



COUNTRY PROFILE

The Preamble of the 2010 Constitution of Angola provides for equal opportunities and equality. Article 23 protects everyone's right to equality and non-discrimination on the basis of, amongst others, sex. Some of the fundamental tasks of the State are to 'promote equal rights and opportunities between Angolans, regardless of origins, race, party affiliations, sex, colour, age or any other form of discrimination'⁵⁹ and to 'promote equality between men and women'.⁶⁰ Article 35 further protects the family, where '[m]en and women shall be equal within the family, in society and before the State, enjoying the same rights and being responsible for the same duties'.⁶¹

In addition to the constitutional protection of the family, the Angolan Family Code 1988, replaced Book IV of the Portuguese Civil Code relating to family law.⁶² The Family Code is based on civil and customary laws.⁶³ However, customary laws should not contradict the Constitution as per its Article 223.

Treaty	Date of ratification	Reservations/Declarations
CEDAW	17 September 1986	None
African Charter	2 March 1990	None
Maputo Protocol	30 August 2007	None

⁵⁹ Article 21(8) of the Constitution of Angola 2010. Available at https://www.constituteproject.org/constitution/Angola_2010

⁶⁰ Article 21(11) of the Constitution of Angola 2010

⁶¹ Article 35(3) of the Constitution of Angola 2010

⁶² MDC Medina 'Challenges for the Angolan Family Code' 2003 *The International Survey of Family Law* 25

⁶³ DP Zongwe and ND Dias 'Republic of Angola – Legal system and research' *GlobaLex* (2022) <https://www.nyulawglobal.org/globalex/Angola1.html> (accessed 7 July 2022)

MAIN TRENDS IN FAMILY LAW

Article 35 of the Family Code prohibits forced marriage and unions that require the payment of bride price. All marriages need to be registered for them to be valid according to Article 35(4) of the Family Code. Article 35 of the Constitution further extends recognition to customary marriages and *de facto* unions. The jurisprudence of the country emphasises on *de facto* unions as follows:⁶⁴

'As the identity card of the petitioner proves that he is unmarried as is the respondent, and it is also proved that the couple had lived together for more than ten years in marital cohabitation, from which three children were born, and as it is not proved that the petitioner had established a lasting relationship with another woman, it must be recognised that there was a de facto union according to the law established between them, as stated in Art 1130 no 10 of the Family Code. Ownership of the matrimonial home must be given to the respondent who still lives there with their children and the unilateral transfer of the property carried out exclusively by the petitioner declared void.'

A *de facto* union is considered as a marriage under customary law if both parties have mutual agreement. Moreover, the court will consider 3 factors: (1) three years of cohabitation; (2) capacity for marriage; and (3) exclusiveness of the relationship.⁶⁵ Such a recognition is progressive since it protects women's family rights even if the marriage is not registered.

Article 127 of the Angolan Family Code recognises the equal rights of men and women to parental authority. Under Article 131, they are both responsible for the duty of care and of raising the child even if they are not married to each other.

Article 78 of the Family Code allows any party, either the wife or the husband, to petition for a divorce.⁶⁶ In the instance of divorce, under Articles 127 and 131 of the Family Code, both parents have equal responsibilities towards the child and if the child is in the custody of the mother, the father also has to provide financial support.

In 2021, the new Penal Code was adopted that decriminalises same-sex relationships.⁶⁷ This implies that same-sex couples can now engage in same-sex relationships without being subject to criminalisation. Article 238 of the 2021 Penal Code also criminalises polygamy. Article 156 of the 2021 Penal Code allows for abortion in 'concrete instances such as a grave threat to the health or life of the mother or the fetus or for victims of rape'.⁶⁸

Law 25/11 deals with domestic violence and the Penal Code criminalises sexual violence and sexual harassment at work. The State also initiated the 'Zero Tolerance for Gender and Sexual Based Violence campaign' to increase awareness of sexual violence and promote preventive best practices addressing sexual violence. There was also a National Action Plan on Domestic Violence (2013- 2017).

64 Civil and Administrative Chamber of the Supreme Court on Process no 273 1996

65 Medina (n above) 29

66 <https://wbl.worldbank.org/content/dam/documents/wbl/2024/snapshots/Angola.pdf> (accessed 17 April 2024)

67 R Garrido 'Decriminalisation of consensual same-sex acts in Angola and the progress of LGBTI human rights in Lusophone Africa' *AfricLaw*. Available at <https://africlaw.com/2021/03/05/decriminalisation-of-consensual-same-sex-acts-in-angola-and-the-progress-of-lgbti-human-rights-in-lusophone-africa/> (accessed 5 March 2021)

68 <https://archive.gazettes.africa/archive/ao/2020/ao-government-gazette-dated-2020-11-11-no-179.pdf> (accessed 15 April 2024)

KEY GAPS AND CONTESTATIONS

- (i) **Same-sex marriage not recognised:** Article 20 of the Angolan Family Code recognises a marriage as a 'voluntary union between a man and a woman'. This provision is a challenge for same-sex marriages even if the Penal Code has decriminalised same-sex relations. This is discriminatory towards same-sex couples who want to found a family.
- (ii) **Exceptions to the legal age of marriage:** Article 24 of the Family Code sets the legal age of marriage at 18. However, marriage can be allowed from 16 for boys and 15 for girls under exceptional circumstances with parental consent.⁶⁹ In the event there is no parental consent, the parties under 18 may appeal to the court to obtain permission to marry. The exceptions to the legal age of marriage is against international human rights law such as the Maputo Protocol which expressly sets the minimum age of marriage at 18.
- (iii) **Matrimonial property:** While Article 49 of the Family Code provides that property acquired during the marriage is split equally upon divorce, it also provides that when deciding on the family home, the court must take into account the following: (1) the 'life conditions' of the spouse; (2) the children; and (3) causes of divorce.
- (iv) **Discriminatory customary inheritance laws:** Article 75 of the Family Code protects widows' inheritance rights. However, since customary laws are also acknowledged, in some parts of the country, even if it is against the Constitution, women are excluded from inheriting from their deceased husband's property and are sometimes even kicked out of the matrimonial home.⁷⁰
- (v) **Implementation of law against polygamy:** Even if the Penal Code criminalises polygamy, the practice still exists in many parts of the country, especially in rural areas.⁷¹ In these instances, the man will be legally married to one woman and have informal marriages to other women. In this case, the women whose marriages are not registered do not have any protection of the law in instances of the spouse's death or separation.

RECOMMENDATIONS

Legal reforms:

- ▶ Adopt a law that allows for same-sex marriages.
- ▶ Revise the Penal Code to allow for abortion upon choice.
- ▶ Revise the Family Code to remove any exceptions to the legal age of 18 for marriage and to be clear about distribution of property upon dissolution of the marriage.
- ▶ Adopt a law and new national plan of action that targets violence against women generally.

Policies and programmes:

- ▶ Adopt policies and programmes to target polygamy and to ensure that women in such relationships are protected upon the man's death or divorce.
- ▶ Adopt sensitisation policies on widows' inheritance rights so that family members do not mistreat them.

69 Article 24(2) of the Angolan Family Code. Available at [https://www.africa-laws.org/Angola/Family%20law/Family%20code%20\(%20in%20Portuguese\).pdf](https://www.africa-laws.org/Angola/Family%20law/Family%20code%20(%20in%20Portuguese).pdf) (accessed 16 April 2024)

70 Republic of Angola 'Sixth and seventh report on the implementation of the African Charter on Human and Peoples' Rights and initial report on the Protocol on the Rights of Women in Africa (2011-2016)' (2017) paragraph 113. Available at <https://achpr.au.int/index.php/en/state-reports/republic-angola-6th-periodic-report-2011-2016> (accessed 16 April 2024)

71 <https://newswirengr.com/2023/03/06/african-countries-where-polygamy-is-illegal/> (accessed 24 May 2023)