



## El Salvador: A Brief on Constitutional and Legal Guarantees to Non-Discrimination, Equality, and Education

*Information for the Committee on Economic, Social, and Cultural Rights  
67<sup>th</sup> Pre-Sessional Working Group, October 2020*

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## EXECUTIVE SUMMARY

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 67<sup>th</sup> Pre-Sessional Working Group of the Committee on Economic, Social, and Cultural Rights.

This brief will focus on the following three areas:

1. Equality and non-discrimination (Article 2, General Comment No. 5)
2. Non-discrimination in work and employment (Article 7)
3. Free and compulsory education (Article 13)

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 executive summary, we provide our findings and suggestions for questions the committee may ask regarding areas that may have not been covered. Finally, we suggest topics to be addressed by the committee in concluding observations. We hope the Committee will recommend that the El Salvador address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations.

The WORLD Policy Analysis Center's examination of El Salvador's constitutional provisions and legislation vis à vis the commitments it has made through its ratification of the ICESCR is focused in the following areas:

### ***Areas where El Salvador does not appear to have relevant provisions in place:***

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#### **A) Equality and non-discrimination (Article 2, General Comment No. 5)**

Based on our review of full-text national constitutions, El Salvador's constitution states that all persons are equal before the law. However, the **constitution fails to guarantee equality or non-discrimination to all persons explicitly based on race, colour, sex, language, religion, political or other opinion, national or social origin, property status, birth status, or disability status.**



**We hope the Committee will:**

- Recommend in its concluding observations that El Salvador consider amending its constitution to add explicit guarantees of equality and non-discrimination for all persons regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property status, birth status, and disability status, consistent with ICESCR commitments.

***Areas where El Salvador has provisions in place, but where these provisions do not appear to fully address the commitments El Salvador has made through its ratification of the Covenant:***

**A) Non-discrimination in work and employment (Article 7)**

Our systematic review of national legislation finds that El Salvador does not consistently and explicitly protect all workers from workplace discrimination across four key areas of employment: employment opportunities or hiring, equal remuneration, promotions and demotions, and dismissals. Legislation **broadly prohibits employers from making any distinction between workers for reasons based on race, colour, sex, religion, political opinion, national origin, and social origin**. El Salvador also specifically guarantees **equal pay for equal work regardless of sex, race, color, nationality, political opinion, and religion**, but **falls short of guaranteeing the stronger protection of equal remuneration for work of equal value for these protected characteristics**, as outlined in Article 7 of the Covenant. Further, the provisions of this law notably **do not extend to workers facing discrimination based on language, property status, and birth status**. El Salvador has also passed legislation guaranteeing the **right of persons with disabilities to not be dismissed because of their disability**, but legislation does not explicitly prohibit disability-based discrimination in other critical areas of employment.

**Table 1. Guaranteed provisions of non-discrimination across four key areas of employment for personal characteristics covered by the Covenant**

	Discrimination Broadly Prohibited	Employment Opportunities or hiring	Equal remuneration	Promotions and demotions	Dismissals
Race and colour	✓		✓		
Sex	✓		✓		
Language					
Religion	✓		✓		
Political opinion	✓		✓		
National origin	✓		✓		
Social origin	✓				
Property status					
Birth status					
Disability					✓

Note: An empty cell indicates no relevant provisions were found.



**We hope the Committee will:**

- In its list of issues, ask El Salvador: Can El Salvador outline any concrete, near-term plans to pass legislation prohibiting all forms of workplace discrimination based on, language, property status, and birth status?
  - If El Salvador does not have concrete, near-term plans to pass and implement such legislation, recommend in its concluding observations that El Salvador pass and implement legislation that explicitly prohibits workplace discrimination based on language, property status, and birth status, particularly in:
    - employment opportunities or hiring
    - equal remuneration for work of equal value
    - promotions and demotions
    - dismissals or terminations
- In its list of issues, ask El Salvador: Can El Salvador outline any concrete, near-term plans to amend current legislation to guarantee equal remuneration for work of equal value to workers with disabilities, and prohibit other forms of disability-based workplace discrimination, particularly in hiring and recruitment, promotions, and demotions?
  - If El Salvador does not have concrete, near-term plans to amend current legislation, recommend in its concluding observations that El Salvador amend current legislation to explicitly guarantee equal remuneration for work of equal value to workers with disabilities and prohibit disability-based workplace discrimination during hiring and recruitment, promotions, and demotions.
- In its list of issues, ask El Salvador: Can El Salvador demonstrate whether broad prohibitions of workplace discrimination based on race, colour, sex, religion, political opinion, national origin, and social origin have been interpreted to include all forms of discrimination including discrimination during hiring and recruitment, promotions and demotions, and dismissals?

***Areas where El Salvador's provisions are consistent with or directly support the Covenant:***

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**Free and compulsory education (Article 13)**

Based on our systematic review of legislation, El Salvador **guarantees nine years of free and compulsory education for all children**. This is a positive and important provision to have in place. However, 2018 data from the UNESCO Institute for Statistics indicates that nearly 14% of primary school aged children were not enrolled in primary school.<sup>1</sup>

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<sup>1</sup> UNESCO Institute for Statistics. Education: Out-of-school rate for children of primary school age, 2018. Web. 18 August 2020. <<http://data.uis.unesco.org/>>



**We hope the Committee will:**

- In its list of issues, ask El Salvador: Can El Salvador demonstrate how legal guarantees of free and compulsory education are being implemented equally for all children? What are the obstacles faced by the children who remain out of school?
  - Where El Salvador has not been able to fully and equally implement these guarantees to free and compulsory primary education for all children, recommend in its concluding observations approaches to advancing these educational guarantees fully and effectively.

**DETAIL**

## 1. Equality and Non-Discrimination (Article 2, General Comment No. 5)

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Article 2 (2) of The Covenant states that:

*The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Furthermore, General Comment No. 5, explicitly addresses non-discrimination of persons with disabilities by stating:

*[...] the requirement contained in article 2 (2) of the Covenant that the rights “enunciated ... will be exercised without discrimination of any kind” based on certain specified grounds “or other status” clearly applies to discrimination on the grounds of disability.*

We reviewed full text constitutions for all 193 UN member states available from official government sources to determine whether the constitution took any approach to equality across the grounds listed in Article 2.2 and General Comment No. 5 of the ICESCR by prohibiting discrimination, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities based on each specific characteristics.

### *EL SALVADOR’S CONSTITUTIONAL PROVISIONS: MISSING EXPLICIT GUARANTEES OF EQUALITY AND NON-DISCRIMINATION*

Article 3 of El Salvador’s constitution states that all persons are equal before the law. However, the constitution fails to guarantee equality or non-discrimination to all persons explicitly on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or disability status.



*Art. 3.- Todas las personas son iguales ante la ley. Para el goce de los derechos civiles no podrán establecerse restricciones que se basen en diferencias de nacionalidad, raza, sexo o religión. No se reconocen empleos ni privilegios hereditarios.*

### WHY CONSTITUTIONS MATTER

Constitutions state the values of a country, describe the rights of people living within the country, and profoundly influence norms and practice. In nearly all countries, constitutions take precedence over other sources of law—making them critical tools for delineating and implementing equal rights. New constitutions and new rights guaranteed in constitutions can be used to overturn discriminatory laws as well as to legislate non-discrimination guarantees. Moreover, constitutions can offer protection against policy and legal changes during periods of social and political shifts that may seek to undermine equal rights. For these reasons and others, as the foundational document setting out the rights of all human beings in a country, a constitution and the rights contained therein are essential to realizing equal rights.

## 2. Work and Employment (Article 7)

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In addition to Article 2(2) and General Comment No. 5 of the Covenant, which guarantee equal rights regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and disability status, Article 7 of the Covenant outlines a number of specific measures States Parties shall undertake in order to eliminate discrimination in the field of employment:

*The States Parties to the present Covenant recognize 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:*

*(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;*

We systematically reviewed national labour codes, penal codes, equal opportunity, anti-discrimination legislation 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 discrimination in employment across four areas covered by the ICESCR:

- Employment opportunities or hiring



- Equal remuneration for work of equal value
- Promotions and demotions
- Dismissals or terminations

For each area, we assessed whether there were explicit prohibitions from discrimination across the grounds listed in Article 2.2 and General Comment No. 5 of the Covenant.

#### *EL SALVADOR'S LEGISLATIVE PROVISIONS: LIMITED PROTECTIONS FROM WORKPLACE DISCRIMINATION*

El Salvador's *Código de Trabajo* does not consistently and explicitly protect all workers from workplace discrimination across the following four key areas of employment: employment opportunities or hiring, equal remuneration, promotions and demotions, and dismissals. While Article 30 of the law broadly prohibits employers from making any distinction between workers for reasons based on race, colour, sex, religion, political opinion, national origin, and social origin, this provision does not extend to all characteristics covered through ICESCR commitments, and excludes workers facing discrimination based on language, property status, and birth status. Article 123 of the law also guarantees equal pay for equal work regardless of sex, race, color, nationality, political opinion, and religion. However, this provision falls short of guaranteeing the stronger equal remuneration for work of equal value between workers, as outlined in Article 7 of the Covenant.

Additionally, the *Ley de Equiparación de Oportunidades para las Personas con Discapacidad* guarantees the right of persons with disabilities to not be terminated because of their disability.

#### ***Código de Trabajo***

*SECCION SEGUNDA.*

*PROHIBICIONES*

*Art. 30.-Se prohíbe a los patronos:*

*[...]*

*12) Establecer cualquier distinción, exclusión o preferencia basada en motivos de raza, color, sexo, religión, opinión política, ascendencia nacional u origen social, salvo las excepciones previstas por la Ley con fines de protección de la persona del trabajador.*

*Art. 123.- Los trabajadores que en una misma empresa o establecimiento y que en idénticas circunstancias desarrollen una labor igual, devengarán igual remuneración cualquiera que sea su sexo, edad, raza, color, nacionalidad, opinión política o creencia religiosa*

#### ***LEY DE EQUIPARACIÓN DE OPORTUNIDADES PARA LAS PERSONAS CON DISCAPACIDAD***

*Art. 2.- La persona con discapacidad tiene derecho:*

*[...]*

*5.- A obtener empleo y ejercer una ocupación remunerada y a no ser despedido en razón de su discapacidad.*



### 3. Free and Compulsory Education (Article 13)

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Article 13 of the Covenant states that:

*1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*

*2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:*

*(a) Primary education shall be compulsory and available free to all;*

*(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;*

For all 193 UN member states, we systematically reviewed education acts and child protection laws available online through UNESCO's Observatory on the Right to Education Library and International Labour Organization's NATLEX database. Through the review we determined whether national legislation guaranteed free and compulsory education at the primary and secondary level.

#### *EL SALVADOR'S LEGISLATIVE PROVISIONS: GUARANTEED FREE AND COMPULSORY BASIC EDUCATION*

Based on our systematic review of legislation, Article 20 of the *Ley General de Educación* in El Salvador guarantees nine years of free and compulsory basic education for all children.

*Art. 20.- La Educación Básica comprende regularmente nueve años de estudio del primero al noveno grados y se organiza en tres ciclos de tres años cada uno, iniciándose normalmente a los siete años de edad. Será obligatoria y gratuita cuando la imparta el Estado.*





## El Salvador: Reference Sheet

### Recommended Questions for the List of Issues and Concluding Observations

For the Committee on the Economic, Social, and Cultural Rights  
67<sup>th</sup> Pre-Sessional Working Group, October 2020

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#### Recommended Questions for El Salvador's List of Issues:

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##### **Work and Employment**

- Can El Salvador outline any concrete, near-term plans to pass legislation prohibiting all forms of workplace discrimination based on, language, property status, and birth status?
- Can El Salvador outline any concrete, near-term plans to amend current legislation to guarantee equal remuneration for work of equal value to workers with disabilities, and prohibit other forms of disability-based workplace discrimination, particularly in hiring and recruitment, promotions, and demotions?
- Can El Salvador demonstrate whether broad prohibitions of workplace discrimination based on race, colour, sex, religion, political opinion, national origin, and social origin have been interpreted to include all forms of discrimination including discrimination during hiring and recruitment, promotions and demotions, and dismissals?

##### **Free and Compulsory Education**

- Can El Salvador demonstrate how legal guarantees of free and compulsory education are being implemented equally for all children? What are the obstacles faced by the children who remain out of school?

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#### Recommended Concluding Observations for El Salvador's (where El Salvador's responses to questions from the list of issues are unclear or insufficient):

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\*Note that wherever possible, these recommendations should be implemented in collaboration with relevant stakeholders, including civil society organizations.

##### **Equality and Non-Discrimination**

- Recommend that El Salvador consider amending its constitution to add explicit guarantees of equality and non-discrimination for all persons regardless of race, colour, sex, language, religion,



political or other opinion, national or social origin, property status, birth status, and disability status, consistent with ICESCR commitments.

### **Work and Employment**

- Recommend that El Salvador pass and implement legislation that explicitly prohibits workplace discrimination based on language, property status, and birth status, particularly in:
  - Employment opportunities or hiring
  - Equal remuneration for work of equal value
  - Promotions and demotions
  - Dismissals or terminations
- Recommend that El Salvador amend current legislation to explicitly guarantee equal remuneration for work of equal value to workers with disabilities and prohibit disability-based workplace discrimination during hiring and recruitment, promotions, and demotions.

### **Free and Compulsory Education**

- Where El Salvador has not been able to fully and equally implement guarantees to free and compulsory primary education for all children, recommend in its concluding observations approaches to advancing these educational guarantees fully and effectively.

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*Brief prepared by the World Policy Analysis Center, University of California, Los Angeles*