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**COI QUERY**

Country of Origin/Topic	Democratic Republic of Congo (DRC)
Question(s)	1. Information on the process/practice of becoming a traditional chief in the Kinshasa province and how this title of 'chief' is passed along or inherited (2015-2019) 2. Information on the potential consequences faced by a person who refused to become a traditional chief (2015-2019)
Date of completion	19 December 2019
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Contributing EU+ COI units (if applicable)	---

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The information provided in this response has been researched, evaluated and processed with utmost care within a limited time frame. All sources used are referenced. A quality review has been performed in line with the above mentioned methodology. This document does not claim to be exhaustive neither conclusive as to the merit of any particular claim to international protection. If a certain event, person or organisation is not mentioned in the report, this does not mean that the event has not taken place or that the person or organisation does not exist. Terminology used should not be regarded as indicative of a particular legal position.

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The target audience is caseworkers, COI researchers, policy makers, and decision making authorities. The answer was finalised on 19 December 2019. Any event taking place after this date is not included in this answer.



COI QUERY RESPONSE

1. Information on the process/practice of becoming a traditional chief in the Kinshasa province and how this title of 'chief' is passed along or inherited (2015-2019)

In this query, the terms 'traditional' and 'customary' chief are used interchangeably, in line with term used by the source.

No information specifically about the process of becoming a traditional or customary chief in the Kinshasa province could be found in the consulted and used sources.

However, more general information about the situation of customary or traditional chiefs in the Democratic Republic of Congo (DRC) presented below could be of relevance.

The position of customary chiefs was recognised by Article 207 of the constitution of the DRC:

'The customary authority is recognized.

It is transferred in conformity with local custom, provided that the latter is not contrary to the Constitution, the law, public order and morality.

Each customary Chief who desires to exercise an elective public function must submit himself to an election, unless the provisions of Article 198, paragraph 3 of this Constitution are applicable.

The customary authority has the duty to promote national unity and cohesion.

A law establishes the status of the customary Chiefs.'¹

The abovementioned law establishing the status of customary chiefs was issued by then-president Joseph Kabila on 25 August 2015.²

According to Section 10 of the law, 'a customary chief is any person appointed by virtue of local customs, recognized by public authorities and entrusted to lead a customary entity'.³ The law further stipulates that [informal translation] 'no one can exercise the authority of a customary chief unless he holds a Congolese nationality, is at least 18 years old, has the right to inheritance and is of good moral character'.⁴

An article published by the Global Legal Monitor of the US Library of Congress (LOC) summarised the law as follows:

'The new statute defines the customary chief as a chief, group leader, or village chief designated by local customs, whose powers are also determined by customs and recognized

¹ DRC, The Constitution of the Democratic Republic of Congo, 2005, [url](#), Article 207

² LOC, Congo, The Democratic Republic of the: President Adopts Laws on Elections, Traditional Leaders, 8 September 2015, [url](#)

³ MDPI, Can traditional authority improve the governance of forestland and sustainability? Case study from the Congo (DRC), 26 April 2019, [url](#), p. 2

⁴ DRC, Loi fixant le statut des chefs coutumiers [Law establishing the status of customary chiefs], 25 August 2015, [url](#), Article 5

by public authorities. The law establishes that traditional leaders enjoy consideration and respect, “decent” pay, immunity from arrest except if caught in the act of a crime, and other considerations. In turn, the traditional leader is required to be apolitical, not to take part in anti-government activities, and to be involved in resolving conflicts through conciliation, mediation, and arbitration.⁵

According to the law, [informal translation] ‘the customary authority is exercised within the following territorial entities: *la chefferie* (chiefdom), *le groupement* (community), *le village* (the village)’.⁶ An article by France 24 indicates that most of the chiefdoms are located in the north-east of the country. In 2012, reportedly 259 chiefdoms existed.⁷

Sources indicate that since the 2015 law, traditional chiefs must be recognised also by the central government.⁸

On the succession of a customary chief, the law establishing the status of customary chiefs stipulates in Section 5:

- In the case of a vacancy of customary chief (whether by death or long-term absence of the chief, suspension of his functions or exercise of another incompatible function), a higher administrative functionary (the provincial governor or his delegate- sector chief, local chief, or mayor – goes to the location and draws up an official report on the vacancy (article 13).
- If the successor is known, the aforementioned higher authority authorises the installation (article 15, informal translation).
- If the successor is not known, the higher authority installs an interim and opens the road to succession (article 16). To fill the vacancy, the authority draws up the following minutes:
 1. the authenticity of the family tree;
 2. the hearing of members of the lineage of the claimant entitled to inheritance;
 3. the testimony of group leaders, village chiefs or neighboring notables;
 4. proclamation of the chief designated in accordance with local custom.

The authority draws up a report to which all the minutes are attached and transmits it to the competent authority for installation, investiture and recognition (Article 17, informal translation).⁹

A report by the Congo Research Group indicates that the question of succession to the position of a traditional chief is not without a controversy, with more than 500 such conflicts taking place in the period of 2014-2016 recorded by the Congolese government. In 2017, almost 70 conflicts over the traditional authority were recorded in the Kasai province only.¹⁰ No information on the number of conflicts in the Kinshasa province could be found in the consulted and used sources.

⁵ LOC, Global Legal Monitor, Congo, The Democratic Republic of the: President Adopts Laws on Elections, Traditional Leaders, 8 September 2015, [url](#), accessed 18 December 2019

⁶ DRC, Loi fixant le statut des chefs coutumiers [informal translation: Law establishing the status of customary chiefs], August 2015, 25 August 2015, [url](#), Article 3

⁷ France 24, Assassinats en série des chefs coutumiers au nord-est de la RDC [informal translation: Serial killings of customary chiefs in North-Est of DRC], 17 January 2014, [url](#)

⁸ ACLED, Democratic republic of Congo - May 2017, 20 June 2017, update, [url](#); Congo Research Group, Setting Fire to Your Own House, July 2018, [url](#), p. 22; TimesLIVE, Top militia chief surrenders in DRC's Kasai region, 17 September 2018, [url](#)

⁹ DRC, Loi fixant le statut des chefs coutumiers [informal translation: Law establishing the status of customary chiefs], August 2015, 25 August 2015, [url](#), Articles 11-17

¹⁰ Congo Research Group, Setting Fire to Your Own House, July 2018, [url](#), p. 22

Immigration and Refugee Board of Canada (IRB) observed that customary chiefs are known as *Mwami*, which literally means ‘king’. The customary chiefs are considered as ‘guardians of morality’ and act as ‘protector[s] of the cultural identity’.¹¹ *Mwami*, as a head of a chiefdom (*chefferie*), fulfils both an administrative and a customary role in it.¹² Another source observed that [informal translation] ‘[b]ased on the concentration of powers that the customary chief has, he also remains a religious leader and a mediator’.¹³ It should be noted that customary law is one of the bases of law in the DRC, regulating personal status and property rights. It is estimated that customary laws resolve 75 % of disputes in the country.¹⁴

Sources quoted in the IRB response indicate that the position of a customary chief is hereditary and passed from a father to a son.¹⁵

However, the aforementioned source also quoted Dr. Mambi Tunga-Bau, a professor of political sciences at the University of Kinshasa, who explained that:

‘In practice, the eldest becomes the person who has the greatest virtues for assuming power. Therefore, it is the noble candidate who socially justifies more assets who assumes power’. The election is organised between the right holders and excludes ‘widespread competition in the population, as well as in terms of the eligibility of candidates and the elective population’.¹⁶

Dr. Mambi Tunga-Bau adds that ‘[i]t goes without saying that it is not possible for individuals outside of the chieftain family to assume power’.¹⁷

Another source wrote about the succession within the Lega ethnic group in Shabunda territory [informal translation]:

‘While the customary chief is still alive, the successor, who represents required qualities, is introduced by the family members of the chief to an audience comprised of territorial authority representatives, the groupements (traditional communities) and the villages.

¹¹ Canada, IRB, DRC: Customary chiefs, including their authority, regions where they are present and their legal recognition; how to become a customary chief, including the need for human sacrifice; consequences of refusing to become a customary chief; state protection (COD104878.FE), 20 May 2014, [url](#)

¹² PSRP, A Microcosm of Militarization: Conflict, governance and armed mobilization in Uvira, South Kivu, RVI, 2016, [url](#), p. 13

¹³ IOSR, Conflits de pouvoir coutumier dans le Bulega en RD Congo : Une réalité caractéristique d’un Etat en panne et un grand défi au développement local [informal translation: Customary power related conflicts in Bulega in DRC : a typical reality of a failed state and a big challenge in local development], August 2018, [url](#), p. 15

¹⁴ GlobalLex, UPDATE: The Legal System of the Democratic Republic of the Congo (DRC): Overview and Research, 29 January 2015, [url](#)

¹⁵ Canada, IRB, DRC: Customary chiefs, including their authority, regions where they are present and their legal recognition; how to become a customary chief, including the need for human sacrifice; consequences of refusing to become a customary chief; state protection (COD104878.FE), 20 May 2014, [url](#)

¹⁶ Canada, IRB, DRC: Customary chiefs, including their authority, regions where they are present and their legal recognition; how to become a customary chief, including the need for human sacrifice; consequences of refusing to become a customary chief; state protection (COD104878.FE), 20 May 2014, [url](#)

¹⁷ Canada, IRB, DRC: Customary chiefs, including their authority, regions where they are present and their legal recognition; how to become a customary chief, including the need for human sacrifice; consequences of refusing to become a customary chief; state protection (COD104878.FE), 20 May 2014, [url](#)

Everyone recognises the future successor via a speech. The successor takes over automatically the customary chief at his death'.¹⁸

According to an article by the IOSR Journal Of Humanities And Social Science (IOSR-JHSS), [informal translation] 'the traditional power is hold by the eldest person of the tribe, which is inherited, at the death of the father, by his eldest son, mostly from his first wife, and is enthroned as Mwami (the leader, the eldest of the tribe)'.¹⁹ For example, in Kivu, the Fuliiru people have a custom according to which succession of the position goes from father to his oldest son, which is understood as the first son of his first wife.²⁰

In 2013 in South Kivu, a case was reported when [informal translation] 'the death of a customary chief resulted in a dispute between two sons on the succession and disrupted schools and local market activities'.²¹

In another case, a person called [informal translation] 'Kalega Lwango, who was a customary chief and remained Mwami despite seven years of absence in his community due to old age. When he died on 20 March 2011, his grandson, Lucien Riziki Lwango, could succeed him as a young Mwami'.²²

2. Information on the potential consequences faced by a person who refused to become a traditional chief (2015-2019)

IRB, quoting Dr. Mambi Tunga-Bau, wrote about the topic the following:

'[C]ustomary chiefs' mandates are [translation] "unlimited", and "the chief remains invested for his entire life"; "succession is only possible in the event of death, revocation or abdication of the chief in power"[...]. According to the author, it is [translation] "rare" that chiefs "voluntarily renounce customary power" because "their role procures not only wealth but prestige" (Mambi Tunga-Bau 2010, 26). He adds that [translation] "customary chiefs who have abdicated did so, undoubtedly because of social constraints, to preserve their life after contravening customary rules".²³

¹⁸ DRC, Online Mémoire, Les rites d'investiture d'un chef coutumier comme espace communicationnel chez les Lega du territoire de Shabunda en RDC, université pédagogique nationale de Kinshasa RDC [A customary chief's investiture ceremony as a communication area within the Lega (ethnic group) of Shabunda territory in DRC, national pedagogy university of Kinshasa DRC], 29 November 2019, [url](#)

¹⁹ IOSR, Conflits de pouvoir coutumier dans le Bulega en RD Congo : Une réalité caractéristique d'un Etat en panne et un grand défi au développement local [Customary power related conflicts in Bulega in DRC : a typical reality of a failed state and a big challenge in local development], August 2018, [url](#), p. 15

²⁰ PSRP, A Microcosm of Militarization: Conflict, governance and armed mobilization in Uvira, South Kivu, RVI, 2016, [url](#), p. 35

²¹ Radio Okapi, Sud-Kivu : une querelle de succession retard l'inhumation d'un chef coutumier [a succession dispute delays inhumation of a customary chief], 10 September 2013, [url](#)

²² IOSR, Conflits de pouvoir coutumier dans le Bulega en RD Congo : Une réalité caractéristique d'un Etat en panne et un grand défi au développement local [Customary power related conflicts in Bulega in DRC : a typical reality of a failed state and a big challenge in local development], August 2018, [url](#), p. 15

²³ Canada, IRB, DRC: Customary chiefs, including their authority, regions where they are present and their legal recognition; how to become a customary chief, including the need for human sacrifice; consequences of refusing to become a customary chief; state protection (COD104878.FE), 20 May 2014, [url](#)



Among all sources consulted and due to the time constraints, no further information on the potential consequences of refusing to become a customary chief could be retrieved.



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