

Circle of Rights

Economic, Social & Cultural Rights Activism: A Training Resource

Section: 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10

HRRC Home - Table of Contents

SECTION 5- UNDERSTANDING SPECIFIC ESC RIGHTS

Contents of Section 5:

Module 10

The Right to Work and Rights at Work [USING MODULE 10 IN A TRAINING PROGRAM](#)

The Purpose of Module 10

The purpose of this module is to provide an overview of the right to work as well as rights at work or labor rights.

The module is divided into two sections. The first section :

- identifies the international standards guaranteeing the right to work; and
- analyzes states' obligations related to that right.

[The second section](#)

- identifies the essential elements of rights at work (or labor rights); and
- discusses freedom of association as it relates to trade union autonomy.

Introduction

As was mentioned in [Module 2](#), workers' struggles have been essential to the recognition of a range of ESC rights-most particularly, of course, rights related to work itself. Even before the United Nations existed or the Universal Declaration of Human Rights was drafted, the International Labour Organization was developing and enforcing a broad range of labor-related standards. As a result of decades of focused effort at international and national levels, spearheaded by workers' initiatives in a large number of countries, human rights standards related to work are highly developed, at least when compared to other ESC rights. This module provides a short summary of international standards related to the right to work and rights at work (or labor rights). The module closes with some discussion of the changing conditions of work and the problem of "invisible workers," both of which pose a challenge to workers and

those seeking to protect their rights.

The Right to Work

The right to work is the first of the specific rights recognized in the ICESCR. After part II of the Covenant, on determining the nature of states' obligations, part III on specific rights immediately starts with the right to work (art. 6). The right to work deals exclusively with access to work, and hence persons who do not have access to work are the main concern. In spite of its great importance, the right to work itself is relatively little detailed. Much work has been done on questions like discriminatory access to work, but not on the right to work itself. There are few international instruments on the topic; the ILO Employment Policy Convention of 1964 (No. 122) [\[1\]](#) is one of them.

One reason for this lack of attention could be a hesitation to deal with work as a human right that each person is entitled to enjoy. Another problem is the very understanding of work. What is work? Is it restricted to only wage labor? Does it extend to the activities of self-employed persons, to the economic activities of indigenous groups? There is a need to define work and the right to work, taking into account the standards formulated in the Covenant.

Work as a human rights standard

Most human rights standards are seen as something positive—for example, food, education, just working conditions, fair trial and free speech. Work, on the other hand, has some negative implications related to the strain of mental or physical effort, to distress and even some degree of suffering. For many people, work also has an undertone of an unpleasant duty; it is seen as something we have to do in order to survive. Thus, a frequent confusion around the right to work is that it is taken as a duty. Why do we need a right to something that is somewhat negative? Shouldn't there be more machines to do our household chores, as we really do not care for such work?

Article 6 of the ICESCR states that the right to work includes "the right of everyone to the opportunity to gain his living by work." This identifies for us the crucial element in this human rights standard, which is the opportunity *to earn one's living*. What is the meaning of "to earn one's living?" Under article 11 of the ICESCR there is a right to an adequate standard of living that is unconditional; it does not depend on work. So work as a human rights standard is not to be seen as a means to have an adequate standard of living (as this is guaranteed by another human right), but *to earn* such a standard of living.

The term "to earn" has certain moral overtones. If you *earn* money, you are justly rewarded for some service you render for the well-being of others. Work thus has to do with your relation to and participation in your society's (or your family's) activities to secure its survival and well-being. It includes the acceptance and gratification you derive from your community or society.

Even in welfare societies, where the right to an adequate standard of living, including food, housing, etc., is guaranteed to people who do not participate in economic activities, the lack of participation is seen as a severe deprivation by these victims of unemployment. It can lead to

social isolation and to the disintegration of personality. Work as a human rights standard is therefore much more than just a tool to attain an adequate standard of living. (See [Module 1](#) on a "capability approach" to ESC rights.)

From this description it should be clear that work as a human right is quite different from mere wage labor. Indigenous peasants and fisherfolk work, so do hunters and gatherers, traders and businessmen. Work may be more (as with indigenous people) or less (as with wage laborers) integrated into the rest of life and activities. Nevertheless, work always means performing some activities that will satisfy needs and create services for your group and society, and it is therefore accepted and rewarded.

International and regional standards on the right to work

Article 23 of the UDHR guarantees everyone "the right to work, to free employment, to just and favourable conditions of work and to protection against unemployment."

The ICESCR provides in article 6(1) for the "right to work, which includes the right of everyone to the opportunity to gain his living by work." It also says, in article 6(2) that "the full realization of this right shall include technical and vocational guidance and training programmes."

Under article 1(2) of ILO Convention No. 122 each member shall ensure that "there is work for all who are available for and seeking work."

Article 1 of the European Social Charter states:

With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:

1. 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;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation. [\[2\]](#)

The human right to work



The human right to work recognizes work as something to which each and every individual is entitled. The right to work means, first of all, the right to participate in the producing and servicing activities of human society and the right to participate in the benefits accrued through these joint activities to an extent that guarantees an adequate standard of living. The right to work thus ensures that nobody is excluded from the economic sphere.

The type of work a person does depends on access to resources, education and training. Work can be enjoyed as a wage-employed person or as a self-employed person. A crucial feature of work is that it allows persons to earn their living.

— The right to work means that work and access to resources are distributed in a way that allows for the participation of everyone who wants to work. The right to earn one's living, as discussed above, implies, at a minimum, that the benefits derived from these economic activities should be enough to reach an adequate standard of living.

The right to work is not satisfied by participation in just any type of economic activity. In fact, it includes "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts." [3] There is an important element of choice and freedom in the economic activity to earn one's living. The right to work therefore means not only that work is distributed in a way that allows for the participation of everyone, but also that a person's preference in how to earn his or her living is a human rights guarantee as well. In addition to the right to earn one's living, article 6 therefore establishes a human right to freely chosen or accepted work. Here the term "accepted work" refers to wage employment whereas "chosen work" may be seen as self-employment.

Does this right then guarantee that you can do whatever you feel like, call it work and demand a state salary for it? The right to freely chosen or accepted work may seem utopian. A closer look, however, reveals that this right is actually quite reasonable. It does not mean, for example, that everyone who wants to be a full-time musician has the right to earn his or her living this way. The right to freely chosen or accepted work is conditional, of course, on the possibility of earning one's living with this job. Hence, being a full-time musician can only be considered work if it is rewarded in a way that one can earn one's living with it.

State obligations arising from the right to work

Is every case of an unemployed person a violation of the human right to work? The generic state obligation under the right to work includes the state's obligation to respect, protect and fulfill each person's access to work to earn one's living and the obligation to guarantee that this work can be freely chosen or accepted.

This means, for example, that states must not destroy a person's opportunity to earn his or her living (obligation to respect). States must prevent this opportunity from being destroyed by third parties (obligation to protect). States must provide the opportunity to earn one's living to each person who currently does not have this opportunity (obligation to fulfill). Moreover, people's preferences as to the type of work they do must be satisfied as far as possible.

Some elements of the state's obligations to fulfill the right to work are as follows.

- Vocational guidance, training, employment services

The ICESCR includes some fulfillment-bound obligations such as "technical vocational guidance and training programs" and "policies and techniques to achieve economic, social and cultural development and full and productive employment." As a state obligation related to a human right, access to vocational guidance and training must be possible for everybody, and hence either free of cost or at a cost that does not limit the exercise of a person's right to technical guidance and training programs.

Another element of a state's obligation is nondiscrimination. People must not be denied access to work (or to any policies or programs related to this right) on the basis of gender, ethnic or national origin, religion, or social or other status.

The European Social Charter, for example, formulates the maintenance of free employment services as an additional state obligation under the right to work. [\[4\]](#) Articles 9 and 10 of the ESC refer to the right to vocational guidance and the right to vocational training respectively.

All these state obligations, as important as they are, may not prevent widespread unemployment and untold suffering of jobless persons-even if their social security is realized. A state obligation that will really address this issue is the obligation to provide "full and productive employment."

- Full employment

Employment should always be understood both in terms of wage employment and self-employment. Even though article 6 formulates that states only have "to take steps" towards full employment, article 2(1) qualifies that these steps have to be taken to the maximum of available resources, and hence as quickly as possible.

In a society where most people want to work for wages in the market sector, full employment policies need not mean that the state must create new labor-absorbing activities on the labor market (for example, by investment programs). On the other hand, the state should promote the distribution of the existing volume of work available on the labor market to everybody willing

and able to carry it out.

- Employment guarantee in the "common sector"

There is little doubt that even the best full employment policies in the world will not be able to provide employment via the labor market or as self-employment in the market economy to each and every person seeking such employment. At the same time it must be recognized that many activities are carried on outside the market sector that would qualify as work, except that people do not earn their living with these activities. There is a lot of absolutely necessary work, mostly carried out by women, which goes unpaid. These activities form an important part of the economy, even though hardly any money is involved. They belong to a sector that could be called the "common sector." It should be noted that in a money-dominated economy the marginalization of the common sector, which includes child rearing, caring for the elderly, and improving the quality of community, has severe consequences for social well-being.

The Employment Guarantee Programmes in India and the "work is better than social aid" programs in Germany provide acceptable, paid work to persons seeking such work. These programs already reflect important elements of a state's obligation under the right to work that overcome the limited orientation of the obligation to provide full employment in the market sector. The personal income in such programs is sufficient to provide an adequate standard of living, but cannot compete with wages paid in the market sector.

The common sector, therefore, has to be distinguished from the state or public sector. State authorities hire their staff on the labor market. The common sector instead guarantees employment at a minimum wage to those who are unwilling or unable to work in the market sector. The activities carried out in the common sector are those activities of a social purpose and for the common good that are not profitable enough for the private sector or not urgent enough for the state sector to make them search for employees on the labor market. The employers in the common sector need not be state agencies, but can be nonprofit organizations.

Most persons will probably prefer work in the labor market or as a self-employed person in the market sector, as these activities will allow for a higher standard of living. The requirement that work must be freely chosen or accepted requires the existence of a private sector, and of government measures to ensure that the market caters (as much as possible) to the needs and preferences for work of all those who want to enter the labor market.

[continue on to Module 10 - Section 2](#)
[USING MODULE 10 IN A TRAINING PROGRAM](#)

NOTES

1. International Labour Organization, Convention concerning Employment Policy (ILO No. 122), 569 UNTS 65, *entered into force* 15 July 1966.

[2.](#) European Social Charter, 529 UNTS 89, *entered into force* 26 Feb. 1965, art. 1.

[3.](#) International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, GA Res. 2200 (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc A/6316 (1966), 993 UNTS 3, *entered into force* 3 January 1976, art. 6.

[4.](#) European Social Charter, 529 UNTS 89, *entered into force* 26 Feb. 1965.

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