**APWLD Submission on the Draft General Comment on Article 7 of the International Covenant on Economic, Social and Cultural Rights: Right to just and favourable conditions of work**

The Asia Pacific Forum on Women, Law and Development (APWLD) is pleased to submit its comments on the above Draft General Comment for consideration by the Committee on Economic, Social and Cultural Rights.

APWLD is Asia Pacific’s leading feminist, membership driven network.  Our 180 members represent organisations and groups of diverse women from 25 countries in the region. We use capacity development, research, advocacy and activism to claim and strengthen women’s human rights.

**Introduction**

Paragraph 3 mentions the persistence of a gender pay gap as a global problem. While the gender pay gap remains a problem, the draft fails to recognize that the gap has not remained static but is, in fact, widening in many areas of the world. Despite increases in women’s education and participation in the labour workforce, the consistent undervaluing of women’s work and knowledge has resulted in a global increase of the gender pay gap despite increasing levels of women’s education and participation in the labour market.[[1]](#footnote-1)

**Remuneration**

Paragraph 23 of the draft states that “the elements to take into account in fixing minimum wage are flexible [and they include] the general level of wages in the country, the cost of living, social security contributions and benefits and relative living standards.” It is important to note that without a fixed minimum wage, workers cannot be guaranteed a decent living. A minimum wage that is determined by flexible elements leaves too much scope for wages to be decreased in the context of neo-liberal economic pressures.[[2]](#footnote-2) Workers cannot enjoy economic rights if there is no clear floor as it leaves them vulnerable to governments who, for example, consider low wages as a source of competitive advantage in international trade or investment flows.

Although the draft discusses minimum wage, it does not advocate for a living wage. Article 11 of the International Covenant on Economic, Social and Cultural Rights recognize[s] the right to an adequate standard of living for an individual and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.[[3]](#footnote-3) In addition, both Article 23 of the Universal Declaration on Human Rights, as well as Convention 131 of the International Labour Organization reference and support the right to a living wage.[[4]](#footnote-4) Despite the ESCR’s support for a living wage in the International Covenant and the draft of Article 7 outlining the elements of a living wage, the draft still does not explicitly state it’s the necessity of a living wage and instead focuses on how to fix a minimum wage. A minimum wage is simply the minimum and is often insufficient to support a family, especially with the privatization of social services. In order to ensure that workers’ wages are just and favourable, a fixed minimum wage which cannot be regressed from is a crucial starting point.

Paragraph 27 requests that employers who do not respect minimum wage be subject to sanctions. Clarification is needed to specify that these sanctions apply to employers who do not respect minimum wage during standard working hours. A decent living standard should be made from standard working hours and should not require the need for overtime payments. As a result, APWLD would like specification of separate sanctions for employers who do not pay a living wage during overtime.

**Article 7 (b); Safe and healthy working conditions**

Paragraph 32 stipulates that State Parties owe workers who have experienced an occupation-related accident or disease adequate compensation for the costs associated with treatment, loss of earnings, and rehabilitation. APWLD would like to suggest that in addition to compensatory damages, there needs to be action taken against the employer for damage including but not limited to injuries resulting from a negligent employer. Penalties for negligence hold employers accountable for their actions and protect their employees from further harm.

For example, the Australian Capital Territory has legislation on industrial manslaughter which stipulates that it is an offence if a worker dies or is injured in the course of employment, and if the employer’s reckless or negligent conduct substantially contributed to a worker’s injury or death, and that provides for a penalty of substantial fines and/or imprisonment.[[5]](#footnote-5)

**Article 7 (d): Rest, leisure, reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays**

We request the removal of “as well as the demands of different employment sectors” from Paragraph 37 when taking into account the different factors relating to limits on daily hours of work. APWLD is concerned that a lack of specificity with regard to what legitimate demands may be combined with the suggestion that employers can compensate longer working days with shorter work days may be open to abuse by employers. Although we do not object to these measures, we would request more specificity. Similarly, Paragraph 38 discusses a “reasonable maximum work day” without clearly specifying what constitutes “reasonable”. APWLD suggests including a clear reference to ILO’s Hours of Work Convention, which specifies a maximum that is not to exceed ten hours of work per day.[[6]](#footnote-6)

Paragraph 39 specifies that “workers should receive additional pay for overtime hours above the maximum additional hours worked in any given week”. This passage needs clarification as overtime pay should be applied to any hours worked above the 40 hour work week. The wording of “above the maximum additional hours worked” may allow for employers to pay overtime to workers who work additional hours on top of the maximum legal limit. The maximum number of hours worked should not be exceeded, even with overtime compensation and the General Comment should clearly articulate this.

Paragraph 40 recognises the importance of identifying and protecting workers’ daily rest periods and should specify that a daily rest period must be paid. Specifying that rest should be paid is essential to protect vulnerable workers from the economic incentives of skipping an unpaid rest period.

**Special Topics of Broad Application: Domestic workers**

The paragraph addressing domestic workers specifies that they have the right to just and favourable conditions of work, but only states their entitlement to minimum wage coverage “where it exists”. We request the removal of “where it exists” which introduces too much discretion in the payment of a minimum wage. As the Draft General Comment notes, domestic work is undervalued and, as a result, it is among the lowest paid occupations in the labour market. Protecting domestic workers’ right to a minimum wage is a vital aspect of their right to just and favourable working conditions and is especially important when considering their vulnerability to unfair wages and exploitation.

While the topic of “domestic workers” mentions the right to protection from abuse, harassment and violence, it would be helpful to expand on the particular types of abuse that domestic workers continue to face.

For example, the ILO C189 Article 9 (b) recognizes that a common abuse faced by live-in domestic workers are inadequate living conditions due to a lack of privacy and restrictions on their freedom to leave the dwelling during their rest time.[[7]](#footnote-7)

Similarly, domestic workers are often forced to work without a clear contract of terms and conditions of their employment and, as a result, are often denied sufficient rest. Further, many are not privy to the location of their new workplace, which is why ILO Convention 189 specifies that domestic workers must have a clear contract with all the addresses and contact information necessary.[[8]](#footnote-8) We ask that the General Comment reflect ILO Convention 189 Articles 6 and 7 which requires live-in domestic workers to have access to a private space which they are free to leave if they choose, and a clear contract which provides them with fair terms of employment.

**Obligations**

Paragraph 52 of the Draft General Comment states that “retrogressive measures in economic crisis [have] to demonstrate that such measures are temporary, necessary, non-discriminatory and that they respect at least the core obligations”. Although the Draft mentions the need for respect of core obligations, we submit that it does not go far enough in acknowledging the deeply damaging impact of retrogressive measures on the fulfillment of women’s economic and social rights. The “race to the bottom” in working conditions in export-oriented sectors has a profoundly deleterious impact on women, especially in the Asia Pacific.[[9]](#footnote-9) We are concerned that while the General Comment acknowledges that retrogression can never be justified in the name of attracting investment, there is a fine line between that and what governments may claim to be “necessary” given the power and mobility of international capital. As a result of retrogressive measures, access to a living wage and a life of dignity is significantly endangered and we therefore contest that retrogressive measures are ever necessary.

**International assistance and cooperation**

APWLD particularly welcomes the recognition in this section of the Draft General Comment of the extraterritorial obligations of States. To further clarify the nature of States’ extraterritorial obligations, we suggest that in paragraph 69 it would be helpful to include that home States should be able to obtain remedies in the host State, or wherever the employer has interests.

In the context of international assistance, APWLD is concerned about the rising recourse among investors to Investor State Dispute Settlement (ISDS), which is increasingly provided for in investment treaties and preferential trade agreements. We ask the General Comment recommends in the strongest terms possible that awards or settlements resulting from ISDS must not prevent or interfere with access to just and favourable working conditions. For example, Veolia, a French transnational company specializing in environmental and public services, sued Egypt in 2012 under a bilateral investment agreement for introducing a minimum wage which interfered with Veolia’s profits.[[10]](#footnote-10) In this sense, bilateral and multilateral investments are interfering with the State’s ability to provide just and favourable working conditions for its workers.

We would also suggest a clear recommendation that trade and investment agreements must not undermine the right to just and favourable conditions of work, and a recommendation that, in line with the Guiding Principles on Human Rights Impact Assessments proposed by the Special Rapporteur on the Right to Food,[[11]](#footnote-11) governments conduct participatory human rights impact assessments before signing such agreements. We are particularly concerned that these agreements contain “standstill” provisions that prevent governments from adopting progressive regulation, including for the protection of workers.

**Obligations of non-State actors**

Paragraph 75 discusses the responsibility of non-state actors to respect the right to just and favourable working conditions. Although it is important that business entities are mentioned, special mention should be made of the obligations of corporations acting in the context of global value chains. Particular mention should be made of the need to ensure transparency and traceability of the supply chains,[[12]](#footnote-12) and the need to ensure that companies at the top of the supply chain establish a clear legal relationship with suppliers and sub-contractors. Further, the ITUC lists the establishment of a minimum living wage and wage fixing mechanism as an obligation to workers in the Global Supply Chain, as ratified in the ILO C131’s Minimum Wage Fixing Convention.[[13]](#footnote-13)

1. UN Women, Progress of World’s Women 2015-2016 Chapter 2, page 81 [↑](#footnote-ref-1)
2. UN Women Report of the Expert Group Meeting on Structural and Policy Constraints in Achieving the MDGs for Women and Girls, p 17 <http://www.unwomen.org/~/media/headquarters/attachments/sections/csw/58/csw58-2013-egm-report-en.pdf> [↑](#footnote-ref-2)
3. Article 11, International Covenant on Economic, Social and Cultural Rights (1976). [↑](#footnote-ref-3)
4. Article 23, Universal Declaration of Human Rights (1998( and ILO Convention 131 (Minimum Wage Fixing Convention) (1970). [↑](#footnote-ref-4)
5. Australian Capital Territory Crimes (Industrial Manslaughter) Amendment Act 2003 <http://www.legislation.act.gov.au/a/2003-55/20040301-10529/pdf/2003-55.pdf> [↑](#footnote-ref-5)
6. International Labour Conference, 93rd Session 2005. Report III (Part 1B) General Survey of the reports concerning the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30). Pages 38-40 [↑](#footnote-ref-6)
7. Article 9 (b), ILO Convention 189 (Domestic Workers Convention) 2011. [↑](#footnote-ref-7)
8. Article 7, ILO Convention 189 (Domestic Workers Convention) 2011. [↑](#footnote-ref-8)
9. UN Women, Progress of World’s Women 2015-2016 Chapter 1, page 49 [↑](#footnote-ref-9)
10. Eberhardt, P. Investment Protection at a Crossroads: The TTIP and the Future of International Investment Law, International Policy Analysis, July 2014. P 6. <http://library.fes.de/pdf-files/iez/global/10875.pdf> [↑](#footnote-ref-10)
11. Report of the Special Rapporteur on the Right to Food, Guiding Principles on Human Right Impact Assessments of Trade and Investment Agreements (2011) A/HRC/ 19/59/Add.5. [↑](#footnote-ref-11)
12. Global Supply Chains and Decent Work: Trade Union Input to the G7. Trade Union Advisory Committee, International Trade Union Confederation, and Confederation of the German Trade Union. 16 March 2015. Page 1 <http://www.tuac.org/en/public/e-docs/00/00/10/1B/document_news.phtml> [↑](#footnote-ref-12)
13. International Labour Organization, Article 1, C131- Minimum Wage Fixing Convention, 1970. [↑](#footnote-ref-13)