

CUBA: A BRIEF ON THE IMPLEMENTATION OF CEDAW COMMITMENTS FROM ARTICLES 2, 10, 11, 16 AND GENERAL RECOMMENDATIONS 12 AND 36

*Information for the Committee on the Elimination of Discrimination Against Women
87th Pre-Session Working Group, May/June 2023*

Submitted By

The WORLD Policy Analysis Center

University of California, Los Angeles

TABLE OF CONTENTS

INTRODUCTION	2
Summary of Findings and Recommendations.....	3
1. Non-Discrimination in Work and Employment (Article 11)	3
2. Sexual Harassment in Work and Sex-Based Harassment in Work and Employment (General Recommendation 12)	3
3. Child Marriage (Articles 16, 2).....	4
4. Discrimination and Sexual Harassment in Education (Article 10, General Recommendation 36)	5
Detail of Legislative Findings	6
1. Non-Discrimination in Work and Employment (Article 11)	6
2. Sexual Harassment in Work and Sex-Based Harassment in Work and Employment (General Recommendation 12)	8
3. Child Marriage (Articles 16, 2).....	9
4. Discrimination and Sexual Harassment in Education (Article 10, General Recommendation 36)	10

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 87th Pre-Sessional Working Group of the Committee on the Elimination of Discrimination against Women.

This brief will focus on the following areas:

1. Non-discrimination in Work and Employment (Article 11)
2. Sexual Harassment in Work and Sex-based Harassment in Work and Employment (General Recommendation No. 12)
3. Child Marriage (Articles 16, 2)
4. Discrimination and Sexual Harassment in Education (Article 10, General Recommendation 36)

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 Cuba 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 Cuba 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 Cuba for having provisions in place, we hope the Committee will recommend that Cuba work with stakeholders to overcome any obstacles in implementing these provisions.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. Non-Discrimination in Work and Employment (Article 11)

Our systematic review of national legislation found that Cuba’s labor code protects against sex-based discrimination primarily in general terms, with a specific guarantee only to equal pay for equal work. These provisions do not cover other specific aspects of employment, such as hiring, training, promotions and/or demotions, and terminations. We found no provisions against discrimination specifically on the basis of marital status, family status, or pregnancy, against indirect discrimination, or against retaliatory action for bringing forward discrimination complaints.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Cuba: Can Cuba outline any concrete, near-term plans to pass legislation that explicitly prohibits **sex-based discrimination** in hiring, training, promotions and demotions, and terminations?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Cuba pass and implement legislation that explicitly prohibits sex-based discrimination in all the dimensions of work listed above.
- In its list of issues, ask Cuba: Can Cuba demonstrate whether the labor code’s **prohibitions of discrimination** in employment “on any distinction” has been interpreted, through case law or otherwise, to specifically protect against discrimination on the basis of marital status, family status, or pregnancy?
 - If Cuba cannot, recommend in its concluding observations that Cuba pass and implement legislation specifically prohibiting workplace discrimination on the basis of marital status, family status, or pregnancy. This could be added to article 2.a) of the labor code, which already protects against discrimination on multiple other grounds and statuses.
- In its list of issues, ask Cuba: Can Cuba demonstrate whether sufficient protections exist against **retaliatory action** when reporting sex-based discrimination at work?
 - If sufficient protections do not exist in this area, recommend in its concluding observations that Cuba pass and implement legislation that explicitly prohibits retaliatory action when reporting sex-based discrimination at work.

2. Sexual Harassment in Work and Sex-Based Harassment in Work and Employment (General Recommendation 12)

In 2022, Cuba introduced -- for the first time -- sexual harassment legislation in its penal code that applies specifically to the labor relations. However, these new provisions have a limited definition of sexual harassment, and only protect against harassment by supervisors, and not by co-workers.

While criminalizing the consequences for the most egregious cases of sexual harassment and violence can be an effective mechanism, penalizing sexual harassment exclusively through criminal legislation can pose important challenges, including potentially narrower definitions of sexual harassment, failure to cover the entire range of sexual harassment behaviors, and, because of the criminal nature of legal redress, discouraging victims from reporting some cases of sexual harassment. While it is important to cover sexual violence in criminal codes, these drawbacks imply the need for a civil component as well.

RECOMMENDED QUESTION FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Cuba: Can Cuba clarify if workplace sexual harassment will be addressed fully in its labor legislation?
 - If Cuba does not have concrete, near-term plans to prohibit the full range of sexual- and sex-based harassment in its labor legislation, recommend in its concluding observations that Cuba pass specific labor legislation penalizing sexual harassment.
 - Further recommend that Cuba include in this legislation the most relevant elements of a comprehensive anti-sexual harassment law:
 - a definition of sexual harassment that includes both quid pro quo and the creation of a hostile work environment;
 - the inclusion of sex-based harassment as well as sexual-behavior based harassment;
 - protections for workers from harassment by co-workers and other actors in the workplace, as well as supervisors; and
 - protections against retaliatory action for reporting sexual harassment.

3. Child Marriage (Articles 16, 2)

Cuba's new family code, passed in September 2022, establishes 18 as the minimum age of marriage for both sexes without any exceptions or loopholes. Prior to the passing of this law, when girls as young as

14 could legally be married, Cuba showed devastatingly high rates of child marriage, with 29% of women aged 20-24 in 2019 having married before age 18.¹

RECOMMENDED QUESTION FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATION

We hope the Committee will:

- In its list of issues, ask Cuba: Can Cuba provide any information on what measures it is taking to effectively implement the new prohibition on underage marriage introduced in its 2022 family code?
 - If Cuba does not have concrete plans to implement this new law, recommend in its concluding observations that Cuba develop a concrete, near-term plan to effectively enforce the family code and reduce rates of child marriage.

4. Discrimination and Sexual Harassment in Education (Article 10, General Recommendation 36)

Cuba recently introduced a new penal code that criminalizes sexual harassment from teachers towards students for the first time. We commend Cuba for taking a first step towards preventing sexual harassment in schools. However, there are no accompanying civil protections which will likely limit implementation. In addition, we did not find any prohibitions of sex-based discrimination in education.

¹ UNICEF. UNICEF Data Warehouse – Child Marriage. Retrieved March 15, 2023 from https://data.unicef.org/resources/data-explorer/unicef-f/?ag=UNICEF&df=GLOBAL_DATAFLOW&ver=1.0&dq=CUBA: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=1971&endPeriod=2022

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Cuba: Can Cuba clarify if sexual harassment in schools will be addressed fully in its education legislation?
 - If Cuba does not have concrete, near-term plans to prohibit the full range of sexual and sex-based harassment in its education legislation, recommend in its concluding observations that Cuba pass education legislation prohibiting both.
 - Further recommend that Cuba include in this legislation the most relevant elements of a comprehensive anti-sexual harassment law:
 - a definition of sexual harassment that include both quid pro quo and the creation of a hostile educational environment;
 - the inclusion of sex-based harassment as well as sexual-behavior based harassment; and
 - protections for students from harassment by fellow students, teachers and other actors in education.
- In its list of issues, ask Cuba: can Cuba demonstrate if legislation exists that prohibits sex-based discrimination in education?
 - If sufficient protections do not exist in this area, recommend in its concluding observations that Cuba pass and implement legislation that explicitly prohibits sex-based discrimination in education.

DETAIL OF 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. Non-Discrimination in Work and Employment (Article 11)

We systematically reviewed national labor codes, gender equality, 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 gender discrimination in employment. We examined legal protections across five areas covered by CEDAW:

- employment opportunities or hiring
- equal pay for work of equal value
- training
- promotions or demotions
- job security or terminations

We assessed whether women were explicitly protected from discrimination at work in each of these areas and whether the definition of discrimination included both direct and indirect discrimination.

We also examined whether there were explicit protections from discrimination in terminations on the grounds of pregnancy and marital status, in line with Article 11.2.a) of the Convention, which prohibits “dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status”. We further examined whether explicit protections from terminations on the basis of family status were in place, because of the intersection of family status with both marital status and pregnancy.

Finally, although the Convention focuses only on protecting from dismissal on these grounds, we nevertheless further examined whether discrimination on the grounds of pregnancy, marital status, or family status was prohibited in other stages of employment because of the centrality of these protections from preventing sex discrimination at work, which the convention protects against more broadly.

CUBA’S LEGISLATIVE PROVISIONS: [Insufficient protection against workplace discrimination on the basis of sex](#)

While we recognize there may be other policies governing discrimination at work, our systematic review of national legislation found that Cuba’s labor code protects against sex-based discrimination primarily in general terms. Art. 2.b) protects broadly against workplace discrimination on the basis of sex, and art. 2.c) extends this protection specifically to equal pay for equal work. These provisions do not cover other

specific aspects of employment, such as hiring, training, promotions and/or demotions, and terminations.

In addition, we found no provisions against discrimination specifically on the basis of marital status, family status, or pregnancy; we also found no provisions against indirect discrimination, or against retaliatory action for bringing forward discrimination complaints against one's employer.

A summary of these findings is presented in Table 1.

Código de trabajo, consolidated to 2020

ARTÍCULO 2.- Los principios fundamentales que rigen el derecho de trabajo son:

(...)

b) igualdad en el trabajo; todo ciudadano en condiciones de trabajar tiene derecho a obtener un empleo atendiendo a las exigencias de la economía y a su elección, tanto en el sector estatal como no estatal; sin discriminación por el color de la piel, género, creencias religiosas, orientación sexual, origen territorial, discapacidad y cualquier otra distinción lesiva a la dignidad humana.

c) igualdad en el salario; el trabajo se remunera sin discriminación de ningún tipo en correspondencia con los productos y servicios que genera, su calidad y el tiempo real trabajado, donde debe regir el principio de distribución socialista de cada cual según su capacidad a cada cual según su trabajo.

Table 1: Does Cuba have legislative provisions in place explicitly guaranteeing non-discrimination for women in the following key areas of employment?

Employment opportunities and hiring	No specific provision, broad protection only
Equal pay for work of equal value	Guarantee of equal pay for equal work only
Training	No specific provision, broad protection only
Promotions and/or demotions	No specific provision, broad protection only
Terminations	No specific provision, broad protection only
Discrimination on the basis of marital status, family status, and pregnancy	No specific provisions
Indirect discrimination	No provisions found
Retaliatory action	No provisions found

2. Sexual Harassment in Work and Sex-Based Harassment in Work and Employment (General Recommendation 12)

We systematically reviewed national labor codes, penal codes, equal opportunity, 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 sexual harassment at work. We examined whether protections from sexual harassment at work were in line with international agreement of what constitutes key components on sexual harassment. Namely, do laws define sexual harassment to cover quid pro quo and the creation of a hostile work environment; include sex-based harassment as well as sexual-behavior based harassment; protect workers from harassment by co-workers and other actors in the workplace, as well as supervisors; and ensure workers are protected from retaliation for reporting sexual harassment?

CUBA'S LEGISLATIVE PROVISIONS: [Recently passed legislation newly prohibits sexual harassment at work](#)

According to our review, Cuba passed a new penal code in September 2022. Among its new provisions, article 80 introduces sex-based discrimination as an aggravating circumstance for any crime, article 327 newly criminalizes workplace harassment, including for discriminatory reasons, and articles 397.2 b) and 397.2 c) newly criminalize sexual harassment in the workplace. We commend Cuba for introducing legislation to specifically target sexual harassment at work.

Código Penal, 2022

Artículo 80.

1. Son circunstancias agravantes de la responsabilidad penal de las personas naturales cometer el delito:

(...)

n) por motivos de violencia de género o familiar, discriminación de sexo, género, orientación sexual, identidad de género, edad, origen étnico, color de la piel, creencia religiosa, discapacidad, origen nacional o territorial o cualquiera otra condición o circunstancia personal que implique distinción lesiva a la dignidad humana;

Artículo 327.

1. Quien afecte los derechos laborales de una persona con la que mantiene una relación de trabajo o empleo, mediante su acoso directo o indirecto a través acciones de aislamiento, amenazas, exigencias o con cualquier otro acto o medio potencialmente capaz de producir dicho fin, incurre en sanción de privación de libertad de seis meses a dos años o multa de doscientas a quinientas cuotas, o ambas.

2. La sanción es de privación de libertad de uno a tres años o multa de trescientas a mil cuotas, o ambas, si en el hecho previsto en el apartado anterior:

(...)

d) el delito se comete como consecuencia de la violencia de género, o por motivos discriminatorios de cualquier tipo;

(...)

Artículo 397.

1. Se sanciona con privación de libertad de seis meses a dos años o multa de doscientas a quinientas cuotas o ambas, a quien, directamente o a través de cualquier medio de comunicación, acose a otra persona con requerimientos sexuales para sí o para un tercero.

2. La sanción es de uno a tres años de privación de libertad o multa de trescientas a mil cuotas o ambas, si para ejecutar los actos previstos en el apartado anterior el comisor se aprovecha:

(...)

c) de su superioridad laboral, docente o de otro tipo análogo respecto a la víctima, anunciándole expresa o tácitamente la producción de un daño o perjuicio relacionado con las legítimas expectativas que pueda tener en el ámbito de dicha relación de superioridad, si rechaza la propuesta sexual.

3. Child Marriage (Articles 16, 2)

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 Labour Organization's NATLEX database, regional sources, and official country websites.

CUBA'S LEGISLATIVE PROVISIONS: [Recently passed legislation strengthening prohibitions of child marriage](#)

Based on our review, Cuba passed a new family code, by referendum, in September 2022. Whereas the previous family code allowed the marriage of girls as young as 14 and boys as young as 16, the new code sets the minimum age of marriage at 18 for both boys and girls and allows no exception to this standard. We commend Cuba for taking this important step, both by protecting girls from early marriage and by eliminating discriminatory age disparities in the minimum age of marriage.

Código de las familias, 2022

Artículo 204. Ejercicio de la capacidad matrimonial. La capacidad de las personas para formalizar matrimonio se alcanza a los dieciocho (18) años.

Artículo 205. Prohibiciones absolutas. No pueden formalizar matrimonio:

- a) Las personas menores de dieciocho (18) años;*
- (...)*

Prior to the passage of this law, girls as young as 14 could legally be married, and Cuba showed damagingly high rates of child marriage, with 29% of women aged 20-24 in 2019 having married before age 18.² Given these figures, ensuring concrete steps are in place for promptly and effectively implementing this new legislation is paramount.

4. Discrimination and Sexual Harassment in Education (Article 10, General Recommendation 36)

We systematically reviewed education laws, penal codes, equal opportunity laws, and other relevant legislation available through the legal repositories of UNESCO and the International Labour Organization for all 193 UN member states to determine whether national legislation prohibited both discrimination and sexual harassment in education. We further examined whether protections from sexual harassment at school were in line with international agreement of what constitutes key components on sexual harassment, namely do laws:

- define sexual harassment to cover quid pro quo and the creation of a hostile environment;
- include sex-based harassment as well as sexual-behavior based harassment; and
- protect students from harassment by other students and by teachers, as well as by other actors in the education system

CUBA'S LEGISLATIVE PROVISIONS: Recently legislated prohibition of sexual harassment at school, but no prohibition of discrimination in education

As detailed above, Cuba recently introduced a new penal code. Among its new provisions, article 80 introduces sex-based discrimination as an aggravating circumstance for any crime, and articles 397.2 c) newly criminalize sexual harassment on the part of teachers towards students, including sex-based

² UNICEF. UNICEF Data Warehouse – Child Marriage. Retrieved March 15, 2023 from https://data.unicef.org/resources/data_explorer/unicef_f/?ag=UNICEF&df=GLOBAL_DATAFLOW&ver=1.0&dq=CU B.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=1971&endPeriod=2022

harassment when read together with article 80. We commend Cuba for introducing legislation that includes sexual harassment at school.

Código Penal, 2022

Artículo 80.

1. Son circunstancias agravantes de la responsabilidad penal de las personas naturales cometer el delito:

(...)

n) por motivos de violencia de género o familiar, discriminación de sexo, género, orientación sexual, identidad de género, edad, origen étnico, color de la piel, creencia religiosa, discapacidad, origen nacional o territorial o cualquiera otra condición o circunstancia personal que implique distinción lesiva a la dignidad humana;

Artículo 397.

1. Se sanciona con privación de libertad de seis meses a dos años o multa de doscientas a quinientas cuotas o ambas, a quien, directamente o a través de cualquier medio de comunicación, acose a otra persona con requerimientos sexuales para sí o para un tercero.

2. La sanción es de uno a tres años de privación de libertad o multa de trescientas a mil cuotas o ambas, si para ejecutar los actos previstos en el apartado anterior el comisor se aprovecha:

(...)

c) de su superioridad laboral, docente o de otro tipo análogo respecto a la víctima, anunciándole expresa o tácitamente la producción de un daño o perjuicio relacionado con las legítimas expectativas que pueda tener en el ámbito de dicha relación de superioridad, si rechaza la propuesta sexual.

3. En igual sanción que la prevista en el apartado anterior se incurre, si el hecho es consecuencia de la violencia de género o la violencia familiar, o por cualquier motivo discriminatorio.

(...)

However, these new provisions only include quid pro quo as a key component of sexual harassment, without considering the creation of a hostile environment, and only protect against harassment by teachers, and not by fellow students or other members of the education community.

We found no provisions that prohibit sex-based discrimination in education.