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Presentation: "Racial inequalities, labour rights, and decent work"

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Thank you very much for the opportunity to address this Forum.

Early this decade, a group of five racialized minority agricultural workers brought a claim of racial discrimination to a domestic human rights tribunal. The racial discrimination that the tribunal found to have been amply established was one of the worst cases of blatant humiliation through outright segregation – the racialized workers were not allowed to use the same kitchen and bathroom facilities as the workers of the majority culture; instead, they had to eat and clean up in an outhouse-like facility that was kept in the most insalubrious state. They were subjected to racial slurs and similar humiliations. The tribunal had no difficulty finding that there was workplace discrimination.

However, the human rights tribunal completely missed the more endemic form of discrimination – the fact that the multi-million dollar so-called family run farm only hired minorities to do the hard manual labour, and hired them on terribly precarious daily contracts, for pay below the statutory minimum for other forms of employment, and hired persons from the white majority culture for mechanized jobs, and for office jobs. It was as if that kind of occupational segmentation on the basis of race was so much a part of the "common sense" of racial discrimination that it simply was not seen...

The discrimination was decidedly "new economy" – the sub-standard working conditions were meant to be competitive with conditions presumed to prevail in the global South, so that the agricultural product could be sold in the North at a price competitive with the global South (the South in the North). The asymmetrical global production and trade was embodied in these racialized workers, who contrary to popular belief were NOT temporary migrants, but permanent residents and in some cases, political citizens.

The experience in a number of post-industrialized market economies of the North, including societies that consider themselves to be multicultural and welcoming to persons from many parts of the world and of a variety of heritages, is not uniformly bleak. It is possible to acknowledge the development of institutions meant to safeguard human rights in the workplace, and a growing effort to seek a coordinated application of human rights norms by labour law enforcement mechanisms and recognition of labour rights (economic and social rights) within human rights frameworks. These institutions often date from the 1970s and 1980s – in many parts of the world they are not new. Yet a persisting problem remains that racialized workers tend to be "over-represented in lower paid occupations usually requiring less education and training, such as semi-skilled and other manual workers, sales and service workers, and clerical personnel." For example, according to one study, 40 % of the harvesting labourers are from racialized groups. They are similarly more likely to experience employment gaps than all other workers, for example less likely to be hired for a continuous year. Their jobs are more precarious, requiring dependence on employment insurance that is greater than all workers, but also increasing the likelihood that they will not qualify for employment insurance benefits because they worked an insufficient number of hours.

Educational attainment and integration into society do not necessarily account for the disparity. In some countries, workers of colour are much more highly educated than all other workers, with similarly small proportions who have less than a high school education and a significantly higher proportion having a university degree or higher. When they are employed in higher status positions, they may report a range of informal barriers to continued occupational advancement. I have been particularly concerned about the deficit in mentoring opportunities provided to racialized minorities so that they may be meaningfully accepted in their occupations, and ensured the conditions under which they may thrive.

Studies have also increasingly challenged the "catch up" theory so much a part of the founding myths of many multicultural societies in respect of those members of racialized communities who immigrated to their country of residence. Members of racialized communities – whether immigrant or nationals by birth – tend to face more significant difficulties on the labour market than members of the majority culture. This challenges in particular the view of steady progress toward equality over time.

The data that I have studied paints a picture of underrepresentation in occupations that afford relative autonomy, control and societal power. It suggests overrepresentation in low status, subordinate, poorly remunerated and precarious employment – it suggests societal marginalization.

I want to focus now on how labour rights and the decent work challenge fit into the picture of labour market inequality on the basis of race.

Labour rights are meant to be enabling. They are meant to span both the civil and political rights, and the economic and social rights. As I have understood the ILO's historical approach, the distinction represented by the two distinct UN covenants was not even accentuated in international labour law: the focus was on constructing labour regulatory frameworks that would ensure workers' equitable access to and participation in meaningful employment. Fundamental labour rights – the freedom from forced and

child labour, the freedom of association and effective exercise of collective bargaining rights and of course equality rights – can be understood as an important part of this process, but are not the whole process, which the 2008 ILO Declaration on Social Justice for a Fair Globalization recognizes must among others include social protection. And labour rights are meant to be effectively and efficiently enforced, as close to the workplace actors' as possible, often through alternative dispute resolution mechanisms.

In material terms, labour rights – including basic matters such as control over one's own time – one's own working time – are crucial to the move from servitude and slavery toward what labour lawyers tend to refer to as "citizenship at work". The contemporary international focus on the notion of "decent work", which is meant to capture much more than state law, at some level also reflects the promised outcome of labour rights AND broader societal change.

Yet racialized minorities have tended not to benefit fully from the promise even of fundamental labour rights. If there is a citizenship at work, the workers have tended to fall outside of it. Take for example the freedom of association and effective exercise of the right to bargain collectively. Although collective representation through unionization can contribute significantly to the rights that workers enjoy, historically and to this day racialized minorities are underrepresented in occupations that face relatively high unionization rates (such as skilled trades in construction, some transportation occupations such as truck driving, and teaching). Conversely, racialized minorities tend to be overrepresented in occupations where unionization tends to be low such as agricultural workers, domestic workers, cleaners and janitors, taxi drivers... The data of course do not quite capture the exclusionary processes that lead to a representation gap and the failure to mobilize to respond to it. There are numerous structural factors that lead to systemic discrimination, including received ideas about racialized workers' proper – subordinate – place in society. I would add that these understandings are not uniform across racialized groups – they interact in complex, often counter-productive ways. Some are increasingly referring to this kind of labour market segmentation as part and parcel of the broader process of racial profiling.

The core of my intervention today is that for workplace rights to be effective for racialized minorities, more than abstract articulation, and more even than enforcement and compliance mechanisms such as human rights tribunals and labour rights tribunals is necessary. We need proactive bodies, attune to structural labour market inequality, that are empowered to look closely into the systemic measures that lead to inequality. This includes robust boards of inquiry that are well financed and that have real investigative authority which can be exercised at the initiative of the boards and can handle collective, systemic complaints. This also includes greater attentiveness, within these bodies, to internal representation of members of racialized minorities, and greater openness to the perspectives of those who live racial discrimination in the workplace. And in a time of under-financing of human rights bodies, the words of my Australian colleague Dianne Otto are fitting: we need "an ethical commitment to address the *material* aspects of human dignity" which includes approaching workplace issues from a global economic justice and substantive equality approach.

I remain ambivalent about whether the international embrace of "decent work FOR ALL" reflects the kind of ethical commitment we need to make institutions work for structurally marginalized groups, notably racialized minorities. But it can be an important start, if the architects and foot soldiers of "decent work for all" look at the matter in a manner that recognizes systemic workplace discrimination and take concrete measures to root it out.

The case of regulating decent work for domestic workers is the issue that I have focused upon most recently, as the academic expert for the ILO who was commissioned to write the Law and Practice Report (http://www.ilo.org/ilc/ILCSessions/99thSession/reports/lang--en/docName--WCMS_104700/index.htm). One of my co-panelists will speak more about minorities as domestic workers. I will emphasize here the roots of domestic "service" in the subordinating status of the minorities who undertook that work – notably enslaved African men and women, and women and men of marginalized castes. The report focused on identifying the disadvantage that attached to the workers and impregnates the perceived social value of the work. It articulates a framework to arrive at substantive equality for domestic workers, both as a matter of process and as a goal. This means that governments and social actors need to take proactive measures to put in place a labour regulatory framework that meaningfully address the conditions of those who work and live in someone else's household, lose "control" over the most basic of matters, most notably their time... The proactive framework should enable domestic workers to organize into collective bodies. It should promote social inclusion, by ensuring that domestic workers enjoy social protection rights including pensions and other benefits. It should regulate against abuse by racialized women who should be employed in other occupations that recognize their skill level (many migrant domestic workers are in fact nurses or teachers). In short, the domestic worker – embodied as an "other", racially- subordinate woman – is not a slave, but a worker who contributes meaningfully to the care economy and enables market activity – she is a social citizen.

By way of comment on the draft recommendations – overall I consider that the draft recommendations are replete with attentive, meaningful proposals that if implemented would make a tremendous difference in the lives of minority communities. I have communicated my detailed comments in writing, but would make the following three comments here, as they relate specifically to this presentation:

1. The conditions under which minorities migrate for work should be considered carefully. It will be particularly important to move beyond thinking of migrants exclusively through the lens of trafficking, which is an important issue but deprives the women and men who decide to leave their homes to better their livelihoods of the AGENCY that they have claimed. Rather, as with the work on decent work for domestic workers, it would be helpful to focus on the terms of migration, and the conditions met by migrants – in other words, on increasing their capabilities and reducing the structural asymmetry associated with their exercise of agency. The increasing governmental policy orientation preferring temporary migration schemes – as the OECD has counselled – rather than permanent labour migration schemes, has a serious impact on the structural position of minorities, and needs to be called into question. Migration needs to be

recast in terms of the freedom of movement of persons, which can be conditioned with guaranteed labour rights for migrants.

2. The situation of minorities in relation to the current, global economy warrants particular attention in the report. In paragraphs 42-46, I believe there is an opportunity to identify transnational corporations specifically. There is an allusion in para. 44; however it might be welcome to link John Ruggie's work specifically to the protection of minorities. It might also be useful to reference the inclusion in the ILO Guidelines of equality (it might also be appropriate to refer to OECD guidelines despite its limited membership because of the concentration of MNCs headquartered in OECD member states). A broader but related comment on corporate social responsibility and soft law standards might also be in order in the Report. Sometimes, states rely on soft law such as codes of corporate practice not because they lack regulatory authority, but because they have chosen for a mix of economic reasons to privilege self-regulation by an industry, even when the labour standards of minorities in marginalized sectors are disregarded. This was the case in the example of segregation in the agricultural sector that I mentioned at the outset. The reliance on "model contracts" for migrant domestic workers without robust legislative frameworks in the background is a similarly problematic phenomenon. I would encourage the Rapporteur to caution that reliance on soft law in employment contexts where minorities predominate may lead to a severe degradation over time of the applicable hard law rules (equality, respect for labour rights) that exist for majority culture workers. Legal form matters. So too implementation and compliance mechanisms need to be applied attentively to racialized minorities.

3. The recommendation in paragraph 50 about equal representation of minority groups among their national and international staff is praiseworthy in its intent and should be extended to the UN human rights system and development agencies. That said, I believe it will need to be articulated more precisely - is it equal (numerical equality, if minorities are numerically smaller?) or equitable representation or even proportional (possibly unduly rigid). I would go so far as to suggest a recommendation that urges the UN and other agencies to promote hiring policies that foster the active recruitment and retention of members of minority groups (international employment equity).

Thank you for listening; I look forward to your questions and comments.