

DJIBOUTI: A BRIEF ON THE IMPLEMENTATION OF CEDAW COMMITMENTS FROM ARTICLES 2 AND 16

*Information for the Committee on the Elimination of Discrimination Against Women
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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 81st Pre-Sessional Working Group of the Committee on the Elimination of Discrimination against Women.

This brief will focus on the following area:

1. Child Marriage (Articles 16, 2)

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 provide a summary of our legislative findings. We then outline suggested questions for the Committee to ask Djibouti, and topics we hope the Committee will address in its concluding observations. We hope the Committee will recommend that Djibouti address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations. We also hope the Committee will recommend that Djibouti work with stakeholders to overcome any obstacles in implementing existing provisions.



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. Child Marriage (Articles 16, 2)

Child marriage disproportionately affects girls, often leading to social, economic, educational, and health inequalities, which States Parties have committed to eliminating. Article 16.2 of the Convention calls on States Parties to legislate a minimum age of marriage and prohibit the marriage of children. Additionally, disparities in the legal minimum age of marriage between girls and boys contravenes Article 2(a) 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 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. We reviewed all legislation available through the Lexadin World Law Guide, Foreign Law Guide, International Labour Organization’s NATLEX database, regional sources, and official country websites.

DJIBOUTI’S LEGISLATIVE PROVISIONS: NEED TO REMOVE ALL EXCEPTIONS TO THE MINIMUM AGE OF MARRIAGE

Based on our review, Djibouti has two laws governing marriage rights. Both the Civil Code and the Family Code require that girls and boys be at least 18 years old to marry. However, the Family Code permits the marriage of children under the age of 18 with parental consent, and the Civil Code allows children under the age of 18 to marry with both parental and judicial consent. There is no minimum age of marriage associated with these exceptions, thus children of any age can be married with parental or judicial consent.

Civil Code of Djibouti

Article 163

L’homme et la femme ne peuvent contracter mariage avant dix-huit ans révolus.

Néanmoins, il est loisible au procureur de la République du lieu de célébration du mariage, d’accorder des dispenses d’âge pour des motifs sérieux.

L’officier de l’état civil reçoit la déclaration des futurs époux s’ils entendent que leur union soit régie par les dispositions du présent code, faute de quoi elle le sera par le code de la famille.

Article 166

Les mineurs ne peuvent contracter mariage sans le consentement de leurs père et mère.



En cas de dissentiment entre le père et la mère, ce partage emporte consentement.

En cas de refus des deux parents et de persistance de l'intention matrimoniale des deux mineurs, le mariage est autorisé par le juge.

Family Code of Djibouti

Article 7

[...]

Le mariage n'est formé que par le consentement des deux époux et du tuteur de la femme.

[...]

Article 13

Les deux futurs époux ne doivent pas se trouver dans l'un des cas d'empêchement prévus par la loi.

Les futurs époux doivent avoir l'âge de 18 ans révolu pour contracter mariage.

Article 14

Le mariage des mineurs qui n'ont pas atteint l'âge de la majorité légale est subordonné au consentement de leurs tuteurs.

En cas de refus des tuteurs et de persistance des deux futurs conjoints, le mariage est autorisé par le juge.

Article 16 :

Le père ou son mandataire, le grand-père ou son mandataire consent au mariage de l'enfant mineur, qu'il soit de sexe masculin ou féminin et ce conformément aux dispositions de l'article 14.

We hope the Committee will:

- In its list of issues, ask Djibouti: Can Djibouti outline any concrete, near-term plans to amend current legislation by removing the exceptions that allow children to be married under the age of 18?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Djibouti amend current legislation to establish a minimum age for marriage of 18 years old for children, with no exceptions.