

DEMOCRATIC REPUBLIC OF THE CONGO

1. Discriminatory family code

Under a new act passed in 2009, the **minimum age for marriage** was increased from 14 for females and 18 for males to 18 for both males and females.¹

With respect to **parental authority**, the Family Code stipulates that men are the head of the household and women must obey them.² Further, according to the DR Congo's latest report to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) in 2011, family relations are built on an "underlying inequality between man, the husband and father who is head of the family, and woman, the wife and mother who manages the household" setting out an inequitable relationship when it comes to child rearing.³ That said, there are no barriers to Congolese nationality based on gender.⁴

Concerning **inheritance** rights, the Family Code gives preferential treatment to the children of the deceased and does not discriminate between women and men within the second category of heirs. Article 758, paragraph 3, of the Family Code stipulates that women have the right to inherit their husband's property.⁵ However, in practice, women are often not the recipients of full inheritance. The Chronic Poverty Research Centre reports that only 23.8% of widows were able to inherit a majority of assets from their spouses in 2007.⁶

According to article 546 of the Family Code, either spouse can initiate **divorce**,⁷ although it is unclear whether men and women have equal decision-making authority after divorce. Furthermore, the requirement to repay the bride price or dowry to the husband's family poses a restriction on women's ability to seek a divorce.⁸ Also, as stipulated under both the Family Code and Criminal Code, in cases of adultery, women face up to one year in prison and a large fine

¹ Act No. 09/001; CEDAW (2011), pp. 9, 20

² Articles 444 and 445 of the Family Code in CEDAW (2004), p. 18

³ CEDAW (2011), p. 20

⁴ CEDAW (2011), p. 13

⁵ CEDAW (2013), p. 25

⁶ Chronic Poverty Research Centre (2011), p. 29

⁷ Livre Trois de Famille,

<http://www.leganet.cd/Legislation/Code%20de%20la%20famille/LIVRE%20III%20DE%20LA%20FAMILLE.htm#>

⁸ US Department Of State (2010)

regardless of circumstance, while men only face the same criminal penalty for adultery if a judge determines that it was of “injurious quality”.⁹ In the latest CEDAW report and session, however, the government notes that it is in the process of repealing these, and other discriminatory provisions, in the Family Code.¹⁰

2. Restricted physical integrity

Domestic violence is not specifically addressed in Congolese law. Although there are no official statistics, domestic violence against women, including spousal rape, appears to be common, and domestic violence has high levels of social acceptance. The 2007 Demographic and Health Surveys (DHS) asked women if a husband was justified in hitting his wife for one of five reasons and 76% responded affirmatively to at least one reason.¹¹ The same survey found that 63% of women in the DRC have experienced physical or sexual violence from their partner or spouse at some point in their life, while almost half reported experiencing violence within the preceding 12 months.¹² The 2004 CEDAW report indicates that rates of domestic violence have increased as a result of the armed conflict in the country¹³ and, nearly a decade later, the NGO WILPF noted in its 2013 shadow report to CEDAW that sexual violence had now spread outside of the conflict affected areas.

The DR Congo Penal Code prohibits **rape**,¹⁴ and the country adopted a law on sexual violence that addresses violence as a result of conflict in 2006.¹⁵ The law on sexual violence criminalises rape, but the government does not effectively enforce this law, and rape is common throughout the country. Between 2004 and 2013, rates of sexual violence including rape have grown very high: according to the 2007 Demographic and Health Survey, among women who have had sex before the age of 15, more than one in five reported that it was coerced.¹⁶

The law defines rape to include sexual slavery, sexual harassment, forced pregnancy, and other sexual crimes but not spousal rape. It also prohibits compromise fines and forced marriage, allows survivors of sexual violence to waive appearance in court, and permits closed hearings to protect confidentiality. The minimum penalty prescribed for rape is a prison sentence of five years.¹⁷ According to Women’s International League of Peace and Freedom (WILPF), victims and experts cite “the sense of impunity, the failure of the judicial apparatus, and the weak implementation of the law” as major obstacles to ending violence against women.¹⁸

⁹ Articles 467 and 468 of the Family Code; Article 3 of the Penal Code, in CEDAW (2004), p. 18, 19

¹⁰ CEDAW (2011), p. 20; CEDAW (2013), p. 25

¹¹ Ministère du Plan and Macro International (2008), Table 17.5

¹² Ministère du Plan and Macro International (2008), Tables 18.1 and 18.5; OECD (2014), Gender, Institutions and Development Database, <http://stats.oecd.org>

¹³ CEDAW (2004), p. 48

¹⁴ Articles 170 and 171 of the Penal Code, in CEDAW (2004), p. 19

¹⁵ WILPF (2013), p. 2

¹⁶ Ministère du Plan and Macro International (2008), Table 18.4

¹⁷ US Department of State (2013)

¹⁸ WILPF (2013), p. 2

The 2002 Labour Code (article 73) provides grounds for the dismissal of a perpetrator of **sexual or psychological harassment** in the workplace.¹⁹ According to the government's latest report to CEDAW in 2011, this legislation is reinforced in Act No. 06/018, which amends the Criminal Code, and Act No. 06/019, which amends the Code of Criminal Procedure, defining harassment as an offence.²⁰

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Abortion is only legal in cases where the mother's mental or physical health is in danger.²¹

After her visit to the country in 2008, Yakin Erturk, former Special Rapporteur on violence against women, its causes and consequences, described sexual violence as a "defining feature of the Democratic Republic of Congo's conflicts."²² Although the government has been increasingly responsive, addressing women's physical integrity through legislation, the culture of violence perpetuated through the ongoing conflict has meant that violence against women continues to be pervasive.

In 2010, the United Nations Special Rapporteur on extrajudicial, summary, or arbitrary executions denounced the "prevalent and horrific nature of sexual atrocities and shocking lack of accountability in the country's domestic legal system, both military and civilian."²³ For its part, the government, in its 2013 report to CEDAW, noted that it had created a National Strategy Against Gender-based Violence in 2009 in part as a reaction to impunity, and also lists several steps it has recently taken to address the needs of sexual violence victims, including: anti-violence training modules for the armed forces; provision of holistic health care for victims; considering of draft legislation to establish a public compensation fund for victims of sexual violence.²⁴ The government also indicated in its 2013 report to CEDAW that it was taking steps to tackle underlying discriminatory stereotypes, in part through the implementation of the country's National Policy on Gender Issues, also enacted in 2009.²⁵

The general problem of violence against women in the country is of epidemic proportions, and has been greatly exacerbated by armed conflict.²⁶ In a 2009 report, Human Rights Watch recorded 16,000 new cases of sexual violence for the year 2008, but even that number might underestimate the total number of attacks.²⁷ The government suggested in its 2013 report to CEDAW that the security situation in some parts of the country has made gathering reliable data on the exact number of sexual violence cases impossible.²⁸ In the same report, the government also lists the number of prosecutions for crimes of violence against women for the period

¹⁹ Portant Code du Travail, http://investindrc.cd/fr/IMG/pdf/code_travail-2.pdf

²⁰ CEDAW (2011), p. 16

²¹ United Nations (2011)

²² UN Human Rights Council (2008)

²³ Cited in CEDAW (2013), p. 2; also noted is the government's objection to the Special Rapporteur's report as "biased and unobjective"

²⁴ CEDAW (2013), pp. 2-4; Law n° 06/018 of 20 July 2006

²⁵ CEDAW (2013), pp. 8-11

²⁶ UNHCR (2013)

²⁷ Human Rights Watch (2009), p. 14

²⁸ CEDAW (2013), p. 3

between July 2011 and June 2012 at 224 (number of convictions unknown) while, in the period from July 2010 to June 2011, there were 355 prosecutions and 200 convictions for crimes of violence against women.²⁹ According to a report by the UN Refugee Agency in July 2013, violence in certain parts of the DRC continues to rise: between January and July of 2013, the agency had registered 705 cases of sexual violence in North Kivu, where only 108 had been registered in the area in all of 2012.³⁰

According to DHS survey responses, physical violence is negatively correlated with some measures of women's empowerment, as women who worked more frequently and were paid in cash reported higher levels of violence than women who did not receive cash wages.³¹

3. Son bias

The male/female **sex ratio** for the working age population (15-64) in 2013 is 0.99 while the sex ratio at birth is 1.03.³² This evidence does not suggest that the Democratic Republic of the Congo is a country of concern in relation to **missing women**.

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In 2012, the ratio of female to male primary **school enrolment** was 87.6 and 59 for secondary education.

According to data from 2010, **malnutrition** appears to have affected boys to a greater extent than girls.³³

4. Restricted resources and assets

Women – especially those who are married – have very limited **access to land**. By law, the right to land concessions can be given to men and women without distinction, but attitudes and customs that discriminate against women remain strong in this area. Despite the nationalisation of all land and the introduction of formal legislation governing land use rights, as a practical matter a significant percentage of the land in the DRC (some estimate as much as 97%) remains subject to customary law. This presents a major challenge to women's ability to enjoy their land rights in practice.³⁴ Moreover, according to the government's latest report to CEDAW in 2011, although women produce 75% of food in rural areas, "the best land is appropriated by men."³⁵

Married women in DR Congo do not have **access to non-land assets**, since everything must be administered by their husbands.³⁶

²⁹ CEDAW (2013), pp. 3-4

³⁰ UNHCR (2013)

³¹ Ministère du Plan and Macro International (2008), Table 18.1

³² CIA, <https://www.cia.gov/library/publications/the-world-factbook/fields/2018.html> (accessed 07/05/2014)

³³ World Bank (n.d.)

³⁴ MONUSCO (2013)

³⁵ CEDAW (2011), p. 19

³⁶ Articles 490 and 497 of the Family Code, in CEDAW (2004), pp. 18, 20

Regarding **access to financial services**, married women do not have the legal capacity to sign certain acts and contracts without the consent of their husbands.³⁷ This means that they have virtually no access to bank loans and bank accounts. However, according to the latest data from the World Bank, only small percentages of both women (2.8%) and men (4.7%) in the DR Congo had accounts at formal financial institutions in 2011, and only 1.5% of men and women had received loans from financial institutions in the past year.³⁸ According to its 2011 report to CEDAW, the government did have a microfinance strategy for the period 2008-2012 that specifically addressed women's access to microfinance.³⁹ Although unclear how this strategy was implemented in practice, women make up 66% of those who access microcredit with reduced rates.⁴⁰

According to the 2007 DHS, wealthier and more educated women living in urban environments have significantly more decision-making power than rural women.⁴¹ Nevertheless, power over wages does not extend to other decision-making responsibilities, as the same survey shows a majority of women reporting that their spouse had sole decision-making power over large household purchases and even decisions concerning women's health.⁴²

5. Restricted civil liberties

Women face restrictions on their freedom of movement and **access to public space**. Married women are obliged to live in a residence of their husband's choosing, and cannot apply for a passport without their husband's consent.⁴³ As detailed in the physical integrity section, widespread instability and militia activity, and the attendant risk of rape and other atrocities, effectively limits the movement of women.

Concerning **political voice**, in the DR Congo, women enjoy the same rights as men to vote in and stand for election to political office.⁴⁴ There are **quotas** at both national and sub-national levels. According to article 14 of the 2006 Constitution, as amended in 2011, women have the right to equal representation in national, provincial and local institutions.⁴⁵ In the past, the government reported that women wishing to stand for office face considerable practical and cultural obstacles, including hostility towards the idea of female politicians.⁴⁶ To address this issue, in 2008, Act No.08/005 on the public financing of political parties was passed including a requirement for political parties to take gender parity into consideration in their electoral lists.⁴⁷ According to the government's 2011 report to CEDAW, "women seeking to enter politics are no

³⁷ Articles 215, 448, and 450 of the Family Code, in FAO et al. (2004); CEDAW (2004), p. 18; Mossi and Duarte 2006, pp. 9-11

³⁸ World Bank (2013)

³⁹ CEDAW (2011), p. 17

⁴⁰ CEDAW (2013), p. 24

⁴¹ Ministère du Plan and Macro International (2008), Table 17.2

⁴² Ministère du Plan and Macro International (2008), Table 17.3

⁴³ Article 165 of the Family Code in CEDAW (2004), p. 17

⁴⁴ CEDAW (2004), p. 29

⁴⁵ <http://www.quotaproject.org/uid/countryview.cfm?country=39>

⁴⁶ CEDAW (2004), pp. 29-31

⁴⁷ CEDAW (2011), p. 8

longer necessarily stigmatized.”⁴⁸ The government has also taken steps to draft an Act on gender parity in all sectors of national life.⁴⁹

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In terms of **workplace rights**, according to the government’s 2011 report to CEDAW, new provisions to the Labour Code establish that the Code applies to all workers regardless of gender or marital status (article 1), grants everyone the right to work without discrimination (article 2), provides for equal salary for equal work (article 83), removes the requirement for married women to gain their husband’s permission to work (article 111), and prohibits women applying for employment from undergoing a pregnancy test (article 128).⁵⁰ It is not clear if this legislation is enforced effectively. Further, given that the majority of the population (female and male) earn their living in the informal economy,⁵¹ it is likely that few women actually benefit from these provisions.

The Democratic Republic of the Congo’s Labour Code provides 14 weeks of paid **maternity leave** at two-thirds of wages, with all benefits paid by the employer, and prevents employers from terminating the employment of women while they are on maternity leave.⁵²

⁴⁸ CEDAW (2011), p. 8

⁴⁹ CEDAW (2011), p. 8

⁵⁰ CEDAW (2011), p. 16

⁵¹ US Department of State (2011)

⁵² ILO (2009)

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