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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. Links are correct at the time of publication. 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

Freedom House in April 2010 points out that:

“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*)

The *United Nations Committee on Economic, Social and Cultural Rights* in January 2009 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.” (United Nations 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)*

An Individual NGO report in relation to CEDAW published in July 2013 states:

“Early arranged marriages, ‘*le mariage précoce*’, are common.” (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)

Proxy Marriages

In January 2009 a paper released by the *United Kingdom Home Office*, citing an external sources notes that:

“...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...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...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...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)

In November 2014 a report released by the *Social Institution and Gender Index* states:

“Under a new act passed in 2009, the minimum age for marriage was increased from 14 for females and 18 for males to 18 for both males and females.” (Social Institutions and Gender Index (25 November 2014) *Congo, Dem. Rep. Country Profile 2014*)

In an undated report, the *United States Department of State* points out that:

“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.” (United States Department of State Travel (undated) *Congo Reciprocity Schedule*)

Research compiled and issued in April 2004 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... 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)*)

In April 2014 the *Immigration and Refugee Board of Canada* points out that:

“...two out of every three marriage certificates received last year were falsified, given that there was no information in the register for the year indicated.” (Immigration and Refugee Board of Canada (10 April 2014) *Democratic Republic of the Congo: Prevalence and availability of fraudulent identity, administrative and legal documents (2011-February 2014)*)

3. Divorce

The *Social Institutions and Gender Index* states in a report released in November 2014 that:

“According to article 546 of the Family Code, either spouse can initiate divorce... although it is unclear whether men and women have equal decision-making authority after divorce. Furthermore, the requirement to repay the bride price or dowry to the husband's family poses a restriction on women's ability to seek a divorce.” (Social Institutions and Gender Index (25 November 2014) *Congo, Dem. Rep. Country Profile 2014*)

A compilation of research issued in April 2012 by the *Immigration and Refugee Board of Canada* includes noting:

“...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))

The *Refugee Council* in December 2004 notes:

“Divorce is not common in the DRC because marriage is seen as a union between two families and divorce therefore divides communities...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*)

4. Marriage between Non Nationals and Nationals

The *United Kingdom Home Office* citing an external source points out in a report released in January 2009 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*. Llaka 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 could be found in sources consulted by the RDC within time constraints.

References:

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*
http://www.ecoi.net/file_upload/1930_1375097101_congregationofourladyofcharityofthegoodshepherd-drc-cedaw55.pdf

Freedom House (7 April 2010) *Countries at the Crossroads 2010 - Democratic Republic of the Congo*
<http://www.freedomhouse.org/report/countries-crossroads-2010/congo-democratic-republic-kinshasa>

Immigration and Refugee Board of Canada (10 April 2014) *Democratic Republic of the Congo: Prevalence and availability of fraudulent identity,*

administrative and legal documents (2011-February 2014)

<http://www.refworld.org/docid/537339cf4.html>

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)*

<http://www.refworld.org/docid/4f9e5e532.html>

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)*

<http://www.refworld.org/docid/41501c520.html>

Social Institutions and Gender Index (25 November 2014) *Congo, Dem. Rep. Country Profile 2014*

<http://genderindex.org/country/congo-dem-rep>

Refugee Council (December 2004) *A Guide to Congolese cultural and Social norms*

<http://www.refugeecouncil.org.uk/OneStopCMS/Core/CrawlerResourceServer.aspx?resource=F370F137-A389-4F4C-90D3-D3F1A37D831F&mode=link>

United Kingdom Home Office (27 January 2009) *Country of Origin Information Report - Democratic Republic of the Congo*

<http://www.refworld.org/docid/498166df2.html>

United Nations 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*

<http://www.refworld.org/docid/4a4b501f2.html>

United States Department of State (undated) *Congo Reciprocity Schedule*

<http://travel.state.gov/content/visas/english/fees/reciprocity-by-country/CG.html>

Sources Consulted

Embassy of the United States (Kinshasa – Congo)

European Country of Origin Information Network

Freedom House

Google

Human Rights Watch

Immigration and Refugee Board of Canada

IRIN News

Lexadin

Lexis Nexis

OECD Social Institutions and Gender Index

Refugee Council (UK)
UN Committee on Economic, Social and Cultural Rights (CESCR)
UNHCR Refworld
United Kingdom Home Office
United States Department of State
UN Office of the High Commissioner for Human Rights
WorldLII