



## Eritrea: A Brief on Equal Rights in Constitutions, Equal Rights and Non-Discrimination at Work, and Protection from Child Marriage

*Information for the Committee on the Elimination of Discrimination against Women*

*75<sup>th</sup> Pre-Session Working Group, July 2019*

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## EXECUTIVE SUMMARY

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 75<sup>th</sup> Pre-Sessional Working Group of the Committee on the Elimination of Discrimination against Women.

This brief will focus on the following three areas:

1. Prohibition of discrimination in constitutions (Article 2)
2. Prohibition of discrimination in the field of employment (Article 11, Gen. Recommendation 12)
3. Child Marriage (Articles 16.2, 2.a)

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. constitutional texts, original legislation), 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 our review.

While our review is systematic and rigorous, we recognize that there may be other laws or policies governing these areas that we have not captured. We also recognize that Eritrea may have passed legislation or enacted new policies since our most recent review. We therefore hope the Committee will include the following questions for Eritrea in its list of issues, and where applicable, make the recommendations outlined below in its concluding observations. We hope the Committee will recommend that Eritrea address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations.

### ***Areas where Eritrea does not appear to have relevant provisions in place:***

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#### **A) Prohibition of sexual harassment at work (General Recommendation 12)**

*Our systematic review of national legislation as of August 2016 did not identify any national legislative provisions that explicitly protect women from sexual harassment at work in Eritrea.*

In this area, we hope the Committee will:

- In its list of issues, ask Eritrea: **Does legislation exist protecting women from sexual harassment at work?**



- If the relevant provisions are not in place, recommend in its concluding observations that Eritrea pass and implement legislation that explicitly protects women from sexual harassment at work.

***Areas where Eritrea has provisions in place, but where these provisions do not appear to fully address the commitments Eritrea has made through its ratification of CEDAW:***

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**A) Prohibition of discrimination in the field of employment (Articles 11.1.b, 11.1.c, 11.1.d)**

**B) Child marriage (Articles 16.2, 2.a)**

**A) Prohibition of discrimination in the field of employment (Articles 11.1.b, 11.1.c, 11.1.d)**

*Based on our review of national legislation as of August 2016, Eritrea's legislation explicitly:*

- *Protects women from discrimination in terminations based on gender, marital status, pregnancy, and family status;*
- *Guarantees women equal pay for equal work, but not the stronger equal pay for work of equal value;*
- *Guarantees broad protection from workplace gender discrimination;*
- *Protects women from retaliatory action for women reporting discrimination.*

*But we found no explicit protections from:*

- *Discrimination in hiring;*
- *Discrimination in vocational training at work;*
- *Discrimination in promotions/demotions;*
- *Indirect discrimination.*

We hope the Committee will:

- In its list of issues, ask Eritrea:
  - **Can Eritrea demonstrate whether broad protections from discrimination at work sufficiently protect women from discrimination in employment opportunities or hiring, vocational training at work, and promotions/demotions?**
    - If sufficient protections do not exist, recommend in its concluding observations that Eritrea pass and implement legislation that explicitly protects women from discrimination at work in all aspects of the working life course, including in employment opportunities or hiring, vocational training at work, and promotions/demotions.



- **Can Eritrea outline whether existing guarantees of equal pay for equal work sufficiently protect women working in female-dominated occupations from pay discrimination?**
  - If sufficient protections do not exist, recommend in its concluding observations that Eritrea pass and implement legislation that sufficiently protects women working in female-dominated occupations from pay discrimination.
- **Can Eritrea demonstrate whether legal protections from gender discrimination extend to include indirect discrimination?**
  - If sufficient protections do not exist, recommend in its concluding observations that Eritrea pass and implement legislation that expands the definition of discrimination to include both direct and indirect discrimination.
- **Can Eritrea demonstrate how protections from retaliation for reporting discrimination are being enforced, and whether all women, regardless of income, have access to an effective reporting process?**
  - If insufficient evidence is provided to demonstrate implementation of protections from retaliation in reporting, recommend in its concluding observations that Eritrea outline how it will improve implementation of protections from retaliation for reporting discrimination, and of access to an effective reporting process for all women.

## **B) Child marriage (Articles 16.2, 2.a)**

*Based on our systematic review of legislation and country reports as of February 2019, Eritrea establishes a minimum age of marriage for girls of 18 years old, but legally allows girls to be married under customary and/or religious law without establishing an explicit minimum age.*

We hope the Committee will:

- In its list of issues, ask Eritrea: **What laws exist to protect girls under the age of 18 from early marriage, and do these laws extend to protect girls from early marriage under customary and/or religious law?**
  - If Eritrea has no concrete plans to address this gap, we hope the Committee will recommend in its concluding observations that Eritrea pass and implement legislation that protects girls under the age of 18 from early marriage, including protection from early marriage under customary and/or religious law.

***Areas where Eritrea's legislative, policy or constitutional approaches are consistent with or directly support the Convention:***

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## **A) Prohibiting discrimination in constitutions (Article 2)**

*Based on our review of full-text national constitutions as of May 2017, Eritrea's constitution prohibits discrimination based on gender.*



This is a positive and important step to have in place, and while this constitutional right is essential, so too is its implementation.

We hope that in its list of issues, the Committee will ask Eritrea: **How are constitutional guarantees of non-discrimination based on gender being implemented through laws, policies, and the lived experiences of women?**

- Where evidence of implementation is unclear or insufficient, we hope the Committee will recommend in its concluding observations that Eritrea develop concrete action towards implementation.



DETAIL

## 1. Prohibiting discrimination in constitutions (Article 2)

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Article 2 of the Convention states that:

*States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:*

*(a) To embody the principle of the equality of men and women in their national constitutions*

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 human rights. We reviewed full text constitutions as of May 2017 for all 193 UN member states available from official government sources to determine whether the constitution explicitly guaranteed equality or non-discrimination on the basis of sex and/or gender by prohibiting discrimination, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

### *ERITREA'S CONSTITUTIONAL PROVISIONS*

Eritrea's constitution prohibits discrimination based on gender. These guarantees are specified in Article 14.2 of Eritrea's Constitution: *No person may be discriminated against on account of race, ethnic origin, language, color, gender, religion, disability, age, political view, or social or economic status or any other improper factors.*

## 2. Prohibiting discrimination in the field of employment (Article 11, General Recommendation 12)

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Article 11 of the Convention outlines a number of specific measures States Parties shall undertake in order to eliminate discrimination in the field of employment:

*"States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:"*

*"The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;" (Article 11.1.b)*

*"The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training" (Article 11.1.c)*



*“The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work” (11.1.d)*

We systematically reviewed national labor codes, gender equality, and other relevant legislation available through the International Labor Organization’s NATLEX database as of August 2016 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;
- vocational training at work;
- 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.<sup>1</sup> We further examined whether there were provisions that protected women from retaliatory action for reporting discrimination. We also examined whether there were explicit protections from discrimination at work for statuses that intersect directly with women’s dual roles as workers and caregivers: marital status, pregnancy, and family status.

#### *ERITREA’S LEGISLATIVE PROVISIONS*

Based on our review, Eritrea’s legislation explicitly protects women from discrimination at work in terminations, but we found no explicit protections for employment opportunities or hiring, vocational training at work, and promotions/demotions. However, Eritrea’s legislation does broadly protect women from discrimination at work. Eritrea’s legislation also guarantees equal pay for equal work, but not equal pay for work of equal value. We found no explicit legislative provisions prohibiting indirect discrimination. Eritrea’s legislation explicitly protects from discriminatory dismissal based on marital status, pregnancy, and family status and legislation protects women from retaliatory action for reporting discrimination.

*Labor Proclamation, 2001:*

*Article 23. Non-Legitimate Grounds for the Termination of the contract of employment The following may not constitute legitimate grounds for the termination by employer of a contract of employment: (...)*

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<sup>1</sup> Indirect discrimination refers to a law, policy or practice that may appear neutral, but that can have a disproportionate impact on certain people or groups. For example, a job advertisement with a minimum height requirement for applicants doesn’t explicitly prohibit women from applying, but would inherently exclude more women than men, even if the woman is able to fulfil all the physical requirements of the job.



*(3) an employee's submission of grievances or his participation in a proceeding before a court of law or a concerned authority against the employer;*

*(4) an employee's race, colour, nationality, sex, religion, lineage, pregnancy, family responsibility, marital status, political orientation or social status;*

*Article 65. General*

*(1) Women may not be discriminated against as regards opportunity or treatment in employment and remuneration, on the basis of their sex.*

*Article 118. Unfair Labour Practice on the Part of an Employer or Undertaking: It shall be unfair labour practice for an employer or undertaking to commit any one of the following acts:*

*(7) to discriminate on grounds of race, colour, social origin, nationality, sex, political orientation or religion;*

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### *Sexual harassment at work (General Recommendation 12)*

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General Recommendation 12 states that:

*“The Committee on the Elimination of Discrimination against Women, Considering that articles 2, 5, 11, 12 and 16 of the Convention **require the States parties to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life, (...) Recommends to the States parties that they should include in their periodic reports to the Committee information about:***

- 1. The legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, **sexual harassment at the work place etc.)”***

We systematically reviewed national labor codes, penal codes, equal opportunity, and other relevant legislation available through the International Labor Organization’s NATLEX database as of August 2016 for all 193 UN member states to determine whether national legislation prohibited sexual harassment at work.

### *ERITREA’S LEGISLATIVE PROVISIONS*

Our systematic review of national legislation of the ILO’s NATLEX database as of August 2016 did not identify any national legislative provisions that protect women from sexual harassment at work in Eritrea.





### 3. Child marriage (Article 16.2, Article 2.a)

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Article 16 of the Convention states that:

*“The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.”*

Additionally, disparities in the legal minimum age of marriage between girls and boys contravenes Article 2 of the Convention, which commits States Parties to *“embody the principle of the equality of men and women in their national constitutions or other appropriate legislation”*.

We systematically reviewed national civil codes and child-related 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 as of February 2019 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.

#### *ERITREA’S LEGISLATIVE PROVISIONS*

Based on our review, we were unable to locate full text legislation, but CEDAW and CRC committee reports indicate that Eritrea establishes a minimum age of marriage for girls of 18 years old, but legally allows girls to be married under customary and/or religious law without establishing an explicit minimum age.

*CEDAW (2006), Concluding comments*

*28. While noting that the Transitional Code of Eritrea adopted in 1991 establishes a minimum age at marriage, prohibits forced marriages and establishes a system of equitable division of marital property upon divorce, the Committee is concerned that these laws are not enforced and that discriminatory customary laws and practices continue to be applied. The Committee is also concerned that the Transitional Code’s provisions on marriage and family relations do not apply to Muslim marriages and divorces. The Committee expresses its concern that the ongoing law reform process aimed at harmonization and consolidation of Eritrean laws may result in the legal recognition and/or codification of discriminatory laws governing marriage and family relations, in contravention of article 16 of the Convention.*

*29. The Committee calls on the State party to ensure full compliance with the provisions of the Transitional Code on marriage and divorce, including enforcement of the minimum age at marriage, prohibition of forced marriages and enforcement of equitable division of marital property upon divorce, and other laws relating to harmful traditional or customary practices that violate women’s rights. The*



*Committee recommends that the ongoing law reform process aim at promotion of gender equality, elimination of discrimination against women, especially in family relations, and full compliance with all provisions of the Convention.*

*CRC/C/ERI/CO/3 (2008):*

*The Committee reiterates its concern, as stated in the previous concluding observations, that while the Constitution and the Civil Code formally set 18 years-old as the minimum age to enter into marriage, customary laws do not have the same minimum marriage age and are often applied differently to boys and girls. The Committee notes that in practice many children, especially girls, are married between the ages of 13 and 15. The Committee is furthermore concerned over reports which indicate that the rate of child marriages is increasing.*

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## Reference Sheet

### Recommended Questions and Concluding Observations for Eritrea's List of Issues

*For the Committee on the Elimination of Discrimination against Women*

*75th Pre-Sessional Working Group, July 2019*

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#### *Recommended Questions for Eritrea's List of Issues:*

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#### **Sexual harassment at work (General Recommendation 12)**

- Does legislation exist protecting women from sexual harassment at work?

#### **Prohibition of discrimination in the field of employment (Article 11)**

- Can Eritrea demonstrate whether broad protections from discrimination at work sufficiently protect women from discrimination in employment opportunities or hiring, vocational training at work, and promotions/demotions?
- Can Eritrea outline whether existing guarantees of equal pay for equal work sufficiently protect women working in female-dominated occupations from pay discrimination?
- Can Eritrea demonstrate whether legal protections from gender discrimination extend to include indirect discrimination?
- Can Eritrea demonstrate how protections from retaliation for reporting discrimination are being enforced, and whether all women, regardless of income, have access to an effective reporting process?

#### **Child marriage (Articles 16.2, 2.a)**

- What laws exist to protect girls under the age of 18 from early marriage, and do these laws extend to protect girls from early marriage under customary and/or religious law?

#### **Prohibiting discrimination in constitutions (Article 2)**

- How are constitutional guarantees of non-discrimination based on gender being implemented through laws, policies, and the lived experiences of women?



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*Recommended Concluding Observations for Eritrea (where Eritrea's responses to questions from the list of issues are unclear or insufficient):*

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*\*Note that wherever possible, these recommendations should be implemented in collaboration with relevant stakeholders, including civil society organizations.*

**Sexual harassment at work (General Recommendation 12)**

- If legislation is not in place protecting women from sexual harassment at work, we hope the Committee will recommend in its concluding observations that Eritrea pass and implement legislation that explicitly protects women from sexual harassment at work.

**Prohibition of discrimination in the field of employment (Articles 11.1.b, 11.1.c, 11.1.d)**

- If broad protections from discrimination at work do not sufficiently protect women from discrimination in employment opportunities or hiring, vocational training at work, and promotions/demotions, we hope the Committee will recommend in its concluding observations that Eritrea pass and implement legislation that explicitly protects women from discrimination at work in all aspects of the working life course, including in employment opportunities or hiring, vocational training at work, and promotions/demotions.
- If Eritrea cannot demonstrate that existing guarantees of equal pay for equal work sufficiently protect women working in female-dominated occupations from pay discrimination, we hope the Committee will recommend that Eritrea pass and implement legislation that sufficiently protects women working in female-dominated occupations from pay discrimination.
- If Eritrea cannot demonstrate that existing protections from discrimination at work extend to include indirect discrimination, we hope the Committee will recommend that Eritrea pass and implement legislation that expands the definition of discrimination to include both direct and indirect discrimination.
- If Eritrea cannot demonstrate how protections from retaliation for reporting discrimination are being enforced, and that all women, regardless of income, have access to an effective reporting process, we hope the Committee will recommend that Eritrea outline how it will improve implementation of protections from retaliation for reporting discrimination and of access to an effective reporting process for all women.

**Child marriage (Articles 16.2, 2.a)**

- If insufficient laws exist to protect girls under the age of 18 from early marriage, including protecting girls from early marriage under customary and/or religious law, we hope the Committee will recommend that Eritrea pass and implement legislation that protects girls under the age of 18 from early marriage, including under customary and/or religious law.



**Prohibiting discrimination in constitutions (Article 2)**

- If evidence is insufficient that constitutional guarantees of non-discrimination based on gender are being implemented through laws, policies, and the lived experiences of women, we hope the Committee will recommend in its concluding observations that Eritrea develop concrete action towards implementation.

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*Briefing prepared by the World Policy Analysis Center, University of California, Los Angeles*