



# Luxembourg: 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*

## Table of Contents

<b>Executive Summary</b> .....	<b>2</b>
Equality and non-discrimination .....	2
Non-discrimination in work and employment.....	3
Free and compulsory education .....	4
<b>Detail</b> .....	<b>4</b>
Equality and non-discrimination .....	4
Non-discrimination in work and employment.....	5
Free and compulsory education .....	8
<b>Reference Sheet: Recommended Questions for List of Issues</b> .....	<b>9</b>
<b>Reference Sheet: Recommended Concluding Observations</b> .....	<b>9</b>



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

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

---

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

Based on our review of full-text national constitutions, Luxembourg's constitution **guarantees equal rights between men and women**. However, other characteristics protected by Article 2 and General Comment No. 5 of ICESCR are **not guaranteed equal rights in Luxembourg's constitution, including those persons facing discrimination based race, colour, language, religion, political or other opinion, national or social origin, birth status, and disability status**.



**We hope the Committee will:**

- Recommend in its concluding observations that Luxembourg consider amending its constitution to add explicit guarantees of equality and non-discrimination for all persons regardless of race, colour, language, religion, political or other opinion, national or social origin, property, 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 Luxembourg does not consistently and explicitly protect all workers from workplace discrimination. The ***Code du Travail* guarantees non-discrimination to workers regardless of race, sex, religion, and disability status across four key areas of employment including: employment opportunities or hiring, equal remuneration, promotions and demotions, and dismissals.** Despite Luxembourg’s commitment to guaranteeing the stronger protection of equal remuneration for work of equal value without any distinction through Article 7 of the Covenant, **Luxembourg’s law only addresses equal remuneration for work of equal value between men and women.** Luxembourg’s law **does not guarantee this stronger level of protection between workers with other characteristics covered through ICESCR commitments.**

**Table 1. Guaranteed provisions of non-discrimination across four key areas of employment for 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 Luxembourg: Can Luxembourg outline any concrete, near-term plans to pass legislation prohibiting all forms of workplace discrimination on the basis of language, political opinion, national or social origin, property status, and birth status?
  - If Luxembourg does not have concrete, near-term plans to pass and implement such legislation, recommend in its concluding observations that Luxembourg pass and implement legislation that explicitly protects all characteristics covered in Article 2 and General Comment 5 of the ICESCR from workplace discrimination, 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 Luxembourg: Can Luxembourg outline how it is enforcing existing prohibitions of workplace discrimination based on race, sex, religion, and disability status?
  - Where Luxembourg is not fully implementing these provisions, recommend in its concluding observations that Luxembourg explore how to implement these provisions fully and effectively.

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

---

### Free and compulsory education (Article 13)

Based on our systematic review of legislation, Luxembourg **guarantees twelve years of free and compulsory education for all children**. This is a positive and important provision to have in place, and while this legislative guarantee is essential, so too is its implementation.

## DETAIL

### 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.*

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.



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

Article 11 of Luxembourg's constitution guarantees equal rights between men and women. However, the constitution does not guarantee equality or non-discrimination for other characteristics protected in Article 2 and General Comment No. 5 of the Covenant, including persons facing discrimination based on race, colour, language, religion, political or other opinion, national or social origin, birth status, and disability status.

*Art. 11.*

*(1) L'Etat garantit les droits naturels de la personne humaine et de la famille.*

*(2) Les femmes et les hommes sont égaux en droits et en devoirs.*

*L'Etat veille à promouvoir activement l'élimination des entraves pouvant exister en matière d'égalité entre femmes et hommes.*

*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)**

---

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.

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

Luxembourg's *Code du Travail* 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. While Articles 241-1, 241-2, 251-1, and 251-2 of the law guarantee non-discrimination to workers regardless of race, sex, religion, and disability status across all four areas of employment, these provisions notably do not extend to all groups covered through ICESCR commitments, and exclude workers facing discrimination based on language, political opinion, national or social origin, property status, and birth status.

Additionally, despite Luxembourg'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 225-3 of Luxembourg's *Code du Travail* only addresses equal pay for work of equal value between men and women. The law does not guarantee this stronger level of protection between workers of other characteristics covered by the Covenant: language, political opinion, national or social origin, property status, and birth status.

#### *Code du Travail*

##### *Art. L.225-3.*

*(1) Sont considérés comme ayant une valeur égale, les travaux qui exigent des salariés un ensemble comparable de connaissances professionnelles consacrées par un titre, un diplôme ou une pratique professionnelle, de capacités découlant de l'expérience acquise, de responsabilités et de charge physique ou nerveuse.*



*(2) Les différents éléments composant le salaire sont établis selon des normes identiques pour les hommes et les femmes.*

*Les catégories et les critères de classification et de promotion professionnelle ainsi que toutes les autres bases de calcul du salaire, notamment les modes d'évaluation des emplois, doivent être communs aux salariés des deux sexes.*

*Art. L. 241-1.*

*(1) Toute discrimination fondée sur le sexe, soit directement, soit indirectement par référence, notamment, à l'état matrimonial ou familial est interdite.*

*Art. L. 241-2.*

*Le présent titre s'applique à tous les salariés dont les relations de travail sont régies par le Livre premier du Code du travail en ce qui concerne:*

- 1) les conditions d'accès à l'emploi, aux activités non salariées ou au travail, y compris les critères de sélection et les conditions de recrutement, quelle que soit la branche d'activité et à tous les niveaux de la hiérarchie professionnelle, y compris en matière de promotion;*
- 2) l'accès à tous les types et à tous les niveaux d'orientation professionnelle, de formation professionnelle, de perfectionnement et de formation de reconversion, y compris l'acquisition d'une expérience pratique du travail;*
- 3) les conditions d'emploi et de travail, y compris les conditions de licenciement ainsi que le salaire;*
- 4) l'affiliation à, et l'engagement dans, une organisation de salariés ou d'employeurs, ou toute organisation dont les membres exercent une profession donnée, y compris les avantages procurés par ce type d'organisation.*

*Art. L. 251-1.*

*(1) Toute discrimination directe ou indirecte fondée sur la religion ou les convictions, l'handicap, l'âge, l'orientation sexuelle, l'appartenance ou non appartenance, vraie ou supposée, à une race ou ethnie est interdite.*

*Art. L. 251-2.*

*Le présent titre s'applique à tous les salariés dont les relations de travail sont régies par le statut de salarié tel qu'il résulte notamment du Titre II du Livre Premier du Code du travail, en qui concerne:*

- a) les conditions d'accès à l'emploi, les activités non salariées ou le travail, y compris les critères de sélection et les conditions de recrutement, quelle que soit la branche d'activité et à tous les niveaux de la hiérarchie professionnelle, y compris en matière de promotion;*
- b) l'accès à tous les types et à tous les niveaux d'orientation professionnelle, de formation professionnelle, de perfectionnement et de formation de reconversion, y compris l'acquisition d'une expérience pratique;*
- c) les conditions d'emploi et de travail, y compris les conditions de licenciement et de salaire;*
- d) l'affiliation à, et l'engagement dans, une organisation de salariés ou d'employeurs, ou toute organisation dont les membres exercent une profession donnée, y compris les avantages procurés par ce type d'organisations.*



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

---

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.

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

Based on our systematic review of legislation, education laws in Luxembourg guarantee twelve years of free and compulsory education for all children attending public school.

##### ***Loi relative à l'obligation scolaire***

*Art. 7.*

*Tout enfant habitant le Luxembourg âgé de quatre ans révolus avant le premier septembre, doit fréquenter l'École. Cette obligation s'étend sur douze années consécutives à partir du premier septembre de l'année en question.*

##### ***Loi portant organisation de l'enseignement fondamental***

*Art. 5.*

*L'accès à l'enseignement public est gratuit pour chaque enfant habitant le Grand-Duché, inscrit à une école de sa commune de résidence, à une école d'une autre commune ou à une école de l'État.*

*La commune, ou l'État pour les écoles et classes étatiques, fournit gratuitement aux élèves les manuels scolaires à utiliser en classe, recommandés par le ministre.*





## Luxembourg 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

---

#### Recommended Questions for Luxembourg's List of Issues:

---

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

- Can Luxembourg outline any concrete, near-term plans to pass legislation prohibiting all forms of workplace discrimination on the basis of language, political opinion, national or social origin, property status, and birth status?
- Can Luxembourg outline how it is enforcing existing prohibitions of workplace discrimination based on race, sex, religion, and disability status?

---

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

---

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

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

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

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

- Recommend that Luxembourg pass and implement legislation that explicitly protects all characteristics covered in Article 2 and General Comment 5 of the ICESCR from workplace discrimination, particularly in:
  - Employment opportunities or hiring
  - Equal remuneration for work of equal value
  - Promotions and demotions



- Dismissals or terminations
- Where Luxembourg is not fully implementing existing prohibitions of workplace discrimination, recommend that Luxembourg explore how to implement these provisions fully and effectively.

---

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