



Afghanistan: 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

75th 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 75th 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)
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 Afghanistan may have passed legislation or enacted new policies since our most recent review. We therefore hope the Committee will include the following questions for Afghanistan in its list of issues, and where applicable, make the recommendations outlined below in its concluding observations. We hope the Committee will recommend that Afghanistan address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations.

Areas where Afghanistan does not appear to have relevant provisions in place:

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 Afghanistan.

In this area, we hope the Committee will:

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



- If the relevant provisions are not in place, recommend in its concluding observations that Afghanistan pass and implement legislation that:
 - Explicitly protects women from direct and indirect¹ 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 Afghanistan has provisions in place but where these provisions do not appear to fully address the commitments Afghanistan has made through its ratification of CEDAW:

Child marriage

Based on our review, Afghanistan establishes a minimum age of marriage for girls of 16 years old. For boys, the legal minimum age of marriage is 18 years old.

In this area we hope the Committee will:

- In its list of issues, ask Afghanistan: **What laws exist to protect girls under the age of 18 from early marriage?**
 - If sufficient laws do not exist, recommend in its concluding observations that Afghanistan pass and implement legislation that strengthens its protections for girls from marriage before age 18.
 - We also hope the Committee will recommend that Afghanistan address gender differences in the law that give boys more protection from early marriage than girls, and to ensure that girls' protections are raised.

¹ 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 does not 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.



Areas where Afghanistan’s legislative, policy or constitutional approaches are consistent with or directly support the Convention:

Prohibition of discrimination in constitutions (Article 2)

Based on our review of full-text national constitutions as of May 2017, Afghanistan’s constitution guarantees equal rights between men and women.

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 Afghanistan: **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 Afghanistan develop concrete action towards implementation.



DETAIL

1. Prohibiting discrimination in constitutions (Article 2)

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.

AFGHANISTAN'S CONSTITUTIONAL PROVISIONS

Afghanistan's constitution guarantees equal rights between men and women. These guarantees are specified in Article 22 of Afghanistan's Constitution: *Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law.*

2. Prohibiting discrimination in the field of employment (Article 11)

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. 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.

AFGHANISTAN’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 Afghanistan. Pregnant or nursing women are guaranteed some protection from discrimination in hiring and pay, but this does not extend to cover all women.

Labor Law, Article 125: It is forbidden to refuse employment of women or to reduce their payments because of pregnancy or nursing their children.

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

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.

AFGHANISTAN'S LEGISLATIVE PROVISIONS

Based on our review, Afghanistan establishes a minimum age of marriage for girls of 16 years old. For boys, the legal minimum age of marriage is 18 years old.

Civil Law of the Republic of Afghanistan

Article 70:

Marriage shall not be considered adequate until the male the age of 18 and the female the age of 16.

Article 71:

(1) Where the girl does not complete the age provided under Article 70 of this law, the marriage may be concluded only through her father or the competent court.

(2) The marriage of a minor girl whose age is less than 15 shall never be permissible.



Reference Sheet

Recommended Questions and Concluding Observations for Afghanistan's List of Issues

For the Committee on the Elimination of Discrimination against Women

75th Pre-Sessional Working Group, July 2019

Recommended Questions for Afghanistan's List of Issues:

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?

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

- Does legislation exist prohibiting gender discrimination at work?

Child marriage (Articles 16.2, 2.a)

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

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

**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 Afghanistan 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.

Child marriage (Articles 16.2, 2.a)

- If Afghanistan does not have sufficient laws in place to protect girls under the age of 18 from early marriage, we hope the Committee will recommend that Afghanistan pass and implement legislation that strengthens its protections for girls from marriage before age 18.
- We also hope the Committee will recommend that Afghanistan 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 Afghanistan 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 Afghanistan develop concrete action towards implementation.

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