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Mali : Forced marriage, including the prevalence of forced marriage, related legislation, state protection, support services and the ability of women to refuse a forced marriage (2012 - June 2016)

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1. Prevalence of Forced Marriage

According to a comparative study on the practice of early marriage in 10 countries of West Africa, conducted in 2013 by Judith-Ann Walker, the Director of the Development Research and Projects Centre, dRPC) [1], Mali is among the countries with [Walker English version] "the highest prevalence of early marriage worldwide" (Walker Sept. 2013, 9). The Amnesty International (AI) Mali section notes that early and forced marriage [translation] "remains a common practice in Mali, particularly in rural areas" (AI 8 Mar. 2016). In correspondence sent to the Research Directorate,

the President of the Malian office of Women in Law and Development in Africa (WiLDAF), a pan-African non-governmental network for women's and activists' rights, represented in nine countries of West Africa (WiLDAF Jan. 2013), also stated that forced marriage is [translation] "prevalent" in rural areas and occurs "sometimes" in urban areas (WiLDAF 15 June 2016).

According to a summary report of the Multiple Indicator Cluster Survey (MICS) conducted in 2015 by the National Institute of Statistics (Institut national de la statistique, INSTAT) and Mali's Ministry of Rural Development and Population, 16.1 percent of women ages 15 to 49 were married before the age of 15, and 48.9 percent of women ages 20 to 49 were married before the age of 18 (Mali Mar. 2016, 16). The same survey shows that, among women ages 15 to 19, 38.9 percent were married at the time of the survey, 42 percent of whom have a husband who is 10 or more years older than them (ibid.). According to the final report of the MICS, conducted in 2009/2010 by the Ministry of Health, Social Development and Promotion of the Family and by INSTAT, of a sample of 13,995 homes (Mali July 2013, 33), that gives further details on the variations in the rate of early marriage depending on place of residence and the socio-economic status a woman, the rate of early marriage

[translation]

is higher in rural areas than in urban areas (16 percent versus 11 percent for marriage before age 15; and 67 percent versus 45 percent for marriage before age 18). This decreases with a woman's level of education (from 16 percent to 6 percent for marriage before age 15 and from 67 percent to 22 percent for marriage before age 18) and with the level of economic wellbeing (from 69 percent to 42 percent for marriage before age 18). (ibid., 161)

1.1 Conflict in Northern Mali

In its List of issues and questions in relation to the combined sixth and seventh periodic reports of Mali, the United Nations Committee on the Elimination of Discrimination against Women notes the [UN English version] "near breakdown of public administration, school closures [and] destruction of health-care facilities" in Mali since the start of the conflict in 2012, and points out that the conflict has had a particular impact on women and girls (UN 27 Nov. 2015, para. 1). Sources state that during the conflict, women and girls were forced into marriage by armed groups in areas that were under their occupation in northern Mali (ibid. 3 Sept. 2014; Thomas Reuters Foundation 11 Feb. 2013). The United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) website states that these marriages [UN English version] "were simply arranged to give cover of legitimacy to kidnappings and rapes, which, in some cases, could amount to sexual slavery" (UN 3 Sept. 2014). In the report presented to the United Nations Human Rights Council on the situation in Mali from May to December 2014, an independent expert who visited the country in October 2014 notes that

[UN English version]

[e]arly and/or forced marriages are still being reported, particularly in the regions of Timbuktu and Mopti. On November 11, 2014, the Association of Women Jurists of Mali in Niafounké indicated that it was aware of more than 150 victims of forced marriage and offences against the integrity of the person (rape and other acts of sexual violence). (UN 9 Jan. 2015, para. 86)

The President of WiLDAF Mali stated that girls and women living in northern Mali [translation] "can marry freely" but they "remain under the burden of the traditions ... and customs of their town that support family marriages and those arranged by parents" (WiLDAF 15 June 2016).

2. Legislation

In December 2011, Mali adopted Law No. 2011 - 087 of December 30, 2011 on the Code of Persons and the Family (Loi n°2011 - 087 du 30 décembre 2011 portant code des personnes et de la famille), which includes the following provisions regarding marriage:

[translation]

Article 281: The minimum age to enter into marriage is set at eighteen for a man and sixteen for a woman.

The head of the administrative district may, however, subject to review, before a civilian judge, grant an exemption to age on serious grounds.

This authorization may only be issued to future spouses at least fifteen years old.

A copy of the exemption decision is attached to the marriage certificate.

Article 282: Any civil registrar or minister of religion who celebrates the marriage of a person who has not reached the minimum age will receive term of imprisonment of six months to one year and a fine of 120,000 francs [about C\$263].

Article 283: Marriage is not possible if there is no consent.

The consent is not valid if it was obtained through violence or made in error by the person.

Each party must give their consent orally and in person before the civil registrar. It is noted by signature or, failing that, a fingerprint at the end of the certificate.

However, for geographical reasons, if one of the future spouses lives outside the place of marriage and is unable to appear in person before the civil registrar, that party may provide consent through a certificate prepared by the civil registrar for their residence.

This certificate is sent by this civil registrar to the civil registrar responsible for the marriage celebration.

The marriage must be celebrated in this case before a representative appointed by the party unable to attend. This representative must sign or, failing that, add their fingerprints to the end of the marriage certificate.

Consent by parents or legal representatives may be given within the conditions set out in paragraph 3 of this article.

By reason of illness or for geographical reasons, or any other cause, consent by parents or legal representatives may be given in writing in a certificate prepared by the mayor or head of the administrative district of the residence of the party concerned. The signature or, failing that, the fingerprints of the party concerned must be appended to this certificate.

Article 284: In principle, in the case of an exemption of age, the future spouse may not enter into marriage without the consent of their father and mother. In the event of a disagreement, the father's opinion is sufficient.

In the event of death or the father's inability to provide consent, the consent of the mother's extended family counsel is sufficient.

Article 285: A future spouse recognized by their father or mother may not enter into marriage, in the case of an exemption of age, without the consent of the parent who recognized them.

Article 286: A future spouse who was not recognized by their father and mother, or who has an unknown father and mother, may only enter into marriage, in the case of an exemption of age, with the authorization of their guardian or, failing that, the special authorization of the head of the administrative district of their residence.

This authorization is then attached to the marriage certificate.

Article 287: Without obtaining the required consent, any civil registrar conducting a marriage celebration shall be sentenced to a term of imprisonment of a minimum of six months to a maximum of one year and receive a fine of 25,000 to 120,000 francs [about C\$55 to C\$264], or one of these two sentences. (Mali 2011)

A copy of the code of persons and the family is attached to this Response.

A number of sources state that the final version of the code, adopted in 2011, set back women's rights, particularly the provisions indicating the legal age for marriage as 16 for girls, that men are considered the head of the family and that a woman must obey her husband (The Guardian 1 May 2012; FIDH 23 Jan. 2012; RFI 12 Dec. 2011). The United Nations Committee on the Elimination of Discrimination against Women also states that the code contains [UN English version] "discriminatory provisions" against women, "especially the provisions reducing the age of marriage from 18 to 16 years for girls, and provisions granting parents legal permission to give in marriage minor girl children who have reached the customary threshold of maturity, which is the first menstrual cycle," and calls on the Malian government to review them (UN 27 Nov. 2015, para. 2).

In its report presented in June 2016 to the Committee on the Convention on the Elimination of All Forms of Discrimination against Women, a Malian non-governmental human rights group states that article 284, which [translation] "minimizes" a mother's consent to the marriage of her minor daughter, "reinforces the risks of early and forced marriage" (AJM et al. June 2016, 15). According to the Malian National Commission of Human Rights (Commission nationale des droits de l'homme du Mali, CNDH), a public agency responsible for promoting and protecting human rights in Mali, article 284 [translation] "helps to re-invigorate a societal concept that women have no opinion and that fathers may assume all rights over family matters" (Mali May 2016, 8).

According to the US Department of State's Country Reports on Human Rights Practices for 2015, the Malian government did not effectively enforce the law regarding the legal age of marriage (US 13 Apr. 2016, 23). According to that same source,

[i]t was common practice in the country for a 14-year-old girl to marry a man twice her age. According to local human rights organizations, judicial officials frequently accepted false birth certificates or other documents claiming that girls under age 15 were old enough to marry. (ibid.)

Moreover, the Malian non-governmental human rights group states that in the case of religious marriages, which are also permitted in the code of persons and the family, [translation] "the imams are not concerned about consent between the couple" (AJM et al. June 2016, 15). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3. State Protection

In its report on gender and the security sector in Mali, the Geneva Centre for the Democratic Control of Armed Forces (DCAF), an international foundation "whose mission is to assist the international community in pursuing good governance and reform of the security sector" and comprises 63 member states (DCAF n.d.), states that help to victims of domestic violence and sexual harassment remains [DCAF English version] "very limited" from the Malian police, in the absence of an internal structure for handling gender issues (DCAF 2015, 39).

Media report that in March 2014, the Malian police, in partnership with UN Women, launched a hotline for reporting cases of violence against women, including cases of forced marriage (L'Indicateur du renouveau 31 Mar. 2014; Le Tjikan 12 May 2015). According to sources, through this number, 506 cases were reported to the police between March and December 2014 (ibid.; UN 30 Nov. 2015). According to Le Tjikan, a Malian newspaper in Bamako, among those cases, 130 were related to forced marriage (Le Tjikan 12 May 2015). According to the UN Women website, the hotline is accessible 24 hours a day, across the country (UN 30 Nov. 2015). However, the DCAF centre points out that [DCAF English version] "[a]n awareness-raising campaign was recently launched as it seems the population is not widely aware of how to use the toll-free hotline number" (DCAF 2015, 38).

Information on state structures specializing in handling cases of forced marriage could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3.1 Access to Justice

According to a study conducted in Mali in 2014 by the Hague Institute for Innovation of Law, a foundation located in the Hague dedicated to improving the justice systems in the world (HiiL n.d.), Malian women remain [HiiL English version] "reluctant" to approach formal institutions out of fear that it will escalate their problem (HiiL 2014, 71). The President of WiLDAF Mali stated that cases of forced marriage are [translation] "rarely" reported because they often implicate victims' family members (WiLDAF 16 June 2016). She added that women who decided to refuse a forced marriage by invoking the law risk being stigmatized by the family and their community (ibid. 15 June 2016).

Sources state that Malian women have difficulty initiating judicial proceedings (AJM et al. June 2016, 3; Mali May 2016, 9, 11). According to the President of the Africa Centre for the Integration of Human Rights (Pôle des actions d'intégration des droits humains en Afrique, PACINDHA), a Malian NGO active in the areas of environmental protection, education, health and human rights (Le Reporter 1 Mar. 2016), speaking at the March 2016 launch of the organization's project to improve women's access to justice and eliminate forced marriage in Mali, women face [translation] "many problems" with respect to accessing justice, such as "ignorance of the law on legal assistance, the complexity and diversity of procedures and possible recourse," as well as the distance separating them from the courts (cited by Le Tjikan 11 Mar. 2016). The President of PACINDHA added that his organization notes that [translation] "in all regions of Mali, without exception, thousands of young girls are married against their will" (ibid.).

4. Support Services

Sources report that there are two women's shelters in Mali, one in Bamako and the other in Mopti (WiLDAF 16 June 2016; L'Essor 3 Aug. 2015). According to an article published by the Malian journal L'Essor, the centres are run by the Association for the Progress and Defence of Women's Rights (Association pour le progrès et la défense des droits des femmes, APDF) and receive financial support from UN Women (ibid.). That same source reports that the centres, which receive victims of gender-based violence, including women and girls who are victims of the conflict in northern Mali, provide medical and socio-psychological care and organize activities that foster financial independence in the women (ibid.). However, the President of WiLDAF Mali stated that these shelters have only a limited number of spots and that the living conditions in them [translation] "are not very good" (WiLDAF 16 June 2016). She added that [translation] "victims of forced marriage often have to resign to it because it is not easy for them to obtain help. Most of the associations and NGOs are in large cities" (ibid.).

In March 2016, Malian media announced the launch of a project to improve women's access to justice and advocate for eliminating the marriage of minor girls (Le Tjikan 11 Mar. 2016; Le Reporter 1 Mar. 2016). The project, funded 95 percent by the European Union, is to be implemented by the NGO PACINDHA (ibid.; Le Tjikan 11 Mar. 2016). According to information on the Facebook page of the Delegation of the European Union to Mali, PACINDHA's project will receive a grant of 473,500 euros [about C\$683,034] and will pay for, among other things, the training of 3,000 women in the district of Bamako on the laws regarding access to justice, the creation of five women's rights information centres in five different urban communes and awareness-raising campaigns against forced marriage aimed at 10,000 people in 10 rural communes (EU 23 Dec. 2015). Information on the implementation of the project could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

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.

Note

[1] The dRPC is a [Walker English version] "non-profit third sector think tank which utilizes participatory approaches to mobilize indigenous knowledge on development issues and problems impacting negatively on the lives of women and children in particular" (Walker Sept. 2013, 1).

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Internet sites, including: ecoi.net; Égalité Maintenant; European Union - EuropeAid, Service européen pour l'action extérieure; France - Agence française de développement; Gender Index; Groupe pour l'abolition des mutilations sexuelles, des mariages forcés et autres pratiques traditionnelles néfastes à la santé des femmes et des enfants; Human Rights Watch; International Crisis Group; Jeune Afrique; Libre Afrique; Mali - Police nationale, Primature; Norwegian Church Aid; Population Reference Bureau; United Nations - Security Council, United Nations Population Fund, Refworld, Reliefweb, UNICEF; Women Under Siege.

Attachment

Mali. 2011. Loi n°2011 - 087 du 30 décembre 2011 portant code des personnes et de la famille. [Accessed 9 June 2016]