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Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Realization of the right to work

Report of the United Nations High Commissioner for Human Rights

Summary

The present report, prepared pursuant to Human Rights Council resolution 31/15, gives an overview of the normative content of women's right to work, and the main challenges involved and good practices as regards the implementation of that right, on the basis of international human rights law and international labour law and of its interpretation by United Nations treaty bodies and the International Labour Organization. It also contains examples drawn from national experiences.

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I. Introduction

1. In its resolution 31/15, the Human Rights Council requested the United Nations High Commissioner for Human Rights to prepare an analytical report, in consultation with States, United Nations agencies, funds and programmes, particularly the International Labour Organization, and the treaty bodies, special procedures, civil society and other relevant stakeholders, on the relationship between the realization of the right to work and the enjoyment of all human rights by women, with a particular emphasis on the empowerment of women, in accordance with States' respective obligations under international human rights law and the relevant major challenges and best practices in that regard, and to submit the report to the Human Rights Council prior to its thirty-fourth session.

2. The Office of the United Nations High Commissioner for Human Rights (OHCHR) solicited submissions from States, United Nations agencies and non-governmental organizations, and as at 28 November 2016, 32 responses had been received, from States,¹ the International Labour Office, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the United Nations Research Institute for Social Development, and non-governmental organizations.

3. The present report offers an overview of the scope and content of women's right to work, drawing on applicable human rights instruments, on the work of United Nations human rights mechanisms, including treaty bodies, special procedures and the universal periodic review, on international labour standards and the principles of the International Labour Organization (ILO), and on the submissions received. It identifies challenges and refers to good practices implemented by States to move towards full realization of the right of work for women, underscoring the connection between this right and other human rights. In order to analyse the main issues, the report focuses on three matters in particular: (a) women's right to decent work; (b) non-discrimination in working conditions; and (c) women's unpaid work. It does not elaborate on the specific elements of the right to work, which have already been the subject of a report of the United Nations High Commissioner for Human Rights on the realization of the right to work (A/HRC/31/32). Rather, it analyses their implications for women, and the concomitant obligations on States for the elimination of discrimination in the exercise of the right to work.

II. Normative recognition of women's human right to work

4. The right to work is a universal human right, which finds ample recognition in international human rights law and international labour instruments.² Gender equality and non-discrimination are fundamental human rights guarantees which fully apply to the right to work. Women's exercise of the right to work is a prerequisite for their enjoyment of several other human rights, including the right to an adequate standard of living and the right to social security. Women's equal exercise of the right to work also depends on the extent of their enjoyment of other rights, including the right to education.

¹ Algeria, Argentina, Azerbaijan, Bahrain, Bulgaria, Burkina Faso, Cuba, Egypt, El Salvador, Georgia, Germany, Greece, Italy, Jamaica, Kyrgyzstan, Madagascar, Mozambique, Oman, Paraguay, Portugal, Republic of Moldova, Romania, Saudi Arabia, Serbia, South Africa, State of Palestine, Turkey and United Arab Emirates. Submissions are available from www.ohchr.org/EN/Issues/ESCR/Pages/RightWorkReport.aspx.

² See A/HRC/31/32.

5. The right to work is enshrined in the Universal Declaration of Human Rights, in its article 23.1, in which it is stated that “everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment”. In its article 2, the prohibition of discrimination is made applicable to all the rights recognized in the Universal Declaration, including to the right to work, 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. The right to work is also recognized in the International Covenant on Economic, Social and Cultural Rights, in its article 6, and a general non-discrimination clause, applicable to all the rights set forth in the Covenant, is incorporated in its article 2.2, in which discrimination on the grounds of “sex” is proscribed. Furthermore, a specific gender equality clause is included in article 3 of the Covenant, according to which “the States Parties ... undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant”.
6. Discrimination against women is defined in article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, and in article 11 of the Convention the right of women to be free of discrimination in the field of employment is reaffirmed, including the right to equal remuneration for work of equal value, the right to social security and the right to safe conditions of work safeguarding women’s reproduction function. According to article 11, “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.”
7. In the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the right to work is referred to in articles 11, 25, 26, 40, 52 and 54, and prohibition of discrimination, including on the basis of sex, is made applicable to the Convention by virtue of its article 1. Similarly, the right to work is referred to in the Convention on the Rights of Persons with Disabilities in its article 27, non-discrimination and equality between men and women are included as principles in its article 3, these principles are further developed in its article 5 and there is a specific focus on discrimination against women with disabilities in its article 6.
8. Regional human rights instruments also provide for recognition of the right to work and the application of the principles of gender equality and non-discrimination to this right. For instance, the European Social Charter of 1961 and the revised Charter of 1996 devote considerable attention to the right to work, and pay specific attention to equal pay for equal work and protection for women workers, including in the case of maternity. The Charter of Fundamental Rights of the European Union addresses the right to work in its article 15. Article 23, on equality between men and women, explicitly refers to employment, work and pay, while article 33 mentions maternity protection and maternal and paternal leave as measures for reconciling family and professional life. Articles 20 and 21 are devoted to equality and non-discrimination.
9. The American Declaration of the Rights and Duties of Man, of the Organization of American States, refers to the right to work in its article 14, and to the principles of equality and non-discrimination in its article 2, including on the basis of sex. The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) protects the right to work in its article 6, and makes specific mention of women’s work. Furthermore, the Additional Protocol enshrines the prohibition of discrimination, including on the basis of sex, in its article 3.
10. The African Charter on Human and Peoples’ Rights enshrines the right to work in its article 15, and the prohibition of discrimination, including on the basis of sex, in its article 2. The Arab Charter on Human Rights, as revised in 2004, provides for the right to work, in its article 34. It also includes a non-discrimination provision, in its article 3, that refers

specifically to discrimination on the grounds of sex and to equality between men and women.

11. Several ILO texts are aimed at protecting and realizing women's equal right to work. In its article II (a), the Declaration concerning the aims and purposes of the International Labour Organization (Declaration of Philadelphia), of 1944, specifies that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity". Equality and non-discrimination, including on the basis of sex, are also among the fundamental rights of workers identified in the ILO Declaration on Fundamental Principles and Rights at Work, and are the subject of the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), both of which are fundamental ILO conventions.

12. Of particular importance is the more recent Domestic Workers Convention, 2011 (No. 189), as women carry out most domestic work. The ILO Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), in paragraph 15, specifies women among the categories of persons who may frequently have difficulties in finding lasting employment and for which States are required to adopt measures to respond to their needs in the context of an overall employment policy.

13. Many States have ratified the above-mentioned instruments. Most States have enshrined the principle of equality between men and women in their constitutions. Many have promulgated gender equality legislation to operationalize these convention-based and constitutional commitments. Nonetheless, discrimination against women in the labour market is pervasive, as reflected by the "glass ceiling", the "gender pay gap" and the "sticky floor", which indicate the restrictions encountered by women in realizing their right to work and in exercising opportunities at work. As such, the realization of women's equal enjoyment of the right to work warrants consideration of the gender-specific dimensions of every aspect of that right.

III. Women's right to decent work

14. The right to decent work entails the right to productive and freely chosen and accepted work that ensures a dignified life without discrimination. For women, this involves the freedom to choose work and to practise a profession, and equal access to work opportunities and decent jobs.

15. Notwithstanding women's growing involvement in paid work worldwide, significant gender disparities persist in regard to labour force participation and employment. A 2016 ILO report on women's employment estimates women's labour force participation in 2015 at 49.6 per cent globally, compared to 76.1 per cent for men.³ While the rate in developed countries stood at 71.0 per cent, figures ranged between 61.9 per cent and 18.8 per cent in other regions in 2015.⁴ Securing decent work and staying in it also remains a challenge for many women. Indeed, with the exception of a few subregions, unemployment rates among women in the workforce are higher than among men worldwide.⁵ Moreover, women workers are disproportionately numerous in non-standard forms of employment such as part-time and temporary contracts or self-employment, which tend to be more precarious. Women are also overrepresented in the informal economy, which is characterized by poor working conditions as well as a lack of job security and of social protection. The gender

³ ILO, *Women at Work: Trends 2016* (Geneva, 2016).

⁴ ILO, *World Employment and Social Outlook: Trends 2016* (Geneva, 2016).

⁵ ILO, *Women at Work: Trends 2016*.

gap in employment in the informal economy reaches a peak of 13 percentage points in sub-Saharan Africa.⁶ These statistical data signal de facto discrimination as regards access by women to decent work opportunities, which States have an immediate duty to eliminate.

A. Freedom to choose a profession and an occupation

16. Women's right to freedom to choose a profession is frequently compromised by discriminatory legal provisions.

17. Laws in some countries prohibit women from performing certain tasks, exercising certain professions or entering particular industries, on the basis of gendered perceptions of unsuitable work for women. Such prohibitions often concern night work, jobs in sectors such as mining, or participation in the armed forces. Treaty bodies have called upon States to remove these prohibitions.⁷

18. Subjecting women's engagement in work to authorization from their spouse or a male guardian, as is found in some family laws, is another form of formal discrimination.⁸ In some countries, where the laws do not provide for such prior authorization, it may nevertheless be practised. In other situations, women's right to freely chosen work is impeded by restrictions on the exercise of other rights, such as their freedom of movement or their right to legal autonomy. The Committee on the Elimination of Discrimination against Women has on several occasions challenged States that have maintained such systems.⁹

19. Freedom to choose work also means freedom from forced labour. Many women are trapped in slavery-like situations or engaged in forced labour, including as a result of trafficking. As part of its duty to protect, States must take specific measures to prevent actions by third parties that would put women in situations of forced labour. States should also tackle the root causes of women's vulnerability to forced labour and trafficking, such as poverty or a lack of employment in the home country, that compel women to seek migration opportunities.

20. Domestic work notably exposes girls and women, especially migrant domestic workers, to risks of forced labour. Combating this situation necessitates raising awareness around women's dignity and equal rights, both in countries of origin and countries of destination. Awareness of legal protections for women's rights in receiving countries, including with regard to the conditions of work, is also essential, in order to enable domestic workers to assert their rights.

21. Treaty bodies have recommended that States discontinue arrangements such as the sponsorship system and the live-in setting, which render domestic workers particularly vulnerable to severe labour exploitation.¹⁰ States should also take measures to ensure the release of women in situations of forced labour. This involves setting up accessible systems that allow victims to seek effective assistance, and subjecting to labour inspection those sectors where women are likely to be held in forced labour, such as domestic work and agriculture.

⁶ Ibid.

⁷ See, for example, CEDAW/C/KAZ/CO/3-4, para. 28; CEDAW/C/GIN/CO/7-8, para. 47; and CEDAW/C/TKM/CO/3-4, para. 32.

⁸ See, for example, CEDAW/C/CMR/CO/4-5, para. 28; CEDAW/C/TCD/CO/1-4, para. 32; and CEDAW/C/QAT/CO/1, para. 35.

⁹ See, for example, CEDAW/C/ARE/CO/1, para. 45; and CEDAW/C/IDN/CO/6-7, para. 17.

¹⁰ See, for example, CEDAW/C/OMN/CO/1, para. 42; and CERD/C/LBN/CO/18-22, para. 42.

B. Equal access to work opportunities

22. Equality in the exercise of the right to work involves non-discrimination in accessing work opportunities. Women's higher unemployment rates, as well as occupational segregation, are symptomatic of discrimination in access to work opportunities. To achieve substantive equality, States should adopt supportive policies, combat discriminatory practices, and change cultural or religious expectations about women's roles at home and in the family that hinder their transition from school to work.

1. Unemployment

23. While the right to work is not construed as an absolute right to obtain employment, States have an obligation to ensure equal access to work opportunities. A State in which a significantly higher number of women are unemployed is failing to discharge its obligations to fulfil the right to work and to ensure non-discrimination in the exercise of the right to work. The principle of progressive realization also entails the gradual reduction of women's unemployment. To that end, States have an obligation to implement effective and targeted measures, to the maximum of their available resources.

24. Research converges on the importance of adequate economic policies to effect change in women's employment opportunities. Economic policies that do not lead to the creation of jobs have a detrimental effect on women's equal access to employment. In fact, policies targeting women's employment in the context of jobless growth will have only a limited redistributive effect, reallocating some jobs from men to women.¹¹ Consequently, in a 2016 report, UN-Women stresses the importance of creating additional decent jobs for women, as well as improving their access to them. Specifically, it is recommended in the report that macroeconomic policies depart from traditional goals of deflation, and instead stimulate economic activity and increase demand for labour. In the report, UN-Women also calls for increased social spending so as to create decent jobs in sectors such as health, education, and care.¹²

25. Employment policies should provide for employment services that cater to the specific challenges faced by women, to ensure that they do not leave the workforce or resort to precarious jobs after childbirth and to facilitate their re-employment after career interruptions. This could include specialized placement assistance, as well as training programmes linked with prospective employment opportunities. Some States have put in place incentives for companies to recruit women who return to the workforce after career breaks.

26. Because of the criterion of sex intersecting with other factors such as race, ethnicity, colour, religion, national or social origin and disability, many women experience multiple forms of discrimination and face serious hurdles in exercising their right to work. For example, women with disabilities face greater difficulty in securing employment. In this regard, laws should require employers to ensure an accessible work environment and the provision of reasonable accommodation.

27. Discriminatory legal provisions and policies such as those on access to certain positions on the basis of ways of dressing,¹³ different mandatory retirement ages for men and women, and provisions for revoking the work permit of migrant women upon

¹¹ José Antonio Ocampo and Jomo Kwame Sundaram, *Towards Full and Decent Employment* (2008), p. 70.

¹² UN-Women, *Transforming Economies, Realizing Rights* (New York, 2015), p. 9.

¹³ See, for example, CEDAW/C/NOR/CO/8, para. 29.

childbirth or marriage¹⁴ should also be amended, so that women enjoy the right to work on an equal basis with men.

2. Discrimination in recruitment

28. Women are often refused job offers on account of their sex, in spite of labour laws against discrimination. Structural biases have led to practices of appointing men to perform certain jobs and not hiring women, including due to social assumptions that motherhood is irreconcilable with the demands of employment. In some cases, the prospect of pregnancy and motherhood discourages employers from recruiting women at all. In this regard, some employers have imposed pregnancy tests as a condition of recruitment or for maintaining employment, which is discriminatory and should be prohibited.¹⁵ In fact, women's situations in the labour market often belie their educational attainment, due to discrimination in recruitment.

29. States have an obligation to remove conditions that are likely to lead to women's disadvantage in recruitment, through sound labour laws and monitoring institutions, especially as women rarely have the opportunity to challenge hiring decisions. For example, it is important to transfer the coverage of paid maternity leave to the social security system or public funds, in order to combat the preferential recruitment of men on the basis of the perceived cost of recruiting women of childbearing age.

3. Occupational segregation

30. Stereotypes about women's roles in the family and society have resulted in horizontal segregation, whereby women are overrepresented in sectors such as manufacturing and in professions related to familial and service functions in the public and private sectors. Moreover, women occupy primarily clerical and support positions, which creates a horizontal segregation in the labour market.¹⁶ More concerning is the practice of employing women with disabilities in sheltered workshops, without adequate support for their transitioning to the open labour market.¹⁷ States have an obligation to take effective measures to remove these discriminatory situations, with a view to fulfilling women's equal right to work opportunities.

31. While girls' and women's right to education is beyond the scope of the present report, it is important to stress that it is a critical determinant of equality in employment. Therefore, States should take measures to diversify girls' and women's educational choices. States should also introduce quotas, where necessary, in areas of study in technical, vocational and tertiary education in which women are underrepresented. Some countries have implemented specific projects to encourage girls to pursue education in fields traditionally associated with the other sex. Sexual harassment and bullying that are obstacles to girls' and women's educational achievement, especially when they are in the minority, should also be addressed.

32. As stereotypes are often reproduced in school textbooks and conveyed by the media, sustained communication campaigns about equality of opportunities and outcomes are necessary. In particular, article 8 of the Convention on the Rights of Persons with Disabilities calls on States to combat stereotypes and prejudices relating to persons with disabilities.

¹⁴ See, for example, CEDAW/C/ISR/CO/5, para. 42.

¹⁵ See, for example, CEDAW/C/MEX/CO/7-8, para. 28.

¹⁶ UN-Women, *Transforming Economies, Realizing Rights*, p. 10.

¹⁷ See, for example, CRPD/C/AUT/CO/1, para. 44; E/C.12/JPN/CO/3, para. 12; and CRPD/C/KOR/CO/1, para. 49.

33. Temporary special measures are the most effective means to address occupational segregation, both horizontal and vertical, and to achieve substantive equality. They should be codified in laws specifying the circumstances under which employers are required to implement them. Special measures should be designed to support the principle of equality, so as to comply with convention-based and constitutional stipulations thereon.¹⁸ The Committee on the Elimination of Discrimination against Women regularly highlights the importance of defining numerical goals to be achieved within a certain period of time. Special measures should be discontinued when the objectives of equality of opportunity and treatment have been achieved.

34. Temporary special measures can be implemented in recruitment, for example by giving preference to a woman when candidates are equally qualified, or by providing training to women candidates so that they can meet the qualifying criteria for the positions that are subject to temporary special measures. Some countries have introduced mandatory quotas for the representation of women on the boards of companies.

35. Governments have a greater responsibility to eliminate occupational segregation in public organizations, where they have more direct control of human resources policies. Targets in the public sector could include appointments to decision-making positions or in professional groups where women are traditionally underrepresented.

C. Access to decent work

36. When there are no legal restrictions on one's choice of work, women are not always fully free to engage in the work of their preference. Indeed, unpaid domestic and care responsibilities often restrict their employment options. On the one hand, many countries face a shortfall in affordable infrastructure and services and related social security schemes that would free women from care responsibilities. On the other hand, inflexible hours in the workplace are often incompatible with household and care roles that women continue to carry out. As a result, women take on part-time or temporary employment involuntarily; accordingly, in some regions, they face a 25 to 35 per cent higher risk of being in precarious employment than men.¹⁹

37. The discriminatory ramifications of women's overrepresentation in non-standard forms of employment are numerous. In addition to the repercussions on earnings, women's right to work is also at risk, as non-standard jobs generally lack security. Moreover, while work should enable individuals' personal fulfilment, women frequently experience discrimination in part-time and temporary jobs that tend to be low-skilled, have few career prospects and often do not correspond to their educational and professional qualifications or aspirations.

38. The lack of possibilities to work part-time or with other flexible working options is equally discriminatory. When flexibility is not afforded, female workers with care responsibilities may be forced to forego employment. This holds particularly true when economic considerations favour withdrawal from work by women who earn less than male household members.

39. The ILO Workers with Family Responsibilities Recommendation, 1981 (No. 165) provides detailed guidance on national policies to enable persons with family responsibilities to exercise their right to work. In particular, States should develop systems

¹⁸ Committee on the Elimination of Discrimination against Women general recommendation No. 23 (1997) on political and public life, para. 15.

¹⁹ ILO, *World Employment and Social Outlook: Trends 2016*, summary.

of care that are affordable and accessible and change society's perception of women's roles. Some countries have made it compulsory for companies of a certain size to provide childcare services.²⁰ Moreover, the Committee on Economic, Social and Cultural Rights states that the development of flexibility in the workplace should be part of these national policies. To this end, it is important to ensure that the arrangements put in place are premised on the equitable sharing of care responsibilities between men and women.

40. The right to decent work also implies work opportunities in the formal economy. In many regions, women are primarily employed in the informal economy.²¹ The ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) outlines 12 guiding principles informed by country experiences. In addition to measures taken to progressively bring employment and businesses into the formal economy, States should implement macroeconomic policies aimed at creating decent jobs. Indeed, women work in the informal economy owing to a lack of opportunities in the formal economy.²²

D. Entrepreneurship

41. Entrepreneurship is another way of exercising one's right to work, where the right of women to equal opportunities also applies. Data showing that women are less likely to be involved in entrepreneurial activity than men reveals patterns of inequality.²³ Closing this gap requires tackling the root causes of women's disadvantages in entrepreneurial participation and business ownership, as well as implementing targeted measures.

42. Firstly, formal discrimination should be eliminated where it exists. States should guarantee women's legal autonomy, thus eliminating any legal barriers to their ability to conclude contracts, own and administer properties, or hold bank accounts without needing the prior authorization of another person. Discriminatory practices, such as those related to inheritance and the registration of households' lands in men's names, should also be abolished.

43. Financial inclusion is critical for promoting women's access to means of production, as either women lack the necessary collateral for accessing loans or the informality of their businesses is incompatible with procedures in traditional financial institutions. Several countries have attempted to overcome this barrier through initiatives establishing special credit lines at banks or by setting up specific funds or more accessible banking and payment services. Other countries have coupled these measures with initiatives aimed at improving women's literacy, and their business, economic, financial and legal skills, and at narrowing the gender gap in access to information and communication technology. Temporary special measures can also be implemented to support women's entrepreneurship, for example by prioritizing women in land redistribution programmes or granting women-led businesses preferential treatment in public procurement processes.

44. Several States have implemented projects and programmes promoting the development of income-generating activities for women. These initiatives should be accompanied by measures to facilitate access to markets, including through investment in transport infrastructure and in marketing facilities. A human rights-based approach to such efforts should seek to develop activities in the formal economy, in businesses that would lift

²⁰ See, for example, CEDAW/C/PRY/CO/6, para. 28.

²¹ ILO, *Women at Work: Trends 2016*, p. 11.

²² Ocampo and Jomo K.S., *Towards Full and Decent Employment*, p. 77. See also the ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).

²³ United Nations Development Programme (UNDP), *Human Development Report 2015* (New York, 2015), p. 111.

women and their families out of poverty, and to support their inclusion in sectors traditionally associated with men.

IV. Non-discrimination in the enjoyment of the right to just and favourable working conditions

45. Beyond equal access to opportunities, women's equal right to work encompasses equality of opportunity and treatment in the workplace. The right to just and favourable conditions is the necessary corollary of the right to work that is freely chosen and accepted.²⁴ In its general comment No. 23 (2016) on the right to just and favourable conditions of work, the Committee on Economic, Social and Cultural Rights recalls that States have an obligation to guarantee that women enjoy conditions of work not inferior to those of men and receive equal pay for work of equal value.²⁵

A. Non-discrimination in working conditions

46. For women, non-discrimination encompasses the right to equal working conditions as well as the right to differential treatment due to biological differences.

1. Right to equal working conditions

47. The right to equal working conditions is undermined for certain categories of female workers, including due to the sectors they belong to. Domestic workers, the majority of whom are girls or women, are among those most at risk of abuse, harassment and violence. Their living and working conditions may be akin to slavery when they live with their employers. Domestic work also falls outside the scope of the labour law in several countries. Therefore there are no standards, at the country level, that spell out their working conditions.

48. The ILO Domestic Workers Convention, 2011 (No. 189) and Domestic Workers Recommendation, 2011 (No. 201) provide guidance to States on measures to be taken to protect the rights of domestic workers. On the basis of these instruments, several States have started regulating domestic work and the operations of recruitment agencies. However violations continue to be observed, as victims are often isolated and unable to seek assistance. Treaty-monitoring bodies have expressed the view that domestic workers should enjoy the same labour rights as other workers, in terms of health and safety at work, rest and remuneration.²⁶ Any separate legislation should solely address their increased vulnerability to abuses and not set specific conditions of work.

49. Women working in manufacturing and other sectors in export-processing zones are also vulnerable to violations of their labour rights. Often, in order to attract investors, States adopt specific regimes for export-processing zones whereby labour law does not apply, either partially or fully. Reports of low wages, long working hours, unpaid overtime, sexual harassment and other forms of violence in export-processing zones are rife. States enforcing such regimes fail in their obligation to protect the right to just and favourable conditions of work and the right to non-discrimination.

²⁴ See Committee on Economic, Social and Cultural Rights general comment No. 23 (2016) on the right to just and favourable conditions of work, para. 1.

²⁵ *Ibid.*, para. 54.

²⁶ See, for example, CEDAW/C/BRA/CO/7, para. 12; and CEDAW/C/AND/CO/2-3, para. 30.

50. Women migrant workers, especially undocumented and irregular migrant workers, are likely to face violations of labour rights.²⁷ Often, they lack employment contracts and are thus vulnerable to exploitation.²⁸ Also, legal protections may not reach the large majority of women engaged in the informal economy.

51. In order to meet their obligation to protect the right to equal working conditions, States should expand the mandate of compliance institutions so that it covers the informal economy and domestic work, including in private residences. Moreover, they should monitor the working conditions of both regular and irregular migrant workers. Regulations and policies should take into account the difficulties encountered by these women workers in seeking assistance or remedies when their rights are violated. States should also ensure that these categories of workers are able to exercise their right to organize so that they can advocate for their labour rights.

2. Differential treatment due to biological differences

52. Due to biological differences, female workers require differential treatment at work, including in relation to pregnancy, childbirth and breastfeeding. These should be specified and protected by domestic laws and should not be considered as discriminatory. The lack thereof would have adverse consequences not only on the right of women to just and favourable conditions of work and on their right to health but also on their ability to exercise the right to work altogether.

53. Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women and the ILO Maternity Protection Convention, 2000 (No. 183) and Maternity Protection Recommendation, 2000 (No. 191) provide the main direction for a maternity protection framework in the workplace, with minimum standards in respect of access to health care, health protection, and maternity leave entitlements.

54. According to the ILO Maternity Protection Convention, 2000 (No. 183), working women should have access to prenatal, childbirth and postnatal medical care. When such services are not provided free of charge, the costs should be covered by health insurance schemes. Conditions in the workplace for safeguarding the health of pregnant or nursing women and that of their child include prohibition of the performance of certain tasks that may pose risks to the health of expectant women, protection against their exposure to harmful environmental conditions, and the granting of rest periods during working hours. To the extent possible, appropriate accommodation should be provided so that women can perform their work responsibilities during pregnancy. If necessary, they may be reassigned to different tasks. Such a decision should be made in consultation with the person concerned, with the guarantee that she can return to her previous position when conditions allow it. Pregnant workers should be protected against exposure to harmful chemicals that can result in illnesses, pregnancy complications or fetal disorders. Article 11 (3) of the Convention on the Elimination of All Forms of Discrimination against Women advises periodic reviews of legislation relating to maternity protection in the light of scientific and technological advances.

55. In the context of its examination of State party reports, the Committee on the Elimination of Discrimination against Women has recommended that States accord the minimum of 14 weeks of paid maternity leave to women, with at least two thirds of previous or insured earnings, in accordance with the ILO Maternity Protection Convention, 2000 (No. 183) which also prescribes one daily break with pay for breastfeeding. The Committee on the Elimination of Discrimination against Women has also called upon

²⁷ See, for example, CMW/C/URY/CO/1, para. 23; and CMW/C/BFA/CO/1, para. 20.

²⁸ See, for example, CMW/C/KGZ/CO/1, para. 38.

States to remove undue restrictions on the right to paid maternity leave.²⁹ Pay during maternity leave — guaranteeing continued income — is central to ensuring that maternity does not affect women’s economic situation and that women have the means to meet the additional expenses engendered by childbirth. With regard to migrant women, it is essential to ensure that they retain their legal status during maternity leave.³⁰

56. Maternity benefits should be made available to all women, including female migrant workers, unwed mothers,³¹ domestic workers, self-employed women and part-time workers, as well as women employed in sectors where such protection is not traditionally afforded, such as in agriculture. In this regard, setting up non-contributory cash benefits for women who do not meet the qualifying conditions is a good practice.

57. Notwithstanding the recommendation in article 4 of the ILO Maternity Protection Convention, 2000 (No. 183) of a minimum of six weeks of postnatal maternity leave, several States have allowed women to decide when they start maternity leave. Overprotective regulations imposing long maternity leave may not be desirable, when they reinforce gender-stereotyped roles.³² Instead, provisions for non-transferable paternity leave, parental leave and leave for family reasons are recommended.³³ Some States have extended parental leave to parents adopting children.

58. Workplaces should have water and sanitation facilities that meet women’s specific hygiene needs. A lack of adequate facilities is discriminatory, as it often compels women to avoid work during menstruation. Leave policies should also accommodate menstruation-related needs, as required. States should combat stigma and taboos around menstruation, where they exist, so that they do not hamper women’s right to work. Some industries may also need to establish specific standards for the protection of women’s health. For instance, attention should be paid to women’s exposure to chemicals that may have adverse effects on their reproductive health.

B. Equal opportunities in the workplace

59. The right to equal opportunities at work concerns women’s equal right to be promoted, freedom from harassment — especially sexual harassment, and protection against unfair dismissal. Several countries have made it illegal for employers to discriminate against a person on the grounds of sex and have adopted equal employment opportunity laws. And yet, women are routinely discriminated against in the workplace, as evidenced by women’s underrepresentation in managerial and decision-making occupations³⁴ and by the numerous cases of sexual harassment and of gender-based discrimination when such data are collected.³⁵

60. According to article 7 of the International Covenant on Economic, Social and Cultural Rights, all workers have the right to equal opportunity to be promoted to an appropriate higher level, subject to no considerations other than those of seniority and competence. Under their obligation to protect, States should adopt laws requiring employers to apply merit-based and transparent promotion processes and to outline in their

²⁹ See, for example, CEDAW/C/GRD/CO/1-5, para. 31; CEDAW/C/MUS/CO/6-7, para. 31; and CEDAW/C/BHS/CO/1-5, para. 34.

³⁰ See, for example, CEDAW/C/CZE/CO/5, para. 33.

³¹ See, for example, CEDAW/C/SGP/CO/4/Rev.1, para. 29.

³² See, for example, CEDAW/C/MDA/CO/4-5, para. 27.

³³ See Committee on Economic, Social and Cultural Rights general comment No. 23 (2016), para. 44.

³⁴ UN-Women, *Transforming Economies, Realizing Rights*, p. 10.

³⁵ See, for example, CEDAW/C/BEL/CO/7, para. 32; and CEDAW/C/MEX/CO/7-8, para. 28.

internal human resources policies and procedures the safeguards against discrimination in promotion.

61. Non-discrimination against women at work also entails pregnancy and maternity — and the prospect thereof — not leading to disadvantages in the workplace nor affecting job security. Maternity should not impede women's opportunity for promotion. In some countries maternity leave is counted in time accrued, for the purposes of seniority and promotion. Adjustments made to accommodate expectant and nursing workers should not lead to the downgrading of their position, or to the risk thereof. The practice of demoting women upon their return from maternity leave should be proscribed.³⁶

62. Violence, including sexual harassment, is an impediment to women's equal opportunities in the workplace. Furthermore, sexual harassment is discriminatory, as rejection of advances often results in victims being denied recruitment and promotion and in some cases has led them to resign from their positions. As such, States should enact legislation outlawing sexual harassment, with the broadest definition possible. Legislation should also prescribe specific duties on employers to prevent sexual harassment, and procedures, based on confidentiality, for the notification and reporting of claims of sexual harassment and for their resolution.³⁷

63. Women workers should enjoy protection against unfair dismissal. Due to their overrepresentation in pink-collar jobs and among those who are on short-term and precarious contracts, women are more likely to be made redundant. It follows that, in addition to promoting women's access to higher-level positions, States should take measures to prevent the abuse of short-term and other precarious contracts by employers, which often occurs in order to circumvent the right of women to maternity leave and to avoid paying social contributions.³⁸

64. Lastly, dismissal due to pregnancy or maternity should also be prohibited. Standards on this matter ban the termination of women's employment contracts for a certain period of time before and after childbirth. Yet, the practice of terminating women's contracts during or after the protection period is widely reported. The penalties for such unfair practices are often not enough of a deterrent, with employers opting to pay the fines.

65. As part of their duty to protect, States should monitor the effectiveness of regulatory provisions aimed at protecting women against unfair treatment on account of sex, pregnancy or childbirth, ensuring that they have a dissuasive effect and that aggrieved workers have access to effective remedies. Trade unions also play a key role in promoting women's equal rights at work, by guaranteeing, among other things, that collective agreements do not lead to discrimination. As such, States should maintain a legal and political environment that enables workers to exercise freely their trade union rights. It is equally important that women are adequately represented in the decision-making bodies of trade unions.³⁹

C. Equal pay for work of equal value

66. The right to equal pay for work of equal value is enshrined in article 7 of the International Covenant on Economic, Social and Cultural Rights and in the ILO Equal

³⁶ See, for example, CEDAW/C/GRC/CO/7, para. 28.

³⁷ See Committee on Economic, Social and Cultural Rights general comment No. 23 (2016), para. 48.

³⁸ See, for example, CEDAW/C/MNE/CO/1, para. 28.

³⁹ See, for example, CEDAW/C/SRB/CO/2-3, para. 26; CEDAW/C/TUN/CO/6, para. 36; and CEDAW/C/ZAF/CO/4, para. 29.

Remuneration Convention, 1951 (No. 100). This entails equal remuneration for the performance of similar jobs and of jobs that are “completely different but nonetheless of equal value when assessed by objective criteria”.⁴⁰ In this regard, treaty-monitoring bodies have often drawn the attention of States parties to the fact that provisions on equal pay for equal work fall short of the requirement of the principle of equal pay for work of equal value.⁴¹

67. Studies show that discrimination in remuneration accounts for a large part of the gender pay gap. Women are overwhelmingly paid less for the same work, but also, the wages in sectors that predominantly employ women are lower than in other sectors. Indeed, wages tend to diminish when more women enter a particular occupation, which demonstrates the devaluation of work that is performed by women.⁴² This systemic discrimination in remuneration is one of the reasons why women’s educational achievements have not generated commensurate economic returns.

68. The Committee on Economic, Social and Cultural Rights recommends that States set time-bound targets for achieving gender equality in remuneration.⁴³ Measures to be taken in this regard include adopting legislation that guarantees the right to equal remuneration for work of equal value, and mandating labour inspectorates to investigate claims of unequal remuneration. Moreover, States should promote objective appraisals of jobs on the basis of the work to be performed and require employers to progressively decrease the differentials between rates of remuneration for men and rates of remuneration for women for work of equal value.⁴⁴ The Committee on Economic, Social and Cultural Rights clarifies that “the extent to which equality is being achieved requires an ongoing objective evaluation of whether the work is of equal value and whether the remuneration received is equal.”⁴⁵ Discriminatory practices, such as the payment of larger wage bonuses to men, based on social norms of men as breadwinners, should also be abandoned.⁴⁶ Some States have enacted laws providing for mandatory gender equality plans and mandatory reporting by employers, for example on the transparency of salary policies and mechanisms for reporting instances of discrimination.

69. Evaluation of jobs across industries and professions should be conducted by States, with a view to narrowing gender pay gaps. In its general recommendation No. 13 (1989) on equal remuneration for work of equal value, the Committee on the Elimination of Discrimination against Women recommends that States consider adopting “job evaluation systems based on gender-neutral criteria” to assess the value of jobs across organizations, professions and industries. The Committee on Economic, Social and Cultural Rights has further developed this concept, stating that such criteria should include “skills, responsibilities and effort required by the worker, as well as working conditions”.⁴⁷ In practice, States should provide support to social partners so that collective bargaining in sectors where women are predominant could lead to re-evaluation of wages in those

⁴⁰ See Committee on Economic, Social and Cultural Rights general comment No. 23 (2016) on the right to just and favourable conditions of work, para. 11.

⁴¹ See, for example, E/C.12/JAM/CO/3-4, para. 14; E/C.12/NZL/CO/3, para. 14; and CEDAW/C/CPV/CO/7-8, para. 26.

⁴² Asaf Levanon and others, “Occupational feminization and pay: assessing causal dynamics using 1950-2000 U.S. census data”, *Social Forces*, vol. 88, No. 2 (December 2009), pp. 865-892.

⁴³ See Committee on Economic, Social and Cultural Rights general comment No. 23 (2016), para. 15.

⁴⁴ ILO, Equal Remuneration Recommendation, 1951 (No. 90), arts. 4 and 5.

⁴⁵ See Committee on Economic, Social and Cultural Rights general comment No. 23 (2016), para. 12.

⁴⁶ See, for example, CEDAW/C/BLR/CO/7, para. 32.

⁴⁷ See Committee on Economic, Social and Cultural Rights general comment No. 23 (2016), para. 12.

sectors.⁴⁸ Some States have also undertaken nationwide equal pay campaigns, raising awareness of the illegality of discrimination in remuneration.

V. Women's unpaid work

70. Women carry out the bulk of unpaid caregiving and household work in society, which keeps them out of the workforce and public life. In addition to social norms, the lack of affordable care services and the gender remuneration gap perpetuate women's disproportionate engagement in unpaid care work.

71. The gender disparities in the allocation of unpaid work impedes girls' and women's equal enjoyment of their rights to education, work and an adequate standard of living, and of other rights, and impedes their social and economic empowerment. While men engage in remunerative and productive activities, women, who are often burdened by unpaid work, have limited options to participate in public life and to seek decent employment. Often, they are compelled to resort to precarious part-time and temporary employment. The cumulative impact of unpaid work on the situation of the rights of older women is also considerable. With little to no pension and retirement savings, some older women who have spent a significant part of their life in unremunerated work may be denied a large range of their rights, including the right to an adequate standard of living, the right to health, and the right to be protected against abuse. Moreover, the rights of persons receiving support may also be affected, in that caregivers may not always be able or qualified to provide adequate care.

72. The social and economic contributions of unpaid work have remained largely invisible and undervalued. Yet, in essence, women's unpaid work "subsidizes" the provision of care, by filling unmet demands for public or affordable services. It is estimated that women's unremunerated work could amount to between 10 and 39 per cent of a given country's gross domestic product.⁴⁹ Most national economic and social policies have failed to accord due consideration to this barrier to women's equal participation in the labour market and public life.

73. States' policies affect the extent of women's engagement in unpaid care. In her 2013 report, the Special Rapporteur on extreme poverty and human rights underlines that State policies determine who has access to care services and also who does not⁵⁰ and is thus obliged to fill the gaps through unpaid care work — this is usually girls and women. Moreover, the availability of social, household and public infrastructure influences the amount of time that women spend on household work. Consequently, in addition to mending the gender-based division of work, the core of public policies that are aimed at addressing women's unpaid work should be anchored in social protection, recognition of the value of unpaid work, and the availability of time-saving domestic technologies and public infrastructure. Part of this approach has been framed by Diane Elson as the "triple R": recognize, reduce and redistribute.⁵¹

74. Any effort to effect change on women's burden of unpaid work should start with recognition of the social and economic value of the work. This entails acknowledging that

⁴⁸ See, for example, CEDAW/C/NOR/CO/8, para. 30.

⁴⁹ Debbie Budlender, *The Statistical Evidence of Care and Non-Care Work Across Six Countries*, (Geneva, United Nations Research Institute for Social Development, 2008), p. 38.

⁵⁰ See A/68/293, para. 8.

⁵¹ Diane Elson, "The three R's of unpaid work: recognition, reduction and redistribution", paper presented at the Expert Group Meeting on Unpaid Work, Economic Development and Human Well-being (UNDP, 2008).

care, hitherto performed primarily by women, enables other members of society to enjoy their human rights at the expense of those women's enjoyment of their own human rights. Such recognition should inform States' social, economic and fiscal policies. In order to measure the economic worth of the unpaid work done by women, States could collect statistical data, embark on a valuation process, and incorporate unpaid work in the gross national product. This exercise could also lead to a better valuation of wages in care-related industries.

75. Posited on the principle that care is a collective responsibility, the social protection system is a critical tool for redistributing the burden of unpaid care on women and for mitigating its impact on older women. In its general comment No. 19 (2007) on the right to social security, the Committee on Economic, Social and Cultural Rights recommends that States develop schemes for covering, among other things, family and child support, and sickness and disability, to meet the needs for assistance and other related expenses and to enable carers to fulfil their responsibilities. These benefits, which could be in the form of cash entitlements and social services, should be available and accessible, especially for disadvantaged and marginalized individuals and households, including those working in the informal economy. Taking into account the resources and circumstances of the beneficiaries, they should also be adequate in amount, form and duration, so that care can be outsourced, for example. In this regard, the inclusion of care in social protection floors is of critical importance. Other good practices include allowing for care expenses to be deductible from income tax.⁵²

76. States should alleviate the effect of career interruptions for unpaid care on older women's income, through social protection. States could, for instance, design non-contributory pensions to ensure older women's right to social security and to offset losses of earnings due to periods of unpaid care work. Another good practice is factoring women's involvement in unpaid care into the determination of benefits under contributory schemes, by considering periods of child-rearing or care of dependents in the calculation of pension entitlements.

77. States should be mindful of the impact of economic policies on women's unpaid work. Reductions in public social services, prompted by funding cuts in the context of austerity measures, could result in additional demands for unpaid care work on families, compelling some women to give up remunerated work.⁵³ At the same time, those who remain in employment end up carrying a heavier burden. Although the Committee on Economic, Social and Cultural Rights and many other human rights mechanisms recommend that austerity measures should not disproportionately affect the rights of disadvantaged and marginalized individuals and groups, the gendered effect of budgetary cuts on unpaid care work is often overlooked by impact assessments.⁵⁴

VI. Conclusions

78. The commitments made with the recent adoption of the Sustainable Development Goals — especially goal 8 (target 8.5, under goal 8, “Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”) and goal 5 (“Achieve gender equality and empower all women and girls”), together with the requirement contained in the 2030 Agenda that the goals

⁵² See, for example, CEDAW/C/MLT/CO/4, para. 20.

⁵³ Francesca Bettio and others. *The Impact of the Economic Crisis on the Situation of Women and Men and on Gender Equality Policies* (Luxembourg, European Commission, 2013).

⁵⁴ See, for example, A/HRC/26/39.

be implemented in a manner consistent with the obligations of States under international law — should give a political impetus to advancing women’s equal right to work worldwide.

79. Equality and non-discrimination are fundamental human rights guarantees which apply to the right to work. They also give rise to an immediate obligation for States to eliminate discrimination against women in the exercise of the right to work, in terms of equal opportunities and equality of outcomes. In this vein, addressing the gender-related dimensions of the right to work is crucial, as the labour market reflects the social prejudices and disadvantages that undermine equality and dignity.

80. The close nexuses between the right to work and other human rights warrant a life cycle and rights-based approach as well as multisectoral interventions. To achieve substantive equality, macroeconomic policies should promote the creation of decent jobs for women, and targeted measures should be integrated into employment policies to strengthen women’s employability and reduce their engagement in precarious jobs.

81. Labour regulations and policies should provide for specific tools for combating discrimination in the workplace such as wage disparities and sexual harassment. Such regulations and policies should pay particular attention to domestic workers, migrant workers and women with disabilities, whose labour rights are often violated. They should also provide for conditions and treatment that take into account biological differences between men and women. At the same time, laws and regulations would be of limited utility without access to effective remedies by victims and without monitoring and enforcement mechanisms that are sensitive to violations of women’s labour rights in the workplace.

82. Sustained efforts are needed to correct the deeply entrenched gender stereotypes that obstruct women’s equal access to opportunities. Adjustments in social protection systems and investment in infrastructure are also necessary in order to alleviate women’s burden of unpaid care. More generally, greater involvement by women in policymaking and law-making processes and in trade union leadership is called for so that their experiences and views are taken into account.

83. The impact of all measures taken should be monitored against time-bound goals, on the basis of process and outcome indicators,⁵⁵ in the light of States’ obligation to progressively realize the right to work. States are also bound by their obligation to use their maximum available resources in this process.

⁵⁵ OHCHR, *Human Rights Indicators: A Guide to Measurement and Implementation* (Geneva, 2012).