

# Jamaica: A Brief on the Implementation of CEDAW Commitments from

## Articles 2, 5, 11, 16 and General Recommendation 12

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

*79<sup>th</sup> Pre-Session Working Group, November 2020*

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

This brief will focus on the following five areas:

1. General Equality and Non-Discrimination (Article 2)
2. Non-discrimination in Work and Employment (Article 11)
3. Sexual Harassment in Work and Employment (General Recommendation 12)
4. Paid Maternity and Paternity Leave (Articles 11, 5)
5. 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 detailed constitutional and legislative excerpts documenting our findings. These findings are followed by suggested questions the Committee may ask Jamaica, as well as topics we hope the Committee will address in their concluding observations. We hope the Committee will recommend that Jamaica address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations. We also recognize that while having strong laws and policies in place are necessary first steps, implementation is also of paramount importance. In areas where we have commended Jamaica for having provisions in place, we hope the Committee will recommend that Jamaica work with stakeholders to overcome any obstacles in implementing these provisions.



## 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. General Equality and Non-Discrimination (Article 2)

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While the entirety of the Convention aims to eliminate discrimination against women in all spheres of life, Article 2(a) of the Convention specifically requires States Parties “To embody the principle of the equality of men and women in their national constitutions”.

We reviewed full text constitutions 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.

#### *JAMAICA'S CONSTITUTIONAL PROVISIONS: EXPLICIT GUARANTEE OF NON-DISCRIMINATION*

Based on our review, Jamaica’s constitution guarantees the right to non-discrimination between men and women. These guarantees are embedded in Article 13 of the constitution:

*13. FUNDAMENTAL RIGHTS AND FREEDOMS*

*(3) The rights and freedoms referred to in subsection (2) are as follows-*

*[...]*

*(i) the right to freedom from discrimination on the ground of-*

*(i) being male or female;*

*(ii) race, place of origin, social class, colour, religion or political opinions;*

#### *WHY CONSTITUTIONS MATTER*

Constitutions state the values of a country, describe the rights of people living within the country, and profoundly influence norms and practice. In nearly all countries, constitutions take precedence over other sources of law—making them critical tools for delineating and implementing equal rights. New constitutions and new rights guaranteed in constitutions can be used to overturn discriminatory laws as well as to legislate non-discrimination guarantees. Moreover, constitutions can offer protection against policy and legal changes during periods of social and political shifts that may seek to undermine equal rights. For these reasons and others, 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 equal rights.



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

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

We systematically reviewed national labor codes, gender equality, and other relevant legislation available through the International Labour Organization's NATLEX database 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. We further examined whether there were provisions that protected women from retaliatory action for 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.

### *JAMAICA'S LEGISLATIVE PROVISIONS: LIMITED PROHIBITIONS OF WORKPLACE DISCRIMINATION BASED ON SEX AND GENDER*

Based on our review, we found Jamaica's legislation to be lacking critical provisions prohibiting sex-based workplace discrimination. We found no explicit prohibitions of discrimination in employment opportunities or hiring, access to vocational training, promotions or demotions, and job security or terminations. Jamaica's *Employment (Equal Pay for Men and Women) Act of 1975* does guarantee equal pay for equal work between men and women but falls short of implementing the stronger protection of equal pay for work of equal value.

#### ***The Employment (Equal Pay for Men and Women) Act***

***3 . (1) From and after the 1st day of January, 1976, no employer shall, by failing to pay equal pay for equal work, discriminate between male and female employees employed by him in the same establishment in Jamaica.***



### 3. Sexual Harassment in Work and Employment (General Recommendation 12)

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Referencing Articles 2, 5, 11, 12, and 16 of the Convention, General Recommendation 12 further recommends that States Parties implement legislation protecting women from sexual harassment in the workplace.

We systematically reviewed national labor codes, penal codes, equal opportunity, and other relevant legislation available through the International Labour Organization's NATLEX database for all 193 UN member states to determine whether national legislation prohibited sexual harassment at work. We examined whether protections from sexual harassment at work were in line with international agreement of what constitutes key components on sexual harassment. Namely, do laws define sexual harassment to cover quid pro quo and the creation of a hostile work environment; include sex-based harassment as well as sexual-behavior based harassment; protect workers from harassment by co-workers and other actors in the workplace, as well as supervisors; and ensure workers are protected from retaliation for reporting sexual harassment?

#### *JAMAICA'S LEGISLATIVE PROVISIONS: MISSING EXPLICIT PROHIBITIONS OF WORKPLACE SEXUAL HARASSMENT*

Acknowledging Jamaica's recent efforts to pass the *Sexual Harassment Act*, our systematic review of national legislation did not identify any current legislative provisions that explicitly prohibit workplace sexual harassment.

### 4. Paid Maternity and Paternity Leave (Articles 11, 5)

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Article 11.2 of the Convention states that:

*In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, 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;*

*(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;*

Further, Article 5(b) of the Convention emphasizes the importance of including men in the upbringing of children:

*To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.*



We systematically reviewed national labor codes and social security laws to assess the availability of paid maternity and paternity leave. We relied primarily on legislation downloaded through the International Labour Organization's NATLEX database. Additionally, for confirmation or clarification on legal provisions, we consulted trusted secondary sources including the Social Security Programs throughout the World (SSPTW) database, and the International Review of Leave Policies.

*JAMAICA'S LEGISLATIVE PROVISIONS: NEED TO STRENGTHEN PAID MATERNITY AND PATERNITY LEAVE*

Based on our systematic review of national legislation and country reports, Jamaica's *Maternity Leave Act* provides eight weeks of paid maternity leave to mothers. The law also protects mothers from dismissal during this period of leave. We found no provisions in the Labour Code that provide paid paternity leave to fathers.

***The Maternity Leave Act***

*3.-(1) Subject to the provisions of subsection (2), the employer of a worker shall grant her leave, to be known as maternity leave (...)*

*(2) The period (or, if more than one, the aggregate of the periods) for which a worker is entitled under subsection (1) to be granted maternity leave shall be the period or periods during which she is absent from work wholly or partly because of her pregnancy or confinement, but shall not, except in the cases mentioned in subsections (3) and (4), exceed twelve weeks in respect of each pregnancy or confinement.*

*4. 1) Subject to the provisions of subsections (2), (3), (4) and (5), every worker to whom maternity leave is granted shall be entitled to return to work-*  
*(a) with the employer who granted the leave or, where appropriate, his successor;*  
*(b) in the capacity and place in which she was employed under the original contract of employment, to do work of the nature for which she was employed under that contract of employment;*  
*(c) on terms and conditions that, as regards seniority, pension rights and other similar rights, the period of her employment immediately prior to her absence on maternity leave shall be regarded as continuous with her employment following that absence.*

*5.-(1) Subject to the provisions of subsection (2), the employer of a qualified worker who has been granted maternity leave shall pay to that worker sums, to be known as maternity pay, in respect of the first eight weeks of her maternity leave beginning on, or falling after, the relevant day.*  
*(...)*

***7. Offences***

*(...)*

*(2) Any employer who without reasonable cause terminates the employment of a worker wholly or partly because of her pregnancy or confinement shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding one thousand dollars and in default of payment to imprisonment for a term not exceeding six months.*



## 5. Child Marriage (Articles 16, 2)

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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.

### *JAMAICA’S LEGISLATIVE PROVISIONS: MARRIAGE UNDER 18 IS LEGAL WITH PARENTAL CONSENT*

Based on our review, Jamaica’s *Marriage Act* establishes a general minimum age of marriage of 18 years for girls and boys. However, the law also allows both girls and boys to be married as young as 16 years old with parental consent.

#### ***Marriage Act***

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*(2) A marriage solemnized between persons either of whom is under the age of sixteen years shall be void.*

*24. Persons who have reached the age of eighteen years of age and widowers or widows may marry without the consent of others.*

*Where a person under eighteen years of age not being a widower or widow intends to marry, the father, or if the father is dead the lawful guardian or guardians, or if there is no such guardian the mother, if unmarried, of such person shall have authority to consent to the marriage of such person, and such consent is hereby required unless there is no person authorized to give it resident in this Island.*

*(...)*



## REFERENCE SHEET (JAMAICA)

### RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

*Information for the Committee on the Elimination of Discrimination against Women  
79<sup>th</sup> Pre-Session Working Group, November 2020*

#### **We hope the Committee will:**

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*Non-discrimination in Work and Employment (Article 11): Limited Prohibitions of Workplace  
Discrimination Based on Sex and Gender*

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- In its list of issues, ask Jamaica: Can Jamaica demonstrate whether sufficient legislation exists protecting women from discrimination at work in hiring, vocational training, promotions/demotions and terminations?
  - If sufficient protections do not exist in these areas, recommend in its concluding observations that Jamaica pass and implement legislation that explicitly protects women from discrimination at work in hiring, vocational training, promotions/demotions and terminations, possibly as part of its review of the *Employment (Equal Pay for Men and Women) Act* described in Jamaica's eighth periodic report, paragraph 94.

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*Sexual Harassment in Work and Employment (General Recommendation 12): Missing Explicit  
Legislative Prohibitions of Workplace Sexual Harassment*

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- In its list of issues, ask Jamaica: Can Jamaica outline any concrete, near-term plans to pass legislation that explicitly prohibits workplace sexual harassment and includes the following key elements?
  - An explicit prohibition of sexual harassment that extends to anyone in the workplace, including supervisors, co-workers, and third parties, such as customers, clients, or contractors;
  - A clear definition of sexual harassment behaviors, including quid pro quo, conduct that creates a hostile work environment, and sex-based harassment;
  - A prohibition of retaliatory action against persons who report cases of workplace sexual harassment;
  - An effective and inclusive reporting process that ensures all women, regardless of income or social status, have legal recourse.





- If concrete, near-term plans are not in place, recommend in its concluding observations that Jamaica pass and implement legislation that explicitly develops a comprehensive anti-sexual harassment law which includes all elements listed above.

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*Paid Maternity and Paternity Leave (Articles 11, 5): Need to Strengthen Paid Maternity and Paternity Leave*

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- In its concluding observations, recommend that Jamaica increase the duration of paid maternity leave to at least 14 weeks, consistent with widely accepted standards set and endorsed by global institutions such as the ILO and UNICEF.
- In its list of issues, ask Jamaica: Can Jamaica outline any concrete, near-term plans to pass legislation that provides paid paternity leave to fathers?
  - If Jamaica does not have concrete, near-term plans to provide paid paternity leave to fathers, recommend in its concluding observations that Jamaica pass and implement legislation that does so.

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*Child Marriage (Articles 16, 2): Marriage under 18 is Legal with Parental Consent*

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- In its list of issues, ask Jamaica: Does Jamaica have near-term plans to pass and implement legislation to protect girls under the age of 18 from early marriage by eliminating the loophole allowing early marriage from the age of 16 with parental consent?
  - If Jamaica does not have near-term plans in place, recommend in its concluding observations that Jamaica pass and implement legislation that establishes a minimum age for marriage with and without parental consent of 18 years old for both girls and boys.