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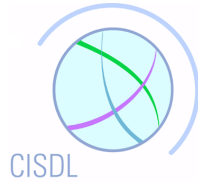


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present:

Making Jobs Work: The Right to Work, Jobs and Green Structural Change

Sean Stephenson



MAKING JOBS WORK: THE RIGHT TO WORK, JOBS AND GREEN STRUCTURAL CHANGE

Sean Stephenson¹

*Climate change challenges every corner of the 21st century.*²

1. Introduction

For developed States to fulfil their present and future climate change obligations large-scale domestic emissions reductions will be necessary.³ The international community is slowly moving toward a post-2012 climate agreement. For indications as to the scale of developed state obligations, one can look to other international instruments. For example, the G8's 2009 *Declaration on Responsible Leadership for a Sustainable Future* supports the 'goal of developed countries reducing emissions of greenhouse gases in aggregate by 80% or more by 2050 compared to 1990 or more recent years'.⁴ In short, States will be transitioning to low carbon economies. More specifically, developed States, as a result of present and future emission reduction obligations, must make the transition to low carbon economies. Put differently, developed States must go through a green structural change.⁵ While there has been vast academic literature on the positive opportunities that this structural change will create,⁶ it would be a mistake to take this optimism too far.

Green structural change will affect workers and their rights. Recently, there has been a growing recognition that, while many jobs stand to be gained through green structural change, some jobs across the economies of developed States will be adversely affected. In economic terms, this

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² Anthony Giddens, 'The Politics of Climate Change: National Responses to the Challenge of Global Warming', online: http://www.policy-network.net/publications_detail.aspx?ID=2590 (2008) Policy Network at 3.

³ While domestic emissions reductions targets may be met solely through the use of flexible measures for some developed States this would contravene the principle of supplementarity in articles 6, 12, and 18 of the Kyoto Protocol.

⁴ G8 Leaders Declaration: 'Responsible Leadership for a Sustainable Future', July 2009, online: G8 L'Aquila Summit: < http://www.g8italia2009.it/static/G8_Allegato/G8_Declaration_08_07_09_final,0.pdf >, at art. 65.

⁵ The International Labour Organization defines structural change as 'long-term and substantial change taking the form of shifts in demand, of the emergence of new sources of supply, national or foreign (including supplies of goods from countries with lower costs of production) or of new techniques of production, or of changes in the size of the labour force'. ILO, 'Recommendation No. 122, Recommendation concerning Employment Policy' in *Conventions and Recommendations Adopted by the International Labour Conference, 1919-1966* (Geneva: International Labour Office, 1966), paragraph 13(2).

⁶ OECD, 'Interim Report of the Green Growth Strategy: Implementing our Commitment for a Sustainable Future', Meeting of the OECD Council and Ministerial Level, Paris 2010, at para 12 [OECD, Interim Report]; Roger H. Bezdek, 'Estimating the Jobs Impacts of Tackling Climate Change', American Solar Energy Society, 2009, online: < http://files.eesi.org/ases_jobs_102209.pdf >, at iv; Aldersgate Group, 'Mind the Gap: Skills for the Transition to a Low Carbon Economy' (London, 2009) at 6; European Trade Union Confederation *et al.*, 'Climate Change and Employment: Impact on Employment in the European Union-25 of Climate Change and CO2 Emission Reduction Measures by 2030' (2007) at 37 [ETUC]; Ana Belén Sanchez & Peter Poschen, 'The social and decent work dimensions of a new Agreement on Climate Change: A Technical Brief' (June, 2009); OECD, Environment Policy Committee, *Environment and Employment: An Assessment*, ENV/EPOC/WPNEP(2003)/11.FINAL (2004) at 72-73.

adverse impact is simply considered as a ‘policy challenge’.⁷ However, this is also a human rights issue. While new *green jobs*⁸ will emerge, some jobs will be lost. This has the potential to create employment insecurity, a type of insecurity that is included within the purview of the right to work. To harmonize developed State obligations under international law, these States need to take a sufficiently broad approach to implementing their climate change obligations, which includes considering individuals who are adversely affected by green structural change.

2. Respecting, Protecting and Fulfilling the Right to Work

The right to work is expressed in its most comprehensive form in article 6 of the International Covenant on Economic Social and Cultural Rights.⁹ This right includes, among other protections, the right to decent work,¹⁰ defined as the basic ‘conditions of freedom, equity, security and human dignity’ in which the exercise of all work should be carried out.¹¹ The Committee on Economic, Social and Cultural Rights [CESCR] has expressed that ‘[t]he exercise of work in all its forms and at all levels requires the existence of elements such as employment availability, labour market accessibility, and acceptability and quality of working conditions.’¹²

The Committee’s general comment 18 also details the actions and omissions for States to respect, protect and fulfil the right to work. Firstly, the obligation to respect the right to work includes the prohibition of forced labour and the cessation of denying equal access to decent work for all persons. Siegel states that this calls to a comprehensive approach to social and economic policies that, with respect to the right to work, include employment opportunity and security.¹³ Consequently, the obligation to respect the right to work will be violated if a State does not take a comprehensive approach to employment policy. Secondly, the obligation to protect ensures equal access to work and training. The obligation to protect will be violated if a State does not take all the necessary measures to safeguard persons from third party violations of the right to work.¹⁴ Lastly, the obligation to fulfil requires States to adopt a national policy on the right to work aimed at stimulating economic growth and development while overcoming unemployment and underemployment, in order to achieve full employment.¹⁵ While such a policy does not need to *guarantee* work for every person that is available for, and willing to work, States must take concrete steps to implement policies aimed at ensuring work for all who are

⁷ OECD, Interim Report, *ibid.*, at para 12.

⁸ While the definition of ‘green jobs’ is contentious, the term is used here ‘as a job which reduces the negative impacts made on the environment, relative to the status quo.’ See: Alicia Pearce & Frank Stilwell, ‘Green-Collar Jobs: Employment Impacts of Climate Change Policies’ (2008) *Journal of Australian Political Economy* at 131.

⁹ *International Covenant on Economic Social and Cultural Rights*, Can. T.S. 1976 No. 46, 993 U.N.T.S. 3 (entered into force 03 January 1976).

¹⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18, at para. 31 [CESCR, General Comment 18] at para. 6, 7, 9.

¹¹ International Labour Organization, “Report of the Director-General: Decent Work Decent” 87th Session Report (June 1999), online: ILO.

¹² CESCR, General Comment 18, *supra* note 10, at para. 12.

¹³ Richard Siegel, ‘The Right to Work: Core Minimum Obligations’ in Audrey Chapman & Sage Russell eds., *Core Obligations: Building a Framework for Economic Social and Cultural Rights* (Oxford: Intersentia, 2002) at 34.

¹⁴ See: CESCR, General Comment 18, *supra* note 10, at para. 35; UN Commission on Human Rights, *Note verbale dated from 6/12/05 from the Permanent Mission of the Netherlands to the United Nations Office at Geneva addressed to the Centre for Human Rights (Limburg Principles)*, 8 January 1987, E/CN.4/1987/17 at para. 6.

¹⁵ See: CESCR, General Comment 18, *ibid.*, at para. 19, 23-28; Guy Standing, *Global Labour Flexibility: Seeking Distributive Justice* (New York: St. Martin’s Press Inc., 1999) at 131; Matthew C.R. Craven, *The International Covenant on Economic, Social and Cultural Rights A Perspective on its Development* (Oxford: Clarendon Press, 1995) at 206.

available and seeking work.¹⁶ A State will violate the obligation to fulfil if it fails to take all necessary measures to ensure the realization of the right to work.¹⁷

In sum, developed States must take a comprehensive approach towards employment policy by taking into account all the necessary measures to ensure the right to work, including work-related security.

3. Social Protection, Jobs and Green Structural Change

Responding to the financial crisis, many States have adopted ‘green’ economic recovery plans. For example, 21% of France’s US\$ 33.1 billion stimulus package was designated toward green measures expected to produce up to 110 000 jobs during the 2009-10 period, alongside its “Green Growth and Employment Plan.”¹⁸ However, for developed States to fulfil their climate change obligations, further large-scale action will be required. While market-based instruments will aid in the transition to greener consumption and production, State regulation will also be needed to meet the emission reduction obligations of developed States.¹⁹ In other words, developed States will have to be going through a period of green structural change.²⁰ As noted above, this change will create new economic opportunities and sectorial growths. It will also require the creation of new jobs and skill sets and the loss of jobs and skill sets that are involved in heavy polluting or environmentally damaging activities.²¹ Carbon intensive industries such as resource extraction, steel, cement, aluminium and the automotive sector are at risk of job declines, whereas energy efficiency, offshore wind, solar, transport, tourism and research and development stand to benefit.²² Furthermore, some jobs will be indirectly affected by the structural change to a low carbon economy. As value and production chains adjust to green structural change, upstream jobs in those chains will also be lost. For example, reductions in coal fired power generation will lead to job losses in the mining industry, but also in rail freight.²³ On the other hand, in an interconnected world, increased demand for sustainable production in one State or within another region of a State will create green employment opportunities for another State or region, via production and value chains, and *vice versa*.²⁴

Fankhauser, Sehleier and Stern analyze these impacts with respect to short term, medium term and long term effects.²⁵ In the short term, jobs will be lost directly as a result of climate policy. In the medium term, jobs will be lost along the value and production chains of affected industries, as climate policy will “ripple [...] through the economy.” Finally, in the long term, innovation and development will create new opportunities for investment and growth.

¹⁶ CESCR, General Comment 18, *ibid.*, at para 19; Craven, *ibid.* at 204.

¹⁷ CESCR, General Comment 18, *ibid.*, at para. 36.

¹⁸ OECD, Interim Report, *supra* note 6, at 27.

¹⁹ See: OECD, Interim Report, *supra* note 6, at para 6; ‘Green jobs: towards decent work in sustainable, low-carbon world’, Policy messages and main findings for decision makers (Geneva: UNEP, 2008) at 16 [Green Jobs].

²⁰ See: OECD, Interim Report, *supra* note 6, at 54; Samuel Fankhauser, Friedel Sehleier & Nicholas Stern, ‘Climate Change, Innovation and Jobs’ (2008) *Climate Policy* at 422.

²¹ See: OECD, Interim Report, *supra* note 6, at para 18; Jim Barrett, ‘Worker Transition and Global Climate Change’ (2001) Pew Center on Global Climate Change, at iii; Jenny Bird & Kayte Lawton, ‘The Future’s Green: Jobs and the U.K. low-carbon transition’ (2009) Institute for Public Policy Research at 6; D. Parsons and Associates, ‘Greening the Economy: Transitioning to New Careers’ (Toronto, 2009) at 9; Green Jobs, *supra* note 19, at 19.

²² See: Bird and Lawton, *ibid.* at 6; European Trade Union Confederation and the Confederation of European Employers (CEEP), ‘Joint Declaration on the EU climate change and energy package with a view to employment’ (2008) at 2.

²³ Fankhauser, Sehleier & Stern, *supra* note 21, at 424.

²⁴ Global Climate Network and the Centre for American Progress, ‘Low Carbon Jobs in an Inter-Connected World’ (London, 2009) at 4.

²⁵ Fankhauser, Sehleier & Stern, *supra* note 21, at 422

4. Social Protection and the Right to Work

When viewed through a comprehensive legal approach, in the event of a green structural change if developed States do not plan for green structural change nor put specific measures in place, there will be large potential conflict between a developed States climate change regime and the right to work. Social protection, a core pillar to decent work, includes work-related security as it promotes human dignity and security in the workplace.²⁶ Sufficient work-related security may therefore be seen as a key aspect to fulfilling the right to work. Thus, for work to be decent, a sufficient amount of social protections must be provided. If States do not provide a sufficient amount of work-related protections, they will be infringing upon the right to work. With respect to structural change, work related security was included in the ILO's Recommendations No. 122 and 169, Recommendations concerning Employment Policy.²⁷

Paragraph 8 of Recommendation No. 122 (1964) provides that, in the event of a structural change, 'selective measures directly connected with the employment of individual workers or categories of workers' should be adopted.²⁸ Paragraph 13(1) goes further and recommends that 'measures should be planned and taken to prevent the emergence and growth of unemployment or underemployment resulting from structural changes'.²⁹ The objectives of these supplementary measures should be 'to protect from financial or other hardship groups and individuals whose employment is affected by structural changes'.³⁰ Two decades later, recommendation No. 169 (1984) echoed the need for supplementary measures.³¹ Thus, in the event of green structural change, the ILO Recommendations Concerning Employment Policy would require States to take specific work-related security measures that are supplementary to measures already in place. Furthermore, it should be noted that the new jobs that are being created must also be decent.³² Since few developed States have taken the effects of climate change on employment into account,³³ there is significant potential for labour market insecurity and thus the partial normative conflict between the obligations of the two regimes is very large.³⁴

5. Policy Options for a Just Transition

Therefore, to make climate-job relationship work and to fully take advantage of the opportunities of green structural change, a strategic vision that includes a human rights approach is necessary for all future national and international climate change legislation. Including such an approach into the climate change framework is consistent with the principle

²⁶ Juan Somavia, *Perspectives on Decent Work: Statements made by the ILO Director-General* (Geneva: International Labour Office, 2000) at 14. See generally Guy Standing, 'From People's Security Survey's to a Decent Work Index' (2002) vol. 141 *International Labour* at 441-443.

²⁷ Recommendation No. 122, *Supra* note 5; International Labour Organization, *Recommendation 169 Recommendation Concerning Employment Policy*, 70th Sess., Record of Proceedings (Geneva: International Labour Office, 1984) XVIII.

²⁸ Recommendation No. 122, *supra* note 5, at para. 8.

²⁹ *Ibid.* at para. 13.

³⁰ *Ibid.*

³¹ Recommendation 169, *supra* note 27, at para. 10.

³² Green Jobs, *supra* note 19, at p. 5; Karin Martinson, Alexandra Stanczyk, Luran Eyster, 'Low-Skill Workers' Access to Quality Jobs', Urban Institute (Washington D.C., 2010) at 3.

³³ ETUC, *supra* note 6, at 48. ILO Committee on Employment and Social Policy, *Employment and Labour Market Implications of Climate Change*, 303rd Sess., GB.303/ESP/4 (November, 2008) at para. 18 (a minimal amount of study has been completed on this issue).

³⁴ A partial normative conflict occurs where two norms conflict with regard to some addresses, or in some times or in some places. Seyed Ali Sadat-Akhavi, *Methods of Resolving Conflicts between Treaties* (Martinus Nijhoff Publishers: Leiden, 2003) at p. 11.

of integration and interrelationship a core tenant of sustainable development, as evidenced by the International Law Association's New Delhi Declaration.³⁵ The human rights approach should be participatory and should institutionalize a framework for dialogue between all interested parties from which concrete equitable steps forward can emerge.³⁶

Policies should factor in measures that may be taken both in the short and long term to avoid the normative conflict between the two sets of obligations. As a minimum, developed States must adopt a view that takes the full effects of their climate change obligations on employment into account. Once the full effects of climate change have been taken into consideration, the specific jobs and sectors that will be affected by climate change may be identified for each State and region. Then, specific measures targeted at the vulnerable groups should be adopted and implemented. These policies should consider, but not be limited to: re-training programs and skill gaps, compensation/ income support, dislocation of work, decent work, gender perspectives, ageing work force and accessibility of programs. More specifically, based on current long term trends, climate change is predicted to seriously disrupt economic and social activity.³⁷ Therefore, long term planning should institutionalize dialogue between States and engage with the private sector and civil society so that the jobs that will be lost and gained may be taken into consideration as green industries and sectors develop. This has been proven to work.³⁸ Furthermore, States should look to innovation and development to create green jobs.

6. Conclusion

In sum, the following points can be seen as key aspects to the success of a green and just structural change in developed States.

- Developed States must consider the full extent of their climate change obligations and the effects this will have on employment.
- The specific sectors and jobs that will be directly and indirectly affected by developed States climate change obligations and the national policies and legislation that implement those obligations must be identified. This analysis must include both the positive employment effects such as job creation, and the jobs and sectors that will be adversely affected.
- Dialog between States, the private sector, civil society, unions and employees should be implemented and institutionalized to find appropriate solutions to the climate-employment relationship.
- Long term and short term policies should be adopted and implemented on the basis on this dialog to create a just transition.

³⁵ ILA, *New Delhi Declaration of Principles of International Law Relating to Sustainable Development*, ILA Resolution 3/2002, UN Doc. A/57/329, in ILA, *Report of the Seventieth Conference* (London: ILA 2002).

³⁶ Sanchez & Poschen, *supra* note 6, at 19; *Employment and labour market implications of climate change*, *supra* note 33, at para. 15.

³⁷ *Employment and labour market implications of climate change*, *ibid.*, at para 6.

³⁸ See generally: ILO, 'The impact of climate change on employment: management of transitions through social dialogue' (Geneva, 2010).

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