



PERU: A BRIEF ON
CONSTITUTIONAL GUARANTEES TO EQUALITY AND NON-
DISCRIMINATION
(Article 2, 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 area:

1. Equality and non-discrimination (Article 2, 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 findings, as well as suggested questions for the Committee to ask Peru and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed constitutional excerpts documenting our findings. We hope the Committee will recommend that Peru address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations. We also recognize that while having strong constitutions, laws and policies in place are necessary first steps, implementation is also of paramount importance. In areas where we have commended Peru for having provisions in place, we hope the Committee will recommend that Peru 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 Peru's constitution guarantees equality on the basis of nearly all groups and statuses cited in the Covenant, including "on any other ground". **The constitution does not, however, explicitly protect against discrimination on the basis of disability or on the basis of birth status.**

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATION

We hope the Committee will:

- In its list of issues, ask Peru: Can Peru demonstrate whether the constitutional right to equality on the basis of "on any other ground" has been interpreted through case law or other policies to apply to persons with disabilities, consistent with commitments made through General Comment No. 5?
 - If Peru cannot demonstrate that this constitutional universal protection is inclusive of persons with disabilities, recommend in its concluding observations that Peru amend the constitution to add explicit guarantees of equality and non-discrimination based on disability. These provisions could be added to Article 2 of the constitution, which already lists all other Convention grounds and statuses.
- Recommend in its concluding observations that Peru amend its constitution to add explicit guarantees of equality and non-discrimination regardless of birth status, consistent with ICESCR commitments. These protections could be added to Article 2 of the constitution, which already protects all other grounds and statuses listed in the Covenant.

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.

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.

PERU’S CONSTITUTIONAL PROVISIONS: MISSING EXPLICIT GUARANTEES OF EQUALITY AND NON-DISCRIMINATION FOR PERSONS WITH DISABILITIES

Article 2.2 of Peru’s constitution prohibits discrimination on the basis of origin, race, sex, language, religion, opinion, and financial condition. Although, like the Covenant, the constitution includes protection on “any other ground”, it does not guarantee equality on the basis of birth which is a status explicitly outlined in the Covenant.

Constitution of Peru

Artículo 2.- Toda persona tiene derecho:

(...)

2. A la igualdad ante la ley. Nadie debe ser discriminado por motivo de origen, raza, sexo, idioma, religion, opinion, condicion economica o de cualquiera otra indole..

(...)

Additionally, given General Comment No. 5 which explicitly addresses non-discrimination of persons with disabilities, **Peru’s constitution does not explicitly guarantee equality for persons with disabilities.** Our research has shown that these protections are becoming increasingly common: While only 12% of current constitutions that were passed before 1990 explicitly protect equality for persons with disabilities, 69% of those passed since 2010 do.

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