

# Immigration and Refugee Board of Canada

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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 [Basesdedonnees.DatabaseUnit@irb-cisr.gc.ca](mailto:Basesdedonnees.DatabaseUnit@irb-cisr.gc.ca).

3 January 2014

### MLI104708.FE

Mali: polygamy, including conditions to be met for a man to be able to marry a second wife; divorce, specifically when a woman requests a divorce, including the grounds and treatment of women by society and the authorities (2012-December 2013)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

#### 1. Polygamy

##### 1.1 Frequency

According to an article published in 2010 on the Lehigh University [in Pennsylvania] website, Mali has one of the highest rates of polygamous marriage in the world (Lehigh University 19 Oct. 2010). Quoted in the article, an assistant professor of anthropology at that university who conducted research on marriage in Mali states that polygamy is present in all socio-economic classes in Bamako, the country's capital (ibid.). According to the Assistant Professor's testimony, polygamy has adapted to the urban and educated environment of Bamako, and, in "modernized" forms, it has spread to provincial towns and rural regions (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

In correspondence with the Research Directorate, the Assistant Professor stated that the members of some ethnic groups, including the Soninke and the Fulbe, have a greater tendency for polygamous marriages than members of some other groups, including the Songhai and the Touareg, but that ethnicity is not a determining factor in the practice of polygamy (Assistant Professor 12 Dec. 2013).

According to the Professor's research, educated Malian men are inclined to want to keep the polygamy options open for themselves, while young, educated Malian women are less and less likely to want to be in a polygamous marriage (Lehigh University 19 Oct. 2010). However, the Assistant Professor also said that women have few choices other than agreeing to a polygamous marriage, even if they would prefer a monogamous marriage (ibid.). The Professor explained that single women whose support is not provided by their father or their spouse are "looked upon unfavourably," and that many of them therefore feel obliged to agree to a polygamous marriage, because they are afraid that they will not be able to find a husband otherwise (ibid.). Information to corroborate the Assistant Professor's statements could not be found among the sources consulted by the Research Directorate within the time constraints of this response.

##### 1.2 Marriages in Mali

###### 1.2.1 Civil and Religious Marriages

In correspondence with the Research Directorate, the Assistant Professor explained that, in Mali, there are civil marriages recognized by the state, and "informal unions" that are not legally recognized but that are

usually consecrated by the religious authorities and are therefore recognized socially as being valid (12 Dec. 2013).

A report by the American Bar Association (ABA) on the access to justice in Mali, prepared in co-operation with the *Association des juristes maliennes*, also states that, in Mali, there are civil marriages, celebrated before a state official, and religious marriages, celebrated before a religious leader (ABA Jan. 2012, 15). However, the ABA report states that, since the adoption of a new family code in 2011, religious marriages are also recognized legally and include the same rights and duties as civil marriages (ibid.). According to the report, before the new code was adopted, religious marriages had no legal significance and granted no legal rights to spouses (ibid.).

According to the Assistant Professor, a majority of marriages in Bamako and in other urban centres are civil marriages, while "only a small portion" of marriages in the rural regions are civil marriages (12 Dec. 2013).

### 1.2.2 Polygamous Civil Marriages

According to some sources, in the case of civil marriages, couples must decide whether their marriage will be monogamous or polygamous (Assistant Professor 12 Dec. 2013; *Les Échos du Mali* 2 Sept. 2010). These sources explain that if a marriage is monogamous, the husband may not marry another woman if the first marriage has not been dissolved (ibid.; Assistant Professor 12 Dec. 2013). These sources also state that the wife must consent to a polygamous marriage or to changing her monogamous marriage into a polygamous one (ibid.; *Les Échos du Mali* 2 Sept. 2010).

According to an article in *Les Échos du Mali*, a daily newspaper, the type of marriage chosen is recorded on the marriage certificate (ibid.). The article states that, [translation] "the commitment to polygamy may be done after the celebration of marriage by a deed executed before a public official" and that, even in a polygamous union, a man may not have more than four wives (ibid.).

According to the Assistant Professor, there are some legal protections for couples united in a civil marriage (12 Dec. 2013). *Les Échos du Mali* states the following:

[translation]

Anyone who, being bound by the ties of a monogamous marriage, enters into another one before the dissolution of the previous, will be punished in accordance with the provisions set out in the penal code. The same is true for anyone who, being bound by the ties of a polygamous marriage, having four lawful wives, enters into a fifth union. (2 Sept. 2010)

Information on the provisions of the penal code that would relate to polygamy could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

### 1.2.3 Polygamous Religious Marriages

According to the Assistant Professor, the only condition concerning the number of spouses within informal marriages is that the husband must be able to support the needs of any additional wife (Assistant Professor 12 Dec. 2013). However, the Assistant Professor added that he had never heard about any men who had been prevented from taking another wife because they lacked sufficient means (ibid.). In addition, he stated that, although it is mainly wealthy men who have several wives, it is not uncommon for poor men to have several wives in the rural areas (ibid.). Corroboration of the Assistant Professor's statements could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

### 1.2.4 Polygamous Marriages in Practice

The Assistant Professor stated that it was not uncommon in practice for a monogamous man to marry another woman through an informal marriage, usually presided over by religious officials, which makes this marriage valid socially, even though it is not recognized legally (12 Dec. 2013). An article in *L'Essor*, a Malian daily newspaper, also states that some men [translation] "think up all kinds of ways to celebrate a second, illegal marriage because they are already in a monogamous marriage" and adds that "often, men who have entered into a religious marriage enter into a new traditional union with another woman without having legalized the situation with the first wife before civilian authorities" (*L'Essor* 16 Sept. 2011). The Assistant Professor added that children resulting from an informal marriage are considered socially legitimate but that legally, their father is not required to support them (12 Dec. 2013).

## 2. Divorce

### 2.1 Divorce According to the Law

Marriage and divorce in Mali are governed by *Loi n° 2011 - 087 du 30 décembre 2011 portant Code des personnes et de la famille* (Mali 2011; ABA Jan. 2012, 14). Under this law, [translation] "a divorce can be obtained on the basis of mutual consent, a breakdown in marital relations, or by fault of a spouse" (Mali 2011, art. 325). The law also states that [translation] "unless the divorce is consensual, an attempt to reconcile is mandatory" (ibid., art. 327). However, the law states that [translation] "no applications for a consensual divorce may be submitted within the first six months of marriage" (ibid., art. 338).

With respect to divorce because of a breakdown in marital relations, the law states that one of the spouses [translation] "may apply for a divorce on the basis of a breakdown in marital relations when the couple has lived separately for three years, or when either spouse is unable to perform his or her conjugal duties" (ibid., art. 348). In the case of a divorce for fault, one of the spouses may apply for a divorce on the basis of the following:

- adultery by the other spouse;
- verbal or physical abuse or serious insults that make marital life impossible;
- sentencing of the other spouse to an afflictive and defamatory period of incarceration;
- inveterate alcoholism or drug addiction;
- failure to fulfill a substantial promise. (ibid., art. 352)

The law also adds that [translation] "a wife may also file for divorce when her husband refuses to provide for her essential needs (food, clothing, lodging) and for her medical care" (ibid.). The Assistant Professor explained that a woman has the right to a divorce if her husband is unfaithful to her or if he does not provide the money needed to support her (ibid.).

According to the ABA report, a woman who obtains a divorce has the right to alimony, to damages to reflect the material or emotional harm caused by dissolution of the marriage, and to her share of the marital property (ABA Jan. 2012, 13). Custody of children is generally awarded to the spouse in whose favour the divorce is granted, unless it is determined that another disposition would be in a child's best interests (ibid.). The report states that the costs of a divorce action are the responsibility of the spouse against whom the divorce is pronounced, and shared fault entails sharing of costs (ibid., 15).

### 2.2 Divorce and Polygamy

The Assistant Professor stated that, according to a survey conducted in 1998, a man's taking another wife was the main reason for divorce in Bamako (12 Dec. 2013). An article from *L'Essor* also states that divorce in the case of couples who have been married for a long time are generally caused by a second marriage (16 Sept. 2011).

### 2.3 Treatment of Divorced Women

According to the Assistant Professor, divorced women are "treated like pariahs," especially when they were the party who initiated the divorce, and face a number of prejudices on a daily basis (Assistant Professor 12 Dec. 2013). He stated that women therefore hesitate to ask for a divorce, regardless of their reasons for doing so (ibid.). Corroborating information 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.

## References

American Bar Association (ABA). January 2012. *Access to Justice Assessment for Mali*. <[http://www.americanbar.org/content/dam/aba/directories/roli/mali/mali\\_access\\_to\\_justice\\_assessment\\_2012.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/directories/roli/mali/mali_access_to_justice_assessment_2012.authcheckdam.pdf)> [Accessed 23 Dec. 2013]

Assistant Professor of anthropology, Lehigh University. 12 December 2013. Correspondence with the Research Directorate.

*Les Échos du Mali*. 2 September 2010. Aminata Traoré and Aminata A. Lah. "Polygamie : une pratique ancestrale." <<http://www.mediaf.info/fr/pays/fiche.php?itm=4065&md=&thm=&p=12>> [Accessed 23 Dec. 2013]

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Lehigh University. 19 October 2010. Jennifer Tucker. "Polygamy Is Holding Its Own as Mali Modernizes." <<http://www4.Lehigh.edu/news/newsarticle.aspx?Channel=%2FChannels%2FNews%3A+2010&WorkflowItemID=5a40f511-960a-4102-b2fa-8243346d611c>> [Accessed 23 Dec. 2013]

Mali. 2011. *Loi n° 2011 - 087 du 30 décembre 2011 portant Code des personnes et de la famille*. <[http://www.justice.gouv.ml/documentation/Code\\_des\\_Personnes\\_et\\_de\\_la\\_Famille.pdf](http://www.justice.gouv.ml/documentation/Code_des_Personnes_et_de_la_Famille.pdf)> [Accessed 2 Jan. 2014]

## Additional Sources Consulted

**Oral sources:** An anthropology professor at Université Laval could not provide information within the time constraints of this Response. Attempts to contact the following organizations were unsuccessful: Association pour le progrès et la défense des droits des femmes maliennes; Association du Sahel d'aide à la femme et à l'enfance; Œuvre malienne d'aide à la femme et à l'enfance du Sahel.

**Internet sites, including:** Afribone; Amnesty International; the Civil Society Web Portal in Mali; Droit Afrique; ecoi.net; Factiva; Freedom House; Human Rights Watch; *Le Journal du Dimanche*; *Journal du Mali*; Mali – Primature; Maliactu; MaliJet; MaliNet; Maliweb; Mediaf; *Le Nouvel Observateur*; United Nations – Refworld, Integrated Regional Information Networks; United States – Department of State.

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