

WORK - EQUALITY IN THE WORKPLACE

II. GENERAL COMMENTS AND RECOMMENDATIONS

- 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.

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- ICESCR General Comment 5 (Eleventh session, 1994): Persons with Disabilities, E/1995/22 (1994) 99 at para. 22.

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22. According to the Standard Rules, persons with disabilities, whether in rural or urban areas, must have equal opportunities for productive and gainful employment in the labour market. ^{19/} For this to happen it is particularly important that artificial barriers to integration in general, and to employment in particular, be removed. As the International Labour Organisation has noted, it is very often the physical barriers that society has erected in areas such as transport, housing and the workplace which are then cited as the reason why

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persons with disabilities cannot be employed. ^{20/} For example, as long as workplaces are designed and built in ways that make them inaccessible to wheelchairs, employers will be able to "justify" their failure to employ wheelchair users. Governments should also develop policies which promote and regulate flexible and alternative work arrangements that reasonably accommodate the needs of disabled workers.

Notes

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^{19/} [General Assembly resolution 48/96 of 20 December 1993, annex], Rule 7.

^{20/} See A/CONF.157/PC/61/Add.10, p.12.

- CEDAW General Recommendation 13 (Eighth session, 1989): Equal Remuneration for Work of Equal Value, A/44/38 (1989) 76.

The Committee on the Elimination of Discrimination against Women,

Recalling International Labour Organisation Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, which has been ratified by a large majority of States parties to the Convention on the Elimination of All Forms of Discrimination against Women,

Recalling also that it has considered 51 initial and 5 second periodic reports of States parties since 1983,

Considering that although reports of States parties indicate that, even though the principle of equal remuneration for work of equal value has been accepted in the legislation of many countries, more remains to be done to ensure the application of that principle in practice, in order to overcome the gender-segregation in the labour market,

Recommends to the States parties to the Convention on the Elimination of All Forms of Discrimination against Women that:

1. In order to implement fully the Convention on the Elimination of All Forms of Discrimination against Women, those States parties that have not yet ratified ILO Convention No. 100 should be encouraged to do so;
2. They should consider the study, development and adoption of job evaluation systems based on gender-neutral criteria that would facilitate the comparison of the value of those

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jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate, and they should include the results achieved in their reports to the Committee on the Elimination of Discrimination against Women;

3. They should support, as far as practicable, the creation of implementation machinery and encourage the efforts of the parties to collective agreements, where they apply, to ensure the application of the principle of equal remuneration for work of equal value.

- CEDAW General Recommendation 16 (Tenth session, 1991): Unpaid Women Workers in Rural and Urban Family Enterprises, A/46/38 (1991) 5.

The Committee on the Elimination of Discrimination against Women,

Bearing in mind articles 2 (c) and 11 (c), (d) and (e) of the Convention on the Elimination of All Forms of Discrimination against Women and General Recommendation No. 9 (eighth session, 1989) on statistical data concerning the situation of women,

Taking into consideration that a high percentage of women in the States parties work without payment, social security and social benefits in enterprises owned usually by a male member of the family,

Noting that the reports presented to the Committee on the Elimination of Discrimination against Women generally do not refer to the problem of unpaid women workers of family enterprises,

Affirming that unpaid work constitutes a form of women's exploitation that is contrary to the Convention,

Recommends that States parties:

(a) Include in their reports to the Committee information on the legal and social situation of unpaid women working in family enterprises;

(b) Collect statistical data on women who work without payment, social security and social benefits in enterprises owned by a family member, and include these data in their report to the Committee;

(c) Take the necessary steps to guarantee payment, social security and social benefits for women who work without such benefits in enterprises owned by a family member.

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- CERD General Recommendation XXIX (Sixty-first session, 2002): On Article 1, Paragraph 1, of the Convention (Descent), A/57/18 (2002) 111 at para. kk. For text of General Recommendation, see **EQUALITY AND DISCRIMINATION - RACIAL DISCRIMINATION**.
- CERD General Recommendation XXX (Sixty-fifth session, 2004): Discrimination Against Non-Citizens, A/59/18 (2004) 93 at paras. 15, 29 and 33-35. For text of General Recommendation, see **ALIENS - GENERAL**.
- 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. 31. For text of General Comment, see **EQUALITY AND DISCRIMINATION - GENDER DISCRIMINATION - General**.
- 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. 11, 23 and 24. For text of General Comment, see **EQUALITY AND DISCRIMINATION - GENDER DISCRIMINATION - General**.
- CEDAW General Recommendation 19 (Eleventh session, 1992): Violence Against Women, A/47/38 (1992) 5 at paras. 7 (h), 17, 18 and 24 (j), (p) and (t)(i). For text of General Recommendation, see **EQUALITY AND DISCRIMINATION - GENDER DISCRIMINATION - Violence Against Women**.
- CEDAW General Recommendation 25 (Thirtieth session, 2004): Article 4, Paragraph 1: Temporary Special Measures, A/59/38 part I (2004) 78 at paras. 9, 22, 23, 31, 32 and 37. For text of General Recommendation, see **EQUALITY AND DISCRIMINATION - TEMPORARY SPECIAL MEASURES (AFFIRMATIVE ACTION)**.