Employee Representation in the New World of Work:
The Dynamics of Rights, Voice, Performance and Power

PROPOSAL FOR THEMATIC CONTRIBUTION
Question 3: What are the emerging models for employee rights, voice and representation?

Towards Decent Work for All: A Holistic Human Rights Model

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Abstract

Globalization and the more recent collapse of the global economy present tremendous challenges but also opportunities for advancing human rights, including the right to decent work. The failure of neo-liberal policies to advance human development and reduce poverty, now widely acknowledged,¹ has coincided with the emergence of economic and social rights into the mainstream human rights agenda. Marginalized during the cold-war period, economic and social rights were reinvigorated by human rights advocates beginning in the mid-1980s.² The most recent achievement was the adoption by the UN General Assembly in December 2008 of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR), providing, for the first time outside of the International Labour Organization (ILO), a complaint mechanism at the global level for violations of economic and social rights.³

While the work rights covered by the ICESCR and the new Optional Protocol overlap with the Pillars of the ILO Decent Work Agenda, as well as with the rights in ILO Conventions, there are important differences. The Four Pillars of the ILO Decent Work Agenda are (1) employment promotion, (2) social protection, (3) social dialogue, and (4) rights at work.⁴ Significantly, the rights at work are limited to the 1998 four core labour standards – elimination of forced labour, prohibition of child labour, elimination of discrimination in employment and freedom of association.⁵ Although there are human rights legal obligations underpinning all four Decent Work Pillars, the Decent Work Agenda transforms the other three Pillars into mere political commitments. Moreover, the ILO Conventions are highly selective in the workers that they protect.

⁵ ILO Declaration of Fundamental Principles and Rights at Work, 37 I.L.M. 1233(June 19, 1998).
In contrast, the work rights in the ICESCR are universal. They cover all human beings regardless of their employment status – formal or informal, paid or unpaid – and without regard to their union status or the sector in which they work. Further, the ICESCR has been ratified by 160 countries, while ILO Conventions on the same subjects covered by the Covenant often have significantly fewer ratifications. For example, only 101 countries have ratified Convention 122 concerning (full) employment policy and only 34 countries have ratified Convention 158 on (justification for) termination of employment. All 160 parties to the ICESCR have legal obligations for ensuring the enjoyment of the human rights underlying these ILO Conventions. Additionally, the parties are required to report regularly to the Committee on Economic, Social and Cultural Rights on the legislative, judicial, administrative and other measures they have taken to implement economic and social rights protections, as well as on the progress made in the enjoyment of these rights within their jurisdiction.

In this context, this paper explores the synergies that might be possible by taking a holistic human rights approach to decent work. This approach helps to reframe decent work beyond the political commitments in the ILO Decent Work Agenda as legal obligations under international and domestic human rights law. Additionally, the human rights approach embraced in the Universal Declaration of Human Rights (UDHR) and the ICESCR includes the three key principles of universality, interdependence and equality of all human rights. These principles help to de-compartmentalize decent work-related ILO Conventions and Pillars, integrating them into a holistic human rights framework. In this way, the holistic human rights model presents potential strategies for advancing the right to decent work.

The paper begins by outlining the similarities between the ILO social justice model and the holistic human rights model for achieving decent work. For purposes of comparison, it then explains in some detail the Four Pillars of the ILO Decent Work Agenda, as well as the three key features of the holistic human rights approach – universality, interdependence and equality of all human rights. To illustrate the potential value of the holistic human rights model, the paper then identifies four strategies for using this model to achieve decent work. These strategies are (1) defining decent work holistically, (2) recognizing the interdependence of rights and of people in policymaking for decent work, (3) using human rights-based methods and tools for policymaking on decent work, and (4) building coalitions among people and organizations by linking decent work to other human rights movements. Based on these illustrations, the paper concludes that there is great potential for improving policymaking on decent work by adopting a holistic human rights model.

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8 At this point, it still remains to be seen how many countries will ratify the Optional Protocol to the ICESCR, subjecting themselves to the complaints mechanism, and how quickly they will do so.