

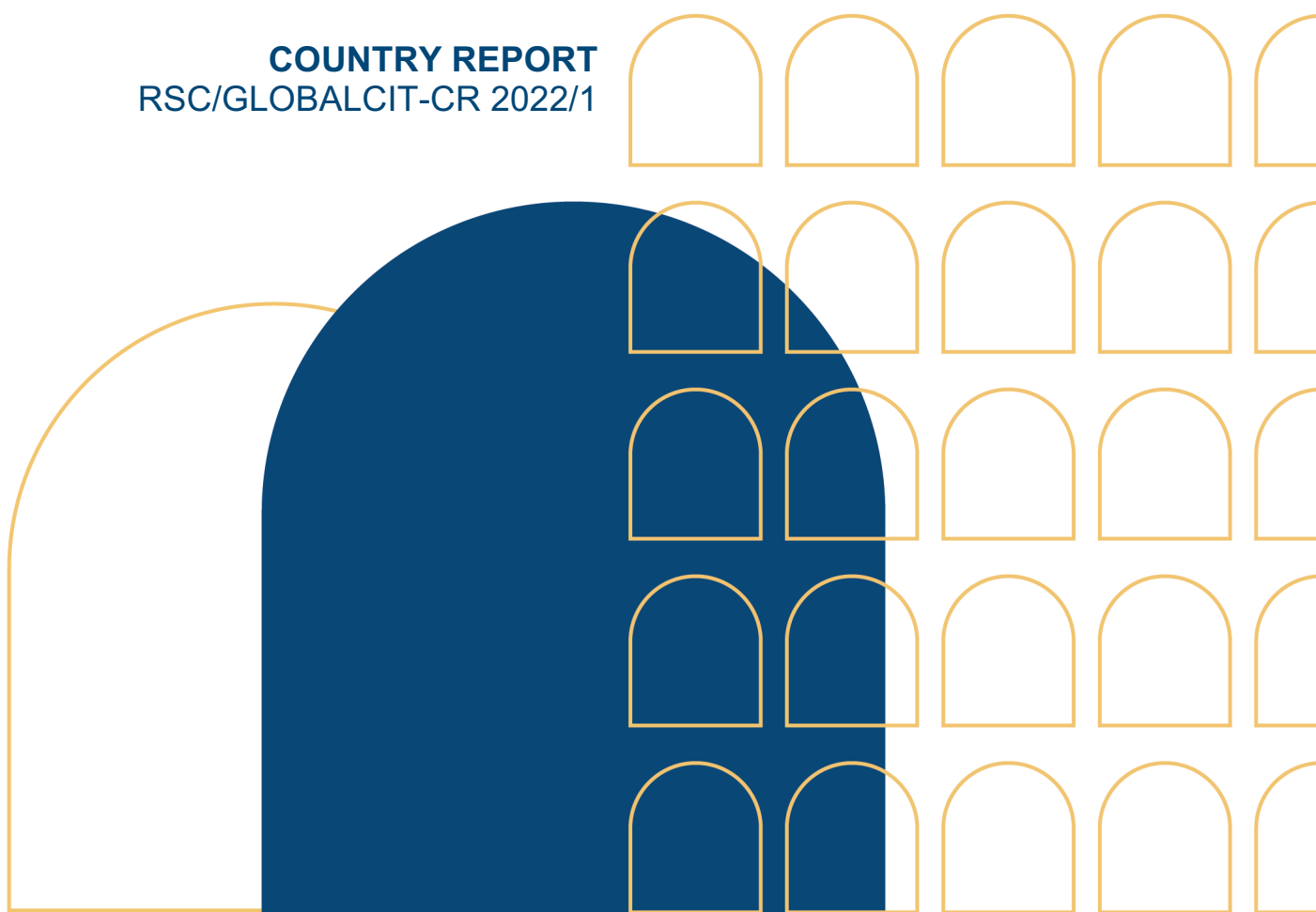
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Report on Citizenship Law: Democratic Republic of Congo

Franck Kamunga

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Requests should be addressed to GlobalCit@eui.eu.
Global Citizenship Observatory (GLOBALCIT)
Robert Schuman Centre for Advanced Studies
in collaboration with Edinburgh University Law School

Report on Citizenship Law: Democratic Republic of Congo

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I – 50014 San Domenico di Fiesole (FI)
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Report on Citizenship Law

Democratic Republic of Congo

Franck Kamunga¹

1. Introduction

The citizenship regime of the Democratic Republic of the Congo (DRC) consists of provisions contained in the 2008 Constitution (as amended),² the Congolese Nationality Code (as amended), Congolese Civil Code (as amended), as well as bilateral agreements and international treaties to which the country is a party. These provisions stipulate the requirements for obtaining the status of a DRC national. Nationality of the DRC is obtained on the basis of birth (*ius soli*, as well as *ius sanguinis*), by marriage, or by naturalisation. Holding this status does not automatically result in the rights of citizenship, which are attainable only after an individual has met further specific conditions. For example, voting rights are attached not only to being a national, but also to age (e.g. 30 years of age to run for president, 18 to vote in elections). Furthermore, article 72 of the Constitution limits the eligibility for the presidency to ‘natural-born’ citizens of the DRC, defined as ‘anyone belonging to the ethnic groups whose persons and territory constituted what became the Congo (currently the Democratic Republic of the Congo), at independence’.³ There is also a constitutional ban on dual nationality, but multiple membership has in practice been tolerated since 2002.⁴ The discrepancy between the constitutional ban and the reality of the DRC nationals holding multiple passports has been subject of political debates, especially as regards holders of high office.⁵

This report provides information on the issues related to the citizenship regime of the DRC from before independence to the present day. Citizenship policies have evolved ever since the country gained independence in 1960 and have impacted upon different social, political and economic developments in the country. It is therefore important to map this evolution over the past five decades and understand the modalities of acquisition and loss of DRC nationality under the different legislative and political regimes. The first part of this report provides an historical background to the law and politics of the country prior to independence. In particular, it highlights the role of the colonial powers in the formulation of the country’s citizenship law and the implications for the traditional Congolese society. The report thus focuses on analysis

¹ This report has been edited for language, balance, and consistency by the GLOBALCIT team. Background information has been added for a broader readership.

² The 2006 Constitution of the DRC is the country's sixth constitution since the country has gained independence in 1960. It was promulgated on 18 February 2006, after previous approval by referendum.

³ Constitution de la République Démocratique du Congo. Journal Officiel de la République Démocratique du Congo: Cabinet du Président de la République, 2006- 18 février, article 10. wipo.int/edocs/lexdocs/laws/fr/cd/cd001fr.pdf

⁴ Manby, Bronwen (2016). *Citizenship Law in Africa* (3rd ed.). Cape Town, South Africa: African Minds, pp. 74-78.

⁵ 'DRC presidential: dual citizenship debate'. The Morning Call, 24 August 2018. africanews.com/2018/08/24/drc-presidential-dual-citizenship-debate-the-morning-call/

of both present and past legislative provisions, situated in their socio-political context. The final parts of the report outline current debates and provide some concluding remarks.

2. Historical background and legal context

2.1. Pre-colonial and colonial contexts

The territory of the present-day DRC has historically been inhabited by different groups, which often engaged in inter-group conflict and competition over resources. The first inhabitants of the territory were the Pygmies, known locally as ‘Batwa’ or ‘Twa’, who lived in small groups on the outer limits of the Equatorial Forest and in other parts of the present-day DRC. Subsequently, a second group, the semi-Bantus, entered the territory from the northwest and established small kingdoms. The semi-Bantus attempted to conquer the Pygmies, but the Pygmies fled deeper into the Equatorial Forest. A third group, the Bantus, arrived in the DRC from the north and settled across most of the territory of the present-day DRC, either conquering or expelling the Pygmies and the semi-Bantus. The migration of Bantus in the DRC started around 1000 BC and lasted for five centuries. During this period, the various Bantu peoples founded kingdoms and empires, including the Kongo, Kuba, Lunda, and Luba kingdoms. Each kingdom or empire created and followed its own customary laws. Today, the descendants of the Bantu tribes still make up the majority of the Congolese people, estimated at over 92 million as of 2021.⁶ The population of the DRC comprises no less than 450 ethnic groups.

In 1891, the Belgian colonial empire started to integrate parts of present-day Congo, starting with the mineral rich Katanga region. The wealth in ivory of the Central African region and the extent of the slave trade further motivated the Belgian King Leopold II to seek financial, infrastructural, and political support from other imperialist powers. Belgium’s hold on Congo was consolidated at the Berlin West African Conference in late 1884 and early 1885, following which the United States recognised Belgian rule over the territory. The country was then run as a dictatorship – King Leopold’s *Etat indépendant du Congo* (‘Congo Free State’, CSF). Systematic violence, widespread forced labour, and the extermination of millions of innocent Congolese people were the hallmarks of King Leopold II’s rule.⁷

Seven years after the establishment of the CSF, an 1892 decree introduced the first rules relating to nationality in Congo. With the objective of increasing the population of the CFS, nationality attribution was mainly based on *ius soli*, i.e. birth on the territory. Children born to foreign parents could opt for Congolese nationality at the age of majority or were presumed to have done so. Similar provisions existed for foundlings and children of unknown parentage, who were also presumed stateless. This inclusive model also entailed that naturalisation was facilitated for certain groups, notably citizens of the neighbouring African states, who were presumed to be Congolese following a five-year residence period in Congo. The same principle applied to the Congolese who possessed another nationality – unless they left the country and declared dual loyalty, they were presumed to be Congolese citizens.⁸

⁶ World Population Review: <https://worldpopulationreview.com/countries/dr-congo-population-2021>.

⁷ Nzongola-Ntalaja, Georges (2007). *Congo*. London and New York: Zed Books, pp. 15-18.

⁸ Manby, Bronwen (2018). ‘The Banyarwanda of Eastern Democratic Republic of Congo’, *Citizenship in Africa: The law of belonging*. London: Hart Publishing.

In 1908, in accordance with the wishes of Leopold II expressed in his will, Belgium annexed the Congo. The country thus became ‘Belgian Congo’, a colonial territory. A new colonial charter replaced the older charter as the fundamental law of the Congo. Congolese nationality was abolished and the Congolese formally became Belgian nationals. However, they did not enjoy the rights attached to nationality that were granted to the white Belgians living in Congo. The borders of the new Belgian colony were redrawn in 1910 in agreement with other colonial powers in Africa, whereby some parts of the CFS were ceded to Rwanda (ruled by Germany) and others to Uganda (ruled by Britain). In 1922, the League of Nations granted the previously German colonies of Ruanda-Urundi to the Belgian Congo; these lands were later entrusted to the United Nations after the Second World War.⁹ After the transfer of territory, the population inhabiting the formerly German territories were left without their German nationality. As the *en masse* granting of citizenship was not possible at the time, Ruanda-Urundi citizens – who had presumably become stateless – were given identification cards. These cards were different to those for migrants from other neighbouring countries, which were the same as those for Congolese citizens.¹⁰

The unclear rules resulted in inconsistency as to who was considered Congolese or Belgian. The question of whether to adopt legislation establishing a new ‘Congolese nationality’ under the umbrella of the Belgian nationality was debated for decades, almost until independence. The situation changed in the 1950s, when mass movements for independence gathered momentum. The leader of one of those movements, Patrice Emery Lumumba, argued for a ‘calm and dignified’ march towards independence and against the balkanization of the Congo. On 30 June 1960, the Congo won its independence from Belgium, with Joseph Kasavubu as President and Patrice Lumumba as Prime Minister. The subsequent decades saw significant changes to the Congolese citizenship regime.

2.2. After independence

Shortly after gaining independence, the Congo experienced major conflict and civil strife in the form of a second independence movement. The popular struggle for democracy was motivated by the inadequacy of the externally backed regime of corrupt leaders. The people of the Congo sought to uphold the egalitarian and developmentalist ideals of independence, together with the political ideals of Patrice Lumumba. The political violence and dislocations of the independence struggle during the first war of liberation against the postcolonial state taught the Congolese people the value of scepticism about political elites with little interest in building the country. The second independence movement brought about a culture of resistance against illegitimate state authority that has subsequently become a major feature of Congolese political life.¹¹

Seeking to slow down the decolonisation process, Belgium ‘helped to fuel the growing popular defiance of colonial authority’ and instigated a crisis that lasted from 1960 to 1965.¹² The crisis saw the secession of the provinces of Katanga and South Kasai. The domestic enemies of Prime Minister Lumumba conspired with foreign forces involving US, Belgian, and UN officials.¹³ Lumumba was assassinated on 17 January 1961. On 24 November 1965, Mobutu Sese Seko

⁹ Ibid.

¹⁰ Ibid.

¹¹ Nzongola-Ntalaja, p. 56.

¹² Nzongola-Ntalaja, pp. 86-90.

¹³ Ibid., p. 107.

staged a coup and ousted President Kasavubu. In its ‘golden era’, Mobutu’s reign brought some stability and economic growth. From the 1970s, however, the system was destabilised by popular demands for political change. Despite pockets of relative growth and stability, under Mobutu Sese Seko’s rule, the country experienced a brutal dictatorship, the rise of corruption, and the decline of public services.

In 1989 to 1991, under domestic and international pressure, Mobutu conceded the need for political pluralism and convened a national conference (*Conférence Nationale Souveraine, CNS*), with the declared aim of establishing a new political and constitutional order. Thus began a difficult transition. As a system of absolute power, dictatorship, and personal rule, the Mobutu regime ended in 1990. The official demise of the Second Republic and its party-state system marked the beginning of transition to multiparty democracy. By the time the CNS voted to establish the political institutions of the transition on 4 August 1992, the ruling clique around Mobutu had been reduced and survived only by looting and thuggery.¹⁴ By the mid-1990s, it was clear that the political process had run into a dead end, which could only be broken by a protracted conflict fuelled by security concerns, competition for control of mineral resources, the fragility of the Congolese state, ethnic rivalries, and territorial ambitions.

Mobutu remained in power until 17 May 1997, when Laurent Désiré Kabila – supported by allies from Burundi, Rwanda, and Uganda – sent him into exile. In August 1998, Kabila expelled his Rwandan and Ugandan allies from the country, triggering another armed conflict. A ceasefire agreement was signed in Lusaka in July 1999, but all parties to the agreement violated it. The First (1996-1997) and the Second (1998-2003) Congo Wars led to the death of more than 5 million people. During the Second Congo War, Uganda and Rwanda each backed a major rebel group. On the other side, Angola, Namibia, Zimbabwe, Chad, and Libya intervened in support of Laurent Kabila’s government. President Kabila was assassinated on 16 January 2001 and was succeeded as head of state by his son Joseph Kabila. In December 2002, all parties to the conflict signed a peace accord in Pretoria, South Africa. This accord is known by its French title, the *Accord global et inclusif* (Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo). These events and the effects they had on the various groups inhabiting the Congolese territory had a deep impact on the rules determining nationality in the DRC, which were the subject of much debate in the transitional parliament.

2.3. The Third Republic

A transitional government was formed in July 2003. After a series of debates, the transitional parliament adopted a new nationality law in 2004. This law established the reference date for nationality acquisition as being in 1960 and linked Congolese nationality to origin and descent rather than birth on the territory, referring to ‘ethnic groups and nationalities of which the individuals and territory formed what became Congo at independence’.¹⁵ This principle – for individuals from Rwanda and Burundi only – has been in place since 1971. While naturalisation was possible in principle, it was difficult in practice. The prohibition of dual citizenship remained.

¹⁴ Ibid., p. 159.

¹⁵ For detailed discussion, see: Manby, Bronwen (2018). ‘The Banyarwanda of Eastern Democratic Republic of Congo’, *Citizenship in Africa: The law of belonging*. London: Hart Publishing, p.13.

On 18 and 19 December 2005, the transitional government successfully organized a constitutional referendum for the adoption of a new Constitution. This was followed by elections for the presidency, national assembly, and provincial legislatures in 2006. On 18 February 2006, Joseph Kabila promulgated the new Constitution, whose Article 10 reaffirmed origin and descent as the key principles of Congolese nationality. In December that year, after winning the second round of the presidential elections, Joseph Kabila was inaugurated President. He established his government on 7 February 2007. In spite of the country's reunification and the holding of democratic elections, intense rebel activities continued, mostly in eastern DRC, until 2013, when the Congolese army defeated foreign-backed rebels. The Congolese army is still pursuing the remaining armed groups in the eastern provinces. These developments have improved the security situation in eastern Congo, although pockets of insecurity and violence persist, which have been worsened by a severe Ebola outbreak since 1 August 2018.

2.4. Legacies of history on nationality regulation in Congo

While sometimes considered a source of national cohesion, nationality can generate tensions and conflicts where legal and policy frameworks are not well organized and defined. In the DRC, this issue transcends belonging to a community or family, as nationality constitutes a source fundamental rights and freedoms. The enjoyment of economic, social, and political rights is also linked to equal citizenship. Political leaders may alter the rules regarding nationality acquisition in order to deny access to strategic government positions for certain groups or individuals.

In the colonial era, access to Congolese nationality was regulated in accordance with the interests of the colonial powers. The first Colonial Decree of 27 December 1897 linked Congolese nationality to *ius sanguinis* and *ius soli*. During Belgian rule, *ius soli* prevailed due to colonial interests (see above). In the post-colonial period, descent and origin took precedence: a Congolese citizen has to be born to Congolese parents in the country's territory after independence. *Ius soli* has been used for foundlings and children born in the DRC whose parents are unknown.

The issue of nationality in the DRC has also created controversy among communities and groups in the Great Lakes Region, especially between Rwanda, Uganda, and Burundi. A large number of refugees and migrant populations from these countries have crossed the DRC's borders, some before and some after independence (see above).

2.5 Overview of the Congolese legal system: A context for understanding nationality

The DRC is a civil law country. The main provisions of its private law can be traced back to the 1804 Napoleonic Civil Code. The general characteristics of the Congolese legal system are similar to those of the Belgian legal system because the DRC received its law from the Belgian colonial authorities.¹⁶ Congolese law draws its substance from at least seven formal sources. These include the Constitution, international treaties, legislation, administrative regulations,

¹⁶ This summary is based on: Dunia Zongwe, Francois Butedi and Clement Phebe, "The Legal System and Research of the Democratic Republic of Congo (DRC): An Overview" Globalex, Hauser Global Law School Program, 2007, updated 2018, available at https://nyulawglobal.org/globalex/Democratic_Republic_Congo.html.

custom, case law, and doctrinal writings. The 2006 Constitution sits at the apex of the legal system. It is the basic organic law of the Congo, with three key components: it establishes the institutions and the apparatus of government, defines the content and limits of government powers, and protects fundamental human rights and freedoms. The content of the 2006 Constitution was informed by Congolese constitutional law and history, comparative law and international law. French and Belgian laws are the primary substantive sources of the Congolese Constitution, whose drafting also drew on constitutional experiences in Benin, Mauritius, Senegal, South Africa and Togo.

International treaties and agreements are the second source of law. By virtue of article 215 of the Constitution, treaties and international agreements ratified by the DRC prevail over Congolese legislation upon publication in the government gazette (*Journal Officiel*). Article 215 confirms the status of the Congolese legal system as monist. Articles 214 and 216 limit the operation of article 215 of the Constitution by subjecting the application of international law in the DRC to the Constitution and requiring implementing legislation for specified types of international treaties. The application of international law is rare; nonetheless, military courts have relied on article 215 to apply international law in a handful of cases.

Legislation is the third source of law. The Constitution distinguishes between organic laws (*lois organiques*) and ordinary laws (*lois ordinaires*). Unlike ordinary laws, organic laws are a special kind of legislation that organizes key areas of national life and requires absolute majorities to be passed and amended. Moreover, the Constitutional Court must declare that the organic bill is consistent with the Constitution before the organic bill can be signed into law by the President of the Republic.

The fourth source of law is administrative regulations. The Constitution confers on the President and the Prime Minister the power to issue administrative regulations by means of ordinances. Ministers and other administrative officials also have the power to issue ministerial and other regulations.

Customary law or tribal law also forms part of the legal system of the DRC, where 54.3% of the population lives in rural areas.¹⁷ Often viewed as the oldest source of law, custom (*la coutume*) consists of usages that have acquired the character of law after they have been widely observed over a long period of time by individuals who subjectively see them as binding. Local customary laws regulate both personal status laws (like marriage and divorce laws) and property rights, particularly the inheritance and land tenure systems, in the various traditional communities of the country. Even though the Constitution treats state law as superior to customary law, the latter settles 75% of disputes in the Congo. The term ‘customary law’ does not refer to a body of rules merely stemming from usages and practices that have acquired the character of law over time. Rather, it refers to a general normative system enacted by legitimate law-making organs, including patriarchs, family councils, clan councils, and traditional or tribal chiefs. This normative system is ‘customary’ not because it results from traditional customs, but because it finds expression in or through them. In other words, customary laws derive their authority from a legitimate law-making organ and exist independently of the individuals whose behaviour they regulate. Unlike state laws, this characteristic of customary laws implies that ethnographic studies, as opposed to the usual doctrinal legal research methodologies, are necessary to ascertain the content of a given customary rule. Another distinctive characteristic of customary laws is that they do not have general application but instead only apply to the traditional communities from which they originate.

¹⁷ World Bank Data. Rural population (% of total population) - Congo, Dem. Rep. <https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?locations=CD>.

Unlike the other sources discussed above, case law or judicial precedents (*la jurisprudence*) do not constitute a binding source of law, even if they carry persuasive authority. The same is true for doctrinal writings (*la doctrine*).

3. Nationality law and policy since independence

3.1. The Luluabourg Constitution and Decree-Law of 18 September 1965

Congo gained independence in 1960, but in the political instability that followed, did not enact a constitution until four years later. The ‘Luluabourg Constitution’ of 1964, the first constitution of independent Congo, declared to be ‘all persons one of whose ancestors was or had been a member of a tribe or part of a tribe established in the Congo before 18 October 1908’ to be Congolese as of 30 June 1960. The constitution prohibited dual nationality and provided for other rules on nationality to be determined by law.¹⁸

The following year a Decree-Law was adopted setting out the detailed framework for acquisition and loss of nationality:

- Acquisition based on descent (filiation): the law provided for nationality to be transmitted from a Congolese father to a child born in wedlock – including those recognised as father of a child, whether voluntarily or by court order – and from a Congolese mother if born out of wedlock (articles 2 and 3). The law thus discriminated on the basis of the sex of the parent and birth in or out of wedlock.
- Presumption of law: a new-born child found in Congo was presumed to be Congolese unless descent was established to a foreign parent before the child reached the age of majority (article 4).
- Naturalisation: naturalisation would be granted by a legislative act on the basis of 15 years’ residence in Congo and other conditions, including no criminal record and good physical and mental health (articles 6 to 8). These provisions made naturalisation extremely challenging given the complexity of the requirements.
- Option: The right to opt for Congolese nationality was given to several categories of person, including those born in Congo, a person born abroad of a Congolese mother, and an adopted child (Article 9).
- Marriage: A woman marrying a Congolese man could acquire nationality by declaration (article 11).
- Automatic loss: A person who acquired or retained a foreign nationality automatically lost Congolese nationality (articles 14 to 18).
- Deprivation by decision of a public authority: A person who had acquired nationality by naturalisation or option could be deprived of their nationality by presidential decree if convicted of crimes against the state or internal security, if sentenced to a term of imprisonment for five years or more, or if carrying out acts incompatible with the status of Congolese national or prejudicial to the interests of the state (article 19).¹⁹

¹⁸ Constitution de la République Démocratique du Congo du 1er août 1964, articles 6 and 7.

¹⁹ Décret-Loi du 18 septembre 1965 portant Loi organique relative à la nationalité congolaise.

3.2. Ordinance-Law No. 71-020 of 26 March 1971 and Law No. 72-002 of 5 January 1972

On 26 March 1971, new legislation, Ordinance-Law No. 71-020, was enacted to regulate the acquisition of Congolese nationality by persons from Ruanda-Urundi (Rwanda and Burundi were jointly governed by the Belgians) who had been in the DRC since the date of independence, i.e. 30 June 1960.²⁰ The law's single provision established such persons were considered to have acquired nationality on that date.

A year later, Law No. 72-002 was enacted to repeal and replace the Decree-Law, also providing that the 1971 Ordinance-Law was of no effect.²¹ Article 15 of the 1972 Law established a new rule regarding the acquisition of nationality by persons from Ruanda-Urundi, stipulating that only those who were present in the province of Kivu before 1 January 1950 and who had continued to reside in the Republic of Zaire (as the DRC was then known) until the entry into force of the 1972 Law would be considered to have acquired Zairian nationality on 30 June 1960. More generally, the new legislation regulated the loss and acquisition of nationality as follows:

- Nationality based on ethnic origin: Article 1 of the 1972 Law reiterated the ethnic basis of nationality found in the 1964 Constitution, providing that all persons whose ancestors were members of one of the tribes established within the territorial borders of the Republic of Zaire as of 15 November 1908 (and as modified by subsequent conventions) were Zairians from 30 June 1960.
- Nationality by descent: Articles 5 and 6 repeated the terms of the 1965 Decree-Law. A child was attributed nationality from their father if born in wedlock (or if recognized as the child of the father) or from the mother if born out of wedlock.
- Presumption of law: Article 7 provided for nationality by presumption of law for a new-born child found in the territory of Zaire. This presumption would be overridden if the child was established to have foreign parents before reaching the age of majority.
- Naturalisation: Articles 8 to 11 provided for naturalisation, under the same conditions as the 1965 Decree-Law but with the additional requirement that a person could never have carried out activities for the benefit of a foreign state that were incompatible with the status of a national or against the interests of Zaire (article 9(6)).
- Option: In similar terms to the 1965 Decree-Law, a right to opt for Zairian nationality was provided under certain conditions for a child born in Zaire, a child born abroad to a Zairian parent (not only the mother), or a child adopted by a Zairian (article 12).
- Dual nationality: Article 2 stated that a Zairian can only have one nationality.
- Loss: Any Zairian national who acquired a foreign nationality would automatically lose his or her nationality. The same applied to an unmarried minor child whose parents were found to be foreigners (articles 18 to 20).
- Deprivation: A person who had acquired nationality by naturalisation or option could be deprived of their nationality by presidential order if convicted of a crime against the

²⁰ Ordonnance-loi n° 71-020 du 26 mars 1971 relative à l'acquisition de la nationalité congolaise par les personnes originaires du Rwanda–Urundi établies au Congo à la date du 30 juin 1960.

²¹ Loi n° 72-002 du 5 janvier 1972 relative à la nationalité zaïroise, articles 17 and 48.

internal or external state security or if carrying out acts for the benefit of a foreign state incompatible with the status of national or against the interests of Zaire (article 22).

3.3. Law No. 81-002 of 29 June 1981

Law No. 081-002 of 29 June 1981 repealed and replaced the law of 1972 With the stated purpose of responding to the demand of President Mobutu to know ‘who in Zaire is Zairian and who is not’.²² As its explanatory memorandum reveals, the 1981 Law ‘further specifies the principles which governed the previous law and brings innovations of great importance’, in particular:

- the notion that Zairian nationality is singular and exclusive;
- recognition of the right of a mother to transmit Zairian nationality by descent;
- the establishment of two forms of naturalisation – lesser (*petite*) and greater (*grande*) – and the abandonment of the legislative procedure in favour of an administrative procedure;
- the loss of nationality only by express option for Zairian women who married a foreigner;
- the strictly individual nature of the application for Zairian nationality, except in the case of the addition of territories provided for in article 109, paragraph 3 of the Constitution.²³

Article 4 of the 1981 Law also shifted the reference date for acquiring nationality ‘by belonging’ (*par appartenance*), i.e. on the basis of having ancestors who belonged to tribes which had historically been present on the territory of the Republic of Zaire from 15 November 1908 to 1 August 1885. Other aspects of nationality acquisition and loss were regulated as follows:

- Nationality by descent: Article 5 provided that a child would acquire nationality at birth if their father or mother was Zairian, without discrimination based on sex or birth within a marriage. However, under article 6 descent had no legal effect unless established under the terms of relevant legislation.
- Presumption of the law: as in the previous legislation, a new-born child found in Zaire was presumed to be Zairian, unless proved otherwise before attaining the age of majority (article 7).
- Naturalisation:
 - o Both forms of naturalisation required renunciation of any other nationality (article 11).
 - o Lesser (*petite*) naturalisation could be granted by the president to any person who could speak one of the Zairian languages, had been resident for at least 15

²² Loi n° 81-002 du 29 juin 1981 sur la nationalité zaïroise, exposé des motifs: ‘La nationalité zaïroise était réglementée jusqu’à ce jour par la loi n° 72-002 du 5 janvier 1972. Celle-ci est révisée sur la base des grandes options politiques arrêtées par le Comité Central du Mouvement Populaire de la Révolution, à la suite de l’épineuse question posée dans le discours du Président-Fondateur du Mouvement Populaire de la Révolution. Président de la République, à l’ouverture de la session de cet organe le 26 mars 1981, de savoir « qui au Zaïre est Zaïrois et qui ne l’est pas ».’

²³ Constitution of Zaire 1974, as amended. Article 109, paragraph 3 provided that exchanges and additions of territory were only valid if approved by referendum.

years (with Zaire as the centre of his or her interests for at least the previous 10 years), and had sufficient means, in addition to the previous conditions for naturalisation (article 12). A person naturalised under this article could not hold electoral or public office or serve at a senior level in the national gendarmerie (article 13).

- Greater (*grande*) naturalisation could be granted to a person who had already been granted lesser naturalisation and in addition had rendered important services to the state and whose naturalisation was supported by the Central Committee of the ruling party (article 15). The person would then be eligible to hold high office, except for the position of head of state (article 16).
- Option: Nationality could be acquired by option by a child born abroad to a Zairian parent or by an adopted child, subject to other conditions. There was no longer any provision for a child born in Zaire (article 17). A person acquiring nationality by option was subject to the same restrictions concerning high office as lesser naturalised persons (article 22).
- Marriage: A woman married to a Zairian man could acquire nationality by declaration, provided she renounced any other nationality (article 19).
- Loss: A person who voluntarily acquired another nationality or who was legally recognised by a foreign father automatically lost their Zairian nationality (articles 27 and 28). However, a woman who married a foreigner would no longer lose her nationality unless she expressly renounced it (article 30).
- Deprivation: A person who had acquired nationality by naturalisation or option could be deprived of nationality on the same grounds as before, i.e conviction of a crime against the internal or external security of the state or acts incompatible with the status of a national or against the interests of Zaire (article 31). In addition, a new article provided that nationality acquisition by naturalisation or option could be annulled if acquired by fraud or false representation (article 32).

3.4. Law No. 04/024 of 12 November 2004

The most recent nationality legislation is Law No. 04/024 adopted and promulgated on 12 November 2004. This law retained the core requirement of membership of an ethnic group historically present on the national territory, but moved the reference date from 1885 to 1960. The law added new provisions under which a child born in Congo whose parents were stateless or who could not transmit their nationality to the child would also be presumed to be Congolese. A person could also apply for recognition of nationality based on birth and residence in Congo up to the age of majority. Changes were also made such that marriage no longer has any automatic effect on nationality for either spouse and acquisition based on marriage is subject to similar conditions as for naturalisation. Article 1 of the 2004 Law restates the prohibition of dual nationality that has existed since independence: '*La nationalité congolaise est une et exclusive. Elle ne peut être détenue concurremment avec une autre nationalité*' ('Congolese nationality is singular and exclusive. It cannot be held concurrently with another nationality').

4. The current citizenship regime

The current citizenship regime is based on article 10 of the 2006 Constitution, according to which Congolese nationality is singular and exclusive. It cannot be held concurrently with another nationality and is obtained either by origin or by ‘individual acquisition’ (*acquisition individuelle*). The Constitution provides that a person is Congolese by origin if he or she belongs to ‘one of the ethnic groups whose members and territory constituted what became the Democratic Republic of Congo at independence’.²⁴ The Constitution provides that the conditions and requirements for recognition, acquisition, loss, and recovery of Congolese nationality shall be regulated by an organic law. The nationality legislation in force remains Law No. 04/024 of 12 November 2004. This is considered part of the family code, which was last amended in 2016, but without changing the provisions relating to nationality.²⁵

4.1 Attribution of Congolese nationality at birth

Children are recognized as having Congolese nationality by origin on the basis of two kinds of attachment to the Democratic Republic of Congo, namely Congolese parentage (*ius sanguinis*), belonging to the ethnic groups and nationalities whose members and territory constituted what became the Congo (now the Democratic Republic of the Congo) at independence (*ius sanguinis* and *ius soli*), and/or birth in the Democratic Republic of Congo (*ius soli*). The following therefore have Congolese nationality by origin under the 2004 Law:

- Any individual belonging to the ethnic groups and nationalities whose members and territory constituted what became the Congo (currently the Democratic Republic of the Congo) at independence (article 6).²⁶
- Any child at least one of whose parents – either the father or the mother – is Congolese (article 7). As per the previous law, filiation (legal recognition of parentage) must be established in accordance with the relevant legislation, with the additional requirement that this must be during before the child reaches the age of majority (article 8).
- Any new-born child found on the territory of the Democratic Republic of Congo whose parents are unknown. However, they will be deemed to have never been Congolese if, before reaching the age of majority, foreign parentage is established and if, in accordance with the national law of the foreign state, they hold the nationality of that state (article 8).
- Any child born in the Democratic Republic of Congo to stateless parents or foreign parents whose nationality cannot be transmitted to the child under the legislation of the State of origin, which only recognises *ius soli* or does not recognise nationality acquisition by descent (article 9).

²⁴ Constitution 2006, article 10: ‘Est Congolais d’origine, toute personne appartenant aux groupes ethniques dont les personnes et le territoire constituaient ce qui est de venu le Congo (présentement la République Démocratique du Congo) à l’indépendance.’

²⁵ Loi n° 87-010 du 1er août 1987 portant Code de la famille, as amended most recently by Loi n° 16/008 du 15 juillet 2016. The amended family code, incorporating the nationality code, is available at: <https://www.leganet.cd/Legislation/Code%20de%20la%20famille/CDF.2017.pdf>. The article numbers remain the same as the 2004 law in relation to nationality.

²⁶ ‘Est Congolais d’origine, toute personne appartenant aux groupes ethniques et nationalités dont les personnes et le territoire constituaient ce qui est devenu le Congo (présentement la République Démocratique du Congo) à l’indépendance.’

4.2 Acquisition of Congolese nationality after birth

The acquisition of Congolese nationality is distinguished from the recognition of Congolese nationality by origin by the fact that in the former case the person concerned is considered a foreigner until the moment of acquiring Congolese nationality. The 2004 Law provides for five modes of acquiring Congolese nationality after birth (articles 10 to 23):

- Naturalisation (the distinction between lesser (*petite*) and greater (*grande*) naturalisation was removed);
- Option;
- Adoption;
- Marriage;
- Birth and residence in the Democratic Republic of Congo.

The first three modes were found in previous legislation; the latter two were introduced by the 2004 Law. Each of them is subject to specific conditions. In order to acquire Congolese nationality by any of the five modes, an individual must:

- Be of legal age;
- Expressly submit an individual declaration;
- Submit a written declaration committing to renouncing any other nationality;
- Know how to speak one of the Congolese languages;
- Be of good moral standing;
- Have been a permanent resident in the DRC for 7 years at the date of application;
- Never have engaged in activities for the benefit of a foreign state or in acts incompatible with the status of Congolese nationals or prejudicial to the interests of the DRC;
- Never have been convicted by a final instance court of any of the following offenses:
 - o High treason
 - o War crimes, crimes of genocide, crimes against humanity, crimes of aggression;
 - o Crime of terrorism, assassination, murder, rape, rape of minors, paedophilia;
 - o Economic crimes, money laundering, corruption, counterfeiting (article 22).

In addition to these conditions, the law requires that two copies of the declaration be submitted individually, that it includes the applicant's domicile in the DRC, and that it includes their legalized signature. Moreover, the declaration must be accompanied by documents determined by order of the Minister of Justice and Keeper of the Seals and deliberated in the Council of Ministers, and be addressed to the Minister and Justice and Keeper of the Seals by letter.²⁷ The 2004 Law specifies the following additional requirements for each of the modes of nationality acquisition:

- Naturalisation: Article 11 provides that nationality may be granted by naturalisation to any foreigner who has rendered important services to the state or whose naturalisation would be clearly in the interests of the state. An individual naturalisation decree is signed by the president on the basis of a supporting opinion from the National Assembly (*Assemblée Nationale*) and a debate in the Council of Ministers (article 12).
- Option: Nationality may be acquired by option by a child born in Congo or abroad to a Congolese parent, a child who has been legally adopted, or a child whose adoptive parents acquire or recover Congolese nationality (article 13). The minor child of a parent who has opted for nationality simultaneously acquires nationality by operation of law (article 14). A person opting for nationality must be resident in Congo for at least

²⁷ Ibid p. 25.

5 years, renounce any other nationality, and speak a Congolese language (article 15). In addition to the provision on option, the law includes a specific provision on the right to acquire nationality based on adoption (article 17).

- Marriage: Marriage no longer has any automatic effect regarding the acquisition of Congolese nationality (article 18). Instead, either spouse may apply to acquire nationality after seven years of marriage. As for naturalisation, the favourable opinion of the National Assembly is required and the relevant decree must also be debated in the Council of Ministers (article 19).
- Birth and residence: Under a new provision that partially restores a right provided in the 1965 and 1972 nationality codes, a child born in Congo to foreign parents may acquire nationality at the age of majority if they are permanently resident in Congo (article 21).

4.3 Loss and deprivation of nationality

The 2004 Law also establishes the conditions for loss of Congolese nationality, the main one being the acquisition of a foreign nationality by any Congolese national (article 26). In addition, the government may deprive a person of their nationality if they acquired Congolese nationality and kept their nationality of origin, if they acquired Congolese nationality by fraud, or if they are guilty of corruption in relation to persons involved in the procedure for acquiring Congolese nationality (articles 27 and 28). The decree pronouncing the forfeiture of nationality is signed after deliberation in the Council of Ministers and with the assent of the National Assembly. The person concerned is notified by the Minister of Justice and Keeper of the Seals and can appeal to the President of the Republic and, if necessary, before the Supreme Court of Justice (article 29).

4.4 Recovery of nationality

Congolese nationality can be recovered by persons who establish that they previously held it, with the specific conditions varying depending on whether the person is Congolese by origin or by acquisition (articles 30 to 33).

4.5 Procedures and proof nationality

Chapters 5, 6, 7, and 8 of the 2004 Law establish the procedures for proof of nationality of origin or to acquire nationality by naturalisation, option, or adoption.

5. Current political debates and reforms

The key ongoing dilemma for nationality law in the DRC is the question of dual nationality. As noted above, any Congolese national who acquires a second nationality automatically loses their Congolese nationality. The constituent assembly that adopted the 2006 Constitution

emphasised the singular nature of Congolese nationality and thus the prohibition of dual nationality. The latter has been the rule since independence. This position has been reaffirmed in all the nationality legislation to date but is the cause of controversy within the Congolese political leadership. The geographic and demographic situation of the DRC, located between nine neighbouring countries, has played an important role in defining this aspect of the citizenship regime, given the huge number of tribes and communities split across the boundaries. For instance, the Banyarwanda community is present not only in Congo but also in neighboring states like Rwanda, Burundi, and Uganda; similarly, the Bakongo and Babemba are also found in Congo Brazzaville, Angola, Zambia, and Tanzania. Congo's nationality legislation reflects the socio-political context in which the country has been situated since independence.

In December 2019, the current president of the DRC indicated in a parliamentary speech that the issue of dual nationality needed to be addressed and that reforms were necessary to avoid the current confusion.²⁸ Recent analysis indicates that a large number of political leaders hold dual nationality, including members of the national government and parliament, as well as several provincial governors. This gave rise to very contentious debates over voter registrations for the first elections held in 2006. The National Assembly came up with a political solution, setting up a 'moratorium' on dual nationality, thereby enabling a significant number of political leaders who held a second nationality to run for office in the presidential, national, and provincial elections.²⁹ The issue of dual nationality was subsequently listed as a priority for legal reform by the 2006 legislature.

Nonetheless, 15 years later, the question of dual nationality is still pending. This is a clear indication of the political sensitivities surrounding the issue. Many members of parliament and other stakeholders support dual nationality only for Congolese nationals by origin who acquire another nationality elsewhere.³⁰ Most of those who have adopted a second nationality have done so out of necessity. Local human rights organizations also favour the recovery of Congolese nationality by those who lost it after acquiring nationality in countries such as France or Belgium.

6. Conclusion

This report has provided the historical and legal background to the DRC nationality legislation and a brief summary of the current legislative provisions in force. It has highlighted the different approaches to nationality during and after colonial rule, as well as the bases for the contestation of membership in the context of multiple and protracted conflicts. The Citizenship Rights Initiative in Africa notes that there still exist major challenges for both individuals and groups to claim nationality as the basis for accessing rights and resources. This has caused intergroup violence across several countries on the continent. In particular, the nationality status of the Banyarwanda population of Eastern Congo has been the main source of the

²⁸ 'Félix Tshisekedi appelle les congolais à la réflexion pour résoudre la problématique de la double nationalité', Kinshasa Times, 13 December 2019: <https://www.kinshasatimes.cd/rdc-felix-tshisekedi-appelle-les-congolais-a-la-reflexion-pour-resoudre-la-problematique-de-la-double-nationalite/>.

²⁹ 'Assemblée nationale : double nationalité, une période de grâce pour régulariser', Radio Okapi, 13 February 2007 <http://www.radiookapi.net/sans-categorie/2007/02/13/assemblee-nationale-double-nationalite-une-periode-de-grace-pour-regulariser>.

³⁰ 'Félix Tshisekedi encourage les députés à ouvrir le débat sur la double nationalité', Atualités.CD, 26 April 2021: <https://actualite.cd/2021/04/26/rdc-felix-tshisekedi-encourage-les-deputes-ouvrir-le-debat-sur-la-double-nationalite>.

conflicts in North and South Kivu.³¹ In that much troubled area, the nationality status of several communities has long been contested. The issue is further complicated by the asymmetrical approaches of the neighbouring countries to dual nationality, a matter still subject to political debates in the DRC.

Nationality legislation in the DRC has major weaknesses. However, the country has continued to apply its provisions in affirmation of its recently (re)gained sovereignty and revival of nationalism, guided by the philosophy of African renaissance and self-determination. A number of important reforms need to be made to ensure the economic and socio-cultural realities are reflected in the regulation of nationality and citizenship. Reforms informed by best practices from other countries would improve the current legislation and help to achieve a more stable and integrated society.

³¹ 'Who Belongs Where? Conflict, Displacement, Land and Identity in North Kivu, Democratic Republic of Congo', Citizenship Rights Initiative in Africa: <http://citizenshiprightsafrika.org/who-belongs-where-conflict-displacement-land-and-identity-in-north-kivu-democratic-republic-of-congo/>.

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