



How to adopt a child in Democratic Republic of the Congo

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The process to adopt a child in DRC

1. GENERAL CONSIDERATIONS

1.1. Definition of adoption

The concept of adoption can be understood in various ways, because its use depends as much on the context as on the bodies or individuals who make use of it. Although the legislator has not expressly defined it, in the Democratic Republic of the Congo, adoption is understood to mean: "the legal institution which creates, by decision of the competent judge, a bond of descent distinct from the descent of origin of the adoptee, thereby integrating the latter into the family of the adopter ».

In the explanatory memorandum to Law No. 87/010 of August 1, 1987, the legislator of the Family Code said expressis verbis the following: "From now on, adoption will only result from a judicial decision, excluding thus conventional adoption".

It is therefore noted that only the judge is empowered to order adoption. However, it is important to know how to apply to the judge and what the adoption file contains. Before going to the judge, a series of administrative elements must be gathered both for the Adopting Candidate and for the future adoptee.

The adoption thus defined makes it possible to know the purpose of its existence in Congolese family law, as well as the objectives assigned to it by the Congolese legislator.

1.2. Purpose of adoption

It should be noted that the general philosophy of adoption has evolved. In the explanatory memorandum to Law No. 87/010 of August 1, 1987 on the Family Code, the Congolese legislator stresses that under the old legislation, adoption gave offspring to adults they could not have their

own blood; while the new adoption is mainly aimed at protecting young people, although the adoptee can be a child as well as an adult.

Today, therefore, the aim of the “Adoption” institution is essentially first of all “the protection of young people”.

The care and supervision of any child is better conceived as a family than at any other place. We note however that many children have been torn from this beautiful setting that is the family, to find themselves either on the street or in orphanages, thus accumulating stress, antipathy and other negative feelings towards their alike who are them in their respective family backgrounds.

It is in this sense that the Democratic Republic of Congo, like other states in the world, has recognized through Law N ° 09/001 of January 10, 2009 relating to the protection of children, precisely in its Article 17 which provides: "Every child has the right to an ideal family environment where his material, moral and emotional needs are taken into account for his development".

Understanding this legal provision leads us to say that the objective pursued by the Congolese legislator by instituting adoption, proceeds from the principle that each child must have a family, so as to take into account the requirements of their growth.

1.3. Legal bases of adoption

Adoption, as a legal institution, is governed by international conventions ratified by the Democratic Republic of the Congo and national laws and regulations, in particular:

- The Convention on the Rights of the Child , ratified by ordinance N ° 90-048 of August 21, 1990, in its articles 20 and 21;
- The African Charter for the Welfare and rights of the child in its article 24;
- The Constitution of the DRC of February 18, 2006, in its articles 40 to 42;
- Law No. 87/010 of August 1, 1987, relating to the “Family Code” in its articles 650 to 691;
- Law n ° 09/001 of January 10, 2009 on the protection of children in the Democratic Republic of Congo, in its articles 17 to 20.

1.4. Forms of adoption

On reading the various legal texts mentioned above, we can deduce the following five different forms of adoption:

- Simple adoption;
- Plenary ADOPTION;
- Internal (national) ADOPTION;
- International ADOPTION;
- Intrafamily ADOPTION.

Simple adoption is one where, while creating a parentage relationship with the adopter, allows certain legal ties between the adoptee and his family of origin to persist.

Under article 678 of the Family Code, “the Adopted retains his ties with his family of origin. His descendants have ties to the adoptive family as well as to the family of origin.” From the analysis, it is clear from this provision that the Congolese legislator, without expressly saying so, opted only for adoption as a common law regime.

Plenary adoption is one which has the effect of breaking the bond of filiation between the adoptee and his family of origin and of creating a new bond of filiation with the adoptive family, similar to that of biological filiation. Although not expressly expressed by Congolese law, it applies implicitly in the case of children without known parents, more particularly that of the wards of the State.

National (internal) Adoption is one in which there is no foreign element, that is to say one in which the adoptee and the adopter are Congolese.

International adoption is one in which the adopter and the adoptee do not have the same nationality.

Intrafamily adoption is that of a child related up to the third degree to the adopter, his spouse or his cohabitant even deceased or with whom the adopter has social and emotional ties.

1.5. The adopter (who can adopt?)

To adopt, you must:

- (i) be an adult and capable person;
- (ii) have not been deprived of parental authority (art. 653 of the Family Code);
- (iii) have 5 years of marriage, for the couple (art 654 of the Family Code);
- (iv) not having three children alive at the time of the adoption request (art 656 of the Family Code).

In the DRC, the adoption of a child by a homosexual person or couple, a pedophile or a person suffering from mental disorders is prohibited (art 20 of the law on child protection).

In a couple, both spouses must consent to the adoption (art. 675 of the Family Code), with the exceptions provided by law, in particular, the spouse or the spouse concerned is unable to express their will or if he has no known remains.

The Adoptor must be at least fifteen years older than the Adopted, in general, and at least ten years old when it comes to the adoption of the spouse's child (Art 668 of the family).

Foreign couples or individuals, through bodies approved for international adoption in the DRC (OAA) by the Central Authority of the host country, can adopt subject to certain prerequisites prescribed by law.

Singles, divorced people, widows and widowers can only adopt people of the opposite sex in extreme circumstances subject to the dispensation of the President of the Democratic Republic of Congo. The same is true of couples with more than three children alive.

An explanation is necessary, on what should be understood by "if the circumstances justify it" or by "just cause", often used by the writer of the Family Code, more precisely, in articles 651 and 669. Because , in any event, adoption is only justified by the best interests of the child. However, by best interest of the child it is necessary to hear, according to the provisions of article 6 of the law N ° 09/001 of January 10, 2009 bearing protection of the child: "the concern to safeguard and to privilege with all price his rights, taking into account his moral, emotional and physical needs, his age, his state of health, his family environment and the various aspects relating to his situation".

1.6. The adoptee (which child can be adopted?)

Can be adopted:

- A child of which one or both living or deceased parents are known but give, without any possible doubt, their consent to lose their authority and legal prerogatives arising from biological kinship;
- An abandoned child without known parents (state ward), with the consent of his legal guardianship.

2. ELEMENTS OF THE ADOPTION FILE

Whether it is a couple of Congolese or foreigners, the adoption application file must contain the documents of the adopter and the adoptee.

2.1. Elements of the file of an adopting couple

The file of the adopting couple must contain the following elements:

- A request for adoption, signed by the spouses;
- Individual information sheets for two spouses;
- The birth certificates of each spouse;
- Extracts from the valid criminal record of each of the spouses;
- The civil marriage certificate dating back at least 5 years previously;
- Declaration of family composition;
- Acts attesting to the normal psychological, psychological and health status of each of the spouses;
- The act of approval or aptitude for adoption, approved by the diplomatic representative of the DRC in the country of origin of the prospective adopters (for adoptions by foreigners);
- Proof of means of subsistence (pay slip or bank account statement supplied);
- Photocopies of passports;
- The photo of the couple.

2.2. Elements of the file of a single adopter, a widower or a widow In

addition to the elements mentioned above for the couple, the single person must present a certificate of celibacy or widowhood in place of the marriage certificate. Let us repeat that the adoption by a single person of a person of the opposite sex can only be done in case of extreme necessity and subject to the exemption of the Congolese Head of State.

2.3. Information documents of the child to be adopted

As said above, the children to be adopted are divided into two categories, that of children of which one of two or both parents is known and that of children whose parents are not known, commonly known as state wards. Their

files must include the following elements:

Case of children whose parents are known

- The birth certificate of the municipality of birth of the child, possibly subject to a supplementary birth certificate;
- The act consent to legalized adoption, given by the parents or the person exercising guardianship of the child to be adopted if the latter is 15 years of age or over; if the child has reached the age of 10, he must be heard before his adoption;
- The adoption judgment.

Cases of children whose parents are not known

- The birth certificate of the town where the child is born, possibly subject to a supplementary birth certificate;
- A copy of the designation of the delegated guardian for the wards of the State to be adopted, drawn up by the municipality of the child's domicile (art 248 and 249 of the Family Code);
- A temporary accommodation certificate issued by the social worker of the municipality where the child resides;
- A placement approval order issued by the Children's Court within the jurisdiction of the child's domicile;
- A report of acknowledgment of abandonment drawn up by the Social Affairs services of the municipality of the child's domicile.

3. THE ADOPTION PROCEDURE IN THE DRC

3.1. Competent jurisdiction

Congolese Civil Law has left all matters concerning the child to the jurisdiction of the Juvenile Court. Article 99 of the Child Protection Law provides that "the Children's Court is the only competent to hear matters in which the child in conflict with the law is involved". He thus knows matters relating to identity, capacity, filiation, adoption and kinship as provided by law. This court includes a first instance chamber and an appeal chamber (Art 87 and 99 of the Child Protection Law).

However, in entities which do not yet have juvenile courts, the courts of peace and the courts of first instance hear first and second instance, respectively, cases which normally fall within the jurisdiction of the juvenile courts (Article 200 of the Child Protection Law).

3.2. Execution of the procedure

The adoption procedure is triggered by referral to the Juvenile Court within the jurisdiction of the domicile of the adopter (or one of the two) or the adoptee, by means of a request addressed to the president of the Children's court and to which are attached all the documents constituting the file of the adopter and that of the adopted child (Art 670 of the Family Code).

The judge seized is required to render his decision, after verification of the documents produced, within 15 days of taking the case under advisement (Art 38 of the Judicial Organization Order n ° 299/79 on the Internal Rules of the Courts and courts and prosecution of August 20, 1979).

It should be noted here that, during the legal proceedings, the applicants (adopters) and the adoptee are required, if required by law, to give their consent personally before the court; otherwise, they can be represented by a lawyer or legal defender with a power of attorney.

3.3. The hearings, the execution of the adoption judgment and the end of the adoption procedure

During the hearings, the adopters or the adoptee can physically appear before the judge. In the absence of their physical presence, lawyers and legal defenders will be received by the court to validly represent the parties before it.

Once the judgment pronouncing the adoption has been rendered, it must be served on the registrar of the adoptee's domicile. Thirty (30) days after the service of the judgment, the applicants or their counsel seize the Civil Registry of the appeal chamber of the Children's Court or, if applicable, of the High Court of jurisdiction, to obtain proof that their judgment pronouncing the adoption was not challenged.

The court office seized, delivers "a certificate of non-appeal" by virtue of which the adoption judgment will be said "Cast in force of res judicata", an expression meaning that this judgment can no longer be the subject of an appeal or 'an opposition.

Obtaining the certificate of non-appeal of the judgment will be followed by the mention of the adoption by the competent civil registrar on the margins of the adoptee's birth certificate (marginal registration) as well as obtaining of the act of adoption with the State Officer, thus putting an end entirely to the judicial procedure.

There follows an administrative phase with the obtaining of the exit permit issued by the Municipality of the adoptee's domicile as well as that of the legalization of all the documents obtained (for international adoptions). This legalization is done by the Notary of the City or at the Chancellery Directorate of the General Secretariat of the Ministry of Justice (3rd Directorate).

3.4. Other administrative procedures

In the case of international adoption, all documents thus legalized must still receive legalization of signatures by the Chancellery of the Ministry of Foreign Affairs. It will also require a Congolese passport for the adopted child.

The complete file thus validated will first be submitted to the Interministerial Commission placed under the coordination of the Ministry of Gender, Family and Children. The said commission delivers, after checking for conformity, a favorable opinion which authorizes the visa of the Embassy of the country of reception of the child.

After obtaining the visa of the host country, the adopters must request, from the department responsible for the movement of the population of the Commune of the adoptee's domicile, the establishment of an exit permit and, from the General Management of Migrations (DGM), an authorization to exit the child from Congolese territory.

This is the adoption procedure provided by the legislator and the administration in the Democratic Republic of Congo.