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The Status of Labor Rights in the International Covenant on Economic, Social and Cultural Rights
and the Extent of Their Fulfillment in the Southern Mediterranean Countries
(The Cases of Tunisia, Morocco and Jordan)

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INTRODUCTION TO AND PURPOSE OF THIS PAPER IN THE CONTEXT OF SOUTHERN MEDITERRANEAN COUNTRIES

I. Labor rights between the requirements of international human rights instruments and the reality of Southern Mediterranean countries

1. As part of celebrating the 90th anniversary of its founding in 1919, the International Labor Organization (ILO) raised the slogan “Decent Work and Social Justice in Times of Crisis.” The ILO is indeed the international organization traditionally concerned with monitoring human rights in the workplace, and it has since its inception adopted at least 189 international labor conventions, spelling out in detail the various aspects and means of implementing rights related to work, workers and their families. Among these are the eight conventions related to the fundamental human rights and principles in the workplace, as recognized in the ILO’s *Declaration on Fundamental Principles and Rights at Work and its Follow-up* adopted by the eighty-sixth session of the International Labor Conference on 18 June 1998. These fundamental human rights revolve around the following:
 - Eliminating all forms of forced labor (Convention No. 29 of 1930 “Concerning Forced Labor” and Convention No. 105 of 1957 “Abolition of the Forced Labor”);
 - Effectively eliminating child labor (No. 138 of 1973 “Minimum Age Convention” and Convention No. 182 of 1999 “Worst Forms of Child Labor”);
 - Equal remuneration (No. 100 of 1951 “Equal Remuneration Convention”) and the elimination of discrimination in employment and occupation, especially towards women (“Discrimination (Employment and Occupation) Convention” No. 111 of 1958);
 - Freedom of association (“The Freedom of Association and Protection of the Right to Organize Convention” No. 87 of 1948) and active recognition of the right to organize and to bargain collectively (“Right to Organize and Collective Bargaining Convention” Convention No. 98 of 1949).
2. International labor conventions have had an effective impact on formulating and expanding international instruments for human rights so that they include, in addition to civil and political rights, economic, social and cultural rights as well, including labor rights, considering that human beings are, aside from being individuals, a part of wider social and economic life.
3. This approach has been consolidated by both the Universal Declaration of Human Rights, dated on 10 December 1948, and the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the UN’s General Assembly on 16 December 1966, which is the same resolution under which the International Covenant on Civil and Political Rights (ICCPR) was adopted, formally and perpetually confirming the inseparable link between different categories of human rights.
4. The United Nations has consistently sought to affirm the status of labor rights as an integral part of economic, social and cultural rights and the consequent obligations of states parties,

particularly in terms of supervision and follow-up mechanisms. Therefore, and in accordance with a UN Economic and Social Council resolution on 28 May 1985, the Committee on Economic, Social and Cultural Rights was created as a body of independent experts.

5. In the same context, according to the UN Resolution on 8 December 2008, the Optional Protocol appended to the ICESCR was adopted, which – similarly to the ICCPR – would enhance the effectiveness of this instrument by permitting the consideration of individual communications related to the violation of any the rights declared in it, including labor rights.
6. Problems persist, despite this development, not to mention for example that so far, this protocol has only been ratified by 22 countries, while the estimated number of signatories is 26 – with no Arab states ratifying the ICESCR.
7. **The current stakes, which are discussed in Southern Mediterranean countries and others,** are linked to the extent to which policies and legislation succeed in achieving a quality shift in the way issues related to labor rights are addressed, including issues related to employment and decent work in different sectors of production – organized and unorganized – and the interventions and activities of the different concerned bodies, structures and mechanisms, with the common awareness required by the various political actors and civil society components in each country to adjust policies and legislation and to coordinate the work of various administrative monitoring agencies and mechanisms for social dialogue, so that they become the driving force of the various elements of production while simultaneously guaranteeing respect for economic, social and cultural rights.
8. Next appears the need for a further strengthening of labor rights in legal texts, especially in national constitutions, policies and behaviors in order to change the objective and tangible reality of the current cruel situation in the region and the exacerbation of the crisis viewed by all studies and analyses as more so a political and social crisis than an economic and financial one. This crisis is embodied in the suffering of the region’s population due to several imbalances, including the decline in decent work opportunities, high unemployment rates (especially among the youth) and unregulated labor. The 2016 Arab Watch on Economic and Social Rights report indicates that 60% of total employment is unregulated, according to data gathered from 13 countries. This makes informal economy the number one obstacle to ensuring the comprehensive inclusiveness of human rights, and a dilemma of politicians, economists and sociologists alike.

II. The objectives of this paper in the context of Southern Mediterranean countries

9. Like the rest of economic, social, and cultural rights, labor rights do not have a central status in Arab constitutions and legislative and domestic policies systems, which reaffirms the importance of ensuring the priority of ratified international human rights instruments, including the ICESCR and the ILO conventions, over domestic legislation, not to mention the definitely achieved advantage of elevating these rights to a constitutional level.
10. In this context, and in order to support all initiatives and efforts to promote the status of labor rights, this paper aims to achieve the following objectives:
 - Exploring the status of labor rights within the ICESCR and the extent to which they are implemented in the national constitutional, legislative and political system in the Southern Mediterranean countries, particularly in Tunisia, Morocco and Jordan;
 - Identifying the shortages and the necessary amendments to be made in national constitutions, legislation and policies in order to ensure full compliance with international human rights instruments and their provisions on labor rights;
 - Providing a critical evaluation and analysis in order to make amendments to the constitutional and legislative provisions and policies designed to promote labor rights across the region, and to make proposals for the integration these rights into Arab constitutions for the purpose of achieving greater conformity between national frameworks and international human rights standards;
 - Contributing to a wide dissemination of the conclusive observations made by the UN treaty bodies, including the Committee on Economic, Social and Cultural Rights (CESCR), as well as the conclusions made by the Universal Periodic Review (UPR) working group while viewing reports submitted by Southern Mediterranean countries, namely Tunisia, Morocco and Jordan, and particularly the reports pertaining to the development of necessary laws and mechanisms to guarantee effective labor rights.

III. Methodology and axes of the paper

11. To achieve its objectives, this paper draws on the various sources of information regarding labor rights in Southern Mediterranean countries, especially in Tunisia, Morocco and Jordan, which particularly include:
 - a) The national legal and political framework for economic, social and cultural rights (national constitutions, laws, etc.);
 - b) The latest reports submitted to the UN treaty bodies, including the CESCR, as well as the reports submitted within the UPR context;
 - c) Conclusive notes of the UN treaty bodies, in particular the CESCR, and findings of the Working Group on the Universal Periodic Review;

d) General comments adopted by the CESCR, including in particular its General Comment No. 3 on the nature of states parties' obligations (art. 2, para. 1 of the Covenant), General Comment No. 18 (2005) on the right to work, General Comment No. 19 (2007) on the right to social security (art. 9), General Comment No. 20 (2009) on non-discrimination in economic, social and cultural rights (art 2, para. 2), General Comment No. 23 (2016) on the right to just and favorable conditions of work (art. 7), and General Comment No. 24 (2017) on state obligations under the International Covenant on the Economic, Social and Cultural Rights in the context of business activities.

12. In order to achieve its stated objectives, the first part of this paper focuses on determining the status of labor rights according to the provisions of the ICESCR **(Part One)**.

The second issue to be highlighted in a later part is inseparable from the first issue. It involves the integrated duties that primarily fall on the state and the various actors in society in ensuring that human rights are respected at work, which necessitates the determination of the scope and nature of the state's constitutional obligations in implementing these rights **(Part Two)**.

In a third part, this paper examines the situation of labor rights in Southern Mediterranean countries, particularly in Tunisia, Morocco and Jordan, through an analytical study of the current constitutional, legislative and political framework in these three countries **(Part Three)**.

PART ONE- STATUS OF LABOR RIGHTS IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

13. According to Articles 6 to 10 of the ICESCR, labor rights start with the necessary commitment of states parties to take all measures, draft policies, and set the mechanisms which secure the right to work itself **(I)**, while simultaneously ensuring the minimum standards of working conditions that guarantee the protection of human dignity and right to just and favorable working conditions **(II)**, and that's without neglecting each state's duty to emphasize and recognize certain assurances to protect individual and collective freedoms, in particular the protection of the right to organize and the freedom of association **(III)**.

Moreover, labor rights are closely tied to the right to social security, including social insurance **(IV)** and the measures each state is required to take to protect maternity **(V)** and children in workplace **(VI)**.

I. The right to work¹

14. This means that, as is explicitly stated in Article 6 of the ICESCR, *“Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.”*

Reading this article, which abbreviates a number of authoritative international labor conventions, shows that the right to work is associated with several conditions, which can be reduced to four considerations:

- Attending work must be voluntary, without any form of forced labor (A),
- The state promises to pursue an active employment policy that ensures an effective response to the right to work for as many workers as possible (B),
- The state must commit to ensuring equal employment opportunities, including the necessary measures, programs and mechanisms that ensure the implementation of the right to vocational and technical guidance and training and to decent work opportunities for persons with disabilities (C),
- The state must commit to combating the various forms of discrimination between men and women at work (d).

(A) The right to work and the free choice of work

15. The affirmation of the right to work is above all a guarantee of a free system of work, where freedom of employment is incompatible with any form of forced labor. Since the abolition of slavery to the prohibition of more subtly violent practices, which have been used – and

¹ See General Comment No. 18 (2005) of the Committee on Economic, Social and Cultural Rights on the right to work.

are still sometimes being used in some parts of the world – for the purposes of political coercion or the so-called social prevention and example-making, the ILO's efforts has been notable for resisting forced labor by constantly striving to ensure people's free attendance to work. ILO Conventions No. 29 on "Concerning Forced Labor" and No. 105 on the "Abolition of Forced Labor" constitute the main instruments for assessing the extent to which states parties comply with the prohibition of forced labor on paper and in practice. Convention No. 105 dictates the immediate and complete abolition of the following five types of forced labor:

- As a means of coercion or political example-making,
- As a means of recruitment for the purpose of economic growth,
- As a punishment for participating in strikes,
- Or, as a measure of racial, social, national or religious discrimination.

(B) The right to work and the need for an active policy of employment

- 16.** States parties must commit to formulating and implementing an active policy that promotes full and productive employment, ensuring an actual response to the right to work for the largest number of job seekers possible, especially among degree holders and the youth. These include the formulation and implementation of *"technical and vocational guidance and training programs, policies and techniques"* as stated in Article 6, Paragraph 2 of the ICESCR, which came as a summary of the provisions of ILO Convention No. 142 *"concerning Vocational Guidance and Vocational Training in the Development of Human Resources."*
- 17.** **There is no doubt that the commitment of** the involved states to working towards the formulation and application of an active policy that promotes full productive employment that ensures the effective response to the right to work for the largest number of job seekers is an integral part of the states' commitment to human development in general. Therefore, work is considered to be the decisive incentive for an individual's humanity, which distinguishes them from other beings. and human work plays a central role in the productive process, which is the crux of social development.
- 18.** All this demonstrates that states cannot be indifferent to the inevitable disadvantages of unemployment and underemployment. Whatever the advantages of a market economy and what seems to be a return to it today, the labor market cannot be fully reliant on an automatic self-regulation, nor be treated as a free market of goods like any other. States must therefore adopt a number of mechanisms and take various legal, economic and financial measures within the scope of its economic and social plans in order to promote a policy of active and productive hiring and to respond to the goal of achieving justice in labor for as many people as possible.

(C) The right to work and to equal opportunities in employment

19. The right to work shall ensure equal employment opportunities. More than ever before, this is about states' duties to formulate and implement programs and policies and develop mechanisms to implement the right to technical and vocational guidance and training and to decent work opportunities for the physically disabled, as recognized in Article 27 of the International Convention on the Rights of Persons with Disabilities (CRPD), which abbreviates the provisions of ILO Convention No. 159 on "*Vocational Rehabilitation and Employment (Disabled Persons)*." Among the obligations placed upon states parties is the necessity to adopt active policies that ensure the right of persons with disabilities to employment in both the private and the public sectors, while taking positive measures, decisions and incentives to ensure their effective employment.

(D) The right to work and to combat the various forms of gender discrimination

20. ILO Convention No. 100 of 1950 on "*Equal Remuneration*" and Convention No. 111 of 1951 on "*Discrimination (Employment and Occupation)*" represent the fundamental pillars of the protection of the right of women at work. The most important guarantees established in these two Conventions are affirmed in the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), adopted on 18 December 1979 by the UN General Assembly. In this convention, Article 11, Paragraph 1 indicates that "States Parties shall take all appropriate measures 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;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational and training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction."

21. Paragraph 2 of the same article of the CEDAW convention abbreviates another set of ILO convention,² stating that *“In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:*

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

The third paragraph of the same Article 11 adds: *“Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.”*

II. The right to just and favorable conditions of work³

22. The recognition of the right to decent work as an integral part of human rights requires every state to work beyond the requirements expressed by the employment policy, and to provide more than the means to ensure the effective enjoyment of this right for all people without discrimination. Article 7 of the ICESCR abbreviates a large number of international labor conventions with a view to determining the minimum standards of work that would guarantee the protection of human dignity. These could be understood in terms of three considerations:

- The right must ensure adequate remuneration which covers the needs of workers and their families, alongside the right of equal pay for equal work;
- Taking the required measures to protect all workers’ health during work;
- Specifying a reasonable number of working hours to ensure the right to rest and vacation.

² Convention No. 152 of 1980 on equal opportunities and equal treatment for working men and women with family responsibilities;

Convention No. 3 of 1919, Convention No. 103 of 1952 and Convention No. 183 of 2000 on maternity leave; Convention No. 4 of 1919, Convention No. 41 of 1934 and Convention No. 89 of 1938 on night work, in addition to the 1990 Protocol;

Convention No. 45 of 1935 on the prohibition of the employment of women in underground work.

³ See CESCR General Comment No. 23 (2016) on the Right to just and favorable conditions (Article 7).

- 23.** The right to adequate remuneration is an important part of the right for decent work in general. It is closely related to the development of productive activity that has gradually moved from a traditional mode of production, which could no longer accommodate the growing capacities of the work force and perceive a person's work as a mere commodity valued by supply and demand mechanisms, all the way to a new mode of production based on the mobilization of and investment in human resources, both men and women, in a framework of productive social action based on a set of human values and principles, including, without a doubt, the protection of work and wages for work of equal value, on the basis of equal opportunities without discrimination of any kind.
- 24.** In accordance with Article 7 of the ICESCR and the provisions of the relevant international labor conventions, it is the state's duty in this regard to establish a national wage policy which particularly guarantees:
- Full consultation of employers' and workers' organizations in order to establish a minimum wage in all economic sectors and for all types of workers who, due to their working conditions, need protection, while taking into consideration evolving lifestyles, the needs of workers and their families, living costs and other economic factors, including the needs of employment and economic development;
 - Provide periodic review of minimum wages by adopting methods compatible with the needs and circumstances of each state party;
 - Giving wage systems statutory form, establishing mechanisms for monitoring and penalty, if necessary, in order to ensure their effectiveness.
- 25. Additionally, the right to enjoy just and favorable working conditions can not be separated from the state's duty to ensure "safe and healthy working conditions" in accordance with Article 7(b) of the ICESCR Covenant and the requirements of relevant international labor standards. This is particularly related to the state's obligation to ensure the following:**
- In accordance with national circumstances and in full consultation with employers' and workers' organizations, adopting an integrated national policy on the safety and health of workers and the working environment for all types of workers, including workers in the public sector – with certain exceptions such as maritime and fishing activities which are subject to special arrangements;
 - Implementing measures and policies to ensure the best ways to prevent labor-related tragedies and diseases, including legislative and practical measures, training and information programs, dissemination of knowledge and raising awareness regarding safety and health to the widest extent through effective and appropriate means;
 - Adopting monitoring and follow-up mechanisms in order to ensure the required effectiveness of health and safety system in the workplace.

III. The right to decent work and the protection of the rights to organize the freedom of association

- 26.** The recognition of the right to decent work as an integral part of human rights is not limited to guaranteeing that states undertake active employment policies to ensure an effective response to this right for as many workers as possible, and nor is it limited to ensuring just and favorable conditions of work. It is a main concern of international labor standards to recognize and emphasize the allocation of a certain guarantees for the exercise of fundamental human rights and the protection of personal and collective freedoms in the workplace.
- 27.** In this regard, the ILO Constitution is considered the first set of rules in the international law with regard to fundamental freedoms, in particular the protection of the right to organize and the freedom of association. Since its inception, the ILO has never stopped working towards strengthening this aspect, which is the same one that has been adopted by the provisions of Article 8 of the ICESCR which can be understood in terms of a number of meanings and values that can be restated in two categories:
- The obligation of states parties to protect the right to organize and the freedom of association, on the one hand (B);
 - And the need to secure and develop the right to organize and bargain collectively, on the other hand (A).

(A) Protection of the right to organize and the freedom of association

- 28.** In accordance with Article 8 of the ICESCR and the provisions of ILO Convention No. 87 on *“Freedom of Association and Protection of the Right to Organize,”* the right to organize and to the freedom of association is accompanied by a number of guarantees which can be summarized in the following:
- The right of all workers – except members of the army, police or state administration whose state party’s laws lay out the conditions for their exercise of collective professional rights – and of employers to freely form and joint trade unions and associations in order to enhance and protect their economic and social interests.
 - The right to freely join or withdraw from unions.
 - The right of workers’ and employers’ organizations to prepare their main and internal regulations and to freely elect their representatives, as well as their right to organize the progress of their work, activities and work programs freely and without interference from public authorities that would limit or illegally obstruct such activities.
 - Preventing the dissolution of trade unions or the suspension of their activities by an administrative decision.
 - The right by trade unions to form national federations or treaties, and the latter’s right to form or join international trade union organizations.

- The rights of unions to acquire legal status not be subjected to restrictive conditionalities.
- Taking the required measures to ensure the freedom of association and trade union activity, including the right to take strike actions, on the condition that they be conducted according to the states parties' laws.
- Taking measures by the employer to ensure the freedom of association and conduct union activities inside the establishment.
- The exercise of these rights not be subjected to any restrictions except as provided by the law as is necessary in a democratic society for national security, public order, or the protection of people and their liberty.

(B) The right to organize and collective bargaining

29. According to article 8 of the ICESCR Covenant and the provisions of ILO Convention No. 98 of 1949 concerning the *“Right to Organize and Collective Bargaining,”* the right to organize and collective bargaining comes with a number of guarantees, which can be summarized as follows:

- Protection of the right to collective organization within the establishment.
- Taking measures to protect workers from any action designed to limit their right to freely exercise their trade union activities.
- Protecting workers' and employers' organizations from any interference in each other's affairs, with particular emphasis on preventing employers or their organizations from surveilling workers' unions, either directly or indirectly by means of financing, in addition to other practices that violate the workers' freedom to collective organization.
- The development of collective bargaining as an ideal way to create an atmosphere of understanding and dialogue, and to settle differences, with special focus on encouraging the conclusion of joint labor agreements freely and in a manner that aims to regulate work conditions and circumstances.

IV. The right to social security, including social insurance⁴

30. As stated in Article 9 of the ICESCR, “*The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.*” This article indicates that it was limited to the recognition of the right to social security without defining the basic features and conditions for securing such a right. It would be pertinent to depend on relevant international labor conventions, which provide that states parties must undertake to:

- Ensure a minimum level of social security (A);
- Achieve equality of treatment with regard to non-national residents in the field of social security (B);
- Ensure the maintenance of social security rights (C).

(A) Ensuring a minimum level of social security

31. ILO Convention No. 102 of 1952 on “Social Security (Minimum Standard)” is the primary reference in this regard and has addressed nine social security branches: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors’ benefit. It is sufficient to ratify the Convention that states parties commit to securing at least three of the nine branches mentioned, including at least one branch on unemployment benefit, employment injury benefit, old-age benefit, invalidity benefit, or survivors’ benefit.

(B) Equal treatment of non-national residents in the field of social security

32. ILO Convention No. 118, 1962 on “equality treatment of nationals and non-nationals in social security” is the primary authority in this regard, whereby it obliges the state party to guarantee the right of foreign residents to be treated on an equal footing with the citizens of that state, provided that the state to which the foreigner belongs is also a signatory to the said convention. The right to equal treatment also benefits refugees and stateless persons. The convention applies to the branches of social security whose related obligations are accepted by states parties.

(C) Maintaining rights in the field of social security

33. ILO Convention No. 157 of 1982 on “maintenance of social security rights” represents the primary authority in this regard, and it invites states parties to coordinate with each other in order to ensure the maintenance of rights for workers working or living outside their homelands, in respect of the benefits for the following nine branches: sickness, maternity, invalidity, employment injury, unemployment, family benefits and medical care.

⁴ See CESCR General Comment No. 19 (2007) on the right to social security (Article 9).

- 34.** The above-mentioned convention applies to employed and self-employed workers working within the territory of a state party. It also benefits non-working persons, especially the families of the workers concerned.

V. Measures for maternity protection

- 35.** Both Article 10(2) of the ICESCR and ILO Convention No. 3 of 1919 – as amended by Convention No. 103 of 1952 and Convention No. 183 of 2000 – provide for “Maternity Protection,” stating that states parties must guarantee the right to special protection for working mothers in the form of benefits they could access, on the condition that they submit a medical certificate indicating the expected date of birth. These benefits include a full paid leave of at least 12 weeks – which was raised up to 14 weeks, according to Convention No. 183 of 2000 mentioned above – and a mandatory period of leave after the birth, not less than six months.

The leave taken before the expected date can be extended between the expected and the actual date of delivery, without decreasing the period of compulsory leave following delivery. The leave granted under these conventions does not affect the annual leave normally granted to all workers.

The maternity protection system also prohibits the dismissal of working mothers during pregnancy or during maternity leave, unless it is proven that they have engaged in other work during the said leave.

VI. Measures to protect children in the workplace

- 36.** Article 10(3) of the ICESCR obliges states parties that *“Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law.”*

- 37.** In addition, Article 32 of the Convention on the Rights of Children also requires states parties to recognize the *“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.”* States parties are also obliged, according to the second paragraph of the same Article 32, to take legislative, administrative, social and educational measures to ensure the implementation” of this right, in particular:

“(1) Provide for a minimum age or minimum ages for admission to employment;

(2) Provide for appropriate regulation of the hours and conditions of employment;

(3) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.”

38. ILO Convention No. 138 on “Minimum Age” referred to above – along with Convention No. 182 of 1999 concerning the “Worst Forms of Child Labor” – are the authoritative references of the international standards for the protection of children from economic exploitation. Under this convention, ten previous international labor conventions were reviewed.

39. The child protection system can be summarized, with reference to the said convention, in the following points and conditions:

- The minimum age for employment must not be less than the age of compulsory education, and in all cases below 15 years of age – and in less developed countries 14 years of age. An exception is work performed by juveniles in institutions where the family members work under the authority of their fathers, mothers or guardians, provided that the working conditions have no negative impact on the health, physical and mental development and education of these children. The age of employment of children is reduced to 13 years of age in light agricultural work that does not harm their health and development and does not affect their school attendance.
- The prohibition of employing juveniles under the age of 18 years in all types of work which, by their nature or circumstances, can endanger their health, safety or morals. The types of work referred to in the preceding paragraph are to be determined by national law after consulting relevant employers’ and workers’ organizations.
- States must reduce the working hours of children compared to other workers, with the weekly working hours being distributed over not more than six working days followed by a compulsory rest day with full pay.
- Daily working hours must include a period of rest of not less than one hour, and juveniles must not work continuously for more than four hours.
- The prohibition of employing juveniles in overtime or night shifts other than those determined by a decision from specialized authorities issued after consulting relevant employers’ and workers’ organizations.
- The hours spent by children in training should be considered as part of official working hours.
- The prohibition of employing children during weekly rest periods, holidays and other leave days.
- The prohibition of employing juveniles in remote and distant areas.
- Employers are required to provide healthy and safe working environments for children in accordance with the conditions and circumstances determined by national laws after consulting relevant employers’ and workers’ organizations.

- The prohibition of employing children in hard labor, harmful industries and hazardous work, which are to be determined by national laws after consulting relevant employers' and workers' organizations.
- The recognition of children's right to an annual leave of thirty days for each effective working year, with full enjoyment of their specified time, and the prevention of children or their guardians from waiving any part of it with or without compensation.
- Employers are required to establish a register of children employed and their social and professional status, indicating the name of the child, his or her age, guardian, date of employment, place of residence and any other data determined by national laws.
- Employers are required to perform the preliminary medical examination on children and the periodic medical examination whenever it is necessary to ascertain their fitness, and to open a health file for each child that reports on his or her health issues.
- Employers are required to reveal in a conspicuous place in the workplace the nature of their child labor system.
- Employers are required to provide the child with a fair wage for the work performed and no less than the remuneration paid to other workers employed in similar circumstances.

PART TWO - SCOPE AND NATURE OF STATE OBLIGATIONS IN IMPLEMENTING HUMAN RIGHTS IN THE WORKPLACE

I. The scope of state obligations: obligation to respect, obligation to protect, and obligation to fulfill

40. With reference to the provisions of Article 2, Paragraph 1 of the ICESCR, it is incumbent upon each state party to the Covenant to *“to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”*

41. The CESCR has identified, in the Limburg Principles on the implementation of the said international covenant,⁵ the content of each state party’s obligations, summarizing them as follows:

- *“to take steps ...”*: This means that all states parties have an obligation to begin immediately to ensure full realization of the rights contained in the Covenant. The Committee emphasized that measures that are deliberate, tangible and clearly intended to fully implement the rights must be taken into account within a reasonably short period of time after the Covenant’s entry into force for the states concerned.
- *“through international assistance and cooperation...”*: The Committee emphasized on the essential role played by both international assistance and cooperation when it comes to facilitating the full exercise of economic, social and cultural rights; and stressed that international cooperation for development, and thus the exercise of economic, social and cultural rights, is an obligation incumbent upon all states, and without it the full enjoyment of economic, social and cultural rights would have been unfulfilled for many countries. Specifically, international cooperation and assistance must focus on the establishment of a social and international order in which the rights and freedoms contained in the Covenant can be fully exercised.⁶
- *“... to the maximum of its available resources ...”*: The Committee declared that even if the available resources proved insufficient, the obligation remained on states parties to strive to ensure respect for the relevant rights according to their particular circumstances, in particular the protection of the rights of the most vulnerable groups. In determining whether adequate measures have been taken for the realization of economic, social and cultural rights, attention has to be paid to equitable and effective use if and access to the available resources.⁷

⁵ See UN Doc. E/C.12/2000/13, Paragraph 16.

⁶ Op. cit., Paragraph 30.

⁷ Op. cit., Paragraphs 11 and 12.

- *“... to achieve progressively the full realization of the rights ...”*: The Committee noted that the concept of progressive realization of rights was a way of recognizing that the full exercise of economic, social and cultural rights could not generally be achieved in a short period of time. However, this should under no circumstances be interpreted as a right of states to delay efforts to exercise rights or to reject the obligation to “take steps” indefinitely. In fact, states should make most effective use of resources in their possession, however small. In addition, despite the duty of progressive realization, certain obligations under the Covenant, such as the prohibition of discrimination, must be promptly and fully applied by states.
 - *“... by all appropriate means, including particularly the adoption of legislation.”*: This means that measures adopted in this field – as well as legislation – may include judicial remedies, administrative measures, and economic and social measures.
- 42.** On the other hand, on the basis of the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights,⁸ each state party abides to any of the rights enshrined in the said international covenant with three fundamental levels of obligation: to respect, to protect, and to fulfill.
- **Obligation to respect**: States are required to refrain from the interference with the enjoyment of the rights enshrined in the ratified ICESCR – including labor rights – and to refrain from any act that could amount to direct violation by the state or by any official body affiliated with it.
 - **Obligation to protect**: States are supposed to prevent the violation of labor rights by others. As directly bound by the ICESCR and other relevant international instruments related to labor rights, states commits themselves to the same degree of obligation to ensure respect for those rights by people under their jurisdiction.
 - **Obligation to fulfill**: This undoubtedly refers to a larger list of legislative, administrative and judicial obligations incumbent upon states parties as per the ICESCR, requiring them to take certain legislative, administrative, and judicial measures, develop monitoring, coordination and follow-up mechanisms, allocate the required budget, and other mechanisms and programs aiming to integrate labor rights into the methods and measures adopted by various – public and private – apparatuses.

⁸Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, UN Doc. E/C.12/2000/13.

II. Obligations of states towards business activities and the private sector

- 43.** States parties are primarily responsible for the realization of all economic, social and cultural rights, including labor rights, and it is their responsibility to respect, protect and fulfill them. But other actors or entities also bear responsibility. This is particularly the case with non-governmental entities, including national and non-national businesses and international organizations, through which many states act collectively.⁹
- 44.** As noted above, Article 2, Paragraph 1 of the ICESCR provides that international assistance and cooperation are ways in which states can implement economic, social and cultural rights. In addition, the Limburg Principles provide that “must be directed towards the establishment of a social and international order in which the rights and freedoms set forth in the Covenant can be fully realized.” In addition, such cooperation must take place irrespective of differences in political, economic and social systems adopted by the states, and it shall be based on the sovereign equality of the states. And while states should cooperate to realize the rights recognized in the Covenant, the role of international organizations and the contribution of non-governmental organizations shall be kept in mind.¹⁰
- 45.** The CESCR committee has highlighted some of the key areas relevant to the international obligations of the Covenant. The following is a non-exhaustive list of these areas (e.g. see UN Doc. E/C.12/1999/10 Paragraph 56, UN Doc. E/1992/23 Paragraph 18, and UN Doc. E/C.12/1999/5 Paragraphs 36 and 37):
- With regard to the negotiation and ratification of international conventions, states parties must take measures to ensure that these instruments do not have negative effects on economic, social and cultural rights.
 - States are obliged to ensure that economic, social and cultural rights are duly considered in their actions as members of international organizations, particularly in international financial institutions.
 - International financial institutions that undertake structural adjustment measures must ensure that these measures do not jeopardize economic, social and cultural rights.
 - States must respect the economic, social and cultural rights existing in other countries and provide the necessary assistance when applicable.
- 46.** In General Comment No. 24 (2017) on state obligations under the ICESCR covenant in the context of business activities, the CESCR committee highlighted the important role played by businesses and the private sector in the realization of economic, social and cultural rights by contributing to the creation of employment opportunities and – through private investment – to development. However, the Committee expressed its concern regarding states’ failure to ensure compliance, under their jurisdiction, with internationally recognized human rights norms and standards.

⁹ Op. cit. Paragraphs 16-19.

¹⁰ Limburg Principles, op. cit. Paragraphs 29-34.

PART THREE: THE REALITY OF LABOR RIGHTS IN SOUTHERN MEDITERRANEAN COUNTRIES: THE CURRENT CONSTITUTIONAL, LEGISLATIVE AND POLITICAL FRAMEWORK (THE CASES OF TUNISIA, MOROCCO AND JORDAN)

47. Considering that states' ratification of international human rights instruments promotes enjoyment of human rights and fundamental freedoms in all aspects of life, including labor rights, an interesting evolution in the pattern of ratification on international human rights instruments related to labor rights by Southern Mediterranean countries is noticed **(I)**.

However there remains a reluctance concerning the constitutional status of labor rights in Southern Mediterranean countries **(II)**.

In reality, the relative development of the ratification pattern of labor-related international human rights instruments, including the fundamental ILO conventions on human rights at work, should not hide the difficulties and challenges faced by some of these states in the effective realization of the whole scope of labor rights contained in these international conventions. In this regard, distinction should be made between the formal procedures resulting from ratifying international instruments and their implementation on the ground. Some of problems with the implementation are attributed to political choices, the lack of will or the inability to implement an acceptable policy **(III)**.

I. The evolution of ratification pattern regarding labor-related international human rights instruments in Southern Mediterranean countries

48. Among 165 countries in the world, all Southern Mediterranean states, along with the rest of the Arab states with the exception of Comoros (signed without ratification), Oman, Qatar, Saudi Arabia and UAE, have ratified the International Covenant on Economic, Social and Cultural Rights, as well as a number of basic international human rights instruments.¹¹

¹¹ - All Southern Mediterranean states and the rest of the Arab states with the exception of Comoros (signed without ratification), Oman, Qatar, Saudi Arabia and UAE, have ratified the International Covenant on Economic, Social and Cultural Rights, out of 165 states in the world;
- Southern Mediterranean and the rest of the Arab states have ratified the International Convention on the Elimination of All Forms of Racial Discrimination;
- Southern Mediterranean and the rest of the Arab states, with the exception of Oman and Sudan (signed without ratification), have ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, out of 162 states in the world;
- Southern Mediterranean and the rest of the Arab states, with the exception of Somalia and Sudan, have ratified the Convention on the Elimination of All Forms of Discrimination against Women, out of 189 states in the world;
- All Arab States have ratified or acceded to the Convention on the Rights of the Child out of 196 states in the world;
- Southern Mediterranean and the rest of the Arab states have ratified the Convention on the Rights of Persons with Disabilities, out of 174 states in the world;
- Only 6 Southern Mediterranean states, out of 51 states in the world, have ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which are Morocco, Algeria, Egypt, Libya, Syria and Mauritania;
- Only 6 Southern Mediterranean states as well, out of 57 states in the world, have ratified the International Convention for the Protection of All Persons from Enforced Disappearance, and these are Morocco, Algeria, Iraq, Lebanon, Mauritania and Tunisia.

49. Also noticeable is an evolution in the pattern of ratification of ILO Conventions by Southern Mediterranean states. This is reflected in the following data:

- All Southern Mediterranean and the rest of the Arab states, among the 178 states worldwide, have ratified ILO Convention No. 29 of 1930 on “Forced Labor”;
- All Southern Mediterranean and the rest of the Arab states, among the 175 states in the world, have ratified ILO Convention No. 105 of 1957 on “Abolition of Forced Labor”;
- All Southern Mediterranean states, except **Jordan and Morocco**, and the rest of the Arab states, except Bahrain, Saudi Arabia, Iraq, Lebanon, Oman, Qatar, UAE and Sudan, have ratified among the 153 states worldwide the ILO Convention No. 87 of 1948 on “Freedom of Association and Protection of the Right to Organize”;
- All Southern Mediterranean and the rest of the Arab states, among the 164 worldwide and with the exception of Bahrain, Saudi Arabia, Oman, Qatar and the UAE, have ratified the ILO Convention No. 98 of 1949 on “Right to Organize and Collective Bargaining”;
- All Southern Mediterranean and the rest of the Arab states, except Bahrain, Oman, Qatar and Kuwait, were among the 171 worldwide that have ratified the ILO Convention No. 100 of 1951 on “Equal Remuneration”;
- All Southern Mediterranean and the rest of the Arab states, with the exception of Oman, were among the 172 countries worldwide that have ratified ILO Convention No. 111 of 1958 on “Discrimination (Employment and Occupation)”.
- All Southern Mediterranean and the rest of the Arab states, among 168 countries in the world, have ratified ILO Convention No. 138 of 1973 on “Minimum Age”;
- Finally, Southern Mediterranean and the rest of the Arab states, among 180 countries in the world, have ratified ILO Convention No. 182 of 1999 on “Worst Forms of Child Labor”.

II. Reluctance regarding the current constitutional status of labor rights in Southern Mediterranean countries (the cases of Tunisia, Morocco and Jordan)

(A) Morocco and Tunisia are Southern Mediterranean countries whose constitutions recognize the precedence of international human rights instruments over domestic legislation

50. In this regard, the study states that only 4 Arab countries (Algeria, Mauritania, Morocco and Tunisia) explicitly recognize in their constitutions the precedence of international human rights instruments over domestic legislation.

Morocco

51. As stated in the preamble to the New Constitution adopted by a referendum on 1 July 2011, which represents “an integral part of this Constitution,” the Kingdom of Morocco reaffirms and pledges to: “... make international conventions, as ratified by Morocco and within the provisions of the Constitution, the Kingdom’s laws and its deeply rooted national identity,

take upon their publication precedence over national legislation, while also working towards the appropriation of such legislation as required by that ratification.”

Tunisia

52. Article 20 of the new Constitution, **adopted** on 27 January 2014, states that “*International agreements approved and ratified by the Assembly of the Representatives of the People have a status superior to that of laws and inferior to that of the Constitution.*” The first overview of the formulation of this article gives the impression that the new constitution has retained the principle of Article 32 of the 1959 constitution, which responded to the repeated appeals made by the practitioners and civil society organizations concerned with and calling for prioritizing international treaties over domestic laws. This appears positive relative to the two previous formulations of the draft constitution.

53. Concerns remain, however, with regard to the stipulation that international treaties rank “... *inferior to that of the Constitution,*” which may constitute a form of general reservation intended to nullify all international human rights instruments in all matters that may be deemed – by concerned legislative, judicial and administrative institutions – unconstitutional.

This matter is very serious, for it can lead to the interpretation of Article 20 in a manner that represents a decline in the emphasis on the precedence of international instruments and their direct applicability by the courts.

(B) Jordan is a country where there is still uncertainty regarding the legal status of international human rights instruments

54. International treaties do not seem to take precedence over domestic laws. Article 33(2) of the Jordanian Constitution of 1952 stipulates that “treaties and conventions which ... affect public or private rights of Jordanians shall only be effective if they are approved by the National Assembly.”

III. The current constitutional status of labor rights in Southern Mediterranean countries (the cases of Tunisia, Morocco and Jordan)

55. With the exception of the new Tunisian (and Algerian¹²) constitutions, labor rights – as well as other economic, social and cultural rights in general – have no important status in the

¹² The Algerian Constitution of 28 November 1996 contains, in Article 4 “Rights and freedoms,” a number of economic, social and cultural rights, including those related to the labor, the life of workers and their family members such as:

- The right to healthcare for citizens (art. 54);
- The right to work for all citizens (art. 55);
- The right to organize for all citizens (art. 56), which includes the right to take strike action as long as it is exercised “... within the law.” The law may prohibit the exercise of this right or limit it to “... the fields of national defense and security, or in all public services or enterprises of vital benefit to society” (art. 57).

current constitutions of Southern Mediterranean countries, which include only generic references that do not rise to the level of binding rights on states as recognized in the ICESCR covenant.

(A) The current constitutional status of labor rights in the Tunisian Constitution

56. Unlike the Tunisian Constitution of 1959, where only its preamble recognized the republican system as the best guarantor of human rights and of citizens' right to work, health and education, adding in Article 8 that "... *the right to organize is guaranteed...*," the new constitution **adopted** on 27 January 2014 included explicit clauses that consolidate – in a generally sound manner – a set of human rights recognized by international instruments, including those related to labor, the life of workers and their family members rights such as:

- The right to unionize, including taking strike action, is guaranteed and recognized without limitation. Article 36 of the constitution states that "The right to join and form unions is guaranteed, including the right to strike. This right does not apply to the national army. The right to strike does not apply to the forces of internal security and to customs officers."
- The right to health and to social assistance (art. 39);
- The right to work, for every citizen, male and female, and the state shall take the necessary measures to guarantee it on the basis of competence and fairness. All citizens, male and female, shall have the right to decent working conditions and to a fair wage (art. 40).

(B) The current constitutional status of labor rights in the Jordanian Constitution

57. The 1952 Constitution of Jordan did not provide a clear and specific definition for the range of economic, social and cultural rights, including labor rights, with the exception of certain articles such as Article 6(b) which indicates that "The State shall ensure, to the extent permitted by its available resources, work, education, wellbeing and equal opportunities for all Jordanians."

(C) The current constitutional status of labor rights in the Moroccan Constitution

58. Article 31 of the new constitution of July 2011 provides as follows: "*The State, public establishments and territorial collectivities shall mobilize all the means available to facilitate the equal access of citizens, male and female, to the rights to:*

- *treatment and healthcare;*

- The right to ensure "...living conditions for citizens who have not reached the working age, who cannot work, and who are completely unable to work..." (art. 59).

- to social protection, medical coverage, and to the mutual or organized joint and several liabilities of the State; ...
- to vocational training and benefits of physical and artistic education;...
- to work and to the support of public authorities in job searches or self-employment;
- the access public jobs according to merit;...”

IV. The difficulties facing Southern Mediterranean countries in the effective realization of work rights: Observations and recommendations of the CESCR committee (the cases of Tunisia, Morocco and Jordan)

Jordan

59. Jordan has not reviewed the current status of labor rights before the CESCR committee recently, with the latest review going back to the year 2000, when the Committee considered the second periodic report of Jordan on the implementation of the ICESCR at its meetings on 15 and 16 August 2000 and adopted its concluding observations at its meeting on 29 August 2000.

At that time, the Committee particularly expressed concern over:

- “... the persistence of high levels of unemployment and poverty in the country”;
- “... non-Jordanian workers are exempted from minimum wage provisions, and denied participation in trade union activities and are excluded from the social security system”;
- The 1996 Labor Code does not provide any protection for persons working in family-owned and agricultural enterprises, and domestic labor. It is precisely with respect to work in these areas that protection is most needed because it often involves hazardous working conditions, and largely female and child workers ...”;
- “... restrictions imposed on the right of public-sector employees, notably those working in the health and educational services, to participate in trade union activities. Furthermore, the Committee is concerned that article 100 of the Labor Code preempts the right of workers to strike.”¹³

60. In the meantime, the Committee on The Abolition of Discrimination Against Women expressed its concern “... about the limitation of sexual harassment in workplace to cover only cases where the perpetrator is the employer.”¹⁴ It also expressed concern at “... economic and physical exploitation of women migrant workers; the lack of regular inspection visits to monitor their working conditions; the lack of shelters for victims of

¹³ See UN Doc. E/C.12/1/Add.46, Paragraphs 18-21.

¹⁴ See UN Doc. CEDAW/C/JOR/CO/5, Paragraph 37.

exploitations; and, the overall ineffective enforcement of the labor Code on migrant workers.”¹⁵

61. The Committee Against Torture also expressed its concern *“about reports of widespread abuse of female migrant domestic workers, the vast majority of whom come from South and Southeast Asia, and who are physically, mentally and sexually abused.”*¹⁶

62. In the January 2014 report of the Working Group on the Universal Periodic Review of the Human Rights Council, following its twenty-fifth session, Jordan expressed support for the following recommendations made during the interactive dialogue:

- *“Continue to take measures to protect children against economic exploitation and violence ... and continue efforts to eradicate child labor”;*
- *Strengthen labor protections for all workers in Jordan, with special emphasis on migrants, children, and domestic workers;*
- *Ensure through the Labor Code, as well as in practice, the protection of the rights of all workers in Jordan, regardless of their origin;*
- *Reviewing existing labor laws;*
- *Increase the work on promotion of women’s participation in the labor market;*
- *Increase the protection of female domestic workers through amending systems and procedures;*
- *Redouble the efforts to eradicate poverty and unemployment;*
- *Continue to undertake measures to eliminate poverty and combat unemployment;*
- *Continue to adopt strategies and enforce policies and procedures needed to ensure the protection and the respect of migrant workers; halt all means of discrimination in the workplace; ensure equality in salaries and benefits and ensure the efficiency of the justice mechanisms;*
- *Continue its efforts with a view to ensuring the protection and promotion of the rights of foreigners working in Jordan;*
- *Strengthen efforts to safeguard the rights of women migrant workers...”*¹⁷

63. In contrast, the recommendations below did not enjoy the support of Jordan:

- *“Consider ratifying the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;*

*Consider ratifying International Labor Organization Convention No. 189 (2011) concerning decent work for domestic workers.”*¹⁸

¹⁵ Op. cit., Paragraph 43.

¹⁶ See UN Doc. CAT/C/JOR/CO/5, Paragraph 37.

¹⁷ See UN Doc. A/HRC/25/9, Paragraph 118.

¹⁸ See UN Doc. A/HRC/25/9, Paragraph 120.

Morocco

Unemployment

64. Following its two meetings on 30 September and 1 October 2015 on the fourth periodic report submitted by Morocco on its implementation, the CESCR committee noted the measures taken by the state party to reduce the unemployment rate, but it expressed concern that “... *unemployment continues to have a disproportionate impact on young people and women (arts. 3, 6 and 7)*”.

The Committee therefore recommended that the state party “*strengthen its efforts to significantly reduce the unemployment rate by targeting women and young people, including through retraining programs and vocational and technical training programs, as well as incentives for employers. In this regard, it refers the State party to its general comment No. 18 (2005) on the right to work.*”¹⁹

Minimum wage

65. The Committee expressed concern “*about the disparities between the minimum wage applicable in different sectors of the economy. It expresses its concern about the minimum wage in agriculture, which remains low and does not guarantee a decent living. It notes with concern that the low wages in agriculture have a disproportionate impact on women, who are overrepresented in this sector. It is also concerned that the minimum wage does not apply to domestic workers (art. 7).*”

Hence the Committee recommended that the state party “... *guarantee the application of the national minimum wage in all sectors, public and private, including in the informal economy. It urges the State party to raise the minimum wage in agriculture to a level that guarantees a decent living for workers and members of their families. The Committee recommends that the State party ensure respect for the principle of the legal minimum wage, which must be reviewed periodically and set at a level sufficient to provide a decent standard of living for all workers, whether male or female, and for members of their families.*”²⁰

Informal economy

66. The Committee expressed concern “*about the high percentage of workers employed in the informal economy, despite the measures adopted by the State party to promote registration of businesses. Likewise, the Committee is concerned that workers in this sector and self-employed workers do not enjoy just and favorable conditions of work and are not affiliated to the social security system. In addition, the Committee is concerned about the insufficient*

¹⁹ See UN Doc. E/C.12/MAR/CO/4, Paragraphs 21-22.

²⁰ Op. cit., Paragraphs 25-26.

number of labor inspectors, which affects workers in remote or rural areas in particular (arts. 7 and 9)."

And it therefore recommended that the state party "... strengthen its efforts to regulate the informal economy and self-employment, notably by extending social security coverage to those workers and gradually improving their conditions of work. It further recommends that the State party systematically include the informal sector and rural areas in the operations of the labor inspection services and that it take firmer action to tackle the obstacles to job creation in the formal economy. In this regard, it encourages the State party to refer to the International Labor Organization (ILO) Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204)."²¹

Domestic workers

67. The Committee expressed its concern "... about the bill establishing the conditions of work and employment of domestic workers under which children would be permitted to work from 16 years onwards — a situation which would have a negative impact on their right to education. The Committee is also concerned at the absence of strict measures to secure the full protection of the rights of domestic workers (arts. 7 and 13)."

The Committee consequently recommended that the state party "... adopt the bill establishing the conditions of work and employment of domestic workers. It recommends that the State party ensure that the law adopted sets the minimum age for employment at 18 years and ensures that domestic workers enjoy as just and favorable conditions of work as other workers. It also recommends that the State party put in place an inspection mechanism to monitor the working conditions of domestic workers."²²

Trade union rights

68. The Committee expressed concern "... about the restrictions on the right to strike, particularly the deterrent provisions of article 288 of the Criminal Code, which remain in force, and the administrative obstacles to the formation of trade unions. It also notes with regret the State party's assertion that application of the guarantee of the right to strike is dependent on the enactment of an organic law (art. 8)."

And it therefore recommended that the state party "... bring article 288 of the Criminal Code into line with article 8 of the Covenant and make it easier to establish a trade union. The Committee recommends that the State party adopt legislation on the exercise of the right to strike and on trade unions. Until such time as such legislation is adopted, the Committee invites

²¹ Op. cit., Paragraphs 27-28.

²² Op. cit., Paragraphs 29-30.

the State party to facilitate the establishment of trade unions on the basis of article 8 of the Covenant.”²³

Social security

69. The Committee expressed concern that “... *a large proportion of the active population is not covered by social security, particularly workers in the informal economy and in some private enterprises (art. 9).*”

The Committee hence recommended that the state party “... *continue to roll out the social security system in order to achieve wider coverage of the population. The Committee urges the State party to secure compliance by private enterprises, especially in rural areas, with the obligation of affiliation to the social security system and to improve the social coverage of workers in the agricultural sector, at the same time ensuring that these measures are based on sound institutions and procedures that are accessible to all. The Committee refers the State party to its general comment No. 19 (2007) on the right to social security and its statement on social protection floors (2015).*”²⁴

Tunisia

Right to work

70. Following its consideration of the third periodic report of Tunisia on the implementation of the ICESCR covenant at its meetings held on 22-23 September 2016, the Committee welcomed “... *the steps taken to increase the representation of women in the justice sector, the legislature and the civil service,*” but it nevertheless expressed concern that, despite these measures, “*women remain at a disadvantage in accessing the labor market owing to the fact that provisions designed to enhance work-life balance actually reinforce gender stereotypes and occupational segregation. The Committee is concerned by the gender pay gap and the number of women in unpaid work in the agricultural sector (arts. 3 and 6).*”

Accordingly, the Committee urge the state party to:

“(a) Take targeted measures with regard to women who are at the greatest disadvantage in the labor market, in particular rural women;

(b) Combat occupational segregation and develop tools to assess jobs with a view to raising wages in professions where women have traditionally been overrepresented;

²³ Op. cit., Paragraphs 33-34.

²⁴ Op. cit., Paragraphs 35-36.

(c) Increase the representation of women in decision-making positions in public entities and better promote the balanced representation of the sexes in businesses, including through temporary special measures.”²⁵

Unemployment

71. While commending the adoption of the National Employment Strategy in 2012, the Committee expressed concern that “... *unemployment remains high, in particular in the regions of Sidi Bu Zayd, Qafsah and Qasrayn, and that 37 per cent of jobs, according to some estimates, are in the informal economy (arts. 6 and 7).*”

The Committee therefore recommended that the state party “... *step up the fight against unemployment by targeting the most affected regions and the most disadvantaged E/C.12/TUN/CO/3 GE.16-20066 5 groups. The Committee further recommends that the State party take steps to regularize the situation of workers in the informal sector by progressively improving their working conditions and by extending social security schemes to include them. Strengthening the mandate of the labor inspection services in order to promote regularization is a priority in this regard.*”²⁶

The right just and favorable conditions of work

72. The Committee was concerned that “*Although a guaranteed inter-occupational minimum wage has been set pursuant to article 134 of the Labor Code, several categories of workers are in situations where this wage is not applied. Moreover, in the agricultural sector, where a different guaranteed minimum wage is in force, unpaid work remains common. The Committee is concerned at the working conditions in the textile industry and the lack of resources allocated to labor inspection for the periodic assessment of workplace hygiene, health and safety. It is astonished that the mandate of the labor inspection services does not extend to the informal sector, thereby exposing workers in this sector to exploitation and hazardous working conditions (arts. 3, 6 and 7).*”

The Committee therefore urges the state party “...*to strengthen the capacity of the general labor inspectorate by endowing it with the necessary financial and human resources to fulfil its mandate. It recommends that the State party adopt appropriate measures to ensure that all allegations of violations of the right to work committed by employers are duly investigated and, where appropriate, that penalties are applied. The Committee also recommends that the State party extend labor inspections to the informal sector in order to safeguard the right to just and favorable conditions of work for all. It refers the State party to its general comment No. 23 (2016) on the right to just and favorable conditions of work.*”²⁷

²⁵See UN Doc. E/C.12/TUN/CO/3, Paragraphs 28-29.

²⁶Op. cit., Paragraphs 30-31.

²⁷Op. cit., Paragraphs 34-35.

The right to social security

73. The Committee noted with concern that *“over 50 per cent of the workforce does not have social security coverage. In addition, 37 per cent of workers are employed in the informal sector and do not currently enjoy any guarantees in terms of wages, working hours, health and safety or social benefits (arts. 7 and 9).”*

The Committee thereupon urges the state party *“...to continue its efforts to set up a social security system that guarantees broad social coverage, providing sufficient benefits to all workers and all disadvantaged persons and families in order to ensure they achieve an adequate standard of living. In this connection, the Committee refers to its general comment.”*²⁸

²⁸Op. cit., Paragraphs 36-37.



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