



HONDURAS

A BRIEF ON NON-DISCRIMINATION, EQUALITY, CHILD MARRIAGE, AND WORK AND EMPLOYMENT

(Articles 2, 3, 7, 10, and General Comment No. 5)

*Information for the Committee on Economic, Social, and Cultural Rights
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CONTENTS

Introduction1

Summary of Findings and Recommendations.....2

- 1. Equality and Non-Discrimination (Article 2, General Comment No. 5)2
- 2. Non-Discrimination in Work and Employment (Article 7)2
- 3. Child Marriage (Articles 3, 10).....5

Detail of Constitutional and Legislative Findings.....5

- 1. Equality and Non-Discrimination (Article 2, General Comment No. 5)5
- 2. Work and Employment (Article 7).....7
- 3. Child Marriage (Articles 3, 10).....9



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 71st Pre-Sessional Working Group of the Committee on Economic, Social, and Cultural Rights.

This brief will focus on the following areas:

1. Equality and non-discrimination (Article 2, General Comment No. 5)
2. Child marriage (Articles 3 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 Honduras 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 Honduras 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 Honduras for having provisions in place, we hope the Committee will recommend that Honduras 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, the constitution of Honduras generally guarantees equality before the law, and also prohibits all forms of discrimination based on sex, race and social class. However, some groups guaranteed equality and non-discrimination in the Covenant are not protected by constitutional provisions, including persons facing discrimination based on language, religion, political opinion, national origin, property status, birth status, or disability status.

RECOMMENDED CONCLUDING OBSERVATION

We hope the Committee will:

- Recommend in its concluding observations that Honduras amend its constitution to add explicit guarantees of equality and non-discrimination based on language, religion, political opinion, national origin, property status, birth status, and disability status, consistent with ICESCR commitments. These guarantees could be added to Article 60 of the constitution, which already guarantees non-discrimination based on other personal characteristics and statuses.

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

On broad prohibitions of workplace discrimination:

A new Penal Code, passed in 2019, criminalizes workplace discrimination, and broadly prohibits workplace discrimination for all groups and statuses outlined in the Covenant **except on the basis of political opinion and birth status.**

On discrimination in remuneration:

The labor code guarantees equal pay for equal work on the basis of sex, race, religion and political opinion, **but omits other groups and statuses specified in the Covenant such as on the basis of language, national origin, social origin, birth status, or property status.**

Additionally, a specific gender equality law in Honduras comprehensively protects women in all areas of employment, including equal pay for work of equal value.

While a similar law for equality of persons with disabilities exists in Honduras, it fails to protect persons with disabilities against discrimination in the area of remuneration.

On discrimination in promotions:

While a specific gender equality law in Honduras comprehensively protects women in all areas of employment, including promotions, **our systematic review did not identify any provisions prohibiting workplace discrimination in promotions in Honduras for any other groups outlined in the Covenant.**



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

	Discrimination broadly prohibited	Equal pay for equal work/for work of equal value	Promotions
Race and colour	✓	✓*	
Sex	✓	✓	✓
Language	✓		
Religion	✓	✓*	
Political opinion		✓*	
National origin	✓		
Social origin	✓		
Property status	✓		
Birth status			
Disability	✓		

**Only the weaker guarantee of equal pay for equal work – as opposed to equal pay for work of equal value – is guaranteed.*

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

On broad prohibitions of workplace discrimination:

We hope the Committee will:

- In its list of issues, ask Honduras: Given that it is unusual to prohibit workplace discrimination in criminal law, can Honduras demonstrate how often the broad prohibitions of workplace discrimination introduced in the Penal Code are being invoked in complaints?
 - If Honduras cannot demonstrate how often criminal provisions against workplace discrimination are being used in practice, recommend that Honduras start tracking and compiling this information.
- Further ask Honduras: Have the Penal Code provisions been interpreted to include specific forms of discrimination that occur in remuneration or promotion?
 - If Honduras cannot demonstrate that broad prohibitions of workplace discrimination have been interpreted to prohibit discrimination in remuneration and promotions, recommend in its concluding observations that Honduras pass and implement specific legislation that explicitly prohibits discrimination in these critical areas of employment outlined in the Covenant.

(continued on next page)



RECOMMENDED QUESTIONS FOR THE LOI AND CONCLUDING OBSERVATIONS (CONT'D)

On discrimination in remuneration:

We hope the Committee will:

- In its list of issues, ask Honduras: Can Honduras outline any concrete, near-term plans to pass legislation that explicitly prohibits discrimination in **remuneration** based on language, national origin, social origin, property status, birth status, and disability?
 - If Honduras does not have concrete, near-term plans in place, recommend in its concluding observations that Honduras pass and implement legislation that explicitly prohibits discrimination in remuneration on the basis of all groups covered in Article 2 and General Comment 5 of the ICESCR.
- In its list of issues, ask Honduras: Can Honduras outline how it is enforcing its comprehensive provisions prohibiting discrimination in remuneration on the basis of race, sex, religion and political opinion?
 - Where Honduras is not fully implementing these provisions, recommend in its concluding observations that Honduras explore how to implement these provisions fully and effectively.

On discrimination in promotions:

We hope the Committee will:

- In its list of issues, ask Honduras: can Honduras outline any concrete, near-term plans to pass legislation that explicitly prohibits discrimination in **promotions** based on race or colour, language, religion, political opinion, national origin, social origin, property status, birth status, and disability?
 - If Honduras does not have concrete, near-term plans in place, recommend in its concluding observations that Honduras pass and implement legislation that explicitly prohibits discrimination in promotions on the basis of all groups covered in Article 2 and General Comment 5 of the ICESCR.
- In its list of issues, ask Honduras: Can Honduras outline how it is enforcing its provisions prohibiting discrimination in promotions on the basis of sex?
 - Where Honduras is not fully implementing these provisions, recommend in its concluding observations that Honduras explore how to implement these provisions fully and effectively.



3. Child Marriage (Articles 3, 10)

Based on our review, **Honduras establishes 18 years as the minimum age of marriage for both boys and girls**, following a 2017 amendment to its Family Code. We commend Honduras for passing this amendment, however recent child marriage data from 2019 show that 15% of Honduran girls aged 15-19 were married.¹

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Honduras: Given the persisting high rates of marriage among girls aged 15-19 outlined in the most recently available statistics (2019), ask Honduras: can Honduras specify what proportion of girls in that group are aged 15-17?
 - If Honduras cannot specify how many girls aged 15-17 are getting married despite legislative guarantees to the contrary, recommend in its concluding observations that Honduras collect these statistics.
- In its list of issues, ask Honduras: If Honduras has statistics that show high rates of marriage of girls aged 17 and under, what concrete, near-term plans are in place to reduce rates of child marriage?
 - If Honduras does not have concrete, near-term plans in place, recommend Honduras explore how to fully and effectively implement its legal guarantees that prohibit marriage before age 18.

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.

¹ UNICEF. UNICEF Data Warehouse – Child Marriage. Retrieved May 26, 2022 from https://data.unicef.org/resources/data_explorer/unicef_f/?ag=UNICEF&df=GLOBAL_DATAFLOW&ver=1.0&dq=.PT_F_20-24_MRD_U15+PT_M_20-24_MRD_U18+PT_F_20-24_MRD_U18+PT_M_15-19_MRD+PT_F_15-19_MRD.&startPeriod=2016&endPeriod=2022



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.

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

Based on our review of Honduras’s constitution, articles 60 and 61 generally guarantee equality for Hondurans and foreign residents, and article 60 also prohibits any discrimination based on sex, race, and social position as well as any form of discrimination that harms human dignity.

Constitution of Honduras of 1982, as amended to 2021

ARTICULO 60.- Todos los hombres nacen libres e iguales en derechos. En Honduras no hay clases privilegiadas. Todos los hondureños son iguales ante la Ley.

Se declara punible toda discriminación por motivo de sexo, raza, clase y cualquier otra lesiva a la dignidad humana.

La Ley establecerá los delitos y sanciones para el infractor de este precepto.

ARTICULO 61.- La Constitución garantiza a los hondureños y extranjeros residentes en el país, el derecho a la inviolabilidad de la vida, a la seguridad individual, a la libertad, a la igualdad ante la ley y a la propiedad.



However, some groups guaranteed equality and non-discrimination in the Covenant are not protected by constitutional provisions, including persons facing discrimination based on language, religion, political opinion, national origin, property status, birth status, or disability status.

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, including specific measures in the areas of remuneration and promotion.

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 workplace discrimination broadly, as well as in employment across the two areas specified in the Covenant:

- Equal remuneration for work of equal value
- Promotions

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.

HONDURAS'S LEGISLATIVE PROVISIONS: BROAD PROTECTIONS EXIST, BUT LACK DETAIL FOR SPECIFIC GROUPS

BROAD PROTECTIONS AGAINST DISCRIMINATION

Honduras's new Penal Code, introduced in 2019, **broadly protects against workplace discrimination on the basis of most statuses covered by the Covenant**, including religion, language, race, national origin, sex, economic status, and disability, **although one status covered through the Covenant's commitments, birth status, is notably omitted from these provisions**. However, these protections are not specific to remuneration or promotions.

Código Penal, 2019

ARTÍCULO 295.- DELITO DE DISCRIMINACIÓN LABORAL.

Quien realiza una grave discriminación en el empleo, público o privado, contra alguna persona por ostentar la representación legal o sindical de los trabajadores, por razones de ideología, religión o creencias, lengua, pertenencia a una etnia o raza, origen nacional, pueblo indígena o afrodescendiente, lugar de residencia, sexo, orientación sexual, identidad de género, razones de género, estado civil, situación familiar o económica, edad, enfermedad, discapacidad o



embarazo, debe ser castigado con las penas de prisión de uno (1) a dos (2) años y multa de cien (100) a doscientos (200) días.

Honduras has an equality law for persons with disabilities, but it **protects only against discrimination in hiring, without protecting against discrimination broadly, or against discrimination in remuneration and promotions.**

Decreto núm. 160-2005 por el que se dicta la Ley de equidad y desarrollo integral para las personas con discapacidad (2005)

SECCION IV. TRABAJO

ARTICULO 32.- DISCRIMINACIÓN LABORAL. Se consideran actos de discriminación laboral adoptar criterios de selección de personal o establecer condiciones generales de trabajo no adecuados a las condiciones de los aspirantes, así como solicitar requisitos adicionales a los establecidos para cualquier otro solicitante y, no emplear, por razones de discapacidad, cuando se es idóneo para desempeñar el cargo o labor solicitado.

ON REMUNERATION

The Covenant states that:

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;

The Covenant requires all workers – and more specifically women -- to receive equal pay for equal work, or equal pay for work of equal value. Honduras's labor code protects against discrimination in remuneration, requiring equal pay for equal work on the basis of sex, race, religion and political opinion; however, **multiple Covenant groups and statuses, including language, national origin, social origin, birth status, and property status, are omitted.**

Código de Trabajo, as amended to 2015

Artículo 367



(...)

A trabajo igual debe corresponder salario igual, sin discriminación alguna, siempre que el puesto, la jornada y las condiciones de eficiencia y tiempo de servicio, dentro de la misma empresa, sean también iguales, comprendiendo en este, tanto los pagos hechos por cuota diaria, como las gratificaciones, percepciones, habitación y cualquier otra cantidad que sea entregada a un trabajador a cambio de su labor ordinaria. No pueden establecerse diferencias en el salario por razones de edad, sexo, nacionalidad, raza, religión, opinión política o actividades sindicales.

Honduras has additional legislation on gender equality that **guarantees equal pay for work of equal value on the basis of sex only.**

Decreto 27-2015 Igualdad de remuneración en el trabajo

ARTÍCULO 1.- No se pueden establecer diferentes remuneraciones entre la misma categoría de trabajo asalariado, masculino o femenino por un trabajo de igual valor.

ON PROMOTIONS

The Covenant calls for equal opportunity in promotions, subject only to competence and seniority:

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:

(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;

Honduras's law on equal opportunities for women comprehensively prohibits workplace discrimination in promotions on the basis of sex. Sex is the only Covenant group or status that is protected against discrimination in promotions; in our review of Honduran legislation, **we found no prohibitions of discrimination in promotions on the basis of race, religion, political opinion, language, national origin, social origin, birth status, and property status.**

Decreto núm. 34-2000 por el que se da la ley de igualdad de oportunidades para la mujer, 2000

CAPITULO IV. IGUALDAD DE OPORTUNIDADES EN EL TRABAJO Y LA SEGURIDAD SOCIAL

Artículo 48.-Los empleadores y empleadoras, deben proporcionar igualdad de oportunidades en similares condiciones a las mujeres, en los aspectos de selección, empleo, asignación de trabajo y promoción, así como en la formación, educación y capacitación; lo mismo que prohibir la discriminación de género en los recortes de personal y despidos. (...)

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 Labor Organization’s NATLEX database, Pacific Islands Legal Information Institute, Asian Legal Information Institute, JaFBBase, and official country websites.

HONDURAS’S LEGISLATIVE PROVISIONS: STRONG PROTECTIONS AGAINST CHILD MARRIAGE, BUT QUESTIONS REMAIN ABOUT IMPLEMENTATION

Based on our review, Article 16 of the Family Code of Honduras establishes 18 years as the minimum age for marriage of both men and women, with no exceptions or loopholes allowing girls or boys to marry at an earlier age.

Código de Familia 1984, as amended to 2017

Artículo 16

La mayoría de edad se obtiene al cumplirse los veintiún (21) años.

Sólo las personas mayores de edad gozan de libre aptitud para contraer matrimonio.

Sin embargo, podrán contraerlo, el varón y la mujer mayor de dieciocho (18) años, siempre que medie autorización otorgada conforme a este Código.

We commend Honduras for passing an amendment to this article in 2017, which eliminated the last remaining loophole allowing the marriage of children under 18, as highlighted in page 3 of the State Party Report. **However, as late as 2019, UNICEF reported that almost 15% of girls aged 15-19 interviewed were married at the time of survey.**²

² UNICEF. UNICEF Data Warehouse – Child Marriage. Retrieved May 26, 2022 from https://data.unicef.org/resources/data_explorer/unicef_f/?ag=UNICEF&df=GLOBAL_DATAFLOW&ver=1.0&dq=.PT_F_20-24_MRD_U15+PT_M_20-24_MRD_U18+PT_F_20-24_MRD_U18+PT_M_15-19_MRD+PT_F_15-19_MRD.&startPeriod=2016&endPeriod=2022