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Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights

Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)

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1. The Committee on Economic, Social and Cultural Rights, in accordance with Rule 65 of its Provisional Rules of Procedure (E/C.12/1990/4/Rev.1), may prepare general comments based on the various articles and provisions of the Covenant with a view to assisting States parties in fulfilling their reporting obligations. This draft general comment is prepared based on that Rule.

I. Introduction

2. The right of everyone to the enjoyment of just and favourable conditions of work is recognized in international human rights treaties[1] as well as in other United Nations instruments, particularly ILO conventions[2], and at the regional level.[3] It is an important

* Late submission.

[1] UDHR, articles 23 and 24; ICERD, article 5; CEDAW, article 11; CRC, article 32; ICRMW, article 25; CRPD, article 27.

[2] Though many ILO conventions relate directly and indirectly to just and favourable conditions of work, for this General Comment, the Committee has identified the following as relevant: Hours of Work (Industry) Convention, 1919 (No.1); Weekly Rest (Industry) Convention 1921 (No.14); Minimum Wage-Fixing Machinery Convention 1928 (No.26); Hours of Work (Commerce and Offices) Convention 1930 (No.30); Forty-Hour Week Convention 1935 (No.47); Protection of Wages Convention 1949 (No.95); Minimum Wage Fixing (Agriculture) Convention 1951 (No.99); Equal Remuneration Convention 1951 (No.100); Weekly Rest (Commerce and Offices) Convention 1957

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Comment [AA1]: Please note that some of the Conventions mentioned in the footnote have been considered **not up-to-date instruments** by the CARTIER WORKING PARTY, which from 1995 to 2002 undertook a work of revision of ILO Standards. **The NON-UP-TO-DATE conventions mentioned below are: C.1-26-30-47-99-132-153.**

For a full list of up-to-date ILO instruments: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/genericdocument/wcms_125121.pdf

Please also note that the ILO Governing Body has agreed on establishing and implementing a system of constant reviewing of ILO Instruments (the so-called Standard Review Mechanism) that will start its work as from November 2015.

component of a broader set of labour rights enshrined in the Covenant and the corollary of the right to work as freely chosen and accepted work. Similarly, trade union rights, freedom of association and the right to strike are crucial means to introduce, maintain and defend just and favourable conditions of work[4]. In turn, social security benefits to compensate for the lack of work-related income also are an important element of labour rights The enjoyment of the right to just and favourable conditions of work is also a pre-requisite for, and result of, the enjoyment of other Covenant rights, for example, in ensuring the right to the highest attainable standard of physical and mental health, by avoiding occupational accidents and disease, and in enabling an adequate standard of living through a decent remuneration.

3. The Committee is concerned that the importance of the right to just and favourable conditions of work has yet to be fully recognized by State and non-state actors, as shown by a number of factors. In fact, almost 50 years after adoption of the Covenant, the gender pay gap remains a persistent and global problem. The ILO estimates that annually some 330 million people are victims of accidents at work and that there are 2 million work-related fatalities.[5] Almost half the countries in the world still regulate weekly working hours above the 40 hour work week, with many regulating a 48 hour limit, and some countries having excessively high average working hours.

4. Discrimination, inequalities and a lack of assured rest and leisure conditions plague many of the world's workers. For some years now, economic, fiscal and political crises have led to austerity measures that claw back advances and an increasing complexity of work contracts as well as an erosion of national and international labour standards, collective bargaining and working conditions that often result in insufficient protection of just and favourable conditions of work as required by the Covenant.

5. Drawing on the Committee's many years of experience in its consideration of reports of States parties, and following up on General Comment 18, on the right to work, this general comment is drafted with the aim of contributing to the full implementation of Article 7 of the Covenant.

Comment [AA2]: The right to strike is a relevant and important tool that workers can use to maintain and defend favorable conditions of work. However the mention of the right to strike as crucial is questionable.

What is **crucial** to assure just and favorable conditions of work is rather a conducive economic environment towards the creation and development of sustainable enterprises which are conducive to growth and employment. This should be included here.

Comment [TT3]: This sentence seems to suggest that an adequate standard of living could be ensured only by a decent remuneration. This is reductive: the adequate standard of living does not only come from a decent remuneration (or, better, wage). There are other factors involved eg social security, infrastructure, education, access to basic necessities, etc.

Comment [TT4]: Gender pay gap occurs not as a result of stakeholders refusing to recognize just and favorable conditions of work. Again, there are many reasons behind the existence of this gap eg cultural factors, different skills levels, experience at the workplace, etc.

Comment [TT5]: This line suggests that new forms of employment contracts have resulted in insufficient protection. Lack of protection is not a result of such contracts per se. The lack of protection for workers in these forms of contracts is often due to national laws and regulations that tend to overprotect workers in permanent contracts. So there needs to be clarity on what is the cause and effect here.

(No.106); Discrimination (Employment and Occupation) Convention 1958 (No.111); Minimum Wage Fixing Convention 1970 (No.131); Holidays with Pay Convention (Revised) 1970 (No.132); Minimum Age Convention 1973 (No.138); Hours of Work and Rest Periods (Road Transport) Convention 1979 (No.153); Occupational Safety and Health Convention 1981 (No.155); Protocol of 2002 to the Occupational Safety and Health Convention 1981 (No.155); Workers with Family Responsibilities Convention 1981 (No. 156); Night Work Convention 1990 (No.171); Part-Time Work Convention 1994 (No.175); Maternity Protection Convention 2000 (No.183); The Convention concerning the promotional Framework for Occupational Safety and Health 2009 (No.187); Domestic Workers Convention 2011 (No.189).

[3] European Social Charter (Revised), Part I, paragraphs 2, 3, 4, 7 and 8; Part II, articles 2, 3 and 4; Charter of Fundamental Rights of the European Union, articles 1483), 23, 31 and 32; Additional Protocol to the American Convention on Human Rights, article 7; African Charter on Human and Peoples' Rights, article 15. The wording of the provisions in the various treaties differs. The European instruments are broader in the protections offered while the African Charter includes the narrower requirement of 'equal pay for equal work'.

[4] CESCR General Comment No. 18, para.2, indicates the inter-connection between the right to work in a general sense in Article 6 of the Covenant; the recognition of the individual dimension of the right to the enjoyment of just and favourable conditions of work in Article 7; and the collective dimension in Article 8.

[5] According to the ILO, overall, the number of work related fatal and non-fatal accidents and diseases globally did not alter significantly over the period 1998 to 2008 although the global figure hides variations between countries and regions.

II. Normative Content

6. The right to just and favourable conditions of work is a right of everyone, without distinction of any kind. The reference to 'everyone' highlights the fact that the right applies to all workers, female and male, as well as young and older workers, workers with disabilities, workers in the informal sector, migrant workers, domestic workers, self-employed workers, and unpaid workers as well as all workers in all settings, including free trade and export processing zones. The reference to everyone reinforces the general prohibition on discrimination in article 2(2) and the equality provision in article 3 of the Covenant and is supplemented by the various references to equality and freedom from distinctions of any kind in sub-articles 7(a) (i) and 7(c).

7. In its formulation, Article 7 identifies a non-exhaustive list of fundamental elements to guarantee just and favourable conditions of work, that are unpacked in this General Comment. In addition, the reference to the term 'in particular' indicates that other elements are also relevant. In this context, the Committee has systematically underlined factors such as the prohibition of forced labour and the social and economic exploitation of children and young persons, freedom from violence and harassment, including sexual harassment, as well as paid maternity, paternity and parental leaves.

Comment [TT6]: The question is: how to effectively preserve the right to just and favorable conditions to workers in the informal sector and unpaid workers? The draft does not provide for any practical and realistic guidance.

Article 7(a): Remuneration which provides for all workers, as a minimum, with:

(i) Remuneration

8. 'Remuneration' is the first constituent element of just and favourable conditions of work. The term 'remuneration' is broad in scope, going beyond the more restricted notion of 'wage' or 'salary' to include additional direct or indirect allowances in cash or in kind that should be of a fair and reasonable amount paid by the employer to the employee, such as grants, contributions to health insurance, housing and food allowances, and on-site affordable childcare facilities.[6]

9. Article 7(a) identifies the 'minimum' requirements that remuneration should meet to fulfil the right to just and favourable conditions at work. It is clear that the reference to a 'minimum' is to ensure that the article sets out the basic requirements for remuneration which in no case should limit efforts to improve the level of remuneration above those standards[7]. This minimum applies to 'all workers' reflecting the term 'everyone' in the chapeau.

10. The minimum criteria for remuneration in 7 (a) are fair wages, equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work (article 7(a) (i)); and a decent living for workers and their families (article 7(a) (ii)).

(ii) Fair wage

11. All workers have the right to a fair wage. The notion of a fair wage is not static since it depends on a range of non-exhaustive objective criteria, reflecting not only the output of the work but also responsibilities of the worker, the level of skill and education required to

Comment [AA7]: The most relevant question is: what is the difference between fair wages and remuneration providing a decent living? (See IOE General Comment #2).

[6] This understanding is supported by article 1(a) of the ILO Equal Remuneration Convention 1951 (No. 100) ratified by 171 States.

[7] Travaux Préparatoires A/2929 (1955), para.5. Craven, *op. cit.*,p.228.

perform the work, the impact of the work on health and safety of the worker, specific hardships related to the work and impact on the worker's personal and family life.[89] Any assessment of fairness should also take into account the position of women workers, particularly where their work and pay has traditionally been undervalued. Where workers have unstable contracts, supplements to the wage, as well as other measures to guard against arbitrariness, may be necessary in the interests of fairness to mitigate the lack of job security. Workers should not have to pay back part of their wage for work already performed and should receive all wages and benefits legally due upon termination of contracts or in event of the bankruptcy or judicial liquidation of the employer. Employers are prohibited from restricting freedom of workers to dispose of their remuneration. Prisoners who accept to work should receive a fair wage. The minimum wage might represent a fair wage for some workers; however, for the clear majority of workers, fair wages are above the minimum wage.

(iii) Equal remuneration for work of equal value without distinction

12. Workers should not only have equal remuneration when they perform the same or similar jobs, but their remuneration should be equal even when their work is completely different but nonetheless of equal value, when assessed by objective criteria. The requirement goes beyond only wages or pay to include other payments or benefits paid directly or indirectly to workers. Though equality between men and women is particularly important in this context and even merits a specific reference in Article 7 (a)(i), the Committee reiterates that equality applies to all workers without distinction based on race, ethnicity, nationality, migrant or health status, disability, age, sexual orientation, gender identity or any other ground.[10]

13. The extent to which equality is being achieved requires an on-going objective evaluation of whether the work is of equal value and whether the remuneration received is equal.[11] It should cover a broad selection of functions. Since the focus should be on the 'value' of the work, evaluation factors should include skills, responsibilities and effort required by the worker as well as working conditions. It could be based on a comparison of rates of remuneration across organizations, enterprises and professions.

14. Objective job evaluation is important to avoid indirect discrimination when determining rates of remuneration and comparing the relative value of different jobs. For example, a distinction between full time and part time work – such as payment of bonuses only to full time employees – might indirectly discriminate against women employees where a higher percentage of women are part time workers.[12] Similarly, the objective evaluation of the work must be free from gender bias.

[8] The ILO Study 2014 on 'Minimum Wages Systems' suggests that the notion of a fair wage comprises the notions of a minimum wage and a living wage (the latter more closely related to article 7(a)(ii) of the Covenant), the notion of a fair wage being broader.

[9] In this General Comment, the relationship between wages and the cost of living is understood to fall more clearly as a consideration under article 7(a)(ii); however, it is also important to emphasize that the notion of a 'fair wage' and remuneration for a decent living are inter-dependent.

[10] Article.2 para 2 of the Covenant and CESCR General Comment No. 20.

[11] The Equal Remuneration Convention 1951 (No.100), article 1(b) refers to 'equal remuneration for work of equal value' as 'rates of remuneration established without discrimination on the basis of sex'. The Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111) extends the principle of equal remuneration for work of equal value to other grounds upon which discrimination is prohibited. In making an explicit reference to 'without distinction' Article 7 goes beyond Convention No. 100 to protect against discrimination on grounds other than sex.

[12] Part-Time Work Convention 1994 (No.175), article 5.

Comment [AA8]: Fairness has to be considered within the context; a fair wage also has to be based on productivity, the cost of living, the average wage in the sector, the capacity of the employers to pay, the desirability of attaining and maintaining a high level of employment (refer to ILO Convention 131).

Comment [TT9]: The footnote is wrongly labelled. The study is NOT an ILO study intended as a product of the tripartite constituents. Rather, the study referred to here is a report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) on ILO Conventions 131 and ILO Recommendation 135.

Comment [TT10]: Who is responsible for supplementing the wage? Are the public institutions or the employer? What is more unstable: a temporary contract or a labor market with high unemployment? Furthermore, countries must be conscious of the need to ensure that they do not excessively increase the costs of employment since doing so will more likely infringe on the necessary flexibility, which much be sought after by employers and workers. In fact, many contracts offered need to be by nature flexible contracts. The fact that this statement seems to insinuate that all non-standard contracts are unstable and low-paying necessitating supplementary support fails to acknowledge the reality of the matter. Finally, it is important not to discount the fact that well-meaning interventions may have unintended consequences of restricting employability of job-seekers. ...

Comment [TT11]: It is true that some employers may attempt to circumvent on their obligations as employers and misuse certain work arrangements to cut costs. But this is not a common practice amongst all employers and the statement should not present this as such.

Comment [AA12]: We firmly disagree with this statement. The word objective is not the best one. With reference to ILO Convention No. 100 (Equal Remuneration Convention), the employers have always underlined that the objectivity cannot exist when one have to compare different jobs.

Comment [AA13]: The same applies for the need of « objective evaluation ».

Comment [TT14]: This is not a good example. Providing bonuses is a company prerogative linked to a specific task or performance and cannot always be extended to all kind of workers. That does not have to do with the working time and international standards.

15. Equal remuneration for work of equal value applies across all sectors although States parties have differing responsibilities regarding the public and private sectors. Where the State has direct influence over rates of remuneration, equality should be achieved in the public sector as rapidly as possible ensuring equal remuneration for work of equal value in the civil service at central, provincial or local levels as well as for work under public contract or in enterprises either fully or partially owned by the State.[13]

16. Remuneration set through collective agreements between workers and employers should seek equality for work of equal value. States parties should adopt legislation as well as other relevant measures to promote progressive realization of equal remuneration for work of equal value including in the private sphere, for example, by encouraging the establishment of a classification of jobs without regard to sex; fixing time bound targets to achieve equality and reporting requirements to assess whether targets have been met; and requiring progressive decreases in the differentials between rates of remuneration for men and women for work of equal value. [14]States parties should consider the introduction of a wide range of vocational and other training measures for women, including in non-traditional fields of study and work.

Comment [AA15]: This is indeed a good statement. Quite different from the objective criteria requested in Paragraphs 12 and 13. Nevertheless fixing targets should not be equivalent to counterproductive obligations (quotas). Appropriate incentives, realistically designed with progressive targets are much more efficient than distorting compulsory measures

(iv) Conditions of work for women not inferior to those enjoyed by men with equal pay for equal work

17. 'Conditions of work' in this particular sub-paragraph include the 'conditions' identified in the work contract that can affect the rate of remuneration as well as broader 'conditions' in other paragraphs of article 7. Thus, a woman performing work of equal value to that of a male counterpart should not have fewer contractual protections or more arduous contractual requirements. This requirement does not prevent women enjoying specific conditions of work relating to pregnancy and maternity protection.

18. While equal remuneration for work of equal value should be achieved progressively, conditions of work for women not inferior to those enjoyed by men and equal pay for equal work[15] must be guaranteed, reflecting the obligation in article 2(2) for States parties to guarantee the exercise of all Covenant rights without discrimination. Consequently, States parties must achieve this aspect of article 7(a) (i) immediately.

19. The notion of 'equal pay for equal work' mentioned in the 2nd part of Article 7 (i) (a) is more restrictive because it focuses on the narrower notion of equal work instead of the broader recognition of remuneration based on the value of work. In the understanding of the Committee, in the specific situation where a man and a woman perform the same or similar functions, both workers must receive the same pay but this should not detract from the requirement to take immediate steps towards the broader obligation of achieving progressively equal remuneration for men and women for work of equal value.

(v) Remuneration that provides all workers with a decent living for themselves and their families

20. Closely linked to the notions of fairness and equality, 'remuneration' must also provide a 'decent living' for workers and their families. While fair wages and equal remuneration are determined by reference to the work performed by an individual worker as well as in comparison to other workers, remuneration that provides a decent living must be determined by reference to outside factors such as the cost of living and other prevailing

Comment [TT16]: Remuneration refers to wages (what the employer pays his worker). So technically, it does not include other non-wage benefits that are accorded to the worker neither does it include state contributions/assistance. Wages by themselves are not meant to enable a family to enjoy all the rights in the Covenant. They are meant to pay the worker (and only the worker) for his service. It is important to bear this in mind.

[13] Adapted from Equal Remuneration Recommendation, 1951 (No. 90), paras 1 and 2.
[14] ILO Equal Remuneration Recommendation, 1951 (No. 90), paras 4 and 5.
[15] ILO instruments do not refer to the concept of equal pay for equal work but only to equal remuneration for work of equal value. The Covenant refers to both.

economic and social conditions. Thus, remuneration must be sufficient to enable the worker and his or her family to enjoy other rights in the Covenant, such as social security, health care, education and an adequate standard of living, including access to adequate food, water and sanitation, housing and clothing.

21. The notion of a minimum wage defined as 'the minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract'[16] provides a means of ensuring remuneration for a decent living for workers and their families.

22. States parties should prioritize the adoption of a periodically reviewed minimum wage, indexed to the cost of living, and maintain a mechanism to do this. Workers, employers and their representative organizations, as well as other stakeholders such as representatives of civil society, should participate directly in the operation of such a mechanism.

23. In the experience of the Committee, minimum wages can only be effective if they are realistic. The minimum wage should be recognized in legislation, fixed with reference to the requirements of a decent living, and applied consistently. The elements to take into account in fixing the minimum wage are flexible although they must be technically sound, including the general level of wages in the country, the cost of living, social security contributions and benefits and relative living standards.

24. The minimum wage should be above the poverty line. Given the vertical and horizontal segregation of women in the labour market, the minimum wage is particularly important for them to enjoy Covenant rights. The minimum wage might represent a percentage of the average wage so long as this percentage is sufficient to ensure a decent living for workers and their families.[17]

25. Reference to wages paid for work of equal value in sectors subject to collective wage agreements is relevant as is the general level of salaries in the country or locality in question. Economic factors such as the requirements of economic and social development and the achievement of a high level of employment also need to be considered, but the Committee underlines that such factors should not be used to justify a minimum wage that does not ensure a decent living for workers and their families. While recognizing that minimum wages are often frozen during times of economic and financial crises, the Committee further underlines that, in order for States Parties to comply with Article 7 of the Covenant, such a measure has to be taken as a last resort and it must be of a temporary nature with a return to the standard procedures of periodic review and increase in the minimum wage as swiftly as possible[18].

26. In keeping with the broad scope of article 7, the minimum wage should apply systematically, protecting as much as possible the fullest range of workers, including workers in vulnerable situations such as workers with disabilities, domestic workers, migrant workers, agricultural workers as well as workers in the informal sector. The minimum wage might apply generally or differ across sectors, regions, zones and professional categories[19] so long as the wages apply without direct or indirect

[16] This is the definition relied upon by the ILO Committee of Experts on the Application of Conventions and Recommendations in a number of its Reports and other documents.

[17] The European Committee of Social Rights has indicated that remuneration, to be fair, must be in any event above the poverty line in the country, ie 50 per cent of the national average wage.

[18] Letter of the Chairperson of CESCR to States parties on austerity measures, May 2012.

[19] The Minimum Wage Fixing Recommendation No. 135 (Part III, para 5).

Comment [AA17]: Economic factors should refer to the following: the productivity, the cost of living, the average wage in the sector, the capacity of the employers to pay, the desirability of attaining and maintaining a high level of employment.

Comment [AA18]: Why the concept of minimum wage is only raised at this stage?

Comment [TT19]: It is against all the tripartite and social dialogue principles to add other stakeholders in this genuine social dialogue process. It goes against the ILO tripartite approach (and ILO Convention on minimum wages) and will distort any capacity to have a consensual approach among workers, employers and public institutions.

Comment [AA20]: The word realistic is a good word here, as it anchors the minimum wage to objective criteria. The word adequate (Paragraph 2, last line) only looks at the social element of the minimum wage.

Comment [AA21]: Minimum wages does not exist in many countries that have developed advanced welfare strategies (such as Switzerland, Austria, Denmark, Norway, among others). There is not just one way to assure minimum welfare for individuals; minimum wages can be a good tool if designed properly but should not be considered as something to be included systematically in all regulations. Beyond this, in many countries with minimum wages systems, it is not the legislation that defines the minimum wage. Minimum wages might also be set by collective agreements or arbitration awards, for instance. The requirement contained in ILO Convention No. 131 (Minimum wage fixing Convention) « Minimum wages shall have the force of law» is one of the main reason explaining why the Convention has not ...

Comment [AA22]: Again, there is no reference to economic factors apart from the cost of living. What about the employers capacity to develop its business and ensure that the agreed minimum wage is paid?

Comment [TT23]: The use of minimum wage as an instrument to equalize gender pay gap or any form of inequality for that matter is misguided.

Comment [TT24]: Article 3 of ILO Convention 131 considers both the social and economic factors as equally important in fixing the minimum wage. This statement seems to give a higher priority for social factors, which should not be the case.

discrimination and ensure a decent living. In setting minimum wages at sector or industry level, the work performed in sectors predominantly employing women, minorities or foreign workers, should not be undervalued compared to work in sectors predominantly employing men or nationals. It is particularly important to ensure that job evaluation methods used to align or adjust sectoral or occupational minimum wage schemes is not inherently discriminatory.

27. The failure to respect the minimum wage should be subject to penal or other sanctions. Appropriate measures, including effective labour inspections, are necessary to ensure the application of minimum wage provisions in practice. States parties should provide adequate information on minimum wages in relevant languages and dialects as well as in accessible formats for workers with disabilities and illiterate workers. Placing information on notice boards placed prominently in the work place such as the collection point for wages is appropriate.

Article 7(b): Safe and healthy working conditions

28. Preventing occupational accidents and disease is a fundamental aspect of the right to just and favourable conditions of work and closely related to other Covenant rights, in particular the right to the highest attainable level of physical and mental health.[20] States parties should adopt a national policy for the prevention of accidents and work-related health injury by minimizing hazards in the working environment[21] and ensuring broad participation in its formulation, implementation and review, in particular of workers and employers and their representative organizations.[22] While full prevention of occupational accidents and diseases might not be possible, the human and other costs of not taking action far outweigh the financial burden on States parties for taking immediate preventative steps that should be increased over time.[23]

29. The national policy should cover all branches of economic activity including the formal and informal sectors and all categories of workers.[24] It should take into account specific risks to the safety and health of female workers, for example in case of pregnancy, as well as of workers with disabilities and stipulate that denial of reasonable accommodation amounts to discrimination.

30. The policy should address at least the following areas[25]: design, testing, choice, substitution, installation, arrangement, use and maintenance of the material elements of work (workplaces, working environment, work processes, tools, machinery and equipment, as well as chemical, physical and biological substances and agents); the relationship between the main elements of work and the physical and mental capacities of workers, including their ergonomic requirements; training of relevant personnel; and protection of workers and representative organizations from disciplinary measures when they have acted in conformity with the national policy, such as in response to imminent and serious danger.

31. In particular, the policy should indicate specific actions required of employers in areas such as prevention and response to accidents and disease as well as recording and

[20] Articles 12(2)(b) and (c) of the Covenant.
[21] ILO Occupational Safety and Health Convention 1981 (No. 155), article 4(1).
[22] Ibid.
[23] Craven, *op.cit.*, p.241.
[24] Occupational Safety and Health Convention 1981 (No. 155), articles 1(1) and 2(1). In particular, policies should include protection of domestic workers, as well as temporary workers, part-time workers apprentices, self-employed persons, migrant workers and workers in the informal sector.
[25] Occupational Safety and Health Convention 1981 (No. 155), articles 5(a), 5 (b), 5 (c), 5 (e).

notifying relevant data, given the fundamental responsibility of the employer to protect the health and safety of workers; include a mechanism, which might be a central body, for coordination on policy implementation and programmes to support implementation of the policy; and have the authority to undertake periodic reviews. To assist with the review, the policy should promote the collection and dissemination of reliable and valid data on the fullest possible range of occupational accidents and disease, including accidents of workers while commuting to and from work.[26] Data collection should respect human rights principles, including confidentiality of personal and medical data[27] as well as disaggregation of data by sex and other relevant grounds.

32. The policy should incorporate appropriate monitoring and enforcement provisions including effective investigations, and provide adequate penalties in case of violations. Workers affected by a preventable occupational accident or disease should have a right to a remedy, including access to appropriate grievance mechanisms, such as courts, to resolve disputes. In particular, States parties should ensure that workers suffering from an accident or disease, and where relevant, their dependents, receive adequate compensation, including for costs of treatment, loss of earnings and other costs, as well as access to rehabilitation services.

Article 7(c): Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence

33. All workers have the right to equal opportunity for promotion through fair and transparent processes that respect human rights principles. The criteria of seniority and competence require promotions to be based on merit. Consequently, there should be no place for irrelevant criteria such as personal preference or family and social links. Similarly, workers must have the opportunity for promotion free from reprisals related to trade union or political activism. The reference to equal opportunity requires that promotions are not discriminatory and this is highly relevant for women and other workers, such as workers with disabilities, workers from certain ethnic, national and other minorities, for example, the Roma and LGBTI workers, and older workers who face age-related discrimination later in their working life.

34. The materialisation of equality in promotion requires the analysis of direct and indirect obstacles as well as a number of broad measures including training and incentives such as initiatives to reconcile work and family responsibilities, for example, affordable day-care services for children and dependent adults. In order to accelerate *de facto* equality, temporary special measures might be necessary.[28] They should be regularly reviewed and appropriate sanctions applied in case of non-compliance.

35. In the public sector, States parties should introduce objective standards for promotion that are non-discriminatory and seek to achieve equality, particularly between men and women. Public sector promotions should be subject to independent review. For the private sector, States parties should adopt relevant legislation, such as comprehensive non-discrimination legislation, to guarantee equality of promotion opportunities and undertake surveys to monitor changes over time.

[26] Protocol of 2002 to the Occupational Safety and Health Convention 1981 (No. 155), article 1(d).
[27] Ibid, article 3(d).
[28] CESCR General Comments No. 16, para 15; and No. 20, paras 38 and 39.

Article 7(d): Rest, leisure, reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

36. Rest and leisure, limitation of working hours as well as paid periodic holidays help workers to maintain an appropriate work/life balance and to avoid work-related stress, accidents and disease. This also promotes the realization of other Covenant rights and therefore, though States parties have flexibility in light of the national context, they are required to set minimum standards that must be respected and cannot be denied or reduced on the basis of economic or productivity arguments. States parties should introduce, maintain and enforce laws, polices and regulations to cover several factors.

(i) Limits on daily hours of work

37. Working days in all activities, including unpaid work, should be limited to a specified number of hours. While the general daily limit (without overtime) should be eight hours,[29] the rule should take into account the complexities of the work place and allow for flexibilities, responding, for example, to different types of work arrangements such as shift work, consecutive works shifts, work during emergencies, flexible working arrangements as well as the demands of different employment sectors. Exceptions to the general limit of daily hours of work should be strictly limited and subject to consultation with workers and their representative organisations. Where legislation permits longer working days, employers should compensate longer days with shorter working days so that the average number of working hours over a period of weeks does not exceed the general principle of eight hours per day.[30]

38. Legislation should establish the maximum daily hours of work and they could differ in light of the exigencies of different employment activities but should not go beyond what is considered a reasonable maximum work day. Measures aimed at assisting workers to reconcile work with family responsibilities should not reinforce stereotyped assumptions that men are the main breadwinners and that women should bear the main responsibility for the household. If substantive equality is to be achieved, both men and women workers with family responsibilities should benefit from the measures on an equal footing.[31]

(ii) Limits on weekly hours of work

39. The number of hours of work per week should also be limited through legislation. The same criteria as indicated for daily limits of working hours apply. The limitation should apply across all sectors and for all types of work, including unpaid work. Reduced working weeks may apply, for instance, in relation to arduous activities. The Committee is aware that many States parties have opted for a forty hour week and recommends that States parties that have not yet done so take steps progressively to achieve this target.[32] Legislation should allow for some flexibility to go beyond the limited number of hours of work per week corresponding to different working arrangements and sectors. However, as a general rule, the hours per week averaged over a period of time should meet the statutory standard

Comment [AA25]: Paragraphs i) and ii) could be grouped together since they are based on the same idea that working hours have to be limited and « reasonable ».

Comment [TT26]: Legislation is not the only way of determining working conditions, given that collective agreements and other arrangements are more and more used to define them.

Comment [AA27]: 40 hours per week is a good target from a workers' viewpoint. However, it is useful to investigate the basis as to why some countries have decided not to go for the 40 hours to better understand the constraints behind this choice rather than insisting the target of 40 hours per week be attained by all countries.

[29] The Hours of Work (Industry) Convention, 1919 (No.1), article 2 and the Hours of Work (Commerce and Offices) Convention 1930 (No.30), article 3. While very wide in scope, they do not cover all areas of economic activity such as agricultural and domestic workers that later ILO Conventions and Recommendations take on board.

[30] Adapted from Hours of Work (Industry) Convention, 1919 (No.1), article 2(c) (referring strictly to shift work).

[31] Workers with Family Responsibilities Convention 1981 (No. 156).

[32] ILO Report TMEWTA, para 40 notes that 41 per cent of countries provide for a regular 40 hour workweek.

working week. Workers should receive additional pay for overtime hours above the maximum additional hours worked in any given week.

(iii) Daily rest periods

40. Rest during the day is important for workers' health and safety and therefore legislation should identify and protect rest periods during the work day. Where workers operate machinery or undertake tasks that can affect the life and health of themselves and others, legislation should include mandatory rest periods. Legislation should also include specific regulations on rest periods for night workers and acknowledge that women might require specific rest periods, for example, in order to breast feed. Daily rest periods should take into account possibilities of flexible working arrangements which allow for extended working days in return for an additional day of rest in a weekly or fortnightly period.

(iv) Weekly rest periods

41. All workers must enjoy weekly rest periods which should, in principle, amount to at least 24 consecutive hours every period of seven days,[33] though two consecutive days of rest for workers is preferable as a general rule to ensure their health and safety. As much as possible, days of rest should correspond with the customs and traditions of the country and workers in question[34] and apply simultaneously to all staff in the enterprise or workplace.[35]

42. Temporary exceptions should be permissible in certain cases such as accidents, force majeure, urgent work requirements and abnormal pressure of work or to prevent the loss of perishable goods[36] and where the nature of the service provided requires work on generally applied days of rest, such as weekend retail work. In such cases, workers should receive compensatory rest as much as possible within the seven day work period and at least for a duration of 24 hours.[37] Any exceptions should be agreed through consultation with workers and employers and their representative organizations.

(v) Paid annual leave

43. All workers, including part time and temporary workers, must have paid annual leave.[38] Legislation should identify the entitlement, at a minimum, of three working weeks of paid leave for one year of full-time service. Workers should receive at least the normal pay for the corresponding period of holidays. Legislation should also specify any minimum service requirements, not exceeding six months, for paid leave. In such situations, the worker should nonetheless enjoy paid leave proportionate to the period of employment. Leave due to illness or other reasons should not be deducted from paid annual leave.

44. Part-time workers should receive paid annual leave equivalent to that of comparable full-time workers and proportionate to hours of work. A failure to include part-time workers in the scope of legislation will lead to inequalities between men and women where a higher proportion of women rely on part-time work, for example, when returning to work after maternity leave.

Comment [AA28]: Paragraphs iii) and iv) should also be grouped under the same paragraph.

Comment [AA29]: See comment on Paragraph 39 on « legislation ».

Comment [AA30]: Again the issue of « legislation ».

[33] Weekly Rest (Industry) Convention 1921 (No. 14), article 2(1); Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), article 6 (1).
[34] Ibid, articles 2(3); 6(3), 6(4).
[35] Ibid, articles 2(2); 6(2).
[36] Weekly Rest (Commerce and Offices) Convention 1957 (No. 106), article 8(1). See also ILO Report TMEWTA-R, para 21.
[37] Weekly Rest (Industry) Convention 1921 (No. 14). Article 5; Weekly Rest (Commerce and Offices) Convention 1957 (No. 106), article 8(3).
[38] Holidays with Pay Convention (Revised) 1970 (No. 132), Articles 2,3, 4,5(1),6,7(1),8(2), 11 and 12.

45. The timing for taking paid annual leave should be subject to a decision of the employer in consultation with the worker; however, legislation should set a minimum period of ideally two weeks of uninterrupted paid annual leave. Workers may not relinquish such leave, including in exchange for compensation. Upon termination of employment, workers should receive the period of annual leave outstanding or alternative compensation amounting to the same level of pay entitlement or holiday credit.

46. In addition to paid annual leave, legislation should identify other forms of leave, in particular entitlements to maternity, paternity and parental leaves as well as to paid sick leave. Workers should not be placed on temporary contracts in order to be excluded from such leave entitlements.

(vi) Paid public holidays

47. Workers should benefit from a set number of public holidays with payment of wages equivalent to those for a normal working day. Workers that have to work on public holidays should receive at least the same wage as on a normal working day as well as compensatory leave corresponding to the time worked. The setting of any minimum work requirement for entitlement to paid public holidays should be prohibited by law. Paid public holidays should not be counted as part of annual leave entitlements.

(vii) Flexible working arrangements

48. In light of contemporary developments in labour law and employment practice, the development of a national policy on flexibility in the work place might be appropriate. Such a policy could include flexible arrangements in the scheduling of working hours, for example through flex time, compressed working weeks and job sharing , as well as flexibility in the place of work to include work at home, telework or from a satellite work centre. Such measures can also contribute towards a better balance between work and family responsibilities provided they respond to the different requirements and challenges faced by men and women workers. The Committee underlines that flexible working arrangements must meet the needs of both workers and employers.

Special topics of broad application

The right to just and favourable conditions of work for specific groups

(i) *Women workers*: In the experience of the Committee, progress on the three key interrelated indicators for gender equality in the context of labour rights – the 'glass ceiling', the 'gender pay gap' and the 'sticky floor' - remain far from satisfactory. In addition, the absence of a life-cycle approach regarding the needs of women results in accumulated disadvantages that can have a negative impact on all Covenant rights, including the right to just and favourable conditions at work. The Committee therefore underlines the importance of achieving equality between men and women in relation to all aspects of the right. Particular attention is needed to achieve equal remuneration for work of equal value as well as equal opportunity for promotion, including through the introduction of temporary special measures. Any assessment of the value of work must avoid gender stereotypes that could undervalue work predominantly performed by women. States parties should take into account the different requirements of male and female workers. For example, specific measures might be necessary to protect the safety and health of pregnant workers in relation to travel or night work. Given the role of women as primary carers, day care services in the work place and flexible working arrangements can help women to enjoy the same conditions of work as men in practice. Workers benefiting from gender-specific measures should not be penalized in other areas. On a broader level, States parties must

also undertake measures to address traditional roles and options as well as other structural obstacles that perpetuate inequalities between men and women.

(ii) *Young and older workers*: All workers should be protected against discrimination, including on the basis of age. Young workers should not suffer wage discrimination, for example, being forced to accept low wages due to lack of employment opportunities or to a perceived lack of experience. They should be entitled to a fair wage. An excessive use of unpaid internships and training programmes, as well as of short term and fixed term contracts that negatively affect their job security, career prospects and social security benefits is not in line with the right to just and favourable conditions of work. Laws and regulations should include specific measures to protect the health and safety of young workers, including through raising the minimum age for certain types of work.[39] Children and young persons should be protected from economic and social exploitation. Older workers should receive fair wages, equal remuneration for work of equal value, and have equal opportunity to promotion based on their experience and know-how.[40] Specific health and safety measures in the work place might be necessary and older workers should benefit from pre-retirement programmes.[41] The cumulative effects of discrimination against women workers through the life cycle may require targeted measures to guarantee fair wages, equal opportunities to promotion and equal pension rights as well as broader measures to combat other inequalities.

Comment [TT31]: It has been shown that minimum wages need to be set at a lower rate for young people in order to provide them with employment opportunities (OECD Economic Outlook).

Comment [AA32]: What would fair mean in this context? Would it mean, instead, minimum wage?

Comment [TT33]: Such programmes keep youths connected to the labour market and prevents them from becoming discouraged. A nuanced statement may be more appropriate.

(iii) *Workers with disabilities*: At times, they require specific measures to enjoy the right to just and favourable conditions of work on an equal basis with others. In particular, their safety and health require accessibility and other measures in the work place and an individual with a disability should not be denied reasonable accommodation in this regard, for example, additional daily rest periods or time to take medication. Workers with disabilities should also enjoy equal remuneration for work of equal value and should not suffer wage discrimination due to a perceived reduced capacity for work.

(iv) *Workers in the informal sector*: Though these workers account for a significant percentage of the world's work force, they are often excluded from national statistics and out of reach of legal protection, national safeguards and support structures, making them particularly vulnerable to poor conditions of work. While the overall objective should be to formalize work, labour and social security laws and policies should explicitly extend to workers in the informal sector and States parties should take steps to gather relevant disaggregated data and statistics so as to include this category of workers in the progressive realization of the right. Women are often over-represented in the informal sector, for example as casual workers, home workers or own account workers, which in turn exacerbates inequalities in areas such as remuneration, health and safety, rest, leisure and paid leave.

(v) *Migrant workers*: These workers, in particular if undocumented, are vulnerable to exploitation, long working hours, unfair wages and dangerous and unhealthy working environments. If they do not speak the national languages they might be less aware of their rights and unable to access grievance mechanisms. Undocumented workers might fear reprisals from employers and eventual expulsion if they seek to complain about unjust and unfavourable conditions at work. Laws, policies and regulations should ensure that migrant workers enjoy treatment no less favourable than national workers in relation to remuneration and conditions of work.

[39] Minimum Age Convention 1973 (No. 138), articles 3 and 7.
[40] CESCR General Comment 6, para. 23.
[41] Ibid, para 24.

(vi) *Domestic workers*: The vast majority of domestic workers are women. Many belong to ethnic or national minorities or are migrants. Often deprived from enjoying basic rights, they are relatively isolated and can be exploited, harassed and in some cases subject to slave-like conditions, frequently without the right to join trade unions. Due to stereotyped perceptions, the skills required for domestic work are undervalued and, as a result, it is among the lowest paid occupations in the labour market. Domestic workers have the right to just and favourable conditions of work[42], including protection against abuse, harassment and violence, decent working conditions, paid annual leave, normal working hours as well as daily and weekly rest on the basis of equality with other workers, minimum wage coverage where this exists and remuneration established without discrimination based on sex, a safe and healthy work environment, as well as to social security. Legislation should recognize these rights for domestic workers and ensure adequate means of monitoring domestic work, including through labour inspection, as well for domestic workers to complain and seek a remedy in case of violation.

(vii) *Self-employed workers*: States parties also carry obligations towards self-employed workers. Where unable to earn a sufficient income, they should have access to appropriate support measures. Self-employed female workers should benefit from maternity insurance on an equal basis with other workers.[43] Legislation on occupational health and safety should cover self-employed workers, requiring them to undertake appropriate training programmes, and seek to raise their awareness on the importance of rest, leisure and limitations on working time, as part of their right to just and favourable conditions of work but also as a means to enjoy other Covenant rights.

Comment [TT34]: Some clarity would be needed on the fact that the public institutions should carry out the obligation to cover the maternity leave cost for self-employed.

(viii) *Unpaid workers*: Women spend twice as much time as men in unpaid work. Unpaid workers, such as workers in the home or in family enterprises, volunteer workers and unpaid interns have remained beyond the coverage of ILO Conventions and national legislation. Nonetheless, they have a right to just and favourable conditions of work and should be protected by laws, policies and regulations in relation to occupational safety and health, rest and leisure, and reasonable limitations on working hours, as well as social security.

Freedom from harassment, including sexual harassment

49. All workers should be free from harassment, including sexual harassment. Legislation, such as anti-discrimination laws, the Penal Code and labour legislation, should define harassment broadly, with explicit reference to sexual harassment as well as to other forms of harassment, such as on the basis of disability, race, sexual orientation or gender identity. A specific definition of sexual harassment at the work place is appropriate and legislation should criminalise and punish sexual harassment as appropriate. A national policy to be applied in the workplace, in both the public and private sectors, should include at least the following elements: (a) explicit coverage of harassment by and against men and women; (b) prohibition of certain acts that constitute harassment, including sexual harassment; (c) identification of specific duties on employers, managers, supervisors and workers to prevent and, where relevant, resolve and remedy harassment cases; (d) access to justice for victims; (e) compulsory training for all staff, including for managers and supervisors; (f) protection of victims, including focal points to assist them, as well as avenues of complaint and redress; (g) procedures for notification and reporting to a central public authority of claims of sexual harassment and resolution of such claims; (h) provision of a clearly visible and available workplace specific policy, developed in consultation with

[42] Domestic Workers Convention 2011 (no. 189), articles 5,6,7,10,11,13,14,16 and 17.

[43] See *Blok v The Netherlands*, Views, Communication No. 36/2012, Committee on the Elimination of Discrimination against Women, CEDAW/C/57/D/36/2012.

workers, employers and their representative organizations, and other relevant stakeholders such as civil society organizations.

III. Obligations

General obligations

50. States parties must comply with their core obligations and take deliberate, concrete and targeted steps towards the progressive realization of the right to just and favourable conditions of work.[44] In addition to legislation as an indispensable step, States should also ensure the provision of judicial and other effective remedies that include, but are not limited to, administrative, financial, educational and social measures.

51. States parties must move as expeditiously and effectively as possible towards the full implementation of the right with a level of flexibility to choose the appropriate means. Non-State actors, such as employer and worker organizations, also have a role in securing just and favourable conditions at work, particularly through collective agreements, and States parties must create enabling conditions for the full enjoyment of the right although the State retains the overall obligation to protect the right.

52. State parties should avoid taking any deliberately retrogressive measure without careful consideration and justification. Where a State party seeks to introduce retrogressive measures, for example, in response to an economic crisis, it has to demonstrate that such measures are temporary, necessary, non-discriminatory and that they respect at least the core obligations.[45] States parties facing considerable difficulties in achieving progressive realization of the right due to a lack of national resources have an obligation to seek international cooperation and assistance. Retrogressive measures adopted to attract investment, such as the introduction of lower levels of protection in Special Economic Zones or Export Processing Zones, would be a violation of the Covenant. A State party may never justify retrogressive measures in relation to aspects of the right subject to immediate or core obligations.

53. States parties must guarantee that the right is exercised without discrimination of any kind. Specifically, they have obligations to guarantee that women enjoy conditions of work not inferior to those of men and receive equal pay for equal work, which requires the immediate elimination of formal and substantive discrimination.[46] State parties should work progressively towards ensuring equal remuneration for men and women for work of equal value.

54. In order to ensure accountability. States parties should establish a functioning system of labour inspectorates to monitor all aspects of the right for all workers, including workers in the informal sector and domestic workers, as well as agricultural workers; to provide advice to workers and employers; and to raise any abuses with competent authorities. Labour inspectorates should be independent and adequately resourced; staffed with trained professionals; and have the authority to enter workplaces freely and without prior notice, make recommendations to prevent or remedy problems and facilitate access to justice for victims. Penalties should apply for non-compliance with their recommendations. Labour inspectorates should focus on monitoring the rights of workers and not be used for other purposes such as checking the migration status of workers. States parties should

Comment [AA35]: The functioning system of labour inspectorate has to be developed with the involvement of social partners, so that the design of the system takes into account the reality of the world of work and it benefits from the collaboration and experience of the social partners.

[44] CESCR General Comment No.3.
[45] Letter of the Chaiperson of CESCR to States parties on austerity measures, May 2012.
[46] CESCR General Comment No. 20, para. 8.

provide the Committee with detailed information on the results of the work of labour inspectorates. National human rights institutions should be empowered to cooperate with labour inspectorates as appropriate and their mandate should include the right to just and favourable conditions of work. States parties should identify indicators and benchmarks to monitor the implementation of the right and to help with the periodic review of laws and policies. Such indicators should address the different elements of the right, be disaggregated by sex and other relevant grounds such as age, disability, and urban/rural, and cover all persons under the territorial jurisdiction of the State party or under its control. States parties should define indicators most relevant to national implementation of the right, such as the incidence of occupational accidents, ratio of women's to men's wages, proportion of women and other under-represented individuals in high-level positions, proportion of workers offered continuing job training, the number of complaints of harassment received and resolved, the minimum standards for rest, leisure, hours of work and paid annual leave, and uptake of measures to reconcile professional and family life by women and men. In selecting indicators, the Committee invites States parties to have regard to available guidance, including the OHCHR lists of illustrative indicators on Articles 6 and 7 of the Covenant and ILO indicators.[47]

55. The Committee underlines the importance of consultation in formulating, implementing, reviewing and monitoring laws, policies and regulations related to the right with traditional social partners such as workers and employers and their representative organizations, but also other relevant organizations, such as those representing persons with disabilities, older persons, women, workers in the informal sector, migrants and LGBTI persons, as well as representatives of ethnic groups and indigenous communities.

56. Any person who has experienced a violation of the right to just and favourable conditions of work should have access to effective judicial or other appropriate remedies, including adequate reparation, restitution, compensation, satisfaction or guarantees of non-repetition. Courts, but also national human rights institutions, labour inspectorates and other relevant mechanisms, should have authority to address such violations. Legal assistance for obtaining remedies should be available and it should be free for those unable to pay.

Specific legal obligations

57. Like other human rights, the right to just and favourable conditions of work imposes three levels of obligations on States parties. First, State parties have an obligation to respect the right by refraining from interfering directly or indirectly with its enjoyment and this is particularly important where the State is the employer. For example, States parties should not introduce salary scales that discriminate, directly or indirectly, against women workers, or maintain a promotion system in the public sector that favours, directly or indirectly, the over-represented gender at higher levels. Similarly, States parties should take measures to prevent and remedy occupational accidents and disease resulting from their acts or omissions. States parties should also respect collective agreements aimed at introducing and maintaining just and favourable conditions of work and review legislation, including corporate laws and regulations to ensure that they do not constrain the right.[48]

58. The obligation to protect requires States parties to take measures to ensure that third parties, such as private sector employers and enterprises, do not interfere with the

[47] OHCHR, *Human Rights Indicators: A Guide to Measurement and Implementation*, United Nations, Geneva, 2012 (HR/PUB/12/5); see page 95 for an illustrative list of indicators for articles 6 and 7 of the Covenant. See also Labour Statistics Convention 1985 (No.160).

[48] Guiding Principles on Business and Human Rights, principle 3(b).

Comment [AA36]: Priority should be given to the social partners for collaboration purposes.
What are national human rights institutions? And how should they cooperate with the labor inspectorates? It is inappropriate to suggest empowering external organisations such as national human rights institutions to assume public roles in labour inspections. The risk here is that these organisations assume the duties and responsibilities of the State, without legitimacy, capacity nor experience.

Comment [TT37]: The authority to address violations should rest with the State (through courts, etc). It is critically important to ensure that third parties do not interfere or assume the duties and responsibilities of the State. This will distort the whole inspectorate system.

enjoyment of the right and comply with their obligations. This includes taking steps to prevent, investigate, punish and redress abuse through effective policies, legislation, regulations and adjudication.[49] For example, obligations of business enterprises to respect the right to just and favourable conditions of work should de clearly set out by States parties in laws, policies and regulations, such as a national occupational safety and health policy, or legislation on minimum wage and minimum standards for working conditions.[50] States parties should impose sanctions and appropriate penalties on third parties, including adequate reparation, criminal penalties, pecuniary measures such as damages, and administrative measures, in case of violation of any of the elements of the right. State parties should ensure that the mandates of labour inspectorates and other investigation and protection mechanisms cover conditions of work in the private sector and provide guidance to employers and enterprises. Measures to protect should also cover the informal sector and certain workers, such as domestic workers, may require specific measures.

59. The obligation to fulfil requires States parties to adopt the necessary measures to ensure the full realization of the right to just and favourable conditions of work. This includes introducing measures to facilitate, promote and provide the right.

60. In order to facilitate the right, States parties should adopt positive measures to assist workers by according sufficient recognition of the right through laws, policies and regulations, for example, on non-discrimination, a non-derogable minimum wage, occupational safety and health, compulsory insurance coverage, minimum standards for rest, leisure, limitations on working hours, paid annual and other leaves, as well as public holidays. States parties should also introduce quotas or other temporary special measures to enable women and other members of discriminated groups to reach high level posts and provide incentives for the private sector to do so.

Comment [TT38]: The term non-derogable is usually linked with human rights issues. By linking it with minimum wages, we cease to understand the practical purpose of this tool and see it as a solution to larger social problems.

Comment [TT39]: Quotas are but one way to ensure gender equality. Many countries resist the use of quotas to attain this as quotas by themselves seem to demean the quality of capable women who are simply chosen for the job due to quotas rather than for her capability. So state parties "may" rather than "should" introduce quotas is a preferable option.

61. To help assess the enjoyment of the right, States parties should establish obligatory notification schemes in case of occupational accidents and disease as well as mechanisms to assess systematically the level of the minimum wage, fair wages, and the gender pay gap between men and women within organizations in the public and private sectors, including in high level posts. States parties should also review the impact of laws, policies and regulations at appropriate intervals, in consultation with workers and employers, with a view to updating standards in light of practice. For example, the national policy on occupational safety and health should include a built-in periodic review mechanism. States parties should create incentives for extension of protective regimes to sectors in risk; introduce schemes that allow for coverage of informal workers coupled with measures to regularise the informal sector; create adequate dialogue mechanisms to raise pertinent issues; introduce incentives to overcome the gender pay gap, including through initiatives to alleviate the burden of reproductive work on women, for example, by promoting access to goods and services, such as day care facilities and non-transferable parental leave for men.

62. In order to promote the right, State parties should take steps to ensure appropriate education, information and public awareness. With a view to creating equal opportunities for workers to advance in both the private and public sectors, States parties should put in place training programmes and information campaigns in relevant languages and in accessible formats for persons with disabilities and illiterate workers. Attention should be paid to the need for gender-sensitive training on occupational health and safety of workers.

[49] Guiding Principles on Business and Human Rights, principle 1.
[50] Ibid, principle 2.

63. States parties must also provide aspects of the right when workers are unable to realize the right themselves. For example, the State should ensure the adaptation of the work place or of working equipment for persons with disabilities in the public sector and provide incentives for the private sector to do so. States could establish non-contributory social security programmes for certain workers, such as workers in the informal sector, to provide benefits as well as protection against accidents and disease at work.

Core obligations

64. States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right to just and favourable conditions of work. Specifically, this requires States parties to:

(a) Guarantee through law the exercise of the right without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, age, sexual orientation, gender identity, health or any other status;

(b) Put in place a comprehensive system to combat gender discrimination at work;

(c) Establish in legislation and in consultation with workers and employers, their representative organizations and other relevant partners, minimum wages that are non-discriminatory and non-derogable, fixed taking into consideration relevant economic factors and indexed to the cost of living so as to ensure a decent living for workers and their families;

Comment [AA40]: The non-derogability clause is rigid and inefficient: parties might want to derogate to the minimum wage agreed, for instance in times of economic downturn.

(d) Ensure, in law and practice, equal remuneration for equal work;

(e) Adopt a comprehensive national policy on occupational safety and health;

(f) Define and prohibit harassment, including sexual harassment at work through law, ensure appropriate complaints procedures and mechanisms and establish criminal sanctions for sexual harassment;

(g) Introduce and enforce minimum standards in relation to rest, leisure, reasonable limitation of working hours, paid leaves and public holidays.

International assistance and cooperation

65. All States must take steps individually and through international assistance and cooperation, especially economic and technical, with a view to achieving progressively the full realization of the right. International assistance and cooperation is a means of transferring knowledge and technology and a tool for States to maximize available resources for the full realisation of Covenant rights.

66. Where a State party is not in a position to meet its obligations to realise the right, it must seek international assistance. Depending on the availability of resources, States parties, in a position to, should respond to such requests by providing economic and technical assistance and technology transfer, and promoting transnational dialogue between employer and worker organizations, among other measures. Such assistance should be sustainable and culturally appropriate and provided in a manner consistent with the Covenant and human rights standards. Economically developed States parties have a special responsibility for, and interest in, assisting developing countries in this regard.

67. States parties should also avail themselves of technical assistance and cooperation of international organizations, in particular of the ILO. When preparing reports, States parties should use the extensive information and advisory services provided by the ILO for data collection and disaggregation.

68. States parties should refrain from acts or omissions that interfere, either directly or indirectly, with the realisation of the right to just and favourable conditions of work in other countries. This is particularly relevant where a State party owns or controls an enterprise operating in another State party.[51] To this end, the State party should respect relevant host-country legislation that complies with the Covenant. Where the home-country has stronger legislation, the State party should seek to maintain similar minimum standards in the host-country as much as practicable. State parties should also promote respect for the right to just and favourable conditions of work by individuals and enterprises based extra-territorially with which they conduct commercial transactions.[52]

69. States parties should take measures, including legislative measures, to clarify that their nationals as well as enterprises domiciled in their territory and/or jurisdiction should respect the right throughout their operations extra-territorially.[53] This responsibility is particularly important in States with advanced labour law systems as home-country enterprises can help to improve standards for working conditions in host countries. Similarly, in conflict and post-conflict situations, States parties can have an important role in helping individuals and enterprises to identify, prevent and mitigate risks to just and favourable conditions of work through their operations.[54] States parties should introduce appropriate measures to ensure that non-State actors domiciled in the State party are accountable for any violations of the right to just and favourable conditions of work extra-territorially and that victims have access to a remedy. States parties should also provide guidance to employers and enterprises on how to respect the right extra-territorially.

Comment [AA41]: We are in support of the comment of the Australian Government (See IOE General Comment #4).

70. States parties acting as members of international organizations should also respect the right. Accordingly, States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure the right to just and favourable conditions of work is taken into account in their lending policies, credit agreements and other international measures. They should also ensure that the policies and practices of international and regional financial institutions, in particular those concerning structural and/or fiscal adjustment, promote and do not interfere with the right.

Comment [TT42]: This proposal would be very counterproductive: It will make lending and borrowing much more cumbersome and will distort the capacity of companies and of the economy as whole to create employment and wealth.

71. States parties should ensure that the right is given due attention in international agreements, including in bilateral, regional and multilateral trade and investment agreements. Similarly, States parties should ensure that other international agreements do not negatively affect the right to just and favourable conditions of work, for example, by restricting the actions that other States parties could take to implement the right. States parties that have not done so should consider ratifying relevant ILO conventions.

72. States parties should cooperate so as to protect the rights of their nationals working in other States parties including through bilateral agreements with host countries. This is particularly important to avoid abuse of migrant workers, including domestic workers, and to combat trafficking. Similarly, States parties should seek international cooperation to protect the rights of migrant workers who are employed by enterprises registered in other States parties so as to enable them to enjoy just and favourable conditions of work.

[51] Guiding Principles on Business and Human Rights, principle 4.
[52] Ibid, principle 6.
[53] Ibid.
[54] Ibid, principle 7(a).

Obligations of non-state actors

73. While only States are parties to the Covenant, all members of society, individuals, business enterprises, trade unions and others – have responsibilities to realize the right to just and favourable conditions of work. This is particularly important in the case of occupational safety and health given that the employer's responsibility for the safety and health of workers is a basic principle of labour law, intrinsically related to the employment contract, but it also applies to other elements of the right.

74. Business enterprises, irrespective of size, sector, ownership and structure,[55] should comply with laws, avoiding any infringements and addressing any abuse of the right to just and favourable conditions of work as a result of their actions.[56] In situations where a business enterprise has caused or contributed to adverse impacts, the enterprise should remedy the damage through legitimate processes that meet recognized standards of due process.[57]

75. The role of the United Nations agencies and programmes, in particular the ILO, is also important. In conformity with articles 22 and 23 of the Covenant, the ILO and other UN specialized agencies, the World Bank, regional development banks, the International Monetary Fund, the World Trade Organization and other relevant bodies as well as the UN Secretariat including OHCHR, should cooperate effectively with States parties in the implementation of the right to just and favourable conditions of work. When examining State party reports, the Committee will consider the effects of any request for assistance by the State party for the enjoyment of the right and the response given.

IV. Violations

76. States parties must demonstrate that they have taken all necessary steps towards the realization of the right to just and favourable conditions of work within their maximum available resources; that the right is enjoyed without discrimination; and that women enjoy conditions of work not inferior to men, as well as equal pay for equal work. A failure to act in good faith to take such steps amounts to a violation of the Covenant. In assessing whether State parties have complied with their obligation to take steps, the Committee examines whether such steps are reasonable and proportionate and whether they comply with human rights standards and democratic principles. The Committee also examines whether there is an adequate monitoring and accountability framework, including recognition of the right to a remedy for victims of violations.

77. Violations of the right can occur through acts of commission, that is direct actions of States parties or other entities or individuals insufficiently regulated by States, for example, failure to ensure equal pay for equal work for men and women, or to prevent unfair dismissal from work of pregnant workers, and the adoption of deliberately retrogressive measures incompatible with core obligations, such as the introduction of a policy to reduce the existing minimum wage or annual and other leave entitlements.

[55] Guiding Principles on Business and Human Rights, principle 14.
[56] Ibid, principles 11 and 23.
[57] Ibid, principle 22.

Violations can also occur through acts of omission, that is the failure by a State party to take appropriate action to realize the right. For example, the failure to take reasonable steps to prevent an occupational accident or disease in a publicly-run enterprise, or to respect the minimum wage, where it exists, or to require non-State actors to respect the minimum wage, would also result in violations.