



## An appraisal of rectification and reconstitution of civil status certificates in Cameroon

Doh Gima Joseph

Department of English Law, University of Maroua, Cameroon

### Abstract

In Cameroon, during the establishment of civil status documents, errors could be made, given the fact that they are drawn up by human beings who are fallible, in which case, it can be rectified and on the other hand, civil status certificates might be lost, destroyed by any unforeseen circumstances or acts of force majeure, in such cases, they can be reconstructed. Generally, such rectification and reconstitution of civil status certificates may be effected only by court decision, however, the civil status officer can do the modification at the time of establishment, but before the signature. In Cameroon, despite the provision for possibility of rectification and reconstitution of civil status certificates, many citizens who suffer from erroneous information or loss or destruction of any civil status certificate, hardly succeed in invoking these remedies. This is because of the unnecessary complexity in the procedures of effecting rectification and reconstitution which has been identified by critics and scholars in recent years. In addition, the boundary between rectification and reconstitution has become less clear. This paper seeks to give an appraisal in this area of the law, within the context of civil status certificates in Cameroon. This has been done by using the qualitative methodology where, both content and comparative analysis have been used to analyse primary and secondary data. The data is interpreted using inductive, deductive, analogy and justification philosophies. The study concludes that the unnecessary complexity in the procedures of effecting rectification and reconstitution can be reduced. It is therefore recommended that the executive should pass a decree that makes the procedures for rectification and reconstitution simplified and less cumbersome and also the Computerization of the National System of Civil Registration program to ensure speed and security in the procedures.

**Keywords:** Rectification, reconstitution, civil status certificates

### Introduction

It is a matter of public policy that every Cameroonian person whether living in Cameroon or abroad should have civil status <sup>[1]</sup>. Consequently, the Government of the Republic of Cameroon enacted a civil status Law No. 2011/011 on 6 May 2011 which modifies and supplements the Ordinance No. 81-02 of 29 June 1981. The new law improved several provisions of the 1981 Ordinance, in particular the organization of civil registration and provisions relating to the status of natural persons <sup>[2]</sup>.

This new law covers births, marriages, deaths, adoptions, legitimations, and recognitions. The 2011 law makes the declaration and registration of births, deaths and marriages mandatory for all people residing in the country, irrespective of their citizenship status, and for Cameroonians residing abroad, with the competent nearest civil status registrar. Emphasis is also placed on the confidentiality of information and security of civil registration records as well as the interactions between key stakeholders of the civil registration system. However, the law is silent on the collection and sharing of information for vital statistics and the computerization of the civil registration system <sup>[3]</sup>.

As a result of the irregularities performed by some authorities in some civil status centres, the head of state enacted decree No: 2013/031 of 13 February 2013 relating to the organization and functioning of the National Office of the Civil Status (NOCS) known in its French acronym as BUNEC (Bureau Nationale de l'Etat Civil) <sup>[4]</sup>.

The seat of the NOCS is in Yaoundé which is the capital of Cameroon under the delegation of a board of directors, and as such decentralization came as a result of this new law which will enable citizens to quickly have access in civil status registration office and authorities in their divisional and sub divisional jurisdictions.

However, some provisions of the previous law (Ordinance No 81/02 29 June 1981) were maintained such as the civil status records still held in civil status centres; one record each for birth, marriage, and death certificates, two categories of civil status centres which are the main registration center and the special registration center, civil status documents written by civil status registrars such as government delegates, mayors, and their deputies, heads of diplomatic and consular missions of Cameroon abroad and they have limited competence which obligate them to act only within their jurisdiction <sup>[5]</sup>.

In Cameroon, during the establishment of civil status documents, errors could be made, given the fact that they are drawn up by human beings who are fallible, in which case, it can be rectified and on the other hand, civil status certificates might be lost, destroyed by any acts of force majeure, in such cases, they can be reconstructed and also, depending on their gravity, the document can be annulled if the irregularity is substantial. In fact, the law provides special rules for rectification and reconstitutions.

Generally, Article 2 of the 1981 Ordinance provides that a birth, marriage and death certificates, once issued is intangible and final. This means that once you have been issued a birth certificate it cannot be changed nor the facts altered except by a court decision. Therefore, as matter of general rule, rectification and reconstitution of civil status certificates may be effected only by court decision; however, the civil status officer can do the modification at the time of their establishment, but before the signature.

In Cameroon, despite the provision for possibility of rectification and reconstitution of civil status certificates, many citizens who suffers from erroneous information or loss or destruction of any civil status certificate, hardly

succeed in invoking these remedies. This is because of the unnecessary complexity in the procedures of effecting rectification and reconstitution which has been identified by judges and scholars in recent years. In addition, the boundary between rectification and reconstitution has become less clear. Today, most birth certificates in Cameroon reflect the wrong ages. The tendency is for people to change their ages following the indication of the time because of the laxity, on the part of both court and the civil status registrar in the issuance of birth certificates. It is therefore not strange to see one person with more than one birth certificates which may indicate that she had her first child at the age of ten. This paper seeks to give an appraisal of rectification and reconstitution, within the context of civil status certificates in Cameroon.

### Civil Status Documents

In view of the above, the civil status can be defined as the non-patrimonial right of the individual to be individualized in his family and society through a set of personal qualities resulting from legal acts and facts of civil status in which he/she is involved, proven by the civil status documents.

Generally, civil status documents (instrumentum probationem) are those authentic documents drawn up under the conditions provided by law, by civil status officers or persons delegated by them, in the civil status registers, for the purpose of proving legal acts and legal facts of civil status of individuals.

The principle advocated by the United Nations give civil registration two basic functions of roughly equal importance: (a) a legal function which consists in registering the legal events and records that constitute the source of civil status and form the basis of family organization; and (b) a statistical function, which assumes that the registration offices have been legally charged with collecting additional statistical- data on each of the events and acts to be entered or reported, as input to the country's vital statistics. However, unlike in other public administrative services, the civil registration system is called upon to lend its cooperation to help other agencies achieve their own objectives. It is important to ensure that it is organized and funded in such a way that it is able to offer such collaboration to enhance its overall value to society. Once it becomes an ongoing, routine activity, this collaborative function can be seen as another basic function of the registration system, together with those mentioned earlier<sup>[6]</sup>. For citizens, this activity contributes to the protection of rights and of their fundamental freedoms. Various qualities, such as minor or major, mother, father or child or husband, are taken into account both in substantiating legal regulations and in respecting the rights specific to these categories of persons.

Civil registration aims at creating an integrated record that proves the existence and identity of individuals, as well as those circumstances that affect their legal situation in terms of their position as members of a marriage-based or defacto family: relationships of marital or extramarital filiation, family relationships, marital ties, etc. The content of the civil register includes information that touches on a person's legal capacity, which may affect the capacity to act. It is unquestionably important that all information that determine an individual's capacity to act should be recorded in the register to protect the integrity of judicial proceedings, public and individual interests; they should therefore result

comprehensive entries in the record of the individual concerned or, where appropriate, in the inclusion in the register of a special section devoted to such situations.

To accomplish its essential purposes the collection, storage and retrieval of information on vital events and their characteristics for legal, statistical, administrative and any other purposes, civil registration uses the registration method in its work. The registration method is defined as the continuous, permanent, Compulsory recording of the occurrence and characteristics of vital events. This definition yields three characteristics: continuity, permanence and compulsoriness, which have been analysed in other United Nations publications.

### Rectification and Reconstitution

As already stated earlier, Article 2 of the 1981 Ordinance provides that a birth, marriage and death certificates, once issued is intangible and final. This means that once someone has been issued a birth, death or marriage certificate, it cannot be changed nor the facts altered except by a court decision. Therefore, as matter of general rule, rectification and reconstitution of civil status certificates may be effected only by court decision; however, the civil status officer can do the modification at the time of their establishment, but before the signature. We therefore have two scenarios; that is; the rectification before the signature of the civil status officer is appended and rectification after the civil status registrar has already signed the document.

It should be noted that, while rectification can be done in the two circumstances depending on each case, reconstitution can only be done after the signature of the civil status officer, but reconstitution can also be effected in one of two ways *viz*: either through administrative procedure or by the court. We shall therefore examine these possibilities below.

### Rectification of Documents

Article 22 (3) of the 1981 Ordinance states that "Civil status certificates shall be rectifiable if they contain erroneous information that could not be corrected at the time the said certificates were drawn up"

Rectification is the operation that consists in repairing or correcting omissions and material errors affecting a legal document. Reconstitution refers to the process of legally re-establishing a given situation illegality. It is the extreme sanction for an irregularity contained in a civil status document.

It may occur in certain cases, in particular the incompetence of the civil registrar as set out in article 20 of the Ordinance: "(1) A civil registrar is prohibited from drawing up records concerning himself or a member of his family. If he does not have a deputy, he is automatically replaced by the Mayor, the Municipal Administrator or any other civil registrar of the Commune within which the centre concerned is located.

(2) Documents drawn up in contravention of the provisions of the above paragraph are null and void null and void, without prejudice, where applicable, to criminal proceedings for forgery of a public document forgery".

Article 21 also stipulates that "Any alteration, in any civil status records, any registration of these records elsewhere than in the registers intended for this purpose, may give rise to damages and interest for the injured parties, without prejudice to the penalties under criminal law. The establishment of the record elsewhere than in the registers".

This last sentence justifies the annulment of document that have been drawn up without follow laid down procedures.

The omission of the secretary's signature for birth and death certificates also constitutes a cause for annulment of these records in accordance with Article 14, which states that: "Birth and death certificates are signed jointly by the civil registrar and the secretary of the centre, on the basis of a declaration made by the person concerned and by the secretary of the centre, on the basis of a declaration by the father, mother, head of household or other legal guardian hospital where the birth or death took place, or any person having knowledge of the event who has knowledge of the event. The capacity of the declarant must be mentioned on the record on the document".

During the establishment of civil status documents, some irregularities may occur, and depending on their gravity, the document can be annulled if the irregularity is substantial or rectified if it is not. In fact, the law provides special rules for rectification.

Rectification is the modification of a civil status document by adding, or removing or changing entries in the document. In principle, this process can only be done through a court judgment. However, the civil status officer can do the modification at the time of establishment but before the signature.

In the general sense, rectification will appear as the correction of the document. If the document is incomplete, the court or the civil status officer must add the omitted elements depending on the case; for example, the omission of the place of birth or death; the omission of the name of the husband<sup>[7]</sup>.

### Administrative Rectifications

Article 13(1) of the 1981 Ordinance states that after drawing up the certificates and prior to their signature, the civil status registrar shall read the same to the parties and witnesses. The parties and witnesses may, on the spot, request the civil status registrar to make necessary rectifications in case of error. Such rectifications shall be made in the margin and signed by the civil status registrar or the secretary in case of birth or death certificate. It shall be countersigned by the parties in the case of a marriage certificate<sup>[8]</sup>.

Of the many possible kinds of registration errors, those which can be corrected at the registry office should include those listed below, since they are the most common and obvious; they may be due to individuals providing the wrong data for registration or bringing in erroneous documentation or to clerical errors-, where registry office staff incorrectly copy the data provided by individuals. In all the cases, the correction is made simply by substituting the Correct information for the erroneous data that have been entered for different reasons

Other, more sensitive, errors are those involving an individual's identity. When such mistakes are made in entries of marriage or death, there is usually no difficulty in that references to the identity of the couple or the deceased, as the case may be, can be checked against the respective certificates or birth of the parties concerned, which give the names and surnames, date and place of birth-, names of parents, etc. For example, if the entry of death gives the deceased civil status as married, his widowerhood can be documented on the strength of his wife's death certificate. However, correcting references to identity on the actual entry of birth poses greater difficulties, since they constitute

essential data in the entry, and the utmost care should therefore be taken to substantiate that the error is confined to references to a person's identity and does not refer to the person himself or herself, which would create a problem of dual personality that could obviously not form the basis for any correction to a registration record. It is essential to prevent an action taken to correct a record from creating changes in the identify of individuals.

However difficult such cases may be to prove, it is vital to uphold the jurisdiction of the registrar to correct them wherever possible, since there is no reason- why the evidentiary rigour required in a judicial proceeding should be any greater than that required in registration work, and, in the final analysis, the outcome will be based fundamentally on documentary evidence, whether it involves original documents- used as a basis for the-entry made or registration records documenting that the data item was incorrectly entered, and will have the probatory. force conferred on it- by law.

Besides the cases of registration errors as such, discussed above, it is possible to visualize other instances of corrections to records that can be handled at the registry office and that may give rise, among other things, to the decision of entries improperly made because they relate to non-existent events, that is, events which did not actually occur in the real world; for example, if an entry is made for a birth which did not take place in connection with a foetal death. It is also legitimate to delete an entry made improperly because it does not involve a matter for registration and there is therefore no legal requirement to register it, or because it was made without reference to the documentation legally required as a basis for registration; for example, a birth entry made beyond the prescribed time period on the strength of documentation prepared for registration within the legal time limit, within the following the legally prescribed procedure for late registration. There are also case where records are corrected that do not involve errors or the deletion of entries, but instead involve completing entries with data not. known at the time they were first made; the data are then- added to the existing record by a simple registration procedure to complete the entry; for example, where an entry of death has been made without the identity of the deceased being known, it will need to be completed when his identity becomes known. Another case where an entry is cancelled would be the new entry of birth when an adoption takes place, although appropriate cross references must be recorded to establish the connection between the cancelled entry and the new-one, for purposes of subsequent disclosure at the request of a judicial authority or the adoptee himself after reaching his majority. Finally, this recital of instances of corrections to records should include a reference to those cases where owing to the total or partial destruction or disappearance of the entries made in a civil register, they need to be reconstituted.

The procedure for correcting records for any of the reasons listed above can be initiated by individuals or ex officio by the registrar, who has oversight over the integrity and accuracy of the civil register. Authority to process them and resolve issues should be conferred upon local registrars in the exercise of the duties entrusted to them as part of their registration work. Decision-making authority will be vested in the local registrar of the office where the record to be corrected resides, and the correction will be made on the

strength of the ruling issued by the registrar in accordance with the prescribed registration procedure. The guiding principles underlying this registration procedure should be spelled out in the law: initiation ex officio or at the instigation of a party; official prosecution of the procedure; ex officio investigation into the accuracy of the events, and broad decision-making powers vested in the preparing agency to verify and carry out the necessary proofs; lack of undue formalism in handling the procedure, which will normally follow written rules of procedures; flexibility of the procedure where not subject to prescribe periods, for filing claims, presenting evidence, etc.; cost-free; guaranteed notification to interested parties that the procedure is being processed to allow them to assert any claims they consider appropriate; decision by the competent registration agency to terminate the procedure and agreement, where appropriate, to the pertinent amendment; notification of the decision to interested parties, with express reference to available remedies, agency ad peril for filing an appeal, and indication of the body: responsible for ruling on it.

In conclusion, note should be taken of the considerations discussed earlier with respect to the undesirability of placing time limits on the- correction of entries.

If documents contain futile mentions, the court must take away those useless mentions.

If the document contains inaccurate mentions, the court must correct it; for example, wrong entry of name, wrong indication of sex of the person, of date or place of birth or death.

### Two conditions are required

It is necessary that there is a mistake and it must not be a mechanism to change the name.

When the mistake is obvious and noticed prior to the issuance of the document, the civil status registrar may spontaneously correct it, but if it is discovered after, it can only be done by court decision.

According to article 13(2) all such administrative rectifications shall be made in the margin and signed by the civil status registrar or the secretary in case of birth or death certificate. It shall be countersigned by the parties in the case of a marriage certificate.

### Judicial Rectifications

According to article 23(1) of the 1981 Ordinance, Applications for rectification or reconstitution of civil status certifications shall be brought before the competent court under which fall the civil status registry in which the certificate was or ought to have been drawn up. What is clear from this section is that, the application for rectification shall be brought before the competent court under which fall the civil status registry in which the certificate was or ought to have been drawn up. It should be noted that the requirements and procedure for both rectification and reconstitution of civil status certifications by the court is the same. This further blears the difference between the two concepts. - incomplete record (insufficient identification of the deceased, omission or absence of a first name omission of a signature where this can no longer be ascertained, omission of a particle or a title of nobility or a title of nobility when the right to this particle or title is indisputably established);

- birth certificate that omits to designate the parents when the child has the indisputable status legitimate child<sup>[9]</sup>.
- documents omitting the essential information as required by article 12.

Article 23(2) of the 1981 Ordinance spells lays down the process of application. Such applications shall state, inter alia:

- a. the full name of the applicant;
- b. the full name, affiliation, date and place of birth of the person whose certificate is to be rectified or reconstituted;
- c. detailed reasons justifying reconstitution or rectification;
- d. the full names, age and place of residence of witnesses;
- e. the civil status, registry where the certificate was or ought to have been drawn up.

Furthermore article 24(1) stipulates that the court seized of the application under the above conditions must, before any decision is taken, forward the application to the Legal Department for purposes of enquiry, and to ensure:

- that another civil status certificate of the same type does not already exist for the same person;
- that the witnesses presented by the applicant are likely either to have been actually present at the birth, marriage or death they are attesting to, or to furnish proof of the same;
- that the declaratory judgment sought will not have the effect of fraudulently changing the full name, affiliation, date of birth or death, in the marital status.

The requirement in Article 24(1) above to forward the application to the Legal Department for purposes of enquiry, seems not to be effective in practice, because in practical terms there are individuals who possess more than one birth certificate at the same time. This is also because of the slow digitalization of the civil status registration in Cameroon which would have help to curb such fraudulent conduct with civil status documents by citizens.

Article 24(2) which provides that the enquiry provided for in paragraph 1 shall not be obligatory in the case of applications concerning minors less than 15 years old. The reason for limiting such enquiries to person above 15 years old is not clear. Rather it is a window for individuals below such age to have mor than one birth certificate, since there is no need for such inquiries to be made.

Declaratory or supplementary judgments can only give rise to judicial rectification. This is the case for a judgment of full adoption, which takes the place of the child's birth certificate.

### Reconstitution of Documents

Article 26 (1) of the 1981 Ordinance states that "In the event of war or a natural disaster, and notwithstanding the provisions of Article 23 above, death certificates may be reconstituted through administrative procedures. The same shall apply to births and marriages which took place in occupied territory".

### Judicial reconstitution

Judicial reconstitution, provided for in Article 23 above, constitutes the ordinary law of reconstitution.

This method of reconstitution may be used in the event of the destruction of a register or acts of war as well as in cases where the deterioration of the records is such as to render them unusable. The procedure for judicial reconstruction follows the rules as for judicial rectifications above.

For some people in some cases, they will rather choose to do the document at fresh and not reconstitution.

Where a death certificate attesting to the death of someone was prepared in error and it was later established that the person was not yet deceased, the competent high court shall, at the request of the legal department or any person concerned, immediately order that the certificate or declaratory judgment on the death certificate be cancelled<sup>[10]</sup>.

The judgment, which may take the form of a collective judgment, is transcribed into the registers for the current year and a summary entry is made on the date of the registers in which they were destroyed or damaged.

### Administrative Reconstitution

26. (1) In the event of war or a natural disaster, and notwithstanding the provisions of Article 23 above, death certificates may be reconstituted through administrative procedures. The same shall apply to births and marriages which took place in occupied territory.

Although this law was passed with a view to reconstituting records destroyed during the war its provisions are have been applied in particular to the destruction war; on the other hand, and the scope of the aforementioned provision is extended to include destruction caused by a "disaster"; the theft or accidental disappearance of one or more registers.

In order to effect the reconstitution, the senior divisional officer shall order the civil status registrar to prepare certificates for persons whose deaths are not subject to question.

Such administrative order shall be entered as marginal notes on each certificate issued by the civil status registrar.

Where a death or birth has been reconstituted through administrative procedure, the certificate drawn up may be cancelled only by judgment following and application by any person concerned<sup>[11]</sup>.

### Conclusion

Article 19 (new) provides that in all cases where a civil status fact is to be recorded in the margin of an act already registered, it is made ex officio, or at the request of the most diligent party.

The civil registrar who drew up or transcribed the act giving rise to the mention, shall without delay enter this entry in the registers held by him and shall send an extract for the same purpose to the clerk of the territorially competent court of first instance and to the registry office of the competent court of first instance and to the national registry office.

If the record on the margin of which the entry is to be made has been drawn up or transcribed in another registry office, notice is sent within fifteen days to the registry office of as well as to the national registry office.

Any entry made in the margin of a record drawn up in a secondary civil status center secondary registry office must be communicated, within fifteen days, to the main registry office as well as to the national registry office.

All entries in the margin must be approved by the signature of the competent civil registrar.

The rectification or reconstitution of a civil status certificate or judgment may be challenged by a third parties. The study concludes that rectification and reconstitution are twin remedies to correcting or reestablishing civil status documents that contains errors or those that are damages by war or natural disaster. Under conditions laid down by law. In either case the remedy could be administrative or judicial. Findings reveals that because the unnecessary complexity and the porous nature in the procedures of effecting rectification and reconstitution most victims prefer to do an entirely new document as though such never existed.

### Recommendations

It is therefore recommended that the executive should pass a decree that makes the procedures for rectification and reconstitution simplified and less cumbersome and also the Computerization of the National System of Civil Registration program developed before should be speed up.

We are therefore calling on the courts and the competent administrators (Magistrates and Registrars) to strictly implement the Laws in force on civil status registration. For instance, they should ensure that all the required documents have been produced such as marriage certificates and a delivery certificate before establishing a birth certificate or a declaratory judgment, and to ensure that the birth certificates or declaratory judgment is within their jurisdiction as per Article 30 of the Law, to ease investigation. Today, a proper investigation still remains a dream because; the provisions of Article 30 which states that, a birth shall be declared to the civil status registrar of the place of birth within 60 days following such birth, are never respected.

Furthermore, where a child has been recognized, legitimized or adopted, these facts should be inscribed as marginal notes on the birth certificate, mentioning the court's decision or marriage certificate which has empowered them to do so. See Article 41(3) Court judgments on recognition, legitimation and adoption shall be inscribed as marginal notes on the birth certificates.

In all cases, applicants should be given reasonable opportunity to cross-check every civil status document drawn for them.

As earlier mentioned, a person's birth certificate should speak for itself, because it has its bearing and gives rise to legal implications on paternity, maintenance, nationality, and inheritance etc.

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