



Zambia – Researched and compiled by the Refugee Documentation Centre of Ireland on 14 July 2016

Information on the statutory provision for dissolution of marriage in Zambia between 1970 and 1978, and the provisions in statute for formalisation of tribal marriages in Zambia between 1978 and 1988 and whether any time limits are in place for tribal marriages

A 1999 Immigration and Refugee Board of Canada response to a request for information states:

“Zambia has dual legal systems of customary law and statutory law that operate side by side and govern matters relating to land, property, contracts and personal relations such as marriage, divorce, and succession. ‘Customary law’ refers to the customary laws of the various ethnic groups in Zambia and has not been codified

Three types of marriages are recognized under Zambia's dualistic system: common law marriages, customary marriages, and marriages under the Marriage Act. Marriages contracted under the Marriage Act, which is similar to the Marriage Act prevailing in the United Kingdom, are registered and are monogamous. Those who chose to choose to marry under statutory law enjoy the full protection of Zambian law. Marriages contracted under customary law, however, are not registered and allow for polygamy.

Customary laws are normally upheld by the courts unless they violate either the constitution or statutory law.” (Immigration and Refugee Board of Canada (19 December 1999) *Zambia: Forced marriage, including whether the practice is widespread and availability of state protection*)

In an undated document published on the German website FTCAM.de the author states:

“Thus, by virtue of being a former colony of Britain, Zambia’s law relating to divorce was largely borrowed from the divorce of in place in Britain.” (FTCAM.de (undated) *Historical Development of Divorce Law in Zambia*)

In a paragraph headed “Ground For Divorce” this document states:

“It should however be noted that a divorce cannot be granted on this ground alone. Breakdown has to be inferred from certain facts. Thus we have five facts from which a breakdown of marriage can be inferred. These reforms were subsequently incorporated in the Matrimonial Causes Act of 1973 (‘MCA’) which forms the current law of divorce. In Zambia the passing of the matrimonial causes Act No 20 of 2007 now entails that Zambia has its own law on matrimonial causes. The 2007 MCA however is a replica of the English Common law relating matrimonial causes. Thus most of the

provisions are borrowed from the case law of England on matrimonial causes.” (ibid)

The UK Matrimonial Causes Act of 1973 is attached for reference.

The Zambian Matrimonial Causes Act of 2007, in a section titled “Proof of breakdown of marriage”, states:

(1) For purposes of section 8, the court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts—
(a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
(d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted; or
(e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.
(2) On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent.
(3) If the court is satisfied on the evidence of any fact mentioned in sub-section (1), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall grant a decree of dissolution of marriage.
(4) A decree of dissolution of marriage shall not be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed.”
(Zambia Legal Information Institute (ZambiaLII) (5 September 2007)
Matrimonial Causes Act)

Chapter 50 of the Marriage Act, in “Part V: Registry and Evidence of Marriages” (Paragraph 34), states:

“Any person who is married under this Act or whose marriage is declared by this Act to be valid, shall be incapable during the continuance of such marriage of contracting a valid marriage under any African customary law, but, save as aforesaid, nothing in this Act contained shall affect the validity of any marriage contracted under or in accordance with any African customary law, or in any manner apply to marriages so contracted.” (Zambia Legal Information Institute (ZambiaLII) (19 September 2012) *Laws of Zambia: Chapter 50 – The Marriage Act*)

See also “Part VI: Validation Of Marriages Already Solemnised” (paragraph 35) of this act which states:

“Every marriage solemnised in the portion of Zambia formerly known as North-Eastern Rhodesia before the 1st February, 1903, and every marriage solemnised in the portion of Zambia formerly known as Barotseland-North-Western Rhodesia before the 16th July, 1906, by any minister of any religious denomination or body, according to the rites in use by such religious

denomination or body, shall be and shall be deemed to have been from the time of the solemnisation thereof, a legal and valid marriage:

Provided that nothing herein contained shall legalise any marriage which has, before the commencement of this Act, been declared invalid by any competent court, nor any marriage, either party to which had at the time of its solemnisation a lawful wife or husband living, nor any marriage which was void by reason of kindred or affinity or fraud or incapacity to contract marriage, nor any marriage otherwise invalid, either party to which shall, before the commencement of this Act and in the lifetime of the other party thereto, have intermarried with any other person.” (ibid)

In “Part VII: Offences and Penalties” (paragraph 38) this act states:

“Any person who

(a) contracts a marriage under this Act, being at the time married in accordance with African customary law to any person other than the person with whom such marriage is contracted;

(b) having contracted a marriage under this Act, during the continuance of such marriage contracts a marriage in accordance with African customary law;

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years:” (ibid)

An article from the Times of Zambia notes that:

“Zambia has a dual legal system, and although statutory law takes precedence over customary law the reality is that many people live in rural and traditional settings and has given customary law dominance in large parts of the country. The subordination of women and the indulgence of men has been a feature of marriage under customary law, which stipulates that marriage is a union of a man who may or may not already be married and a woman who must be unmarried at the time of entering into matrimony. In the event of a divorce, most tribes do not recognise a woman's right to a share of marital property - she gets whatever her ex-husband or his family decides she can have. Local courts have to be guided by the traditions and customs of Zambia's seven main tribes, but because the practices and procedures remain unwritten and subjective, local court justices often use their own discretion when deciding on such cases.” (Times of Zambia (24 September 2010) *Zambia: Are Women Losing Out in Customary Marriages?*)

This response was prepared after researching publicly accessible information currently available to the Research and Information Unit within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

References:

FTCAM.de (undated) *Historical Development of Divorce Law in Zambia*
https://www.ftcam.de/ft_files/Scheidung_Sambia.pdf
(Accessed 14 July 2016)

Immigration and Refugee Board of Canada (14 December 1999) *Zambia: Forced marriage, including whether the practice is widespread and availability of state protection*
<http://www.refworld.org/docid/3ae6ad820.html>
(Accessed 14 July 2016)

Parliament of the United Kingdom (1973) *Matrimonial Causes Act*
www.legislation.gov.uk/ukpga/1973/18
(Accessed 14 July 2016)

Times of Zambia (24 September 2010) *Zambia: Are Women Losing Out in Customary Marriages?*
<http://allafrica.com/stories/201009240433.html>
(Accessed 14 July 2016)
This is a subscription database

Zambia Legal Information Institute (ZambiaLII) (19 September 2012) *Laws of Zambia: Chapter 50 – The Marriage Act*
<http://www.zambialii.org/zm/legislation/consolidated-act/50>
(Accessed 13 July 2016)

Zambia Legal Information Institute (ZambiaLII) (5 September 2007) *Matrimonial Causes Act*
<http://www.zambialii.org/zm/legislation/act/2007/20>
(Accessed 13 July 2016)

Sources Consulted

European Country of Origin Information Network
Google
Immigration and Refugee Board of Canada
Lexis Nexis
Refugee Documentation Centre Query Database
UNHCR Refworld
ZambiaLII