

INDONESIA: A BRIEF ON LEGAL GUARANTEES TO NON-DISCRIMINATION IN WORK AND EMPLOYMENT, CONSTITUTIONAL GUARANTEES TO EQUALITY AND NON-DISCRIMINATION, AND CHILD MARRIAGE

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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 70th 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. Child marriage (Articles 2 and 10)
3. Non-discrimination in work and employment (Article 7)

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 constitutional and legislative findings, as well as suggested questions for the Committee to ask Indonesia and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed constitutional and legislative excerpts documenting our findings. We hope the Committee will recommend that Indonesia 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 Indonesia for having provisions in place, we hope the Committee will recommend that Indonesia work with stakeholders to overcome any obstacles in implementing these provisions.



SUMMARY OF FINDINGS AND RECOMMENDATIONS

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

Based on our review of full-text national constitutions, we find that Indonesia's constitution broadly protects all persons from discriminatory treatment. In a fundamental document such as the constitution, it is important to ensure that a universal non-discrimination provision guarantees equality and non-discrimination to all persons who may experience discrimination.

We hope the Committee will:

- In its list of issues, ask Indonesia: Can Indonesia demonstrate whether this universal constitutional protection from discriminatory treatment has been interpreted through case law or other policies to apply to all characteristics and statuses listed in the Covenant?
- If Indonesia cannot demonstrate that this broad constitutional protection is inclusive of all characteristics and statuses listed in the Covenant, recommend in its concluding observations that **Indonesia amend the constitution to add explicit guarantees of equality and non-discrimination based on race, color, sex, language, religion, political and other opinion, national or social origin, property, birth, and disability status**, consistent with commitments made through the Covenant and General Comment No. 5. These provisions could be added to Article 28I of the constitution to ensure that all persons with these characteristics and statuses are explicitly protected from discrimination.

2. Non-Discrimination in Work and Employment (Article 7)

Based on our systematic review of national legislation, we find that Indonesia's Act No. 13 of 2003 on Labor broadly prohibits the discrimination of workers based on race, color, sex, religion, and political affiliation. The law also specifically protects these groups of workers from discrimination in hiring and employment opportunities and dismissals, including retaliatory dismissals. The 2016 Law on Persons with Disabilities also guarantees non-discrimination to workers with disabilities. Specifically, workers with disabilities have the right to obtain employment without discrimination, are guaranteed equal wages compared to workers without disabilities for the same type of work, and are guaranteed reasonable accommodation. **There are, however, several groups protected through the Covenant's commitments that are not included in these legislative provisions, including workers facing discrimination based on language, national or social origin, property status, or birth status.**

We hope the Committee will:

- In its list of issues, ask Indonesia: Can Indonesia demonstrate whether broad prohibitions of workplace discrimination have been interpreted to include specific forms of discrimination that occur during promotions, demotions, and remuneration, when these explicit prohibitions are missing?



- If Indonesia cannot demonstrate that broad prohibitions of workplace discrimination have been interpreted to prohibit discrimination during promotions, demotions, and remuneration, recommend in its concluding observations that Indonesia pass and implement legislation that explicitly prohibits discrimination in these critical areas of employment.
- In its list of issues, ask Indonesia: Can Indonesia outline any concrete, near-term plans to pass legislation that explicitly prohibits all forms of workplace discrimination based on language, national and social origin, property status, and birth status?
 - If Indonesia does not have concrete, near-term plans in place, recommend in its concluding observations that Indonesia pass and implement legislation that explicitly prohibits discrimination on the basis of all groups covered in Article 2 and General Comment 5 of the ICESCR, particularly in the following aspects of employment:
 - Employment opportunities and hiring
 - Equal remuneration for work of equal value
 - Career advancement, including promotions and demotions
 - Continuance of employment or terminations
 - We also hope the Committee will recommend that this legislation includes effective enforcement mechanisms, as well as protection from retaliation by employers against those reporting incidents of workplace discrimination.
- In its list of issues, ask Indonesia: Can Indonesia demonstrate how it is enforcing guarantees of reasonable accommodation at work to persons with disabilities?
 - Where Indonesia is not fully implementing this guarantee of reasonable accommodation, recommend in its concluding observations that Indonesia develop concrete steps towards full implementation.

3. Child Marriage (Articles 3, 10)

In 2019, Indonesia amended the 1974 Marriage Law to remove the legal gender disparity that allowed girls to be married at the age of 16 with parental consent, three years younger than boys, who could marry beginning at the age of 19. Since the amendment, all children under the age of 19 are prohibited from marrying, even with parental consent. We commend Indonesia for implementing this amendment and taking this critical step to remove formally embedded gender disparities within the law.

We hope the Committee will:

- In its list of issues, ask Indonesia: Can Indonesia outline the steps it is taking to implement and enforce the new minimum age of marriage to ensure that all girls are protected from earlier marriage?
 - If Indonesia cannot outline concrete steps it is taking to implement and enforce the new minimum age of marriage, recommend in its concluding observations that Indonesia develop a plan to implement, enforce, and monitor the law.



DETAIL OF CONSTITUTIONAL AND LEGISLATIVE FINDINGS

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

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.

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.

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 Covenant by prohibiting discrimination based on each specific status, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

INDONESIA’S CONSTITUTIONAL PROVISIONS: MISSING EXPLICIT GUARANTEES OF EQUALITY AND NON-DISCRIMINATION

According to Article 28I of Indonesia’s constitution, all persons are broadly protected from discriminatory treatment. In a fundamental document such as the constitution, it is important to ensure that a universal non-discrimination provision guarantees equality and non-discrimination to all persons who may experience discrimination.

Constitution of Indonesia

Article 28I



(2) Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment.

2. Non-Discrimination in Work and Employment (Article 7)

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;

For workers with disabilities, Paragraph 22 of General Comment No. 5 further calls on States to remove barriers to employment by promoting and regulating “work arrangements that reasonably accommodate the needs of disabled workers.”

We systematically reviewed national labor 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 of employment covered by the Covenant:

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

For each provision, 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. We also examined whether there were provisions that protected workers from retaliatory action for reporting discrimination in these four areas, and whether reasonable accommodation was guaranteed for workers with disabilities.



INDONESIA'S LEGISLATIVE PROVISIONS: LIMITED PROTECTIONS FROM WORKPLACE DISCRIMINATION

Based on our systematic review of national legislation, we find that Article 6 of Indonesia's Act No. 13 of 2003 on Labor broadly prohibits the discrimination of workers based on race, ethnicity, color, sex, religion, and political affiliation. The law also specifically protects these groups of workers from discrimination in hiring and employment opportunities and dismissals, including retaliatory dismissals.

Act No. 13 on Labor, 2003¹

Article 5

Every person available for a job shall have the same opportunity to get a job without discrimination.

Article 6

Every worker/laborer has the right to receive equal treatment without discrimination from their employer.

Article 32

(1) Job placement shall be carried out based on transparency, respect for each other's freedom, objectivity, fairness and equal opportunity without discrimination.

Article 153

(1) The entrepreneur is prohibited from terminating the employment of a worker/ laborer because of the following reasons:

i. Because the worker/ laborer is of different understanding/ belief, religion, political orientation, ethnicity, color, race, sex, physical condition, or marital status.

Explanatory Notes on Act No. 13 on Labor, 2003

Article 5

Every person who is available for a job shall have the same right and opportunity to find a decent job and to earn a decent living without being discriminated against on grounds of sex, ethnicity, race, religion, political orientation, in accordance with the person's interest and capability, including the provision of equal treatment to the disabled.

Article 6

Entrepreneurs are under an obligation to give the worker/laborer equal rights and responsibilities without discrimination based on sex, ethnicity, race, religion, skin color, and political orientation.

Article 32

Subsection (1)

¹ Translation provided by ILO Jakarta at <https://www.ilo.org/dyn/travail/docs/760/Indonesian+Labour+Law+-+Act+13+of+2003.pdf>



The phrase “fairness and equal opportunities without discrimination” here shall refer to placement purely based on the ability of the manpower and not based on the manpower’s race, sex, skin color, religion, and political orientation.

Table 1. Guaranteed legal provisions of non-discrimination across 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.

The more recent Law on Persons with Disabilities from 2016 also guarantees non-discrimination to workers with disabilities. Specifically, workers with disabilities have the right to obtain employment without discrimination and are guaranteed equal wages compared to non-disabled workers for the same type of work. The law also requires employers to provide reasonable accommodation for workers and prospective workers.

Law on Persons with Disabilities, 2016

Pasal 1

Dalam Undang-Undang ini yang dimaksud dengan:

3. Diskriminasi adalah setiap perbedaan, pengecualian pembatasan, pelecehan, atau pengucilan atas dasar disabilitas yang bermaksud atau berdampak pada pembatasan atau peniadaan pengakuan, penikmatan, atau pelaksanaan hak Penyandang Disabilitas.

Pasal 11

Hak pekerjaan, kewirausahaan, dan koperasi untuk Penyandang Disabilitas meliputi hak:

- a. memperoleh pekerjaan yang diselenggarakan oleh Pemerintah, Pemerintah Daerah, atau swasta tanpa Diskriminasi*
- b. memperoleh upah yang sama dengan tenaga kerja yang bukan Penyandang Disabilitas dalam jenis pekerjaan dan tanggung jawab yang sama*

Pasal 48

Pemberi Kerja dalam penempatan tenaga kerja Penyandang Disabilitas dapat:



- a. memberikan kesempatan untuk masa orientasi atau adaptasi di awal masa kerja untuk menentukan apa yang diperlukan, termasuk penyelenggaraan pelatihan atau magang;
- b. menyediakan tempat bekerja yang fleksibel dengan menyesuaikan kepada ragam disabilitas tanpa mengurangi target tugas kerja;
- c. menyediakan waktu istirahat;

Pasal 49

Pemberi Kerja wajib memberi upah kepada tenaga kerja Penyandang Disabilitas yang sama dengan tenaga kerja yang bukan Penyandang Disabilitas dengan jenis pekerjaan dan tanggung jawab yang sama

Pasal 50

- (1) *Pemberi Kerja wajib menyediakan Akomodasi yang Layak dan fasilitas yang mudah diakses oleh tenaga kerja Penyandang Disabilitas.*
- (2) *Pemberi Kerja wajib membuka mekanisme pengaduan atas tidak terpenuhi hak Penyandang Disabilitas.*
- (3) *Pemerintah dan Pemerintah Daerah wajib menyosialisasikan penyediaan Akomodasi yang Layak dan fasilitas yang mudah diakses oleh tenaga kerja Penyandang Disabilitas.*
- (4) *Pemberi Kerja yang tidak menyediakan Akomodasi yang Layak dan fasilitas yang mudah diakses oleh tenaga kerja Penyandang Disabilitas dikenai sanksi administratif berupa:*
 - a. *teguran tertulis;*
 - b. *penghentian kegiatan operasional;*
 - c. *pembekuan izin usaha; dan*
 - d. *pencabutan izin usaha.*

There are, however, several groups protected through the Covenant’s commitments that are not included in these legislative provisions, including workers facing discrimination based on language, national or social origin, property status, or birth status.

3. Child Marriage (Articles 3, 10)

Article 10 (1) of the Covenant states that all States Parties must recognize that:

[...] Marriage must be entered into with the free consent of the intending spouses.

Additionally, Article 3 guarantees this right to be applied to all persons equally regardless of sex:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Child marriage has life-long health, educational, and economic consequences, particularly for girls. Child brides are more likely to drop out of school, be victims of domestic abuse, and experience pregnancy and childbirth complications due to early childbearing, all of which affect core rights of the Covenant, specifically the right to physical and mental health (Article 12), and the right to education (Article 13).



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, Pacific Islands Legal Information Institute, Asian Legal Information Institute, JaFBase, and official country websites.

INDONESIA’S LEGISLATIVE PROVISIONS: IMPLEMENTING AND MONITORING THE AMENDMENT TO THE MINIMUM AGE OF MARRIAGE

In 2019, Indonesia amended the 1974 Marriage Law to remove the legal gender disparity that allowed girls to be married at the age of 16 with parental consent, three years younger than boys, who could marry at the age of 19. Now, all children under the age of 19 are not permitted to marry even with parental consent. We commend Indonesia for implementing this amendment and taking this important step to remove formally embedded gender disparities within the laws.

BRIEFING PREPARED BY THE WORLD POLICY ANALYSIS CENTER, UNIVERSITY OF CALIFORNIA, LOS ANGELES