

**MOTIVATION FOR CHOOSING THE COMMUNITY PROPERTY MARITAL
REGIME BY CONGOLESE COUPLES**

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ABSTRACT

This article seeks to understand the reasons why an increasing number of couples opt for the community property marital regime over other matrimonial regimes offered during civil marriage. To this end, a psychosocial survey was conducted in communes of Kinshasa, where we contacted 134 legally married subjects who had chosen the community property regime. According to our respondents, the socio-economic security that the community property regime provides to spouses in the event of one partner's death, the idea of prolonged cohabitation, and the connotation of mutual trust are the motivations for their choice of this regime.

KEYWORDS: - Matrimonial regime; Community property; Congolese couples.

1.0 INTRODUCTION

Marriage is a legitimate union of two persons under conditions provided by law. The constitution of our country grants all citizens the right to enter into marriage, stating: Every Congolese has the right to marry the person of their choice and to found a family. However, marriage is first and foremost customary. This implies that parents have the right to marry off their children (girls and boys alike) through the dowry. Beyond the customary aspect, marriage also has a religious dimension. Indeed, marriage remains an extremely important religious institution for the vast majority of religions, if not all. Among Roman Catholics, although celibacy is a valued way of life, marriage and family are described as "one of the most precious goods of humanity." For Jews, men have an obligation to produce legitimate offspring, and celibacy is not considered desirable, to say the least: the unmarried man is seen as committing a sin for which he must account to his creator. Among Muslims, across all schools of jurisprudence, founding a family is "one of the meritorious religious duties that every human being must fulfill," an obligation derived directly from the Quran (Régnière, 2002).

From a legal perspective, in the Democratic Republic of Congo, marriage is conceived as a civil, public, and solemn act by which a man and a woman, neither of whom is bound by a previous registered marriage, establish a legal and lasting union whose conditions of formation, effects, and dissolution are determined by the Family Code (Article 330 of the Family Code, 1987). Thus, under civil law, marriage leads spouses to choose a matrimonial regime, consisting of a set of legal or conventional provisions that regulate property relations between the new spouses (Braudos, 2023). Generally, three matrimonial regimes are available to them: the legal community regime, the separation of property regime, and the participation in acquisitions regime.

The legal community regime essentially involves absolute solidarity between spouses on professional income, the main source feeding the common patrimony. The pure and simple separation of property regime is characterized by increased autonomy and great independence in managing assets. Spouses are thus free to manage their respective assets as they see fit and are only liable for their personal debts, except those contracted jointly or for the household. The participation in acquisitions regime combines the advantages of both separation of property and legal community. It operates during the union as if the spouses were separated in property, but upon dissolution of the marriage, it is liquidated as if they had been in community property, with the particularity that, unlike the legal community regime, only acquisitions are shared, not debts (Casman, 2016). Besides these three regimes recognized by Congolese law, there is another called the "legal regime," which is imposed on all spouses who have not signed a marriage contract before a notary. Indeed, when spouses marry without a marriage contract, they are automatically subject to the legal community regime, specifically the reduced community of acquisitions, which distinguishes assets as follows: each spouse's own property; movable property; movable goods (Mandin, 2001).

It is true that spouses can opt for any of these matrimonial regimes, as they have the freedom to choose the most suitable one for their union through marriage. The current trend in our society leans heavily toward the community property regime. In fact, in a preliminary survey conducted among some newlywed couples in Kinshasa, 3 out of 4 couples favoured community property.

Certainly, the community property regime has its advantages, including the fact that upon dissolution of the marriage (divorce, death of a spouse, etc.), all assets are shared equally, with any separate property returned to its owner (Carbonnier, 1972). However, it is not the only regime offered to spouses. So why do most couples prefer this regime? This concern is the very foundation of this scientific reflection.

2.0 METHODOLOGY

2.1 Participants

This study was conducted in the city of Kinshasa, targeting civilly married individuals who had chosen the community property matrimonial regime. The sample size was 134 subjects, contacted based on their availability, distributed as follows:

- By gender: 85 subjects (63%) are men, while 49 subjects (37%) are women;
- By length of marriage: out of 134 contacted subjects, 56 (42%) have been married less than 10 years; 50 (37%) have 20 years or more of marriage; 28 (21%) fall in the 10- to 19-year range;
- By profession: 70 subjects (52%) are in liberal professions; 40 (30%) are state civil servants; 10 (7%) are healthcare workers; 9 (7%) are teachers; and 5 (5%) work in the private sector.

2.2 Data Collection Tool

To uncover the motivations driving our subjects to choose the community property regime, we used a survey questionnaire developed by ourselves in line with the objectives of this scientific reflection, respecting both content and form requirements.

- **Content-wise:** The questionnaire covered four themes. The identity section addressed sociodemographic variables of respondents. The matrimonial regime and spousal security theme examined the community property regime as a guarantee of security for spouses. The matrimonial regime and prolonged cohabitation theme addressed the regime as a guarantee of union longevity. The matrimonial regime and mutual trust theme explored the regime as a guarantee of trust between partners.
- **Form-wise:** The questionnaire contained 10 questions, excluding identity questions: 9 closed-ended and 1 open-ended. The prevalence of closed-ended questions was justified by their ease in allowing quick responses from participants.

2.3 Survey Procedure

The survey was conducted in two phases: a pre-survey followed by the main survey.

2.3.1 Pre-survey

The pre-survey aimed to verify whether the questionnaire statements were comprehensible to the target subjects. We administered it to 15 subjects with characteristics similar to the target population, selected based on availability and accessibility. No comprehension issues were found, so the questionnaire underwent no modifications. Pre-survey participants were excluded from the main survey.

2.3.2 Main Survey

The main survey took place in several Kinshasa communes. Questionnaires were administered directly to some subjects; for others, they were provided for completion and return within two weeks. For subjects with reading/writing difficulties, questionnaires were administered via structured interviews.

2.4 Data Processing

For the open-ended question, we conducted content analysis of responses and grouped them into response categories. All data were processed using IBM SPSS version 25 software, which provided frequencies, percentages, and Chi-Square test values for differential analysis.

3.0 RESULTS

In this section, we present our results overall, based on frequencies and percentages of responses to each question.

Question 1: Before your civil marriage, did you discuss the matrimonial regime to choose with your spouse?

92 subjects (68.7%) affirmed they discussed it with their spouse, versus 42 (31.3%) who did not.

Question 2: What motivated you to choose the community property regime? 51 subjects (38.1%) cited security for the children and couple upon one spouse's death; 49 (36.6%) cited expressing love for their partner; 13 (9.7%) cited imposition by the partner or civil registry office; 8 (6%) cited consolidating assets; 7 (5.2%) and 6 (4.5%) cited religious/cultural influences or entourage influence, respectively.

Question 3: An observer stated: "Community property ensures the security of the surviving spouse after her husband's death." Do you agree, disagree, or are undecided? 108 subjects (80.6%) agree; 15 (11.2%) disagree; 11 (8.2%) are undecided.

Question 4: In Kinshasa, some believe that regardless of the matrimonial regime, after the husband's death, his family has rights over everything the deceased left. Do you agree, disagree, or are undecided?

82 subjects (61.2%) disagree; 35 (26.1%) agree; 17 (12.7%) offered no opinion.

Question 5: Couples choosing community property start peacefully and last long.

- On starting peacefully: 118 (88.1%) agree; 16 (11.9%) disagree.

- On duration: 103 (76.9%) agree it lasts long; 31 (23.1%) disagree.

Question 6: Choosing community property means spouses will live together as long as possible. Do you agree, disagree, or are undecided?

74 (55.2%) agree; 32 (23.9%) undecided; 28 (20.9%) disagree.

Question 7: Some in Kinshasa say there are few divorces among couples choosing community property. Do you agree, disagree, or are undecided?

62 (46.3%) agree; 45 (33.6%) disagree; 27 (20.1%) neutral.

Question 8: Choosing community property is a sign of having nothing to hide from one's spouse. Do you agree, disagree, or are undecided?

81 (60.4%) agree; 27 (20.1%) disagree; 26 (19.4%) neutral.

Question 9: In community property, spouses live in mutual trust. Is this true, false, or neither?

82 (61.2%) say true; 38 (28.4%) neutral; 14 (10.4%) false.

Question 10: Pooling assets is a sign of spousal love and mutual trust. Do you agree, disagree, or are undecided?

104 (77.6%) agree; 16 (11.9%) disagree; 14 (10.4%) undecided.

4.0 DISCUSSION

Our results show that 68.7% of subjects discussed the matrimonial regime with their spouse beforehand, indicating that the choice of community property was deliberated by the parties involved. Several reasons motivated these discussions: security for children and couple upon one death (38.1%), expressing love (36.6%), imposition by partner or civil office (9.7%), asset consolidation (6%), religious/cultural influences (5.2%), and entourage influence (4.5%). Thus, the choice is driven by various conscious reasons known to the partners.

The majority (80.6%) believe community property ensures the surviving spouse's security, and 61.2% assert the deceased's family has no claim on all assets. This regime thus guarantees spousal security, correcting post-death abuses common in our context.

Furthermore, 88.1% see unions starting peacefully, 76.9% lasting long, 55.2% enabling prolonged cohabitation, and 46.3% noting fewer divorces. For 60.4%, it proves sincerity, love, and mutual trust.

In summary, for Congolese couples surveyed, community property ensures socio-economic security (in life and death), promotes longevity, and signifies love and transparency. This aligns with Savatier (1985) on joint management and security benefits, and Pérès (2004) on solidarity, equality, and eased patrimonial management in dual-income couples. These factors drive the preference for this regime.

5.0 CONCLUSION

This scientific reflection on Congolese couples' a motivation for choosing community property confirms several reasons over alternatives like separation or participation in acquisitions: socio-economic security upon one spouse's death, prolonged cohabitation, and mutual trust.

In a social environment where a partner's death—especially the husband's—triggers irresponsible family behavior seizing inheritance from widow and children, this regime aptly secures rightful heirs, particularly after the husband's death.

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