



Tajikistan: A Brief on Constitutional and Legal Guarantees to Non-Discrimination, Equality, and Education

*Information for the Committee on Economic, Social, and Cultural Rights
67th Pre-Sessional Working Group, October 2020*

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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 67th Pre-Sessional Working Group of the Committee on Economic, Social, and Cultural Rights.

This brief will focus on the following three areas:

1. Equality and non-discrimination (Article 2, General Comment No. 5)
2. Non-discrimination in work and employment (Article 7)
3. Free and compulsory education (Article 13)

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 executive summary, we provide our findings and suggestions for questions the committee may ask regarding areas that may have not been covered. Finally, we suggest topics to be addressed by the committee in concluding observations. We hope the Committee will recommend that Tajikistan address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations.

The WORLD Policy Analysis Center's examination of Tajikistan's constitutional provisions and legislation vis à vis the commitments it has made through its ratification of the ICESCR is focused in the following areas:

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

A) Equality and non-discrimination (Article 2, General Comment No. 5)

Tajikistan's constitution guarantees equality before the law to all citizens. The constitution **further guarantees all rights, including equality before the law, without discrimination based on nationality, race, gender, language, religious beliefs, political persuasion, education, and social and property**



status. However, it offers no **such guarantees of rights without discrimination on the basis of disability** as outlined in General Comment 5.

We hope the Committee will:

- Recommend in its concluding observations that Tajikistan consider amending the constitution to add explicit guarantees of equality and non-discrimination regardless of disability status, consistent with ICESCR commitments.

B) Non-discrimination in work and employment (Article 7)

Our systematic review of national legislation shows that Tajikistan does not consistently and explicitly prohibit workplace discrimination across four key areas of employment: employment opportunities or hiring, equal remuneration, promotions and demotions, and dismissals. Legislation in Tajikistan **broadly prohibits discrimination in employment relations based on race, nationality, sex, language, religion, political opinion, social origin, and property status, and further prohibits employers from discriminating during the hiring process based on these grounds.** The same law also generally guarantees equal remuneration for work of equal value to all workers, but not explicitly for any characteristic. Legislation also prohibits discrimination in promotions and demotions based on sex but does not have the same guarantees based on other characteristics. **Workers facing discrimination based on birth status and disability status are not protected by these provisions.**

Table 1. Guaranteed provisions of non-discrimination across four key areas of employment for personal characteristics covered by the Covenant

	Discrimination broadly prohibited	Employment opportunities or hiring	Equal remuneration for work of equal value	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.

We hope the Committee will:

- In its list of issues, ask Tajikistan: Can Tajikistan outline any concrete, near-term plans to pass legislation that explicitly prohibits workplace discrimination based on birth status and disability status?



- If Tajikistan does not have concrete, near-term plans in place, recommend in its concluding observations that Tajikistan pass and implement legislation that explicitly prohibits discrimination based on birth status and disability status, particularly in the following aspects of employment:
 - Employment opportunities and hiring
 - Equal remuneration for work of equal value
 - Career advancements including promotions and demotions
 - Continuance of employment or terminations
- In its list of issues, ask Tajikistan: Can Tajikistan outline any concrete, near-term plans to pass and implement legislation explicitly guaranteeing equal remuneration for work of equal value regardless of race, colour, sex, language, religion, political opinion, national or social origin, property status, birth status, and disability status?
 - If Tajikistan does not have concrete, near-term plans to pass and implement such legislation, recommend in its concluding observations that Tajikistan pass and implement legislation to explicitly guarantee equal remuneration for work of equal value to all workers regardless of race, colour, sex, language, religion, political opinion, national or social origin, property status, birth status, and disability status.
- In its list of issues, ask Tajikistan: Can Tajikistan demonstrate whether broad prohibitions of workplace discrimination based on race, nationality, sex, language, religion, political opinion, social origin, and property status have been interpreted to include all forms of discrimination including discrimination during promotions, demotions, and dismissals?

Areas where Tajikistan's provisions are consistent with or directly support the Covenant:

Free and compulsory education (Article 13)

Based on our systematic review of legislation, public education in Tajikistan is guaranteed to be free and compulsory through the end of the lower secondary level, or “general basic education”. This is a positive and important step to have in place, and while these legislative guarantees are essential, so too is their implementation.



DETAIL

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.

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 ICESCR by prohibiting discrimination based on each specific status, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

TAJIKISTAN’S CONSTITUTIONAL PROVISIONS: MISSING EXPLICIT GUARANTEES OF EQUALITY AND NON-DISCRIMINATION

Article 17 of Tajikistan’s constitution guarantees equality before the law to everyone, and extends all rights and freedoms in the constitution, including this right to equality before the law, to everyone regardless of nationality, race, gender, language, religious beliefs, political persuasion, education, and social and property status. Article 16 further extends all rights in the constitution, including the right to equality before the law, to foreign citizens and stateless persons.

ARTICLE 16

Foreign citizens and stateless persons shall enjoy the established rights and freedoms and have the duties and responsibility equal to [those of] citizens of Tajikistan except in cases provided by law.

ARTICLE 17

*All are equal before the law and court. The State guarantees the rights and freedoms of everyone regardless of his nationality, race, gender, language, religious beliefs, political persuasion, education, [and] social and property status.
Men and women have equal rights.*

There is notably no protection against discrimination on the grounds of disability, as required by General Comment No. 5.



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. 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;

We systematically reviewed national labour 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 covered by the ICESCR:

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



- Dismissals or terminations

For each area, we assessed whether there were explicit prohibitions from discrimination across the grounds listed in Article 2.2 and General Comment No. 5 of the Covenant.

TAJIKISTAN'S LEGISLATIVE PROVISIONS: LIMITED PROTECTIONS FROM WORKPLACE DISCRIMINATION AND SOME GROUPS NOT COVERED AT ALL

Tajikistan's labor code does not consistently and explicitly protect all workers from workplace discrimination across four key areas of employment: employment opportunities or hiring, equal remuneration, promotions and demotions, and dismissals. Article 7 of the law broadly guarantees non-discrimination in labour relations, while Articles 7 and 23 specifically prohibit discrimination in hiring on the basis of nationality, race, sex, language, religion, political opinion, social status, education, and property status. These provisions do not extend to workers facing discrimination based on birth status and disability status.

Further, Article 140 prohibits all discrimination in remuneration, and requires employers to pay equal remuneration for work of equal value.

An additional law specific to sex discrimination, the *Law on State Guarantees of Equality Between Men and Women*, guarantees non-discrimination based on sex in hiring, equal pay for work of equal value, and promotions, but does not prohibit discriminatory dismissals based on sex.

Labor Code of the Republic of Tajikistan

Моддаи 7. Манъи таъъиз дар муносибатҳои меҳнати

1. Ҳамаи шахрвандон ба меҳнат ҳуқуқи баробар доранд, таъъиз дар муносибатҳои меҳнати манъ аст. Ҳама гуна фарқиятгӯзорӣ, роҳ надодан, афзалият гузоштан ё рад кардан аз қабул ба кор қатъи назар аз миллат, наҷод, ҷинс, забон, эътиқоди динӣ, мавқеи сиёсӣ, вазъи иҷтимоӣ, таҳсил ва молу мулк, ки баробарии имкониятро дар меҳнат халалдор мекунад, манъ аст.
2. Фарқият дар меҳнат вобаста ба талаботи махсуси намуди муайяни кор ва ё вобаста ба ғамхорӣ махсуси давлат нисбат ба шахсоне, ки муҳтоҷи ҳимояи махсуси иҷтимоӣ мебошанд (аз рӯи ҷинс, синну сол, норасоӣҳои ҷисмонӣ, уҳдадорӣҳои оилавӣ, дараҷаи иҷтимоӣ ва фарҳангӣ), таъъиз намебошад.
3. Шахсоне, ки дар муносибатҳои меҳнати худро таъъизшуда меҳисобанд, метавонанд ба суд муроҷиат намоянд.

Моддаи 23. Кафолатҳои ҳангоми қабул ба кор

1. Ҳамаи шахрвандон ба кор қабул накардан манъ аст. Беасос рад кардан аз қабул ба кор, ки талаботи қисми 1 моддаи 7 Кодекси мазкурро вайрон мекунад [...]

Моддаи 140. Кафолати пардохти музди меҳнат

1. Корфармо, сарфи назар аз вазъи молиявиаш уҳдадор аст ба корманд барои кори иҷро намудааш музди меҳнати муқарраршударо пардохт намояд.



2. Таъбиз дар пардохти музди меҳнат манъ аст. Корфармо уҳдадор аст ба корманд барои иҷрои кори баробарарзиш музди меҳнати якхела диҳад. Ба зарари корманд тағйир додани шарту шароити пардохти музди меҳнат манъ аст.
3. Андозаи музди меҳнат, ки тарафҳо бо шартномаи меҳнатӣ муайян кардаанд, аз андозаи ҳадди ақали музди меҳнат камтар буда наметавонад.

Law on Guarantees of Equality Between Men and Women

Моддаи 13. Мусоидат ба баробарии гендерӣ дар муносибатҳои меҳнатӣ

Бо мақсади мусоидат кардан ба баробарии гендерӣ дар муносибатҳои меҳнатӣ корфармо (роҳбари мақоми давлатӣ, ташкилотҳои ҳамаи шаклҳои моликият) корҳои зайлро ба ҷо меоварад:

- барои мардону занон ҳангоми бастанӣ шартномаҳои меҳнатӣ имкониятҳои баробар муҳайё менамояд;
- ба мардону занон ҷойҳои (вазифаҳои) холии корро баробар дастрас мегардонад;
- барои мардону занон ҳангоми иҷрои кори якхела ё коре, ки қиматаш баробар аст, музди меҳнати (мукофоти) баробар медиҳад;
- барои такмили ихтисос, бозомӯзӣ, болоравӣ дар хизмат имконияти баробар муҳайё менамояд;
- шароити якхелаи бехатарии меҳнатро, ки барои ҳаёт ва саломатии ҳам мардон ва ҳам занон зарур аст, таъмин менамояд.

3. Free and Compulsory Education (Article 13)

Article 13 of the Covenant states that:

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

For all 193 UN member states, we systematically reviewed education acts and child protection laws available online through UNESCO's Observatory on the Right to Education Library and International Labour Organization's NATLEX database. Through the review we determined whether national legislation guaranteed free and compulsory education at the primary and secondary level.



TAJIKISTAN'S LEGISLATIVE PROVISIONS: GUARANTEED FREE AND COMPULSORY EDUCATION THROUGH LOWER SECONDARY EDUCATION

The *Law of the Republic of Tajikistan On Education* guarantees free and compulsory education through the end of the lower secondary level (“general basic education”).

Law of the Republic of Tajikistan On Education

Моддаи 6. Кафолати давлатии ҳуқуқи шаҳрвандон ба таҳсил

2. Давлат ба шаҳрвандони Ҷумҳурии Тоҷикистон таълими ҳатмии умумии асосии ройгонро дар муассисаҳои таълимии давлатӣ, инчунин дар доираи фармоишҳои давлатӣ дар асоси озмун ройгон гирифтани таҳсилотро дар зинаҳои минбаъдаи таҳсилот кафолат медиҳад.

Моддаи 16. Таҳсилоти умумӣ

2. Таҳсилоти умумӣ тавассути муассисаҳои таълимии таҳсилоти ибтидоӣ, умумии асосӣ, миёнаи умумӣ, мактабҳои (синфҳои) камнуфус ва дигар муассисаҳои таълимӣ дар се зина: ибтидоӣ, умумии асосӣ ва миёнаи умумӣ амалӣ мегардад.



Tajikistan Reference Sheet

Recommended Questions for the List of Issues and Concluding Observations
For the Committee on the Economic, Social, and Cultural Rights 67th Pre-Sessional Working Group,
October 2020

Recommended Questions for Tajikistan's List of Issues:

Work and Employment

- Can Tajikistan outline any concrete, near-term plans to pass legislation that explicitly prohibits workplace discrimination based on birth status and disability status?
 - Can Tajikistan outline any concrete, near-term plans to pass and implement legislation explicitly guaranteeing equal remuneration for work of equal value regardless of race, colour, sex, language, religion, political opinion, national or social origin, property status, birth status, and disability status?
 - Can Tajikistan demonstrate whether broad prohibitions of workplace discrimination based on race, nationality, sex, language, religion, political opinion, social origin, and property status have been interpreted to include all forms of discrimination including discrimination during promotions, demotions, and dismissals?
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Recommended Concluding Observations for Tajikistan (where Tajikistan's responses to questions from the list of issues are unclear or insufficient):

*Wherever possible, recommendations should be implemented in collaboration with relevant stakeholders, including CSOs.

Equality and Non-Discrimination

- Recommend that Tajikistan consider amending the constitution to add explicit guarantees of equality and non-discrimination regardless of disability status, consistent with ICESCR commitments.

Work and Employment

- Recommend that Tajikistan pass and implement legislation that explicitly prohibits discrimination based on birth status and disability status, particularly in the following aspects of employment:
 - Employment opportunities and hiring
 - Equal remuneration for work of equal value
 - Promotions and demotions
 - Continuance of employment or terminations
 - Recommend that Tajikistan pass and implement legislation to explicitly guarantee equal remuneration for work of equal value to all workers regardless of race, colour, sex, language, religion, political opinion, national or social origin, property status, birth status, and disability status.
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Briefing prepared by the World Policy Analysis Center, University of California, Los Angeles
