

Flygtningenævnets baggrundsmateriale

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DEMOCRATIC REPUBLIC OF THE CONGO: FORCED MARRIAGES, INCLUDING PREVALENCE, TYPES, AND AVAILABILITY OF STATE PROTECTION AND RECOURSE FOR VICTIMS (2008-MARCH 2012) [COD104023.E]

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1. Forced Marriage

1.1 Legislation

In 2006, the Democratic Republic of the Congo (DRC) passed a law amending its penal code because of a recognition that incidents of sexual violence had been increasing over the second half of the twentieth century (DRC 2006, Exposé). Among the changes made to address sexual violence is a provision outlawing forced marriage (DRC 2006, Exposé, Art. 3, para. 6). The law imposes a penalty of one to twelve years in prison and a minimum fine of 100,000 Congolese francs (CDF) [C\$ 110 (XE 16 Mar. 2012a)] on parents or guardians who, in the exercise of their authority, impose a forced marriage on a dependant (DRC 2006, Art. 3, para. 6). The minimum sentence is doubled if the victim of forced marriage is under the age of 18 (ibid.). Additionally, Congolese family law (*Code de la famille*) states that both parties must personally consent to being married, and that the legal age of marriage is 18 for men and 15 for women (ibid. 1987, Art. 351-352).

1.2 Prevalence

A representative of the American Bar Association's Rule of Law Initiative (ABA ROLI), which runs programs on sexual violence and access to legal aid in eastern DRC (n.d.), described forced marriage in his correspondence with the Research Directorate as a [translation] "hidden reality" in the country (ABA 5 Mar. 2012). In telephone interviews with the Research Directorate, representatives of two women's rights organizations in the DRC said that forced marriage frequently occurs in the country (RFDA 24 Feb. 2012; RFDP 1 Mar. 2012). One of the representatives, a woman who works with the Women's Network for Development (Réseau des femmes pour un développement associatif, RFDA), which is based in South Kivu (GRIP n.d.), said that forced marriage takes place all over the country, including in South and North Kivu (RFDA 24 Feb. 2012).

In a 2008 interview with Radio Okapi, the UN radio station in the DRC (n.d.), Congolese women's rights activist Fayila Mwangila stated that forced marriage is more common in villages [than in cities] but that it occurs [translation] "almost everywhere," due to the socio-economic conditions in the DRC (Kamuandu and Mwangila 18 Feb. 2008). A radio segment produced by Radio Okapi in December 2010 reported that sexual violence against women, particularly forced marriage, was on the rise in the Ituri region of eastern DRC (27 Dec. 2010). An article published by the Congolese newspaper *La Prospérité* in June 2010 reported on forced and underage marriage in the city of

Tshikapa, Kasai Occidentale, explaining that girls are considered as objects and that tradition dictates that they be forced to marry without their consent (25 June 2010).

1.3 Circumstances Under Which Forced Marriage Occurs

Sources indicate that parents or guardians force their daughters to marry for financial reasons (RFDA 24 Feb. 2012; RFDP 1 Mar. 2012; Kamuandu and Mwangila 18 Feb. 2008). In her telephone interview with the Research Directorate, the representative of the other women's rights group, the Women's Network for the Defence of Rights and Peace (Réseau des femmes pour la défense des droits et la paix, RFDP), which also works in South Kivu (Irenees.net n.d.), explained that if a man has financial difficulties, he may give his daughter in marriage in exchange for money or forgiveness of a debt without consulting his wife (RFDP 1 Mar. 2012). Sources indicate that a bride price (*la dot*) is paid by the man to the parents of the bride before the marriage takes place (DRC 1987, Art. 361; RFDA 24 Feb. 2012). The representative of the RFDA noted that, after the bride price is paid, the girl is made to quit school and the marriage is finalized, regardless of whether she has consented to be married (*ibid.*). In the same Radio Okapi interview in which Fayila Mwangila spoke, Dominique Kamuandu, a Congolese lawyer from the NGO Lawyers Without Borders, indicated that, in the Kasai provinces in particular, young girls may be [translation] "reserved" for marriage to older, wealthy men (Kamuandu and Mwangila 18 Feb. 2008).

The representative of the RFDP also explained that if a girl becomes pregnant and her partner is unmarried, her parents will force them to marry since the girl will not be able to find another husband once her pregnancy becomes known (1 Mar. 2012).

Both of the women's-organization representatives also said that girls who have been raped are forced to marry their rapist (RFDA 24 Feb. 2012; RFDP 1 Mar. 2012). The RFDP representative elaborated, explaining that although this practice is illegal, it may nevertheless be enforced by the girl's family, the police, or the village chief, particularly in remote regions where there is less enforcement of the law (*ibid.*). The RFDA representative noted that the family may receive compensation money for the rape and subsequent marriage of the girl (24 Feb. 2012).

Radio Okapi has also reported the practice of *levirate*, in which a widow is forced to marry her deceased husband's brother, in the Kamuandu and Mwangila interview and in the December 2010 segment on sexual violence (Kamuandu and Mwangila 18 Feb. 2008; Radio Okapi 27 Dec. 2010). Kamuandu, the Lawyers Without Borders representative, explained to his interviewers that the practice continues, particularly in the Kasai provinces (Kamuandu and Mwangila 18 Feb. 2008).

1.4 Recourse

According to Kamuandu, a girl who is being forced into marriage can inform the local state authority (l'officiel de l'état civil) of her lack of consent; the authority can then refuse to make the marriage official (*ibid.*). The girl can also request the annulment of her marriage if it has already taken place (*ibid.*). According to Article 402 of the Congolese family law, a marriage that has taken place without the consent of both parties must be annulled (DRC 1987). The law also decrees that a person can request the annulment of his or her marriage if it took place under the threat of violence or due to deception about an [translation] "essential, physical, civil, or moral attribute" of a spouse (*ibid.*, Art. 403, 405). However, this provision is only valid until six months after the violence has ended or the misunderstanding has been discovered but not past two years of the marriage taking

place (ibid.). Kamuandu also noted that the effectiveness of the law depends on the victims' willingness to report the crime (Kamuandu and Mwangila 18 Feb. 2008).

The ABA ROLI representative said that, of the cases registered with his organization's legal aid clinics, they had not yet seen a successful criminal prosecution for forced marriage (ABA 5 Mar. 2012). He added that such cases are rarely or never reported to the clinic or to the authorities (ibid.). Similarly, Kamuandu and Mwangila, the lawyer and the women's rights activist interviewed by Radio Okapi, indicated that cases of forced marriage are seldom reported (18 Feb. 2008). The Radio Okapi interviewers explained that, in Congolese culture, it is often difficult for girls to go against the wishes of their parents or to file a complaint against them (Kamuandu and Mwangila 18 Feb. 2008). Girls who refuse forced marriage are reportedly considered by their parents to be disobedient, particularly when it is a consanguineous marriage intended to keep property within the family and strengthen family ties (ibid.).

In its December 2010 segment on sexual violence, Radio Okapi reported that the DRC has a national committee against sexual violence in the eastern part of the country that has been working with women's rights NGOs to educate the population about sexual violence, including forced marriage and levirate (27 Dec. 2010).

2. Sexual Slavery

The DRC's 2006 law modifying penal code provisions on sexual violence prohibits sexual slavery and imposes a penalty of five to twenty years in prison and a fine of 200,000 CDF [C\$ 220 (XE 16 Mar. 2012b)] on any person or group that confines, sells, lends or trades another person for sexual purposes (DRC 2006, Art. 3, para. 5).

Various sources indicate that Congolese girls are abducted by members of armed groups for forced marriage or sexual slavery (BBC 15 May 2010; Bartels et al. May 2010, 42; Peterman et al. June 2010, 1060). In a study of the medical records of rape victims treated between 2004 and 2008 at Panzi Hospital in Bukavu, South Kivu, researchers found that 12 percent of patients reported being kept in sexual slavery for a period of at least 24 hours, typically by armed combatants (HHI Apr. 2010, 2, 21, 36). The study explains, further, that

[i]n some instances, the women were taken as “wives” by a particular soldier, often a chief or commander. In other instances, the women were raped by many men over a period of time. Many women were eventually able to escape. Occasionally, family members paid money to the captors in exchange for the women’s release. (ibid., 21).

The study also found that young, single girls were more likely to be captured as sex slaves (ibid., 36). A BBC article published in 2010 reported on a woman being forced to choose between being raped by armed groups or marrying them, and a girl being abducted by the Interahamwe rebel group and being kept as a sex slave for a year (15 May 2010). For additional information on sexual violence in conflict zones in the DRC, see Response to Information Request COD104022.EF of 17 April 2012.

Two Congolese media sources reported in 2009 that police officers at the Kikuangu Mbemba border in the Tshela district, Bas-Congo, were kidnapping girls and selling them to Angolan soldiers across the border as so-called wives, without the consent of the girls or the knowledge of their parents

(Radio Okapi 28 Jan. 2009; *Le Potentiel* 23 Apr. 2009). According to the Kinshasa-based newspaper *Le Potentiel*, 32 girls had been kidnapped between January and March 2009, and eight police officers and two village chiefs had been arrested (ibid.).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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ADDITIONAL SOURCES CONSULTED

Oral sources: Representatives of Solidarity with the Victims and for Peace and Actions des Femmes pour le Développement, and a researcher at the University of Ottawa were unable to

provide information within the time constraints of this Response. Attempts to contact representatives of Héritiers de la Justice, Eveil de la Femme, and Panzi Hospital were unsuccessful.

Internet sites, including: Africa Canada Accountability Coalition; Africa for Women's Rights; AllAfrica; Amnesty International; Avocats sans frontières; *Congo Indépendent*; Congolese Women's Campaign Against Sexual Violence in the DRC; CNN.com; *direct.cd*; Droit-Afrique.com; Droit de la Republique démocratique du Congo; Forum internationale des femmes congolaises; Freedom House; GBV Prevention Network; Hot Peach Pages; *Jeune Afrique*; Kabissa; *L'Observateur*; Power of Peace; *Slate Afrique*; United Nations — Economic and Social Council, UN Population Fund, Secretary General's Database on Violence Against Women; The World Law Guide; World Legal Information Institute.
