

**Refugee Review Tribunal
AUSTRALIA**

MRT RESEARCH RESPONSE

Research Response Number: COD35554
Country: Congo (Democratic Republic – ex-Zaire)
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Keywords: Congo (Democratic Republic – ex-Zaire) – Caring for Siblings – Legal Rights of Married Women – Head of Family

Questions

1. Please provide any research as to whether, in the Congo within a large family, one of the older siblings might be regarded as the “family head” or otherwise be regarded (informally or legally) as having the permanent care of a younger sibling?

RESPONSE

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Care of Siblings

According to the Countries and their Cultures website, in the Democratic Republic of Congo (DRC) “often the woman is the family’s principal breadwinner”. Boys tend to remain at school longer, while “girls learn from a very young age to take care of their younger siblings. Babies are seen on the backs of girls as young as five years of age.” And, “some authors argue that there really is no period of life called “childhood” in the Congo, at least in the Western sense of the concept. From the time babies are able to walk, they are thrust into the realm of adult responsibilities. Youth learn from their parents and elders how to manage the homestead. Young girls, especially, are expected to do lots of work for the family and are usually the ones found endlessly pounding cassava roots with a large mortar and pestle”:

Often the woman is the family’s principal breadwinner. Many women have hopes that their children will advance out of poverty, and they are therefore burdened with the additional responsibility of paying school fees. Male children typically advance further in school than their female counterparts, since men are the head of the household and make financial decisions on behalf of the entire family and will benefit more from the education.

...Infant Care. It is common to see women carrying their babies on their backs as they work in the field, care for other children, carry water, cook, gather firewood, and clean their clothes and homes. **Young girls learn from a very young age to take care of their younger siblings. Babies are seen on the backs of girls as young as five years of age.**

Child Rearing and Education. Some authors argue that there really is no period of life called “childhood” in the Congo, at least in the Western sense of the concept. From the time babies

are able to walk, they are thrust into the realm of adult responsibilities. **Youth learn from their parents and elders how to manage the homestead. Young girls, especially, are expected to do lots of work for the family and are usually the ones found endlessly pounding cassava roots with a large mortar and pestle.** Good children treat their elders with utmost respect and perform chores without complaint ('Culture of Democratic Republic Of The Congo' (undated), Countries and Their Cultures website <http://www.everyculture.com/Bo-Co/Democratic-Republic-of-the-Congo.html> – Accessed 12 October 2009 – Attachment 1).

According to the 2006 document 'Congolese Community Profile', produced by the then Department of Immigration and Multicultural Affairs, family in the DRC can encompass "a wide group of relatives, including extended family such as grandparents, aunts and uncles, nephews and nieces, and cousins":

African society is traditionally organised by kinship groups. Family encompasses a wide group of relatives, including extended family such as grandparents, aunts and uncles, nephews and nieces, and cousins. Congolese people take pride in coming from a good family, and are taught to contribute to the family's well being by respecting their elders and providing for family members. It is common for people to take in nephews and nieces if necessary (Department of Immigration and Multicultural Affairs 2006, 'Congolese Community Profile', DIAC website http://www.immi.gov.au/living-in-australia/delivering-assistance/government-programs/settlement-planning/_pdf/community-profile-congo.pdf – Accessed 8 October 2009 – Attachment 2).

In a 2000 report to the United Nations Committee on the Convention on the Elimination of All Forms Discrimination Against Women (CEDAW), the International Women's Rights Action Watch (IWRAP) stated that kinship structures within families varied dramatically within the Democratic Republic of Congo due to "tremendous ethnic, cultural and tribal diversity." The report also states that despite a woman's legal right to inherit property, "widows often lose all possessions, as well as their dependent children, to the deceased husband's family":

The DRC's tremendous ethnic, cultural and tribal diversity affects the variety of roles women are expected to play in the family and in society. The kinship structure varies from matrilineal (in the Bandundu and Bas-Zaïre regions), in which the mother's brother has authority over her children, to patrilineal (in the Shaba and Kivu regions). Regardless of whether or not a woman lives in a matrilineal or patrilineal kinship structure, a man has "established authority over his wife, reinforcing patriarchal social relations. . . Such a traditional system requires that the authoritative allocation of resources be controlled by men."

... Although the Family Code was revised in 1987 to permit a widow to inherit her husband's property, control her own property, and to receive a property settlement in a divorce, women are routinely denied these rights. Widows often lose all possessions, as well as their dependent children, to the deceased husband's family. Although human rights groups are trying to change this, there has been generally no government intervention in support of these efforts. Women are denied custody of their children in divorce (International Women's Rights Action Watch 2000, *Report to the Committee on the Convention on the Elimination of All Forms Discrimination Against Women (CEDAW) on the Democratic Republic of the Congo*, Peace Women website, January <http://www.peacewomen.org/resources/DRC/IWRAPCEDAW.html> – Accessed 23 April 2007 – Attachment 3).

Women's Legal Rights

No sources have been located that state that an eldest child, or any child for that matter, can be legally deemed the “family head” in the absence of a father. According to the Social Institutions and Gender Index, the Democratic Republic of Congo’s Family Code “decrees that men are the head of the household and women must obey them.” Furthermore, “following the death of a husband, wives must share the running of the household with a male relative of the deceased – in part to compensate for women’s lack of ability to sign legal acts”:

Women in DR Congo have a low degree of protection in regard to family matters. The Family Code decrees that men are the head of the household and women must obey them. The legal minimum age for marriage is very low: only 15 years for women and 18 for men. As a result, the incidence of early marriage is very high. A 2001 report by UNICEF estimated that 74 per cent of girls in DR Congo between 15 and 19 years of age were married, divorced or widowed.

...In theory, spouses have equal parental authority. However, married women must receive authorisation from their husbands for any legal act, which clearly limits their capacity to independently fulfil activities associated with parental authority.

Concerning inheritance rights, the DR Congo’s Family Code gives preferential treatment to the children of the deceased but does not discriminate between women and men within the second category of heirs. However, following the death of a husband, wives must share the running of the household with a male relative of the deceased – in part to compensate for women’s lack of ability to sign legal acts(‘Gender Equality and Social Institutions in Congo, Dem. Rep’ 2009, OECD Social Institutions and Gender Index website, April <http://genderindex.org/country/congo-dem-rep> – Accessed 12 October 2009 – Attachment 4).

One woman’s story of “sharing the running the household with a male relative of the deceased” is contained in the May 2009 report ‘Women “Prisoners” in Their Own Homes’, produced by Institute for War and Peace Reporting:

A woman whose husband had recently died described the humiliation she felt when her in-laws insisted she participate in a superstitious ritual.

“The uncles and aunts of my husband came from the village and decided that I had to have sexual intercourse with my brother-in-law, the little brother of my husband, whom I had raised,” she said. “This custom aims at purifying the widow so that the spirit of my husband won’t come haunting me or the children. I had to give in to these degrading customs.

“After that, my parents-in-law decided that the house had to be under his supervision and that he would also be responsible for the children” (Maila, H. 2009, Women “Prisoners” in Their Own Homes, 29 May, UNHCR Refworld, source: *Institute for War and Peace Reporting* <http://www.unhcr.org/refworld/docid/4a28c215c.html> – Accessed 8 October 2009 – Attachment 5).

The US Department of State 2008 Human Rights Report – Congo states that during 2008 in the DRC, “Women did not possess the same rights as men in law and in practice. The law requires a married woman to obtain her husband’s consent before engaging in legal transactions, including selling or renting real estate, opening a bank account, and applying for a passport.” Furthermore, “the law forbids a woman from working at night or accepting employment without her husband’s consent”:

Women did not possess the same rights as men in law and in practice. The law requires a married woman to obtain her husband's consent before engaging in legal transactions, including selling or renting real estate, opening a bank account, and applying for a passport. Under the law women found guilty of adultery may be sentenced to up to one year in prison; adultery by men is subject to legal penalty only if judged to have “an injurious quality.”

Women experienced economic discrimination. The law forbids a woman from working at night or accepting employment without her husband's consent. According to the International Labor Organization, women often received less pay in the private sector than men doing the same job and rarely occupied positions of authority or high responsibility (US Department of State 2009, *Country Reports on Human Rights Practices – Democratic Republic of Congo*, February <http://www.state.gov/g/drl/rls/hrrpt/2008/af/118995.htm> – Accessed 12 October 2009 – Attachment 6).

The February 2008 *Report of the Special Rapporteur on violence against women, its causes and consequences*, Yakin Ertürk – Mission To The Democratic Republic Of The Congo, produced by the Office of the United Nations High Commissioner for Human Rights, states that the Family Code “renders a married woman a minor under the guardianship of her husband”:

97. The Family Code recognizes equality between the spouses (art. 330), but effectively renders a married woman a minor under the guardianship of her husband. Article 444 stipulates that the wife must obey her husband; article 448 requires a woman to obtain her husband's authorization to effect any legal act for which she must present herself in person. The law also endorses double standards on marital fidelity: all cases of adultery committed by a married woman are punishable by six months to one year of imprisonment, whereas male adultery is only punishable if it is of an “injurious quality”. In almost all ethnic groups, bride price is practised, which leads some men to believe that they have “bought” their wife (Ertürk, Y. 2008, *Report of the Special Rapporteur on violence against women, its causes and consequences – Mission To The Democratic Republic Of The Congo*, Office of the United Nations High Commissioner for Human Rights <http://www2.ohchr.org/english/issues/women/rapporteur/annual.htm> – Accessed 13 October 2009 – Attachment 7).

List of Sources Consulted

Internet Sources:

Government

Department of Immigration and Citizenship <http://www.immi.gov.au/>

US Department of State <http://www.state.gov>

UK Home Office <http://www.homeoffice.gov.uk/>

Immigration and Refugee Board of Canada <http://www.irb-cisr.gc.ca/>

United Nations

UN <http://www.un.org/>

UNHCR <http://www.unhcr.ch/cgi-bin/texis/vtx/home>

Office of the United Nations High Commissioner for Human Rights <http://www2.ohchr.org/>

Non-Government Organisations

Amnesty International <http://www.amnesty.org/>

Human Rights Watch <http://www.hrw.org/>

Médecins Sans Frontières <http://www.msf.org/>

Oxfam <http://www.oxfam.org/>

Databases:

FACTIVA (news database)

CISNET (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (MRT – RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

MRT – RRT Library Catalogue

List of Attachments

1. 'Culture of Democratic Republic of The Congo', Countries and Their Cultures website <http://www.everyculture.com/Bo-Co/Democratic-Republic-of-the-Congo.html> – Accessed 12 October 2009.
2. Department of Immigration and Multicultural Affairs 2006, 'Congolese Community Profile', DIAC website http://www.immi.gov.au/living-in-australia/delivering-assistance/government-programs/settlement-planning/_pdf/community-profile-congo.pdf – Accessed 8 October 2009.
3. International Women's Rights Action Watch 2000, *Report to the Committee on the Convention on the Elimination of All Forms Discrimination Against Women (CEDAW) on the Democratic Republic of the Congo*, January, Peace Women website <http://www.peacewomen.org/resources/DRC/IWRAWCEDAW.html> – Accessed 23 April 2007.
([http://immibelweh03/NXT/gateway.dll/cisnet_bacis/cisnet_bacis_zar_frame/bacis_cx175989?f=templates\\$fn=document-frameset.htm\\$q=%5BBrank,100%3A%5Bdomain%3A%5BAnd%3A%5Bstem%3A%5BAnd%3Afamily%20structure%5D%5D%5D%5D%5Bsum%3A%5Bstem%3Afamily%20structure%20%5D%5D%5D%5D\\$x=server\\$3.0#LPHit1](http://immibelweh03/NXT/gateway.dll/cisnet_bacis/cisnet_bacis_zar_frame/bacis_cx175989?f=templates$fn=document-frameset.htm$q=%5BBrank,100%3A%5Bdomain%3A%5BAnd%3A%5Bstem%3A%5BAnd%3Afamily%20structure%5D%5D%5D%5D%5Bsum%3A%5Bstem%3Afamily%20structure%20%5D%5D%5D%5D$x=server$3.0#LPHit1))
4. 'Gender Equality and Social Institutions in Congo, Dem. Rep' 2009, OECD Social Institutions and Gender Index website, April <http://genderindex.org/country/congo-dem-rep> – Accessed 12 October 2009.
5. Maila, H. 2009, Women "Prisoners" in Their Own Homes, 29 May, UNHCR Refworld, source: *Institute for War and Peace Reporting* <http://www.unhcr.org/refworld/docid/4a28c215c.html> – Accessed 8 October 2009.
6. US Department of State 2009, *Country Reports on Human Rights Practices – Democratic Republic of Congo*, February <http://www.state.gov/g/drl/rls/hrrpt/2008/af/118995.htm> – Accessed 12 October.

7. Ertürk, Y. 2008, *Report of the Special Rapporteur on violence against women, its causes and consequences – Mission To The Democratic Republic Of The Congo*, Office of the United Nations High Commissioner for Human Rights
<http://www2.ohchr.org/english/issues/women/rapporteur/annual.htm> – Accessed 13 October 2009.