



THE PHILIPPINES

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

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

*Information for the Committee on Economic, Social, and Cultural Rights
71st Pre-Sessional Working Group, September 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 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. 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 the Philippines 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 the Philippines 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 the Philippines for having provisions in place, we hope the Committee will recommend that the Philippines 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 the Philippines generally guarantees equality before the law, and also on the basis of sex. However, some groups guaranteed equality and non-discrimination in the Covenant are not protected by constitutional provisions, including persons facing discrimination based on race or colour, language, religion, political opinion, national or social origin, property status, birth status, or disability status.

RECOMMENDED CONCLUDING OBSERVATION

We hope the Committee will:

- Recommend in its concluding observations that the Philippines amend its constitution to add explicit guarantees of equality and non-discrimination based on race or colour, language, religion, political opinion, national or social origin, property status, birth status, and disability status, consistent with ICESCR commitments.

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

On discrimination in remuneration:

The Philippines' labor code requires equal pay for work of equal value on the basis of sex. Specific legislation for persons with disabilities guarantees equal pay for equal work to employees with disabilities. **However, all other Covenant groups and statuses, including race or colour, language, religion, political opinion, national or social origin, property status, and birth status, are not specifically guaranteed any form of equality in remuneration.**

Paragraph 74 of the State Party Report describes a bill – HB 8243 – currently being considered by the Congress of the Philippines; from the drafts that are available to the public, HB 8243 would protect against discrimination in multiple areas of employment, including remuneration, on the basis of race, color, descent, national or ethnic origin, and religion. **However, to the best of our knowledge, this law has passed the House of Representatives but has not yet been approved by the Senate of the Philippines,** thus this remains an active issue.

On discrimination in promotions:

The Philippines's labor code protects women against discrimination in multiple areas, including promotion, as does the country's specific legislation for workers with disabilities. All other **Covenant**



groups and statuses, including race or colour, language, religion, political opinion, national or social origin, property status, and birth status, are omitted from this protection.

HB 8243, if passed in its current form (described above), would also protect against discrimination in promotions on the basis of race, color, descent, national or ethnic origin, and religion.

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

	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 discrimination in remuneration:

We hope the Committee will:

- In its list of issues, ask the Philippines: Can the Philippines provide the Committee with the specific steps it is taking, including providing more information on the status and timeline for the passage of HB 8243, to add explicit guarantees against discrimination in remuneration on the basis of race or colour, language, religion, political opinion, national or social origin, property status, and birth status?
 - Recommend that the Philippines amend its legislation in the near term to provide guarantees against discrimination in remuneration on the basis of race or colour, language, religion, political opinion, national or social origin, property status, and birth status.
- In its list of issues, ask the Philippines: Can the Philippines outline how it is strengthening the capacity of government agencies to enforce its comprehensive provisions prohibiting discrimination in remuneration on the basis of disability and sex, including by providing adequate budgetary support for these agencies?
 - Where the Philippines is not fully implementing these provisions, recommend in its concluding observations that the Philippines explore how to implement these provisions fully and effectively, including by strengthening institutional capacity and providing adequate budgetary support for the Department of Labor and Employment (DOLE) and any other implementing agencies.

On discrimination in promotions:

We hope the Committee will:

- In its list of issues, ask the Philippines: Can the Philippines provide the Committee with the specific steps it is taking, including providing more information on the status and timeline for the passage of HB 8243, to add explicit guarantees against discrimination in promotions on the basis of race or colour, language, religion, political opinion, national or social origin, property status, and birth status?
 - Recommend that the Philippines amend its legislation in the near term to provide guarantees against discrimination in promotions on the basis of race or colour, language, religion, political opinion, national or social origin, property status, and birth status.
- In its list of issues, ask the Philippines: Can the Philippines outline how it is strengthening the capacity of government agencies to enforce its comprehensive provisions prohibiting discrimination in promotions on the basis of disability and sex, including by providing adequate budgetary support for these agencies?
 - Where the Philippines is not fully implementing these provisions, recommend in its concluding observations that the Philippines explore how to implement these provisions fully and effectively, including by strengthening institutional capacity and providing adequate budgetary support for the Department of Labor and Employment (DOLE) and any other implementing agencies.



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.

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

Based on our review of the Philippines’s constitution, section 14 of article II guarantees equality before the law specifically on the basis of sex, and section 1 of article III guarantees equality before the law to all persons.

Constitution of the Philippines, 1987

ARTICLE II SECTION 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

ARTICLE III SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.



Besides sex, no other group that is guaranteed equality and non-discrimination in the Covenant or in General Comment No. 5 is explicitly protected by the constitution, including persons facing discrimination based on race or colour, language, religion, political opinion, national or social origin, property status, birth status, and disability.

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.

THE PHILIPPINES'S LEGISLATIVE PROVISIONS: VERY FEW GROUPS PROTECTED

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.



The Philippines' labor code does require equal pay for work of equal value, but sex is the only group or status that is specifically singled out in the relevant provision. The Philippines also has specific legislation for persons with disabilities, which extends guarantees of equal pay for equal work to employees with disabilities.

All other **Covenant groups and statuses, including race or colour, language, religion, political opinion, national or social origin, property status, and birth status, are omitted.**

Labor Code, 1974, amended to 2022

ART. 133. [Previously 135] Discrimination Prohibited. — It shall be unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex.

The following are acts of discrimination:

(a) Payment of a lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value; (...)

The Magna Carta for Persons with Disabilities (PWD), n. 7277 of 1992, amended to 2018

Sec. 32. Discrimination on Employment. — No entity, whether public or private, shall discriminate against a qualified disabled person by reason of disability in regard to job application procedures, the hiring, promotion, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. The following constitute acts of discrimination:

(...)

(d) Providing less compensation, such as salary, wage or other forms of remuneration and fringe benefits, to a qualified disabled employee, by reason of his disability, than the amount to which a non-disabled person performing the same work is entitled;

(...)

Paragraph 74 of the State Party Report does describe a bill – HB 8243 – currently being considered by the Congress of the Philippines; from the drafts that are available to the public, HB 8243 would protect against discrimination in multiple areas of employment, including remuneration, on the basis of race, color, descent, national or ethnic origin, and religion. **However, to the best of our knowledge, this law has passed the House of Representatives but has not yet been approved by the Senate of the Philippines,** thus this remains an active issue.



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

The Philippines's labor code protects women against discrimination in multiple areas, including promotion. The Philippines' legislation for persons with disabilities also protects workers with disabilities in multiple areas of employment, including specifically promotions. All other **Covenant groups and statuses, including race or colour, language, religion, political opinion, national or social origin, property status, and birth status, are omitted from this protection.**

Labor Code, 1974, amended to 2022

ART. 133. [Previously 135] Discrimination Prohibited. — It shall be unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex.

The following are acts of discrimination:

(...)

(b) Favoring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes.

(...)

The Magna Carta for Persons with Disabilities (PWD), n. 7277 of 1992, amended to 2018

Sec. 32. Discrimination on Employment. — No entity, whether public or private, shall discriminate against a qualified disabled person by reason of disability in regard to job application procedures, the hiring, promotion, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. The following constitute acts of discrimination:

(...)

e) Favoring a non-disabled employee over a qualified disabled employee with respect to promotion, training opportunities, study and scholarship grants, solely on account of the latter's disability;

(...)

HB 8243, if passed in its current form (described above), would also protect against discrimination in promotions on the basis of race, color, descent, national or ethnic origin, and religion.