

The child's right to identity in Djibouti

Factsheet for the Committee on the Rights of the Child

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In Djibouti, there is a dual legal system, in particular on family and child protection issues: the Family Code¹, which is a common law system applicable to Muslim persons (Art. 11 of the Civil Code) and the Civil Code.

1 Creation of identity

Birth registration:

- The birth registration rate is at 79% in rural areas and 97% in urban areas².

- Law N° 3/AN/18 of 9 April 2018 on the Civil Code³ has established a Civil Code for Djibouti, which replaces the old laws of 1972 and 1973 and the Napoleon Code. Birth registration is addressed at Arts. 86 ff.

- In accordance with Article 7 of the Code on the legal protection of minors of 2015⁴, any child should be registered at birth, and has an immediate right to a name, nationality and, as far as possible, to know their parents and be cared for by them.

- However, it is worth mentioning that the civil registration system is currently subject to reform and in the process of establishing a biometric system. UNICEF has supported the drafting of the revised legislation on birth registration, but the latter has not been adopted yet.

Obstacles to birth registration⁵:

- Poor implementation of legislation. The declaration must occur within three days, which does not reflect the reality. This timeline is not well known amongst the population and is not implemented⁶.

- According to a draft law published in the report on the review of the legislation on birth registration in Djibouti (2019), the timelines must be extended, harmonised and adapted to the reality in the field⁷.

- Currently, civil registrars give priority to local customs rather than to the law, and suffer from a lack of training⁸.

- The population is not aware of the importance of registration at birth⁹.

- The registration procedures are not homogeneous, nor are the timelines. The timelines are not respected in relation to births happening outside health facilities. These vary between one and 12 months¹⁰.

- The procurement of a birth certificate is a costly procedure, although it should be free of charge¹¹.

- With regards to births occurring in health facilities, their registration takes place following the issuance of a declaration filled by the head medical doctor and an exit form¹², whose cost is FDJ 5,000 in the city of Djibouti and Ali Sabieh and FDJ 500 in the regions. Services are not based locally in the regions (subprefecture).

- Since 2019, UNICEF has supported the government in the establishment of judgments in lieu of registration for all children, who do not have a birth certificate yet on the country's territory, as well as awareness-raising meetings within the communities. A professional training and certification initiated on 2 January 2022 for all civil registrars and staff.

Biological children:

- If the father and mother of a biological child, or one of them, are not mentioned to the civil registrar, no mention of the latter is included on the registry (Art. 88 of the Civil Code).

- A biological child is subject to the Civil Code whenever their parents have expressed their wish to do so at the time of the declaration of birth to the civil registrar (Art. 401 of the Civil Code).

Nationality:

Since the adoption of the Civil Code in 2018, the Code on Nationality has been incorporated into the latter. The following persons are considered to have Djiboutian nationality (Arts. 29, 30, 31 of the Civil Code) :

- any legitimate or biological child, whose father and mother are Djiboutian;
- any child born in the Republic of Djibouti or abroad from a Djiboutian father or mother;
- any child born in the Republic of Djibouti, whose parents are unknown. -> This prevents statelessness.

Assisted reproductive technology:

Any agreement on reproduction or surrogacy is considered invalid (Art. 23 of the Civil Code). Medically assisted reproduction does not exist in Djibouti¹⁴.

Considerations:

- What happens when a child is born through medically assisted reproduction abroad?
- Does the State foresee the implementation of awareness-raising campaigns on the importance of birth registration?
- What measures does the State intend to implement to counter the current obstacles to birth registration?
- Does the State plan to review the legislation on birth registration in order to establish more realistic, harmonised timelines in line with the realities in the field?

¹ Loi n°152/AN/02/4ème L portant Code de la Famille, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/75293/78258/F145881385/DJI-75293.pdf>.

² UNICEF (2018). Djibouti, Protection de l'enfant, <https://www.unicef.org/djibouti/protection-de-lenfant>. Accessed on 10 November 2021.

³ Loi n°3/AN/18 du 9 avril 2018 portant Code civil, <https://www.droit-africain.com/uploads/Djibouti-Code-civil-2018.pdf>. See also Code civil de la République de Djibouti, <https://www.presidence.dj/AnnexeTextes/Annexe5ad3535c167d020180415032756.pdf>.

⁴ Loi n°95/AN/15/7ème L portant Code de protection juridique des mineurs, https://www.presidence.dj/PresidenceOld/jo/texte.php?num=95&date_t=2015-05-18&nature_t=Loi.

⁵ Ministère Délégué Chargé de la Décentralisation et UNICEF (2019). Rapport sur l'actualisation de la loi sur l'enregistrement des naissances à Djibouti. Pages 14 to 26, <https://decentralisation.gouv.dj/wp-content/uploads/2020/11/Rapport-sur-lactualisation-de-la-loi-sur-lenregistrement-des-naissances-a-Djibouti.pdf>.

⁶ Ibid, pp. 14, 27.

⁷ Ibid, p. 28.

⁸ Ibid, p. 26.

⁹ Ibid, p. 16.

¹⁰ Ibid, pp. 18 to 22.

¹¹ Ibid, p. 26.

¹² Ibid, p. 17.

¹³ Ibid, p. 26.

¹⁴ Human Village (2016). Procréation médicalement assistée à Djibouti, <https://human-village.org/spip.php?article230>.





Modification of identity

Abandoned children:

- An abandoned or found newborn child is placed at the Centre Daryel. As soon as the child arrives, the head of the centre submits a request for a declaration of abandonment to the Public Prosecutor, in order for the Centre Daryel to be recognised as the child's guardian until their placement in a family¹⁵. Indeed, in accordance with the **Family Code** (Arts. 85-86), a child, who has been found or abandoned by their parents will have the following guardian: the legal representative of the public or private national body, which cares for the child, or the commissioner competent on that territory in all other cases. When a child is cared for by a private physical or moral person, a contract is signed before a notary between, on the one hand, the guardian and, on the other, the father and mother of the state ward – or one of them if the other one is unknown or is deceased – or the Commissioner of the Republic competent on that territory or his or her representative.

- In accordance with Article 89 of the **Civil Code**, a birth certificate must be issued for abandoned newborn children. A birth certificate must also be issued for children placed under the guardianship of child protection services, who have no known birth certificates or in relation to whom the secrecy of their birth was requested.

Street children:

According to a 2018 survey on children living on the streets in the city of Djibouti¹⁶:

- 84.8% of the 1,137 surveyed children, i.e. most street children, come from Ethiopia;
- 9.1% are from Djibouti;
- 33.7% of the children came to the city of Djibouti with their family; 30.6% came alone, 21% came with other children; 10.1% have always lived there and 4% arrived with other non-relative adults;
- 36.5% live with their families, 35.3% live alone whilst 28.2% state that they live with friends or with non-relative adults;
- only 11.2% have a birth certificate and 3.4% have a refugee card.

The survey has highlighted that most street children do not have an identity document, stating that, whilst most of these children state that they were born in Djibouti, those facilities that provide them with primary health care or other services are often facing problems when resolving these adolescents' civil status, to whom they could offer an opportunity to work and to no longer be on the streets; the essential problem being the recognition of their true identity.¹⁷

Adoption:

Adoption is also subject to the country's dual legal system. It appears that a review of the Family Code is ongoing.

1) Article 80 of the **Family Code** prohibits adoption. However, **Law N° 56/AN/14/7ème L of 30 September 2014**¹⁸ reformed Djibouti's Family Code and created two types of placements, known as 'adoption-protection' (Art. 87):

- 'adoption-protection' through a notary: the 'adoption-protection' act is concluded before a notary when the child has known parentage;
- 'adoption-protection' through judicial proceedings: the judicial procedure is foreseen for children of unknown parentage. It is similar to a *kafalah* placement and creates no parentage bonds¹⁹.

In accordance with the principle of subsidiarity, Article 88 of this Law requires that the person or couple wishing to apply for an 'adoption-protection' be of Djiboutian nationality and of Muslim faith. An 'adoption-protection' may be revoked (Art. 91).

2) The **Civil Code** includes, in its Title IX on adoptive parentage, provisions relating to the adoption of a child in Djibouti (Arts. 435- 472). It provides for simple and full adoption.

- A simple adoption is mentioned or registered on the Civil Registry records and grants the adopter's surname to the adoptee in addition to the latter's surname. The Court may, however, decide that the adoptee will only have the adopter's surname.

- A full adoption is incorporated into the Civil Registry's records. It does not mention the child's original parentage. Its recording acts as the adoptee's birth certificate. The original birth certificate includes a mention of adoption and is considered invalid. The adoption grants the child the adopter's surname or that of the husband in the case of an adoption by two spouses. Upon a request by the adopter(s), the Civil Chamber of the Court of First Instance may amend the child's first names.

- Even though the Civil Code governs any person of any faith on the territory of Djibouti (Art. 11 of the Civil Code), the applicability of the provisions relating to adoption remains complex and supplementary to those of the Family Code.²⁰ In accordance with Article 440 of the Civil Code, the following persons may be adopted: children, whose father and mother or the Family Council have validly consented to their adoption; children, who have been legally entrusted to an association, whose statutory mission is the protection or assistance of children and acts in this field; children declared abandoned.

It appears that, following the Civil Code, there has been an increased resort to adoption and that some intercountry adoptions may have taken place in practice.²¹

Considerations:

- **What measures and policies will be implemented to address those issues related to the identity of street children?**

- **Will the State implement measures to clarify the legal situation of adopted children?**

¹⁵ Dambach M., Wöllenstein-Tripathi J. (Eds.) (2020). *Kafalah. Preliminary analysis of national and cross-border practices* (pp. 68 - 73). Geneva: International Social Service, https://www.iss-ssi.org/images/Publications_ISS/ENG/ISS_Kafalah_ENG.pdf.

¹⁶ Ministère de la femme et de la famille (2018). *Etude sur les enfants en situation de rue dans la ville de Djibouti*. Pp. 6 - 8, <https://famille.gouv.dj/uploads/publications/9db95561f5e82c4cf8d717b73fd57aa0.pdf>.

¹⁷ *Supra* 5, p. 22.

¹⁸ *Loi N° 56/AN/14/7ème L modifiant et complétant les titres 6 et 7 de la Loi n°152/AN/02/4ème L portant Code de la Famille*, <https://www.presidence.dj/texte.php?ID=56&ID2=2014-09-30&ID3=Loi&ID4=18&ID5=2014-09-30&ID6=n>.

¹⁹ *Supra* 15, p. 72.

²⁰ *Ibid*, p. 74.

²¹ *Ibid*, p. 75.





Falsification of identity

Adoption:

Djibouti has not ratified the 1993 Hague Convention on Intercountry Adoption, mainly due to the fact that, as a Muslim country, it does not foresee adoption as an option for most children. However, it also means that any intercountry adoption may therefore not be subject to the safeguards provided by the Convention.

Child marriage:

- The two texts that govern the country's Family Law, *i.e* the **Family Code** and the **Civil Code**, allow child marriage. In accordance with Articles 13 and 14 of the Family Code²², which is based on the *Sharia*, and Article 163 of the Civil Code²³, prospective spouses must be at least 18 years old to get married. The marriage of children, who have not yet reached the age of legal adulthood, is subject to the consent of their guardians. Should their guardians refuse to consent and the future spouses insist, the marriage may be authorised by a judge. Finally, the Public Prosecutor of the place of marriage is free to issue age exemptions on serious grounds.
- It is estimated that 20.6% of girls in the regions of Arta and Dikhil are married before the age of 18²⁴.

Refugees:

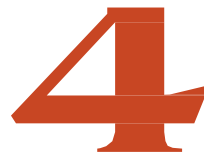
- Djibouti is a receiving country for 150,000 undocumented migrants and a country of transit for another several thousands²⁵.
- Early 2019, there were 29,000 refugees and asylum-seekers in the country. Over 40% of them are school-age children²⁶.
- The number of births of children of refugees and immigrants has been increasing²⁷.
- In general, unaccompanied migrant children do not have a birth certificate²⁸.
- According to the United Nations Development Aid Plan 2018-2022²⁹, most refugee children born in the city of Djibouti have not received a birth certificate; this situation will improve thanks to the implementation of the law on refugees approved in January 2017 (see 'Restoration of identity').
- Since 2012, refugee children are able to obtain their birth certificate, but they are registered on a separate register, which is not submitted to the Directorate of Population (under the Ministry of the Interior) for its centralisation and the archiving of civil status acts. This generates problems when these children request their naturalisation and identity cards. Civil Registry officers require the presentation of the parents' identity cards, but this hinders the obtaining of birth certificates for children of (undocumented) migrant parents and for unaccompanied or separated children.

Trafficking and smuggling:

- *Law No. 133/AN/16/7ème L on the fight against trafficking in persons and illicit smuggling of migrants* of 24 March 2016 criminalises sexual trafficking and forced labour. The involvement of a child is an aggravating factor (Art. 8).
- The government has reduced the number of investigations and charges linked to trafficking and has not sentenced a trafficker since 2017. Furthermore, no victim of trafficking has been identified.
- Migrant and local children in the city of Djibouti, in particular along the Siesta Beach road, remain vulnerable to sexual trafficking. The traffickers exploit street children in the context of sexual trafficking in Djibouti, along the transport route between Ethiopia and Djibouti, and in Obock, which is the main entry and exit port for Yemen. The traffickers, including relatives, exploit local and migrant children by forcing them to beg and sell their products.

Considerations

- *Is Djibouti considering the ratification of the 1993 Hague Convention?*
- *Are measures aimed at ensuring the resort to licit practices in intercountry adoption implemented?*
- *Is Djibouti considering the prohibition of child marriage?*
- *What will the State put into practice to harmonise the legislation across its territory?*



Preservation of identity and access to origins

Minorities:

The Human Rights Committee has expressed its concern at the fact that Djibouti does not recognise specifically the rights of tribal populations, despite the coexistence of various tribes on its territory³⁰.

²² *Supra* 1.

²³ *Supra* 3.

²⁴ *Supra* 2.

²⁵ OIM (2021). La toute première stratégie nationale de Djibouti sur la migration cible les défis de la Corne de l'Afrique,

<https://www.iom.int/fr/news/la-toute-premiere-strategie-nationale-de-djibouti-sur-la-migration-cible-les-defis-de-la-corne-de-lafrique>.

²⁶ Partenariat mondial pour l'éducation (2019). Djibouti : Satisfaire les besoins des réfugiés en matière d'éducation | Blog. Accessed on 9 November 2021, <https://www.globalpartnership.org/fr/blog/djibouti-satisfaire-les-besoins-des-refugies-en-matiere-deducation>.

²⁷ *Supra* 5, p. 5.

²⁸ UN General Assembly, Human Rights Council, Working Group on the Universal Periodic Review (2018). *Compilation concernant Djibouti Rapport du Haut-Commissariat des Nations Unies aux droits de l'homme*. A/HRC/WG.6/30/DJI/2. Para. 72, https://www.upr-info.org/sites/default/files/document/djibouti/session_30_mai_2018/a_hrc_wg.6_30_dji_2_fr.pdf.

²⁹ United Nations Djibouti (2017). *Plan des Nations Unies pour l'aide au développement 2018–2022, Ensemble pour un avenir meilleur*, p. 24, https://www.undp.org/sites/g/files/zskgke326/files/undp/library/corporate/Executive%20Board/2018/First-regular-session/DPDCPDJ13_UNDAF%20Final.pdf.

³⁰ *Supra* 28, Para. 66.



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Restoration of identity

Biological children:

- The act of recognition of a biological child is recorded on the registers at its date; it is mentioned on the birth certificate, if existent, and is notified, within one month, to the President of the Civil Chamber of the Court of First Instance (Art. 90 of the Civil Code).
- The recognition of a biological child will be undertaken through an authenticated act, if not done on the birth certificate (Art. 413 of the Civil Code).
- The legitimisation is the act that allows a married couple to legitimately grant a biological child the quality of legitimate child. The legitimisation may benefit all biological children, once their parentage has been legally established (Art. 388 of the Civil Code).

Djiboutian nationality through naturalisation:

- Djiboutian nationality may be acquired if the applicant has resided in Djibouti for at least 10 years (Art. 39 of the Civil Code).
- In cases of naturalisation, underage children born from the marriage are Djiboutian by law (Art. 36 of the Civil Code).

Refugees:

Acquisition of refugee status: Law N° 159/AN/16/7ème L on the status of refugees in the Republic of Djibouti of 5 January 2017³¹ states, in its Article 8, that members of the family (spouse and children) of a person having been recognised as refugee, who are with him or her or will join him or her are also considered refugees. The refugee status grants the right to civil status documents, as well as identity and travel documents. Article 9 provides for any unaccompanied child to benefit from the status of refugee.

Naturalisation: Decree N° 2017-410/PR/MI establishing the means to exercise fundamental rights by refugees and asylum-seekers in the Republic of Djibouti of 7 December 2017³² provides, in its Article 8, for refugees to request their naturalisation under the same conditions as set by domestic legislation on this matter.

Family reunification of unaccompanied children is provided for in Article 9 of the Law of 5 January 2017: The Republic of Djibouti, with the support of international partners, contributes to the restoration of family reunification. The International Organization for Migration (IOM) manages a Counselling and Advice Centre for Migrants in the region of Obock, in order to help those persons, who wish to return to their country of origin after having emigrated or tried to emigrate towards countries in the Arabian Peninsula³³.

- A programme of assisted voluntary return and reintegration (AVRR) programme has been established. This programme organises the return to the country of origin, in particular family tracing (67 children were involved in this family tracing procedure between 1 and 31 July 2021³⁴).

- According to the annual report of the UN Core framework for development aid, 582 migrant children, who returned to Ethiopia, benefitted from family reunification in 2018.³⁵

Street children:

- 1,000 street children have been identified and registered by Caritas, most of them refugees. They work with the Ministry of Women and Family and the Ministry of the Interior on a new system of identification of all street children³⁶.

Late declaration:

- In accordance with Article 86 of the Civil Code, when a birth has not been declared within the legal timeframe, the civil registrar may only record it on the registers pursuant to a sentence issued by the Court of the place of birth of the child, and a summary mention is included on the date of birth. If the place of birth is unknown, the competent Court is that of the place of residence of the applicant.

- Law N° 24/AN/83/1ère L of 3 February 1983 governs the issuance of the act of sentence in lieu of record of the birth certificate by the competent authorities when the timeframe of 30 days from the birth has expired. It appears that the rural population is most affected (by the absence of a birth certificate), as the latter is in a situation in which, in order to identify themselves, they must first have a judicial decision in lieu of record of the birth certificate.³⁷

- A draft decree has been published in the report on the review of the law on birth registration in Djibouti (2019).³⁸

Consideration:

- *What will Djibouti put into place to increase its efforts to investigate, take to court and sentence potential traffickers?*

³¹ Loi N° 159/AN/16/7ème L portant statut des réfugiés en République de Djibouti, 5 January 2017, <https://www.presidence.dj/texte.php?ID=159&ID2=2017-01-05&ID3=Loi&ID4=1&ID5=2017-01-15&ID6=n>.

³² Décret N° 2017-410/PR/MI fixant les modalités d'exercice des droits fondamentaux des réfugiés et demandeurs d'asile en République de Djibouti, 7 Decemberr 2017, <https://www.presidence.dj/texte.php?ID=2017-410&ID2=2017-12-07&ID3=D%E9cret&ID4=23&ID5=2017-12-14&ID6=n>.

³³ OIM (2021). Tableau de bord : centre d'orientation et d'assistance aux migrants (MRC) Obock | djibouti (Rapport #34 : 1), https://reliefweb.int/sites/reliefweb.int/files/resources/DJI_MRC_Dashboard_Mars21_FR.pdf.

³⁴ OIM (2021). Tableau de bord : centre d'orientation et d'assistance aux migrants (MRC) Obock | djibouti (Rapport #38 : 1), https://reliefweb.int/sites/reliefweb.int/files/resources/DJI_Dashboard_MRC_JUIL21_FR.pdf.

³⁵ United Nations Djibouti (2018). *Plan cadre des Nations Unies d'aide au développement. Rapport annuel*. P. 39,

<https://djibouti.un.org/sites/default/files/2020-10/RAPPORT%20UNDAF%20DIBOUTI%202018%20final%20double.pdf>.

³⁶ Djibouti - CARITAS supports Migrant Street Children (12 August 2021). Migrants & Refugees Section, <https://migrants-refugees.va/2021/08/12/djibouti-caritas-supports-migrant-street-children/>.

³⁷ *Supra* 5, p. 16.

³⁸ *Supra* 5, p. 29.

