



**DRC: Researched and compiled by the Refugee Documentation Centre of Ireland on 17 May 2011**

**Information on Marriage Formalities in DR Congo.**

A report by the *United Nations Committee on Economic, Social and Cultural Rights (CESCR)* under the heading 'Article 10' 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. The family is the basic unit of the human community and is organized so as to ensure its unity, stability and protection. It is placed under the protection of the public authorities.

Articles 442 to 444 of the Family Code provide that marriage creates the household and that the term "household" designates the spouses, their unmarried dependent children, and all those persons whom the spouses have an obligation to support, on the condition that those persons live regularly in the conjugal home and are registered in the family record. The husband is the head of the household. As can be seen, the household is synonymous with the family in its restricted meaning." (United Nations Committee on Economic, Social and Cultural Rights (CESCR) (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 – pg.32*)

Paragraph 157 states:

"Article 352 of the Family Code sets the age for contracting marriage at 18 years for men and 15 years for women. However, paragraph 2 of that article provides that a court may grant age exemptions for serious grounds. The court may issue such a decision at the request of any person who has a legitimate interest.

With respect to "emancipated" children, article 357 of the Family Code provides as follows: "A child, even if emancipated, who has not attained the age required for marriage may not contract marriage without the consent of its father and mother. If either the father or mother is deceased, absent, or not in a position to declare his or her will, or is deprived of parental authority, the consent of the other spouse shall suffice. In the absence of the father and the mother, the child must obtain the consent of its tutor, who must first obtain the opinion of the family council". (ibid)

Paragraph 161 states:

“There are however certain practices that exist outside the law, reflecting the persistence of ancestral customs, in particular those requiring the man to marry the daughter of his paternal aunt, i.e. his first cousin, and others obliging the widow to marry the younger brother of her deceased husband. These customs are disappearing, thanks to evolving mentalities.” (ibid)

A report by the *United Nations Committee on the Elimination of Discrimination Against Women (CEDAW)* under the heading ‘Family Code’ states:

“The Family Code promulgated on 1 August 1987 marked a positive change in The situation of women, in comparison with the former Civil Code. It introduced improvements in relation to consent to marriage, inheritance and the existence of reciprocal rights and obligations in marriage. However, it also contains provisions which conflict with the spirit of the Convention, for example:

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Article 59 (1), which deals with the naming of children, gives pre-eminence to the father in case of disagreement. This article conflicts with the provisions of article 16 (1) (c) and (d) of the Convention,<sup>6</sup> which give equal rights and responsibilities to both parents in matters relating to their children.

Article 148 (1), relating to the issuance of the family record book to the father only when the marriage is celebrated or registered, conflicts with the provisions of article 16 (1) (c) of the Convention,<sup>7</sup> which gives equal rights and responsibilities to spouses during marriage and at its dissolution.

Article 150 gives the husband alone the right to request the reissue of the family record book in case it is lost. This article conflicts with the provisions of article 16 (1) (c) of the Convention,<sup>8</sup> which gives equal rights and responsibilities to spouses during marriage.

Article 165, which provides that a married woman is domiciled at her husband’s home, conflicts with articles 15 (4)<sup>9</sup> and 16 (1) (h)<sup>10</sup> of the Convention.

Article 190, paragraph 4, which emphasizes only the woman and not the surviving spouse in relation to obtaining the temporary continuation of one of the two matrimonial property regimes in case of a judicial declaration of absence, conflicts with article 15 (2) of the Convention.<sup>11</sup>

Articles 198 and 200, which deal with the temporary absence of the father and do not recognize the parental authority of lone mothers, requiring a relative of the father to be involved, conflict with the provisions of article 16 (1) (d) of the Convention,<sup>12</sup> which gives the same rights and responsibilities to both spouses as parents.

Article 215, which restricts the legal capacity of married women, conflicts with article 15 of the Convention.

Article 223, which states that a legal guardian must be a competent person, excludes married women, who are considered incompetent. This article conflicts with article 5 of the Convention.

Article 264, relating to the composition of guardianship councils, specifies that they must include at least one woman among the six members. This conflicts with the spirit of article 16 of the Convention.

Article 275, concerning the “legal father”, may contribute to presumptions and attitudes which are discriminatory towards women, and may conflict with article 16 (1) (d) of the Convention.

Articles 288, 289 and 292, which deal with the emancipation of girls at age 15 for the purpose of marriage, conflict with article 16 (2) of the Convention.

Article 317, paragraph 2, gives primacy to the father in case of disagreement between the parents concerning their joint authority over their children. This conflicts with article 16 (1) (d)<sup>21</sup> of the Convention, which gives the same parental rights and responsibilities to both father and mother in matters relating to their children.

Article 322 refers to article 198, which requires a woman whose husband is absent to be accompanied by a relative of the husband in matters concerning her authority over her minor children. This conflicts with article 16 (1) (d) of the Convention.” (United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) (30 November 2004) *UN Committee on the Elimination of Discrimination against Women: State Party Report, Democratic Republic of the Congo – pg.17*)

In a section titled ‘Volume III: The family’ it states:

“Article 352, which deals with the legal capacity to marry (age 15 for girls and 18 for boys), by discriminating between girls and boys, conflicts with article 16 (1) (a) <sup>23</sup> of the Convention, which gives both men and women the same right to enter into marriage.

Article 355 deals with remarriage following the expiry of a 300-day period following the dissolution or annulment of the previous marriage. This waiting period is required for women only. The justification for this is the possibility of a pregnancy. This article conflicts with the provisions of article 16 (1) (a) of the Convention,<sup>24</sup> which gives both men and women the same right to enter into marriage.

Article 407 of the Family Code, which deals with the celebration or registration of marriage for a man aged under 18 or a woman aged under 15, conflicts with article 16 (2) of the Convention, which states that “the betrothal and the marriage of a child shall have no legal effect”.

Article 412, which prohibits the customary practice of polyandry, makes no mention of polygamy and therefore conflicts with article 2 (c) of the Convention.

Articles 420-422 of the Family Code state that the legal age of puberty for girls is 14. This implies that early marriages may be entered into by girls under 18.

Articles 444 and 445, which state that the husband is the head of the household, conflict with article 16 (1) (c)<sup>31</sup> of the Convention, which gives the

same rights and responsibilities to spouses during marriage and at its dissolution.

Article 448, which requires married women to obtain marital authorization for any legal acts whereby they enter into an obligation, conflicts with article 15 (2) of the Convention.<sup>32</sup>

Article 450, which requires married women to obtain marital authorization to go to court in a civil case, or to buy or sell property or enter into any obligation, conflicts with article 16 (1) (h) of the Convention,<sup>33</sup> which provides for “the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration”.

Articles 454 and 455, which require wives to follow their husbands wherever he sees fit to reside or to go to court, conflicts with article 16 (1) (d) of the Convention.<sup>34</sup>

Articles 467 and 468, relating to adultery, which make a distinction between adultery by the wife and by the husband, conflict with articles 2 (g)<sup>35</sup> and 15 (1) of the Convention, which require States to give women equal rights before the law.

Article 490, paragraph 2, provides that regardless of the matrimonial regime which applies to a particular marriage, the management of both joint and individual property is presumed to be entrusted to the husband. This conflicts with the provisions of article 15 (3) of the Convention, under which “all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void”.

Article 497, paragraph 2, and articles 515, 524 and 531 of the Family Code, which entrust to the husband the management and administration of property acquired by the wife in the exercise of her profession, conflict with the provisions of article 16 (1) (c) of the Convention,<sup>38</sup> which gives equal rights and responsibilities to spouses during marriage and at its dissolution. Indeed, women are increasingly the ones who manage the household, and they do it better than men.” (ibid)

A report by the *United States Department of State* under the heading ‘Women’ states:

“In their March 2009 report to the UNHRC, seven UN special rapporteurs and representatives expressed concern that, while the family code recognizes equality between spouses, it “effectively renders a married woman a minor under the guardianship of her husband,” by stating that the wife must obey her husband; women remained underrepresented in the democratic institutions.” (United States Department of State (8 April 2011) *2010 Human Rights Report: Democratic Republic of the Congo*)

In a section titled ‘Children’ it states:

“The law prohibits marriage of girls under the age of 14 and boys under the age of 18; however, marriages of girls as young as 13 years old took place.

Dowry payments greatly contributed to underage marriage. In some cases parents married off a daughter against her will to collect a dowry or to finance a dowry for a son. The sexual violence law criminalizes forced marriage. It subjects parents to up to 12 years' hard labor and a fine of 92,500 Congolese francs (approximately \$103) for forcing a child to marry. The penalty doubles when the child is under the age of 15. There were no reports of prosecutions for forced marriage; no additional information was available." (ibid)

Another report by the *United States Department of State* under the heading 'Documents' states:

"All civil records, with the exception of the Extrait du Casier Judiciaire, must be requested from the appropriate office in the district in which the event (birth, marriage, death, etc.) took place." (United States Department of State (Date Unknown) *Democratic Republic of Congo Reciprocity Schedule*)

In a section titled 'Marriage Certificates' it states:

"Available. Extraits d'Actes de Mariage or Actes de Mariage 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." (ibid)

#### **References:**

UN Committee on Economic, Social and Cultural Rights (CESCR) (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 :*

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This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

**Sources Consulted:**

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Constitution Finder

Electronic Immigration Network (EIN)

European Country of Origin Information Network (ECOI)

Human Rights Watch

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Refugee Documentation Centre Query Database.

United Kingdom Home Office

UN Commission on Human Rights

UN Committee on the Rights of the Child (CRC)

UN Committee on the Elimination of Discrimination Against Women (CEDAW)

UN Committee on the Elimination of Racial Discrimination (CERD)

UN High Commissioner for Refugees

UN Committee on Economic, Social and Cultural Rights (CESCR)

UNHCR Refworld

United States Department of State