



PANAMA:
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
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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 Panama, as well as topics we hope the Committee will address in its concluding observations. We hope the Committee will recommend that Panama 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 Panama for having provisions in place, we hope the Committee will recommend that Panama 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)

Panama's constitution prohibits all forms of discrimination based on race, birth, disability, social class, sex, religion, and political beliefs. However, other characteristics protected by Article 2 and General Comment No. 5 of the Covenant are not guaranteed equal rights in Panama's constitution, including persons facing discrimination based on language, national origin, or property status.

We hope the Committee will:

- Recommend in its concluding observations that Panama amend its constitution to add explicit guarantees of equality and non-discrimination for all persons regardless of language, national origin, and property status, consistent with the Covenant's commitments. These guarantees may be added to Article 19 of the constitution, which already prohibits discrimination based on other characteristics.

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

Our systematic review of legislation shows that Panama broadly prohibits workplace discrimination based on race, birth, disability, social class, sex, religion, and political beliefs, but does not outline and prohibit specific forms of discrimination that may occur during hiring, promotions and demotions, remuneration, and dismissals. Further, several groups covered through the Covenant's commitments are not included in any legislative workplace non-discrimination provisions, such as workers facing discrimination based on language, national origin, and property status.

We hope the Committee will:

- In its list of issues, ask Panama: Can Panama outline any concrete, near-term plans to pass legislation that explicitly prohibits workplace discrimination based on language, national origin, and property status?
 - If Panama does not have concrete, near-term plans in place, recommend in its concluding observations that Panama pass and implement legislation that explicitly prohibits discrimination based language, national origin, and property 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 Panama: Can Panama demonstrate whether broad prohibitions of workplace discrimination based on race, birth, disability, social class, sex religion, and political beliefs have been interpreted to include specific forms of discrimination that occur during hiring,



promotions and demotions, remuneration, and dismissals when these explicit prohibitions are missing?

3. Free and Compulsory Education (Article 13)

Panama guarantees 11 years of free and compulsory education, covering primary education and lower secondary education. Legislation further specifies that upper secondary, although not compulsory, is provided free to all students. Despite these legislative guarantees, 2017 data from the UNESCO Institute for Statistics estimates that approximately 13% of both primary school age children and lower secondary age adolescents are not enrolled in school.

We hope the Committee will:

- In its list of issues, ask Panama: Can Panama demonstrate how legal guarantees of free and compulsory primary and lower secondary education are being implemented equally for all children? What are the obstacles faced by children who remain out of school?
 - Where Panama has not been able to equally implement these guarantees to free and compulsory primary and lower secondary education for all children, recommend in its concluding observations approaches to advancing these educational guarantees fully and effectively.

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

Panama's legislation prohibits children under the age of 18 from being employed in hazardous work. However, laws permit children to work in non-hazardous work at the age of 14 if they have completed primary education.

- In its list of issues, ask Panama: Can Panama outline any concrete, near-term plans to pass legislation that raises the minimum age for admission to employment to at least 16 years?
 - If Panama does not have concrete, near-term plans in place, recommend in its concluding observations that Panama pass and implement legislation that raises the minimum age for admission to employment to at least 16 years, consistent with commitments from Article 10 of the Covenant and General Comment No. 18.



DETAIL OF CONSTITUTIONAL AND LEGISLATIVE FINDINGS

1. Equality and Non-Discrimination (Articles 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.

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

Article 19 of Panama’s constitution prohibits all forms of discrimination based on race, birth, disability, social class, sex, religion, and political beliefs. However, other characteristics protected by Article 2 and General Comment No. 5 of the Covenant are not guaranteed equal rights in Panama’s constitution, including persons facing discrimination based on **language, national origin, or property status**.

Artículo 19. No abra fueros o privilegios ni discriminacion por razon de raza, nacimiento, discapacidad, clase social, sexo, religion o ideas politicas.



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:

1. Employment opportunities or hiring
2. Equal remuneration for work of equal value
3. Promotions and demotions
4. 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.

PANAMA'S LEGISLATIVE PROVISIONS: LIMITED PROTECTIONS FROM WORKPLACE DISCRIMINATION

Our systematic review of national legislation shows that Panama 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. *Ley que prohíbe la discriminación laboral y adopta otras medidas broadly prohibits workplace discrimination based on race, birth, disability, social class, sex, religion, and political beliefs*, but does not outline specific forms



of discrimination that may occur during hiring, promotions and demotions, remuneration, and dismissals.

Two additional laws outline more specific employment rights for women and persons with disabilities. Specifically, Article 20 of *Ley que adopta medidas de prevención contra la violencia en las mujeres* **prohibits all forms of sex-based discrimination in employment, and further requires employers to pay women equal wages for comparable work.** *Ley por la cual se establece la equiparación de oportunidades para las personas con discapacidad* **requires that employment practices regarding recruitment or hiring, promotions, and remuneration are equitable for persons with disabilities.**

However, several groups covered through the Covenant’s commitments are **not included in any of these provisions, such as workers facing discrimination based on language, national origin, and property 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.

Ley que prohíbe la discriminación laboral y adopta otras medidas

Art. 1. Se prohíbe la discriminación laboral, por razones de raza, nacimiento, discapacidad, clase social, sexo, religión o ideas políticas.

Ley que adopta medidas de prevención contra la violencia en las mujeres y reforma el Código Penal para tipificar el femicidio y sancionar los hechos de violencia contra la mujer

20. Violencia laboral y salarial. Aquella que se ejerce por las personas que tienen un vínculo laboral con la víctima, independientemente de la relación jerárquica. Incluye acoso sexual,



hostigamiento por pertenencia al sexo femenino, explotación, desigualdad salarial por trabajo comparable y todo tipo de discriminación basada en su sexo.

Ley por la cual se establece la equiparación de oportunidades para las personas con discapacidad

ARTÍCULO 41: Las personas con discapacidad tienen derecho a optar por un empleo productivo y remunerado, en igualdad de condiciones. Las políticas y programas de contratación y ascenso, condiciones de empleo, tasas de remuneración, ambiente laboral y de reinserción de los trabajadores lesionados en accidentes laborales, deben ser equitativos. En los casos en que personas con discapacidad apliquen para un puesto de trabajo en igualdad de calificaciones, éstas deberán ser consideradas prioritariamente para ocupar la posición.

ARTÍCULO 43: El trabajador cuya discapacidad haya sido diagnosticada por autoridades competentes, tendrá derecho a permanecer en su puesto de trabajo, y de no poder ejercerlo, a que se tomen las medidas para lograr su readaptación profesional u ocupacional. De igual forma, tendrá derecho a la adaptación del puesto de trabajo que ocupa dentro de la empresa o institución. Cuando el puesto de trabajo no pueda ser readaptado, el trabajador deberá ser reubicado de acuerdo con sus posibilidades y potencialidades, sin menoscabo de su salario

3. Free and Compulsory Education (Article 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 level.



PANAMA'S LEGISLATIVE PROVISIONS: GUARANTEED FREE AND COMPULSORY EDUCATION THROUGH LOWER SECONDARY LEVEL

According to the *Ley Orgánica de Educación*, Panama guarantees 11 years of free and compulsory education, covering primary education and lower secondary education. The law further specifies that upper secondary, although not compulsory, is provided free to all students. Despite these legislative guarantees, 2017 data from the UNESCO Institute for Statistics estimates that approximately 13% of both primary school age children and lower secondary age adolescents are not enrolled in school.¹

Ley Orgánica de Educación

Artículo 3. La educación sistematizada que los planteles oficiales imparten se divide en preescolar o pre-primaria, primaria, secundaria y universitaria.

Artículo 64. El subsistema regular se organiza en tres niveles:

1. Primer nivel de enseñanza o educación básica general, que es de carácter universal, gratuito y obligatorio, con una duración de once (11) años e incluye:

a. Educación preescolar, para menores de cuatro (4) a cinco (5) años, con duración de dos (2) años,

b. Educación primaria, con una duración de seis (6) años

c. Educación premedia, con una duración de tres (3) años

2. Segundo nivel de enseñanza o educación media, de carácter gratuito con una duración de tres años

Artículo 71. La educación primaria es gratuita y obligatoria. La obligatoriedad de la enseñanza se refiere no solo a la obligación del niño de recibirla, sino también a la obligación que tiene el Estado de impartirla.

Artículo 81. El segundo nivel de enseñanza o educación media es de carácter gratuito y diversificado, con una duración de tres (3) años lectivos.

¹ UNESCO Institute for Statistics. Education: Out-of-school rate for children of primary school age, 2017. Web. 5 November 2020. <<http://data.uis.unesco.org/>>



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

Article 10 of the Covenant requires States Parties to recognize the 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 obligates State 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.

PANAMA’S LEGISLATIVE PROVISIONS: CHILDREN CAN WORK AT THE AGE OF 14

Based on our review, Article 118 of Panama’s Código de Trabajo prohibits children under the age of 18 from being employed in hazardous work. However, Article 83 and Article 117 of the law permit children to work in non-hazardous work at the age of 14 if they have completed primary education.

Código de Trabajo

Artículo 83. Toda persona que haya cumplido catorce años de edad puede obligarse como trabajador, con las limitaciones establecidas en este Código.

Artículo 117. Es prohibido el trabajo:

- 1. De los menores que no hayan cumplido catorce años.*
- 2. De menores hasta de quince años que no hayan completado la instrucción primaria.*

Artículo 118. Queda prohibido a los que tengan menos de dieciocho años los trabajos que, por su naturaleza o por las condiciones en que se efectúen, sean peligrosos para la vida, salud o moralidad de las personas que los desempeñan, especialmente los siguientes:

- 1. Trabajos en clubes, cantinas y demás lugares donde se expendan al por menor bebidas alcohólicas.*
- 2. Transporte de pasajeros y mercancías por carretera, ferrocarriles, aeronavegación, vías de agua interior y trabajos en muelles, embarcaderos y almacenes de depósitos.*



3. *Trabajos relacionados con la generación, transformación y transmisión de energía eléctrica.*
4. *Manejo de sustancias explosivas o inflamables.*
5. *Trabajos subterráneos en minas, canteras, túneles o cloacas.*
6. *Manejo de sustancias, dispositivos o aparatos que lo exponga a los efectos de radiactividad.*

BRIEF PREPARED BY THE WORLD POLICY ANALYSIS CENTER, UNIVERSITY OF CALIFORNIA, LOS ANGELES