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A distinction was made above between (i) non-discrimination clauses that *complement* other substantive provisions of human rights treaties, and (ii) non-discrimination clauses that apply *independently* and have a general scope of application. Article 26 ICCPR belongs to the second category. It should therefore prohibit discrimination in all areas of life, including those related, *inter alia*, to social security, housing or education, although there are not areas otherwise covered by the ICCPR.

The Human Rights Committee confirmed this in a series of cases that began with *Broeks v. The Netherlands* (communication No. 172/1984, final views adopted on 9 April 1987) (concerning the application of section 13(1) of the Dutch Unemployment Benefits Act) and its companion case, *Zwaan-de Vries* (communication No. 182/1984, final views adopted on the same day). In its General Comment No. 18, *Non-discrimination*, the Human Rights Committee summarized the lessons from this case-law:

'article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant'.

Nevertheless, this approach was resisted by governments, and raised questions even within the Human Rights Committee itself. In the case of *Sprenger v. The Netherlands* (Communication No. 395/1990), where the Human Rights Committee concluded that the differentiation between married and unmarried persons in the Health Insurance Act did not constitute discrimination prohibited under Article 26 ICCPR, three members of the Committee (Messrs Nisuke Ando, Kurt Herndl and Birame Ndiaye) filed a separate opinion in which they explained:


'While it is clear that article 26 of the Covenant postulates an autonomous right to nondiscrimination, we believe that the implementation of this right may take different forms, depending on the nature of the right to which the principle of non-discrimination is applied. (...) Surely, it is also necessary to take into account the reality that the socio-economic and cultural needs of society are constantly evolving, so that legislation – in particular in the field of social security – may well, and often does, lag behind developments. Accordingly, article 26 of the Covenant should not be interpreted as requiring absolute equality or nondiscrimination in that field at all times; instead, it should be seen as a general undertaking on the part of the States parties to the Covenant to regularly review their legislation in order to ensure that it corresponds to the changing needs of society. In the field of civil and political rights, a State party is required to respect Covenant rights such as the right to a fair trial, to freedom of expression and freedom of religion, immediately from the date of entry into force of the Covenant, and to do so without discrimination. On the other hand, with regard to rights enshrined in the International Covenant on Economic, Social and Cultural Rights, it is generally understood that States parties may need time for the progressive implementation of these rights and to adapt relevant legislation in stages; moreover, constant efforts are needed to ensure that distinctions that were reasonable and objective at the time of enactment of a social security provision are not rendered unreasonable and discriminatory by the socio-economic evolution of society. Finally, we recognize that legislative review is a complex process entailing consideration of many factors, including limited financial resources, and the potential effects of amendments on other existing legislation.'

Do you agree? Should the requirement of non-discrimination, when applied to social and economic rights, be applied with flexibility, leaving a large margin of appreciation to States? Should it be seen as subject to progressive realization, as is the case for some components of social and economic rights?

INSTRUCTIONS: In responding to the above questions, **DO NOT click on 'New Post'**. Click on 'Show discussion', and then, in the first discussion thread, called '**[6.1.2] Non-discrimination in the context of progressive realization of social rights**', click on '**View discussion**' and then on '**Add a response**' to propose your views to the community. If you want to comment on a peer's opinions in that thread then click on 'Add a comment' in his response. You can also watch the tutorial (<http://youtu.be/SINSJKdez6g>) (see also, the updated (<http://youtu.be/TNoOB8q19kQ>) version) in order to make the best use of the interface.

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