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# BIRTH CERTIFICATE: IS IT A HUMAN RIGHT?

## THE CASE OF THE DEMOCRATIC REPUBLIC OF CONGO

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For all the invisible children of this world,  
may your life be exceptionally blatant.

*E mi hanno sempre fatto credere che  
nell'incertezza è meglio prendere  
ma se io prendo chi è che dà?  
Se io prendo chi è che dà?*

*(Negrita - Bambole)*

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## **Abstract**

Il presente lavoro analizza la registrazione alla nascita dei bambini dal punto di vista del Diritto Internazionale e in particolare del Diritto Internazionale dei Diritti Umani, con specifica attenzione al caso della Repubblica Democratica del Congo.

Sebbene il diritto ad essere registrati alla nascita venga stabilito sia dalla Convenzione ONU sui diritti dell'infanzia sia da numerosi strumenti di diritto internazionale, il numero di bambini sotto i cinque anni d'età non registrati alla nascita raggiunge i 230 milioni, secondo dati ONU del 2013. L'impossibilità di ottenere un certificato di nascita implica il mancato riconoscimento del neonato da parte dello Stato; come conseguenza, milioni di persone vengono private della possibilità di godere dei propri diritti fondamentali in quanto invisibili agli occhi dei governi e delle società.

Questa lavoro intende pertanto esplorare le cause che portano alla negazione così frequente di tale diritto fondamentale del bambino, e investigare le modalità secondo cui il diritto nazionale congolese integri il diritto alla registrazione alla nascita e lo armonizzi con il quadro normativo internazionale. In seguito ad una breve contestualizzazione sincronica dello Stato in esame, viene studiato il quadro giuridico pertinente. Inoltre, essendo il certificato di nascita il primo documento necessario ad attribuire la nazionalità ad un bambino, le relazioni che intercorrono tra questo e il rischio di apolidia vengono approfondite a livello sia internazionale sia locale. Si prosegue con lo studio statistico di dati ministeriali e delle Nazioni Unite (dal 2008 al 2014), con l'intento di evidenziare la relazione tra le variazioni del tasso di registrazione delle nascite e due eventi particolari: i cambiamenti legislativi avvenuti nel 2009; e

operazioni di registrazione di massa dell'UNICEF sul territorio congoleso relative al 2013.

In conclusione, il lavoro identifica le principali barriere, governative e non, al summenzionato diritto sia a livello internazionale sia locale. Sulla base di tali identificazioni, vengono infine accertati gli ambiti che maggiormente necessitano di cambiamenti nella Repubblica Democratica del Congo, nonché formulati suggerimenti sulla natura delle modifiche necessarie.

## List of abbreviations

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<b>ACHR</b>	American Convention on Human Rights
<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>AIDES</b>	Actions et Interventions pour le Développement et l'Encadrement Social
<b>Art.</b>	Article
<b>CAAP</b>	Comité d'Appui à l'Autopromotion
<b>CCPR</b>	International Covenant on Civil and Political Rights
<b>CNR</b>	Commission National pour les Réfugiés
<b>CRC</b>	Convention on the Rights of the Child
<b>CTD</b>	Convention Travel Document
<b>DRC</b>	Democratic republic of Congo
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICMW</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
<b>ILO</b>	International Labour Organisation
<b>IMF</b>	International Monetary Fund
<b>IO</b>	International Organisation
<b>IPCC</b>	Intergovernmental Panel on Climate Change
<b>MOUSCO</b>	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
<b>NGO</b>	Non-Governmental Organisation
<b>OAS</b>	Organization of American States
<b>OAU</b>	Organisation of African Unity
<b>OCHA</b>	United Nations Office for the Coordination of Humanitarian Affairs
<b>ODH</b>	Observatoire des Droits Humains

## List of abbreviations

<b>Para.</b>	Paragraph
<b>PU-AM</b>	Première Urgence - Aide Médicale Internationale
<b>ULPGL</b>	Université Libre des Pays des Grandes Lacs
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations Children's Fund
<b>USD</b>	United States Dollar
<b>WTO</b>	World trade Organisation

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*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*

*Article 1 of the Universal Declaration of Human Rights*

## **Introduction**

Children's rights are an emotionally-charged issue, especially when the focus is on newborns. In fact, dealing with newborn children means dealing with little human beings who cannot protect themselves alone, and who are not in the position to stand up and let the world hear their voices. Their fragility and innocence make all of us feel responsible for them and, even when adults fail in being empathic with other adults who are suffering, it is rather impossible to remain emotionally untouched by the sufferance of children. It is painful and challenging to think of all the cases in which they are denied the exercise of their human rights. Let us try to recall the pictures of stunted kids in Tanzania, child brides in India, little Syrian refugees dying ashore in the Mediterranean see: surely, the recalling process has caused emotional shocks and provoked all of us into at least thinking of taking an action to stop children's human rights violations. In fact, adults are used to perceive themselves as in charge of protecting children, may it be because we are all naturally predisposed to parenthood or because we are well aware of the fact that we can potentially and sometimes easily do what they cannot. However, this topic cannot be addressed on the wave of emotions. Tears, shivers, fear, pity, hunger represent rather an obstacle than an asset, if not framed by a strong knowledge of law, culture, geopolitics, and socio-economic background. In fact, it requires a structured and comprehensive approach that must comprise governments as well as the civil society and all the other actors involved. Although the discourse about the child's rights is fruitful and constructive at the international level, somehow there still is a relevant number of States that appear unwilling to move towards the implementation of the set of norms created *ad hoc* to promote and protect children's rights.

The premises of the present research thesis are rooted in the existing gap between national and international approaches to children's right, specifically the right to have a birth certificate in the Democratic Republic of Congo (DRC from now onward). The Convention on the Rights of the Child of 1989 and a number of other international treaties enshrine the right for every child to have a name and a nationality. Nevertheless, the number of non-recorded births of children under the age of five

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worldwide nearly reaches 230 million<sup>1</sup>. The impossibility to obtain a birth certificate implies a failure in the formal recognition of the newborns by the State. Consequently, millions of children are denied the exercise of some of their basic human rights due to the fact that they are not recognised as citizens of any country.

In this concern, the situation in DRC is very complex. While the right to have a birth certificate is well harmonised by the national normative and legal framework, the practise is still weak and flawed. A universal and comprehensive birth registration in DRC appears to be a utopia, at least in the near future. In fact, poor infrastructures, basic level of development, corrupt civil registry offices functioning, and scarce involvement and interest of the Government have been preventing the implementation of such a right. In this context, the role of the UN is crucial: the sixteen years of UN intervention in the country corroborate the idea that DRC is not able to have a peaceful and democratic life counting only on its own strengths. On the one hand, it is true that DRC has to face a number of challenges that requires the UN aids; on the other hand, a progressive UN disengagement could serve as engine to promote a higher quality and degree of governmental involvement in matters that fall under DRC sovereignty.

This dissertation aims at assessing how the right to have a birth certificate is harmonised under International Law as well as under the Congolese national legal and normative framework. In addition, it provides a comprehensive analysis of such a right in relation to risk of statelessness, statistics, and UN approaches. Furthermore, it provides an overview of the barriers to the birth registration right, both in DRC and worldwide, in order to highlights the possible fields of intervention to improve its universal enjoyment.

## **Structure**

This dissertation is of a descriptive nature even though it holds also an innovative characteristic linked to the lack of previous works on this specific topic in the Congolese context. It is divided into five chapters structured as follows.

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<sup>1</sup> [www.unicef.org](http://www.unicef.org)

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The first chapter is an itinerary through the DRC historical background, from pre-colonialism to the arrival of Portuguese merchants first, and Belgian entrepreneurs secondly. After a glimpse into colonialism in DRC, a description of the Congolese independence in 1960 follows and, subsequently, there is a brief narration of the newly-independent State up to nowadays: from Lumumba, to Joseph Kabilà, passing through Mobutu and Kabilà father and son.

The second chapter is focused on the normative and legal framework, both at national and international level, that harmonises the right to birth registration. Thanks to the analysis of the Congolese normative on this concern, it resulted possible to identify the birth registration procedure step by step.

The third chapter analyses into depth the birth registration in DRC, specifically in the North Kivu province, focusing on two main actors involved: UNICEF and ODH, a local NGO. Their efforts and works will be discussed into details, enumerating sensitisation campaigns as well as mass registration campaigns. In addition, both ministerial and UN statistical data will be analysed in light of both the normative amendments of the *Loi n° 007/09* in 2009, and UNICEF registration campaign carried out in July 2013. The quantitative study aims at providing a reliable picture of the situation in DRC.

The fourth chapter deals specifically with statelessness. First, it provides a legal analysis of statelessness and citizenship under International Law, and second it describes the role played by birth registration in the fight against the risk of statelessness. The impact of UNHCR worldwide and in North Kivu is described accordingly.

The fifth and last chapter finally provides a comprehensive analysis of the barriers to birth registration, worldwide and in DRC. Starting from the description of these barriers, a number of suggestions to better tackle the lack of birth registration in DRC is discussed.

## **Methodology**

The dissertation is mainly based on a field research carried out in DRC during the summer 2014. During my permanence in the country, I interviewed several specialists

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who are dealing with birth registration issue on a daily basis. A list of the key informants can be find at the end of this work, in the Bibliography; all the people in the list previously agreed on being mentioned in this work. The interviews served to have a technical picture of the situation from an experts' point of view. The third and fifth chapters, for instance, are rooted on documents kindly provided by the key informants from UNICEF and ODH I met in Goma. They gave me several booklets, draft documents, and precious documents for internal use only that helped me in the writing of the aforementioned chapters. These sources resulted treasurable to better understand both the impact of the international cooperation system as well as the governmental role. Similarly, UNHCR exponents provided me with several highly technical working documents that were useful to write the fourth chapters. In fact, the documents draw a parallel between statelessness and birth certificates, focusing on the role of UNHCR refugees' and displaced persons' camps.

In addition, a number of other interviews with local people served to have a second standpoint that helped me in the process of underlying and understanding the main barriers at the civil society level. The decision to have two different type of key informants derives from the lack of previous literature about this topic and from the willingness to achieve the most comprehensive picture possible.

Concerning the statistical parts of the present work, which surely have been the most challenging, they are mainly rooted on ministerial data that I personally collected at the Ministry of Internal Affairs – Goma Division in July 2014. In addition, UN data have been carefully analysed as well, and aggregated with the ministerial ones. In order to obtain a critical understanding and knowledge of this very high technical and specific topic, I asked for help to UNICEF experts on the field and to other people who work in this domain<sup>2</sup>. Additionally, academic literature has been taken into consideration in order to ensure the objectivity of the research.

Together with interviews and documents collected on the field, a relevant section of this dissertation is based on a desk research. The first chapter, for instance, is the result of a literature review based on History manuals, International Relations books, and also narrative readings about DRC.

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<sup>2</sup> A special thanks to the precious help of my friend Alex Di Giulio

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For what concerns the normative analysis carried out in the second chapter, literature about International Law, International Human Rights Law, and Child's Rights has been carefully reviewed in light of the aim of this work. In addition, in order to understand the normative harmonisation of birth registration in DRC, I interviewed the *Bourgmestre* of Goma and I analysed in depth the Congolese Constitution, as well as the *Code de la Famille* and the *Loi 001/09* on the protection of the child. The normative analysis of the Congolese normative framework required an intense work due to the lack of previous analysis concerning this topic.

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When arriving in DRC, the first things that come into a western mind are questions. Initially, one wonders why and how it is possible in 2015 to have such a degree of poverty, unemployment, and underdevelopment. The second step is trying to find someone to blame, someone so powerful to resist to years and years of UN interventions. Has it been the international community's fault, since it has not been able to *fix* the Congolese situation yet? Has it been the lack of care of the ruling elites on call? Alternatively, is it a problem of the Congolese population, which failed numerous attempts to bring changes and seems too often rather tired and unwilling to fight?

It is very hard to understand why the majority of Congolese population live day by day without having any forthcoming plan to improve their future, and how do they manage to hide their anger and moral principles underneath a motionless waiting of the passing of time. The first glimpse at DRC society generates in the eyes of the foreign observer a wave of confusion. There are so many contradictions that it is almost impossible to have a clear, rational, and comprehensive picture of the situation. History teaches that there have always been every-day rebellions in this country, which were aimed at fighting against unfairness and wars but it seems that even the most resolute people finally resigned themselves to the situation. "*Ça va un petit peu*", someone answers when you ask, and one easily run the risk to react with irritation to this widespread *laissez faire* attitude. However, there is a *fil rouge* that clarifies the situation to western observer and it is represented by the precariousness of Congolese life. The child mortality rate is one of the highest in the world due to endemic diseases:

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161 children on 1000 die before turning five years old and one third of children in this age is harshly underweight. About the thirty percent of the population is illiterate, the fifty percent of children does not go to primary school, and the majority of the rest attends classes only every now and then, when there is money to pay the school fees. Last, but not least, the fifty-four percent of the population does not have access to clean and drinkable water<sup>3</sup>. When crashing onto these numbers, the only thing one can do is to shiver. Numbers and statistical data picture a terrible state of things. How is it possible to let such a disaster going on after sixteen years of UN peacekeeping operations and almost forty years of international loans and investments? People do not have access to clean water and we, from our comfortable western standpoint, dare to demand them to rise up against privatization of all their natural resources, corruption, dictators on call or ineffective democrats, and economic powers who keep them in check? The Congolese population has been proudly resisting and living through so many autocratic regimes and wars; sometimes, however, it is impossible to defeat an enemy that is hundreds of times more powerful than you are, and that comes from both within and outside the national borders. *“How can the machete compete with the machine?”*<sup>4</sup>

The current condition of things is not meant to spread discouragement and resignation: a lot can be done and there is room for massive improvements. If history is a combination of continuity and change, we all should act together and make the difference needed to become true and concrete. The sort of aids provided by the international community so far are already a lot, but surely neither enough nor always adequate. We should revise our idea of cooperation and assistance in order to plan operations that are more effective, avoiding incurring in neo-colonial-like form of dependence, and concretely looking for “mutual benefits”.

As Winston Churchill asserted, *democracy is the worst form of government except all the others that have been tried*. If we decide not to disagree with Mr. Churchill, then we should use western expertise in terms of institution building and democratisation to put into effect

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<sup>3</sup> Please note that the data for all countries are in the process of being updated. For most recent data (including 2013 data) [www.unicef.org/infobycountry/drcongo\\_statistics.html](http://www.unicef.org/infobycountry/drcongo_statistics.html)

<sup>4</sup> DASHIELL C, 2002, *Life and Debt* <http://www.cinescene.com/dash/life&debt.htm>

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all the democracies we decided to export in territories surely not completely ready for them. In fact, how can a democracy work where people can barely read and have no documents, and institutions do not work at all? The answer is simple: it cannot. Hence, let us try to make all those democracies real, starting from the very first step: let the people exist in front of the law.

## CHAPTER 1

### A BRIEF HISTORY OF THE DEMOCRATIC REPUBLIC OF CONGO

#### 1.1 About the Democratic Republic of Congo Geography

*“Debout Congolais, unis par le sort,  
Unis dans l’effort pour l’indépendance, dressons nos fronts, longtemps courbés  
Et pour de bon prenons le plus bel élan, dans la paix, o peuple ardent, par le labeur,  
nous bâtirons un pays plus beau qu’avant, dans la paix”<sup>5</sup>*

The Democratic Republic of Congo (DRC), also known as Congo Kinshasa – the capital – is located in Central Africa, is the second largest country in the continent after Algeria, the fourth most populous nation in Africa, and the nineteenth in the world. With an estimated



Figure 1 © Operation World at: [www.operationworld.org](http://www.operationworld.org)

<sup>5</sup> Congolese National Anthem: “Arise, Congolese, united by fate, united in the struggle for independence, let us hold up our heads, so long bowed, and now, for good, let us keep moving boldly ahead, in peace. Oh, ardent people, by hard work we shall build, In peace, a country more beautiful than before”

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population of 72 million of inhabitants<sup>6</sup> from hundreds of ethnic groups, DRC official language is French, together with four Bantu languages (Swahili, Kikongo, Lingala, and Tchiluba)<sup>7</sup>. It borders the Republic of the Congo, the Central African Republic, and South Sudan to the North, Uganda, Rwanda, Burundi, and Tanzania to the East, Zambia, and Angola to the South and the Atlantic Ocean to the West.

The country covers an area of about 1,000,000 square kilometres and it hosts the biggest section of the Congo Basin: the latter has been titled World Heritage Site by the UNESCO in July 2012<sup>8</sup>, and is an amusing fusion of active volcanoes, rivers, lakes, savannahs, and the second largest rainforest in the world after the Amazon Jungle<sup>9</sup>. It hosts a massive number of species of both plants and animals, among them endangered wildlife such as chimpanzees, okapi, bonobos, and the beautiful mountain gorillas. Additionally, DRC is very rich in every kind of raw mineral, namely diamonds,

Human Development Index (HDI)	
	Value
HDI rank	2013
186 Congo (Democratic Republic of the)	0.338
187 Niger	0.337

Graphic 1 © HDI

gold, copper and coltan. Still, it ranks fourth on 2014's Fragile States Index<sup>10</sup>, 186<sup>th</sup> (just before Niger) on 2014's U.N. Human Development Index (see *Graphic 1*).

<sup>6</sup> IMF Population estimates at: [www.imf.org](http://www.imf.org)

<sup>7</sup> UN World Population Prospects: The 2012 represents the latest global demographic estimates by the Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, at [http://esa.un.org/wpp/documentation/pdf/WPP2012\\_HIGHLIGHTS.pdf](http://esa.un.org/wpp/documentation/pdf/WPP2012_HIGHLIGHTS.pdf) pp 75-85

<sup>8</sup> Data taken from the official websites of UNESCO and WWF <http://en.unesco.org/> and <http://www.worldwildlife.org/places/congo-basin>

<sup>9</sup> "The moist forests of central Africa represent the world's second largest area of tropical rainforest after the Amazon. It is one of the last regions in the world where vast areas of interconnected rainforest allow biological processes to continue undisturbed." WORLD HERITAGE IN THE CONGO BASIN, Published in 2010 by the UNESCO World Heritage Centre, pp 7-8

<sup>10</sup> The tenth annual Fragile States Index focuses on the indicators of risk and is based on thousands of articles and reports to develop ideas for promoting greater stability worldwide, to spur conversations, encourage debate, and most of all help guide strategies for sustainable security. <http://ffp.statesindex.org/>

## **Birth Certificate: Normative And Legal Framework & Practice**

Potentially, it could be one of the richest countries on earth, but colonialism, corruption, flawed institutional system, poor political interventions have turned it into one of the poorest.

### **1.2 From the Kingdom of Congo to the Belgian Congo (14<sup>th</sup> century - 1960)**

The historical background of DRC is characterised by warfare, insurgencies, ethnic hostilities, and exploitations at any level. From time to time, the country served as stage for innumerable conflicts between exploiters, rebels, and extractive rulers on call. From the little we know about the controversial background of the country, Congolese people rarely dwelled in peace for long periods: each and every generation in living memory had their own cross to bear, as well as their own scars in remembrance of abuses and lack of peace.

The early history of the country remains shrouded in mystery: we know very little about the pre-colonial age since traditions and cultural knowledge were transmitted only orally from generation to generation. For this reason, a remarkable portion of Congolese pre-colonial folklore remains lost in time. However, the vastness of the territory together with the enormous number of cultures, sub-cultures, ethnic groups, and tribal religions contributed to safeguard their preservation. On the one hand, the rich Congolese culture intermingled with the European one, creating a fusion that has persisted up to nowadays; on the other hand, art, music, animist rituals, and beliefs of clans in remote areas kept on living undisturbed, protected by impenetrable forests and impassable rivers. The information we hold nowadays, which dates back to 1395, were recorded and set in writing during early sixteenth century by Europeans, namely members of the clergy, missionaries, and historians<sup>11</sup>. It should be emphasised that the majority of the historical sources held a strong Eurocentric standpoint affirming the western legitimate superiority in respect to the *uncivilised* African countries. Therefore, there were not intents to neither get to know nor to protect colonial peculiar

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<sup>11</sup> YELLEN J. E., pp 173-198

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backgrounds; instead, the very last purpose of colonialism in Congo was a cultural assimilation by means of exporting European fine models. From the limited number of data gathered at that time, the Kingdom appears to spring from the unification of two important dynasties, *Mpenba Kasi* and *Mbata*, which kept on expanding their borders. Fierce expansionistic policies led to the annexation of neighbouring territories that, either brutally conquered or voluntarily subdued, lead to the creation of the Kingdom of Congo. The latter included the territories of the modern northern Angola, Cabinda, the Republic of Congo, as well as parts of the Democratic Republic of Congo and Gabon.<sup>12</sup>

The arrival of Portuguese explores in the 1480s represented the turning point for the Kingdom. By means of a consolidate coercive diplomacy, such as kidnapping local nobles and use them as hostages, Portugal representatives convinced the ruling King to embrace Christianity. The forced conversion of the King and, progressively of the local population, created an enduring link between Portugal and the Kingdom of Congo that completely reshaped the relation occurring between the two. For example, Christianity implied a huge demand of clergymen, supplied only by the Portuguese Church, establishing in this way a growing religious dependency, which allowed Portugal to settle undisturbed within the kingdom. The growing popularity of Christianity that openly mingled with the local animist tradition, at first provoked reluctance on the part of Portuguese clergymen, but then ended providing roots to achieve the empowerment of the role played by the Portuguese representatives, who thus began to obtain the power to legitimately exploit the terrific wealth of the territory. Since then, the Kingdom of Congo represented for Europe an inexhaustible supply of raw materials and human capital. From the fifteenth century onward, slave trade represented a massive source of income for Portuguese merchants, who sold men both offshore and within the kingdom itself. As a matter of fact, slavery existed in the kingdom since long time, and Congolese elites fought to maintain the control on the trade initiating a number of conflicts and turmoil. Slavery remained a burning topic until the Congress of Vienna on 8 February 1815, when European powers condemned the slave trade and opened the path towards the recognition of enslavement as a severe

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<sup>12</sup> VAN REYBROUCK D., (2014) *Congo*, pp 43-71

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violation of customary International Law and International Human Rights Law, even though many difficulties remained when dealing with such an issue, as demonstrated by *The Antelope* case of 1825<sup>13</sup>. Therefore, slave trade did not end immediately in the aftermath of the Conference, but surely it started decreasing in a progressive way. From the seventeenth century to 1885, the Kingdom of Congo was slowly dismantled into several mini-states out of the control of the King and governing authorities, dwelling in anarchy, perpetual civil wars, and constant external abuses of the country's resources. The attempts of reunification resulted rather clumsy and disorganized: all of them had a dismal outcome, the kingdom lost autonomy, sovereignty and self-governance. The Portuguese struggle to strengthen both their colonial power and their influence on the territory terminated with the Berlin Conference held in 1884-1885, also known with the name of Congo Conference<sup>14</sup>. The Conference sprang from the desire of European leaders, all of them driven by imperialistic ambitions and expansionistic surges, to regulate the division of the African continent. The burning topic of the Conference was the partition of the Kingdom of Congo, for sure the most desired slice of the entire African cake: due to its tremendous natural wealth and for its strategic position, both Portugal and France would have had economic and political interests in obtaining the control of the country. However, in the aftermath of the Conference, neither of them obtained the control over the Kingdom of Congo. In fact, a new independent State was created thanks to the gestures of King Leopold II of Belgium who implemented a tactical six-year programme in order to let the territories be under his personal influence. Accordingly, in 1879 he created, together with Dutch and British entrepreneurs, the International Congo Society, also known as International Association of the Congo<sup>15</sup>, a philanthropic society aimed at improving

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<sup>13</sup> The Supreme Court of the United States claimed the legitimacy of the slave trade. FOCARELLI C., (2012) *Diritto Internazionale I, Il Sistema degli Stati e I valori comuni dell'umanità*, p 433

<sup>14</sup> “Berlin Conference of 1884–1885 Meeting at which the major European powers negotiated and formalized claims to territory in Africa; also called the Berlin West Africa Conference or the Congo Conference.”

<http://www.oxfordreference.com/view/10.1093/acref/9780195337709.001.0001/acref-9780195337709-e-0467>

<sup>15</sup>The International Association of the Congo, original name Comité d’Études du Haut Congo, is an association under whose auspices the Congo region (coextensive with present-day Democratic Republic of the Congo) was explored and brought under the ownership of the Belgian king Leopold II and a group of European investors.

<http://www.britannica.com/EBchecked/topic/39451/Association-Internationale-du-Congo>

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cultural, social, and humanitarian intervention in the area. By means of this smokescreen organisation, King Leopold II carried out a successful lobbying campaign and convinced the European fellow countries of the legitimacy of his claim of the territories of the Congo Basin. Therefore, in 1885 the Conference recognized the sovereignty of the International Congo Society over the territory and the Belgian King named the latter as Congo Free State. Notwithstanding the deceptive moral and benevolent driving forces of King Leopold II on behalf of the Society, the reality was anything but this pink appearance: to establish control over the Congo Basin and to exploit at the best its resources. After the international recognition of his power on the territory, King Leopold II would not need anymore the *façade* of the Society, which was cleverly replaced by a bunch of Belgian associates. At an early stage, King Leopold II implemented a set of policies and procedures to stress his philanthropic *modus operandi* at the eyes of the rest of the European countries. First of all, he highlighted the importance of concluding, or at least reducing, slave trade in Africa; afterward, he freed the market from duties and quotas and promised a scientific, cultural, and economic development of the colony. Unfortunately, the goodwill decreased as soon as the unbearable costs of ruling such a huge colony became apparent. The commerce of rubber, ivory, and other raw materials was never enough to cover the massive expenditures and the King started giving up on his philanthropic premises to implement a new strategy. Leopold II's administration abruptly started carrying out extractive policies and imposed a forced labour system. The region suddenly became the vessel of European brutal exploitation in Africa, the cruellest example of colonialism worldwide. Mutilations of not-enough-productive workers were at the order of the day, death rates frenetically increased – almost the twenty percent of the population perished in the vain attempt of satisfying King Leopold II needs and requests – and all the sort of violence at damage of the Congolese population were carried out for the sake of economic gain. Millions of people were killed due to acts of disobedience and insubordination against Belgian brutal colonialism under the eyes of an inert international arena. Notwithstanding years of stern criticism by leaders and politicians all over the world, severe accusations of gross misconduct and genocide, and books and journal articles of denounce, no European country stood up to put an end to the atrocities. The decisional power remained in the sole hands of King Leopold

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II who, to appease the international community, decided to take over the administration of the country in 1908, annexing the territory to Belgium as a colony and thus giving life to the Belgian Congo<sup>16</sup>.

As a result, the new administration brought some necessary improvement, namely it remarkably decreased the abuse of arbitrary violence and deadly exploitation of human beings, even though the forced labour system would come to an end only at the end of Belgian colonialism in 1960. Belgian Congo underwent a notable urbanisation and modernisation process, for the sake of not only development and improvement of standard of safety, health, and human dignity, but above all to maximise economic profits. Namely, transport infrastructures as railways and streets served to reach more easily remote and unexploited areas, and substantial investments in plantations and mines transformed the colony in an efficient raw-materials reserve for the West. Alongside the economic aspects of colonialism, it results impossible not to take into account the so-called *civilising missions*, which used to be used as justification for almost every European colonisation campaigns. One of the major ambitions of Colonialism as such was to *civilise* the so-deemed primitive and undeveloped regions in Africa, India and the Americas by means of an Europeanisation process. *Civilisation* consisted of steps that were more or less equally implemented everywhere: conversion to Christianity, spreading of basic education shaped on western models, and creation of a health care system<sup>17</sup>. The Roman Catholic Church kept on easily rooting in the Congolese society, even if trace of animism seeped through the Christian practice. Among other factors, its rapid growth depended on the fact that churches were widely involved in the run of both educational institutions and hospitals. Concerning schools, the objectives reached under the Belgian dominion resulted extraordinary: the literacy rate of school kids reached rather high percentages, which represented a massive improvement considering both the vastness and the complexity of the geography of the colony. The Europocentric didactics and management of teaching have been deeply criticised for they completely ignored Congolese culture and history; however, the results obtained are just undeniable. Concerning health care, large scale and

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<sup>16</sup> VAN REYBROUCK D., (2014) *Congo*, pp 73-117

<sup>17</sup> MCWILLIAMS W.C & PIOTROWSKI H., (2001) *The World Since 1945, A History Of International Relations*, pp 105-107

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constant immunisation campaigns were implemented, even though endemic diseases such as malaria, typhoid fever, and cholera were, and still are, a terrific barrier to overcome. New discoveries in the field of pharmacy and chemistry improved the treatment of patients, who often got the chance to be hospitalised even in remote areas, thanks to remarkable Belgian investment in health care.<sup>18</sup>

If it is true that colonialism generated a certain degree of economic and human development, it is also true that black people would keep on suffering an implicit – meaning that there was no such a law within the colony's legislation – *apartheid*. They were forced to respect curfews, for example, had limited access to services, were denied of enjoying both social and political rights. Active and passive resistance against colonialism during the 1950s had as a result the diminishing of the hierarchy between black and white people. Belgian governors seemed ready to create a Belgian-Congolese community, as stated by the Governor-general Léon Pétillon – 1952–58 – supporting the creation of a Congolese elite to substitute the Belgian one<sup>19</sup>. One of the attempts to put in actions the nationalist ideas of the Belgian power was the first municipal election open to black voters that took place in 1957 in the biggest Congolese cities — Léopoldville, Élisabethville and Jadotville. Nonetheless, the efforts to improve the relations between the colony and the colonial power did not prevent the events that followed. Between 1958 and 1959, the first set of riots shook Léopoldville, the capital city. In light of the misfortunate uprisings, Belgium asserted that he would have worked to lead Congo through independency, planning national elections between 1960 and 1961<sup>20</sup>. However, the Congolese resistance to the Belgian administration became tougher and unmanageable; the Belgian government wanted to have a smooth decolonisation process to avoid futile frictions, as happened to France in their colonies in Indochina and Algeria<sup>21</sup>. For this reason, the round-table held in Brussels in January

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<sup>18</sup> VAN REYBROUCK D., (2014) *Congo*, pp 127

<sup>19</sup> VAN REYBROUCK D., (2014) *Congo*, pp 247-301

<sup>20</sup> MCWILLIAMS W.C & PIOTROWSKI H., (2001) *The World Since 1945, A History Of International Relations*, pp 137-140

<sup>21</sup> “France’s determination to retain control over Algeria must be viewed in the historical context of its war in Vietnam. [...]when defeat came in 1954, the French accepted the loss of Vietnam. [...]The French, however, having lost one colony, were not in the mood to accept again a humiliation” and fought at the expenses of both French and Algerian people until 1962. MCWILLIAMS W.C & PIOTROWSKI H., (2001) *The World Since 1945, A History Of International Relations*, pp 135-137

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1960 was surprisingly fast and accommodating. After a relatively quick dialogue between the parties involved, Kasavubu was agreed to be the first President of the Republic of the Congo, and Lumumba his first Head of Government. Belgians handed-over solemnly and with dignity on 30 June 1960, formally concluding their African venture.

Since the very moment when King Leopold II of Belgium transformed the huge Congolese territory in his own private property, millions of people paid with their lives due to a fierce extractive governance, a labour system based on exploitation, and a hegemonic regime built on pillars of hierarchy, terror, and power games. For centuries, the inhabitants of Congo suffered from any kind of physical and psychological abuses, they were kept at a very basic level of development, both human, social, and economical. Thus, Congolese leaders decided to stop digging with their own hands all the resources out of their national ground to hand them to colonial powers, and to start concretely moving toward independence, in line with the growth of a national consciousness and a sense of political unity. The decision sprang from the gain of awareness of the fact that their colonisation had been one of the worst in Africa, from the influence of the third-worldist movement started officially during the 1955 Bandung Conference<sup>22</sup>, and from the echoes of new nationalisms and decolonisation processes implemented all around the world.

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<sup>22</sup> “In 1955, the leaders of these nations met for the first time at an Afro-Asian conference in the Indonesian city of Bandung. [...] They had much in common: they had participated in the postwar struggle for independence, [...] they were nonaligned in the Cold War and [...] and have very low economic growth rates. MCWILLIAMS W.C & PIOTROWSKI H., (2001) The World Since 1945, A History Of International Relations, pp 247-249

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### 1.3 The Independence of the Republic of the Congo, Zaire, and DRC (1960-2001)



Figure 2 © CORBIS

The declaration of independence on 30 June 1960 represented a predictable failure for several reasons. The colonial power seemed not to have contemplated the possibility of independence and, thus, had not prepared the colony for

independence. Notwithstanding the flowering of newly independent States everywhere in the world, Belgians appeared to naively consider that their colony would remain undemanding forever and thus would reluctantly made political concessions to Congolese people. They tried to hinder the inevitable decolonisation process instead of preparing the soil for it. However, after the outbreak of a severe insurrection in 1959 in Léopoldville, Belgian government hastily announced the creation of the sovereign State of the republic of Congo within six months.<sup>23</sup>

First of all, the failure of independence was due to the lack of both expertise in self-ruling, and administrative and cultural preparation at local level. Belgian policymakers successfully provided primary education to a vast portion of the Congolese population; however, very few attended secondary school and even fewer higher level of education

<sup>23</sup> “The Belgian government paid even less attention than France to preparing its colonial possession, the Congo, for self-government, and yet it quite abruptly granted independence to that huge colony in June 1960” MCWILLIAMS W.C & PIOTROWSKI H., (2001) *The World Since 1945, A History Of International Relations*, pp 137-140

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such as universities. As a result, there was not a single Congolese lawyer or doctor or engineer in the country in 1960: the first doctors and civil engineers graduated in July 1961<sup>24</sup>. In addition, the Congolese were not involved in the administration of their country because deemed corrupted and less qualified than Belgians were, thus there was nobody able to play leading roles after the request of emancipation and independence. The lack of an effective civil service to administer the population went with another massive lack; the political environment did not exist at all. Up to 1958, the Belgians prevented the creation of political parties representing the fragmented will of the population; in addition, the terrific number of tribes, clans, and ethnic groups made barely impossible to promote and set up intra-tribal unity and dialogue. The nonexistent sense of national unity in Congo deeply rooted both in the political organization of the colony, and in the centenary tradition of tribalism and localism. It was a lot to ask the new Government to overthrow those traditions and social standards with a six-month notice.

Another cause of the dismal outcome of the independence was the irresponsible lack of investments to prepare the national armed force. At independence, the sole national institution responsible for defence and security was the *Force Publique*. It was made up of members coming from different tribes but serving as a unity, which were not ready at all to handle such an intense timetable towards independence. Too little was done to transfer powers, know-how, and equipment from Belgian to Congolese army and, in any case, the efforts were done too late. The transition from colonialism to post-colonialism was a *fiasco* and, after less than one week, the newborn State immediately fell into chaos. The first challenge to the territorial unity of the Congo was the uprising in the province of Katanga, where a secession movement lead to a sever conflict<sup>25</sup>.

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<sup>24</sup> “Under Belgian rule the Congo turned out plenty of skilled workers but not a single doctor, dentist, engineer, lawyer, or architect. July 1961 Lovanium graduated for the first time, some doctors and civil engineers.” BRENDAN GILL, JANE BOUTWELL, AND LOUIS P. FORSTER, *La République du Congo (Leopoldville)* in *The New Yorker* (June 9, 1962), p. 22.

<sup>25</sup> “[...] Moïse Tshombe, the separatist leader of the rich copper-mining province of Katanga, announced the secession of that province from the new republic. The result was not only a complicated three-side political struggle, but a tragic war that soon involved outside forces, including UN forces, the CIA, and Soviet troops.” MCWILLIAMS W.C & PIOTROWSKI H., (2001) *The World Since 1945, A History Of International Relations*, pp 138

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The Katanga crisis forced the new Government to request the UN intervention. Accordingly, the UN mission ONUC was promptly established to avoid Katanga secession and to “*maintain law and order in the country*”.<sup>26</sup> The war was extremely violent, lasted two years, caused the death of tens of thousands people, and is one of the most tragic conflict of Congo.

The transition and the consequent national crisis were led by the first democratically elected Prime Minister Patrice Émery Lumumba, who remarkably helped the country to win the independence from Belgium. In the election of May 1960, the very first by



Figure 3 © Patrice Émery Lumumba  
[www.imurenge.com](http://www.imurenge.com)

universal suffrage, Lumumba's *Mouvement National Congolais* (MNC) party won 35 seats on 137 of the Assembly<sup>27</sup>, also because it was about the sole national political movement existing. Less than one year from his election, Lumumba was imprisoned and executed on 17 January 1961, after the *coup d'état* carried out by Joseph-Désiré Mobutu, who was supported not only by Belgian élites but also by the rest of western countries. First, Mobutu assumed a shadow leading-role within the army and the power remained officially in the hands of Kasavubu. Afterwards, in 1965, he officially took the power during a military coup. During his ruling, he

introduced a new constitution and imposed a right-wing single party. After the failure

<sup>26</sup>ONUC was established by Security Council resolution 143 (1960) of 14 July 1960, by which it decided "to authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance as might be necessary until, through that Government's efforts with United Nations technical assistance, the national security forces might be able, in the opinion of the Government, to meet fully their tasks". The initial mandate of ONUC was to ensure the withdrawal of Belgian forces from the Republic of the Congo, to assist the Government in maintaining law and order and to provide technical assistance. The function of ONUC was subsequently modified to include maintaining the territorial integrity and political independence of the Congo, preventing the occurrence of civil war and securing the removal from the Congo of all foreign military, paramilitary and advisory personnel not under the United Nations Command, and all mercenaries.  
<http://www.un.org/en/peacekeeping/missions/past/onuc.htm>

<sup>27</sup> "In the election of May 1960, the Mouvement National Congolais (MNC), led by Patrice Lumumba, won 35 seats in the 137 seat Assembly, the largest party in terms of seats." Purcell J. P., *Decolonisation: Congo 1960-1961*, at: <http://www.eceme.ensino.eb.br/cihm/Arquivos/PDF%20Files/37.pdf> p. 5

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of the First Republic of Lumumba, he imposed a dictatorship. His government was based on the so-called *Mobutism*, a doctrine build upon three pillars: nationalism, revolution, and authenticity<sup>28</sup>. The concept of authenticity appeared as a condemnation of tribalism, deemed to be an obstacle to nationalism and, in line with this concept, Mobutu renamed himself Sese Seko and changed the name of his country in 1971 into Republic of Zaire. In addition, he encouraged privileging African names and endorsing the African culture<sup>29</sup>. Within five years, he accomplished a goal that the European Union is still struggling to achieve: a British man could likely be still reluctant to define himself as a European citizen, but everyone, belonging to any of the numerous Congolese tribes, was proud to belong to Zaire. The first decade of Zaire was an economic, demographic, and social rebirth. However, the material growth was not followed by a socio-cultural one. This gap did not pass undisturbed: there were oppositions to and social movements against the regime, especially during 1968-69, but Mobutu bloodily repressed them all.

Due to his renowned greediness, the Seventies represented the turning point of

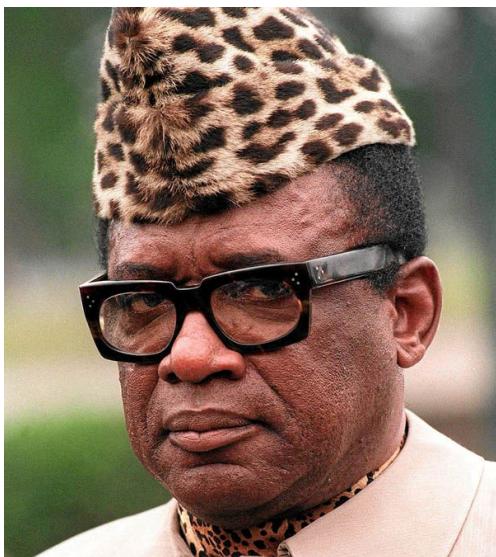


Figure 4 © Joseph-Désiré Mobutu  
[www.theguardian.com](http://www.theguardian.com)

Mobutu's reign: he was so busy trying to protect his socio-political and economic position that completely stopped caring of his people and duties. Consequently, inflation grew crazily, economy regressed, exploitations rose, and severe human rights violations were perpetuated under the eyes of a silent international community. His government was an authoritarian *cleptocracy*, characterised by entrenched corruption, misuse of state funds in order to enlarge personal power and wealth of the restricted ruling class. All of this was at the expense of

the rest of the population, who suffered a remarkable economic crisis and witnessed

<sup>28</sup> Nationalism was the “repudiation of both capitalism and communism”. GHISLAIN C. KABWIT (1979). Zaire: the Roots of the Continuing Crisis. The Journal of Modern African Studies, 17, pp 381-407.

<sup>29</sup> Many names of cities were changed accordingly (i.e. Léopoldville became Kinshasa)

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defenceless the drastic reduction of their chances to enjoy civil, political, economic, social, and cultural rights<sup>30</sup>. In 1977 the annual inflation reached the 60%, between 1974 and 1983 prices grew crazily and the population became poorer and poorer<sup>31</sup>. At a certain point, almost all of the western countries deemed this situation unacceptable, and thus forced Zaire to accept IMF, Paris Club and World Bank intervention, allowing them to play a more significant role within its national borders. From 1976 to 1990, IMF lent millions of dollars to Zaire, a massive amount of which was stolen by Mobutu himself to satisfy his own caprices. Although western countries were well aware of the theft in place and of the fact that in 1981 the national debt amounted to about five billions of dollars, they allowed him to keep on borrowing money, in line with the philosophy Mobutu is a bastard, but at least he is *our* bastard<sup>32</sup>.

The 1980s was a disaster for Zaire. The solution to the economic regression never arrived and people were forced to start a parallel and illegal commerce to try to gain a little money to buy food, at least. Youngsters all over the country began to stand up and protest against *mobutism*, even if the punishments they were subjected to were heinous; corruption was the very governance of the country and it existed everywhere and at every level. The internal dissatisfaction together with external pressures from the entire international system, forced Mobutu to create a tripartite Parliament in 1990<sup>33</sup>. *De facto*, this Parliament represented a mere short-term palliative that did not grant any achievements in terms of democratisation and implementation of human rights. More than multiparty, the Parliament was *multimobutu*. As a consequence, the country was shaken by a number of both pacific protests and violent riots against Mobutu, all of them ended in a bloodshed. Mobutu was considered among the most bloodthirsty ruler at the time, but all the international judgements were left aside in 1994, when the Hutu-Tutsi war went beyond the borders of Rwanda<sup>34</sup>. The tragedy

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<sup>30</sup> VAN REYBROUCK D., (2014) *Congo*, pp 391-424

<sup>31</sup> “[...] the swift monetary expansion produces by forced advances from the Banque du Zaire to cover government deficits generated new inflation; beginning in 1973, inflation rose to a 60-80 percent per annum rate, which continued into 1980.” YOUNG C. & TURNER T. (1985). *The rise and Decline of the Zairean State*, p 71

<sup>32</sup> VAN REYBROUCK D., (2014) *Congo*, pp 407-408

<sup>33</sup> VAN REYBROUCK D., (2014) *Congo*, pp 423

<sup>34</sup> “The immediate cause of the outbreak of the violence was the assassination of President Habyarimana in April 1994, when his plane was shot over Kigali, the Rwandan capital. Hutu soldiers blamed the incident on Tutsis and began immediately to avenge Habyarimana’s death with indiscriminate massacres

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that took place in the small Zaire's neighbouring country deeply reshaped the image of Zaire. In light of the ethnic cleansing of Tutsis by Hutus and *vice versa*, Mobutu agreed to provide aids and shelter in the province of North Kivu to 850,000 people – principally Hutus – collaborating with UNHCR and French Government. The refugees camps were subjected to a massive attack in 1996, when Rwandese forces decided to punish Zaire for hosting the *génocidaires*. Ultimately, a full-scale civil war broke in eastern Zaire and rebels conducted by Laurent-Désiré Kabila, blatantly supported by both neighbouring countries and the President of USA Bill Clinton, overthrew Joseph-Désiré Mobutu in 1996.

The brutal clash between Kabila and Mobutu marked the beginning of the First Congo War (1996-97), during which Kabila guided ethnic Tutsis from the province of South Kivu against Hutu armed forces. The greedy entourage of merchants, politicians, and soldiers who surrounded Mobutu during his government turned its back on the leader as soon as it was clear that his power would not represent a source of profits anymore. Mobutu left the country in chaos and, one year later, died in Morocco due to cancer. When Laurent-Désiré Kabila took the power, he was supposed to defend Rwandan national interests; however, he refused to do so. After his proclamation as President, he changed the name of Zaire into the Democratic Republic of Congo and suspended democratic elections for two years in order to let his government bring stability and peace to the country.

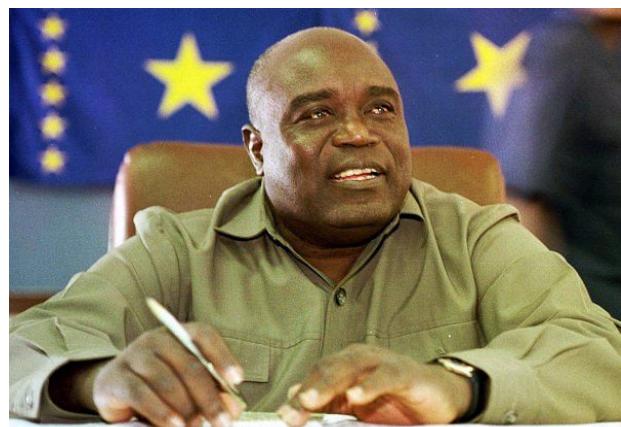


Figure 5 Laurent-Désiré Kabila © [www.theguardian.com](http://www.theguardian.com)

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of any and all Tutsis, as well as moderate Hutus. [...] Mons conducted house-to-house searches, hunting down and killing their victims with whatever weapons they had at their disposal. [...] In June 1994, RPF Leader Paul Kagame set up a new government with a moderate Hutu as a figurehead president and himself as a vice-president and defense minister. Kagame, [...] took effective measure to halt the violence. [...] When the carnage ended in Rwanda, a country of 8 million of people, between 800,000 and 1 million Rwandans lay dead." MCWILLIAMS W.C & PIOTROWSKI H., (2001) *The World Since 1945, A History Of International Relations*, p 287

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Suddenly, the President who used to be dedicated to Marxism turned into another corrupted dictator who perpetuated human rights severe violations and exploitation of the country's natural wealth. The attitude of the President forced his erstwhile allies (Rwanda, Uganda, and Burundi) to invade DRC, thus starting in 1998 the Second Congo War<sup>35</sup>. On the other hand, DRC tied with other African countries such as Namibia, Angola, Zimbabwe, Chad, and Sudan. Again, the country at a certain point collapsed, paralyzed in the grip of atrocities carried out by hundreds and hundreds of foreign and national military groups. Anarchy and violence spread around again, in a five-year conflict that pushed siblings against each other. Everyone ended being an enemy for someone else: linguistic, cultural, religious, and ethnic differences served as a source of irrational hate, fear, and ferocity that culminated into the umpteenth bloodshed. Armed groups enlisted a huge number of child soldiers, raped women, razed villages, killed civilians, and starved to death prisoners. In addition, endemic diseases, poor hygienic and sanitary conditions, lack of clean water and poor and

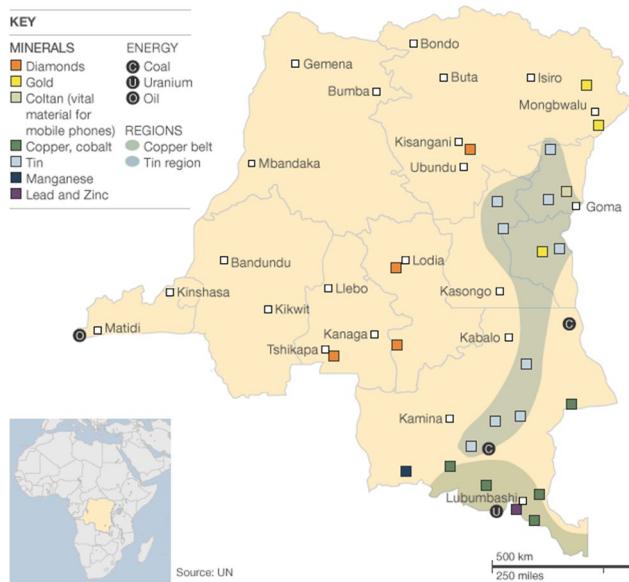


Figure 6 © BBC

unbalanced diets kept on murdering, as always, even the civilians who were not directly touched by the war. While millions of people were dying, another million was still exploited by both fellow countrymen and foreigners, whose demand of natural resources increased day by day. Digging for minerals such as coltan, a key component of the batteries of modern computers

and mobile phones that in the last decades have invaded western markets, was, and still is, one of the main activity carried out in DRC by foreign investors.

<sup>35</sup> MCWILLIAMS W.C & PIOTROWSKI H., (2001) *The World Since 1945, A History Of International Relations*, pp 288-290

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The conflict was one of the cruellest in Africa: it lasted until 2003 and, since the very beginning in 1998, the United Nations Security Council installed a number of liaisons to persuade the parts to agree on a cease-fire. Consecutively, the United Nations established also the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) by mean of the Security Council resolutions number 1279 in 1999 and number 1291 in 2000<sup>36</sup>. The Peacekeeping mission was deployed to monitor the peace dialogue during the Second Congo War, though much of its focus subsequently turned to the Ituri conflict, the Kivu conflict, and the Dongo conflict. MONUSCO is the biggest peacekeeping mission ever deployed and, as a matter of fact, even the more expensive! The Kivu conflict never ended *de facto*, and still today demonstrations and uprisings are frequent in the region. For the length of his mandate, Kabila would rule a fragmented country in a permanent state of violent transition. His people feared, hated, loved him, as well as the international community: he had as many friends as enemies. On 16 January 2001, Laurent-Désiré Kabila was shot by one of his young (not to say child) bodyguard and died. The exact cause of the death of the President still remains a mystery: 135 people were judged by a military tribunal and 64 of them were convicted. Nonetheless, the validity of the trial has never been confirmed and it is very hard to understand if his murderer acted on behalf of a conspiracy group managed in partnership with other countries or if he did an act imputable to himself only<sup>37</sup>. In the aftermath of Laurent-Désiré Kabila's assassination, his son, Joseph Kabila Kabange, succeeded his father, even if he formally became president in 2006.

### **1.4 DRC: from 2001 up to Today**

The 35-year old President tried from the very beginning to arrange peace agreements with Rwanda's, Angola's, and Uganda's rebel groups. At first, his attempts were clumsy and inexperienced, but he kept on participating to peace dialogues and

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<sup>36</sup> <http://monusco.unmissions.org/>

<sup>37</sup> VAN REYBROUCK D., (2014) *Congo*, pp 497-534

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finally Rwanda and Angola decided to leave the Kivu province and thus to stop exploiting it. The Peace Agreement concluded during the Inter-Congolese Dialogue in 2002, finally put a formal end to the intra-state conflict. Yet, the peace represented

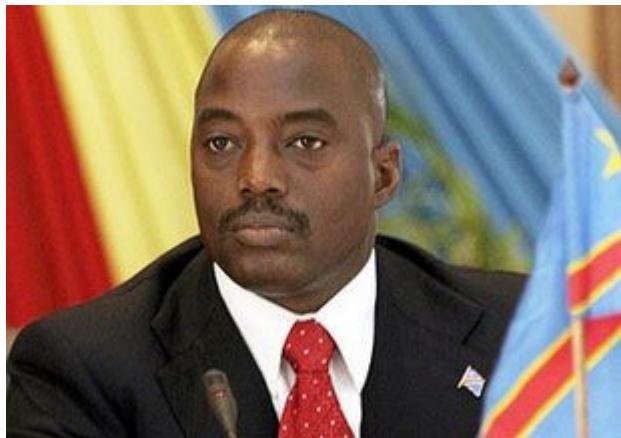


Figure 7 Joseph Kabila © [www.theguardian.com](http://www.theguardian.com)

only a small plaster on a bleeding wound: DRC stability was, and still is, constantly compromised by internal fights and external interventions. At the beginning, Joseph Kabila was supported by two vice-presidents representing the two main rebel groups in the country, part of an *ad interim* administration together with a

number of ministers, rather greedy than wise. Whoever would assume a leading position in this period, from politicians to soldiers, did everything to gain the most out of it<sup>38</sup>. Corruption grew stronger and rooted everywhere. Everyone was corrupted in DRC, and still today, corruption is not even something to be ashamed of since it represents too often the only way to let the families eat at least once per day. In 2006 Joseph Kabila ran for the presidential elections; he won with more than the 58% of votes<sup>39</sup> and in 2011, he was elected again for a second term.

DRC centenary political and social weakness devastated the civil society; on the other hand, this weakness opened a huge number of doors to international actors such as multinationals. Companies within a crumbling State, holding a budget that is far higher than the ones of the Ministries of Education and Healthcare together, are not neutral actors. Economics and market laws still rule DRC. Neoliberalism would heal the developing countries, it was said...

Joseph Kabila changed the Constitution, created a multiparty Parliament and tried to conduct his country towards an effective democratisation process. Obviously, democratic elections do not magically set up a democracy and DRC is still

<sup>38</sup> VAN REYBROUCK D., (2014) *Congo*, pp 535-574

<sup>39</sup> <http://www.eueom.eu/files/dmfile/MOERDC2006-RapportFinal.pdf> p. 55

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transitioning. Political scientists usually assert that is normal for a new democracy to be stutterer and hesitating for the first three/four mandates: patience, perseverance, and optimism are necessary to build up a democracy from scratches<sup>40</sup>.

Nowadays, there is a controversial discourse built up around the figure of Joseph Kabila Kabange: while he remains well accepted by the majority of the States, in particular for having undertaken concrete actions against hundreds of Congolese soldiers accused of sex crimes or other human rights violations, he seems not to be as well approved by his own people. In 2012, DRC was shuddered by the rebel group M23, a military group based in eastern Congo, namely in the North Kivu province, which took the power in Goma to protest against Joseph Kabila government.



*Figure 8 UN intervention brigade helping the Congolese Army versus M23 (2012) © [www.bbc.com](http://www.bbc.com)*

Only months later, in 2013, the rebel troops left the city, accepting the cease-fire after a long peace dialogue with the President. The controversial national opinion about Kabila has been highlighted on 19 January 2015, when student-led protests shook the country, especially in the provinces of North and South Kivu. The movement sprang from the proposal of a Census Bill to be amended by the Congolese Senate, which would have not allowed the run of elections until a national census would have been

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<sup>40</sup> VAN REYBROUCK D., (2014) *Congo*, pp 497-534

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conducted<sup>41</sup>. This clause would have allowed Joseph Kabila Kabange to remain legally in power longer, postponing the presidential elections for at least five years. After the announcement of the Bill, hundreds of students took the streets for days, fighting against the national security guards; in response to this, the Government closed the national media – both television and radio programmes – and cut the Internet connection in several cities, such as in Goma. Human rights monitoring groups asserted that dozens of people lost their life during the protests; in line with the international opinion, even condemning the violence, the Congolese Senate omitted the Census clause<sup>42</sup>. According to the Congolese Constitution (Title III, Chapter 1, Article 70)<sup>43</sup>, the President must not run again for a third mandate in 2016 presidential elections: in fact, Joseph Kabila promised to stand down in November 2016's elections. However it still seems that he is doing his best to remain in power. This dice has yet to be cast.

### **1.5 Historical Background: Conclusions**

The Kingdom of Congo, Congo Free State, Belgian Congo, Zaire, DRC, Congo-Kinshasa has always been characterized by lasting and brutal regimes: his history is a never-ending succession of rather ineffective, greedy, and extractive governments. Portuguese explorers, Belgian kings, Lumumba, Mobutu, Kabilia father and the currently on call Kabilia son have all, somehow, smothered the development of the country. In precolonial, colonial, and postcolonial times, DRC has experienced only autocratic regimes, even though often masked as democracies. As stated by the British television presenter Daniel Robert Snow in October 2013, DRC is “cursed by its natural wealth”<sup>44</sup>. Since ever, the massive richness that lies underneath the soil of DRC has been a limitless source of gain for the tiny Congolese élites, for western governments, and

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<sup>41</sup> www.bbc.com

<sup>42</sup> <http://www.bbc.com/news/world-africa-30947880>

<sup>43</sup> <http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>, p. 18: “The President of the Republic is elected by direct universal suffrage for a term of five years which is renewable only once.”

<sup>44</sup> <http://www.bbc.com/news/magazine-24396390>

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for enterprises all over the world. Gain for everyone but for the local people. The technological achievements of the last decades would not have been feasible without the Congolese mines, but the profits coming from that have not been fairly redistributed within the country. Soil exploitation, or better, the systemic theft of the treasury of the country, still jeopardises the development of proper educational, political, economic, and hygienic systems.

In fact, as previously stated, not only does DRC rank fourth on 2014's Fragile States Index, but it also ranks 186<sup>th</sup> on 2014's UN Human Development Index. The country of diamonds, oil, gas, gold, coltan, which hosts the second largest rainy forest in the world and a massive number of protected and life-endangered animal and plant species, whose national territory is as extended as half of Western Europe, still is the among the poorest in the world.

## CHAPTER 2

### BIRTH CERTIFICATE: NORMATIVE AND LEGAL FRAMEWORK & PRACTICE

#### 2.1 Birth Certificate: Start it Right!

*‘Mkono moja haulei mwana’<sup>45</sup>*

In the past few years, we have been witnessing the dismantling of the “*zero-sum game between globalisation and borders*”<sup>46</sup> due to the undeniable increasing presence of different types of boundaries, both physical and socio-cultural, aimed at dividing countries, groups, and societies. Global and postcolonial capitalism reformatted and reorganised the contemporary world-order according to economic, political, and social demarcation lines. The latter ones are not only meant to delineate the territory of a State and thus to geographically limit its sovereignty, but also to categories the population from within. The movements through those new borders, which appear and disappear without letting people get used to them, could be as easy as impossible. On the one hand, the Schengen Area has freed the movement of people within, on the one hand, the outside borders are growing higher and tickier, as demonstrated by the millions that die in the Mediterranean See in the attempt to escape from war and reach the fortress of Europe. Therefore, the terrific importance of identity documents in today’s world is more apparent than ever before. The massive population movements of nowadays highlights the necessity to better organise both the discourse and the practise around migration, focusing on the categories mostly in need of protection – such as children. For that reason, birth registration is more essential than ever for it provides a document to the children, which is the birth certificate. The latter results

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<sup>45</sup> African proverb in Swahili: *A single hand cannot nurse a child.* In the African culture, it takes a village to grow a child.

<sup>46</sup> MEZZADRA S. & NEILSON B, (2013) *Border as Method, or, the Multiplication of Labor*, pp viii-x

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extremely important in order to avoid, among the other things, child trafficking, illegal adoption networks, and child involvement in warfare.

Birth registration is too often considered as a mere bureaucratic and administrative practice; the birth certificate is regarded as just a piece of paper. However, the former is actually a fundamental and undeniable right of the child, and the latter is *the* piece of paper! According to UNICEF, it is the “*official recording of the birth of a child by some administrative level of the State and coordinated by a particular branch of government. It is a permanent and official record of a child's existence*”<sup>47</sup>. Acknowledging the existence of the child before the law, it ensures both the prevention and promotion of the majority of all the other fundamental rights of children. For instance, it ensures the right to education, to health care, and to belong to a family. As a matter of fact, unregistered children are more likely to face discrimination and exploitation and to be deprived of their fundamental rights. Imagine how easily undocumented children could have denied access to health care or education systems, for example, or how they can run the risk to incur early marriage, child labour, illegal adoption, recruitment in armed forces, or imprisonment and trial examination as adults. Moreover, birth certificates increase the chances both to properly exercise social and political rights when children grow up, and to reduce the risk of both illegal migration and statelessness. In addition, since the lack of registration usually occurs in very poor contexts, both in economic and social terms, it contributes to the exacerbation of poverty itself, increasing the gap between the ones who have and the ones who have not.

Additionally, a birth certificate is not only relevant for the registered child him/herself, but results relevant for governments as well for it provides crucial statistical data from which it is possible to extract indicators about death, marriage, fertility, rates. Those can be used to draw effective and efficient social policies, internal actions, development programmes, ask for funding from IOs, and to obtain a clearer picture of the social fabric of a country. The latter becomes a tremendous point in all those countries that lack of a consolidated and effective control over the population.

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<sup>47</sup> [http://www.childinfo.org/files/birthregistration\\_Digestenglish.pdf](http://www.childinfo.org/files/birthregistration_Digestenglish.pdf) pp 2

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Finally, a birth certificate creates a sense of belonging to the country and thus strengthens the internal civil coherence.

Benefits For the Child	Benefits For the State
<ul style="list-style-type: none"><li>• Right to education</li><li>• Right to health care</li><li>• Right to have a family</li><li>• Protection against exploitation and abuses</li><li>• Promotion of juvenile justice</li><li>• Governmental schemes</li><li>• Active social and political participation</li></ul>	<ul style="list-style-type: none"><li>• Strengthening nationalist feelings</li><li>• Civil coherence</li><li>• Collecting statistical data</li><li>• Policy-planning</li><li>• IOs and NGOs intervention planning</li><li>• Fund requests to International financial institutions</li></ul>

Figure 1 Benefits of birth registration: to sum up

Notwithstanding both the renowned importance of the birth registration and the worldwide IOs<sup>48</sup> and local NGOs' efforts to promote its implementation, the procedure is still inefficient and not well appraised in too many countries, among them the Democratic Republic of Congo.

According to United Nations data, the number of non-recorded births of children under the age of five worldwide nearly reaches 230 million<sup>49</sup>. The impossibility to obtain a birth certificate implies a failure in the formal recognition of the newborns by the State. Consequently, millions of people are denied the exercise of their basic human rights due to the fact that they are not acknowledged as citizens of any country. As stated in the Universal Declaration of Human Rights, Art. 2, "*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or*

<sup>48</sup> UNICEF and UNHCR, among the other IOs, have been carried out the most important campaigns in the field of birth registration. Their efforts in DRC will be analysed more in depth in Chapter 3,

<sup>49</sup> UNICEF (October 2014), *Birth registration worldwide*, Document kindly provided by one of the Key Informants from UNICEF Goma.

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*international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty*<sup>50</sup>. Therefore, human rights should be guaranteed by law to all men, women and children without any form of discrimination. Nonetheless, the crude reality is that there are millions and millions of people around the world who are deprived of the chances of exercising their fundamental human rights, namely the right to citizenship and identity, because they are not recognized as citizens. The plight of undocumented persons could lead to statelessness<sup>51</sup> that is too often “under-appreciated, inadequately recorded and badly in need of more robust and effective responses”<sup>52</sup>. A simple birth registration document could help tackling the risk of statelessness as well as the lack of enjoyment of human rights to which everyone is entitled.

The right to be recognized in front of the law as citizens of a State, as well as the right to have an identity, and thus to hold a birth registration document, are specified by a number of international Conventions and Declarations as well as by national laws. In the following paragraphs, the international and national normative and legal frameworks harmonising birth registration procedures and theory will be discussed in order to familiarise with the applicable legislation.

## **2.2 The International Normative and Legal Framework**

Among all the fundamental human rights, there is the right to be registered at birth and to have a nationality right from the birth. Parents, or whom on their behalf, are in charge of transmitting a birth notification to register the newborn child to governmental institutions or authorities – i.e. civil registry. This formal recognition of the existence of the child before the law often implies the confirmation of the

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<sup>50</sup> The Universal Declaration of Human Rights, which consists of thirty articles, was adopted by the United Nations General Assembly on 10 December 1948 in Paris. It represents the very first global instrument to recognise rights inherently entitled to all human beings. The full text of the Declaration is at <http://www.un.org/en/documents/udhr/>

<sup>51</sup> Statelessness will be discussed in depth in Chapter 4.

<sup>52</sup> <http://www.refugeeresearch.net/>

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nationality of the child, conferring to him or her both a citizenship, and judicial capacities that will let him or her hold rights and obligations.

Under International Law, the legal and normative framework concerning birth registration includes a relevant number of binding and non-binding instruments. Applicable International Law establishes the existence of the aforementioned identity and citizenship rights to be achieved through birth registration; however, it does not always clearly provide neither the powers and responsibilities of single States nor the duties of individuals, especially of parents. Hence, at the international level there is a lack of specific procedures to be implemented as well as a clear appointment of responsibilities and consequences deriving from the non-registration of children. The existing gaps within the International Law framework should be optimistically filled by national normative and legal framework. Nevertheless, national laws are not all the time and everywhere able to fill those gaps.

In this paragraph, the most important international and regional instruments concerning birth registration will be briefly presented and commented.

### **INTERNATIONAL LEGAL SYSTEM**

The **Universal Declaration of Human Rights** was adopted by the UN General Assembly 217A (III) on 10 December 1948 in Paris. It has been further elaborated in the two binding Covenants of 1966 and consists of 30 Articles that now are considered by many international lawyers as customary law. Art. 15 enshrines the right to have a nationality as follows:

#### ***Article 15***

*(1) Everyone has the right to a nationality.*

*(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.*

This article will be further discussed herewith in Chapter 5.

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The **International Covenant on Civil and Political Rights** (CCPR)<sup>53</sup> was adopted by the UN General Assembly resolution 2200A (XXI) on 16 December 1966 in New York and came into force on 23 March 1976, after receiving the necessary number of ratifications. As for June 2015, the CCPR has 74 Signatories and 168 Parties<sup>54</sup>; DRC's accession<sup>55</sup> with no reservations to the Covenant was on 1 November 1976<sup>56</sup>. The **Universal Declaration of Human Rights**, adopted by the UN General Assembly on 10 December 1948, inspired the Covenant<sup>57</sup>. It represents one of the most important human rights binding treaty for it has a universal coverage and embraces a wide range of rights. The article that establishes the birth certification as a right is Art. 24 that claims what follows:

### **Article 24**

- 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his or her family, society and the State.*
- 2. Every child shall be registered immediately after birth and shall have a name.*
- 3. Every child has the right to acquire a nationality.*

The Art. 24(1) generally sets forth the necessity to protect the children. This protection measures are an obligation on the State. The use of the adjective *his* in the first paragraph, represents one the most contentious point since it has been accused of being disrespectful of the gender parity issue: for this reason it has been subject to

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<sup>53</sup> The full text at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>54</sup>[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)

<sup>55</sup> <http://www1.umn.edu/humanrts/research/ratification-congo.html>

<sup>56</sup> On the same date, DRC accessed also the Optional Protocol to the International Covenant on Civil and Political Rights.

<sup>57</sup> The Universal Declaration was not conceived to be a legally binding treaty, hence it does not create legal obligations for States. However, for it represents an expression of the basic values shared by all members of the international community and has a relevant influence on the development of International Human Rights Law, it can be argued that it has become binding as Customary International Law. Furthermore, from the Universal Declaration has sprung a number of other international agreements that are legally binding on the countries that ratify them. Among them, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights

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several amendment proposals. The Art. 24(2) defines the right of each newborn child to have his or her name registered. The right is intimately connected to the right of each person to have an identity and to be recognized before the law<sup>58</sup>. The only way to guarantee the legal existence of a child is through the birth registration. Pursuant to Art. 24(1), the registration duty is upon the State where the child was born. Nonetheless, the preservation of the child's identity is primarily a duty of “*parents, legal guardians or others legally responsible of the child*” (NOWAK M., 2005). States Parties must ensure both a legal framework and public services and offices to ensure a smooth registration process – positive obligations – and to respect the rights and duties of parents – negative obligations. In addition, whenever a child is illegally deprived of some or all elements of his or her identity, States must provide protection and assistance. States are thus in charge of providing support to families, private facilities for children, or to protect directly the child through its own measures<sup>59</sup>. Concerning the Para. 3 of Art. 24, it will be discussed in Chapter 4.

The **Convention on the Rights of the Child** (CRC)<sup>60</sup> was unanimously adopted and opened for signature, ratification and accession by the UN General Assembly resolution 44/25 of 20 November 1989 in New York, and entered into force on 2 September 1990. CRC has 74 Signatories and 168 Parties. DRC signed the Convention on 20 March 1990 and ratified it on 27 September 1990 with no reservations<sup>61</sup>. The Convention is a legally binding instrument and its compliance is monitored by the UN Committee on the Rights of the Child. The ratifying States must submit reports examining their improvements concerning the child rights regularly. The Convention is divided into three sections: the Preamble (from Art. 1 to Art. 41), and two procedural sections (the second section includes Artt. 42 -45 and the third section includes Arts. 46-54), including also implementation and monitoring procedures. Art. 7 of CRC claims:

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<sup>58</sup> CCPR Art. 16 Everyone shall have the right to recognition everywhere as a person before the law.

<sup>59</sup> NOWAK M., (2005) *U.N. Covenant on Civil and Political Rights: CCPR commentary - 2. rev. ed*  
pp.544-562

<sup>60</sup> The full text at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>61</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en)

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## **Article 7**

- 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*
- 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

The Para. 1 is of a more general nature and recalls the Arts. 24(2) and 24(3) of the CCPR while specifying the right of the child to know who his or her parents are and the right and duty of parents to take care of their own daughters and sons. Para. 2 is in line with the Art. 24(1) of the CCPR but goes more in depth explaining the obligation of States Parties to protect the aforementioned rights, by implementing both national and international instruments. The protection of a stateless child and the prevention of statelessness absorbed the attentions of the plenipotentiary representatives of the States that drafted the Convention. For statelessness results to be a major issue nowadays, the Para. 2 invites the States Parties to tackle the problem by mean of normative and legal instruments, but do not specifies the means of achieving that result – that should be provided by national laws<sup>62</sup>. Again, general recommendations are not followed by procedural specifications.

Considering the scope of the CRC, along with Art 7 there is a number of other articles that are of particular relevance for they are intimately linked to birth registration. Art. 1 provides a definition of child, who is whoever under the age of 18, unless the major age is attained earlier according to specific national legislations. Art. 2 stresses the importance of ensuring human rights to everybody with no discrimination, Art. 3 states that the very first goal of all the actions concerning children should be the protection of their interests through the implementation of all the possible measure by the States, as claimed by Art. 4. The responsibility of the State in preserving the child's identity, nationality, and family's bonds are appealed by Art.8,

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<sup>62</sup> DETRICK S. (1999) *A Commentary on the United Nations convention on the rights of the child*, The Hague ; Boston ; London: Martinus Nijhoff,

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while Art. 9 imposes the right to maintain the family integrity, avoiding any unjustified separation of the child from the parents, and providing help for facilitating family reunification. Art. 21 concerns national and international adoption, stressing the significance of safeguarding the welfare of the children. Finally, Artt. 32, 35, and 35 respectively prohibit child work, sale, trafficking, and abduction of children, and their recruitment in armed forces.

The **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**<sup>63</sup> (ICMW) was adopted by the UN General Assembly resolution 45/158 of 18 December 1990 in New York and entered into force on 1 July 2003. ICMW has 38 Signatories and 48 Parties and DRC is not among the ratifying States. This is a multilateral binding treaty aimed at protecting migrant workers and their families without any discrimination and for the entire period of permanence in the State of employment<sup>64</sup>. Considering the terrific importance of migration and migrant workers nowadays, this Convention is indeed a burning topic. In fact, there is a relevant number of awareness-raising campaigns worldwide to advocate for States to ratify the ICMW in order to improve the protection of such a category. Below, Art. 29:

### ***Article 29***

*Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality*

This article stresses the importance of providing a child with a name, a nationality and a birth registration, but it does not stress neither that the latter actually includes the former ones nor the responsibilities of States Parties and the parents of the child. Again, this is a general provision that needs to be contextualised within and strengthen through a national legal framework.

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<sup>63</sup> The full text at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en)

<sup>64</sup> Artt. 1 and 2 of ICMW

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The **Convention number 182 on the Worst Forms of Child Labour**<sup>65</sup> was adopted by the ILO on 17 June 1999 in Geneva and entered into force on 19 November 2000. DRC ratified it on 20 Jun 2001<sup>66</sup>. The Convention requests the prohibition, the prevention, and the elimination of the worst forms of child labour advocating for immediate and comprehensive actions. The General Conference of ILO adopted, on the 17 June 1999 in Geneva, the **Worst Forms of Child Labour Recommendation number 190**<sup>67</sup>, whose provision should be applied in conjunction with the Convention number 182. The Recommendation number 180 determines a Programme of Action (Part I), defines Hazardous Work (Part II), and provides detailed guidelines for its Implementation (Part III). Art. 5(2) of Part III claims as follow:

### **Article 5**

*(2) As far as possible, such information and statistical data should include data disaggregated by sex, age group, occupation, branch of economic activity, status in employment, school attendance and geographical location. The importance of an effective system of birth registration, including the issuing of birth certificates, should be taken into account.*

This article records the birth registration as a powerful mean to prevent child labour, for the recording of the birth safeguards the child to be treated as an adult. A birth certificate ensure that the State is aware of the actual age of the child and hence allows the governments to undertake all the measures required by law to protect and promote child's rights. The importance of statistical data deriving from the registration process becomes blatant when about to design policies to prevent and eradicate child slavery, trafficking, prostitution, pornography, debt bondage and involvement in armed forces.

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<sup>65</sup> The full text at:

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C1\\_82](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C1_82)

<sup>66</sup>[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312327:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO)

<sup>67</sup> The full text at:

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:R190](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R190)

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The **Convention on the Rights of Persons with Disabilities**<sup>68</sup> was adopted on 13 December 2006 during the sixty-first session of the UN General Assembly by resolution A/RES/61/106. “*In accordance with its article 42, the Convention shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of 30 March 2007*”<sup>69</sup>. The Convention has 159 Signatories and 155 Parties (DRC has not ratified it). According to this binding Convention, the term *persons with disabilities* stands for “*those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others*”<sup>70</sup>. Art. 18 Para. 2 claims:

### ***Article 18***

*2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.*

In line with CRC Art.7 Para. 1, Art. 18 extends the same rights to disabled children and results legally binding for States Parties. As well as upon CRC, there is a strong statement of the right but here there is a lack of definition of the role of both States Parties and family, or legal guardians. The Art. 18 is very general and does not highlight any procedures nor responsibilities of the States Parties. Therefore, the article sets a goal to be reached without specifying what kind of measures have to be undertaken in order to reach it.

In addition to the aforementioned international instruments, all of them binding for the States Parties and some of them represents also universally binding International Customary Law, there are many others such as: Additional or Optional Protocols, UN Security Council Resolutions, judicial decisions of the International Court of Justice and other treaties that recall the ones described above. It follows a list of the most important International Law sources that, even without explicitly referring to birth registration, are in any case deeply linked to it for their focus on the right to

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<sup>68</sup> Full text at <http://www.un.org/disabilities/convention/conventionfull.shtml>

<sup>69</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en)

<sup>70</sup> Art. 1 at <http://www.un.org/disabilities/convention/conventionfull.shtml>

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have a nationality. First, Art. 15 of the **Universal Declaration of Human Rights**<sup>71</sup> of 1989 states that “*Everyone has the right to a nationality*”; Art. 1 of the **Convention on the Reduction of Statelessness**<sup>72</sup> of 1961 claims that “*A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless*”; Art. 9 of the **Convention on the Elimination of All Forms of Discrimination Against Women**<sup>73</sup> of 1979 underlines that all women shall hold “*equal rights with men with respect to the nationality of their children*”; and Art. 6 of the **European Convention on Nationality**<sup>74</sup> of 1997 asserts that “*Each State Party shall provide in its internal law for its nationality to be acquired ex lege by ... foundlings found on its territory who would otherwise be stateless ... [and] for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality.*”

## **REGIONAL LEGAL SYSTEM**

The **American Convention on Human Rights** (ACHR)<sup>75</sup> was adopted by countries on the Western Hemisphere in San José, Costa Rica, on 22 November 1969 and came into force 18 July 1978. As of 2014, ACHR has 23 active Parties. Being a regional normative instrument, DRC has not ratified it for it is outside the region interested by the ACHR. The articles of ACHR related to birth registration are:

### ***Article 18. Right to a Name***

*Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.*

### ***Article 19. Rights of the Child***

*Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.*

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<sup>71</sup> The full text at <http://www.un.org/en/documents/udhr/>

<sup>72</sup> The full text at <http://www.unhcr.org/3bbb286d8.html>

<sup>73</sup> The full text at <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

<sup>74</sup> The full text at <http://conventions.coe.int/Treaty/EN/Treaties/Html/166.htm>

<sup>75</sup> The full text at [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm)

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### ***Article 20. Right to Nationality***

- 1. Every person has the right to a nationality.*
- 2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.*
- 3. No one shall be arbitrarily deprived of his nationality or of the right to change it.*

The provisions of Art. 18 was recommended by Organization of American States Council by the InterAmerican Commission on Human Rights, in line with Art. 24(2) of CCPR. The Art. 18 refers to national law to harmonise the right to have an identity. Art. 19 recalls both CRC and the Convention on the Rights of Persons with Disabilities while Art. 20 This article was not included in the draft prepared by the Inter-American Commission on Human Rights, but rather was developed from Art. 24 of CCPR. This article claims the rights rather than specifying duties and powers of the States Parties: for this, it relies on national laws.<sup>76</sup>

The **African Charter on the Rights and Welfare of the Child** (ACRWC) was adopted by the Organisation of African Unity (OAU)<sup>77</sup> in 1990 and came into force on 29 November 1999. Like the CRC, this Charter is a comprehensive legally binding regional instrument that sets out rights, principles, and norms for children. The ACRWC and the CRC are the only international and regional human rights treaties that cover all the children's rights. The ACRWC sprang from the necessity of integrating the CRC that, according to OAU countries, lacked of some aspect peculiar of African societies. Among those aspects there are, for example empowering the role of law at the expenses of tribal cultures, traditions, religions that too often push children into early marriage, physical abuses and early work; promoting the improvement of the rose of girls within African societies; and avoiding the conscription of children into armed groups. DRC signed the Charter on 2 February 2010 but never ratified it. The article related to birth registration is Art. 6:

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<sup>76</sup> MONROY CABRA M. G., (1980) *Rights And Duties Established By The American Convention On Human Rights*, Vol. 30:21 pp 49-51 at <http://amulrev.org/pdfs/30/30-1/Cabra.pdf>

<sup>77</sup> In 2001, the OAU legally became the African Union (AU). More information about AU can be found at <http://www.au.int/>

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## ***Article 6: Name and Nationality***

- 1. Every child shall have the right from his birth to a name.*
- 2. Every child shall be registered immediately after birth.*
- 3. Every child has the right to acquire a nationality.*
- 4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.*

Art. 6(1) claims the right to have a name, which is a mean of identification, tracking of individuals and assigning rights and responsibilities. Additionally, Para. 2 provides the right to be registered at birth. The Charter does not provide any procedure to be followed or any other specification; however, the African Committee of Experts on the Rights and Welfare of the Child<sup>78</sup> has highlighted that “*it must be universal, free and accessible immediately after the birth of a child*” (the Committee, April 2014) and that States Parties should guarantee the registration of the birth of each and every child on their territories. The Para. 3 specifies the right to have a nationality while Para. 4 establishes the obligation of the States Parties with regards to the right to a nationality to whoever was born within their national borders or to the children born elsewhere but with no other nationality<sup>79</sup>.

In the next paragraph, it will be analysed how international treaties influenced DRC legislation concerning birth registration.

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<sup>78</sup> Established to protect the rights enshrined in the ACRWC, the Committee formulates principles and rules to protect the rights of the child, interacts with the States parties, and produces observation and recommendations. More information at <http://acerwc.org/>

<sup>79</sup> THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD (2014), *General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child*, ACERWC/GC/02 adopted by the committee as its twenty-third Ordinary Session (7-16 April, 2014) pp 1-101

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### 2.3 The Congolese Normative and Legal Framework



Figure 2© UNICEF

All the International Law instruments illustrated above suggest the importance of having a human rights approach to birth certificate rather than an administrative-bureaucratic one. However, not only birth registration is not always considered as a fundamental human right by

the totality of States, but also it appears not to be fully implemented, especially in less developed areas of the world. The number of non-recorded births of children under the age of five worldwide nearly reaches 230 million<sup>80</sup> and in DRC, millions of children live and die and no trace of their passage in this life exists. However, there are national laws that legally ensures both the registration of every child in DRC immediately after birth, and the presence of an efficient civil registry system based on universality and non-discrimination. In this paragraph, the Congolese normative and legal framework concerning birth registration will be presented and briefly explained. In addition, for the official language of the country is French, a translation of the most relevant articles is presented herewith.

The first national law's source that harmonises and protects the implementation of the right to be registered at birth is the **2006 DRC Constitution**<sup>81</sup>. As thereto stated by the Art.1 "*the Democratic Republic of the Congo is, within its borders of 30 June 1960, a State based on the rule of law, independent, sovereign, united and indivisible, social, democratic and secular*". DRC is now under the regime of this Constitution, which was approved through a referendum, and was promulgated on 18 February 2006 by President Joseph Kabila. Since the independence in 1960, the Constitution has been amended six times in line

<sup>80</sup> Appendix 1, Birth registration worldwide, UNICEF, October 2014

<sup>81</sup> The full text at <http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>

## **Birth Certificate: Normative And Legal Framework & Practice**

with the transition of the country from colonialism to post-colonialism, and from dictatorships to a democratic regime. It is composed of 229 articles gathered within nine Titles, each of them harmonising a specific issue. Title I provides general provisions concerning both the State and its sovereignty, and nationality; Title II covers a wide range of human rights, fundamental liberties and the duties of citizens and State; Title III explains how the power of the State is organised and exercised; Title IV describes the division of DRC into Provinces, enumerating the competences of both central and peripheral authorities; Title V defines the role of the Economic and Social Council; Title VI refers to democracy-supporting Institutions; Title VII specifies the international treaties and agreements on which the Congolese Constitution is based; Title VIII contains the revision of the Constitution; and Title IX includes transitory and final provisions. The Constitution does not clearly specify the right to be registered at birth at a civil registry bureau in charge, for it generally and universally promotes and protects the rights of the child through the provisions of several articles.

### ***Article 40***

*All individuals have the right to marry a person of the opposite sex of their own choice and to create a family.*

*The family, the basic unit of the human community, is organized in a way that ensures its unity, stability, and protection. Its protection is under the care of the public authorities.*

*The care and the education to be given to children constitute a natural right and duty of the parents, which they exercise under the control and with the assistance of the public authorities.*

*The children have the duty to assist their parents.*

*The law defines the rules on marriage and the organization of the family.*

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### **Article 41**

*Every person who has not yet reached the 18<sup>th</sup> year of age is to be considered as a minor, without gender distinctions.*

*All minors have the right to know the names of both of their parents.*

*They also have the right to enjoy the protection of their family, of society, and of the public authorities.*

*The abandonment and maltreatment of children, in particular paedophilia, sexual abuse, and engagement in conflicts and war, are prohibited and punished by law.*

*The parents have the duty to take care of their children and to ensure their protection against any act of violence inside as well as outside their parental home.*

*The public authorities have the obligation to ensure the protection of children in a difficult situation and to punish the authors of acts of violence against children according to the law.*

*All other forms of exploitation of minors are severely punished in accordance to the law.*

Artt. 40 and 41 provide a definition of child, who is whoever under eighteen years of age. In addition, they claim the duty of both the parents and the public authorities to prevent the abuse of, to assist, and to protect children. Those articles adhere to international instruments, particularly to both the Convention n° 138 of ILO concerning the Minimum Age for Admission to Employment<sup>82</sup> – ratified by DRC on 20 June 2001 – and the Convention n° 182 on the Worst Forms of Child Labour. According to Art. 123(16), DRC commits to the protection of “vulnerable groups”<sup>83</sup>, namely women, children, minorities, and people in a vulnerable socio-economic and

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<sup>82</sup>The full text at:

[http://www.ilo.org/dyn/normlex/fr/?p=NORMLEXPUB:12100:0::NO:P12100\\_ILO\\_CODE:C138](http://www.ilo.org/dyn/normlex/fr/?p=NORMLEXPUB:12100:0::NO:P12100_ILO_CODE:C138)

<sup>83</sup> Article 123: Without prejudice to the other provisions of this Constitution, statutory law determines the fundamental principles concerning: (16) the protection of vulnerable groups.

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health position. Finally, Art. 150 appoints the judiciary power as “*the guarantor of individual liberties and fundamental rights of citizens*”<sup>84</sup>.

Together with the Congolese Constitution, the most powerful legal mechanism to guarantee the right to be registered at birth is the ***Code de la Famille*** (Family Law Act<sup>85</sup>). The Law n° 87.010, approved on 1 August 1987, lays down the Family Law Act, which is a juridical instrument harmonising the family organisation. It is composed of five *Livre* (Sections), twenty-eight Chapters, and 935 Articles. The five Sections provide procedural and legal framework concerning respectively: the Congolese nationality, the rights and duties of individuals, the rights and duties of families, the management of inheritance, and final dispositions. Section III, in turn, contains eight Chapters and 273 articles (Arts. 56-329) that specify, among the other things, the normative and the procedure to undertake in order to obtain a birth registration certificate.

First of all, according to Arts. 50-70, the name of a child – that must be in line with the Congolese culture – has to be chosen by the father and, only in case he is unknown, the mother holds the right to choose it; the very same procedure is applied to confer the surname. In case both the parents remain unknown, either the legal guardian or the employee of the civil registry has the right to choose the name of the child at the moment of registration. The legal organisation of birth registration, together with responsibilities and duties of both the State and the parents, are claimed in a number of articles, in particular Arts. 83-85, 92, 96-99, 106, 114, 115, and 157.

The section containing the Arts. 116-130 provides specific rules concerning the theory and the procedures behind the issuance of a birth certificate. The translation from French into English of the entire section, useful in order to obtain a clearer picture of the birth registration system, can be found herewith as Annex.

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<sup>84</sup> Article 150: The judiciary is the guarantor of the individual liberties and fundamental rights of the citizens.

<sup>85</sup>All the translations into English from now until the end of the Chapter of the *Code de la Famille* are neither official nor legally binding. Since there is not an official translation, I translated the relevant articles by myself since they fall within the scope of this research. Please notice that the original document is written in French and the full text is available at: <http://www.leganet.cd/Legislation/Code%20de%20la%20famille/Table.htm>

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The aforementioned articles serve to protect and promote the child's rights to exist in front of the law, to hold a nationality, a clear identity, and to be legally treated according to his or her age.

In practice, a child shall be declared – by either his or her parents, or by witnesses of the birth or by relatives holding a proxy signed by the parents – at a Civil Registry Bureau within thirty days from the birth. In this range of time, the birth certificate shall be issued for free; afterward, it will be necessary to appeal to the court for a suppletory judgement<sup>86</sup>. In this case, the one who appeals must bear the burden of the costs of this legal procedure, including the cost of a lawyer. The entire procedure is estimated to cost about 29,000 Congolese Francs that are about 28.00 Euros (30.00 USD).

Furthermore, lacking of a physic, intellectual, and emotional maturity, DRC Government agreed that children should require even more special and accurate normative instruments to guarantee their protection. In order to both decrease the breach between what is written and what should be done, and to facilitate the implementation in practice, the provisions within the *Code de la Famille* have been amended on 10 January 2009, through the adoption by the National Assembly and the DRC Senate of the ***Loi n° 09/001 Portant Protection de l'Enfant***<sup>87</sup>. This Law is meant to strengthen the implementation of the child's rights introducing amendments to the previous normative framework in order to better protect the child. Particularly, the articles that fall within the scope of this work are the ones contained in *Chapitre II: Des Droits Et Devoirs De L'enfant, Section 1er: Des droits de l'enfant*<sup>88</sup> that follow<sup>89</sup>.

### ***Article 14***

*Every child has the right to an identity from the birth. Without prejudice to the provisions of Artt. 56-70 of the Code de la Famille, the identity consists of a*

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<sup>86</sup> The suppletory judgement is harmonised by Art. 106 of the *Code de la Famille*.

<sup>87</sup> The full text at: <http://www.leganet.cd/Legislation/JO/2009/L.09.001.10.01.09.htm>

<sup>88</sup> A possible translation into English could be: *Chapter II: Rights and Duties of the Child, Section I: Child's Rights*.

<sup>89</sup> As for the *Code de la Famille*, also the *Loi n° 09/001* does not have a legal translation from French into English; therefore, the translation provided has been made by myself and does not hold any legal power.

## **Birth Certificate: Normative And Legal Framework & Practice**

*name, place and date of birth, gender, and the names and nationalities of the parents of the child.*

### ***Article 15***

*Any child, illegally deprived of one or all components of his or her identity, is entitled to appropriate assistance and protection provided by the authorities in charge, contacted by the family child, by public or private social structures approved, or by any interested person in order to let the registration process to be as quick as possible.*

### ***Article 16***

*Every child has the right to be registered at a Civil Registry Bureau within ninety days after birth, according to law. Birth registration within ninety days after birth is free of charge.*

On the one hand, Art. 14 reaffirms what already stated in the *Code de la Famille* without additional comments; on the other hand, Artt, 15 and 16 bring some important changes. Particularly, Art. 15 opens the possibility of designate *any interested person* to register the birth of a child, amending Art. 117 of the *Code de la Famille* that conferred the power to declared a newborn solely to the father, the mother, other close relatives of the child or to *those present at the moment of the birth*.

Considering the Congolese background, especially in terms of social framework, it often happens that parents are not able to arrive physically to the closest Civil Registry Bureau to register their children: Art. 15, hence, provides a legal proxy (Figure 1) to whoever is willing to register the child, may it be an NGO's or an IO's employee, or anyone else. This new provision surely make the entire birth registration process smother and easier. In addition, another very important innovation is provided by Art. 16 amending Art. 116 of the *Code de la Famille*. The article extends the legal deadline to register a child without paying any fee from thirty to ninety days. Firstly, it should be noticed that this two-months extension is in line, although not completely, with the recommendation of the African Committee of Experts on the ACERWC that encourages States Parties to let late registration “*be allowed to occur free of charge within a*

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*grace period of one year after*<sup>90</sup>. Obviously, there is substantial difference between a grace period of three months and one of one year, however, the positive effects of this extension on birth registration is undeniable and will be further demonstrated in Chapter 3. Therefore, Art. 16 is important for it confers more time to families to travel from their home the closest Civil Registry Bureau. Considering both the vastness of the territory of DRC and the fact that the majority of the country is made of rural areas, both the time and the costs of such a journey could be very limitative and could represent a geographical barrier that results rather difficult to overcome. Art. 16 is then meant to tackle the timing issue, which is a very relevant problem in DRC, as well as the geographic barriers.

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<sup>90</sup> THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD (2014), *General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child*, ACERWC/GC/02 adopted by the committee as its twenty-third Ordinary Session (7-16 April, 2014) p 35

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N° .....

## **PROCURATION POUR FAIRE LA DECLARATION DE LA NAISSANCE A L'ETAT CIVIL**

Je soussigné (e) .....Père/Mère de l'enfant dont l'identité suit:

Nom:..... Post-nom:..... Prénom:.....  
né (e) le..... à.....(Lieu), à .....heures.....minutes,  
Sexe (M) (F)

**Identité du Père**.....(nom complet) né le.....  
.....à.....(Lieu), nationalité.....Profession .....  
.....Adr. Av (Rue).....Q/.....  
C/.....Tél:.....

**Identité de la Mère**.....(nom complet) né .....Profession  
le..... à.....(Lieu), nationalité.....Profession  
.....Adr. Av (Rue).....Q/.....  
C/.....Tél:.....

Situation matrimoniale des parents: (Conjoints) (non conjoints)

Eventuellement : (Divorcé (e) ) (Veuf (e)) depuis le.....

Donnons procuration à.....(nom complet), nationalité:  
.....Profession.....né (e) le.....  
à.....(lieu), Adr. Av. (Rue).....Q/.....  
C/.....

Pour faire la déclaration de la naissance de mon enfant dans les 90 jours qui suivent celle-ci devant l'Officier du Bureau de l'état civil (Principal) (Secondaire) de .....

En cas de déplacement, Adresse familiale: Av:.....Q/.....  
C/.....

Date.....

Signature du déclarant (e)

Figure 3 Proxy – Collected at the Tribunal of Goma

### **2.4 To Resume: What to do in Practice to Register a Child in DRC**

The normative and legal framework about birth registration in DRC is rather detailed in theory and provides a clear procedure to be followed to obtain a birth certificate. The articles of both the 2006 DRC Constitution and of the *Code de la Famille* – amended by the *Loi n° 09/001 Portant de la Protection de l'Enfant* are herewith analysed in order to attain a comprehension of what has to be done, step by step.

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First of all, either the parents of the newborn or whoever holds a proxy signed by the parents of the child have to go the Civil Registry Office of the municipality of residence of one of the parents to present a request of birth certificate (Arts. 116 and 117 of the *Code de la Famille*, amended by the *Loi n° 09/001*). The request and the respective registration should be done within three months from the birth without paying any fee (Art. 116 of the *Code de la Famille*, amended by the *Loi n° 09/001*); after this grace period, it is necessary to present a supplementary judgement to the court and the applicant have to bear all the legal costs of this operation (Arts. 88 and 106 of the *Code*



Figure 4 Birth registration step by step

*de la Famille*). It is possible to find some hospital or maternity ward in possession of a civil register; in this case, the child can be registered there immediately after birth (Art. 119 of the *Code de la Famille*).

Accordingly, the civil register's page is made up of four identical sections (Figure 2): one should be given back to the parents of the child maximum one month after the moment of the registration and represents the birth certificate. If this does not happen, the documents does not hold any legal power (Art. 98 of the *Code de la Famille*).

Concerning the other sections, one should be sent to the Central Civil Registry Bureau in the capital city – Kinshasa – one has to be archived at the archive of the municipality, and the last one should be delivered to the registry of the High Court in Kinshasa (Arts. 83 and 87 of the *Code de la Famille*). All those parts are identical and contain the very same information: exact date, time and place of the birth, name – that has to be chosen in accordance with Arts. 51-60 of the *Code de la Famille* – sex of the child as well as personal details of his or her parents or of the person legally in charge

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of registering him or her (Arts. 88 and 118 of the *Code de la Famille*). The birth certificate is written in French, has to be fully filled in and signed by both the officer of the Civil Registry and the applicant (Arts. 92 and 96 of the *Code de la Famille*).

### BIRTH CERTIFICATE

REPUBLIQUE DEMOCRATIQUE DU CONGO



Province de.....  
Ville de.....  
District de.....  
Territoire/Commune de.....  
Chefferie/Secteur ou Cité de.....  
Bureau Principal de l'Etat civil de.....  
Bureau Secondaire de l'Etat civil de.....  
Acte n°..... Volume..... Folio n°.....

#### ACTE DE NAISSANCE

L'an deux mille..... le..... jour du mois  
de..... à..... heures.....  
Par devant nous\*.....  
Officier de l'Etat civil de.....  
A comparu..... en qualité de.....  
Né (e) à\*..... le.....  
..... Profession.....  
Résidant à.....  
Lequel (laquelle) nous a déclaré ce qui suit :  
Le..... jour du mois de ..... de l'année.....  
est né à..... un enfant de sexe.....  
nommé .....  
fils (fille) de\* ..... né à.....  
le..... nationalité ..... profession.....  
résident à..... et de.....  
..... né (e) à.....  
le..... nationalité ..... profession.....  
résidants à..... conjoints.  
Lecture de l'acte a été faite ou connaissance de l'acte a été donnée ou traduction de l'acte a été faite en....., langue que nous connaissons ou par ..... interprète ayant prêté serment.  
En foi de quoi, avons dressé le présent acte.

Le déclarant

L'Officier de l'Etat civil

(\* ) Préciser le nom et qualité  
(\*) Biffet les mentions inutiles

Figure 5 Birth Certificate Sample

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Additionally, in case of missed, false or flawed registration, the parents or legal guardians of the child should paid a fine or be imprisoned for a limited period (Artt. 114 and 115 of the *Code de la Famille*).

Finally, only the person concerned, his or her close relatives, his or her legal guardians or any person holding an authorisation of the Court, can request a copy of the birth certificate upon the payment of a fee. (Artt. 99 and 129 of the *Code de la Famille*).

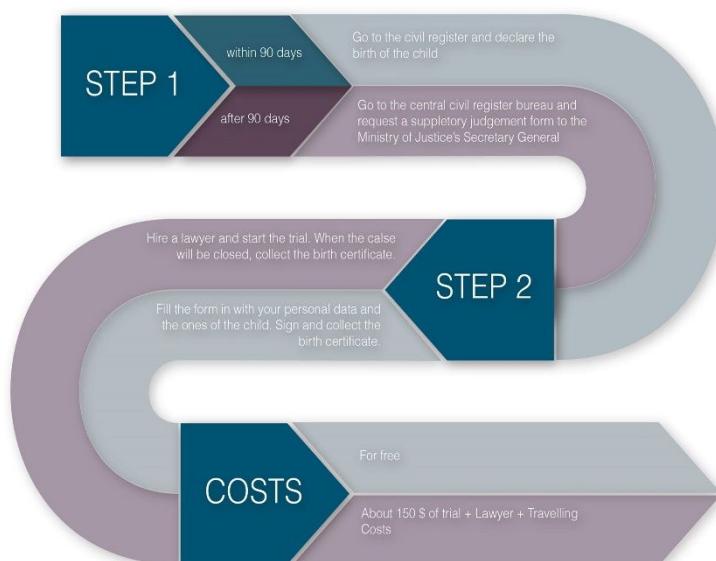


Figure 5 Birth registration in two steps

### 2.5 Conclusions

Birth registration is a fundamental human right and should be considered as such for it is enshrined by several international legal instruments. Being ensured by the majority of national legal framework, it could be assumed as a customary practice. It is not only a mere administrative practice for it serves to implement a number of other human rights such as the existence of a child in front of the law and the right to have a family and a nationality. It facilitates the participation of children to schools and civil society as well as their access to health care national schemes; in addition, by ensuring

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the age of the child, it protects him or her from abuses, exploitation, risk of statelessness, and judicial mistreatments.

This undeniable human right is either directly or indirectly protected and ensured by several International Law instruments, both binding and non-binding, such as the Universal Declaration of Human Rights, the CCPR, the CRC, the ACRWC and many others. Most of those are more of a general nature and do not clearly specify neither procedure nor responsibilities of the actors concerned. For more specific and detailed provisions, it is necessary to look at national legislations. In the specific case of DRC, the two main legal instruments are the 2006 Constitution and the *Code de la Famille*, amended by the *Loi n° 09/001*.

Unfortunately, the existing gap between what the laws say and what actually do is incredibly big. On the one hand, what the national and international legal frameworks assert appears to be more than sufficient; on the other hand, their implementations urgently needs to be improved. One of the main problem of the practice is that birth registration should be inserted within an efficient civil registry system that properly works: unluckily, the civil registry in DRC – as well as elsewhere in the world – barely exists. In country where institution building is rather humble and where both the willingness and possibilities of governments are reduced, it results very challenging to tackle such an issue. The reason why birth registration is still that poorly considered could be that, according to my personal opinion, there is a perception of a hierarchy of priorities: obviously, when a country is striving to reduce high poverty, huge death rates, and constant conflicts, it results difficult even to let people understand the relevance of birth certificates. Nonetheless, it is part of an engine that works only when all its components work. It is not possible to register a child without an efficient civil registry, the civil registry cannot exists without a government, and governments. The weak points, together with the main challenges, will be further discussed in Chapter 5.

## CHAPTER 3

### BIRTH CERTIFICATE IN THE DEMOCRATIC REPUBLIC OF CONGO – NORTH KIVU

*“Masisi*

*North Kivu*

*a place defying beauty*

*green is even the color of sky [...]”<sup>91</sup>*

#### 3.1 National and International Actors Involved: UNICEF and ODH

According to statistical data from the United Nations Children’s Fund (UNICEF) about “230 million children under five years of age are not registered at birth”<sup>92</sup>. The percentage of unregistered children changes from country to country according to various factors. The differentials of birth registration can be: socio-economic and demographic variables (i.e. gender, place of residence, household wealth, mother’s education); proximate variables (i.e. degree of skilled health personnel attending the birth, vaccinations, children education); knowledge-linked variables; and malnutrition and mortality rates<sup>93</sup>. Actually, further differentials exists in addition to those variables, and they became object of specific studies in 2013<sup>94</sup>. This is the year when the UN started carrying out a survey, asking the caretakers of unregistered children worldwide the reasons why they had not registered their children. After about one year of work, all the data were aggregated and the outcomes of the survey have indicated three main

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<sup>91</sup> AMITABH MITRA, (2012) *Migration Poetry of South Africa*. At <http://southafricanmigrantpoetry.blogspot.it/>

<sup>92</sup> Data from UNICEF documents for internal use (2013) p. 2

<sup>93</sup> More information about challenges and causes of non-registration can be found in Chapter 5.

<sup>94</sup> For the 25<sup>th</sup> anniversary of the CRC.

## Birth Certificate in the Democratic Republic of Congo – North Kivu

causes of lack of registration. They are related to: costs of the procedure, long travels to reach the civil office in charge, and lack of knowledge related to this topic, in terms of both theory and practise. In addition, the survey had reported very significant differences on the basis of geo-political positions. In fact, the non-registration rate in industrialised countries is very low, around the 2 percent only; instead, in developing areas it reaches the pick of 63 percent. This terrific gap is caused by the fact that birth registration is a practice linked to the well-functioning of States' institutions and, thus, it is given almost for granted in all those consolidated States, where the institutional and administrative apparatus properly works. In order to have a better picture of the aforementioned gap, some of the percentages of unregistered births by region are reported in the *Table A* below. The year of reference is 2003.

Regions	Births 2003 (In Thousands)	Unregistered Children (%)	Unregistered Children (In Thousands)
<b>Sub-Saharan Africa</b>	26,879	55	14,751
<b>South Asia</b>	37,009	63	23,395
<b>Developing Countries</b>	119,973	40	48,147
<b>Industrialised Countries</b>	10,827	2	218
<b>World</b>	133,028	36	48,276

*Table A © UNICEF Database*

The data above show a grave global issue surely in need of concrete improvements, which should require efforts both at national and international level. For what concerns the international position, the UN bodies have recognised unregistered children as a burning topic. In line with both Art. 7 of CRC and a number of UN General Assembly Resolutions<sup>95</sup> – not to mention all the other legal instruments already herewith presented in Chapter 2 – the Governments of the UN Member States

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<sup>95</sup> Among them, the 2002 General Assembly Resolution '*A World Fit for Children*'

## **Birth Certificate in the Democratic Republic of Congo – North Kivu**

have been reaffirming their deep commitment to ensuring universal birth registration, which is at the same time a fundamental right as well as the main door on the way to the full enjoyment of further rights.

Particularly, UNICEF is fully devoted to the cause and birth registration is included in its strategic plans since its dawning. When UNICEF was established on 11 December 1946 by the UN General Assembly Resolution number 57 (I) was meant to be a temporary fund; then, the relevance of universal child protection worldwide pushed the States to make it a permanent UN Organization, and this happened in 1953. Nowadays, it is active in 190 countries and its mandate aims at protecting and promoting every children's rights and wellbeing<sup>96</sup>. The scope of the organisation is thus very wide, because children are involved in each and every aspect of a country's life: from health care to education, from economic development to environmental sustainability, from conflicts to peace. As foreseen in the CRC, guaranteeing the fulfilment of children's rights is crucial to ensure the very existence of countries. For children are the future populations to be, UNICEF cooperates with both governments, IOs and NGOs in order to promote and ensure all their rights.

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Since decades, DRC dwells in a protracted situation of emergency. Although the crisis is perceived more or less in the entire country, there are some areas more affected than others. DRC is composed by eleven provinces: North Kivu, South Kivu, Maniema, Katanga, Western Kasai, Eastern Kasai, Bandundu, Équateur, Kinshasa, Orientale, and Bas-Congo. In addition, DRC comprehends 156 territories and municipalities. Given the dimensions of the country, it is easy to understand that each part has a different social, economic and cultural background. The existing differences from within results in big dissimilarities in terms of rates, may they be registered either at a national level or at provincial level. On a pure statistical and numerical basis, it can

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<sup>96</sup> [www.unicef.org](http://www.unicef.org)

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be asserted that North Kivu has one of the worst socio-economic condition of the country – and of the world, actually – and this is the reason why it is the focus of this research. The challenges in the territory are many, involve several domains, and last since decades. At a first sight, this place is one of the most difficult on heart. In July 2006, before the presidential elections, the UNICEF UK Ambassador and BBC war correspondent Martin Bell stated that “*every six months, the death toll in DRC rivals the total deaths caused by the 2004 Indian Ocean tsunami*”<sup>97</sup>. As for 2006, DRC was deadliest country in the world. The democratic elections brought a number of improvements although the security and development in particular zones are still hard to reach and to root. The complexity of the country goes along with a positive attitude of Congolese people and their willingness to start from scratches over and over again. The strength in despair of Congolese people is mesmerising and represents a positive example for everyone: notwithstanding the high level of criticality, the Congolese population keeps on trying and living, even in this precarious environment.

The first humanitarian crisis in North Kivu, whose echoes reached the international community, busted in the 1990's in the territory of Masisi. Afterward, the area was deeply affected by the Rwandan civil war and genocide in 1994 and then there have been two other main severe civil wars, which are considered to be the worst ones in the aftermath of the Cold War<sup>98</sup>. Today, the United Nations Office for the



Figure 1 DRC Province Division ©UN

<sup>97</sup> <http://www.unicef.org/childalert/drc/>

<sup>98</sup> COGHLAN, B. et al. (2006), Mortality in the Democratic Republic of Congo, Lancet 367(9504)

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Coordination of Humanitarian Affairs (OCHA) recognises 56 active armed groups in eastern DRC that have been causing as many displaced persons as half of the size of Western Europe<sup>99</sup>. UNICEF and its partners – NGOs, IOs, and representatives of the private sector – have been settling context-specific methodologies to best protect children and their families' necessities, either in conflict or post-conflict or peaceful periods.

In this context, UNICEF – Goma has based its action plan on three main pillars<sup>100</sup>, which covers a time-period that goes from 2013 until 2017. The pillars are: to prevent and protect the children from all kind of abuses and discrimination, to guarantee children juridical protection, and to ensure their access to the services of the civil registry (namely, birth registration). The first pillar is thus related with governance, to be strengthen both at national and provincial level. In this field, UNICEF is aligning its capabilities with municipalities, territorial units, and governmental institutions in order to develop and improve their capabilities to identify, coordinate, report, and take care of children within vulnerable and/or risky situations. The major efforts concern the prevention of child recruitment in armed forces, rehabilitation and social reintegration of child soldiers and prevention of sexual abuses and sexual slavery of minors<sup>101</sup>. For what concerns the second pillar on justice for minors, UNICEF funded and coordinated the creation of eight new juvenile Courts in the provinces of Maniema, South Kivu, Bandundu, Katanga, Orientale, Équateur, and Western and Eastern Kasai. In addition, it is educating the civil society all over the country about juvenile justice as well as offering trainings addressed to tribunals' administrative and judicial staff. Up to nowadays, it has been estimated that at least 40,000 children were granted a proper judicial protection in the eleven provinces of DRC<sup>102</sup>. The third and final pillar on birth registration implies the involvement of UNICEF in the creation of 637 new secondary civil bureaux that should be completed by 2017. Nowadays, 411 principal and 651 secondary civil registry bureaux exist and operate in five provinces

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<sup>99</sup> Around 2.8 millions of displaced persons: <http://www.unocha.org/>

<sup>100</sup> UNICEF (2014), *Défis Communautés Protectrices & Modélisation de la Fiche Technique Intégrée*, for internal use only, p. 3

<sup>101</sup> *Ibidem* p. 4

<sup>102</sup> *Ibidem* p. 7

## Birth Certificate in the Democratic Republic of Congo – North Kivu

(Katanga, Maniema, and Western and Eastern Kasai); instead, in other four provinces (North and South Kivu, Kinshasa, and Équateur) only 723 secondary bureaux exist<sup>103</sup>. In order to concretise the action plan concerning the dynamisation of those principal and secondary bureaux, UNIFEF is providing funds<sup>104</sup>, equipment, and training and retraining courses for local employees. In addition, it is involved in sensitisation campaigns to spread knowledge about the theory and practice of birth registration's procedure, within and after the grace period of ninety days. Sensitisation about the topic is carried out in partnership with a number of NGOs, among them the Observatoire des Droits Humains (ODH)<sup>105</sup> that plays a major role in the province of North Kivu.

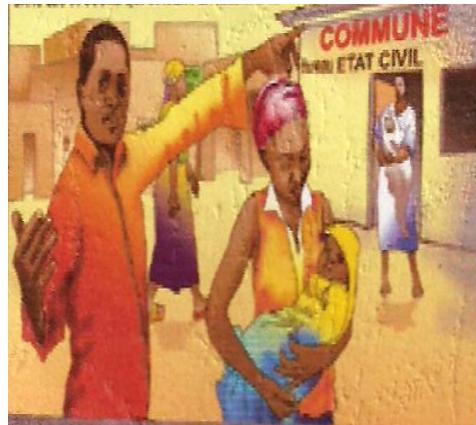


Figure 2 © UNICEF

ODH operates in North Kivu since December 2012 and is a local non-governmental organisation. ODH represents such a positive asset in the fight against unregistered children (as well as in other fields of action related to human rights' protection and promotion) because it is a Congolese NGO working in the Congolese territory. Accordingly, the impact on the population is much different with regards to the one of international actors. This is not meant to establish a *good cop, bad cop* relationship between local and international actors, but only to highlight the differences within the two levels concerning the production of efficient outputs. First, it is necessary to assert that ODH is a junior partner of UNICEF, which have been funding and supporting the organisation from the very beginning. The two organisations are devoted to the same causes and thus cooperate in order to reach the very same goals, even if with different approaches and scopes of action. The main difference between the two in the Congolese context, apart from the blatant ones concerning their mandates, capabilities, and funds, is the perception that local people have about them. On the one hand, UNICEF is recognised worldwide as one of the

<sup>103</sup> *Ibidem* p. 7

<sup>104</sup> About 27,000 US Dollars have been invested in birth registration only (2013-2017). *Ibidem* p.12

<sup>105</sup> <http://www.odhasbl.org/>

## **Birth Certificate in the Democratic Republic of Congo – North Kivu**

more appraised and respected UN organisation; on the other hand, it still represents an external actor working within national contexts and the risk of playing a paternal role – meaning holding as superior and thus controversial position – is rather high. At the contrary, ODH is considered as closer to the local population, closer to the civil society just because is part of it. While all the IOs will always have to face the issue of being perceived as *external* and *paternalistic*, for NGOs this risk is less relevant. Therefore, also in North Kivu local NGOs hold this more friendly and inclusive reputation: accordingly, the chances of having a successful impact on people is generally rather high.

The ODH<sup>106</sup>'s vision consists in supporting the local community by creating a safe environment in which the fundamental rights of everybody are respected and guaranteed. The organisation takes care especially of women and children, the categories more in risk of being abused in eastern DRC. ODH is principally involved in sensitisation operations and divulgation of information at the civil-society level. It supports children during their growth, especially with regards to schooling and health care, protects women from familiar abuses and work exploitation, provides legal and medical support to everyone in need in both urban and rural areas, and educates the population about their fundamental rights. Concerning birth registration, it carries on sensitisation campaigns during which ODH's members travel from municipality to municipality to share information and knowledge with the civil society. They organise meeting with the local chiefs and representatives to let them know that birth registration is a civil obligation and a fundamental right at the same time. Additionally, they also explains the basic procedures to implement, stressing that the entire process is free of charge within ninety days from the birth and can be requested at the civil registry office of the place of residence of the parents of the newborn. Accordingly, ODH delivers informative materials (booklets, flyers, and the likes), both in French and in Swahili – the local language – mostly produced by UNICEF. Since the entire group of ODH's workers is Congolese, it is much easier for them to capture the attention of their fellow *citizens*. Aids and guidelines that come completely from the

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<sup>106</sup> The set of information concerning ODH has been collected interviewing the Key Informant (and dear friend) Mr. Kitoko Felicién, ODH Programmes Coordinator.

## Birth Certificate in the Democratic Republic of Congo – North Kivu

*outside* run a higher risk to be ignored or misunderstood. Instead, the importance of informing people using a performative language that they understand, spoken by personnel recognised as *friendly* is fundamental. Even though DRC has French as official language, also a number of local languages have been recognised as official: Swahili is one of them. Local languages conceive a national-belonging feeling and result more powerful when used to give directives to people: the instructions/guidelines in Swahili are thus perceived as suggestions for the better instead as mere commands coming from an upper level. Therefore, their performative power is higher. Additionally, all the informative materials that ODH distributes are kept very simple and straightforward, the register used is quite low and a lot of images are included within the communication materials. The simplicity of the sensitisation campaigns is due to the fact that the addressees are diverse: parents, both literate and illiterate, caretakers, siblings, and children themselves. The latter ones benefits from informative days either at schools or outside, aimed at including children in the social life of the country since an early stage. For them, ODH has created specific projects as the *Parlement d'Enfants*<sup>107</sup> aimed at inciting children to being active citizens and human rights defenders for their own country. Considering the wide range of interlocutors, the informative materials are generally in the form of comic strips representing daily situations (from vaccination of children, to inheritance issues, from elections, to environment matters, and so on and so forth), including challenges and their possible solutions. The characters are ordinary Congolese individuals, dressed with typical clothes, with traditional names, facing common problematical situations, speaking the local language: these factors let the Congolese average people identify with them and thus act like them when about to identify solutions. Furthermore, the universal nature of those campaigns is meant to take into account the different social backgrounds and life standards in North Kivu (and in DRC in general), as well as the different degrees of literacy.

Therefore, in line with Art. 82 of the *Code de la Famille*, successively emended in 2009 by Art. 16 of the *Loi n° 09/001 Portant de la Protection de l'Enfant*, UNICEF and ODH advocate for Congolese parents and caretakers to register all the children at the

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<sup>107</sup> <http://www.odhasbl.org/le-parlement-denfants-nous-fait-participer/>

## **Birth Certificate in the Democratic Republic of Congo – North Kivu**

secondary and principal institutions in charge. The official declaration of the birth of a child is, first of all, a binding legal obligation as established by national law. In addition, it is among the few legal tools that can be used to demonstrate the attachment to the State and the recognition of the person as a citizen, serves as door to access official statistics, and could be necessary when about to request further administrative documents. Above all, it protects children fundamental rights to have an identity, family bonds, a citizenship, access to inheritance and many others; moreover, it protects children from violence and exploitation by legally recognising them as underage.

In addition to sensitisation campaigns, UNICEF is operating to implement the coupling of civil registry's services together with the health care national system. This linking has an impact both on a short-term and a long-term basis. The short-term approach includes the registration of children during the immunisation campaigns. When travelling around the country to vaccinate the children, UNICEF personnel and a team of civil offices' employees bring with them a number of proxies (as established by Art. 15 of the *Loi n° 09/001*) to be delivered to the closest civil registry office by either the parents or directly by the UNICEF/civil office staff members. This practice is defined as a short-term solution because it neither improves the effectiveness of the national institutions nor represents a moment of active involvement of the Government in this issue. On the other hand, though, it is a useful and valuable practice to register children on a large scale. Only in 2010, for instance, UNICEF managed to register the 28%<sup>108</sup> of children in DRC, such a relevant percentage if considered that the total registration rate per year was around the 25%<sup>109</sup>. In 2014, in ten sites of immunisation in the municipalities of Goma and Karisimbi, 1000 children from zero to ninety days of age were registered. Two agents per municipality have been employed to explain to parents how to properly fill the documents in and to deliver the requests of registration to the closest civil registry bureau<sup>110</sup>. For the children that

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<sup>108</sup> Source: UNICEF global database – Updated in November 2014. Statistical data provided by one of the Key Informant.

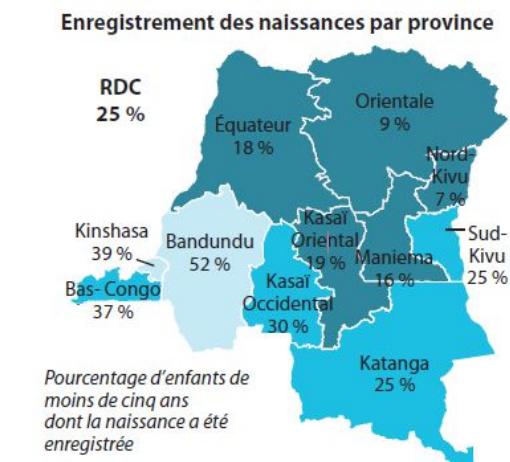
<sup>109</sup> Ministère du Plan et Suivi de la Mise en œuvre de la Révolution de la Modernité (MPSMRM), (2014), *Enquête Démographique et de Santé 2013-2014*, p. 10

<sup>110</sup>UNICEF, *Plan de travail pour la campagne de la semaine africaine de vaccination couplée à l'Enregistrement de Naissance*, Document for internal use only, provided by one of the Key Informants.

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have more than ninety days of age, the registration requires a supplementary judgment to be presented at the court: for the costs of this judgement is about 30 Euros per child, UNICEF cannot fund this practice for the millions of unregistered Congolese children who will most probably remain invisible. Concerning the long-term approach, its objective is to create a smooth dialogue between the civil registries and maternity wards or hospital where it could be possible for mothers to give birth to their children and immediately register them. This flow of information as well as of materials (i.e. civil registers, proxies and the likes) would make possible to register a baby immediately

after his or her birth. The registration can be made either by the hospital personnel or by civil registry's employees, where available. This proposal, if implemented, would represent a big step toward the universal birth registration in DRC. There is a major weak point though. With regards to DRC's – and especially to North Kivu – socio-cultural background, it has to be highlighted that the majority of the territory is still



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Figure 3 © UNICEF

underdeveloped. This means that women give birth at home rather than at hospitals, particularly in rural areas. To make the long-term approach effective, it is necessary to improve and develop a number of aspects concerning the democratic life of the institutions of the country: the health care system as such, the civil registry system as such, the economic expansion of the country, as well of its degree of human development. The coupling results surely effective in developed and industrialised countries<sup>111</sup>, its effectiveness in rural and developing areas is instead under revision to achieve the production of relevant outputs. In any case, this option would bring for sure an increment in the registration rate and could be regarded as a light to be followed

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<sup>111</sup> For instance, it works properly in Italy.

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by the country as a whole. On a long-term vision, a comprehensive growth of the country is needed.

To conclude, national and international actors tend to cooperate to finally reach the universal birth registration of children. All their efforts and attempts are however quite strenuous when the rule of law does not entirely support them. The Congolese Government should work more to tackle the plague of non-registration, not only by the promulgation of new laws, but especially by implementing them. Notwithstanding the poor implementation of it, the national legal framework, has demonstrated that even slight changes can bring massive improvements. This is the case of the *Loi* of 2009 that will be further discussed in the following paragraph.

### **3.2 *Loi n° 09/001 Portant Protection de l'Enfant: Before and After***

The year 2009 is an important date for DRC for it represented a relevant legislative improvement in the field of children's rights. The promulgation of the *Loi n° 09/001* followed a moment of international stern critique as well as of national willingness to change for the better. The Congolese Government, in light of the several abuses of the children in DRC, which were condemned worldwide, adopted a number of provisions to protect in a better way every person under the eighteen years of age. In order to take account of the condition of vulnerable populations – namely children, women, and persons with handicaps – the legislation in force was subject to a number of modifications to ensure their personal advancement and protection. Considering the extent and the frequency of armed conflicts, civil uprisings, and natural catastrophes that cause a prolonged degradation of the socio-economic conditions (Article 2(5) of the *Loi*), the need to protect the weaker categories while working to create a safer and healthier environment was (and still is) self-evident. The *mantra* of DRC Government, as strongly recommended by the international community, has become since then “*to protect and to improve*”.

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In 2009 then, birth registration was already recognised as a powerful protection instrument and thus better defined within the national legal framework. Especially concerning the recruitment of child soldiers, it was noticed by global and local human rights' organisations that the rate of underage recruits results higher where the age of millions of children remains unknown in front of the law<sup>112</sup>. The lack of a fixed and established identity, together with the low rate of birth registration (that serves to legally certify, among the other things, the age of the children) contributes to increase the vulnerability of the civil society. Although the DRC Government does not seem keen to put in practice measures to actually decrease the exploitation rate of children, as stated in a U.S. Department of State' report of 2003<sup>113</sup>, the *Loi* of 2009 represents at least a theoretical step forward. However, what about the practice? Did the law actually bring some progress in terms of numbers? Is it possible to identify a degree of improvement after the provisions of the law of 2009 entered into force? The answers to these queries are very difficult to obtain but I will try to provide a contribution for what falls within the scope of this work.

Thanks to the kind help of Mr. Kitoko Felicién (ODH Programmes Coordinator) in August 2013 I managed to meet Mr. Mayune Alois, Head of the Internal Affairs Division of Goma, North Kivu, who kindly provided me with ministerial statistical data of the North Kivu province that will be herewith analysed. The purpose of this statistical analysis is rather modest: to provide a simple and general picture of the birth registration rate in North Kivu, from a synchronic point of view. Considering the complexity of both the topic itself and the history of the country, it results impossible to aggregate all the data in such a limited number of pages, and to find out the real impact of the *Loi* in terms of number and in a comprehensive way. That is the reason why this analysis does not hold a statistical validity but is a simple description of the facts.

The variables of the investigation are two: the total number of births in North Kivu (that includes nine cities/territories: *Ville de Beni*, *Ville de Butembo*, *Ville de Goma*, *Territoire de Beni*, *Territoire de Lubero*, *Territoire de Masisi*, *Territoire de Nyiragongo*, *Territoire de*

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<sup>112</sup> [www.unicef.org](http://www.unicef.org)

<sup>113</sup> <http://www.state.gov/j/tip/rls/tiprpt/countries/2013/215442.htm>

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*Rutshuru, and Territoire de Walikale*) per year; and total number of birth registrations per year. The original statistical data presented a division between male and female of the two main variables but I decided not to use this sex separation due to limited time at my disposal. It would be very interesting to establish a relation between sex and birth registration in North Kivu, though. Further researches would be necessary.

The very first challenge I had to face when about to analyse the data is my limited knowledge of statistical analysis as such. It resulted rather complicated not to dive into pure Statistics and Mathematics but to use the numbers solely as reliable evidences to support my thesis. In addition, a second relevant obstacle is represented by the data themselves. The main weaknesses concern their period of reference and their source. During my staying in Goma<sup>114</sup>, I managed to collect only data pertaining the period from 2007 to 2013<sup>115</sup>. Actually, I have some statistics outside this range of period but they are not useful for the purposes of my research for they are either not complete or reliable. Therefore, since the period of reference is brief, the margin of error to take into account must be high. Concerning the source, some preliminary notes require the attention of the reader. Primary, the data have been presented at the beginning of this paragraph as ministerial; however, this adjective is, unfortunately, not a synonym of hundred-percent reliable. In fact, there are missing spots, handmade margin-additions, and some data are very hard to be understood. The latter point applies above all to the first variable – the total amount of births in North Kivu. It is rather difficult to understand how this number was collected, giving the fact that the majority of mothers gives birth at home, there are not enough civil registry offices to monitor the entire province, the last national population census was conducted in 1981<sup>116</sup> (the results are hence outdated and not useful today), there is no governmental system to control the flow of migrants inside and outside DRC borders, and thus there is no proper authority in charge of counting how many children are born in a given city or territory each

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<sup>114</sup> June – August 2014

<sup>115</sup> The data before 2007 were not complete and quite hard to collect, considering the lack of electronic archives in North Kivu. In addition, the statistics concerning 2014 do not cover the entire year

<sup>116</sup> [https://familysearch.org/learn/wiki/en/Democratic\\_Republic\\_of\\_the\\_Congo\\_Census](https://familysearch.org/learn/wiki/en/Democratic_Republic_of_the_Congo_Census)

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year<sup>117</sup>. These points, for the moment, will be kept aside. However, it is hard not to ask ourselves why all those children are still unregistered and invisible if there was someone who has spent time and energies and resources to count them. How is it possible that they *exist* in statistics but do not hold a birth certificate right now? For what is worth, if it is true that there is someone in charge of taking a census of Congolese newborns, my suggestion for the future would be to count and register the children at the same time, to save money, time, and fundamental rights' violations.

However, as a matter of fact the data I have are the only ones that exist. In fact, even if UNICEF, UNHCR and several other organisations work on birth registration issues on a daily basis, the responsibility to collect, aggregate, and examine data remains in the hand of the Congolese Government. Obviously, UN statistical data exist and most of them are available online, but they are often sector-based and thus do not fall within the scope of this research, unless considered in light of a more comprehensive statistical framework. On the one hand, the assumption from which it is necessary to start is thus acknowledging the ministerial statistical data as reliable – this standpoint has been kindly suggested by the majority of the Key Informants from UNICEF and UNHCR; on the other hand, though, it is important not to lose a critical attitude, at least to underline the right margin of error as well as to establish a room for improvement.

Therefore, *Table B* below reports the data from 2007 to 2013. It is interesting to notice the variations of the total number of births in North Kivu. In fact, the highest natality rate was reported in 2009 with 15,1534 newborn children, while in 2008 the lowest pick was registered with only 44,444 newborns<sup>118</sup>. The percentage of the birth registration rate varies quite a lot, from about the 29% in 2009 to more than the 50% in 2013.

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<sup>117</sup> From the interviews to the Key Informants, I understood that the data are collected *door to door* by local chiefs, representatives, or civil registry's employees. The methodologies are rather archaic and hence I am not sure about their reliability.

<sup>118</sup> All the data in this Chapter come from the *Ministère de l'Intérieur et Sécurité, Province du Nord-Kivu, RDC, Rapport de Statistiques Démographiques et de l'Etat Civil de la Province du Nord-Kivu (2007-2013)*.

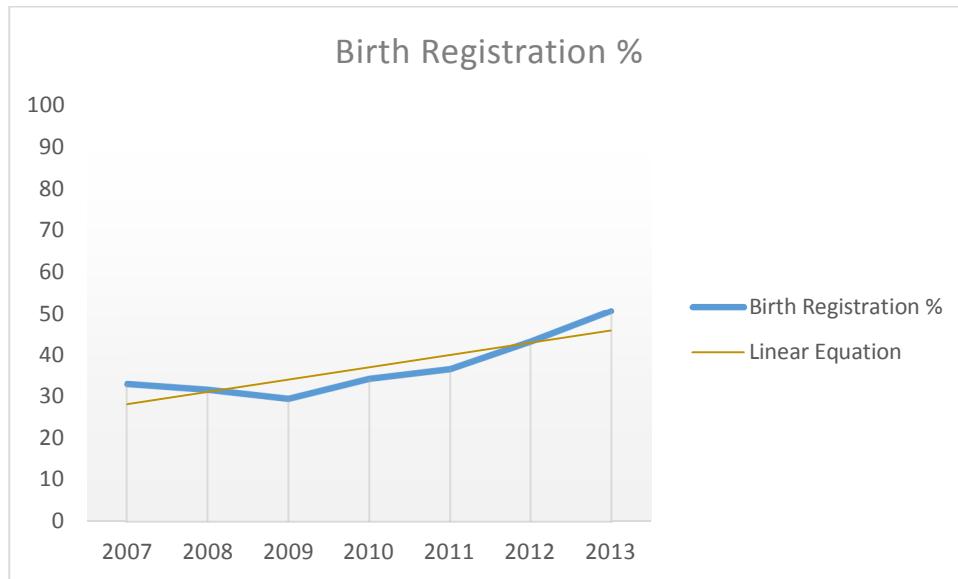
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Year	Total		Total		Birth Registration (%)
	Number of Births	Registration	Number of Birth	Number of Unregistered Children	
2007	86160	28464	57696	33,036	
2008	44444	14024	30420	31,554	
2009	151534	44585	106949	29,422	
2010	100472	34379	66093	34,217	
2011	94113	34394	59719	36,545	
2012	58755	25343	33412	43,133	
2013	52007	26253	25754	50,479	

*Table B Ministerial Data*

From the percentages shown in *Table B*, we should expect a certain degree of growth of birth registrations in North Kivu. In fact, *Graphic 1* below shows the birth registration rate's trend per year. This trend is represented by a linear function that is decrescent from 2007 to 2009 and then crescent from 2009 up to 2013. According to the data, after the promulgation of the *Loi* in 2009, an improvement was actually recorded. The linear function has hence a positive growth that could be also considered as exponential, meaning that it will arises whenever a quantity grows or declines at a given rate that must be proportional to its current value. The exponential function, though, neither has a logic basis in the Congolese context nor is measurable using the little set of data at my disposal.

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Graphic 2 Linear equation of Birth Registration Rate starting from Ministerial Data

In order to hypothesise the annual increment of birth registrations, I made a curve fitting, which is the process of constructing a mathematical function starting from a number of data points. By means of specific mathematical programmes<sup>119</sup>, it resulted possible to obtain the curve that best fits our data points, which are the annual percentages of birth registrations. To understand whether we can assert that there was a growth or not, I isolated the percentages concerning 2007 and 2008. In fact, during this period the curve has a negative angle; for I want to obtain the growth rate after the *Loi* of 2009, it was necessary to take into account only the period following the promulgation. The curve fitting demonstrates that there is an annual linear growth of 5.1%: this means that the linear function is  $5.1035x + 23.4506$ . Certainly, it would be desirable that this rate keeps on either remain as it is or arising in the next future. According to pure mathematics, the validity of this curve fitting is very high and reaches the 96% (in *Graphic 2* below, the value named  $R^2$  represents the degree of validity). The results of the curve fitting are shown in *Graphic 2* below.

<sup>119</sup> In this case, considering the simplicity of the data I hold, I used a programme that is available online at <http://www.wolframalpha.com/>

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Input interpretation:

fit	data	{29.42244, 34.21749, 36.54543, 43.13335, 50.47974}
	model	linear function

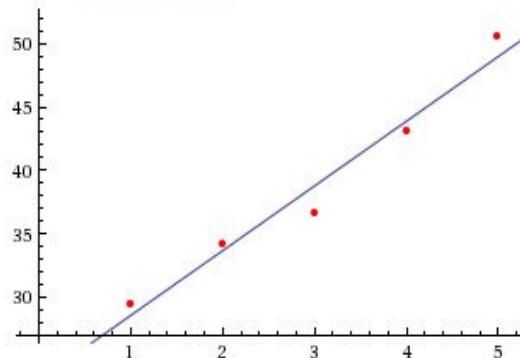
Least-squares best fit

$$5.10305 x + 23.4506$$

Fit diagnostics:

AIC	BIC	R <sup>2</sup>	adjusted R <sup>2</sup>
23.0139	21.8423	0.967325	0.956433

Plot of the least-squares fit:



Graphic 2 Curve Fitting

The situation depicted by statistics and mathematical functions results rather positive. In fact, even recognising the fluctuating nature of the birth registration rate, the trend appears to be in process of improving and growing. However, as stated before those results cannot hold a statistical value because they cannot be analysed in light of neither a trend of reference, hence a trend that mirrors a *normal* situation that tends to reiterate without substantial changes, nor a socio-political trend that includes also a number of other variables. The trend of reference is usually measured during periods of relative tranquillity, when no relevant event happens outside the range of the so-called *normality*. The normality in North Kivu during the period of this study, unfortunately, has never been normal enough to fit the requirements imposed by Statistics. The conflicts, the migratory movements, the eruptions of volcanos, and the

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very nature of the Congolese culture have been preventing the establishing of a reliable trend of reference so far. Also, this trend of reference needs to be scientifically recognised as such and thus empirical studies would be needed. In the case of birth registration in North Kivu, for what concerns this specific work, I do not hold enough statistical data to establish the trend of reference. This situation has as result that the linear function I found could be the outcome of a mere combination of exceptions. Without a fixed rule, it is not possible to discriminate the exceptional cases from the norm.

Notwithstanding the impossibility to exult for the results I obtained, I have faith in the fact that they are not only mere exceptions to the rule but represents a little step forward. It is important to remember though that official statistics from UN still recognises the birth registration rate in North Kivu around the 7% per year. The situation in North Kivu is in process of improving, though; the numbers provide a concrete positive portrait and I hope that this hue will be considered as an incentive in the future.

In the next paragraph, the impact of UNICEF's campaigns in North Kivu will be analysed on the basis of ministerial and UN Statistics concerning the year 2014. Particularly, a coupling campaign between birth registration and immunisation services will be the main topic.

### **3.3 The Impact of UNICEF: Case Study of July 2013**

As previously stated, UNICEF and birth registration are strongly connected. In this paragraph, the impact of its registration campaigns in North Kivu will be discussed and studied to verify its impact in terms of numbers. This analysis, as well as the one carried on in the previous paragraph, aims at presenting a simple illustrative example that can be useful to better frame the state of the situation.

UNICEF, beside promotion and sensitisation about birth registration, registers itself a relevant number of children whose age is within zero and ninety days. The

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registration process usually happen during the immunization campaigns – unless specific cases require a different type of approach – that are carried out widely throughout the entire country. UNICEF is renowned for its large-scale and multi-sectoral assistance and it is no surprise to see how many activities coexist and support each other. The example of the coupling of vaccination campaigns and birth registration represents only a glimpse through the vast synergetic efforts implemented at the UN level.

The pilot phase of the aforementioned coupling took place in 2012 in eight Congolese provinces: South Kivu, Kinshasa, Maniema, Katanga, Western Kasai, Eastern Kasai, and Orientale. During this phase, 57,766 children out of 93,958 were registered at the civil registry meaning that the 61% of children benefited from the campaign<sup>120</sup>. The blatant success of this experimental phase brought the UNICEF team in charge to implement the coupling on a regular basis. The experience collected during this phase served to design an efficient action plan that has been repeated at least twice per year with successful outcomes in the past three years. The plan consists of three phases: preparation, implementation, and data analysis. The first phase starts with official communication with national authorities, for they are the ones who can approve or refuse the actual implementation of the programme. Therefore, permission letters have to be sent to the Secretary General of the Ministry of Internal Affairs and to the Secretary General of the Ministry of Health. Upon their approval, an information letter is delivered to the local *bourgmestres*<sup>121</sup>. Afterward, the team in charge of going on the field has to be created: it usually includes, besides doctors and nurses for the vaccination campaign, a civil registry's employee, a supervisor, and a person in charge of registering the children via proxy. The team attends trainings and meetings with UNICEF's staff in order to be ready to face any kind of problem and let the campaign run smoothly. It follows the identification of the municipalities or geographical areas more in need of the campaign, hence the territories that record both a high natality rate and a low birth registration rate. The identification includes also the control of the equipment needed and, in case of lack of it, its supply. Accordingly, new

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<sup>120</sup> The data come from a UNICEF document for internal use, kindly provided by one of the Key Informants (*Couplage\_JNV\_2013*, p. 5)

<sup>121</sup> A *bourgmestre* is the person who hold the executive power at the municipality level.

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registers, writing materials, proxies, leaflets, and informative materials are provided together with the immunisation material. The second phase is the implementation. The teams – vaccination and birth registration – go to the municipalities selected and start their job; one employee fill the proxy in, upon signature of the parents of the newborn and under the supervision of a second employee, and at the end of each day, the proxies signed by the caretakers are consigned to the civil registry bureau (may it be secondary or principal). At the civil registry, the birth certificates are prepared and given back to the team's members; the preparation lasts maximum one month and the team is in charge of delivering the document to the children's families once it is ready. At the same time, the data are recorded and archived. The third phase, finally, is the analysis of the results. In the *Table C* below, the results of the pilot Phase of 2012 are reported. The source of the data is the Ministry of Internal Affairs.

PROVINCES	Areas	Birth Registration by proxy	Total Number of Children	Birth Registration %
BANDUNDU	4	2966	3500	85
KASAI OCCIDENTAL	2	5087	5586	91
KASAI ORIENTAL	3	2537	5701	45
TANGANYIKA	2	3789	7120	53
MANIEMA	2	7335	10466	70
PROVINCE OR	4	6337	7585	84
SUD KIVU	2	2481	5000	50
KINSHASA	35	27234	49000	56
S/TOTAL 8 PROV	54	57766	93958	61

*Table C © UNICEF Data*

Furthermore, in order to obtain a clearer picture let us study the impact of a coupling campaign in one specific province, North Kivu, which is the main focus of this research. The campaign under analysis has been carried out in July 2013 and involved twenty-eight areas of different areas including eight out of nine municipalities

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of the North Kivu province<sup>122</sup> (the Nyaragongo territory was not covered by the campaign for it was deemed not suitable for it). It lasted three days (of second phase) plus one additional day of third phase during which, though, some children were registered as well. In fact, it has to be noticed that the phases are never too strict but rather flexible and a certain degree of adaptability to the context needs to be guaranteed. During the first day, the team registered by proxy 7,093 children; the second day they registered 6,380 children; the third day 6,770 children; and the fourth and last day 1,374 children obtained a birth certificate. In total, the coupling campaign brought a birth certificate to 21,617 children within the aforementioned twenty-eight territories. Specifically, in North Kivu during the sole month of July 5,570 were registered: 2,042 the first day, 1,366 the second day, 2,046 the third day, and 116 the fourth day – see *Table 4* below. It result interesting to have a look at the data in light of the statistics collected at the Ministry of Internal Affairs, which are more of a comprehensive nature. According to ministerial statistics, the total amount of birth registration of July and August 2013 is 6,505<sup>123</sup>. The month of August has to be included in this analysis because each birth certificate pertaining the coupling campaign has to be ready and archived within one month from the campaign itself. For instance, this means that the children registered on the 10<sup>th</sup> of July may receive the document on the 9<sup>th</sup> of August and this case will thus be archived in the register of August. Hence, the range of time to be taken into consideration for the purposes of this study actually lasted two months. After this preliminary note, it is possible to assert the UNICEF registered in one month the 85.626% of children in North Kivu, not even including all the nine territories (but only eight) in its coupling campaign. In one month only, UNICEF has provided with a birth certificate the 21.216% of the registered children of the entire year 2013. Therefore, the impact this UN organisation has on the territory is undeniable. As a matter of fact, four days on the field with a team of experts resulted in a massive step toward the improvement needed in the country and toward the achievement of the ambitious universal birth registration goal. Considering that the employees that supported the vaccination team consists of mainly Congolese people

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<sup>122</sup> All the data pertaining this case study have been kindly provided by one of the Key Informant and are inserted in a document that is for internal use only (*UNICEF, Fiche de Collecte Données, 2013*).

<sup>123</sup> Ministerial Data.

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employed at civil registry offices, who have been trained by UNICEF's staff, the coupling campaigns served also to build capabilities, skills, and know-how at local level. The hope is that the expertise will be put in practice in the future without the help of either UNICEF or any other external organisation.

BIRTH REGISTRATIONS IN JULY 2013 – UNICEF IMMUNISATION CAMPAIGN

AREAS	DAY 1	DAY 2	DAY 3	DAY 4 (phase 3)	Total
<i>Beni</i>	354	354	351	0	1059
<i>Butembo</i>	321	477	740	100	1638
<i>Lubero</i>	80	100	120	0	300
<i>Goma</i>	63	66	91	0	220
<i>Masisi</i>	138	159	96	16	409
<i>Rutshuru</i>	649	0	501	0	1150
<i>Walikale</i>	437	210	147	0	794

Table D © UNICEF Data

### 3.4 Conclusions

According to UN statistics, the birth registration rate in DRC is about the 25%<sup>124</sup>; as it have been already explained, this average percentage remarkably changes according to the geographic areas. Therefore, on the one hand, the birth registration rate in Kinshasa is higher than the average, reaching more than the 39%; on the other hand, in North Kivu it is only the 7%. The variations root in political, geographical, economical reasons that will be further analysed in Chapter 5.

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<sup>124</sup> The data refers to 2014, since the data for the current year – 2015 – have not been collected and analysed yet.

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Less than the 30% of birth registration at national level represents a terrific data to handle. If we look at it the other way around, more than the 70% of children in the country still does not exist in front of the law. There is an army of invisible little women and men to be, whose life lack of a number of human rights that we, western societies, give for granted. Before diving into numbers, statistics, and rate, it results tremendously important not to forget the main aim of all of it: to make visible the invisible. Every time a digit appears within this dissertation, it is important to keep in mind that it refers to children, to newborns in particular. What can a child do, who cannot speak, walk, survive by his or her own, in order to safeguard his or her human rights? Nothing. That is why we are all asked to act on their behalf.

At national level, the main step forward is represented by the *Loi n° 09/001* on children protection. This law was created *ad hoc* to better meet the need of children as well as their caretakers. The main improvement is surely represented by the grace period that was prolonged of two months. In fact, before 2009 the *Code de la Famille* stated that every child would have been registered free of any charge within 30 days only; from 2009 onward, the grace period lasts 90 days. This amendment was thought especially for the caretakers who live far away from principal civil registry bureaux and need weeks to reach them. A second major improvement is the introduction of the possibility to let the child be registered by proxy – signed by the parents or other close relatives – by everyone who is willing to do it. The proxy allows also ONG's, IO's, and civil registry's personnel to provide a child with a birth certificate. The enhancements of the *Loi* of 2009 have been pictured herewith using ministerial data from 2008 to 2013. The data show a growth of 5% per year in the birth registration rate that is quite remarkable. The rate that in 2009 was about the 29% has reached about the 50% in 2013. Obviously, those numbers are too optimistic and lack of a proper socio-political contextualisation. On the one hand, the 7% of UN statistics could be regarded as too low today, however, the 50% is far too high to be considered as reliable. Actually, no one really knows how many children exist in DRC for there is no institution in charge of taking a comprehensive census. This means that all the aggregations of data hold a relevant margin of error. Such dissimilar outcomes could be regarded as an result of this lack of knowledge. Since deciding the degree of reliability of one or the other set

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of statistical data does not fall within the scope of my research, I will simply outline the problem as it is, with the hope that further researches will be carried out in the next future, in order to obtain a trustworthy and realistic image of birth registration in DRC.

UNICEF mandate includes three mainstays that are: protection and prevention of any kind of children's abuse; ensuring the protection in front of the law of every child; and safeguarding their access to public services such as the ones of the civil registry. All the UNICEF campaigns are country-based: this is necessary to ensure their positive outcome since cultural and traditional factors massively influence them. UNICEF is not only keen to tackle the problems in a country, but it also wants to do it in a way that is understood and accepted by the local population. The latter is the sole characteristic that allows the creation of supportive relation between UNICEF and the country instead of dependency relations. In addition, UNICEF provides trainings and retraining's courses to local people and pushed them to be self-standing. This passage of know-how is followed by provision of equipment and building of facilities – by 2017, UNICEF will inaugurate 637 secondary civil registry bureaux that will most probably increase the number of birth certificates issued for it tackles the problem of long journeys faced by families to reach principal bureaux from rural areas.

This Chapter represents only a little glimpse into the UNICEF's actions concerning birth registration. Sensitisation campaigns, which are supported by partner organisations such as ODH, and registration campaigns, which are also coupled with immunisation campaigns have been described herewith. According to the aggregation of UN and ministerial data, it was possible to obtain the impact of those campaigns and it is blatantly positive, even though does not hold a statistical validity. Especially concerning the immunisation-registration coupling campaigns, it has been shown that UNICEF, in partnership with local civil registries and hospitals and maternity wards, registered the 85.626% of children in North Kivu in one month only. This data do not need further elucidations since they are self-explanatory. Therefore, successful outcomes can be obtained even deploying relatively few assets, in terms of both human and economic resources.

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To conclude, either taking into account UN data or ministerial data, the need of changes is obvious. Both the 7% and the 30% are too low to be considered in compliance with international standards and in line with the International Law instruments ratified by DRC. The entire international community should urge DRC to implement measures aimed at both finding the very causes that impede the proper development of birth registration, and solve them once for all. If it is true that DRC's Government is doing a lot on the paper, it is also true that the practice still lacks of consistency. As for my personal experience, the situation in certain areas of North Kivu is too far from being considered as respectful of International Human Rights Law and Governmental actions should be mandatory. In the conclusive Chapter 5, the problems to be faced in DRC when about to guarantee the human right to have a birth certificate will be explained in order to identify who is in charge of acting and where.

In the next Chapter, the link between birth registration and statelessness/citizenship will be analysed.

## CHAPTER 4

### BIRTH CERTIFICATE AND RISK OF STATELESSNESS

#### 4.1 Nationality and Statelessness: the Irreconcilable Facets of the same Rights

*“Once they had left their homeland they remained homeless, once they had left their state they became stateless, once they had been deprived of their human rights they were rightless, the scum of the earth”<sup>125</sup>*

Nationality and statelessness are currently at the heart of the international debate. One reason of the current centrality of this discourse is linked to the massive flow of migrants from and to Europe that has been forcing ourselves to become rather familiar with those terms. Being familiar does not imply a full understanding of the topic, though. In fact, even if at first sight those concepts may be considered as purely antithetical, like whatever object and its specular reflection into a mirror, the entire picture is far more intricate than this. Both the causes and the peculiarities of the two themes are diverse for a number of disharmonies and mismatches deriving from the very contrasting nature of our society exists. On the one hand, there is the blatant growing selective permeability of borders that reshapes the world order on a transnational basis; on the other hand, the nation-state system is still the most accredited one in the international arena and is anchored in classic principles that hinder the full denationalization – and the resulting *de facto* universalization – of human rights. As Hannah Arendt pointed out in several occasions of her professional life, the international system is based on an inner contradiction between national sovereignty and human rights that could results in preventing the universal practice of the inalienability of human rights. In a world where human rights do not depend on the

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<sup>125</sup> ARENDT H., (2004) *The Origins of Totalitarianism*, p.341.

## Birth Certificate and Risk of Statelessness

States (only), the ideas of citizenship and nationality would be unnecessary. The core of this question is rather ethical than political and aims at both understanding and handling the intimate link between the universal and the national level of human rights. If it is true that those levels could be considered as complementary, it is also true that often create contradictions and collisions that get the practice problematical. One case of clashing of these two levels is related to the discourse about nationality, citizenship, and statelessness.

When about to discuss of nationality and citizenship<sup>126</sup>, we do not immediately realise how complicate and different these topics are, since we generally tend to give them for granted – in this context, “*we*” means citizens of a country. From a historical point of view, the understanding of nationality and citizenship used to be unique, meaning that the current distinction between the two terms was not that relevant and therefore it tended to be ignored. It was first of all a matter of holding a formal and *passive* legal status of membership in an organised community; second, it was understood as the *laissez-passer* for the enjoyments of rights within the community itself. We inherited those visions from the Roman political model but there are also other classical assumptions that have shaped the modern interpretation of nationality and citizenship. For example, the Aristotelian<sup>127</sup> idea of citizenship-nationality as active participation into democracies’ life is still fundamental, as well as the Stoic conception of global inclusion as nationals of the world<sup>128</sup>. In addition, there is also the romantic idea of citizenship and nationality as the higher form of democratic inclusion within a country, a tool to avoid subordination and discrimination, even if it also implies an “*axis of subordination itself*” to the State<sup>129</sup>. Nowadays, the differences between the two terms are growing bigger and, especially at domestic level, it is important to highlight the fact that the two words are not synonyms. Citizenship and Nationality cover thus a very wide range of meanings and the contradictions are inevitable when dealing with such ubiquitous concepts, whose etymological borders change according to the analytical point of view.

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<sup>126</sup> The differences between the two terms will be discussed in depth in the next paragraph.

<sup>127</sup> Idea that was presented also by other philosophers as Machiavelli, Rousseau and Arendt.

<sup>128</sup> GATTI R., (2011) *Filosofia Politica. Gli autori, i concetti, i problemi*, Editrice La Scuola (Italy)

<sup>129</sup> BOSNIAK L., (2008) *The Citizen and the Alien, Dilemmas of Contemporary Membership*, p 1

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From an historical point of view, which thus does not take into account the dissimilarities between citizenship and nationality, it is possible to analyse the topic either “*from an internal or endogenous perspective*” or “*by attending to the community’s boundaries*”<sup>130</sup>. The first standpoint defines the two terms as “*the nature and quality of relations among presumed members of an already established society*”<sup>131</sup>: in this respect, it holds a universal sense of *inclusion* in the life of a nation-state of every individual who is within its national borders. Citizenship and nationality are in this case understood as *inside* and *universal*. The second approach is based on an outward point of view linked to the edges of the nation-state. Accordingly, they are considered as the wall that keeps community united and existing by pushing the aliens outside the scope of application. Therefore, are conceived as *exclusive*, *limited*, and *closed*. Even if there have been attempts to reach a reconciliation between the two standpoints, the interchanges between the inward and the outward approaches are less than expected and the scholars still remain divided. In light of both the dynamic nature of borders and the particularity of the topic in the practice much consistent theoretical discourse would be needed.

Accordingly, the biggest paradox concerning citizenship and nationality is that they are inclusive and exclusive at the same time. This means that all the aliens, which are the *non-citizens* and the *non-nationals*, are not entitled to benefit from nationality and citizenship; thus, they are denied the exercise of their fundamental human rights when no State includes them, running in this way a high risk of becoming stateless. This exclusive feature creates an enormous breakage within the logic of International Human Rights Law. The identification *de facto* of civil rights as human rights on the one hand has been used internationally as an advocacy tool to improve the standard of life of stateless persons, on the other hand tends to bestow to single States the power of excluding specific subjects from benefiting of their inalienable rights. This entrustment to domestic laws could be recognised as against the very principles that pushed the international actors to empower International Law and create the UN in the aftermath of the Second World War. As a result, people who are considered not only aliens but also stateless are, to a certain and provocative extent, *less human* – for

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<sup>130</sup> *Ibidem* pp. 1-2

<sup>131</sup> *Ibidem* p. 2

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actively living within the artificial society is what makes human beings different from animals. Living a life as not formally part of the world created by the people for the people excludes them from benefiting of a range of civil, economic, political, cultural, and social rights. From a legal point of view, stateless persons exist however they are invisible at the eyes of societies. The theory of the “*in/visibility*”<sup>132</sup> perfectly explain the fate of stateless people: on the one hand, they suffer a public invisibility in terms of “”<sup>133</sup>; on the other hand, they are subject to a forced personal visibility, since they do not have the chance to appear as someone different from a *natural man*. Stateless people “*embody the breakdown of the paradox of citizenship*”<sup>134</sup> and nationality, for they lack a physical protection – a home, a legal safeguard of their private life – and they generate from the very exclusive nature of citizenship and nationality.

The fact that the life of stateless persons could be considered hierarchically *less important* than the life of nationals and citizens, in terms of legally enjoying inalienable human rights, is a burning topic in the international agenda. Actually, stateless people exist with or without documents that certify their existence; people live, breath, eat, love, travel, exactly nationals do. However, people without a nationality cannot have documents, hence cannot board on a plane, nor benefits from public schemes, they simply cannot have the same opportunities of one person with a nationality. At least, they cannot do all of that legally. Not having a national membership still guarantees in a number of countries a certain degree of *inclusion* and sometimes it results difficult to distinguish nationals from *non-nationals* with respect to their political and social life. Many scholars have thus started talking of the “*citizenship of aliens*”<sup>135</sup> due to the degree of enjoyment, in practice, of a series of political and social rights that should be theoretically only for citizens.

Prevention of statelessness is a duty of States and means prevention, among the other things, of illegal migration and human rights severe violations. Protection of

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<sup>132</sup> BORREN M., (2008) *Towards an Arendtian politics of in/visibility: On stateless refugees and undocumented aliens*, pp. 213 - 233

<sup>133</sup> *Ibidem* p. 221

<sup>134</sup> *Ibidem*, p. 225

<sup>135</sup> BOSNIAK L., (2008) *The Citizen and the Alien, Dilemmas of Contemporary Membership*

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stateless people is a duty of the States and means protection of human beings that are any less human than nationals are. The International Law was created to protect every human being and not only the ones who have a bond with States. However, the efforts to produce legal instruments aimed at the prevention of all sort of human right violations have created during the years a dense net of norms, provisions, treaties, agreements, and clauses that, sometimes, represents the very impediment for the implementation of actions to defend human rights themselves. It results rather simple to get stuck in this intricate entanglement of international instruments, in particular of the ones that goes *across* national borders. Another weak point of International Law is the non-binding nature of the majority of international legal tools – i.e. non-binding for the non-ratifying States of treaties – that tends to protect more the national sovereignty rather than individuals in need. Therefore, the reduction of the risk of statelessness remains in practice under the scope of national laws. The role of States, though, is not yet well defined under International Law and there are relevant gaps to be filled in. In the next paragraph, the international legal framework on citizenship, nationality and statelessness will be discussed more in depth in order to achieve a better understanding of the topic.

### **4.2 Citizenship, Nationality, and Statelessness under International Law**

It results necessary to start this paragraph with a definition of citizen and nationality. In a number of works, the two terms are used as synonyms: however, especially at the domestic level, they could refer to different legal statuses and thus imply different degrees of national protection and involvement. Both the words are used to express a relation of membership between people and a given community, as well as an exclusion relationship that involves the aliens, who are the ones meant to remain outside a given community. However, dissimilarities exist.

Let us start with the term nationality. According to Art. 15 of the **Universal Declaration of Human Rights** “*Everyone has the right to a nationality. No one shall be*

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*arbitrarily deprived of his nationality nor denied the right to change his nationality*<sup>136</sup>. The Declaration clearly enshrines the right for everyone to have a nationality and it holds a customary power in term of International Law. The same right to have a nationality is guaranteed by a number of other international instruments, among them Artt. 7-8 of CRC and Art. 24 (3) of ICCPR.

In addition, the International Court of Justice, in the **Nottebohm Case** (1955), has asserted that: “*Nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as a result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality, than with that of any other State*

<sup>137</sup>.

A similar definition is contained in Art. 2 (a) of the 1997 **European Convention on Nationality**: “*"nationality" means the legal bond between a person and a State and does not indicate the person's ethnic origin*<sup>138</sup>. Therefore, in light of the aforementioned international legal instruments, nationality is the permanent bond between a national of the State and the State itself. The granting of the nationality is sovereignty of State and could be granted either if a person is the descendent of other nationals (*jus sanguinis*) or if the person was born or reside in the State (*jus soli*). Nationality means the belonging to an organised political community as well as the cultural, social and historical relations between nationals and the State.<sup>139</sup> A further distinction can be made between nationality and *naturality*<sup>140</sup>. A natural of a country is whoever born within the national

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<sup>136</sup> The full text at <http://www.un.org/en/documents/udhr/>

<sup>137</sup> <http://www.icj-cij.org/docket/index.php?sum=215&p1=3&p2=3&case=18&p3=5>

<sup>138</sup> <http://conventions.coe.int/Treaty/EN/Treaties/Html/166.htm>

<sup>139</sup> O'LEARY S. *The evolving concept of community citizenship. From the free movement of persons to Union citizenship*, pp. 3; C. Tiburcio, *The human rights of aliens..*, p. 1 ss.

<sup>140</sup> *Ibidem*, p. 1

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borders and thus, not always the two terms coincide. In fact, considering the case of Italy for instance, the son or daughter of two Americans will be considered as an American national even if born in Italy – for in Italy only the *jus sanguinis* is in force, unless in limited cases, for instance in case of sons and daughters of stateless or unknown parents<sup>141</sup>.

It is possible now to define the term citizenship. A citizen is a national of a State who legally enjoys all the civil, political, and economic rights. It results clear, then, that while the citizens are surely nationals of a State, not always all the nationals are considered as citizens. For instance, the long-lasting discrimination against women deprived them of their citizen's right to vote even though they were nationals of a State. Therefore, nationality stands for the belonging to a given State while citizenship defines all the consequences of this belonging. To briefly sum up, nationality defines *who* while citizenship defines *what*; together, they answer the question: who (national) is entitled to benefit of the rights (citizen) deriving from nationality?

Notwithstanding this distinction, it is not always easy to grasp the differences between the two terms, because historically they used to intermingle with each other quite much. However, the current migration *crisis*, especially in Europe, Middle East, and North Africa, is urging Governments to better understand this burning topic in order to implement actions addressed to migrants and refugees.

Therefore, according to the Universal Declaration of Human Rights, only nationality is a human right. However, the estimated number of stateless people worldwide is higher than 10 million<sup>142</sup>, according to data from UNHCR (United

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<sup>141</sup> Italian law n° 91/92.

<sup>142</sup> <http://www.unhcr.org/pages/49c3646c155.html>

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Nations High Commissioner for Refugees). This means that the sole existence of statelessness represents a challenge for the International Law mechanisms and, in some cases, a failure of them.

Statelessness is a global plague, and is the condition of “*an individual who is not considered a national by any state in accordance with its laws [...]”*<sup>143</sup>. Statelessness implies the lack of legal bonds with any State and is thus linked with nationality. However, statelessness means also the lack of citizenship, in the sense that stateless persons do not enjoy *consequences* of nationality. Therefore, when defining a person as stateless International Law makes reference to the lack of nationality; when defining what statelessness is, it makes reference to the lack of citizenship. However, if it is always true that stateless persons do not hold a nationality, it is not that true that they lack of all the benefits addressed to citizens. In fact, as stated before, they could enjoy a certain degree of *inclusion* in the political and economic life of a country.

The definition of statelessness is anchored to the present time, meaning that does not take into account neither future possibilities of the individual to acquire a nationality, nor a past nationality that could have been lost. The roots of statelessness could be found either at the moment of the birth – if the parents are stateless, for instance – or during the lifetime of individuals. Statelessness is caused by a number of issues concerning multiple domains of the States: State succession, discrimination of minorities or ethnic groups, arbitrary deprivation of nationality, technical failings of the governmental institutions, and climate change<sup>144</sup>. After wars, civil wars, and *coup d'état*, States could find themselves in need of implementing a reconstruction, either partial or full, of the governmental system. This means developing a new set of laws and practices starting from scratches. Although often necessary, this practice could generate chaos, exchange of misinformation, misunderstanding and could end up creating stateless persons due to confusion and lack of a clear legislation in force concerning the nationality granting process. A further cause is discrimination that, although hindered both at national and international level, still represents an

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<sup>143</sup> ARAGÓN V., (2012), *Statelessness and the Right to Nationality*, pp. 341-342

<sup>144</sup> BLITZ B. K. AND LYNCH M, (2012) *Statelessness and Citizenship. A Comparative Study on the Benefits of Nationality*, pp. 5-10

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impediment for the access to this right for minorities and discriminated groups. Discrimination concerning the acquiring of nationality is not always illegal but could also have a legal justification: in fact, it happens that a number of national laws<sup>145</sup> follows the principle of *jus sanguinis* rather than *jus soli*, hence the children of migrants run the risk of being discriminated for they will not immediately recognised as nationals. According to *jus sanguinis*, nationality is granted on a blood origin basis and not according to the territory at birth (that is instead the requirement of *jus soli*), causing a higher risk of arbitrary statelessness. In addition, a set of technical failings, for instance the lack of an effective administrative system, may result in the loss or non-recognition of the nationality of a person. This affects in particular children who live in developing countries where birth registration system is poor and ineffective, and thus run the risk of remaining invisible before the law. Therefore, the first tool to protect a child from being stateless is the birth certificate, which is the first formal recognition of the newborn. Holding a birth certificate does not mean having a nationality and vice versa, but since the lack of documents has been often used to deny the nationality, it represents a terribly important instrument. A last cause of statelessness is related more to the near future rather than to the present time. In fact, as for the report of IPCC (Intergovernmental Panel on Climate Change) presented at 2009 UN Conference on Climate Change<sup>146</sup>, several countries will be deeply affected by the rising sea levels that will make a big portion of lands not suitable for human settlements anymore. The destruction of those lands will push millions of people to migrate elsewhere and, in the worst scenario, will give an end to entire national territories<sup>147</sup>. If this foreseen massive migration happen, it could provoke many stateless persons whenever the other States will fail in tackling the issue in a proper way.

Scholars and experts in the field have spent the last sixty years trying to include at the best the plight of statelessness in the international architecture, in order to frame the issue and create a set of norms to properly face it. However, stateless persons

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<sup>145</sup> Among which laws from Italy, Germany, Cote d'Ivoire, and Dominican Republic.

<sup>146</sup> <http://unfccc.int/2860.php>

<sup>147</sup> <http://www.theguardian.com/environment/2009/mar/11/sea-level-rises-climate-change-copenhagen>

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remain a tremendously vulnerable category for a number of rights are granted only to the people who demonstrate to have a bond with a State, even under International Human Rights Law. This does not mean that treaties and conventions positively *exclude* stateless persons from their protection; on the contrary, they too often do not clearly *include* them.

Accordingly, there are three main example in International Law of non-inclusion of stateless persons. The very first example of this non-inclusion concerns the political participation of stateless persons within a nation-state. For instance, Art. 21 of Universal Declaration of Human Rights declares that: “*Everyone has the right to take part in the government of his own country*”. The tricky part of this article is represented by the sentence “*own country*”: in fact, it refers to the country of nationality of the interested person and, thus, represents an exclusion article for all those people who do not hold any nationality. A second example is about freedom of movement – namely, the right to stay, leave and enter or re-enter a given country. A number of instruments grant the right to move inside and outside one “*own country*”<sup>148</sup> as well as the right of the States to hold a decisional power about admittance and expulsion within their territory. As consequence, “*the stateless are left without the ability to travel internationally as well as without a country that they can rightfully call home*”<sup>149</sup>. The third and last example concerns economics rights. Art. 2(3) of the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>150</sup> establishes the possibility for each State to determine the position of non-nationals with respect to their national economic systems: thus, they could lawfully exclude stateless persons from the enjoyment of economics rights.<sup>151</sup>

Those three examples are the three most relevant gaps in the international legal framework – to be further discussed below – and demonstrate how universality of human rights has yet to be achieved. Notwithstanding the postulated universal and

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<sup>148</sup> i.e. Art. 12 International Covenant on Political and Social Rights

<sup>149</sup> BLITZ B. K. AND LYNCH M, (2012) *Statelessness and Citizenship. A Comparative Study on the Benefits of Nationality* p. 27

<sup>150</sup> “*Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals*”. The full text at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

<sup>151</sup> BLITZ B. K. AND LYNCH M, (2012) *Statelessness and Citizenship. A Comparative Study on the Benefits of Nationality*, pp. 26-28

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inclusive nature of International Law, the lack of a full denationalization of human rights still creates a legal framework of exclusion and discrimination of stateless. Non-discrimination is the very core of the human rights apparatus and it is not questionable: human rights are for all human beings. For this reason, the flaws in the system that tends to consider *more* human the nationals than the stateless is an undeniable challenge to overcome. The entire international community has been fighting in different ways in order to tackle this incongruence and to reduce the phenomenon of statelessness. First, the right to have a nationality is declared in several treaties (namely, CCPR, CRC, ICMW, ACHR, ACRWC and others that have already been presented in Chapter 2) that have been widely ratified. Although, those instruments are mainly related to children's right. Second, two specific instruments have been addressed to the avoidance of statelessness.

### **INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK**

Originally, the normative framework to prevent statelessness at the international level was meant to be contained within an additional Protocol to the 1951 **Convention relating to the Status of Refugees**. However, the urgent need to deal with the great number of post-war refugees all over the world, led to the adoption of the Convention without this Protocol<sup>152</sup>. A clear action plan concerning statelessness was thus delayed until the adoption of the **Convention relating the Status of Stateless Persons**<sup>153</sup> on 28 September 1954 by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 526 A (XVII) of 26 April 1954<sup>154</sup>. It entered into force on 6 June 1960 and today it has 23 signatories and 86 parties<sup>155</sup>. The Convention introduces for the first time statelessness as a legal status defining in Art. 1 a stateless person as "*a person who is not considered as a national by any State under the operation of its law*". It includes forty-two articles developed *ad hoc* in order to cover different stateless-related topics, such as religion, property, inheritance, access to justice, wages, social schemes, and freedom of movement. The articles can be divided in two macro-categories: the very specific and the rather general ones. The more specific articles address clear and

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<sup>152</sup> REFUGEES STUDIES CENTRE, *Forced Migration Review*, n°32 (2009), p. 5

<sup>153</sup> The full text at <http://www.unhcr.org/3bbb25729.html>

<sup>154</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatelessPersons.aspx>

<sup>155</sup> DRC never ratified it.

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unambiguous aspects, while the more general ones are meant to guarantee at least the so-called minimum standard of enjoyment of rights. A noteworthy characteristic of the Convention is the way in which it categorises the subjects: different *degrees* of statelessness exist according to the level of attachment of the person to the State (legal, physical, or judicial attachment). The attachment affects the chances to enjoy human rights in the sense that the more attached, the more rights the person is entitled to (i.e. freedom of religion is guaranteed only to the ones who physically dwell in a country). One of the most important steps forward in the protection of stateless persons of the Convention is the issuing of both identity papers and Convention Travel Documents (CTDs) that significantly simplify a safe movement across countries. Concerning the weaknesses of the Convention, they are herewith analysed in light of the three aforementioned flaws (political rights, freedom of movement, and economic rights) linked to statelessness within International Law. Political rights are completely absent since nationality remain the sole key factor for their enjoyment even in this Convention. Freedom of movement is not properly addressed by the Convention and represents its major weakness. Protection against entrance and expulsion is either covertly dismissed or mildly defined; specifically, it bestows to States a full decisional power on those issues. About economic rights, only minimum standards are outlined and guaranteed.

A second international instrument, aimed at filling the gaps of the 1954 Convention by establishing specific provisions, is the **Convention on the Reduction of Statelessness**<sup>156</sup>. It was adopted on 30 August 1961 by the United Nations Conference on the Elimination or Reduction of Future Statelessness in accordance with the General Assembly resolution 896 (IX)1 of 4 December 1954. It has 5 signatories and 63 parties<sup>157</sup>. It contains twenty-one articles that improve and enrich the legal framework addressed to statelessness. This Convention provides the very same definition of statelessness as the 1954 Convention. Its major improvement is represented by a set of provisions “according to which a person is entitle to acquire the nationality of a Contracting State, or not to be deprived of the nationality of a Contracting State, if

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<sup>156</sup> The full text at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=V-4&chapter=5&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en)

<sup>157</sup> DRC never ratified it.

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*be or she would otherwise be stateless”<sup>158</sup>.* The provisions harmonise *jus soli* and *jus sanguinis*: it means that whenever the risk of statelessness has been identified, *jus soli* must be applied even in those countries where nationality follows only *jus sanguinis*, and vice versa. In addition, the Convention claims that a Contracting State should confer nationality at birth to whoever is born in its territory and did not manage to acquire any other nationality. The UN General Assembly has designated in 1974 UNCHR as the UN Body in charge of gathering and examining all the claims of people requesting for benefiting from the Convention.

The Conventions of 1954 and 1961 are not the sole international instruments aimed at reducing the cases of statelessness. The issue is tackled also by: the 1930 **Hague Convention on Nationality**, the 1933 **OAS Convention on the Nationality of Women**, 1957 **UN Convention on the Status of Married Women**, the 1966 **International Covenant on Civil and Political Rights** and the 1966 **Convention on the Elimination of all Forms of Racial Discrimination**, the 1979 **Convention on the Elimination of all Forms of Discrimination against Women** and the 1989 **UN Convention on the Rights of the Child**<sup>159</sup>, the 1990 **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**. All of them tackle statelessness pushing the States to grant nationality “*to a person who, under the operation of its regular provisions would otherwise be stateless*”<sup>160</sup>. Thus, they push contracting States to prevent stateless right from the birth, but not always provide specific norms addressed to statelessness acquired during adulthood. The treaties are binding upon only a limited number of States and deal with specific instances of statelessness. However, according to a number of treaties and recommendation at the

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<sup>158</sup> UNHCR, *UNHCR and De Facto Statelessness*, p. 23

<sup>159</sup> HAILBRONNER, K. (2006). *Nationality in public international law and European law* (p. 28)

<sup>160</sup> *Ibidem*, p. 29

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international level, prevention of statelessness as for Art. 4 of the 1961 Convention<sup>161</sup> is today to be considered as customary law<sup>162</sup>.

Additionally, an important regional instrument about statelessness is the **European Convention of Nationality**<sup>163</sup> of the Council of Europe, signed on 6 November 1977 in Strasbourg and entered into force on 1 March 2000. It has 29 Signatories and has been ratified by 20 countries. The principle of avoidance of statelessness is currently a common European Standard as demonstrated by all the Recommendations and Conventions at the European level. For what concerns the European Convention on Nationality: Art. 4 (b) claims that *statelessness shall be avoided*; under Art. 6 Para. 1 nationality shall be granted to *foundlings found on the territory who would otherwise be stateless*; Art. 7 Para. 3 claims that *State Party may not provide in its internal law for the loss of its nationality [...] if the person concerned would thereby become stateless, with the exception of the cases of fraudulent acquisition of nationality*; and under Art. 8 Para. 1 *each State Party shall permit the renunciation of its nationality provided the persons concerned do not thereby become stateless*.

Although the number of ratifications of the aforementioned international instruments on statelessness varies, the great majority of States are parties to at least one of them and thus the right to have a nationality should be guaranteed, at least for newborn children.

Both the 1954 and 1961 Conventions constitute the legal basis to recognise and tackle statelessness even though there still are some main points to be better clarified: for instance, the positive obligations of States to grant citizenship, and the weak definition of statelessness<sup>164</sup>. Namely, which are the actions that the State must undertake in this respect? Notwithstanding the attempts to provide a clear answer to

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<sup>161</sup> Art. 4: *A Contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he was born because he has passed the age for lodging his application or has not fulfilled the required residence conditions, if the nationality of one of his parents at the time of the person's birth was that of the Contracting State first above mentioned. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. If application for such nationality is required, the application shall be made to the appropriate authority by or on behalf of the applicant in the manner prescribed by the national law. Subject to the provisions of paragraph 5 of this Article, such application shall not be refused.*

<sup>162</sup> *Ibidem*, p. 29

<sup>163</sup> The full text at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/166.htm>

<sup>164</sup> <http://africanarguments.org/2009/10/12/the-right-to-citizenship-under-international-law/>

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the query, the reality of fact is that everything still depends on the national context. For example, several States keep on rightfully denying their nationality because they claim that the person applying for the acquisition should be national of another State. It means that the lack of strict guidelines for States let them blame someone else instead of taking ownership of their actions and responsibilities. Another problem, then, is the poor ratification of the two Conventions. The legal framework exists, but compliance and implementation should be monitored and sponsored more since the laws are not sufficiently implemented by States, not even from the ones who have ratified them.

As a matter of facts, UN bodies and institutions that are widely involved on the field play a fundamental role in the issuing of nationality and in the fight against statelessness. However, as asserted by Goldston J. A., “*while UNHCR has done admirable work with scarce resources in addressing statelessness, it cannot do the job alone*”<sup>165</sup>. There is a lot more that could be done at a UN level: for instance, a UN supervisor body should be established to monitor and implement actions addressed to stateless persons as for the 1954 Convention. Accordingly, the UN Human Rights Council, the Office of the High Commissioner for Human Rights, and the UN Children’s Fund should both create specific bodies aimed at the prevention and protection of statelessness, and insert stateless as a priority issue in their agenda. In this way, it would be easier and smoother to better tackle every form of discrimination and promote massive birth registration campaigns as well as universal demographic census.

Even admitting that the existence of all the aforementioned legal instruments, an additional step towards an effective prevention and eradication of statelessness implies also legal and normative enforcement. For instance, a better articulation of Art. 15 of the Universal Declaration of Human Rights would be required in order to clarifying the following points. First, nationality should be granted by the State of birth (*jus soli*) unless the child already has another nationality, as for the Convention of 1961. Ensuring the nationality at birth avoiding the tricky dispositions of *jus sanguinis* represents a terrific step forward since, if this procedure is massively and universally

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<sup>165</sup> BLITZ B. K. AND LYNCH M, edited by (2012) *Statelessness and Citizenship. A Comparative Study on the Benefits of Nationality*, p. 212

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implemented, statelessness could be diminished within few generations. Second, States should issue proper identity documents to all citizens, particularly birth documents to every newborn. Third, people who live in a country for a given period should have the right to acquire the nationality. Fourth, criteria and procedures for obtaining nationality must be more transparent within each country. Fifth, withdrawal of nationality by States that blatantly causes statelessness has to be considered as illegal; also, withdrawal shall require a more effective harmonisation within the national normative framework. Finally, nationality should be granted without any kind of discrimination and more protection should be addressed to minority groups<sup>166</sup>. All of these improvements would better define statelessness also at a national level and thus advocacy to States to ratify the legal instruments on statelessness would be needed.

In the following paragraph, the legal framework harmonising nationality in DRC will be discussed. In addition, the paragraph underlines



Figure 1 Displaced people in North Kivu © UNHCR

the role of UNHCR in the fight against statelessness. Both the issues will be analysed with respect to North Kivu, a province in the Northeast of DRC that has been chosen due to its geographical position – i.e. it borders with Rwanda, that is both source of and destination for thousands of migrants and refugees each year – and to the high incidence of conflicts, either national or international.

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<sup>166</sup> *Ibidem*, pp. 212-215

# Birth Certificate and Risk of Statelessness

For DRC is a country in ongoing transition, with multiple sources of challenges arising from within, each little step toward effective democratic standards shall be considered as a big conquest. The current DRC statelessness/nationality condition is not optimal, neither in terms of standard of life of stateless nor in terms of prevention, but every little positive feature of the picture should be regarded as an incentive to work and improve more.

## 4.3 Risk of Statelessness in DRC - North Kivu, and Role of UNHCR

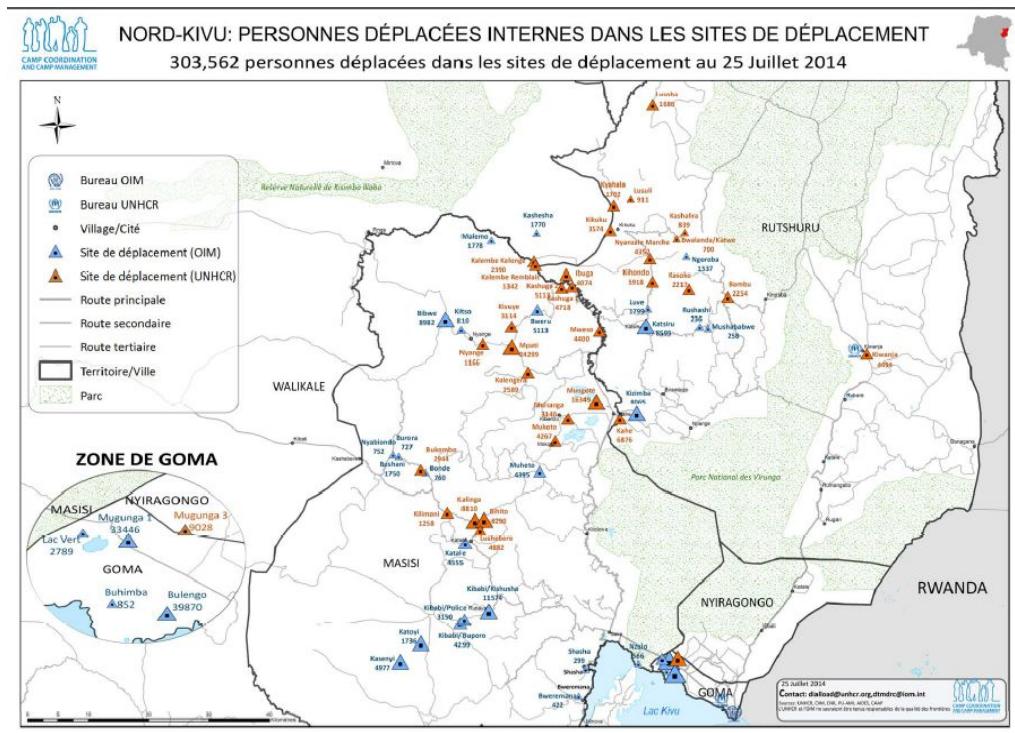


Figure 2 © UNHCR Internal Displaced Persons Camps in North Kivu

DRC is not a peaceful country: many conflicts, civil uprisings, and wars have shaken the State before and after its independence in 1960. The roots of those fight are diverse – ethnical, economic, political – and have created a state of continuous alert and instability all around the Congolese borders. Considering its geographical position, North Kivu province particularly served as stage for a number of conflicts, both

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national and intra-national. Currently, the situation is not stable and the population still suffers from this never-ending insecurity. Consequently, the conflicts affected the country with regards to a number of aspects, from the development of an efficient democratic apparatus to the actual possibility of DRC to avoid the risk of statelessness. Concerning the latter issue, it generates from the plague of refugees in DRC that is massive and in need of concrete solutions; people are too often forced to leave their villages looking for a safe shelter either in neighbouring countries – mainly Rwanda and Uganda – or in UNHCR refugees' camps (see *Figure. 2*). The latter ones are under the supervision of UNHCR, which have been working hard to create a safe environment for all those people who are forced to escape from unsafe situations, such as rebellions and uprisings.



*Figure 3 UNHCR Camp in DRC.*

The mandate of UNHCR concerning the prevention of statelessness and the protection of stateless people has been bestowed by the UN General Assembly resolutions number 32/74 (XXIV) of 10 December 1974, number 31/36 of 30 November 1976, and number 50/152 of 9 February 1996. In addition, it has been confirmed by the UNHCR Executives Committee's Conclusions number 78 (XLVI)

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of 20 October 1995 and number 106(LVII) of 6 October 2006<sup>167</sup>. This mandate focuses on four domains:

1. *Identification* of stateless people and of risk of statelessness;
2. *Prevention* as a solution of the problem;
3. *Reduction* through the facilitation of procedures to grant nationality and the improvement of stateless standard of living; and
4. *Protection* through the identification of difficulties faced by stateless persons and reasonable solutions.

At the international level, the juridical instruments concerning statelessness are the two **UN Conventions on Statelessness of 1954 and 1961** as well as the **Convention relating to the Status of Refugees** adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, convened under General Assembly resolution 429 (V) of 14 December 1950 and entered into force on 22 April 1954<sup>168</sup>. The latter Convention has 145 signatories and DRC ratified it on 19 July 1965<sup>169</sup>.

The regional legal framework on statelessness includes: the Tripartite Agreements between UNHCR, DRC, and Rwanda of 17 February 2010, and the one between UNHCR, DRC, and Uganda of October 2010; the Dar es Salaam Declaration of 20 November 2004 (Paragraph 68)<sup>170</sup>; the Pact on Security Stability and Development in the Great Lakes Region of 15 December 2006<sup>171</sup>; and the Protocol on the Protection and Assistance to Internally Displaced Persons in the Great Lakes Region of 30 November 2006 (Principle 20)<sup>172</sup>.

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<sup>167</sup> UNHCR (2013) *Rapport à mi-parcours Janvier-Juillet 2013*, p.6

<sup>168</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages>StatusOfRefugees.aspx>

<sup>169</sup> <http://www.unhcr.org/3b73b0d63.html>

<sup>170</sup> <https://repositories.lib.utexas.edu/bitstream/handle/2152/5958/3211.pdf?sequence=1>

<sup>171</sup> <http://www.lse.ac.uk/collections/law/projects/greatlakes/Pact%20on%20Security%20Stability%20&%20Development.pdf>

<sup>172</sup> <http://www.refworld.org/pdfid/52384fe44.pdf>

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The Congolese legal frameworks takes account of the 2006 **DRC Constitution**, the **Loi n°09/001 2009 Portant Protection de l'Enfant**, and the **Loi n° 04/024** of 12 November 2004 on the awarding of the Congolese nationality<sup>173</sup>.

In addition to those international, regional, and national instruments, there are a number of guidelines and strategy notes of both UNHCR and DRC governing bodies (i.e. *Stratégie Prévention contre l'apatriodie au Nord Kivu*, UNHCR, 2013).

On the Congolese field, UNHCR collaborates with the International Organization for Migration (IOM) for the management of the refugees' and displaced persons' camps in North Kivu. Their administration is bestowed to the *Commission National pour les Réfugiés* (CNR) and their management to: CNR, the *Première Urgence - Aide Médicale Internationale* (PU-AMI), the *Actions et Interventions pour le Développement et l'Encadrement Social* (AIDES), and the *Comité d'Appui à l'Auto-Promotion* (CAAP-TUJITEGEMEE)<sup>174</sup>. The interventions and projects implemented within the camps are diverse and aim at ensuring respectable standard of life for everyone, especially for the one more in need such as disabled person, women and children. In addition, UNHCR incites the achievement of economic independence from external aids of refugees and displaced persons through the building of capabilities, skills, and resources in order to let them have an autonomous life once outside the camps. Even if the life in camps is meant to be temporary, there are public services offered with the scope of making life after the camp easier. In the camps in North Kivu, for example, among those services there is the birth registration. In fact, parents or other people in charge have the opportunity to fill the form for registering the child in while in the camp, according to the provisions of the *Code de la Famille* – emended in 2009 by the *Loi n° 09/00* – and of the DRC 2006 Constitution. Afterward, the form has to be handed to the closest civil registry bureau in order to archive it and prepare the birth certificate. This procedure should be executed by the parents of the child but, as established by the *Loi n° 09/001*, also a third person can deliver the document, making the entire process easier. Thanks to the law of 2009, UNHCR employees are registering a high number of children under the three months of age. For all those children older than three months, the law

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<sup>173</sup> <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4a1a99022>

<sup>174</sup> IOM (May 2014), *Bulletin d'information*, Mai 20014 - #1, p.3

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establishes that a suppletory judgement has to be presented to the tribunal and no exceptions can be made, neither for refugee nor for displaced children. Considering the unfortunate number of children holding this status, UNHCR as well as other IOs and ONGs do not have the resources to provide economic aid to all of them. The results is that the economic support is not enough, only very few families can afford to bear the costs of a legal procedure by themselves, and thus unregistered children remain a big challenge in DRC. Furthermore, it has to be noticed that registering a child does not guarantee that DRC recognises him or her as a Congolese national: the risk of statelessness thus remains. This is one of the major weakness of the normative framework and will be further discussed in this paragraph.

The existence of camps for refugees and displaced persons – especially in the North Kivu province – do not prevent the risk of statelessness. It has to be noticed that no stateless persons exist *de jure* in the country nowadays. Apparently, ethnical divisions and political belonging have guaranteed the prompt recognition of undocumented people so far. In addition, the fact that stateless exists only in potency is first of all caused by the lack of claims by the population. For the migration of the Congolese people are rather circumscribed in neighbouring countries traditionally used to *illegal* movements from DRC, and for the UN institutions have been transnationally marginalising the issue, people do not perceive at all the risk of statelessness as they are not well aware of the degree of danger linked to this status. According to an onward standpoint, the lack of awareness is caused by the little differences in terms of enjoyments of rights between the citizens and the aliens in DRC. Considering the high unemployment, poverty, and death rates registered in the country, the majority of the population live day by day more or less according to the same standards of living, no matter whether a citizen, a national or neither of them. Moreover, undocumented people, refugees and displaced persons represent the majority of the population and thus they do not consider their status as dangerous for it simply is their own ordinariness. Notwithstanding the poor set of knowledge and awareness from within, the risk of statelessness in DRC and especially in North Kivu is actually very high. It is caused by multiple factors: the very first one has been already mentioned and is related to the high incidence of conflicts and wars. Those events have been causing a

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terrific number of displaced persons: UNHCR has estimated more than 47.000 displaced children without birth documents in its camps and it has not been feasible to register them all up to nowadays<sup>175</sup>. Wars do not only contribute to statelessness by generating displaced persons and refugees: it destroys life, villages, buildings, civil registries, archives, tribunals. For this reason, the entire population of Kitshanga is in risk of statelessness for everything has been set to fire<sup>176</sup>. In this case, the impossibility to establish the identity and the nationality of those people put them all in danger of becoming stateless.

However, another relevant factor is the national legal framework concerning the nationality-granting process. A number of experts and scholars have been working during the past years to deeply analyse it in light of the rather unique Congolese environment. During the years, the requirements and procedures to acquire the Congolese nationality changed and evolved in order to comply with international and regional standards. UNHCR, together with lawyers, law professors of the *Université Libre des Pays des Grandes Lacs* (ULPGL), and the Ministry of Internal Affairs gathered together in order to discuss this urgent topic<sup>177</sup>. Nonetheless, the laws in force still require additional amendments in order to better frame and tackle the risk of statelessness in DRC.

The nationality law of 2004, in fact, still leaves outside its protection a number of categories that thus run the risk of becoming stateless. First of all, it should be highlighted that the Congolese nationality is exclusive, meaning that a Congolese national cannot hold another nationality of any other country<sup>178</sup>: this is a clear source of problems for the foreigners requiring Congolese nationality. From that starting point, let us herewith analyse the *Loi n° 04/024* more in depth in order to better picture its weak points and to underline its innovations and steps forward.

According to Artt. 4 and 6 of, people who are recognised as Congolese by origin are: children who have at least a Congolese parent; newborns found on DRC territory;

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<sup>175</sup> UNHCR (2013), *Loi de 2004 sur la Nationalité: Analyse Juridique des Risques d'Apatriodie*, pp. 14-15

<sup>176</sup> *Ibidem*, p. 15

<sup>177</sup> Interview to one of the Key Informants from UNHCR on 16 July 2014.

<sup>178</sup> Art. 10 of the 2006 DRC Constitution.

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and every person who belongs to an ethnic group dwelling in DRC territory as for its independence in 1960. Furthermore, the *Loi* sets the modality to acquire the Congolese nationality that are: request, adoption, naturalisation, marriage, residence and birth in the country. Therefore, the subjects who are not granted the nationality by origin, who cannot lawfully acquire it, and thus who are more in risk of becoming stateless are the ones that follows. First, the child born from Congolese parents in a third country where nationality is granted by *jus sanguinis* and who has not resided in DRC since five years before his or her eighteenth birthday (Art. 15 *ibidem*) could be considered as alien and, in the worst scenario, as stateless. Second, the child born in DRC from foreign parents who have not submitted any application for acquiring the Congolese nationality within six months after the eighteenth birthday of the child is not considered as a nationals of DRC (Art. 16, *ibidem*). Third, everyone who applied for the granting of the Congolese nationality, being obliged to renounce to the previous nationality he or she held, if any, is formally an alien either when waiting for the procedure to be completed or in case the application is rejected – in this latter case the risk of becoming stateless is very high (Arts. 22, 27, and 28, *ibidem*). Fourth, ethnic groups created in the aftermath of the DRC independence in 1960 are not recognised as Congolese by origin: they should thus apply for acquiring the nationality (Art. 6, *ibidem*). Fifth, every person whose nationality certificate is not available nor traceable (Art 42, *ibidem*), situation that occurs very often in unstable developing countries whose governmental institutions are poor and rather inefficient. Sixth, every person who unlawfully held a second nationality, even for a brief period – i.e. while waiting for the application to be approved – apart from the Congolese one will be immediately deprived of it (Art. 1, *ibidem*); in case the person has already refused the previous nationality, could be considered as stateless. Seventh, foreign soldier who committed war crimes in DRC must not be granted the nationality even if has started a procedure to acquire it by marriage (Art. 22 *ibidem*). Other categories who hypothetically could be stateless according to the legal framework are Rwandan refugees in DRC and Congolese refugees in Rwanda or Uganda<sup>179</sup>. Considering the political and tribal tensions between the countries, the situation of those categories is very difficult to

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<sup>179</sup> According to the Tripartite Agreements of 2010

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manage: all the parties have strict standpoints and, even though Tripartite Agreements do exist, the cooperation among them concerning certain topics is rather rusty. The first group of refugees could be considered in risk of statelessness upon returning in Rwanda, their home country, without identity documents and with a high risk of expulsion due to political and ethnical reasons following the 1994 Rwandese genocide. The second group incur the very same risk when spontaneously repatriating in DRC without documents. The malfunctioning of civil registries in DRC caused between 2011 and 2012 1.329 unidentified refugee children born in Uganda and then repatriated, thus violating the disposition of Art 16 of the *Loi n° 04/024*<sup>180</sup>. Another issue concerning Congolese refugees in Uganda is linked with Art. 25 of the Uganda Citizenship and Immigration Control Act that prevents the naturalisation of or the acquisition of a permanent residence by Congolese immigrants. In addition, a refugee child born in Uganda whose Congolese nationality is contested in DRC could be considered stateless for being not formally recognized by neither of the States. With regards to the Congolese refugees in Rwanda, their applications for a nationality are too often rejected due to political and ethnical frictions between DRC and Rwanda. For example, a Congolese refugee child in Rwanda (thus underage) is not recognised as Congolese unless he or she is repatriated – but even upon repatriation he or she could face a high degree of discrimination which would impede him or her to be officially recognized as a DRC national.

Notwithstanding the aforementioned weakness of the *Loi n° 04/024* on nationality, it also represents a terrific step forward with regards to the previous national normative, particularly to the *Décret-loi sur la nationalité* of 18 September 1965. Accordingly, it introduces a number of innovations that serve to prevent statelessness in DRC. In particular, the dispositions contained in five main articles deserve to be underlined. As claimed by Art. 8, the Congolese nationality is automatically granted to every child of unknown parents that is found on DRC territory. In case it is possible to find the parents (both or one of them) of the child, the latter will be granted with their nationality according to the applicable national laws. Furthermore, according to Art. 9(1), every stateless child born in DRC will be awarded with the Congolese

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<sup>180</sup> UNHCR (2013), *Loi de 2004 sur la Nationalité: Analyse Juridique des Risques d'Apatriodie*

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nationality. As for the Art. 9(2), is Congolese by origin a child born in DRC from foreign parents whose country of origin grants nationality according to *jus soli*. In addition, Art. 19 states that a stateless person who marries a Congolese national can acquire Congolese nationality. One of the main improvement concerns naturalisation, which has been introduced by Art. 12 and was forbidden before 2004. The latter is a process by which it is possible to become national of a country, its requirements vary from State to State even though a minimum number of years of lawful permanence in the country is often required. Upon naturalisation, the person shall enjoy all the rights and duties that the Congolese nationality implies (Art. 24)<sup>181</sup>.

Within this specific normative context, the role of UNHCR as for its mandate is based, as previously mentioned, on four pillars: identification, prevention, reduction, and protection. In order to identify the risk of statelessness, UNHCR experts have been working on the legal analysis of the normative as well as on the direct identification on the field, meaning in refugees' and displaced persons' camps. The prevention of statelessness is the pillar on which UNHCR works more in DRC. It implies massive sensitisation campaigns on statelessness with stakeholders, could they be NGOs, governmental representatives or the local population. About the rising awareness process, it works together with UNICEF and with several local organisations in order to reach as many people as possible. On the one hand, sensitisation is about explaining statelessness to people; on the other hand, it is meant to inform families about the terrific importance of birth registration, pushing them to register their children. In addition to sensitisation, UNHCR is deeply involved also in training local experts to be employed either in the organisation itself or in local facilities, such as civil registries, tribunals, and administrative bureaux. Another task is the structural and material support to civil registries: as well as UNICEF, it provides material to carry out daily task – i.e. registers, papers, pens, laptops. Finally, it facilitates forensic hearings for the suppletory judgements in order to register children after the grace period of ninety days. Facilitating means that UNHCR could offer lawyers either free of charge or at a minimum price, can be in contact with local lawyers and local judges, could provide help to physically reach the tribunal or pay for travel expenses.

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<sup>181</sup> Ibidem

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Concerning the reduction of statelessness, UNHCR invests energies and resources to provided stateless people with legal assistance and it also serve as an intermediary between the person and the State concerned, advocating for it to grant its nationality to the stateless. The fourth pillar is the protection of stateless persons: UNHCR protects those people in several ways, including legal assistance, economic and psychological support, social and working inclusion, and funding for all the other aspect of the life of people in nees. The procedures and methodologies varies from context to context. In DRC, even if the risk rate is among the highest worldwide, there are not stateless persons<sup>182</sup>: therefore, both the protection and reduction measures do not have reasons to exist. Thus, the resources established for those pillars can be invested where required. In addition, the pillars are not sharply separated but continuously in contact with each other; they intermingle in a synergetic way for the purpose of them all is only one, meaning not letting anyone else being stateless anymore. To achieve this ambitious goal the intervention of States is fundamental. No organisation has such a power to end stateless by itself.

Although it is undoubted that UNHCR, as well as other UN organisations, is a relevant asset in DRC, it is also undoubted that its mandate is limited. This happens in order to avoid any violation of the national sovereignty. For example, no one but the State has the power to award its nationality and set the condition for acquiring it. For this reason, one task of UNHCR is to frequently report the government about the actual situation of camps, supporting its reports with fact-finding document full of statistical data and proposals. The debate between UNHCR and the Congolese Government is always open and a number of problematics to be better framed has been presented.

First of all, the information about statelessness and nationality is not sufficient, neither at population level, nor at administrative and ministerial level. A more intense discourse about those issues should be implemented in order to avoid vagueness and normative gaps. For example, the Rwandan refugees issue is very ambiguous and in need of a more specific framework. For example, there are no clear laws about the

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<sup>182</sup> Interview to one of the Key Informants from UNHCR on 16 July 2014.

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refugees status, nor about the procedure to extinguish it; also, neither the status of refugee nor the birth certificate guarantee the awarding of the Congolese nationality. Another major problematic is the unclear responsibilities and task-division for the acquisition of identity document (i.e. birth certificates) in national and provincial institution, as well as the rules and conditions of the tasks. The lack of specific guidelines leaves a relevant number of bureaux in chaos, above all the ones in rural areas where the vertical control is less perceived.<sup>183</sup>

In light of those problems, UNHCR presented recommendations addressed to the Congolese Government, UNCHR itself, and other experts on the field. Accordingly, everyone concerned should undertake measures to urge the population to register the children at civil registries, and support the latter ones with equipment and funds. In addition, both the administrative burden and the bureaucratic procedure to acquire the nationality should be simplified by the Government to the maximum extend in order to streamline the entire process.<sup>184</sup>

### **4.4 Citizenship, Nationality, and Statelessness – Conclusions**

As demonstrated so far, it results very difficult to grasp and handle the concepts of statelessness, citizenship, and nationality. Concerning nationality and citizenship it is possible to outline four main historic pillars, which have been inherited by the Romans and the Greeks, and help defining the contemporary understanding of citizenship and nationality: formal legal status, political engagement and participation, enjoyments of rights, and identity – may it be global or national<sup>185</sup>. Therefore, citizenship and nationality are characterised by a series of legal, political, psychological, and behavioural aspects that are not mutually exclusive but tend to intermingle with each other. The results is that our comprehension of the issue involves a growing number

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<sup>183</sup> *Ibidem*

<sup>184</sup> UNHCR (2-3 July 2013), *Rapport des Travaux de la Table Ronde: Nationalité et Apatriodie*, Goma – DRC, pp.4-6

<sup>185</sup> BOSNIAK L., (2008) *The Citizen and the Alien, Dilemmas of Contemporary Membership*, p 20

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of domains that implies a higher percentage of problems to be faced. Those problematical issues are caused by the fixed boundaries that we culturally conferred to citizenship and nationality: the boundaries are too *tight* though to contain all the knowledge about this topic and are actually suffocating a possible better understanding. This means that we kept on inserting objects in a box that now is far too full. Therefore, instead of talking about citizenship and nationality as a unity, even though semantically divided into *who* and *what*, it would be better to split our understanding into subcategories in order to achieve a more efficient categorization.

Therefore, to create those categories it would be useful to consider both the domains involved and the subjects. As a results, there would be a number of citizenship and nationality categories such as “Economic citizenship”, understood as the chance to have a basic economic wellbeing, and “Cultural/Multicultural nationality”, which is the recognition of the differences within a community without any form of subordination or exclusion. Another category could be “Postnational/Global citizenship” that, in line with globalisation and neoliberal world order, would overthrow the exclusive relation between nationals and nation-states’ edges to create a new multinational framework. One example of the latter could be the European Union citizenship, which requires and implies the holding of the nationality of one of the European Union Member States, which have removed *some* borders of Member States to actually guarantee, among the other things, freedom of movement. However, postnational citizenship is very hard to achieve in practice even though the growing occurrence of double/multiple nationalities is a sign of the slow dismantling of national borders as the main discriminating feature to award nationality. Nevertheless, the universalisation has been subject to profound criticism for it implies a gap between the legal status (nationality) and the concrete performances (citizenship). Nonetheless, universalism remains a keystone within the political and academic community, since it is given for granted that everyone has the human right to be a national of at least one country. The concept of universalism is broad enough to open the path to discussions about the formal recognition of nonhuman animals as citizens, to be labelled as “Ecological nationality”. Others have advocated for the States to recognise as nationals also the fetuses that are the ones still unborn. Those two last proposals take into

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account only the nationality as legal and formal status and not citizenship for all the practices and benefits linked to the latter are not applicable to animals or unborn humans. Last but not least, it would be possible to talk about “citizenship of Aliens” that, even if sounds like an oxymoron in theory, holds some practical basis. In fact, the aliens and the statelessness could enjoy a number of human rights within the domain of political, social and economic rights. This happens due to several reasons that mostly imply the impossibility or incapability of the States to effectively control the population. The result of this lack of possibilities or competences on the one hand illegally improves the well-being of the category; on the other endanger the effectiveness of the State involved.<sup>186</sup>

From a general point of view, cultural, economic, minority group, postnational/global, ecological, animals’, fetuses’, and aliens’ citizenship/nationality status could help the achievement of a better academic understanding as well as an improvement in the practice. In addition, considering that statelessness is often a result of the policies concerning the nationality, improving the one thing could lead to improving also the other one.

### **4.5 Nationality and Statelessness in DRC – Conclusions**

For what concerns the situation in DRC, and in particular in North Kivu, the main challenge spring from the instability of the country. In fact, the majority of the issues would be easily diminished or better tackled if the country dwelled in peace. First, wars and conflicts affect the population’s life under multiple aspects: people are often forced to move and it is not easy at all for them to properly settle down so frequently. Their life remains then precarious and focused only on the most basic needs. When running away from a conflict, most probably the last thing a person thinks of is bureaucracy – even if birth registration has been demonstrated not to be a mere bureaucratic practice. Registering a child at the civil registry becomes all of a sudden less important than

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<sup>186</sup> *Ibidem*, Chapter 2, Defining Citizenship, pp. 17-36

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looking for shelter, food, jobs, and health assistance. For this reason, the State should take actions to create new policies to favourite and promote the registration of all those people involved in conflicts. In fact, the State is the one in charge of protecting and promoting each and every human right, even in case people neither ask for them nor completely understand their importance.

A second challenge comes from the legal background and concerns the non-ratification of the two UN Conventions on Statelessness by DRC. This represents a weak point because, lacking of an international binding instrument, the country is compelled to work on this topic mostly on a national framework basis. A number of actors involved in the reduction and protection of stateless persons is advocating DRC for the ratification of those international instruments, which would force DRC to strengthen the normative about the statelessness as well as about citizenship. However, the international pressure is not enough for the Conventions have a limited number of signatories themselves. In fact, worldwide advocacy campaigns are in place to persuade all the States to ratify them, not only DRC. In addition, the role of international actors in DRC is limited to their mandate that under no circumstances can subvert the national sovereignty of the State.

Furthermore, another main challenge concerns the lack of proper and efficient structures due to a poor democratic institution building and a massive corruption. As a result, the malfunctioning of the civil registries is among the major cause increasing the risk of statelessness. First of all, civil registries are still in process of being properly constituted: they exists, the State and other external donors are funding the creation of more bureaux in rural areas, but people is not even using them as it would be required. In fact, those bureaux can deliver only birth and death certificates and nationality documents if requested. No others identity documents are obtainable by the Congolese people, who currently use as ID the electoral document provided by international electoral observers<sup>187</sup> during the presidential and parliamentary elections of 2006 and 2011. Obviously, this is not a valid identity document because it holds no picture on it, is either printed or hand-written on sheets of paper but still remains the

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<sup>187</sup> i.e. The European Union Electoral Observation Missions.

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only documents Congolese people have. The importance of documents, furthermore, is unclear to the majority of the population. Additionally, the management of these bureaux by the government is ineffective and too frequently inconsistent: the lack of managerial expertise, together with a very high corruption rate, has as result poor outputs that do not comply at all with international standards requirements. Even if both UNHCR and UNICEF – as well as other IOs and NGOs – are working to support those civil registries in terms of equipment and trainings for employees, the degree of ineffectiveness is still tremendously high. An issue concerns for sure corruption: many civil registry's employees abuse of their position in the attempt to gain more. Therefore, it could happen that they ask for additional money to register a child, or they refuse to let the registration be finished within the grace period of ninety days unless the applicant would pay an extra fee<sup>188</sup>. Corruption of the ones in power is a plague in a great number of countries, and in DRC represents a serious impediment for the effectiveness of the governmental institutions.

A fourth problematical issue is the huge lack of knowledge and information about statelessness and nationality, both at the higher and at the lower levels of the society. Therefore, very few Congolese people are informed about the topic in a proper way; the rest of the population either ignores or underestimates the importance of it. The blurriness of this matter generates a confusion whose burden falls upon the shoulders of the local people who often find themselves in an irregular or illegal position – i.e. when leaving the country to migrate elsewhere without documents.

In order to improve the situation a lot has been done and even more shall be done in the future. First of all, the risk of statelessness in DRC is object of discussions and round tables since the early 2000s: multiple stakeholders are devoted to the cause and have invested energies and resources to study the national framework and suggest improvements from legal standpoints. One hypothesis that often arises aims at mining the unicity of the Congolese nationality that, as for UNHCR proposals, could be more opened in the future. This openness would avoid unfortunate situation of people who want to acquire the Congolese nationality and are forced to withdraw their previous

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<sup>188</sup> Information taken from interviews with the Key Informants.

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nationality and hence be an alien for a certain period, running thus the risk of becoming stateless. A suggestion could be to award the Congolese citizenship (and not the nationality!), to the people who reside in the territory and ask for it.

Additionally better understanding of the status of stateless in general, with the focus on Rwandan people, is required in DRC and North Kivu to avoid ethnical and racial discrimination still rooted in the country since the 1994 genocide in Rwanda. The plague of Rwandese people in DRC needs to be better framed.

Furthermore, it results necessary to address more specifically the responsibility of institutions in this regards and to strengthen the civil registries as such. This could be done firstly fighting the internal corruption, reporting every case of abuse of power that must be punished accordingly. Concerning equipment, UNHCR, UNICEF, and the Ministry of Internal Affairs are in charge of providing all the offices with proper registers, stamps, pen, and other office material. Also, they are supporting the creation of civil registries in rural areas in order to prevent the non-registration of children because of too high travel costs to reach the closest municipality.

Concerning the sensitisation of the displaced of refugee population, a lot can be done with little resources. For instance, 350 women in camps in the territory of Walikale were thought about statelessness and birth registration, and then asked to have sensitisation meetings opened to the civil society once per week. With a little investment in the education of those 350 women, 4,748 people (2,274 men and 2474 women) obtained detailed information and 263 parents decided to register their newborn babies. Additionally, UNHCR funded the ULPGL to create a course on the role on UNHCR in DRC for 170 students and teachers. The final aim is to create a research centre to facilitate the research in the DRC in the field of International and National Law<sup>189</sup>.

As demonstrate, improvements can be achieved even with little resources. Unfortunately, what is really needed is a radical change rather than little improvements – that are obviously more than welcome and useful. The only character that holds the

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<sup>189</sup> UNHCR (2013) *Rapport à mi-parcours Janvier-Juillet 2013*, pp. 2-5

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power to change a country, then, is its government. External actors can provide suggestions and aids but the sovereignty has to remain in the hand of the State itself. Therefore, amendments to the normative framework concerning citizenship and statelessness are necessary; appropriate political and diplomatic actions are required in order to bring more stability within the national borders; and a long-term plan to achieve more independence from external actors should be created. Unfortunately, the political weakness in DRC has resulted quite useful for there are external stakeholders who are gaining from this situation. Still, a little Congolese elite and external investors are building their own empire at the expenses of other human beings.

An international awareness-raising and advocacy campaigns plan is needed to bring DRC on the international agenda as well as on the international mass media apparatus. We discuss too little about this country that instead deserves more attention from our side.

## CHAPTER 5

### BIRTH CERTIFICATE: THE CHALLENGE

*“The place to improve the world*

*is first in one's own heart and head and hands”<sup>190</sup>*

#### 5.1 Non-Registration of Births: the Reasons

The lack of birth registration is caused by multiple factors: some of them are specific of only certain countries; others can be applied more or less to every place in the world. The UNICEF Innocenti Research Centre, together with other international research groups, studies these factors from both a local and a global standpoint. In 2005, UNICEF published “*The Rights’ Start to Life: a Statistical Analysis of Birth Registration*” that represents the outcome of a cross-country analysis carried out in sixty-three selected countries<sup>191</sup>, aimed at not only providing a descriptive literature about the topic, but also at determining the causes of non-registration of births from a statistical point of view. Before 2005, diverse descriptive works existed, but it was (and still is!) very hard to find an analysis with statistical significance. UNICEF, by means of a logistic regression model, have obtained a multi-sectoral and cross-country result registering the likelihood of a child to obtain a birth certificate in a given country and according to specific variables<sup>192</sup>. Because of the analytical and descriptive approach of this statistical work, it was selected as the main source of information to write this paragraph.

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<sup>190</sup> ROBERT M. PIRSIG (2009), *Zen and the Art of Motorcycle Maintenance: an Inquiry into Values*, HarperCollins Publishers, USA

<sup>191</sup> DRC was among the countries included in the research.

<sup>192</sup> UNICEF (2005), *The Rights’ Start to Life: a Statistical Analysis of Birth Registration*, p. 21

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Since the reasons for non-registering a child are diverse and numerous, it is easier to start grouping them into two macro-categories: the State-related causes, and the civil society-related causes. The former ones include all the reasons that can be attributed to the State – i.e. its functioning, its legal framework, its willingness to tackle the problem – while the latter ones are attributable to the civil society, principally but not exclusively the caretakers of the children. The two groups are not always divided in a sharply way and sometimes it result rather difficult to decide whether a given cause should be attributed to the State or to the population. However, for the sake of simplification, let us use this discrimination as a starting point keeping in mind the porous nature of the borders created *ad hoc* to explain the concept in one of the most straightforward ways possible.

First, the causes related solely to the States are diverse. It is important to stress, though, that nowadays almost all the countries in the world ensure legal mechanisms as well as governmental institutions aimed at registering births. This happens on a regular basis because, besides being a fundamental right, a birth certificate serves also statistical purposes that are vital for any country. In fact, knowledge about births is useful for governments not only to draw more effective action plans in the field of education, sustainable development, economics, and whatever other domain of governmental interest, but also to have an effective degree of control over the population. For instance, how can a State be completely sovereign if it does not know how many people dwell in the country and how intense the migration flows are? Therefore, being both a duty and right for the States, birth registration is deeply influenced by the State's attitude and structure, to its governmental functioning and degree of institution-building capabilities. The coverage and degree of efficiency of this practice therefore differs depending on the country's infrastructure, capabilities, administrative apparatus, and availability of funds to be invested. It could be easily assumed that birth registration, being such an important and useful tool for the States, is a consolidated practice all over the world; unfortunately, its relevance is directly proportionate to the degree of development and peace of the country. The issue almost disappears at the eyes of all those country dwelling in wars or conflicts or facing economic severe regressions. In these cases, all of a sudden a birth certificate seems to

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stop being a child's rights and become a mere administrative formality. In the so-called Fragile States' scale of priorities, it happens that registering a child could completely falls into oblivion if both the government and the civil society are victims of life-threatening situations. Therefore, it is just impossible to be judgemental sometimes: even though it is customary to recognise all the human rights as equal and standing on the same level, it results understandable to accept the existence of hierarchies of rights in the aforementioned cases. However, notwithstanding wars and conflicts birth registration remains a fundamental brick in the structure of a State as for International Law<sup>193</sup>: for this reason, cooperation could be the very solution, if not the only one, in order to help the States enduring hardships to first solve their problems and afterward to build up a stronger effective political authority.

Accordingly, the issues related to the States concern: the relevance that they give to birth certificates, the national legal framework, the existence of proper administrative infrastructures, and the barriers to registration that the States do not fight enough<sup>194</sup>. When birth registration represents a burning topic for a country, sensitisation campaigns and smooth procedures would be most probably implemented making easier for the number of registered children to grow without substantial impediments. Seemingly, the existence of an efficient legal framework together with functioning institutions in charge have a positive impact on the registration rate. For what concerns barriers of whatever nature that the States should decrease, it is necessary to hold both the willingness and the means to overcome a specific obstacle. If a government do not act to solve the issues related to its functioning, the result is that the procedures are more difficult for the people to be put into practice.

Second, in addition to States-linked elements non-registration strongly depends on multiple factors related to the people. According to the worldwide survey carried out in 2005 by UNICEF, the main impediments are: costs, distances between place of birth and the civil registry office, and lack of knowledge about the topic. Furthermore, the characteristics of the children and the household themselves influence the rate of

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<sup>193</sup> A State must have those characteristics: a population, a defined territory, and a political authority that is independent and sovereign.

<sup>194</sup> *Ibidem*, p.1

## **Birth Certificate: the Challenge**

registration. In general, the most relevant factors are related to socio-economic elements, proximate variables, knowledge variables, and health issues<sup>195</sup>.

The socio-economic element about birth registration are linked to gender, place of residence, and wealth and characteristics of the household. Overall, gender-based disparities are rare and the gender gap is about the 0.02% worldwide – meaning that there is a 1:1 ratio. The gap has such a low percentage in all those countries where the registration rate is more than the 50%. Usually, where the registration rate is much lower, the gender discrimination is more relevant. Exceptions to the norm occur: in Uganda (birth registration rate of children under five in 2005: 14.2%) girls are more likely to be registered while in the United Republic of Tanzania (birth registration rate of children under five in 2005: 6.4%) the situation is the opposite<sup>196</sup>. A second discriminant is the geographic position of the household with respect to the offices where it is possible to register a child. The greater distances, the higher travel expenses; this have as result the impossibility for certain families to bear the costs – meaning opportunity cost – to reach the closer registration office. Therefore, relevant dissimilarities exist between urban and rural areas. The former are usually closer to central offices and have higher registration rates, especially in the capitals and in the most important cities. However, there are exceptions to this norm: countries like DRC (birth registration rate of children under five in 2005: 34.1%) and Rwanda (birth registration rate of children under five in 2005: 65.2%) present higher percentages in rural areas due to the fact that the UN implements on a regular basis registration campaigns addressed to rural territories. The two examples remain in the domain of the exceptions and disparities in favour of the urban parts of a country are undeniable.

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<sup>195</sup> *Ibidem*, pp. 5, 13, 17, and 19

<sup>196</sup> *Ibidem*, p.6

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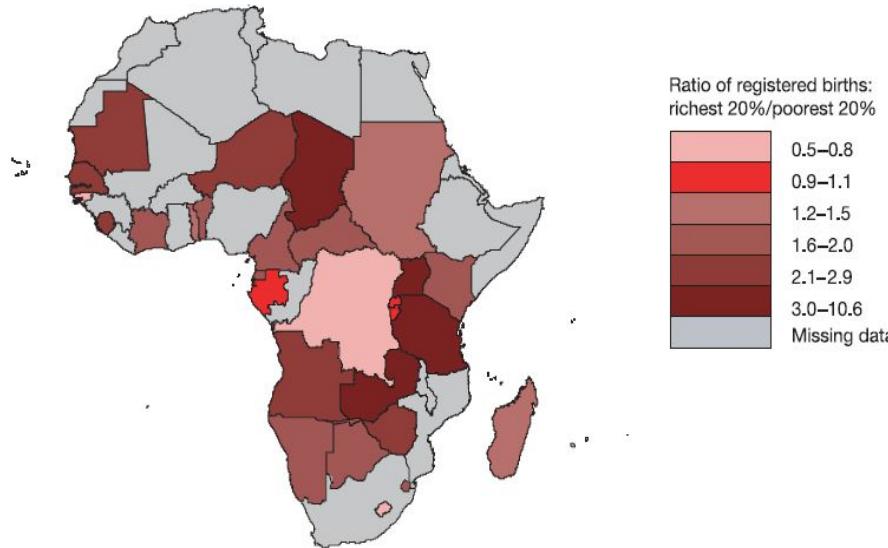


Figure 1 Birth Registration Disparities Associated with Household Wealth, Africa © UNICEF

The third factor is represented by the wealth of the family: by dividing the societies into the richest and poorest quintiles<sup>197</sup>, it is possible to understand in which quintile there is the higher registration rate – see *Figure 1* above. As expected, the richest families tend to register their children twenty times more than the poorest families – the biggest gap exists in the United Republic of Tanzania where only the 2% of registered children belongs to the poorest quintile. Also in this case, DRC shows opposite results because of UN programmes targeting the weaker categories. For what concerns the specificities of the household, further discriminating elements are education of mothers, living arrangements, religion, and ethnicity. It has been demonstrated that the mothers with any or very basic education level hold any or few information about the importance of registering a child. At the contrary, well-educated mothers tend to provide their children with a birth certificate because are aware of its importance. The uneducated mothers often ignores that they have to do it. However, a child has also either an entire family who influences his or her life or nobody at all. The children who live with both parents and with other close relatives – i.e. grandparents – are more likely to be registered than orphans or street-children who live by themselves without the carefulness of a family. Additionally, another variable is represented by religions and ethnicities. As far as I know, no religion forbid the

<sup>197</sup> This is the Wealth Index, *Ibidem*, p.8

## **Birth Certificate: the Challenge**

registration of a child, but it has been noticed that certain religious groups tend to remain at the edges of societies and refuses to be fully integrated, meaning that they could refuse to register their child. In addition, linguistic minorities are more likely to face a greater number of challenges linked to access to information – i.e. all the informative material are written in the language of the majority of the population<sup>198</sup> – as well as to request a certificate in a civil registry where all the officers speak another language and the documents to fill in are not understandable.

In addition, proximate variables are the combination of all the “*events that occur from the child’s birth until the age of five*”<sup>199</sup>, which include early education, vaccinations, child-addressed services, illnesses, and so on and so forth. Therefore, a discriminating factor is the degree of knowledge about birth registration of the personnel of hospitals and maternity wards. When nurses and doctors are well aware of the importance of a birth certificate, they can push the mothers or the administrative staff available in the hospital to register the baby straight after birth. Additionally, the children with vaccinations have been demonstrated to have higher chances to be registered because they are exposed to high-skilled workers who may notice the lack of a birth certificate and act to provide them with the document. Another influencing event is early education: families who want to enrol their kids at kindergartens or some other type of educational programme for children between three and five years of age may be requested to present the birth certificate. Overall, registration ratio is higher for children who attends early schooling systems. However, not always a birth certificate is needed to access to education, at least in practice. In all those countries where the public services do not imply holding an identity document, birth certificates are less requested for they are perceived as non-compulsory – this is the case of DRC that will be further discussed in the next paragraphs.

As widely talked over in this research work, knowledge of caretakers about theory and procedures is of a terrific importance. In addition to this sectorial knowledge, it has been demonstrated that a multisector caretakers’ awareness of the means to protect and prevent any harm to the child can improve the general enjoyment of the child’s

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<sup>198</sup> *Ibidem*, pp. 11-12

<sup>199</sup> *Ibidem*, p. 13

## **Birth Certificate: the Challenge**

rights. Namely, the knowledge of childhood illness' symptoms, country-specific diseases (i.e. malaria., cholera, typhoid fever, HIV/AIDS), and how to prevent and treat them appears to be linked to the percentage of birth registration. Finally, two last proximate variable concerning the children have a strong impact on registration of births: child health conditions and child mortality rate. In particular, studies have shown that malnourished children have less chances to be registered than the ones who receive a proper nutrition. Again, in DRC it works the opposite way around because the UN deploys a high number of resources to put an end to the plague of malnutrition in the country. For this reason, Congolese stunted children are more likely to be followed by a team of health-care workers and thus to obtain the documents they need. Additionally, thanks to cross-countries statistical analysis it has been approximated that in those States where the mortality rate is very high, the registration rate is very low<sup>200</sup>. It is an approximation though, because it is based on an estimation of the total number of birth, both registered and not registered. If it could be easy in some country – i.e. developed countries – to establish an approximation of the number of unregistered newborns that is close to the reality, the task could be far more difficult in developing countries or in places hit by conflicts.

To conclude, a better understanding of the causes of non-registration is fundamental to draw efficient action plans and to maximise the production of positive outputs. Education of caretakers, place of residence, gender, religion, ethnicity, health of the children play a terrific role in defining their chances both to be registered at birth and to comprehensively enjoy all of their human rights. However, a norm for a country could be an exception for another one: that is why country-specific sets of knowledge result essential when about to design interventions. Both the international community and the national Governments should thus work more on understanding the causes of non-registration for each country and thus implement actions that are more effective and better targeted.

It follows an analysis of the barriers to birth registration identified in DRC, specifically in the province of North Kivu.

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<sup>200</sup> *Ibidem*, pp.19-20

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### 5.2 Non-Registration in DRC: Why not?



Figure 2 Child registered via proxy in DRC © UNICEF

When asking about birth registration in North Kivu, the majority of the people I interviewed provided me with two different kinds of answers: the answers of the experts on the field (either migrant workers or high-skilled local professionals) and the ones of local people<sup>201</sup>. The group of the experts was not surprised to hear me questioning about this topic since birth registration is included in the daily routine of each and every IOs and NGOs working on human rights' issues in DRC. After my questions, all of the professionals I met kindly gave me a lot of documents, reports, surveys, booklets, presentations, internal documents, photos, and shared with me all their knowledge about this matter. Instead, when I asked local people, including mothers, kids, workers, they were rather diffident and surely less enthusiastic about the subject of our conversation than the former group. Sometimes people appeared to know enough about the topic, other times I had the impression that their knowledge

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<sup>201</sup> The interviewed were people I met in Goma, hence in an urban area of DRC.

## **Birth Certificate: the Challenge**

was a bit foggy but eventually, all the interviewed showed to hold at least a basic understanding of birth registration's theory and practice. After weeks of interviews and data collection on the field and months of study, I managed to highlight the main challenges faced by caretakers in DRC – principally in North Kivu – in relation to birth registration.

As showed in the previous paragraph, DRC is often an exception to the norms concerning the reasons for non-registration. For instance, malnutrition and residence in rural areas results to be a *positive* factor that actually increment birth registration instead of decreasing it, as according to the norm. This happens because DRC is a very particular country, where the UN plays a big role as well a great number of other IOs and multinationals. Sometime, the sovereignty of the Government appears to be not so effective and independent as it should be. In addition, the balance between hardship and peace is questionable and the civil society constantly struggles to live a *normal life*. All these factors considered together create a situation that is unique in the world. Unfortunately, this unicity does not conceive a positive acceptation; however, since other numerous unique and positive aspects specific of the country exist, I hope that they will overcome the negative ones in the nearest future. DRC is a rough diamond, the beauty concealed underneath the layers of dust and blood and soil is beyond every expectation.

The systemic difficulties combined with leadership and administrative failings in the country have created a multitude of barriers that prevent the delivery of an equitable and effective birth registration apparatus in DRC. The identified barriers are diverse. First, the knowledge of the caretakers: it is true that the vast majority of the population is aware of the importance of birth registration however, there is a gap between knowledge and proper understanding of what a birth certificate is and how to obtain it. Many caretakers are not aware of the modalities to request a copy of the birth certificate, for instance, and in case of lost or damage of it they think they need to register the child again (actually, they are not entirely wrong!). In addition, when people are used to live in little communities for generations and every person is known by all the other members of the society, birth registrations seems less important. Second, the cost to register a child results prohibitively high for many families. In fact, the grace

## **Birth Certificate: the Challenge**

period during which birth registration is free of charge lasts only ninety days and, after this time lapse, registering a child has been estimated to cost around 29,000 Congolese Francs (that are about 30 Dollars - USD). Third, the lack of inadequate transportation services impede both the civil society and the civil registry officers to easily reach each other. The lack of railways and motorways, the limited number of tarmacked streets and of public transports are huge physical barriers for everyone who needs to undertake long journeys. Also, the inadequate number of registry offices, both principal and secondary, prevent a comprehensive national coverage. For this reason, the families who live in remote areas, such as in areas adjacent to the rainy forest, are requested to travel for weeks to reach a civil registry; thus, they have to leave their families and jobs, if any – running the risk of being fired – to register a child. Last but not least, travelling in DRC could be rather unsafe considering the number of rebels and armed groups all over the country, especially when the only transportation means available are one's feet on the typical and folkloristic *tshukudu*<sup>202</sup>. Fourth, governmental funding is almost absent: the shortfalls in the budget on the one hand hinder quality and timely services, on the other hand could impede the functioning of the entire system. Also, shortages of equipment represent a barriers. UNICEF is the main supplier of registers, writing materials, pieces of furniture, and all the rest that is needed to ensure a smooth office work. However, shortages becomes inevitable due to poor transportations and lack of efficient communication between the civil registry officers in charge of the logistics and UNICEF. Fifth, even in the case in which a family manages to register a child, the registration process itself is not very efficient. First of all, it is a manual an labour-intensive process at all administrative levels. The information about the child and the parents are manually collected, the document is manually compiled and aggregated at each level, from the capital city to the remotest municipality. As explained in Chapter 2, each register includes four sections: one for the child, one to be sent to Central Civil Registry Bureau in Kinshasa, one to be archived at the archive of the municipality, and the last one to be delivered to the registry of the High Court in Kinshasa (Artt. 83 and 87 of the *Code de la Famille*). The delivery of the sections is very difficult for the communication and the transfers from

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<sup>202</sup> A kick scooter- like mean of transportation widely use in DRC to carry heavy loads, i.e. water, stones, wooden, all the members of a huge Congolese family... It is one of the symbol of the country.

## **Birth Certificate: the Challenge**

the municipality to the national level is overly time and money consuming. For the postal service either does not exist at all or is not reliable and trustworthy enough, the employees are required to travel themselves from wherever they work to Kinshasa (it could take days to travel back and forth). Costs of travels and poor and slow allocation of economic resources prevent the success of this step and quite often the transfer never happens. The majority of the registries I saw, in fact, contained all the four sections. Even assuming that the transfer had not happened yet while I was in DRC, fact that is plausible only for the late-2013's and the 2014's registries, it is not justifiable that all the registries still had the part for the children within. It means that the registered children did not obtain the certificate and the documents were not archived. Therefore, all the efforts implemented at each level *before* and *during* the registration process had been frustrated because the phase *after* simply did not happen. Neither the right to have an identity and a nationality was ensured nor the statistical purposes of the registration achieved. A register with all the sections is as useful as an empty one. Finally, another major barrier is corruption. Corruption seems to be part of the cultural background of the country as well as one of the few ways out to survive. It exists at every level and seems to be also well-accepted by the population who, by now, has got used to it. For instance, it happens quite often that the officers of the civil registry ask for extra money in order to do their job. If they do not receive the extra money, they could try to delay the entire process in order to overcome the grace period and oblige the parents or caretakers to pay for registering the child or to travel somewhere else and lie about the age of the baby. This happens because quite often the officers are either not well-paid or not paid at all: this is not an attempt to justify them, corruption must be fought by everyone and this is not questionable. However, when trying to walk on their shoes, you understand them: their salaries arrive only every now and then because are often withheld at higher administrative levels or not dispensed at all at national level. When the officers do not receive their salary, they try to get it from people in an illegal way, because they want to survive. Lower-levels corruption is more understandable, in my opinion, than the one of the wealthier levels. This is not only related to civil registries, but also to all the other public services such as schools and hospitals. Families often pay directly the teachers to convince them go to school and have classes because their salaries never arrive. The same is for hospitals. This increases

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both the informal economy of the country that represents about the 80%<sup>203</sup>, and the level of corruption. If you want to obtain something in DRC, most likely you will be asked to pay extra fees to balance the deficit of salaries at public administrative level (especially if you are a *mzungu*<sup>204</sup>).

Apart from the aforementioned barriers, there are additional impediments. For instance, weak leadership lead to poor organisation and ineffective practices at every level. Also, civil registry officers are often unqualified<sup>205</sup> or inadequate in terms of number inhibiting both accessible and universal birth registration services, and effective collection, processing, and archiving of the data. In addition, the inadequate management and poor monitoring mechanisms cause the misuses of resources and fund that, when available, are distributed in an inefficient way and thus do not cover all the costs. For instance, the lack of or poor salaries, which on the one hand increase the corruption rate and exclude the poorest from benefiting of their human rights, and on the other hand generates disengagement to the work and lack of motivation and enthusiasm, are a result of this.

Therefore, the reasons of non-registration of births in DRC are both imputable to the civil-society and to the State. Everyone, in DRC and outside the national borders, has his or her accountabilities: it is time to recognise them as well as to take on the responsibilities. Talking about this specific issue only, it seems that the burden of the work is mainly on the shoulders of the UN organisations and of the civil registry officers, who often work on a voluntary basis. Thus, the upper national levels appear to be rather missing and negligent even keeping the decisional power in their hands. However, the UN is not meant to act on behalf of DRC for the country has been recognised worldwide as sovereign. The executive power belongs to the State and the governmental apparatus should care and do more instead of relying on the UN aids. As expected, a lot could and should be done in order to tackle the existing barriers. The Congolese Government, the UN, all the NGOs operating in the territory, the civil society are asked to cooperate to improve the situation. Potential solutions and

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<sup>203</sup> [www.worldbank.org](http://www.worldbank.org)

<sup>204</sup> The Swahili word for white people.

<sup>205</sup> For instance, the civil registry officers I met in Goma were not aware of the fact that the four sections of the registries were meant to be delivered to the capital city.

## **Birth Certificate: the Challenge**

suggestions to hopefully achieve some improvements are presented in the next paragraph.

### **5.3 Recommendations and Possible Application: the Case of DRC**

Thanks to descriptive and analytical analysis carried out by UNICEF and my researches on the field, it is possible to depict the profile of the children in DRC who have the greater chances to be register at birth. On the one hand, the children whose likelihood to obtain a birth certificate is higher tend to be poor, malnourished, vaccinated, with poorly educated mothers, between zero and ninety days of age<sup>206</sup>, live in rural areas rather than in urban areas, have one or none caretakers and hence benefit from either international support as the sponsorships and immunisation campaigns or national schemes<sup>207</sup> as orphanages. On the other hand, also the small elite of wealthy households tend to provide the children with a birth certificate. These children tend to be rich, live in urban areas, vaccinated, with well-educated mothers, adequately nourished, and live with both the parents. Therefore, the profiles are recognisable in the two extremes of the societies: the poorest and the richest. All the in-betweens are in a *limbo*-like situation: not poor enough to benefit from international sponsorship and aids, too old (more than three months) and not rich enough to afford to pay a birth certificate. The in-betweens represent the majority of the population in DRC, are all those children who are most in need of benefiting from national schemes and services and who instead dwell in the country as shadows because the Government does not work as it should in this regard. In this *limbo*, there are also refugees children from neighbouring countries and children of displaced persons, who are such a great number that it is hard for UNHCR and other UN institutions to cope with them all, in terms of funds, structures, and human resources. To reach all the invisible children

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<sup>206</sup> Or, at least, they should look old like this. Identifying the exact age of a Congolese is not easy. There is nothing like a birthday and when you ask “How old are you?” to someone, the answer is most probably vague even though more poetic than the one that a wester person would give: “*I was born during an eruption of the Nyiragongo that followed a mild rainy season*”.

<sup>207</sup> Frequently, public services as orphanages are more of a private nature for they are managed and funded by ONGs or privates.

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in DRC, a systemic growth and development is required. Overall, the quality and reliability of birth registration services must be strengthen together with DRC as Nation-State. Investments on infrastructures, streets, railways, buildings to host offices, reliable electric power supplies results necessary not only to improve the civil registry system, but also to promote better standards of life for everyone. Together with the strengthening of the country's infrastructures, it is necessary to advocate for more efficient political, social and economic systems in order to achieve lasting and concrete improvements at every level.

Birth registration, to be efficient and effective, must be free, continuous, permanent and available, universal in coverage, confidential, timely and accurate. Using this characteristics as guidelines, a set of recommendations and an identification of the possible fields of intervention have been identified.

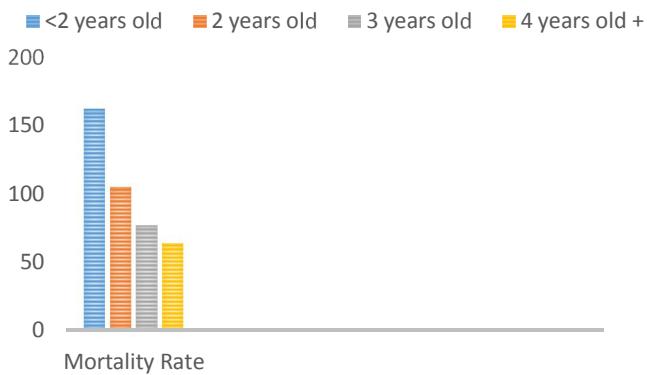
The first recommendation is a very tricky one, meaning that its impact could be at the same time positive and negative, and consists in making the birth certificate compulsory in practice. In fact, from a theoretical and legal standpoint it is mandatory to have a certificate when about to enrol to school or to benefit from the national health care system. In practice, it is not like that. For instance, almost all the children in DRC attend the primary school, at least every now and then when their family can afford to pay the enrolment fees (that often go directly in the hand of the teachers who otherwise would not have a fixed salary). If presenting a birth certificate were compulsory, around the 70% of Congolese children would not attend school today. However, the mandatory nature can be seen also the other way around: when a mother becomes aware of the fact that the education of her children actually depends on that certificate, maybe she will be more keen to request and obtain it. Considering the number of unregistered child in the country, my suggestion would be to start using the birth certificate as a discriminatory factor to allow or not the enrolment of children to school, for instance, for the children that will born from January 2017 onward. In this way, the risk of either excluding even a sole child from enjoying his or her right to have an education or pushing the families to register their sons and daughters in late (upon the payment of the fee) would be drastically reduced. In fact, considering that children start school when they are six years old, the country would have to year to reinforce

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the civil registry system and eight years from now to make the birth certificate mandatory. To be considered as feasible, this suggestion implies the activation of a chain reaction that would finally lead to a general degree of development for the entire country.

A second set of recommendations follows and it is addressed mainly to the State: however, its implementation is meant to challenge both the State-related and the civil society related-barriers. For what concern the civil society, the principal improvement could be promoted at the level of knowledge. Therefore, one possible field of intervention concerns education, especially of girls, who are the mothers to be. Considering the positive relation between education and birth registration, it is important to foster schooling of girls. In addition, the sensitisation campaigns that already exists should be reinforced in order to reach the entire country, especially the most remote rural areas.

### **CHILD MORTALITY RATE: NUMBER OF DEATHS OUT OF 1000 BIRTHS**



*Graphic 3 © MPSMRM*

To do so, the Government should fund the creation of new infrastructure as well as an overall modernisation of the already existing infrastructures in order to make the intra-country communication smoother. In addition, with regards to the negative relationship between birth registration and child mortality rate, it is necessary to ensure universal vaccination for all the children under five years of age and for their mothers,

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strengthen the national health care system and make it available even for all the ones who are too poor to afford to reach hospitals or to benefit from a proper health care. Nowadays, the child mortality rate in DRC is very high: 58 children out of 1,000 die during their first year (*Graphic 1* above)<sup>208</sup>. In North Kivu the child mortality rate reaches the 65%, data that seems slight if compared with the one of South Kivu that reaches the 139%. Congolese families are well aware of the fact that the likelihoods for a baby to die before the three years of age are very high. This constant life threat is deeply felt by mothers: the result is that babies tend not to even have a fixed name during the first years of their life: thus, can you imagine them having a birth certificate? Taking into account the Congolese child mortality rate, the Government should: make the civil registries easier to reach and, above all, prolong once again the grace period that now lasts ninety days. In my opinion, considering the Congolese background, a further amendment of Art. 116 of the *Code de la Famille*<sup>209</sup> is needed. Three months only to register for free a children are not enough, especially in light of the massive geographical barriers and of the high mortality rate that discourages mothers to register their babies. In Chapter 3, the positive impact of the extension granted by the *Loi n°09/001* have been illustrated: in my opinion, further and greater improvements can be reached by modifying again the national legal framework. Furthermore, a possible extension of the grace period would lead to a greater compliance to the ACERWC, especially to its Art. 6. The African Committee of Experts on the ACERWC suggests to encourage birth registration immediately after birth but, at the same time, to allow late birth registration as well<sup>210</sup>. The grace period recommended by Committee should last one year starting from the moment of the birth and, if it results impossible to let it be entirely for free, the fees should be variables. On the one hand, the price should be differentiated according to the extent of the delay; on the other hand, the fees should not be the same amount for everyone. Equality, in the case, does not mean justice. What is needed is the creation of just prices according to the place of residence

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<sup>208</sup> Ministère du Plan et Suivi de la Mise en œuvre de la Révolution de la Modernité (MPSMRM), (2014), Enquête Démographique et de Santé 2013-2014, p. 7

<sup>209</sup> Art. 16 of the *Loi n° 09/001* already has extended the grace period from thirty to ninety days.

<sup>210</sup> THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD (2014), *General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child*, ACERWC/GC/02 adopted by the committee as its twenty-third Ordinary Session (7-16 April, 2014) p. 35

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(making a difference between rural and urban territories) as well as just discounts for the families who are too poor to *buy* their fundamental rights. Art. 1 of the ACERW requires the States Parties (as previously stated, DRC signed the Convention but never ratified it) to undertake all the necessary measures to adapt their national legal framework to the Convention, namely adopting and implementing laws about civil registries and updating the existing national legal framework whether adjustments are needed<sup>211</sup>. Therefore, DRC is asked exactly to do so: little changes can bring substantial changes.

Further recommendations addressed to the State are aimed at overcoming cost, structural and administrative barriers. If DRC does not want to extend the grace period for some reason, it should at least diminish the overall costs of late registration. The price of the legal procedure, in fact, is about 30 USD and it is very simple to demonstrate why this price is insanely high. The annual average salary in DRC is about 410 USD<sup>212</sup>, let us say eighteen times less than the monthly average income of Luxembourg: it means that the average income per month is about 34.166 USD. Let us try to aggregate this datum with demographic data: for instance, the average number of children that each Congolese woman gives birth to is 6.6<sup>213</sup>. This means that the 34.166 USD per month must be divided at least between seven people (this could be the case of a widow) and hence each member of the family has 5.7 USD per month. I assume that the money must be invested most probably only to eat decently once a day and to try to guarantee a basic education to each kid; it is even hard to think about savings when dealing with such small incomes but we can assume the existence of very little savings for emergencies. Therefore, starting from this very simple analysis, it results more than easy to understand that the 30 USD are an illogical amount. The latter represents around the 87.8% of the monthly income of an entire average Congolese family. When asking for such a high registration fee, it is as if the Congolese Government is requesting the families to survive for one entire month with only the 12.2% of their normal average income, hence with 4.168 USD, plus a little amount of

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<sup>211</sup> *Ibidem*, p. 7

<sup>212</sup> <http://data.worldbank.org/country/congo-dem-rep>

<sup>213</sup> Ministère du Plan et Suivi de la Mise en œuvre de la Révolution de la Modernité (MPSMRM), (2014), Enquête Démographique et de Santé 2013-2014, p. 3

## **Birth Certificate: the Challenge**

extra money, if we want to take into account the existence of presumed savings. Therefore, the legal request does not seem to make any sense. For this reason, either the fees are reduced or they should become personalised in order to avoid to afflict already enough-oppressed people. Either the solutions must be followed by poverty alleviation programmes, not only to guarantee the respect of children's rights, but also to create a safer environment that goes far beyond the edges of childhood.

In addition, with regards to structural and administrative barriers, a more efficient institution and capacity building is required. The Government, in partnership with the UN and NGOs, should simplify the entire procedure and make it easier and shorter in terms of time. A simpler modification procedure to allow the change name would be appraised considering the cultural background of DRC. In fact, the Congolese names are not that fixed and tend to change during the lifetime of a person. Additionally, the Government should also improve the resource allocation in order to avoid unpaid employees and thus to tackle the systemic corruption. Concerning employees, their efficiency, knowledge of their work, and capacities are in need of further improvements. More technical trainings would be useful in order to limit incompetence and avoid ineffectiveness. In addition, employees should receive a human-rights oriented training in order to let them understand the importance of their job. In relation to the functioning of the civil registry apparatus, the introduction of a computerisation system would be desirable. The workload and its efficiency would be positively affected by computerisation and benefits would be registered at each level, from the compilation of the birth certificate's request, to its issuing and archiving. The advantages of computers and internet connection are renewed worldwide, however, they require a reliable electric power supply that, nowadays is not that efficient all over the country. Even in a big city like Goma, unless relying on expensive private electric suppliers, electricity is discontinuous and is generally provided only at the dawn, at lunch time, and at the sunset. Also, UNICEF is working on creating and using new innovative approaches and new ways of working to increment the birth registration rate all over the world. Here, two case-studies in Ghana and in Uganda<sup>214</sup>. A birth registration system assisted by mobile phones has been put in action since 2013. The

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<sup>214</sup> Source: UNICEF internal document of January 2014

## **Birth Certificate: the Challenge**

design of the use of mobile phones is innovative and efficient for it holds costs efficiency as well as long-term sustainability. It is low cost for governments and, with a simple bilateral agreement between the governments and the telephonic companies<sup>215</sup>, it is very cheap for users as well. This project could improve recordkeeping, reporting, and budgeting and generate a real-time exchange of information between citizens and governments. By establishing a quick and reliable births notification system, generating vital statistics from the information collected by mobile phones would be strengthened. Also, considering that the mobile phones are already vastly available at the civil-society level due to international aids aimed at creating micro-credit programmes, the implementation of this suggestion results to be neither expensive nor too difficult. Birth registration procedures that use mobile phone technology allow the completion of birth registration steps in minutes, a process that normally takes months since it is a manual procedure.

In addition to these suggestions, an overall strengthening of the leadership of the civil registry offices could results in avoiding structural gaps such as the ones linked to the lack of proper issuance of birth certificates and of efficient transfer of information from the peripheral bureaux to the central system in the capital city. In addition, a stronger leadership could endure that the birth registration process follows a strict order: declaration of the birth, registration at the civil registry, issuance of the certificate, and its archiving. As previously stated, the issuance of the certificate represents a significant challenge. Therefore, to inhibit the lack of issuance of the certificate, the section for the baby should be given to the family straight away, upon registration. In fact, the section is the certificate itself, and if not issued immediately, the risk of remaining in the civil registry forever and useless is high. The reasons why there is a lack of collection of the certificate is linked to both travel costs and lack of awareness of the caretakers of the fact that they should return to the office to take that part after maximum one month from the request. For it is difficult for the civil registry employees to distribute the certificates to all because of geographical and infrastructure barriers, too often they remain exactly where they are. Instead, the immediate issuance of the certificate, which is harmonised by the *Code de la Famille*, would avoid the parents

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<sup>215</sup> In Uganda, Uganda Telecom and the Government implemented a solution called MobileVRS.

## **Birth Certificate: the Challenge**

or caretakers to go to the civil registry more than once and thus would cut additional transport costs.

This set of advices represents a brief summary of all the possible existing advices. It would be even possible and surely useful to identify specific advices for each and every actor involved in the process but this is not the right place to start such an ambitious, whilst useful, project. Confidently, the implementation of the aforementioned recommendations would represent a big step forward the achievement of the universal birth registration in DRC. However, it is simply not feasible to obtain a perfect functioning of the civil registry apparatus without an empowerment of the entire governmental system. Therefore, a more credible governmental commitment to comply with the existing legal framework and to improve its implementation within every domain is necessary. Concerning birth registration, just to mention one single example, the State is legally in charge of supporting the orphans, including providing them with birth certificates, either their age is within or outside the grace period. However, too often the State's support is not available and it is only thanks to ONGs and religious charity groups or privates, who financially support the orphans, if they do not remain unregistered. More commitment by the State is necessary.

### **5.4 What has been already done?**

After the numerous barriers and relative suggestions enumerated in the previous paragraphs, it results clear that the quality of the Congolese birth registration system must be improved together with a number of further national services. While stressing the crucial importance of a higher involvement of the Government in this domain, it results essential as well to underline the relevance of the UN apparatus in the birth registration system. In fact, the democratic life of DRC would be most probably weaker without the consolidated UN interventions. UNICEF, in particular, employs a great number of resources and funding to strengthen the Congolese governance, also by trying to ensure that all the children living on the Congolese territory are counted

## **Birth Certificate: the Challenge**

and registered. Therefore, its actions improve the collection of demographic data enabling the Government and other actors in charge to better plan child-targeted interventions. The ultimate aim of UNICEF about this matter is thus to help the Congolese Government in the creation of a well-functioning birth registration system, hopefully by strengthening the entire civil registry system as well. The latter is deeply in need of a drastic change: in fact, as already mentioned herewith, the last scientific census in DRC was conducted in 1984 and thus its results are no longer applicable. Therefore, it is crucial nowadays, in light of the forthcoming presidential elections of 2016, to create a stronger and effective authority in charge of taking a census of the population that must be of a comprehensive nature and must hold a valid statistical significance.

To be efficient and effective, birth registration must be universal and free, confidential and timely, permanent and always available. The path to follow to achieve all of these characteristics is still long and imbued with difficulties: however, many steps forwards have been done and it is important to recognise the efforts already put into actions. By this time, a number of activities have been initiated by UNICEF and by the DRC Government, with the vital financial and technical support of the UN. By now, these activities have produced positive outputs and it is essential not to ignore them but to appraise properly all the targets reached. Using these achievement as instructions for the future is crucial to design new policies and practices. For example, in order to enlarge the coverage of birth registration and to overcome physical and geographical barriers existing in DRC, UNICEF is funding the creation of 637 secondary civil registry offices in rural areas. Their creation should be ultimate by 2017 and will help reaching the share of children who still remains outside the coverage of the national civil registry system. In addition to this, a further achievement concerns the improvement of both the set of general and specific knowledge of caretakers about human rights and how to benefit from them, and awareness of parents concerning the children health issues. Seemingly, the degree of education of young girls, who too often in DRC remain outside of schools due to cultural and social reasons, represents a central issue for UNICEF DRC and worldwide. Accordingly, UNICEF is implementing two major projects in the country since years: promoting primary and

## **Birth Certificate: the Challenge**

secondary education all over DRC as well as promoting advocacy and sensitisation campaigns about birth registration and other fundamental rights of the children. The latter represents a field on which UNICEF and its partners (i.e. civil society and NGOs) are concentrating resources and energies with appraisable results. In fact, the majority of the population is well aware of the importance of birth registration. However, for the lack of a birth certificate does not affect the daily life of average Congolese people within the national borders, people is still reluctant about investing time or, worst, money on requesting the birth certificate issuance. In fact, considering that the emigration flows of Congolese people are mostly directed to neighbouring countries that are used to them and face similar problems concerning lack of documents, they rarely run the concrete risk of being considered as stateless. They less perceive their socio-political fragility as a problem than by people who look at the situation from an International Law standpoint. Therefore, they often do not feel the urgent need of having identity documents and of providing their children with one of them. This is exactly the reason why one of my suggestion is to let the birth certificate have a perceivable effect on the life of Congolese people in DRC – i.e. enrolling children in schools only upon request of the birth certificate, as it happens for example in all the Member States of the European Union. Additionally, a further positive action that is worth to notice and that has been already initiated concerns the coupling of the civil registries services together with the national health care system. Continuous, permanent and reliable dialogue and exchange of information between the two public-services providers has proved to have a concrete positive effect on the birth registration rate (see Chapter 3). On a short-term basis, the immunisation and registration campaigns make mass registrations possible, reaching all the children that have to face the biggest challenges to be registers. However, their positive impact is rather limited in terms of time and implies an ongoing UNICEF engagement to let the equation of the birth registration rate be crescent. Instead, on a long-term basis the enclosure of the birth registration service within the health care system would produce a protracted and continuous generation of positive outputs. Therefore, it is important to keep on continuing the strengthening of this coupling.

## **Birth Certificate: the Challenge**

All of these already initiated interventions would have not been feasible without the UN support. While recognising the importance of this support, in my personal opinion the UN should start a progressive and gradual slow disengagement. This is not a critique towards the UN aids system, for the engagement on the territory of DRC is perfectly in line with the Preamble of the Charter of the United Nations<sup>216</sup> (signed on 26 June 1945 in San Francisco), “*We peoples of the United Nations determined [...] to unite our strength to maintain international peace and security, and [...] to employ international machinery for the promotion of the economic and social advancement of all peoples*”. However, the promotion of economic and social advancement of all peoples means also that, at a certain point, even the most fragile State, if internationally recognised as a State, should be able to stand on its own two feet. If left somehow *alone* in certain domain, maybe DRC would be more incentivised to fly with its own wings.

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<sup>216</sup> The full text of the Preamble of the Convention can be found online here: <http://www.un.org/en/documents/charter/preamble.shtml>

## **Conclusions: Lesson Learnt**

Arrived at the end of this comprehensive analysis, it is possible to assert that the first lesson learnt is that birth registration is a human right. More than this, it is a fundamental human right. It ensures the legal recognition of the existence and of the identity of the child in front of the law and shows also the children bonds with his or her family and nation. Therefore, it represents the entry ticket to let the children enjoy other human rights such as access to health care and schooling systems, as well as prevention of children's violations such as the entering into early marriage, labour market, or armed forces. Moreover, the importance of the birth certificate as an identity document goes beyond the edges of childhood for it may be necessary, once grown up, to exercise a person's social and political rights such as the right to vote, to inherit properties, and to benefit from social assistance's schemes.

In addition, birth registration is not an asset exclusively for children's life: the birth certificate provides crucial data and vital statistics that can be used by national governments to properly draw social policies, internal actions, development programmes as well as to obtain a clearer picture of the social fabric of a country.

Therefore, it results essential not to deny this right. Governments are required to make special efforts to overcome political, legislative, administrative, economic, cultural, geographic, ethnic, or sometimes gender and health barriers. Stronger energies should be addressed to ensure birth registration to all those children more in need, such as orphans, children of single mothers, children of illiterate parents, living in rural areas, or affected by diseases – i.e. HIV/AIDS. Additionally, governments are asked not to deny a full identity to the children of refugees and of migrants without identity documents in order not to run the risk of being considered as stateless.

Considering that the barriers to birth registration are often of a socio-economic and political nature, they should be tackled by planning a comprehensive methodology that should include poverty reduction strategies as well as capacity and institution building. Therefore, sustainable national development and poverty reduction can be easily

## **Conclusions: Lesson Learnt**

achieve through the use of statistical data: hence, birth registration and development result to be mutually dependent.

In addition, if it is true that international – i.e. UNICEF – interventions on the field are fundamental, it is also true that the national government is the one who has the sovereignty in this domain. Governments' political will is thus vital. In fact, stimulation of birth registration demand on the civil society level is useless if not matched by institutional efforts to cope with it and to ensure an effective, timely, and efficient service. On the one hand, birth certificate's demand can be improved by raising awareness at every level, by simplifying and accelerating the registration procedures, by gaining commitment of the employees of the civil registry apparatus. On the other hand, the demand must be matched with legal, administrative, structural, and political improvements. Top- down approaches are as required in the same measure as the bottom-up ones: all the levels must cooperate and work in synergy, by maximising both their visions, and human and economic resources allocation.

Establishing an efficient civil registry system that can ensure a birth registration services within the national border is of a terrific importance for every country who has not implemented such a service yet. DRC is one of those countries.

A birth certificate is a simple piece of paper, but most important one in the life of any child. It does not matter that most probably we will never have to deal with a Congolese invisible children, we are all asked to give our contribution to make them visible. For we are human being, our ultimate goal should be to do our best to promote all human rights for all the people.

## BIBLIOGRAPHY

The present work is in part based on UN documents for internal use only that are partially referenced in this bibliography. The statistical data, as well as PowerPoint presentations and other documents that have never been published are not contained in this Bibliography.

In addition, a number of statistical data from the Ministry of Internal Affairs, which has been used in light of the aim of this research, can be found herewith as Annexes.

ARAGÓN V., (2012), Statelessness and the Right to Nationality, in Southwestern Journal of International Law, Volume XIX, Number 1

ARENDT H., (2004) *The Origins of Totalitarianism*, New-York: Schocken

ATKINSON, A & FIENBERG, S.E. (eds.) (1985). *A Celebration of Statistics: The ISI Centenary Volume*. New York: Springer-Verlag.

BISCOTTINI G., “Rifugiati”, in *Encyclopedia del diritto*, vol. XL, Milano, Giuffrè, 1989.

BLITZ B. K. AND LYNCH M, edited by (2012) *Statelessness and Citizenship. A Comparative Study on the Benefits of Nationality*, Edward Elgar Publishing Limited, UK; USA

BORREN M., (2008) *Towards an Arendtian politics of in/visibility: On stateless refugees and undocumented aliens*, ‘Ethical Perspectives: Journal of the European Ethics Network’ 15, no 2, European Centre for Ethics, K.U. Leuven, Belgium

BOSNIAK L., (2008) *The Citizen and the Alien, Dilemmas of Contemporary Membership*, Princeton University Press, USA

## BIBLIOGRAPHY

D'ONOFRIO, F (2013). *Knowing to Transform. Three ways for agricultural economists to observe Italy 1900-1940.* Ridderkerk, the Netherlands: Ridderprint BV.

DE CASTRO SENRA, N., & DE PAIVA RIO CAMARGO (2010). *Estatísticas nas Américas. Por uma Agenda de Estudos Históricos Comparados.* Rio de Janeiro, Brazil: IBGE Instituto Brasileiro de Geografia e Estatística.

DETTRICK S. (1999) *A Commentary on the United Nations convention on the rights of the child ,* The Hague ; Boston ; London : Martinus Nijhoff,

FOCARELLI C. (2012), *Diritto Internazionale I, Il Sistema degli Stati e I valori comuni dell'umanità,* (Casa editrice Dott. Antonio Milani, Italy)

GATTI R., (2011) Filosofia Politica. Gli autori, i concetti, i problemi, Editrice La Scuola (Italy)

GHISLAIN C. KABWIT (1985). *Zaire: the Roots of the Continuing Crisis* (The University of Wisconsin Press)

GILL B., et all, (1965) "La Republique du Congo (Leopoldville)" in *The New Yorker* (June 9, 1962)

GUilmoto, C.Z. *Les Classifications Sociales et Ethniques dans l'Inde Coloniale.* In Institut National d'Études Démographiques, Centre de Démographie de Lyon 2. *Histoire de la statistique démographique.*

HOSKYNNS C., (1965) *The Congo Since Independence: January 1960-December 1961* (Oxford University Press, London)

IOM (May 2014), Bulletin d'information, Mai 20014 - #1

KEHL, N. P. ENGEL, (Strasbourg; Arlington)

## BIBLIOGRAPHY

- MCWILLIAMS W.C & PIOTROWSKI H., (2001) *The World Since 1945, A History Of International Relations* (Lynne Rienner Publishers, Inc., London)
- MEZZADRA S. & NEILSON B, (2013) *Border as Method, or, the Multiplication of Labor* (Duke University Press, London)
- MONROY CABRA M. G., (1980) *Rights And Duties Established By The American Convention On Human Rights*, The American University Law Review
- NOWAK M., (2005) U.N. Covenant on Civil and Political Rights : CCPR commentary - 2. rev. ed
- O'LEARY S. (1996), *The evolving concept of community citizenship. From the free movement of persons to Union citizenship*, Kluwer Law Int., The Hague
- O'BALLANCE E., (2000) *The Congo Zaire Experience, 1960-98* (London: MacMillan Press)
- PRÉVOST, J.G., & BEAUD J.P. (2000). *L'ère du chiffre. Systèmes statistiques et traditions nationales*. Québec, Canada: Presses de l'Université du Québec.
- PREVOST, J.G., & BEAUD J.P. (2012). *Statistics, Public Debate and the State, 1800-1945*. London, UK: Pickering & Chatto.
- PIRSIG R. M., (2009), Zen and the Art of Motorcycle Maintenance: an Inquiry into Values, HarperCollins Publishers, USA
- SIDES, SOCIETÀ ITALIANA DI DEMOGRAFIA STORICA, (2010). *Popolazione e Storia*. Udine, Italy, Forum, Società Editrice Universitaria Udinese srl.
- STEARNS J. K., (2012) *Dancing in the Glory of Monsters: The Collapse of the Congo and the Great War of Africa* (PublicAffairs, New York)

## BIBLIOGRAPHY

THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD (2014), *General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child*, ACERWC/GC/02 adopted by the committee as its twenty-third Ordinary Session (7-16 April, 2014)

UN World Population Prospects: The 2012 Revision at:  
<http://esa.un.org/wpp/documentation/publications.htm>

UNESCO, World Heritage Centre, (2010) *World Heritage in the Congo Basin*

UNHCR (2013) *Rapport à mi-parcours Janvier-Juillet 2013* (Kindly provided by one of the Key Informants)

UNHCR (2013), *Loi de 2004 sur la Nationalité: Analyse Juridique des Risques d'Apatriodie* (kindly provided by one of the Key Informants)

UNHCR (2-3 July 2013), *Rapport des Travaux de la Table Ronde: Nationalité et Apatriodie*, Goma – DRC,

UNHCR, ( April 2010) *UNHCR and De Facto Statelessness*, LPPR/2010/01, available at:  
<http://www.refworld.org/docid/4bbf387d2.html>

VAN REYBROUCK D., (2014) *Congo*. (Giangiacomo Feltrinelli Editore, Milano)

YELLEN J. E., (1998) *Barbed Bone Points: Tradition and Continuity in Saharan and Sub-Saharan Africa*, National Science Foundation (Virginia, USA)

YOUNG C. & TURNER T., (1985). *The rise and Decline of the Zairean State*. (Madison)

HAILBRONNER, K. (2006). *Nationality in public international law and European law*, na.

REFUGEES STUDIES CENTRE, *Forced Migration Review*, n°32 (2009)

## BIBLIOGRAPHY

### INTERNATIONAL & NATIONAL LEGAL DOCUMENTS

*2006 DRC Constitution* at: <http://www.constitutionnet.org/files/DRC%20-%20Congo%20Constitution.pdf>

*International Court of Justice, Nottebohm Case (Liechtenstein v. Guatemala)* at:  
<http://www.icj-cij.org/docket/index.php?sum=215&p1=3&p2=3&case=18&p3=5>

*African Charter on the Rights and Welfare of the Child* at: <http://acerwc.org/>

*American Convention on Human Rights* at: [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm)

*Code de la Famille* at:

<http://www.leganet.cd/Legislation/Code%20de%20la%20famille/Table.htm>

*Convention number 182 on the Worst Forms of Child Labour* at:

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182)

*Convention on the Elimination of All Forms of Discrimination Against Women* at:

<http://www.un.org/womenwatch/daw/cedaw/cedaw.html>

*Convention on the Reduction of Statelessness* at: <http://www.unhcr.org/3bbb286d8.html>

*Convention on the Rights of Persons with Disabilities* at:

<http://www.un.org/disabilities/convention/conventionfull.shtml>

*Convention on the Rights of the Child* at:

<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Convention relating the Status of Stateless Persons at:

<http://www.unhcr.org/3bbb25729.html>

## BIBLIOGRAPHY

*European Convention on Nationality* at:

<http://conventions.coe.int/Treaty/EN/Treaties/Html/166.htm>

*International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* at:

[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en)

*International Covenant on Civil and Political Rights* at:

<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

*Loi n° 09/001 Portant de la Protection de l'Enfant* at :

<http://www.leganet.cd/Legislation/JO/2009/L.09.001.10.01.09.htm>

*Universal Declaration of Human Rights* at: <http://www.un.org/en/documents/udhr/>

## WEBSITES – LAST ACCESSED IN SEPTEMBER 2015

<http://africanarguments.org/2009/10/12/the-right-to-citizenship-under-international-law/>

<http://en.unesco.org/>

<http://ffp.statesindex.org/>

<http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf>

<http://monusco.unmissions.org/>

<http://unfccc.int/2860.php>

## BIBLIOGRAPHY

<http://www.au.int/>

<http://www.bbc.com/news/magazine-24396390>

<http://www.britannica.com>

[http://www.childinfo.org/files/birthregistration\\_Digestenglish.pdf](http://www.childinfo.org/files/birthregistration_Digestenglish.pdf)

<http://www.eueom.eu/files/dmfile/MOERDC2006-RapportFinal.pdf>

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P1\\_1300\\_INSTRUMENT\\_ID:312327:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P1_1300_INSTRUMENT_ID:312327:NO)

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P1\\_2100\\_ILO\\_CODE:R190](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P1_2100_ILO_CODE:R190)

[http://www.ilo.org/dyn/normlex/fr/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C138](http://www.ilo.org/dyn/normlex/fr/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138)

<http://www.lse.ac.uk/collections/law/projects/greatlakes/Pact%20on%20Security%20Stability%20&%20Development.pdf>

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatelessPersons.aspx>

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>

<http://www.oxfordreference.com>

<http://www.refugeeresearch.net/>

<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4a1a99022>

## BIBLIOGRAPHY

<http://www.refworld.org/pdfid/52384fe44.pdf>

<http://www.theguardian.com/environment/2009/mar/11/sea-level-rises-climate-change-copenhagen>

<http://www.un.org/en/peacekeeping/missions/past/onuc.htm>

<http://www.unhcr.org/pages/49c3646c155.html>

<http://www.worldwildlife.org/places/congo-basin>

<http://www1.umn.edu/humanrts/research/ratification-congo.html>

<http://www1.umn.edu/humanrts/research/ratification-congo.html>

<https://repositories.lib.utexas.edu/bitstream/handle/2152/5958/3211.pdf?sequence=1>

[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=V-4&chapter=5&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en)

[www.ilsole24ore.com](http://www.ilsole24ore.com)

[www.imurenge.com](http://www.imurenge.com)

[www.operationworld.com](http://www.operationworld.com)

[www.unicef.org/infobycountry/drcongo\\_statistics.html](http://www.unicef.org/infobycountry/drcongo_statistics.html)

[www.worldbank.org](http://www.worldbank.org)

## BIBLIOGRAPHY

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## BIBLIOGRAPHY

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A number of documents<sup>217</sup> used as source of information for the writing of this research work are not edited to official publication standards and are intended exclusively for sharing within UNICEF. Statements from the aforementioned documents do not imply or constitute official opinions or policy positions of either the United Nations or UNICEF.

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<sup>217</sup> The references from these documents have been quoted in the text as: “Document kindly provided by one of the Key Informant, for internal use only”

## ANNEXES

15

On constate que sur l'ensemble de la Province, le taux d'enregistrement des naissances aux bureaux de l'état civil est très bas, soit 33%. Il faut donc une sensibilisation de la population afin que celle-ci ait la culture de faire enregistrer les enfants au bureau de l'état civil.

Tableau n° 14 : Statistiques des naissances survenues et enregistrées aux bureaux de l'état civil pour l'année 2008

Entités	NAISSANCES SURVENUES			NAISSANCES ENREGISTRÉES			% NE
	G	F	T	G	F	T	
Ville de Beni	1040	1167	2207	412	464	876	40
Ville de Butembo	2308	2555	4863	912	1001	1913	39
Ville de Goma	2016	1669	3685	849	705	1554	42
Territoire de Beni	3687	3689	7376	1288	1294	2582	35
Territoire de Lubero	3166	3474	6640	1108	1216	2324	35
Territoire de Masisi	2245	2072	4317	516	477	993	23
Territoire de Nyiragongo	134	135	269	45	55	100	37
Territoire de Rutishuru	4051	4389	8440	814	874	1688	20
Territoire de Walikale	4121	2526	6647	1035	959	1994	30
<b>Ensemble Province</b>	<b>22768</b>	<b>21676</b>	<b>44444</b>	<b>6979</b>	<b>7045</b>	<b>14024</b>	<b>32</b>

Source : rapports des entités

Sur 44444 naissances survenues dans la Province, il y a eu seulement 14024 naissances enregistrées à l'état civil soit un taux de 32 %.

## ANNEXES

16

Tableau n° 15 : Statistiques des naissances survenues et enregistrées aux bureaux de l'état civil pour l'année 2009

Entités	NAISSANCES SURVENUES			NAISSANCES ENREGISTRÉES		
	G	F	T	G	F	T
Ville de Beni	1748	1895	3643	345	377	722
Ville de Butembo	9932	10652	20584	1669	1746	3415
Ville de Goma	9480	10274	19754	843	894	1737
Territoire de Beni	13139	13114	26253	4267	4471	8738
Territoire de Lubero	14272	15183	29455	2116	2266	4382
Territoire de Masisi	7590	8148	15738	4915	5193	10108
Territoire de Nyiragongo	637	682	1319	391	421	812
Territoire de Rutishuru	10278	10795	21073	3696	4101	7797
Territoire de Walikale	6631	7084	13715	3304	3570	6874
<b>Ensemble Province</b>	<b>73707</b>	<b>77827</b>	<b>151534</b>	<b>21546</b>	<b>22039</b>	<b>44585</b>
						<b>29</b>

Source : rapports des entités

Au vu de ce tableau, on constate que sur 151534 naissances survenues seules 44585 ont été enregistrées aux bureaux de l'état civil sur l'ensemble de la Province, soit un taux d'enregistrement de 29%.

## ANNEXES

Aout	1602	1992	3194	1359	1311	2680	84
Septembre	2435	2634	5069	1301	1375	2676	53
Octobre	1921	1876	3797	1031	1010	2041	54
Novembre	1112	1163	2279	515	497	1012	44
Décembre	190	207	397	57	58	115	29
Total	26429	28017	54447	12856	12789	25649	47

Source : Rapports des entités

Commentaire : ce tableau reprend les données statistiques de naissance survenues et enregistrées de toutes les entités sur l'ensemble de la province. Comme on peut le lire dans le tableau ci-haut, le taux de NE à l'état civil s'élève à 47%. Il a donc passé de 43 à 47% de 2012 à 2013.

### statistiques de décès

Mois	H	F	G	F	T
Janvier	174	118	46	35	373
Février	131	97	49	37	314
Mars	133	99	69	79	380
Avril	131	97	49	37	314
Mai	129	82	58	42	311
Juin	157	88	37	24	306
Juillet	173	161	58	53	445
Aout	135	120	49	41	345
Septembre	163	145	53	57	418
Octobre	137	142	70	43	392
Novembre	174	145	49	41	409
Décembre	168	145	61	55	429
Total	1805	1439	648	544	4436

Sources : Rapport des entités

Commentaire : Comme on peut le remarquer dans le tableau ci haut, les décès enregistré à l'Etat Civil sur l'ensemble de la Province s'élève à 4436

### Statistiques de mariages et divorces

Source : Rapports des entités

Mois	Mariage	Divorce
Janvier	472	
Février	392	
Mars	340	
Avril	502	
Mai	376	1
Juin	420	
Juillet	455	
Aout	354	
Septembre	372	
Octobre	356	
Novembre	490	
Décembre	397	
Total	4926	1

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Entités	HOMMES	FEMMES	GARÇONS	FILLES	TOTAL	Trimestre
Ville de Beni	65	23	17	18	123	RA 2013
Ville de Butembo	17	15	7	5	44	T4 2013
Ville de Goma	523	383	164	147	1217	T4 2013
Territoire de Beni	82	67	45	42	236	T4 2013
Territoire de Lubero	3	3	0	0	6	T3 2013
Territoire de Masisi	7	6	0	0	13	T4 2013
Territoire de Nyiragongo	2	1	0	0	3	T4 2013
Territoire de Rutshuru	27	19	20	25	91	RA 2013
Territoire de Walikale	322	415	202	307	1246	T1 2013
F <sup>r</sup> e Province	1048	932	455	544	2979	

Source : Rapports des entités

Sur le l'ensemble de la Province, la population étrangère s'élève à 2979 personnes. Ces effectifs ne sont du pas fiables étant donné que la collecte ou le recensements par le recenseurs n'atteind pas tous les étrangers.

Etat comparatif pour les cinq dernières années (Mouvement de la population étrangère)

Année	HOMMES	FEMMES	GARÇONS	FILLES	TOTAL
2009	442	239	164	183	1028
2010	462	291	254	290	1297
2011	476	295	255	285	1311
2012	944	320	204	152	1620
2013	1048	932	455	544	2979

Source : Rapport des entités

Commentaire : la population étrangère en Province du Nord-Kivu est passée de 1620 à 2979 étrangers de 2012 à 2013

### b. Statistiques d'état civil

Statistique des naissances des naissances enregistrées à l'état civil pour l'exercice 2013

Mois	NS			NS			%NE
	G	F	T	G	F	T	
Janvier	2766	3063	5829	1176	1197	2373	41
Février	2679	2800	5479	926	958	1884	34
Mars	3375	3634	7009	1158	1214	2372	34
Avril	2614	2819	5433	1251	1227	2478	46
Mai	2423	2488	4911	978	994	1932	39
Juin	2427	2352	4979	1140	1117	2257	45
Juillet	2661	3189	6070	1951	1871	3823	63

## ANNEXES

= : REPUBLIQUE DEMOCRATIQUE DU CONGO :=

MINISTERE DE L'INTERIEUR ET SECURITE  
PROVINCE DU NORD-KIVU

*Année 2013*

### DIVISION PROVINCIALE

#### 1. Recensement de la population

##### a. Population congolaise

→ Statistiques par entité ou subordonnées administratives (Hommes-Femmes-Garçons-Filles)

ENTITES	HOMMES	FEMMES	GARCONS	FILLES	TOTAL
Ville de Beni	65781	74499	85626	96046	321952 <i>14 2013</i>
Ville de Butembo	171895	185112	149485	163793	670285 <i>13 2013</i>
Ville de Goma	304896	199986	251820	275569	1032271 <i>14 2013</i>
Territoire de Beni	279701	299273	280069	295070	1154113 <i>14 2013</i>
Territoire de Lubero	307652	358248	275757	302086	1243743 <i>14 2013</i>
Territoire de Masisi	121944	138030	202053	219170	681197 <i>13 2013</i>
Territoire de Nyiragongo	27326	29638	35260	36599	128823 <i>14 2013</i>
Territoire de Rutshuru	203393	244650	475689	526177	1499909 <i>14 2013</i>
Territoire de Walikale	210651	225833	203323	215321	855138 <i>14 2013</i>
Ens. Province	1693249	1755269	1959082	2179831	7587431

Source : Rapports des entités Source. Commentaire : comme on peut le constater dans le tableau ci haut la population congolaise de la Province du NK s'élève à 7587431 habitants

#### \* Statistiques par tranche d'âge

Compte tenu de la périodicité différente de données ci-haut ainsi que de l'absence des statistiques de la Ville de Beni  
Il est impossible de confectionner ce tableau de statistiques de la population congolaise par tranche d'âge

Etat comparatif pour les cinq dernières années (évolution de la population congolaise)					
Année	HOMMES	FEMMES	GARCONS	FILLES	TOTAL
2009	1356765	1456125	1432602	1526707	5772199
2010	1466482	1621991	1735789	2028185	6852447
2011	1499815	1661208	1839186	2048424	7048633
2012	1538290	1690288	1862664	2091622	7182864
2013	1693249	1755269	1959082	2179831	7587431

Commentaire

#### \* Densité

Entités	Densités	Population	Sup/Km <sup>2</sup>
Ville de Beni	1747	321952	184,24
Ville de Butembo	3522	670285	190,34
Ville de Goma	15535	1032271	66,45
Territoire de Beni	154 155	1160946	7484
Territoire de Lubero	69	1243743	18096
Territoire de Masisi	144 143	681197	4734
Territoire de Nyiragongo	790	128823	163
Territoire de Rutshuru	284	1499909	5289
Territoire de Walikale	36	855138	23475
Ens. Province	128	2501650	59483

Source Rapport des entités

+ 587431

*Géographie l'O.L viennent à  
Province.*

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17

Tableau n° 16 : Statistiques des naissances survenues et enregistrées aux bureaux de l'état civil pour l'année 2010

Entités	NAISSANCES SURVENUES			NAISSANCES ENREGISTRÉES			% NE
	G	F	T	G	F	T	
Ville de Beni	2783	2965	5748	567	573	1140	20
Ville de Butembo	4795	4348	9143	1370	1641	3011	33
Ville de Goma	6727	6903	13630	1004	1212	2216	16
Territoire de Beni	11942	12668	24610	3354	3451	6805	28
Territoire de Lubero	9949	10717	20666	2797	3243	6040	29
Territoire de Masisi	5309	5504	10813	3894	4090	7984	74
Territoire de Nyiragongo	645	623	1268	268	254	522	41
Territoire de Rutshuru	4380	4378	8758	2614	3006	5620	64
Territoire de Walikale	2768	3068	5836	476	565	1041	16
<b>Ensemble Province</b>	<b>49298</b>	<b>51174</b>	<b>100472</b>	<b>16344</b>	<b>18035</b>	<b>34379</b>	<b>34</b>

Source : rapports des entités

On remarque que sur 100472 naissances survenues sur toute l'étendue de la Province de Janvier à novembre 2010, seules 34379 naissances ont été enregistrées aux bureaux de l'état civil soit 34%. Celui-ci étant toujours en déçà de 50%, il est nécessaire que

TRANSLATION OF THE ARTICLES OF THE CONGOLESE CODE  
DE LA FAMILLE PERTAINING BIRTH REGISTRATION'S  
PROCEDURES.

***Article 83***

*The registers are closed and archived by the officer of Civil Registry within two months after the end of each year. One of the parts of the page of the register is deposited in the archives of the community or of the urban or rural municipality, another one in the Registry of the High Court, and the last part in the central bureau of Civil Registry at the Ministry of Justice in Kinshasa.*

*At the end of each register the officer of Civil Registry shall prepare an alphabetical table of documents contained therein, indicating the date and the reference numbers. This alphabetical table is also attached to both the registers at the Registry of the High Court and at the central bureau of Civil Registry at the Ministry of Justice in Kinshasa.*

***Article 84:***

*The new registers available in every Civil Registry Bureau are signed from the first to last page by the officer of the Ministry of Justice of the pertinent community or of the urban or rural municipality. The documents shall be filled in completely – no blank spaces and no abbreviations are allowed.*

*The dates shall be written in letters. Cuts and referrals shall be approved and signed as well as the entire body of the document. The documents are numbered following a sequential order. The numbers shall be written in the margin of the page.*

**Article 85**

*The registers' first page contains a list of the names of the officers of the Civil Registry and their qualifications in regards to their juridical competence to sign the registers.*

*In addition, they have a series of numbered pages, to be used to draft the documents of Civil Registry remits. Templates of the documents of every register of the Civil Registry will be determined via ministerial order.*

*The registers end with a number of pages containing the alphabetical list of the people who have requested the documents contained in the registers themselves.*

**Article 87**

*Part 1, on the upper left of the register, is given immediately to the applicant.*

*Part 2, on the lower left of the register, is teared off the register at the end of the year, gathered with the rest of Parts 2 and sent within two months to at the Registry of the High Court. The gathering of the Parts 2, upon receipt, shall be archived by the officers of the Court.*

*Part 3, on the lower right of the register, is teared off the register and sent within two months at the central bureau of Civil Registry at the Ministry of Justice in Kinshasa.*

*Part 4 is kept at the Civil Registry Bureau where the register was originally placed.*

*The two copies of the alphabetical table are sent, within two months from the end of the year, both to the Registry of the High Court, and to the central bureau of Civil Registry at the Ministry of Justice in Kinshasa. The original alphabetical table remains archived in the Civil Registry Bureau where it was written.*

*Parts 2 and 3 of the registers, as well as the alphabetical tables validated by diplomatic and consular officers, are sent respectively, within two months after the end of the year, to the Registry of the High Court in Kinshasa and to the central bureau of Civil Registry at the Ministry of Justice in Kinshasa*

**Article 88**

*Proxies and other documents that shall be attached to documents of the Civil Registry are attached directly to the documents themselves, signed by the person who filled them in and by the officer of Civil Registry, chronological listed according to the typology and date of the document, and gathered by the end of the year to be transmitted in original to the Registry of the High Court together with the listed Part 2.*

*Certified copies of these documents remain in the Civil Registry Bureau of the place where the documents were issued.*

**Article 92**

*Documents of the Civil Registry are written in French.*

*In addition to the provisions laid down in Article 84, they shall state the exact date and time when they have been filled in, the name and the role of the officer of the Civil Registry, as well as names, sex, marital status, occupation, domicile or residence and, where possible, the date and place of birth of the children who shall be registered.*

*When the date of birth is unknown, the document will report the approximate age of that person.*

**Article 96**

*After a careful reading, the documents and their translation, in case the applicant does not speak French, are signed by both the officer of the Civil Registry, and by the applicant and witnesses, if any. In case the applicant cannot write his/her name, either he/she shall deposit the fingerprints instead of the signature, or the cause that prevented him/her from signing shall be reported.*

**Article 97**

*Upon reception of the declarations of birth, the officer of Civil Registry shall immediately prepare the relative document to be given to the father or the mother of the child. [...]*

**Article 98**

*Unless special provisions provided by law, the documents of the Civil Registry must be ready within a month from the birth/marriage/death.*

*After the legal deadline, the documents of the Civil Registry hold a mere probative information value. However, if they are recorded in the register upon a declaratory or suppletory judgment, they will hold a legal value.*

**Article 99**

*Unless special provisions provided by law, a person shall be given copies of the documents that are recorded in the register of the Civil Registry upon payment of a fee.*

*These certified copies shall bear the date of issuance, report the entire asset of information of the original copy, and shall be sealed by the authority that originally issued them.*

*They need a further legalisation whenever they are issued to be presented before foreign authorities. [...]*

**Article 106**

*Every incorrect document of the Civil Registry shall be replaced through a judgment of the High Court upon request presented to the Court where the document should have been prepared.*

*Any interested person as well as the Ministries on call can start this legal action. When it does not spring from Public Minister's initiative, the request shall be in any case forwarded to it.*

*When the officer of the Civil Registry recognises the error of a document of the Civil Registry linked to the fact that the applicants presented the request after the grace period, the officer of the Civil Registry, after verifying the request and the reasons of the delay, shall send immediately a report to the Public Minister asking for a suppletory judgment to the court.*

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*The court, after a verification procedure and a further investigation process – whether required – takes a decision that needs to arrive along with detailed explanations of the decision itself.*

*The transcription of the judgment shall be inserted on the register of the current year as an annex and mentioned in the margin of the register. [...]*

### **Article 114**

*People that were forced to declare births or deaths after the legal deadline and who refused to do so will be punished with seven days of imprisonment and a fine not exceeding 20 Zaires or only one of these.*

### **Article 115**

*People who provide false data to draft the documents shall be punished with eight days up to one year of imprisonment and a fine from 20 to 50 Zaires or only one of these.*

## **Specific rules for Birth Certificates**

### **Article 116**

*All births occurring in the territory of the Republic must be declared to the officer of the Civil Registry of the residence of the father or the mother within thirty days following birth.*

### **Article 117**

*The child's birth shall be declared by the father or the mother of the child or, in case they fail to present the request, by other close relatives of the child or by those who were present at the moment of the birth.*

*The declaration of birth shall be presented upon one of the two parents' proxy holding by mean of formal request written on paper and signed by the father or the mother of the child.*

**Article 118**

*The birth certificate shall state:*

- a) the exact time, if possible, the day, the month, the year, the place of birth, the sex and the name to be assigned to the child;*
- b) the names, the age, the occupations, and the address of parents;*
- c) if applicable, the name or names, the age, the occupation, and the address of the applicant if different from the father or the mother.*

**Article 119**

*A special register can be found in hospitals, maternity wards or public or private medical training centres, where births that occur therein can be immediately listed by date and registered.*

*The examination of the aforementioned registry may be required by the officer of Civil Registry of the place where the facility is located, as well as by administrative and judicial authorities.*

**Article 120**

*Any person who finds a newborn child shall declare him/her to the officer of Civil Registry of the place of the discovery. The officer shall provide a detailed report claiming: the approximate age and sex of the child; any characteristic that could contribute to his/her identification; and the authority or the person to whom the custody of the child has been given.*

*This person or authority shall send a copy of the report to the officer of the Ministry in whose jurisdiction he/she exercise his/her duties.*

**Article 121**

*The officer of the Civil Registry shall draft a provisional birth certificate stating the name given to the child, the gender, the date and place of the discovery, which will annexed to the report.*

**Article 122**

*If the child's birth certificate is subsequently found or if the birth is judicially declared, the report of the discovery and provisional birth certificate shall be annulled by the High Court upon request of the Minister or of any additional interested party.*

**Article 123**

*When the birth of a dead child is declared, the declaration shall be recorded by date on the register of deaths and not on that of births.*

*The declaration of a dead child can be done only when there is any prejudice to the question of whether the child is alive or not.*

*The sex of the child, the name, the age, the occupation and the residence of the parents and the day, month, year and place of birth shall be recorded as well.*

**Article 124**

*The provisions of the article 123 are applicable to a dead child still subjected to medical care if specified in the document that the child was born dead.*

**Article 125**

*When a child was born during a trip in see, river, lake or air, on a ship, boat, or aircraft of Congolese nationality, a record shall be taken within 48 hours from the birth, upon declaration of the mother or the father if they are on board. In absence of the father and if the mother is unable to register the birth herself, the document shall be automatically drafted by the commandant or the person who performs his/her functions. Once arrived at the first Congolese port where the ship or boat can dock, the officer of the Civil Registry shall send two copies of the birth certificates drafted on board:*

- One at the bureau of maritime inscription;
- The other to the Civil Registry of the place of last residence of the child's father or mother –if the father is unknown;

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- If the last residence can not be found or if it is outside the Republic, one copy shall be sent to the Civil Registry of the municipality of Gombe, Kinshasa.

Concerning births on a Congolese aircraft, the presiding officer must send two copies of the birth certificates drafted on board, one to the officer of the Civil Registry of the municipality of Gombe, Kinshasa, and the other to the officer of Civil Registry of the last residence of the father or mother, if the child's father is unknown.

### **Article 126**

The declaration of adoption or maternity of a child born out of the wedlock takes place before the officer of the Civil Registry; it shall be attached to the child's birth certificate or in a separate document.

### **Article 127**

The name of the mother in the birth certificate of a child born out of the wedlock represents a proof of maternity. When the father, either by himself or by a representative holding a legal power of attorney, requests the birth certificate of a child born out of the wedlock, this shall be considered as a bilateral document of affiliation of the father and the mother.

### **Article 128**

When the declaration of adoption or maternity is made separately from the birth certificate, or by the father or by the mother alone, or by both, it shall be placed in the margin of the birth certificate.

### **Article 129**

Copies and extracts of birth certificates are issued in accordance with Article 99 concerning general provisions.

However, except for the head of the local prosecutor of the child, and of his/her successors, wife/husband, guardian or legal representative, no one can get a copy of a birth certificate, except upon authorisation issued by the judge of the place

## ANNEXES

*where the document was received and upon written request of the person concerned.*

*In case of refusal, appeal can be made.*

*The court shall decide.*

### **Article 130**

*The extracts specifying the name, the occupation, and the domicile of the father and the mother cannot be issued according to article 130, unless upon request of the child's successors, or of public administration.*