



CHINA:
A BRIEF ON CONSTITUTIONAL AND LEGAL GUARANTEES TO
NON-DISCRIMINATION, EQUALITY, EDUCATION, AND
PROHIBITIONS OF CHILD LABOR

*Information for the Committee on Economic, Social, and Cultural Rights
68th Pre-Session Working Group, March 2021*

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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 68th Pre-Sessional Working Group of the Committee on Economic, Social, and Cultural Rights.

This brief will focus on the following four 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)
4. Child Labor (Article 10, General Comment No. 18)

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 provide detailed constitutional and legislative excerpts documenting our findings. These findings are followed by suggested questions for the Committee to ask China, as well as topics we hope the Committee will address in its concluding observations. We hope the Committee will recommend that China 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 China for having provisions in place, we hope the Committee will recommend that China 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)

China's constitution guarantees equal rights between men and women. The constitution further prohibits any form of discrimination based on nationality and religious beliefs. However, other characteristics protected by Article 2 and General Comment No. 5 of Covenant are not guaranteed equal rights in China's constitution, including persons facing discrimination based race, colour, language, political or other opinion, social origin, property status, birth status, and disability status.

We hope the Committee will:

- Recommend in its concluding observations that China amend its constitution to add explicit guarantees of equality and non-discrimination for all persons regardless of race, colour, language, political or other opinion, social origin, property status, birth status, and disability status, consistent with the Covenant's commitments.

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

Our systematic review of national legislation shows that China does not consistently and explicitly prohibit workplace discrimination across four keys areas of employment: employment opportunities or hiring, equal remuneration, promotions and demotions, and dismissals. Although China's laws broadly prohibit workplace discrimination based on race, sex, religion, and disability, several groups covered through the Covenant's commitments are not included in these provisions, such as workers facing discrimination based on language, political opinion, national or social origin, property status, and birth status.

We hope the Committee will:

- In its list of issues, ask China: Can China outline any concrete, near-term plans to pass legislation that explicitly prohibits workplace discrimination based on language, political opinion, national and social origin, property status, and birth status?
 - If China does not have concrete, near-term plans in place, recommend in its concluding observations that China pass and implement legislation that explicitly prohibits discrimination based on language, political opinion, national and social origin, property status, and birth status, particularly in the following aspects of employment:
 - Employment opportunities and hiring
 - Equal remuneration for work of equal value
 - Promotions and demotions
 - Continuance of employment or terminations



- In its list of issues, ask China: Can China demonstrate whether broad legislative prohibitions of workplace discrimination based on race, sex, religion, and disability status have been interpreted to include specific forms of discrimination that occur during promotions, demotions, and dismissals when these explicit prohibitions are missing?

3. Free and Compulsory Education (Article 13)

China guarantees nine years of tuition-free compulsory education, covering the primary and junior secondary levels of education. Legislation, however, fails to ensure tuition-free education through the senior secondary level, potentially restricting the availability and accessibility of secondary education.

We hope the Committee will:

- In its list of issues, ask China: Can China outline any concrete, near-term plans to pass legislation that guarantees free senior secondary education for all children?
 - If China does not have concrete, near-term plans to ensure free senior secondary education, recommend in its concluding observations that China pass and implement legislation to do so.

4. Child Labor (Article 10, General Comment No. 18)

China has laws and regulations in place prohibiting children under the age of 16 from engaging in any work, and prohibiting children between the ages of 16 and 18 from engaging in hazardous work. Despite the legislative steps China has taken to eliminate child labor, data from the China Family Panel Study found that in 2010, 7.74% of children aged 10-15 were working.¹ In this context, it is important to understand current rates of child labor in China, however the International Labour Organization has noted that China has not submitted nor published official statistics on child labor.²

We hope the Committee will:

- In its list of issues, ask China: Can China provide recent national-level statistics on the prevalence of child labor within the country?
 - If China cannot provide recent national statistics on the prevalence of child labor in the country, or if those statistics show a high prevalence of child labor, recommend in its concluding observations that China develop concrete, near-term plans to systematically measure the prevalence of child labor and fully implement prohibitions of child labor.

¹ Tang, C., Zhao, L., and Zhong, Z. (2018). "[Child labor in China](#)". *China Economic Review* 51, p. 149.

² International Labour Organization. *Child labour in China and Mongolia*, Available at: <https://www.ilo.org/beijing/areas-of-work/child-labour/lang--en/index.htm> (accessed 30 November 2020).



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.

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

Article 48 of China’s constitution guarantees equal rights between men and women. The constitution further prohibits any form of discrimination based on nationality and religious beliefs in Article 4 and Article 36. However, other characteristics protected by Article 2 and General Comment No. 5 of the Covenant are not guaranteed equal rights in China’s constitution, including persons facing discrimination based on race, colour, language, political or other opinion, social origin, property status, birth status, and disability status.



Article 4

All nationalities in the People's Republic of China are equal. The State protects the lawful rights and interests of the minority nationalities and upholds and develops a relationship of equality, unity and mutual assistance among all of China's nationalities. Discrimination against and oppression of any nationality are prohibited; any act which undermines the unity of the nationalities or instigates division is prohibited. The State assists areas inhabited by minority nationalities in accelerating their economic and cultural development according to the characteristics and needs of the various minority nationalities. Regional autonomy is practised in areas where people of minority nationalities live in concentrated communities; in these areas organs of self-government are established to exercise the power of autonomy. All national autonomous areas are integral parts of the People's Republic of China. All nationalities have the freedom to use and develop their own spoken and written languages and to preserve or reform their own folkways and customs.

Article 36

[...]

No State organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.

Article 48

Women in the People's Republic of China enjoy equal rights with men in all spheres of life, in political, economic, cultural, social and family life.

2. Non-Discrimination in 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 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 discrimination in employment across four areas covered by the Covenant:

- 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.

CHINA'S LEGISLATIVE PROVISIONS: LIMITED PROTECTIONS FROM WORKPLACE DISCRIMINATION

Our systematic review of national legislation shows that China does not consistently and explicitly prohibit workplace discrimination across four keys areas of employment: opportunities or hiring, equal remuneration, promotions and demotions, and dismissals. Article 12 of China's *Labour Law* and Article 3 of the *Law on Promotion of Employment* **broadly prohibit discrimination against employees and persons seeking employment based on race, sex, and religion.**

Two additional laws, the *Law on the Protection of Women's Rights and Interests* and the *Law on the Protection of Disabled Persons* outline more specific employment rights for women and persons with disabilities. Specifically, the *Law on the Protection of Women's Rights* **guarantees women equal pay for equal work and prohibits sex-based discrimination during promotions and evaluations** in Articles 24 and 25, respectively. Article 38 of the *Law on the Protection of Disabled Persons* also **prohibits disability-based discrimination during the acquiring of employment or hiring process, during promotions and evaluations, and in remuneration and benefits.**



However, several groups covered through the Covenant’s commitments are not included in these provisions, such as workers facing discrimination based on language, political opinion, national or social origin, property status, and birth status.

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

	Discrimination broadly prohibited	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.

Labour Law

Article 12

Labourers, regardless of their ethnic group, race, sex, or religious belief, shall not be discriminated against in employment.

Article 13

Women shall enjoy the equal right, with men, to employment. With exception of the special types of work or post unsuitable to women as prescribed by the State, no unit may, in employing staff and workers, refuse to employ women by reason of sex or raise the employment standards for women.

Law on Promotion of Employment

Article 3

The workers enjoy the right to employment on an equal footing and to choice of jobs on their own initiative in accordance with law.

In seeking employment, the workers shall not be subject to discrimination because of their ethnic backgrounds, races, gender, religious beliefs, etc.



Law on the Protection of Women's Rights and Interests

Article 24

Equal pay for equal work shall be applied to men and women alike.

[...]

Article 25

In such aspects as promotion in post or in rank, evaluation and determination of professional and technological titles, the principle of equality between men and women shall be upheld and discrimination against women shall not be allowed.

Law on Protection of Disabled Persons

Article 38

[...]

No discrimination shall be practiced against disabled persons in employment, in their acquiring of a regular status, promotion, evaluation of technical or professional titles, payment for work, welfare benefits, rest and vacations, social insurance or in other aspects.

[...]

3. Free and Compulsory Education (Articles 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 levels.

CHINA’S LEGISLATIVE PROVISIONS: GUARANTEED FREE AND COMPULSORY EDUCATION THROUGH JUNIOR SECONDARY LEVEL

China’s *Law on Compulsory Education* guarantees nine years of tuition-free compulsory education, covering the primary and junior secondary levels of education. The law, however, fails to ensure tuition-free education through the senior secondary level, potentially restricting the availability and accessibility of secondary education.

Law on Compulsory Education

Article 2

The State adopts a system of 9-year compulsory education.

Compulsory education is education which is implemented uniformly by the State and shall be received by all school-age children and adolescents. It is a public welfare cause that shall be guaranteed by the State.

No tuition or miscellaneous fee may be charged in the implementation of compulsory education.

The State shall establish a guarantee mechanism for operating funds for compulsory education in order to ensure the implementation of the system of compulsory education.

4. Child Labor (Article 10, General Comment No. 18)

Article 10 of the Covenant commits States Parties to implementing special measures needed to protect children for economic exploitation. Specifically, the Article states:

Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

In addition, General Comment No. 18 obliges States Parties to implement Article 10 of the Covenant by taking “effective measures, in particular legislative measures, to prohibit labour of children under the age of 16.”

We systematically reviewed national labor and child-related legislation available through the International Labour Organization’s NATLEX database for all 193 UN member states to determine



whether national legislation established a minimum age for admission to employment and hazardous employment.

CHINA'S LEGISLATIVE PROVISIONS: CHILDREN UNDER 16 PROTECTED FROM LABOR

Based on our review, China has laws and regulations in place prohibiting children under the age of 16 from engaging in any work, and further prohibiting children between the ages of 16 and 18 from engaging in hazardous work. These protections are outlined in the 1994 *Labor Act* and the 2002 *Provisions on the Prohibition of Child Labor*, and reiterated in the 1991 *Law on the Protection of Minors*.

Labor Act (1994)

Section 15. No employing units shall be allowed to recruit juveniles under the age of 16.

Section 58. The State shall provide female workers and juvenile workers with special protection. "Juvenile workers" hereby refer to labourers at the age of 16 but not 18 yet.

Section 64. No juvenile workers shall be arranged to engage in work down the pit of mines, work that is poisonous or harmful, work with Grade IV physical labour intensity as stipulated by the State, or other work that they should avoid.

Provisions on Prohibition of Child Labor (2002)

Article 2: No State organs, social organizations, enterprises, institutions, private non-enterprise units, or individual industrial and commercial businesses (hereinafter referred to as employing units) may recruit and hire minors under the age of 16 (the term "hiring minors under the age of 16" is hereinafter referred uniformly to as "use of child labour"). All units and individuals are prohibited from providing job placement service to minors under the age of 16. Minors under the age of 16 are prohibited from starting business and engaging in individual business operation activities.

Despite the legislative steps China has taken to eliminate child labor, data from the China Family Panel Study found that in 2010, 7.74% of children aged 10-15 were working.³ Further, the International Labour Organization has noted that China has not submitted nor published official statistics on child labor.⁴ In this context, it is important to understand current rates of child labor in China.

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³ Tang, C., Zhao, L., and Zhong, Z. (2018). "[Child labor in China](#)". *China Economic Review* 51, p. 149.

⁴ International Labour Organization. *Child labour in China and Mongolia*, Available at: <https://www.ilo.org/beijing/areas-of-work/child-labour/lang--en/index.htm> (accessed 30 November 2020).