

## DRAFT LAW OF THE REPUBLIC OF TAJIKISTAN

### On State Guarantees of Equal Rights for Men and Women and Equal Opportunities for their Implementation

The present Law governs relations with respect to provisions of equal rights for men and women in the social, political, and cultural spheres, as well as in any other sphere, and is aimed at eliminating the gender discrimination. The Law provides state guarantees of equal opportunities for men and women.

#### CHAPTER 1. General Provisions

##### Article 1. Basic Concepts

The following basic concepts are applied in the Law:

- ***gender*** - social relations between men and women maintained in all spheres of public life, including rights, ideology and culture;
- ***gender policy*** – state, social activity directed on providing equality with respect to relationship between men and women.
- ***equal rights*** – equality of rights, obligations and responsibilities of men and women before the Law.
- ***gender equality*** – equal legal status of a woman and a man as well as equal opportunities for its implementation, allowing men and women to easily develop their potential abilities, to develop competences and skills for participation in political, economic, social and cultural development and exploration of its achievements
- ***equal opportunities*** – actual provision of equal conditions enabling exercise of the rights by men and women in conformity with the Constitution and laws of the Republic of Tajikistan as well as with universal norms and principles of international law.
- ***discrimination***\* – 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, irrespective of their marital status, 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

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\* ABA/ CEELI Tajikistan Comment: This definition derives from Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women to which the Republic of Tajikistan became a party on 26 October 1993.

## **Article 2. Legislation of the Republic of Tajikistan on State Guarantees of Equal Rights of Men and Women and Equal Opportunities for their Implementation**

Legislation of the Republic of Tajikistan on state guarantees of equal rights of men and women and equal opportunities for their implementation is based on the Constitution of the Republic of Tajikistan, comprising the Law, other legal statutory acts as well as international legal acts recognized by the Republic of Tajikistan.

## **Article 3. Prohibition of the Discrimination**

Discrimination on the basis of sex is prohibited in any sphere.

Breach of the main principle of gender equality (implementation of the state policy, performance of any other acts which place men and women on unequal position on the basis of sex) is considered to be an act of discrimination and is subject to elimination in accordance with the events and procedures established by the Law.

Statutory acts which contain gender discriminatory provisions are invalid.

The following is not considered as discrimination:

- special measures undertaken for the protection of the health of men and women;
- special protection of women in respect of pregnancy and birth;<sup>\*\*</sup> and
- practical measures aimed at implementation of provisions of the present law.

## **Article 4. Duties of Public Authorities on Provision of Equal Opportunities for Men and Women (gender equality)**

Public authorities, executive authorities within their competence are obliged to:

- constantly raise gender awareness among civil servants of all public bodies using the system of training and re-training of specialists of the state apparatus;
- promote fulfillment of equal opportunities for men and women, including by adoption of legal statutory acts, establishment of procedures and implementation of other concrete measures, including the elimination of all grounds and conditions impeding the fulfillment of genuine gender equality;
- elaborate and introduce special programs focused on the elimination of gender discrimination

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<sup>\*\*</sup> ABA/ CEELI Tajikistan Comment: This clause derives from Article 4 (2) of the Convention on the Elimination of All Forms of Discrimination Against Women to which the Republic of Tajikistan became a party on 26 October 1993.

- integrate measures ensuring constitutional rights of citizens and strengthening stability of society in the state programmes, regional plan of actions focused on development of social sphere as well as measures on ensuring gender equality.

### **Article 5. Equal Representation of Men and Women in Public Authorities**

The State guarantees equal participation of men and women in the process of governing the State. The State ensures equal representation of men and women in legislative, executive and judicial branches of state power through legal, organizational and other mechanisms.

### **Article 6. State Guarantees on Provision of Equal Opportunities of Men and Women in the Sphere of Education and Science**

Educational and Scientific Institutions of any types of ownership<sup>\*\*\*</sup> are obliged to:

- ensure equal conditions for men and women and with regard to
- access to basic, secondary professional and higher education, to all forms of professional education and mid-career development, and participation in the fulfillment of educational and scientific progress;
- introduce special gender courses in educational curriculums, promote the development of gender researches and gender awareness raising among citizens;
- apply educational programs and manuals prohibiting propoganda of gender discrimination
- create favorable conditions for girls from the mountainous regions and rural areas for their admission to university and getting further education in secondary and higher educational institutions.

Education and professional development in the military educational institutions come within the purview of the present article.

### **Article 7. Consideration of Family Duties of Women and Men with respect to Performance of Functions**

The provisions of the legislation in respect of the rights and guarantees of men and women having family duties shall be taken into account in the course of employment of staff, promotion, professional development, establishment of working schedule as well as dismissal of employees including civil servants.

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<sup>\*\*\*</sup> ABA/CEELI Comment: Institution or organization of any property form is taken to mean any institution or organization formed under the Constitution of Tajikistan, adopted on 6 November 1994, (art. 12) and the Civil law, Part I of Tajikistan, adopted on 30 June 1999, (art. 236).

Employer shall maintain a system of conversion training and refreshment courses for both men and women essentially respecting legally defined intervals during employment, birth and bringing up the children, service in term active duty (army), and fulfillment of other functions.

## **CHAPTER 2. State Guarantees for Provision of Equal Opportunities of Men and Women with regard to the Exercise of the Voting Rights**

### **Article 8. Provision of Equal Opportunities of Men and Women with regard to Exercise of Voting Rights**

The election system of the Republic Tajikistan calls for and provides equal voting rights and guarantees for men and women the right to participate in the political process.

Men and women shall be evenly represented throughout the list upon nomination of candidates from political parties, electoral blocs for elections on national electoral district.

### **Article 9. Provision of Equal Opportunities for Men and Women in the Establishing Election Commissions**

The Constitutional principle of equal rights and equal opportunities for men and women shall be applied in the process of the establishment of the Central commission on elections and referenda, and oblast, city, rayon and district election commissions.

## **CHAPTER 3. Guarantees for Provision of Equal Opportunities of Men and Women in the Sphere of Civil Service**

### **Article 10. Provision of Equal Opportunities for Men and Women with respect to Accessing Civil Service and in the course of Civil Service**

It is prohibited to establish any direct or indirect restrictions or advantages on the basis of sex with respect to accession to civil service and in the course of civil service.

Managers of public authorities and respective officials are obliged to ensure equal access of citizens to the civil service in conformity with skills and professional qualifications of the candidates regardless of gender.

Men and women shall equally participate in the competitions for filling vacant positions, including leadership positions.

The advertisement of competitions open for individuals of only one sex is prohibited.

## **Article 11. Provision of Equal Access of Men and Women to the Competitions for Filling Positions of the Civil Service**

The competitions for filling vacant positions available in the civil service are administered by the human resources departments of public agencies. Participation of representatives of the human resource offices in the competition commissions is obligatory.

The human resources departments of public bodies are obliged to provide to a competition commission information on proportion of women and men holding respective state positions of the civil service in addition to information about education and professional qualifications as well as any other information established by the law regarding individuals participating in competition. Human resource departments of public bodies shall provide similar information in the course of performance appraisal of civil servants, promotion, and increase of remuneration.

## **CHAPTER 4. Guarantees for Provision of Equal Opportunities of Men and Women in the Social and Economic Sphere**

### **Article 12. Obligations of Public Authorities, Authorities of Local self-government on Provision of Equal Rights for Men and Women in the Social and Economic Sphere**

Public authorities, local authorities and managers of organizations of all types of property are obliged to provide equal access for men and women to the economic resources of society, including movable and immovable property, land, financial assets, credits, including provision of free entrepreneurial and any other activity not prohibited by legislative acts.

### **Article 13. Promotion of Gender Equality in the Sphere of Labor Relations**

In order to promote achievement of gender equality in the sphere of labor relations, the employer (manager of public body or organization of any type of property) shall provide:

- equal opportunities for men and women to make labor contracts;
- equal access of men and women to fill vacant positions;
- equal payment (remuneration) for equal work for men and women
- equal opportunities for taking a refreshment course, conversion training and promotion; and
- safe working conditions, providing preservation of life and health for both men and women.

## **Article 14. Burden of Proof with regard to Lack of Intention to Discriminate on the Basis of Sex**

In the event of the administration of the labor claims with regard to assumed discrimination on the ground of sex filed by an employee, trade union or another public union responsible for protection of employees' interests in the court or other respective body the burden of proof with regard to lack of intention to discriminate on the basis of sex shall be borne by the employer.

## **Article 15. Guarantees for Gender Equality in respect of the Massive Dismissal of Employees**

In the event of the massive dismissal of employees when dismissal exceeds one-third (1/3<sup>rd</sup>) of the total number of employees of an enterprise, institution, organization, the number of dismissed individuals of one sex shall be proportional to the actual number of personnel of mentioned entities.

## **Article 16. Integration of Measures Focused on Provision of Equal Opportunities of Men and Women in the Collective Contracts and Agreements**

If the social labor relations are governed by the collective contracts provisions ensuring equal rights and opportunities of men and women and enabling conditions for combining professional and family duties shall be stipulated in these collective contracts and agreements

Administration of Trade unions and their associations, other representatives of employees, employers and their associations, competent public bodies shall supervise the process of implementation of these provisions.

## **Article 17. Monitoring of Observance of Provisions of Equal Rights of Men and Women and Equal Opportunities of their Implementation in the Social and Economic Sphere**

The competent body of the Government of the Republic of Tajikistan constantly monitors provision of equal opportunities for men and women in the mentioned sphere in order to conduct a system analysis of the progress in provision of equal rights and equal opportunities of men and women in the social and labor sphere,\*\*\*\* forecast changes of actual situation and develop measures to prevent and eliminate facts of gender

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\*\*\*\* N.B. According to the preamble of the Law, the Law regulates relations with the purpose of ensuring equal rights for men and women in the *social, political, and cultural spheres, and in any other sphere*. Thus, monitoring gender equality in accordance with Article 17 would seem to require monitoring all spheres referenced in the preamble.

discrimination if deemed necessary as well as work out proposals on elaboration of national social programs.

Monitoring results shall be circulated in Mass Media.

## **CHAPTER 5. Mechanism of Provision of Equal Rights of Men and Women and Equal Opportunities for their implementation**

### **Article 18. Authority of the Government of the Republic of Tajikistan with respect to Provision of Equal Rights of Men and Women and Equal Opportunities for their Implementation**

In order to provide equal rights and freedoms to men and women and equal opportunities for their implementation the Government of Republic of Tajikistan within its competence shall:

- elaborate a unified state policy aimed at the achievement of the social equality of men and women in all spheres of the state and public life and ensure implementation of this policy;
- develop targeted republican programs aimed at fulfillment of gender equality and ensure implementation of these programs;
- steer and supervise activities of the executive authorities of the state power and local authorities with regard to protection and provisions of gender equality, selection and appointment of women to responsible assignments, and the upbringing of the young generation of the management personnel out of girls and women.

### **Article 19. Authority of Public Bodies on Provision of Gender Equality in the Republic of Tajikistan**

In order to provide gender equality in the Republic of Tajikistan public authorities within their competence shall oversee observance of the present Law.

In order to provide gender equality public authorities shall publish annual reports on the implementation of the present Law in the mass media of the Republic of Tajikistan.

### **Article 20. Participation of the Public Associations in Provision of Equal Rights of Men and Women and Equal Opportunities for their Implementation**

Trade unions and other public associations, including those established for the purpose of implementation of the constitutional principle of equal rights and equal opportunities for men and women are entitled to:

- participate in the process of elaboration of the decisions of the public authorities and local self-government authorities regarding equal opportunities for men and women in the social and economic sphere; and
- represent and protect rights of men and women in the courts and other public bodies.

### **Article 21. State Supervision over Observance of the Legislation on State Guarantees of Equal Rights of Men and Women and Equal Opportunities for their Implementation**

Supervision over observance of legislative and other statutory acts aimed at provisions of state guarantees of equal rights of men and women and equal opportunities for their implementation shall be performed by the Prosecutor General and other prosecutors of the Republic of Tajikistan.

### **Article 22. Liability for Breach of the Present Law**

Legal entities and individuals shall bear responsibility for breach of the provisions of the present Law in accordance with the procedures established by the legislation of the Republic of Tajikistan.

### **Article 23. Procedure of Coming into Effect of the Present Law**

The present law comes into effect following to its official publication.

The President  
of the Republic of Tajikistan