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General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)

I. Introduction

1. The right of everyone to the enjoyment of just and favourable conditions of work is recognized in the International Covenant on Economic, Social and Cultural Rights and other international and regional human rights treaties,[1] as well as related international legal instruments, including conventions and recommendations of the International Labour Organization (ILO).[2] It is an important component of other labour rights enshrined in the

[1] See Universal Declaration of Human Rights, arts. 23 and 24; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5; Convention on the Elimination of All Forms of Discrimination against Women, art. 11; Convention on the Rights of the Child, art. 32; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 25; Convention on the Rights of Persons with Disabilities, art. 27; European Social Charter (Revised), Part I, paras. 2, 3, 4, 7 and 8; and Part II, arts. 2, 3 and 4; Charter of Fundamental Rights of the European Union, arts. 14, 23, 31 and 32; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, art. 7; and African Charter on Human and Peoples' Rights, art. 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".

[2] Although many ILO conventions relate directly and indirectly to just and favourable conditions of work, for the present 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 Machinery (Agriculture) Convention, 1951 (No. 99); Equal Remuneration Convention, 1951 (No. 100); Weekly Rest (Commerce and Offices) Convention, 1957 (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; 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);

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Covenant and the corollary of the right to work as freely chosen and accepted. Similarly, trade union rights, freedom of association and the right to strike are crucial means of introducing, maintaining and defending just and favourable conditions of work.[3] In turn, social security compensates for the lack of work-related income and complements labour rights.[4] The enjoyment of the right to just and favourable conditions of work is a prerequisite for, and result of, the enjoyment of other Covenant rights, for example, the right to the highest attainable standard of physical and mental health, by avoiding occupational accidents and disease, and an adequate standard of living through decent remuneration.

2. The importance of the right to just and favourable conditions of work has yet to be fully realized. Almost 50 years after the adoption of the Covenant, the level of wages in many parts of the world remains low and the gender pay gap is a persistent and global problem. 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 of all countries still regulate weekly working hours above the 40-hour work week, with many establishing a 48-hour limit, and some countries have excessively high average working hours. In addition, workers in special economic, free trade and export processing zones are often denied the right to just and favourable conditions of work through non-enforcement of labour legislation.

3. Discrimination, inequality and a lack of assured rest and leisure conditions plague many of the world's workers. Economic, fiscal and political crises have led to austerity measures that claw back advances. The increasing complexity of work contracts, such as short-term and zero-hour contracts, and non-standard forms of employment, as well as an erosion of national and international labour standards, collective bargaining and working conditions, have resulted in insufficient protection of just and favourable conditions of work. Even in times of economic growth, many workers do not enjoy such conditions of work.

4. The Committee is aware that the concept of work and workers has evolved from the time of drafting of the Covenant to include new categories, such as self-employed workers, workers in the informal economy, agricultural workers, refugee workers and unpaid workers. Following up on general comment No. 18 on the right to work, and benefiting from its experience in the consideration of reports of States parties, the present general comment has been drafted by the Committee with the aim of contributing to the full implementation of article 7 of the Covenant.

Convention concerning the Promotional Framework for Occupational Safety and Health, 2006 (No. 187); and Domestic Workers Convention, 2011 (No. 189).

[3] Committee on Economic, Social and Cultural Rights general comment No. 18 (2005) on the right to work, paragraph 2, indicates the interconnection 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.

[4] See Committee on Economic, Social and Cultural Rights general comment No. 19 (2007) on the right to social security, para. 2.

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

II. Normative content

5. 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 in all settings, regardless of gender, as well as young and older workers, workers with disabilities, workers in the informal sector, migrant workers, workers from ethnic and other minorities, domestic workers, self-employed workers, agricultural workers, refugee workers and unpaid workers. 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 (c).

6. Article 7 identifies a non-exhaustive list of fundamental elements to guarantee just and favourable conditions of work. The reference to the term "in particular" indicates that other elements, not explicitly referred to, are also relevant. In this context, the Committee has systematically underlined factors such as the following: prohibition of forced labour and social and economic exploitation of children and young persons; freedom from violence and harassment, including sexual harassment; and paid maternity, paternity and parental leave.

A. Article 7 (a): remuneration which provides all workers, as a minimum, with:

1. Remuneration

7. The term "remuneration" goes beyond the more restricted notion of "wage" or "salary" to include additional direct or indirect allowances in cash or in kind paid by the employer to the employee that should be of a fair and reasonable amount, such as grants, contributions to health insurance, housing and food allowances, and on-site affordable childcare facilities.[6]

8. It is clear that the reference to "a minimum" in article 7 (a) is designed to ensure that the article should in no case limit efforts to improve remuneration to a level above those standards.[7] This minimum applies to "all workers", reflecting the term "everyone" in the chapeau.

9. The minimum criteria for remuneration 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 (art. 7 (a) (i)); and a decent living for workers and their families (art. 7 (a) (ii)).

2. Fair wages

10. 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 the responsibilities of the worker, the level of skill and education required to perform the work, the impact of the work on the health and safety of the worker, specific hardships related to the work and the impact on the worker's personal

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

[7] See Travaux Préparatoires A/2929 (1955), para. 5. See also Matthew Craven, *The International Covenant on Economic, Social, and Cultural Rights: A Perspective on Its Development* (Oxford, Clarendon Press, 1995), chap. 6, sect. II.B.

and family life.[8, 9] Any assessment of fairness should also take into account the position of female workers, particularly where their work and pay has traditionally been undervalued. Where workers have precarious contracts, supplements to the wage, as well as other measures to guard against arbitrariness, may be necessary in the interest of fairness to mitigate the lack of job security. Workers should not have to pay back part of their wages for work already performed and should receive all wages and benefits legally due upon termination of a contract or in the event of the bankruptcy or judicial liquidation of the employer. Employers are prohibited from restricting the freedom of workers to dispose of their remuneration. Prisoners who agree to work should receive a fair wage. For the clear majority of workers, fair wages are above the minimum wage. Wages should be paid in a regular, timely fashion and in full.

3. 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

11. Not only should workers receive equal remuneration when they perform the same or similar jobs, but their remuneration should also be equal even when their work is completely different but nonetheless of equal value when assessed by objective criteria. This requirement goes beyond only wages or pay to include other payments or benefits paid directly or indirectly to workers. Although 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, migration or health status, disability, age, sexual orientation, gender identity or any other ground.[10]

12. The extent to which equality is being achieved requires an ongoing 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.

13. 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 the payment of bonuses only to full-time employees — might indirectly discriminate against women

[8] The 2014 ILO Study on *Minimum Wage 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 the present 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 interdependent.

[10] See art. 2 (2) of the Covenant; and Committee on Economic, Social and Cultural Rights general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

[11] The ILO 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 of the Covenant goes beyond Convention No. 100 to protect against discrimination on grounds other than sex.

employees if a higher percentage of women are part-time workers.[12] Similarly, the objective evaluation of the work must be free from gender bias.

14. Equal remuneration for work of equal value applies across all 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 the central, provincial and local levels, as well as for work under public contract or in enterprises either fully or partially owned by the State.[13]

15. Remuneration set through collective agreements should be aimed at ensuring equality for work of equal value. States parties should adopt legislation and other measures to promote 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 for achieving equality, and reporting requirements designed 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.

16. The notion of "conditions of work for women not inferior to those enjoyed by men" and "equal pay for equal work" mentioned in the second part of article 7 (i) (a) are more restrictive than the notion of equal remuneration for work of equal value. First, the former are specifically related to direct discrimination on the basis of sex, while "equal remuneration for work of equal value" is without distinction on any ground. Second, they focus on a narrower comparison between the same job or post, normally in the same enterprise or organization, instead of the broader recognition of remuneration based on the value of work. Therefore, in the specific situation in which 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 equal remuneration for men and women for work of equal value.

17. "Conditions of work" in this particular subparagraph include the "conditions" identified in the work contract that can affect the rate of remuneration, as well as broader "conditions" referred to 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 from enjoying specific conditions of work relating to pregnancy and maternity protection.

4. Remuneration that provides all workers with a decent living for themselves and their families

18. 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 with 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 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 food, water and sanitation, housing, clothing and additional expenses such as commuting costs.

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

[13] Adapted from Equal Remuneration Recommendation, 1951 (No. 90), paras. 1-2.

[14] See ILO Equal Remuneration Recommendation 1951 (No. 90), paras. 4-5.

19. A minimum wage is "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".[15] It provides a means of ensuring remuneration for a decent living for workers and their families.

20. States parties should prioritize the adoption of a periodically reviewed minimum wage, indexed at least to the cost of living, and maintain a mechanism to do this. Workers, employers and their representative organizations should participate directly in the operation of such a mechanism.

21. Minimum wages can be effective only if they are adequate to the goals set forth in article 7. 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. 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.[16]

22. In setting the minimum wage, 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. The requirements of economic and social development and 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 crisis, 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 must be of a temporary nature, bearing in mind the needs of workers in vulnerable situations, with a return to the standard procedures of periodic review and increase in the minimum wage as swiftly as possible.[17]

23. The minimum wage should apply systematically, protecting as much as possible the fullest range of workers, including workers in vulnerable situations. The minimum wage might apply generally or differ across sectors, regions, zones and professional categories,[18] so long as the wages apply without direct or indirect discrimination and ensure a decent living. In setting minimum wages at the sector or industry level, the work performed in sectors predominantly employing women, minorities or foreign workers should not be undervalued compared with work in sectors predominantly employing men or nationals. It is particularly important to ensure that the job evaluation methods used to align or adjust sectoral or occupational minimum wage schemes are not inherently discriminatory.

24. The failure of employers 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.

[15] 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.

[16] 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, i.e. 50 per cent of the national average wage.

[17] Letter of the Chair of the Committee on Economic, Social and Cultural Rights to States parties on austerity measures, May 2012.

[18] See ILO Minimum Wage Fixing Recommendation, 1970 (No. 135), Part III, para. 5.

B. Article 7 (b): safe and healthy working conditions

25. Preventing occupational accidents and disease is a fundamental aspect of the right to just and favourable conditions of work, and is closely related to other Covenant rights, in particular the right to the highest attainable level of physical and mental health.[19] States parties should adopt a national policy for the prevention of accidents and work-related health injury by minimizing hazards in the working environment[20] and ensuring broad participation in the formulation, implementation and review of such a policy, in particular of workers, employers and their representative organizations.[21] 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.[22]

26. The national policy should cover all branches of economic activity, including the formal and informal sectors, and all categories of workers,[23] including non-standard workers, apprentices and interns. It should take into account specific risks to the safety and health of female workers in the event of pregnancy, as well as of workers with disabilities, without any form of discrimination against these workers. Workers should be able to monitor working conditions without fear of reprisal.

27. The policy should address at least the following areas:[24] 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.

28. 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 providing notification about relevant data, given the fundamental responsibility of the employer to protect the health and safety of workers. It should also include a mechanism, which might be a central body, for coordination of policy implementation and support programmes and with 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 involving workers while commuting to and from work.[25] Data collection should respect human rights principles, including confidentiality of personal and medical data,[26] as well as the need for disaggregation of data by sex and other relevant grounds.

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[19] See art. 12 (2) (b) and (c) of the Covenant.

[20] See ILO Occupational Safety and Health Convention, 1981 (No. 155), art. 4 (1).

[21] Ibid.

[22] See Craven, *The International Covenant on Economic, Social, and Cultural Rights*, chap. 6, sect. III.C.

[23] See ILO Occupational Safety and Health Convention, 1981 (No. 155), arts. 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.

[24] See ILO Occupational Safety and Health Convention, 1981 (No. 155), arts. 5 (a), (b), (c) and (e).

[25] See Protocol of 2002 to the ILO Occupational Safety and Health Convention, 1981 (No. 155), art. 1 (d).

[26] Ibid., art. 3 (d).

29. The policy should incorporate appropriate monitoring and enforcement provisions, including effective investigations, and provide adequate penalties in case of violations, including the right of enforcement authorities to suspend the operation of unsafe enterprises. Workers affected by a preventable occupational accident or disease should have the 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, the dependants of those workers, receive adequate compensation, including for costs of treatment, loss of earnings and other costs, as well as access to rehabilitation services.

30. Access to safe drinking water, adequate sanitation facilities that also meet women's specific hygiene needs, and materials and information to promote good hygiene are essential elements of a safe and healthy working environment. Paid sick leave is critical for sick workers to receive treatment for acute and chronic illnesses and to reduce infection of co-workers.

C. 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

31. All workers have the right to equal opportunity for promotion through fair, merit-based and transparent processes that respect human rights. The applicable criteria of seniority and competence should also include an assessment of individual circumstances, as well as the different roles and experiences of men and women, in order to ensure equal opportunities for all. There should be no place for irrelevant criteria such as personal preference or family, political and social links. Similarly, workers must have the opportunity for promotion free from reprisals related to trade union or political activity. The reference to equal opportunity requires that hiring, promotion and termination not be discriminatory. This is highly relevant for women and other workers, such as workers with disabilities, workers from certain ethnic, national and other minorities, lesbian, gay, bisexual, transgender and intersex workers, older workers and indigenous workers.

32. Equality in promotion requires the analysis of direct and indirect obstacles to promotion, as well as the introduction of measures such as training and initiatives to reconcile work and family responsibilities, including affordable day-care services for children and dependent adults. In order to accelerate de facto equality, temporary special measures might be necessary.[27] They should be regularly reviewed and appropriate sanctions applied in the event of non-compliance.

33. In the public sector, States parties should introduce objective standards for hiring, promotion and termination that are aimed at achieving equality, particularly between men and women. Public sector promotions should be subject to impartial review. For the private sector, States parties should adopt relevant legislation, such as comprehensive non-discrimination legislation, to guarantee equal treatment in hiring, promotion and termination, and undertake surveys to monitor changes over time.

[27] See Committee on Economic, Social and Cultural Rights general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural , para. 15; and general comment No. 20, paras. 38 and 39.

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

34. Rest and leisure, limitation of working hours and paid periodic holidays help workers to maintain an appropriate balance between professional, family and personal responsibilities and to avoid work-related stress, accidents and disease. They also promote the realization of other Covenant rights; therefore, although States parties have flexibility in the 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 covering several factors, as outlined below.

1. Limits on daily hours of work

35. Working days spent 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,[28] the rule should take into account the complexities of the workplace and allow for flexibility, responding, for example, to different types of work arrangements such as shift work, consecutive work shifts, work during emergencies and flexible working arrangements. Exceptions should be strictly limited and subject to consultation with workers and their representative organizations. Where legislation permits longer working days, employers should compensate for 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.[29] Requirements for workers to be on-call or on standby need to be taken into account in the calculation of hours of work.

36. Legislation should establish the maximum number of daily hours of work, which could vary in the 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 male and female workers with family responsibilities should benefit from the measures on an equal footing.[30]

2. Limits on weekly hours of work

37. The number of hours of work per week should also be limited through legislation. The same criteria as indicated for daily limits on 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 40-hour week and recommends that States parties that have not yet done so take steps progressively to achieve this target.[31] Legislation

[28] See ILO Hours of Work (Industry) Convention, 1919 (No. 1), art. 2, and Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), art. 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.

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

[30] ILO Workers with Family Responsibilities Convention, 1981 (No. 156).

[31] See ILO, "Working time in the twenty-first century", report for discussion at the Tripartite Meeting of Experts on Working-time Arrangements (17-21 October 2011), para. 40, which notes that 41 per cent of countries provide for a regular 40-hour workweek.

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

3. Daily rest periods

38. Rest during the day is important for the health and safety of workers 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 certain situations, for example, those of pregnant women, lactating women who may require rest periods in order to breastfeed, or workers undergoing medical treatment. Daily rest periods should take into account possibilities for flexible working arrangements which allow for extended working days in return for an additional day of rest in a weekly or fortnightly period.

4. Weekly rest periods

39. All workers must enjoy weekly rest periods, in principle amounting to at least 24 consecutive hours every period of seven days,[32] although two consecutive days of rest for workers is preferable as a general rule to ensure their health and safety. Days of rest should correspond to the customs and traditions of the country and the workers in question[33] and apply simultaneously to all staff in the enterprise or workplace.[34]

40. 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[35] 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 for at least 24 hours.[36] Any exceptions should be agreed through consultation with workers and employers and their representative organizations.

5. Paid annual leave

41. All workers, including part-time and temporary workers, must have paid annual leave.[37] 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 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.

[32] See ILO Weekly Rest (Industry) Convention, 1921 (No. 14), art. 2 (1); and Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), art. 6 (1).

[33] See ILO Weekly Rest (Industry) Convention, 1921 (No. 14), art. 2 (3); and Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), art. 6 (3) and 6 (4).

[34] See ILO Weekly Rest (Industry) Convention, 1921 (No. 14), art. 2 (2); and Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), art. 6 (2).

[35] See ILO Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), art. 8 (1); see also ILO, "Working time in the twenty-first century", para. 21.

[36] See ILO Weekly Rest (Industry) Convention, 1921 (No. 14), art. 5; and Weekly Rest (Commerce and Offices) Convention 1957 (No. 106), art. 8 (3).

[37] See ILO Holidays with Pay Convention (Revised), 1970 (No. 132), arts. 2, 3, 4, 5 (1), 6, 7 (1), 8 (2), 11 and 12.

Leave due to illness or other justified reasons should not be deducted from paid annual leave.

42. 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 inequality between men and women where a higher proportion of women rely on part-time work, for example, when returning to work after maternity leave.

43. The timing for taking paid annual leave should be subject to a negotiated decision between the employer and 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.

44. Legislation should identify other forms of leave, in particular entitlements to maternity, paternity and parental leave, to leave for family reasons and to paid sick leave. Workers should not be placed on temporary contracts in order to be excluded from such leave entitlements.

6. Paid public holidays

45. Workers should benefit from a set number of public holidays with payment of wages equivalent to those for a normal working day. Workers who 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 a 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.

7. Flexible working arrangements

46. In the light of contemporary developments in labour law and practice, the development of a national policy on flexibility in the workplace might be appropriate. Such a policy could include flexible arrangements in the scheduling of working hours, for example through flextime, compressed working weeks and job-sharing, as well as flexibility regarding the place of work to include work at home, telework or work from a satellite work centre. Those measures can also contribute towards a better balance between work and family responsibilities, provided they respond to the different requirements and challenges faced by male and female workers. Flexible working arrangements must meet the needs of both workers and employers, and in no case should they be used to undermine the right to just and favourable conditions of work.

E. Special topics of broad application

47. The right to just and favourable conditions of work relates to specific workers:

(a) *Female workers*: 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” — remains far from satisfactory. Intersectional discrimination and the absence of a life-cycle approach regarding the needs of women lead to accumulated disadvantages that have a negative impact on the right to just and favourable conditions of work and other rights. Particular attention is needed to address occupational segregation by sex and 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. Day-care services in the workplace and flexible working arrangements can promote equal conditions of work in practice. Workers benefiting from gender-specific measures should not be penalized in other areas. States parties must take measures to address traditional gender roles and other structural obstacles that perpetuate gender inequality;

(b) *Young workers and older workers*: All workers should be protected against age discrimination. Young workers should not suffer wage discrimination, for example, being forced to accept low wages that do not reflect their skills. An excessive use of unpaid internships and training programmes, as well as of short-term and fixed-term contracts that negatively affect 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.[38] Older workers should receive fair wages and equal remuneration for work of equal value, and have equal opportunity for promotion based on their experience and know-how.[39] Specific health and safety measures might be necessary, and older workers should benefit from pre-retirement programmes, if they so wish.[40] The cumulative effects of discrimination against female workers through the life cycle might require targeted measures to achieve equality and guarantee fair wages, equal opportunities for promotion and equal pension rights;

(c) *Workers with disabilities*: At times, workers with disabilities require specific measures to enjoy the right to just and favourable conditions of work on an equal basis with others. Workers with disabilities should not be segregated in sheltered workshops. They should benefit from an accessible work environment and must not be denied reasonable accommodation, like workplace adjustments or flexible working arrangements. They should also enjoy equal remuneration for work of equal value and must not suffer wage discrimination due to a perceived reduced capacity for work;

(d) *Workers in the informal economy*: Although these workers account for a significant percentage of the world's workforce, they are often excluded from national statistics and legal protection, support and safeguards, exacerbating vulnerability. While the overall objective should be to formalize work, laws and policies should explicitly extend to workers in the informal economy and States parties should take steps to gather relevant disaggregated data so as to include this category of workers in the progressive realization of the right to just and favourable conditions of work. For that purpose, the informal economy should be included in the mandate of the respective monitoring and enforcement mechanism. Women are often overrepresented in the informal economy, 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;

(e) *Migrant workers*: These workers, in particular if they are undocumented, are vulnerable to exploitation, long working hours, unfair wages and dangerous and unhealthy working environments. Such vulnerability is increased by abusive labour practices that give the employer control over the migrant worker's residence status or that tie migrant workers to a specific employer. If they do not speak the national language(s), they might be less

[38] See ILO Minimum Age Convention, 1973 (No. 138), arts. 3 and 7.

[39] See Committee on Economic, Social and Cultural Rights general comment No. 6 (1995) on the economic, social and cultural rights of older persons, para. 23.

[40] Ibid., para. 24.

aware of their rights and unable to access grievance mechanisms. Undocumented workers often fear reprisals from employers and eventual expulsion if they seek to complain about working conditions. Laws and policies should ensure that migrant workers enjoy treatment that is no less favourable than that of national workers in relation to remuneration and conditions of work. Internal migrant workers are also vulnerable to exploitation and require legislative and other measures to ensure their right to just and favourable conditions of work;

(f) *Domestic workers*: The vast majority of domestic workers are women. Many belong to ethnic or national minorities or are migrants. They are often isolated and can be exploited, harassed and, in some cases, notably those involving live-in domestic workers, subject to slave-like conditions. They frequently do not have the right to join trade unions or the freedom to communicate with others. Due to stereotyped perceptions, the skills required for domestic work are undervalued; as a result, it is among the lowest paid occupations. Domestic workers have the right to just and favourable conditions of work,[41] including protection against abuse, harassment and violence, decent working conditions, paid annual leave, normal working hours, daily and weekly rest on the basis of equality with other workers, minimum wage coverage where this exists, remuneration established without discrimination based on sex, and social security. Legislation should recognize these rights for domestic workers and ensure adequate means of monitoring domestic work, including through labour inspection, and the ability of domestic workers to complain and seek remedies for violations;

(g) *Self-employed workers*: Where unable to earn a sufficient income, such workers should have access to appropriate support measures. Self-employed female workers should benefit from maternity insurance on an equal basis with other workers.[42] Legislation on occupational health and safety should cover self-employed workers, requiring them to undertake appropriate training programmes, and be aimed at raising their awareness on the importance of rest, leisure and limitations on working time. Small-scale farmers who rely on unpaid family labour to compensate for difficult working conditions deserve particular attention;

(h) *Agricultural workers:* Agricultural workers often face severe socioeconomic disadvantages, forced labour, income insecurity and lack of access to basic services. At times, they are formally excluded from industrial relations and social security systems. Women agricultural workers, particularly on family farms, are often not recognized as workers and therefore not entitled to wages and social protection, to join agricultural cooperatives and to benefit from loans, credits and other measures to improve working conditions. States parties should enact laws and policies to ensure that agricultural workers enjoy treatment no less favourable than that enjoyed by other categories of workers;

(i) *Refugee workers*: Because of their often precarious status, refugee workers remain vulnerable to exploitation, discrimination and abuse in the workplace, may be less well paid than nationals, and have longer working hours and more dangerous working conditions. States parties should enact legislation enabling refugees to work and under conditions no less favourable than for nationals;

(j) *Unpaid workers*: Women work in activities that are significant for their households and the national economy, and they 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

[41] See ILO Domestic Workers Convention, 2011 (No. 189), arts. 5, 6, 7, 10, 11, 13, 14, 16 and 17.

[42] See Committee on the Elimination of Discrimination against Women, communication No. 36/2012, *Blok et al. v. The Netherlands*, views adopted on 17 February 2014.

national legislation. They have a right to just and favourable conditions of work and should be protected by laws and policies on occupational safety and health, rest and leisure, and reasonable limitations on working hours, as well as social security.

Freedom from harassment, including sexual harassment

48. All workers should be free from physical and mental 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 and other forms of harassment, such as on the basis of sex, disability, race, sexual orientation, gender identity and intersex status. A specific definition of sexual harassment in the workplace is appropriate, and legislation should criminalize 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 any worker; (b) prohibition of certain acts that constitute harassment, including sexual harassment; (c) identification of specific duties of employers, managers, supervisors and workers to prevent and, where relevant, resolve and remedy harassment cases; (d) access to justice for victims, including through free legal aid; (e) compulsory training for all staff, including for managers and supervisors; (f) protection of victims, including the provision of focal points to assist them, as well as avenues of complaint and redress; (g) explicit prohibition of reprisals; (h) procedures for notification and reporting to a central public authority of claims of sexual harassment and their resolution; (i) provision of a clearly visible workplace-specific policy, developed in consultation with workers, employers and their representative organizations, and other relevant stakeholders such as civil society organizations.

49. Human rights defenders should be able to contribute to the full realization of Covenant rights for all, free from any form of harassment. States parties should respect, protect and promote the work of human rights defenders and other civil society actors towards the realization of the right to just and favourable conditions of work, including by facilitating access to information and enabling the exercise of their rights to freedom of expression, association, assembly and public participation.

III. Obligations

A. 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, using maximum available resources.[43] 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 to just and favourable conditions of work, with a level of flexibility to choose the appropriate means. Although non-State actors, such as employer and worker organizations, also have a responsibility to secure just and favourable conditions of work, particularly through collective agreements, States parties must

[43] Committee on Economic, Social and Cultural Rights general comment No. 3 (1990) on the nature of States parties' obligations.

effectively regulate and enforce that right, and sanction non-compliance by public and private employers.

52. State parties should avoid taking any deliberately retrogressive measure without careful consideration and justification. When 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 and non-discriminatory, and that they respect at least its core obligations.[44] A State party may never justify retrogressive measures in relation to aspects of the right to just and favourable conditions of work that are subject to immediate or core obligations. States parties facing considerable difficulties in achieving progressive realization of that right due to a lack of national resources have an obligation to seek international cooperation and assistance.

53. States parties must guarantee that the right to just and favourable conditions of work is exercised without discrimination of any kind. Specifically, they have an obligation to guarantee that women enjoy conditions of work not inferior to those of men and receive equal pay for work of equal value, which requires the immediate elimination of formal and substantive discrimination.[45] States parties must also combat all forms of unequal treatment arising from precarious employment relationships.

54. In order to ensure accountability, States parties should establish a functioning system of labour inspectorates, with the involvement of social partners, to monitor all aspects of the right to just and favourable conditions of work for all workers, including workers in the informal economy, domestic workers and 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; able to rely on specialists and medical experts; 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.

55. States parties should identify indicators and benchmarks to monitor the implementation of the right to just and favourable conditions of work. Such indicators and benchmarks should address the different elements of the right to just and favourable conditions of work, be disaggregated by sex and other relevant grounds such as age, disability, nationality and urban/rural location, and cover all persons under the territorial jurisdiction of the State party or under its control. States parties should define the indicators that are most relevant to national implementation of the right, such as the incidence of occupational accidents; the ratio of women's wages to men's wages; the proportion of women and other underrepresented individuals in high-level positions; the 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 the uptake of measures to reconcile professional and family life by women and men. In selecting indicators, the Committee invites States parties to take into account available guidance, including the Office of the United Nations High Commissioner for Human Rights

[44] Letter of the Chair of the Committee to States parties on austerity measures, May 2012.

[45] See Committee on Economic, Social and Cultural Rights general comment No. 20, para. 8.

(OHCHR) lists of illustrative indicators with respect to articles 6 and 7 of the Covenant and ILO indicators.[46]

56. The Committee underlines the importance of consultation in formulating, implementing, reviewing and monitoring laws and policies related to the right to just and favourable conditions of work, not only with traditional social partners such as workers and employers and their representative organizations, but also with other relevant organizations, such as those representing persons with disabilities, younger and older persons, women, workers in the informal economy, migrants and lesbian, gay, bisexual, transgender and intersex persons, as well as representatives of ethnic groups and indigenous communities.

57. 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. Access to remedy should not be denied on the grounds that the affected person is an irregular migrant. Not only courts, but also national human rights institutions, labour inspectorates and other relevant mechanisms, should have authority to address such violations. States should review and, if necessary, reform their legislation and codes of procedure to ensure access to remedies, as well as procedural fairness. Legal assistance for obtaining remedies should be available and it should be free for those who are unable to pay.

B. Specific legal obligations

58. 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. This is particularly important when the State is the employer, including in State-owned or State-controlled enterprises. For example, States parties should not introduce salary scales that discriminate, directly or indirectly, against female workers, or maintain a promotion system in the public sector that favours, directly or indirectly, the overrepresented gender at higher levels. 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 it does not constrain that right.[47]

59. 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 enjoyment of the right to just and favourable conditions of work and comply with their obligations. This includes taking steps to prevent, investigate, punish and redress abuse through effective laws and policies and adjudication. For example, States should ensure that laws, policies and regulations governing the right to just and favourable conditions of work, such as a national occupational safety and health policy, or legislation on minimum wage and minimum standards for working conditions, are adequate and effectively enforced.[48] States parties should impose sanctions and appropriate penalties on third parties, including adequate reparation, criminal penalties, pecuniary measures such as damages, and

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

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

[48] Ibid., principle 3.

administrative measures, in the event of violation of any of the elements of the right. They should also refrain from procuring goods and services from individuals and enterprises that abuse 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. Certain workers, such as domestic workers, may require specific measures.

60. The obligation *to fulfil* requires States parties to adopt the measures necessary to ensure the full realization of the right to just and favourable conditions of work. This includes introducing measures to facilitate, promote and provide that right, including through collective bargaining and social dialogue.

61. In order to facilitate the right to just and favourable conditions of work, 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 leave and public holidays. States parties should also introduce quotas or other temporary special measures to enable women and other members of groups that have experienced discrimination to reach high-level posts and provide incentives for the private sector to do so.

62. To help assess the enjoyment of the right to just and favourable conditions of work, States parties should establish obligatory notification schemes in the event 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 periodically review the impact of laws and policies, in consultation with workers and employers, with a view to updating standards in the light of practice. For example, the national policy on occupational safety and health should include a built-in periodic review mechanism. States parties should promote the extension of protective regimes to sectors at risk; introduce schemes that allow for coverage of informal workers, coupled with measures to regularize the informal economy; create adequate dialogue mechanisms to raise pertinent issues; and 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.

63. In order to promote the right to just and favourable conditions of work, 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, also targeting employers, in relevant languages and accessible formats for persons with disabilities and illiterate workers. Attention should be paid to the need for gender-sensitive training on the occupational health and safety of workers.

64. States parties must also provide aspects of the right to just and favourable conditions of work when workers are unable to realize the right themselves. They have a role in creating an enabling labour market environment and should, for example, adapt the workplace and 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 economy, to provide benefits and protection against accidents and disease at work.

C. Core obligations

65. 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, intersex status, health, nationality or any other status;

(b) Put in place a comprehensive system to combat gender discrimination at work, including with regard to remuneration;

(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 by 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;

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

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

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

D. International assistance and cooperation

66. 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 to just and favourable conditions of work. This is particularly incumbent upon those States which are in a position to assist others in this regard. International assistance and cooperation is a means of transferring knowledge and technology and a tool for States to maximize available resources for the full realization of Covenant rights.

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

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

69. States parties must refrain from acts or omissions that interfere, either directly or indirectly, with the realization of the right to just and favourable conditions of work in other countries. This is particularly relevant when a State party owns or controls an enterprise or

provides substantial support and services to an enterprise operating in another State party.[49] To this end, the State party should respect relevant host-country legislation that complies with the Covenant. When 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 require respect for the right to just and favourable conditions of work by individuals and enterprises based extraterritorially with which they conduct commercial transactions.[50]

70. States parties should take measures, including legislative measures, to clarify that their nationals, as well as enterprises domiciled in their territory and/or jurisdiction, are required to respect the right to just and favourable conditions of work throughout their operations extraterritorially.[51] 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 regulatory and enforcement role and support individuals and enterprises in identifying, preventing and mitigating risks to just and favourable conditions of work through their operations.[52] States parties should introduce appropriate measures to ensure that non-State actors domiciled in the State party are accountable for violations of the right to just and favourable conditions of work extraterritorially and that victims have access to remedy. States parties should also provide guidance to employers and enterprises on how to respect the right extraterritorially.[53]

71. States parties acting as members of relevant international organizations should also respect the right to just and favourable conditions of work. 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 that the right 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.

72. States parties should ensure that the right to just and favourable conditions of work is given due attention in the conclusion and implementation of 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 core human rights treaties and relevant ILO conventions.

73. 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 and the sharing of recruitment practices. This is particularly important to avoid abuse of migrant workers, including domestic workers, and to combat trafficking in persons. 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 such workers to enjoy just and favourable conditions of work.

[49] Ibid., principle 4.
[50] Ibid., principle 6.
[51] Ibid., principle 2.
[52] Ibid., principle 7 (a).
[53] Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2011).

E. Obligations of non-State actors

74. While only States are parties to the Covenant, business enterprises, trade unions and all members of society 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 to just and favourable conditions of work.

75. Business enterprises, irrespective of size, sector, ownership and structure,[54] should comply with laws that are consistent with the Covenant and have a responsibility to respect the right to just and favourable conditions of work,[55] avoiding any infringements and addressing any abuse of the right as a result of their actions. In situations in which a business enterprise has caused or contributed to adverse impacts, the enterprise should remedy the damage or cooperate in its remediation through legitimate processes that meet recognized standards of due process.[56]

76. The role of United Nations agencies and programmes, in particular ILO, is also important. In conformity with articles 22 and 23 of the Covenant, ILO and other United Nations specialized agencies, the World Bank, regional development banks, the International Monetary Fund, the World Trade Organization and other relevant bodies, as well as the United Nations 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 concerning the enjoyment of the right, as well as the response given.

IV. Violations and remedies

77. States parties must demonstrate that they have taken all steps necessary towards the realization of the right 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 and for work of equal value. A failure to take such steps amounts to a violation of the Covenant. In assessing whether States parties have complied with their obligation to take such steps, the Committee examines whether steps taken are reasonable and proportionate and whether they comply with human rights standards and democratic principles.

78. Violations of the right to just and favourable conditions of work can occur through acts of commission, which means direct actions of States parties. Adoption of labour migration policies that increase the vulnerability of migrant workers to exploitation, failure to prevent unfair dismissal from work of pregnant workers in public service, and introduction of deliberately retrogressive measures that are incompatible with core obligations are all examples of such violations.

79. Violations can also occur through acts of omission, which means the failure by a State party to take reasonable steps to fully realize the right for everyone, for example by failing to enforce relevant laws and implement adequate policies, or to regulate the activities of individuals and groups to prevent them from violating the right, or to take into

[54] See Guiding Principles on Business and Human Rights, principle 14.
[55] Ibid., principles 11, 12 and 23.
[56] Ibid., principle 22.

account its Covenant obligations when entering into bilateral or multilateral agreements with other States, international organizations or multinational corporations.

80. States parties must put into place an adequate monitoring and accountability framework by ensuring access to justice or to other effective remedies.