



SENEGAL

Submission to the Committee on the Rights of the Child

95th Pre-Sessional Working Group, May 2023

NGO Report

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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 95th Pre-Sessional Working Group of the Committee on the Rights of the Child.

This brief will focus on the following areas:

- General Principles: **Equality and Non-Discrimination**
- Special Protection Measures: **Education, Leisure and Cultural Activities**
- Special Protection Measures: **Child Marriage**

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 first provide a summary of our constitutional and legislative findings, as well as suggested questions for the Committee to ask Senegal, and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed constitutional and legislative excerpts documenting our findings. We hope the Committee will recommend that Senegal 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 Senegal for having provisions in place, we hope the Committee will recommend that Senegal work with stakeholders to overcome any obstacles in implementing these provisions.



SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. General Principles: Equality and Non-Discrimination (Article 2)

Senegal's constitution guarantees equality before the law to all citizens, irrespective of race, sex, religion, and origin. These protections do not, however, include some of the groups included in Article 2.1 of the Convention, including children facing discrimination based on language, political or other opinion, property, disability, or birth status.

RECOMMENDED CONCLUDING OBSERVATION

We hope the Committee will:

- Recommend in its concluding observations that Senegal amend its constitution to add explicit guarantees of equality and non-discrimination regardless of language, political or other opinion, property, disability, and birth status, consistent with CRC commitments. These guarantees could be added to Article 1 of the constitution, which already guarantees equality before the law based on other personal and social characteristics.

2. Special Protection Measures: Education, Leisure and Cultural Activities (Articles 23, 28)

Based on our research, Senegal's legislation guarantees free education for children and adolescents with disabilities throughout the education system, and further guarantees their attendance at regular schools insofar as is possible. However, our systematic review of Senegal's laws did not find any guarantee of non-discrimination for students with disabilities once they are in school.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Senegal: Can Senegal confirm whether students with disabilities are explicitly protected from discrimination in school, either through the *Loi d'orientation sociale relative à la promotion et à la protection des droits des personnes handicapées* or through alternative laws or policies?
 - If Senegal cannot, recommend in its concluding observations that Senegal develop concrete, near-term plans to pass or amend legislation that explicitly protects students with disabilities from discrimination in school.



3. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)

Based on our research, boys and girls can marry at any age if they have parental consent and court approval. Moreover, girls can marry at 16 or 17 with parental consent alone. As of the latest available data from the Demographic and Health Surveys (2019), 31% of women aged 20-24 in 2019 had been married before age 18.

Our review of legislation also shows that Senegal is in the process of updating its family code, to review and eliminate all discriminatory provisions towards women and girls. We are encouraged by the country's commitment to revisions as detailed in paragraph 82 of the State Party Report but more information is needed about whether child marriage will be adequately addressed.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Senegal: Can Senegal update the Committee on its current efforts to amend the relevant articles of the *Code de la famille*, as outlined in paragraph 82 of the State Party Report?
 - Further ask Senegal: do the revisions to the *Code de la famille* specifically prohibit marriage before the age of 18, regardless of gender and without exceptions, notably parental consent?
 - If the revisions do raise the minimum age of marriage to 18 regardless of gender and without exceptions, recommend in its concluding observations that Senegal pass this legislation soon; if the revisions do not include these essential elements, recommend in its concluding observations that Senegal pass and implement legislation that protects children under the age of 18 from early marriage without exceptions.

DETAIL OF CONSTITUTIONAL AND 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. General Principles: Equality and Non-Discrimination (Article 2)

Article 2.1 of the Convention states that:



States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Constitutions state the values of a country, outlining the rights of people living within the country and profoundly influencing norms and practices. 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 took any approach to equality across the grounds listed in article 2.1 of the CRC by prohibiting discrimination based on each specific status, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

SENEGAL'S CONSTITUTIONAL PROVISIONS: MISSING EXPLICIT GUARANTEES OF EQUALITY AND NON-DISCRIMINATION ON THE BASIS OF LANGUAGE, POLITICAL OPINION, PROPERTY, DISABILITY, AND BIRTH STATUS.

Article 1 of Senegal's constitution guarantees equality before the law to all citizens without distinction of race, sex, religion and origin. Article 7 further reinforces the equality before the law of all human beings, as well as specifically between men and women.

Constitution of the Republic of Senegal, as amended to 2019

Article premier. - 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. – [...].

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

[...]

There are, however, some groups guaranteed equality in Article 2.1 of the Convention that are not explicitly included in these provisions, including children facing discrimination based on language, political or other opinion, property, disability, or birth status.

2. Special Protection Measures: Education, Leisure and Cultural Activities (Articles 23, 28)

Article 28.1 of the CRC recognizes a child’s right to education, and specifically outlines that States Parties “make primary education compulsory and available free to all”. In addition, Article 23.3 of the CRC recognizes the rights and special needs of children with disabilities, and in particular, encourages States Parties to design assistance policies which “ensure that the disabled child has effective access to and receives education”.

For all 193 UN member states, we systematically reviewed education acts, child protection laws, and anti-discrimination legislation available online through UNESCO’s Observatory on the Right to Education Library and International Labour Organization’s NATLEX database. Through the review, we determined whether national legislation or supplementary policy documents guaranteed free and compulsory primary education. Our review also determined whether national legislation guaranteed non-discrimination in education based on disability, and whether legislative provisions guaranteed individualized accommodations and supports to enable students with disabilities to succeed in school alongside their peers and advance inclusion.

SENEGAL’S LEGISLATIVE PROVISIONS: LACKING GUARANTEES OF NON-DISCRIMINATION FOR CHILDREN WITH DISABILITIES

Senegal’s legislation for persons with disabilities guarantees free education for children and adolescents with disabilities throughout the education system, and guarantees their attendance at regular schools insofar as is possible.

Loi d’orientation sociale n° 2010-15 du 6 juillet 2010 relative à la promotion et à la protection des droits des personnes handicapées.

Art. 15. - L’État garantit le droit à l’éducation, l’enseignement, la formation et l’emploi pour les personnes handicapées.

Les enfants et adolescents handicapés ont droit à une éducation gratuite en milieu ordinaire autant que possible dans les établissements proches de leur domicile.

[...]

While we commend Senegal for these guarantees of integration for children and adolescents with disabilities, **our systematic review of Senegal’s legislation did not find any guarantees of non-discrimination for students with disabilities once they are in school.**

3. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)

General Comment No. 4 (2003) states that:

The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.

Child marriage has life-long health, educational, and economic consequences. For girls in particular, child brides are more likely to drop out of school, be victims of domestic abuse, and experience pregnancy and childbirth complications due to early childbearing, all of which affect core rights of the Convention, specifically the right to protection from violence (Article 19), the right to health (Article 24), the right to education (Article 28), and the right to protection from sexual exploitation and abuse (Article 34).

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, Pacific Islands Legal Information Institute, Asian Legal Information Institute, JaFBASE, and official country websites.

SENEGAL’S LEGISLATIVE PROVISIONS: MARRIAGE POSSIBLE AT ANY AGE AFTER TAKING ALL EXCEPTIONS INTO ACCOUNT

Senegal’s family code has different marriage requisites for boys and girls. Boys and girls can marry at any age if they have parental consent and court approval. Moreover, girls can marry at 16 or 17 with parental consent alone.

Code de la famille, 2000

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.

[...]

*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.

2019 data from the Demographic and Health Surveys indicated that child marriage remains a significant concern in Senegal; at the time of survey, 31% of women aged 20 to 24 had been married before age 18.¹ The State Party Report outlines in paragraph 82 a current legislative process to amend article 111 of the *Code de la famille*, above; however, as of the time of writing, this process has not concluded and thus it remains an active issue.

BRIEFING PREPARED BY THE WORLD POLICY ANALYSIS CENTER, UNIVERSITY OF CALIFORNIA, LOS ANGELES

¹Data compiled by UNICEF – Child Marriage. Retrieved January 24, 2023 from <https://data.unicef.org/topic/child-protection/child-marriage/>