



POLAND

A BRIEF ON LEGAL GUARANTEES TO NON-DISCRIMINATION
IN WORK AND EMPLOYMENT AND CONSTITUTIONAL
GUARANTEES TO EQUALITY AND NON-DISCRIMINATION AND
EQUAL RIGHTS TO ESTABLISH A FAMILY
(Articles 2,7, and 10 and General Comments No. 5 and No. 22)

*Information following the Committee on Economic, Social, and Cultural Rights
71st Pre-Sessional Working Group, October 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 two areas:

1. Equality and non-discrimination (Article 2, General Comment No. 5)
2. Non-discrimination in work and employment (Article 7, General Comment No. 22)
3. Equal right to establish a family (Article 10, General Comment No. 5)

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 Poland 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 Poland 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 Poland for having provisions in place, we hope the Committee will recommend that Poland 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, Poland’s constitution guarantees equality and non-discrimination to all persons generally as well as on the on the basis of sex. **However, it does not explicitly prohibit discrimination against any of the other groups cited in the Covenant, including race, colour, language, religion, political opinion, national or social origin, property status, and birth status.**

RECOMMENDED CONCLUDING OBSERVATION

We hope the Committee will:

- Recommend in its concluding observations that Poland amend its constitution to add explicit guarantees of equality and non-discrimination based on race or colour, language, religion, political opinion, national origin, social origin, property status, and birth status, consistent with ICESCR commitments. These guarantees could be added to Article 32 of the constitution, which already guarantees non-discrimination generally.

2. Non-Discrimination in Work and Employment (Article 7, General Comment No. 22)

On broad prohibitions of workplace discrimination:

Poland’s labor code broadly protects against “any discrimination in employment” on the basis of multiple Covenant-protected grounds, **but our research did not find any protections on the basis of language, social origin, property status birth status, pregnancy, childbirth, parenthood, gender identity, or intersex status.**

On discrimination in remuneration:

Poland’s labor code protects against discrimination in remuneration on the grounds of multiple Covenant-protected grounds; it further specifies that employees should receive equal pay for equal work or work of equal value. **We did not find protections guaranteeing any form of equal remuneration on the basis of language, social origin, property status, birth status, pregnancy, childbirth, parenthood, gender identity, or intersex status.**

On discrimination in promotions:

Poland’s labor code specifically protects against discrimination in promotions on the basis of multiple Covenant-protected grounds, **but our research did not find any protections on the basis of language,**



social origin, property status, birth status, pregnancy, childbirth, parenthood, gender identity, or intersex status.

Table 1. Guaranteed legal provisions of non-discrimination in Poland 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	✓	✓	✓
Pregnancy and childbirth			
Parenthood			
Sexual orientation	✓	✓	✓
Gender identity			
Intersex status			

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 Poland: can Poland outline any concrete, near-term plans to extend its broad protections against workplace discrimination to other Covenant-protected groups and statuses, including language, social origin, property status, birth status, pregnancy, childbirth, parenthood, gender identity, and intersex status?
 - If Poland cannot, recommend that Poland amend its labor code to include these groups and statuses in articles 11-3 and 18-3 of the labor code, which already broadly protect against workplace discrimination on the basis of, among others, sex, disability, race, religion, nationality, political beliefs, and sexual orientation.



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 Poland: can Poland outline any concrete, near-term plans to extend its specific protection against discrimination in remuneration to other Covenant-protected groups and statuses, including language, social origin, property status, birth status, pregnancy, childbirth, parenthood, gender identity, and intersex status?
 - If Poland cannot, recommend that Poland amend its labor code to include these groups and statuses in article 18-3 of the labor code, which already protects against discrimination in remuneration on the basis of a number of groups and statuses covered by the Covenant.
- In its list of issues, ask Poland: Can Poland outline how it is enforcing its provisions prohibiting discrimination in remuneration on the basis of sex, disability, race, religion, nationality, political beliefs, and sexual orientation?
 - Where Poland is not fully implementing these provisions, recommend in its concluding observations that Poland explore how to implement these provisions fully and effectively.

On discrimination in promotions:

We hope the Committee will:

- In its list of issues, ask Poland: can Poland outline any concrete, near-term plans to extend its specific protection against discrimination in promotions to other Covenant-protected groups and statuses, including language, social origin, property status, birth status, pregnancy, childbirth, parenthood, gender identity, and intersex status?
 - If Poland cannot, recommend that Poland amend its labor code to include these groups and statuses in article 18-3 of the labor code, which already protects against discrimination in promotions on the basis of a number of groups and statuses covered by the Covenant.
- In its list of issues, ask Poland: Can Poland outline how it is enforcing its provisions prohibiting discrimination in promotions on the basis of sex, disability, race, religion, nationality, political beliefs, and sexual orientation?
 - Where Poland is not fully implementing these provisions, recommend in its concluding observations that Poland explore how to implement these provisions



3. Equal Right to Establish a Family (Article 10, General Comment No. 22)

Based on our review of full-text national constitutions, Poland's constitution uses exclusionary language **that could be interpreted to deny the right to marry to same sex couples.**

RECOMMENDED CONCLUDING OBSERVATION

We hope the Committee will:

- Recommend in its concluding observations that Poland amend its constitution to remove exclusionary language that could be used to limit same sex marriage and ensure non-discrimination based on sexual orientation and gender identity, consistent with ICESCR commitments.



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.

POLAND’S CONSTITUTIONAL PROVISIONS: MISSING IMPORTANT GUARANTEES OF EQUALITY

Article 32 of Poland’s constitution generally guarantees equality and non-discrimination to all persons, and article 33 guarantees equal rights on the basis of sex. **However, the constitution does not explicitly prohibit discrimination based on any of the other groups protected in the Covenant, including race, colour, language, religion, political opinion, national or social origin, property and birth status.**



Constitution of Poland, 1997, with amendments to 2009

Article 32

1. *All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.*
2. *No one shall be discriminated against in political, social or economic life for any reason whatsoever.*

Article 33

1. *Men and women shall have equal rights in family, political, social and economic life in the Republic of Poland.*
2. *Men and women shall have equal rights, in particular, regarding education, employment and promotion, and shall have the right to equal compensation for work of similar value, to social security, to hold offices, and to receive public honours and decorations.*

[2. Work and Employment \(Article 7 and General Comment No. 22\)](#)

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. General Comment No. 22 extends workplace prohibitions of discrimination to also cover pregnancy, childbirth, parenthood, sexual orientation, gender identity or intersex status.

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, General Comment No. 5, and General Comment No. 22 of the Covenant.

POLAND'S LEGISLATIVE PROVISIONS: SPECIFIC PROTECTIONS EXIST, BUT DO NOT COVER SOME GROUPS

BROAD PROTECTIONS AGAINST DISCRIMINATION

Poland's labor code broadly protects against "any discrimination in employment" on the basis of multiple Covenant-protected grounds.

Labor Code, amended to 2022



Art. 11³ . Jakakolwiek dyskryminacja w zatrudnieniu, bezpośrednia lub pośrednia, w szczególności ze względu na płeć, wiek, niepełnosprawność, rasę, religię, narodowość, przekonania polityczne, przynależność związkową, pochodzenie etniczne, wyznanie, orientację seksualną, zatrudnienie na czas określony lub nieokreślony, zatrudnienie w pełnym lub w niepełnym wymiarze czasu pracy – jest niedopuszczalna

Art. 18^{3a} . § 1. Pracownicy powinni być równo traktowani w zakresie nawiązania i rozwiązania stosunku pracy, warunków zatrudnienia, awansowania oraz dostępu do szkolenia w celu podnoszenia kwalifikacji zawodowych, w szczególności bez względu na płeć, wiek, niepełnosprawność, rasę, religię, narodowość, przekonania polityczne, przynależność związkową, pochodzenie etniczne, wyznanie, orientację seksualną, zatrudnienie na czas określony lub nieokreślony, zatrudnienie w pełnym lub w niepełnym wymiarze czasu pracy.

§ 2. Równe traktowanie w zatrudnieniu oznacza niedyskryminowanie w jakikolwiek sposób, bezpośrednio lub pośrednio, z przyczyn określonych w § 1

However, our research did not find any protections in the labor code or in any other separate legislation on the basis of a number of grounds or statuses covered in the Covenant, including language, social origin, property status, birth status, pregnancy, childbirth, parenthood, gender identity, and intersex status.

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.

Poland's labor code protects against discrimination in remuneration on the grounds of multiple Covenant-protected grounds. The labor code also specifies that all workers should receive equal pay for equal work or work of equal value.



Labor Code, amended to 2022

Art. 18^{3a} . § 1. Pracownicy powinni być równo traktowani w zakresie nawiązania i rozwiązania stosunku pracy, warunków zatrudnienia, awansowania oraz dostępu do szkolenia w celu podnoszenia kwalifikacji zawodowych, w szczególności bez względu na płeć, wiek, niepełnosprawność, rasę, religię, narodowość, przekonania polityczne, przynależność związkową, pochodzenie etniczne, wyznanie, orientację seksualną, zatrudnienie na czas określony lub nieokreślony, zatrudnienie w pełnym lub w niepełnym wymiarze czasu pracy.

Art. 18^{3b} . § 1. Za naruszenie zasady równego traktowania w zatrudnieniu, z zastrzeżeniem § 2–4, uważa się różnicowanie przez pracodawcę sytuacji pracownika z jednej lub kilku przyczyn określonych w art. 183a § 1, którego skutkiem jest w szczególności

(...)

2) niekorzystne ukształtowanie wynagrodzenia za pracę lub innych warunków zatrudnienia albo pominięcie przy awansowaniu lub przyznawaniu innych świadczeń związanych z pracą

Art. 18^{3c} . § 1. Pracownicy mają prawo do jednakowego wynagrodzenia za jednakową pracę lub za pracę o jednakowej wartości.

§ 2. Wynagrodzenie, o którym mowa w § 1, obejmuje wszystkie składniki wynagrodzenia, bez względu na ich nazwę i charakter, a także inne świadczenia związane z pracą, przyznawane pracownikom w formie pieniężnej lub w innej formie niż pieniężna.

However, our research did not find any protections in the labor code or in any other separate legislation guaranteeing any form of equal remuneration on the basis of a number of grounds or statuses covered in the Covenant, including language, social origin, property status, birth status, pregnancy, childbirth, parenthood, gender identity, and intersex status.

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

Poland's Labor Code protects against discrimination in multiple specific areas of employment.

Labor Code, amended to 2022

Art. 18^{3a} . § 1. Pracownicy powinni być równo traktowani w zakresie nawiązania i rozwiązania stosunku pracy, warunków zatrudnienia, awansowania oraz dostępu do szkolenia w celu podnoszenia kwalifikacji zawodowych, w szczególności bez względu na płeć, wiek, niepełnosprawność, rasę, religię, narodowość, przekonania polityczne, przynależność związkową, pochodzenie etniczne, wyznanie, orientację seksualną,



zatrudnienie na czas określony lub nieokreślony, zatrudnienie w pełnym lub w niepełnym wymiarze czasu pracy.

However, our research did not find any protections, in the labor code or in any other separate legislation, against discrimination in promotions on the basis of a number of grounds or statuses covered in the Covenant, including language, social origin, property status, birth status, pregnancy, childbirth, parenthood, gender identity, and intersex status.

3. Equal Right to Establish a Family (Article 10 and General Comment No. 22)

Article 10 states that “The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment...” Moreover, General Comment No. 22 establishes that “Non-discrimination, in the context of the right to sexual and reproductive health, also encompasses the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and intersex status ... State parties also have an obligation to combat homophobia and transphobia, which lead to discrimination, including violation of the right to sexual and reproductive health.” Restrictions on the right to marry based on sex is state-sponsored discrimination against lesbian, gay, bisexual, transgender and intersex persons.

We reviewed full text constitutions for all 193 UN member states available from official government sources to determine whether the constitution guaranteed or restricted the right to marry.

POLAND’S CONSTITUTIONAL PROVISIONS: MAY DENY SAME SEX MARRIAGE

Article 18 of Poland’s constitution defines marriage as “a union of a man and a woman,” potentially limiting the right to marry for same sex couples.

Constitution of Poland, 1997, with amendments to 2009

Article 18

Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland.