



GUATEMALA: A BRIEF ON THE IMPLEMENTATION OF CEDAW COMMITMENTS FROM ARTICLES 2, 5, 11, 16 AND GENERAL RECOMMENDATION 12

*Information for the Committee on the Elimination of Discrimination Against Women
85th Pre-Sessional Working Group, October 2022*

Submitted By

The WORLD Policy Analysis Center
University of California, Los Angeles



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INTRODUCTION

The WORLD Policy Analysis Center, based at the University of California, Los Angeles, captures quantitative policy data on more than 2,000 indicators that matter to equality, health, and well-being. We strive to improve the quantity and quality of globally comparative data available to policymakers, citizens, national governments, intergovernmental organizations, civil society, and researchers for all 193 UN member states. We submit the following brief in advance of the 85th Pre-Sessional Working Group of the Committee on the Elimination of Discrimination against Women.

This brief will focus on the following areas:

1. Non-discrimination in Work and Employment (Article 11)
2. Sexual Harassment in Work and Employment (General Recommendation No. 12)
3. Paid Maternity and Paternity Leave (Articles 11, 5)
4. Child Marriage (Articles 16, 2)

We have collected and analyzed information on rights, laws, and policies in these areas for all 193 UN member states using a variety of sources, including primary national legal sources (e.g. original legislation and constitutions), national reports on policies and laws to the United Nations and official global and regional bodies, and secondary sources where clarification or corroboration of primary data is needed. Using a rigorous double-coding process, we create original databases which distill thousands of pages of text to highlight the essential features of each right, law, or policy. These original databases are the reference for the following brief. When drafting each brief, we perform a series of additional verifications to ensure the data provided reflects the current constitutional and legal landscape of a country.

In this report we first provide a summary of our legislative findings, as well as suggested questions for the Committee to ask Guatemala and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed legislative excerpts documenting our findings. We hope the Committee will recommend that Guatemala address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations. We also recognize that while having strong laws and policies in place are necessary first steps, implementation is also of paramount importance. In areas where we have commended Guatemala for having provisions in place, we hope the Committee will recommend that Guatemala work with stakeholders to overcome any obstacles in implementing these provisions.



SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. Non-Discrimination in Work and Employment (Article 11)

Our review of legislation found that Guatemala includes:

- Legislative protections from sex discrimination in hiring, and equal pay for work of equal value
- Protection from retaliatory action if workers report discrimination on the basis of sex at work
- Protection from terminations on the basis of pregnancy

However, **we did not identify any legislative provisions prohibiting discrimination in promotions, demotions, terminations, and training on the basis of sex. We also did not identify any prohibition of terminations on the basis of marital status or family status.**

We further found no protections from indirect discrimination.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Guatemala: Can Guatemala outline any concrete, near-term plans to pass legislation that explicitly prohibits **sex discrimination** in promotions and demotions, terminations, and training?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Guatemala pass and implement legislation that explicitly prohibits sex discrimination in all dimensions of work.
- In its list of issues, ask Guatemala: Can Guatemala outline any concrete, near-term plans to pass legislation that explicitly **prohibits discrimination in terminations on the basis of family status and marital status?**
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Guatemala pass and implement legislation that explicitly prohibits discrimination in terminations on the basis of family status and marital status.
- In its list of issues, ask Guatemala: Can Guatemala demonstrate whether prohibitions exist against workplace **indirect discrimination** on the basis of sex?
 - If sufficient protections do not exist in this area, recommend in its concluding observations that Guatemala pass and implement legislation that explicitly prohibits workplace indirect discrimination against women.



2. Sexual Harassment and Sex-based Harassment in Work and Employment (General Recommendation No. 12)

Our systematic review of legislation did not identify any national legislative provisions that protect women from sexual harassment or from sex-based harassment at work in Guatemala.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Guatemala: Can Guatemala outline any concrete, near-term plans to pass legislation that explicitly prohibits workplace sexual harassment as well as workplace sex-based harassment and includes the following key elements?
 - An explicit prohibition of sex-based harassment as well as an explicit prohibition of sexual harassment that extends to anyone in the workplace, including supervisors, co-workers, and third-parties, such as customers, clients, or contractors
 - A clear definition of sexual harassment behaviors, including quid pro quo, conduct that creates a hostile work environment, and sex-based harassment
 - A prohibition of retaliatory actions against persons who report cases of workplace sexual or sex-based harassment
 - An effective and inclusive reporting process that ensures all women, regardless of income or social status, have legal recourse
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Guatemala pass and implement legislation that explicitly develops a comprehensive prohibition on sex-based and sexual harassment and which includes all elements listed above.



3. Paid Maternity and Paternity Leave (Articles 11, 5)

Based on our systematic review of national legislation and country reports, Guatemala provides 84 days (or 12 weeks) of paid maternity leave to mothers. Guatemala also provides 2 days of paternity leave to fathers.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Guatemala: Can Guatemala confirm whether paid maternity leave provisions include all categories of female workers, including self-employed women and women working within the informal economy?
 - If Guatemala does not guarantee the inclusion of all types of female workers in its maternity leave provisions, recommend in its concluding observations that Guatemala explore how to fully and effectively expand these guarantees to do so.
- In its concluding observations, recommend that Guatemala:
 - Increase the duration of paid maternity leave to at least 14 weeks, consistent with widely accepted standards set and endorsed by global institutions such as the ILO and UNICEF
 - Increase the duration of paid paternity leave. Ensuring fathers' access to an adequate duration of paid paternity leave is foundational to increasing gender equality in caregiving responsibilities and gender equality in employment.

4. Child Marriage (Articles 16, 2)

Based on our review, Guatemala amended its civil code in 2017 to prohibit the marriage of both boys and girls under 18 under any circumstances. Prior to the passage of this act, 2015 UNICEF data shows a high prevalence of child marriage: 19.8% of girls aged 15-19 were married at time of survey, and 29.5% of women aged 20-24 at time of survey had been married since before age 18.¹

¹ UNICEF data – Child Marriage. Retrieved April 15, 2022 from <https://data.unicef.org/topic/child-protection/child-marriage/>



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Guatemala: Can Guatemala confirm whether it performs any systematic, routine monitoring to ascertain how many girls and boys under the age of 18 are married in the country?
 - If Guatemala does perform this monitoring, ask Guatemala: can Guatemala provide the Committee with recent data on the number of underage marriages in the country?
 - If data continue to show high rates of child marriage, recommend that Guatemala explore how to effectively implement legislative prohibitions of marriage for girls and boys under 18 years old.
 - If Guatemala does not perform this monitoring, recommend that Guatemala begin regularly collecting this information, in order to assess whether the 2017 amendment to its civil code is being effectively implemented.

DETAIL OF LEGISLATIVE FINDINGS

While the following review is systematic and rigorous, we recognize that there may be laws or policies governing these areas that we have not captured, including new legislation or policies that have not yet been published globally.

1. [Non-Discrimination in Work and Employment \(Article 11\)](#)

Article 11 of the Convention outlines specific measures States Parties shall undertake in order to eliminate discrimination in the field of employment.

We systematically reviewed national labor codes, gender equality, and other relevant legislation available through the International Labour Organization's NATLEX database for all 193 UN member states to determine whether national legislation prohibited gender discrimination in employment. We examined legal protections across five areas covered by CEDAW:

- employment opportunities or hiring
- equal pay for work of equal value
- promotions or demotions
- job security or terminations
- training

We assessed whether women were explicitly protected from discrimination at work in each of these areas and whether the definition of discrimination included both direct and indirect discrimination. We



further examined whether there were provisions that protected women from retaliatory action for reporting discrimination.

We also examined whether there were explicit protections from discrimination in terminations on the grounds of pregnancy and marital status, in line with Article 11.2.a) of the Convention, which prohibits “dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status”. We further examined whether explicit protections from terminations on the basis of family status were in place, because of the intersection of family status with both marital status and pregnancy.

Finally, although the Convention focuses only on protecting from dismissal on these grounds, we nevertheless further examined whether discrimination on the grounds of pregnancy, marital status, or family status was prohibited in other stages of employment because of the centrality of these protections from preventing sex discrimination at work, which the convention protects against more broadly.

GUATEMALA’S LEGISLATIVE PROVISIONS: Missing important provisions prohibiting sex discrimination

On sex discrimination

Based on our review, Guatemala’s labor code explicitly prohibits discrimination in hiring and in equal pay for work of equal value on the basis of sex. **However, we found no prohibitions of sex discrimination in promotions or demotions, terminations, or training.**

We further did not identify any explicit prohibition of indirect discrimination.

On the basis of pregnancy

The labor code prohibits discrimination specifically in terminations on the basis of pregnancy, but it does not provide any such protection against discrimination in hiring, promotions or demotions, compensation, or training.

On the basis of marital and family status

The labor code further protects against discrimination on the basis of marital and family status only in broad terms; however, more specific protections against discrimination in, for example, hiring, promotions or demotions, compensation, termination, or training can better protect women with family responsibilities in the workplace, and would be more consistent with art. 11.2a) of the Convention.

On retaliatory action

Guatemala’s legislation prohibits retaliatory action for women who file a complaint for workplace discrimination.



Table 1: Does Guatemala have legislative provisions in place explicitly prohibiting discrimination in the following key areas of employment?					
<i>(An empty cell indicates no relevant provisions were found.)</i>					
	Employment opportunities or hiring	Equal pay for work of equal value	Training	Promotions and demotions	Terminations
Sex	Yes	Yes			
Marital status					
Family status					
Pregnancy					Yes
Indirect discrimination			No provisions found		
Retaliatory action			Yes		

Labor Code of Guatemala, updated to 2020

Artículo 137 bis.

Se prohíbe la discriminación por motivo de sexo, raza, religión, credos políticos, situación económica, por la naturaleza de los centros en donde se obtuvo la formación escolar o académica y de cualquier otra índole para la obtención de empleo en cualquier centro de trabajo (...)

Artículo 89.

Para fijar el importe del salario en cada clase de trabajo, se deben tomar en cuenta la intensidad y calidad del mismo, clima y condiciones de vida. A trabajo igual, desempeñado en puesto y condiciones de eficiencia y antigüedad dentro de la misma empresa, también iguales, corresponderá salario igual, el que debe comprender los pagos que se hagan al trabajador a cambio de su labor ordinaria. En las demandas que entablen las trabajadoras relativas a la discriminación salarial por razón de sexo, queda el patrono obligado a demostrar que el trabajo que realiza la demandante es de inferior calidad y valor.

Artículo 151.

Se prohíbe a los patronos:

(...)



b) Hacer diferencia entre mujeres solteras y casadas y/o con responsabilidades familiares, para los efectos del trabajo.

c) Despedir a las trabajadoras que estuvieren en estado de embarazo o período de lactancia, quienes gozan de inamovilidad. (...)

Artículo 379. Desde el momento en que se entregue el pliego de peticiones al Juez respectivo, se entenderá planteado el conflicto para el solo efecto de que patronos y trabajadores no puedan tomar la menor represalia uno contra el otro, ni impedirle el ejercicio de sus derechos.

2. Sexual Harassment in Work and Employment (General Recommendation No. 12)

Referencing Articles 2, 5, 11, 12, and 16 of the Convention, General Recommendation 12 further recommends that States parties implement legislation protecting women from sexual harassment in the workplace.

We systematically reviewed national labor codes, penal codes, equal opportunity, and other relevant legislation available through the International Labour Organization's NATLEX database for all 193 UN member states to determine whether national legislation prohibited sexual harassment at work. We examined whether protections from sexual harassment at work were in line with international agreement of what constitutes key components on sexual harassment. Namely, do laws define sexual harassment to cover quid pro quo and the creation of a hostile work environment; include sex-based harassment as well as sexual-behavior based harassment; protect workers from harassment by co-workers and other actors in the workplace, as well as supervisors; and ensure workers are protected from retaliation for reporting sexual harassment?

GUATEMALA'S LEGISLATIVE PROVISIONS: No legal protection from sexual harassment at work

Our systematic review of national legislation did not identify any national legislative provisions that protect women from either sexual harassment or sex-based harassment at work in Guatemala. We welcome Guatemala's introduction of a strategy for the prevention of sexual harassment at work, as described in paragraph 194 of the State Party Report; however, to the best of our knowledge, Guatemala is one of only 26% of countries worldwide that do not have any legal protections from sexual harassment at work.

3. Paid Maternity and Paternity Leave (Articles 11, 5)

Article 11.2 of the Convention states that:

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;

Further, Article 5(b) of the Convention emphasizes the importance of including men in the upbringing of children:

To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Research evidence indicates that paid paternity leave can increase gender equality in caregiving responsibilities and gender equality in employment; it is therefore important to ensure fathers have access to adequate paid paternity leave.

We systematically reviewed national labor codes and social security laws to assess the availability of paid maternity and paternity leave. We relied primarily on legislation downloaded through the International Labour Organization's NATLEX database. Additionally, for confirmation or clarification on legal provisions, we consulted trusted secondary sources including the Social Security Programs throughout the World (SSPTW) database, and the International Review of Leave Policies.

GUATEMALA'S LEGISLATIVE PROVISIONS: Length of leave falls short of international standards

Based on our systematic review of national legislation and country reports, Guatemala provides only 84 days (or 12 weeks) of paid maternity leave to mothers, which falls short of the 14 weeks recommended by international organizations such as the International Labour Organization. Guatemala also provides 2 days of paternity leave to fathers.

Labor Code of Guatemala, updated to 2020

Derechos de la madre trabajadora

Artículo 152. La madre trabajadora gozará de un descanso retribuido con el ciento por ciento (100%) de su salario durante los treinta (30) días que precedan al parto y los 54 días siguientes; los días que no pueda disfrutar antes del parto, se le acumularán para ser disfrutados en la etapa post-parto, de tal manera que la madre trabajadora goce de ochenta y cuatro (84) días efectivos de descanso durante ese período: (...)

Artículo 61. Además de las contenidas en otros artículos de este Código, en sus reglamentos y en las leyes de previsión social, son obligaciones de los patronos:

(...)

ñ) Conceder licencia con goce de sueldo a los trabajadores en los siguientes casos:



(...)

3) *Por nacimiento de hijo, dos (2) días.*

(...)

4. Child Marriage (Articles 16, 2)

Child marriage disproportionately affects girls, often leading to social, economic, educational, and health inequalities, which States Parties have committed to eliminating. Article 16.2 of the Convention calls on States Parties to legislate a minimum age of marriage and prohibit the marriage of children. Additionally, disparities in the legal minimum age of marriage between girls and boys contravenes Article 2(a) of the Convention, which commits States Parties to “embody the principle of the equality of men and women” in their “national constitutions or other appropriate legislation”.

We systematically reviewed national civil codes and child-related legislation for all 193 UN member states to determine whether national legislation established a minimum age of marriage for both girls and boys generally, with parental consent, and under religious and customary law. We reviewed all legislation available through the Lexadin World Law Guide, Foreign Law Guide, International Labour Organization’s NATLEX database, regional sources, and official country websites.

GUATEMALA’S LEGISLATIVE PROVISIONS: Child marriage was recently prohibited

Based on our review, Guatemala amended its civil code in 2017 to prohibit the marriage of both boys and girls under 18 under any circumstances. The latest available data on percentages of child marriage from UNICEF (2015) predates this amendment.

Civil Code of Guatemala, as amended to 2017

Artículo 83 [amended by Decree 13-2017]- Prohibición de contraer matrimonio. No podrán contraer matrimonio ni autorizarse de manera alguna, el matrimonio de menores de dieciocho (18) años de edad.