

Senegal: A Brief on the Implementation of CEDAW Commitments from

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

For the Committee on the Elimination of Discrimination against Women

77th Pre-Session Working Group, March 2020

TABLE OF CONTENTS

Table of Contents

Introduction	1
Detail of Constitutional and Legislative Findings	2
Equality and Non-Discrimination in the Constitution	2
Non-Discrimination in Work and Employment	3
Sexual Harassment in Work and Employment	4
Paid Maternity and Paternity Leave	5
Child Marriage	6
Recommended Questions for List of Issues and Concluding Observations	7
Equality and Non-Discrimination in the Constitution	7
Non-Discrimination in Work and Employment	7
Sexual Harassment in Work and Employment	8
Paid Maternity and Paternity Leave	8
Child Marriage	9



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 77th Pre-Sessional Working Group of the Committee on the Elimination of Discrimination against Women.

This brief will focus on the following five areas:

1. Prohibition of Discrimination in Constitutions (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.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. 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 Senegal, as well as topics to be addressed by the Committee in their concluding observations. We hope the Committee will recommend that Senegal address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations.



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

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”.

Constitutions state the values of a country and 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.

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.

SENEGAL'S CONSTITUTIONAL PROVISIONS

Based on our review, the constitution of Senegal takes multiple approaches to guaranteeing equality to women. Article 1 **guarantees equality before the law to all citizens regardless of sex**, while Article 7 further reiterates that **men and women are equal before the law**.

Article 1

La République du Sénégal est laïque, démocratique et sociale. Elle assure l'égalité devant la loi de tous les citoyens, sans distinction d'origine, de race, de sexe, de religion. Elle respecte toutes les croyances.

Article 7

La personne humaine est sacrée. Elle est inviolable. L'Etat a l'obligation de la respecter et de la protéger.

Tout individu a droit à la vie, à la liberté, à la sécurité, au libre développement de sa personnalité, à l'intégrité corporelle notamment à la protection contre toutes mutilations physiques.

Le peuple sénégalais reconnaît l'existence des droits de l'homme inviolables et inaliénables comme base de toute communauté humaine, de la paix et de la justice dans le monde.

Tous les êtres humains sont égaux devant la loi. Les hommes et les femmes sont égaux en



droit.

Il n'y a au Sénégal ni sujet, ni privilège de lieu de naissance, de personne ou de famille.

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

Article 11.1 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:

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) 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;

(d) 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;

We systematically reviewed national labor codes, gender equality, and other relevant legislation available through the International Labor 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.

SENEGAL'S LEGISLATIVE PROVISIONS

Based on our review, Senegal's *Code du Travail* explicitly protects women from discrimination at work in employment opportunities and hiring in Article L.1. Article L.105 also guarantees equal pay for equal work, but does not have the stronger guarantee of equal pay for work of equal value in place. We did not identify any provisions to protect women from discrimination in vocational training, promotions



or demotions, or terminations. Furthermore, we did not identify any provisions protecting women from retaliatory action for reporting discrimination in Senegal. Lastly, we found no explicit legislative provisions protecting from discrimination based on marital, pregnancy, or family status.

*Art.L.1.- Le droit au travail est reconnu à chaque citoyen comme un droit sacré. L'Etat met tout en oeuvre pour l'aider à trouver un emploi et à le conserver lorsqu'il l'a obtenu.
L'Etat assure l'égalité de chance et de traitement des citoyens en ce qui concerne l'accès à la formation professionnelle et à l'emploi, sans distinction d'origine, de race, de sexe et de religion.
[...]*

Art.L.105.- A conditions égales de travail, de qualification professionnelle et de rendement, le salaire est égal pour tous les travailleurs, quels que soient leur origine, leur sexe, leur âge et leur statu. Aucun salaire n'est dû en cas d'absence en dehors des cas prévus par la réglementation, les conventions collectives ou les accords des parties.

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

General Recommendation 12 states that:

*The Committee on the Elimination of Discrimination against Women, Considering that articles 2, 5, 11, 12 and 16 of the Convention **require the States parties to act to protect women against violence of any kind occurring** within the family, **at the work place** or in any other area of social life, (...) Recommends to the States parties that they should include in their periodic reports to the Committee information about:*

- 1. The legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, **sexual harassment at the work place** etc.);*

We systematically reviewed national labor codes, penal codes, equal opportunity, and other relevant legislation available through the International Labor 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?

SENEGAL'S LEGISLATIVE PROVISIONS

Our systematic review of national legislation only identified provisions to protect women from sexual harassment at work through the *Penal Code*, which **generally prohibits sexual harassment by anyone abusing their position of authority**. The *Penal Code* does not provide any further details around this prohibition. Mainly, **it fails to include a clear definition of sexual harassment that protects women**



from conduct that creates a hostile work environment and sex-based harassment. We further did not find any provisions that would protect women from sexual harassment by colleagues or third-parties, or protect women from retaliatory action after reporting workplace sexual harassment.

Article 319 bis

Le fait de harceler autrui en usant d'ordres, de gestes, de menaces, de paroles, d'écrits ou de contraintes dans le but d'obtenir des faveurs de nature sexuelle, par une personne abusant de l'autorité que lui confèrent ses fonctions sera puni d'un emprisonnement de six mois à trois ans et d'une amende de 50.000 à 500.000 francs.

Lorsque la victime de l'infraction est âgée de moins de 16 ans, le maximum de la peine d'emprisonnement sera prononcée.

4. Paid Maternity and Paternity Leave (Article 11.2, Article 5.b)

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 Labor 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.

SENEGAL'S LEGISLATIVE PROVISIONS

Based on our systematic review of legislation and country reports, the *Code du Travail* of Senegal (Article 143) provides **14 weeks of paid maternity leave** to working mothers, during which the employment contract cannot be terminated. We found **no provisions granting paid paternity leave** to working fathers.



5. Child Marriage (Article 16.2, Article 2.a)

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 Labor Organization’s NATLEX database, regional sources, and official country websites.

SENEGAL’S LEGISLATIVE PROVISIONS

Based on our review, the *Family Code* of Senegal legally allows **girls to be married as young as 16 with parental consent**. For boys, the minimum age of marriage is 18 years old. **Children younger than this are able to marry for serious reasons (“*motif grave*”) and with court approval**, as specified in Article 111.

Article 108

Consentement des époux

Chacun des futurs époux, même mineur, doit consentir personnellement au mariage.

Toutefois lorsque la forme de mariage adoptée ne comporte pas la comparution en personne de l’un ou de l’autre des futurs époux au moment de sa conclusion, ils peuvent se faire représenter par mandataire, pourvu que les formalités des articles 126 et 127 aient été préalablement respectées.

Article 109

Consentement des parents

Le mineur ne peut contracter mariage sans le consentement de la personne qui exerce la puissance paternelle à son égard.

Ce consentement doit comporter la désignation des deux futurs conjoints. Il est donné soit par la déclaration faite devant un officier de l’état civil, devant un juge de paix ou devant un notaire antérieurement à la célébration du mariage, soit verbalement lors de cette célébration même. Tout parent peut saisir le juge de paix du lieu de célébration du mariage s’il estime que le refus de consentement est basé sur des motifs non conformes à l’intérêt du mineur. Après avoir régulièrement convoqué dans le délai d’ajournement la personne qui refuse son consentement, celle par qui il a été saisi du recours et toute autre personne dont l’audition lui semblerait utile, le juge de paix statue par ordonnance non susceptible de voies de recours pour maintenir le refus



opposé ou au contraire autoriser la célébration du mariage. La procédure se déroule dans le cabinet du juge, en audience non publique, même pour le prononcé de l'ordonnance.

Paragraphe II – Conditions particulières à chacun des époux

Article 111

Sexe et âge

Le mariage ne peut être contracté qu'entre un homme âgé de plus de 18 ans et une femme âgée de plus de 16 ans sauf dispense d'âge accordée pour motif grave par le Président du tribunal régional après enquête.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

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

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

Non-discrimination in Work and Employment (Article 11)

- In its list of issues, ask Senegal:
 - Can Senegal demonstrate whether sufficient legislation exists explicitly protecting women from discrimination at work in vocational training, promotions and demotions, and terminations?
 - If sufficient protections do not exist in these areas, recommend in its concluding observations that Senegal pass and implement legislation that explicitly protects women from discrimination at work in vocational training, promotions and demotions, and terminations.
 - Can Senegal demonstrate whether sufficient protections exist to protect women from retaliatory action when reporting discrimination at work?
 - If sufficient protections do not exist in this area, recommend in its concluding observations that Senegal pass and implement legislation that explicitly protects women from retaliatory action when reporting discrimination at work.
 - Can Senegal demonstrate whether sufficient protections exist to protect women from discrimination at work based on marital, pregnancy, or family status?



- If sufficient protections do not exist, recommend in its concluding observations that Senegal pass and implement legislation that strengthens its protections for working mothers by prohibiting discrimination on the basis of marital, pregnancy, and family status.

Sexual Harassment in Work and Employment (General Recommendation 12)

- In its list of issues, ask Senegal: Can Senegal 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 actions 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 Senegal pass and implement legislation that explicitly develops a comprehensive anti-sexual harassment law which includes all elements listed above.

Paid Maternity and Paternity Leave (Articles 11, 5)

- In its list of issues, ask Senegal: Can Senegal demonstrate how paid maternity leave provisions are being implemented to be inclusive of all female workers, including part-time or self-employed women, as well as women working within the informal economy?
 - If Senegal is not fully implementing these guarantees to be inclusive of all female workers, recommend in its concluding observations that Senegal develop a specific plan for fully and effectively expanding these guarantees to do so.
- In its list of issues, ask Senegal: Can Senegal outline any concrete, near-term plans to pass legislation that provides paid paternity leave to fathers?
 - If Senegal does not have concrete, near-term plans to provide paid paternity leave to fathers, recommend in its concluding observations that Senegal pass and implement legislation that does so.

Child Marriage (Articles 16, 2)



- In its list of issues, ask Senegal: Can Senegal outline any concrete, near-term plans to pass legislation that establishes a minimum age for marriage of 18 years old for both girls and boys under all circumstances?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Senegal pass and implement legislation that establishes a minimum age for marriage of 18 years old for both girls and boys, with no exceptions.
 - In its concluding observations, also recommend that Senegal work to address gender differences in the law that give boys more protection from early marriage than girls, and to ensure that girls' protections are raised.