

Addressing your themes on (1) Apply human rights online and (2) Promote regulation of artificial intelligence

This brief suggests that our digital future should pay due regard to our right to work (provided in, e.g., Article 6 of the International Covenant on Economic, Social and Cultural Rights).¹

Digital developments (including AI) undeniably affect the right to work of many. Nevertheless, technological, digital and online developments should not unduly undermine the right.

Core principles:

- 1. Recognizing that digital developments (including AI) affect the right to work of many.
- 2. Recognizing that the **right to work should play an unignorable and pivotal role in the policy process** and balancing exercise on regulating Al
- 3. The right to work needs to be upheld and emphasized as <u>an obligation for</u> <u>Governments</u> to achieve <u>sustainable</u> socio-economic development. It is legally wrong to ignore the right to work when formulating policies.
- 4. Art.16 ICESCR requires states parties to submit <u>Periodic Reports</u> to the United Nations Committee on Economic, Social and Cultural Rights, "<u>on the measures which they have adopted</u>, and also the progress made in achieving the observance of the rights".

¹ ASEAN Human Rights Declaration, Art.27: right to work

Universal Declaration of Human Rights, Art.23: right to work

European Social Charter, Art.1: Parties undertake to achieve a level of employment that is as high and as stable as possible

5. Actions need to be taken to protect the right, and in case of impossibility, compensate for the loss of the right.

Commitments:

On the role of the United Nations

- 1. The reviewing UN Committee on ESCR needs to pay extra and specific attention to what governments have done for the right to work.
- 2. Update the UN General Comment No. 18 in light of the Fourth Industrial Revolution. In Martin Kwan's work, it is explained that:

'U.N. General Comment No. 18 contains vague statements that could be understood to suggest differently. This inconsistency may lead to confusion and uncertainty.

In particular, the U.N. Comment states that States have the obligation to "respect, protect and fulfil[I]." It problematically explains that the "obligation to protect requires States parties to take measures that prevent third parties *from interfering* with the enjoyment of the right to work." Strictly speaking, automation amounts to interference, as it reduces access to work. Therefore, this statement essentially requires States "to take measures" to halt [digital developments and AI].

At the same time, creating the threshold with the wording 'interference' is questionable, because it is too low a threshold. The word "interference" is of legal significance. Notably, the word "interference" is not used in the ICESCR itself, but it is used in the ICCPR to denote a different degree of protection. For example, article 17 of the ICCPR provides that there should be no "arbitrary or unlawful interference" with privacy. By contrast, article 19 provides that everyone has "the right to hold opinions without interference." The more stringent wording of article 19 reflects that it is non-derogable. The careful choice of words in the ICCPR evidences an intentional parallel because both the ICCPR and the ICESCR are based on the UDHR and they are adopted in the same Resolution. Hence, the U.N. Committee which drafted the U.N. General Comment No. 18 in

2006 presumably must be well-aware of the subtle meaning of the word "interference."

Applying this observation, the General Comment No. 18 has set a highly dubious threshold. It does not qualify the level of interference, such as "arbitrary interference." If any interference should be prevented, it would mean that automation must be stopped, even if automation is done with the benign motive of benefiting the overall economy with improved efficiency. This cannot be right, because by analogy, if a highly capable person can do the work of four people alone and leave them unemployed in a hypothetical economy with only five available jobs, the highly capable person is similarly "interfering" with the right to work of others. However, it would be illogical to say that the highly capable person should be prohibited because of the highly capable person's skill set. Apart from uncertainty, General Comment No. 18 has set an outmoded goal that has become increasingly less achievable. It expects full employment. However, the economic reality, or the ideal world created by automation, is moving towards eliminating the need for humans to work.'2

On the role of governments

- 3. The governments **<u>cannot take a laissez-faire approach</u>** to technological development and its impact to our right to work. Art.6 requires governments to take steps to safeguard our right to work.
- 4. In reparation to the loss of the right to work, governments need to (a) provide training and guidance and (b) an adequate compensation fund for loss of employment.
- 5. Explore and plan for the feasibility and future necessity of a Universal Basic Income (UBI).
- 6. Governments should take the lead to promote a new corporate social responsibility that urge companies to pay attention to the impact to employment they generate from disruptive digital applications

² Martin Kwan, "Automation and the International Human Right to Work" (2021) Emory International Law Review.

On the role of corporations

- 7. Strong justifications for imposing a social duty on corporations to offer solutions (e.g. providing training)
 - Companies are the ones who deploy and benefit most from digital applications and AI.
 - The U.N. Guiding Principles for Business and Human Rights suggest companies help address human rights consequence.
 - Corporate social responsibility.

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https://www.youtube.com/watch?v=5Z6eY0mWt7A&pp=ygUPbWFydGluIGt3YW4gUkFG

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