

REPUBLIC OF CONGO
A BRIEF ON CHILD MARRIAGE, MATERNITY AND PATERNITY
LEAVE, AND NON-DISCRIMINATION IN WORK AND
EMPLOYMENT
(CEDAW Articles 2, 5, 11 AND 16)

*Information for the Committee on the Elimination of Discrimination Against Women
89th Pre-Sessional Working Group, February 2024*

Submitted By

The WORLD Policy Analysis Center
University of California, Los Angeles



TABLE OF CONTENTS

INTRODUCTION2

Summary of Findings and Recommendations.....3

 1. Child Marriage (Articles 2, 16).....3

 2. Paid Maternity and Paternity Leave (Articles 5, 11).....3

 3. Non-Discrimination in Work and Employment (Article 11).....4

Detail of Legislative Findings6

 1. Child Marriage (Articles 2, 16).....6

 2. Paid Maternity and Paternity Leave (Articles 5, 11).....7

 3. Non-Discrimination in Work and Employment (Article 11).....8



INTRODUCTION

The WORLD Policy Analysis Center, based at the University of California, Los Angeles, captures quantitative policy data on more than 2,000 indicators that matter to equality, health, and well-being. We strive to improve the quantity and quality of globally comparative data available to policymakers, citizens, national governments, intergovernmental organizations, civil society, and researchers for all 193 UN member states. We submit the following brief in advance of the 89th Pre-Sessional Working Group of the Committee on the Elimination of Discrimination against Women.

This brief will focus on the following areas:

1. Child Marriage (Articles 2, 16)
2. Paid Maternity and Paternity Leave (Articles 5, 11)
3. Non-discrimination in Work and Employment (Article 11)

We have collected and analyzed information on rights, laws, and policies in these areas for all 193 UN member states using a variety of sources, including primary national legal sources (e.g. original legislation and constitutions), national reports on policies and laws to the United Nations and official global and regional bodies, and secondary sources where clarification or corroboration of primary data is needed. Using a rigorous double-coding process, we create original databases which distill thousands of pages of text to highlight the essential features of each right, law, or policy. These original databases are the reference for the following brief. When drafting each brief, we perform a series of additional verifications to ensure the data provided reflects the current constitutional and legal landscape of a country.

In this report we first provide a summary of our legislative findings, as well as suggested questions for the Committee to ask the Republic of Congo and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed legislative excerpts documenting our findings. We hope the Committee will recommend that Congo address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations. We also recognize that while having strong laws and policies in place are necessary first steps, implementation is also of paramount importance. In areas where we have commended Congo for having provisions in place, we hope the Committee will recommend that Congo work with stakeholders to overcome any obstacles in implementing these provisions.



SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. Child Marriage (Articles 2, 16)

Based on our review, **Congo’s legal framework sets a minimum age of marriage of 18 for women and 21 for men; however, a court may permit underage marriages for “serious reasons” if parents also consent to the marriage. When these exceptions are taken into account, there is no minimum age of marriage.** Congo’s last recorded child marriage rates, from 2015, remained relatively high: 27% of women aged 20-24 at the time of survey had been married before age 18, 7% had been married before age 15, and 16% of girls ages 15 to 19 were already married.¹

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Congo: Can Congo outline any concrete, near-term plans to pass legislation that removes all existing exceptions to a minimum age of marriage of 18 years for both boys and girls?
 - If Congo does not have concrete near-term plans in place, recommend in its concluding observations that Congo develop a concrete plan to pass and implement legislation that protects children under the age of 18 from early marriage without exceptions.

2. Paid Maternity and Paternity Leave (Articles 5, 11)

While Congo provides 15 weeks of paid leave to new mothers, our review of available legislation found that fathers in Congo are not entitled to any leave, paid or not, after the birth of a child.

¹ UNICEF Data Warehouse – Child Marriage. Retrieved November 30, 2023 from https://data.unicef.org/resources/data_explorer/unicef_f/?ag=UNICEF&df=GLOBAL_DATAFLOW&ver=1.0&dq=.PT_F_20-24_MRD_U15+PT_M_20-24_MRD_U18+PT_F_20-24_MRD_U18+PT_M_15-19_MRD+PT_F_15-19_MRD..&startPeriod=2016&endPeriod=2022



RECOMMENDED CONCLUDING OBSERVATION

We hope the Committee will:

- In its list of issues, ask Congo: Can Congo outline any concrete, near-term plans to pass legislation that provides paid leave that is specifically reserved to fathers upon the birth of their child?
 - If Congo does not have concrete, near-term plans to provide paid paternity leave to fathers, recommend in its concluding observations that Congo pass and implement legislation that does so.

3. Non-Discrimination in Work and Employment (Article 11)

Congo's labor code mandates equal pay for equal work regardless of sex. It contains no other provisions on workplace discrimination against women.



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Congo: can Congo outline any concrete, near-term plans to pass legislation that **comprehensively prohibits discrimination at work on the basis of sex** -- in hiring, training, promotions and demotions, and terminations?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Congo pass and implement legislation that enacts protections against discrimination on the basis of sex in hiring, training, promotions and demotions, and terminations.
- In its list of issues, ask Congo: can Congo outline any concrete, near-term plans to pass legislation that **comprehensively prohibits discrimination at work** -- in hiring, training, promotions and demotions, remuneration, and terminations – **on the basis of family status, marital status, and pregnancy**?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Congo pass and implement legislation that enacts protections against discrimination in hiring, training, promotions and demotions, remuneration, and terminations on the basis of family status, marital status, and pregnancy.
- In its list of issues, ask Congo: Can Congo outline any concrete, near-term plans to pass legislation that explicitly prohibits **indirect discrimination on the basis of sex**?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Congo pass and implement legislation that explicitly prohibits indirect discrimination on the basis of sex.
- In its list of issues, ask Congo: Can Congo outline any concrete, near-term plans to pass legislation that explicitly prohibits **retaliatory action against claims of workplace discrimination**?
 - If concrete, near-term plans are not in place, recommend in its concluding observations that Congo pass and implement legislation that explicitly prohibits retaliatory action against claims of workplace discrimination.



DETAIL OF LEGISLATIVE FINDINGS

While the following review is systematic and rigorous, we recognize that there may be laws or policies governing these areas that we have not captured, including new legislation or policies that have not yet been published globally.

1. Child Marriage (Articles 2, 16)

Child marriage disproportionately affects girls, often leading to social, economic, educational, and health inequalities, which States Parties have committed to eliminating. Article 16.2 of the Convention calls on States Parties to legislate a minimum age of marriage and prohibit the marriage of children. Additionally, disparities in the legal minimum age of marriage between girls and boys contravenes Article 2(a) of the Convention, which commits States Parties to “embody the principle of the equality of men and women” in their “national constitutions or other appropriate legislation”.

We systematically reviewed national civil codes and child-related legislation for all 193 UN member states to determine whether national legislation established a minimum age of marriage for both girls and boys generally, with parental consent, and under religious and customary law. We reviewed all legislation available through the Lexadin World Law Guide, Foreign Law Guide, International Labour Organization’s NATLEX database, regional sources, and official country websites.

CONGO’S LEGISLATIVE PROVISIONS: No minimum age of marriage under certain conditions

Based on our review, Congo’s legislative framework sets a minimum age of marriage of 18 for women and 21 for men; however, a local court may allow underage marriage for “serious reasons” if the minor to be married also has parental consent to marry. When all exceptions are taken into account, there is therefore no minimum age of marriage for boys or girls in Congo.

Code de la famille

Article 128. - Age.

L'homme avant 21 ans révolus et la femme avant 18 ans révolus, ne peuvent contracter mariage.

Néanmoins le Procureur de la République près le Tribunal Populaire d'Arrondissement ou de District peut accorder des dispenses d'âge pour des motifs graves.

Article 130. - Consentement des parents pour les mineurs.

Le mineur ne peut contracter mariage sans l'autorisation de ses père et mère (...)



The last available data shows relatively high rates of child marriage in Congo: 27% of women aged 20-24 at the time of survey had been married before age 18, 7% had been married before age 15, and 16% of girls ages 15 to 19 were already married.²

2. Paid Maternity and Paternity Leave (Articles 5, 11)

Article 11.2 of the Convention states that:

In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

Further, Article 5(b) of the Convention emphasizes the importance of including men in the upbringing of children:

To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Research evidence indicates that paid paternity leave can increase gender equality in caregiving responsibilities and gender equality in employment; it is therefore important to ensure fathers have access to adequate paid paternity leave.

We systematically reviewed national labor codes and social security laws to assess the availability of paid maternity and paternity leave. We relied primarily on legislation downloaded through the International Labour Organization's NATLEX database. Additionally, for confirmation or clarification on legal provisions, we consulted trusted secondary sources including the Social Security Programs throughout the World (SSPTW) database, and the International Review of Leave Policies.

² 2019 data taken from UNICEF. UNICEF Data Warehouse – Child Marriage. Retrieved November 30, 2023 from https://data.unicef.org/resources/data_explorer/unicef_f/?ag=UNICEF&df=GLOBAL_DATAFLOW&ver=1.0&dq=.PT_F_20-24_MRD_U15+PT_M_20-24_MRD_U18+PT_F_20-24_MRD_U18+PT_M_15-19_MRD+PT_F_15-19_MRD..&startPeriod=2016&endPeriod=2022



CONGO'S LEGISLATIVE PROVISIONS: No leave for new fathers

Our research shows that Congo provides 15 weeks of leave to mothers only. Fathers have no specific statutory entitlement to paid paternity leave.

Code du travail

Art.113.- Toute femme enceinte dont l'état a été médicalement constaté peut quitter le travail sans préavis sans avoir de ce fait à payer une indemnité de rupture de contrat.

A l'occasion de son accouchement, et sans que cette interruption de service puisse être considérée comme cause de rupture du contrat, toute femme a le droit de suspendre son travail pendant quinze semaines consécutives, dont neuf postérieures à la délivrance;

(...)

3. Non-Discrimination in Work and Employment (Article 11)

Article 11 of the Convention states that:

[p]arties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(...)

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(...)

We systematically reviewed national labor codes, gender equality, and other relevant legislation available through the International Labour Organization's NATLEX database for all 193 UN member states to determine whether national legislation prohibited gender discrimination in employment in five areas covered by CEDAW:

- employment opportunities or hiring (art. 11.1.b)
- equal pay for work of equal value (art. 11.1.d)
- training (art. 11.1.c)



- promotions or demotions (art. 11.1.c)
- job security or terminations (art. 11.1.c)

We assessed whether women were explicitly protected from discrimination at work in each of these areas and whether the definition of discrimination included both direct and indirect discrimination.

We also examined whether there were explicit protections from discrimination on the grounds of pregnancy, marital status, and family status in line with Article 11.2.a) of the Convention, which prohibits “dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status”. Although the Convention focuses only on protecting from dismissal on these additional grounds, we nevertheless further examined whether discrimination on the grounds of pregnancy, marital status, or family status was prohibited in other stages of employment, consistent with CEDAW’s spirit of prohibiting discrimination against all women, regardless of their circumstances.

CONGO’S LEGISLATIVE PROVISIONS: Almost no protections against discrimination in employment

Congo’s labor mandates equal pay for equal work regardless of sex.

Code du Travail

Art.80.- A conditions égales de travail, de qualification professionnelle et de rendement le salaire est égal pour tous les travailleurs quels que soient leur origine, leur sexe, leur âge et leur statut.

We found no further protections of any kind against workplace discrimination on the basis of sex, including: protections against discrimination in other areas of employment, such as hiring, promotions or demotions, terminations and vocational training; protections against discrimination on the basis of family status, marital status, or pregnancy; protections against indirect discrimination; and protections against employer retaliatory action for bringing forward claims of discrimination.

A summary of these findings is presented in Table 1.

Table 1: Does Congo have legislative provisions in place explicitly guaranteeing non-discrimination for women in the following key areas of employment?	
Employment opportunities and hiring	No provisions found
Equal pay for work of equal value	Yes, but only equal pay for equal work
Training	No provisions found
Promotions and/or demotions	No provisions found
Terminations	No provisions found
Discrimination on the basis of marital status, family status, and pregnancy	No provisions found



Table 1: Does Congo have legislative provisions in place explicitly guaranteeing non-discrimination for women in the following key areas of employment?

Indirect discrimination	No provisions found
Retaliatory action	No provisions found

BRIEFING PREPARED BY THE WORLD POLICY ANALYSIS CENTER, UNIVERSITY OF CALIFORNIA, LOS ANGELES