



Ivory Coast: Recognition of Customary Marriage and Divorce

July 2009

LL File No. 2009-003100
LRA-D-PUB-000331

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IVORY COAST

RECOGNITION OF CUSTOMARY MARRIAGE AND DIVORCE

Executive Summary

The law of the Ivory Coast requires that all marriages be registered in order to have legal effect. The law does, however, provide a mechanism whereby parties may be deemed to possess the status of spouses, which in effect, provides legal effect to undocumented marriages. There is no reference in the law to customary divorce.

I. The Law

Marriage

Marriage in the Ivory Coast is addressed in the Family Code of the Ivory Coast.¹ The essential requirements of a marriage are found in the following articles:²

- Article 1:

Man before completing the age of twenty and a woman before completing the age of eighteen cannot enter into a marriage contract. The prosecutor general of the Republic, however, may grant an exception for grave reasons.

- Article 3:

Each of the future spouses must personally consent to the marriage. The consent is not valid if extracted by violence or a mistake in identity.

- Article 4:

Only a man or a woman who have reached the age of majority can give their consent.

- Article 5:

A minor under the age of twenty one may not give a consent for marriage without the consent of their fathers and mothers.

- Article 18:

¹ LIVRE DEUXIEME DU LIEN MATRIMONIAL of the CODE DE LA FAMIL, LOI NO 64-375 DU 7 OCTOBRE 1964 MODIFIEEE PAR LA LOI NO 83-800 DU 2 AOUT 1983.

² The Family Code of the Ivory Coast is in French, the official language of the country. All translations of the Family Code in this report are made by the author.

A marriage must be celebrated by a civil officer.

- Article 19:

Only a marriage celebrated by a civil officer bears the legal effects.³

There are no references to customary marriage in the law. There are, however, references to customary and traditional marriage in the following articles of the law which implemented the Family Code:

- Article 1:

Starting from the day these laws become effective, the laws, regulations and customary laws which were applicable before this law came into effect, shall cease to have any legal effect.

- Article 10:

The marriages contracted in conformity with tradition before the new law came into effect which have been stated regularly by the civil status or confirmed by the registered judgments of the civil status shall have the same legal effects of the law in effect.

- Article 12:

Such marriages cannot be dissolved except in accordance with the form and reasons stated in the new law.⁴

As seen from the above articles, the references to traditional and customary marriage apply to marriages contracted before the effective date of the civil law.

Further, article 3 of the CONVENTION SUR LE CONSENTEMENT AU MARIAGE (PAR LES DÉCRETS NO 95-717 DU 20-09-1995, which the Ivory Coast has joined and ratified provides, “All marriages must be officially registered by a qualified officer.” The marriage registration requirement appears to be strongly encouraged, if not mandated, by the law.⁵

The law however, provides that parties may possess the “status of spouse,” under certain conditions.⁶

The Family Code, in article 47 states:

³ *Id.*

⁴ LOI NO 64-381 DU 7 OCTOBRE 1964.

⁵ Article 45 of the Family Code states, under the title “Proof of Marriage,” “No one can claim the title of husband or wife and the civil effects of marriage, if he does not produce an act of celebration, save the exceptions predicted by law and cases of loss or total or partial destruction of the registers.” Article 46 states: “Possession of the status does not prevent the pretending couples from showing respectively the act of marriage celebration.” [Translated by author].

⁶ *Id.*

Possession of the status of spouse is established by sufficient gathering of facts which lead to assuming the existence of the matrimonial bond. The most important of these facts are:

- that the man and the woman bear the same name;
- that they behave as husband and wife;
- that they are considered as such in the family and in the society.

The Family Code, in article 49, further recognizes and invigorates the legal standing of “possession of the status” versus “celebration act” by stating, “No one can contest the legitimacy of a child, whose father and mother have died, whenever such legitimacy is supported by possession of the status uncontradicted by the act of birth.”

Divorce

The law relating to divorce in the Family Law of the Ivory Coast is referenced in article 2 of LOI NO 83-801 DU 2 AOÛT 183 PORTANT MODIFICATION DE LA LOI NO 64-376 DU 7 OCTOBRE 1964 RELATIVE AU DIVORCE ET À LA SÉPARATION DE CORPS, which states, “[T]he couple wishing to institute an action for divorce or for separation from bed and board must present a petition in person, either in writing or orally, to the president of the competent tribunal of the district.”

The law is silent with regard to the legality or illegality of a customary divorce.

Concluding Remarks

There is no reference in the law of the Ivory Coast to customary marriage or divorce per se. There is, however, a reference to “possession of the status of spouse.” Parties in possession of the status of spouse, as determined and supported by the facts mentioned in article 47, are considered legally married, and their union is accordingly recognized as a legal marriage, albeit one without celebration documents. There is no reference in the law to customary divorce, and the law is accordingly silent with regard to the legality or illegality of a customary divorce.

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August 2009