

REQUIREMENTS FOR LEGITIMATION OF CHILDREN  
BORN OUT OF WEDLOCK IN TOGO

Provisions controlling the requirements for the legitimation of children born out of wedlock are contained in the Civil Code of Togo which provides for two forms of legitimation: (1) by subsequent marriage, or (2) by a judgment rendered in open court, after the marriage.

The Togolese Civil Code was introduced by France and rendered applicable in Togo by Decree of May 22, 1924 when that territory was a League of Nations mandate placed under French administration. The latest consolidated version of that civil code dates back to 1951<sup>1/</sup> when Togo was still a member of the French Union. Other amendments rendered applicable in Togo are included in French sources quoted below.

The text of the Civil Code of Togo, as amended, governing the legitimation of natural children reads as follows:

Art. 331. (Law of April 23, 1924 rendered applicable in Togo by Decree of May 24, 1929 and promulgated by Order No. 379 of July 13, 1929) <sup>2/</sup>

Children born out of wedlock, other than those born of adulterous intercourse, are legitimated by the subsequent marriage of their father and mother, if they have also acknowledged them before their marriage or if they acknowledged them at the time of its celebration. In the latter case, the Civil Status officer who officiates the marriage establishes the acknowledgment and legitimation by a separate legal document. <sup>3/</sup>

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<sup>1/</sup> Camerlynck, G. H. (Comp.), Code Civil de l'Union Française, Paris, 1951, pp. 23, 62-63.

<sup>2/</sup> Journal Officiel du Territoire du Togo Placé Sous le Mandat de la France, No. 138, Aug. 1, 1929, p. 493.

<sup>3/</sup> Camerlynck, G. H., supra, p. 63.

Art. 331, para. 3. (Law No. 56-656 of July 5, 1956 rendered applicable in Togo by Decree No. 57-542 of April 29, 1957 and promulgated by Order No. 39-57 of May 10, 1957) <sup>4/</sup>

If the children referred to in the present article have been acknowledged by both their parents, or by one of them after the marriage, such acknowledgment shall not imply legitimation except by a judgment in open court, preceded by an inquiry and arguments in Chambers, whereby the judgment must establish that the child has had "possession of the status" of their common child since the celebration of their marriage.

Every legitimation shall be entered in the margin of the record of birth of the legitimated child.

This entry shall be made at the request of the Civil Status officer who shall officiate the marriage if he knows of the existence of children, otherwise at the request of any interested party. <sup>5/</sup>

The pertinent text controlling the acknowledgment of natural children is contained in the following articles: <sup>6/</sup>

Art. 334. The acknowledgment of natural children shall be made through an official document if it has not been made in their record of birth.

Art. 335. Such acknowledgment can not be made in favor of children born of incestuous or adulterous intercourse (Law of December 30, 1915), the provisions of Article 331 notwithstanding.

Art. 336. Acknowledgment by the father, without indicating who the mother is and without her consent, binds only the father.

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<sup>4/</sup> Tables du Journal Officiel de la République du Togo, 1957,  
pp. 14 & 43.

<sup>5/</sup> Dalloz, Code Civil, 49 ed., Paris, 1960, pp. 178-179.

<sup>6/</sup> Camerlynck, G. H., supra, p. 63.

Art. 337. An acknowledgment by one of the spouses during the marriage, made in favor of a natural child which one of them had by a different person prior to their marriage, cannot affect the rights of the other spouse nor those of the children of that marriage.

Proof of filiation and kinship required in cases involving legitimation after marriage by a judgment rendered in open court is controlled by the following text, <sup>7/</sup> and in particular, Article 321.

Art. 319. The filiation of children shall be proven by birth records entered in the Civil Status registers.

Art. 320. In the absence of such a record, the constant possession of the status of a legitimate child shall be sufficient.

Art. 321. The possession of such a status shall be established by a preponderance of sufficient facts indicating the relationship of filiation and kinship between the individual and the family to which he claims to belong.

The essentials of these facts are:

That the individual has always borne the name of the father to whom he claims to belong;

That the father has treated him as his child, and in this capacity has provided for his education, maintenance and establishment in life;

That the child has always been considered as such in society;

That the child has been acknowledged as such by the family.

Art. 322. No one can claim a status contrary to the one which his birth record and the possession of a status in conformity with his record of birth, gives him.

And reciprocally, no one can contest the status of a person who has possession of a status which is in conformity with his record of birth.

Art. 323. In the absence of a record or the constant possession of a status of a legitimate child, or if the

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<sup>7/</sup> Camerlynck, G. H., supra, p. 62.

child has been registered under false names, or if he was born of an unknown father or mother, proof of filiation may be made by witnesses.

Nevertheless, such proof is only admissible if there is some initial documentary evidence or if the presumptions and indications resulting from constant facts since then are sufficiently serious to determine the admissibility of such evidence.

Art. 324. Initial documentary evidence consists of family deeds, records and private papers of the father or the mother, official and even private documents emanating from a party engaged in the contestation of acknowledgment, or who would have an interest therein, if alive.

Art. 325. Proof to the contrary may be made by all means which are proper to establish that the claimant is not the child of the mother whom he pretends to have, or even if the maternity has been proven, that he is not the child of the mother's husband.

Art. 326. The civil tribunals shall have exclusive jurisdiction to decide claims of "status families".

Provisions relating to the name of natural children are contained in Law No. 52-899 of July 25, 1952 rendered applicable in Togo by Decree No. 54-966 of September 18, 1954 and promulgated by Order No. 917-54 of October 5, 1954.<sup>8/</sup> The pertinent text reads as follows:

Art. 1. The natural child shall bear the name of the parent to whom his filiation has been established first.

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<sup>8/</sup> Journal Officiel du Territoire du Togo, No. 833, Oct. 16, 1954, pp. 886-887.



If it has been established with both parents, the child shall bear the name of the father.

Art. 2. If the filiation has been established with the father in the second place, the natural child may be authorized by the court to take the name of the second person by adding to, or substituting for it the father's name.

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