

Tajikistan's Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women: Women's Labour Rights

Report for the 87th Pre-Sessional Working Group of the Committee on the Elimination of Discrimination Against Women

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Introduction

1. Tajikistan has made great strides towards ensuring the implementation and protection of women's rights in line with its international obligations and has prioritized women's equal access to decent work. Nevertheless, structural, systemic discrimination remains a problem in Tajikistan, including through protective legislation and regulation that directly and indirectly discriminate against women and fail to ensure equality of opportunity and access to work.
2. The Constitution of the Republic of Tajikistan guarantees men and women equal rights, including the right to work and to freely choose a profession; it also bans discrimination in labour relations.¹ Tajikistan's Constitution provides that "*International legal acts recognized by Tajikistan are a constituent part of the legal system of the Republic. In case of disparity between the laws of the Republic and the recognized international legal acts, the norms of the international acts apply.*"² Tajikistan's Labour Code similarly recognizes the role of international legal obligations as part of the labour law. It states that "Labour legislation of the Republic of Tajikistan is based on the Constitution of the Republic of Tajikistan and is comprised of this Code and other legal and regulatory documents of the Republic of Tajikistan *as well as international legal documents acknowledged by the Republic of Tajikistan.*"³
3. A recently-adopted Law N° 1890 (July 19, 2022) on Equality and Elimination of All Forms of Discrimination defines the organizational and legal basis for the exercise of equal rights and opportunities for all persons in the Republic of Tajikistan and establishes a legal system for the prevention and effective protection against all forms of discrimination.⁴ The new legislation defines discrimination as "any distinction, exclusion, restriction, or preference based on race, colour, descent, sex, language, religion or belief, national and/or ethnic origin, disability, state of health, age, nationality, opinion, property, or other status."⁵ The legislation bars direct and indirect discrimination and provides the right to a judicial remedy for discrimination.⁶ The law establishes a process for improving legislation on the right to equality and elimination of all forms of discrimination by authorizing action by the Government of the Republic to adopt normative legal acts for equality and elimination of all forms of discrimination, by the Commissioner of Human Rights to submit proposals for such legal reforms, and by the state and self-government bodies of towns and villages to take measures to bring their domestic regulatory legal acts into line with the provisions of Law

¹ [Constitution of Tajikistan of 1994 with Amendments through 2016](#), Extract from Article 17, The Constitution of the Republic of Tajikistan was adopted on November 6, 1994 by popular referendum. In the same way, it was amended and supplemented on September 26, 1999, June 22, 2003 and May 22, 2016; Extract from article 35 Constitution of the Republic of Tajikistan.

² Constitution of Tajikistan, *supra* note 1, Article 10, third paragraph. *See also* The Law on Legislative Acts of Republic of Tajikistan (2017) Article 10.

³ [Tajikistan Labour Code](#) of July 23, 2016, N° 1329 as amended by the Law of July 19, 2022 (N° 1897) ("Tajikistan Labour Code"), Article 2 (italics added).

⁴ Tajikistan Equality and Elimination of All Forms of Discrimination Law of July 19, 2022 N° 1890 ("Tajikistan Equality and Non-Discrimination Law" or "Law N° 1890"), Preamble.

⁵ *Id.* at Paragraph 1, Article 1.

⁶ *See, Id.*; Human Rights Watch, Tajikistan Events of 2022, <https://www.hrw.org/world-report/2023/country-chapters/tajikistan>

N° 1890 and of other anti-discrimination legislation.⁷ The Government reports that proposed amendments to the Labour Code and other draft laws are under consideration.⁸

4. Tajikistan's Labour Code prohibits sex discrimination in labour relations and provides the right to freely choose a profession, unless an exception in the Code or another legislative exception applies.⁹ Article 7 provides that “differences in the sphere of work due to the requirements inherent in a certain type of work or special care of the state for persons in need of increased social protection” on the basis of grounds such as sex “shall not constitute discrimination.”¹⁰ Under Article 216 of the Labour Code, women are prohibited from employment in “heavy, underground, and hazardous works” and the Ministry of Labor is authorized to issue a list of occupations from which women are barred as well as “the minimum norms of weight, manual lifting, and delivery of which is allowed for women.”¹¹ Article 35 of Tajikistan's Constitution contains similar language that “using the labour of women and minors in heavy and underground works as well as in harmful conditions is prohibited.”¹²
5. Pursuant to article 216 of the Labour Code, the Government of Tajikistan has banned women from 327 professions, including work as tractor drivers, machinists of agricultural production, truck drivers, maintainers of radio and communication equipment on high-rise structures (towers, masts) with a height of more than 10 m (not equipped with elevators), aircraft mechanics or technicians for airframe and engines, instruments, electrical equipment, radio equipment, or parachute and emergency rescue equipment, and bus drivers for buses with more than 14 seats (except for those employed in intra-factory, intracity, suburban transportation and transportation in rural areas within one day shift, provided that the bus is not involved in maintenance and repair).¹³ In addition, women are not allowed to be educated or receive advanced training within the fields prohibited to them.¹⁴
6. These provisions banning women from a wide range of jobs in the labour market contribute to gross inequality in employment opportunities, with many women working in informal and low-paid positions. Among six Central Asian countries, Tajikistan ranked the second lowest in its labour force participation rate of 31.3% in 2020.¹⁵ In the country economy-wide, 69% of working-wage women in Tajikistan were reported as not working for pay, and those who

⁷ Tajikistan Equality and Non-Discrimination Law, *supra* note 4, Articles 12, 13, and 16.

⁸ Seventh periodic report submitted by Tajikistan under article 18 of the Convention, UN Doc. CEDAW/C/TJK/7 (17 November 2022), Advance unedited version, paras. 88-90.

⁹ Tajikistan Labour Code, *supra* note 3, Articles 5, 6, & 7.

¹⁰ *Id.* at Article 7(2).

¹¹ *Id.* at Article 216(1) and (2).

¹² Constitution of Tajikistan, *supra* note 1, Article 35.

¹³ Government Resolution No. 179 of 4 April 2017: Sphere – agriculture Chapter 27 of the list of jobs in which the use of women's labour is prohibited and the maximum permissible load rates for them when lifting and moving weights manually from April 4, 2017, No. 179; Sphere – civil aviation, chapter 23 of the list of jobs in which the use of women's labour is prohibited and maximum permissible load standards for them when lifting and moving weights manually from April 4, 2017, No. 179; Road Transport Chapter 22

¹⁴ Public organization “Pro bono De Jure”, Forthcoming publication

¹⁵ Figure 1: Labour force participation rate, female (% of female population ages 15+), modelled ILO estimate, 2020 (ILOSTAT database), data retrieved 15 June 2020, reprinted in Beijing +25 Review: Gender Equality and Women's Empowerment in SPECA Countries (UN ESCAP, September 2020), p. 15.

worked for pay earned 60% of what men earned in 2017 or 2018.¹⁶ Many women work in the informal labour market, or “mardikorbozor,” which employs them in the same forms of prohibited work, but for less pay than their male counterparts.¹⁷ This is especially the case, as Tajikistan is one of the most remittance reliance countries of the world with high percentages of men migrating to work abroad. Additionally, women workers in the “mardikorbozor” are left without an employment or service contract, insurance, protective equipment, labour rights, or social protections.¹⁸ Consequently, these provisions of Tajikistan’s law contribute to increasing the gender pay gap and the level of poverty in families where women are the primary breadwinners.¹⁹

7. As detailed below, the list of jobs that prohibits women’s employment contributes to Tajikistan’s violations of Articles 1, 2, 4, 7 and 11 of the Convention. Contrary to its obligation under the Convention, the Republic of Tajikistan has provided no medical or scientific justifications for these restrictions imposed only on women nor has it reviewed the list of protective measures “in the light of scientific and technological knowledge” as further discussed below.²⁰ In its Concluding Observations in 2018, the Committee called for repeal of the list as well as of Article 216.²¹ This conclusion elaborated on the Committee’s recommendation in 2013 that Tajikistan “eliminate structural inequalities and occupational segregation, both horizontal and vertical”.²²

The list of prohibited professions issued by the Government constitutes discrimination as defined under Article 1 and is inconsistent with the 2022 law of Tajikistan

8. Article 1 of the Convention for the Elimination of All Forms of Discrimination against Women (the Convention, or CEDAW) defines discrimination against women as “any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women [...] on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”²³
9. As set out above (e.g., paragraphs 5-6), *the list of prohibited professions for women and its enforcement constitute discrimination in purpose and effect under Article 1 by facilitating unjustified distinctions based on sex which impair women’s right to pursue employment on the same grounds as their male counterparts.* The list is based on discriminatory

¹⁶ World Bank Blogs, Sevimli and Rajabov, ‘[Working towards gender equality in Tajikistan’s labor market](#)’ (March 7, 2022), Figure 1: Ratio of Women’s to Men’s Nominal Monthly Wage (percent)

¹⁷ Public organization “Pro bono De jure” Forthcoming publication

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, A/RES/34/180, article 11, para. 3.

²¹ UN Committee on the Elimination of Discrimination Against Women, Concluding Observations on the sixth periodic report of Tajikistan, UN Doc. CEDAW/C/TJK/(CO/6 (14 November 2018), para. 38(c).

²² UN Committee on the Elimination of Discrimination Against Women, Concluding Observations on the fourth and fifth periodic reports of Tajikistan, 29 October 2013, CEDAW/C/TJK/CO/4-5.

²³ Convention on the Elimination of All Forms of Discrimination against Women, *supra* note 20.

provisions of Article 216 of the Labor Code which are now outdated and in conflict with the definition of and mandate to eliminate discrimination as spelled out in Equality and Non-Discrimination Law (see paragraph 3 above). The breadth and reach of the list's restrictions in practice result in discriminatory impact on women, including *inequality in employment opportunity, remuneration, vocational training, and social protection*, as noted in paragraphs 5 and 6 above.

The list of prohibited professions violates Tajikistan's obligation under article 2 to abolish discriminatory laws and regulations

10. Article 2(d) and 2(f) of the Convention obligate States Parties to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination” and “to adopt appropriate legislative and other measures ... prohibiting all discrimination against women”. In a similar context involving another State Party, the Committee has already noted that a government regulation banning women from hundreds of professions violated Articles 2 (d) and (f), which present “obligations upon States parties to abolish or amend discriminatory laws and regulations, to abstain from engaging in any act or practice of direct or indirect discrimination against women and to ensure that any laws that have the effect or result of generating discrimination are abolished”.²⁴
11. As to protective legislation, the Committee further noted that “provisions regarding the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work” and that any necessary restrictions for protecting maternity in the strict sense or women's health should be based on scientific evidence to ensure legislation is not merely reflecting persistent stereotypes about the role of women in society.²⁵
12. Much like the other regulation found unacceptable by the Committee, the Tajikistan Government's list banning women from 327 professions is not backed by scientific evidence establishing the specific risks these professions pose to maternity or to women's health exclusively.²⁶ The list thus violates article 2(d) and 2(f) of the Convention as does article 216 on which it is based. As such, the list is contrary to Tajikistan's constitutional order which incorporates its international obligations as part of its domestic law (see paragraph 2 above).

²⁴ UN Committee on the Elimination of Discrimination Against Women, Views of the Committee on the Elimination of Discrimination Against Women under article 7(3) of the Optional Protocol to the Convention of the Elimination of All Forms of Discrimination Against Women, 21 March 2016, CEDAW/C/63/D/60/2013, paragraph 11. *See also* Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 20, article 2; General Recommendation 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women, UN Doc. CEDAW/C/2010/47/GC.2 (19 October 2010), paragraph 31.

²⁵ UN Committee on the Elimination of Discrimination Against Women, Views of the Committee on the Elimination of Discrimination Against Women under article 7(3) of the Optional Protocol to the Convention of the Elimination of All Forms of Discrimination Against Women, 21 March 2016, CEDAW/C/63/D/60/2013, paragraph 11.3.

²⁶ *See*, Reports of Public organizations “Office of civil freedoms” and “Pro bono Dejure”.

The list and its legislative basis in articles 7 and 216 are also contrary to the Labour Law which incorporates international obligations of the Republic as an integral part (op. cit.).

13. Tajikistan has not yet abolished the discriminatory Articles of Tajikistan’s Labour Code in accordance with the provisions for equality and anti-discrimination and the organization and process for legal reforms adopted under the Equality and Anti-discrimination Law of July 2022. *In line with the 2022 law, Tajikistan should abolish or amend its discriminatory laws and regulations, including the list banning women from 327 professions and articles 7 and 216 of the Labour Code, and should ensure that workplace health and safety laws apply equally to both sexes.*²⁷

Tajikistan’s special measures adopted to protect maternity are not in conformity with its obligations under Article 4 and Article 11, paragraphs 2 and 3

14. Article 4(2) establishes that measures adopted to protect maternity are not considered discriminatory. Such measures are further set out in Article 11, paragraph 3, which requires that “protective legislation on such matters shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.”
15. In a similar context, the Committee has noted that this “provision does not sanction the restriction of women’s rights, including to work, on the basis of biological differences or their potential to become pregnant and bear children.”²⁸ In addition, “preventing women’s employment through exclusionary laws that apply only to women is not appropriate.”²⁹
16. In contrast to CEDAW’s observation, the Government of Tajikistan mistakenly argues that these measures and prohibitions do not constitute discrimination³⁰ but rather reflect “the special care of the State for persons in need of increased social protection.”³¹ The Government states without scientific or statistical evidence that the special requirements of certain types of work and its particular concern for persons requiring enhanced social protection, such as women, minors, and persons with disabilities do not amount to discrimination.³² It further maintains that the establishment of certain restrictions on women’s employment aims to protect their health from occupational hazards and that it is premature to include amendments to Article 216 of the Labour Code at this time.³³

²⁷ *Id.*

²⁸ CEDAW/C/63/D/60/2013, *supra* note 25, paragraph 3.2.

²⁹ *Id.* at paragraph 3.3. *See also*, Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 20, article 4(2).

³⁰ *See, e.g.*, Committee on the Elimination of Discrimination Against Women, List of issues and questions in relation to the sixth periodic report of Tajikistan, 20 June 2018, CEDAW/C/TJK/Q/6/Add.1; Committee on the Elimination of Discrimination Against Women, Seventh Periodic Report submitted by Tajikistan under article 18 of the Convention, due in 2022, 17 November 2022, CEDAW/C/TJK/7, paragraph 5.

³¹ CEDAW/C/TJK/7, *supra* note 30, paragraph 5.

³² *Id.*

³³ *Id.*

17. In a similar context and its general recommendation to States Parties, CEDAW has stated that a desire to protect is not relevant to discrimination considerations.³⁴ Rather, any restrictions necessary for protecting maternity in the strict sense should be based on scientific and technological evidence to ensure legislation is not merely reflecting persistent stereotypes about the role of women in society (see paragraph 11 above). Such evidence, combined with the country's international legal obligations against discrimination, would justify an interpretation that gives article 35 of the Constitution a modern meaning and narrows if not eliminates the scope of "heavy works" and "harmful conditions" as prohibited for women.
18. *As an immediate measure within the purview of the executive branch, the Government of Tajikistan should abolish or amend the list to include only restrictions necessary for protecting maternity in the strict sense or based on occupational safety and health risk assessments and do not constitute obstacles to the employment of women.*³⁵
19. *The Government should also adopt positive temporary measures under Article 11 of the Equality and Non-Discrimination Law and in line with Article 4 of the Convention to overcome the past disadvantages to women caused by its discriminatory law and practice (see paragraph 9 above) to ensure the achievement of full equality of opportunity and treatment in employment.*³⁶

Tajikistan should take measures to facilitate women's participation in trade unions under Article 7

20. Under Article 7 of the Convention, States Parties have a positive obligation to eliminate discrimination against women in the political and public life of the country.³⁷ General Recommendation 23 confirms that political and public life of a country includes engagement in the activities of trade unions.³⁸ Facilitating women's equal participation in trade unions provides women with a strong platform from which to continue advocating for their labour rights. As such, Tajikistan should ensure that trade unions can be independent and freely support the rights of workers, ensure they do not discriminate against women, and facilitate the effective participation of women as trade union members and leaders.³⁹ Accordingly, *the Government of Tajikistan should provide the committee with information concerning, and analyse factors contributing to the underrepresentation of women as members and officials of trade unions as well as employers' organizations.*⁴⁰

³⁴ CEDAW/C/63/D/60/2013, *supra* note 25, paragraph 3.3 and 11.7.

³⁵ See also, ILO, Committee of Experts, Direct Request under articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Tajikistan adopted June 2022, published 111st ILC session 2023.

³⁶ Tajikistan Equality and Non-Discrimination Law, *supra* note 4, article 11, paragraph 2; Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 20, Article 4, paragraph 1.

³⁷ Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 20, article 7.

³⁸ Committee on the Elimination of Discrimination Against Women, General Recommendation 23: Political and Public Life, 1997, A/52/38, paragraphs 5 and 34.

³⁹ *Id.* at paragraph 42.

⁴⁰ *Id.* at paragraph 48 (h).

Tajikistan’s prohibitions violate its obligations to eliminate discrimination and to ensure equality in employment under Article 11, paragraph 1

21. Under Article 11, paragraph 1 of the Convention, State Parties have the obligation to 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 to work, including free choice of profession and employment, equal remuneration, social security, and the right to protection of health and safety without discrimination on the grounds of marriage or maternity. Article 11(1)(b) and (1)(c) ensure expressly that women have the right to the same employment opportunities and the right to free choice of profession and employment.⁴¹
22. In a similar context, the Committee found that a blanket provision banning all women from certain categories of employment violated these articles.⁴² Even where employers can hire women for banned professions if they create safe workspaces, that is not enough to avoid a violation under articles 11(1)(b) and (c).⁴³ Indeed, under article 11(1)(f), *the State* is obligated to create safe working conditions in *all* industries “rather than preventing women from being employed in certain areas and leaving the creation of safe working conditions to the discretion of employers.”⁴⁴
23. In accordance with the above, *Tajikistan should repeal and replace the discriminatory list and legislation with measures to ensure equality in the law and regulations for women in all industries to protect their right to freely choose their profession and employment, and enjoy the same terms and conditions including equal remuneration, social security, and the right to protection of health and safety. equal remuneration, social security, and the right to protection of health and safety in working conditions.*

Suggested Best Practices

24. Tajikistan’s domestic and international commitments obligate the Government to ensure equal access of men and women to all occupations, while still protecting the health of both men and women without discrimination. To begin with, Tajikistan should eliminate legal prohibitions on women’s entry into “hazardous,” “underground,” or “heavy” occupations. Instead of barring women from these positions completely, Tajikistan should implement a framework to evaluate the health risks of these various occupations to women and men, using scientific and medical evidence and modern technological techniques in order to take

⁴¹ Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 20, Article 11 paragraphs (1)(b) and (1)(c).

⁴² CEDAW/C/63/D/60/2013, *supra* note 25, paragraph 11.5.

⁴³ *Id.* paragraph 11.7.

⁴⁴ *Id.*

measures consistent with best practice and its international obligations to ensure that women are allowed full employment and health rights.⁴⁵

Suggested Questions

1. What plans, if any, does Tajikistan have to abolish or amend the list of prohibited occupations for women in line with its obligations under the Convention?
2. What plans, if any, does Tajikistan have to abolish or amend Articles 7 and 216 of the Labour Code?
3. What steps is Tajikistan taking to ensure that consideration of the pending draft amendments of the Labour Code and other existing discriminatory legislation (see paragraph 3 above) is consistent and in compliance with the Equality and Non-discrimination Law of 2022? What is the process by which Tajikistan is ensuring public participation in this process as well as compliance with its international obligations?
4. What steps is Tajikistan taking, or planning to take, to ensure positive temporary measures as provided under the Convention and the Equality and Non-discrimination Law to remedy the past discrimination caused by its discriminatory legislation and list banning women from certain professions?

Recommendations

Welcoming the initiative of the state to introduce amendments to the Labor Code of the Republic of Tajikistan, announced by the Government in its report to the ILO, we recommend:

1. Ensure the participation of civil society, experts, and representatives of public organizations in the working group for the revision and introduction of amendments to the Labor Code of the Republic of Tajikistan.
2. Revise the list of prohibited professions for women, bringing them into line with the norms of the Constitution of the Republic of Tajikistan, identify and justify specific “hard work” for women.
3. Abolish or amend the list of prohibited professions adopted by the Ministry of Labor in line with international and domestic commitments for gender equality. In its current legal reform process, the Government should make use of the advisory services of the

⁴⁵See, International Labour Organization, Conditions of Work and Employment Programme by Country, Maternity Protection, 2011. <https://www.ilo.org/dyn/travail/travmain.byCountry2> . Similarly, such lists have been deleted or drastically reduced in Kazakhstan, Ukraine, and Uzbekistan. For jobs that do pose a risk to women’s health during pregnancy, best practice is to assess the risks posed to health during pregnancy, using scientific and medical guidance, in consultation with representative trade unions and employer organizations and take temporary measures consistent with its obligations under the Convention as well as under the ILO Maternity Protection Convention (No. 143). Measures to mitigate the risk, or temporary transfer to a different, low-risk position over the course of her pregnancy, without reduction to pay or benefits have been implemented by a wide range of countries, including Australia, New Zealand, Canada, Chile, and the European Union, among others.

ILO which has called on Tajikistan to revise its list in line with international criteria (see para. 18 and note 35) and is competent to advise the Government on this matter in coordination with the CEDAW Committee and other concerned UN bodies. Thereafter, the Government should notify the CEDAW Committee of the results of such action and, to the extent any restrictions remain, the scientific evidence and reasoning supporting them, and the alternative measures being taken to mitigate the impact on affected women. Notify the CEDAW Committee of the results of such action and, to the extent any restrictions remain, the scientific evidence and reasoning supporting them, and the alternative measures being taken to mitigate the impact on affected women.

4. Abolish or amend Articles 7 and 216 of the Labour Code of the Republic of Tajikistan to bring them into compliance with Tajikistan's international obligations including under the Convention.
5. Implement the process of legal reform and enforce the provisions of the Equality and Non-Discrimination Law of 2022 in relation to the elimination of discrimination against women in employment and their enjoyment of equality in relation to employment opportunity, remuneration, occupational safety and health, vocational training, and social protection.
6. Ensure independent functioning of trade union organizations, facilitate women's participation in them, and ensure they do not discriminate against women.
7. Develop and ensure access of women to programmes for vocational training, including those in remote areas or in the informal economy.
8. Develop mechanisms to assist in the transition from informal to formal labour economy for women workers and entrepreneurs while maintaining or improving income and livelihoods and facilitating their receipt of social protection benefits.
9. Implement policies and programs to promote gender equality in employment to counter gender stereotypes in the workplace by establishing diversity and inclusion policies and training programs or incentive systems (e.g. tax incentives) for employers investing in such programmes. Reduce gender segregation in employment by addressing identified barriers to gender equality.