



COLOMBIA

A BRIEF ON NON-DISCRIMINATION IN WORK AND EMPLOYMENT, AND CHILD MARRIAGE (Articles 3, 7, and 10)

*Information for the Committee on Economic, Social, and Cultural Rights
73rd Pre-Sessional Working Group, October 2023*

Submitted By

The WORLD Policy Analysis Center
University of California, Los Angeles



CONTENTS

Introduction1

Summary of Findings and Recommendations.....2

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

 2. Child Marriage (Articles 3, 10).....3

Detail of Legislative Findings5

 1. Work and Employment (Article 7).....5

 2. Child Marriage (Articles 3, 10).....7



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 73rd Pre-Sessional Working Group of the Committee on Economic, Social, and Cultural Rights.

This brief will focus on the following areas:

1. Non-discrimination in work and employment (Article 7)
2. Child marriage (Articles 3 and 10)

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 legislative findings, as well as suggested questions for the Committee to ask the Colombia and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed legislative excerpts documenting our findings. We hope the Committee will recommend that Colombia 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 Colombia for having provisions in place, we hope the Committee will recommend that Colombia work with stakeholders to overcome any obstacles in implementing these provisions.



SUMMARY OF FINDINGS AND RECOMMENDATIONS

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

On broad prohibitions of workplace discrimination:

Colombia has broad prohibitions of discrimination in both its penal code and its labor code; **together, they cover** race or colour, sex, religion, political or other opinion, national or social origin, property, birth status, and disability. Only language is not explicitly covered, although the penal code does protect against discrimination on the basis of “other reasons”.

On discrimination in remuneration:

Among Covenant groups, Colombia guarantees equal pay for work of equal value **on the basis of race, sex, religion, political opinion, and national origin; it fails to offer this protection on the basis of language, social origin, property, birth and disability.**

On discrimination in promotions:

Our research found no prohibitions in Colombian legislation against discrimination in promotions.

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

	Discrimination broadly prohibited	Equal pay for work of equal value	Promotions
Race and colour	✓	✓	
Sex	✓	✓	
Language			
Religion	✓	✓	
Political opinion	✓	✓	
National origin	✓	✓	
Social origin	✓		
Property status	✓		
Birth status	✓		
Disability	✓		



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

On discrimination in remuneration:

We hope the Committee will:

- In its list of issues, can Colombia provide the Committee with any concrete, near-term steps it is taking to pass legislation that protects against discrimination in remuneration on the basis of language, social origin, property, birth and disability?
 - If no concrete, near-term plans are in place, recommend in its concluding observations that Colombia amend its legislation to provide explicit guarantees against discrimination in remuneration on the basis of language, social origin, property, birth and disability.

On discrimination in promotions:

We hope the Committee will:

- In its list of issues, can Colombia provide the Committee with any concrete, near-term specific steps it is taking to pass legislation that adds specific prohibitions against discrimination in promotions on the basis of race and colour, sex, language, religion, political or other opinion, national origin, social origin, property, birth, and disability?
 - If no concrete, near-term plans are in place, recommend that Colombia amend its legislation to provide broad guarantees against discrimination in promotions on the basis of race and colour, sex, language, religion, political or other opinion, national origin, social origin, property, birth, and disability.

2. Child Marriage (Articles 3, 10)

Based on our review, **Colombia's civil code sets a minimum age of marriage of 18 for both girls and boys, but this age can be lowered to 14 with parental consent only.** Colombia's last recorded child marriage rates, from 2017, were high: 23% of girls married before age 18 and 5% married before age 15.¹

¹ UNICEF. UNICEF Data Warehouse – Child Marriage. Retrieved July 20, 2023 from https://data.unicef.org/resources/data_explorer/unicef/f/?ag=UNICEF&df=GLOBAL_DATAFLOW&ver=1.0&dq=.PT_F_20-24_MRD_U15+PT_M_20-24_MRD_U18+PT_F_20-24_MRD_U18+PT_M_15-19_MRD+PT_F_15-19_MRD.&startPeriod=2016&endPeriod=2022



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Colombia: Can Colombia outline any concrete, near-term plans to pass legislation that removes all existing exceptions to a minimum age of marriage of 18 years for both boys and girls?
 - If Colombia does not have concrete near-term plans in place, recommend in its concluding observations that Colombia pass and implement legislation that protects children under the age of 18 from early marriage without exceptions.



DETAIL OF LEGISLATIVE FINDINGS

1. Work and Employment (Article 7)

In addition to Article 2(2) and General Comment No. 5 of the Covenant which guarantee 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.

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 and General Comment No. 5 of the Covenant.

COLOMBIA'S LEGISLATIVE PROVISIONS: BROAD PROTECTIONS PROVIDED, BUT ISSUES PERSIST IN COMPENSATION AND PROMOTIONS

BROAD PROTECTIONS AGAINST DISCRIMINATION

The combination of articles 2.3 of Colombia's workplace harassment and discrimination act and articles 134A and 134C of its penal code **broadly prohibit workplace discrimination on almost all of the grounds and statuses** covered by Article 2 and General Comment No. 5 of the Covenant. **Language is the only group that does not receive this protection**, although the penal code does protect against workplace discrimination on the basis of "other reasons".

Ley 1010 por medio de la cual se adoptan medidas para prevenir, corregir y sancionar el acoso laboral y otros hostigamientos en el marco de las relaciones de trabajo (2006, amended to 2022)

ARTÍCULO 2o. DEFINICIÓN Y MODALIDADES DE ACOSO LABORAL

(...)

3. Discriminación laboral: todo trato diferenciado por razones de raza, género, edad, origen familiar o nacional, credo religioso, preferencia política o situación social que carezca de toda razonabilidad desde el punto de vista laboral

Código Penal, amended through 2023

CAPÍTULO IX - DE LOS ACTOS DE DISCRIMINACIÓN

Artículo 134A. Actos de racismo o discriminación



El que arbitrariamente impida, obstruya o restrinja el pleno ejercicio de los derechos de las personas por razón de su raza, nacionalidad, sexo u orientación sexual, discapacidad y demás razones de discriminación, incurrirá en prisión de doce (12) a treinta y seis (36) meses y multa de diez (10) a quince (15) salarios mínimos legales mensuales vigentes.

(...)

Artículo 134C. Circunstancias de agravación punitiva. Las penas previstas en los artículos anteriores, se aumentarán de una tercera parte a la mitad cuando:

(...)

6. La conducta esté orientada a negar o restringir derechos laborales.

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. Colombia’s labor code extends this protection on the basis of sex, race, religion, nationality, and political opinion.

Labor Code, amended through 2023

ARTICULO 143. A TRABAJO DE IGUAL VALOR, SALARIO IGUAL.

1. A trabajo igual desempeñado en puesto, jornada y condiciones de eficiencia también iguales, debe corresponder salario igual, comprendiendo en este todos los elementos a que se refiere el artículo 127.

2. No pueden establecerse diferencias en el salario por razones de edad, género, sexo, nacionalidad, raza, religión, opinión política o actividades sindicales.

(...)

According to our research, **all other Covenant groups and statuses, including language, social origin, property status, birth status, and disability, are not covered by this protection.**



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;

In our review of Colombian legislation, **we found no provisions whatsoever that prohibit discrimination in promotions.**

2. Child Marriage (Articles 3, 10)

Article 10 (1) of the Covenant states that all States Parties must recognize that:

[...] Marriage must be entered into with the free consent of the intending spouses.

Additionally, Article 3 guarantees this right to be applied to all persons equally regardless of sex:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Child marriage has life-long health, educational, and economic consequences, particularly for girls. Child brides are more likely to drop out of school, be victims of domestic abuse, and experience pregnancy and childbirth complications due to early childbearing, all of which affect core rights of the Covenant, specifically the right to physical and mental health (Article 12), and the right to education (Article 13). We systematically reviewed national civil codes and child-related legislation for all 193 UN member states to determine whether national legislation established a minimum age of marriage for both girls and boys generally, with parental consent, and under religious and customary law. We reviewed all legislation available through the Lexadin World Law Guide, Foreign Law Guide, International Labor Organization's NATLEX database, Pacific Islands Legal Information Institute, Asian Legal Information Institute, JaFBASE, and official country websites.

COLOMBIA'S LEGISLATIVE PROVISIONS: UNDERAGE MARRIAGE PERMITTED WITH PARENTAL CONSENT AS YOUNG AS FOURTEEN

Based on our review, Colombian law sets a minimum age of marriage of 18 for both girls and boys. However, girls and boys as young as 14 may marry as long as they obtain consent from their parents.

Código Civil, amended to 2022

Artículo 116. *Las personas mayores de 18 años pueden contraer matrimonio libremente.*



Artículo 117. *Los menores de la edad expresada no pueden contraer matrimonio sin el permiso expreso, por escrito, de sus padres legítimos o naturales. Si alguno de ellos hubiere muerto, o se hallare impedido para conceder este permiso, bastará el consentimiento del otro; (...)*

Artículo 140. *Causales de nulidad. El matrimonio es nulo y sin efecto en los casos siguientes:*

(...)

2°) *Cuando se ha contraído entre un varón menor de catorce años, y una mujer menor de catorce o cuando cualquiera de los dos sea respectivamente menor de aquella edad.*

(...)

In the last year for which there is available data in Colombia, child marriage rates were high: 23% of women aged 20-24 at the time of survey had been married before age 18, and 5% had been married before age 15.²

² 2017 data taken from UNICEF. UNICEF Data Warehouse – Child Marriage. Retrieved July 20, 2023 from https://data.unicef.org/resources/data_explorer/unicef_f?ag=UNICEF&df=GLOBAL_DATAFLOW&ver=1.0&dq=.PT_F_20-24_MRD_U15+PT_M_20-24_MRD_U18+PT_F_20-24_MRD_U18+PT_M_15-19_MRD+PT_F_15-19_MRD..&startPeriod=2016&endPeriod=2022