

KYRGYZSTAN: A BRIEF ON LEGAL GUARANTEES TO NON-DISCRIMINATION IN WORK AND EMPLOYMENT AND CONSTITUTIONAL GUARANTEES TO EQUALITY AND NON-DISCRIMINATION

*Information for the Committee on Economic, Social, and Cultural Rights
70th Pre-Sessional Working Group, March 2022*

Submitted By

The WORLD Policy Analysis Center
University of California, Los Angeles



CONTENTS

Introduction 2

Summary of Findings and Recommendations..... 3

 1. Equality and Non-Discrimination (Article 2, General Comment No. 5) 3

 2. Non-Discrimination in Work and Employment (Article 7) 3

Detail of Constitutional and Legislative Findings 4

 1. Equality and Non-Discrimination (Article 2, General Comment No. 5) 4

 2. Non-Discrimination in Work and Employment (Article 7) 5



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 70th Pre-Sessional Working Group of the Committee on Economic, Social, and Cultural Rights.

This brief will focus on the following two areas:

1. Equality and non-discrimination (Article 2, General Comment No. 5)
2. Non-discrimination in work and employment (Article 7)

We have collected and analyzed information on rights, laws, and policies in these areas for all 193 UN member states using a variety of sources, including primary national legal sources (e.g. original legislation and constitutions), national reports on policies and laws to the United Nations and official global and regional bodies, and secondary sources where clarification or corroboration of primary data is needed. Using a rigorous double-coding process, we create original databases which distill thousands of pages of text to highlight the essential features of each right, law, or policy. These original databases are the reference for the following brief. When drafting each brief, we perform a series of additional verifications to ensure the data provided reflects the current constitutional and legal landscape of a country.

In this report we first provide a summary of our constitutional and legislative findings, as well as suggested questions for the Committee to ask Kyrgyzstan and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed constitutional and legislative excerpts documenting our findings. We hope the Committee will recommend that Kyrgyzstan 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 Kyrgyzstan for having provisions in place, we hope the Committee will recommend that Kyrgyzstan work with stakeholders to overcome any obstacles in implementing these provisions.



SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. Equality and Non-Discrimination (Article 2, General Comment No. 5)

Based on our review of full-text national constitutions, Kyrgyzstan's constitution guarantees equality and non-discrimination to all persons on the basis of sex, race, language, disability status, ethnic origin, political convictions, education, background, and proprietary status. However, the constitution does not explicitly prohibit discrimination based on national origin, a status which is protected from non-discrimination in the Covenant.

We hope the Committee will:

- Recommend in its concluding observations that **Kyrgyzstan amend the constitution to add explicit guarantees of equality and non-discrimination based on national origin**, consistent with ICESCR commitments. These guarantees could be added to Article 16 of the constitution, which already guarantees non-discrimination based on other personal characteristics and statuses.

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

Our systematic review of labor legislation shows that the Labor Code of Kyrgyzstan broadly prohibits the discrimination of workers based on sex, race, nationality, language, origin, property status, religion, political opinions, and other characteristics. The law further prohibits unequal pay between workers for reasons due to these characteristics and statuses. However, the laws in Kyrgyzstan do not outline and prohibit other forms of workplace discrimination that may occur during hiring, promotions, demotions, or terminations.

In the Labor Code, certain cases of workplace discrimination against persons with disabilities are also prohibited. Specifically, workers with disabilities are guaranteed equal working conditions and equal remuneration and are protected from terminations and dismissals in certain circumstances. The law also requires employers to reasonably accommodate workers with disabilities by creating individualized working conditions. These rights are reaffirmed in the Law on the Rights of Persons with Disabilities. However, we did not identify any provisions that broadly prohibit disability-based workplace discrimination or any provisions that explicitly prohibit disability-based discrimination in other employment interactions such as hiring, promotions, or demotions.

We hope the Committee will:

- In its list of issues, ask Kyrgyzstan: Given that explicit prohibitions of workplace discrimination in hiring, promotions, demotions, and terminations are missing, can Kyrgyzstan demonstrate whether broad legislative prohibitions of workplace discrimination have been interpreted to include these specific forms of discrimination?
 - If Kyrgyzstan cannot demonstrate how broad legislative prohibits of workplace discrimination have been interpreted to prohibit specific forms of discrimination that may occur during hiring, promotions, demotions, and terminations, recommend in its



- concluding observations that Kyrgyzstan amend the current laws to add explicit prohibitions of discrimination in these key areas of employment.
- We also hope the Committee will recommend that the current law be amended to include effective enforcement mechanisms, as well as protection from retaliation by employers against those reporting incidents of workplace discrimination.
 - In its list of issues, ask Kyrgyzstan: Given that there is no broad legislative prohibition of workplace discrimination against persons with disabilities, can Kyrgyzstan outline any concrete, near-term plans to pass legislation that explicitly prohibits disability-based workplace discrimination in key areas of employment such as hiring, promotions, and demotions?
 - If Kyrgyzstan does not have concrete, near-term plans in place, recommend in its concluding observations that Kyrgyzstan pass and implement legislation that explicitly prohibits disability-based discrimination during hiring, promotions, and demotions.
 - We also hope the Committee will recommend that the current laws be amended to include effective enforcement mechanisms, as well as protection from retaliation by employers against those reporting incidents of workplace discrimination.
 - In its list of issues, ask Kyrgyzstan: Can Kyrgyzstan demonstrate how it is enforcing guarantees of reasonable accommodation at work to persons with disabilities?
 - Where Kyrgyzstan is not fully implementing guarantees of reasonable accommodation, recommend in its concluding observation that Kyrgyzstan develop concrete steps towards full implementation.

DETAIL OF CONSTITUTIONAL AND LEGISLATIVE FINDINGS

1. Equality and Non-Discrimination (Article 2, General Comment No. 5)

Article 2 (2) of The Covenant states that:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, General Comment No. 5, explicitly addresses non-discrimination of persons with disabilities by stating:

[...] the requirement contained in article 2 (2) of the Covenant that the rights “enunciated ... will be exercised without discrimination of any kind” based on certain specified grounds “or other status” clearly applies to discrimination on the grounds of disability.

Constitutions state the values of a country, describe the rights of people living within the country, and profoundly influence norms and practice. In nearly all countries, constitutions take precedence over other sources of law—making them critical tools for delineating and implementing equal rights. New



constitutions and new rights guaranteed in constitutions can be used to overturn discriminatory laws as well as to legislate non-discrimination guarantees. Moreover, constitutions can offer protection against policy and legal changes during periods of social and political shifts that may seek to undermine equal rights. For these reasons and others, as the foundational document setting out the rights of all human beings in a country, a constitution and the rights contained therein are essential to realizing equal rights.

We reviewed full text constitutions for all 193 UN member states available from official government sources to determine whether the constitution took any approach to equality across the grounds listed in Article 2.2 and General Comment No. 5 of the Covenant by prohibiting discrimination based on each specific status, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

KYRGYZSTAN'S CONSTITUTIONAL PROVISIONS: MISSING PROHIBITION OF DISCRIMINATION BASED ON NATIONAL ORIGIN

Article 16 of Kyrgyzstan's constitution guarantees equality and non-discrimination to all persons on the basis of sex, race, language, disability status, ethnic origin, political convictions, education, background, and proprietary status. **However, the constitution does not explicitly prohibit discrimination based on national origin, a status which is protected from non-discrimination in the Covenant.**

Constitution of Kyrgyzstan

Article 16

[...]

2. The Kyrgyz Republic shall respect and ensure human rights and freedoms to all persons on its territory and under its jurisdiction.

No one may be subject to discrimination on the basis of sex, race, language, disability, ethnicity, belief, age, political and other convictions, education, background, proprietary and other status as well as other circumstances.

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

In addition to Article 2(2) and General Comment No. 5 of the Covenant which guarantees equal rights regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and disability status, Article 7 of the Covenant outlines a number of specific measures States Parties shall undertake in order to eliminate discrimination in the field of employment:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:



(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

For workers with disabilities, Paragraph 22 of General Comment No. 5 further calls on States to remove barriers to employment by promoting and regulating “work arrangements that reasonably accommodate the needs of disabled workers.”

We systematically reviewed national labor codes, penal codes, equal opportunity, anti-discrimination legislation and other relevant legislation available through the International Labour Organization’s NATLEX database for all 193 UN member states to determine whether national legislation prohibited discrimination in employment across four areas of employment covered by the Covenant:

- Employment opportunities or hiring
- Equal remuneration for work of equal value
- Promotions and demotions
- Dismissals or terminations

For each provision, we assessed whether there were explicit prohibitions of discrimination across the grounds listed in Article 2.2 and General Comment No. 5 of the Covenant. We also examined whether there were provisions that protected workers from retaliatory action for reporting discrimination in these four areas, and whether reasonable accommodation was guaranteed for workers with disabilities.

KYRGYZSTAN’S LEGISLATIVE PROVISIONS: LIMITED PROTECTIONS FROM WORKPLACE DISCRIMINATION

Based on our systematic review of national legislation, we find that Article 9 of Kyrgyzstan’s Labor Code generally prohibits the discrimination of workers based on sex, race, nationality, language, origin, property status, religion, political opinions, and other characteristics. The law further prohibits unequal pay between workers for reasons due to these characteristics and statuses. **However, the laws in Kyrgyzstan do not explicitly outline and prohibit workplace discrimination that may occur during hiring, promotions, demotions, or terminations.**



Labor Code

9-статья. Эмгек чөйрөсүндө басмырлоого тыюу салуу

Ар бир адам өзүнүн эмгек укуктарын жана эркиндиктерин ишке ашыруу үчүн бирдей мүмкүнчүлүктөргө ээ.

Эч ким жынысына, расасына, улутуна, тилине, тегине, мүлктүк жана кызмат абалына, курагына, жашаган жерине, динге карата мамилесине, саясий ынанымдарына, коомдук бирикмелерге таандуулугуна же таандуу эместигине, ошондой эле кызматкердин иштөө сапатына жана анын ишинин натыйжаларына байланышпаган башка жагдайларга карабастан алардын эмгектик укуктары жана эркиндиктери чектелүүгө же кандайдыр бир артыкчылыктарга ээ болууга мүмкүн эмес.

Бирдей эмгекке бирдей акы төлөнбөшүнө жол берилбейт.

Articles 317 and 318 of the Labor Code also prohibit specific cases of workplace discrimination against persons with disabilities, guaranteeing equal working conditions and equal remuneration while also protecting workers with disabilities from terminations and dismissals in certain circumstances. The law also requires employers to reasonably accommodate workers with disabilities by creating individualized working conditions. These rights are reaffirmed in the Law on the Rights of Persons with Disabilities. **However, we did not identify any provisions that broadly prohibit disability-based workplace discrimination or any provisions that explicitly prohibit disability-based discrimination in other employment interactions such as hiring, promotions, or demotions.**

Labor Code

317-статья. Ден соолугунун мүмкүнчүлүктөрү чектелүү адамдардын эмгек шарттарына жана эс алууларына кепилдиктер

Иштеген ден соолугунун мүмкүнчүлүктөрү чектелүү адамдарга иш берүүчү МСЭК тарабынан берилген реабилитациянын жекече программасына ылайык, анын ичинде өндүрүштө аларды кесиптик окутуп үйрөтүүнү уюштурууну жана үйдөн иштөө жолу менен эмгек шарттарын түзүүгө милдеттүү.

Макулдашуулар менен, жамааттык келишимде, макулдашууларда жана эмгек келишиминде белгиленүүчү эмгек шарттары, анын ичинде акы төлөө, жумуш убактысынын жана эс алуу убактысынын режими, жыл сайын берилүүчү өргүүнүн узактыгы башка кызматкерлерге салыштырганда ден соолугунун мүмкүнчүлүктөрү чектелүү адамдардын абалын начарлатпоого же укуктарын чектебөөгө тийиш. ...



318-статья. Башка ишке которууда жана эмгек келишимин бузууда ден соолугунун мүмкүнчүлүктөрү чектелүү адамдар үчүн кошумча кепилдиктер

[...]

Кызматкерлердин санын же штатты кыскартууда ден соолугунун мүмкүнчүлүктөрү чектелүү адамдарга эмгек өндүрүмдүүлүгү жана квалификациялары бирдей болгондо жумушта калтырууга артыкчылык берилет. Ден соолугунун мүмкүнчүлүктөрү чектелүү адамдардын эмгегин пайдалануу үчүн арналган адистештирилген уюмдарда иштеген ден соолугунун мүмкүнчүлүктөрү чектелүү адамдар эмгек өндүрүмдүүлүгүнө жана квалификациясына карабастан жумушта калтырууга артыкчылык укугуна ээ.

Иш берүүчүнүн демилгеси боюнча ден соолугунун мүмкүнчүлүктөрү чектелүү адамдар менен эмгек келишимин бузууга жол берилбейт (уюмдун жоюлгандыгына байланыштуу ушул Кодекстин 83-статьясынын 1-пункту, 3-пункттун "а" пунктчасы, 5-8, 10, 11-пункттары боюнча бошотулган учурларды кошпогондо).

Table 1. Guaranteed legal provisions of non-discrimination across key areas of employment for personal characteristics covered by the Covenant					
	Discrimination broadly prohibited	Employment opportunities or hiring	Equal remuneration	Promotions and demotions	Dismissals
Race and colour	✓		✓		
Sex	✓		✓		
Language	✓		✓		
Religion	✓		✓		
Political opinion	✓		✓		
National origin	✓		✓		
Social origin					
Property status	✓		✓		
Birth status					
Disability			✓		✓

Note: An empty cell indicates no relevant provisions were found.