

Democratic Republic of the Congo

1. Discrimination in the family

a) Overarching legal framework for marriage

Under the Democratic Republic of Congo's (DRC) Constitution, women and men have the right to marry the person of their choice and form a family (Art. 40, 2011). Marriage is defined as an act between a man and a woman of legal age in which both parties provide full consent (Family Code, 1987, Art. 330, 334, 351). Religious and common law marriage are recognised by the state.

Women and men do not have the same rights to enter into marriage. The law requires that men pay a dowry to the family of the bride prior to getting married (Family Code, 1987). Divorced women must wait 300 days before they can remarry. Many harmful practices related to marriage continue to affect women and girls, including early marriage, polygamy and levirate (CEDAW, 2013). Polygamy, in particular, is widespread throughout the country, where men are often pressured to have relationships with multiple women, to demonstrate their power (ACHPR, 2015; USAID, 2012).

b) Child marriage

The legal minimum age for marriage for women and men in the DRC is 18 years old (Law 2016-008, Art. 352, 2016). The law also specifically prohibits children, even emancipated, from contracting marriage (Art. 357, 2016). Prior to this amendment of the Family Code in 2016, there were exceptions to the legal age of marriage where children under the age of 18 could contract marriage provided there was consent of the parents or legal authority.

Despite these laws, in some rural communities, forced and early marriages are still practiced (ACHPR, 2015; CEDAW, 2013). Dowry payments made by a groom or his family to the family of the bride contribute largely to the prevalence of child marriage and more specifically forced marriage of girls (Department of State, 2017).

c) Household responsibilities

Women and men are afforded the same rights and responsibilities under statutory law (Constitution, 2011). However, the state's Family Code designates the husband as the head of the household where the wife is legally obligated to obey her husband (Art. 444).

The law reinforces social and cultural norms that place women as inferior to men (ACHPR, 2015; USAID, 2012). Moreover, it places married women under the guardianship of their husband, where they are legally obliged to obey their husband, live with him, request for permission to travel or to access family planning services (US Department of State, 2017; USAID, 2012). Discriminatory legislation and norms assign women specific roles in the household such as childcare and domestic responsibilities (Samndong, Kjosavik, 2017).

With regard to children, both the father and the mother, regardless of marital status, have equal rights to be legal guardians, and moreover hold equal responsibility in the maintenance and education of the child (Family Code, Art 590-591, 648, 1987).

d) Divorce

The Family Code allows each spouse to initiate a divorce, however in order to finalise a divorce the woman is required to repay the dowry in accordance with the customs of the parties involved (Family Code, 1987). After a divorce, women and men have the same rights to legal guardianship which are determined by a court (Ibid). Irrespective of which spouse gains custody, both the father and the mother have the same rights and responsibilities with regard to the maintenance, education and welfare of the children (Ibid).

e) Inheritance

The Family Code provides that daughters and sons have the same rights to inherit land (Art. 758-761, 1987). Likewise, the law ensures that surviving spouses, female and male, equally have the right to inheritance (Ibid). Moreover, the Code prohibits disinheritance and places fines against those who perpetrate it (Law 016-008, Art. 545).

While these protections are in place, customary and traditional practices continue to discriminate against women and girls in cases of inheritance (CEDAW, 2013). Daughters often are seen as temporary members of the family because they can be wedded off, while sons are seen as rightful heirs that will carry on the family line (USAID, 2012). This notion of women as temporary members of the family continues during in marriage. As such, it is common for the deceased husband's family to take all the household belongings, leaving the widow and her children with nothing (US Department of State, 2017; USAID, 2012). These practices are reinforced by the strong belief and fear of witchcraft and retaliation against widows who protest, women's lack of knowledge of their inheritance rights, and underlying social and cultural norms that discriminate against women (CEDAW, 2013; USAID 2013).

2. Restricted Physical integrity

a) Violence against women

In 2008, the DRC ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the Maputo Protocol. Moreover, the state's Constitution ensures that all persons have the right to life and to physical integrity (Art. 16, 2011). To date, there is no comprehensive law addressing violence against women, however existing legislation provides protections against specific forms of violence against women, including rape and sexual harassment.

To respond to violence against women, the government developed a National Strategy against gender-based violence in 2009, established the National Agency for Eliminating Violence against Women and Adolescent and Very Young Girls (AVIFEM), and created a National Fund for the Promotion of Women and the Protection of Children (FONAFEN); (ACHPR, 2015; CEDAW, 2013). The National Strategy against gender-based violence (SNVBG) comprises five components: (i) fighting impunity (ii) ensuring protection and prevention, (iii) undertaking security sector reforms (iv) ensuring

multi-sectoral assistance and (v) data and mapping. While all these initiatives are operational, they often experience financial challenges (ACHPR, 2015).

In the DRC, violence against women is endemic owing to various factors including discriminatory attitudes towards women, outdated customs, conceptions of sexuality, weak legal and judicial systems, culture of silence of victims and impunity of perpetrators (ACHPR, 2015; Department of State, 2017; CEDAW, 2013). Conflict-affected areas experience particularly high levels of violence against women where mass rapes, sexual violence and sexual slavery is used as a weapon of war (US Department of State, 2017; CEDAW, 2013). In rural areas, conflict related abuse of children and infants was more prevalent because of traditional beliefs that harming children or sleeping with virgins could bring wealth and/or provide protection from death in conflict (US Department of State, 2017; ACHPR, 2015).

b) Domestic violence

At present, there is no law prohibiting domestic violence. Moreover, there is an absence of shelters, counselling and rehabilitation services for victims of domestic violence (CEDAW, 2013). Throughout the country, domestic violence is widespread, ranging from verbal, emotional and economic abuse to physical trauma (US Department of State, 2017; ACHPR, 2015). In such instances, law enforcement rarely intervene because domestic disputes is customarily regarded as a private family matter and there is a general social acceptance of spousal abuse (Ibid).

c) Rape

Under the constitution, sexual violence is prohibited and in some instances and is considered a crime against humanity (Art. 15, 2011). Rape is also a criminal offense in the state's Penal Code that is punishable by five to twenty years of imprisonment, and when it causes the death of the victim, the penalty is death or servitude in perpetuity (Art. 170-171, 2004).

In 2006, an amendment to the Penal Code was introduced to align the definition of rape in accordance with international standards and prohibit extrajudicial settlements, such as a customary fine paid by the perpetrator to the family of the victim and forced marriages of victims (Law No.06/018, 2006; US Department of State, 2017). Moreover, the government established the Comprehensive Strategy on Combating Sexual Violence in the Democratic Republic of Congo, which provides medical support and legal support to survivors of sexual violence, and raises awareness on the issues amongst other efforts.

Despite having these legal mechanism in place, rape and sexual violence are pervasive in the country notwithstanding it being widely underreported by survivors (Department of State, 2017; CEDAW, 2013). Prevalence is largely driven by the ineffective implementation of the laws on sexual violence, and the lack of awareness among men of the harmful nature of sexual violence, a culture of silence, and prevailing traditional attitudes that place women inferior to men (CEDAW, 2013). Survivors often do not seek justice through formal legal systems due to insufficient resources, lack of confidence in law enforcement and the judicial system, fear of social humiliation or reprisal, and family pressure (US Department of State, 2017; USAID, 2012). It is common for rape survivors to experience social stigma, being branded as unsuitable for marriage (US Department of State, 2017). In some cases, wives who have been sexually assaulted are abandoned by their husbands while other women are forced by their

families to marry the men who raped them or to accept money or goods from the rapist to avoid prosecution (Ibid). Rape was particularly rampant in conflict-affected areas where survivors include young girls and infants (ACHPR, 2015; CEDAW, 2013).

d) Sexual harassment

By law, sexual harassment is prohibited and liable of criminal penalties (Law 06-018, 2006; Labour Law, 2002). While there are legal protections against sexual harassment, the law only specifically covers the workplace (World Bank, 2016). Sexual harassment is widespread both in the workplace and in education due to a lack of enforcement of the law (Department of State, 2017).

e) Female genital mutilation

In 2006, the government introduced amendments to the Penal Code that criminalises female genital mutilation (Law 06-018, Art. 3, 2006). Under the new amendments, any person who conducts the act may be subject to two to five years of prison and a fine of CDF 200 000 if convicted. If the act of female genital mutilation leads to death, the penalty is increased to life in prison.

The practice has been reported to exist among various tribal groups where it is still embedded in customs (Canada IRB, 2012). However, there are no recent reports of female genital mutilation (US Department of State, 2017).

f) Abortion

According to the Penal Code, abortion is legal only to save the life of a pregnant woman (Art. 165-166, 2004). A person who performs an illegal abortion and the pregnant woman who voluntarily has an abortion can be subjected to 5 to 15 years of imprisonment (Ibid). In practice, it has been reported that abortions are legally performed when the pregnant woman's physical or mental health is at risk or in case of serious foetal impairment (DESA, 2015). Still, there is a large number of clandestine abortions, particularly among adolescents and single women (Ibid).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

According to the state's Constitution, women and men are equally guaranteed the right to property in accordance with law or custom, and no citizen shall be deprived of their rightful property (Article 34, 2011). Taken together with the law that prohibits discrimination against women, this requires the government to ensure women property rights both under statutory and customary law (Art. 14, 2011). In principle, the Constitution recognizes customary law, but only to the extent that it does not contradict the Constitution.

Under statutory law, no distinction is made in the provision of land rights between women and men (Land Law 1973). For married persons, the state passed the Family Code in 1987 which outlines three property regimes which allow for equal property ownership rights for husbands and wives. These include the Separation of Property (where each spouse keeps their own property); Communal Acquisitions (where each spouse keeps the property they acquired before the marriage, but share the

property acquired during the marriage); and Universal Community Property (where both spouses share the property acquired before and during the marriage) (Family Code, Arts. 487-537, 1987).

Under customary law, traditional chiefs, who largely are men, hold the authority on land rights guided by patrilineal lineages (Conciliation Resources, 2012). By these principles, inherited land is almost always given to sons rather than daughters and women's access to land becomes dependent on their husband (Ibid).

Customary practices, social norms, women's lack of economic autonomy and decision making power, and no access to justice are some of the challenges women face in land ownership (UN Habitat, 2015; Conciliation Resources, 2012; USAID, 2012). Given deeply embedded stereotypes surrounding the roles of women and men, a married couple's property is often registered in the husband's name, and it is more likely to see joint land titling among unrelated men than husband and wife (UN HABITAT, 2015).

b) Secure access to formal financial resources

Amendments to the Family Code eliminate the need for a married woman to obtain her husband's permission to engage in any legal act (Law 16-008, 2016). In principle, the amendment allows women the right to open individual bank accounts as well as access formal financial services such as a line of credit or financial loan (Ibid). Moreover, the government enacted microfinance legislation which guarantees the right of each citizen to access microfinance services without any discrimination, stressing that women specifically should have equal rights to open bank accounts, access credit, and any other microfinance service (Law 11/020, Art. 9-10, 2011).

Despite such laws that help promote women's economic participation, there is a general resistance toward women's economic empowerment in the country, even if it serves to enhance the well-being the family unit (USAID, 2012). As such, women often experienced economic discrimination, particularly in access to credit (US Department of State, 2017; CEDAW, 2013). This is particularly so for rural women, who make a large portion of women in the DRC (CEDAW, 2013).

c) Workplace rights

In 1969 and 2001, the DRC ratified ILO conventions relating to equal remuneration and discrimination in employment and occupation. Accordingly, the state has domesticated these laws within its legal framework. Under the Constitution, each citizen is granted the equal right to work and receive equitable pay, and moreover, they are protected from discrimination due to their origin, sex, opinions, beliefs or socioeconomic conditions. (Art 36, 2011). The Labour Code also protects all workers from acts of discrimination and guarantees equal remuneration for work of equal value regardless of one's origin, sex, or age (Art 86, 234, 2010). Women are prohibited to work in occupations that may pose a risk to their health or safety, including night shift hours.

The Law contains provisions for maternity leave and guarantees pregnant women's employment security when they are on leave (Art. 129-130, 2010).

Yet, gender-based discrimination in employment and occupation persists, including a gender wage gap and a disproportionate amount of women in the informal sector with low pay and no social

security (Department of State, 2017; ECINEO, 2017; CEDAW, 2013). Fuelling these inequalities are stereotypical and perceptions of the abilities of women and their traditional role in society, namely that of household duties and subsistence farming (CEDAW, 2013; USAID, 2012).

4. Restricted Civil liberties

a) Citizenship rights

Under the Constitution, it is established that each citizen is equal before the law, and that all forms of discrimination against women are prohibited (Art. 11-14 2011). The right to work, education, vote, justice and political participation are equally afforded to Congolese women and men (Constitution, 2011).

Under the Nationality Code, women and men have equal rights with regard to acquiring, changing or retaining their nationality, regardless of their marital status (2004). Women and men have equal rights to confer their nationality to a foreign spouse (Ibid). The Constitution also provides women and men freedom of movement, with no stipulations barring either from obtaining a passport or travel documents (Constitution, 1990; World Bank, 2017).

With regard to children, the amended family code law allows both women and men to register the birth of their child as well as confer their nationality to their child (Law 016-008, 2016).

b) Voting

Statutory law establishes that suffrage is universal, equal and secret for Congolese of both sexes who are of legal age (18 years of age or over) (Constitution, Art. 5, 2011). While there are no laws limiting the participation of women in the political process, often their participation is limited compared to men due to cultural and traditional factors (US Department of State, 2017).

c) Political voice

The requirements to hold public and political office in the three branches of government (executive, legislative and judicial) are gender neutral, with no specific provisions barring women from accessing these positions (Constitution, 2011). While there are no quotas in place to enhance the political participation of women, the state has adopted several legislative measures including the law on political parties which prohibits discrimination based on ethnic origin, religion, gender and language in the formation, organization and functioning of political parties and specifically requests political parties to consider gender equality in establishing electoral lists, offering financial incentives parties if the gender parity ratio is reached (Act No. 08/005, 2008; CEDAW, 2013). In addition, the state developed a National Strategy for women's political participation in 2010 (CEDAW, 2013).

In practice, these measures are not mandatory and thus difficult to enforce (US Department State, 2017). More broadly, women's participation in political and public life is low at all levels (CEDAW, 2013). Reasons for this may include cultural and traditional factors that perceive women in high-level or public positions as a challenge to the masculine identity and dominance (US Department of State, 2017; USAID, 2012).

d) Access to justice

Under the state's Constitution, each citizen is equal before the law and has the right to equal protection (Art. 12, 2011). Specifically, each citizen is afforded the presumption of innocence, due process and public hearings (Art 16-21, 1990). In addition, statutory law also ensures that each citizen can access a legal defence regardless of economic means, proceedings in their own languages, and the right to closed proceedings in certain situations which pose a risk to either party (Ibid).

Yet, even with these laws in place, women often do not report crimes against them, particularly in cases of rape and acts of sexual violence committed by the Congolese armed forces. The challenges Congolese women face in accessing justice include the high costs of legal proceedings, insufficient number of courts, perceived ineffectiveness and corruption in justice system, limited training of judges, prosecutors and lawyers on women's rights, and women's general lack of knowledge on their legal rights, and an underlying fear of subjecting themselves to humiliation, reprisal, or family pressure if they do pursue formal legal action (US Department of State, 2017; CEDAW, 2013; USAID, 2012).

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