



## Guatemala: 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 Guatemala address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations.

The WORLD Policy Analysis Center's examination of Guatemala'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 Guatemala has provisions in place, but where these provisions do not appear to fully address the commitments Guatemala has made through its ratification of the Covenant:***

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

Guatemala's constitution **guarantees equal opportunities and responsibilities between men and women**. The constitution further guarantees equal rights for all naturalized citizens. However, the constitution **fails to guarantee equality and non-discrimination on the basis of other characteristics outlined in Article 2 and General Comment 5 of the ICESCR, including persons facing discrimination**



based on language, religion, political or other opinion, social origin, property status, birth status, or disability status.

**We hope the Committee will:**

- Recommend in its concluding observations that Guatemala consider amending its constitution to add explicit guarantees of equality and non-discrimination on the basis of language, religion, political or other opinion, social origin, property status, birth status, and disability status, consistent with ICESCR commitments.

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

Our systematic review of national legislation shows that Guatemala does not consistently and explicitly prohibit workplace discrimination across four key areas of employment: employment opportunities or hiring, equal remuneration, promotions and demotions, and dismissals. Legislation in Guatemala **prohibits employers from discriminating during the hiring process based on race, sex, and disability status.** However, **several groups covered through ICESCR commitments are not protected by these provisions, such as workers facing discrimination based on language, national or social origin, and birth status.** The law also **guarantees equal remuneration to workers regardless of race, sex, religion, political opinion, and property status, but only guarantees the stronger provision of equal remuneration for work of equal value between men and women.**

**Table 1. Guaranteed protections of non-discrimination across four key areas of employment for 10 statuses and personal characteristics covered by the Covenant**

	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.  
\*Also guarantees equal remuneration for work of equal value

**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 discrimination based on language, national origin, social origin, and birth status?



- If Guatemala does not have concrete, near-term plans in place, recommend in its concluding observations that Guatemala pass and implement legislation that explicitly prohibits discrimination on the basis of all characteristics covered in Article 2 and General Comment 5 of ICESCR, particularly in the following aspects of employment:
  - Employment opportunities and hiring
  - Equal remuneration for work of equal value
  - Career advancements including promotions and demotions
  - Continuance of employment or terminations
- In its list of issues, ask Guatemala: Can Guatemala outline how it is enforcing existing workplace non-discrimination provisions on basis of race, sex, religion, political opinion, property status, and disability status?
  - Where Guatemala is not fully implementing these protections, recommend in its concluding observations that Guatemala explore how to implement these provisions fully and effectively.

***Areas where Guatemala’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, **public education in Guatemala is guaranteed to be free and compulsory through the end of the upper secondary level**, or “diversificado”. This is a positive and important step to have in place. However, 2018 data from the UNESCO Institute for Statistics indicates that nearly 11% of primary school aged children were not enrolled in primary school.<sup>1</sup>

**We hope the Committee will:**

- In its list of issues, ask Guatemala: Can Guatemala demonstrate how legal guarantees of free and compulsory primary education are being implemented equally for all children? What are the obstacles faced by children who remain out of school?
  - Where Guatemala 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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<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/>>



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 based on each specific characteristic, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

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

Article 4 of Guatemala’s constitution guarantees equal opportunities and responsibilities between men and women. Article 146 further extends all rights to naturalized Guatemalan citizens:

*ARTICULO 4. Libertad e igualdad. En Guatemala todos los seres humanos son libres e iguales en dignidad y derechos. El hombre y la mujer, cualquiera que sea su estado civil, tienen iguales oportunidades y responsabilidades. Ninguna persona puede ser sometida a servidumbre ni a otra condición que menoscabe su dignidad. Los seres humanos deben guardar conducta fraternal entre sí.*

*ARTICULO 146. Naturalización. Son guatemaltecos, quienes obtengan su naturalización, de conformidad con la ley. Los guatemaltecos naturalizados, tienen los mismos derechos que los de origen, salvo las limitaciones que establece esta Constitución.*

However, many characteristics covered by Article 2 and General Comment No. 5 of ICESCR are not covered by the constitutional provisions above, including persons facing discrimination based on language, religion, political or other opinion, social origin, property, or disability status.



### *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 guarantees 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.

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

Guatemala's *Código de Trabajo* does not consistently and explicitly protect all workers from workplace discrimination across four key areas of employment: employment opportunities or hiring, equal remuneration for work of equal value, promotions and demotions, and dismissals. Article 151 of the law prohibits discrimination in hiring based on sex and race, while Article 137bis prohibits discrimination in remuneration based on sex, race, religion, political opinion and economic status. These provisions do not extend to workers facing discrimination based on religion, language, national or social origin, and birth status.

In addition, despite Guatemala's commitment to guaranteeing the stronger protection of equal remuneration for work of equal value without any distinction through Article 7 of the Covenant, Article 89 of Guatemala's law only mandates equal pay for work of equal value without discrimination on the basis of sex.

Additionally, Articles 34 and 35 of the *Ley de Atención a las Personas con Discapacidad* prohibit discrimination in hiring based on disability, but the law fails to prohibit discrimination in other areas of employment.

#### ***Código 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 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. El acceso que las o los trabajadores puedan tener a los establecimientos a los que se refiere este artículo, no puede condicionarse al monto de sus salarios ni a la importancia de los cargos que desempeña.*

##### *Artículo 151.*



*Se prohíbe a los patronos: a) Anunciar por cualquier medio, sus ofertas de empleo, especificando como requisito para llenar las plazas el sexo, raza, etnia y estado civil de la persona, excepto que por la naturaleza propia del empleo, éste requiera de una persona con determinadas características (...).*

***Ley de Atención a las Personas con Discapacidad***

**ARTICULO 34.**

*El Estado garantiza la facilitación de la creación de fuentes de trabajo para que las personas con discapacidad, tengan el derecho de un empleo adecuado a sus condiciones y necesidades personales, dependiendo de las limitaciones físicas o mentales que presenten.*

**ARTICULO 35.**

*Se consideran actos de discriminación, el emplear en la selección de personal mecanismos que no estén adaptados a las condiciones de los aspirantes, el exigir requisitos adicionales a los establecidos para cualquier solicitante y el no emplear, por razón de su discapacidad, a un trabajador idóneo. También se considera acto discriminatorio que, en razón de la discapacidad, a una persona se le niegue el acceso y la utilización de los recursos productivos.*

### 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.





*GUATEMALA'S LEGISLATIVE PROVISIONS: GUARANTEED FREE AND COMPULSORY EDUCATION THROUGH UPPER SECONDARY LEVEL*

In Guatemala, the *Ley de Protección Integral de la Niñez y la Adolescencia* guarantees free and compulsory public education through the end of the upper secondary level (“diversificado”).

***Ley de Protección Integral de la Niñez y la Adolescencia, Decreto n° 27-2003***

*ARTICULO 37. Educación pública. La educación pública deberá ser gratuita, laica y obligatoria hasta el último grado de diversificado.*



## Guatemala: 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 Guatemala's List of Issues:

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

- Can Guatemala outline any concrete, near-term plans to pass legislation that explicitly prohibits workplace discrimination based on language, national origin, social origin, and birth status?
- Can Guatemala outline how it is enforcing existing workplace non-discrimination provisions on basis of race, sex, religion, political opinion, property status, and disability status?

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

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

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#### Recommended Concluding Observations for Guatemala (where Guatemala'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 Guatemala consider amending its constitution to add explicit guarantees of equality and non-discrimination on the basis of language, religion, political or other opinion, social origin, property status, birth status, and disability status, consistent with ICESCR commitments.



### **Work and Employment**

- Recommend that Guatemala pass and implement legislation that explicitly prohibits discrimination on the basis of all characteristics covered in Article 2 and General Comment 5 of the ICESCR, particularly in:
  - Employment opportunities or hiring
  - Equal remuneration for work of equal value
  - Promotions or demotions
  - Dismissals or terminations
- Where Guatemala is not fully implementing existing workplace non-discrimination provisions on basis of race, sex, religion, political opinion, property status, and disability status, recommend that Guatemala explore how to implement these provisions fully and effectively.

### **Free and Compulsory Education**

- Where Guatemala has not been able to fully and equally implement guarantees to free and compulsory primary education for all children, recommend that Guatemala explore how to implement these educational guarantees fully and effectively.

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