



PAKISTAN

A BRIEF ON EQUALITY AND NON-DISCRIMINATION, EDUCATION, CHILD MARRIAGE, AND WORK AND EMPLOYMENT

(ICESCR Articles 2, 3, 7, 10, and 13, and General Comment No. 5)

*Information for the Committee on Economic, Social, and Cultural Rights
74th Pre-Sessional Working Group, March 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 2,000 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 74th 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 (Articles 2, General Comment No. 5)
2. Non-discrimination in work and employment (Article 7)
3. Child marriage (Articles 2 and 10)
4. Free and compulsory education (Article 13)

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 constitutional and legislative findings, as well as suggested questions for the Committee to ask Pakistan 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 Pakistan 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 Pakistan for having provisions in place, we hope the Committee will recommend that Pakistan 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, the constitution of Pakistan guarantees equality before the law broadly, and prohibits discrimination on the basis of sex. The State Party Report states that the Constitution is being amended to include additional Covenant-protected groups, including race, color, ethnic or social origin, language, religion and disability. We have found no evidence that this proposed amendment includes other Covenant-protected groups, such as political or other opinion, national origin, property and birth.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Pakistan: Can Pakistan update the Committee on the status of its bill amending article 25 of the constitution to include additional Covenant-protected groups?
 - Recommend in its concluding observations that Pakistan develop concrete, near-term plans to pass this bill and enshrine the right to non-discrimination for these groups in its constitution.
- In its list of issues, ask Pakistan: besides the groups cited in paragraph 33 of the State Party Report, does the proposed amendment include protections on the basis of political or other opinion, national origin, property, birth or other status?
 - If the amendment does not include these protections, recommend in its concluding observations that, if possible at this stage of the amendment process, Pakistan review its proposed amendment to include them.
- In its list of issues, ask Pakistan: If the amendment cannot at this stage be modified, can Pakistan demonstrate whether the existing constitutional right to equality before the law for all citizens has been interpreted through case law or other policies to apply to other Covenant-protected groups that are not explicitly covered by the constitution or by its proposed amendment?
 - If Pakistan cannot demonstrate that this existing constitutional right has been shown to apply on the basis of political or other opinion, national origin, property, and birth, recommend in its concluding observations that Pakistan amend the constitution to add explicit guarantees of equality and non-discrimination based on these characteristics.

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

On broad prohibitions of workplace discrimination:



Among Covenant groups, Pakistan only **protects specifically against workplace discrimination on the basis of sex**. All other Covenant groups, including **race and colour, language, religion, political or other opinion, national origin, social origin, property, birth, and disability, do not enjoy this protection**.

On discrimination in remuneration:

Pakistan does not protect any Covenant groups against discrimination in remuneration.

On discrimination in promotions:

Among Covenant groups, Pakistan only prohibits discrimination in promotions **on the basis of sex**. All other Covenant groups, including **race and colour, language, religion, political or other opinion, national origin, social origin, property, birth, and disability, do not enjoy this protection**.

Table 1. Guaranteed legal provisions of non-discrimination in Pakistan 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			



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

On broad prohibitions of workplace discrimination:

We hope the Committee will:

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

On discrimination in remuneration:

We hope the Committee will:

- In its list of issues, ask Pakistan: can Pakistan 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 race and colour, sex, language, religion, political or other opinion, national origin, social origin, property, birth and disability?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Pakistan amend its legislation to provide explicit guarantees against discrimination in remuneration on the basis of race and colour, sex, language, religion, political or other opinion, national origin, social origin, property, and birth.

On discrimination in promotions:

We hope the Committee will:

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



3. Child Marriage (Articles 3, 10)

Based on our review, **Pakistan’s legislation sets a minimum age of marriage of 16 for girls and 18 for boys.** Pakistan’s last recorded child marriage rates, from 2018, were relatively high: 18% of girls married before age 18 and 4% married before age 15.¹

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Pakistan: Can Pakistan outline any concrete, near-term plans to pass legislation that establishes a minimum age of marriage of 18 years for both boys and girls, with no exceptions?
 - If Pakistan does not have concrete, near-term plans in place, recommend in its concluding observations that Pakistan develop a concrete plan to pass and implement legislation that protects children under the age of 18 from early marriage without exceptions.

4. Free and Compulsory Education (Article 13)

Education in Pakistan is free and compulsory for the ages of 5 to 16, as outlined by the country’s constitution and the education laws of all subnational units. However, as of 2018, the out-of-school rate for children of primary school age was 23%, and the out-of-school rate for children of lower secondary school age was 27%.²

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Pakistan: Given the out-of-school rates for students of primary and lower secondary age, can Pakistan provide any information on what concrete measures it is taking to effectively implement its free and compulsory education provisions?
 - If Pakistan does not have concrete measures in place, recommend in its concluding observations that Pakistan develop a concrete, near-term plan to effectively enforce its provisions to provide education that is both free and compulsory between the ages of 5 and 16.

¹ UNICEF. UNICEF Data Warehouse – Child Marriage. Retrieved November 30, 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

² UNESCO. SDG 4 Country Dashboard. Retrieved November 30, 2023 from <https://tcgtest.uis.unesco.org/sdg-4-dashboard/sdg-4-country-dashboard/>



DETAIL OF 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.

PAKISTAN’S CONSTITUTIONAL PROVISIONS: ALMOST NO COVENANT GROUPS EXPLICITLY PROTECTED

The Constitution of Pakistan provides in article 25 for equality before the law for all, and further prohibits discrimination specifically on the basis of sex.

Constitution of 1973, amended to 2018

25. Equality of citizens

1. All citizens are equal before law and are entitled to equal protection of law.

2. There shall be no discrimination on the basis of sex.

(...)

The constitution does not explicitly guarantee equality on the basis of race, color, language, religion, political or other opinion, national or social origin, property, birth, or disability. In paragraph 33 of its



report, the State Party states that article 25 is in the process of being amended to include a number of additional Covenant-protected groups, including race, color, ethnic or social origin, language, religion and disability. However there are no reported current efforts to also include political opinion, national origin, property and birth.

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, 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.

PAKISTAN'S LEGISLATIVE PROVISIONS: MOST COVENANT GROUPS NOT EXPLICITLY PROTECTED

ON BROAD PROTECTIONS AGAINST DISCRIMINATION

Pakistan's 2018 Transgender Persons Act contains a general prohibition of workplace discrimination on the basis of sex (as well as gender identity and gender expression).

Transgender Persons (Protection of Rights) Act

9. Right to employment.–

(...)

(3) It shall be unlawful for an employer to discriminate against an employee on the ground of their sex, gender identity and/or gender expression:

(...)

(c) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;

(...)

(e) by subjecting the employee to any other detriment.

Our research did not identify any provisions that, at the federal level, explicitly protect against workplace discrimination on the basis of race or color, language, religion, political or other opinion, national or social origin, property, birth, or disability.



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. According to our research, however, **Pakistan’s federal legislation contains no provisions on equal pay whatsoever.**

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;

Among Covenant-protected groups, Pakistan’s legislative framework only protects against discrimination in promotions on the basis of sex.

Transgender Persons (Protection of Rights) Act

9. Right to employment.–

(...)

(3) It shall be unlawful for an employer to discriminate against an employee on the ground of their sex, gender identity and/or gender expression:

(...)

(c) by denying the employee access, or limiting the employee’s access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;

(...)

In our review of Pakistan’s legislation, **we found no federal prohibition of discrimination in promotions on the basis of race or colour, language, religion, political or other opinion, national origin, 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.

PAKISTAN'S LEGISLATIVE PROVISIONS: MARRIAGE PERMITTED AT 16 FOR GIRLS

Based on our review, Pakistan's laws set a minimum age of marriage of 16 for girls and 18 for boys.

Child Marriage Restraint Act

2. Definitions.

In this Act, unless there is anything repugnant in the subject or context,

(a) "child" means a person who, if a male, is under eighteen years of age, and if a female, is under sixteen years of age;

(...)

5. Punishment for solemnizing a child marriage.

Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.



In the last year for which there is available data in Pakistan, child marriage rates were relatively high: 18% of women aged 20-24 at the time of survey had been married before age 18, 4% had been married before age 15, and 14% of girls aged 15-19 were already married.³

4. 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 levels.

PAKISTAN'S LEGISLATIVE PROVISIONS: SCHOOL IS FREE AND COMPULSORY THROUGH SECONDARY EDUCATION, BUT MANY CHILDREN AND ADOLESCENTS REMAIN OUT OF SCHOOL

Since a 2010 amendment, Pakistan's constitution makes education free and compulsory between the ages of 5 and 16.

Constitution of 1973, amended to 2018

25A. Right to education

The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.

This is in turn reflected in the education laws of all four provinces and the Islamabad Capital Territory.

Despite these provisions, in 2018 23% of Pakistani children of primary school age were out of school, as were 27% of Pakistani children of lower secondary school age,⁴ so this remains a matter of concern.

³ 2018 data taken from UNICEF. UNICEF Data Warehouse – Child Marriage. Retrieved November 30, 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

⁴ UNESCO. SDG 4 Country Dashboard. Retrieved November 30, 2023 from <https://tcgtest.uis.unesco.org/sdg-4-dashboard/sdg-4-country-dashboard/>