

# LEGAL RIGHTS - PROPERTY, CIVIL AND CONTRACT RIGHTS

## II. GENERAL COMMENTS AND RECOMMENDATIONS

- CERD General Recommendation XXX (Sixty-fifth session, 2004): Discrimination Against Non-Citizens, A/59/18 (2004) 93 at paras. 24, 29, 32 and 34.

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[The Committee recommends]...that the States parties to the Convention, as appropriate to their specific circumstances, adopt the following measures:

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24. Regulate the burden of proof in civil proceedings involving discrimination based on race, colour, descent, and national or ethnic origin so that once a non-citizen has established a *prima facie* case that he or she has been a victim of such discrimination, it shall be for the respondent to provide evidence of an objective and reasonable justification for the differential treatment;

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29. Remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health;

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32. Guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing and ensuring that housing agencies refrain from engaging in discriminatory practices;

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34. Take effective measures to prevent and redress the serious problems commonly faced by non-citizen workers, in particular by non-citizen domestic workers, including debt bondage, passport retention, illegal confinement, rape and physical assault;

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- ICCPR General Comment 13 (Twenty-first session, 1984): Article 14: Equality Before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law, A/39/40 (1984) 143 at para. 2.

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2. In general, the reports of States parties fail to recognize that article 14 applies not only to procedures for the determination of criminal charges against individuals but also to procedures to determine their rights and obligations in a suit at law. Laws and practices dealing with these matters vary widely from State to State. This diversity makes it all the more necessary for States parties to provide all relevant information and to explain in greater detail how the concepts of "criminal charge" and "rights and obligations in a suit at law" are interpreted in relation to their respective legal systems.

## LEGAL RIGHTS - PROPERTY, CIVIL AND CONTRACT RIGHTS

- ICCPR General Comment 28 (Sixty-eighth session, 2000): Article 3: Equality of Rights Between Men and Women, A/55/40 vol. I (2000) 133 at para. 19.

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19. The right of everyone under article 16 to be recognized everywhere as a person before the law is particularly pertinent for women, who often see it curtailed by reason of sex or marital status. This right implies that the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. It also implies that women may not be treated as objects to be given, together with the property of the deceased husband, to his family. States must provide information on laws or practices that prevent women from being treated or from functioning as full legal persons and the measures taken to eradicate laws or practices that allow such treatment.

- ICCPR General Comment 31 (Eightieth Session, 2004): Article 2: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, A/59/40 (2004) 175 at para. 8.

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8. The article 2, paragraph 1, obligations are binding on States parties and do not, as such, have direct horizontal effect as a matter of international law. The Covenant cannot be viewed as a substitute for domestic criminal or civil law. However, the positive obligations on States parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights insofar as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States parties of those rights, as a result of States parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. States are reminded of the interrelationship between the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach under article 2, paragraph 3. The Covenant itself envisages in some articles certain areas where there are positive obligations on States parties to address the activities of private persons or entities. For example, the privacy-related guarantees of article 17 must be protected by law. It is also implicit in article 7 that States parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power. In fields affecting basic aspects of ordinary life such as work or housing, individuals are to be protected from discrimination within the meaning of article 26.

## LEGAL RIGHTS - PROPERTY, CIVIL AND CONTRACT RIGHTS

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- CEDAW General Recommendation 25 (Thirtieth session, 2004): Article 4, Paragraph 1: Temporary Special Measures, A/59/38 part I (2004) 78 at para. 38.

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38. States parties are reminded that temporary special measures should be adopted to accelerate the modification and elimination of cultural practices and stereotypical attitudes and behaviour that discriminate against or are disadvantageous for women. Temporary special measures should also be implemented in the areas of credit and loans, sports, culture and recreation, and legal awareness. Where necessary, such measures should be directed at women subjected to multiple discrimination, including rural women.

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- CRC General Comment 2 (Thirty-first session, 2002): The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child, A/59/41 (2004) 82 at paras. 13 and 14.

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13. NHRIs [national human rights institutions] must have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children. In order to be able to effectively carry out such investigations, they must have the powers to compel and question witnesses, access relevant documentary evidence and access places of detention. They also have a duty to seek to ensure that children have effective remedies - independent advice, advocacy and complaints procedures - for any breaches of their rights. Where appropriate, NHRIs should undertake mediation and conciliation of complaints.

14. NHRIs should have the power to support children taking cases to court, including the power (a) to take cases concerning children's issues in the name of the NHRI and (b) to intervene in court cases to inform the court about the human rights issues involved in the case.

- CRC General Comment 3 (Thirty-second session, 2003): HIV/AIDS and the Rights of the Child, A/59/41 (2004) 89 at paras. 31-33.

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31. Special attention must be given to children orphaned by AIDS and to children from

## LEGAL RIGHTS - PROPERTY, CIVIL AND CONTRACT RIGHTS

affected families, including child-headed households, as these impact on vulnerability to HIV infection. For children from families affected by HIV/AIDS, the stigmatization and social isolation they experience may be accentuated by the neglect or violation of their rights, in particular discrimination resulting in a decrease or loss of access to education, health and social services. The Committee wishes to underline the necessity of providing legal, economic and social protection to affected children to ensure their access to education, inheritance, shelter and health and social services, as well as to make them feel secure in disclosing their HIV status and that of their family members when the children deem it appropriate. In this respect, States parties are reminded that these measures are critical to the realization of the rights of children and to giving them the skills and support necessary to reduce their vulnerability and risk of becoming infected.

32. The Committee wishes to emphasize the critical implications of proof of identity for children affected by HIV/AIDS, as it relates to securing recognition as a person before the law, safeguarding the protection of rights, in particular to inheritance, education, health and other social services, as well as to making children less vulnerable to abuse and exploitation, particularly if separated from their families due to illness or death. In this respect, birth registration is critical to ensuring the rights of the child and is also necessary to minimize the impact of HIV/AIDS on the lives of affected children. States parties are, therefore, reminded of their obligation under article 7 of the Convention to ensure that systems are in place for the registration of every child at or immediately after birth.

33. The trauma HIV/AIDS brings to the lives of orphans often begins with the illness and death of one of their parents, and is frequently compounded by the effects of stigmatization and discrimination. In this respect, States parties are particularly reminded to ensure that both law and practice support the inheritance and property rights of orphans, with particular attention to the underlying gender-based discrimination which may interfere with the fulfilment of these rights. Consistent with their obligations under article 27 of the Convention, States parties must also support and strengthen the capacity of families and communities of children orphaned by AIDS to provide them with a standard of living adequate for their physical, mental, spiritual, moral, economic and social development, including access to psychosocial care, as needed.

- CRC General Comment 4 (Thirty-third session, 2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child, A/59/41 (2004) 102 at para. 20.

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20. The Committee is concerned that early marriage and pregnancy are significant factors in health problems related to sexual and reproductive health, including HIV/AIDS. Both the legal minimum age and actual age of marriage, particularly for girls, are still very low in

## **LEGAL RIGHTS - PROPERTY, CIVIL AND CONTRACT RIGHTS**

several States parties. There are also non-health-related concerns: children who marry, especially girls, are often obliged to leave the education system and are marginalized from social activities. Further, in some States parties married children are legally considered adults, even if they are under 18, depriving them of all the special protection measures they are entitled under the Convention. The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys. The Committee on the Elimination of Discrimination against Women has made a similar recommendation (general comment No. 21 of 1994).

- CERD General Recommendation XX (Forty-eighth session, 1996): Article 5: Non-Discriminatory Implementation of Rights and Freedoms, A/51/18 (1996) 124. For text of General Recommendation, see **EQUALITY AND DISCRIMINATION - RACIAL DISCRIMINATION**.
- CERD General Recommendation XXII (Forty-ninth session, 1996): Article 5 and Refugees and Displaced Persons, A/51/18 (1996) 126 at para. 2 (c) and (d). For text of General Recommendation, see **EQUALITY AND DISCRIMINATION - RACIAL DISCRIMINATION**.
- CERD General Recommendation XXIII (Fifty-first session, 1997): On the Rights of Indigenous Peoples, A/52/18 (1997) 122 at paras. 3 and 5. For text of General Recommendation, see **INDIGENOUS PEOPLES**.
- CERD General Recommendation XXIX (Sixty-first session, 2002): On Article 1, Paragraph 1, of the Convention (Descent), A/57/18 (2002) 111 at paras. a, o, u, v, aa and mm. For text of General Recommendation, see **EQUALITY AND DISCRIMINATION - RACIAL DISCRIMINATION**.
- CERD General recommendation XXXI (Sixty-seventh session, 2005): The Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, A/60/18 (2005) 98 at preamble and paras. 7, 8 and 15-17. For text of General Recommendation, see **EQUALITY AND DISCRIMINATION - RACIAL DISCRIMINATION**.

## **LEGAL RIGHTS - PROPERTY, CIVIL AND CONTRACT RIGHTS**

- ICCPR General Comment 17 (Thirty-fifth session, 1989): Article 24: Rights of the Child, A/44/40 (1989) 173 at para. 4. For text of General Comment, see **CHILDREN'S RIGHTS - GENERAL**.
- ICCPR General Comment 29 (Seventy-second session, 2001): Derogations from provisions of the Covenant during a state of emergency, A/56/40 vol. I (2001) 202 at paras. 7 and 11. For text of General Comment, see **DEROGATIONS**.
- ICESCR General Comment 4 (Sixth session, 1991): Article 11(1): The Right to Adequate Housing, E/1992/23 (1991) 114 at paras. 8(a), 8(c) and 17. For text of General Comment, see **ADEQUATE OR DECENT STANDARD OF LIVING - FOOD, CLOTHING, SHELTER**.
- ICESCR General Comment 7 (Sixteenth session, 1997): The Right to Adequate Housing (art. 11(1) of the Covenant): Forced Evictions, E/1998/22 (1997) 113. For text of General Comment, see **ADEQUATE OR DECENT STANDARD OF LIVING - FOOD, CLOTHING, SHELTER**.
- ICESCR General Comment 15 (Twenty-ninth session, 2002): The Right to Water (arts. 11 and 12 of the Covenant), E/2003/22 (2002) 120 at paras. 55-57. For text of General Comment, see **ADEQUATE OR DECENT STANDARD OF LIVING - FOOD, CLOTHING, SHELTER**.
- ICESCR General Comment 16 (Thirty-fourth session, 2005): Article 3: The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights, E/2006/22 (2005) 116 at paras. 27 and 28. For text of General Comment, see **EQUALITY AND DISCRIMINATION - GENDER DISCRIMINATION - General**.
- CEDAW General Recommendation 21 (Thirteenth session, 1994): Equality in Marriage and Family Relations, A/49/38 (1994) 1 at paras. 7-10, 25-35, and 48-50. For text of General Comment, see **EQUALITY AND DISCRIMINATION - FAMILY**.