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# Responses to Information Requests

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24 April 2020

## COD200187.FE

Democratic Republic of the Congo: The consequences of living without civil status documents in the Democratic Republic of the Congo (DRC), including birth, marriage or other certificates, as well as education documents; whether persons who are not registered with the civil status authorities may register the birth of a child; whether it is possible to obtain a passport without other civil status documents (2017-March 2020)

Research Directorate, Immigration and Refugee Board of Canada

## 1. Civil Status Documents in the DRC

Sources indicated that Act No. 16/008 of 15 July 2016 Amending and Supplementing Act No. 87-010 of 1 August 1987 on the Family Code (*Loi n° 16/008 du 15 juillet 2016 modifiant et complétant la loi n° 87-010 du 1<sup>er</sup> août 1987 portant Code de la famille*) governs civil status documents in this country (Lawyer 12 Apr. 2020; IPHR 21 Apr. 2020).

The Family Code of the Democratic Republic of the Congo (*Code de la famille de la République démocratique du Congo*), amended by Act No. 16/008 of 2016, provides the following regarding civil status registry entries:

[translation]

## Article 72

Unless otherwise provided by law, the civil status of citizens is established and can be proven only by records of civil status.

. . .

## Article 82

All births, marriages and deaths are registered in the form of records in a separate civil status registry, known as the birth, marriage and death registry.

Other events or records concerning the status of persons are entered in a supplementary registry and may also be included in other registries, based on special legal provisions. When such an entry cannot be made in the margin of the civil status registry in the Democratic Republic of the Congo, it is to be transcribed in the civil status registries of the commune of La Gombe, in the city of Kinshasa. (DRC 1987)

Regarding cases where registration was not completed within the prescribed time limit, the Family Code provides the following:

[translation]

## Article 106

In the absence of a record of civil status, as a substitute for this, a judgment may be rendered by the District Court upon a simple motion made to the court of the place where the record should have been made.

Any interested party or the Office of the Public Prosecutor may make such a motion. When a motion is made by a party other than the Office of the Public Prosecutor, the Office of the Public Prosecutor is informed of it.

When the registrar of civil status notes the absence of a civil status record as a result of the registrants coming forward after the prescribed time limit, the registrar of civil status, after verifying the truthfulness of what is being declared and the reasons for the delay, immediately sends a report to the Office of the Public Prosecutor, which refers it to the court.

The court, after verification and possible investigation, renders its decision and gives reasons for that decision.

The judgment is transcribed in the civil status registry by the registrar of civil status in the place where the event occurred, within eight days of receiving the judgment, at the initiative of the Office of the Public Prosecutor. The judgment is transcribed in the registers for the current year, and the date of the event is recorded in the margins of the registries.

In cases where the transcription concerns an event that occurred in a year prior to the current year, after verification or investigation, the registrar of civil status informs the District Court's registrar and the central office of civil status records of the ministry responsible for justice of the event date entry to be made in the margins of the registries. (DRC 1987)

In addition, regarding events that occurred before this legislation came into force, article 153 of the same Code provides the following:

In the absence of a civil status record of a birth, death or marriage, on the basis of the legal or regulatory provisions prior to this Act, any interested party may ask the registrar of civil status in the place of the birth, death or marriage to provide, as a substitute for this, a certificate of notoriety.

However, in the absence of a certificate of notoriety, as a substitute for this, a judgment may be rendered within eight days of the date of referral by the Justice of the Peace Court upon a simple motion made by any interested party or the Office of the Public Prosecutor to the court in the place where the certificate should have been issued. (DRC 1987)

Local sources consulted by the Research Directorate stated that it [translation] "is possible to live" in the DRC without civil status documents (Lawyer 12 Apr. 2020; VSV 10 Apr. 2020; IPHR 21 Apr. 2020), and that this is [translation] "common" (IPHR 21 Apr. 2020). In correspondence with the Research Directorate, the coordinator of the Initiatives for Peace and Human Rights (IPHR), a non-profit organization that [translation] "advocates for a sustainable peace in the Great Lakes Region" and that is present in Rwanda, Burundi and the DRC, stated that although "the legislature has provided several legal mechanisms to ensure that no Congolese citizens are without civil status records, actual practice sometimes fails to comply with legislation" (IPHR 21 Apr. 2020). The same source added that civil status documents and school records can be lost as a result of natural disasters and wars that occur [translation] "nearly every year" in the DRC, and that if there is no specific reason to obtain them again, "generally, no one cares" (IPHR 21 Apr. 2020). In correspondence with the Research Directorate, a Congolese lawyer, whose work has included the verification of civil status records, also stated that conflicts in the DRC, notably in the eastern and central parts of the country, give rise to displacement and the loss or destruction of civil status documents and training certifications, and that in the context of ongoing insecurity, seeking such documents may [translation] "become a luxury or pipe dream" (Lawyer 12 Apr. 2020).

## 1.1 Birth Certificates

The Family Code provides the following regarding birth certificates:

[translation]

## Article 116

Any birth occurring within the territory of the Republic is declared to the office of civil status of the place of residence of the father or of the mother within ninety days after the birth.

Where the birth is declared within this statutory time limit, the declaration of birth is registered and the birth certificate is issued free of charge.

## Article 117

The birth of the child is declared by the father or the mother, failing which the birth is declared by the ascendants or close relatives of the child or by persons present at the birth.

The declaration may be made by a proxy with a power of attorney, even one made under private writing, from the father or the mother.

## Article 118

The birth certificate sets out

1. the time of birth, where possible, as well as the day, month, year and place of birth, the child's sex and the name given to the child;
2. the names, ages, occupations, domiciles and nationalities of the father and mother; and
3. where the declarant is not the father or the mother, the name, age, occupation, domicile and nationality of that declarant.

## Article 119

Every birth is immediately entered, by order of date, in a special register kept by the hospital, maternity clinic or public or private medical facility in which the birth occurred.

The registrar of civil status or the administrative and judicial authorities of the place where the establishment is located may require that said register be presented to them. (DRC 1987)

The same source also provides the following:

[translation]

## Article 114

Everyone who is required to declare a birth or death and fails to do so within the statutory time limit or who is summoned by a registrar of civil status to make a declaration of death and refuses to appear or give testimony commits an offence punishable by a fine of 10,000 to 50,000 Congolese francs [approximately C\$8 to C\$41]. (DRC 1987)

The lawyer indicated that births [translation] “are not directly or automatically registered” in the DRC and that “[g]enerally, either the hospital or the doctor issues a birth certificate that one of the newborn's parents or any interested party can present to the registrar of civil status

to request a birth certificate” (Lawyer 12 Apr. 2020). According to UNICEF, fees are charged for birth certificates and vary from health care institution to health care institution (UN n.d.). According to the Reciprocity Schedule for the DRC published by the US Department of State, birth certificates are issued in accordance with the following procedure:

Within 90 days of birth, at least one parent takes the child’s identity to the nearest Commune’s Civil Status Office with evidence of birth such as the hospital’s birth certificate. After about two weeks, the parent goes back to the same office to pick-up the [b]irth [c]ertificate. (US n.d.)

UNICEF states that, according to information collected between December 2016 and November 2017, birth certificates are issued immediately upon registration of the birth (UN n.d.).

Sources note that the birth registration rate in the DRC is “low” (UN 28 Feb. 2017, para. 21; US 20 Sept. 2018, 2, 3). According to the US Department of State’s *Country Reports on Human Rights Practices for 2019*, the government registered 25 percent of children born in medical facilities (US 11 Mar. 2020, 36). According to a demographic survey conducted in the DRC between November 2013 and February 2014, the births of 25 percent of children under 5 years of age were registered with the civil status authorities, and 14 percent of children registered had birth certificates (DRC and ICF International Sept. 2014, 5, 329).

The lawyer noted that [translation] “[a]though [the] obligation [to declare births within 90 days of the birth] involves a penal sanction, the population does not comply with it” (Lawyer 12 Apr. 2020). Sources report that not all Congolese citizens are aware of this legal obligation (Lawyer 12 Apr. 2020; IPHR 21 Apr. 2020). The UN similarly reports that a good number of Congolese are unaware of the importance of registering births (UN 28 Feb. 2017, para. 21). Moreover, sources report that the distances parents have to travel to register births with the authorities may discourage them from doing so (Lawyer 12 Apr. 2020; UN 28 Feb. 2017, para. 21). According to sources, other obstacles to birth registration include negligence or forgetfulness of parents, the time required, armed conflicts (IPHR 21 Apr. 2020; UN 28 Feb. 2017, para. 21), underresourced civil status offices, and cost (UN 28 Feb. 2017, para. 21). The lawyer also added that in the DRC, a good number of children are born at home, not in hospital, and their births are never registered (Lawyer 12 Apr. 2020).

In correspondence with the Research Directorate, the executive director of the Congolese NGO The Voice of the Voiceless for Human Rights (La Voix des sans voix pour les droits de l’homme, VSV) [1] noted that [translation] “many births” fail to be registered within the prescribed 90-day time limit and that the Congolese state “turns a blind eye to this” (VSV 10 Apr. 2020). Similarly, according to US *Country Reports 2019*, the fact that births are not registered “rarely affect[s] access to government services” (US 11 Mar. 2020, 36). In contrast, the UN Committee on the Rights of the Child reports that not being registered [UN English version] “render[s] children vulnerable to statelessness and limit[s] their access to social

benefits and services” (UN 28 Feb. 2017, para. 21). Sources state that individuals without birth certificates sometimes obtain one when it is required for an administrative procedure (VSV 10 Apr. 2020; IPHR 21 Apr. 2020). Sources note that a birth certificate may be required for:

- obtaining employment (IPHR 21 Apr. 2020; VSV 10 Apr. 2020);
- legal proceedings (VSV 10 Apr. 2020);
- travel (VSV 10 Apr. 2020) or obtaining a passport (UN n.d.);
- education (VSV 10 Apr. 2020; UN n.d.; IPHR 21 Apr. 2020), notably for enrolment in some universities (IPHR 21 Apr. 2020; UN n.d.);
- health care (VSV 10 Apr. 2020; UN n.d.);
- identification requirements (UN n.d.);
- inheritance (UN n.d.);
- marriage (IPHR 21 Apr. 2020);
- maternity leave and family allowances, particularly for government officials (IPHR 21 Apr. 2020).

### **1.1.1 Birth Registrations of Children Whose Parents’ Births Are Not Registered**

Local sources stated that the births of children in the DRC can be registered even if the parents’ births were not (Lawyer 12 Apr. 2020; VSV 10 Apr. 2020; IPHR 21 Apr. 2020). Among the requirements for birth registration in the DRC, UNICEF lists the following: presentation of the child’s medical birth certificate and the presence and consent of one of the parents (or an ascendant, a close relative, a person present at the birth, or a person designated as having power of attorney) (UN n.d.). According to the same source, information collected about the parents when they register their child’s birth includes their dates of birth or ages, their place of usual residence, their occupations and their nationalities; the source does not specify whether proof must be provided (UN n.d.). The VSV executive director similarly noted that [translation] “only the parents’ identities, nationalities, address and occupations and the child’s birth certificate issued by the maternity clinic are required” (VSV 10 Apr. 2020).

## **1.2 Marriage Certificates**

The DRC’s Family Code distinguishes between two types of marriages:

[translation]

Article 368

A marriage may be solemnized in the presence of family, in accordance with the formalities prescribed by custom.

In such case, the registrar of civil status registers the marriage and prepares a marriage certificate.

A marriage may also be solemnized by the registrar of civil status, in accordance with the formalities prescribed by this law.

In such case, the registrar of civil status immediately prepares a marriage certificate. (DRC 1987)

Regarding the registration of marriages in the presence of family, or customary marriages, the Code provides the following:

[translation]

#### Article 370

Within three months following the solemnization of a marriage in the presence of family, the spouses and, where applicable, their proxies appear before the registrar of civil status of the place where the marriage was solemnized, with a view to reporting the marriage and ensuring its publication and registration. Each of the spouses is accompanied by a witness.

The spouses may be represented by a proxy with a written power of attorney. The proxy will be a member of the immediate family, unless there is a valid reason duly noted by the registrar of civil status for this not being the case.

Witnesses must be of full age and capacity. They are chosen from the paternal or maternal line of each of the spouses, unless there is a valid reason duly noted by the registrar of civil status for not doing so.

Within 15 days following the marriage, the registrar of civil status makes public, by proclamation made at least twice and/or by posting on the door of the office of civil status, the certificate reporting the solemnization of the marriage.

Once the 15-day time limit has expired, the registrar of civil status registers the marriage in accordance with the formalities for publication.

. . .

#### Article 373

The registrar of civil status will require that the following documents be submitted:

1. for each of the spouses, an extract from his or her birth certificate;
2. copies of any certificates granting exemptions in the cases provided by law;  
and
3. where applicable, copies of any certificates attesting to the consent of the parents or of the guardian, and the written powers of attorney provided by law.

Where one of the spouses is unable to obtain the extract from his or her birth certificate, he or she may provide, as a substitute for this, a certificate of notoriety issued by a justice of the peace in his or her place of birth, domicile or residence, in accordance with the provisions

respecting civil status.

. . .

#### Article 379

Without prejudice to the provisions of article 330 of this law, a marriage in the presence of family comes into full effect on the date of its solemnization, even if it has not been registered. (DRC 1987)

Regarding civil marriage, it provides the following:

[translation]

#### Article 390

Subject to the provisions of article 351, paragraph 2 of this law, the future spouses, accompanied by a witness, whether that witness is a relative or not, appear together and in person before the registrar of civil status.

The registrar reads out the documents respecting their civil statuses and their declaration respecting the dowry and the selected matrimonial regime.

The registrar then informs them of their respective rights and duties.

Before the registrar, each of the parties declares that they intend to take each other as husband and wife.

The registrar pronounces them married.

The registrar immediately signs the marriage certificate with the spouses and the witnesses if they are present. If one of the persons in attendance does not know how to sign or is unable to do so, that person may instead place his or her fingerprint on the certificate, and a notation to this effect is made therein.

Part 1 of the marriage certificate and a household booklet established in accordance with the provisions respecting civil status are issued to the spouses. (DRC 1987)

The Family Code also provides the following:

[translation]

#### Article 432

Spouses who do not have their marriage registered in accordance with articles 370 and 378 of this law may be subject to a fine of 60,000 to 250,000 Congolese francs.

#### Article 433

Proof of marriage is made exclusively in accordance with the rules provided in this law.



. . .

#### Article 436

Marriage is normally proved by submitting the marriage certificate or household booklet prepared upon the registration or solemnization of the marriage.

. . .

#### Article 438

In the absence of a record of civil status, marriage is proved by possession of status as spouses. Two persons possess status as spouses where they consider themselves and treat each other as spouses, and are considered and treated as such by their families and by society.

Possession of status as spouses is proved by more than one witness, whether they be relatives of the persons concerned or not.

Said status may be contested in the same manner.

. . .

#### Article 440

If the proof of the solemnization or registration of a marriage arises from a criminal judgment, the registration of this decision in the civil status registry is considered equivalent to solemnization or registration.

#### Article 441

All marriages produce the same effects, whether they have been registered or solemnized. (DRC 1987)

Local sources reported that spouses in civil marriages had marriage certificates, but that those who preferred to enter into customary marriages rarely had any (Lawyer 12 Apr. 2020; VSV 10 Apr. 2020). The lawyer explained the following:

[translation]

1. Marriages solemnized by the registrar of civil status: The registrar of civil status prepares a marriage certificate and issues it to the newlyweds. In practice, they often receive it 48 hours after the ceremony, if not later. Sometimes the bride and groom leave and do not go back to pick it up, unless an obligation requires them to do so.
2. Marriages in the presence of family: . . . Customary marriages can also be solemnized. The marriage is solemnized in the presence of family, without the presence of a registrar of civil status, in accordance with the bride's customs. There are over 800 tribes in the Congo, each with its own customs. A customary marriage ceremony is considered legal under the law. It is still

subject to registration requirements ... . Often, however, after the customary marriage ceremony, which in most customs entails giving gifts to the bride's family, the newlyweds' honeymoon lasts so long that they forget to have the marriage registered by the registrar of civil status. (Lawyer 12 Apr. 2020)

According to the VSV executive director, [translation] "[o]nly spouses who are married in a civil ceremony after the customary marriage have marriage certificates, and this is especially common among couples living in major DRC cities, not in the country's interior" (VSV 10 Apr. 2020). According to the US Department of State's Reciprocity Schedule, customary marriages are more common in remote areas, where there are no civil status offices; in addition, couples who have been living together for a long time or who do not have the means for a big event may limit themselves to this type of marriage (US n.d.). Similarly, the IPHR project coordinator stated that marriages in the presence of family are more common than civil marriages, notably because of the costs of the ceremony, and that [translation] "a great many" common-law unions fail to be registered within the 90-day time limit (IPHR 21 Apr. 2020). The same source added that it is [translation] "possible to do without the record of civil status and simply possess status of spouse" in accordance with the procedure set out in article 438 of the Family Code (IPHR 21 Apr. 2020).

## 2. Education Documents

Students generally receive their report cards or transcripts from institutions at the end of each academic year, but those documents are sometimes withheld when tuition fees are outstanding (IPHR 21 Apr. 2020; Lawyer 12 Apr. 2020). High school diplomas are issued by the state, and lengthy delays may occur, notably when the individual does not live in Kinshasa (Lawyer 12 Apr. 2020). Because of these delays (sometimes up to 10 years), universities sometimes rely on lists published in newspapers or posted on the website of the Ministry of Primary, Secondary and Vocational Education to admit students (Lawyer 12 Apr. 2020). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the IPHR coordinator, university transcripts are not automatically issued, and students must request transcripts and pay a fee for them (IPHR 21 Apr. 2020).

## 3. Obtaining a Passport Without Civil Status Documents

For information on Congolese passports and on the requirements and procedure for obtaining them, see Response to Information Request COD106122 of July 2018.

A publication posted on the site of the embassy of the DRC in Canada states that, among the conditions required for submitting an application for a Congolese passport from Canada, [translation] "[t]he applicant must present proof of Congolese nationality," and that

this proof may consist of “an old expired Congolese passport, an old Zairian passport, or a nationality certificate issued by the Ministry of Justice and Human Rights” (DRC n.d.). The same source notes that applications are [translation] “rejected” if this condition is not met (DRC n.d.). The Ministry of Foreign Affairs form included with the publication states that the original copy and a photocopy of an [translation] “[a]ttestation in lieu of a nationality certificate” and a photocopy of an identity card must be included with the passport application (DRC n.d.). A section of the form is reserved for the [translation] “voter or identification card” number (DRC n.d.).

According to the US Department of State’s Reciprocity Schedule, the passport application file must necessarily include proof of identity (national identity card or old passport) and proof of nationality (birth certificate or nationality certificate) (US n.d.). The same source specifies that the sole national identity card is the voter card issued by the Independent National Electoral Commission (Commission électorale nationale indépendante, CENI) (US n.d.). Local sources similarly stated that identity documents, such as a voter card or an old passport, had to be presented in order to obtain a passport (Lawyer 12 Apr. 2020; VSV 10 Apr. 2020). Two sources stated that in the event that [the voter card (Lawyer 12 Apr. 2020)] is lost, a [translation] “certificate of lost documents” could be presented (Lawyer 12 Apr. 2020; VSV 10 Apr. 2020). According to the lawyer, this certificate is issued by the police (Lawyer 12 Apr. 2020). For further information on certificates of lost documents, see Response to Information Request COD104669 of December 2013. More recent information on this document could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The lawyer added that a nationality certificate, or in the case of a minor, a birth certificate or a judgment in lieu of birth certificate, could also serve as proof of identity (Lawyer 12 Apr. 2020). According to the IPHR project coordinator, in the case of minors, an identity document issued by the civil status authorities is required (IPHR 21 Apr. 2020). Corroborating evidence 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 Voice of the Voiceless for Human Rights (La Voix des sans voix pour les droits de l’homme, VSV) is a Kinshasa-based NGO with branches in the provinces that has been advocating for human rights in the DRC since 1983; it works with several international human rights organizations and the UN (VSV n.d.).

## References

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United States (US). 20 September 2018. Department of Labor. “Congo, Democratic Republic of the.” 📄 2017 Findings on the Worst Forms of Child Labor. [Accessed 15 Apr. 2020]

United States (US). N.d. Department of State. “Democratic Republic of the Congo (D.R.C.) Reciprocity Schedule.” [Accessed 9 Apr. 2020]

La Voix des sans voix pour les droits de l’homme (VSV). 10 April 2020. Correspondence from the executive director to the Research Directorate.

La Voix des sans voix pour les droits de l’homme (VSV). N.d. “Qui sommes-nous?” [Accessed 18 Apr. 2020]

## Additional Sources Consulted

**Oral sources:** Avocats sans frontières in the DRC; Comité national femme et développement; Conseil national des organisations non gouvernementales de développement; Droits humains sans frontières; law firms in the DRC.

**Internet sites, including:** Amnesty International; DRC – embassy in Paris, embassy to Benelux and the European Union, Primature; Factiva; Fédération internationale pour les droits humains; Freedom House; Human Rights Watch; International Crisis Group.

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