



# Pakistan: 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 Pakistan may have passed legislation or enacted new policies since our most recent review. We therefore hope the Committee will include the following questions for Pakistan in its list of issues, and where applicable, make the recommendations outlined below in its concluding observations. We also hope the Committee will recommend that Pakistan address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations.

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

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

Our systematic review of national legislation as of August 2016 did not identify any national legislative provisions that explicitly prohibit gender discrimination at work in Pakistan.

#### **We hope the Committee will:**

- In its list of issues, ask Pakistan: **Does legislation exist prohibiting gender discrimination at work?**



- If the relevant provisions are not in place, recommend in its concluding observations that Pakistan pass and implement legislation that:
  - Explicitly protects women from direct and indirect discrimination based on gender, marital status, pregnancy, and family status in all aspects of the working life course, including in:
    - employment opportunities or hiring
    - vocational training at work
    - promotions or demotions
    - job security or terminations
  - Guarantees equal pay for work of equal value.
- We also hope the Committee will recommend that this legislation includes effective enforcement mechanisms, such as protection from retaliation.

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

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

Based on our systematic review of national legislation as of August 2016, Pakistan's legislation explicitly protects women from sexual harassment at work, including quid pro quo and conduct that creates a hostile work environment. Prohibitions of sexual harassment extend to contractors and other third-party affiliates, thus protecting women from acts committed by perpetrators other than co-workers and employers. However, Pakistan's legislation does not explicitly protect women from sex-based harassment. Additionally, Pakistan's legislation does not protect workers from retaliatory action for reporting sexual harassment.

**We hope the Committee will:**

- In its list of issues, ask Pakistan:
  - **Can Pakistan provide evidence of effective enforcement of protections from sexual harassment at work, including in protecting women from quid pro quo and conduct that creates a hostile work environment?**
    - If Pakistan is not fully implementing its protections from sexual harassment at work, we hope the Committee will recommend in its concluding observations that Pakistan explore how to fully and effectively implement effective protections from sexual harassment at work.
  - **Can Pakistan demonstrate whether sufficient protections exist to protect women from retaliatory action when reporting sexual harassment at work?**
    - If sufficient protections are not in place, recommend in its concluding observations that Pakistan pass and implement legislation that supports



women's ability to report harassment without fear of job loss or other retaliatory actions.

- **Can Pakistan demonstrate whether sufficient legislation exists protecting women from sex-based harassment?**
  - If sufficient protections do not exist, recommend in its concluding observations that Pakistan pass and implement legislation that explicitly protects women from sex-based harassment.

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

Based on our systematic review of legislation and country reports as of February 2019, Pakistan legally allows girls to be married as young as 16 years old. For boys, the legal minimum age of marriage is 18 years old.

### **We hope the Committee will:**

- In its list of issues, ask Pakistan: **What laws exist to protect girls under the age of 18 from early marriage?**
  - If Pakistan does not have sufficient laws in place to protect girls under the age of 18 from early marriage, recommend in its concluding observations that Pakistan pass and implement legislation that protects girls under the age of 18 from early marriage.
  - In its concluding observations, also recommend that Pakistan work to address gender differences in the law that give boys more protection from early marriage than girls, and to ensure that girls' protections are raised.

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

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## Prohibiting discrimination in constitutions (Article 2)

Based on our review of full-text national constitutions as of May 2017, Pakistan's constitution prohibits discrimination based on sex. 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 the Committee will:**

- In its list of issues, ask Pakistan: **Can Pakistan outline how constitutional guarantees of non-discrimination based on gender are being implemented through laws, policies, and the lived experiences of women?**
  - If Pakistan is not fully implementing these guarantees, recommend in its concluding observations that Pakistan explore how to fully and effectively implement these guarantees.



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.

### *PAKISTAN'S CONSTITUTIONAL PROVISIONS*

Pakistan's constitution prohibits discrimination based on sex. These guarantees are specified in Article 25 of Pakistan's Constitution: *(2) There shall be no discrimination on the basis of sex.*

## 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.

#### *PAKISTAN’S LEGISLATIVE PROVISIONS*

While we recognize there may be other policies governing discrimination at work, 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 discrimination at work in Pakistan.

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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.)”***

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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.



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. We examined whether protections from sexual harassment at work were in line with international agreement of what constitutes key components on sexual harassment. Namely, defining sexual harassment to cover quid pro quo and the creation of a hostile work environment; including sex-based harassment<sup>2</sup> as well as sexual-behavior based harassment; protecting workers from harassment by co-workers and other actors in the workplace, as well as supervisors; and ensuring workers are protected from retaliation for reporting sexual harassment.

#### *PAKISTAN’S LEGISLATIVE PROVISIONS*

Based on our review, Pakistan’s legislation explicitly protects women from sexual harassment at work, including quid pro quo and conduct that creates a hostile work environment. Prohibitions of sexual harassment extend to contractors and other third-party affiliates, thus protecting women from acts committed by perpetrators other than co-workers and employers.

While we commend Pakistan for these strong protections, Pakistan’s legislation does not explicitly protect women from sex-based harassment. Additionally, Pakistan’s legislation does not protect workers from retaliatory action for reporting sexual harassment.

#### *EXCERPT FROM PAKISTAN’S LEGISLATION*

##### ***Protection against Harassment of women at the Workplace Act (Act IV of 2010)***

*2. Definitions.— In this Act, unless there is anything repugnant in the subject or context—*

*(a) “accused” means an employee or employer of an organization against whom complaint has been made under this Act;*

*(g) “Employer” in relation to an organization, means any person or body of persons whether incorporated or not, who or which employs workers in an organization under a contract of employment or in any other manner whatsoever and includes—*

*(ii) any person responsible for the direction, administration, management and control of the management;*

*(vi) a contractor or an organization of a contractor who or which undertakes to procure the labour or services of employees for use by another person or in another organization for any purpose whatsoever and for payment in any form and on any basis whatsoever;*

##### *Code of Conduct for Protection against Harassment of Women at the Workplace*

*(ii) “Harassment” means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature, or sexually demeaning attitudes, causing*

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<sup>2</sup> The UN Women Virtual Knowledge Centre to End Violence against Women and Girls notes that legal definitions of sexual harassment in the workplace should include, among other elements, that it “Occur because of the person’s sex and/or it is related to or about sex”. Retrieved from <https://endvawnow.org/en/articles/817-overview-and-definition.html> on June 9, 2019.



*interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment;*

*The above is unacceptable behavior in the organization and at the workplace, including in any interaction or situation that is linked to official work or official activity outside the office.*

### 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.

#### *PAKISTAN’S LEGISLATIVE PROVISIONS*

Based on our review, Pakistan legally allows girls to be married as young as 16 years old. For boys, the legal minimum age of marriage is 18 years old.

#### *EXCERPT FROM PAKISTAN’S LEGISLATION*

##### ***Act XIX of 1929 to Restraint the Solemnization of Child Marriages***

###### ***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;*

*(b) "child marriage" means a marriage to which either of the contracting parties is a child; (...)*

###### ***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.*





## Reference Sheet

### Recommended Questions and Concluding Observations for Pakistan'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 Pakistan's List of Issues:*

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

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

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

- Does legislation exist prohibiting gender discrimination at work?

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

- Can Pakistan provide evidence of effective enforcement of protections from sexual harassment at work, including in protecting women from quid pro quo and conduct that creates a hostile work environment?
- Can Pakistan demonstrate whether sufficient protections exist to protect women from retaliatory action when reporting sexual harassment at work?
- Can Pakistan demonstrate whether sufficient legislation exists protecting women from sex-based harassment?

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

- What laws exist to protect girls under the age of 18 from early marriage?



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*Recommended Concluding Observations for Pakistan (where Pakistan'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.*

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

- If the relevant provisions are not in place, we hope the Committee will recommend in its concluding observations that Pakistan pass and implement legislation that:
  - Explicitly protects women from direct and indirect discrimination based on gender, marital status, pregnancy, and family status in all aspects of the working life course, including in:
    - employment opportunities or hiring
    - vocational training at work
    - promotions or demotions
    - job security or terminations
  - Guarantees equal pay for work of equal value.
- We also hope the Committee will recommend that this legislation includes effective enforcement mechanisms, such as protection from retaliation.

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

- If Pakistan is not fully implementing its protections from sexual harassment at work, including in protecting women from quid pro quo and conduct that creates a hostile work environment, we hope the Committee will recommend in its concluding observations that Pakistan explore how to fully and effectively implement effective protections from sexual harassment at work.
- If insufficient evidence is not provided to demonstrate protections from retaliatory action when reporting sexual harassment at work, we hope the Committee will recommend in its concluding observations that Pakistan pass and implement legislation that supports women's ability to report harassment without fear of job loss or other retaliatory actions.
- If sufficient legislation does not exist protecting women from sex-based harassment, we hope the Committee will recommend in its concluding observations that Pakistan pass and implement legislation that explicitly protects women from sex-based harassment.



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

- If Pakistan does not have sufficient laws in place to protect girls under the age of 18 from early marriage, we hope the Committee will recommend in its concluding observations that Pakistan pass and implement legislation that protects girls under the age of 18 from early marriage.
- We also hope the Committee will recommend that Pakistan work to address gender differences in the law that give boys more protection from early marriage than girls, and to ensure that girls' protections are raised.

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

- If Pakistan is not fully implementing constitutional guarantees of non-discrimination based on gender through laws, policies, and the lived experiences of women, we hope the Committee will recommend in its concluding observations that Pakistan explore how to fully and effectively implement these guarantees.

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