

# 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).

1 May 2014

### COD104852.E

Democratic Republic of the Congo: Marriage practices among the Luba, including frequency of forced marriage for adult women, as well as the possibility for a person to marry someone of a different ethnicity or from a different region; recourse available to Luba women in cases of forced marriage, including levirate marriage (2010-April 2014)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

#### 1. Marriage Practices

A paper published in *Challenge*, a journal of research on African American men published by Morehouse College in Atlanta (Morehouse College n.d.), by Tshilemalema Mukenge, a former professor in the Department of African Studies at Morris Brown College in Atlanta, is the source of the information in this paragraph. The family occupies a "central place" in the personal life of each Luba, and in the social, economic and political organization of its society. The family is a source of legitimacy, social recognition, status, acceptability, and identity, and determines an individual's rights and privileges in society. The Luba are both patrilineal, in that descent, the inheritance of property rights, and the acquisition of citizenship are determined through the father's line, and "patrilocal," in that a man and his wife settle among the members of the husband's paternal lineage. The Luba practice polygamy, and "the first wife occupies a position of pre-eminence in respect to her co-wives" (Mukenge spring 2010, 21, 22, 26).

In a 26 April 2014 correspondence with the Research Directorate, a representative of Les anges du ciel, an NGO based in Kinshasa that advocates for the rights of minors and women in the Democratic Republic of the Congo (DRC) (Societecivile.cd n.d), provided the information in the following paragraph regarding marriage customs among the Luba.

When a woman accepts a marriage proposal, she invites the man to meet her parents and pay the dowry. The parents of the woman invite all close and extended family members from both families to meet on an arranged date. On that day, the father of the woman asks her if she consents to the marriage. In general, the answer is always yes. The man and his family present the dowry, which usually consists of a sum of money (the actual dowry), clothing and footwear for the bride's parents, two goats (one of which is given to her mother for the virginity of the daughter), drink, and accessories. In the past, the goat was not given to the bride's family if the woman was not a virgin, but nowadays this is not usually practiced. It is up to the family to decide what the accessories will be, but they always include oil and salt. The father of the woman considers whether the dowry and accessories satisfy his family wishes, and if they are insufficient, he indicates the correct amount to be added to the dowry. The couple can live together even if the dowry is incomplete, but the man has to complete its payment before the date agreed on with her parents. After the delivery of the dowry, the celebration begins and the families get to know each other. The woman goes to live with her new husband's family for one month, after which she returns to her family only to go back to her husband's house with the provisions for their new home.

Mukenge indicates in his article that the man usually has to rely on his family to pay the dowry since the cost is "too high" to pay himself (Mukenge spring 2010, 22). The Luba use the sale of corn, the main food crop in Lubaland, to finance the purchase of livestock, usually goats and chickens, and use some of it to pay dowries (ibid., 23). He notes that goats are "rarely" used for payment nowadays (ibid., 28). He further indicates that

[t]o prevent exploitative accumulation of wealth by the beneficiary of a bridewealth, tribute by ancestral right, the ancestors obligate him to transfer wealth from his own work to another, and becoming the beneficiary of a bridewealth creates an obligation to reciprocate. The normal use of bridewealth is to obtain a wife for a family member. The ancestral norm obligates a man whose bridewealth is paid by anyone other than his own father to reciprocate with the bridewealth that comes to him from his first daughter's marriage. (ibid., 25)

### 1.1 Marrying a Person from Another Ethnic Group

The representative of Les anges du ciel indicated that, even though it is possible to marry a person from another ethnic group, it does not occur frequently, since fear of mixing with another culture is perceived to be the cause of conflict in marriage among the Luba (24 Apr. 2014). According to Mukenge,

[i]ndividuals claim membership in their villages of origin even if they have never lived there. Family and lineage building still stand out as the most culturally valued contribution one can make to the community. For a Luba man, marrying a Luba woman and having many children remains the ideal. (spring 2010, 29)

In correspondence with the Research Directorate, a professor at the Institute of Sociology at the Université libre de Bruxelles who researches Luba in the Democratic Republic of the Congo (DRC), indicated that endogamy [the custom of marrying within one's own group] is "quite important" for the Luba in Kasai, but expressed the contrasting view that there are many "cross-marriages" as well (Professor 8 Apr. 2014).

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

## 2. Forced Marriages and Levirate

### 2.1 Forced Marriages

Law No. 09/001 of January 10, 2009, on Child Protection (*Loi no 09/001 du 9 janvier 2009 portant protection de l'enfant*) contains the following provisions:

[translation]

Article 48

The betrothal and marriage of children is prohibited.

Article 189

Any person who is responsible for a child as their parent or guardian and who gives this child in marriage or for the purpose of marriage or who forces this child to marry shall be sentenced to imprisonment for five to twelve years and to a fine of eight hundred thousand [C\$960 (XE 29 Apr. 2014a)] to one million Congolese francs [(CDF), C\$1,200 (XE 29 Apr. 2014b)]. (DRC 2009)

Also, the Penal Code (*Loi no 6/018 du 20 juillet 2006 modifiant et complétant le Décret du 30 janvier 1940 portant Code pénal congolais*) of the DRC prescribes punishment of persons responsible for forced marriage by 1 to 12 years imprisonment and a fine of not less than 100,000 CDF (ibid. 2006, Art. 174f), or C\$118 (XE 29 Apr. 2014c).

The US *Country Reports on Human Rights Practices for 2013* indicates that

[w]hile the law prohibits the marriage of boys and girls under age 18, some marriages of underage children took place. Bridewealth payment made by a groom or his kin to the kin of the bride to ratify a marriage greatly contributed to underage marriage, as parents forcibly married daughters to collect bridewealth or to finance bridewealth for a son. (US 27 Feb. 2014, 28)

The Professor indicated that he would "hardly say" that forced marriage is practiced by the Luba in Kasai and that "it certainly depends on the rural/urban divides, and inside the city, on social milieus" (8 Apr. 2014). The representative of Les anges du ciel indicated that forced marriages are not common nowadays, though arranged marriages do occur among the Luba (Les anges du ciel 26 Apr. 2014). She indicated that a parent of a man may ask the parents of a woman to [translation] "keep" her for marriage at a later date and may pay the dowry in advance (ibid.). In that case, the parents of the woman [translation] "start to prepare her" by telling her that she will be the wife of that man (ibid.). They also communicate her engagement to the entire neighbourhood so other men do not consider her for marriage (ibid.).

### 2.2 Levirate and Sororate

Sources indicate that the Luba practice levirate (Les anges du ciel 26 Apr. 2014; Professor 8 Apr. 2014; Mukenge spring 2010, 22) as well as sororate (ibid.). Levirate is the custom of a man marrying the widow of a deceased brother (ibid.; Les anges du ciel 26 Apr. 2014). Sororate is a man marrying the sister of his deceased wife (Mukenge spring 2010, 22; Encyclopædia Britannica n.d.). According to Mukenge, a marriage is preserved

through these practices so the loss of a parent "does not become a major disruption in [the] lives" of children (spring 2010, 22). The representative of Les anges du ciel indicated that levirate was an obligation in the past, but that today it takes place if the woman consents (24 Apr. 2014). The Professor indicated that "it is quite unusual that [levirate] is enforced against the will of the widow in cities [but] it could be" (8 Apr. 2014). According to Mukenge, a marriage is not a contract between man and woman but an "alliance" between their families expected to last beyond the lives of the spouses (Mukenge spring 2010, 22). Mukenge indicates that Luba children "are raised as sons and daughters of many fathers and mothers" (ibid.).

### 2.3 Recourse Available

The representative of Les anges du ciel indicated that in urban areas women can obtain the assistance of the authorities or local NGOs when forced marriage has taken place or is feared (Les anges du ciel 26 Apr. 2014). However, she also indicated that some women who live in levirate do so out of fear and are too ashamed to seek the assistance of authorities (ibid.). Additional or corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

A report produced by the National Network of Congolese Human Rights NGOs (Réseau national des ONGs des droits de l'homme de la République démocratique du Congo, RENADHOC), an organization that monitors and advocates for human rights in the country and acts as the spokesperson for Congolese human-rights NGOs (RENADHOC n.d.), indicates that, in the province of West Kasai, laws are not respected, and early marriage, rape and sexual violence are common (ibid. Mar. 2012, 104). The report also indicates that the province has only one appeal court, two superior courts (*tribunaux de grande instance*), and three magistrate's courts (*tribunaux de paix*) (ibid., 105). The report notes that these courts are located [translation] "very far away" from some parts of the province, and they are not able to "effectively" cover the province (ibid.). In a report produced by the Coalition for the Convention on the Elimination of All Forms of Discrimination against Women (Coalition pour la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, C.CEDEF), indicates that the situation of women's access to justice is [translation] "worrying" (C.CEDEF Mar. 2013, 43). The report indicates that [translation] "women do not access justice because of factors such as poverty, ignorance, legal incapacity, prejudice, as well as old fashioned norms and customs, [and] the tendency of magistrates to apply old discriminatory laws that had been abolished" (ibid.). The report explains that the Family Code considers the husband to be the head of the family, which has [translation] "discriminatory consequences for women" regarding the application of some provisions of the law (ibid., 44). The Professor indicated that, in rural areas, Luba women have "few legal opportunities" to appeal to the law (Professor 8 Apr. 2014). He also indicated that

[s]uch issues are settled by families during meetings, or possibly to some 'traditional' instances like the authorities of the clan, the authorities of the 'secteur' or 'chefferie'. In a big city like Lubumbashi or Kinshasa, for example, appealing to the law is more and more frequent in such cases, [but] not in the countryside. (ibid.)

According to Mukenge, "virginity before marriage was mandatory" and if a girl became pregnant before marriage, both families would exert pressure on the man to marry her, to "save her family from disgrace ... [and to] give the unborn child a chance to be fully accepted into his corporate family group" (spring 2010, 21). *Country Reports 2013* for the Democratic Republic of the Congo indicates that most survivors of rape and other types of sexual violence "did not pursue formal legal action due to insufficient resources, lack of confidence in the justice system, fear of subjecting themselves to humiliation and possible reprisal, or family pressure (US 27 Feb. 2014, 25). It also indicates that

[i]t was common for family members to pressure a rape survivor to remain silent, even in collaboration with health-care professionals, to safeguard the reputations of the survivor and her family. Survivors of SGBV faced enormous social stigma. After a sexual assault, many young women and girls were labeled as unsuitable for marriage, and married women were frequently abandoned by their husbands. Some families forced rape survivors to marry the men who raped them or to forego prosecution in exchange for money or goods from the rapist. (ibid.)

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.

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## Additional Sources Consulted

**Oral sources:** Attempts to contact the following persons and organizations were unsuccessful: Association africaine des droits de l'homme; Association des juristes pour les droits des enfants et des femmes; Association pour la protection des droits de la femme et de l'enfant; Avocats sans frontières; Ligue de la zone Afrique pour la défense des droits des enfants, étudiantes et élèves; Observatoire national des droits de l'homme de la République démocratique du Congo; Réseau des femmes pour un développement associatif; professor at the Département des sciences juridiques at the Université du Québec; professor at the Nordic Africa Institute; researcher on the Luba.

A professor at the University of Ottawa and a representative of Arche d'Alliance could not provide information within the time constraints of this Response.

**Internet sites, including:** *Africa Confidential*; *Africa Research Bulletin*; Agence congolaise de presse; Amnesty International; Archidiocèse de Kananga; Democratic Republic of the Congo – Ministry of the Interior and Security, Police nationale congolaise; Droit.Afrique.com; ecoi.net; Ethnologue; Factiva; Fédération internationale des ligues des droits de l'homme; Freedom House; Human Rights Watch; *Jeune Afrique*; Kasai occidental – Réseau pour la réforme du secteur de sécurité et de justice; Lexadin; Les médias du citoyen; Minority Rights Group International; Reporters sans frontières; United Kingdom – Embassy in Kinshasa; United Nations – Refworld, UNWomen; United States – Agency for International Development, Central Intelligence Agency.

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