

LESOTHO

A BRIEF ON NON-DISCRIMINATION 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
RECOMMENDATION 36)

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

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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 2,500 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 90th 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. Paid Maternity and Paternity Leave (Articles 11, 5)
3. Child Marriage (Articles 16, 2)
4. 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)

Lesotho's Labour Code broadly prohibits discrimination in work on the basis of sex and marital status, and prohibits discrimination in most aspects of work for these two groups – with the exception of promotions and demotions. The law more narrowly protects against terminations on the basis of pregnancy and family status. We did not identify any protections against indirect discrimination, but retaliatory action against workers that bring claims of workplace discrimination is prohibited.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Lesotho: can Lesotho confirm whether the Labour Code's broad protection against discrimination on the basis of sex has been interpreted, through case law or otherwise, to apply to discrimination in promotions and/or demotions?
 - If Lesotho cannot confirm this application of existing law, can Lesotho outline any concrete, near-term plans to pass new legislation that explicitly prohibits **sex-based discrimination** in promotions and demotions?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Lesotho pass and implement legislation that explicitly prohibits sex-based discrimination in promotions and demotions.
- In its list of issues, ask Lesotho: can Lesotho outline any concrete, near-term plans to pass legislation that **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 Lesotho pass and implement legislation that enacts protections against discrimination on the basis of family status, marital status, and pregnancy in all of the dimensions cited above.
- In its list of issues, ask Lesotho: can Lesotho outline any concrete, near-term plans to pass legislation that **prohibits indirect discrimination at work** on the basis of sex?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Lesotho pass and implement legislation that enacts protections against indirect discrimination on the basis of sex.



2. 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 Lesotho are granted 12 weeks of maternity leave. We did not identify any statutory provisions on paternity leave.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Lesotho: Can Lesotho describe concrete, near-term plans to expand maternity leave to at least 14 weeks, consistent with widely accepted standards set and endorsed by global institutions such as the ILO and UNICEF?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Lesotho pass and implement legislation that increases the duration of paid maternity leave to at least 14 weeks.
- In its list of issues, ask Lesotho: Can Lesotho describe any concrete, near-term plans to pass a statutory entitlement to paternity leave?
 - If Lesotho does not have any concrete, near-term plans to pass this legislation, recommend in its concluding observations that Lesotho 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.

3. Child Marriage (Articles 16, 2)

Lesotho's Marriage Act does not allow marriage under the age of 21, except with parental consent. Boys under 18 and girls under 16 can marry if they obtain governmental permission and parental consent. However, customary marriages are exempted from all of these provisions. Lesotho notes in its State Party report that the Children Protection and Welfare Act of 2011 criminalizes child marriage, but this act does not explicitly override the Marriage Act's provisions on customary marriages, and does not otherwise address what happens when parents or the government consent to the marriage of a child. In 2018, child marriage rates remained high: 16.4% of women aged 20-24 at the time of survey had been married before age 18, and 13.9% of girls aged 15-19 were already married.



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Lesotho: does Lesotho have any concrete, near-term plans to amend its Marriage Act or otherwise harmonize it with the Children Protection and Welfare Act so that there are no remaining exceptions to marriage before the age of 18, including for customary marriages?
 - If Lesotho does not have concrete, near-term plans, recommend in its concluding observations that Lesotho ensure that all applicable legislation establishes 18 years as the minimum age for marriage without any exceptions.

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

Our research shows that Lesotho prohibits sex 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 Lesotho: can Lesotho 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 Lesotho pass and implement legal provisions that prohibit sexual harassment in educational settings.
 - Further recommend that Lesotho 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 sex discrimination at work.

LESOTHO’S LEGISLATIVE PROVISIONS: PROTECTIONS AGAINST WORKPLACE DISCRIMINATION EXIST BUT GAPS REMAIN

Lesotho’s Labour Code protects broadly against discrimination on the basis of sex and marital status, and also prohibits discrimination specifically in hiring, training and terminations. The same article mandates equal pay for work of equal value for men and women. The law additionally prohibits discriminatory dismissal on the basis of sex, marital status, pregnancy



and family status, and the same article also prohibits retaliatory dismissal for bringing forward claims of workplace discrimination.

Labour Code Order, 1992, amended to 2006

5. Non-discrimination

(1) The application by any person of any distinction, exclusion or preference made on the basis of race, colour, sex, marital status, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, is incompatible with the provisions of the Code.

(...)

(3) Men and women shall receive equal remuneration for work of equal value

(...)

(5) For the purposes of this section, the terms "employment" and "occupation" include access to vocational and other occupationally related training, access to employment and to particular occupations, retention of employment and any terms or conditions of employment.

66. Dismissal

(...)

(3) The following shall not constitute valid reasons for termination of employment

(...)

(c) the filing in good faith of a complaint or grievance, or the participation in a proceeding against an employer involving the alleged violation of the Code, other laws or regulations, or the terms of a collective agreement or award;

(d) race, colour, sex, marital status, pregnancy, family responsibilities, religion, political opinion, national extraction or social origin;

(...)

We found no provisions on discrimination in promotions or demotions on the basis of sex, marital status, pregnancy or family status. We also found no provisions on equal pay for work of equal value for any group except sex. We further found no provisions beyond terminations on the basis of pregnancy and family status, and we found no provisions on indirect discrimination.

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

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.

LESOTHO'S LEGISLATIVE PROVISIONS: SHORT MATERNITY LEAVE, AND NO PATERNITY LEAVE

Lesotho generally provides twelve weeks of maternity leave to employees, half to be taken immediately before the expected date of delivery and half immediately after delivery; employers are legally entitled to require women to come back to work as soon as six weeks after birth.

Labour Code Order of 1992, amended to 2000.

133. Absence from work in connection with confinement

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

(2) On receipt of notice under subsection (1), the employer shall immediately permit the female employee in question to absent herself from work until her confinement, and thereafter the employer shall not permit or require her to return to work until the expiry of six weeks immediately after her confinement. This period of absence shall be known as statutory maternity.

(...)

(4) Notwithstanding subsection (2), where a female employee delivers to her employer a written certificate signed by a medical officer or a registered nurse or midwife certifying his or her opinion that the employee is suffering from an illness arising out of her confinement and is consequently unfit to return to work, the employer shall not permit or require her to return to work until the expiry of eight weeks immediately after her confinement.

Our research shows that Lesotho has no statutory entitlement to paternity leave, as confirmed by Paragraph 102 of the State Party report.

3. Child Marriage (Articles 16, 2)

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.

LESOTHO’S LEGISLATIVE PROVISIONS: UNDERAGE MARRIAGE PERMITTED UNDER CERTAIN CONDITIONS, AND NO MINIMUM AGE FOR CUSTOMARY MARRIAGES

Lesotho’s Marriage Act does not allow the marriage of minors (majority in Lesotho is attained at age 21), except with parental consent. Boys under 18 and girls under 16 can marry, but require governmental permission and parental consent. These provisions do not apply to customary marriages; as described in Paragraph 144 of the State Party report, customary law does not set a minimum age for marriage.

Marriage Act 1974

25. (1) No marriage officer shall solemnize a marriage between parties of whom one or both are minors unless the consent of the party or parties which is legally required for the purpose of contracting the marriage has been granted and furnished to him in writing:

(...)

27. (1) No boy under the age of eighteen years and no girl under the age of sixteen years shall be capable of contracting a valid marriage except with the written permission of the Minister, which he may grant in any particular case in which he considers such marriage desirable:

(...)

42. This Act shall apply to all marriages solemnized in Lesotho save and except marriages contracted in accordance with Sesotho law and custom, and nothing herein contained shall be taken as in any manner affecting or casting doubts upon the validity of any such last-mentioned marriages contracted before or after the coming into operation of this Act.

While paragraph 145 of the State Party report notes the Children Protection and Welfare Act of 2011 criminalizes child marriage, this Act does not explicitly override the Marriage Act’s provisions on customary marriages, and does not otherwise address parental or government consent to the marriage of a child.. In 2018, well after the passage of the Children Protection and Welfare Act, child marriage rates remained high: 16.4% of women aged 20-24 at the time of survey had been married before age 18, and 13.9% of girls aged 15-19 were already married¹.

¹ All figures from UNICEF Data Warehouse – Child Marriage. Retrieved April 1, 2024 from https://data.unicef.org/resources/data_explorer/unicef/f/?ag=UNICEF&df=GLOBAL_DATAFLOW&ver=1.0&dq=PT_F_20-24_MRD_U15+PT_M_20-24_MRD_U18+PT_F_20-24_MRD_U18+PT_M_15-19_MRD+PT_F_15-19_MRD.&startPeriod=2016&endPeriod=2022



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

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;

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

Lesotho’s Children Protection and Welfare Act prohibits discrimination on the basis of gender and affirms a child’s right to access education; the country’s Higher Education Act prohibits gender discrimination in admissions. Our research did not, however, find any specific provisions on sexual harassment in education.

2011 Children Protection and Welfare Act

Non-discrimination

6. A child shall not be discriminated against on the grounds of gender, race, age, religion, disability, health status, language, custom, ethnic origin, rural or urban background, birth, socio-economic status, refugee status or other status.

Right to education and Health

11 (1) A child has a right to access education, adequate diet, clothing, shelter, medical attention, social services or any other service required for the child's development.

Higher Education Act, 2004



31. (2) The admission policy shall not discriminate with respect to admission of persons to the higher education public institution on the ground of race, nationality, gender, religion or political affiliation.

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