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Democratic Republic of the Congo: Judiciary documents, including summonses to appear (mandats de comparution), bench warrants (mandats d'amener) and arrest warrants (mandats d'arrêt); issuing authorities; features of judiciary documents, including contents and appearance; samples (2022–March 2022) [COD200966.FE]

Research Directorate, Immigration and Refugee Board of Canada

1. Issuance Procedures for Judiciary Documents

In correspondence with the Research Directorate, a program officer in the Democratic Republic of the Congo (DRC) with the League for Human Rights in the Great Lakes Region (Ligue des droits de la personne dans la région des Grands Lacs, LDGL), a regional NGO headquartered in Kigali that advocates for the promotion and protection of human rights in Burundi, Rwanda and the DRC (LDGL n.d.), stated that [translation] "[j]udiciary documents are issued in accordance with the stage of the legal proceeding and the circumstances of the offence. They vary depending on whether a case is at the investigation or the hearing stage" (LDGL 10 Mar. 2022). In contrast, an executive secretary of Héritiers de la justice, a local NGO involved in human rights, particularly in the South Kivu province (KAİROS Canada n.d.), wrote in correspondence with the Research Directorate that

[translation]

[s]ome judiciary documents such as exhibits are issued by authorization of the Prosecutor General in response to applications for disclosure filed with the Prosecutor General by lawyers or police officials needing the documents in question (party to a trial: accused or complainant). Other documents are issued directly by authorization of the president (*président*) (head of the court [*Chef de la juridiction*] via the registrar [*greffier*]). (Héritiers de la justice 4 Mar. 2022)

In correspondence with the Research Directorate, a representative of the Centre for Human Rights and Humanitarian Law (Centre des droits de l'homme et du droit humanitaire, CDH), an NGO concerned with promoting and protecting human rights in the DRC (CDH 18 Feb. 2022), stated that judiciary documents are typed and use the same form in all cities of the DRC, but that the type of stamp and the ink used varies (CDH 8 Mar. 2022).

1.1 Summonses to Appear and Bench Warrants

Summonses to appear and bench warrants are governed by the Decree of 6 August 1959 regarding the Code of Criminal Procedure (*Décret du 6 août 1959 portant le Code de procédure pénale*), article 15 of which reads as follows:

[translation]

Section II The summons to appear and the bench warrant

Art. 15. – The public prosecutor may issue a summons to appear against an alleged perpetrator of an offence.

If the alleged perpetrator fails to comply with the summons, the public prosecutor may issue a bench warrant against the alleged perpetrator.

Independently of any previous summonses to appear, the public prosecutor may also issue a bench warrant when the alleged perpetrator of an offence is not present or where there are serious indications of guilt and the offence is punishable by at least two months' imprisonment.

Bench warrants are valid for three months and renewable. Individuals named in a bench warrant must be brought before the public prosecutor who issued the warrant as soon as possible.

Individuals named in a summons to appear or in a bench warrant must be questioned no later than the day following their arrival at the location of the public prosecutor who issued the summons or warrant. (DRC 1959)

The CDH representative stated that summonses to appear and bench warrants are [translation] "official document[s] issued by a public prosecutor (magistrate, judicial police officer [*officier de police judiciaire*, OPJJ]), the public prosecutor's office or the judicial police in the event of problems with the law. Such documents are signed by the issuer with a seal from the public prosecutor's office, the police or even the intelligence service" (CDH 8 Mar. 2022). According to the Héritiers de la justice Executive Secretary, however,

[translation]

[a] summons to appear is an invitation from the prosecutor [*Procureur*] to an accused to appear before the prosecutor. In principle, the accused must be informed of the grounds on the spot. A bench warrant is a legal document authorizing judicial officers to arrest the accused and to take the accused directly to the public prosecutor's office. (Héritiers de la justice 4 Mar. 2022)

Actualite.cd, a Congolese news website, describes bench warrants and summonses to appear as follows:

[translation]

Bench warrants are regulated by article 15 of the Code of Criminal Procedure and are also the work of the public prosecutor. Bench warrants are generally issued when the alleged perpetrator of an offence has failed to respond to a summons to appear (which is merely an invitation). However, bench warrants can also be issued independently of a summons to appear, when the alleged perpetrator of an offence is not present or where there are serious indications of guilt and the offence is punishable by at least two months' imprisonment. They are valid for three months and renewable. Individuals named in a bench warrant must be brought before the public prosecutor who issued the warrant as soon as possible. Bench warrants are not a pre-trial detention measure. They are simply a measure designed to compel the alleged perpetrator of an offence to appear before the public prosecutor. (Actualite.cd 27 Apr. 2021)

The LDGL Program Officer in the DRC stated the following regarding bench warrants and summonses to appear:

[translation]

In order to be able to conduct a full hearing, the public prosecutor needs various pieces of information. The public prosecutor must therefore question the accused and hear witnesses. For that, the accused and any witnesses have to appear before the public prosecutor.

The presiding magistrate (*magistrat instructeur*) can compel an accused to appear using two different enforcement measures:

- **The presiding magistrate may issue a summons to appear.** This summons is delivered by a messenger (police, bailiff) in exchange for an acknowledgment of receipt.
- **The presiding magistrate may issue a bench warrant when the accused has refused to comply with the summons to appear.** This warrant, which is issued by the public prosecutor, is served and enforced on the spot by a judicial police officer assisted by law enforcement officers where necessary. It is valid for three months. When issued by a judicial police officer where the accused is caught in flagrante, it is valid for two months. (LDGL 10 Mar. 2022, emphasis in original)

The same source also explained the following:

[translation]

In the following circumstances, bench warrants can be issued directly without a summons to appear having been issued beforehand:

- the alleged perpetrator of the offence is not present or is the subject of serious accusations; and
- the offence must be punishable by at least two months' imprisonment.

To ensure that bench warrants are fully effective, it is usual in judicial practice to send copies to all judicial police stations interested in the case, including judicial police officers at aerodromes, judicial police officers in the area of residence and judicial police officers of the Special Criminal Search

Squad (*Brigade spéciale de recherche criminelle*), as well as officers of the Central Bureau of Reporting (*Bureau central de signalement*). (LDGL 10 Mar. 2022)

The LDGL Program Officer in the DRC also explained the difference between a summons to appear and a notice to appear (*Convocation*) as follows:

[translation]

To summon an accused, the presiding magistrate uses a summons to appear, in which the presiding magistrate asks the prison director to make the accused in question available to appear at a preliminary hearing at a particular time on a particular day. The legal form for compelling a witness to appear is a notice to appear. If the witness fails to appear, a bench warrant may be issued against the witness. Judicial police officers should never issue a bench warrant against a witness unless the witness is caught in flagrante or fails to appear. (LDGL 10 Mar. 2022)

1.2 Arrest Warrants

Chapter III of the Code of Criminal Procedure provides the following regarding provisional arrest warrants:

[translation]

Art. 27. – An accused may only be placed in preventive detention if there are serious indications of the accused's guilt and the facts appear to constitute an offence that is punishable by at least six months' imprisonment.

However, where there are serious indications of guilt, an accused may be placed in preventive detention when the facts appear to constitute an offence that is punishable by less than six months' but more than seven days' imprisonment if there are reasons to fear the accused is a flight risk, if the identity of the accused is unknown or questionable, or where, in light of serious and exceptional circumstances, preventive detention is imperative in the interests of public safety.

Art. 28. – Preventive detention is an exceptional measure.

When preventive detention is imposed, the following rules must be complied with. When the conditions for preventive detention are met, the public prosecutor may after questioning the accused issue a provisional arrest warrant against the accused, on condition that the accused is taken before the nearest judge of competent jurisdiction for a ruling on the accused's preventive detention.

If the judge is in the same local area as the public prosecutor, the accused must appear before the judge no later than five days of the provisional arrest warrant being issued.

If the judge is not in the same local area, this time is extended by the time strictly required to travel to the judge, except in the event of force majeure [or] delays necessitated by obligations related to the hearing.

On expiry of these periods, the accused may apply to the judge of competent jurisdiction for the accused's release or bail. In the event of an accused contemplated in paragraph 2 of article 27, the provisional arrest warrant must set out the circumstances justifying it.

...

Art. 37. – The public prosecutor and the accused may appeal orders issued in respect of preventive detention.

...

Art. 40. – During the appeal period and, in the event of an appeal, until the decision, the status of the accused is maintained as ordered by the judge, as long as the validity term of the order has not expired.

However, when the accused is charged with an offence that is punishable by at least one year's imprisonment, the public prosecutor may, if the judge has refused to order preventive detention, order that the provisional arrest warrant be re-imposed on the accused or, if the judge refuses to order an extension of the detention, order that the detention order be re-imposed on the accused.

In either event, the previous arrest warrant or order can only be re-imposed on the accused during the appeal period or, in the event of an appeal, until the decision.

The public prosecutor must provide reasons for the order and must provide copies to the public prosecutor's superior, the appeal judge and the prison warden. The warden must inform the accused of the order.

The order is only valid for 24 hours unless the warden is notified of the appeal during that time.

Art. 41. – The judge hearing the appeal must review the matter immediately and rule on it within 24 hours of the hearing during which the public prosecutor will make submissions.

If the accused is not in the local area where the court hearing is held or is not represented by someone with a special power of attorney, the judge may decide the matter on submissions.

Art. 42. – If the appeal judge sets aside the order of the judge below refusing to authorize or to extend a detention, the appeal judge will determine the term of the authorization or extension granted. This term may not exceed one month and starts on the day the appeal order is enforced.

Art. 43. – An accused whose preventive detention has not been granted or extended may not be the subject of a new provisional arrest warrant for the same offence unless new and serious circumstances require the accused's preventive detention. (DRC 1959)

The LDGL Program Officer gave the following description of provisional arrest warrants:

[translation]

Provisional arrest warrants are coercive orders given by an officer of the public prosecutor, a presiding magistrate, (1) to a prison warden to accept and detain the person mentioned in the order, namely, the accused; and (2) to law enforcement officers to bring the accused. (LDGL10 Mar. 2022)

The same source gave the following explanation:

[translation]

This instrument [provisional arrest warrant] requires that the conditions for charging an alleged offender have been met, such as questioning the alleged offender, the sentence for the offence and the evidence for the offence. Indeed, in order for the public prosecutor to be able to issue a provisional arrest warrant,

- ***the accused must have already been questioned;***
- ***there must be serious indications of the accused's guilt;***
- ***the offence must be punishable by at least six months' imprisonment, or at least seven days' imprisonment if the accused is a flight risk, if the accused's identity is uncertain, or where, in light of serious and exceptional circumstances, preventive detention is imperative in the interests of public safety.***

Before arresting the offender, therefore, the public prosecutor has to inform the offender of the allegations against them; the offender is informed of their new status when charged. Indeed, it is essential that individuals are informed in which capacity they are making any statements being gathered. (LDGL 10 Mar. 2022, emphasis in original)

Actualite.cd also speaks of provisional arrest warrants in similar terms:

[translation]

Provisional arrest warrants are governed by section 28 of the Code of Criminal Procedure. They are issued by the public prosecutor against individuals who have committed an offence where there are serious indications of guilt, a flight risk or doubts about the offender's identity. It should be noted that serious indications of guilt are enough for a provisional arrest warrant to be issued, without the other requirements having to be satisfied, but the offence must be punishable by at least six months' imprisonment. However, when the offence is punishable by less than six months' imprisonment but more than seven days, the requirement of a flight risk or doubts about the offender's identity must also be met.

A provisional arrest warrant is valid for five days, plus the time strictly required to travel; it can only be issued after the accused has been questioned. On expiry of this time, the magistrate at the public prosecutor's office has to bring the accused before a judge of competent jurisdiction who will decide on preventive detention, as judges are the protectors of individual freedoms. (Actualite.cd 27 Apr. 2021)

According to Lawyers Without Borders (Avocats sans frontières, ASF), an international NGO created in 1992 in Brussels that defends human rights (ASF n.d.a), [translation] "the arrest warrant is the order given by the officer of the public prosecutor's office to the officers and agents of the judicial police to take an individual into custody and to the guards of the detention centre to receive and detain the individual" (ASF n.d.b). The same source explains when and on what grounds an individual may be subject to an arrest warrant:

[translation]

An arrest warrant can only be issued by a public prosecutor after the accused has been questioned. It can only be issued if the conditions for remand in custody are met. It is therefore necessary to verify these conditions.

Two conditions must be met in order to place an accused person in preventive detention, and thus to be able to issue an arrest warrant:

1. The existence of serious indications of guilt:
 - The evidence must be sufficient to justify a deprivation of liberty and must be mentioned in the report drawn up by the presiding magistrate. Moreover, the evidence cannot have been gathered in an irregular manner. In such cases, the proceeding may be considered null and void.
2. The minimum penalty threshold:
 - The act committed must be likely to result in a prison sentence of at least six months. In exceptional cases, it is possible to place the person in pre-trial detention for acts entailing a sentence of imprisonment of more than seven days but less than six months, for three reasons:
 - if there is a fear that the accused will flee;
 - if the accused's identity is unknown or doubtful;
 - if, due to serious or exceptional circumstances, detention is required in the interests of public safety.
 - During the hearing, if the presiding magistrate finds that the suspect can benefit from a cause of excuse that has the effect of eliminating or reducing the sentence below the seriousness threshold required by law, the provisional arrest warrant cannot be issued. (ASF n.d.b)

ASF also explains the formalities that must be completed in order for an arrest warrant to comply with the law as follows:

[translation]

In order to be issued and validated, the arrest warrant must respect certain formalities and legal conditions. Circular No. 001/D.008/IM/PGR/2006 of 31 March 2006 (*Circulaire n° 001/D.008/IM/PGR/2006 du 31 mars 2006*) sets out the formalities that must be completed for an arrest warrant to comply with the law by proposing a standard arrest warrant model.

- The arrest warrant can only be issued by the public prosecutor after the accused has been questioned. At the end of the interrogation, the public prosecutor must draw up a report on the hearing. If the interrogation does not take place according to the conditions set by law, the arrest warrant may be declared null and void. In fact, the report and the arrest warrant constitute a substantial formality of the remand in custody.
- All serious indications of guilt that justify the issuance of a warrant must be written into the body of the warrant.
- Detailed reasons must be given for the decision to issue a warrant for the arrest of an individual for acts entailing a sentence of imprisonment of less than six months but more than seven days.
- After placing an individual under a provisional arrest warrant, the public prosecutor must bring the individual before the nearest judge of competent jurisdiction for a ruling on the preventive detention. If the judge is in the same local area as the public prosecutor, the appearance before the judge must take place within five days of the issuance of the provisional arrest warrant. Otherwise, the time limit is increased by the time strictly necessary to carry out the transport. An extension of the time limit is accepted in cases of force majeure or for the duties of the investigation. The time limit is calculated from midnight to midnight, and Saturdays, Sundays and holidays do not extend the time limit. (ASF n.d.b)

A copy of Circular No. 001/D.008/IM/PGR/2006 of 31 March 2006 on the new templates for the report on the seizure of an accused and the provisional arrest warrant (*Circulaire n° 001/D.008/IM/PGR/2006 du 31 mars 2006 relative aux nouveaux modèles de procès-verbal de saisie de prévenu et de mandat*

d'arrêt provisoire) is available online (DRC 2006).

The Héritiers de la justice Executive Secretary stated that when the alleged offender is under a bench warrant, [translation] "they are in a state of hearing, can be put under provisional arrest warrant (put in jail) or can be released after the hearing" (Héritiers de la justice 4 Mar. 2022). The CDH representative also stated that an arrest warrant is [translation] "an official document issued by a public prosecutor (Magistrate, OPJ) of the public prosecutor's office or the judicial police in the event of problems with the law. Such documents are signed by the issuer with a seal from the prosecutor's office, the police or even the intelligence service" (CDH 8 Mar. 2022).

2. Authorities Having Jurisdiction to Issue These Judiciary Documents

The LDGL Program Officer in the DRC stated the following regarding the authorities having jurisdiction to issue judiciary documents:

[translation]

These documents may be issued either by the officer of the public prosecutor's office, who has a monopoly on them, or by the officer of the judicial police, acting in accordance with the law and within the limits of his or her jurisdiction, or by the judge by order in the case of preventive detention. (LDGL 10 Mar. 2022)

2.1 Summonses to Appear and Bench Warrants

According to Actualite.cd, the OMP is competent to issue summonses to appear and bench warrants (Actualite.cd 27 Apr. 2021). The Héritiers de la justice Executive Secretary also stated that summonses to appear and bench warrants [translation] "are within the jurisdiction or issued by the prosecutor against the alleged perpetrators of the crime (article 15 of the Code of Criminal Procedure)" (Héritiers de la justice 4 Mar. 2022). According to the same source, [translation] "summonses to appear or bench warrants may be issued against alleged offenders by OPJs upon request to the officers of the public prosecutor's office (OMP)" (Héritiers de la justice 4 Mar. 2022).

2.2 Arrest Warrants

The sources state that public prosecutors have jurisdiction to issue arrest warrants (ASF n.d.b; Héritiers de la justice 4 Mar. 2022; LDGL 10 Mar. 2022). According to ASF, [translation] "following police custody, the prosecuting officer may decide to place the individual, whom the judicial police officer has brought before the prosecuting officer, under a provisional arrest warrant" (ASF n.d.b). The Héritiers de la justice Executive Secretary also claimed that the OMP who conducts the hearing of the accused person may place the accused [translation] "under a provisional arrest warrant" (Héritiers de la justice 4 Mar. 2022).

According to the LDGL Program Officer, [translation] "[a] judicial police officer cannot issue a provisional arrest warrant" (LDGL 10 Mar. 2022). In a follow-up interview with the Research Directorate, the Héritiers de la justice Executive Secretary also stated that [translation] "only officers of the public prosecutor's office can issue arrest warrants" (Héritiers de la justice 14 Mar. 2022).

3. Features of These Judiciary Documents

The LDGL Program Officer stated that [translation] "[t]he content of these [judiciary] documents is within the jurisdiction of the law, and the authority to issue them is provided for by law" (LDGL 10 Mar. 2022). However, the same source explains that [translation] "[t]his power may be exercised concurrently by the Magistrate of the public prosecutor's office and, by delegation, by the officers of the judicial police, who are under the control of the public prosecutor's office" (LDGL 10 Mar. 2022).

The Héritiers de la justice Executive Secretary stated that the features of judiciary documents may vary from region to region and from city to city, but that they share a number of common features, including the fact that they are mostly typewritten in black ink on plain white paper, that they must specify the person charged and that their letterheads usually display the issuing authority (Héritiers de la justice 14 Mar. 2022).

3.1 Summonses to Appear

According to the Héritiers de la justice Executive Secretary, summonses to appear are not uniform in the DRC, but have the following common elements: the competent authority to issue the summons to appear (usually the attorney general's office), the date and place of issuance, the name of the person who is the subject of the summons, the time and date and place of appearance, the name of the OPJ or bailiff responsible for serving the warrant, the name and signature of the OMP who issued the warrant, and finally, the seal of the sponsoring department or competent authority (Héritiers de la justice 14 Mar. 2022).

Samples of the notice to appear and the summons to appear, sent to the Research Directorate by the LDGL Program Officer in DRC, are attached to this Response (Attachments 1 and 2).

3.2 Bench Warrants

The Héritiers de la justice Executive Secretary stated that the warrants are different from each other depending on where they are issued, but they must have the following common characteristics: the authority having jurisdiction to issue the warrant (normally the attorney general's office), the number of the report, the date and place of issuance, the name of the OPJ in charge of issuing and serving the warrant, the name and place of residence of the accused person who is the subject of the warrant, the name of the OMP before whom the accused is to be brought, the time and date and location of the OMP responsible for questioning the accused, the signature of the OPJ who issued the warrant and who is responsible for bringing the accused, and finally, the seal of the competent department or the sponsoring authority (Héritiers de la justice 14 Mar. 2022).

A sample bench warrant, sent to the Research Directorate by the LDJL Program Officer in DRC, is attached to this Response (Attachment 3).

3.3 Arrest Warrants

According to the LDGL Program Officer, [translation] "[t]he arrest warrant does not have a specific formula, and the content varies from one magistrate to another" (LDGL 10 Mar. 2022). In contrast, the Héritiers de la justice Executive Secretary stated that the attorney general's office has established a basic template that OMPs should follow [translation] "almost to the letter" (Héritiers de la justice 14 Mar. 2022). According to the same source, although not all OMPs follow the attorney general's template, there are common aspects to all arrest warrants issued in the DRC, including the following: the authority having jurisdiction to issue the arrest warrant (usually the attorney general's office), the name of the OMP that issued the warrant and the court before which they officiate, the date and place of issuance, and the name and place of residence of the accused person who is the subject of the warrant, the rights guaranteed to the arrested person, the name of the OPJ or bailiff responsible for serving the warrant, the signature of the OMP, and finally, the seal of the department in charge or of the authority concerned (Héritiers de la justice 14 Mar. 2022).

An arrest warrant template, taken from Circular No. 001/D.008/IM/PGR/2006 of 31 March 2006, is attached to this Response (Attachment 4).

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.

References

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Additional Sources Consulted

Oral Sources: Les Anges du ciel; Association congolaise pour l'accès à la justice; attorney and head of works at the faculty of law of a Congolese university; Avocats sans frontières; Barreau de Mbandaka; Barreau du Nord-Kivu; Centre des droits de l'homme et du droit humanitaire; Collectif des organisations des jeunes solidaires du Congo-Kinshasa; Comité national femme et développement; Democratic Republic of the Congo – embassy in Ottawa; Dynamique des femmes juristes; Human Rescue DRC; Initiatives pour la paix et les droits humains; International Crisis Group; Kivu Rise; law firms in the Democratic Republic of the Congo (8); Ligue congolaise de lutte contre la corruption; Ligue pour la paix et les droits de l'homme; Ligue pour la paix, les droits de l'homme et la justice; Miranda Alliance; Programme d'appui aux actions féminines; Réseau des femmes pour un développement associatif; TRIAL International; Toges Noires; La Voix des sans-voix; Women as Partners for Peace in Africa; Women's Caucus.

Internet sites, including: Amnesty International; Australia – Department of Foreign Affairs and Trade; BBC; Belgium – Commissariat général aux réfugiés et aux apatrides; ecoi.net; EU – EU Agency for Asylum, European Anti-Fraud Office; Factiva; France – Office français de protection des réfugiés et apatrides; Freedom House; Human Rights Watch; Minority Rights Group International; Transparency International; UK – Home Office; UN – Human Rights Council, International Organization for Migration, Refworld; US – CIA, Department of State; Voice of America.

Attachments

1. Democratic Republic of the Congo (DRC). N.d. Sample of the *Convocation*. Sent to the Research Directorate by the Ligue des droits de la personne dans la région des Grands Lacs (LDGL) Program Officer, 10 March 2022. Translated into English by the Translation Bureau, Public Services and Procurement Canada.
2. Democratic Republic of the Congo (DRC). N.d. Sample of the *Mandat de comparution*. Sent to the Research Directorate by the Ligue des droits de la personne dans la région des Grands Lacs (LDGL) Program Officer, 10 March 2022. Translated into English by the Translation Bureau, Public Services and Procurement Canada.
3. Democratic Republic of the Congo (DRC). N.d. Sample of the *Mandat d'amener*. Sent to the Research Directorate by the Ligue des droits de la personne dans la région des Grands Lacs (LDGL) Program Officer, 10 March 2022. Translated into English by the Translation Bureau, Public Services and Procurement Canada.
4. Democratic Republic of the Congo (DRC). 2006. Parquet général de la République. *Modèle de mandat d'arrêt provisoire*. Taken from the [Circulaire n° 001/D.008/IM/PGR/2006 du 31 mars 2006 relative aux nouveaux modèles de procès-verbal de saisie de prévenu et de mandat d'arrêt provisoire](#). Translated into English by the Translation Bureau, Public Services and Procurement Canada. [Accessed 14 Mar. 2022]

ecoi.net summary:



Query response on the
Democratic Republic of the
Congo: Judiciary documents
(2022 - March 2022)

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Congo, Democratic Republic

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