

KENYA
A BRIEF ON DISCRIMINATION IN WORK AND EMPLOYMENT,
PAID MATERNITY LEAVE AND PATERNITY LEAVE, AND CHILD
MARRIAGE
(CEDAW ARTICLES 2, 5, 10, 11, 16)

*Information for the Committee on the Elimination of Discrimination Against Women
92nd Pre-Sessional Working Group, February 2025*

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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 92nd 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)

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.

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



SUMMARY OF FINDINGS AND RECOMMENDATIONS

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

Kenya’s labor legislation prohibits discrimination on the basis of sex, pregnancy and marital status, and also mandates equal pay for work of equal value on these bases. It does not, however, extend these comprehensive protections to cover discrimination on the basis of family status, which is important for preventing discrimination against women caring for children and other family members. A summary of these protections is provided in Table 1.

Table 1. Guaranteed legal provisions of non-discrimination in Kenya across key areas of employment

	Sex	Marital Status	Family Status	Pregnancy
Hiring	✓	✓		✓
Promotions/demotions	✓	✓		✓
Vocational training	✓	✓		✓
Remuneration	✓	✓		✓
Terminations	✓	✓		✓
Equal pay for work of equal value	✓	✓		✓



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Kenya: can Kenya 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**?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Kenya pass and implement legislation that enacts protections against discrimination on the basis of family status in all of the aspects of work cited above. This could be done by amending article 5.3.a of the Employment Act, which already lists other protected groups and statuses.

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

Kenya's Employment Act guarantees only 12 weeks of paid maternity leave, below the 14-week minimum recommended by international institutions. The Act also guarantees 2 weeks of paid paternity leave.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Kenya: Can Kenya 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 Kenya pass and implement legislation that increases the duration of paid maternity leave to at least 14 weeks.
- In its list of issues, ask Kenya: Can Kenya describe concrete, near-term plans to expand paternity leave?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Kenya pass and implement legislation that increases the duration of paternity leave. Ensuring fathers' access to an adequate duration of paid paternity leave is foundational to increasing gender equality in caregiving responsibilities and gender equality in employment.



3. Child Marriage (Articles 16, 2)

The minimum age of marriage in Kenya is 18 for both boys and girls. Religious and customary marriages are explicitly mandated to respect this minimum age. The last recorded child marriage rates in Kenya are nevertheless high. As of 2022, 13% of women aged 20-24 at the time of survey had been married before age 18 and 2% had been married before age 15.¹

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Kenya: Can Kenya outline any concrete, near-term measures that it is taking to identify and resolve barriers to the effective implementation of its prohibition of child marriage?
 - If Kenya does not have plans for concrete near-term measures to identify and resolve these barriers, recommend in its concluding observations that Kenya develop a concrete, near-term plan to effectively reduce the rate of child marriage.

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. 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 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
- training
- promotions or demotions

¹ UNICEF data – Child Marriage. Retrieved November 7, 2024 from <https://data.unicef.org/topic/child-protection/child-marriage/>



- 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. Given the disproportionate role of women in caregiving, discrimination based on family status will have a greater impact on women.

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 from preventing sex discrimination at work, which the convention protects against more broadly.

KENYA’S LEGISLATIVE PROVISIONS: COMPREHENSIVE PROTECTION AGAINST WORKPLACE DISCRIMINATION ON THE BASIS OF SEX, PREGNANCY AND MARITAL STATUS, BUT NOT ON THE BASIS OF FAMILY STATUS.

Kenya’s labor legislation prohibits discrimination on the basis of sex, pregnancy and marital status, and mandates equal pay for work of equal value on these bases. It does not, however, extend these comprehensive protections to cover discrimination on the basis of family status.

2007 Employment Act (revised through 2022)

5. Discrimination in employment

(...)

(3) No employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee—

(a) on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, marital status or HIV status;

(b) in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment.

(...)

(5) An employer shall pay his employees equal remuneration for work of equal value.

(8) For the purposes of this section—



(...)

(c) an “employment policy or practice” includes any policy or practice relating to recruitment procedures, advertising and selection criteria, appointments and the appointment process, job classification and grading, remuneration, employment benefits and terms and conditions of employment, job assignments, the working environment and facilities, training and development, performance evaluation systems, promotion, transfer, demotion, termination of employment on disciplinary measures.

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; it is therefore important to ensure fathers have access to adequate paid paternity leave.

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.

KENYA’S LEGISLATIVE PROVISIONS: ONLY 12 WEEKS OF PAID LEAVE FOR MOTHERS, TWO WEEKS FOR NEW FATHERS

Kenya’s Employment Act guarantees only 12 weeks of maternity leave; the same act guarantees 2 weeks of paid paternity leave.



2007 Employment Act (revised through 2022)

29. (1) A female employee shall be entitled to three months maternity leave with full pay.

(...)

(8) A male employee shall be entitled to two weeks paternity leave with full pay.

(...)

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. 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.

KENYA’S LEGISLATIVE PROVISIONS: MARRIAGE FORBIDDEN BEFORE THE AGE OF 18, BUT THE PRACTICE PERSISTS

The legal minimum age of marriage in Kenya is 18 for both boys and girls. Religious and customary marriages are explicitly mandated to respect this minimum age.

Marriage Act, 2014

4. A person shall not marry unless that person has attained the age of eighteen years.

6. (1) A marriage may be registered under this Act if it is celebrated—

(a) in accordance with the rites of a Christian denomination;

(b) as a civil marriage;

(c) in accordance with the customary rites relating to any of the communities in Kenya;

(d) in accordance with the Hindu rites and ceremonies; and

(e) in accordance with Islamic law.

11. (1) A union is not a marriage if at the time of the making of the union—



(a) either party is below the minimum age for marriage;

The last recorded child marriage rates in Kenya are nevertheless quite high. As of 2022, 13% of women aged 20-24 at the time of survey had been married before age 18 and 2% had been married before age 15.²

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² UNICEF data – Child Marriage. Retrieved November 7, 2024 from <https://data.unicef.org/topic/child-protection/child-marriage/>