



DEMOCRATIC REPUBLIC OF CONGO

COUNTRY PROFILE

The Preamble of the Constitution of the Democratic Republic of Congo affirms its adherence to the African Charter and the CEDAW, amongst other international instruments. Article 11 of the Constitution provides for equality in dignity and rights while Article 12 protects equality before the law. Article 13 on non-discrimination 'in matters of education or access to public functions or any other matter' does not list sex as a basis. Nevertheless, it has specific provisions on non-discrimination against women. Article 14 provides as follows:

The public authorities see to the elimination of all forms of discrimination against women and ensure the protection and promotion of their rights.

They take in all areas, and most notably in the civil, political, economic, social and cultural areas, all appropriate measures in order to ensure the full realization of the potential of women and their full participation in the development of the nation.

They take measures in order to fight all forms of violence against women in their public and private life.

Women are entitled to equitable representation in national, provincial and local institutions. The State guarantees the achievement of parity between men and women in said institutions.

The law determines the conditions for the application of these rights.

Article 15 further states that '[t]he public authorities are responsible for the elimination of sexual violence used as an instrument in the destabilisation and displacement of families'.

These Articles of the Constitution are progressive and in line with international women's rights standards. Very few countries across the continent provide for such elaborate provisions relating to women's rights in their constitutions.

However, while the Constitution is overall in favour of women's rights, Article 40 recognises the family as the basic unit of the human community but only recognises marriages between persons of opposite sexes. This is a regressive provision as it excludes same-sex couples's right to marry. As a result, women in queer relationships are not afforded the protection of their family or their rights within their family.

The Constitution depicts the pluralist nature of the legal system by providing in its Article 34 that '[t]he State guarantees the right to individual or collective property acquired in accordance with law or custom'. This is further reinforced by Article 153 that provides for courts and tribunals to apply 'laws as well as customary laws unless the latter is contrary to public order or morality'. Furthermore, according to Article 203(1), the Central Authority and Provinces have to work together on matters relating to civil and customary rights. Subject to the Constitution, Provinces also have exclusive competence to execute customary law.¹²⁷

Treaty	Date of ratification	Reservations/Declarations
CEDAW	17 October 1986	None
African Charter	20 July 1987	None
Maputo Protocol	9 June 2008	None

¹²⁷ Article 204(28) of the Constitution of the Democratic Republic of Congo 2005, amended 2011. Available at https://www.constituteproject.org/constitution/Democratic_Republic_of_the_Congo_2011 (accessed 17 April 2024)

MAIN TRENDS IN FAMILY LAW

Article 334 of the Code of the Family provides that everyone has the right to marry the person of their choice and to have a family. Polygamy is not recognised in the country.

Article 333 of the Code of the Family recognises religious marriages but states that they do not have the same effect as a civil marriage under the Code of the Family. Anyone who forces someone to marry faces imprisonment and a fine under Article 336 of the Code of the Family. According to Article 352, the legal age of marriage for both men and women is 18 years, without exceptions. This is following an amendment to the Code of the Family in 2016.

Article 648 of the Code of the Family also provides that both parents have a duty towards their children. In case of divorce or separation, the court can decide that either parent can be entrusted with the custody of the child under Article 325 of the Code of the Family. Even if one parent has custody, the other parent has the right to visit. In terms of inheritance, under Articles 758 to 761 of the Code of the Family, both daughters and sons, and the surviving spouse have the same right to inheritance.

KEY GAPS AND CONTESTATIONS

(i) **Same-sex marriage not recognised:** Following the Constitution, Article 330 of the Code of the Family provides that a marriage is only between a man and a woman.

(ii) **Violence against women:** Despite the constitutional provision on combating violence against women, there is not yet any comprehensive law on violence against women, including domestic violence¹²⁸, even though the country adopted a National Strategy against Gender-Based Violence in 2009.

(iii) **Dowry, remarriage, head of household:** Despite the constitutional provisions of gender equality, the Code of the Family contains several discriminatory provisions against women.

For instance:

1. Article 361 of the Code of the Family provides for dowry to be paid by the husband.
2. Article 335 further requires women to wait for 300 days after the death of her husband or a divorce to remarry. Although this delay expires in the event the woman gives birth during the 300 days or the woman can approach the court to lift this requirement, such a provision is discriminatory since the husband does not have to wait for that period.
3. Article 444 is another discriminatory provision that states that the husband is the head of the family, even if Article 445 provides for both spouses to be responsible for the interest of the household.

(iv) **Customary marriages:** The fact that the Code of the Family does not regulate customary marriages is a challenge for women. For instance, while the law provides for women to inherit from their husbands, in customary marriages, this does not happen, and the male chiefs view the issue from a patrilineal eye. In this case, the widow is not considered as a beneficiary of the deceased husband's estate.¹²⁹

RECOMMENDATIONS

Legal reforms:

- ▶ Adopt a comprehensive law to combat violence against women that includes domestic violence and marital rape in line with the Constitution.
- ▶ Recognise same-sex marriage.
- ▶ Amend the Code of the Family to: (1) remove the dowry system since it perpetuates forced marriage; (2) remove the 300 days wait period for a woman who is a widow or divorced to remarry; (3) recognise both spouses as the heads of the family; extend its protective provisions to women in customary marriages.

128 <https://wbl.worldbank.org/content/dam/documents/wbl/2024/snapshots/Congo-dem-rep.pdf> (accessed 17 April 2024)

129 P Mubalama 'Congolese widows stripped of inheritance' *Institute for War and Peace Reporting* (27 June 2011) <https://iwpr.net/global-voices/congo-lese-widows-stripped-inheritance> (accessed 10 July 2022)