

Immigration and Refugee Board of Canada

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Responses to Information Requests

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10 July 2014

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Burkina Faso: The practice of levirate, including frequency and how long to wait after the death before levirate can be practised; the possibility of refusal by the deceased man's brother, including legal avenues available to him (2013-July 2014)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Overview

According to sources, in Burkina Faso, levirate is a practice whereby a widow marries a relative of her deceased husband (Voix des femmes 8 July 2014; AI 31 Dec. 2009, 13; UN Sept. 2008, 23). Some sources, however, refer to levirate as a marriage between a widow and her late husband's brother only (Centre for Democracy Development in West Africa Feb. 2010; UN n.d.). Amnesty International (AI) states that a levirate marriage is [AI English version] "usually" between a widow and the brother of her late husband (AI 31 Dec. 2009, 13).

2. Legal Status

According to AI, [AI English version] "religious and customary laws have officially had no legal effect on family relations since the adoption of the 1990 Individual and Family Code (*Code des personnes et de la famille*)" (AI 31 Dec. 2009, 8). Sources report that levirate is specifically prohibited by the Code (WiLDAF/FeDDAF-Burkina Faso Jan. 2013; AI 31 Dec. 2009, 13; MBDHP 5-22 July 2005, 4). Article 234 of the Code prohibits [translation] "forced marriage, especially marriages imposed by families and marriages resulting from customary rules requiring a surviving spouse to marry a relative of the late spouse" (Burkina Faso 1990).

In correspondence with the Research Directorate, the President of the NGO Voix des femmes, an association that advocates for women's rights in Burkina Faso [1], also stated that [translation] "levirate, like forced marriage, is punishable by law in Burkina Faso" (Voix des femmes 8 July 2014). According to the President, [translation] "victims can seek assistance from administrative services and civil society organizations and have recourse to the courts to sanction perpetrators and accomplices" (ibid.). Article 376 of the Penal Code (*Code pénal*) provides for sentences ranging from six months to two years in prison for [translation] "anyone who forces another person into a marriage" (Burkina Faso 1996, Art. 376). Information on the enforcement of these provisions in cases of levirate could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3. Levirate in Practice

3.1 Frequency

Sources indicate that levirate is still practised in Burkina Faso (UN 2 Jan. 2014, 8; Burkina Faso 9 Feb. 2004, 51; AI 31 Dec. 2009, 13), despite being prohibited (ibid.; Burkina Faso 9 Feb. 2004, 51). A report on the situation of women in Burkina Faso prepared by the Burkina Faso office of Women in Law and Development in Africa/Femmes, Droit et Développement en Afrique (WiLDAF/FeDDAF), a pan-African network bringing together individuals and NGOs promoting respect of women's rights (WiLDAF/FeDDAF n.d.), states, [translation] "despite the principles established in the *Code des personnes et de la famille*, the customary practices of women as gifts, dowry and levirate still exist in rural areas as a whole" (WiLDAF/FeDDAF-Burkina Faso Jan. 2013). The same source adds that [translation] "[e]ven in urban areas, only some intellectuals and Christian couples marry according to the [*Code des personnes et de la famille*" (ibid.). Sources report that levirate is [AI English version] "still practised" (AI 31 Dec. 2009, 13) and is [translation] "very widespread" (UN n.d.) and that [translation] "a large number of women are subjected to it" (MBDHP 5-22 July 2005, 4).

However, an article in West Africa Insight, a publication of the Centre for Democracy Development in West Africa that addresses various issues relating to development in West Africa (Centre for Democracy Development in West Africa n.d.), states that levirate is practised only by "a small minority of people" (ibid. Feb. 2010). The President of Voix des femmes stated that [translation] "the practice has decreased considerably in some parts of Burkina Faso" (Voix des femmes 8 July 2014). She also stated that

[translation]

[w]ith the advancement in the promotion of women's rights, the practice of levirate has decreased in communities. In addition to this significant progress in women's rights, greater understanding of the HIV/AIDS pandemic has also raised people's awareness and has halted the practice of levirate somewhat. However, the ideas of gift and counter-gift as well as the dowry, that have been a part of the matrimonial system for a long time in these societies- a system which is the basis for the practice of levirate- are becoming less accepted (ibid.).

3.2 Regional and Ethnic Differences

According to the President of Voix des femmes, [translation] "[i]n general, the practice varies from region to region and from ethnic group to ethnic group" (Voix des femmes 8 July 2014). According to the report by the United Nations (UN) Inter-Agency Network on Women and Gender Equality, "levirate marriage is a common practice among many ethnic groups such as the Mossi, Gourmantché, Lobi, Dagara, Samo and Gurunsi" (UN Sept. 2008, 23). The President of Voix des femmes also noted that levirate [translation] "is relatively common among the Mossi," explaining that "in Mossi society, a woman is considered part of the family patrimony and is thus inherited by a family member after her husband's death" (Voix des femmes 8 July 2014). The President added that [translation] "the Mossi are an ethnic group with the same customary and traditional practices, with some slight differences, and as a result, the practice of levirate is the same in [the geographic region] of the Mossi plateau" (ibid.).

3.3 Waiting Period

According to Article 246 of the Individual and Family Code, [translation] "a woman who is divorced or widowed or whose marriage has been annulled may not enter into a second marriage prior to the expiration of a period of three hundred days" (Burkina Faso 1990). Moreover, Article 684 of the same code provides that [translation] "the estate of the predeceased husband must provide food and housing to the widow for a period of three hundred days following the husband's death. This obligation ceases if the widow remarries prior to the expiration of this period" (ibid.).

According to the President of Voix des femmes:

[translation]

In general, levirate takes place at the end of all customary and religious ceremonies. Depending on the family, area and status of the deceased, the period of widowhood may vary from one to three years. Levirate is practised when this period comes to an end.

...

With younger people, customary and religious ceremonies may take place a year after death and lead to levirate. ... For older people or customary chiefs, customary and religious ceremonies may take place three years after the death and lead to levirate (Voix des femmes 8 July 2014).

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

4. Obligation and Refusal

Some sources describe levirate marriage as being mandatory for widows (Burkina Faso 9 Feb. 2004, 51; MBDHP 5-22 July 2005, 4). According to a report on violence against women in Burkina Faso prepared by the UN Inter-Agency Network on Women and Gender Equality, levirate is "set as a condition to the widow and her children remaining accepted by among the family [of the deceased]" (UN Sept. 2008, 23). The West Africa Insight article also mentions that women are obliged to go along with a levirate marriage in order to retain custody of their children, "failing which child custody reverts automatically to the family of the deceased" (Centre for Democracy Development in West Africa Feb. 2010).

However, a country profile on gender and land rights in Burkina Faso published by the UN Food and Agriculture Organization (FAO) states that [translation] "the degree of a woman's freedom to choose levirate varies from quasi-mandatory among certain groups to considerable freedom of choice among other groups" (UN n.d). This source also states that, depending on the case:

[translation]

[a] widow may return to her original family and be granted land; marry a younger brother of her deceased husband, according to the custom of levirate; or stay with her in-laws as a widow. In the last two cases, the widow retains her access to her husband's family land (ibid.).

However, the country profile states that [translation] "if a woman refuses a levirate marriage, she may return to her original family, but she must leave her sons with the family of her deceased husband and loses all land rights" (ibid.).

According to the President of Voix des femmes, a man may refuse to marry the widow of his brother or half-brother [translation] "if it is suspected that the cause of death was HIV/AIDS" (Voix des femmes 8 July 2014).

Additional information on the obligation of a brother or another relative of the late husband to take part in a levirate marriage or on the legal remedies available to him could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4.1 Consequences of a Refusal

In response to a question from the Research Directorate, the President of Voix des femmes stated that if more than four years has passed since the husband's death and a woman or man refuses a levirate marriage, the person could face the following consequences:

- In certain communities, both families will continue to pressure the man or woman to force them to concede;
- The parents will relent and let the woman choose whom she wants to marry;
- The woman will be banished by her [deceased] husband's family and her children will be taken away from her. It is also possible that she will not be accepted by her own family if she refuses a levirate marriage; however, she retains the right to see her children (Voix des femmes 8 July 2014).

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.

Note

[1] The President of Voix des femmes is also the President of the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children, and she previously held the position of Minister of Social Action in Burkina Faso.

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United Nations (UN). 2 January 2014. Committee Against Torture. *Observations finales concernant le rapport initial du Burkina Faso.* (CAT/C/BFA/CO/1) <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhso9padiGPLZnL2Rh4yZ5rk00Arr4xQZUWVE0LLkuDqgPu6X6tFF16DAZTKKVJXNN5e38B0uyK3rEJNHpBSxwd2JzKz3jyBlT8QB89TsHZm2>> [Accessed 3 July 2014]

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Additional Sources Consulted

Oral sources: A representative of the Association burkinabé pour le bien-être familial could not provide information within time constraints. Attempts to contact the following people and organizations were unsuccessful: Association burkinabé pour le mieux-être de la femme et de l'enfant; Association d'appui et d'éveil Pugsada; Association des femmes juristes du Burkina Faso; Association des veuves et orphelins du Burkina; Association VENEGBA; Coalition burkinabé pour les droits de la femme; Mouvement burkinabé des droits de l'homme et des peuples; Promotion femmes/développement et solidarité; RECIF/ONG-BF; Researcher, Institut des sciences des sociétés; United Nations – United Nations Population Fund.

Internet sites, including: Afribone; L'Afrique pour les droits des femmes; aOuaga.com; Burkina Faso – ministère des Droits humains et de la Promotion civique, ministère de la Promotion de la femme; Cadre de concertation genre au Burkina Faso; ecoi.net; L'Express du Faso; Factiva; LeFaso.net; Femmes sous lois musulmanes; Forum Social Burkina Faso; Kabissa.org; Lexadin; NATLEX; *L'Opinion*; Oxfam Québec; United Nations – UNICEF, Refworld; United States – USAID; Women Reclaiming and Redefining Culture.

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