

Republic of Congo

1. Discriminatory family code

Note that in 2011, the government reported that it was considering reforms to its Family Code.¹

The Congolese Family Code (article 128) sets the **minimum legal age of marriage** at 18 years for women and 21 years for men.² In addition to the minimum age of marriage, the Family Code provides for “pre-marriage”, where a man and woman promise to marry each other. “Pre-marriage” provides for the possibility of cohabitation prior to official marriage, leading many couples to formalise their relationship through “pre-marriage”, rather than formal marriage. There is no minimum age for “pre-marriage” in the law, and the government notes that often the woman may be a minor.³

Under articles 168, 178 and 320 of the Family Code, married men and women have the same rights and power to exercise authority in respect to raising their children.⁴ According to article 168 of the Family Code, however, women can only be the head of the household in situations where the husband is unable to exercise this role.⁵ As such, the law seems to contradict the notion of joint **parental authority**,⁶ although there is no data on how laws on parental authority are implemented in practice.

Although the Civil Code of 1958 contains provisions to protect women in the case of **divorce**, including in terms of division of property and custodial rights, according to the country’s latest report to the Committee on the Elimination of Discrimination against Women (CEDAW), in practice, women lose all of their rights in cases of divorce.⁷

Under article 473 of the Family Code, sons and daughters have equal **inheritance** rights under the law.⁸ However, women’s inheritance rights within the family are dependent on the property arrangements associated with the type of marriage.⁹ If the couple chose to marry under “community of property”, the husband’s estate is divided such that the wife receives half and the other half is

¹ CEDAW (2010)

² CEDAW (2002a), p. 135

³ CEDAW (2002a), pp. 134-135

⁴ CEDAW (2002a), pp. 136-137

⁵ World Bank (2013a)

⁶ CEDAW (2002a), pp. 136-137

⁷ CEDAW (2010), pp. 71, 35

⁸ World Bank (2013a)

⁹ CEDAW (2002b), para 41

shared by his family and his children.¹⁰ If the marriage is based on a “separation of property” contract, the widow has no right to claim ownership of her deceased husband’s estate but does retain the right to use the property.¹¹ However, in practice, the government has reported to CEDAW that women often lose all rights of inheritance upon the death of a spouse, especially in the context of traditional or common-law marriages.¹² And, according to the Chronic Poverty Research Centre, in 2005, only 15.8% of widows inherited the majority of assets after the death of their spouses.¹³ More recently, newspaper reports suggest that these issues continue for widows.¹⁴

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Polygamy is legal as per articles 121 and 136 of the Family Code.¹⁵

2. Restricted physical integrity

There is no specific legislation prohibiting **domestic violence** and no indication that comprehensive legislation addressing all forms of gender-based violence is in place.

In addition to the current barriers posed by insufficient legislation to address gender-based violence, under-reporting and ineffective enforcement also pose significant hurdles to women’s access to justice. The US Department of State reports that domestic violence is traditionally handled within the extended family or village, and only more extreme incidents are reported to the police, primarily due to the social stigma for the victim.¹⁶

According to the US Department of State, **rape** - including spousal rape - is illegal in Congo,¹⁷ although it is unclear whether the perpetrator can escape prosecution by marrying the victim. According to local NGO estimates reported by the US Department of State in 2012, fewer than 25% of reported rape cases are prosecuted.¹⁸

Sexual harassment is technically illegal and punishable, in severe cases, by up to five years in prison, although, according to NGO reports recounted by the US Department of State, this legislation is rarely enforced,¹⁹ and there is no indication that action plans or policies, legal support for women, or other implementation mechanisms are in place.

According to the United Nations’ Universal Periodic Review, the Congolese government was considering draft legislation on violence against women in 2009,²⁰ though, as of 2013, there was no indication as to whether such legislation has been passed. In 2012, the Committee on the Elimination of Discrimination against Women concluded that it was concerned at the lack of legal provisions prohibiting and criminalising sexual harassment, marital rape and **female genital mutilation** as well as the lack of appropriate sanctions for domestic violence.²¹

¹⁰ CEDAW (2002b), para 41

¹¹ CEDAW (2002b), para 41

¹² CEDAW (2002b), para 41

¹³ Chronic Poverty Research Centre (2011), p. 29

¹⁴ <http://www.slateafrique.com/2841/congo-brazzaville-des-veuves-se-rebiffent-contre-leur-belle-famille>

¹⁵ US Department of State (2012) ; Code de la Famille de la République du Congo, 1984, <http://www.jafbase.fr/docAfrique/Congos/BrazzaCodFam1.pdf#> (accessed 04/06/2014)

¹⁶ US Department of State (2012)

¹⁷ US Department of State (2012)

¹⁸ US Department of State (2012)

¹⁹ US Department of State (2012)

²⁰ United Nations General Assembly (2009), p. 17

²¹ CEDAW (2012)

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Although there are no population-based prevalence studies, there are various indications that violence against women is common in the Congo. For instance, in 2002 Medecins sans Frontieres published a report on rising levels of violence against women.²² More recently, the United Nations country team in 2008 reported that sexual violence committed by civilians was widespread. They reported that in the majority of cases (between 50 to 80%) the perpetrators knew their victims. Further, they reported that the majority of victims were young girls.²³ According to the US Department of State, there have also been reports of gender-based violence in refugee camps, with 43 such cases reported in the first half of 2011.²⁴

In 2003, the United Nations Special Rapporteur on Violence Against Women reported that the widespread rape during the armed conflict between 1998-1999 generally raised awareness in the community of violence against women.²⁵ However, UNICEF reported in 2009 that 76% of women aged 15-49 years consider a husband to be justified in hitting or beating his wife if she burns the food, argues with him, goes out without telling him, neglects the children or refuses sexual relations.²⁶

Having control over the timing and spacing of children is an important aspect of women's physical integrity. Before 2010, the promotion of **birth control** was prohibited by the law of 31 July 1990. The 2010 law now authorises advocacy for contraception.²⁷ In Congo, 36,000 women out of the 61,000 adults who are over 15 years old are living with HIV.²⁸

In the Congo, **abortion** is treated as a criminal act. It is allowed only for therapeutic reasons to save the woman's life.²⁹

There is no law with regards to **homosexuality** in the Republic of Congo.³⁰

3. Son bias

The male-to-female **sex ratio** at birth in 2013 is 1.053 and for the working age population (15-64 years old) is 0.99.³¹

There is no evidence to suggest that Congo is a country of concern in relation to **missing women**.

4. Restricted resources and assets

Women in the Congo have **access to land** through three main channels: i) matrilineal or patrilineal filiations (most often, the head of the lineage is a man and the filiation patrilineal, but the head of lineage can choose to allocate the land to a woman); ii) marriage (at the husband's request, the head

²² Bouchet-Saulnier, F. (2002)

²³ United Nations General Assembly (2009b), p. 6

²⁴ US Department of State (2012)

²⁵ United Nations Economic and Social Council (2003), p. 40

²⁶ UNICEF (2009)

²⁷ CEDAW (2012)

²⁸ UNAIDS, 2012, Estimations VIH et SIDA, <http://www.unaids.org/fr/regionscountries/countries/congo/> (accessed 04/06/2014)

²⁹ UN DESA (2013)

³⁰ Ilga, 2014, <http://ilga.org/ilga/en/countries/CONGO/Law> (accessed 04/06/2014)

³¹ CIA, <https://www.cia.gov/library/publications/the-world-factbook/fields/2018.html> (accessed 28/03/2014)

of the lineage may allocate land to the wife); or iii) rent and purchase.³² Overall, women's land holdings are limited. According to the government's 2010 report to CEDAW, women produced approximately 90% of food products for household consumption.³³ In 2002, the government reported that women accounted for 60% of the agricultural workforce, but own only 25% of agricultural land – usually in small holdings.³⁴

There is no reported legal discrimination against women in regard to **access to non-land assets**, and women are able to sign contracts in the same way as men.³⁵ However, as noted in the Family Code section, women's rights to property more generally are tied to the type of marriage they enter into, where under a "separation of property" contract a widow has no right to claim ownership of her deceased husband's estate but can use the property. Under a "community of property" marriage, a widow would inherit half of her husband's property.³⁶ However, the government recognised, in its 2002 report to CEDAW, that more work needed to be done to increase women's awareness of their rights as they generally tended to follow the wishes of their husbands,³⁷ while its 2010 report to CEDAW noted that most legal judgments on property rights come down against women.³⁸ The 2012 CEDAW report indicates that although there is a legislation for inheritance matters, it is not always applied in practice as widows are often pushed to renounce to their rights.³⁹

Although there is no reported legal discrimination against women in **accessing credit**, in 2002, the government reported that women struggled to access bank loans because they did not have the economic resources to meet the credit conditions of banks.⁴⁰ According to 2011 data from the World Bank, only 6.8% of women had accounts at a formal financial institution, while 11.3% of men did, and 1.5% of women had a loan from a financial institution in the past year, compared to 4.1% of men.⁴¹

5. Restricted civil liberties

The Congolese Constitution upholds women's right to freedom of movement and **access to public space**, including the ability to get a passport in the same way as a man, and the ability to travel outside her home, and the country, in the same way a man is able to.⁴² However, the law provides that in the event of disagreement between spouses, the husband has the right to decide the domicile of a married couple.⁴³ The threat of violence also poses an obstacle to women's freedom of movement.

In terms of **political voice**, according to data provided by the government to CEDAW in 2010, women are still relatively sparsely represented in decision-making bodies, making up 14.6% of the government, 10.67% of the Senate, 9.6% of the National Assembly, and 14.22% of the Supreme

³² CEDAW (2002), p. 127; CEDAW (2010), pp. 34-35

³³ CEDAW (2010), p. 32

³⁴ CEDAW (2002a), p. 127

³⁵ CEDAW (2002b), para 42; World Bank (2013a)

³⁶ CEDAW (2002b), para 41

³⁷ CEDAW (2002b), para 41

³⁸ CEDAW (2010), p. 33.

³⁹ CEDAW (2012)

⁴⁰ CEDAW (2002a), pp. 127-128

⁴¹ World Bank (2013b)

⁴² World Bank (2013a)

⁴³ CEDAW (2002a), p. 132

Court in the years 2002-2006.⁴⁴ Article 8 of Act No. 21-2006 mandates that “in accordance with article 8 of the Constitution, parties and political groups must guarantee and ensure the advancement and representation of women in all political, elected, and administrative office.”⁴⁵

The National Assembly has 139 members who are elected through majority vote, in two rounds of voting. Candidate lists must account for at least 15% of women’s representation, according to article 31 (3) of the Electoral Code, as modified in 2007. At the sub-national level, local councillors are elected through a representation system via a proportional list from closed candidate lists. These candidate lists must account for at least 20% of women’s representation, according to article 67 (3) of the Electoral Code, as modified in 2007.⁴⁶ In 2012, the lower house had 10 women out of 136 seats, or 7.4%.⁴⁷

Women in the Congo have equal rights to paid **employment** and equal pay. However, the government reported in 2010 that: “Women’s lack of knowledge of labour law means that they frequently suffer abuses by employers.”⁴⁸ Under Section 113 of the Labour Code, women also have a right to paid **maternity leave** of 15 weeks, to be paid at 100% of wages, half to be paid by the employer and the other half, along with medical expenses, to be paid by the Social Security system.⁴⁹ It is unclear how many women are able to take advantage of this legislation.

⁴⁴ CEDAW (2010), p. 19

⁴⁵ CEDAW (2010), p. 11

⁴⁶ The Quota Project (2012)

⁴⁷ Union Inter-Parlementaire, 2012, <http://www.ipu.org/wmn-f/classif.htm> (accessed 04/06/2014)

⁴⁸ CEDAW (2010), p. 29

⁴⁹ ILO (2010)

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