Non-Discrimination and Equality Standards Compendium

This is The Equal Rights Trust’s Non-Discrimination and Equality Standards Compendium. The Compendium has been developed as an information and educational resource to guide lawyers, policy makers and human rights activists working to promote the right to equality and non-discrimination. It provides a detailed (but non-exhaustive) collection of existing international and regional standards on non-discrimination, equality and human rights and categorises these standards into an accessible and user-friendly format. The Compendium’s contains three parts:
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Part One – General Standards

1.1 The right to equality and non-discrimination

1.1.1 All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law should prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, *ethnic group*, colour, sex, language, religion, political or other opinion, national or social origin, *association with a national minority*, property, *fortune*, birth or *any other social condition* or other status.

1.1.2 No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

1.1.3 Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

1.1.4 Where not already provided for by existing legislative or other measures, all states should undertake to take the necessary steps, in accordance with their constitutional processes and with the provisions of international human rights standards, to adopt such laws or other measures as may be necessary to give effect to all human rights.

1.1.5 Provisions of Part II [provisions of humanitarian law providing for the general protection of civilian populations against certain consequences of war] cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war.

1.1.6 Protected persons under humanitarian law should be entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs.

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5 Article 26, International Covenant on Civil and Political Rights (ICCPR), 1966
8 Article 2(2), ICCPR.
10 Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, in all cases of declared war or of any other armed conflict which may arise between two or more states, even if the state of...
1.2 Definition of discrimination

1.2.1 Discrimination includes any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. However, not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the international human rights standards.

1.2.2 Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1 [DIR2000/78/EC]. Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless: (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or (ii) as regards persons with a particular disability, the employer or any person or organisation, is obliged, under national legislation, to take appropriate measures in order to eliminate disadvantages entailed by such provision, criterion or practice.

1.2.3 Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

1.2.4 An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.2.1.

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[4] Article 1 states: The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.
1.3 Other definitions

1.3.1 “Multiple discrimination” is a term used to describe discrimination on more than one ground, i.e. where a person is discriminated against on grounds of their gender and, separately, on grounds of their race (or disability, age, etc.); and discrimination based on a combination of grounds is increasingly called intersectional discrimination.\(^{20}\)

1.4 The scope of protection from discrimination and permissible restrictions

1.4.1 The right to equality before the law and freedom from discrimination, protected by article 26 [ICCPR], requires States to act against discrimination by public and private agencies in all fields.\(^{21}\)

1.4.2 The legal obligation under article 2, paragraph 1 [ICCPR], is both negative and positive in nature. States Parties must refrain from violation of the rights recognized by the Covenant, and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.\(^ {22}\)

1.5 Right-holders

1.5.1 States Parties are required by article 2, paragraph 1 [ICCPR], to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party. As indicated in General Comment 15, adopted at the twenty-seventh session (1986), the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party. This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such


\(^{21}\) Human Rights Committee General Comment no 28 para 31.

\(^{22}\) Human Rights Committee General Comment no. 31, para 6.
as forces constituting a national contingent of a State Party assigned to an international peace-
keeping or peace-enforcement operation.\textsuperscript{23}

1.5.2 In all cases of declared war or of any other armed conflict which may arise between two or
more states, even if the state of war is not recognised by one of them, as well as in the case of armed
conflict not of an international character occurring in the territory of a state, each party to the
conflict should be bound to treat humanely, without any adverse distinction founded on race,
colour, religion or faith, sex, birth or wealth, or any other similar criteria, persons taking no active
part in the hostilities, including members of armed forces who have laid down their arms and those
placed \textit{hors de combat} by sickness, wounds, detention, or any other cause.\textsuperscript{24}

1.5.3 The provisions of humanitarian law cover the whole of the populations of the countries in
conflict, without any adverse distinction based, in particular, on race, nationality, religion or
political opinion, and are intended to alleviate the sufferings caused by war.\textsuperscript{25}

\section*{1.6. Giving effect to the right to equality and non-discrimination in the domestic order}

1.6.1 Article 2, paragraph 2 [ICCPR], requires that States Parties take the necessary steps to give
effect to the Covenant rights in the domestic order.\textsuperscript{26} The requirement under article 2, paragraph 2
[ICCPR], to take steps to give effect to the Covenant rights is unqualified and of immediate effect. A
\textbf{failure to comply with this obligation cannot be justified by reference to political, social,
cultural or economic considerations within the State.}\textsuperscript{27}

1.6.2 States Parties undertake to ensure and promote the full realisation of all human rights and
fundamental freedoms for all persons with disabilities without discrimination of any kind on the
basis of disability. To this end, States Parties undertake:

a. To adopt all appropriate legislative, administrative and other measures for the
implementation of the rights recognized in the present Convention;

b. To take all appropriate measures, including legislation, to modify or abolish existing laws,
regulations, customs and practices that constitute discrimination against persons with
disabilities;

c. To take into account the protection and promotion of the human rights of persons with
disabilities in all policies and programmes;

\textsuperscript{23} Human Rights Committee General Comment no. 31, para 10.
\textsuperscript{24} Articles 2 and 3 Geneva Convention relative to the Treatment of Prisoners of War, 1949, and Geneva
\textsuperscript{25} Article 13 Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949.
\textsuperscript{26} Human Rights Committee General Comment no. 31, para 13.
\textsuperscript{27} Human Rights Committee General Comment no. 31, para 14.
d. To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

e. To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise;

f. To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;

g. To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;

h. To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

i. To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights.\(^{28}\)

1.6.3 In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations.\(^{29}\)


\(^{29}\) Convention on the Rights of Persons with Disabilities, 2006, article 4(3).
1.7 Derogation from international commitments and the right to equality and non-discrimination

1.7.1 According to article 4, paragraph 1 [ICCPR], one of the conditions for the justifiability of any derogation from the Covenant is that the measures taken do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin (emphasis added). Even though article 26 or the other Covenant provisions related to non-discrimination (articles 2; 3; 14, paragraph 1; 23, paragraph 4; 24, paragraph 1; and 25) have not been listed among the non-derogable provisions in article 4, paragraph 2, there are elements or dimensions of the right to non-discrimination that cannot be derogated from in any circumstances (emphasis added). In particular, this provision of article 4, paragraph 1, must be complied with if any distinctions between persons are made when resorting to measures that derogate from the Covenant.  

1.8 Anti-discrimination legislation – minimum requirements

1.8.1 From the general comments, the case law and the concluding observations of treaty bodies we can garner the following minimum requirements which would make national legislation efficient: provide legal definitions of the concept of discrimination, including direct and indirect discrimination; set out clear and detailed provisions as to what conduct, actions, measures, policies, or criteria would be considered discriminatory; provide for a substantive, asymmetric approach to non-discrimination, as opposed to a merely formal understanding of non-discrimination as “same treatment”; prohibit discrimination in all spheres of public life whether by State or non-State actors; prohibit incitement to discrimination, harassment, and segregation; incorporate specialised bodies which would be empowered to assist victims and to promote a culture of equal rights; provide for effective judicial remedy, including as necessary through criminal, civil or administrative processes, to victims of discrimination and ensure that sanctions in place are efficient, dissuasive and proportional; allow the procedural possibility for proving discrimination through appropriate rules and criteria of evidence and burdens of proof, deriving from the understanding that the victims of discrimination are usually at a disadvantage and would not be able to defend their rights in the courts unless special care is taken as to their procedural

30 Human Rights Committee General Comment No. 29, para 8. An even higher standard of protection is provided by the African Commission on Human and Peoples’ Rights which takes the view that there can be no derogation of any Charter rights because derogation is not recognised in the Charter itself. In Amnesty International and Other vs. Sudan, it stated that “the Charter contains no derogation clause, which can be seen as an expression of the principle that the restriction of human rights is not a solution to national difficulties: the legitimate exercise of human rights does not pose dangers to a democratic state governed by the rule of law.” (see Comm. No. 48/90, 50/91, 52/91, 89/93 (1999).  

31 Direct discrimination on the basis of race and related characteristics is defined as less favourable treatment based wholly or in part on the person's race, ethnicity, colour, descent, ethnic or national origin, without objective and reasonable justification. Indirect discrimination is defined as a neutral measure, criterion or practice which would put persons of a particular race or related characteristic at a particular disadvantage, when there is no objective and reasonable justification.
rights; and establish clear obligations related to the duty to promote equality in a proactive way through appropriate policies.\textsuperscript{32}

1.8.2 The law [civil and administrative] should clearly define and prohibit direct and indirect racial discrimination.

1. The law should provide that the prohibition of racial discrimination does not prevent the maintenance or adoption of temporary special measures designed either to prevent or compensate for disadvantages suffered by persons designated by the grounds enumerated in paragraph 1 (b)[ECRI General Policy Recommendation N°7] (henceforth: enumerated grounds), or to facilitate their full participation in all fields of life. These measures should not be continued once the intended objectives have been achieved.

2. The law should provide that the following acts, inter alia, are considered as forms of discrimination: segregation; discrimination by association; announced intention to discriminate; instructing another to discriminate; inciting another to discriminate; aiding another to discriminate.

3. The law should provide that the prohibition of discrimination applies to all public authorities as well as to all natural or legal persons, both in the public and in the private sectors, in all areas, notably: employment; membership of professional organisations; education; training; housing; health; social protection; goods and services intended for the public and public places; exercise of economic activity; public services.

4. The law should place public authorities under a duty to promote equality and to prevent discrimination in carrying out their functions.

5. The law should place public authorities under a duty to ensure that those parties to whom they award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination. In particular, the law should provide that public authorities should subject the awarding of contracts, loans, grants or other benefits to the condition that a policy of non-discrimination be respected and promoted by the other party. The law should provide that the violation of such condition may result in the termination of the contract, grant or other benefits.

6. The law should ensure that easily accessible judicial and/or administrative proceedings, including conciliation procedures, are available to all victims of discrimination. In urgent cases, fast-track procedures leading to interim decisions should be available to victims of discrimination.

7. The law should provide that, if persons who consider themselves wronged because of a discriminatory act establish before a court or any other competent authority facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no discrimination.

8. The law should provide for effective, proportionate and dissuasive sanctions for discrimination cases. Such sanctions should include the payment of compensation for both material and moral damages to the victims.

9. The law should provide the necessary legal tools to review, on an ongoing basis, the conformity with the prohibition of discrimination of all laws, regulations and administrative provisions at the national and local levels. Laws, regulations and administrative provisions found not to be in conformity with the prohibition of discrimination should be amended or abrogated.

10. The law should provide that discriminatory provisions which are included in individual or collective contracts or agreements, internal regulations of enterprises, rules governing profit-making or non-profit-making associations, and rules governing the independent professions and workers’ and employers’ organisations should be amended or declared null and void.

11. The law should provide that harassment related to one of the enumerated grounds is prohibited.

12. The law should provide for an obligation to suppress public financing of organisations which promote racism. Where a system of public financing of political parties is in place, such an obligation should include the suppression of public financing of political parties which promote racism.

13. The law should provide for the possibility of dissolution of organisations which promote racism.

1.9 Genocide and other crimes against humanity; incitement to discrimination and other discriminatory acts as criminal offences

1.9.1 Genocide, as the most extreme form of discrimination and as a crime under international law, is defined as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) killing members of the group;

(b) causing serious bodily or mental harm to members of the group;

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(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) imposing measures intended to prevent births within the group;

(e) forcibly transferring children of the group to another group.\(^{34}\)

1.9.2 Other extreme forms of discrimination that constitute crimes against humanity, meaning acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, include:

(a) Rape, sexual slavery, enforced prostitution, forced pregnancy (meaning the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law), enforced sterilization, or any other form of sexual violence of comparable gravity;

(b) Persecution, meaning the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectively, against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(c) The crime of apartheid.\(^ {35}\)

1.9.3 Any restriction on the complete self-fulfilment of human beings and free communication between them which is based on racial or ethnic considerations is contrary to the principle of equality in dignity and rights; it cannot be admitted. Other policies and practices of racial segregation and discrimination constitute crimes against the conscience and dignity of mankind and may lead to political tensions and gravely endanger international peace and security.\(^ {36}\)

1.9.4 Any advocacy of national, racial or religious hatred, that constitutes incitement to discrimination, hostility or violence should be prohibited by law.\(^ {37}\)

1.9.5 States should ensure that the prohibition of war propaganda extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations, while the prohibition of advocacy of national, racial or religious hatred is directed against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the state concerned. For this right to be effectively protected,


\(^ {36}\) Declaration on Race and Racial Prejudice adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its twentieth session, on 27 November 1978, article 4

\(^ {37}\) Article 20(2) ICCPR.
states should adopt legislation making it clear that propaganda and advocacy as described therein are contrary to public policy and provide for an appropriate sanction in case of violation.\textsuperscript{38}

See also 2.2.17 and 2.2.18.

1.9.6 (18)\textsuperscript{39} The [criminal] law should penalise the following acts when committed intentionally:

a) public incitement to violence, hatred or discrimination,

b) public insults and defamation or
c) threats against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin;

d) the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin;

e) the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes;

f) the public dissemination or public distribution, or the production or storage aimed at public dissemination or public distribution, with a racist aim, of written, pictorial or other material containing manifestations covered by paragraphs a), b), c), d) and e);

g) the creation or the leadership of a group which promotes racism ; support for such a group ; and participation in its activities with the intention of contributing to the offences covered by paragraph 18 a), b), c), d), e) and f);

h) racial discrimination in the exercise of one’s public office or occupation.

(19.) The law should penalise genocide.

(20.) The law should provide that intentionally instigating, aiding, abetting or attempting to commit any of the criminal offences covered by paragraphs 18 and 19 is punishable.

(21.) The law should provide that, for all criminal offences not specified in paragraphs 18 and 19, racist motivation constitutes an aggravating circumstance.

(22.) The law should provide that legal persons are held responsible under criminal law for the offences set out in paragraphs 18, 19, 20 and 21.

(23.) The law should provide for effective, proportionate and dissuasive sanctions for the offences set out in paragraphs 18, 19, 20 and 21. The law should also provide for ancillary or alternative sanctions.\textsuperscript{40}

\textsuperscript{38} HRC General Comment 11, para 2.
\textsuperscript{39} The numbering in parenthesis is the numbering as it appears in the original ECRI document.

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The law should provide that intentionally instigating, aiding, abetting or attempting to commit any of the criminal offences covered in 1.9.6 is punishable. The law should provide that, for all criminal offences not specified in 1.9.6, discriminatory motivation constitutes an aggravating circumstance. The law should provide that legal persons are held responsible under criminal law for the offences covered in 1.8.7. The law should provide for effective, proportionate and dissuasive sanctions for these offences. The law should also provide for ancillary or alternative sanctions.\[41\]

A hate crime should be defined as any criminal offence including, offences against persons or property, where the victim, premises, or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support, or membership with a group. A group may be based upon a characteristic common to its members, such as real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or other similar factor.\[42\]

### 1.10 Positive measures

1.10.1 The principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant [ICCPR]. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant.\[43\]

1.10.2 The obligation to ensure to all individuals the rights recognised in the Covenant [ICCPR], established in articles 2 and 3 of the Covenant, requires that State parties take all necessary steps to enable every person to enjoy those rights. These steps include the removal of obstacles to the equal enjoyment each of such rights, the education of the population and of state officials in human rights and the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant. The State party must not only adopt measures of protection but also positive measures in all areas so as to achieve the effective and equal empowerment of women.\[44\]

1.10.3 State parties are responsible for ensuring the equal enjoyment of rights without any discrimination. Articles 2 and 3 mandate States parties to take all steps necessary including, the

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\[43\] HRC General Comment no. 18, para. 10.

\[44\] Human Rights Committee General Comment no. 28, para 3.
prohibition of discrimination on the ground of sex, to put an end to discriminatory actions both in the public and the private sector which impair the equal enjoyment of rights.\footnote{Human Rights Committee General Comment no. 28, para 4.}

\subsection{1.11 Obligations of the state to provide an effective legal remedy}

1.11.1 Article 2, paragraph 3 \cite{ICCPR}, requires that in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, including in particular children. The Committee attaches importance to States Parties’ establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law. The Committee notes that the enjoyment of the rights recognised under the Covenant can be effectively assured by the judiciary in many different ways, including direct applicability of the Covenant, application of comparable constitutional or other provisions of law, or the interpretive effect of the Covenant in the application of national law. Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies. National human rights institutions, endowed with appropriate powers, can contribute to this end. A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy.\footnote{Human Rights Committee General Comment no. 31, para 15.}

1.11.2 States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant \cite{ICCPR}.\footnote{Human Rights Committee General Comment no. 31, para 18.} The right to an effective remedy may in certain circumstances require States Parties to provide for and implement provisional or interim measures to avoid continuing violations and to endeavour to repair at the earliest possible opportunity any harm that may have been caused by such violations.\footnote{Human Rights Committee General Comment no. 31, para 19.}

1.11.3 States Parties make reparation to individuals whose Covenant \cite{ICCPR} rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged.\footnote{Human Rights Committee General Comment no. 31, para 16.}

1.11.4 In general, the purposes of the Covenant \cite{ICCPR} would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant.\footnote{Human Rights Committee General Comment no. 31, para 17.}
1.11.5 Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive.51

1.12 The burden of proof in civil proceedings involving discrimination

1.12.1 [State Parties to CERD should] Regulate the burden of proof in civil proceedings involving discrimination based on race, colour, descent, and national or ethnic origin so that once a non-citizen has established a prima facie case that he or she has been a victim of such discrimination, it shall be for the respondent to provide evidence of an objective and reasonable justification for the differential treatment.52

1.13 Specialised bodies

1.13.1 Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals’ rights.53 States should ensure that the independent statutes and competencies of such bodies are established in line with the UN Paris Principles.54

1.13.2 Member States should ensure that the competences of these bodies include:

- without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,

- conducting independent surveys concerning discrimination,

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54 Principles relating to the status and functioning of national institutions for protection and promotion of human rights endorsed by the UN General Assembly in its resolution A/RES/48/134 of 20 December 1993.
1.13.3 The law should provide for the establishment of an independent specialised body to combat racism and racial discrimination at national level (henceforth: national specialised body). The law should include within the competence of such a body: assistance to victims; investigation powers; the right to initiate, and participate in, court proceedings; monitoring legislation and advice to legislative and executive authorities; awareness-raising of issues of racism and racial discrimination among society and promotion of policies and practices to ensure equal treatment.56

1.13.4 The law should provide that organisations such as associations, trade unions and other legal entities which have, according to the criteria laid down by the national law, a legitimate interest in combating discrimination, are entitled to bring civil cases, intervene in administrative cases or make criminal complaints, even if a specific victim is not referred to. If a specific victim is referred to, it should be necessary for that victim’s consent to be obtained.57

1.13.5 The law should guarantee free legal aid and, where necessary, a court-appointed lawyer, for victims who wish to go before the courts as applicants or plaintiffs and who do not have the necessary means to do so. If necessary, an interpreter should be provided free of charge.58

1.13.6 The law should provide protection against any retaliatory measures for persons claiming to be victims of racial offences or racial discrimination, persons reporting such acts or persons providing evidence.59

1.13.7 The law should provide for one or more independent bodies entrusted with the investigation of alleged acts of discrimination committed by members of the police, border control officials, members of the army and prison personnel.60

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1.14 Collection and use of statistics

1.14.1 States should collect appropriately segregated statistics to ensure they can effectively monitor all more significant discriminatory practices and acts. Such information is indispensible for the formulation of effective legislative and policy measures to address noted discriminatory practices.

1.15 Regressive measures

1.15.1 The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.61

Part Two – Discrimination against specific categories of persons

2.1 Gender-based discrimination

2.1.1 For the purposes of the present Convention, the term “discrimination against women” means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.\textsuperscript{62}

2.1.2 States should ensure that the definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. This includes acts perpetrated by public authorities that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.\textsuperscript{63} States should also take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise.\textsuperscript{64} Therefore states may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.\textsuperscript{65} The right of every woman to be free from violence includes, among others: (a) The right of women to be free from all forms of discrimination....\textsuperscript{66}

2.1.3 To achieve substantive equality, the state should give women an equal start and empower them by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. In pursuit of the goal of substantive equality, states should develop an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women.\textsuperscript{67}

2.1.4 Adoption by State Parties of temporary special measures aimed at accelerating de facto equality between men and women should not be considered discrimination, but should in no way entail as a consequence the maintenance of unequal or separate standards; these measures should be discontinued when the objectives of equality of opportunity and treatment have been achieved.

\textsuperscript{63} CEDAW General Recommendation No. 19 (11th session, 1992), para 6.
\textsuperscript{64} CEDAW General Recommendation No. 19 (11th session, 1992), para 8 and 9.
\textsuperscript{65} CEDAW General Recommendation No. 19 (11th session, 1992), para 8 and 9.
\textsuperscript{66} Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994, Article 6.
\textsuperscript{67} CEDAW General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, para 8.
Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.  

2.1.5 States should take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity. The measures set forth in international law aimed at preventing, suppressing and punishing trafficking in people should be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures should be consistent with internationally recognised principles of non-discrimination.

2.1.6 States should ensure development and accelerated implementation of national strategies for women's empowerment, the promotion and protection of women's full enjoyment of all human rights and reduction of their vulnerability to HIV/AIDS through the elimination of all forms of discrimination, as well as all forms of violence against women and girls, including harmful traditional and customary practices, abuse, rape and other forms of sexual violence, battering and trafficking in women and girls.

2.2 Racial discrimination

2.2.1 Racism should be defined so as to include racist ideologies, prejudiced attitudes, discriminatory behaviour, structural arrangements and institutionalised practices resulting in racial inequality as well as the fallacious notion that discriminatory relations between groups are morally and scientifically justifiable; it is reflected in discriminatory provisions in legislation or regulations and discriminatory practices as well as in anti-social beliefs and acts; it hinders the development of its victims, perverts those who practise it, divides nations internally, impedes international co-operation and gives rise to political tensions between peoples; it is contrary to the fundamental principles of international law and, consequently, seriously disturbs international peace and security.

2.2.2 The term "racial discrimination" means any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights

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72 Article 2(2) Declaration on Race and Racial Prejudice adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its twentieth session, on 27 November 1978.
and fundamental freedoms in the political, economic, social, cultural or any other field of public life.\textsuperscript{73}

2.2.3 Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms should not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they should not be continued after the objectives for which they were taken have been achieved.\textsuperscript{74}

2.2.4 Where international law provides for the possibility to differentiate between citizens and non-citizens, concerning, \textit{inter alia}, nationality, citizenship or naturalisation, the legal provisions of the state must not discriminate against any particular nationality.\textsuperscript{75}

2.2.5 The state obligation to eradicate all practices of racial segregation and apartheid should include the obligation to eradicate the consequences of such practices undertaken or tolerated by previous governments in the state or imposed by forces outside the State.\textsuperscript{76} Partial segregation may also arise as an unintended by-product of the actions of private persons. Therefore, a condition of racial segregation can also arise without any initiative or direct involvement by the public authorities. States should monitor all trends which can give rise to racial segregation and work for the eradication of any negative consequences that ensue.\textsuperscript{77}

2.2.6 States should take all appropriate steps, \textit{inter alia}, by legislation, particularly in the spheres of education, culture and communication, to prevent, prohibit and eradicate racism, racist propaganda, racial segregation and apartheid and to encourage the dissemination of knowledge and the findings of appropriate research in natural and social sciences on the causes and prevention of racial prejudice and racist attitudes, with due regard to the principles embodied in international law.\textsuperscript{78}

2.2.7 States should supplement laws proscribing racial discrimination by administrative machinery for the systematic investigation of instances of racial discrimination, by a comprehensive framework of legal remedies against acts of racial discrimination, by broadly based education and research programmes designed to combat racial prejudice and racial discrimination and by programmes of positive political, social, educational and cultural measures calculated to promote genuine mutual respect among groups. Where circumstances warrant, special programmes should be undertaken to promote the advancement of disadvantaged groups and, in

\textsuperscript{73} International Convention on the Elimination of All Forms of Racial Discrimination, Article 1(1).
\textsuperscript{74} International Convention on the Elimination of All Forms of Racial Discrimination, Article 1(4).
\textsuperscript{75} International Convention on the Elimination of All Forms of Racial Discrimination, Article 1(2) and (3).
\textsuperscript{76} CERD General Recommendation No. 19: Racial segregation and apartheid (Art. 3) : : 18/08/95, paras 2-4.
\textsuperscript{77} CERD General Recommendation No. 19: Racial segregation and apartheid (Art. 3) : : 18/08/95, paras 2-4.
\textsuperscript{78} Article 6(2) Declaration on Race and Racial Prejudice adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its twentieth session, on 27 November 1978.
the case of nationals, to ensure their effective participation in the decision-making processes of the community.\textsuperscript{79}

2.2.8 States should enforce the provisions of international law relating to refugees or stateless persons without discrimination as to race, religion or country of origin.\textsuperscript{80}

2.2.9 States should not expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.\textsuperscript{81}

2.2.10 Indigenous and tribal peoples should enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of international law should be applied without discrimination to male and female members of these peoples.\textsuperscript{82}

2.2.11 States should recognise and respect indigenous distinct culture, history, language and way of life as an enrichment of the state's cultural identity and to promote its preservation. Furthermore, states need to ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular, that is based on indigenous origin or identity; that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent; that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages. States should provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics.\textsuperscript{83}

2.2.12 States should develop, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of the indigenous and tribal peoples and to guarantee, and respect for their integrity. Such action should include measures for: (a) Ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; (b) Promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions; (c) Assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other

\textsuperscript{79} Article 6(3) Declaration on Race and Racial Prejudice adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its twentieth session, on 27 November 1978.

\textsuperscript{80} Convention relating to the Status of Refugees, 1951.

\textsuperscript{81} Article 33, Convention relating to the Status of Refugees, 1951.

\textsuperscript{82} Article 3(1) Indigenous and Tribal Peoples Convention, 1989 (No. 169).

\textsuperscript{83} CERD General Recommendation No. 23: Indigenous Peoples. 18/08/97, para 4.
members of the national community, in a manner compatible with their aspirations and ways of life.\(^{84}\)

2.2.13 States should adopt as appropriate special measures for safeguarding the persons, institutions, property, labour, cultures and environment of the indigenous and tribal peoples. Such special measures should not be contrary to the freely-expressed wishes of the peoples concerned. Enjoyment of the general rights of citizenship, without discrimination, should not be prejudiced in any way by such special measures.\(^{85}\)

2.2.14 In applying national laws and regulations to the indigenous and tribal peoples, due regard should be had to their customs or customary laws. These peoples should have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures should be established, whenever necessary, to resolve conflicts which may arise in the application of this principle. However, members of these peoples should not be prevented from exercising the rights granted to all citizens and from assuming the corresponding duties.\(^{86}\)

2.2.15 To the extent compatible with the national legal system and international law, the methods customarily practised by the indigenous and tribal peoples for dealing with offences committed by their members should be respected. The customs of these peoples in regard to penal matters should be taken into consideration by the authorities and courts dealing with such cases.\(^{87}\) In imposing penalties laid down by general law on members of these peoples account should be taken of their economic, social and cultural characteristics and preference should be given to methods of punishment other than confinement in prison.\(^{88}\)

2.2.16 States are required to take steps to identify those descent-based communities under their jurisdiction who suffer from discrimination, especially on the basis of caste and analogous systems of inherited status, and whose existence may be recognised on the basis of various factors including some or all of the following: inability or restricted ability to alter inherited status; socially enforced restrictions on marriage outside the community; private and public segregation, including in housing and education, access to public spaces, places of worship and public sources of food and water; limitation of freedom to renounce inherited occupations or degrading or hazardous work; subjection to debt bondage; subjection to dehumanising discourses referring to pollution or untouchability; and generalised lack of respect for their human dignity and equality.\(^{89}\)

\(^{84}\) Article 2 Indigenous and Tribal Peoples Convention, 1989 (No. 169).
\(^{85}\) Article 4, Indigenous and Tribal Peoples Convention, 1989 (No. 169).
\(^{86}\) Article 8, Indigenous and Tribal Peoples Convention, 1989 (No. 169).
\(^{87}\) Article 9, Indigenous and Tribal Peoples Convention, 1989 (No. 169).
\(^{88}\) Article 10, Indigenous and Tribal Peoples Convention, 1989 (No. 169).
2.2.17 States should ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping.\textsuperscript{90}

2.2.18 States should condemn all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and should adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, \textit{inter alia}: (a) should declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) should declare illegal and prohibit organisations, and also organised and all other propaganda activities, which promote and incite racial discrimination, and should recognise participation in such organisations or activities as an offence punishable by law; (c) should not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.\textsuperscript{91}

2.2.19 States should ensure that appropriately enacted legislation to protect against violence based on ethnic origin is effectively enforced.\textsuperscript{92}

2.3 Discrimination against children

2.3.1 States should respect and ensure the rights, set forth in the Convention on the Rights of the Child, to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. States should take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.\textsuperscript{93}

2.3.2 Children with disabilities should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.\textsuperscript{94} States should take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children. In all actions concerning children with disabilities, the best interests of the child should be a primary consideration. States should ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with

\textsuperscript{90} CERD General Recommendation No.30: Discrimination Against Non Citizens: 01/10/2004, para 10.

\textsuperscript{91} International Convention on the Elimination of All Forms of Racial Discrimination, Article 4.

\textsuperscript{92} CERD General Recommendation No. 15: Organized violence based on ethnic origin (Art. 4): 23/03/93, para 2.

\textsuperscript{93} Convention on the Rights of the Child, 1989, Article 2(1) and (2).

\textsuperscript{94} Convention on the Rights of the Child, 1989, Article 23(1).
their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right.\textsuperscript{95}

2.3.3 Every child should have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.\textsuperscript{96}

2.3.4 States should implement national policies and strategies to build and strengthen governmental, family and community capacities to provide a supportive environment for orphans and girls and boys infected and affected by HIV/AIDS, including by providing appropriate counselling and psychosocial support, ensuring their enrolment in school and access to shelter, good nutrition and health and social services on an equal basis with other children; and protect orphans and vulnerable children from all forms of abuse, violence, exploitation, discrimination, trafficking and loss of inheritance. States should ensure non-discrimination and full and equal enjoyment of all human rights through the promotion of an active and visible policy of de-stigmatisation of children orphaned and made vulnerable by HIV/AIDS.\textsuperscript{97}

\section*{2.4 Discrimination against persons of different religion}

2.4.1 States should take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life. States should also make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.\textsuperscript{98}

2.4.2 States should condemn discrimination between human beings on the grounds of religion or belief as an affront to human dignity and a violation of international law.\textsuperscript{99}

2.4.3 States should enact appropriate measures to counter any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.\textsuperscript{100}

See also 3.7.

\textsuperscript{95} Convention on the Rights of Persons with Disabilities, 2006, article 7.
\textsuperscript{96} Article 24(1) ICCPR.
\textsuperscript{97} Points 65 and 66, Declaration of Commitment on HIV/AIDS, 2001.
\textsuperscript{98} Article 4, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Proclaimed by General Assembly resolution 36/55 of 25 November 1981.
\textsuperscript{99} Article 3, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Proclaimed by General Assembly resolution 36/55 of 25 November 1981.
\textsuperscript{100} Human Rights Committee General Comment no. 22.
2.5 Discrimination of persons of different sexual orientation or gender identity

2.5.1 Discrimination on the basis of sexual orientation\(^{101}\) or gender identity\(^{102}\) includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms. Discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.\(^{103}\)

2.5.2 All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.\(^{104}\) The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination based on sexual orientation or gender identity.\(^{105}\) In this regard, states should:

- Include in their constitutions and appropriate legislation provisions prohibiting discrimination on the basis of sexual orientation\(^{106}\) and ensure that legislative remedies are available to individuals in respect of discrimination on the grounds of sexual orientation.\(^{107}\)

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\(^{101}\) ‘Sexual orientation’ is understood to “refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender,” The Yogyakarta Principles, Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (hereinafter, Yogyakarta Principles), Adopted November 2006, Yogyakarta, Indonesia, preamble.

\(^{102}\) ‘Gender identity’ is understood to “refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms,” The Yogyakarta Principles, preamble.

\(^{103}\) The Yogyakarta Principles, Principle 2.

\(^{104}\) ICCPR, Article 26.

\(^{105}\) The Human Rights Committee (HRC), the treaty monitoring body of the ICCPR, has affirmed that States obligations under Article 26 of the ICCPR to “prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” includes discrimination on grounds of sexual orientation. See the landmark decision of the HRC in *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992, 31 March 1994, para 8.7 in which the Committee affirms that the reference to “sex” in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation. See also *Mr. Edward Young v. Australia*, Communication No. 941/2000, U.N. Doc CCPR/C/78/D/941/2000, 18 September 2003, para. 10.4. The Committee on Economic Social and Cultural Rights (CESCR) and the Committee on the Rights of the Child (CRC) have also determined that discrimination on grounds of sexual orientation falls under the general prohibition of discrimination found in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child respectively. See, *inter alia*, CESCR General Comment No. 15, E/C.12/2002/11, January 20, 2002, para.13; General Comment No. 14, E/C.12/2000/4, August 11, 2000, para.18. and CRC General Comment No. 4, CRC/GC/2003/4, July 1, 2003, para.6 and General Comment No 3, CRC/GC/2003/3, March 17, 2003, para. 8.

\(^{106}\) See for example concern raised by the HRC to Poland in 1999 that failure to include reference to sexual orientation in the draft constitution could lead to violations of Articles 17 and 26 of the ICCPR. (Human Rights Committee, concluding observations (Poland), 29 July 1999 (CCPR/C/79/Add.110, para. 23.) See also, HRC Concluding observations: United States of America, CCPR/C/USA/CO/3, September 15, 2006, para 9 where the Committee welcomed the US Supreme Court’s decision in Lawrence et al. v. Texas (2003), which declared unconstitutional legislation criminalizing homosexual relations between consenting adults.
- Repeal all legal provisions that discriminate on prohibit or criminalise consensual sexual relations between consenting adults of the same sex and ensure that legislation regarding the minimum age of consent does not discriminate on grounds of sex and sexual orientation.

- Guarantee equal treatment in access to all economic, social and cultural rights regardless of sexual orientation.

- Take all necessary actions to provide effective protection to individuals of differing sexual orientation from harassment, discrimination and violence from private and state actors. In this regard, states should launch awareness-raising programmes to combat social prejudice with regards to individuals of differing sexual orientation, ensure that hate crime legislation that addresses sexual orientation-related violence is adopted and effectively implemented and guarantee that discriminatory acts and attitudes against persons on the ground of sexual orientation are adequately investigated and punished. States should provide appropriate training to law enforcement and judicial officials in order to sensitise them to the rights of sexual minorities.

- Take affirmative action in order to promote diminish or eliminate conditions which cause or help to perpetuate discrimination and in order to promote equality and equal advancement of individuals of different sexual orientation.

2.5.3 States should take into account persecution on grounds of sexual orientation and gender identity in the process of refugee status determination. Where homosexuality is illegal in a particular society, the imposition of severe criminal penalties for homosexual conduct could amount to persecution, just as it would for refusing to wear the veil by women in some societies.

107 See, HRC, concluding observations: Hong Kong, (China), CCPR/C/79/Add.117, November 12, 1999, para 15.
109 See, inter alia, HRC Concluding Observations: Austria, CCPR/C/79/Add.103, November 9, 1998, para 13, “The Committee considers that existing legislation on the minimum age of consent for sexual relations in respect of male homosexuals is discriminatory on grounds of sex and sexual orientation. It requests that the law be revised to remove such discriminatory provisions.”
111 See HRC, Concluding observations: Barbados, CCPR/C/BRB/CO/3, May 11, 2007, para 13 where the HRC urges the state party to and take all necessary actions to protect homosexuals from harassment, discrimination and violence.
112 HRC, Concluding observations: Chile, CCPR/C/CHL/CO/5, May 18, 2007.
116 See, inter alia, HRC General Comment 18, paragraph 10.
Even where homosexual practices are not criminalised, a claimant could still establish a valid claim where the State condones or tolerates discriminatory practices or harm perpetrated against him or her, or where the State is unable to protect effectively the claimant against such harm.\textsuperscript{117} 

\textbf{2.6 Discrimination against migrant workers}

2.6.1 States are required to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.\textsuperscript{118} 

\textbf{2.7 Discrimination against persons with disabilities}

2.7.1 States should ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.\textsuperscript{119} Disabled persons have the right to independence, social integration and participation in the life of the community.\textsuperscript{120} 

2.7.2 “Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.\textsuperscript{121} A distinction or preference adopted by a state party to promote the social integration or personal development of persons with disabilities does not constitute discrimination provided that the distinction or preference does not in itself limit the right of persons with disabilities to equality and that individuals with disabilities are not forced to accept such distinction or preference. If, under a state’s internal law, a person can


\textsuperscript{118} International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, article 7.


\textsuperscript{120} European Social Charter (revised) 1996, Part 1(15).

\textsuperscript{121} Convention on the Rights of Persons with Disabilities, 2006, Article 2. See also Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons With Disabilities, 1999, Article 12(a). Also in \textit{Persons with disabilities: 09/12/94. CESC General comment 5}, para 15. The following definition is given: Discrimination against persons with disabilities includes any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of human rights.
be declared legally incompetent, when necessary and appropriate for his or her well-being, such declaration does not constitute discrimination.\textsuperscript{122}

2.7.3 “Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.\textsuperscript{123}

2.7.4 In order to remedy past and present discrimination, and to deter future discrimination, comprehensive anti-discrimination legislation in relation to disability must be in place. Such legislation should not only provide persons with disabilities with judicial remedies as far as possible and appropriate, but also provide for social-policy programmes which enable persons with disabilities to live an integrated, self-determined and independent life.\textsuperscript{124}

2.7.5 Anti-discrimination measures should be based on the principle of equal rights for persons with disabilities and the non-disabled. Because appropriate measures need to be taken to undo existing discrimination and to establish equitable opportunities for persons with disabilities, such actions should not be considered discriminatory as long as they are based on the principle of equality and are employed only to the extent necessary to achieve that objective.\textsuperscript{125}

2.7.6 In giving effect to the right to equality and non-discrimination of persons with a disability and in addition to measures stated in Part One under 1.6, states should: (a) undertake or promote research and development of universally designed\textsuperscript{126} goods, services, equipment and facilities which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines; (b) to undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost; (c) to provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities.\textsuperscript{127}

2.7.7 In so far as special treatment is necessary, States parties are required to take appropriate measures, to the maximum extent of their available resources, to enable persons with disabilities to

\textsuperscript{122} Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons With Disabilities, 1999, Article I 2(b).
\textsuperscript{123} Convention on the Rights of Persons with Disabilities, article 2.
\textsuperscript{124} Persons with disabilities: 09/12/94. CESCR General comment 5, para 16.
\textsuperscript{125} Persons with disabilities: 09/12/94. CESCR General comment 5, para 17 and 18.
\textsuperscript{126} Article 2 of the Convention on the Rights of Persons with Disability defines “universal design” as: “the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.” “Universal design” should not exclude assistive devices for particular groups of persons with disabilities where this is needed.
\textsuperscript{127} Convention on the Rights of Persons with Disabilities, 2006, article 4(1).
seek to overcome any disadvantages, in terms of the enjoyment of their human rights, flowing from their disability.\textsuperscript{128}

2.7.8 States should enact, strengthen or enforce, as appropriate, legislation, regulations and other measures to eliminate all forms of discrimination against and to ensure the full enjoyment of all human rights and fundamental freedoms by people living with HIV/AIDS and members of vulnerable groups, in particular to ensure their access to, inter alia, education, inheritance, employment, health care, social and health services, prevention, support and treatment, information and legal protection, while respecting their privacy and confidentiality; and develop strategies to combat stigma and social exclusion connected with the epidemic.\textsuperscript{129}

\textbf{2.8 Discrimination against older persons}

2.8.1 States should seek to expedite to the greatest extent possible the trend towards the elimination of any barriers in discrimination to older people remaining in a few areas such as mandatory retirement ages or access to tertiary education.\textsuperscript{130}

2.8.2 Everyone has the right to special protection in old age. With this in view the States Parties agree to take progressively the necessary steps to make this right a reality and, particularly, to:

\begin{itemize}
  \item a. Provide suitable facilities, as well as food and specialised medical care, for elderly individuals who lack them and are unable to provide them for themselves;
  \item b. Undertake work programs specifically designed to give the elderly the opportunity to engage in a productive activity suited to their abilities and consistent with their vocations or desires;
  \item c. Foster the establishment of social organizations aimed at improving the quality of life for the elderly.\textsuperscript{131}
\end{itemize}

2.8.3 States should determine the nature and scope of problems affecting older persons within a state through regular monitoring and adopting properly designed policies and programmes to meet requirements; enacting legislation when necessary and eliminating any discriminatory legislation; ensuring relevant budget support or, as appropriate, requesting international cooperation.\textsuperscript{132}

\textsuperscript{128} Persons with disabilities : . 09/12/94. CESCR General comment 5, para 5.
\textsuperscript{129} Point 58, Declaration of Commitment on HIV/AIDS, 2001.
\textsuperscript{130} The economic, social and cultural rights of older persons : . 08/12/95. CESCR General comment 6, para 11 and 12. In the same document the Committee on Economic Social and Cultural Rights noted that "while it may not yet be possible to conclude that discrimination on the grounds of age is comprehensively prohibited by the Covenant, the range of matters in relation to which such discrimination can be accepted is very limited. Moreover, it must be emphasized that the unacceptableness of discrimination against older persons is underlined in many international policy documents and is confirmed in the legislation of the vast majority of States".
\textsuperscript{131} Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights,1988, Article 17.
\textsuperscript{132} The economic, social and cultural rights of older persons : . 08/12/95. CESCR General comment 6, para 18.
2.9 Discrimination against persons of different genetic characteristics or heritage

2.9.1 No one shall be subjected to discrimination based on genetic characteristics that is intended to infringe or has the effect of infringing human rights, fundamental freedoms and human dignity.  

2.9.2 Any form of discrimination against a person on grounds of his or her genetic heritage is prohibited.  

2.9.3 (a) Every effort should be made to ensure that human genetic data and human proteomic data are not used for purposes that discriminate in a way that is intended to infringe, or has the effect of infringing human rights, fundamental freedoms or human dignity of an individual or for purposes that lead to stigmatisation of an individual, a family, a group or communities.  (b) In this regard, appropriate attention should be paid to the findings of population-based genetic studies and behavioural genetic-studies and their interpretations.  

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133 Article 6, UNESCO Universal Declaration on the Human Genome and Human Rights, 1997.  
Part Three – Equality in the enjoyment and exercise of legal rights

3.1 Equality in the right to universal enjoyment of human rights

3.1.1 All human beings are born free and equal in dignity and rights.\textsuperscript{136}

3.1.2 Everyone without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status is entitled to the full enjoyment of all human rights. Furthermore, no distinction should be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.\textsuperscript{137}

3.2 Equality in the right to life

3.2.1 Every human being has the inherent right to life. This right should be protected by law. No one should be discriminated against in their right not to be arbitrarily deprived of their life.\textsuperscript{138} No one within the jurisdiction of a State Party to the present Protocol shall be executed. Each State Party should take all necessary measures to abolish the death penalty within its jurisdiction.\textsuperscript{139}

3.2.2 In all cases of declared war or of any other armed conflict which may arise between two or more states, even if the state of war is not recognised by one of them, as well as in the case of armed conflict not of an international character occurring in the territory of a state, with respect to persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, each party to the conflict should be bound to prohibit at any time and in any place whatsoever, the following acts: (a) violence to the life, health and physical or mental well-being of persons, in particular murder of all kinds; (b) to order that there shall be no survivors; (c) acts of terrorism; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which

\textsuperscript{136} Article 1 Universal Declaration of Human Rights.
\textsuperscript{139} Article 1 Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989; Article 1, Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, 1983.
are recognized as indispensable by civilised peoples; (e) threats to commit any of the foregoing acts.\footnote{140}

### 3.3 Equality in the right to be free from torture or cruel, inhuman or degrading treatment or punishment

3.3.1 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.\footnote{141}

3.3.2 In all cases of declared war or of any other armed conflict which may arise between two or more states, even if the state of war is not recognised by one of them, as well as in the case of armed conflict not of an international character occurring in the territory of a state, with respect to persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed \textit{hors de combat} by sickness, wounds, detention, or any other cause, each party to the conflict should be bound to prohibit at any time and in any place whatsoever: (a) cruel treatment and torture, mutilation or any form of corporal punishment; (b) collective punishments; (c) taking of hostages; (d) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; (e) threats to commit any of the foregoing acts.\footnote{142}

3.3.3 Protected persons under humanitarian law\footnote{143} should at all times be humanely treated, and should be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Without prejudice to the provisions relating to their state of health, age and sex, all protected persons should be treated with the same consideration by the parties to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion. However, the parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.\footnote{144}

\begin{footnotesize}
\footnotetext{143} Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed \textit{hors de combat} by sickness, wounds, detention, or any other cause.  
\footnotetext{144} Article 27 Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949.}
\end{footnotesize}
3.4 Equality in the right to recognition before the law

3.4.1 All persons shall be equal before the courts and tribunals. In the determination of any criminal charge, the person affected should be entitled to the minimum guarantees, in full equality, including to: to be informed promptly and in detail in a language which the person understands of the nature and cause of the charge against her/him.

3.4.2 Prisoners of war should be entitled in all circumstances to respect for their persons and their honour. Women should be treated with all the regard due to their sex and should in all cases benefit by treatment as favourable as that granted to men. Prisoners of war should retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires.

3.4.3 States Parties shall accord to women equality with men before the law.

3.4.4 States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they should give women equal rights to conclude contracts and to administer property and should treat them equally in all stages of procedure in courts and tribunals. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women should be deemed null and void. States Parties should accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

3.4.5 States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages. In order to help to ensure effective access to justice for persons with disabilities, states should promote appropriate training for those working in the field of administration of justice, including police and prison staff.

3.4.6 States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law. States Parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in

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146 Article 14(3) ICCPR.
147 Article 14 Geneva Convention relative to the Treatment of Prisoners of War, 1949.
149 Convention on the Elimination of All Forms of Discrimination against Women, 1979, article 15.
accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.  

3.4.7 A refugee shall have free access to the courts of law on the territory of all Contracting States. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from cautio judicatum solvi. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.  

3.5 Equality in the right to liberty and security of the person

3.5.1 Everyone has a right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of their liberty except on such grounds and in accordance with such procedure as are established by law.  

3.5.2 States Parties shall ensure that persons with disabilities, on an equal basis with others: (a) enjoy the right to liberty and security of person; (b) are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability should in no case justify a deprivation of liberty.  

3.5.3 States should ensure that Principles for the Protection of All Persons under Any Form of Detention or Imprisonment should be applied to all persons within the territory of any given state, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons should not be deemed to be discriminatory. The need for, and the application of, such measures should always be subject to review by a judicial or other authority.  

3.5.4 Taking into consideration the provisions of humanitarian law relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of

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151 Convention on the Rights of Persons with Disabilities, article 12.  
152 Article 16, Convention relating to the Status of Refugees, 1951, for similar provisions regarding stateless persons see Article 16, Convention relating to the Status of Stateless Persons, 1954.  
154 Convention on the Rights of Persons with Disabilities, article 14(1).  
The detaining power should assemble prisoners of war in camps or camp compounds according to their nationality, language and customs, provided that such prisoners should not be separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent.\footnote{\label{f157}Article 22 Geneva Convention relative to the Treatment of Prisoners of War, 1949}

\section*{3.6 Equality in the right to privacy, home and family life}

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.\footnote{\label{f158}Article 17(1) and (2) ICCPR, also Article 11 American Convention on Human Rights, Article 8 European Convention on Human Rights.}

\section*{3.7 Equality in the right to freedom of thought, conscience and religion}

3.7.1 Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.\footnote{\label{f159}Article 18(1) ICCPR, also Article 12 American Convention on Human Rights, Article 9 Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Article 8 African Charter on Human and People's Rights, 1981.}

3.7.2 States should prohibit any coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert.\footnote{\label{f160}Human Rights Committee General Comment no. 22.}

3.7.3 The fact that a religion is recognised as a state religion, or that it is established as official or traditional, or that its followers comprise the majority of the population, should not result in any impairment of the enjoyment of any of the rights under international law, including the right to freedom of thought, conscience and religion and the right to life in one’s own community, nor in any discrimination against adherents to other religions or non-believers. In particular, any measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special

\footnotesize{\textsuperscript{156} Article 16 Geneva Convention relative to the Treatment of Prisoners of War, 1949
\textsuperscript{157} Article 22 Geneva Convention relative to the Treatment of Prisoners of War, 1949
\textsuperscript{158} Article 17(1) and (2) ICCPR, also Article 11 American Convention on Human Rights, Article 8 European Convention on Human Rights.
\textsuperscript{160} Human Rights Committee General Comment no. 22.}
restrictions on the practice of other faiths, will be construed as a violation of the prohibition of discrimination based on religion or belief and the guarantee of equal protection to everyone.161

3.7.4 States should ensure that all children are protected from any form of discrimination on the ground of religion or belief. A child should be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men. States should also ensure that practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development.162

3.7.5 State should ensure that if a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this should not result in any impairment of the freedoms under the right to freedom of thought, conscience and religion or any other rights recognised under international law nor in any discrimination against persons who do not accept the official ideology or who oppose it.163

3.7.6 The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.164

3.8 Equality in the right to freedom of opinion and expression

3.8.1 Everyone shall have the right to hold opinions without interference.165

3.8.2 Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.166

3.8.3 The exercise of the rights provided for in 3.8.2 carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

161 Human Rights Committee General Comment no. 22.
162 Article 5 (3, 5) Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Proclaimed by General Assembly resolution 36/55 of 25 November 1981.
163 Human Rights Committee General Comment no. 22.
164 Article 4, Convention relating to the Status of Refugees, 1951, and for a similar provision regarding stateless persons see Article 4, Convention relating to the Status of Stateless Persons, 1954.
166 Ibid.
(b) For the protection of national security or of public order (ordre public), or of public health or morals.\textsuperscript{167}

3.8.4 Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms. The State should take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of this right. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to states that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.\textsuperscript{168}

\textbf{3.9 Equality in the right to peaceful assembly}

3.9.1 The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.\textsuperscript{169}

See also 3.8.4.

\textbf{3.10 Equality in the right to freedom of association}

3.10.1 Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of one’s interests. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

\textsuperscript{167} Article 19 (3) with regard to restrictions states: “these should only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals”.

\textsuperscript{168} Article 12, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1998.

This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.\textsuperscript{170}

3.10.2 Persons belonging to national or ethnic, religious and linguistic minorities have the right to establish and maintain their own associations.\textsuperscript{171}

3.10.3 Persons belonging to national or ethnic, religious and linguistic minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.\textsuperscript{172}

3.10.4 As regards non-political and non-profit-making associations and trade unions, Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.\textsuperscript{173}

See also 3.8.4.

3.11 Equality in marriage-related rights

3.11.1 States Parties shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision should be made for the necessary protection of any children.\textsuperscript{174}

3.11.2 During marriage, the spouses should have equal rights and responsibilities in the family. This equality extends to all matters arising from their relationship, such as choice of residence, running of the household, education of the children and administration of assets. Such equality continues to be applicable to arrangements regarding legal separation or dissolution of the marriage. Thus, any discriminatory treatment in regard to the grounds and procedures for separation or divorce, child custody, maintenance or alimony, visiting rights or the loss or recovery of parental authority must be prohibited, bearing in mind the paramount interest of the children in this connection.\textsuperscript{175}


\textsuperscript{171} Article 2(4) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992.

\textsuperscript{172} Article 2(5) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992.

\textsuperscript{173} Article 15, Convention relating to the Status of Refugees, 1951, and for a similar provision regarding stateless persons see Article 15, Convention relating to the Status of Stateless Persons, 1954.


\textsuperscript{175} Human Rights Committee General Comment no. 19, paras 8 and 9.
3.11.3 States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular should ensure, on a basis of equality of men and women: (a) the same right to enter into marriage; (b) the same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) the same rights and responsibilities during marriage and at its dissolution; (d) the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children should be paramount; (e) the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) the same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children should be paramount; (g) the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (h) the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.176

3.12 Equality in the rights to take part in the conduct of public affairs, to vote and be elected and to equal access of public services

3.12.1 Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which should be by universal and equal suffrage and should be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) to have access, on general terms of equality, to public service in his country.177

3.12.2 There should be no discrimination between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. There should be no discrimination between those who are entitled to citizenship by birth and those who acquire it by naturalisation.178

3.12.3 Where a mode of direct participation by citizens is established there should be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion,

176 Convention on the Elimination of All Forms of Discrimination against Women, 1979, Article 16, see also for somewhat similar provisions Article 6, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.


178 Human Rights Committee General Comment no 25, para 3.
national or social origin, property, birth or other status, and no unreasonable restrictions should be imposed.\textsuperscript{179}

3.12.4 States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) to participate in non-governmental organizations and associations concerned with the public and political life of the country.\textsuperscript{180}

3.12.5 States should take positive measures to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice.\textsuperscript{181}

3.12.6 Persons belonging to national or ethnic, religious and linguistic minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.\textsuperscript{182}

3.12.7 Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person’s candidacy.\textsuperscript{183}

3.12.8 The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy. Political opinion may not be used as a ground to deprive any person of the right to stand for election unless this person engaged in an activity or perform an act proscribed by law, aimed at the destruction of any of the rights and freedoms recognized in international law or at their limitation to a greater extent than is provided for in international law.\textsuperscript{184}

3.12.9 The principle of one person, one vote, must apply, and within the framework of each State’s electoral system, the vote of one elector should be equal to the vote of another. The drawing of

\textsuperscript{179} Human Rights Committee General Comment no 25, para 6.
\textsuperscript{180} Article 7 Convention on the Elimination of All Forms of Discrimination against Women, 1979, Article 9 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.
\textsuperscript{181} Human Rights Committee General Comment no 25, para 12.
\textsuperscript{182} Article 2(3) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992.
\textsuperscript{183} Human Rights Committee General Comment no 25, para 15.
\textsuperscript{184} Human Rights Committee General Comment no 25, para 17.
electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.\textsuperscript{185}

3.12.10 To ensure access on general terms of equality to public service positions, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. States should take affirmative measures in appropriate cases to ensure that there is equal access to public service for all citizens.\textsuperscript{186}

3.12.11 To ensure that persons holding public service positions are free from political interference or pressures, states should base access to public service on equal opportunity and general principles of merit, providing secured tenure.\textsuperscript{187}

3.12.12 Persons selected for judicial office should be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection should safeguard against judicial appointments for improper motives. In the selection of judges, there should be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, should not be considered discriminatory.\textsuperscript{188}

3.12.13 States should ensure that the selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it should not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned;\textsuperscript{189} In the performance of their duties, prosecutors should carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination.\textsuperscript{190}

3.12.14 In all cases of declared war or of any other armed conflict which may arise between two or more states, even if the state of war is not recognised by one of them, as well as in the case of armed conflict not of an international character occurring in the territory of a state, the occupying power should not alter the status of public officials or judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience. This prohibition does not affect the right of the occupying power to remove public officials from their posts.\textsuperscript{191}

\textsuperscript{185} Human Rights Committee General Comment no 25, para 21.
\textsuperscript{186} Human Rights Committee General Comment no 25, para 23(1).
\textsuperscript{187} Human Rights Committee General Comment no 25, para 23(2).
\textsuperscript{189} Guideline 2(a), Guidelines on the Role of Prosecutors, 1990.
\textsuperscript{190} Guideline 13(a), Guidelines on the Role of Prosecutors, 1990.
\textsuperscript{191} Article 54 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949.
3.12.15 States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

(a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by: (i) ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use; (ii) protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate; (iii) guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including: (i) participation in nongovernmental organisations and associations concerned with the public and political life of the country, and in the activities and administration of political parties; (ii) forming and joining organisations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.\(^\text{192}\)

### 3.13 Equality in minority rights

3.13.1 In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language,\(^\text{193}\) in private and in public, orally and in writing.\(^\text{194}\) Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.\(^\text{195}\)

3.13.2 In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous should not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.\(^\text{196}\)

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\(^{192}\) Convention on the Rights of Persons with Disabilities, article 29.

\(^{193}\) Article 27 ICCPR.

\(^{194}\) Italics from Article 10(1) FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES, 1994.

\(^{195}\) Article 3(1), FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES, 1994.

3.13.3 States should protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and should encourage conditions for the promotion of that identity. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

3.13.4 States should take positive measures to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group. Such positive measures must respect the provisions prohibiting discrimination both as regards the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of the population. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the minority rights they may constitute a legitimate differentiation under international law, provided that they are based on reasonable and objective criteria.

3.13.5 The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons’ ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media. States undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

3.13.6 The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. States shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.

3.14 Equality in the right to free movement

3.14.1 Everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his or her residence. Everyone shall be free to leave any country, including his own. The above mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with

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199 Human Rights Committee General Comment no. 23 para. 6.2.
200 Article 6, FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES, 1994.
201 Article 9(1), FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES, 1994.
the other rights recognised in the present Covenant. No one shall be arbitrarily deprived of the right to enter his own country.\textsuperscript{202}

3.14.2 No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.\textsuperscript{203} The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.\textsuperscript{204}

3.14.3 An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.\textsuperscript{205}

3.14.4 Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions.\textsuperscript{206}

\section*{3.15 Equality in the right to work}

3.15.1 The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. The steps to be taken by a State Party to the present Covenant to achieve the full realisation of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.\textsuperscript{207}

3.15.2 The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

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


\textsuperscript{203} 22(5) American Convention on Human Rights, Article 3, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, 1963.

\textsuperscript{204} Article 12(5) African Charter on Human and People’s Rights, Article 3, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, 1963.

\textsuperscript{205} Article 13 ICCPR, 1968, 1981


\textsuperscript{207} Article 6 ICESCR, see also Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, 1988 Article 6, European Social Charter (Revised) 1996 Part 1 (1-3,9,10,26)
(i) Fair wages and 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;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(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;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.\(^{208}\)

3.15.3 All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities.\(^{209}\)

3.15.4 The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organisation concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.\(^{210}\)

3.15.5 Under its article 2, paragraph 2, and article 3, the Covenant [ICESCR] prohibits any discrimination in access to and maintenance of employment on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, or civil, political, social or other status, which has the intention or effect of impairing or nullifying exercise of the right to work on a basis of equality.\(^{211}\)

3.15.6 Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.\(^{212}\) Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice: (a) to seek the cooperation of employers’ and workers’ organisations and other appropriate bodies in promoting the


\(^{210}\) Article 8(1)(a), see also Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights,1988, Article 8, European Social Charter (Revised) 1996 Part 1 (5,6).

\(^{211}\) CESCR THE RIGHT TO WORK General Comment No. 18: 06/02/2006. E/C.12/GC/18. Para12(b)(i).

\(^{212}\) Article 2 of Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
acceptance and observance of this policy; (b) to enact such legislation and promote such educational programmes as may be calculated to secure the acceptance and observance of the policy; (c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy; (d) to pursue the policy in respect of employment under the direct control of a national authority; ( ) to ensure observance of the policy in activities of vocational guidance, vocational training and placement services under the direction of a national authority...²¹³

3.15.7 Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof should not be deemed to be discrimination.²¹⁴  (1) Special measures of protection or assistance provided in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.  (2) Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.²¹⁵

3.15.8 (1) With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and under-employment, each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.  

(2) The said policy shall aim at ensuring that: (a) There is work for all who are available for and seeking work; (b) Such work is as productive as possible; (c) There is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

(3) The said policy shall take due account of the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices.²¹⁶

3.15.9 Protected persons under humanitarian law²¹⁷ who, as a result of the war, have lost their gainful employment, should be granted the opportunity to find paid employment. That opportunity should, subject to security considerations permitted by humanitarian law, be equal to that enjoyed by the nationals of the power in whose territory they are. Where a party to the armed conflict applies to protected persons methods of control which result in their being unable to support

²¹³ Article 3(a-e) Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
²¹⁴ Article 1(2) Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
²¹⁵ Article 5 Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
²¹⁶ Article 1 Employment Policy Convention, 1964 (No. 122).
²¹⁷ Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, in all cases of declared war or of any other armed conflict which may arise between two or more states, even if the state of war is not recognised by one of them, as well as in the case of armed conflict not of an international character.
themselves, and especially if they are prevented for reasons of security from finding paid employment on reasonable conditions, the said party should ensure their support and that of their dependents. Protected persons may in any case receive allowances from their home country, international agencies or humanitarian relief organisations.218

Women’s equality in the right to work

3.15.10 States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) the right to work as an inalienable right of all human beings; (b) the right to the same employment opportunities, including the application of the same criteria for election in matters of employment; (c) the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training; (d) the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; (e) the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave; (f) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.219

3.15.11 In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: (a) to prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status; (b) to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances; (c) to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities; (d) to provide special protection to women during pregnancy in types of work proved to be harmful to them.220

3.15.12 States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: (a) to participate in the elaboration and implementation of development planning at all levels; (b) to organise self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment; (c) to have access to agricultural

219 Convention on the Elimination of All Forms of Discrimination against Women, 1979, article 11(1).
credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes.\textsuperscript{221}

\textit{Young persons’ equality in the right to work}

3.15.13 States should adopt and implement, without any discrimination, national policies relating to adequate education and vocational training to promote and support access to employment opportunities for young persons, in particular young women.\textsuperscript{222} Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.\textsuperscript{223}

\textit{Older persons’ equality in the right to work}

3.15.14 States should take appropriate measures to prevent discrimination on grounds of age in employment and occupation.\textsuperscript{224} Every elderly person has the right to social protection.\textsuperscript{225}

\textit{Equality for persons with disabilities in the right to work}

3.15.15 State should ensure that persons with disabilities, whether in rural or urban areas, have equal opportunities for productive and gainful employment in the labour market.\textsuperscript{226}

3.15.16 States Parties recognise the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States should safeguard and promote the realisation of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, \textit{inter alia:} (a) prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions; (b) protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances; (c) ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others; (d) enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training; (e) promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment; (f) promote opportunities for self-

\textsuperscript{221} Convention on the Elimination of All Forms of Discrimination against Women, 1979, article 14(2)(a)(e)(g).


\textsuperscript{223} European Social Charter (Revised) 1996 Part 1 (7).

\textsuperscript{224} See general comment No. 6 (1995) on the economic, social and cultural rights of older persons, paragraph 22 (and paragraph 24 on retirement).

\textsuperscript{225} European Social Charter (Revised) 1996 Part 1(23).

employment, entrepreneurship, the development of cooperatives and starting one's own business; 
(g) employ persons with disabilities in the public sector; (h) promote the employment of persons 
with disabilities in the private sector through appropriate policies and measures, which may 
include affirmative action programmes, incentives and other measures; (i) ensure that reasonable 
accommodation is provided to persons with disabilities in the workplace; (j) promote the 
acquisition by persons with disabilities of work experience in the open labour market; (k) promote 
vocational and professional rehabilitation, job retention and return-to-work programmes for 
persons with disabilities.\textsuperscript{227}

3.15.17 States should ensure that the right to the enjoyment of just and favourable conditions of 
work applies to all disabled workers, whether they work in sheltered facilities or in the open labour 
market. Disabled workers may not be discriminated against with respect to wages or other 
conditions if their work is equal to that of non-disabled workers. States should ensure that 
disability is not used as an excuse for creating low standards of labour protection or for paying 
below minimum wages.\textsuperscript{228}

\textit{Migrant workers’ equality in the right to work}

3.15.18 States Parties should prohibit discrimination in relation to employment opportunities for 
migrant workers and their families. States should devise national plans of action to respect and 
promote equality and non-discrimination of migrant workers and their families by all appropriate 
measures, legislative or otherwise.\textsuperscript{229}

\textit{Refugees and stateless persons’ equality in the right to work}

3.15.19 The Contracting States shall accord to refugees lawfully staying in their territory the most 
favourable treatment accorded to nationals of a foreign country in the same circumstances as 
regards the right to engage in wage-earning employment.\textsuperscript{230} The Contracting States shall give 
sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning 
employment to those of nationals, and in particular of those refugees and stateless persons who 
have entered their territory pursuant to programmes of labour recruitment or under immigration 
schemes.\textsuperscript{231}

3.15.20 In any case, restrictive measures imposed on aliens or the employment of aliens for the 
protection of the national labour market shall not be applied to a refugee who fulfils one of the 
following conditions: (a) She/he has completed three years’ residence in the country; (b) She/he 
has a spouse possessing the nationality of the country of residence (a refugee may not invoke the

\textsuperscript{227} Convention on the Rights of Persons with Disabilities, 2006, article 27(1).
\textsuperscript{228} Persons with disabilities: 09/12/94. CESCR General comment 5, para 25.
\textsuperscript{230} Article 17(1), Convention relating to the Status of Refugees, 1951, and for similar provisions relating to 
stateless persons see Article 17(1), Convention relating to the Status of Stateless Persons, 1954.
\textsuperscript{231} Article 17(3), Convention relating to the Status of Refugees, 1951, and Article 17(3), Convention relating to 
the Status of Stateless Persons, 1954.
benefit of this provision if he has abandoned her/his spouse); (c) She/he has one or more children possessing the nationality of the country of residence.\textsuperscript{232}

3.15.21 The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.\textsuperscript{233}

3.15.22 Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognised by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.\textsuperscript{234}

3.15.23 (1) The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters;

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women’s work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(2) The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.\textsuperscript{235}

\textit{Indigenous and tribal peoples’ equality in the right to work}

3.15.24 (1) Governments shall, within the framework of national laws and regulations, and in cooperation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

(2) Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards: (a) Admission to employment, including skilled employment, as well as measures for promotion and advancement; (b) Equal remuneration for work of equal value; (c) Medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing; (d) The right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers’ organisations.

\textsuperscript{232} Article 17(2), Convention relating to the Status of Refugees, 1951. 
\textsuperscript{233} Article 18, Convention relating to the Status of Refugees, 1951, and Article 18, Convention relating to the Status of Stateless Persons, 1954. 
(3) The measures taken shall include measures to ensure: (a) That workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them; (b) That workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances; (c) That workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude; (d) That workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

(4) Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.\footnote{Article 20, Indigenous and Tribal Peoples Convention, 1989 (No. 169).}

3.15.25 Members of the indigenous and tribal peoples shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.\footnote{Article 21, Indigenous and Tribal Peoples Convention, 1989 (No. 169).} Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, states shall, with the participation of these peoples, ensure the provision of special training programmes and facilities. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who should be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.\footnote{Article 22, Indigenous and Tribal Peoples Convention, 1989 (No. 169).}

3.16 Equality in the right to social security

3.16.1 The States Parties to the present Covenant [ICESCR] recognise the right of everyone to social security, including social insurance.\footnote{Article 9 ICESCR, see also Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights,1988, Article 9, European Social Charter (revised) 1996, Part 1(12,13,14,23).}

3.16.2 States should ensure that even in times of severe resource constraints, disadvantaged and marginalised individuals and groups must be protected by the adoption of relatively low-cost targeted programmes.\footnote{Article 9 ICESCR, see also Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights,1988, Article 9, European Social Charter (revised) 1996, Part 1(12,13,14,23).}
3.16.3 States Parties shall take all appropriate measures to eliminate discrimination against women in all areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to family benefits; (b) The right to bank loans, mortgages and other forms of financial credit; (c) The right to participate in recreational activities, sports and all aspects of cultural life.241

3.16.4 States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular shall ensure to such women the right:...(c) benefit directly from social security programmes.242

3.16.5 States Parties shall recognise for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law. The benefits should, where appropriate, be granted without distinction of any kind, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.243

3.16.6 States Parties shall recognise the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realisation of this right, including measures: (a) to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs; (b) to ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes; (c) to ensure access by persons with disabilities and their families living in situations of poverty to assistance from the state with disability-related expenses, including adequate training, counselling, financial assistance and respite care; (d) to ensure access by persons with disabilities to public housing programmes; (e) to ensure equal access by persons with disabilities to retirement benefits and programmes.244

3.16.7 Social security schemes shall be extended progressively to cover the indigenous and tribal peoples, and applied without discrimination against them.245

3.16.8 The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters;

...
(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

...

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.\textsuperscript{246}

\textbf{3.17 Equality in the right to a decent standard of living}

3.17.1 The States Parties to the present Covenant [ICESCR] recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.\textsuperscript{247} Everyone has the right to protection against poverty and social exclusion. Everyone has the right to housing. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.\textsuperscript{248}

3.17.2 States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, should ensure to such women the right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.\textsuperscript{249}

3.17.3 States Parties recognise the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.\textsuperscript{250} States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide

\textsuperscript{246} Article 24(1b, 3,4) Convention relating to the Status of Refugees, 1951, and Article 24(1b, 3,4), Convention relating to the Status of Stateless Persons, 1954. See also European Social Charter (revised) 1996, Part 1(18,19).

\textsuperscript{247} Article 11(1) ICESCR.


\textsuperscript{249} Convention on the Elimination of All Forms of Discrimination against Women, 1979, article 14(2)(h).

\textsuperscript{250} Convention on the Rights of the Child, 1989, article 27(1).
material assistance and support programmes, particularly with regard to nutrition, clothing and housing.\textsuperscript{251}

3.17.4 States Parties recognise the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realisation of this right without discrimination on the basis of disability.\textsuperscript{252}

\textit{Equality in the right to development}

3.17.5 Social progress and development shall be founded on respect for the dignity and value of the human person and shall ensure the promotion of human rights and social justice, which requires:

(a) The immediate and final elimination of all forms of inequality, exploitation of peoples and individuals, colonialism and racism, including Nazism and apartheid, and all other policies and ideologies opposed to the purposes and principles of the United Nations;

(b) The recognition and effective implementation of civil and political rights as well as of economic, social and cultural rights without any discrimination.\textsuperscript{253}

\textit{Equality in the right to adequate housing}

3.17.6 Individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2(2) of the Covenant [ICESCR], not be subject to any form of discrimination.\textsuperscript{254}

3.17.7 Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.\textsuperscript{255}

3.17.8 Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced

\textsuperscript{251} Convention on the Rights of the Child, 1989, article 27(3).
\textsuperscript{252} Convention on the Rights of Persons with Disabilities, 2006, article 28(1).
\textsuperscript{253} Declaration on Social Progress and Development, 1969.
\textsuperscript{254} The right to adequate housing (Art.11 (1)) : . 13/12/91. CESCR General comment 4, para 6.
\textsuperscript{255} The right to adequate housing (Art.11 (1)) : . 13/12/91. CESCR General comment 4, para 8(e).
eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2(2) and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.256

3.17.9 As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.257

*Equality in the right to adequate food*

3.17.10 Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.258 Violations of the Covenant [ICESCR] occur when a State fails to ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger...Furthermore, any discrimination in access to food, as well as to means and entitlements for its procurement, on the grounds of race, colour, sex, language, age, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of the right to adequate food constitutes a violation of international law.259

*Equality in the right to water*

3.17.11 The obligation of States Parties to guarantee that the right to water is enjoyed without discrimination (art.2, para 2), and equally between men and women (art. 3), pervades all of the Covenant obligations. The Covenant thus proscribes any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water. The Committee recalls paragraph 12 of General Comment No. 3 (1990), which states that even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.260

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256 The right to adequate housing (Art.11.1): forced evictions : . 20/05/97. CESCR General comment 7, para 10.
3.17.12 Everyone, without any discrimination, is equal in the enjoyment and exercise of their right to water. States should ensure that water facilities and services are accessible to everyone without discrimination, including the most vulnerable or marginalised sections of the population, in law and in fact, without discrimination on any grounds within the jurisdiction of the State party. Accessibility requires that water, and adequate water facilities and services, must be within safe physical reach for all sections of the population and they must be affordable for all. Accessibility includes the right of everyone to seek, receive and impart information concerning water issues.261

3.17.13 States should ensure equal access by persons with disabilities to clean water services.262

3.18 Equality in the right to the highest attainable standard of physical and mental health

3.18.1 The States Parties to the present Covenant [ICESCR] recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.263 By virtue of article 2(2) and article 3, the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.264

3.18.2 In all cases of declared war or of any other armed conflict which may arise between two or more states, even if the state of war is not recognised by one of them, as well as in the case of armed conflict not of an international character occurring in the territory of a state, each party to the conflict should be bound to ensure that the wounded and sick should be collected and cared for.265 All the wounded, sick and shipwrecked, to whichever party in conflict they belong, should be respected and protected. In all circumstances they should be treated humanely and should receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There should be no distinction among them founded on any grounds other than medical ones.266 The occupying power should afford civilian medical personnel in occupied territories every assistance to enable them to perform, to the best of their ability, their

261 The right to water: 20/01/2003. E/C.12/2002/11. CESC (General Comment no. 15) para 12(c).
262 Convention on the Rights of Persons with Disabilities, 2006, article 28(2)(a)
266 Article 10 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), 1977.
humanitarian functions, and should not require that, in the performance of those functions, such personnel should give priority to the treatment of any person except on medical grounds.\footnote{Article 15 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), 1977.}

3.18.3 The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State party: ...(b) \textit{Accessibility}. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalised sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalised groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.

Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

Information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.\footnote{The right to the highest attainable standard of health : . 11/08/2000. E/C.12/2000/4. CESCR General Comment no. 14 para 12(b).}

3.18.4 (1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. (2) Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.\footnote{Convention on the Elimination of All Forms of Discrimination against Women, 1979, article 12.}

3.18.5 States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they
participate in and benefit from rural development and, in particular, shall ensure to such women the right: to have access to adequate health care facilities, including information, counselling and services in family planning.\textsuperscript{270}

3.18.6 States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.\textsuperscript{271} Implementation of the principle of non-discrimination requires that girls, as well as boys, have equal access to adequate nutrition, safe environments, and physical as well as mental health services. There is a need to adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage, female genital mutilation, preferential feeding and care of male children. Children with disabilities should be given the opportunity to enjoy a fulfilling and decent life and to participate within their community.\textsuperscript{272}

In all policies and programmes aimed at guaranteeing the right to health of children and adolescents their best interests should be a primary consideration.\textsuperscript{273}

3.18.7 States Parties recognise that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall: (a) provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes; (b) provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimise and prevent further disabilities, including among children and older persons; (c) provide these health services as close as possible to people’s own communities, including in rural areas; (d) require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care; (e) prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which should be provided in a fair and reasonable manner; and (f) prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.\textsuperscript{274}

\begin{footnotes}
\item[270] Convention on the Elimination of All Forms of Discrimination against Women, 1979, article 14(2)(b).
\item[271] Convention on the Rights of the Child, 1989, article 24(1) and (2).
\end{footnotes}
3.18.8 With regard to the realisation of the right to health of older persons, the Committee [CESCR], in accordance with paragraphs 34 and 35 of General Comment No. 6 (1995), reaffirms the importance of an integrated approach, combining elements of preventive, curative and rehabilitative health treatment. Such measures should be based on periodical check-ups for both sexes; physical as well as psychological rehabilitative measures aimed at maintaining the functionality and autonomy of older persons; and attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity.\(^{275}\)

3.18.9 In the light of emerging international law and practice and the recent measures taken by States in relation to indigenous peoples, the Committee [CESCR] deems it useful to identify elements that would help to define indigenous peoples’ right to health in order better to enable States with indigenous peoples to implement the provisions contained in article 12 of the Covenant [ICESCR]. The Committee considers that indigenous peoples have the right to specific measures to improve their access to health services and care. These health services should be culturally appropriate, taking into account traditional preventive care, healing practices and medicines. States should provide resources for indigenous peoples to design, deliver and control such services so that they may enjoy the highest attainable standard of physical and mental health. The vital medicinal plants, animals and minerals necessary to the full enjoyment of health of indigenous peoples should also be protected. The Committee notes that, in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, the Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.\(^{276}\)

3.18.10 (1) Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health. (2) Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines. (3) The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.\(^{277}\)

3.18.11 States should ensure the development and implementation of multisectoral national strategies and financing plans for combating HIV/AIDS that address the epidemic in forthright terms; confront stigma, silence and denial; address gender and age-based dimensions of the epidemic; eliminate discrimination and marginalisation; involve partnerships with civil society and


\(^{277}\) Article 25(1-3) Indigenous and Tribal Peoples Convention, 1989 (No. 169).
the business sector and the full participation of people living with HIV/AIDS, those in vulnerable groups and people mostly at risk, particularly women and young people; are resourced to the extent possible from national budgets without excluding other sources, inter alia, international cooperation; fully promote and protect all human rights and fundamental freedoms, including the right to the highest attainable standard of physical and mental health; integrate a gender perspective; address risk, vulnerability, prevention, care, treatment and support and reduction of the impact of the epidemic; and strengthen health, education and legal system capacity.278

3.18.12 In order to complement prevention programmes that address activities which place individuals at risk of HIV infection, such as risky and unsafe sexual behaviour and injecting drug use, states should implement strategies, policies and programmes that identify and begin to address those factors that make individuals particularly vulnerable to HIV infection, including underdevelopment, economic insecurity, poverty, lack of empowerment of women, lack of education, social exclusion, illiteracy, discrimination, lack of information and/or commodities for self-protection, and all types of sexual exploitation of women, girls and boys, including for commercial reasons. Such strategies, policies and programmes should address the gender dimension of the epidemic, specify the action that will be taken to address vulnerability and set targets for achievement.279

3.18.13 Prisoners should have access to the health services available in the country without discrimination on the grounds of their legal situation.280

3.19 Equality in the right to a healthy environment

3.19.1 Everyone shall have the right to live in a healthy environment and to have access to basic public services. The States Parties shall promote the protection, preservation, and improvement of the environment.281 All persons shall be free from any form of discrimination in regard to actions and decisions that affect the environment. All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.282

3.19.2 Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the

case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.  

3.20 Equality in the right to education

3.20.1 The States Parties to the present Covenant [ICESCR] recognise the right of everyone to education. The States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular: (a) to make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law; and take appropriate measures such as to provide financial assistance in case of need; (b) to ensure that the standards of education are equivalent in all public education institutions of the same level, and that the conditions relating to the quality of education provided are also equivalent; (c) to encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity; (d) to provide training for the teaching profession without discrimination.

3.20.2 The States Parties to this Convention agree that: (a) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace; (b) It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction; (c) It is essential to recognise the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however: (i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which

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286 Convention against Discrimination in Education. 1960, article 4.
prejudices national sovereignty; (ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and (iii) That attendance at such schools is optional.\textsuperscript{287}

3.20.3 For the purpose of this Convention, the term "discrimination" includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

(a) Of depriving any person or group of persons of access to education of any type or at any level;

(b) Of limiting any person or group of persons to education of an inferior standard;

(c) Subject to the provisions of article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or

(d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.\textsuperscript{288}

3.20.4 For the purposes of this Convention, the term "education" refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.\textsuperscript{289}

3.20.5 When permitted in a State, the following situations shall not be deemed to constitute discrimination: (a) the establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study; (b) the establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level; (c) the establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.\textsuperscript{290}

\textsuperscript{287} Convention against Discrimination in Education. 1960, article 5(1).
\textsuperscript{288} Convention against Discrimination in Education. 1960, article 1(1).
\textsuperscript{289} Convention against Discrimination in Education. 1960, article 1(2).
\textsuperscript{290} Convention against Discrimination in Education. 1960, article 2.
3.20.6 In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake: (a) abrogate any statutory provisions and any administrative instructions and discontinue any administrative practices which involve discrimination in education; (b) ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions; (c) not allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries; (d) not allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group; (e) give foreign nationals resident within their territory the same access to education as that given to their own nationals.291

3.20.7 States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: (a) the same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality should be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training; (b) access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality; (c) the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods; (d) the same opportunities to benefit from scholarships and other study grants; (e) the same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women; (f) the reduction of female student drop-out rates and the organisation of programmes for girls and women who have left school prematurely; (g) the same opportunities to participate actively in sports and physical education; (h) access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.292

3.20.8 States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, should ensure to such women the right to obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency.293

3.20.9 States Parties recognise the right of persons with disabilities to education. With a view to realising the right of persons with disabilities to education, without discrimination and on the basis of equal

291 Convention against Discrimination in Education, 1960, article 3.
293 Convention on the Elimination of All Forms of Discrimination against Women, 1979, article 14(2).
opportunity, States Parties shall ensure an inclusive education system at all levels and life-long learning directed to: (a) the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity; (b) the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential; (c) enabling persons with disabilities to participate effectively in a free society.

3.20.10 In realising this right [to education], States Parties shall ensure that: (a) persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability; (b) persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live; (c) reasonable accommodation of the individual's requirements is provided; (d) persons with disabilities receive the support required, within the general education system, to facilitate their effective education; (e) effective individualized support measures are provided in environments that maximise academic and social development, consistent with the goal of full inclusion.

3.20.11 States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, states should take appropriate measures, including: (a) facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring; (b) facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community; (c) ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximise academic and social development.

3.20.12 In order to help ensure the realisation of this right [to education], States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training should incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

3.20.13 States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on
an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.\textsuperscript{298}

3.20.14 Measures should be taken to ensure that members of the peoples concerned [the indigenous and tribal peoples] have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.\textsuperscript{299}

3.20.15 Education programmes and services for the people concerned [indigenous and tribal peoples] should be developed and implemented in co-operation with them to address their special needs, and should incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate. In addition, government shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.\textsuperscript{300}

3.20.16 Children belonging to the peoples concerned [indigenous and tribal peoples] shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.\textsuperscript{301}

3.20.17 The imparting of general knowledge and skills that will help children belonging to the peoples concerned [indigenous and tribal peoples] to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.\textsuperscript{302}

3.20.18 Governments shall adopt measures appropriate to the traditions and cultures of the indigenous and tribal peoples, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.\textsuperscript{303}

\textsuperscript{298} Convention on the Rights of Persons with Disabilities, 2006, article 24(5).
\textsuperscript{299} Article 26, Indigenous and Tribal Peoples Convention, 1989 (No. 169).
\textsuperscript{300} Article 27, Indigenous and Tribal Peoples Convention, 1989 (No. 169).
\textsuperscript{301} Article 28, Indigenous and Tribal Peoples Convention, 1989 (No. 169).
\textsuperscript{302} Article 29, Indigenous and Tribal Peoples Convention, 1989 (No. 169).
\textsuperscript{303} Article 30, Indigenous and Tribal Peoples Convention, 1989 (No. 169).
3.20.19 Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned [indigenous and tribal peoples], with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.\(^{304}\)

3.20.20 The Contracting States shall accord to refugees and stateless persons the same treatment as is accorded to nationals with respect to elementary education. The Contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.\(^{305}\)

3.21 Equality in the right to property

3.21.1 Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.\(^{306}\)

\(^{304}\) Article 31, Indigenous and Tribal Peoples Convention, 1989 (No. 169).

\(^{305}\) Article 22, Convention relating to the Status of Refugees, 1951, and Article 22, Convention relating to the Status of Stateless Persons, 1954.

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Declaration on Social Progress and Development, 1969
Declaration on Race and Racial Prejudice adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its twentieth session, on 27 November 1978,
Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981
World Programme of Action concerning Disabled Persons, 1982
Basic Principles on the Independence of the Judiciary, 1985
Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988
Guidelines on the Role of Prosecutors, 1990
Basic Principles for the Treatment of Prisoners, 1990
Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992
Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1993
Principles relating to the status and functioning of national institutions for protection and promotion of human rights, 1993
Draft Principles On Human Rights And The Environment, 1994
Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1998
Declaration of Commitment on HIV/AIDS, 2001
Declaration on the prevention of genocide, 2005.

Treaty body standards:
Human Rights Committee General Comments nos. 11, 15, 18, 19, 22, 23, 25, 28, 29, 31;
CESCR General comments nos. 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 18;
CERD General Recommendation nos. 15, 19, 23, 24, 25, 29, 30;
CEDAW General Recommendation nos. 19, 23, 24, 25;
HRC Case law:
Toonen vs Australia, Communication No. 488/1992
Young vs. Australia, Communication No 941/2000

Regional Treaties:
American Convention on Human Rights,1969
Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights,1988
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994
Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons With Disabilities, 1999
European Social Charter, 1961 and European Social Charter (Revised) 1996

**Regional standards:**