



Refugee Documentation Centre (Ireland)
LEGAL AID BOARD

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Refugee Documentation Centre

Country Marriage Pack

Democratic Republic of Congo

Disclaimer

Country Marriage Packs (CMPs) are prepared by researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. CMPs contain a selection of representative links to and excerpts from sources under a number of categories for use as Country of Origin Information. Please note that CMPs are not, and do not purport to be, exhaustive with regard to conditions in the countries surveyed or conclusive as to the merit of any particular claim to refugee status or protection.

1. Types of Marriage

Civil Marriages

See section below.

Religious Marriages

See section below.

Traditional/Other Marriages

The *United States Department of State* reports:

“While the law prohibits marriage of girls under the age of 14 and boys younger than 18, some marriages of underage girls took place. Dowry payments greatly contributed to underage marriage, as parents married off a daughter against her will to collect a dowry or to finance a dowry for a son. The law criminalizes forced marriage. It subjects parents to up to 12 years’ hard labor and a fine of 92,500 Congolese francs (\$100) for forcing a child to marry. The penalty doubles when the child is under the age of 15. There were no reports of prosecutions for forced marriage.” (United States Department of State (19 April 2013) *2012 Country Reports on Human Rights Practices – Democratic Republic of Congo*)

A report by the *UN Office of the High Commissioner for Human Rights* states:

“With two of the victims and the resource person, the panel had a discussion about the status of women in marriage and the normal peacetime relationship between husband and wife. The resource person explained that in the bush culture, men considered women as objects more than human beings. She said once the dowry is paid to her parents, the wife becomes a kind of slave to her husband in the household. He gives her a home on a plot of land. She cultivates the fields, cooks the food, cares for the children, and at night is used sexually. Women have no right to refuse sex, and men don’t accept their wives back after they have been raped. The two victims confirmed that this was their experience of marriage. When asked if they wanted to return to this life, they did not respond. They said merely that men should be told it is not women’s fault when they are raped.” (UN Office of the High Commissioner for Human Rights (March 2011) *Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo to the High Commissioner for Human Rights*)

This report also states:

“The medical officer suggested that it would be advisable to focus on all forms of violence against women, not limited to sexual violence. He mentioned forced marriage, and also said that many women are beaten by their husbands. Domestic violence is a huge problem that is not being addressed. There are no statistics because no one thinks it is important.” (Ibid)

The *UN Committee on Economic, Social and Cultural Rights (CESCR)* states:

“In the DRC the ‘family’ results from a marriage contracted pursuant to article 40 of the Constitution, which grants every individual the right to marry a person of his or her choice, of the opposite sex, and to found a family. The family is the basic unit of the human community and is organized so as to ensure its unity, stability and protection. It is placed under the protection of the public authorities.” (UN Committee on Economic, Social and Cultural Rights (21 January 2009) *Implementation of the International Covenantal Archives of the Congo Cultural Rights: combined 2nd, 3rd, 4th and 5th periodic reports submitted by States parties under articles 16 and 17 of the Covenant: Democratic Republic of the Congo*)

Freedom House states:

“Congo’s civil law system is a legacy of Belgian rule, but customary law is still in force in many parts of the multiethnic, largely rural country. Traditional private domain issues such as marriage and divorce, inheritance, and land tenure are regulated by customary laws in the various traditional communities.” (Freedom House (7 April 2010) *Countries at the Crossroads 2010 - Democratic Republic of the Congo*)

A Response by the *Immigration and Refugee Board of Canada* states:

“According to two sources, approximately 74 percent of girls between the ages of 15 and 19 in the Democratic Republic of Congo (DRC) are already married (AI 5 Jan. 2005; United Nations 2005). Amnesty International also reported, without however naming the ethnic groups or the regions concerned, the existence of a [AI English version] “very high number of forced marriages” in the DRC (AI 26 Oct. 2004). An article posted on a DRC civil

society Website, societecivile.cd, stated that early marriages are among the main problems that women face in the DRC (Societecivile.cd 6 July 2005).” (A. Immigration and Refugee Board of Canada (9 January 2006) Democratic Republic of Congo (DRC): *Whether forced marriages exist; if so, the frequency of such marriages, the people who organize them (maternal or paternal family), the regions and ethnic groups involved, the treatment of people who refuse such marriages and the state protection available to them (2004 - January 2006)*)

This Response also states:

“The PAAF president indicated that when a woman refuses a forced marriage, she has no protection from the government authorities and that the law is silent on this subject (5 Jan. 2006). She also explained that a woman who refuses this kind of marriage is hated by her entire community and is perceived to have shamed her family, neighbourhood and community (PAFF 5 Jan. 2006).” (Ibid)

IRIN News reports:

“Given the lack of confidence in the judicial system, many survivors choose to handle sexual assault allegations at the family level. This allows them to avoid the shame and stigma of publicity. But it also means some survivors must marry their rapists. ‘The traditional chief of the village or family sees the marriage of a young girl to her aggressor as a kind of reparation,’ explained Zoro. ‘Even the victim sometimes shares the same wish. She prefers this solution to dishonour, and the impossibility of marrying afterward since she is no longer a virgin.’ (IRIN News (7 June 2011) *New laws have little impact on sexual violence in DRC*)

The OECD Social Institutions and Gender Index states:

“According to the 2006 CEDAW report, the 1987 Family Code does not specifically prohibit polygamy (but does prohibit the customary practice of polyandry, i.e. a woman having multiple husbands).[14] According to an earlier CEDAW report (1997), polygamy is not widely practiced but a phenomenon known as the *deuxième bureau* (literally, the “second office”) has developed, whereby married men enjoy extramarital relationships with several women.[15] They act and consider themselves to be genuine spouses, and may even carry the identification cards of married women, but they do not have the legal status of a wife.” (OECD Social Institutions and Gender Index (2012) *Democratic Republic of the Congo*)

An Individual NGO report in relation to CEDAW states:

“Early arranged marriages, ‘*le mariage précoce*’, are common. Although it is illegal under the Family Code and the Child Protection Act to marry before the age of 15, girls as young as 13 have been married. Reasons for this include women’s economic dependence on men. The adolescent girls also reported that *le mariage précoce* occurred because families profited from dowry payments made to them for their daughters. As the family of the male spouse is responsible for the payment of the dowry, girls are effectively being ‘sold off’ by their families.” (Congregation of Our Lady of Charity of the Good

Shepherd (8-26 July 2013) *Individual NGO report in Relation to CEDAW, Session 55, Democratic Republic of the Congo*, p. 9)

This report also states:

“The Family Code, promulgated in 1987 and renewed in 1999, contains several discriminatory clauses. Many provisions are incompatible with the Convention on the Elimination of All Forms of Discrimination against Women. The following are relevant examples: Regarding polygamous marriages only those before 1951 are recognised (Art 925) and Art 354 says that a marriage cannot take place before annulment or dissolution of previous marriage. Hence the second wife technically has no rights pursuant of the family code.” (Ibid, p. 9)

Proxy Marriages

The *UK Home Office Country Report* quotes the hard copy of a joint report from Norway’s Landinfo and the Danish Immigration Service on a fact finding mission in January 2007 as follows in relation to proxy marriage:

“Palankoy Lakwas explained that marriage in certain cases can take place by proxy. For example a marriage can take place by proxy with a substitute as long as one of the parties is in a foreign country as a refugee and therefore cannot travel into the DRC.”

“Palankoy Lakwas stressed that a marriage contract by proxy can only be registered with l’Etat Civil as long as there is a Jugement from the Tribunal de Paix. The marriage becomes legally valid only when it has been registered with l’Etat Civil. The substitute for the missing spouse and the spouse living in the DRC has to be present at the registration at l’Etat Civil and the substitute must sign Acte de Mariage on behalf of the missing spouse.”

“Nsensele wa Nsensele explained that marriage by proxy is legal according to Code de la famille’s article 351, part 2. However there should be a substantial reason to do so. For example, the reason for the spouse’s absence could be due to their work; sickness; or if the person is being held in a foreign country under refugee status. These could be legal reasons for entering a marriage in this manner. By this method of marriage it is important that there exists a Jugement in advance given by the Tribunal de Paix for a marriage to take place. It will always be evident from a marriage certificate Acte de Mariage, and from the certificate from the Tribunal de Paix where a Jugement was given regarding the marriage, who was the substitute present instead of the absentee.”

“Ilaka Kampusu confirmed that a Congolese refugee in a foreign country can enter into a marriage by proxy in the DRC. This is made possible by the law and this happens in reality too. A refugee is a political state and a marriage is a civil affair and they have nothing to do with political conditions. This is never evident from the Tribunal de Paix’s Jugement, that a marriage by proxy involved a person who is a refugee in another country. The Tribunal de Paix will confirm that the spouse is in a foreign country due to their profession..” (United Kingdom: Home Office (27 January 2009) *Country of Origin Information Report - Democratic Republic of the Congo*, pp. 152-153)

2. Formalities of Marriage (Consent, Minimum Age and Registration of Marriage)

An article by *IRIN News* reports:

“A national campaign to inform people of the advantages to officially registering their marriages was launched last week by the Ministry of Social Affairs and Family (Ministere des Affaires sociales et Famille) of the Democratic Republic of the Congo (DRC), in collaboration with UNICEF.”
IRIN News (1 October 2001) *DRC: Marriage registration encouraged to protect women*)

This article also states:

“An estimated 62 percent of women in the DRC marry under customary law, while only 25 percent officially register their marriages with the state.” (Ibid)

The *US Department of State Travel.State.Gov* states under the heading ‘Marriage Certificates’:

“Available. Extraits d'Actes de Mariage, Actes de Mariage, or Attestation de Marriage are available and are issued and legalized by the same officials and for a fee comparable to birth certificates. It should be noted that some natives still believe in, and practice polygamy, despite the fact that the Democratic Republic of the Congo is officially a monogamous country.” (US Department of State Travel.State.Gov (undated) *Congo Reciprocity Schedule*)

The *US Department of State Travel.State.Gov* also states under the heading ‘Divorce Certificates’:

“Available. Certificats de Divorce are obtained from the Registrar of Births, Deaths, and Marriages for the district in which the marriage occurred. If the marriage occurred elsewhere than in the Democratic Republic of the Congo, proof of divorce may be furnished in the form of a certified copy of the Decree of Divorce issued by the Clerk (Greffier) of the Court in which the divorce was granted.” (Ibid)

The *Refugee Council* (UK) states under the section Relationships and marriage:

“In the DRC, the legal age for marriage is 18 although in rural areas it is common for girls to be prepared for marriage at a much earlier age. In the cities, the average age for marriage is around 30 to 35 for men and in the mid-twenties for women. Financial security is also a deciding factor. Polygamy is illegal but the practice continues.” (Refugee Council (December 2004) *A Guide to Congolese cultural and Social norms*)

A Response by the *Immigration and Refugee Board of Canada* states:

“In the Democratic Republic of Congo (RDC), the absence of one of the spouses does not prevent the celebration of a customary or civil marriage.

Religious marriages, however, always require the physical presence of both spouses. In the case of a customary or civil wedding, a family member, such as a brother, uncle or male cousin for the groom, or a sister, aunt or female cousin for the bride, may stand in for the missing spouse. The representative of *Éveil de la femme* said that some men have married by proxy while they were abroad.” (Immigration and Refugee Board of Canada (8 April 2004) *Democratic Republic of Congo: Whether a customary marriage can take place in the absence of one of the spouses (April 2004)*)

A document by the *OECD* states under the heading ‘Discriminatory Family Code’:

“Under the Family Code, the legal minimum age for marriage is 15 years for women and 18 for men. The 2007 Demographic and Health Survey (DHS) estimated that 24.6 % of girls in DR Congo between 15 and 19 years of age were married, divorced, separated or widowed.” (OECD Social Institutions and Gender Index (2012) *Democratic Republic of the Congo*)

3. Divorce

The *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* states under section Volume III: The family:

“Article 355 deals with remarriage following the expiry of a 300-day period following the dissolution or annulment of the previous marriage. This waiting period is required for women only.” (Convention on the Elimination of All Forms of Discrimination against Women (30 November 2004) *UN Committee on the Elimination of Discrimination against Women: State Party Report, Democratic Republic of the Congo*)

The *Refugee Council (UK)* states:

“Divorce is not common in the DRC because marriage is seen as a union between two families and divorce therefore divides communities. Religious beliefs also have an impact. Negotiation, mediated by family members, is a preferred solution and divorce will only be allowed in extreme circumstances. However, it does occur, especially in cities, and is accepted if there is a compelling reason.” (Refugee Council (December 2004) *A Guide to Congolese cultural and Social norms*)

A Response by the *Immigration and Refugee Board of Canada* states:

“The representative of the RFDA explained that, if an accusation of domestic violence led to divorce, the woman would have no rights to shared property or wealth, would lose custody of her children, would be required to repay the bride price given upon marriage, and would be shunned by the community (Immigration and Refugee Board of Canada (17 April 2012) *Democratic Republic of the Congo: Domestic and sexual violence, including legislation, state protection, and services available to victims (2006-March 2012)*, COD104022.E”

4. Marriage between Non Nationals and Nationals

The *UK Home Office Country Report* quotes the hard copy of a joint report from Norway's Landinfo and the Danish Immigration Service on a fact finding mission in January 2007 as follows under the heading 'Marriage to a Foreigner and Residence Status in the DRC':

"Ilaka Kampusu reported that any foreigner has the right to get residence in the DRC on the basis of marriage with a Congolese national, regardless of the fact that the foreigner is a man or a woman".

"If this marriage has taken place in a foreign country, it has then to be legalised in the DRC. This kind of legalisation is called *exequateur* which is a process that is used for legalisation of foreign documents in the DRC. All relevant documentation issued in a foreign country regarding the marriage has to be legalised in the DRC. All these documents have to be presented to the foreign ministry which in case of marriages will refer to the *Tribunal de Paix*. Ilaka Kampusu pointed out that foreign marriages should be legalised in the country of marriage first before presenting it to the Congolese foreign ministry." (United Kingdom: Home Office (27 January 2009) *Country of Origin Information Report - Democratic Republic of the Congo*, p. 153)

Marriage between Two Non Nationals

No information on the above issue could be found among sources available.

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