



# Gabon: A Brief on Equal Rights in Constitutions, Equal Rights and Non-Discrimination at Work, and Protection from Child Marriage

*Information for the Committee on the Elimination of Discrimination against Women*

*76<sup>th</sup> Pre-Session Working Group, November 2019*

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## EXECUTIVE SUMMARY

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 76<sup>th</sup> Pre-Sessional Working Group of the Committee on the Elimination of Discrimination against Women.

This brief will focus on the following three areas:

1. Equality and non-discrimination in the constitution (Article 2)
2. Prohibition of discrimination in the field of employment (Article 11)
3. Child marriage (Article 16.2, Article 2.a)

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. constitutional texts, original legislation), 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 our review.

While our review is systematic and rigorous, we recognize that there may be other laws or policies governing these areas that we have not captured. We also recognize that Gabon may have passed legislation or enacted new policies since our most recent review. We therefore hope the Committee will include the following questions for Gabon in its list of issues, and where applicable, make the recommendations outlined below in its concluding observations. We also hope the Committee will recommend that Gabon address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations.

***Areas where Gabon has provisions in place, but where these provisions do not appear to fully address the commitments Gabon has made through its ratification of CEDAW:***

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### **A) Non-discrimination in work and employment (Article 11)**

Our systematic review of national legislation as of August 2016 shows that Gabon broadly prohibits workplace discrimination on the basis of sex, in addition to explicitly guaranteeing equal pay for work of equal value on the basis of sex, and explicitly protecting women from retaliatory action for reporting discrimination. However, we found no legislative provision protecting women from discrimination in hiring, promotions/demotions, vocational training at work, or terminations. We also found no legislative provision prohibiting indirect discrimination on the basis of sex. Finally, while Gabon's legislation prohibits dismissal or reprisal on the grounds of pregnancy or childbirth, we found no explicit legislative protections from discriminatory dismissals on the grounds of marital status.



**We hope the Committee will:**

- In its list of issues, ask Gabon: Can Gabon demonstrate whether broad protections from discrimination at work sufficiently protect women from discrimination in hiring, promotions/demotions, vocational training at work, and terminations?
  - If sufficient protections do not exist, recommend in its concluding observations that Gabon pass and implement legislation that explicitly protects women from discrimination at work in all aspects of the working life course, including in hiring, promotions/demotions, vocational training at work, and terminations.
- In its list of issues, ask Gabon: Can Gabon demonstrate whether broad protections from discrimination at work also extend to include indirect discrimination?
  - If sufficient protections do not exist, recommend in its concluding observations that Gabon pass and implement legislation that expands the definition of discrimination to include both direct and indirect forms of discrimination.
- In its list of issues, ask Gabon: Can Gabon demonstrate whether sufficient protections exist to protect women from dismissal at work based on marital status?
  - If sufficient protections do not exist, recommend in its concluding observations that Gabon pass and implement legislation that prohibits dismissal based on marital status.
- In its list of issues, ask Gabon: Can Gabon demonstrate how protections from retaliation for reporting discrimination are being enforced, and whether all women, regardless of income, have access to an effective reporting process?
  - If insufficient evidence is provided to demonstrate implementation and protections from retaliation in reporting, recommend in its concluding observations that Gabon outline how it will improve implementation of protections from retaliation for reporting discrimination and of access to an effective reporting process for all women.

## B) Child marriage (Article 16.2, Article 2.a)

Based on our systematic review of legislation and country reports as of January 2019, Gabon allows girls as young as 15 to be married with her parents' consent. In contrast, the minimum age of marriage for boys with parental consent is 18 years old.

**We hope the Committee will:**

- In its list of issues, ask Gabon: Can Gabon demonstrate whether it has amended its Civil Code as described in its 7<sup>th</sup> periodic report to protect girls under the age of 18 from early marriage?
  - If Gabon has not yet amended its Civil Code or passed an analogous law to establish a minimum age of marriage with parental consent of at least 18 years old for girls, recommend in its concluding observations that Gabon pass and implement this legislation.



***Areas where Gabon's legislative, policy or constitutional approaches are consistent with or directly support the Convention:***

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**A) Equality and non-discrimination in the constitution (Article 2)**

Based on our review of full-text national constitutions as of May 2017, Gabon's constitution guarantees equality before the law without distinction of sex. This is a positive and important step to have in place, and while this constitutional right is essential, so too is its implementation.

**We hope the Committee will:**

- In its list of issues, ask Gabon: Can Gabon outline how constitutional guarantees of equality based on sex are being implemented?
  - If Gabon is not fully implementing these guarantees, recommend in its concluding observations that Gabon explore how to fully and effectively implement these guarantees.

**DETAIL**

**1. Equality and Non-Discrimination in the Constitution (Article 2)**

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Article 2 of the Convention states that:

*States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:*

*(a) To embody the principle of the equality of men and women in their national constitutions*

As the foundational document setting out the rights of all human beings in a country, a constitution and the rights contained therein are essential to realizing human rights. We reviewed full text constitutions as of May 2017 for all 193 UN member states available from official government sources to determine whether the constitution explicitly guaranteed equality or non-discrimination on the basis of sex and/or gender by prohibiting discrimination, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

**GABON'S CONSTITUTIONAL PROVISIONS**

Gabon's constitution guarantees equality before the law without distinction of sex. These guarantees are specified in Article 2 of Gabon's Constitution: [...] *La République gabonaise assure l'égalité de tous les citoyens devant la loi, sans distinction d'origine, de race, de sexe, d'opinion ou de religion.*



## 2. Non-Discrimination in Work and Employment (Article 11)

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Article 11 of the Convention outlines a number of specific measures States Parties shall undertake in order to eliminate discrimination in the field of employment:

*“States Parties shall 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, in particular:”*

*“The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;” (Article 11.1.b)*

*“The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training” (Article 11.1.c)*

*“The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work” (11.1.d)*

Article 11 further outlines States Parties obligations to prohibit discrimination of working mothers.

*“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;” (Article 11.2.a)*

We systematically reviewed national labor codes, gender equality, and other relevant legislation available through the International Labor Organization’s NATLEX database as of August 2016 for all 193 UN member states to determine whether national legislation prohibited gender discrimination in employment. We examined legal protections across five areas covered by CEDAW:

- employment opportunities or hiring
- equal pay for work of equal value
- vocational training at work
- promotions or demotions
- job security or terminations

We assessed whether women were explicitly protected from discrimination at work in each of these areas and whether the definition of discrimination included both direct and indirect discrimination.<sup>1</sup> We further examined whether there were provisions that protected women from retaliatory action for

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<sup>1</sup> Indirect discrimination refers to a law, policy or practice that may appear neutral, but that can have a disproportionate impact on certain people or groups. For example, a job advertisement with a minimum height requirement for applicants doesn’t explicitly prohibit women from applying, but would inherently exclude more women than men, even if the woman is able to fulfil all the physical requirements of the job.



reporting discrimination. We also examined whether there were explicit protections from discrimination at work for statuses that intersect directly with women's dual roles as workers and caregivers: marital status, pregnancy, and family status.

#### *GABON'S LEGISLATIVE PROVISIONS*

Based on our review, Gabon's legislation broadly protects women from workplace discrimination, in addition to explicitly guaranteeing women equal pay for work of equal value at work, and explicitly protecting women from retaliatory action for reporting discrimination.

However, Gabon's legislation does not explicitly protect women from discrimination in hiring, promotions/demotions, vocational training at work, and terminations. While Gabon's legislation prohibits dismissal or reprisal on the grounds of pregnancy or childbirth, we found no explicit legislative protections from discriminatory dismissals on the grounds of marital status.

##### *1994 Code du Travail*

*Article 8. Tous les travailleurs sont égaux devant la loi et bénéficient de la même protection et des mêmes garanties. Toute discrimination en matière d'emploi et de conditions de travail fondée, notamment, sur la race, la couleur, le sexe, la religion, l'opinion politique, l'ascendance nationale ou l'origine sociale est interdite.*

*Article 10. Toute renonciation, limitation ou cession par voie d'accord ou autre des droits reconnus aux travailleurs par le présent Code est nulle et de nul effet. Tout licenciement ou autre mesure de représailles pris contre un travailleur au motif que celui-ci a exercé un droit ou s'est acquitté d'une obligation qui lui est conférée ou imposée par le présent Code du travail ou par la législation en général, ou par une convention collective ou par son contrat individuel de travail, est nul de plein droit.*

*Article 140. A conditions égales de travail, de qualification et de rendement, le salaire de base est égal pour tous les travailleurs, quels que soient leur origine, leur opinion, leur sexe et leur âge.*

*L'égalité de rémunération entre la main-d'oeuvre masculine et la main d'oeuvre féminine pour un travail de valeur égale, mais de nature différente, se réfère aux taux de rémunérations fixés sans discrimination fondée sur le sexe.*

*Article 170. La femme a les mêmes droits et les mêmes obligations en matière de législation du travail, sous réserve des dispositions particulières prévues par la présente loi.*

*Aucun employeur ne peut licencier ou prendre toute autre mesure de représailles contre une salariée au motif de sa grossesse ou de son accouchement.*

*Tout licenciement d'une femme enceinte, dont l'état a été constaté médicalement ou dont la grossesse est apparente, ou tout licenciement intervenu dans les quinze mois suivant la date de l'accouchement, est subordonnée à l'autorisation préalable de l'inspecteur du travail.*



### 3. Child Marriage (Article 16.2, Article 2.a)

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Article 16 of the Convention states that:

*“The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.”*

Additionally, disparities in the legal minimum age of marriage between girls and boys contravenes Article 2 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 available through the Lexadin World Law Guide, Foreign Law Guide, International Labor Organization’s NATLEX database, Pacific Islands Legal Information Institute, Asian Legal Information Institute, JaFBase, and official country websites as of January 2019 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.

#### *GABON’S LEGISLATIVE PROVISIONS*

Based on our review, Gabon legally allows girls to be married as young as 15 years old with parental consent. For boys, the legal minimum age of marriage with parental consent is 18 years old.

##### *1995 Code Civil*

*Article 203 : L’homme, avant dix-huit ans révolus, la femme, avant quinze ans révolus, ne peuvent contracter mariage.*

*Néanmoins, le Président de la République ou, à défaut, le Président de la Cour suprême, peut accorder des dispenses d’âge pour des motifs graves.*

*Article 205 : Même si les conditions exigées par l’article 203 sont réunies, le jeune homme ou la jeune fille qui n’a pas atteint l’âge de 21 ans révolus ne peut contracter mariage sans le consentement de ses père et mère.*

We note that in its 7th periodic report, Gabon has indicated that it is in the process of amending legislation to protect girls under the age of 18 from early marriage: *Le processus de modification de la disposition relative à l’âge nubile est en cours, ainsi, l’âge d’accès au mariage sera désormais de 18 ans pour les filles. La violation de la loi entrainera des sanctions pénales.*



## Reference Sheet

### Gabon: Recommended Questions for the List of Issues and Concluding Observations

*For the Committee on the Elimination of Discrimination against Women*

*76th Pre-Sessional Working Group, November 2019*

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#### *Recommended Questions for Gabon's List of Issues:*

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#### **Non-discrimination in work and employment (Article 11)**

- Can Gabon demonstrate whether broad protections from discrimination at work sufficiently protect women from discrimination in hiring, promotions/demotions, vocational training at work, and terminations?
- Can Gabon demonstrate whether legal protections from gender discrimination extend to include indirect discrimination?
- Can Gabon demonstrate whether sufficient protections exist to protect women from dismissal at work based on marital status?
- Can Gabon demonstrate how protections from retaliation for reporting discrimination are being enforced, and whether all women, regardless of income, have access to an effective reporting process?

#### **Child marriage (Article 16.2, Article 2.a)**

- Can Gabon demonstrate whether it has amended its Civil Code as described in its 7<sup>th</sup> periodic report to protect girls under the age of 18 from early marriage?

#### **Equality and non-discrimination in the constitution (Article 2)**

- Can Gabon outline how constitutional guarantees of equality based on sex are being implemented?





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*Recommended Concluding Observations for Gabon (where Gabon's responses to questions from the list of issues are unclear or insufficient):*

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*\*Note that wherever possible, these recommendations should be implemented in collaboration with relevant stakeholders, including civil society organizations.*

**Non-discrimination in work and employment (Article 11)**

We hope the Committee will:

- Recommend in its concluding observations that Gabon pass and implement legislation that explicitly protects women from discrimination in all aspects of work, including in hiring, promotions/demotions, vocational training at work, and terminations.
- Recommend that Gabon pass and implement legislation that expands the definition of discrimination to include both direct and indirect forms of discrimination.
- Recommend in its concluding observations that Gabon pass and implement legislation that strengthens its protections for working mothers from dismissal at work based on marital status.
- Recommend in its concluding observations that Gabon outline how it will improve implementation of protections from retaliation for reporting discrimination and of access to an effective reporting process for all women.

**Child marriage (Article 16.2, Article 2.a)**

- If Gabon has not yet amended its Civil Code or passed an analogous law to establish a minimum age of marriage with parental consent of at least 18 years old for girls, recommend in its concluding observations that Gabon pass and implement this legislation.

**Equality and non-discrimination in the constitutions (Article 2)**

- We hope the Committee will recommend in its concluding observations that Gabon explore how to fully and effectively implement constitutional guarantees of equality.

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*Briefing prepared by the World Policy Analysis Center, University of California, Los Angeles*