



HONDURAS: A BRIEF ON IMPLEMENTATION OF CRC
COMMITMENTS FROM ARTICLES 2, 9, 19, 23, 24, 28, 34, 37
AND GENERAL COMMENT 4

*Information for the Committee on the Rights of the Child
97th Pre-Sessional Working Group, February 2024*

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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 2,500 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 97th Pre-Sessional Working Group of the Committee on the Rights of the Child.

This brief will focus on the following areas:

- General Principles: **Equality and Non-Discrimination**
- Special Protection Measures: **Education, Leisure and Cultural Activities**
- Special Protection Measures: **Child Marriage**
- Special Protection Measures: **Children in Situations of Emergency (Detention based on Immigration Status)**

We have collected and analyzed information on rights, laws, and policies in these areas for all 193 UN member states (150 in the case of detention based on immigration status) 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 that 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 constitutional and legislative findings, as well as suggested questions for the Committee to ask Honduras, 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 Honduras 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 Honduras for having provisions in place, we hope the Committee will recommend that Honduras work with stakeholders to overcome any obstacles in implementing these provisions.



SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. General Principles: Equality and Non-Discrimination (Article 2)

Based on our review of full-text national constitutions, Honduras's constitution guarantees equality before the law to all, and further protects children against discrimination on the basis of race, sex, social status, and birth. It also prohibits "any other form of harmful discrimination." Multiple groups guaranteed equality in the Convention are not covered by this constitutional provision, including children facing discrimination based on language, political opinion, national origin, property, or disability.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Honduras: Can Honduras demonstrate whether the constitutional prohibition of "any other form of harmful discrimination" has been interpreted through case law or other policies to apply on the basis of language, political opinion, national origin, property, or disability?
 - If Honduras cannot demonstrate that this constitutional universal protection protects from discrimination on the basis of language, political opinion, national origin, property, and disability, recommend in its concluding observations that Honduras amend its constitution to add explicit guarantees of equality and non-discrimination based on these grounds. These provisions could be added to Article 60 of the constitution, which already includes multiple other groups and statuses listed in the Convention.

2. Special Protection Measures: Education, Leisure and Cultural Activities (Articles 23, 28)

Our research shows that Honduras's legal framework provides 9 years free and compulsory basic education. Despite these legal guarantees, as of 2021 22% of all Honduran children of primary school age were out of school.¹

¹ UNESCO Institute for Statistics. SDG 4 September 2023 Country Dashboard. Accessed October 9, 2023, at: <http://sdg4-data.uis.unesco.org/>



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Honduras: Given the current out-of-school rates for primary students, can Honduras provide any information on what concrete measures it is currently taking to effectively implement its free and compulsory education provisions?
 - If Honduras does not have concrete measures in place, recommend in its concluding observations that Honduras develop a concrete, near-term plan to effectively enforce its provisions to provide primary education that is both free and compulsory.

3. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)

According to our research, Honduran law prohibits any marriage under the age of 18, for both girls and boys and without exception, and goes as far as requiring parental consent for any marriage between the ages of 18 and 21. Nevertheless, Honduras's child marriage rates in 2019 remained high, as 21% of women aged 15-19 in 2019 were already married.²

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Honduras: Given the persisting high rates of marriage among girls aged 15-19 outlined in the most recently available statistics (2019) can Honduras specify what proportion of girls in that group are aged 15-17?
 - If Honduras cannot specify how many girls aged 15-17 are getting married despite legislative guarantees to the contrary, recommend in its concluding observations that Honduras collect these statistics.
- In its list of issues, ask Honduras: If Honduras has statistics that show high rates of marriage of girls aged 17 and under, what concrete, near-term plans are in place to reduce rates of child marriage?
 - If Honduras does not have concrete, near-term plans in place, recommend Honduras explore how to fully and effectively implement its legal guarantees that prohibit marriage before age 18.

² UNICEF data – Child Marriage. Retrieved October 6, 2023 from <https://data.unicef.org/topic/child-protection/child-marriage/>



4. Special Protection Measures: Children in Situations of Emergency (Detention based on Immigration Status) (Articles 9, 24, 28, 37)

Our review of legislation, regulations and decrees finds that Honduras's immigration law **generally permits the imprisonment of foreigners without constraints, without specifying ages, and without specifying a maximum period of detention.** Further, it contains no provisions on alternatives to detention, or on family unity.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Honduras: given the absence of explicit legal provisions on the detention of minor migrants and minor asylum-seekers in its migration laws:
 - Can Honduras provide details on the current rates of detention among minor migrants?
 - Can Honduras provide details on the current rates and duration of detention among minor asylum-seekers?
 - If Honduras is unable to provide this information, recommend that Honduras systematically collect, monitor and report figures on detention rates and duration among minor asylum-seekers and minor migrants.
 - Can Honduras provide details on any specific steps it is taking to explicitly prohibit the detention of minor migrants and minor asylum-seekers?
 - If Honduras is not taking any specific steps to explicitly prohibit the detention of minor migrants and minor asylum-seekers, recommend that Honduras pass and implement legislation prohibiting immigration detention of minors.



DETAIL OF CONSTITUTIONAL AND LEGISLATIVE FINDINGS

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. General Principles: Equality and Non-Discrimination (Article 2)

Article 2.1 of the Convention states that:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Constitutions state the values of a country, outlining the rights of people living within the country and profoundly influencing norms and practices. 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 2.1 of the CRC by prohibiting discrimination based on each specific status, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

HONDURAS'S CONSTITUTIONAL PROVISIONS: MISSING EXPLICIT GUARANTEES OF EQUALITY AND NON-DISCRIMINATION BASED ON MULTIPLE PROTECTED GROUNDS

Based on our review of full-text national constitutions, Article 60 of Honduras's constitution guarantees equality before the law to all, and further protects against discrimination on the basis of race, sex, social status, and "any other form of harmful discrimination." Further, article 114 grants equal rights to children regardless of birth.

Constitution of Honduras, amended to 2020

ARTICULO 60.- Todos los hombres nacen libres e iguales en derechos. En Honduras no hay clases privilegiadas. Todos los hondureños son iguales ante la Ley. Se declara punible toda



discriminación por motivo de sexo, raza, clase y cualquier otra lesiva a la dignidad humana. La Ley establecerá los delitos y sanciones para el infractor de este precepto.

ARTICULO 114.- Todos los hijos tienen los mismos derechos y deberes. No se reconocen calificaciones sobre la naturaleza de la filiación. En ningún registro o documentos referente a la filiación se consignará declaración alguna diferenciando los nacimientos ni señalando el estado civil de los padres.

However, some groups guaranteed equality in the Convention are not covered by this constitutional provision, including children facing discrimination based on language, political opinion, national origin, property, and disability.

2. Special Protection Measures: Education, Leisure and Cultural Activities (Articles 23, 28)

Article 28.1 of the CRC recognizes a child’s right to education, and specifically outlines that States Parties “make primary education compulsory and available free to all”. In addition, Article 23.3 of the CRC recognizes the rights and special needs of children with disabilities, and in particular, encourages States Parties to design assistance policies which “ensure that the disabled child has effective access to and receives education”.

For all 193 UN member states, we systematically reviewed education acts, child protection laws, and anti-discrimination legislation 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 or supplementary policy documents guaranteed free and compulsory primary education. Our review also determined whether national legislation guaranteed non-discrimination in education based on disability, and whether legislative provisions guaranteed individualized accommodations and supports to promote inclusion and enable students with disabilities to succeed in school alongside their peers.

HONDURAS’S LEGISLATIVE PROVISIONS: FREE AND COMPULSORY EDUCATION MANDATED, BUT OUT-OF-SCHOOL RATES REMAIN HIGH

Our review of laws and policies in Honduras shows that the country’s main education law provides 9 years free and compulsory basic education.

Ley Fundamental de Educación, 2012.

ARTÍCULO 22.-

(...)

La educación básica es gratuita y obligatoria. Consta de nueve (9) años, con edades de referencia desde los seis (6) a los catorce (14) años y se divide en tres (3) ciclos secuenciales y continuos de tres (3) años cada uno. Además de la evaluación anual, cada ciclo será evaluado como un todo.

Despite these legal guarantees, as of 2021 22% of all Honduran children of primary school age were out of school,³ and thus the effectiveness of these provisions remains an open question.

3. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)

General Comment No. 4 (2003) states that:

The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.

Child marriage has life-long health, educational, and economic consequences, particularly for girls. Married girls are more likely to be victims of domestic abuse, experience pregnancy and childbirth complications due to early childbearing, and drop out of school, all of which affect core rights of the Convention, specifically the right to protection from violence (Article 19), the right to health (Article 24), the right to education (Article 28), and the right to protection from sexual exploitation and abuse (Article 34).

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, under religious and customary law, and with court or governmental approval. We reviewed all legislation available through the Lexadin World Law Guide, Foreign Law Guide, International Labour Organization's NATLEX database, Pacific Islands Legal Information Institute, Asian Legal Information Institute, JaFBASE, and official country websites.

HONDURAS'S LEGISLATIVE PROVISIONS: CHILD MARRIAGE PROHIBITED SINCE 2017, BUT LATEST DATA SHOW IT IS STILL WIDELY PRACTICED

According to our research, Honduran law prohibits – since 2017 -- any marriage under the age of 18, for both girls and boys and without exception, and goes as far as requiring parental consent for any marriage between the ages of 18 and 21.

³ UNESCO Institute for Statistics. SDG 4 September 2023 Country Dashboard. Accessed October 9, 2023, at: <http://sdg4-data.uis.unesco.org/>

Código de Familia, 2017*Artículo 162*

La mayoría de edad se obtiene al cumplirse los veintiún (21) años.

Sólo las personas mayores de edad gozan de libre aptitud para contraer matrimonio.

Sin embargo, podrán contraerlo, el varón y la mujer mayor de dieciocho (18) años, siempre que medie autorización otorgada conforme a este Código.

Artículo 17. La autorización para que los menores puedan contraer matrimonio deben darla:

1) El padre y la madre conjuntamente, o aquél de ellos que ejerza la patria potestad;

(...)

Nevertheless, Honduras's child marriage rates in 2019 remained high, as 21% of women aged 15-19 in 2019 were already married.⁴ Thus, child marriage in Honduras remains an issue of concern.

4. Special Protection Measures: Children in Situations of Emergency (Detention based on Immigration Status) (Articles 9, 24, 28, 37)

As noted in the 2002 Committee's Report on the Rights of All Children in the Context of International Migration, migrant children may experience heightened vulnerabilities. Particularly, the detention of children based on immigration status violates the principle of the best interests of the child and infringes on core values outlined in the Convention including the right to liberty (Article 37) and the right to not be separated from their family (Article 9). Children held in detention may also face barriers accessing education (Article 28) and health services (Article 24).

Article 37.b. specifically states:

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

Article 9.1 affirms the right to family unity stating:

⁴ UNICEF data – Child Marriage. Retrieved October 6, 2023 from <https://data.unicef.org/topic/child-protection/child-marriage/>



1. *States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. [...]*

*HONDURAS'S LEGISLATIVE PROVISIONS: DETENTION OF MIGRANT AND ASYLUM-SEEKING CHILDREN
GENERALLY PERMITTED, AND NO EXPLICIT PROVISIONS ON FAMILY UNITY*

Based on our review of legislation, Honduras's general immigration law applies to all foreigners, including asylum-seekers, and generally **permits imprisonment without constraints, without specifying ages, and without giving a concrete maximum detention period**. It does not contain further provisions on alternatives to detention, or provisions on family unity.

Ley de Migración y Extranjería, amended to 2014

ARTÍCULO 8. ATRIBUCIONES.

Son atribuciones de la Dirección General de Migración y Extranjería, las siguientes:

(...)

16) Custodiar temporalmente en centros especiales de atención, a los extranjeros mientras se decide su situación migratoria o mientras son deportados o expulsados del país;

(...)

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