

## **OVERVIEW OF THE LEGISLATION FOR THE NATIONAL ELECTIONS IN THE DEMOCRATIC REPUBLIC OF CONGO (DRC)**

This overview focuses on three pieces of legislation that provide the framework for elections:

- 1 Law No. 04/028 – Identification and Enrolment of Voters in the Democratic Republic of Congo, 24 December 2004
- 2 Law No.04/009 – Organization, Attribution and Operation of the Independent Electoral Commission, 5 June 2004
- 3 Law No. 04/024 – Congolese Nationality, 12 November 2004

It is important to note that the three Acts do not provide a complete legal framework for the electoral process but regulate three important aspects of it, *viz.* the nationality of citizens, the identification and registration of voters and the composition and functions of the Independent Electoral Commission.

Legislation that is outstanding includes the Electoral Act (how the elections will be conducted) and regulations specifying the details and the prescribed forms and documents. Any conflict manager will need to have a thorough knowledge of these to manage conflict and resolve disputes in an effective and situation specific manner. Once these pieces of legislation have been promulgated they will form an addendum to the training material.

The legislation overview highlights specific sections in the law and conveys its meaning in simple language. However conflict management panellists should read the legislation in full, as training material is unable to anticipate every conflict situation and provide for a suggested resolution.

### **1 Law No. 04/024 – Congolese Nationality, 12 November**

The Act provides the criteria for the establishment of nationality in the DRC. Nationality is established in two ways:

- 1 By origin
- 2 By acquisition

## Chapter 2 - Nationality by origin means:

- That by being born to one or both Congolese parents one is a Congolese citizen. This means either the mother or father or both parents must be Congolese.
- Any person who belongs to one of the ethnic groups or nationalities of the Congo is a Congolese citizen.
- Any child born in the DRC of unknown parents (however if this child affiliates to a foreigner they will take the nationality of that foreigner)
- Any child born in the DRC from parents who are stateless or foreign and that country's laws do not recognize a child born in another country as its citizen.

## Nationality by acquisition occurs in five ways:

- Through naturalization
- Through option
- Through adoption
- Through marriage
- Through birth and residency in the DRC

a) Naturalization is given to a foreign citizen by the National Assembly. The Minister of Justice proposes the naturalization and it is discussed by the Council of Ministers. After the National Assembly certifies the notice for naturalization the President signs the decree. A person who is naturalized is one who has done "eminent favours<sup>1</sup>" to the Democratic Republic of Congo or whose "naturalization presents a real interest with visible impact for the DRC<sup>2</sup>."

b) Article 13 - The acquisition of Congolese nationality through option applies to people who were:

- born in the DRC or in a foreign country from parents where one is a Congolese national
- legally adopted by a Congolese national
- legally adopted by a person who acquired Congolese nationality

Article 15 - People who wish to apply for acquisition by option must:

---

<sup>1</sup> Article 11

<sup>2</sup> Article 11

- reside in the DRC for at least five years
- speak one of the Congolese languages
- renounce any other nationality

c) Article 17 – Acquisition of nationality through adoption occurs when:

- the child is legally adopted by a Congolese
- the child is legally adopted by a person who becomes Congolese
- the child is legally adopted by a person who voluntarily recovers their Congolese nationality

d) Articles 18 – 20 – Acquisition of nationality through marriage

A person who marries a Congolese national may acquire Congolese nationality seven years after the marriage on condition that, at the date of application, the marriage still exists. If the marriage ends the children's nationality is not affected.

e) Article 21 – Acquisition of nationality through birth and residency in the DRC

At 18 years of age a person born in the DRC, from foreign parents, may acquire Congolese nationality if they commit themselves to permanent residency in the DRC.

Article 22 – Requirements for qualification for Congolese nationality by acquisition

A person who applies for nationality by acquisition must:

- be a major (over 18 years)
- be able to submit a declaration
- renounce any other nationality
- be able to speak one Congolese language
- “be of good life and morals<sup>3</sup>”
- be permanent resident in the DRC for seven years
- not have done anything that could prejudice the interests of the DRC
- not have been sentenced for the crimes of high treason, attacking the safety of the State, war crimes, genocide, crimes against humanity, crimes of aggression, terrorism, assassination, murder, rape, rape of minors, pedophilia, economic crimes, corruption, arms dealing or drug dealing

---

<sup>3</sup> Article 2 (5)

#### Article 24 – Rights and responsibilities of nationality

Any person who receives Congolese nationality acquires all the rights and obligations of the Congolese people from the date of acquisition.

#### Article 1 – Exclusivity

Congolese nationality cannot be held with any other nationality. A person who acquires Congolese nationality is required to renounce any other nationality.

#### Article 26 – Loss of nationality

Any person who acquires the nationality of a foreign country loses their Congolese nationality.

#### Chapter 5 – Procedures for acquiring nationality

A person applying for Congolese nationality must submit the following documentation:

- in duplicate
- indicating their decision to be domiciled in the DRC
- their legalized (commissioned) signature
- as required by the Minister of Justice
- registered and addressed to the Minister of Justice, with an acknowledgement of receipt

The Minister of Justice undertakes an enquiry into the application within six months.

After the enquiry has been conducted the enquiry documents are deliberated on by the Council of Ministers. A decree of naturalization is issued by the Minister of Justice and becomes effective on the date of registration and is published in the Official Bulletin (Government Gazette). A certificate of nationality is issued to the successful applicant.

## **2 Law No. 04/028 – Identification and Enrolment of Voters in the Democratic Republic of Congo, 24 December 2004**

The Independent Electoral Commission will identify and enroll (register) voters on a national common electoral roll for the national referendum and elections. Only people who are registered on the electoral roll will be eligible to vote. The process of identification and registration takes place concurrently.

#### Article 4 – Compulsory registration

Identification and registration is a civic duty and all Congolese of eligible voting age (18 years) is obligated to apply for registration.

#### Articles 5 and 6, 21 - 23 – Registration centers

The processes of identification and registration take place concurrently at registration centres, in the presence of national and international observers and political party agents who are accredited by the IEC.

The Office of the Registration Centre has the power to vouch for the identity and nationality of the people that apply to be registered at their stations. The IEC determines the number of registration centres depending on the estimated voter population and the geographic area.

Registration centres are established at schools or other private or public places, which are at the disposal of the IEC for the duration of the electoral process. Registration centres cannot be established in places of worship, political party offices, trade union offices, non-governmental offices, bars, police stations, military camps, military academies and schools.

Special arrangements can be made by the IEC for the following categories of people who want to register; prisoners who have not lost their civil rights, displaced people, the sick, pregnant women, people living with disability and the elderly.

#### Articles 7 and 8 and 10 – Requirements for registration

Voters must register at the registration centre where their main residence is. If a person lives outside the district where their main residency is they can elect to register at the registration centre where they temporarily reside.

To register you must be:

- a Congolese citizen
- 18 years or older on the date of closure of identification and registration
- able to register in person
- able to enjoy the civil and political rights of the DRC

- in possession of one of the following:
  - A certificate of nationality or a document attesting that you have applied for a certificate of nationality
  - An identity document
  - A national passport
  - A national driving license
  - A national pension book
  - A pupil or student card
  - A service card

If the potential voter has none of these documents that can take an oath before the office of the registration centre which must be witnessed by five people registered on the electoral roll for that registration centre and they must have lived for a least five years in the district where the registration centre is situated.

#### Article 9 – Disqualifications for identification and registration

The following categories of people cannot register:

- Those with “full mental disability”
- People legally deprived of their civil and political rights
- The military and police on duty

#### Article 12 – IEC structures responsible for identification and registration

The structures are:

- National Sub-Commission in charge of identification and enrolment (SCNIE)
- National Office of Operations (BNO)
- Provincial Representative Office of the IEC (BPRCEI)
- Provincial Sub-commission in charge of identification and registration (SCPIE)
- Provincial Office for Operations (BPO)
- Liaison Office (BL)
- Registration Centre (CI)

The structures must ensure significant women representation.

#### Article 24 – Composition of registration centre staff

Registration centres have the following staff:

- President in charge of the registration centre
- Two identification officers in charge of verification nationality
- One enrolment (registration) officer or keyboard operator

If the President is absent or is removed from office the most senior identification officer replaces the President of the registration centre. The registration centre officers are required to take an oath of loyalty and confidentiality.

#### Article 25 – Information required for registration

The information required from the potential voter is:

- Surname and forename
- Place and date of birth
- Gender
- Names of father and mother
- Sector or Chiefdom of origin
- Territory of origin
- Province of origin
- Physical address or residency
- Photograph
- Fingerprints

The successful applicant receives a plastic laminated voter's card that contains all the above details. If the voter's card is lost the owner is required to report it to the registration centre and apply for a replacement copy. The owner must also report the loss to the Liaison Office. The new card that is issued will bear the word "copy."

#### Article 28 – Checking the electoral roll

Each segment of the electoral roll is published and posted at the head office of the registration centers for people to check if they are on the electoral roll and if their details have been accurately captured.

#### Articles 29 – 37 – Agents and Observers

During identification and enrolment each political party may have one agent (or a substitute agent) at the registration centre to observe the process. The party agents must be accredited by the IEC and are given a party agent card ten days before the process of identification and registration begins.

Party agents can only be removed from the registration centre if they create a disturbance or obstruct the work of the registration centre staff. If this occurs the substitution agent replaces the erring party agent.

Party agents are entitled to observe the proceeding, check the reliability of the computer programmes and request all proceedings or minutes of the registration centre. The agents are entitled to sign the minutes of operation of the registration centres.

Observers may be national or international. There are different requirements for national and international observers. National observers must have:

- An identity document or other identifying document
- A criminal record document that attests to “good morals<sup>4</sup>” issued in the last three months
- A mandate from an organization or association

International observers must have:

- A passport with a valid visa
- A mandate issued by their organization or association

These requirements must be submitted at least one month before identification and registration operations begin and the accreditation will be issued 15 days after the request.

An observer may observe the proceedings and may send any of their observations, in writing, to the IEC if they consider these will assist the operations. An observer is not entitled to intervene in any of the proceedings and must obey the laws and regulations of the DRC. Observers are required to wear their accreditation cards and may be asked by registration centre staff to show their accreditation cards.

---

<sup>4</sup> Article 33(2)

## Articles 38 – 39 – Updating and maintenance of the electoral roll

The electoral rolls are updated when:

- A citizen reaches the voting age of 18 years
- A citizen recovers their electoral rights
- A registered citizen moves, works in another district, is ill or dies

The electoral rolls are established in triplicate; one is posted in the registration centre, one is kept in the provincial representative office of the IEC and one is sent to the IEC head office. At the end of the identification and enrolment process the final electoral rolls are sent to the IEC head office.

## Articles 40 – 44 – Objection to the electoral roll and appeals

Any person who considers that they have been “deprived” by the identification and enrolment process may appeal, within seven days, in writing or by registered declaration to the President of the registration centre. The President has to decide the matter and respond within seven days of receipt of the appeal. If the President does not respond in the seven day period the applicant’s rights are reinstated. If the applicant is not satisfied with the decision of the President of the registration centre they may appeal to the President of the Peace Court or Customary Court of the district, who will have seven days to decide the matter. Their decision is final.

Any changes resulting from the appeals are required to be declared.

## Chapter 4 – Unlawful Conduct

The Act provides for a number of actions that may result in a fine and prison sentence.

The following are unlawful acts:

- Identification under a false name or quality
- Hiding a reason why they do not qualify for registration (would fall under categories of disqualification)
- Fraudulent registration
- Intending to register more than once
- Entering a registration centre with a firearm, (except the armed forces or the police)
- Bringing alcohol or drugs into a registration centre

- Giving false testimony or submitting a false document to verify the information about a third party
- Damaging or unlawfully replacing a voter's card
- Divulging private and confidential information
- Refusing to provide the information required for identification and enrolment
- Offering, receiving or promising money, values, goods, favours or other advantages to falsify information (bribery)
- Making false declarations or using threats or violence or intimidation

Article 57 – Limiting the mobility of the population

To ensure effective operations the IEC can request the government to adopt measures to limit the mobility of the population.

### **3 Law No.04/009 – Organization, Attribution and Operation of the Independent Electoral Commission, 5 June 2004**

The rationale of the Act (presented on the first page) articulates the special circumstances of the DRC and its emergence from decades of conflict and the need for the country to legitimize its governance structures through free, transparent and legitimate elections. It establishes the Independent Electoral Commission (IEC) as a structure with legal personality that is neutral and has financial and economic autonomy. The Act provides that the IEC is independent and doesn't fall under government supervision. The IEC has three organs:

- Plenary Assembly – responsible for conception, orientation and evaluation
- Office – responsible for decision making and the day-to-day management of the IEC
- Special Commissions, responsible for technical operations

In the decision making of these organs consensus is encouraged with voting being the exception.

The composition of the IEC has equal representation of the constituents and entities to the inter-Congolese Dialogue. There must also be gender representation of at least one woman per constituent and entity.

Article 5 and 6 – Mission of the IEC

The mission of the IEC is to ensure the neutrality and impartiality of free, democratic and transparent elections. The IEC is responsible for preparing, organizing, managing and controlling the referendum and elections.

#### Article 7 – Powers and functions of the IEC

The IEC has as its functions:

- To establish and make clear the internal regulations pertaining to the internal running of the IEC
- To organize and manage the referendum and elections including the:
  - Identification of nationals
  - Registration
  - Establishment of the electoral roll
  - Ballot
  - Counting of votes
  - Announcement of the provisional results
- To “elaborate” on the legal framework for elections and the referendum
- To “elaborate” on the budget for the referendum and elections and the elections timetable
- To translate into the national languages and to publicize the Constitution relating to the referendum
- To popularize in French and the national languages the referendum and electoral laws
- To provide and co-ordinate public information and civic education on the elections and referendum, taking into account the national languages
- To train electoral officers nationally, provincially and locally
- To draft and popularize a Code of Conduct
- To ensure that the referendum and electoral legislation is applied
- To determine the number and location of voting stations, counting stations and district electoral offices
- To appoint the voting station, counting station and district electoral officers
- To regulate the referendum campaign

- To announce and publish the results of the referendum and to deliver them to the High Court for proclamation
- To receive, certify and publish the list of candidates
- To regulate the electoral campaigns
- To announce the provisional results of the elections and to deliver them to the High Court for proclamation (presidential and legislative) and to the Court of Appeal (provincial and local government)
- To report to the National Assembly and the Senate a report on the elections and the referendum

#### Article 8 – Composition of the IEC

The IEC is composed of 21 commissioners equally representing the constituents and entities at the inter-Congolese Dialogue. Competency, experience, high morality, provincial representation and gender representation are aspects of consideration.

#### Article 9 – Qualifications for commissioners

Commissioners must:

- 1 be a Congolese national
- 2 be at least 25 years of age
- 3 have at least one graduate diploma or at least five years professional experience in an area of expertise relevant to the work of the Commission
- 4 produce a certificate of physical and mental aptitude, have a blank criminal record, an attestation of “good morals<sup>5</sup>” and a certificate of nationality
- 5 take an oath not to solicit any “elective mandate<sup>6</sup>”

#### Article 10 – Disqualification of commissioners

A person cannot be a commissioner if they are a member of any other institution, a member of the armed forces, police, security services, public service of the state, public attorney, an agent in a public company, member of the cabinet or any transitional

---

<sup>5</sup> Article 9 (d)

<sup>6</sup> Article 9 (e)

institutes, a political administrative manager for the territorial army, a magistrate or a candidate in the election.

#### Article 11 – Termination of mandate of commissioners

Commissioner's term of office may end:

- on resignation
- on death
- on the commission of high treason, embezzlement of public monies, misappropriation of funds or corruption.

#### Article 13 – Provincial representation of the IEC

The IEC establishes offices in the provinces consisting of eight members, of which two members must be women.

#### Article 4 – Oath by commissioners

Commissioners are required to take an oath of loyalty, independence, impartiality and confidentiality

The IEC can appoint and employ people to fulfill its mandate including international and national experts.

#### Article 33 – Immunity from prosecution

Commissioners, members of its provincial officers, its agents, technical managers and experts cannot be sued, researched, arrested, imprisoned or judges during the period of their mandate. They cannot be criminally sued or arrested unless they are caught committing an illegal act and with the authorization of the Plenary Assembly.

#### Article 39 – Dissolution of the IEC

After Parliament adopts the final report of the IEC, the Commission is dissolved.