

Committee on the Application of Standards

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Afghanistan (ratification: 1969)

Convention (n° 111) concernant la discrimination (emploi et profession), 1958

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Convenio sobre la discriminación (empleo y ocupación), 1958 (núm. 111)

Discussion par la commission

Président – Passons maintenant à l'examen du cas individuel de l'Afghanistan sur l'application de la convention n° 111 concernant la discrimination (emploi et profession), 1958.

J'informe la commission que depuis mercredi 4 juin, date à laquelle la commission devait examiner ce cas, l'Afghanistan n'a toujours pas accredité de délégation à cette 113^{ème} session de la Conférence. Il n'a pas répondu à aux rappels envoyés par le secrétariat de la commission, ni à ceux publiés dans le Programme quotidien de la Conférence et sur le site Web de la commission.

Comme indiqué dans la partie VII, paragraphe 35, du document D.1 sur nos méthodes de travail, le dernier jour de la discussion des cas individuels, la commission examine les cas pour lesquels les gouvernements n'ont pas répondu à l'invitation. Pour ce qui est des cas concernant les gouvernements qui ne sont pas présents à la Conférence, la commission ne les examine pas quant au fond mais souligne dans le rapport l'importance des questions qu'ils soulèvent.

Je vais donner la parole aux deux porte-paroles pour leurs déclarations sur ce cas sans ouvrir les débats.

Worker members – The Worker members regret that no delegation from Afghanistan has come forward. As a result, our Committee cannot proceed with the examination of the case in substance. We recall that the participation of governments in the Conference, and at our Committee when on the final list, is essential to the functioning of the ILO supervisory system.

We will therefore take this opportunity to reflect the seriousness and deep concern we have about the application of the Convention by the de facto authorities in Afghanistan, and with the confirmation of our employer counterparts, propose that the Office takes these mutual concerns, as also reflected in the observations of the Committee of Experts, as follow-up with the authorities.

If this case had been examined, Mr Maroof Qaderi, President of the National Union of Afghan Workers and Employees, would have told us about the severe discrimination against women and young girls in Afghanistan.

He would have told us that the Taliban have issued 50 restrictive decrees for women, prohibiting them from accessing public spaces, parks, and healthcare, as well as denying them education and employment. That women workers are almost erased from the workplace and

public space. That those who are still working are forced to receive lower wages and that this systematic discrimination completely violates women's rights and stands in stark opposition to the provisions of the Convention.

Mr Qaderi would also have told us that thousands of workers and employees have been illegally dismissed from various government departments and institutions based on their ethnicity, language, religion or nationality. That tens of thousands of people were dismissed without any humane consideration, in a blatant act of discrimination and in violation of human dignity.

He would have told us that workers in Afghanistan, women and ethnic or religious minority groups in particular, are suffering from livelihood crisis and economic rights violations, resulting for these groups in an alarming increase of child labour and in a dramatic rise in suicides, organ sales, forced marriages, severe hunger, and widespread malnutrition.

He would have told us that the right to freedom of association and civil liberties are non-existent under the Taliban and that trade unions in Afghanistan cannot perform their role or maintain operation.

Mr Qaderi would have told us that the Taliban have appointed someone as acting head of the National Union of Afghan Workers and Employees in violation of the union's statutes and the fundamental principles of freedom of association. He would have asked our Committee to reinstate the legitimate activities of his union, the National Union of Afghan Workers and Employees. He would have asked us to ensure that the rights of Afghan workers, especially those of women, ethnic and religious minorities protected under the Convention are respected in Afghanistan.

Finally, Mr Qaderi would have asked us to press the Taliban to immediately cease repression and violations of fundamental human and labour rights in Afghanistan.

This is what Mr Maroof Qaderi would have told us. But he could not. It could have been an opportunity to hear a powerful testimony of the gravity of the situation but it has become the symbol of what millions of women, girls and members of ethnic and religious minority groups have to face on a daily basis since 2021: exclusion and ostracization.

We had already addressed the gravity of the situation and the serious ongoing violations in Afghanistan in the discussion of the case in 2023. Our discussion had given rise to a strong reaction of our Committee since it had decided to include its conclusions in a special paragraph of its report. It is clear that no improvement has been noted since then and that the situation has deteriorated even further. We could have heard this deterioration through the testimony of Mr Qaderi but we can see it in the Committee of Experts' report that expresses its deep concern at the situation of violation of human rights and fundamental freedoms of women and girls in the country.

The Committee of Experts refers in this regard to reports of several UN bodies such as the Human Rights Council and the United Nations Committee on the Elimination of Discrimination against Women and to the report of the UN Secretary-General to the General assembly.

The Committee of experts deeply deplored the adoption of the Law on the Promotion of Virtue and the Prevention of Vice which imposes gender-specific discriminatory measures, effectively excluding Afghan women and girls from public life and nullifying their rights to employment and occupation, thereby exacerbating the existing restrictions and discrimination they face. These grave violations of the basic human rights of the population will have an immense and enduring transgenerational impact, in particular on women and girls, with each

generation seeing fewer and fewer women with educational backgrounds enabling them to take up roles outside the home. The appalling levels of gender-based violence against women and the ban on women's education will perpetuate women's disempowerment with grave consequences for future generations. No society can prosper based on such blatant discrimination. It is difficult to see any prospects for development when half of the population is manifestly excluded from all life in society.

It is also difficult to conceive how the de facto authorities of Afghanistan can be reintegrated into the international community by having made discrimination against women and minority groups a trademark. Their absence today shows they seem unwilling to engage with the international community. Yet, and considering the gravity of the situation, the Workers' group thinks that it cannot be a valid reason for our Committee to not fully and extensively address the situation in the future.

For all these reasons, we call on our Committee to reiterate in the strongest possible terms the conclusions it adopted in 2023. We also join the Committee of Experts in recalling that the international community is not helpless and we invite the ILO and all its Member States to answer the call of Mr Qaderi, and of millions of Afghans, to use all available diplomatic levers to press the Taliban to immediately cease repression and violations of fundamental human rights in Afghanistan.

Employer members – The Employer members have serious concerns about Afghanistan's application of the provisions of the Convention. The employers echo the observations made by the Committee of Experts on the consistent and institutionalized violation of the human rights and fundamental freedoms of women and girls in Afghanistan.

This case is extremely serious. Since August 2021, the "de facto" authorities in Afghanistan have sought to, and by the assessment of several UN bodies, successfully erased Afghan women and girls from public life. Women and girls are banned from educational and training opportunities. Women and girls are prevented from achieving economic security because they are significantly restricted from pursuing work opportunities outside the home. Their freedom of movement has been severely restricted. They are subject to institutionalized violence. Women and girls have no meaningful access to justice and no resort to remedies for these fundamental violations. Since 2021, there has been an exponential deterioration in the situation of women and girls in this country, where the law violates their freedom and dignity, their economic security, and their equal protection under the law.

Instead of making progress on the serious observations of the Committee of Experts, Afghanistan's "de facto" authorities have failed to appear before this body and have failed to provide any information to respond to these issues.

I will first deal with background and context, and then examine the main issues.

Afghanistan ratified the Convention in 1969. The Committee of Experts has already commented on this case 25 times, almost every year for the last three decades. This is the fourth time the CAS has dealt with this particular case. It was previously discussed at the CAS in 1999, 2000, 2023 and again this year. The Convention concerns discrimination in employment and occupation and is one of the ILO's fundamental Conventions and, as such, must be the subject of special attention and priority monitoring. This fundamental Convention aims to guarantee human dignity and equal opportunities and treatment for all workers by prohibiting any discrimination based on, among other things, sex.

The conduct of Afghanistan with respect to the ILO's governance process is unacceptable. Since 1 July 2016, no written report has been submitted on the implementation of this

fundamental Convention. Furthermore, the “de facto” authorities have not responded to the Committee of Experts’ comments since 2019. On August 27, 2023, the “de facto” authorities announced that they would respond in 2024 to the recommendations made by our Committee in June 2023. Yet, no report has been provided to the ILO since then, despite this official undertaking. Finally, as I mentioned earlier, the “de facto” authorities have elected not to attend this Committee to provide any oral information to respond to the Committee’s deep concerns regarding the application of the Convention in law and in practice.

Like the Committee of experts, we are deeply concerned by this total lack of cooperation from the “de facto” authorities. This extremely serious case is marked by a double footnote. In the absence of information from the “de facto” authorities, the Committee of Experts has relied on the recurrent observations of several high-level United Nations human rights bodies to identify four issues.

The first issue concerns the severe restrictions imposed on women and girls with respect to their access to education, vocational training, and employment opportunities, as well as the absence of any access to justice, including any effective remedies for victims of violence against women. Countries that have ratified the Convention have undertaken to pursue a national policy of equality, with a view to eliminating all discrimination based on sex in employment and occupation. These countries must therefore repeal any legislative provision, administrative instruction or practice that is incompatible with a national equality policy. The de facto authorities must, therefore, take positive actions and measures to ensure that women have equal opportunity and treatment in relation to access to education, vocational training, and employment.

Rather than progressing towards equality and the elimination of discrimination, the situation for women is deteriorating year over year:

Since August 2021, the fundamental rights of women and girls have been effectively decimated through the promulgation of dozens of ordinances, decrees, and declarations:

- women can no longer move about freely;
- women are no longer allowed to work, including in the civil service with very minimal exceptions;
- girls no longer have access to secondary and higher education;
- the Ministry for Women’s Affairs and the Human Rights Commission have been dissolved;
- the public prosecutor’s offices and courts responsible for combating violence against women have closed down.

Since August 2024, a new law titled the Law on the Promotion of Virtue and the Prevention of Vice has institutionalized discriminatory measures to effectively exclude Afghan women and girls from the public arena, including from the educational system and the labour market.

In addition to these violations under the law, further violations exist in practice. Discrimination, harassment and violence against women are commonplace and go unpunished. Because they are forbidden to work and move freely, women have lost their ability to support themselves. This fundamentally affects their human dignity and will have disastrous repercussions not only for several generations of girls, but also for Afghan society. As a result of this law, Afghan society is deprived of the economic, social, and political contributions of approximately half its population.

It is time for the fundamental rights of Afghan girls and women to be restored. We insist that the discriminatory policy of the “de facto” authorities be reversed without delay. All legislation and practices that discriminate against girls and women in employment and occupation must be eliminated. All harassment and violence targeting girls and women must be prevented and combated by ensuring access to justice and the availability of effective remedies.

The second issue concerns the non-conformity of the legislation on non-discrimination. Section 9 of the Labour Law, in both the private and public sectors, does not cover, in a sufficiently explicit and detailed fashion, all the grounds of prohibited discrimination. This legislative shortcoming has been mentioned for several years by the Committee of Experts, without Afghanistan communicating any improvement on this issue of non-compliance. We urge the “de facto” authorities to reconsider their position and finally bring national legislation in line with the Convention, so as to prohibit all direct and indirect discrimination.

The third issue concerns discrimination against girls and women with disabilities. Although section 15 of the Law of Rights and Benefits of Persons with Disabilities enshrines the principle of the equal right for persons with disabilities to participate in social, economic, and educational life, the UN Human Rights Council has noted with deep concern that women and girls with disabilities are often exposed to multiple, aggravated, or intersecting forms of discrimination or disadvantage. The Committee of Experts reiterated its request that specific measures be taken to facilitate access to education and occupation for persons with disabilities, including for girls and women, and to promote their employment opportunities in the private and public sectors. There is an urgent need for Afghan society to put an end, in law and in practice, to this intersectional discrimination.

The fourth issue concerns discrimination in access to justice and the absence of any effective remedies to violence against women and girls. The High Commissioner for Human Rights has noted that the legal and judicial systems since August 2021 have ceased to function. The Ministry of Women’s Affairs was closed. The Afghan Independent Human Rights Commission was dissolved. Further, specialized courts for the elimination of violence against women and public prosecutors’ offices have closed. Thereafter, the “de facto” authorities gradually set up a national judicial system and courts, which are now based on its interpretation of Sharia law. These changes to the judicial system do not guarantee respect for fundamental human rights and freedoms enshrined in customary international law and human rights instruments. Women and girls’ access to justice has been seriously compromised and they no longer have access to remedies that were previously available. We therefore urge that all necessary measures be taken to ensure access to justice in a non-discriminatory manner and ensure access to effective remedies.

We as the employer recognize the difficulty of issuing recommendations based on consensus to a country whose “de facto” authorities are absent from this Committee. Their absence today and their failure to provide information to this Committee seriously impedes our ability to exchange information on the violation of the Convention, as observed by the Committee of Experts. Given the seriousness of this violation we call on the “de facto” authorities – despite their repeated absence from and non-participation in the International Labour Conference – to provide full information on any progress made to end discrimination on basis of sex as well as a copy of any new legislation to bring national legislation in conformance with the Convention.

In addition, we insist that the protection of workers – both men and women – against discrimination in employment and occupation must be ensured in practice. No category or

sector of workers should be excluded from this legal and judicial protection. We call for all necessary measures to be taken to define and expressly prohibit in law, direct and indirect discrimination based on sex. The “de facto” authorities should repeal any legal provisions that institutionalize discrimination on the basis of sex in all aspects of employment and occupation. We call for specific measures to facilitate access to education and vocational training for women and girls including those with disabilities and to promote equal employment opportunities in the private and public sectors.

Finally, we urge that all necessary measures be taken to ensure access to non-discriminatory justice mechanisms and effective remedies regarding discrimination on the basis of sex. In addition, the “de facto” authorities must work actively to prevent discrimination and in particular raise public awareness on the fundamental principles of equality and non-discrimination. There is a long way to go. Not only must the existing legal framework be fundamentally transformed but the legal framework must also be applied in a manner so that girls and women are effectively protected. Because of the extreme seriousness of this case the Employers are insisting that, as they did in 2023, a special paragraph on Afghanistan be added to the conclusions of our Committee’s work.