

Expert Meeting on ‘Full Employment and Decent Work’

Part 6 Standards and Regulatory Policy

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1 Opening assumptions

1.1 ‘Labour market’ doesn’t exist in a pure form ‘prior’ to legal, and other, regulation. No guarantee that existing market norms are conducive to efficiency. Therefore, the State can’t not regulate to ensure its goals are met.

1.2 A crude choice between ‘regulation’ and ‘deregulation’, former rigid and latter flexible, is unhelpful. Better approach is to ask, what do we want to achieve, then to assign an appropriate range of legal, and other, technologies and resources to the task. Australian experience instructive here.

1.3 The normative vision of the worker as unencumbered by family, kin networks, community and civic responsibilities is outmoded and contrary to full economic development on just terms.

2 Some Broad Policy Observations

2.1 Law remains a crucially important tool in achieving Decent Work with Full Employment. Government and legal institutions important. Beware devolution of state role to corporations and consumers, especially those external to national borders.

2.2 International regime of human and labour rights requires ‘hard’ law to enact and enforce non-derogable standards. Must make use of capacity within international law to develop national modalities of implementation.

2.3 We need to articulate the implementation of these international commitments having regard to the new realities of work and to reflect the assumptions above. That is, ‘work’ should be defined more broadly than the traditional standard worker, and all forms of productive labour should be captured. Work must be permeable to care on just terms. Access to the benefits of economic development must be available to all to guarantee social inclusion for citizens and immigrant workers within each State.

2.4 Other standards may be amenable to a more nuanced approach which engages ‘soft’ law and non-State actors. Envisaged by ILO that this would be so. But must ensure robust institutions and processes which are

Participative : more voices heard the better

Democratic : who speaks, and with what authority?

Iterative and responsive and evidence based : how do we learn?

Transparent and public : all citizens have a stake in outcomes

Guided by the fundamental principals of Full Employment with Decent Work

2.5 A rule of law is not the same thing as the achievement of the rule in the real world, a point missed in the construction of the Doing Business regime (Lee and McCann). Experience and research shows what works, but must have regard to actual contexts :

Need superstructure of oversight and enforcement

But rarely enough – more important is to provide knowledge and empowerment of actors at all levels

Best guarantee of law working at work is a good trade union