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Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website. Please note that some RIRs have attachments which are not electronically accessible. To obtain a PDF copy of an RIR attachment, please email the [Knowledge and Information Management Unit](#).

18 August 2015

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Djibouti: How a woman may obtain a divorce without the consent of her husband; whether a divorced woman may remarry under Sharia law, including whether the Sharia marriage certificate must mention the divorce (2010-August 2015)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

A report presented in July 2012 by the government of Djibouti to the United Nations (UN) Human Rights Committee states that the adoption of a family code in 2002 [Djibouti English version] "established the principle of spouses' joint responsibility in all areas of the management of family affairs," including in divorce and particularly in putting an end to repudiation (Djibouti 13 July 2012, para. 223-224). According to an article on divorce in Djibouti prepared by a professor of law at the University of Djibouti, before the Family Code (*Code de la famille*) was introduced, [translation] "a woman had no voice with respect to divorce" and could be "repudiated without a valid reason, simply on the husband's wish" (Faye 1 Sept. 2008, 45). A copy of Act No. 152/an/02/4th L on the Family Code (*Loi n°152/AN/02/4ème L portant Code de la famille*) is attached to this Response.

According to the UN Committee on the Elimination of All Forms of Discrimination against Women, the Family Code is based on [UN English version] "customary law, Islamic law and modern elements of law" (UN 2 Aug. 2011, para. 12). The article by the Professor of law at the University of Djibouti states that the Family Code aims to reconcile these three categories of law (Faye 1 Sept. 2008, 45). The same article states that in the case of a [translation] "unilateral" request for divorce by one of the spouses, "the modern judge" intervenes (*ibid.*, 41).

In correspondence sent to the Research Directorate, a lawyer at the Quebec Bar and lecturer in political sciences at the Université du Québec à Montréal, who has experience in the field of family law in Djibouti from when he was an academic in Djibouti between 2004 and 2009, stated that Djiboutian women may request divorce without the consent of their husband and that such a divorce "is conducted before the court" (Lawyer 8 Aug. 2015). Under Article 38 of the Family Code, [translation] "[d]ivorce may only be conducted before the Al ma'doun or the court" (Djibouti 2002, Art. 38). The Professor of law at the University of Djibouti stated that the "Ma'adoun al Chari," [translation] "a Muslim or Sharian judge," is knowledgeable in matters of divorce by mutual consent (Faye 1 Sept. 2008, 54, 55). Article 39 of the Family Code provides that [translation] "[t]he Ma'doun receives and registers the divorce in the case of mutual consent by the spouses" (Djibouti 2002). According to the Professor of law at the University of Djibouti, the Court of Personal Status has exclusive authority in matters of divorce other than by mutual consent, called [translation] "contentious" divorces (Faye 1 Sept. 2008, 54). Under Article 39 of the Family Code, the husband or the wife may go before this court (Djibouti 2002, Art. 39).

The article by the Professor of law at the University of Djibouti states the following about "contentious" applications for divorce to the Court of Personal Status:

[translation]

[t]hey must be received by the court, either in writing and signed by the applicant or their representative at the court registry, or through a statement made by the applicant in person. In the latter case, a transcript must be prepared by the clerk before whom the statement was made. In order to be admissible, the statement must be signed by the applicant. If they do not know how to sign, they must stamp their fingerprint on the statement.

...

The introductory request or the statement transcript must contain the following information: the identity of the parties, their home or residence and the purpose of the request.

Usually, the applicant must submit to the court clerk a copy of the marriage certificate as well as the birth certificates and death certificates of all children born of the marriage, if applicable (Faye 1 Sept. 2008, 62).

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Sources report that when a Djiboutian woman requests a divorce, she must demonstrate harm (Lawyer 8 Aug. 2015; Djibouti 13 July 2012, para. 225). Article 39 of the Family Code states:

[translation]

The Court pronounces the divorce ... at the request of the wife by reason of the harm she has suffered,

...

With respect to the woman, the judge determines material and moral damage on the basis of the husband's income (Djibouti 2002, Art. 39).

In correspondence sent to the Research Directorate, a member of the gender section steering committee of the Bender Djedid Organization (Organisation de Bender Djedid), a Djiboutian NGO that works on behalf of socio-economic development in Djibouti (Ressources pour le développement durable de Djibouti n.d.), speaking on behalf of the organization and who has experience with divorce applications, stated that [translation] "[the woman] must have valid information and a witness," for example, if she was a victim of physical violence by her husband (Bender Djedid 1 Aug. 2015). The Professor of law at the University of Djibouti provided the following examples of harm:

[translation]

[i]t can be a matter of the husband's failure to take care of the wife, the abandonment of the family or conjugal home, the refusal of one of the spouses to carry out the commitments made when they entered into the marriage, ill treatment, excesses, serious abuses or injuries making the existence of marriage impossible, emotional disagreements making living together intolerable, adultery or infidelity, lack of consummation of the marriage, sterility (Faye 1 Sept. 2008, 52).

However, according to the report presented by the government of Djibouti to the UN Human Rights Commission, a woman may request divorce without justification, in which case she must [UN English version] "relinquish all her rights as a divorced woman and she may even be sentenced to pay damages to her spouse" (Djibouti 13 July 2012, para. 226). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to Article 39 of the Family Code, when a wife requests a divorce and it is accepted by the husband, the divorce application is submitted before the court through a deposition called *kholo* (Djibouti 2002, Art. 39). According to the Professor of law at the University of Djibouti, the *kholo* is a deposition in Djiboutian customary law (Faye 1 Sept. 2008, 50).

The member of the gender section steering committee at Bender Djedid stated that it is difficult for a Djiboutian woman to obtain a divorce without the consent of her husband (1 Aug. 2015). Similarly, according to the lawyer, [translation] "when the husband opposes the divorce, it is extremely difficult for the woman to obtain the divorce unless she is from a rather influential family in the socio-political sphere" (8 Aug. 2015). According to the report of the government of Djibouti presented to the UN Human Rights Commission, the fact that men are not required to provide justification of divorce explains why it is easier for husbands to obtain a divorce than it is for wives (13 July 2012, 28).

Article 40(1) of the Family Code states that [translation] "divorce may not be pronounced until there is an attempt at conciliation made by the court that remains unsuccessful" (Djibouti 2002). Similarly, according to the lawyer, the court will not decide on the divorce until [translation] "an attempt at conciliation by the parties has failed" (8 Aug. 2015). According to the member of the gender section steering committee at

Bender Djedid, prior to divorce, the wife must try a number of times to [translation] "resolve the problems in the presence of witnesses from her side of the family" and witnesses from the spouse's family (Bender Djedid 1 Aug. 2015).

Sources state that a divorced Djiboutian woman may remarry according to Sharia law (ibid.; Lawyer 8 Aug. 2015). In correspondence sent to the Research Directorate, the President of the Association for the Respect of Human Rights in Djibouti (Association pour le respect des droits de l'homme à Djibouti, ARDHD), an NGO in France, stated that a woman must wait three months after the divorce to be able to remarry (ARDHD 3 Aug. 2015). Similarly, the lawyer stated that she [translation] "must observe a period of viduity of three months" before being able to remarry (Lawyer 8 Aug. 2015).

With respect to whether the Sharia marriage certificate must mention the divorce, the lawyer stated that the new marriage certificate must mention the name of the previous spouse, as well as the date and reason for the divorce (ibid.). Similarly, the member of the gender section steering committee at Bender Djedid refers to [translation] "an official document that mentions divorce" (1 Aug. 2015).

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

References

Association pour le respect des droits de l'homme à Djibouti (ARDHD). 3 August 2015. Correspondence sent to the Research Directorate by the President.

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Additional Sources Consulted

Oral sources: Assistant Professor of Law, International Islamic University Malaysia; Director, Islamic Legal Studies Program, Harvard Law School; Djibouti – ministère des Affaires musulmanes, de la Culture et des Biens Waqfs; Ligue djiboutienne des droits humains; Professor of geography, Department of Law, Université de Djibouti; Union nationale des femmes de Djibouti.

Internet sites, including: AllAfrica; Djibouti – Portail du ministère de la Justice et des Droits de l'homme; ecoi.net; Emory University – School of Law; Factiva; Freedom House; United Nations – Office of the High Commissioner for Human Rights, UN Women, Refworld; United States – Department of State; University of London – School of Oriental and African Studies (Centre of Islamic and Middle Eastern Law); Women Living Under Muslim Laws.

Attachment

Djibouti. 2002. *Loi n°152/AN/02/4ème L portant Code de la famille*.
<http://www.law.yale.edu/rcw/rcw/jurisdictions/afe/djibouti/Djibouti_CodedeFamille.htm> [Accessed 6 Aug. 2015]

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