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Responses to Information Requests

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15 October 2015

GIN105292.FE

Guinea: Forced marriages, including prevalence; legislation affecting forced marriages; state protection; ability of women to refuse a forced marriage (2012-2015)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Prevalence of Forced Marriages

In correspondence sent to the Research Directorate, a representative from the office of the United Nations Population Fund (UNFPA) in Conakry, who spoke on her own behalf, stated that [translation] "in Guinea, there is no official document indicating the true prevalence of forced marriages, but the practice persists" (Representative, 30 Sept. 2015). In correspondence sent to the Research Directorate, the Executive Director of the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children in Africa (IAC), an NGO present in 29 African countries that works to eliminate harmful traditional practices, including child marriage (IAC n.d.), made the following clarification: forced marriage, defined as the marriage of individuals under 18 years of age [translation] "is common" in Guinea (ibid. 21 Sept. 2015).

In a report published in 2013, the Ministry of Social Action and the Advancement of Women and Children (Ministère de l'Action sociale, de la Promotion féminine et de l'Enfance, MASPFE) provides the following information on the prevalence of early marriage in Guinea, taken from a 2009 national survey on gender based violence:

[translation]

The prevalence rate of early marriages in Guinea is among the highest in SubSaharan Africa. On average, three out of five girls are married before their seventeenth birthday. The highest prevalence rate is in the Upper Guinea region (76 percent), followed by Central Guinea and Guinea Forest (75 percent), Lower Guinea (61 percent) and the Conakry Special Zone (39 percent) (Guinea Feb. 2013, 11).

In correspondence sent to the Research Directorate in September 2015, the MASPFE Secretary-General provided similar statistics on the regional distribution of forced marriages (ibid. 22 Sept. 2015). According to the Secretary-General, the practice of forced marriage is present [translation] "across ethnicities, across religions, with considerable prevalence among Muslims" (ibid.). Similarly, the IAC Executive Director pointed out the lack of [translation] "ethnic disparities" in terms of forced marriage (IAC 21 Sept. 2015). The UNFPA representative stated that, although forced marriage occurs in all ethnicities, [translation] "it is particularly common among the Fulani and the Malinke, and rare among the Susu and the forested Guineans" (30 Sept. 2015). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

In a telephone interview with the Research Directorate, a sociology professor at the Université Général Lansana Conté de Sonfonia-Conakry, whose research areas include public health and well-being, gave the

following typical profile of Guinean girls who are victims of forced marriage: a girl who [translation] "lives in a rural area, and whose parents work in primary activities or have an elementary level of education" (Professor 17 Sept. 2015). Similarly, the Program Director for Wafrica Guinea, an NGO with the mission of [translation] "promoting the socio-economic and cultural well-being of women and girls in Guinea" (Wafrica 2010), speaking on her own behalf, stated in a telephone interview with the Research Directorate that early marriage was [translation] "more common in rural areas" (Director 18 Sept. 2015).

2. Legislation

In its report released in 2013, MASPFE states that the protection of women is [translation] "a major concern of Guinean legislators, who enshrined it in the constitution, as well as in standard laws," including the Penal Code, the Children's Code and the Civil Code (Guinea Feb. 2013, 16-17). In an article on the situation of women in Guinea, Women in Law and Development in Africa (WiLDAF), a pan-African network of 500 organizations promoting women's rights (WiLDAF n.d), indicates that in the Guinea Civil Code, [translation] "a woman must consent to marriage" (ibid. Jan. 2013). Similarly, the Program Director stated that the Guinea Civil Code stipulates that the spouses' consent be a [translation] "condition of validity of the marriage" (Director 18 Sept. 2015). According to the UNICEF, articles 280 to 286 of the Civil Code [translation] "implicitly" protect children from forced or early marriage (UN 2015, para. 186). Articles 280 to 286 of the Civil Code state:

[translation]

Article 280: Men under age 18 and women under age 17 shall not enter into marriage.

However, the President of the Republic, on a report from the Minister of Justice, may, by Decree, grant age dispensations for serious reasons. The request is addressed to the public prosecutor or to the presiding magistrate, who forwards it to the Attorney General. A Decree dispatch is appended to the marriage certificate.

Article 281: The spouses must consent to the marriage.

Article 282: This consent must be free and valid.

Article 283: It is expressed at the time of the marriage celebration and solemnly noted by the Civil Registrar.

Article 284: Individuals under age 21 may not enter into marriage without their father's consent and, in the absence of the father, without the consent of the person who acts as head of the family.

This consent is given either orally during the marriage celebration or in advance by an authentic and special act.

When the age difference between the future spouses is more than 30 years, the marriage may be celebrated only with the Minister of the Interior's authorization.

Article 285: Any Civil Registrar who proceeds with a marriage celebration without assurance that the consent of the father or family head, where required, has been given, shall be, at the discretion of the parties or the public prosecutor, fined 500 to 5,000 Guinean francs [approximately C\$0.09 and C\$0.90] and/or sentenced to six months to one year in prison.

Article 286: Promises of marriage or engagements do not make the marriage mandatory ... (Guinea 1983, art. 280-286).

Article 268 of the Guinean Children's Code of 2008 (*Code de l'enfant guinéen*) states that [translation] "boys and girls under age 18 shall not enter into marriage" (ibid. 2008, art. 268).

According to WiLDAF, forced marriage is [translation] "punished as an offence" (Jan. 2013). The Guinea Penal Code states that an offence

[translation]

shall be punished by a term of imprisonment of 1 to 3 months and a fine of 50,000 to 100,000 Guinean francs [between about C\$9 and C\$18], the Civil Registrar who ... has not ensured the consent of the fathers, mothers or other persons where required by law to validate a marriage (Guinea 1998, art. 205).

The Penal Code also prescribes a two- to five-year term of imprisonment for any person who [translation] "consummates a marriage celebrated according to custom by completing or attempting to complete the sex act with a child under age 13" (ibid., art. 302).

The 2013 report of the MASPFE states that:

[translation]

the existence of legislation is insufficient to protect women/girls because the methods for analyzing social change, the reality and daily experience of women have not always made it possible for legislation to meet the objective expectations and fundamental needs of women, the overwhelming majority of whom do not benefit from equal access to the judicial system (ibid. Feb. 2013, 17).

Sources indicate that women continue to have difficulty gaining access to justice (UN 14 Nov. 2014, para. 20; IFHR et al. Oct. 2014).

Information on applying forced marriage legislation could not be found from the sources consulted by the Research Directorate within the time constraints of this Response.

3. Refusing a Forced Marriage

According to the Program Director,

[translation]

customary law (which is based on the law of the Muslim faith, which 80 percent of the population recognizes) permits refusal of a forced marriage. However, family pressure is such that it is often difficult for the woman to refuse a forced marriage (Director 11 Sept. 2015).

Similarly, the UNFPA representative stated that [translation] "it is generally very difficult to refuse a forced marriage in Guinean society" (30 Sept. 2015). The same source stated that a woman bound to a forced marriage can protest, but she [translation] "always ends up giving in to sociocultural pressures" (ibid.). The MASPFE Secretary-General attributes the difficulty in refusing a forced marriage to the fact that such a refusal constitutes a [translation] "challenge to parental authority," since girls in Guinea [translation] "most often do not have decision-making freedom from their parents" (Guinea 22 Sept. 2015). The Professor explained that a young woman's capacity to avoid a forced marriage stemmed from her level of education, since an uneducated young woman has [translation] "little chance" to escape (Professor 17 Sept. 2015). On the other hand, the same source stated that an educated woman would have a number of avenues of recourse to avoid a forced marriage and could run away, alert her family network and [translation] "have willing ears enabling her to influence the matter" (ibid.). Similarly, the Program Director stated, without giving more detail, [translation] "that in an urban environment, with the opportunity to study, it was easier for a woman to reject a forced marriage, since the woman had other options for surviving outside the family home" (Director 11 Sept. 2015).

With regard to the possible impact of refusing a forced marriage, the Program Director indicated that a woman who refuses a forced marriage may be rejected by society and may be [translation] "forced to leave the family home"; she added that [translation] "most women do not have the means to do so" (ibid.). Similarly, the MASPFE Secretary-General said that a girl who refuses a forced marriage would be [translation] "repudiated, rejected by her family" (Guinea 22 Sept. 2015). Along the same lines, the UNFPA representative stated that in a situation like that, the girl might be rejected by her family, [translation] "if not her community" (30 Sept. 2015). The Program Director clarified that [translation] "some women who refuse forced marriage" might be pushed, under pressure from society or their family, to [translation] "leave behind where they live" and go into exile in an urban area or abroad (Director 18 Sept. 2015). Similarly, after conducting interviews in August 2014 with Guineans in rural areas and others in Conakry, UNICEF indicated that [translation] "forced marriage was the reason why many women and girls left their region, if not their country of residence; some fled to escape a forced marriage, others were required to go join their 'husband'" (UN 2015, para. 192).

The MASPFE Secretary-General noted that one of the options available to girls to oppose a forced marriage was to distance themselves from the family home (Guinea 22 Sept. 2015). According to the Professor, in general, a woman refusing a forced marriage [translation] "will be required to leave her father's home" (17 Sept. 2015). Similarly, the UNFPA representative stated that the girl would have to [translation] "break all ties with her family" (30 Sept. 2015). According to an article published in 2015 on Plus224.com, an African current affairs website, a 24 year old woman from Labé, an urban community in Guinea's northwest, left her parents' home in 2012 after [translation] "multiple attempts" in vain to convince them not to force her to marry, and has not been in contact with her family since (Plus224.com 13 Mar. 2015). The same article states that fleeing a forced marriage is considered by members of the young woman's family as a [translation] "humiliation" (ibid.). Without giving more detail, the source indicates, based on testimony, that if she returned to Labé, the young woman would face [translation] "severe punishment" (ibid.). Corroborating information or further information on this specific case of refusing a forced marriage could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the Professor, the [translation] "first reflex" of a woman who refuses a forced marriage and who leaves the family home is [translation] "to activate her networks," the primary one comprising her

brothers and the other her maternal uncles (Professor 17 Sept. 2015). The UNFPA representative indicated that the woman had no means other than [translation] "finding a host family or obtaining the protection of certain influential members of her family" (UN 30 Sept. 2015). However, she instead gave the example of the woman's paternal aunts (ibid.).

4. State Protection

According to the Professor, in Guinean culture, filing a complaint is [translation] "very rare" (Professor 17 Sept. 2015). The Professor clarified that for family matters, Guineans instead sought advice from family members, the patriarch (village chief) and the neighbourhood chief, while in general they went to the police for [translation] "matters of a criminal nature" (ibid.). Furthermore, the representative stated that [translation] "girls who are victims of forced marriage do not file complaints with the authorities because that practice was considered in Guinean society as a family matter" and should be resolved according to custom and tradition (30 Sept. 2015).

According to the IAC Executive Director, a woman who refuses a forced marriage may receive protection from the MASPFE or the courts, but this recourse [translation] "is not used much because woman and girls may have difficulty in filing a complaint against their parents" (IAC 21 Sept. 2015). Similarly, the Program Director stated that [translation] "the victims of forced marriage would instead seek support from acquaintances rather than from a legal and judicial framework that is not visible" (Director 11 Sept. 2015).

Country Reports on Human Rights Practices for 2014, published by the US Department of State, note that there were no reported prosecutions, although the Office for Protection of Women, Children, and Morals (OPROGEM) investigated one case (U.S. 25 June 2015, 28). The MASPFE report indicates that OPROGEM is a police service created in December 2009 under the responsibility of the Ministry of Security (Guinea Feb. 2013, 18). Its mission is [translation] "to help implement government policy on protecting vulnerable groups of women and children and protecting morals" (ibid.). At the time of publication, this same report noted that police stations were setting up pilot centres to address gender-based violence (ibid.). No information on these pilot centres' activities relating to forced marriage could be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The MASPFE Secretary-General provided the following information on the support provided by the MASPFE to victims of forced marriage:

[translation]

The Ministry of Social Action and the Advancement of Women and Children has a support unit for women to access legal and judicial services. This unit recorded 10 cases of girls being forced to marry... Many cases are not reported to this unit because women lack knowledge about the law (ibid. 22 Sept. 2015).

In correspondence sent to the Research Directorate, the legal advisor of the Minister of the MASPFE gave more detail about the support unit:

[translation]

The support unit for women to access justice is a system created by order of the Minister of Social Affairs in 2013. It is responsible for helping to distribute and educate others about women's rights. It guides and advises women in difficult situations. It receives complaints from women whose rights have been violated, and in particular who have been victims of early marriage. The unit works closely with legal services. It also receives complaints from women in the areas surrounding Conakry. Women in remote regions deal with the subdivisions of the Ministry of Social Action to exercise their rights. However, because of the illiteracy rate among women and the sociocultural constraints, the rate of recourse to administrative and legal services is very low. The unit is directly connected with the legal advisor of the Minister of Social Action (ibid. 27 Sept. 2015).

However, in its *Concluding observations on the combined seventh and eighth periodic reports of Guinea*, the UN Committee on the Elimination of Discrimination Against Women said that it was concerned "about the limited accessibility of that centre for women living outside the capital and about the lack of similar centres at the prefectural and local levels" (UN 14 Nov. 2014, para. 20). Similar to the MASPFE Secretary-General, it said that it was concerned about the "low level of legal literacy" among women (ibid.).

According to the Program Director, any [translation] "real" recourse available to a woman who refuses a forced marriage is [translation] "social" in nature, which involves the intervention of an NGO, if not family members, given the legal system's lack of resources (Director 11 Sept. 2015). The UN Committee on the Elimination of Discrimination Against Women said that it is concerned about "the limited human, financial and technical resources of the judiciary" (UN 14 Nov. 2014, para. 20).

The MASPFE Secretary General also noted [translation] "a close collaboration" between NGOs defending women's rights and legal services when they receive complaints from victims of forced marriage (Guinea 22 Sept. 2015). No specific information on the collaboration between the MASPFE and the NGOs concerning complaints from victims of forced marriage could be found among the sources consulted by the Research Directorate within the time constraints of this Response.

With regard to the protection offered by NGOs to victims of forced marriage, the Program Director stated the following:

[translation]

In Conakry, there is the Guinean Association of Social Assistants (Association guinéenne des assistantes sociales, AGUIAS), which focuses on girl victims of violence. It must have one or two shelters.... There is a toll-free telephone number for gender-based violence (11 Sept. 2015).

Similarly, a press release from the US Embassy in Guinea, posted on the Guinea current affairs website KibanyiGuinée.info, indicates that at a human rights forum, [translation] "the AGUIAS Director described how she had put in place a shelter and telephone line for victims of forced marriage and violence against women" (U.S. 5 Nov. 2014). However, according to the Program Director, AGUIAS lacks visibility (11 Sept. 2015). 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.

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