

IRELAND: A BRIEF ON LEGAL GUARANTEES TO NON-
DISCRIMINATION IN WORK AND EMPLOYMENT
AND CONSTITUTIONAL GUARANTEES TO EQUALITY AND
NON-DISCRIMINATION

*Information for the Committee on Economic, Social, and Cultural Rights
70th Pre-Sessional Working Group, March 2022*

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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 two areas:

1. Equality and non-discrimination (Article 2, General Comment No. 5)
2. 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 Ireland 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 Ireland 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 Ireland for having provisions in place, we hope the Committee will recommend that Ireland 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 Ireland's constitution broadly guarantees equality to all citizens and specifically prohibits the State from discriminating against any person based on religion. In a fundamental document such as the constitution, it is important to explicitly guarantee equality and non-discrimination to all persons who may experience discrimination.

We hope the Committee will:

- In its list of issues, ask Ireland: Can Ireland demonstrate whether the universal constitutional right to equality has been interpreted through case law or other policies to apply to all characteristics and statuses listed in the Covenant?
- If Ireland cannot demonstrate that this constitutional universal protection is inclusive of all characteristics and statuses listed in the Covenant, recommend in its concluding observations that Ireland **amend the constitution to add explicit guarantees of equality and non-discrimination based on race, color, sex, language, 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 40 of the constitution, which presently outlines other personal rights of individuals.

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

Based on our systematic review of national legislation, Ireland provides comprehensive protection from workplace discrimination for many characteristics and statuses. The law prohibits employers from discriminating against any employee or prospective employee based on their race, color, national and ethnic origin, gender, religion, and disability status. These prohibitions of discrimination extend to key areas of employment including employment opportunities and hiring, remuneration, promotions and demotions, and dismissals. Legislation also prohibits employers from retaliating against individuals who report cases of discrimination, and requires employers to provide reasonable accommodation and other appropriate measures to workers with disabilities. **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, political opinion, social origin, property status, and birth status.**

We hope the Committee will:

- In its list of issues, ask Ireland: Can Ireland outline any concrete, near-term plans to pass legislation that explicitly prohibits all forms of workplace discrimination based on language, political opinion, social origin, property status, and birth status?



- If Ireland does not have concrete, near-term plans in place, recommend in its concluding observations that Ireland 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 Ireland: Can Ireland demonstrate how it is enforcing guarantees of reasonable accommodation at work to persons with disabilities?
 - Where Ireland is not fully implementing this guarantee of reasonable accommodation, recommend in its concluding observation that Ireland develop concrete steps towards full implementation.

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.

IRELAND'S CONSTITUTIONAL PROVISIONS: MISSING EXPLICIT GUARANTEES OF EQUALITY AND NON-DISCRIMINATION

Article 40 of Ireland's constitution broadly guarantees equality to all citizens, and Article 44 further prohibits the State from discriminating on the basis of religion. In a fundamental document such as the constitution, it is important to explicitly guarantee equality and non-discrimination to all persons who may experience discrimination.

Constitution of Ireland

Article 40

1. All citizens shall, as human persons, be held equal before the law.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.

Article 44

2.3° The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.

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.

IRELAND’S LEGISLATIVE PROVISIONS: LIMITED PROTECTIONS FROM WORKPLACE DISCRIMINATION

Based on our systematic review of national legislation, Ireland’s Employment Equality Act provides comprehensive protection from workplace discrimination for many characteristics and statuses. The law prohibits employers from discriminating against any employee or prospective employee based on their race, color, national and ethnic origin, gender, religion, and disability status. These prohibitions of discrimination extend to key areas of employment including employment opportunities and hiring, remuneration, promotions and demotions, dismissals, and retaliatory actions. For workers with disabilities, Article 16 of the Employment Equality Act also requires employers to provide reasonable accommodations and other appropriate measures to ensure equal access to and participation in employment opportunities.



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, political opinion, social origin, property status, and birth status.

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.

Employment Equality Act, N. 21, 1998, amended to 2020

6.—(1) For the purposes of this Act and without prejudice to its provisions relating to discrimination occurring in particular circumstances discrimination shall be taken to occur where—

(2) As between any 2 persons, the discriminatory grounds (and the descriptions of those grounds for the purposes of this Act) are—

(a) that one is a woman and the other is a man (in this Act referred to as “the gender ground”),

(e) that one has a different religious belief from the other, or that one has a religious belief and the other has not (in this Act referred to as “the religion ground”),

(g) that one is a person with a disability and the other either is not or is a person with a different disability (in this Act referred to as “the disability ground”),

(h) that they are of different race, color, nationality or ethnic or national origins (in this Act referred to as “the ground of race”),



Discrimination by employers etc.

8.—(1) *In relation to—*

(a) access to employment,

(b) conditions of employment,

(c) training or experience for or in relation to employment,

(d) promotion or re-grading, or

(e) classification of posts,

...an employer shall not discriminate against an employee or prospective employee and a provider of agency work shall not discriminate against an agency worker.

[...]

(6) Without prejudice to the generality of subsection (1), an employer shall be taken to discriminate against an employee or prospective employee in relation to conditions of employment if, on any of the discriminatory grounds, the employer does not offer or afford to that employee or prospective employee or to a class of persons of whom he or she is one—

(a) the same terms of employment (other than remuneration and pension rights),

(b) the same working conditions, and

(c) the same treatment in relation to overtime, shift work, short time, transfers, lay-offs, redundancies, dismissals and disciplinary measures,

as the employer offers or affords to another person or class of persons, where the circumstances in which both such persons or classes are or would be employed are not materially different.

Obligations of Employers etc.

16.—(3) *(a) For the purposes of this Act a person who has a disability is fully competent to undertake, and fully capable of undertaking, any duties if the person would be so fully competent and capable on reasonable accommodation (in this subsection referred to as ‘appropriate measures’) being provided by the person’s employer.*

(b) The employer shall take appropriate measures, where needed in a particular case, to enable a person who has a disability—

(i) to have access to employment,

(ii) to participate or advance in employment, or

(iii) to undergo training,

unless the measures would impose a disproportionate burden on the employer.



(4) In subsection (3)—

‘appropriate measures’, in relation to a person with a disability—

(a) means effective and practical measures, where needed in a particular case, to adapt the employer’s place of business to the disability concerned,

(b) without prejudice to the generality of paragraph (a), includes the adaptation of premises and equipment, patterns of working time, distribution of tasks or the provision of training or integration resources, but

(c) does not include any treatment, facility or thing that the person might ordinarily or reasonably provide for himself or herself;

Entitlement to equal remuneration.

29.—(1) It shall be a term of the contract under which C is employed that, subject to this Act, C shall at any time be entitled to the same rate of remuneration for the work which C is employed to do as D who, at that or any other relevant time, is employed to do like work by the same or an associated employer.