

Chapter

06

Registration of Marriage and Divorce

DRAFT

Why it is important: Registration of marriage is important in helping to prevent marriage fraud, bigamy, and child marriage. In addition, marriage registration is important for the realization of certain rights, such as rights to inheritance, family benefits, marriage allowances, collection of pension and insurance of a deceased spouse, and the right for a spouse to acquire a nationality, among others. Divorce registration helps demonstrate a person's right to remarry and provides evidence of termination of rights of a former spouse.

Introduction

Because marriages are conducted in a manner that is dependent on particular societal conventions, there is no standard registration process across countries. However, there are common elements that are often addressed in legislation or regulations concerning marriage registration, including: place of registration; application for marriage, including proof of age; late and delayed registration; information collected; issuance of the marriage certificate; and the process for registering marriages that occurred abroad. This section focuses on these common elements and good practices across countries, with a focus on determining whether a country's practices create any barriers to marriage registration.

1. Universal application

Good Practice: The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (effective since 1964) states: "All marriages shall be registered in an appropriate official register by the competent authority." This right to register a marriage must be universally available to all, and should capture all marriages occurring in every geographical area and every population group in the country.¹

Guidance: Describe whether marriage registration is compulsory and, if so, for whom. Indicate whether the law applies to all marriages that occur in the country. Consider all forms of discrimination that may take place, including based on geography; racial, ethnic or religious groups; nomadic, displaced, native or aboriginal populations; refugees or asylum seekers within the country; foreign nationals or temporary workers; or any other characteristics. Indicate whether and how the law applies to citizens of the country residing abroad. Consider whether the law requires the government to take affirmative steps to register people who might not otherwise be able to, such as persons with disabilities, persons who speak other languages, persons who live in remote areas; and refugees, internally displaced and stateless persons. In the comments section, describe whether the law aligns with good practice and note any recommendations for regulatory reform.

a. Registration is required for all marriages?

Citation:

Comments:

2. Definitions

Good Practice: Clear definitions lend clarity to the law and ensure that users of CRVSID systems - government officials and residents of the country alike - have a common understanding of the law's requirements. Definitions should align with international standards.

The UN defines marriage as "the act, ceremony or process by which the legal relationship of spouses is constituted." The legality of the union may be established by civil, religious or other means as recognized by the laws of each country. Countries may wish to expand this definition to cover civil unions and other domestic partnerships if they are registered; in that case, registered partnership usually refers to a legal construct, registered with the public authorities according to the laws of each country, that leads to legal

¹ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 128.

conjugal obligations between two persons.²

The UN defines divorce as: "the legal final dissolution of a marriage, that is, that separation of spouses that confers on the parties the right to remarriage under civil, religious and/ or other provisions, according to the laws of each country". In the case where a country recognizes registered partnerships, a legal dissolution of a registered partnership constitutes the legal final dissolution of such a partnership, according to national laws, which confers on the parties the right to enter into another partnership or marriage.

Some countries' laws provide for other types of dissolution of marriage, such as judicial separation and/or annulment. The UN defines judicial separation as: "The disunion of married persons, without there being conferred on the parties the right to remarriage, according to the laws of each country." The UN defines annulment as: "Invalidation or voiding of a legal marriage by a competent authority, according to the laws of the country, thereby conferring on the parties the status of never having been married to each other."

Guidance: Provide the definition of marriage (and any other type of civil union or domestic partnership recognized in the country's laws) and divorce (and any other type of dissolution of a marriage, civil union or domestic partnership recognized in the country's laws). Note: Definitions for vital events are also considered in Chapter 2, Section 1. For the purposes of this section, pay particular attention to whether the definitions create any other legal issues, such as barriers to registration of a marriage or partnership, or otherwise advance or delay the registration work. In the comments section, describe whether the law aligns with good practice and note any recommendations for regulatory reform.

a. Definition of marriage, (and other types of civil union/domestic partnership, if applicable):

Citation:

b. Definition of divorce (and other types of dissolution of a marriage or other union, if applicable)

Citation:

Comments:

3. Place of registration

Good practice: Countries may require marriage registration in the location where the marriage ceremony took place or the place where one or the other or either spouse resides. Some countries may permit marriage registration at any registration location within the country, particularly if the system is centrally networked. Flexibility regarding the location of marriage registration may help increase marriage registration rates in some countries. Conversely, rigidly requiring marriage registration in a specific location - for example, at the registration office in the area of residence of one of the spouses - may create barriers to registration if the marriage ceremony occurs outside that area.³

Guidance: State the required place of registration for a marriage. Note any issues that may create barriers to registration. In the comments section, describe whether the law aligns with good practice and note any recommendations for regulatory reform.

² United Nations, Principles and Recommendations for a Vital Statistics System, Revision 3, New York, 2014, Para. 2.

³ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 382.

a. Place of registration:

Citation:

Comments:

4. Application or for marriage/domestic partnership/civil union

Good Practice: A country's family law will generally address substantive requirements for marriage, including for example, the age at which a person can consent to marriage, and restrictions on remarriage, polygamous unions, and marriage between persons who are related. There must be a process to ensure that these requirements are met. Generally this occurs through an application process, sometimes referred to as an application for a marriage license or a notice of marriage. Along with the application, generally both spouses must present proof of identity and proof of legal age to marry. If either spouse has been married previously, they must also present proof of dissolution of the previous marriage or proof of death of a spouse. There may also be a statement demonstrating the persons who are to marry are not close relatives.⁴

In some jurisdictions, the application must be filed by a specified time period before the marriage ceremony - referred to as the waiting period - in other jurisdictions, no waiting period is required. There also may be a requirement that notice of the marriage be published at the registration office or other location during the waiting period. The application is usually valid for a specified period of time, for example one year, during which the marriage ceremony must take place and/or completion of registration occur at the registration office.⁵

Guidance: Describe the requirements of the application process, including any documentary evidence required. Note any waiting period and validity period of the application. Note whether any of these requirements present a barrier to registration, or if the lack of any requirement (such as no requirement to prove age) permit underage marriages to occur. In the comments section, describe whether the law aligns with good practice and note any recommendations for regulatory reform.

a. Describe application process (proof, waiting period, validity):

Citation:

Comments:

5. Ceremony: Officiants and Witnesses

⁴ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 383-384.

⁵ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 385.

Good practice: Some countries require that a civil marriage ceremony take place at the registrar office (after the waiting period and before the validity of the application expires, if applicable) in order for the marriage to be valid. A religious or other type of ceremony may be celebrated after the civil ceremony. Other countries, however, do not require that the marriage take place in front of the registrar and recognize religious or other ceremonies as creating a legal valid marriage. In this case, if a religious officiant or other marriage officiant conducts the marriage ceremony, that marriage officiant is required to submit documentation to the registrar verifying that the marriage ceremony took place. The registrar then registers the marriage and issues the marriage certificate. Many jurisdictions require the presence of one or two witnesses at the ceremony, regardless of whether it is a civil or religious ceremony, and the witness signature on the registration form or other documentation.⁶

Guidance: State whether a civil registrar must conduct a marriage ceremony or whether other types of officiants are permitted to conduct a marriage ceremony. If other officiants are permitted, describe the required actions of the officiant to complete marriage registration. Note whether anything in the process creates a barrier to registration. Note whether witnesses are required. In the comments section, describe whether the law aligns with good practice and note any recommendations for regulatory reform.

a. Marriage must be conducted by civil registrar? If no, describe process for other officiants:

Citation:

b. Witnesses required?

Citation:

Comments:

DRAFT

6. Information captured at marriage registration

Best practice: The UN recommends topics that should be recorded at marriage registration for statistical purposes, including high-priority topics as well as topics that are a less urgent goal.⁷

Guidance: In order to compare the various requirements against best practices, complete the worksheet below for marriage registration. (You will come back to this worksheet after reading section 11 on divorce below). In the comments section, describe whether the law aligns with good practice and note any recommendations for regulatory reform.

Worksheet: Information collected at Registration: Fill in the "Actual Practice" column for Marriage Registration based on current practice in your country. Place an "X" in the box if the information is collected.

⁶ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 387-388.

⁷ United Nations, Principles and Recommendations for a Vital Statistics System, Revision 3, New York, 2014, paragraph 66, Table III.1

	Best Practice: Marriage	Actual Practice: Marriage	Best Practice: Divorce	Actual Practice: Divorce
Characteristic of Event [●=Compulsory, ○=Recommended]				
Date of occurrence	●		●	
Date of registration	●		●	
Place of occurrence	●		●	
Place of registration	●		●	
Type of marriage	○			
Characteristics of Spouses/Divorces (each separately) [●=Compulsory, ○=Recommended]				
Date of birth	●		●	
Marital Status (previous)	○			
Number of previous marriage	○		○	
Type of marriage being dissolved			○	
Number of dependent children of divorced persons			○	
Number of children born alive to the marriage being dissolved			○	
Date of marriage			●	
Mode of dissolution of previous marriage			○	
Educational attainment	○		○	
Literacy status	○		○	
Economic activity status	○		○	
Usual occupation	○		○	
Ethnic and/or national group	○		○	
Citizenship	○			
Place of usual residence	●		●	
Duration of residence in usual place	○		○	
Place of previous residence	○		○	
Place/country of birth	○		○	
Place of occurrence of marriage being dissolved			○	

Citation for information collected on marriage:

Comments:

7. Marriage Certificate

Best practice: Upon completion of marriage registration - either after a civil marriage at the registrar's office or after a religious or other officiant submits the required paper work - the registrar should issue a marriage certificate to the spouses. A marriage certificate may be needed for many legal purposes, such as insurance, inheritance, and social benefits. As with birth and death certificates, the local registrar should have the authority to issue a marriage certificate in order to speed up the issuance of the

certificate.⁸

Guidance: State whether the local registrar has the authority and capacity to issue marriage certificates in a timely manner. In the comments section, describe whether the law aligns with best practice and note any recommendations for regulatory reform.

a. Local registrar has authority and capacity to issue marriage certificate in a timely manner?

Citation:

Comments:

8. Late and delayed registration

Good practice: some countries have low marriage registration rates because couples are married in religious or customary ceremonies that are not legally recognized. A process for registering these marriages is important for legitimation of children, property rights, inheritance and other legal purposes. Therefore, lawmakers may wish to consider creating a process by which a marriage can be registered retroactively by providing proof that the marriage occurred at some time in the past, such as affidavits or statements of witnesses to the wedding ceremony.⁹

Guidance: Describe any process for late or delayed registration of marriage. In the comments section, describe whether the law aligns with good practice and note any recommendations for regulatory reform.

a. Process for late or delayed registration of marriage:

Citation:

Comments:

9. Registration of marriage that occurred abroad

Good practice: In general, unless a marriage abroad breaks the laws of the country of a person's origin, marriages that are legally valid in the jurisdiction in which they were performed are also legally valid in the country of the person's origin. Accordingly, substantive family law generally recognizes a marriage that occurs abroad as legally valid and recognizes a marriage certificate from a marriage abroad as providing legally valid proof of the marriage.¹⁰

⁸ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 392.

⁹ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 390.

¹⁰ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 394.

Country practices vary on registration of a marriage that occurred abroad. In some countries, citizens and permanent residents may be required to report a marriage abroad. In other countries, registration may be permitted but not required. If registration of the marriage that occurred abroad is required or permitted, the legislation should address what documentary evidence is necessary for registration (e.g., a marriage certificate from the foreign country).¹¹

Guidance: Describe any process for reporting and registering a marriage that occurred abroad. In the comments section, describe whether the law aligns with good practice and note any recommendations for regulatory reform.

a. Process for reporting and registering a marriage that occurred abroad:

Citation:

Comments:

10. Divorce: Transmittal of divorce/dissolution decree to registrar, matching of records

Best practice: In most countries, the dissolution of a marriage or civil union - whether by divorce, dissolution of registered partnership, judicial separation or annulment - usually falls under the jurisdiction of the courts. In some countries, the Registrar may have authority to dissolve a marriage, civil union or partnership if the dissolution is uncontested, i.e., both parties agree to all terms of the dissolution. In the more common case - where a court grants a request for dissolution of union - information about the dissolution must be submitted to the registrar in order for the dissolution to be matched against the marriage record and recorded. Therefore courts should be required to collect specific information about the spouses and the marriage. After the dissolution decree is issued, the decree and/or the required information should be submitted to the local registrar office in the area (e.g., province, district) where the dissolution decree was issued or to the central registration authority. Legislation should require the courts to submit this information within a specified time period.¹²

Guidance: Describe how information about a divorce is transmitted to the registrar, including who is required to submit the information and within what timeframe. In the comments section, describe whether the law aligns with best practice and note any recommendations for regulatory reform.

a. Process for transmitting divorce information to registrar:

Citation:

Comments:

¹¹ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 395.

¹² United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 399-400.

11. Information captured at divorce/dissolution registration

Best practice: The information collected by the court (or alternatively, provided by the parties to the dissolution) should contain characteristics of the parties to the dissolution and characteristics of the event.¹³ This should include the date and place of the union dissolved, which will help the registrar match the dissolution of union record to the corresponding marriage or civil union record. The UN recommends topics that should be recorded for statistical purposes, including high-priority topics as well as topics that are a less urgent goal.¹⁴

Guidance: In order to compare the various requirements against best practices, complete the worksheet in Section 6 above for divorce. In the comments section below, describe whether the law aligns with good practice and note any recommendations for regulatory reform.

Citation for information collected:

Comments:

12. Divorce Certificate or Divorce Decree

Good practice: Upon dissolution of the marriage, the parties to the dissolution should each be given a certificate of divorce or a divorce decree. In most jurisdictions the court issues a divorce decree, in other jurisdictions the registrar may also issue a certificate of divorce.¹⁵ If a certificate of divorce is issued, the local registrar should have the authority and capacity to issue the certificate.

Guidance: State what type of documentation the parties to the divorce receive; i.e., a divorce decree or certificate of divorce. If a certificate is issued, state whether the local registrar has the authority and capacity to issue the certificate. In the comments section below, describe whether the law aligns with good practice and note any recommendations for regulatory reform.

a. Type of documentation issued and by whom:

Citation:

Comments:

13. Registration of divorce that occurred abroad

¹³ *Principles and Recommendations for a Vital Statistics System, Revision 3*, United Nations Publication, Sales No.E.13.XVII.10, United Nations, 2014, Annex I.

¹⁴ *Principles and Recommendations for a Vital Statistics System, Revision 3*, United Nations Publication, Sales No.E.13.XVII.10, United Nations, 2014, paragraph 66, Table III.1

¹⁵ United Nations, *Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems*, New York, 2019, Para. 403.

Good practice: A country's family law will generally address when and to what extent a foreign divorce or dissolution decree is recognized as legally valid. Foreign dissolution decrees are usually recognized as valid if certain procedural requirements have been met (such as proper notice to the parties). The civil registration law should provide a process for registering a divorce/dissolution that occurred abroad and address who may register the dissolution (i.e., either party to the dissolution) and what, if any, documentary evidence in addition to the foreign dissolution decree is required.¹⁶

Guidance: Describe the process for registering a divorce that occurred abroad, including who may register and what evidence is required. In the comments section below, describe whether the law aligns with good practice and note any recommendations for regulatory reform.

a. Process for registering divorce abroad (who and what evidence):

Citation:

Comments:



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¹⁶ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 405.