work at the national level. (…) and the failure to implement technical and vocational training programs."*[33]

B. Examples of the Implementation at the National Level

To illustrate the implementation (or non-implementation) of the right to work and its corollaries at the national level, we have chosen three countries: Mexico (a country said to be "developing"), the United Kingdom (said to be

[32] Ibid. §32.
[33] Ibid. §§ 33 to 36.

"developed" and one of the world's foremost industrialized countries) and Romania (said to be "in transition"). Within this framework of reference, the example of China is very instructive, but it is beyond the scope of the present work to cover the essential aspects of the problem as they appear in a country as vast and complex as China. For this, we suggest that the reader refer to any of several specialized websites.[34]

1. Mexico

With US$ 8,400 in per capita GDP and thus being ranked as "rich" (by the OECD[35]), Mexico is the world's fifth largest petroleum producer and one of the 15 biggest of the world's economies. However, these figures hide flagrant inequalities in the country, including 40 million Mexicans living in poverty.

In fact, since Mexico joined the NAFTA (North American Free Trade Agreement, comprising Mexico, the United States and Canada) in 1994, national agricultural production has been literally devastated, and the countryside has lost a quarter of its population as a result of free trade that has subjected the country to unequal competition. Since 1994, cereal imports to Mexico have tripled, representing 40% of its food needs.

Although Mexico has become the United States' third biggest trading partner and the second biggest market for U.S. exports, these commercial exchanges have not created the expected jobs – with the highly questionable exception of volatile employment in the *maquiladoras* (free-trade zones), areas outside any legal jurisdiction where there has been a proliferation of assembly factories whose materials are imported from the United States and re-exported back in the form of completed products. Further, since 2001, the *maquiladoras* have been diminishing in importance owing to competition from China and in spite of efforts of the Mexican government to maintain them.

It is worth noting that almost 30 million Mexicans live in the United States and that they support good third of the Mexican population (e.g. some US$ 21 billion in remittances to Mexico in 2006).

Although the average unemployment rate between 1996 and 2006 has been – according to official figures – 2.9% for women and 2.4% for men, it should be emphasized that 40% of the work force (out of a total of 41.6 million) works in the informal sector.

<u>Mexican Legislation</u>

Article 123 of the Mexican constitution stipulates that "every person has the right to honorable and socially useful employment". Article 5 states the "nobody

[34] Inter alia: http://www.ilo.org/dyn/natlex/natlex_browse.Country?p_lang=en&p_country=CHN; http://survey07.ituc-csi.org/getcountry.php?IDCountry=CHN&IDLang=EN;www.fair-computer.ch/cms/fileadmin/user_upload/computer-Kampagne/Laenderstudie_zu_China.pdf; http://www.fair-computer.ch/cms/fileadmin/user_upload/computer-Kampagne/Pressekonferenz_20.Mai/A_one_year_follow_up_ study_final.pdf

[35] Organization for Economic Cooperation and Development, which currently comprises 30 free-market oriented countries: www.oecd.org

can be prevented from engaging in the profession, the commercial or industrial activity or the work that suits him/her in so far as it is a legal occupation".

As for federal employment legislation, it states that "work is both a social right and obligation. It is not a commodity, it demands respect of the freedoms and the dignity of those who carry it out, and it is to be carried out in conditions that guarantee the life and the health of the worker as well as a decent economic level for the worker and his/her dependents." (Article 3.1)

Although Article 357 of the law on employment guarantees the right to organize in these terms, "workers and employers have the right to establish trade unions without needing any authorization", in practice the situation is quite different (see below).

It should be emphasized the Mexico has ratified ILO Convention 87 (Freedom of Association and the Right to Organize) but not Convention 98 (Right to Organize and Collective Bargaining).

Mexican legislation includes no provision for unemployment insurance, although it does have an aid mechanism (set up in 2002 as an experiment) called "Financial Aid System for Employment Seekers" (SAEBE), which makes available some financial support but under certain conditions (the recipient must have been actively in search of employment for at least three months, must have contributed to social security for at least six months, must have dependents etc.).

The minimum wage in Mexico is far from sufficient to guarantee "a decent life" to workers and their families. (It is reckoned to be one fifth of the minimum income needed for survival.)

Mexican legislation does not include any federal legislation on sexual equality, and half of the population has no access to social security or any sort of government aid.

Violations of the Right to Work and of Worker's Rights

According to a recent report on Mexico by the International Trade Union Confederation, "the systematic attacks on trade union autonomy and numerous institutional obstacles prevent the creation of independent trade unions". (sources below)

Worse, in spite of the 1999 decision of the supreme court that declared unconstitutional both the imposition of a trade union monopoly in the public sector and the exclusion clause stating that "only members of the union present in the work place may be hired by a public or private employer", the situation does not seem any better, given that only seven percent of workers benefit from contracts resulting from collective negotiations.

This is corroborated by numerous complaints filed with the ILO. For example, the union of education workers of the state of Puebla Independiente (SETEP) complained to the ILO (in 2006 and 2007) about the refusal of the Mexican authorities to list it on the trade unions register since 2004, in violation of ILO Convention 87. In its conclusions, the Trade Union Freedom

Committee requested that the Mexican government "take measures so that the competent local authorities may accord as soon as possible to the SETEP the listing on the register of independent trade unions of its more or less great representativeness and so that the legislation of the state of Puebla be modified so that it not be required of public sector workers that there be no other representative union in order to register a union." (sources below)

The earnings gap between men and women is also considerable, being as high as 50% in many sectors. The Mexican government has not always taken adequate measures against sexual harassment, which is current in the work world.

According to official figures, at least 3 million children between 6 and 14 work in Mexico, which goes a long way toward explaining the low level of schooling in this country. Access to schooling in a language other than Spanish remains difficult, which has the effect of preventing many children of indigenous origin from finishing school. Forced labor, including forced child labor, remains a problem in present day Mexico and affects most particularly the indigenous populations.

As for the *maquiladoras*, according to the International Trade Union Confederation, they are synonymous with unpaid overtime, sexual harassment, discrimination in hiring, lack of on-the-job hygiene and security and arbitrary firings. Further, union organizing is impossible. The majority of the *maquiladoras* change location without paying their employees the wages due them.

In 2006, the CEREAL (Centro de Reflexión y Acción Laboral) received 578 workers' complaints regarding violations of union rights and the right to work in such companies as HP, Dell, IBM, Intel, Nokia, Philips, Sony, Ericsson, Motorola and Sony. A reduction of the number of persons covered by collective bargaining agreements and the obstruction of collective bargaining negotiations are among the most frequent practices, to which one can add discrimination, exposure to toxic substances, sexual harassment and abusive treatment in general.

On 19 February 2006, an explosion in Mine 8 of the Pasta de Conchos unit of the Minera Mexico SA group (IMMSA) caused the death of 65 miners. Only two bodies were recovered, and the IMMSA gave up looking further on 5 April 2007, on the excuse that 25% of the mine had been flooded and that the water was contaminated by AIDS, tuberculosis etc., which risked putting in danger the health of the rescue workers and that of the population in general. The victims' families have organized themselves in an association to make known this scandal to the various national and international human rights bodies, but also to end the impunity of those responsible and bring them to justice.

The Mexican authorities do not hesitate to recur to violence to "resolve" social conflicts. Several examples follow.

On 3 and 4 May 2006, workers, mostly women working in the informal economy, were the target of violence perpetrated by more than 2,500 national police, entailing more than 200 cases of arbitrary detention, the death of two young men and the torture of dozens of persons, most of them victims of

sexual violence. To this day, none of those responsible for these crimes has been even investigated.

On 11 January 2008, 700 members of the state security forces of the federal police were mobilized to dislodge 1,500 miners of the Canaea (Sonora state) copper mine, run by Grupo Mexico, who had been on strike since July 2007 to denounce their low wages and the horrible sanitary and security conditions in the mine. The police forces and the army fired tear gas grenades and rubber bullets, causing several dozens of wounded among the workers, and several of them were arrested. This action triggered a strike by 270,000 workers in this sector throughout the country.

Two miners dead, 41 injured, two of them seriously – that was the outcome of the brutal expulsion carried out on 20 April 2006 within the Lázaro Cárdenas La Truchas (Sicartsa) steel company, where the workers had been on strike since 2 April to demand that the status of the union manager Napoléon Gómez be recognized and that the manager imposed by the company be withdrawn. In a totally disproportionate response, 800 police from both the federal and state forces were sent to confront the 500 workers. One of the two workers killed was Héctor Álvarez Gómez, a union representative sitting on the joint commission of the Mittal Steel Company.

Recommendations of the Committee on Economic, Social and Cultural Rights

The Committee examined the Mexican government report in June 2006, and made the following final recommendations, among others:

- assure that the wages set by the National Wage Commission or negotiated between workers and employers can provide all workers and employees, in particular women and indigenous persons, with a decent life for themselves and for their dependents;
- eliminate and prevent further discrimination in the work place in all the federal states;
- eliminate legislation allowing for restrictions on union rights;
- make unemployment compensation universal;
- supply government social aid to those in need;
- set the minimum age of admission to the work force at 15 (the age at which compulsory schooling ends);
- adopt a law at both the federal and state level on sexual equality;
- adopt and implement effectively, at the state level, laws against sexual harassment;
- assure full integration of economic, social and cultural rights in social development and poverty reduction strategies, responding specifically to the needs of disadvantaged and marginalized individuals and groups and providing sufficient funds for the implementation of these strategies.

Sources

- Extracts from the Final Observations of the Committee on Economic, Social and Cultural Rights on Mexico, adopted 9 June 2006 during its 36th session, E/C.12/MEX/CO/4: http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.MEX.CO.4_sp.pdf

- Extracts from the report of Mexico presented to the Committee on Economic, Social and Cultural Rights, E/C.12/4/Add.16 daté du 25 February 2005: http://daccessdds.un.org/doc/UNDOC/GEN/G05/405/28/PDF/G0540528.pdf?OpenElement

- Extracts from the report of the International Trade Union Confederation (ITUC) on Mexico, published in Geneva 11 February 2008: www.ituc-csi.org/IMG/pdf/TPR_Mexico.pdf [available only in Spanish] and its press release of 29 April 2008: http://www.ituc-csi.org/spip.php?article2030&lang=en

- Complaint against the government of Mexico presented by the Education Workers Union of the state of Puebla Independiente (SETEP), Report No 349, Case No 2536: www.ilo.org/ilolex/cgi-lex/pdconvf3.pl?host=status01&textbase=ilofre&document=4791&chapter=3&query=%28Mexique%29+%40ref&highlight=&querytype=bool.

- Centro de Reflexión y Acción Laboral: www.sjsocial.org/fomento.

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- Article by Luis Hernández Navarro, published on the internet site of the Réseau d'information et de solidarité avec l'Amérique Latine, 8 Novembre 2007: http://risal.collectifs.net/spip.php?article2358 (available in French only).

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- Human Rights Advocates, Volume 47, Summer 2006, www.humanrightsadvocates.org/images/HRA_Vol47.pdf.

- World Bank: http://www.worldbank.org.

- Géographie sociale et politique, www.geographie-sociale.org/mexique-usa-frontiere.htm

2. The United Kingdom

As the world's sixth largest economy, the United Kingdom is a member of the G8, this group of countries that defines world economic policies without consulting those concerned.

Since the 1980s, the United Kingdom has become a primary promoter of neo-liberal doctrines. Industrial activities today represent less than 20% of this country's economic activity (pharmaceuticals, petroleum, aeronautics in particular), as opposed to 72% for services and 8% for finance (London is the world's third ranking international financial center, the GDP of this city being equivalent to that of Switzerland[36]).

With a GDP of £31,436 per capita in 2004, the United Kingdom demonstrates an apparently striking "good economic health", which hides the catastrophic situation of millions of its inhabitants: the excessive length of the work week (3.3 million persons work 48 hours per week), precarious jobs (3.2 million teleworkers work primarily at home), 3.8 million children live below the poverty level, not to mention legal migrant workers (some 6 million), and "illegals" (estimated at somewhere between 500,000 and a million), as well as more the

[36] CHF 500 billion.

280,000 asylum seekers whose requests for asylum have been refused and who live in poverty, without authorization to work, hence without public aid of any sort…

To this one may add the behavior of British transnational corporations operating abroad, which are abusive of workers' rights and of the right to work. Hence, the call from Action Aid International to the United Kingdom government that the activities of these corporations be regulated outside its territory, which would be one of the best ways for the government to honor its international human rights obligations.

United Kingdom Legislation and Violations of Workers' Rights and the Right to Work

The law on the consolidation of trade unions and labor relations (TULR(C)A 1992) and the 1999 law on employment relations regulate workers' rights.

British workers are protected against lay-offs or against other forms of reprisals if they ask for support from their union. They have the right to be informed and consulted regarding all decisions affecting their job, under pain of a fine of up to £75,000 for the employer.

The minimum wage is £4.85 per hour[37] (according to 2004 figures), which corresponds to a net wage of 60% of the average wage (according to the criteria of the European Committee of Social Rights), hence insufficient for a decent life.

The remuneration of overtime hours is not guaranteed by the law, nor is remuneration of holidays.

The law on working hours provides for four weeks of annual paid vacation, but if a worker falls ill or is hurt in an accident during his vacation, it may not be possible for him to take his vacation time at another time later on, for this is regulated by the worker's contract.

Officially, 5.2% of the work force (29 million according to the 2006 data) of the United Kingdom is unemployed. Unemployment compensation (jobseeker's allowance) is paid only to those persons actively seeking employment, but is manifestly insufficient even for a single person (£ 476 per month).[38]

The questions of health and security of temporary workers pose two particular problems in the United Kingdom: 1. this category of workers runs a risk, by virtue of the inadequacy of its training or preparation for the jobs it occupies often because the placement agency has not provided enough information about the work to be done or because the information given by the hiring enterprise are not inadequate; 2. when an accident happens, the agency and the employer who has hired the temporary worker can both refuse all responsibility by arguing a lack of explicitness in the employment relationship.

[37] £1 = €1,86 = CHF 2.

[38] The European Committee of Social Rights considers that when the amount of such a payment is lower than the poverty level, even if this poverty level is figured to be 40% of the adjusted median income, combining it with payments conditional on resources does not put the situation in conformity with Article 12.1 of the European Social Charter.

Migrant workers from Central and Eastern European countries that joined the European Union in May 2004 are victims of considerable exploitation in the work world – low wages often below the national minimum, late payment of wages, excessively long work days, confiscation of travel documents, violence or abusive treatment in the work place, dangerous/unhealthy work conditions…

British legislation recognizes the right to strike, but it is subject to a highly restrictive procedure of legitimization and a de facto limitation of 12 weeks. Beyond this period or after a longer period in case of a lock-out, the employees can be fired for having taken part in an illegal strike.

Only those workers concerned can go on strike; any gesture of solidarity is considered illegal, such as, for example, picket lines around an enterprise by other union members.

The British courts also exclude any collective action targeting a future employer or future working conditions within the framework of the transfer of a part of the enterprise's activity.

Article 235A of the 1992 Trade Union and Labor Relations (Consolidation) Act allows a third party, under certain conditions, to take legal action against a union that organizes an action to demand redress of grievances.

Today, only about a third of the British work force is covered by collective bargaining agreements.

The Trades Unions Congress (TUC) estimates that the members of unions in Great Britain now have fewer rights in the area of organizing collective action than in 1906!

The European Committee of Social Rights is of the same opinion. According to the Committee, the legislation of the United Kingdom regarding the right to strike is in violation of Article 6.4 of the European Social Charter because 1. the possibility for workers to defend their interests by licit collective actions are too restricted; 2. the obligation to give prior notice to the employer before holding a vote on a grievance action is excessive; 3. the protection of workers who are laid off when they take part in a grievance action is insufficient.

Anti-Union Methods

En addition to legislation unfavorable to workers, certain employers carry on a sort of "guerilla warfare" against union organizing within their enterprises. They recur to a wide range of tactics including reprisals against and firings of militant organizers, prohibiting access to the workplace, active dissuasion of joining a union, the dissemination of anti-union propaganda, financial incentives and the setting up of new consultative bodies. The following are several examples:

- the creation of an internal staff association which monitors workers when they are seen near union organizers outside the workplace, which threatens closure or relocation of the plant rather than recognize the union;
- some employers recur to United States consulting firms to thwart – not without success – efforts to organize their personnel;

- by virtue of the current law on insolvability, unscrupulous employers can easily lay off workers, declare bankruptcy and buy back the assets of their bankrupt company, thus taking back their enterprise without having to pay the least compensation to the laid off workers;
- a study published en April 2006, carried out jointly by the TUC and the Labor Research Institute shows that unions have ever greater difficulty to be recognized by employers.

In this context, it should be mentioned that two British Airways employees were dismissed for serious infraction after having gone on strike in 2005 in support of workers dismissed in the course of a conflict with the catering company Gate Gourmet. A third received an ultimate warning by registered mail.

Examples of Successful Union Efforts

In February 2006, the supermarket chain ASDA belonging to the United States transnational Wal-Mart, known for its hostility to unions, was found guilty by a labor court for having offered financial advantages to its employees (a wage increase of 10%) in order to incite them to renounce their right to collective bargaining. ASDA was forced to pay £2,500 in compensation to each of the 340 workers concerned.

The packaging company Chesapeake dismissed 10 members of Unite the Union for their refusal to sign individual contracts. The union members unanimously rejected the proposal of management that aimed to revoke the collective bargaining contract by making all employees sign individual contracts (December 2006).

Violations of the European Charter Noted by the European Committee of Social Rights

During the examination of the United Kingdom report in December 2007, the European Committee on Social Rights noted violations of the following articles of the European Social Charter:

- Article 2.4, on the grounds that there is no legislation providing for a reduction of work time or for granting additional time off to workers employed in dangerous or unhealthy occupations and that, further, no proof had been forthcoming that such measures or any other measures providing for a reduction of exposure to risks had been taken through collective bargaining contracts or through any other means;
- Article 2.5, on the grounds that it is possible, in many sectors, to work more than 12 consecutive days without any time off, and no information had been supplied regarding the guarantees;
- Article 4.1, on the grounds that the minimum wage is clearly lower than the 60% threshold upheld by the Committee;
- Article 4.2, on the grounds that all workers do not have adequate legal guarantees regarding overtime pay;

- Article 4.4, on the grounds that the notice prior to lay-off is too short for those workers with less than three years on the job;
- Article 4.5, on the grounds that the determination of what will be withheld from wages must be based exclusively on negotiations between parties to a work contract;
- Article 10.4, on the basis that equality of treatment for citizens of other states parties residing legally or working regularly in the United Kingdom is not guaranteed regarding rights and costs of financial aid for training;
- Article 235A of the 1992 Trade Union and Labor Relations (Consolidation) Act constrains yet further the exercise of the right to strike;
- Article 12.1, on the grounds that, regarding single persons, the amounts of sick pay, short-term disability pay, and the allocation for those seeking work are manifestly insufficient;
- Article 19.6, on the grounds that there is neither a *de jure* nor a *de facto* guarantee that 18- to 21-year-old children of migrant workers have the right to family reunion;
- Article 19.8, on the grounds that family members of a migrant worker from neither an EU country and nor a European Economic Area country as well as children of a migrant worker from an EU or EEA country but who are less than 17 years old, can be deported following the deportation of the migrant worker.

Statements, Recommendations and Questions of the CESCR

During the examination of the report of the United Kingdom in 2002, the Committee on Economic, Social and Cultural Rights noted the following regarding the right to work and its corollaries:

- although the *International Covenant on Economic, Social and Cultural Rights* was ratified by the United Kingdom 40 years ago (!), it still has not been incorporated into the domestic law, and the United Kingdom does not have any intention of doing so any time soon;
- there is no national action plan for human rights;
- the minimum wage does not assure all workers a sufficient standard of living, and the protection that the minimum sage guarantees does not apply to those under 18;
- the persistence of poverty is considerable, in particular in certain regions of the country such as Northern Ireland and in certain strata of the population, for example among ethnic minorities, the handicapped and the elderly.

At the end of this examination, the Committee made the following recommendations inter alia, encouraging the government of the United Kingdom:

- to draft legislation and a national policy on issues such as the reduction of poverty, social security, adequate housing, health and education;

- to do all it can as a member of international financial institutions, in particular the International Monetary Fund and the World Bank, to ensure that the policies and decisions of those organizations are in conformity with the obligations of states parties under the *Covenant*, in particular with the obligations contained in articles concerning international assistance and cooperation;
- to take more effective steps to combat de facto discrimination, in particular against ethnic minorities and people with disabilities, especially in relation to employment, housing and education and strongly recommends the enactment of comprehensive legislation on equality and non-discrimination.

It should be noted that the fifth periodic report of the United Kingdom will be examined by the Committee in May 2009, and, in anticipation of this, the Committee is requesting that the government supply information on:

- whether the minimum wage level is sufficient to allow a worker and his/her family to enjoy a decent standard of living;
- the retirement reform program, as well as the measures the government intends to take to deal with the increase in the cost of retirement and health owing to the ageing of the population;
- measures taken in dependent and overseas territories to guarantee all women the right to paid maternity leave or to leave with sufficient social security provisions for a sufficient length of time before and after the birth of their child;
- measures adopted par the government to fight human trafficking, especially that of women and children, and to aid the victims;
- the number of requests pending filed by immigrant families seeking to enter the territory of the United Kingdom for family reunion and measures taken to reduce the delays in the requests procedure, in conformity with the obligations of the government;
- progress made by the United Kingdom in the fight against poverty and social exclusion.

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E/C.12/GBR/Q/5, 10 June 2008: http://daccessdds.un.org/doc/UNDOC/GEN/G08/424/52/ PDF/ G0842452.pdf.

- TUC: www.tuc.org.uk/work_life/tuc-14876-f0.cfm?theme=itsabouttime.

- OCDE: www.oecd.org.

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3. Romania

With a par capita GDP situated somewhere between €3,000 and €7,000, according to its various regions, Romania is a country called "in transition". It became a member of the European Union 1 January 2007.

4.3% of the work force (10 million) is unemployed, but 20% of the Romanian population (out of some 22 million people) works outside the country, the best known of them being the capsunari (strawberry pickers) in Spain.

The Roma constitute without a doubt the part of the population most subject to discrimination. In fact, according to UNICEF, almost 88% of the Romanian Roma were living below the poverty level in 2005.

Romania also produces petroleum (245,000 barrels per day in 2006) and natural gas (17.6 million cubic meters in 2006).

Many European companies such as Renault, Ford, Nokia and Siemens have relocated to this country because of the concessions granted to investors and the country's cheap labor (the minimum wage was € 69 in 2004).

However, the tendency is apparently changing, for Romania is now experiencing a labor shortage. In fact, the companies operating in Romania are now employing several thousand Moldavians, Turks and Chinese of whom most are working in the textile sector, agriculture and construction. Daewoo is said to be planning to import Vietnamese workers.

Romanian Legislation

Article 41 of the Romanian constitution deals formally with the right to work, labor relations and social protection for workers: "1. The right to work shall not be limited. The choice of a profession, a trade or an occupation as well as the place of work is a free choice. 2. Workers have the right to measures assuring their social security. These measures shall cover workers' security and health, the work regime for women and youth, the establishment of a minimum wage at the national level, weekly time off, paid vacations, work accomplished under special or particular conditions, professional training, as well as other specific situations established by the law. 3. The normal work day is, on average, a maximum of eight hours. 4. For equal work, women receive the same pay as men. 5. The right to collective bargaining regarding work and the compulsory character of collective conventions shall be guaranteed."

Trade union rights (Article 9), the right of association (Article 40.1) and the right to strike (Article 43) are guaranteed by the Romanian constitution. It also prohibits forced labor (Article 42.1) and sets 15 as the minimum work age (Article 49.4).

Starting this year, the minimum wage in Romania is 500 lei (about €150), but the wage gap between women and men, according to the Committee for the Elimination of Discrimination Against Women, remains considerable in both the public and private sectors.

Articles 111 and 112 of the Labor Code stipulate that the work week must not surpass 48 hours, including overtime.

The right to collective bargaining is recognized by a 1996 law, but it is strictly limited to work places with a minimum of 21 workers. This law also stipulates that collective bargaining contracts must be renewed every year.

The Romanian government is obliged to "take all economic development and social protection measures such as to assure its citizens a decent standard of living" (Article 47.1), and it recognizes its citizens' right to the following social services: "retirement pension, paid maternity leave, treatment in government-run medical establishments, unemployment compensation, and other forms of public and private social insurance" as well as "social aid measures" (Article 47.2).

It should also be noted that Romania has ratified most of the United Nations human rights conventions, including those on economic, social and cultural rights and on civil and political rights. In this regard, it is worth recalling that the international human rights treaties take precedence over Romanian legislation by virtue of Article 20.2 of the constitution: "In case of conflict between the fundamental human rights conventions and treaties to which Romania is party and domestic legislation, international rules have primacy except in those cases where provisions of the Constitution or domestic legislation may be more favorable."

Restrictions on the right to strike

Although the right to strike is recognized by Romanian legislation, it is restricted for workers in the sectors of health care, pharmacies, schools, communications, radio and television, transportation, essential services (gas, electricity) etc., which must furnish a minimum service equal to one-third of normal activity.

The employer must be given a 48-hour notice. A strike can have for its purpose only the defence of the economic interests of the workers and must not be used for political purposes. Those categories of persons prohibited from organizing into trade unions or joining them do not have the right to strike (lawyers, judges, police and certain other public employees).

Strikes are considered illegal if there is already a collective bargaining agreement, even if the dispute concerns something that is not covered by the existing agreement and even if the employer refuses to hold negotiations with the union on the point in dispute.

Strikes can also be declared illegal owing to irregularities in procedure. In the case where a strike might be declared illegal, the union leader can be legally dismissed, even if the strike is interrupted immediately following the declaration of illegality. If a court declares a strike illegal, the union must pay compensation.

Romania does not have workers tribunals. Professional conflicts and disputes arising in the work place are treated by "special panels" within the framework of the ordinary justice system. Experts on labor legislation representing employers' and workers' organizations, sitting on the panels, can only give an opinion, and their opinion is non-binding in court.

Violations of Labor Rights and of the Right to Work

In practice, the right to organize unions is not always respected. Certain employers try to thwart the organization of unions in their enterprises and even warn their workers against any discussions about union organizing with persons from outside the enterprise. Many employers are said to have set up "yellow" unions (controlled by management). In some cases, employers are trying to eliminate independent unions, which is punishable under the law but difficult to prove.

The employers most opposed to unions (generally foreign business enterprises) set as a condition for hiring that any future employee will not try to organize a union nor join one.

Many employers deny the right to collective bargaining, refusing any collective bargaining agreement with unions. Further, a numerous collective bargaining agreements are not implemented. In 2006, several employers refused to enter into annual negotiations on wages, work schedules and working conditions. The Territorial Labor Councils refused to register the reconciliation requests submitted by the unions in these enterprises. In the absence of any reconciliation procedure, the union may not undertake a legal strike.

Employers have rarely been sanctioned by the tribunals for anti-union behavior.

The Victory of the Workers of Dacia

On 24 March 2008, the workers of the Dacia factory on Pitesti site (in the south of Romania), owned by Renault-France, went on strike to demand a monthly wage increase of 550 lei (+/- €148). The same day, the factory management filed a complaint against the Dacia Autoworkers Union (SAD), but on 9 April 2008, the judge in the court in Arges declared the strike legal.

Finally, the strike ended on 11 April 2008 with the offer from management of a monthly wage increase of 360 lei (+/- €133) in gross pay, going into effect through two consecutive increases (300 lei starting on 1 January 2008 and 60 lei starting on 1 September 2008), to which would be added an annual bonus of a minimum of 900 lei (+/- €330) gross calculated on the basis of the various wages paid in the factory.

The success of this strike derived mainly from four elements: an extremely low minimum wage in European terms (€69 in 2004); considerable profits for the French owner in the Romanian factory (€300 million in the previous two years); participation of 85% of the 14,000 workers at the plant; an unprecedented level of support on both the national and European level.

In fact, never in the history of social conflicts in Romania had a union benefited from such broad support as that given the SAD. The post office workers union gave €11,000, whereas in France, the Confédération française démocratique du travail/Renault (the Renault chapter of the French Democratic Labor Federation) collected €10,000, and the workers of Renault Cléon, €2,000… Cartel Alfa declared itself to be in support of the strike, as did the petroleum industry workers union federation, Petrom. Even the Romanian Social-Democratic Party (PSD), more known for it ideological opposition, its support of privatization and its business interests, supported the strike, bringing along with it the European Social Party.

Action by Chinese Workers

In January 2007, 300 Chinese workers of the Wear Company in the textile factory of Bacau (a city in the east of Romania) carried out a protest to demand wage increases (US$ 300) and better working conditions. According to the agreement between the recruiting agency and the Chinese workers, the workers should have been earning US$700 per month, but they had to pay 25% of their earnings each month to the agency until they had paid US$ 4,000 for having been hired. The recruiting agency was to pay for their return flight to China.

Following an agreement with the unions, the Romanian labor minister and the Chinese and Italian embassies, 50 Chinese workers decided to return to China, and 200 others decided to remain. Those remaining in Romania earned thenceforth US$ 320 per month and were lodged and fed at the expense of the company.

Violations noted by the European Committee of Social Rights of the European Charter

In its concluding observations following the examination of the national report of Romania, adopted in December 2007, the European Committee of Social Rights stated that the situation in Romania is not inconformity with:

- Article 1.1, on the grounds that the general measures taken to deal with the high rate of long-term unemployment and the rise in youth unemployment are inadequate;
- Article 1.2, owing to the excessive length of time required in place of the compulsory military service;
- Article 3.2, for the following reasons: 1. there are no preventive and protective measures for all the risks that must be covered; 2. independent workers and domestic help are not covered by the provisions regarding social security and health on the job during the reference period;

- Article 4.4, on the grounds that a 15-day notice (in the case of termination of employment) is insufficient when workers have been on the job more than six months;
- Article 4.5, on the grounds that the withholding from wages can deprive workers of the strict vital minimum;
- Article 5, for the following reasons: 1. the restrictions on union rights of upper-level civil servants, of persons in upper-level management or holding public office are too general; 2. members of the police force are obliged to belong to the National Association of Police; 3. the requirement of Romanian nationality in order to represent corporate partners within the Economic and Social Council is excessive;
- Article 6.4, for the following reasons: 1. a union can undertake a collective action only if it fulfills the criteria of representiveness and only in so far as half of its members support the action, which limits excessively the right of unions to carry out collective action; 2. the Committee is not able to determine what restrictions on union rights of civil servants are covered by the limits set by Article G of the Charter;
- Article 7.3, for the following reasons: 1. as the definition of light work that may be done by young people over 15 who have not yet finished their compulsory schooling does not correspond to the definition given in Article 7 of the Charter, such young people are not guaranteed the benefit of a sufficient break during vacations; 2. young persons employed as domestic help are not covered by labor legislation; 3. the right of children to benefit fully from compulsory schooling is not guaranteed owing to a lack of enforcement of the pertinent legislation;
- Paragraphs 1, 4, 5, 6, 7, 8 and 9 of Article 7, on the grounds, particularly, that young persons employed as domestic help are not covered by labor legislation;
- Article 7.10, on the grounds that, in spite of the considerable efforts made in the fight against the problem of trafficking in children, the number of children concerned is still too high, which means that the measures taken have not yet produced the expected results;
- Article 12.1, on the grounds that there is no way of assuring that the social security services are sufficient;
- Article 12.4, for the following reasons: 1. no legislation provides for maintaining workers' benefits accrued in case of the relocation of a business enterprise in a state party not linked by an agreement with Romania; 2. no legislation provides for the maintaining of periods of insurance or employment already accumulated by workers of states parties not linked by an agreement with Romania;
- Article 15.1, on the grounds that there is no real anti-discrimination legislation for the handicapped in the areas of education and training and that the majority of handicapped children attend school in special institutions;

- Article 16, for the following reasons: 1. family social protection is manifestly insufficient owing to the lack of adequate housing; 2. family allocations are not sufficient.

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IV. OVERSIGHT MECHANISMS

A. At the National Level

Most countries have ratified many international conventions on labor rights and on the right to work (ILO conventions and human rights conventions), and most of these countries have also incorporated these conventions into their national legislation.[39]

In the majority of countries there are two types of procedures at the national level: 1.redress through judicial mechanisms; 2. redress through extrajudicial mechanisms.

1. Judicial oversight mechanisms

In many countries there are labor rights tribunals that deal with litigation in this area. It is thus possible to file a complaint before this jurisdiction to obtain redress of violations of labor rights, invoking national legislation, of course, but also invoking the international (ILO) conventions on labor rights and human rights.

It may also be possible, depending on the case, to take it before an ordinary court of law (an administrative tribunal, for example), using international human rights instruments, in order to obtain redress in matters of labor rights and their corollaries.

2. Extrajudicial oversight mechanisms

The two main mechanisms of extrajudicial redress available at the national level are a national commission for the protection of human rights and an ombudsman's office. These two mechanisms together constitute what is known as "national institutions of human rights protection". They are to be found in some 100 countries.

These national human rights protections insitutions, of varying degrees of effectiveness and independence according to the country, geneally have a broad mandate, which allows them to oversee government policies and the effect of these policies on human rights, while also protecting the victims of violations through legal aid or mediation with the public authorities. Some of them have a mandate limited soley to the defnese of civil and political rights, but it is more and more common for them to also defend the realization of economic, social and cultural rights.

[39] V., inter alia, the ILO data bank Natlex: http://www.ilo.org/dyn/natlex/natlex_browse.home?p_lang=en

B. At the Regional Level

1. Africa

The ***African Commission on Human and Peoples' Rights*** monitors respect and implementation of the regional human rights protection instruments, including its charter, which recognizes the right to work in Article 15. In this regard, the Commission receives periodic reports of the countries, which must report on measures taken to realize all the rights recognized in the charter, including the right to work.

The African Commission is also authorized to consider individual or NGO complaints alleging violations of rights protected by its charter. The Commission rules on alleged violations and issues recommendations regarding the accused country. These recommendations are not binding (hence the creation of the African Court on Human and Peoples' Rights – see below), but they can exert considerable moral pressure on the governments, which generally implement them.

In its 22 May 2008 decision, the Commission ruled that there had been a violation of the right to work (Article 14 of the *African Charter of Human and Peoples' Rights*), among other violations of the charter, regarding the 2004 arrest and expulsion of 14 Gambians working in the mines of Angola, whereas they were in the country legally.[40]

Regarding the ***African Court on Human and Peoples' Rights***, it is qualified to consider requests for reparations and compensation following violations of rights recognized by the charter and its additional protocol. Victims of labor rights violations have thus the possibility of taking their case to the Court on conditions that their country of citizenship has ratified the protocol setting up this body, that it has recognized the authority of the court to consider complaints from its individual citizens and that domestic avenues of redress have been exhausted. As the African Court was set up only recently (2008), it has not yet considered any complaints.

2. Europe

The mandate of the ***European Committee of Social Rights*** is to judge the extent to which the practices of the states parties to the *European Social Charter* (revised in 1996) are in conformity with the *Charter*. It adopts conclusions within the framework of a system of national reports that the states parties to the *Charter* must submit every two years and decisions within the framework of collective complaints[41] which have been submitted to it by NGOs or unions since the 1995 adoption of the additional protocol. As the

[40] Communication 292/2004, Institute for Human Rights and Development in Africa/Republic of Angola, pp. 86-107: www.achpr.org/english/activity_reports/23rd%20and%2024th%20Activity%20Reports.pdf

[41] V. http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsIndex_en.asp

right to work and its corollaries have been recognized by the *European Social Charter*, the Committee considers the implementation of these rights when it examines the governments' reports, and it can consider collective complaints alleging violations of these rights.

Regarding the national reports, in December 2007, the Committee made public its conclusions on the observance by certain countries of the provisions that they had accepted within the framework of the *European Social Charter (revised)* of 1996. For example, regarding the situation in **Austria**, the Committee concluded that it fails to conform to 1. Article 1.4 of the *Charter* (professional orientation, training and re-adaptation); 2. Article 3.1 of the *Charter* on the grounds that independent workers are not sufficiently covered by regulations regarding on-the-job health and safety; 3. Article 3.2 of the *Charter* owing to the manifestly high number of work-related mortal accidents and the continuous increase in their frequency; 4. Article 10.4 of the *Charter* on the grounds that equality of treatment of citizens of non-EU states parties to the *Charter* living legally or working regularly in Austria is not guaranteed; 5. Article 15.2 of the *Charter* on the grounds that the right of handicapped persons to protection against discrimination in employment is not really guaranteed during the period in question.[42]

Regarding the complaints filed with the Committee, there follow some examples concerning France and Finland.

In the case of a violation of Article 1.2 of the *Charter* by **France** (prohibition of all forms of discrimination in employment), concerning which it was alleged that, according to the *French Labor Code* (Article L.122.45), many categories of workers are excluded from protection against discrimination in employment, the Committee concluded on 8 November 2001 that the abovementioned article had, indeed, been violated.[43]

In the case of a violation of Article 2.4 of the *Charter* by **Finland** (right to supplementary paid leave or to a reduction of work hours in case of employment in dangerous or unhealthy work), concerning which it was alleged that hospital personnel exposed to the dangers of radiation during professional activity had no right to special leave in spite of this danger, the Committee concluded on 17 October 2001 that the abovementioned article had, indeed, been violated.[44]

One can also appeal to the ***European Court of Human Rights*** on the basis of certain provisions of the *European Convention on Human Rights* such as the prohibition of slavery and of forced labor (Article 4), the right to freedom of peaceful assembly and association (Article 11) or the prohibition of discrimination (Article 14).

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[42] European Committee of Social Rights, Conclusions XVIII-2, Vol. 1, pp. 17 to 57, December 2007, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Year/XVIII2Vol1_en.pdf

[43] V. complaint N° 24/2004 Syndicat SUD Travail Affaires Sociales c. France, http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC24Merits_en.pdf

[44] V. complaint N° 10/2000 Tehy ry and STTK ry c. Finlande, http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC10Merits_en.pdf

3. The Americas

The ***Inter-American Court and Commission of Human Rights*** oversee the respect and the implementation by the states parties to the *American Convention on Human Rights* and to the "*Protocol of San Salvador*". This latter establishes formal protection mechanisms, and the states parties have the obligation to present periodic reports to the commission on the progressive measures that they have undertaken to implement economic, social and cultural rights. Victims may not, however, submit individual or collective complaints to either the court or to the commission, whose mandate covers political and civil rights. On the other hand, complaints – coming under certain civil and political rights – may be considered by both the commission and the court.

For example, on 2 February 2001, the ***Inter-American Court of Human Rights*** found Panama guilty of have violated the right to join a trade union, the right to protection and the right to a fair trail of 270 workers. The Court also required that Panama allow these workers to return to their initial jobs and pay them their lost earnings.[45]

C. At the International Level

1. International Labor Organization (ILO)

Created in 1919, the ILO is the principal organization at the international level dealing with work, and it is distinguished from the other specialized U.N. organizations by its tripartite structure. It is overseen by a board of directors composed of 56 members, 28 from governments, 14 workers' representatives and 14 employers' representatives. The 10 most industrialized countries (Brazil, China, France Germany, India, Italy, Japan, Russia, United Kingdom, United States) have permanent seats, whereas the others are elected for a term of three years. The executive body of the ILO, the Governing Body, meets three times a year in Geneva and makes decisions relative to the policies of the ILO. It also establishes the program and budget to be submitted to the annual International Labor Conference for adoption and elects the director general.[46]

The ILO holds an annual conference (for three weeks in June) in Geneva during which each member state is represented by two government delegates, one worker delegate and one employer delegate.

The main purpose of the ILO is to draft international labor norms in the form of conventions (binding) and recommendations (non-binding) "setting minimum standards of basic labor rights: freedom of association, the right to organize, collective bargaining, abolition of forced labor, equality of opportun-

[45] V. Baena, Ricardo et al. (270 workers vs Panama): www.escr-net.org/caselaw/caselaw_show.htm?doc_id=40598.

[46] http://www.ilo.org/global/About_the_ILO/Structure/lang--en/index.htm

ity and treatment and other standards addressing conditions across the entire spectrum of work-related issues."[47]

In recent years, the ILO has been subjected to much criticism and has been the object of systematic attacks from employers' representatives aiming at a weakening of the normative role of the ILO – often, moreover, with the support of member states and without encountering the least resistance from certain trade unions.[48]

For example, the ILO *Declaration on Fundamental Principles and Rights at Work*, adopted in June 1998, constitutes a retreat and a tendency to choose "à la carte" international instruments. In fact, this declaration called upon member states to respect and promote a limited number of conventions,[49] leaving aside numerous others, all the same of capital importance and patiently elaborated by it,[50] supposedly because some of them, become "obsolete", are no longer relevant to the current situation.

That the ILO approves codes of conduct of transnational corporations, such as the *Global Compact*, to the detriment of its own conventions poses serious problems, not to mention the jeopardizing of the work of a non-negligible portion of its personnel.[51] It is the same regarding the failure of the ILO in the area of work standard deregulation and inequalities engendered by globalization and structural adjustment programs.[52]

That having been said, there is no reason to ignore or abandon this institution. On the contrary, the ILO's mission is more crucial than ever and constitutes a rampart against neo-liberal attacks on labor rights and on the right to work. Civil society and social movements, in particular trade unions, have good reason to reconnect with it and take it back, all while reminding governments of their obligations and encouraging them to stop being simple lobbyists for the private, commercial sector.

Mechanisms of the ILO

The ILO has several control mechanisms for monitoring the respect and the implementation of its standards.

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[47] http://www.ilo.org/global/About_the_ILO/Mission_and_objectives/lang--en/index.htm

[48] V. for example the article by André Linard, "OIT: Privatiser le droit international du travail" in *ONU: Droits pour tous ou loi du plus fort*? Éditions CETIM, Geneva, January 2005.

[49] Freedom of association and the effective recognition of the right to collective negotiation, the elimination of all forms of forced or involuntary labor, the effective abolition of child labor, the elimination of discrimination in employment and within professions: http://www.ilo.org/dyn/declaris/DECLARATIONWEB.ABOUTDECLARATIONHOME?var_language=EN

[50] In this regard, one can cite, among others, the following conventions on: the minimum wage (131), women's work (45, 89, 103), the length of the work day (1, 30, 31,43,47, 49, 153), on-the-job safety and health (155, 161), social security (102, 118, 157), employment policy (122), lay-offs (158) migrant workers (97).

[51] V. inter alia Jean-Loup Izambert, *ONU: violations humaines*, Éditions Carnot, April 2003.

[52] Guy Standing, "The ILO: An Agency for Globalization?", in *Development and Change*, Vol. 39 N° 3, May 2008, pp. 355-285, 2008.

a. The Committee on Freedom of Association[53]

Created in 1950, the ***Committee on Freedom of Association*** is composed of nine members from the employer, worker and government sectors, although each sits in a personal capacity. They are named by the IOL Governing Body from among its members. The Committee's mandate includes considering complaints regarding trade union freedom and making recommendations to the Governing Body. This latter then communicates these recommendations to the government in question. Should it be necessary (insufficient information or detail), the Committee can send a case back to its Fact-Finding and Conciliation Commission for further study.

Of course, the recommendations that the ILO Governing Body addresses to a government are not binding, but they cannot simply be ignored either, for they are the result of a broad consensus.

It should be noted that out filing a complaint with the Committee has been greatly facilitated. In fact, national organizations can directly or through an umbrella organization at the international level (unions with consultative status at the ILO) seize the Committee on Freedom of Association.

To do this, it is not necessary to have exhausted the possibilities of redress at the local or national level. The Committee also considers the complaints from, for example, a national organization even if it is not duly registered in its country of origin – but in a country that has given it a "permanent existence" – or even when it has been dissolved by the authorities of this country after the filing of the complaint.

For example, in 2002, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Workers Confederation of Mexico (CTM) filed a complaint with the ILO arguing that after the decision of the United States Supreme Court (the Hoffman ruling) according to which "an undocumented worker [Mr Jose Castro], because of his immigration status, was not entitled to back pay for lost wages after he was illegally dismissed for exercising [union] rights protected by the National Labor Relations Act (NLRA). By this decision, the complainants contend that millions of workers in the United States lost their only protection of the right to freedom of association, the right to organize, and the right to bargain collectively."[54]

Finding for the plaintiffs, the Committee concluded by inviting the United States government:

> *"to explore all possible solutions, including amending the legislation to bring it into conformity with freedom of association principles, in full consultation with the social*

[53] For further information, see the ILO website: http://www.ilo.org/global/What_we_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/CFA/lang--en/index.htm

[54] *Case(s) No(s). 2227, Report No. 332 (United States): Complaints against the Government of the United States presented by the American Federation of Labor and the Congress of Industrial Organizations (AFL-CIO) and the Confederation of Mexican Workers (CTM)*, § 555: http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=1300&chapter=3&query=%28%28United+States%29%29+%40ref&highlight=&querytype=bool& context=0

partners concerned, with the aim of ensuring effective protection for all workers against acts of anti-union discrimination in the wake of the Hoffman decision."[55]

b. The Committee of Experts on the Application of Conventions and Recommendations

Created in 1926, the ***Committee of Experts on the Application of Conventions and Recommendations*** is composed of 20 lawyers named by the ILO Governing Body, for three years.

The countries that have ratified the ILO conventions, every two years, "must submit reports detailing the steps they have taken in law and practice to apply any of the eight fundamental and four priority conventions they may have ratified; for all other conventions, reports must be submitted every five years, except for conventions that have been shelved (no longer supervised on a regular basis). Reports on the application of conventions may be requested at shorter intervals. Governments are required to submit copies of their reports to employers' and workers' organizations. These organizations may comment on the governments' reports; they may also send comments on the application of conventions directly to the ILO.

When examining the application of international labor standards the Committee of Experts makes two kinds of comments: *observations* and *direct requests*. Observations contain comments on fundamental questions raised by the application of a particular convention by a state. These observations are published in the Committee's annual report. Direct requests relate to more technical questions or requests for further information. They are not published in the report but are communicated directly to the governments concerned.

The annual report of the Committee of Experts, usually adopted in December, is submitted to the International Labor Conference the following June, where it is examined by the ***Conference Committee on the Application of Standards***. A standing committee of the Conference, the Conference Committee is made up of government, employer, and worker delegates. It examines the report in a tripartite setting and selects from it a number of observations for discussion. The governments referred to in these comments are invited to respond before the Conference Committee and to provide information on the situation in question. In many cases the Conference Committee draws up conclusions recommending that governments take specific steps to remedy a problem or to invite ILO missions or technical assistance. The discussions and conclusions of the situations examined by the Conference Committee are published in its report. Situations of special concern are highlighted in special paragraphs of its General Report.[56]

For example, the Committee of Experts on Applications of Conventions and Recommendations states in its conclusions concerning Italy, in 2007, that

[55] Ibid., § 612.

[56] Conference Committee on the Application of Standards: http://www.ilo.org/global/What_we_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/CCAS/lang--en/index.htm

"measures to increase labor market flexibility needed to ensure appropriate protection for workers against dismissal and in obtaining a permanent employment contract which was productive and freely chosen." Further, it invited the government "to continue to mainstream its national programs for full and productive employment, the promotion of decent work and high-quality work for all, as required by the Convention."[57]

c. The Representation Procedure (against states)

The ***representation procedure*** is governed by Articles 24 and 25 of the ILO constitution. It grants an industrial association of employers or of workers the right to present to the ILO Governing Body a representation against any member state which, in its view, "has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party." A three-member tripartite committee of the Governing Body may be set up to examine the representation and the government's response. The report that the committee submits to the Governing Body states the legal and practical aspects of the case, examines the information submitted, and concludes with recommendations. Where the government's response is not considered satisfactory, the Governing Body is entitled to publish the representation and the response.[58]

For example, in 2006, Yapi-Yol Sen, a trade union organization of Turkish civil servants, filed a complaint with the Governing Board under Article 24 of the ILO constitution alleging the non-compliance by the government of **Turkey** with the 1948 Convention No. 87 (Freedom of Association and Protection of the Right to Organize). The plaintiff charged that the government had unilaterally modified the system of the branches of activity in which the civil servant unions can be organized. For this reason, Yapi-Yol Sen automatically lost members who were attributed to other branches and found itself confronted with financial difficulties.[59]

In November 2006, the Governing Board agreed to hear the case and decided to refer it to the Committee on Freedom of Association for consultation.

Following this consultation, the Committee observed that this is the second case concerning Turkey where the Ministry of Labor and Social Security modified the branch of activity classification on the basis of questionable criteria – which do not relate to the nature of activity carried out but to the

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[57] *Conference Committee on the Application of Standards, Extracts from the Record of* Proceedings, "Convention No. 122: Employment Policy, 1964, Itlay", Part II/85: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_088133.pdf

[58] *Representations*: http://www.ilo.org/global/What_we_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/Representations/lang--en/index.htm

[59] *Representation against the Government of Turkey presented by Yapi-Yol Sen under article 24 of the ILO Constitution alleging non-observance by the Government of Turkey of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Complaint against the Government of Turkey presented by Yapi-Yol Sen*, Report No. 347, Case No. 2537: http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=28&chapter=17&query=%23Country%3D%2A&highlight=on&querytype=bool&context=0

authority under which work is performed – with very serious consequences for the trade unions concerned (loss of membership and representation rights).[60]

Finding in favor of the plaintiff, in its conclusions, the Committee requested the Turkish government "to take all necessary measures as soon as possible to bring its legislation into conformity with Convention No. 87, ratified by Turkey and in particular: (i) to amend section 5 of the Public Employees' Trade Unions Act No. 4688 as well as the Regulation on the Determination of Branches of Activity of Organizations and Agencies, which determine the branches of activity according to which public employees' trade unions may be established, so as to ensure that these branches are not restricted to any particular ministry, department or service, including local governments; (ii) to amend the Regulation of 2 August 2005 (which amends the Regulation on the Determination of Branch of Activity of Organizations and Agencies) so as to maintain Yapi-Yol Sen members concerned by this complaint within the branch of activity entitled 'Public works, construction and village services' in conformity with the nature of their functions, and their willingness to remain affiliated to Yapi-Yol Sen; (iii) to amend section 16 of the Public Employees' Trade Unions Act No. 4688 so as to ensure that trade union offices are not terminated by reason of the transfer of a trade union leader to another branch of activity, or his/her dismissal or simply the fact that a trade union leader leaves the work, further requesting that the Government to take all necessary measures to ensure that the lost membership of Yapi-Yol Sen is immediately restored and that the check-off system reinstated and trusts that pursuant to the appeal lodged by the complainant on this case, the Court will take the relevant freedom of association principles embodied in Convention No. 87 into account in rendering its decision.(...)[61]

d. The Complaint Procedure (inter state)

The complaint procedure is governed by Articles 26 to 34 of the ILO Constitution. Under these provisions, a complaint may be filed against a member state for not complying with a ratified convention, by another member state which ratified the same convention, a delegate to the International Labor Conference or the Governing Body in its own capacity. Upon receipt of a complaint, the Governing Body may form a Commission of Inquiry, consisting of three independent members, which is responsible for carrying out a full investigation of the complaint, ascertaining all the facts of the case and making recommendations on measures to be taken to address the problems raised by the complaint. A Commission of Inquiry is the ILO's highest-level investigative procedure; it is generally set up when a member state is accused of committing persistent and serious violations and has repeatedly refused to address them….

When a country refuses to fulfill the recommendations of a Commission of Inquiry, the Governing Body can take action under article 33 of the ILO

[60] Ibid., § 21.
[61] Ibid., § 26.

Constitution. This provision states that "[i]n the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith." Article 33 was invoked for the first time in ILO history in 2000, when the Governing Body asked the International Labor Conference to take measures to lead Myanmar to end the use of forced labor. An article 26 complaint had been filed against Myanmar in 1996 for violations of the Forced Labor Convention (No. 29), 1930, and the resulting Commission of Inquiry found "widespread and systematic use" of forced labor in the country.[62]

e. Applying Conventions When Countries have not Ratified Them

One of the primary tasks of the ILO consists of monitoring the effective implementation of the conventions it has drafted. Although the ILO encourages countries to ratify them, it nonetheless believes that governments should observe them even if they have not ratified them.

"International labor standards are universal instruments adopted by the international community and reflecting common values and principles on work-related issues while member States can choose whether or not to ratify any conventions, the ILO considers it important to keep track of developments in all countries, whether or not they have ratified them. Under article 19 of the ILO Constitution, member States are required to report at regular intervals, at the request of the Governing Body, on measures they have taken to give effect to any provision of certain conventions or recommendations, and to indicate any obstacles which have prevented or delayed the ratification of a particular convention."[63]

2. United Nations Treaty Bodies Regarding Human Rights

a. The Committee on Economic, Social and Cultural Rights

This Committee (CESCR) was set up in 1985. It comprises 18 independent experts, who meet twice a year in Geneva for three weeks.

All countries that have ratified the *International Covenant on Economic, Social and Cultural Rights* are required to submit a fist report to the CESCR two years after ratification, and then one every five years. The reports explain the measures they have taken to realize the rights that they have recognized, including the right to work, and each country must come to Geneva to discuss (and, if necessary, to defend) its report. The CESCR examines the country's report, asks questions of its representatives and issues concluding observations.[64]

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[62] *Complaints*: http://www.ilo.org/global/What_we_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/Complaints/lang--en/index.htm

[63] *Applying Conventions When Countries have not Ratifie*d *Them*: http://www.ilo.org/global/What_we_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/Applyingconventions/lang--en/index.htm

During the entire process, from the presentation of the report to the concluding observations, the role of civil society organizations is crucial. These organizations can present parallel reports to the Committee on the realization or violations of the right to work and its corollaries, they can take the floor before the Committee, attend the discussions between the country representatives and the members of the Committee, and they can assure a follow-up at the national level to the concluding observations by putting pressure on their governments, which are often not "motivated" to take these observations into account, thus transforming the observations into a concrete improvement of the life of disadvantaged populations in the country.

For example, in its concluding observations on **France**, the CESCR notes with concern that as a result of the extensive use of fixed-term, temporary and part-time employment contracts, a large number of employed persons – especially young people, single parents and persons without professional qualification – do not have job security and are paid the statutory minimum wage (*Salaire minimum interprofessionnel de croissance*, SMIC), which is not sufficient to enable them and their families to enjoy an adequate standard of living. The Committee is particularly concerned about the over-representation of women in temporary, part-time and low-paid jobs.

The Committee recommends moreover that France "take all necessary measures to combat structural unemployment and to limit, as far as possible, the use of temporary employment contracts as tools to encourage firms to hire persons belonging to vulnerable groups – such as young people, single parents and persons without professional qualification. The Committee also recommends that such contracts be concluded only in those cases provided for by the legislation in force, and that sufficient guarantees be provided to ensure that employees recruited under such contracts are not prevented from enjoying the right to an adequate standard of living, as well as the labour rights set out in articles 6 and 7 of the Covenant."

The CESCR further "encourages" the French government "to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families".[65]

It should be noted that the Committee does not yet have a procedure that allows for individual or collective complaints. In June 2008, the Human Rights Council adopted a optional protocol to the *International Covenant on Economic, Social and Cultural Rights* which would allow the filing of complaints in the case of violations of the right to work and its corollaries. This protocol must yet be approved by the U.N. General Assembly and then be submitted to the member states for ratification.

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[64] The reports of all countries, a summary of the discussions and concluding observations of the Committee are available on the site of the Office of the United Nations High Commissioner for Human Rights: www.unhchr.ch/tbs/doc.nsf

[65] Adopted during its 48th session (April-May 2008), v. §§ 17, 37, 52, E/C.13/FRA/CO/3, 9 July 2008: http://www2.ohchr.org/english/bodies/cescr/docs/co/E.C.12.FRA.CO.3.doc

b. Other United Nations Treaty Bodies

Several other United Nations treaty bodies deal with the protection of the right to work and its corollaries in their monitoring of compliance with the international human rights treaties.

The ***Committee on Migrant Workers*** (CMW) is the most recent U.N. body, set up following the entry into force in 2003 of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.[66] All states parties are required to submit periodic reports to the CMW on the implementation of the rights guaranteed by the convention. The CMW considers each report and communicates its concerns and recommendation to the state party in question in the form of concluding observations. The CMW can also consider interstate complaints (Article 76) as well as individual complaints (Article 77), but only from citizens of a state party accused of violation of the rights listed in the convention and after 10 states parties to the convention have recognized the authority of the CMW in this area.[67]

The ***Committee on the Elimination of Racial Discrimination*** (CERD) is the U.N. body whose main task is to monitor implementation by states parties to the *Convention on the Elimination of All Forms of Racial Discrimination.*[68] Besides the examination of states parties' reports, the CERD may consider complaints, both individual and collective, by virtue of the convention's Article 14.[69] Such complaints could be filed, for example, in case of non-respect of economic, social and cultural rights, including "the rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration" (Article 5.e.i).

The ***Committee for the Elimination of Discrimination Against Women*** (CEDAW) is the U.N. body entrusted with monitoring implementation of the *Convention on the Elimination of All Forms of Discrimination against Women*.[70] The CEDAW examines the periodic reports submitted by the states parties and, since the 2000 entry into force of the optional protocol of the convention, has been mandated to consider both individual and collective complaints of discrimination in the areas of the rights listed in the convention, including the right to work and the right to benefit from social security programs (Articles 11.1.a and 14).

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[66] Adopted in 1999.
[67] http://www2.ohchr.org/english/bodies/cmw/index.htm
[68] Adopted in 1965 and entered into force in 1969.
[69] This article obliges a state party to declare formally its recognition of the jurisdiction of the CERD.
[70] Adopted in 1979 and entered into force in 1981.

The ***Committee on the Rights of the Child*** (CRC) is the United Nations body that monitors implementation by the states parties to the *Convention on the Rights of the Child*,[71] including the protection of the child "from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development" (Article 31.1). It also monitors implementation of the two optional protocols to the convention, one on the involvement of children in armed conflict, the other on the sale of children, child prostitution and child pornography. The CRC examines the periodic reports submitted by the states parties to the convention and the complementary reports of countries that have ratified the two optional protocols. This body does not yet have a procedure for considering individual complaints.

The ***Human Rights Committee*** monitors implementation of the *International Covenant of Civil and Political Rights* and can also consider complaints for the violation of certain aspects of the right to work and its corollaries, such as the prohibition against slavery, servitude and forced labor (Article 8), the right of association (Article 22), the right of assembly (Article 21) etc.

The ***Committee on the Rights of Person with Disabilities***, created to monitor implementation of the *Convention on the Rights of Persons with Disabilities*,[72] including theses persons' right to work (Article 27.1) will come into being in 2009 and will be able to consider both individual and collective complaints on the condition that the country in question has ratified the optional protocol attached to this convention.

[71] Adopted in 1989 and entered into force in 1991.
[72] Adopted on 13 December 2006.

CONCLUSION

As we have just seen, there is a panoply of regulations and important international legislation in the area of the right to work and its corollaries, acquired after long struggles led by earlier generations. They are often incorporated into national legislation.

One must note, however, that there are large scale violations of these rights in our time owing to the neo-liberal offensive that aims at the dismantlement of national legislation in this area, all to the advantage of employers. Most countries, unfortunately, lend themselves to this development by claiming that it will attract investments. Such investments, however, do not always correspond to the needs of the local populations. It is also to be emphasized that certain countries do not necessarily modify their legislation or simply do not enforce it.

In this context, the trade union movement is weakened, for, like countries, workers are also set into competition with each other, and international solidarity as well as solidarity among workers of the same country (between regions and between the nationals and migrants) is often sorely lacking in practice.

Of course, currently, the situation favors the employers, but the international legislation in force speaks for the respect and the implementation of the right to work and its corollaries. It also demands that political and economic orientations (bilateral or multilateral trade treaties, for example) not conflict with the international conventions in these areas. It should not need repeating that these conventions have a binding character for the countries that have ratified them, and these countries are individually and collectively responsible for their implementation, as in the case of the *International Covenant on Economic, Social and Cultural Rights*,[73] for example. These conventions constitute protection against violations of the right to work and its corollaries, both at the national and international level. They must be supported and implemented, and their dismantlement must be fought.

Moreover, it should be emphasized that as a direct consequence of neo-liberalism, workers are organizing themselves otherwise, without waiting for a more favorable political and economic climate. Thus, for several decades, workers have been taking over factories (more than 200 now up and running in Argentina, for example) to reconquer their rights and, most of all, to give another meaning to work and production.[74]

[73] V. Annex I.

[74] V. the examples given in *Produire de la richesse autrement*, PubliCetim N° 31, CETIM, Geneva, October 2008.

V. Annexes

Annex 1

Regarding the right to work and its corollaries, the Committee on Economic, Social and Cultural Rights adopted two general comments: General Comment No. 18 on the right to work[75] and General Comment No. 19 on the right to social security. Since we have taken large extracts from General Comment No. 18 in this brochure, and in consideration of its limited number of pages, we are citing below only extracts of General Comment No 19.

General Comment No. 19 on the Right to Social Security[76]

Adopted on 23 November 2007 by the Committee on Economic, Social and Cultural Rights

I. INTRODUCTION

1. Article 9 of the International Covenant on Economic, Social and Cultural Rights (the Covenant) provides that, 'The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.' The right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights.

2. The right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents.

3. Social security, through its redistributive character, plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion.

4. In accordance with article 2 (1), States parties to the Covenant must take effective measures, and periodically revise them when necessary, within their maximum available resources, to fully realize the right of all persons without any discrimination to social security, including social insurance. The wording of article 9 of the Covenant indicates that the measures that are to be used to provide social security benefits cannot be defined narrowly and, in any event,

[75] Cf. adopted on 24 November 2005, http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.GC.18.En?OpenDocument

[76] Cf. http://daccessdds.un.org/doc/UNDOC/GEN/G08/403/97/PDF/G0840397.pdf?OpenElement

must guarantee all peoples a minimum enjoyment of this human right. These measures can include:

(a) Contributory or insurance-based schemes such as social insurance, which is expressly mentioned in article 9. These generally involve compulsory contributions from beneficiaries, employers and, sometimes, the State, in conjunction with the payment of benefits and administrative expenses from a common fund;

(b) Non-contributory schemes such as universal schemes (which provide the relevant benefit in principle to everyone who experiences a particular risk or contingency) or targeted social assistance schemes (where benefits are received by those in a situation of need). In almost all States parties, non-contributory schemes will be required since it is unlikely that every person can be adequately covered through an insurance-based system.

5. Other forms of social security are also acceptable, including (a) privately run schemes, and (b) self-help or other measures, such as community-based or mutual schemes. Whichever system is chosen, it must conform to the essential elements of the right to social security and to that extent should be viewed as contributing to the right to social security and be protected by States parties in accordance with this general comment. (...)

7. The Committee on Economic, Social and Cultural Rights (the Committee) is concerned over the very low levels of access to social security with a large majority (about 80 per cent) of the global population currently lacking access to formal social security. Among these 80 per cent, 20 per cent live in extreme poverty. (...)

II. NORMATIVE CONTENT OF THE RIGHT TO SOCIAL SECURITY

9. The right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage, whether obtained publicly or privately, as well as the right to equal enjoyment of adequate protection from social risks and contingencies.

A. Elements of the right to social security

10. While the elements of the right to social security may vary according to different conditions, a number of essential factors apply in all circumstances as set out below. In interpreting these aspects, it should be borne in mind that social security should be treated as a social good, and not primarily as a mere instrument of economic or financial policy.

1. Availability - social security system

(...)

2. Social risks and contingencies

12. The social security system should provide for the coverage of the following nine principal branches of social security[77]: a) Health care; b) Sickness; c) Old age; d) Unemployment; e) Employment injury; f) Family and child support; g) Maternity; h) Disability; i) Survivors and orphans. (...)

3. Adequacy

22. Benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care (...).

4. Accessibility

23. a) Coverage (...); 24. b) Eligibility (...); 25. c) Affordability (...) 26. d) Participation and information (...); 27. e) Physical access (...). (...)

III. OBLIGATIONS OF STATES PARTIES

A. General legal obligations

40. (...) States parties have immediate obligations in relation to the right to social security, such as the guarantee that the right will be exercised without discrimination of any kind (article 2, paragraph 2), ensuring the equal rights of men and women (article 3), and the obligation to take steps (article 2, paragraph 1) towards the full realization of articles 11, paragraph 1, and 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to social security.

41. The Committee acknowledges that the realization of the right to social security carries significant financial implications for States parties, but notes that the fundamental importance of social security for human dignity and the legal recognition of this right by States parties mean that the right should be given appropriate priority in law and policy. States parties should develop a national strategy for the full implementation of the right to social security, and should allocate adequate fiscal and other resources at the national level. If necessary, they should avail themselves of international cooperation and technical assistance in line with article 2, paragraph 1, of the Covenant.

42. There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of

[77] See in particular ILO Convention No. 102 (1952) on Social Security (Minimum Standards), which was confirmed by the ILO Governing Body in 2002 as an instrument corresponding to contemporary needs and circumstances. These categories were also affirmed by States and trade union and employer representatives in the ILO Maritime Labour Convention (2006), regulation 4.5, standard A4.5. The Committee's revised general guidelines for State reporting of 1991 follow this approach. See also Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), arts. 11, 12 and 13.

proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State party. (...)

B. Specific legal obligations

43. The right to social security, like any human right, imposes three types of obligations on States parties: the obligation to respect, the obligation to protect and the obligation to fulfil.

1. Obligation to respect

44. The obligation to respect requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to social security. The obligation includes, inter alia, refraining from engaging in any practice or activity that, for example, denies or limits equal access to adequate social security; arbitrarily or unreasonably interferes with self-help or customary or traditional arrangements for social security; arbitrarily or unreasonably interferes with institutions that have been established by individuals or corporate bodies to provide social security.

2. Obligation to protect

45. The obligation to protect requires that State parties prevent third parties from interfering in any way with the enjoyment of the right to social security. Third parties include individuals, groups, corporations and other entities, as well as agents acting under their authority. (...)

46. Where social security schemes, whether contributory or non-contributory, are operated or controlled by third parties, States parties retain the responsibility of administering the national social security system and ensuring that private actors do not compromise equal, adequate, affordable, and accessible social security. To prevent such abuses an effective regulatory system must be established which includes framework legislation, independent monitoring, genuine public participation and imposition of penalties for non-compliance.

3. Obligation to fulfil

47. The obligation to fulfil requires States parties to adopt the necessary measures, including the implementation of a social security scheme, directed towards the full realization of the right to social security. The obligation to fulfil can be subdivided into the obligations to facilitate, promote and provide.

48. The obligation to facilitate requires States parties to take positive measures to assist individuals and communities to enjoy the right to social security. The obligation includes, inter alia, according sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national social security strategy and plan of action

to realize this right;31 ensuring that the social security system will be adequate, accessible for everyone and will cover social risks and contingencies.[78].

49. The obligation to promote obliges the State party to take steps to ensure that there is appropriate education and public awareness concerning access to social security schemes, particularly in rural and deprived urban areas, or amongst linguistic and other minorities.

50. States parties are also obliged to provide the right to social security when individuals or a group are unable, on grounds reasonably considered to be beyond their control, to realize that right themselves, within the existing social security system with the means at their disposal. States parties will need to establish non-contributory schemes or other social assistance measures to provide support to those individuals and groups who are unable to make sufficient contributions for their own protection. Special attention should be given to ensuring that the social security system can respond in times of emergency, for example during and after natural disasters, armed conflict and crop failure.

51. It is important that social security schemes cover disadvantaged and marginalized groups, even where there is limited capacity to finance social security, either from tax revenues and/or contributions from beneficiaries. Low-cost and alternative schemes could be developed to cover immediately those without access to social security, although the aim should be to integrate them into regular social security schemes. Policies and a legislative framework could be adopted for the progressive inclusion of those in the informal economy or who are otherwise excluded from access to social security.

4. International obligations

(...)

53. To comply with their international obligations in relation to the right to social security, States parties have to respect the enjoyment of the right by refraining from actions that interfere, directly or indirectly, with the enjoyment of the right to social security in other countries.

54. States parties should extraterritorially protect the right to social security by preventing their own citizens and national entities from violating this right in other countries. Where States parties can take steps to influence third parties (non-State actors) within their jurisdiction to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law.

55. Depending on the availability of resources, States parties should facilitate the realization of the right to social security in other countries, for example through provision of economic and technical assistance. International assistance should be provided in a manner that is consistent with the Covenant and other human rights standards, and sustainable and culturally appropriate.

[78] V. §§ 12-21 above.

Economically developed States parties have a special responsibility for and interest in assisting the developing countries in this regard.

56. States parties should ensure that the right to social security is given due attention in international agreements and, to that end, should consider the development of further legal instruments. The Committee notes the importance of establishing reciprocal bilateral and multilateral international agreements or other instruments for coordinating or harmonizing contributory social security schemes for migrant workers.33 Persons temporarily working in another country should be covered by the social security scheme of their home country.

57. With regard to the conclusion and implementation of international and regional agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to social security. Agreements concerning trade liberalization should not restrict the capacity of a State Party to ensure the full realization of the right to social security.

58. States parties should ensure that their actions as members of international organizations take due account of the right to social security. Accordingly, States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to social security is taken into account in their lending policies, credit agreements and other international measures. States parties should ensure that the policies and practices of international and regional financial institutions, in particular those concerning their role in structural adjustment and in the design and implementation of social security systems, promote and do not interfere with the right to social security. (...)

IV. VIOLATIONS

(...)

64. Violations of the right to social security can occur through acts of commission, i.e. The direct actions of States parties or other entities insufficiently regulated by States. Violations include, for example, the adoption of deliberately retrogressive measures incompatible with the core obligations outlined in paragraph 42 above; the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to social security; active support for measures adopted by third parties which are inconsistent with the right to social security; the establishment of different eligibility conditions for social assistance benefits for disadvantaged and marginalized individuals depending on the place of residence; active denial of the rights of women or particular individuals or groups.

65. Violations through acts of omission can occur when the State party fails to take sufficient and appropriate action to realize the right to social security. In the context of social security, examples of such violations include the failure to take appropriate steps towards the full realization of everyone's right to

social security; the failure to enforce relevant laws or put into effect policies designed to implement the right to social security; the failure to ensure the financial sustainability of State pension schemes; the failure to reform or repeal legislation which is manifestly inconsistent with the right to social security; the failure to regulate the activities of individuals or groups so as to prevent them from violating the right to social security; the failure to remove promptly obstacles which the State party is under a duty to remove in order to permit the immediate fulfilment of a right guaranteed by the Covenant; the failure to meet the core obligations (see paragraph 59 above); the failure of a State party to take into account its Covenant obligations when entering into bilateral or multilateral agreements with other States, international organizations or multinational corporations.

V. IMPLEMENTATION AT THE NATIONAL LEVEL

(...)

A. Legislation, strategies and policies

67. States parties are obliged to adopt all appropriate measures such as legislation, strategies, policies and programmes to ensure that the specific obligations with regard to the right to social security will be implemented. (...)

72. States parties may find it advantageous to adopt framework legislation to implement the right to social security. Such legislation might include: (a) targets or goals to be attained and the time frame for their achievement; (b) the means by which the purpose could be achieved; (c) the intended collaboration with civil society, the private sector and international organizations; (d) institutional responsibility for the process; (e) national mechanisms for its monitoring; and (f) remedies and recourse procedures.

B. Decentralization and the right to social security

73. Where responsibility for the implementation of the right to social security has been delegated to regional or local authorities or is under the constitutional authority of a federal body, the State party retains the obligation to comply with the Covenant, and therefore should ensure that these regional or local authorities effectively monitor the necessary social security services and facilities, as well as the effective implementation of the system. The States parties must further ensure that such authorities do not deny access to benefits and services on a discriminatory basis, whether directly or indirectly. (...)

D. Remedies and accountability

77. Any persons or groups who have experienced violations of their right to social security should have access to effective judicial or other appropriate remedies at both national and international levels.45 All victims of violations of the right to social security should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of nonrepetition. Na-

tional ombudspersons, human rights commissions, and similar national human rights institutions should be permitted to address violations of the right. Legal assistance for obtaining remedies should be provided within maximum available resources. (...)

80. Judges, adjudicators and members of the legal profession should be encouraged by States parties to pay greater attention to violations of the right to social security in the exercise of their functions.

81. States parties should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society, with a view to assisting disadvantaged and marginalized individuals and groups in the realization of their right to social security.

VI. OBLIGATIONS OF ACTORS OTHER THAN STATES

(...)

83. The international financial institutions, notably the International Monetary Fund and the World Bank, should take into account the right to social security in their lending policies, credit agreements, structural adjustment programmes and similar projects,[79] so that the enjoyment of the right to social security, particularly by disadvantaged and marginalized individuals and groups, is promoted and not compromised.

84. When examining the reports of States parties and their ability to meet the obligations to realize the right to social security, the Committee will consider the effects of the assistance provided by all other actors. The incorporation of human rights law and principles in the programmes and policies of international organizations will greatly facilitate the implementation of the right to social security.

[79] See General Comment No. 2 (1990) on international technical assistance measures (art. 22 of the Covenant).

Annex 2

Main Reference Websites and Instances to Which One May Recur

MAIN REFERENCE WEBSITES

Official Websites

Food and Agriculture Organization of the United Nations: www.fao.org
International Labor Organization: www.ilo.org
Office of the High Commissioner for Human Rights: www.ohchr.org
United Nations Children's Fund: www.unicef.org
United Nations Conference on Trade and Development: www.unctad.org
United Nations Development Programme: www.undp.org
United Nations Research Institute for Social Development: www.unrisd.org
World Health Organization: www.who.int

International Trade Unions Websites

International Metalworkers' Federation: www.imfmetal.org
International Trade Union Confederation: www.ituc-csi.org
Public Services International: www.world-psi.org
Uniting Food, Farm and Hotel Workers World-Wide: www.iuf.org
World Federation of Trade Unions: www.wftucentral.org

Activists Websites

Asia-Pacific Research Network: www.aprnet.org
Attac: www.attac.org
Centre for Research on Multinational Corporations (SOMO): www.somo.nl
Clean Clothes Campaign: www.cleanclothes.org
Corporate Europe Observatory: www.corporateeurope.org
Corporate Accountability International: www.stopcorporateabuse.org
Global Labour Institute: www.global-labour.org
Groupe de recherche pour une stratégie économique alternative (GRESEA): http://users.skynet.be/gresea
Ibon Foundation: www.info.ibon.org
Maquila Solidarity Network: www.maquilasolidarity.org
Observatorio de empresas Multinacionales Españolas en América Latina (OMAL): www.omal.info
Peuples solidaires: www.peuples-solidaires.org
Platforma Interamericana de Derechos Humanos, Democracia y Desarrollo (PIDHDD): www.pidhdd.org
Réseau des centres de documentation pour le développement et la solidarité internationale (RITIMO): www.ritimo.org
Third World Network: www.twnside.org.sg
Transnationale.org: http://fr.transnationale.org

Others

Centre de recherche interuniversitaire sur la mondialisation et le travail: www.crimt.org

European Foundation for the Improvement of Living and Working Conditions: www.eurofound.europa.eu

Organization for Economic Co-operation and Development: www.oecd.org

South Centre: www.southcentre.org

World Bank: www.worldbank.org

INSTANCES TO WHICH ONE MAY RECUR

At the international level

Committee on Economic, Social and Cultural Rights, CESCR (to request information)
Office of the High Commissioner for Human Rights
Avenue de la Paix 8-14, CH-1211 Geneva 10, Switzerland
Fax: +4122 9179046/9179022 E-mail: wlee@ohchr.org

Committee on the Elimination of Discrimination Against Women, CEDAW (to file complaints and request information)
United Nations
2 UN Plaza, DC2-12th Floor, New York, NY, 10017, USA. Fax: +1212 9633463. E-mail: daw@un.org; tb-petitions@ohchr.org
Web: www.un.org/womenwatch/daw

Committee on the Elimination of Racial Discrimination, CERD (to file complaints and request information)
Office of the High Commissioner for Human Rights
Avenue de la Paix 8-14, CH-1211 Geneva 10, Switzerland
Fax: +4122 9179022 E-mail: nprouvez@ohchr.org; tb-petitions@ohchr.org

Committee on the Rights of the Child, CRC (to request information)
Office of the High Commissioner for Human Rights
Avenue de la Paix 8-14, CH-1211 Geneva 10, Switzerland
Fax: +4122 9179022 E-mail: pdavid@ohchr.org

Human Rights Committee, HRC (to file complaints and request information)
Office of the High Commissioner for Human Rights
Avenue de la Paix 8-14, CH-1211 Geneva 10, Switzerland
Fax: +4122 9179022 E-mail: tb-petitions@ohchr.org

Committee Against Torture, CAT (to file complaints and request information)
Office of the High Commissioner for Human Rights
Avenue de la Paix 8-14, CH-1211 Geneva 10, Switzerland
Fax: +4122 9179022 E-mail: tb-petitions@ohchr.org

Committee on Migrant Workers, CMW (information)
Office of the High Commissioner for Human Rights
Avenue de la Paix 8-14, CH-1211 Geneva 10, Switzerland
Fax: +4122 9179022 E-mail: cedelenbos@ohchr.org

At the regional level

African Commission on Human and People's Rights (to file complaints and request information)
Avenue Kairaba, P.O. Box 673, Banjul, Gambia
Tel.: +220 4392962 Fax : +220 4390764 E-mail: achpr@achpr.org

Inter-American Commission on Human Rights (to file complaints and request information)
Organization of American States
1889 F Street, N.W., Washington, D.C. 20006, USA
Fax: +202 458-3992 E-mail: cidhoea@oas.org

Inter-American Court of Human Rights (to file complaints)
Corte Interamericana de Derechos Humanos
Avenida 10, Calles 45 y 47 Los Yoses, San Pedro,
Apartado Postal 6906-1000, San José, Costa Rica
Tel.: +506 2340581 Fax: +506 2340584
E-mail: corteidh@corteidh.or.cr

European Committee of Social Rights (to file collective complaints and request information)
Secretariat of the European Social Charter
Directorate General of Human Rights – DG II
Avenue de l'Europe, 67075, Strasbourg Cedex, France
Tel.: +333 88413258 Fax: +333 88413700
E-mail: social.charter@coe.int Web: www.coe.int

European Court of Human Rights (to file complaints)
Council of Europe
Avenue de l'Europe, 67075 Strasbourg Cedex, France
Tel.: +333 88412018 Fax: +333 88412730
Web: www.coe.int