Chapter VIII

The Principle of Non-Discrimination in the International Covenant on Economic, Social and Cultural Rights

by Barbara Wilson

1 Introduction

The principle of non-discrimination is the fundamental principle at the root of all human rights. Non-discrimination is usually among the first principles mentioned in the core human rights instruments\(^1\) and thus is considered to

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\(^{1}\)This contribution was completed in September 2007. The personal opinions given are those of the author in her capacity as professor of International Human Rights Law and not as member of the International Committee on Economic, Social and Cultural Rights.

\(^{1}\)The United Nations Charter, art. 1, para. 3, sets out the basic principle. Art. 13, para. 1b), art. 55 c) and art. 76 c) reaffirm the principle; Universal Declaration of Human Rights, art. 2, para. 1; International Covenant on Civil and Political Rights, art. 2, para. 1, and art. 26; International Covenant on Economic, Social and Cultural Rights, art. 2, para. 2; Convention on the Elimination of All Forms of Racial Discrimination of 1965: art. 2, 5 and 7 decree in imperative terms that no person shall be victim of discrimination.
The Principle of Non-Discrimination

be a general principle common to all human rights’ systems and the basis of a democratic society.

It is the universal right of every human being to be treated without discrimination based on race, sex, language, religion, political or any other opinion, national or social origin, wealth, birth, culture, age, disability, way of life or any other situation. The principle of non-discrimination is particularly important for vulnerable groups, such as minorities, women, children, old people, the disabled, indigenous peoples and internally displaced persons.

It is applicable at all times, not only in peace-time but also in times of national crisis and armed conflict, whether it be domestic or international. It is thus not only a principle of human rights law but also of international humanitarian law. In spite of the wide application and general nature of the principle, non-discrimination has a particular significance and is interpreted in a specific way with regard to the International Covenant on Economic, Social and Cultural Rights.

In the Covenant, the principle is not only set out in article 2, paragraph 2: it is also referred to in several articles dealing with particular rights. For example, article 3 deals with the equal rights of men and women to the enjoyment of all economic, social and cultural rights; article 7 a) i) guarantees the right to equal remuneration for work of equal value; article 7 c) guarantees due to their race; Convention on the Elimination of All Forms of Discrimination against Women of 1979: art. 1; Convention on the Rights of the Child of 1989: art. 2 includes ethnic origin and disability in the list of prohibited grounds for discrimination; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990: art. 1 includes age for the first time; Convention on the Rights of Persons with Disabilities of 2006, art. 3b) and 5 (not yet in force); see also, regarding the ILO: Indigenous and Tribal Peoples Convention, 1989 (no 169); Discrimination (Employment and Occupation) Convention, 1958 (no 111); UNESCO Convention against Discrimination in Education of 1960, especially art. 1 and 2; regarding the protection of internally displaced persons from discrimination, see: the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) which are recognized by States as an important international framework for the protection of internally displaced persons, Principle 4; as regards regional treaties: European Convention on Human Rights of 1950, art. 14; the Additional Protocol no 12 of 2000 broadens the scope of art. 14 ECHR by establishing an independent right to equal treatment and non-discrimination which is no longer accessory to the rights guaranteed by art. 14 ECHR.

2Human Rights Committee, General Comment no 18, para. 1; Committee on the Elimination of Racial Discrimination, General Recommendation XIV 1993, para. 1.


4Hereinafter, referred to as the ICESCR or the ‘Covenant’.