

Challenging Neoliberalism: ILO, Human Rights, and Public Health Frameworks on Decent Work

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Abstract

In the 2008 report *Closing the gap in a generation*, the Commission on the Social Determinants of Health (CSDH) described “fair employment and decent work” as components of daily living conditions that have “powerful effects on health.” The CSDH therefore proposed far-reaching structural changes to bring about decent work and health for all. Crucially, however, it failed to acknowledge two relevant international legal frameworks, the Decent Work Agenda of the International Labour Organization (ILO) and the right to decent work in international human rights law. This article compares the three frameworks for decent work—CSDH, ILO, and human rights—and makes two arguments. First, it contends that the CSDH, as a creation of the World Health Organization (WHO) and therefore part of the UN system, should have grounded its report—including the section on decent work—in the applicable international law, including the UN Charter and human rights treaties. Second, had the CSDH linked its report to established international law, it would have strengthened all three frameworks, bringing coherence to international law and policy and bolstering the power of the ILO, WHO, and the human rights mechanisms to counter neoliberalism toward achieving their common goal of decent work and health for all.

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Introduction

In the 2008 report *Closing the gap in a generation*, the Commission on the Social Determinants of Health (CSDH) describes “fair employment and decent work” as components of “daily living conditions” that have “powerful effects on health and health equity.”¹ By including fair employment and decent work in its agenda on the social determinants of health, the CSDH recognized the interdependency of work and health. Work (or lack of work) impacts on health, and health (or lack of health) impacts on ability to work. The CSDH also recognized the interdependency of work with several other social determinants of health—including nutritious food, safe housing, clean water, and improved sanitation—as these social determinants are more easily accessible to those who have fair employment and decent work.² Yet the CSDH fell short of advancing the conceptual understanding and framework for implementation of fair employment and decent work by failing to explicitly incorporate the international law on the Decent Work Agenda of the International Labour Organization (ILO) or even recognize the human right to decent work.

“Full employment and decent work”—in contrast to “fair employment and decent work”—are international human rights recognized in the Universal Declaration of Human Rights, which is applicable to all members of the United Nations.³ It is not surprising that work is a human right. It is key a source of self-fulfillment, identity, and dignity.⁴ It is also instrumentally important to bring in income to satisfy basic needs, such as food, housing, education, and health care.⁵ Additionally, it provides opportunities for social relations and community participation.⁶ Indeed, unemployment contributes to social exclusion, loss of self-confidence, and poor health, and also impacts negatively on families, by, for example, increasing divorce rates, and on communities, by, for example, increasing crime rates.⁷ The CSDH recognized that work “can provide financial security, social status, personal development, social relations and self-esteem,” but did not recognize that full employment and decent work are human rights.⁸ Moreover, the CSDH did not acknowledge that the intricate web of interconnected

social determinants of health—linking food, water, housing, sanitation, and decent work, among other factors—is enshrined in international human rights law in, for example, the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as other international treaties.⁹

Unfortunately, work rights are not widely respected around the world, and work can be low paying, demeaning, dangerous, and tedious, leaving workers and their families in multi-dimensional poverty.¹⁰ The dominance of neoliberal ideology and policymaking suggests that substantial change is not on the horizon.¹¹ The ILO, the UN specialized agency responsible for global governance on labor and social justice, estimates that more than 190 million people are currently unemployed.¹² This number is expected to increase over the next year by 1.3 million as more people seek to enter the work force.¹³ Further, the ILO estimates that 1.4 billion workers are in vulnerable forms of employment.¹⁴ This number is also expected to increase by 17 million in 2018 and again in 2019.¹⁵ In developing and emerging countries, 300 million workers live in extreme poverty on less than US\$1.90 (PPP) per day.¹⁶ The CSDH recognized that these daily living conditions impact negatively on health and health equity.

The ILO has also conceptualized, promoted, and mainstreamed “full employment and decent work” throughout the UN and the world.¹⁷ Indeed, the ILO Decent Work Agenda (1999) provides the main framework for all ILO work.¹⁸ Consequently, it is odd that the CSDH sidelines the Decent Work Agenda—and the enormous body of work promulgated under this soft law initiative—in its chapter on “fair employment and decent work,” and removes the term “full employment” from its chapter title, adding a new term “fair employment” with merely a footnote to explain the concept.¹⁹ In contrast, Mary Robinson, former UN High Commissioner for Human Rights, speaking at the launch of the CSDH report in November 2008, highlighted “the importance of human rights as an ethical and legal framework” for action on the social determinants of health, addressing the connections between work as a social determinant of health, the ILO Decent Work Agenda, and the human right to decent work.²⁰

Despite the centrality of full employment and decent work to human well-being, they have been overlooked or marginalized in international development agendas. The Millennium Development Goals (2001–2015), for example, failed to include a goal or target on full employment and decent work for all until 2007.²¹ This may be because this social determinant of health (and human right) conflicts so directly with neoliberalism, the dominant global ideology and policymaking framework. Neoliberalism is an ideology of market fundamentalism, which posits that economic growth is the sole avenue to development and social progress and requires reducing labor protections, among other actions that result in exploitation of workers, to successfully compete in the global marketplace.²² This neoliberal approach is now encompassed in Sustainable Development Goal (SDG) 8, which aims to promote “economic growth, full and productive employment and decent work for all.”²³ Had full employment and decent work been linked with ending poverty (SDG 1), ending hunger (SDG 2), or ensuring healthy lives (SDG 3), it would be recognized as a social determinant of health in the global development agenda. But instead, full employment and decent work are merely *means* to or *ends* of economic growth, unlinked to human rights, health, or well-being.²⁴

This article presents three approaches to conceptualizing and implementing the goals of full employment and decent work for all: (1) the ILO’s Decent Work Agenda, (2) the International Bill of Human Rights, and (3) the CSDH 2008 report *Closing the gap in a generation*. Previous literature has examined the WHO, ILO, human rights, and neoliberal approaches to decent work from public health perspectives.²⁵ Generally, this literature has grouped WHO, ILO, and human rights approaches together and contrasted them with neoliberal approaches of, for example, the World Bank, International Monetary Fund (IMF), and World Trade Organization (WTO).²⁶ We bring a legal lens to this project. The three approaches we examine all recognize full employment and decent work as important conditions for health and wellbeing. However, the ILO Decent Work Agenda and hu-

man rights treaties also recognize full employment and decent work as (soft or hard) law, imposing legal obligations on states. This article argues first that the CSDH, as a creation of the World Health Organization and therefore part of the UN system, should have grounded its report—including the section on decent work—on the applicable international law, including the UN Charter, human rights treaties, and the ILO Decent Work Agenda. Second, had the CSDH linked its report to established international law, it would have strengthened all three frameworks, bringing coherence to international law and policy and bolstering the power of the ILO, WHO, and human rights mechanisms to counter neoliberalism toward achieving their common goal of decent work and health for all.

Three frameworks for full employment and decent work

International Labour Organization

The ILO, established in 1919, is the oldest international organization focused on improving employment and working conditions.²⁷ It is unique among international governance institutions because each of its 187 member states has worker, employer, and government representatives.²⁸ It was founded on an ideology of social justice, recognizing that improved employment and working conditions are necessary for sustained peace and that the failure of any country to adopt humane labor conditions creates obstacles for others to do so. The ILO’s social justice mission aligns with work-related social determinants of health such as: work time limits, prevention of unemployment, adequate living wages, protection against sickness, old age, disease and injury arising from employment, and equal remuneration for work of equal value. The ILO’s mission also implicitly acknowledges the role of power by recognizing the principle of freedom of association, specifically for worker and employer organizations.

The ILO’s tripartite constituents establish and supervise labor standards, many of which correspond to social determinants of health. They address freedom of association, forced labor,

child labor, equal opportunity and treatment, employment policy and promotion, employment security, wages, working time, occupational safety and health, social security, and maternity and social policy. Standards take the form of binding conventions and non-binding recommendations. Conventions adopted by the ILO are open to ratification by member states, which choose freely from among them which to ratify, and then are subject to supervision by ILO mechanisms.

Since 1919, the ILO has faced new social realities and challenges to its social justice vision, and consequently, has periodically updated its mission. At the end of the Second World War, the Declaration of Philadelphia deepened the ILO's social justice commitment within the new United Nations system, establishing that the central aim of global social policy is to improve conditions of work.²⁹ The ILO became the UN's first specialized agency in 1946.³⁰ Neoliberalism, ascendant from the 1970s, has profoundly challenged the ILO's social justice mission. Employer representatives and governments increasingly sought to marginalize ILO labor standards and replace them with market-based logics.³¹ This led to a decline in convention ratifications in the 1990s and a decline in the power and influence of trade unions.³²

In response, the ILO adopted two soft law initiatives to reinvigorate its relevance in global social policymaking. First, the ILO adopted the 1998 Declaration on Fundamental Principles and Rights at Work.³³ The Declaration established four core labor standards (CLS), separate from its regular convention and supervisory system. The CLS are: (1) freedom of association and the right to collective bargaining; (2) elimination of all forms of forced or compulsory labor; (3) abolition of child labor; and (4) elimination of discrimination in employment.³⁴ The Declaration was novel in that it bound ILO members to respect and promote the principles underlying the rights even if they had not ratified the conventions guaranteeing the rights. The CLS sparked sharp human rights critiques for being overly narrow, neoliberal friendly, and excluding important rights, such as work time limits, and health and safety standards.³⁵

In 1999, expanding upon the CLS Declaration, the ILO launched its second soft law initiative, the Decent Work Agenda, which encompasses four strategic pillars to guide the ILO and member countries. The four pillars are:

1. *Employment promotion*: Policies, goals, and strategies to achieve full employment with appropriate pay.
2. *Social protection*: Prevention of oppressive working conditions; policies for the prevention of work-related injuries and illnesses; social security for sickness, disability, pregnancy, old age, unemployment, or other conditions that prevent a person from working.
3. *Social dialogue*: Support for tripartite consultation and negotiation between workers and employers from workplace to national levels.
4. *Rights at work*: Incorporation of the 1998 Declaration on Fundamental Principles and Rights at Work and its four CLS.³⁶

The full institutionalization of the Decent Work Agenda into the ILO culminated in 2008 with the adoption of the Declaration on Social Justice for a Fair Globalization. This Declaration affirmed the ILO's mission to pursue social justice by placing "full and productive employment and decent work at the centre of economic and social policies" of the ILO and its members in the face of globalization.³⁷ In this way, the four pillars of the Decent Work Agenda became the basis for all ILO policy and programming.

An innovation of the Decent Work Agenda was that "work" was not narrowly conceived as only waged employment. Instead, it was broadly construed to encompass all the ways that people contribute to society and the economy.³⁸ This includes unpaid work, self-employment, and informal work.³⁹ The concept of "decent" in the Agenda aligns closely with the social determinants of health because it signifies that work must be of acceptable quality in terms of income, working conditions, job security, and rights and dignity.⁴⁰ As with the CLS, the Decent Work Agenda was not linked to

ILO conventions associated with each of the pillars. Decent work was not conceived as a “human right” but instead was framed as the ILO’s primary goal and “the most widespread need, shared by people, families and communities in every society, and at all levels of development.”⁴¹

Not surprisingly, in light of neoliberal orthodoxy, employers and governments did not intend—in the CLS or the Decent Work Agenda—to establish hard law or to impose specific legal obligations on ILO member countries. Within the ILO system, both are considered soft law and important policy objectives despite the fact that there are ILO conventions that align with virtually all aspects of CLS and the Decent Work Agenda.⁴² Although the ILO is a specialized agency of the UN, neither CLS nor the Decent Work Agenda explicitly recognizes the human rights related to work, health, or the social determinants of health previously established in the UN system. Nonetheless, the ILO mainstreamed the CLS and the Decent Work Agenda extensively throughout international and national systems, receiving support from the UN General Assembly, the United Nations Development Programme (UNDP), the World Bank, and the IMF. Decent work was also incorporated (albeit late) in the MDG targets and then in SDG 8.⁴³ Arguably, the soft-law version of “decent work” that fails to challenge neoliberalism has dominated. This impairs the ability of the “right” to full employment and decent work to challenge the structural obstacles and power imbalances described by the CSDH as detrimental to health.

International human rights

International human rights also recognize full employment and decent work as central to human dignity. The UN Charter, adopted in 1945, established that the United Nations shall promote “higher standards of living, full employment, and conditions of economic and social progress and development” as well as “universal respect for, and observance of, human rights, and fundamental freedoms for all without distinction as to race, sex, language or religion.”⁴⁴ Moreover, all members of

the UN pledge to take joint and separate action in cooperation with the UN to achieve these purposes.⁴⁵ Thus, the ideas of full employment and human rights are both entrenched in the UN Charter, which prevails over any other obligations of UN members under international agreements.⁴⁶

The Universal Declaration of Human Rights (UDHR), adopted in 1948, links human rights and employment, recognizing an array of work-related rights in Articles 22–24.⁴⁷ These include: (1) the rights to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment; (2) the right to equal pay for equal work without any discrimination; (3) the right to just and favorable remuneration ensuring an existence worthy of human dignity; (4) the right to join trade unions; (5) the right to rest, leisure, limitation on work hours, and periodic holidays with pay; and (6) the right to social security and to realization of the economic, social, and cultural rights indispensable for human dignity and free development of the personality. All members of the UN commit to promoting and observing the rights in the UDHR and must report on their progress in this regard to the UN Human Rights Council every four years in a procedure known as the Universal Periodic Review.

Additionally, several international human rights treaties establish legally binding work-related obligations for states that have ratified them. The ICESCR, along with the UDHR and the International Covenant on Civil and Political Rights (ICCPR), forms the International Bill of Human Rights, and also contains the most widely applicable work-related rights.⁴⁸ Today, there are 169 State parties to the ICESCR, which provides detailed work-related rights. The main provisions are similar to those in the UDHR: Article 6 (the rights to decent work and freely chosen employment), Article 7 (the rights to fair remuneration and just and favorable conditions of work), Article 8 (union rights), and Article 9 (the right to social security). Other articles also include work-related rights, including, for example, Article 10 (the rights of working mothers to paid leave before and after childbirth, and the rights of children to be protected from economic exploitation),

Article 12 (the right to continuous improvement of workplace safety), Article 13 (the right to technical and vocational education), and Article 15 (the right of authors to protection of their interest in their scientific, literary, or artistic products).

In sum, there are a multitude of work rights in the ICESCR. Moreover, most of these rights have been further detailed by the Committee on Economic, Social and Cultural Rights (CESCR), which is charged with supervising states in implementing the Covenant, by way of General Comments, Concluding Observations on country reports, and Statements. As a result, there is a large body of international hard law and soft law on work rights, including the rights to full employment and decent work. In particular, the CESCR explains that the right to work in Article 6 is an individual and a collective right, and “encompasses all forms of work, whether independent work or wage-paid work.”⁴⁹ Further, the CESCR maintains that the right to work must be the right to *decent work*.⁵⁰ It defines “decent work” as:

*work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration. It also provides an income allowing workers to support themselves and their families as highlighted in article 7 of the Covenant. These fundamental rights also include respect for the physical and mental integrity of the worker in the exercise of his/her employment.*⁵¹

In most respects, the CESCR’s elaboration of the work rights in Articles 6, 7, 8, and 9 aligns with the ILO concepts of full employment and decent work because the committee draws extensively from the ILO conventions in interpreting these rights.⁵²

The CESCR makes a significant contribution to the goals of full employment and decent work by also adopting the ILO’s soft law initiative, the Decent Work Agenda, into its interpretations of the work rights in the ICESCR. In some cases, the ILO conventions linked to the four decent work pillars have not been widely ratified but the CESCR extends the obligations to all 169 State parties to the ICESCR.⁵³ For example, ILO Convention No. 158, which requires cause to terminate an employee, has

been ratified by only 35 parties, however, the CESCR adopted it in General Comment No. 18 on the right to work, extending the “for cause” requirement to all 169 State parties to the ICESCR. Additionally, the ICESCR locates full employment and decent work in a holistic human rights framework that encompasses a full range of interconnected and interdependent economic, social, cultural, civil, and political rights that impact on health and health equity, aligning well with the CSDH’s approach on the social determinants of health.⁵⁴ This human rights approach is also universal, applying to all people, and contrasts sharply with the ILO’s piecemeal approach to labor standards, which are often adopted to protect only a specific group of workers, such as agricultural workers, dock workers, or domestic workers.⁵⁵

On the other hand, there are limitations to the human rights approach, at least as it has been interpreted and implemented to date. In general, it has not successfully challenged neoliberal orthodoxies.⁵⁶ For example, the CESCR has greatly limited the right to full employment, declaring that “it should not be understood as an absolute and unconditional right to obtain employment.”⁵⁷ Rather, it calls upon states to adopt measures aimed at achieving full employment—providing no examples of policies or best practices in this regard—and recognizes that international factors may create structural obstacles beyond the control of states, hindering realization of this right.⁵⁸ In contrast, many countries have adopted employment guarantee programs, which demonstrate that states may adopt policies that directly bestow the unconditional right to employment.⁵⁹ In other words, the CESCR has supervised rather timidly the human right to full employment and decent work, avoiding many controversial issues. Indeed, in the face of austerity measures in Europe, following the 2007–2008 economic crisis, which both had significant negative impacts on health and health equity, commentators have characterized the CESCR’s application of the ICESCR as consistent with, or at least failing to challenge, the tenets of neoliberal ideology.⁶⁰

Commission on the Social Determinants of Health

In 2005, WHO Director-General JW Lee established the CSDH to “collect, collate, and synthesize global evidence on the social determinants of health and their impact on health inequity, and to make recommendations for action to address that inequity.”⁶¹ The results of the CSDH’s study were published in the 2008 report *Closing the gap in a generation*. In this report, the CSDH identifies three overarching recommendations: “(1) improve daily living conditions, (2) tackle the inequitable distribution of power, money and resources, and (3) measure and understand the problem and assess the impact of action.”⁶² In this respect, the CSDH “takes a holistic view of the social determinants of health.”⁶³

The report advances the discussion on the social determinants of health substantially by explicitly addressing social justice, power, and inequities in health between rich and poor people and between rich and poor countries.⁶⁴ It states:

*Where systematic differences in health are judged to be avoidable by reasonable action they are, quite simply, unfair. It is this that we label health inequity. Putting right these inequities – the huge and remediable differences in health between and within countries – is a matter of social justice. . . . Social injustice is killing people on a grand scale.*⁶⁵

As Audrey Chapman remarked, this type of language, unequivocally condemning such disparities in life opportunities, is rarely seen in a UN publication.⁶⁶

The daily living conditions identified by the CSDH include focusing on: (1) early childhood development; (2) improved urban and rural living conditions; (3) fair employment and decent work; (4) social protection policy supportive of all; and (5) universal health care. Like the report in general, the section on full employment and decent work is holistic. It examines unemployment, precarious work, working conditions, the political economy of employment relationships, and vulnerable populations. In the report, the CSDH also makes five recommendations on fair employment and decent work: (1) prioritize full and fair employment and

decent work in international and national institutions and policy agendas; (2) establish national policies on secure work and real living wages; (3) increase national capacity to promote and enforce fair employment and decent work standards; (4) reduce insecurity for people in precarious work; and (5) expand occupational health and safety standards to cover informal workers and include work-related stressors.⁶⁷

The CSDH’s agenda on fair employment and decent work was concrete and bold in challenging neoliberalism. The report identifies the structural obstacles to improving fair employment and decent work, including the politics and power that have maintained the gross inequities and social injustice. For example, the report challenges corporate structure and recommends that states consider changing corporate law to alter their objectives from maximization of shareholder value to improvement of social and environmental conditions, including employment.⁶⁸ It also recognizes the importance of labor unions to decent work, stating, “Unions are powerful vehicles through which protections for workers – nationally and internationally – can be collectively negotiated.”⁶⁹ Additionally, the report links fair employment and decent work to many other conditions of daily living that impact on health and health inequities. This holistic approach mirrors that of the human rights approach and specifically incorporates most of the subjects of the rights spelled out in the ICESCR.

Nevertheless, the CSDH report fails to use a human rights framework. It acknowledges human rights sporadically. For example, it refers to the right to the highest attainable standard of health (or the right to health) several times but does not mention Article 12 of the ICESCR until page 158, and then very briefly, nor does it mention the Special Rapporteur on the right to health until page 173.⁷⁰ The report also mentions, as daily conditions of living, the human rights to housing, water, and sanitation. In addressing employment and work, however, the report fails to acknowledge that they are also human rights recognized in international law. So, while some aspects of human rights are identified as such, others, like full employment and

decent work, are downgraded from human rights to policy objectives of the CSDH. Moreover, the CSDH merely names the rights but does not use or acknowledge their substantive content. Additionally, under “labor standards,” the CSDH mentions only the CLS, and merely refers to a broader range of labor standards without noting that they also align with the human rights to full employment and decent work.⁷¹

Perhaps most puzzling, the CSDH replaces the term “full employment”—which is in the ILO Decent Work Agenda and the MDGs—with the term “fair employment” as the complement to “decent work.” Table 1 compares the definitions of these two terms. Importantly, “full employment” is a legal obligation under the UN Charter, the ICESCR, and ILO Convention 122, while “fair employment” appears to be a creation of the CSDH. According to its report, “Fair employment implies a just relationship between employers and employees.”⁷²

By invoking this new term, the CSDH indicates limited understanding of the concept of “decent work” as defined by the ILO and international human rights law, which both imply a just relationship between employers and employees, en-

suring respect for the dignity of workers. As shown in Table 2, the components of the CSDH concept of “fair employment” corresponds precisely to elements of the human rights to full employment and decent work in the ICESCR. Moreover, the downgrading of “full employment” as the complement to “decent work” is not explained in the report.

After the ILO, the UDHR, the ICESCR, and the CESC had defined and established global standards and human rights obligations for full employment and decent work, the CSDH created a new framework largely untethered to established law or other historical precedent. Moreover, as Audrey Chapman has explained in her comprehensive evaluation of *Closing the gap in a generation*, the CSDH chose a “weaker formulation” by framing the report in terms of ethical obligations and ignoring human rights laws and standards. This applies in particular to full employment and decent work, where the CSDH does not even acknowledge that these are human rights, much less the body of jurisprudence and scholarly work that had already been generated on these rights. For example, while seeking greater power for unions in order to increase protection for workers, the CSDH undermines

TABLE 1. Definitions of “Fair employment” and “Full employment”

Fair employment (CSDH)	“The term ‘fair employment’ complements the concept of decent work. It encompasses a public health perspective in which employment relations, as well as the behaviours, outcomes, practices and institutions that emanate or impinge upon the employment relationship, need to be understood as a key factor in the quality of workers’ health. Fair employment implies a just relationship between employers and employees.”
Full employment (ILO and human rights)	Full employment requires policy that aims to ensure that “there is work for all who are available for and seeking work.”

TABLE 2. CSDH “Fair Employment”

Components of fair employment	Corresponding human rights provision
Freedom from coercion	ICESCR Article 6(1) (freely chosen work), Article 7(d) (rest, leisure, periodic holidays with pay, and limitations on work hours), 10(3) (protection of children from economic exploitation)
Job security	CESCR General Comment 18, para. 11 (valid grounds for dismissal and right to redress)
Fair income	ICESCR Article 7(a)(i) (fair wages), (ii) (decent living)
Job protection and social benefits	ICESCR Articles 7(b) (safe and healthy working conditions), 8 (union rights), 9 (social security), 10(2) (paid leave for working mothers before and after childbirth), 12(2)(c) (industrial hygiene)
Respect and dignity at work	CESCR General Comment 18, paras. 7-8 (decent work respects the human rights of the worker)
Workplace participation	ICESCR Article 8 (union rights)
Enrichment and lack of alienation	ICESCR Article 6(2) (policies and programs to achieve steady economic, social, and cultural development)

itself by failing to take advantage of international law in this area.

Additionally, by ignoring human rights law, the CSDH missed the opportunity to bolster its agenda and that of the international human rights mechanisms that share the concern for realizing full employment and decent work. By aligning the two frameworks—the ICESCR and the social determinants of health—the CSDH could have brought an entire range of international and regional mechanisms to bear in monitoring the implementation of its agenda.⁷³ Instead, we have merely another list of policy recommendations with no one responsible to take them forward. Further, the CSDH could have contributed to creating a coalition between public health activists, human rights nongovernmental organizations, and labor unions, which could have educated and mobilized people to support implementation of the CSDH's recommendations. Instead, the CSDH found that the ILO concept of decent work was inadequate to the task of requiring just relationships between employers and employees, marginalizing a potential key constituent—labor unions—which are responsible for ensuring such just relationships. It also potentially alienated human rights NGOs and activists by failing to acknowledge that they exist and might be relevant to implementation of the CSDH recommendations. Finally, the CSDH speaks to political empowerment, inclusion, and voice “that underpins social well-being and equitable health,” and yet failed to recognize full employment and decent work as human rights, and thus failed to contribute to empowering people to demand these rights.⁷⁴

Toward collaboration in achieving common goals

All three frameworks for full (and fair) employment and decent work have developed in the context of global neoliberalism, which has proven to be an extremely challenging paradigm for people who must work to support themselves – “workers.” Neoliberalism emerged as a policy framework in the 1970s, first by Pinochet in Chile, followed by Thatcher in the UK, and then Reagan in the United

States.⁷⁵ It was well entrenched globally by the time of the 1993 World Conference on Human Rights, which initiated a revival of attention to economic and social rights, and was also the context for the launch of the 1999 ILO Decent Work Agenda. Thus, in 2005-2008 when the CSDH was working on its report, the human rights to full employment and decent work and the ILO Decent Work Agenda were existing legal frameworks in the UN system.

In this light, the CSDH might have grounded *Closing the gap in a generation*—an important UN report—upon the solid foundation of the UN Charter and the UDHR, as well as the ICESCR, which aligns extraordinarily well with the social determinants of health. Indeed, Paul Hunt, then the UN Special Rapporteur on the right to health, pointed out in his 2005 UN report the synergies between these frameworks, and expressed his firm support for the CSDH's important mandate when it was established.⁷⁶ Yet the CSDH failed to acknowledge the “considerable congruity” Hunt highlighted between the CSDH's mandate and the framework on the rights to health, housing, food, and water.⁷⁷ Had these siloed efforts joined forces, they might have advanced a stronger case against neoliberalism and the obstacles it creates to advancing the right to health, the rights to full employment and decent work, and the social determinants of health.

What human rights and the ILO Decent Work Agenda could have provided to the CSDH report

Interestingly, the background report on Employment Conditions and Health Inequalities prepared by the Employment Knowledge Network (EMCONET) for the CSDH stated “today fair employment is not recognized as a human right,” and thus called for “political and public health international institutions” to “recognize fair employment and decent working conditions as universal human rights.”⁷⁸ The EMCONET failed to acknowledge that full employment and decent work are human rights enshrined in the UDHR and the ICESCR, among other international human rights instruments. Moreover, it created “fair employment” to cover a range of employment-related rights that are already

encompassed in the human rights concepts of full employment and decent work. Had the EMCONET, and thus the CSDH, recognized full employment and decent work as human rights, they might have delved into the jurisprudence (such as the CESCR General Comments) and scholarly literature in this area to obtain more detailed content of these rights, as well as connected to an ongoing system of authoritative interpretations and applications. Although the CSDH draws on ILO standards, it does so only to a limited extent, focusing primarily on the four core labor standards and leaving out fair wages, workplace safety, employment training, and other important components of full employment and decent work as though international law does not address them.⁷⁹ In short, the CSDH might have embedded its work more effectively in the existing UN institutional architecture, providing it greater visibility, legitimacy, coherence, and sustainability.

What the CSDH report could have provided to the ILO and human rights systems

By invoking the human rights to fair employment and decent work in *Closing the gap in a generation*, the CSDH would also have bolstered the human rights system, especially the right to health and the rights to full employment and decent work. Certainly, WHO and the ILO have much larger capacity to address these rights than the UN “mainland” human rights system, including the Office of the UN High Commissioner for Human Rights (OHCHR), the Human Rights Council, the Special Procedures, and the treaty bodies.⁸⁰ Had the CSDH fully integrated human rights into its report and its analysis, it would also have drawn attention to the impact of violations of the rights to full employment and decent work on health. Moreover, its bold pronouncements on reforming corporate law, supporting worker voice through labor unions and worker organizations, and effective regulation of the financial sector, might have encouraged the CESCR to do so as well. The CESCR has been relatively weak on these issues, as well as other issues that directly confront neoliberalism, and could have benefited from such support from the CSDH and WHO.⁸¹ Moreover, by incorporating

the Decent Work Agenda more fully, rather than focusing primarily on the CLS, the CSDH could have reinforced the ILO’s holistic approach to full employment and decent work, strengthening the challenge to neoliberalism. In short, the CSDH was willing to confront neoliberal ideology and structures, and both the ILO and human rights systems would benefit from such inter-institutional support.

What the CSDH, the ILO, and human rights could have provided to SDG 8

The SDGs are the most recent global agenda seeking to address health disparities and other gross inequalities in life opportunities and outcomes. In many ways, the SDG framework is a plan of action on the social determinants of health and on the human rights in the ICESCR. Yet the human rights content in the SDGs is just as Paul Hunt described the human rights content in *Closing the gap in a generation*: “disappointingly muted” and “underdeveloped and understated.”⁸² No SDGs are framed in terms of human rights, and only a handful of the 169 targets integrate human rights language or standards.⁸³ SDG 8 states “Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.”⁸⁴ This SDG fails to align with human rights for several reasons. First, it appears to condition the human rights to full employment and decent work upon economic growth.⁸⁵ However, it is precisely when there is no or low economic growth that these rights are most important. Second, evidence has shown that economic growth does not necessarily result in realizing full employment and decent work.⁸⁶ Third, the merger of full employment and decent work with economic growth appears to be a retreat from the MDG 1 characterization of work as a target associated with poverty reduction.⁸⁷ Finally, improved education, health care, or water and sanitation could equally be conditioned upon economic growth, but they are not in the SDG framework. Why is full employment and decent work singled out to be linked to economic growth in SDG 8?

The CSDH takes a decidedly more human rights-friendly perspective on full employment and decent work, as well as the other social determinants

of health. It viewed full employment and decent work as essential components of health equity, like food, water, and housing. As it notes, “growth by itself, without appropriate social policies to ensure reasonable fairness in the way its benefits are distributed, brings little benefit to health equity.”⁸⁸ A unified coalition—of human rights advocates, worker representatives, and WHO—on full employment and decent work might have influenced the formulation of SDG 8, resulting in a more human rights and health equity enhancing form. United, they might have been able to disengage full employment and decent work from the neoliberal economic growth-first paradigm. The resulting paradigm, however, is that full employment and decent work are not recognized as human rights or social determinants of health but merely as components of the neoliberal economy. In short, the CSDH could have helped to ensure that full employment and decent work were recognized as human rights or health equity goals in the SDG framework.

Conclusion

In a 2015 study, Di Ruggiero et al. found a “lack of consensus about what decent work means” in the policy texts of the ILO, WHO, and the World Bank, and considerable challenge across these institutions in promoting a single agenda.⁸⁹ This challenge was, at least in part, due to the neoliberal orientation of some governments, some specialized agencies of the UN system, and the international financial institutions, which conflicts with social justice paradigms, such as health equity and fair globalization, of others. The study found that ideological, institutional, and disciplinary barriers may have contributed to the contested notion of decent work.⁹⁰ Our analysis indicates that even where ideologies are closely aligned—the CSDH, ILO Decent Work Agenda, and human rights—the institutional and disciplinary silos may prevent natural allies from unifying around a common concept of full employment and decent work to challenge those with opposing ideologies. Here, the CSDH’s presentation of fair employment and decent work in *Closing the*

gap in a generation failed to take advantage of the opportunity to incorporate the ILO Decent Work Agenda and the related human rights in a manner that could have built a coalition of actors, as well as coherent and consistent law and policy across those institutions with established and sustainable systems for monitoring and accountability. As a result, the ILO and human rights also lost out, as the CSDH’s bold and profound message on decent work as a social determinant of health was dislocated from existing international legal regimes. Willingness to collaborate across institutional and disciplinary boundaries with those who have common ideologies and goals—although different institutions and disciplines—may be the key to achieving the rights to decent work and health for all.

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