



## Democratic Republic of the Congo: A Brief on Guarantees to Non-Discrimination and Equality

*Information for the Committee on Economic, Social, and Cultural Rights  
66<sup>th</sup> Pre-Session Working Group, March 2020*

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## EXECUTIVE SUMMARY

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 66<sup>th</sup> Pre-Sessional Working Group of the Committee on Economic, Social, and Cultural Rights.

This brief will focus on the following two areas:

1. Overall guarantees to 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 executive summary, we provide our findings and suggestions for questions the committee may ask regarding areas that may have not been covered. Finally, we suggest topics to be addressed by the committee in concluding observations. We hope the Committee will recommend that the Democratic Republic of the Congo address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations.

The WORLD Policy Analysis Center's examination of the Democratic Republic of the Congo's constitutional provisions and legislation vis à vis the commitments it has made through its ratification of the ICESCR is focused in the following areas:

***Areas where the Democratic Republic of the Congo has provisions in place, but where these provisions do not appear to fully address the commitments made through its ratification of the ICESCR:***

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### A) Overall guarantees to equality and non-discrimination (Article 2, Gen. Comment 5)

Both constitutional and legislative guarantees of equality and non-discrimination are key components of a comprehensive anti-discrimination legal system, with constitutional guarantees setting a foundational and long-standing national principle, and the latter often serving as an important instrument for implementation.



**The Democratic Republic of the Congo's constitution prohibits discrimination of Congolese citizens based on sex, religion, family origin, social status, residence, political opinion, race, ethnicity, tribe, culture, or language.** The constitution further extends all rights to foreigners, subject to reciprocity. However, **some groups guaranteed non-discrimination in Article 2 of the ICESCR and General Comments of the CESCR are not covered by the constitutional provisions above, including persons facing discrimination based on property, birth, or disability status.**

**We hope the Committee will:**

- Recommend in its concluding observations that the Democratic Republic of the Congo consider amending the constitution to add explicit guarantees of non-discrimination for all persons regardless of property, birth, or disability status, consistent with ICESCR commitments. These guarantees could be added to Article 13 of the constitution which already guarantees non-discrimination for other personal characteristics and statuses.
- In its list of issues, ask the Democratic Republic of the Congo: What legislative guarantees are in place to ensure non-discrimination irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or disability status?
  - Where these legislative guarantees are not in place, recommend in its concluding observations that the Democratic Republic of the Congo add these legal guarantees of non-discrimination, consistent with ICESCR commitments.

## **B) Non-discrimination in work and employment (Article 7)**

The 2002 *Loi Portant Code du Travail*, which regulates working hours and paid leave, applies equally to all workers regardless of race, sex, religion, political opinion, national ancestry, social origin, and nationality. However, our systematic review of national legislation shows that the Democratic Republic of the Congo does not consistently and explicitly protect all workers from workplace discrimination across four key areas of employment including: employment opportunities or hiring, equal remuneration for work of equal value, promotions and demotions, and dismissals.

**While legislation guarantees non-discrimination on the basis of sex across all four areas of employment, not all groups covered through ICESCR commitments are guaranteed the same protection**, and there are notably no prohibitions of workplace discrimination on the basis of language, property and birth status.



	Employment Opportunities or hiring	Equal remuneration for work of equal value	Promotions and demotions	Dismissals
Race and colour				✓
Sex	✓	✓	✓	✓
Language				
Religion				✓
Political opinion				✓
National origin				✓
Social origin				✓
Property status				
Birth status				
Disability	✓			

**We hope the Committee will:**

- In its list of issues, ask the Democratic Republic of the Congo: Can the Democratic Republic of the Congo outline any concrete, near-term plans to pass legislation prohibiting all forms of workplace discrimination on the basis of race, colour, language, religion, political opinion, national or social origin, property, birth, or disability status?
  - If the Democratic Republic of the Congo does not have concrete, near-term plans to pass and implement such legislation, recommend in its concluding observations that the Democratic Republic of the Congo pass and implement legislation that explicitly protects all groups covered in Article 2 and General Comment 5 of the ICESCR from workplace discrimination, particularly in:
    - employment opportunities or hiring
    - equal remuneration for work of equal value
    - promotions and demotions
    - dismissals or terminations
- In its list of issues, ask the Democratic Republic of the Congo: Can the Democratic Republic of the Congo outline how it is enforcing protections from sex-based discrimination at work?
  - Where the Democratic Republic of the Congo is not fully implementing these protections, recommend in its concluding observations that the Democratic Republic of the Congo explore how to fully and effectively implement these protections.



## DETAIL

While the following review is systematic and rigorous, we recognize that there may be laws or policies governing these areas that we have not captured, including new legislation or policies that have not yet been published globally.

### 1. Overall Guarantees to Equality and Non-Discrimination (Article 2, Gen Comment 5)

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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 and 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 ICESCR by prohibiting discrimination based on each specific status, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

#### DEMOCRATIC REPUBLIC OF THE CONGO’S CONSTITUTIONAL PROVISIONS

As outlined in Articles 13 and 14 of its constitution, the **Democratic Republic of the Congo prohibits discrimination of Congolese citizens based on sex, religion, family origin, social status, residence, political opinion, race, ethnicity, tribe, culture, or language.** Article 50 further extends all rights to foreigners, subject to reciprocity. However, **some groups guaranteed non-discrimination in Article 2**



**and General Comments of the ICESCR are not covered by the constitutional provisions above, including persons facing discrimination based on property, birth, or disability status.**

*Article 13*

*Aucun Congolais ne peut, en matière d'éducation et d'accès aux fonctions publiques ni en aucune autre matière, faire l'objet d'une mesure discriminatoire, qu'elle résulte de la loi ou d'un acte de l'exécutif, en raison de sa religion, de son origine familiale, de sa condition sociale, de sa résidence, de ses opinions ou de ses convictions politiques, de son appartenance à une race, à une ethnie, à une tribu, à une minorité culturelle ou linguistique.*

*Article 14*

*Les pouvoirs publics veillent à l'élimination de toute forme de discrimination à l'égard de la femme et assurent la protection et la promotion de ses droits.  
Ils prennent, dans tous les domaines, notamment dans les domaines civil, politique, économique, social et culturel, toutes les mesures appropriées pour assurer le total épanouissement et la pleine participation de la femme au développement de la nation.*

*Article 50*

*L'Etat protège les droits et les intérêts légitimes des Congolais qui se trouvent tant à l'intérieur qu'à l'extérieur du pays.  
Sous réserve de la réciprocité, tout étranger qui se trouve légalement sur le territoire national bénéficie des mêmes droits et libertés que le Congolais, excepté les droits politiques.  
Il bénéficie de la protection accordée aux personnes et à leurs biens dans les conditions déterminées par les traités et les lois.  
Il est tenu de se conformer aux lois et règlements de la République.*

## **2. Work and Employment (Article 7)**

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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 labour 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 ICESCR:

- 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.

**DEMOCRATIC REPUBLIC OF THE CONGO’S LEGISLATIVE GUARANTEES**

The *Code du Travail*, which regulates working hours and paid leave, applies equally to all workers regardless of race, sex, religion, political opinion, national ancestry, social origin, and nationality, as stated in Article 1. However, our systematic review of national legislation shows that the Democratic Republic of the Congo **does not consistently and explicitly protect all workers from workplace discrimination across four key areas of employment including: employment opportunities or hiring, equal remuneration for work of equal value, promotions and demotions, and dismissals.**

While the *Loi Portant Modalités d'application des droits de la Femme et de la Parité* comprehensively **guarantees non-discrimination on the basis of sex across all four areas of employment, we found no legislation guaranteeing the same full protection to other groups covered through ICESCR commitments.** Some groups, including language, property and birth status, receive no protection from workplace discrimination.

**Table 1. Guaranteed protections of non-discrimination across four key areas of employment**

	Employment Opportunities or hiring	Equal remuneration for work of equal value	Promotions and demotions	Dismissals
Race and colour				✓
Sex	✓	✓	✓	✓
Language				
Religion				✓
Political opinion				✓
National origin				✓
Social origin				✓
Property status				
Birth status				
Disability	✓			



***Loi Portant Modalités d'application des droits de la Femme et de la Parité***

***Article 20***

*Il est interdit de discriminer les travailleurs en raison du sexe, en se fondant notamment sur l'état-civil, la situation familiale ou s'agissant des femmes, sur leur état de grossesse.*

***Article 21***

*Sans préjudice des dispositions légales en vigueur, l'interdiction de toute discrimination s'applique à toute pratique néfaste liée notamment à l'embauche, à l'attribution des tâches, aux conditions de travail, à la rémunération et autres avantages sociaux, à la promotion et à la résiliation du contrat de travail.*

***Article 86***

*A conditions égales de travail, de qualification professionnelle et de rendement, le salaire est égal pour tous les travailleurs, quels que soient leur origine, leur sexe et leur âge. La rémunération d'un travail à la tâche ou aux pièces doit être calculée de telle sorte qu'elle procure au travailleur, de capacité moyenne et travaillant normalement, un salaire au moins égal à celui du travailleur rémunéré au temps et effectuant un travail analogue.*

***Code du Travail***

***Article 1***

*Le présent code est applicable à tous les travailleurs et à tous les employeurs, y compris ceux des entreprises publiques exerçant leur activité professionnelle sur l'étendue de la République Démocratique du Congo, quels que soient la race, le sexe, l'état civil, la religion, l'opinion politique, l'ascendance nationale, l'origine sociale, la nationalité des parties, la nature des prestations, la rémunération ou le lieu de conclusion du contrat, dès lors que ce dernier s'exécute en République Démocratique du Congo. Il s'applique également aux travailleurs des services publics de l'État engagés par le contrat de travail.*

***Article 62***

*Ne constituent pas des motifs valables de licenciement notamment:*

*- la race, la couleur, le sexe, l'état matrimonial, les responsabilités familiales, la grossesse, l'accouchement et ses suites, la religion, l'opinion politique, l'ascendance nationale ou l'origine sociale, le groupe ethnique;*

***Article 135:***

*Le handicap ne saurait constituer un empêchement pour l'accès d'une personne à l'exercice d'un employ répondant à ses aptitudes intellectuelles, sensorielles ou physiques dans le secteur public, semi-public ou privé pour autant que son handicap ne soit pas de nature à causer un préjudice ou à gêner le fonctionnement de l'entreprise.*





## Reference Sheet

### Recommended Questions for the Democratic Republic of the Congo's List of Issues and Recommended Concluding Observations

For the Committee on the Economic, Social, and Cultural Rights,  
66<sup>th</sup> Pre-Session Working Group, March 2020

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#### Recommended Questions for the Democratic Republic of the Congo's List of Issues:

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##### **Overall Equality and Non-Discrimination (Article 2, General Comment No. 5)**

- What legislative guarantees are in place to ensure non-discrimination irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or disability status?

##### **Work and Employment (Article 7)**

- Can the Democratic Republic of the Congo outline any concrete, near-term plans to pass legislation prohibiting all forms of workplace discrimination on the basis of race, colour, language, religion, political opinion, national or social origin, property, birth, or disability status?
- Can the Democratic Republic of the Congo outline how it is enforcing protections from sex-based discrimination at work?

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#### Recommended Concluding Observations for the Democratic Republic of the Congo (where responses to questions from the list of issues are unclear or insufficient):

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\*Note that wherever possible, these recommendations should be implemented in collaboration with relevant stakeholders, including civil society organizations.

##### **Overall Equality and Non-Discrimination (Article 2, General Comment No. 5)**

- That the Democratic Republic of the Congo consider amending the constitution to add explicit guarantees of non-discrimination for all persons regardless of property, birth, or disability status, consistent with ICESCR commitments. These guarantees could be added to Article 13 of the constitution which already guarantees non-discrimination for other personal characteristics and statuses.



- That the Democratic Republic of the Congo pass and implement legal guarantees of non-discrimination irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or disability status, consistent with ICESCR commitments.

## **Work and Employment (Article 7)**

- That the Democratic Republic of the Congo pass and implement legislation that explicitly protects all groups covered in Article 2 and General Comment 5 of the ICESCR from workplace discrimination, particularly in:
  - employment opportunities or hiring
  - equal remuneration for work of equal value
  - promotions and demotions
  - dismissals or terminations
- That the Democratic Republic of the Congo explore how to fully and effectively implement protections from sex-based discrimination at work.

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*Brief prepared by the World Policy Analysis Center, University of California, Los Angeles*