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Refugee Documentation Centre

Country Marriage Pack

Eritrea

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 Marriage

Under the heading Procedures of Marriage the *Embassy of Eritrea in the United States of America* notes:

“The Draft Civil Code of Eritrea states that the marriageable age for both sexes is 18 unless the woman is pregnant and declaration is made by a doctor.

In Eritrea there are three types of marriages legally accepted.

- Religious marriage
- Customary marriage
- Civil marriage

Marriage is a contract between couples. To enforce its legality there needs two witnesses from bride and two witnesses from bridegroom and one person middleman, a person selected by both parties. This works for the three types of marriages.

At this moment the Civil Marriage is taking place in zonal administration offices (Zobas), therefore, the middle person is always the zonal administrator.

Documentations needed for the contract of marriage is letter from the zonal administration that confirms the person is single. If one of the couples is a foreigner, needs birth certificate from place of born in addition.

Marriage is not allowed between persons related by consanguinity. Marriage between affinities is also not allowed.

A married person can not get remarried unless the previous marriage is dissolved legally. In short no Bigamy is allowed.

A detained person can not get married unless a judge allowed.

Marriage by proxy or representation is not allowed. Unless dispensation be given by the General Attorney for good cause.” (Embassy of Eritrea USA (undated) *Procedures for Work and Residency*)

The *Social Institutions and Gender Index* report on Eritrea noted:

“The Transitional Civil Code recognises three types of marriage: civil, religious and customary. The code explicitly states that the minimum age of marriage for women and men is 18 years. These conditions do not apply to marriages governed by Islamic Sharia law. While the minimum age of marriage according to the Civil Code is 18 years of age, the Civil Code also recognizes marriages between the age of 15 and 18 in recognition of Eritrean customary marriage practices.

From 1995 to 2002, the percentage of girls between 15 and 19 years of age were married, divorced or widowed has decreased from 38 percent to 31 percent. For the most part, customary marriage disregards the TCE’s minimum age condition and sets its own minimums: the age for girls is 8 to 15 and that for boys is 12 to 15. All customary laws give authority for arranging betrothals to fathers or male relatives. While on the decline, marriages under customary law are still widely practiced in Eritrea, particularly in rural areas. According to the National Union of Eritrean Women, forced early marriage is common in rural areas, although declining, with some girls being married off by their families as young as 13.

Despite the formal illegality of polygamy, some parts of Eritrea apply Islamic Sharia law which allows men to take up to four wives. A Demographic and Health Survey of 2002 found that 9 percent of currently married women in Eritrea were in a polygamous union, compared with 7 percent in 1995. This suggests that the acceptability of polygamy is slowly declining.” (OECD Social Institutions and Gender Index (2012) *Gender Equality and Social Institutions in Eritrea*)

A report from the *World Organisation Against Torture (OMCT)* under the heading 3.4 Cultural Practices in the Family that Violate the Human Rights of Girls; sub heading 3.4.1 Early Marriage notes:

“Eritrean civil law provides that the minimum age for marriage for both girls and boys is 18. Nevertheless, customary law carries great weight in Eritrean society and often girls are married at ages well below the legal limit.

It is widely acknowledged in Eritrea that girls are married earlier than boys. The traditional view holds that the ideal age for marriage for a girl is between 12 and 18. In one study, the view was expressed that marrying girls at a young age was necessary to ensure their virginity before marriage and

protect “the woman from sin.” The ideal age for marriage for men is not correspondent with that of women. In the study mentioned above, many respondents claimed that men should wait until they are between at least 20 and 25, with some asserting that 25 be the minimum age, because of the many responsibilities a man assumes once he is married. (World Organisation Against Torture OMCT (2003) *Violence against Girls in Eritrea A Report to the Committee on the Rights of the Child*)

A report submitted by the Eritrean government in 2009 to the *United Nations Human Rights Council* for the purposes of a United Nations Universal Periodic Review, carried out in 2009, states:

“The Eritrean Constitution and other pertinent laws guaranty equal rights for women and men. In addition to the supreme principle enshrined in the Constitution prohibiting discrimination on account of race, ethnic origin, language, color, gender, religion, disability, age, political view, social or economic status, various Articles in the Constitution grant equal right to women as men. With regard to marriage for example, the Eritrean Constitution asserts that:

“Men and Women of full legal age shall have the right, upon their consent, to marry and found a family freely, without discrimination and they shall have equal rights and duties as to all family affairs.” It also provides that any act that violates the human rights of women or limits or otherwise thwarts their role and participation is prohibited.

Right after the independence of Eritrea, the Provisional Government undertook measures to revise the inherited colonial laws. Consequently, Proclamation No. 2/1991 (the Transitional Civil Code of Eritrea) and Proclamation No. 4/1991 (the Transitional Penal Code of Eritrea) repealed all discriminatory clauses and connotations from the colonial Civil Codes and included protective legal measures. To mention some important provisions in the Transitional Codes pertaining to the status of women:

- Marriage is now based on the free consent of both partners, and needs no parental consent. The age of the female partner was raised to 18 from the previous 15 years;
- Women can enter into a contract of marriage freely;
- bride price and abduction were prohibited by law;
- Irregular unions have been abolished because they don't provide any legal protection of women's right[s] upon separation;” (UN Human Rights Council (26 November 2009) *National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1 – Eritrea*, p. 12)

Religious Marriage

See above

Traditional Marriage

See above

Proxy Marriage

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

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

The *UN High Commissioner for Refugees* notes on page 29 of the Eligibility Guidelines under the heading 'Traditional Harmful Practices':

"The minimum age of marriage is set at 18 years old under the Constitution and the Eritrean Civil Code. This age is reportedly lower under customary laws. In practice, many children, especially girls, are married between the ages of 13 and 15. Furthermore, the incidence of child marriages is reportedly increasing." (UN High Commissioner for Refugees (20 April 2011) *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea*)

Under the heading 'Children' the *US Department of State Country Report on Human Rights Practices* notes:

"The legal minimum age for marriage for both men and women is 18, although religious entities may condone marriages at younger ages. The marriage rate for girls and boys under 18 was not known. (US Department of State (19 April 2013) *2012 Country Report on Human Rights Practices – Eritrea*)

The *Library of Congress* note in their Legal Research Guide: Eritrea under the heading Other Sources, Customary Laws:

"Although customary law is not recognized as an official source of law in Eritrea, it plays a complementary role in the 'modern legal system' through incorporation and enjoys a great deal of importance in practice. Its lack of uniformity, due to its variations along ethnic and regional lines, makes blanket customary law application impossible. It has, however, maintained its importance in the Eritrean legal system through informal incorporation in the 'modern laws.' For instance, while the age of majority according to the Civil Code is 18 years of age, the Civil Code also recognizes marriages between the age of 15 and 18 in recognition of Eritrean customary marriage practices. The establishment of Community Courts in 2001 with the mandate to apply customary laws is another testimony to the importance of customary law in Eritrea.

2. Shari'a Law

Although Shari'a law is not formally recognized as a source of law, it enjoys de facto status in the Eritrean legal system. It regulates issues of personal status of believers of Islam and is enforced through separate Shari'a chambers in the civil court system." (Library of Congress (4 April 2011) *Legal Research Guide: Eritrea*)

According to a 2008 *Ohio University Centre for International Studies* report on Eritrea:

“In most Eritrean ethnic group[s] marriage is a sacred institution because the family is believed to be a strong and solid building block of society. Marriage is one of the societal links between two partners that enhance the patriarchal system and the male dominant tradition where gender bias is highly perpetuated. The experience of marriage and divorce reveals that the marriage relationship in most Eritrean communities is highly influenced by inherited attitudes and traditional cultural practices. Customary rules of marriages vary among the ethnic groups. Generally, girls marry at an early age, sometimes as young as fourteen. A large share of marriages in the rural areas are still arranged by the family groups concerned. As a result traditional marriage practices within different areas may vary from one ethnic group to another, for example, betrothal arrangement, wedding day ceremony, the practice of dowry, the family life and the regulations with respect to divorce and child custody are as an example of the difference.

“In most Eritrean ethnic groups except the Kunama, women do not choose their partners. Whatever form of marriage is sanctioned in Eritrea, the arrangement require great care and participation of the communities among which the parents and partners live.” (Ohio University Centre for International Studies (United States) (17 January 2008) *Country Profile: Eritrea*)

The *Constitution of Eritrea* notes under Article 22 – Family:

1. The family is the natural and fundamental unit of society and is entitled to the protection and special care of the State and society.
2. Men and women of full legal age shall have the right, upon their consent, to marry and to found a family freely, without any discrimination and they shall have equal rights and duties as to all family affairs.
3. Parents have the right and duty to bring up their children with due care and affection; and, in turn, children have the right and the duty to respect their parents and to sustain them in their old age.” (Government of Eritrea (23 May 1997) *Constitution of Eritrea*)

The *Child Rights Information Network* notes in a report on Eritrea:

“In 2008, CRC reiterated its concern as to the lack of consistency between the minimum marriage age set at 18 years old in the Constitution and the Civil Code and customary laws, which also applied differently to boys and girls. It also expressed concern about children, especially girls, being married between the ages of 13 and 15. While noting the efforts undertaken in this regard, it recommended that Eritrea enforce legislation on the minimum age of marriage at 18 and develop further sensitization programmes involving community, traditional and religious leaders as well as society at large, including children themselves.” (Child Rights Information Network (30 November 2009) *Eritrea: Child Rights References in the Universal Periodic Review*)

The *United States Commission on International Religious Freedom* states under the heading ‘The Situation of Unregistered Religious Groups’:

“Since 1994, the government of Eritrea has denied Jehovah's Witnesses citizenship and a range of government services, as well as civil and political rights. President Isais Afwerki issued a decree in October 1994 specifically barring Jehovah's Witnesses from obtaining government jobs, business licenses, and government-issued identity and travel documents. He reportedly viewed their refusal on religious grounds to participate in the 1993 independence referendum or to perform mandatory national military service as a rejection of Eritrean citizenship. Without Eritrean identity cards Jehovah's Witnesses cannot obtain legal recognition of marriages or land purchases.” (United States Commission on International Religious Freedom (20 March 2012) *USCIRF Annual Report 2012 - Countries of Particular Concern: Eritrea*)

The *UK Home Office* report notes that the British Embassy in Asmara in August 2010 obtained the following information from Eritrean sources:

“Individuals have to produce their ID card and demobilisation papers...according to Art 5 of the Eritrean Peoples' Liberation Front (EPLF) Civil Law, every People's Congress has the duty and responsibility to organise Civil Status Officers who shall register births, marriages and deaths within its jurisdiction, and are duty-bound to issue certificates on request by any individual, as prescribed under Article 9 of the law. But in practice People's Congresses have not yet been re-established since independence in the spirit of the law. Therefore, registration of births, marriages and deaths is not available except in Asmara. Registration in Asmara has been in practice since the time of Italian colonisation, however, registration is not mandatory for the people - even in Asmara. That said, most people do register births in order to include all family members on their ration cards. There is no central register office where records are held.” (United Kingdom Home Office (17 August 2012) *Country Of Origin Information Report - Eritrea*, pp. 111-112)

A report from the *Immigration and Refugee Board of Canada* notes under the heading 'Other Documents':

“According to the United States (US) Bureau of Consular Affairs, birth certificates and marriage certificates can only be issued to persons inside Eritrea; requests for copies should be addressed to the Office of Civil Status in the municipality in which the birth or marriage was registered (US 8 June 2006). If the birth or marriage has not been registered, the US Bureau of Consular Affairs suggests that consular offices use hospital records, baptismal records, church records or affidavits given by witnesses in lieu of the certificate (ibid.).” (Immigration and Refugee Board of Canada (27 February 2007) *Eritrea: Information on official identity documents and the names of agencies that issue them (2005 - 2006)*)

The *Embassy of Eritrea in the United States of America* notes under the heading Procedures for Marriage:

“Documentations needed for the contract of marriage is letter from the zonal administration that confirms the person is single. If one of the couples is a foreigner, needs birth certificate from place of born in addition.” (Embassy of Eritrea USA (undated) *Procedures for Work and Residency*)

The *UK Home Office Country* report states:

“To mention some important provisions in the Transitional Codes pertaining to the status of women:

- “Marriage is now based on the free consent of both partners, and needs no parental consent. The age of the female partner was raised to 18 from the previous 15 years;
- Women can enter into a contract of marriage freely;
- bride price and abduction were prohibited by law;
- Irregular unions have been abolished because they don’t provide any legal protection of women’s right[s] upon separation;” (United Kingdom Home Office (17 August 2012) *Country Of Origin Information Report – Eritrea*)

This report also states:

“The British Embassy in Asmara, in a letter dated 3 October 2011 provided the following information, obtained from Eritrean sources:

‘Women are able to marry whilst on a national service work programme, but not during military service, which normally is the first six months of the national service programme “Following her marriage, a woman may apply for demobilisation, a decision on whether to grant lies with the relevant dept/ministry. It is not standard practice for a woman to be demobilised on marriage, some are expected to continue their national service for various reasons.

The British Embassy letter, dated 3 October 2011 also stated that:

‘Women are not automatically exempt on marriage. They have to formally apply for demobilisation, if on national service, or exemption if national service has not yet started.’Women who are discharged from national service duties are ‘...issued with a certificate releasing them from duty, followed by a demobilisation card.’” (Ibid)

3. Divorce

Under the heading ‘Procedures for Divorce’ the *Embassy of Eritrea in the United States of America* notes:

“The term divorce refers to the dissolution or the legal end of a marriage. Each state has its own requirements governing when a divorce may be granted, including a residency requirement and grounds or a reason for the divorce. In Eritrea there are certain rules and procedures for dissolving a marriage.

Marriage may be terminated automatically when one of the spouses has been died. This can be legalized only if a request is made by the spouse to the court.

Unilateral repudiation by wife or husband will not be effect.

Mutual consent by both husband and wife is not allowed.

Divorce can be made by no other person.

A petition should be written based on good causes or faults
Divorce – When a divorce petition is made by one of the spouses based on good causes or faults. Some of the major good causes are:

- Adultery
- Desert of the conjugal residence and does not know when he is.....
- Physical disability not able to make love, mental disorder, leprosy, heart attack and other communicable deceases approved by a doctor.
- When the absence of one of the spouses has been judicially declared.

The first step of the divorce procedure is to formulate a 'Family Council'. This contains of 4 members or more from both sides. The court forwarded the divorce petition to this Family Council. They try their best to narrow the gab, reconcile the difference and normalize things. If they are successful then there will no be divorce, if not, they come up with their findings to the court and provisional measures of separation are taken.

- Child Custody and visitation
- Payment half of the income of the family (Alimony)
- Temporary evacuation from the residence of one of the spouses.

The next step is to determine and divide the common property. Mostly known common properties are more or less the following.

- Salaries of both spouses
- All properties acquired during marriage
- Property donated for both spouses during marriage.

The final stage is official to dissolve the marriage and make equal and fare division of property. In Eritrea properties are divided equally to both spouses. If some fixed properties can not be divided, the court decided the property to be sold and money to be shared equally." (Embassy of Eritrea USA (undated) *Procedures for Work and Residency*)

A report from the *Immigration and Refugee Board of Canada* notes under the heading 'Other Documents':

"Divorce decrees are issued following a complex and lengthy process (ibid.). All parties involved in the divorce, including the spouses, family and two appointed arbitrators representing each party in the marriage, must sign an agreement and have it stamped and approved before submitting it to the relevant court, after which a divorce decree can be issued (ibid.). The decree is issued in both Tigrinya and English (ibid.)." (Immigration and Refugee Board of Canada (27 February 2007) *Eritrea: Information on official identity documents and the names of agencies that issue them (2005 - 2006)*)

A report by the *United Nations Committee on the Elimination of All Forms of Discrimination against Women* in 2006 states:

"While noting that the Transitional Code of Eritrea adopted in 1991 establishes a minimum age at marriage, prohibits forced marriages and establishes a system of equitable division of marital property upon divorce,

the Committee is concerned that these laws are not enforced and that discriminatory customary laws and practices continue to be applied. The Committee is also concerned that the Transitional Code's provisions on marriage and family relations do not apply to Muslim marriages and divorces." (UN CEDAW (3 February 2006) *Concluding comments of the Committee on the Elimination of Discrimination against Women: Eritrea*, p. 5)

The *Social Institutions and Gender Index* report on Eritrea notes:

"However, both the TCE and customary laws fall short of recognising the principle of common responsibilities for both parents, particularly in regard to custody of children in case of divorce. In most cases, fathers are still considered as head of the household and are given right of custody." (OECD Social Institutions and Gender Index (2012) *Gender Equality and Social Institutions in Eritrea*)

A report from the *United Kingdom Home Office Fact Finding Mission to Eritrea* notes:

In the event of a divorce decisions over custody of children are, under the provisions of the TCCE, delegated to the Family Council. This body is not a court as such, but a council brought together within the child's community when there is a family dispute to settle. It would typically comprise the child's parents, two family members of each parent and one other member. In the case of a divorce the TCCE provides that maintenance of children born in marriage shall be regulated with sole regard for the interests of the child. For children up to the age of five years of age the TCCE specifies that the child should remain with the mother. The Family Council does have the power to appoint a guardian other than the child's parents in the event of a divorce. (United Kingdom Home Office (29 April 2003) *Report of Fact-Finding Mission to Eritrea (4 to 18 November 2002)*, p. 72)

4. Marriage between Non Nationals and Nationals

The *Embassy of Eritrea in the United States of America* notes under the heading Procedures for Marriage:

"Documentations needed for the contract of marriage is letter from the zonal administration that confirms the person is single. If one of the couples is a foreigner, needs birth certificate from place of born in addition." (Embassy of Eritrea USA (undated) *Procedures for Work and Residency*)

Marriage Between Two Non- Nationals

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

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