

# BOTSWANA

## A BRIEF ON NON-DISCRIMINATION IN WORK AND EMPLOYMENT, SEXUAL HARASSMENT IN WORK AND EMPLOYMENT, PAID MATERNITY AND PATERNITY LEAVE, CHILD MARRIAGE, AND DISCRIMINATION AND SEXUAL HARASSMENT IN EDUCATION

(CEDAW ARTICLES 2, 5, 10, 11, 16 AND GENERAL  
RECOMMENDATIONS 12 AND 36)

*Information for the Committee on the Elimination of Discrimination Against Women  
90<sup>th</sup> Pre-Sessional Working Group, June 2024*

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**TABLE OF CONTENTS**

**INTRODUCTION** .....2

**Summary of Findings and Recommendations**.....3

1. Non-Discrimination in Work and Employment (Article 11) .....3

2. Sexual Harassment in Work and Employment (General Recommendation No. 12).....3

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

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

5. Discrimination and Sexual Harassment in Education (Article 10, General Recommendation 36) .....6

**Detail of Constitutional and Legislative Findings** .....7

1. Non-Discrimination in Work and Employment (Article 11) .....7

2. Sexual Harassment in Work and Employment (General Recommendation No. 12).....8

3. Paid Maternity and Paternity Leave (Articles 11, 5) .....9

4. Child Marriage (Articles 16, 2).....10

5. Discrimination and Sexual Harassment in Education (Article 10, General Recommendation 36) .....11



## INTRODUCTION

The WORLD Policy Analysis Center, based at the University of California, Los Angeles, captures quantitative policy data on more than 2,500 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 90<sup>th</sup> Pre-Sessional Working Group of the Committee on the Elimination of Discrimination against Women.

This brief will focus on the following areas:

1. Non-discrimination in Work and Employment (Article 11)
2. Sexual Harassment in Work and Employment (General Recommendation 12)
3. Paid Maternity and Paternity Leave (Articles 11, 5)
4. Child Marriage (Articles 16, 2)
5. Discrimination and Sexual Harassment in Education (Article 10, General Recommendation 36)

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 available information on the current constitutional and legal landscape of a country.



## SUMMARY OF FINDINGS AND RECOMMENDATIONS

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

Our review of Botswana’s legislation identified narrow protections against terminations on the basis of gender and marital status, as well as a prohibition of retaliatory dismissal for bringing forward workplace discrimination claims. We found no provisions on discrimination in areas of work other than terminations, no protections on the basis of pregnancy and family status, and no protections against indirect discrimination.

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

##### We hope the Committee will:

- In its list of issues, ask Botswana: Can Botswana outline any concrete, near-term plans to pass legislation that explicitly prohibits **sex-based discrimination** in hiring, remuneration training, and promotions and demotions?
  - If concrete, near-term plans are not in place, recommend in its concluding observations that Botswana pass and implement legislation that explicitly prohibits sex-based discrimination in hiring, remuneration, training, and promotions and demotions.
- In its list of issues, ask Botswana: can Botswana outline any concrete, near-term plans to pass legislation that **prohibits indirect discrimination at work** on the basis of gender **and comprehensively prohibits discrimination at work** -- in hiring, training, promotions and demotions, remuneration, and terminations – **on the basis of family status, marital status, and pregnancy**?
  - If concrete, near-term plans are not in place, recommend in its concluding observations that Botswana pass and implement legislation that enacts protections against indirect discrimination on the basis of gender and enacts protections against discrimination on the basis of family status, marital status, and pregnancy and in all of the areas cited above.

### 2. Sexual Harassment in Work and Employment (General Recommendation No. 12)

Our research found no provision on sexual harassment in the workplace in Botswana.



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

**We hope the Committee will:**

- In its list of issues, ask Botswana: can Botswana outline any concrete, near-term plans to pass legislation that **prohibits sexual harassment at work**?
  - If concrete, near-term plans are not in place, recommend in its concluding observations that Botswana pass and implement legislation that enacts protections against sexual harassment at work.
    - Further recommend that Botswana include in this legislation the most relevant elements of a comprehensive anti-sexual harassment law:
      - a definition of sexual harassment that includes both quid pro quo and the creation of a hostile work environment;
      - the inclusion of sex-based harassment as well as sexual-behavior based harassment;
      - protections for workers from harassment by co-workers and other actors in the workplace, as well as supervisors; and
      - protections against retaliatory action for reporting sexual harassment.

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

According to our review of labor legislation, and as described in the State Party report, women in Botswana are granted 12 weeks of maternity leave. There is, however, no statutory provision on paternity leave. Botswana claims in the State Party report that discussions are underway to increase its maternity leave entitlement to 14 weeks, consistent with international standards set by the International Labour Organization and others.



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

**We hope the Committee will:**

- In its list of issues, ask Botswana: Can Botswana clarify the process and timelines of its proposed expansion of maternity leave to 14 weeks?
  - If there are no concrete, near-term plans to implement this expansion, recommend in its concluding observations that Botswana increase the duration of paid maternity leave to at least 14 weeks.
- In its list of issues, ask Botswana: Can Botswana provide any concrete, near-term plans to pass a statutory entitlement to paternity leave?
  - If Botswana does not have any concrete, near-term plans to pass this legislation, recommend in its concluding observations that Botswana pass and implement legislation that provides paternity leave to new fathers that is sufficient in duration and wage replacement rate to support gender equality in care.

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

Our review of Botswana’s marriage laws found that, while marriage under 18 is generally prohibited, customary and religious marriages are exempted from this requirement.

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

**We hope the Committee will:**

- In its list of issues, ask Botswana: does Botswana have any concrete, near-term plans to amend its Marriage Act to eliminate all remaining exceptions to marriage before the age of 18?
  - If Botswana does not have concrete, near-term plans, recommend in its concluding observations that Botswana pass legislation that establishes 18 years as the minimum age for marriage without any exceptions.
- In its list of issues, ask Botswana: given the dearth of reliable statistics to evaluate the prevalence of child marriage, can Botswana provide statistics on underage marriages in the country, disaggregated by sex and age?
  - If updated statistics are not available, recommend in its concluding observations that Botswana begin collecting and reporting statistics on age of marriage, disaggregated by sex.



## 5. Discrimination and Sexual Harassment in Education (Article 10, General Recommendation 36)

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Our research shows that Botswana prohibits gender discrimination in education, but does not explicitly protect girls and women in education from sexual harassment.

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

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

- In its list of issues, ask Botswana: can Botswana outline any concrete, near-term plans to pass legislation explicitly focused on sexual harassment in education?
  - If concrete, near-term plans are not in place, recommend that Botswana pass and implement legal provisions that prohibit sexual harassment in educational settings.
    - Further recommend that Botswana include in these provisions the most relevant elements of sexual harassment:
      - a definition of sexual harassment that includes both quid pro quo and the creation of a hostile school environment; and
      - protections for students from harassment by fellow students, teachers, and other actors in education.



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

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 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
- training
- 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 also examined whether there were explicit protections from discrimination in terminations on the grounds of pregnancy and marital status, in line with Article 11.2.a) of the Convention, which prohibits “dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status”. We further examined whether explicit protections from terminations on the basis of family status were in place, because of the intersection of family status with both marital status and pregnancy.

Finally, although the Convention focuses only on protecting from dismissal on these grounds, we nevertheless further examined whether discrimination on the grounds of pregnancy, marital status, or family status was prohibited in other stages of employment because of the centrality of these protections in preventing gender discrimination at work.

#### *BOTSWANA’S LEGISLATIVE PROVISIONS: PROTECTIONS AGAINST WORKPLACE DISCRIMINATION ARE LIMITED*

Botswana’s Employment Act narrowly protects against discrimination in terminations on the basis of gender and marital status. The same article prohibits the termination of employees in retaliation for bringing forward claims of workplace discrimination.

*1982 Employment Act (amended to 2010)*





*23. Restriction of grounds on which employers may terminate contracts of employment*

*Notwithstanding anything contained in a contract of employment, an employer shall not terminate the contract of employment on the ground of-*

*(...)*

*c) the employee making, in good faith, a complaint or participating in proceedings against the employer involving the alleged violation of any law;*

*d) the employee's race, tribe, place of origin, social origin, marital status, gender, sexual orientation, color, creed, health status or disability; or*

*e) any other reason which does not affect the employee's ability to perform that employee's duties under the contract of employment.*

Our research found no provisions that prohibit discrimination in hiring, remuneration, training, and promotions and/or demotions. We also found no provisions on indirect discrimination. We found no further protections against discrimination on the basis of marital status, and we found no protections at all against discrimination on the basis of pregnancy or family status.

A summary of these findings is presented in Table 1.

<b>Table 1: Does Botswana have legislative provisions in place explicitly guaranteeing non-discrimination for women in the following key areas of employment?</b>	
Employment opportunities and hiring	No provisions found
Equal pay for work of equal value	No provisions found
Training	No provisions found
Promotions and/or demotions	No provisions found
Terminations	Yes
Discrimination on the basis of marital status, family status, and pregnancy	Only prohibition of terminations and only on the basis of marital status
Indirect discrimination	No provisions found
Retaliatory action	Yes

## 2. Sexual Harassment in Work and Employment (General Recommendation No. 12)

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 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?

*BOTSWANA’S LEGISLATIVE PROVISIONS: NO WORKPLACE PROTECTIONS AGAINST SEXUAL HARASSMENT*

According to our research Botswanan law contains no provisions on sexual harassment in the workplace.

### 3. 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.*

Research evidence indicates that paid paternity leave can increase gender equality in caregiving responsibilities and gender equality in employment; laws that do not include paternity leave of sufficient length and wage replacement reinforce inequality.

We systematically reviewed national labor codes and social security laws to assess the availability of paid maternity and paternity leave.

*BOTSWANA’S LEGISLATIVE PROVISIONS: SHORT MATERNITY LEAVE, AND NO PATERNITY LEAVE*

As described in more detail in paragraph 126 of the State Party report, women in Botswana are granted 12 weeks of maternity leave, half to be taken immediately before the expected delivery date and half immediately after delivery; employers are legally entitled to require



women to come back to work as soon as six weeks after birth. Our research shows that Botswana has no statutory entitlement to paternity leave.

*1982 Employment Act (amended to 2010)*

*113. Absence from work in connection with confinement and maternity allowance*

*(1) A female employee shall give notice to her employer of her confinement by delivering to him a written certificate signed by a medical officer or a registered nurse and midwife certifying his opinion that the employee's confinement will probably take place within six weeks immediately after the date of the certificate.*

*(2) On receipt of the notice under subsection (1), the employer shall immediately permit the female employee in question to absent herself from work until her confinement and thereafter he shall not permit or require her to return to work until the expiry of six weeks immediately after her confinement.*

Paragraph 126 of the State Party report mentions that labor laws are “under review”, and an increase to 14 weeks of maternity leave has been proposed; however, we have found no confirmation that this increase has become law.

#### 4. 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.

*BOTSWANA’S LEGISLATIVE PROVISIONS: UNDERAGE MARRIAGE PROHIBITED, BUT CUSTOMARY AND RELIGIOUS MARRIAGES EXEMPTED.*

Botswana’s Marriage Act sets a minimum age of 18 to marry, and even requires those over 18 but under 21 to obtain parental consent to the marriage. However, marriages contracted under customary or religious law are exempted from these provisions. Further, we could find no reliable and recent statistics on underage marriage in the country.

*Botswana Marriage Act 2001*

*2. Application*



*This Part shall apply to all marriages solemnized in Botswana except marriages contracted in accordance with any customary law of Botswana or Muslim, Hindu or other religious rites.*

*14. Insane person and persons below age*

*No insane person who is incapable of giving consent to a marriage and no person below the age of 18 years may marry.*

*15. Consent to marriage by minors*

*No minor or person below the age of 21 years not being a widower or widow may marry without the consent in writing of his or her parents or guardians:*

*(...)*

## 5. [Discrimination and Sexual Harassment in Education \(Article 10, General Recommendation 36\)](#)

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Article 10 of the Convention calls on States Parties to “eliminate discrimination against women in order to ensure to them equal rights with men in the field of education”, and Paragraph 69(a) of General Recommendation 36 calls on countries to:

*Enact and enforce appropriate laws, policies and procedures to prohibit and tackle violence against girls and women in and around educational institutions, including verbal and emotional abuse, stalking, sexual harassment and sexual violence, physical violence and exploitation;*

We systematically reviewed education laws, penal codes, equal opportunity, and other relevant legislation for all 193 UN member states to determine whether national legislation prohibited both discrimination and sexual harassment in education. We further examined whether protections from sexual harassment at school 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 environment;
- include sex-based harassment as well as sexual-behavior based harassment; and
- protect students from harassment by other students and by teachers, as well as by other actors in the education system.

### *BOTSWANA’S LEGISLATIVE PROVISIONS: GENDER DISCRIMINATION IN EDUCATION IS PROHIBITED, BUT SEXUAL HARASSMENT IS NOT*

Botswana’s Children’s Act prohibits discrimination on the basis of sex, affirms a child’s right to free basic education, and commits the government to providing all services without discrimination.

*Children's Act (2009)*

*7. The following principles shall be observed in the administration of this Act –*

*(...)*



*(a) no decision or action shall be taken whose result or likelihood is to discriminate against any child on the basis of sex, family, colour, race, ethnicity, place of origin, language, religion, economic status, parents, physical or mental status, or any other status;*

*(...)*

*8. (1) Every child has a right to free basic education.*

*32. (1) Every service provider, including Government, shall discharge its duties to children and to the communities they live in with diligence, fairness, respect for people's dignity and worth, and without discrimination or being swayed by personal interest.*

However, our research found no provisions on sexual harassment in education.

