



URUGUAY

A BRIEF ON EQUALITY AND NON-DISCRIMINATION, CHILD MARRIAGE, AND WORK AND EMPLOYMENT (Articles 2, 3, 7, and 10, and General Comment No. 5)

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

This brief will focus on the following areas:

1. Equality and non-discrimination (Article 2, General Comment 5)
2. Non-discrimination in work and employment (Article 7)
3. 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 and constitutional findings, as well as suggested questions for the Committee to ask the Uruguay and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed constitutional and legislative excerpts documenting our findings. We hope the Committee will recommend that Uruguay 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 Uruguay for having provisions in place, we hope the Committee will recommend that Uruguay 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, the constitution of Uruguay generally guarantees equality before the law to all, and also generally prohibits discrimination. However, **it contains no provisions specific to any Covenant group or status, including race, colour, sex, language, religion, political or other opinion, national or social origin, property status, birth status, or disability.**

RECOMMENDED CONCLUDING OBSERVATION

We hope the Committee will:

- In its list of issues, ask Uruguay: Can Uruguay demonstrate whether the constitutional right to equality “for all persons” has been interpreted through case law or other policies to apply to persons discriminated on the basis of their race, colour, sex, language, religion, political or other opinion, national or social origin, property status, birth status, or disability?
 - If Uruguay cannot demonstrate that this universal constitutional protection is inclusive of everyone regardless of their their race, colour, sex, language, religion, political or other opinion, national or social origin, property status, birth status, or disability, recommend in its concluding observations that Uruguay amend its constitution to add explicit guarantees of equality and non-discrimination based on all Covenant groups and statuses, consistent with commitments made through Article 2 and General Comment No. 5.

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

Uruguay’s legislation prohibits discrimination, both broadly, and in promotions and remuneration, on the basis only of sex. **We could find no protections, either broad or specific to promotions and remuneration, that are specific to race, colour, language, religion, political or other opinion, national or social origin, property, birth, or disability.**

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

	Discrimination broadly prohibited	Remuneration	Promotions
Race and colour			
Sex	✓	✓*	✓
Language			
Religion			
Political opinion			
National origin			
Social origin			



Property status			
Birth status			
Disability			

**Only the weaker guarantee of equal pay– as opposed to equal pay for work of equal value – is guaranteed.*

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Uruguay: can Uruguay provide the Committee with any specific, near-term steps it is taking to pass legislation that adds broad prohibitions against workplace discrimination, as well as specifically for promotions and remuneration, on the basis of race, colour, language, religion, political or other opinion, national or social origin, property, birth, and disability?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Uruguay amend its legislation to provide broad guarantees against workplace discrimination on the basis of race, colour, language, religion, political or other opinion, national or social origin, property, birth, and disability.

3. Child Marriage (Articles 3, 10)

Based on our review, **Uruguay’s civil code sets a minimum age of marriage of 16 for both girls and boys, but they require parental permission to marry before 18.** Uruguay’s most recent data suggests the marriage rates for girls under 18 remain high.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 Uruguay: Can Uruguay outline any concrete, near-term plans to pass legislation that raises the minimum age of marriage to 18 years for both boys and girls, without exceptions?
 - If Uruguay does not have concrete near-term plans in place, recommend in its concluding observations that Uruguay pass and implement legislation that protects children under the age of 18 from early marriage without exceptions.
- In its list of issues, ask Uruguay: Can Uruguay provide more recent data that quantifies the number under-18 marriages that are happening in the country?
 - If Uruguay cannot provide this information, recommend that Uruguay collect and disseminate updated information about the numbers of marriages involving at least one party under the age of 18, disaggregated by age and sex.



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.

URUGUAY’S CONSTITUTIONAL PROVISIONS: NO PROHIBITION OF DISCRIMINATION SPECIFIC TO CONVENTION GROUPS

The Constitution of Uruguay generally guarantees equality before the law to all, prohibiting any discrimination that is not based on “talent or virtue”.

Constitution of Uruguay, amended to 2004

Artículo 8



Todas las personas son iguales ante la ley no reconociéndose otra distinción entre ellas sino la de los talentos o las virtudes.

Besides these general provisions, the constitution **contains no protections that are specific to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or disability.**

2. 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, 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.

URUGUAY'S LEGISLATIVE PROVISIONS: PROTECTIONS GRANTED ON THE BASIS OF SEX ONLY

Uruguay has a law that prohibits sex discrimination in the workplace; this includes a broad prohibition of discrimination in article 1 and, and a prohibition of discrimination in specific aspects of employment, including promotions and remuneration, in article 2.

Ley 16.045 de Actividad laboral: Prohíbese toda discriminación que viole el principio de igualdad de trato y oportunidades para ambos sexos en cualquier sector

Artículo 1º. Prohíbese toda discriminación que viole el principio de igualdad de trato y de oportunidades para ambos sexos en cualquier sector o ramo de la actividad laboral.

Artículo 2º. La prohibición a que hace referencia el artículo precedente será aplicable también en cuanto a:

(...)

E) Derecho a la promoción y ascenso;

(...)

K) Criterio de remuneración;



In our research we found no further provisions that prohibit discrimination broadly, or in promotions and remunerations, on bases other than sex; this includes protections that are specific to race, colour, language, religion, political or other opinion, national or social origin, property, birth, or disability.

3. 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.

URUGUAY'S LEGISLATIVE PROVISIONS: UNDERAGE MARRIAGE PERMITTED WITH PARENTAL CONSENT AS YOUNG AS SIXTEEN

Based on our review, Uruguayan law sets a minimum age of marriage of 16 for both girls and boys, although they have to obtain parental permission to marry until they turn 18.

Código Civil, amended to 2022

Artículo 91

Son impedimentos dirimentes para el matrimonio:

1°.- Ser cualquiera de los contrayentes menor de dieciséis años de edad.

(...)



Artículo 106

Los hijos legítimos que no hayan cumplido dieciocho años de edad necesitan para casarse el consentimiento expreso de sus padres y a falta de ambos el del ascendiente o ascendientes en grado más próximo.

(...)

Artículo 109

Los hijos naturales reconocidos que no hayan cumplido la edad de dieciocho años, según el artículo 106, están obligados a obtener el consentimiento del padre o madre que los haya reconocido con las formalidades legales; y de los dos si ambos los han reconocido y viven (...).

In 2019, the last year for which there is available data in Uruguay, 7% of girls aged 15-19 were married; in 2013, which is the last time this variable was collected, 25% of women aged 20-24 at the time of the survey had been married before age 18, and 1% before age 15,² so early marriage remains a matter of concern.

² 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