

Human Rights Watch Submission on the Draft General Comment on the Right to Just and Favorable Conditions of Work

July 31, 2015

Human Rights Watch welcomes the initiative by the United Nations Committee on Economic, Social and Cultural Rights (“the Committee”) to develop a General Comment on Article 7 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). We appreciate the opportunity to provide feedback on the draft based on our research findings around the world, particularly our investigations on human rights violations in domestic work, construction, mining, agriculture, and among children, women, and migrants.

As you finalize the General Comment, we hope the Committee will consider the following:

Introduction

Paragraphs 2-3: We suggest inserting a paragraph after Paragraph 2 which notes that the right of everyone to the enjoyment of just and favorable conditions of work is often a critical component to ensure the realization of human rights protected in other major international human rights treaties, including freedom from discrimination and prohibitions on slavery, forced labor, and trafficking.¹

Article 7(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;

¹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, arts. 2, 8, 26. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc A/34/46, entered into force September 3, 1981, arts. 6, 11.

Paragraph 11: In addition to the criteria outlined in the draft comment, Human Rights Watch believes there are additional factors that should be elaborated as critical components of “fair” wages. These include that wages should be paid in a regular, timely fashion and in full. One of the most common complaints of workers across sectors in our labor rights investigations has been the delayed and partial payment of wages. Receiving only half of one’s due wages or receiving them several months late causes considerable hardship for workers, typically violates national labor laws, and is unfair in remunerating the worker for their labor. The timely payment of wages also contributes to a worker’s remuneration supporting a decent living for themselves and their families.

In paragraph 27, the Committee could provide guidance to governments on methods to prevent wage theft, including by instituting electronic wage payment systems, penalizing employers with proven violations, and raising awareness among workers about their rights and channels for redress.

We suggest that the Committee elaborate that governments provide safeguards against exploitative practices such as deducting salaries for the repayment of recruitment fees. Human Rights Watch research across Asia and the Middle East has documented how migrant workers are often charged onerous recruitment fees that leave them deeply in debt and heighten their risk of exploitation. For example, migrant domestic workers in Malaysia must often turn over the first six to seven months of pay out of a two-year contract to repay recruitment costs. Migrant construction workers in the United Arab Emirates and Qatar pay thousands of dollars in recruitment fees, putting them under tremendous pressure to continue working, even under abusive conditions, to repay their debts. These practices can contribute to situations of forced labor, including debt bondage and trafficking. Article 7 of International Labour Organization (ILO) Convention No. 181 stipulates that private employment agencies should not charge any fees to workers, and this provision is echoed in many countries’ national legislation. Article 15 of ILO Convention No. 189 also calls upon governments to ensure that “fees charged by private employment agencies are not deducted from the remuneration of domestic workers.”

Another important component to the “fairness” of wages is there should be no arbitrary deductions and a clearly defined legal basis for any salary cuts due to “mistakes” or disciplinary issues. We found that abusive employers across sectors may make repeated and unfair deductions for minor or perceived “mistakes” in the work to avoid paying their workers’ full salaries. Workers, especially those in marginalized sectors such as domestic work and agriculture, often have few channels to make complaints, challenge the

deductions, or seek redress. The ILO's Committee of Experts has interpreted the ILO Protection of Wages Convention to establish three main principles: that deductions of any type need an appropriate legal basis, that authorized deductions be limited so received wages are sufficient to ensure a decent living income for workers and their families, and information on the grounds for wage deductions must be communicated to workers in advance.²

Governments should also ensure that practices of in-kind compensation do not detract from a worker's fair wages. For example, many domestic workers may receive a lower salary because of allowances made for housing and food despite being required to live with their employers as a condition of employment and doing so for the employer's convenience. The market value of accommodation in a wealthy employer's house may not be valued fairly in comparison to the domestic worker's wages.³ Similar situations take place in other sectors where employers provide their workers with housing, for example on construction and mining sites or in plantations. The Committee should urge governments to elaborate the legal and acceptable parameters for when in-kind compensation replaces a proportion of wages.

The Committee could also note that provision of written contracts with the terms and conditions of employment clearly articulated—in a language the worker can understand—is a good practice for promoting just and favorable conditions of work. This includes information on the amount and type of remuneration, including the frequency and mode of payment and the parameters for any legally permissible salary deductions. When workers cannot read, governments should take measures to ensure workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily

² ILO, "Q&As on Business, Wages and Benefits", http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_WAG_FAQ_EN/lang--en/index.htm#Q6. (accessed July 21, 2015). See also, See, ILO General Survey on Protection of Wages (2003), paras. 295-297.

³ ILO Recommendation No. 201 concerning Decent Work for Domestic Workers, paragraph 14. When provision is made for the payment in kind of a limited proportion of remuneration, Members should consider:

- (a) establishing an overall limit on the proportion of the remuneration that may be paid in kind so as not to diminish unduly the remuneration necessary for the maintenance of domestic workers and their families;
- (b) calculating the monetary value of payments in kind by reference to objective criteria such as market value, cost price or prices fixed by public authorities, as appropriate;
- (c) limiting payments in kind to those clearly appropriate for the personal use and benefit of the domestic worker, such as food and accommodation;
- (d) ensuring that, when a domestic worker is required to live in accommodation provided by the household, no deduction may be made from the remuneration with respect to that accommodation, unless otherwise agreed to by the worker; and
- (e) ensuring that items directly related to the performance of domestic work, such as uniforms, tools or protective equipment, and their cleaning and maintenance, are not considered as payment in kind and their cost is not deducted from the remuneration of the domestic worker.

understandable manner.⁴

In **paragraph 26**, the Committee should specifically note that prisoners performing contracted work should not be unfairly excluded from the minimum wage and overtime provisions, where these protections exist.

(b) Safe and healthy working conditions;

In addition to the criteria outlined in the draft comment, Human Rights Watch believes there are additional factors that should be elaborated as critical components of “safe and healthy working conditions.”

In **paragraph 29**, we suggest that the language on a national policy be clarified to include the development and implementation of minimum safety standards by sector. Safety and health standards, including requirements for protective equipment, should apply to all categories of workers.

We suggest that the Committee elaborate further on special measures that may be necessary to ensure safe and healthy working conditions for children who are above the minimum age of employment. For example, the brains and bodies of adolescents are still developing, making them more vulnerable to toxins or other hazardous substances. National policies should reflect international standards, such as ILO Convention no. 182, prohibiting all hazardous work for children under the age of 18, and also ensure that adequate protections are in place to ensure a safe and healthy working environment for children who are below the age of 18 but above the minimum age of employment.

The Committee should add a paragraph to specifically note that, securing the rights to water and sanitation, through access to safe drinking water, adequate sanitation facilities, and materials and information to promote good hygiene is essential to the establishment of a safe and healthy working environment.⁵ Access to facilities and materials should meet women’s specific hygiene needs, including during menstruation. Lack of sanitation at a place of employment, whether in the formal or informal sector, can have negative impacts

⁴ ILO Convention No. 189 concerning Decent Work for Domestic Workers, article 7.

⁵ UN Committee on Economic, Social and Cultural Rights, General Comment No. 15, The Right to Water, U.N. Doc. E/C.12/2002/11 (2003) and UN Committee on Economic, Social and Cultural Rights, Statement on the Right to Sanitation, U.N. Doc. E/C.12/2010/1 (2010). The rights to water and sanitation, as articulated by the Human Rights Council, entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use and to have physical and affordable access to sanitation, in all spheres of life—including the workplace— that is, safe, hygienic, secure and acceptable, and that provides privacy and ensures dignity.

on health and safety. In the United States and South Africa, for example, Human Rights Watch found that child agricultural laborers often do not have access to drinking water, handwashing facilities or toilets—potentially contributing to urinary tract infections, increased exposure to pesticides and gastrointestinal disorders.⁶

The lack of gender-segregated and safe toilets can also be a barrier to women's employment. In Afghanistan, the Ministry of Interior acknowledged to Human Rights Watch that the lack of safe toilets and changing facilities could be barriers to women joining the police force.⁷

Governments should ensure that those workers in the informal sector, for example sex workers or street vendors, whose work is not authorized by law are able to seek recourse for work-related injury and disease without facing the risk of criminal penalties for performing such work.

Paragraph 32 should provide more detail about enforcement and access to remedies, including unannounced inspections by labor authorities and meaningful penalties for violators. States should establish avenues for workers, including migrant workers, domestic workers, and others who may have a degree of dependency on their employers or otherwise find it difficult to complain, to make confidential reports of employer noncompliance to authorities, e.g., labor inspectors, occupational safety and health authorities, anti-corruption authorities, law enforcement bodies, inspectors general, ombuds offices, and national human rights bodies. There should be proper monitoring of the official follow-up to such complaints.

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

⁶ Human Rights Watch, *Fields of Peril. Child Labor in US Agriculture*, May 2010, <http://www.hrw.org/print/reports/2010/05/05/fields-peril>; see also, Human Rights Watch, *Tobacco's Hidden Children: Hazardous Child Labor in United States Tobacco Farming*, p. 70-71, http://www.hrw.org/sites/default/files/reports/us0514_UploadNew.pdf; Human Rights Watch, *Ripe with Abuse: Human Rights Conditions in South Africa's Fruit and Wine Industries*, August 2011, p. 62-63, <http://www.hrw.org/sites/default/files/reports/safarmo811webwcover.pdf>.

⁷ Human Rights Watch, *Afghanistan: Urgent Need for Safe Facilities for Female Police: Inadequate Facilities Imperil Women Officers*, April 25, 2013, <https://www.hrw.org/news/2013/04/25/afghanistan-urgent-need-safe-facilities-female-police>.

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

The Committee should note in **paragraph 36** that excessive hours with no rest fosters an environment where other labor and human rights abuses occur, including forced labor and trafficking.

The sections on daily and weekly hours of work should address the issue of “on call” hours or “standby” time when workers may not be actively performing work duties or being paid, but are required to be available and are not free to dispose of their time as they wish. For example, ILO Recommendation 201 on Domestic Workers sets out guidance for governments to determine the maximum number of hours per week that workers can be required to be on standby, the compensation they are due if their normal periods of rest are interrupted by such work, and the rate at which they should be remunerated.⁸

The sections on daily and weekly hours should also reflect that working hours for children above the minimum age of employment should not interfere with their right to education.

In paragraphs 37, 40, and 48, it would be helpful if the Committee could elaborate on the need for reasonable accommodation for people with disabilities in the workplace and the forms it could take, extending beyond “additional daily rest periods or time to take medication.”

Special topics of broad application

In paragraph 48 (i), the Committee could note the intersectionality of accumulated disadvantages and multiple discrimination faced by some workers on account of sex, race, ethnicity, nationality, migrant or health status, disability, age, sexual orientation, gender identity or other grounds.

⁸ ILO Recommendation No. 201 concerning Decent Work for Domestic Workers, paragraph 9(i): With respect to periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls (standby or on-call periods), Members, to the extent determined by national laws, regulations or collective agreements, should regulate:

- (a) the maximum number of hours per week, month or year that a domestic worker may be required to be on standby, and the ways they might be measured;
- (b) the compensatory rest period to which a domestic worker is entitled if the normal period of rest is interrupted by standby; and
- (c) the rate at which standby hours should be remunerated.

In **paragraph 48 (ii) on young and older workers**, the committee notes that measures to protect the health and safety of young workers should include raising the minimum age for certain types of work. In addition, it should specify that laws and regulations should prohibit all hazardous work for children under the age of 18, and that hazardous work lists should be continually evaluated and updated as appropriate, including work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.⁹ The reference, “Children and young persons should be protected from economic and social exploitation” could add “through specialized monitoring and complaints systems, and the provision of rehabilitation for children who are withdrawn from hazardous or exploitative child labor.”

In **paragraph 48 (iii) on workers with disabilities**, the Committee should strongly urge governments to prohibit all forms of discrimination, direct and indirect, on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions.¹⁰ For example, the Committee should recommend prohibition of discriminatory practices such as forced or pressured disclosure of disability and contracts stipulating that disability can be grounds for termination of employment (e.g. if the worker develops a mental health condition). The Committee should also comment on the need for governments to guarantee equal access to the workplace for people with disabilities through the implementation of national minimum standards for accessibility of the physical environment, transportation, information and communication, and services. National minimum standards on accessibility must be developed in close consultation with persons with disabilities and their representative organizations.

In **paragraph 48 (v) on migrant workers**, the Committee should note that labor and migration policies require greater harmonization to prevent and respond to the heightened risk of labor exploitation of migrant workers. Restrictive immigration policies, particularly temporary labor migration or “guestworker” schemes where workers have curtailed labor protections and limited employment mobility, can set the stage for workers being trapped in abusive situations. Human Rights Watch has documented how migrant workers in Gulf countries are subject to the *kafala* system, which ties their visa to their employer, and

⁹ ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (Worst Forms of Child Labour Convention), adopted June 17, 1999, 38 I.L.M. 1207 (entered into force November 19, 2000).

¹⁰ International Convention on the Rights of Persons with Disabilities, adopted January 24, 2007, A/RES/61/106, entered into force May 3, 2008, article 27(1).

requires they obtain their employer's consent to change jobs. Combined with the debts incurred by recruitment fees, this system fosters conditions in which employers can exact excessive hours of work in poor working conditions with impunity.

Paragraph 48 (viii) on unpaid workers highlights that women spend twice as much time as men in unpaid work. The Comment should also note that the majority of children engaged in child labor work in family enterprises and are often unpaid. States should ensure that children working in family enterprises are also protected by laws and regulations, and that states enforce relevant obligations regarding child labor.

In paragraph 49 on sexual harassment, the Committee should recognize that children above the minimum age of employment, in particular girls, are also vulnerable to sexual harassment. Accordingly, the recommendation that national policies include explicit coverage of harassment "by and against men and women" should be changed to "by and against any worker."

The general comment helpfully recognizes that remedies should be available under anti-discrimination, labor, and penal laws. We suggest that it more explicitly address the need for civil law damages for victims, not just criminal penalties for perpetrators. After the current text, "A specific definition of sexual harassment at the work place is appropriate and legislation should criminalise and punish sexual harassment as appropriate," we suggest inserting, "Anti-discrimination and labor laws should also provide for civil damages (compensatory and punitive) for plaintiffs in successful harassment lawsuits."

Human Rights Watch recommends adding a new paragraph entitled "Workplace Response to Domestic Violence" after the **paragraph 49** on sexual harassment. Support for survivors of domestic violence in their employment contributes to fairness, health, and safety. The paragraph could read, "Governments should prohibit employers from discriminating against survivors of domestic violence or penalizing them for the consequences of the abuse (for example, missing work due to injuries). Moreover, they should help employers take proactive steps to support survivors. These include offering paid leave for survivors to pursue domestic violence remedies and services; tailored workplace security measures; flexible work arrangements; schedule or location changes; new email or phone numbers; and information to employees about survivor services."

Obligations

In addition to its discussion on the role of labor inspectorates in accountability in **paragraphs 54 to 56**, the Committee should highlight the powerful and effective role that worker organizing and independent trade unions can have in raising awareness among workers about their rights, assisting workers to make complaints, and helping them to get redress. Government and third-party inspections play a critical role in enforcement, but will rarely be able to comprehensively capture all workplace abuses. It is especially important that workers be empowered to identify labor violations and have effective channels for reporting and timely redress without fear of retaliation.

In **paragraph 58**, when the Committee notes that states should set out the obligations of business enterprises to respect the right to just and favorable conditions of work, this should include that businesses conduct human rights due diligence to prevent and respond to labor violations in their businesses and supply chains.

Core obligations

In **paragraph 64**, the Committee should outline governments' core obligation to ensure there are accessible mechanisms for reporting violations and obtaining remedies, including through hotlines, whistleblower protections, accessible and fair labor dispute mechanisms, arbitration bodies, courts, and collective bargaining.