



TAJIKISTAN: A BRIEF ON THE IMPLEMENTATION OF CEDAW
COMMITMENTS FROM ARTICLES 5, 10, AND 11, AND
GENERAL RECOMMENDATIONS 12 AND 36

*Information for the Committee on the Elimination of Discrimination Against Women
87th Pre-Session Working Group, May/June 2023*

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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 87th Pre-Sessional Working Group of the Committee on the Elimination of Discrimination against Women.

This brief will focus on the following areas:

1. Sexual Harassment in Work and Sex-based Harassment in Work and Employment (General Recommendation No. 12)
2. Paid Maternity and Paternity Leave (Articles 11, 5)
3. Discrimination and Sexual Harassment in Education (Article 10, General Recommendation 36)

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



SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. Sexual Harassment in Work and Sex-Based Harassment in Work and Employment
(General Recommendation 12)

Tajikistan introduced -- for the first time -- legislation against sexual harassment in its 2022 antidiscrimination law. We commend Tajikistan for taking this crucial first step, but we note that the provisions lack some important aspects of a comprehensive anti-sexual harassment law.

RECOMMENDED QUESTION FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Tajikistan: given that its current sexual harassment legislation is not workplace-specific, can Tajikistan clarify if the recent introduction of a prohibition against sexual harassment will soon be reflected in its labor legislation?
 - If Tajikistan does not have concrete, near-term plans to add sexual harassment prohibitions to its labor legislation, recommend in its concluding observations that Tajikistan pass labor legislation prohibiting sexual harassment.
 - Further recommend that Tajikistan include in this legislation all elements of a comprehensive anti-sexual harassment law, including:
 - a definition of sexual harassment that includes both quid pro quo and the creation of a hostile work environment; and
 - protections for workers from harassment by co-workers and other actors in the workplace, as well as supervisors.



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

While Tajikistan has lengthy paid leaves for new mothers, our review of available legislation found that fathers in Tajikistan have no legal entitlement to paid paternity leave.

RECOMMENDED QUESTION FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATION

We hope the Committee will:

- In its list of issues, ask Tajikistan: Can Tajikistan outline any concrete, near-term plans to pass legislation that provides paid paternity leave to fathers?
 - If Tajikistan does not have concrete, near-term plans to provide paid paternity leave to fathers, recommend in its concluding observations that Tajikistan pass and implement legislation that does so.

3. Discrimination and Sexual Harassment in Education (Article 10, General Recommendation 36)

Tajikistan recently introduced a new antidiscrimination law, which prohibits sex-based discrimination, sex-based harassment, and sexual harassment, but it does not include a quid pro quo definition of sexual harassment, in addition to creation of a hostile environment.

RECOMMENDED QUESTION FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATION

We hope the Committee will:

- In its list of issues, ask Tajikistan: can Tajikistan confirm whether its new provisions against sexual harassment apply to educational institutions, or whether there are any regulations that prohibit sexual harassment on the part of teachers and also between students?
 - If they do not, recommend that Tajikistan pass and implement legislation prohibiting sexual harassment specifically in education.
 - Further recommend that Tajikistan include in this legislation all relevant elements of a comprehensive anti-sexual harassment law:
 - a definition of sexual harassment that include both quid pro quo and the creation of a hostile environment; and
 - protections for students from harassment by fellow students, teachers and other actors in education.



DETAIL OF LEGISLATIVE 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. Sexual Harassment in Work and Sex-Based Harassment in Work and Employment (General Recommendation 12)

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 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?

TAJIKISTAN’S LEGISLATIVE PROVISIONS: Recently passed legislation newly prohibits sexual harassment at work

According to our review, and as stated in the State Party Report, Tajikistan passed a new antidiscrimination law in July 2022 that applies to all individuals and legal entities in the country. Among its new provisions, article 6 prohibits sexual harassment and sex-based harassment for the first time in Tajik legislation, and article 10 newly prohibits retaliation. We commend Tajikistan for passing this landmark law.

LAW OF THE REPUBLIC OF TAJIKISTAN ON EQUALITY AND ELIMINATION OF ALL FORMS OF DISCRIMINATION, 2022

Статья 6. Преследование

1. Преследование - нежелательное поведение, касающееся какоголибо установленного настоящим Законом основания, целью или результатом которого является умаление достоинства лица и (или) создание недоброжелательной, деструктивной, запугивающей, враждебной, унижительной, оскорбительной или обидной обстановки.

2. Сексуальное домогательство - любая форма недоброжелательного, неблагоприятного вербального, невербального или физического поведения сексуального характера, которое



направлено или представляет собой оскорбление чести и достоинства лица или создание для него устрашающей, враждебной, унижающей, ущемляющей достоинство или оскорбительной обстановки.

3. Преследование на рабочем месте - любая форма нефизического преследования (домогательства) на рабочем месте с повторяющимися действиями, которые оказывают унижающее воздействие на лицо и имеют целью ухудшения условий труда работника или его профессионального статуса.

Статья 10. Защита от виктимизации

Виктимизация, то есть преследование - любое враждебное обращение и помещение в менее благоприятное положение лиц, которые заявили о дискриминации, свидетельствовали о дискриминации, отказались от актов дискриминации по чьему-то поручению или участвовали в рассмотрении дела по вопросам дискриминации в соответствии с положениями настоящего Закона.

However, this law does not include a definition of sexual harassment that incorporates quid pro quo in addition to creation of a hostile work environment, nor does it protect workers explicitly from harassment from colleagues and other actors in the workplace, as well as supervisors.

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

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.



Research evidence indicates that paid paternity leave can increase gender equality in caregiving responsibilities and gender equality in employment; it is therefore important to ensure fathers have access to adequate paid paternity leave.

We systematically reviewed national labor codes and social security laws to assess the availability of 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.

TAJIKISTAN’S LEGISLATIVE PROVISIONS: No leave for fathers

Our research shows that Tajikistan provides a lengthy leave after the birth of a child to mothers only. Fathers have no statutory entitlement to paid paternity leave; the labor code allows only for 7 days of unpaid leave to new fathers.

LABOR CODE OF THE REPUBLIC OF TAJIKISTAN, amended through 2022

Статья 116. Отпуска без сохранения заработной платы

1. По семейным и другим уважительным причинам работнику, по его заявлению, может быть предоставлен отпуск без сохранения заработной платы, продолжительность которого определяется по согласованию между ним и работодателем. Уважительность причин предоставления отпуска по социальным причинам оценивает работодатель, если иное не установлено соглашением и коллективными договорами.

2. Отпуск без сохранения заработной платы по заявлению работника предоставляется в обязательном порядке:

(...)

- работникам, в случае рождения ребёнка, регистрации брака, смерти родственников - до 7 календарных дней; (...)

3. Discrimination and Sexual Harassment in Education (Article 10, General Recommendation 36)

Around the world, girls encounter barriers that prevent them from fully participating in education and reaching their full potential. Article 10 of the Convention calls on States Parties to “eliminate discrimination against women in order to ensure to them equal rights with men in the field of education”, and Paragraph 69(a) of General Recommendation 36 calls on countries to:

Enact and enforce appropriate laws, policies and procedures to prohibit and tackle violence against girls and women in and around educational institutions, including verbal and emotional abuse, stalking, sexual harassment and sexual violence, physical violence and exploitation;



We systematically reviewed education laws, penal codes, equal opportunity laws, and other relevant legislation available through the legal repositories of UNESCO and the International Labour Organization for all 193 UN member states to determine whether national legislation prohibited both discrimination and sexual harassment in education. We further examined whether protections from sexual harassment at school 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 environment;
- include sex-based harassment as well as sexual-behavior based harassment; and
- protect students from harassment by other students and by teachers, as well as by other actors in the education system.

TAJKISTAN'S LEGISLATIVE PROVISIONS: Recently implemented prohibition of sexual harassment at school

As detailed above, Tajikistan recently introduced a new antidiscrimination law that in theory binds educational institutions. Among its new provisions, articles 1 and 4 read together prohibit sex-based discrimination, and article 6 prohibits harassment and sexual harassment. Again, we commend Tajikistan for passing this landmark piece of antidiscrimination legislation.

LAW OF THE REPUBLIC OF TAJIKISTAN ON EQUALITY AND ELIMINATION OF ALL FORMS OF DISCRIMINATION, 2022

Статья 1. Дискриминация

1. Дискриминация - любое различие, исключение, ограничение или предпочтение, сформированное на реальных и (или) предполагаемых основаниях в отношении любого физического и юридического лица или группы лиц, их родственников или лиц, связанных с ними иным образом и основано на признаках расы, цвета кожи, происхождения, пола, языка, религии и убеждений, национальной или этнической принадлежности, инвалидности, состояния здоровья, возраста, гражданства, взгляда, имущественного положения или иного обстоятельства и целью или следствием которого является ухудшение, уничтожение и (или) умаление признания, использования или осуществления всеми лицами, на равных основах, всех прав и свобод человека.

(...)

Статья 4. Право на равенство и эффективную защиту от всех форм дискриминации

1. В Республике Таджикистан все равны перед законом и судом и имеют право на эффективную защиту от всех форм дискриминации.

2. Любое лицо или группа лиц, которые считают, что подверглись дискриминации, имеют право на обращение в судебные и другие государственные органы за защитой своих прав, а также право на справедливое и надлежащее возмещение или удовлетворение за любой



ущерб, причиненный в результате дискриминации.

3. Государство гарантирует равную и эффективную правовую защиту от дискриминации и принимает меры к продвижению политики и программ, направленных на обеспечение равенства и ликвидации всех форм дискриминации.

Статья 6. Преследование

1. Преследование - нежелательное поведение, касающееся какоголибо установленного настоящим Законом основания, целью или результатом которого является умаление достоинства лица и (или) создание недоброжелательной, деструктивной, запугивающей, враждебной, унижительной, оскорбительной или обидной обстановки.

2. Сексуальное домогательство - любая форма недоброжелательного, неблагоприятного вербального, невербального или физического поведения сексуального характера, которое направлено или представляет собой оскорбление чести и достоинства лица или создание для него устрашающей, враждебной, унижающей, ущемляющей достоинство или оскорбительной обстановки.

(...)

However, these new provisions do not include a quid pro quo definition of sexual harassment, in addition to creation of a hostile environment, nor do they protect students specifically against harassment by other students, teachers, or other actors in the education system.

BRIEFING PREPARED BY THE WORLD POLICY ANALYSIS CENTER, UNIVERSITY OF CALIFORNIA, LOS ANGELES