

# Indonesia: A Brief on the Implementation of CEDAW Commitments from Articles 2, 5, 11, and General Recommendation 12

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

*78<sup>th</sup> Pre-Session Working Group, July 2020*

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

This brief will focus on the following four areas:

1. General Equality and Non-Discrimination (Article 2)
2. Non-discrimination in Work and Employment (Article 11)
3. Sexual Harassment in Work and Employment (General Recommendation 12)
4. Paid Maternity and Paternity Leave (Articles 11, 5)

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 provide detailed constitutional and legislative excerpts documenting our findings. These findings are followed by suggested questions the Committee may ask Indonesia, as well as topics to be addressed by the Committee in their concluding observations. We hope the Committee will recommend that Indonesia address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations.



## 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 Equality and Non-Discrimination (Article 2)

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While the entirety of the Convention aims to eliminate discrimination against women in all spheres of life, Article 2(a) of the Convention specifically requires States Parties “To embody the principle of the equality of men and women in their national constitutions”.

We reviewed full text constitutions for all 193 UN member states including Indonesia, 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.

#### *INDONESIA’S CONSTITUTION: MISSING EXPLICIT GUARANTEES OF EQUALITY AND NON-DISCRIMINATION ON THE BASIS OF SEX AND GENDER*

Based on our review, the constitution of Indonesia **guarantees equal treatment before the law and protection from discrimination to all persons** in Article 28D and 28I, respectively. However, these provisions **do not explicitly guarantee equality and non-discrimination to women on the basis of sex or gender**.

##### ***Constitution of Indonesia, 1945***

##### *Chapter XA Human Rights*

##### *Article 28D*

*(1) Every person shall have the right of recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law.*

##### *Article 28I*

*[...]*

*(2) Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment.*

#### *WHY CONSTITUTIONS MATTER*

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.

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

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

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, including Indonesia, 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. 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.

### *INDONESIA'S LEGISLATIVE PROVISIONS: LIMITED PROTECTIONS FROM WORKPLACE DISCRIMINATION ON THE BASIS OF SEX/GENDER*

Based on our review, Article 153 of Indonesia's 2003 *Act Concerning Manpower* strictly **prohibits employers from terminating the contract of a worker based on sex or marital status. We did not find any provisions to guarantee women equal pay for work of equal value, or to protect women from discrimination in vocational training, promotions or demotions, or indirect forms of discrimination.** However, Article 6 of the *Act Concerning Manpower* **broadly protects female workers from workplace discrimination, and** Articles 5 and 32 further **protect prospective female workers from discrimination while seeking employment opportunities and during job placement.** Although these provisions do not utilize sex-specific language, the Explanatory Notes located at the end of the Act explicitly extend these provisions to protect against discrimination on the grounds of sex. We **did not identify any provisions to protect women from retaliatory action after reporting incidents of discrimination.**



**Act Concerning Manpower, 2003**

*Article 5*

*Every person available for a job shall have the same opportunity to get a job without discrimination.*

*Article 6*

*Every worker/labourer has the right to receive equal treatment without discrimination from their employer.*

*Article 32*

*(1) Job placement shall be carried out based on transparency, respect for each other's freedom, objectivity, fairness and equal opportunity without discrimination.*

*Article 153*

*(1) The entrepreneur is prohibited from terminating the employment of a worker/ labourer because of the following reasons:*

*[...]*

*i. Because the worker/ labourer is of different understanding/ belief, religion, political orientation, ethnicity, color, race, sex, physical condition or marital status.*

**Explanatory Notes on Act Concerning Manpower, 2003**

*Article 5*

*Every person who is available for a job shall have the same right and opportunity to find a decent job and to earn a decent living without being discriminated against on grounds of sex, ethnicity, race, religion, political orientation, in accordance with the person's interest and capability, including the provision of equal treatment to the disabled.*

*Article 6*

*Entrepreneurs are under an obligation to give the worker/ labourer equal rights and responsibilities without discrimination based on sex, ethnicity, race, religion, skin color, and political orientation.*

*Article 32*

*Subsection (1)*

*[...]*

*The phrase "fairness and equal opportunities without discrimination" here shall refer to placement purely based on the ability of the manpower and not based on the manpower's race, sex, skin color, religion, and political orientation.*



### 3. Sexual Harassment in Work and Employment (General Recommendation 12)

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Referencing Articles 2, 5, 11, 12, and 16 of the Convention, General Recommendation 12 further recommends that States parties implement legislation protecting women from sexual harassment in the workplace.

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, including Indonesia, 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?

#### *INDONESIA: NO EXPLICIT LEGISLATIVE PROTECTIONS FROM WORKPLACE SEXUAL HARASSMENT*

Our systematic review of legislation **did not identify any national legislative provisions that protect women from sexual harassment at work in Indonesia.**

### 4. Paid Maternity and Paternity Leave (Articles 11, 5)

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Article 11.2 of the Convention states that:

*In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:*

*(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;*

*(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;*

Further, Article 5(b) of the Convention emphasizes the importance of including men in the upbringing of children:

*To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.*

We systematically reviewed national labor codes and social security laws to assess the availability paid maternity and paternity leave. We relied primarily on legislation downloaded through the International



Labour Organization's NATLEX database. Additionally, for confirmation or clarification on legal provisions, we consulted trusted secondary sources including the Social Security Programs throughout the World (SSPTW) database, and the International Review of Leave Policies.

*INDONESIA'S LEGISLATIVE PROVISIONS: A NEED TO STRENGTHEN PAID MATERNITY AND PATERNITY LEAVE*

Based on our systematic review of national legislation, Indonesia provides **three months of paid maternity leave to mothers**, of which half can be taken after the birth of the child. Indonesia also provides **two days of paid paternity leave to fathers**. The 2003 Act Concerning Manpower also protects mothers from dismissal due to absences related to pregnancy or childbirth, however, we found no equivalent protections for fathers during absences related to paternity leave.

***Act Concerning Manpower, 2003***

*Article 82*

*(1) Female workers/ labourers are entitled to a 1.5 (one-and-a-half) month period of rest before the time at which they are estimated by an obstetrician or a midwife to give birth to a baby and another 1.5 (one-and-a-half) month period of rest thereafter.*

*Article 93*

*(1) No wages will be paid if workers/ labourers do not perform work.*

*(2) However, the ruling as referred to under subsection (1) shall not apply and the entrepreneur shall be obliged to pay the worker/ labourer's wages if the worker/ labourer does not perform work because of the following reasons:*

*[...]*

*c. The workers/ labourers have to be absent from work because they get married, marry off their children, have their sons circumcised, have their children baptized, or because the worker/ labourer's wife gives birth to a baby, or suffers from a miscarriage, or because the wife or husband or children or children-in-law(s) or parent(s) or parent-in-law(s) of the worker/ labourer or a member of the worker/ labourer's household dies.*

*[...]*

*(4) The amount of wages payable to workers/ labourers during the period in which they have to be absent from work for reasons specified under point c of subsection (2) shall be determined as follows,*

*[...]*

*e. If a worker/ labourer is absent from work because his wife gives birth to a baby or his wife suffers a miscarriage, he shall be entitled to receive a payment for 2 (two) days' work during the absence;*

*[...]*

*Article 153*

*(1) The entrepreneur is prohibited from terminating the employment of a worker/ labourer because of the following reasons:*

*[...]*

*e. The worker/ labourer is absent from work because she is pregnant, giving birth to a baby, having a miscarriage, or breast-feeding her baby.*



## REFERENCE SHEET (INDONESIA)

### RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

*Information for the Committee on the Elimination of Discrimination against Women  
78<sup>th</sup> Pre-Session Working Group, July 2020*

**We hope the Committee will:**

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*General Equality and Non-Discrimination (Article 2): Adding constitutional guarantees of equality and non-discrimination on the basis of sex/gender*

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In its concluding observations, recommend Indonesia:

- Consider amending the constitution to add explicit guarantees of equality and non-discrimination based on sex or gender, consistent with CEDAW commitments.
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*Non-discrimination in Work and Employment (Article 11): Ensuring non-discrimination across all aspects of the working life course*

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In its list of issues, ask Indonesia:

- Can Indonesia demonstrate whether a broad protection from discrimination at work found in Article 6 in the 2003 Act Concerning Manpower sufficiently protects women from discrimination in promotions and demotions and in accessing vocational training at work?
  - If sufficient protections do not exist, recommend in its concluding observations that Indonesia pass and implement legislation that explicitly protects women from discrimination at work in all aspects of the working life course, including in promotions and demotions and in accessing vocational training at work.
- Can Indonesia demonstrate whether broad protections from discrimination at work, such as Article 6 in the 2003 *Act Concerning Manpower*, also extend to include forms of indirect discrimination?
  - If indirect discrimination is not included, recommend in its concluding observations that Indonesia pass and implement legislation that expands the definition of discrimination to include both direct and indirect forms of discrimination.
- Can Indonesia demonstrate whether sufficient protections exist to protect women from retaliatory action when reporting incidents of discrimination at work?





- If sufficient protections do not exist in this area, recommend in its concluding observations that Indonesia pass and implement legislation that explicitly protects women from retaliatory action when reporting incidents of discrimination at work.

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*Sexual Harassment in Work and Employment (General Recommendation 12): Passing and implementing a comprehensive anti-sexual harassment law*

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In its list of issues, ask Indonesia:

- Can Indonesia outline any concrete, near-term plans to pass legislation that explicitly prohibits workplace sexual harassment and includes the following key elements?
  - An explicit prohibition of sexual harassment that extends to anyone in the workplace, including supervisors, co-workers, and third-parties, such as customers, clients, or contractors.
  - A clear definition of sexual harassment behaviors, including quid pro quo, conduct that creates a hostile work environment, and sex-based harassment.
  - A prohibition of retaliatory actions against persons who report cases of workplace sexual harassment.
  - An effective and inclusive reporting process that ensures all women, regardless of income or social status, have legal recourse.
- If concrete, near-term plans are not in place, recommend in its concluding observations that Indonesia pass and implement legislation that explicitly develops a comprehensive anti-sexual harassment law which includes all elements listed above.

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*Paid Maternity and Paternity Leave (Articles 11, 5): Increasing the duration of paid maternity and paternity leave*

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In its list of issues, ask Indonesia:

- Can Indonesia demonstrate how paid maternity and paternity leave provisions are being implemented to be inclusive of all parents, including part-time or self-employed workers, as well as workers within the informal economy?
  - If Indonesia is not fully implementing these guarantees to be inclusive of all workers, recommend in its concluding observations that Indonesia develop a specific plan for fully and effectively expanding these guarantees to do so.



In its concluding observations, recommend Indonesia:

- Increase the duration of paid maternity leave to at least 14 weeks, consistent with Article 4 of the International Labour Organization Maternity Protection Convention, 2000 (No. 183), which entitles a woman to a period of maternity leave of not less than 14 weeks.
- Increase the duration of paid paternity leave. Ensuring fathers' access to an adequate duration of paid paternity leave is foundational to increasing gender equality in caregiving responsibilities and gender equality in employment.

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