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FOREWORD

Volume 8 of the AFRICAN LAW STUDY LIBRARY is a continuation of previous seminars: The articles in this volume were developed as part of the third seminar in the University of Lubumbashi. As regards the Judicial Council,Jean-Marc P. MUTONWA KALOMBE presents an analytical reading of this body whose mandate is to manage the affairs of the judiciary in the DRC.

Due persistent differences in some legal texts, the author proposes for comprehensive legal reform to be initiated by the Congolese legislators in order to make the judiciary truly independent from a democratic perspective without which, it will take longer for the rule of law to take root in the Democratic Republic of Congo.

According to Clement MUFUNDJI TSHINA-T-KARLE, regionalism policy as established by understatement of federalism in the Constitution of February 18, 2006 in the Democratic Republic of Congo is far from being accepted by the leaders in the existing institutions. Political leaders show certain inertia: their actions are still all with a centralizing vision, visible on the unconstitutionality of legal documents they issue but also from the non-implementation of some of these provisions.

This is about successful examples of: supervisory control exercised by the national minister of the interior of the provinces, the Ministry of the existence of primary, secondary and vocational education at national level Non-application of the provision relating to withholding tax of 40% on revenue of a national character to the provinces, or the lack of actual installation of 15 new provinces.

As par the assistant Marcel KAPYA KABESA, he evokes the quintessence of conformity of the law on the free administration of the provinces in the Constitution as a critical issue whose outcome is the actual practice of decentralization in the DRC. Indeed, decentralization in the Constitution of February 18, 2006 is an ambiguous concept which blurred the shape of the state and political system that are worn by the clear intention of the settler to establish a secular democratic state, social and indivisible namely the DRC. In addition, the law on self-government of provinces reveals a consistent practice to which the Constituent has traced the way through Article 175 part 2 of the Constitution and further clarified in Art. 43 of the Law on the free administration of provinces.

However, these two provisions both statutory and constitutional state that „the finances of the central government and the provinces are distinct. They are withholding taxes from the provinces. „

From the foregoing, the Court finds that the withholding was never born, because of the concept to ambiguity meanders between „withholding and surrender" on the one hand, and to the other between „hierarchical control and supervisory control."

The head of Works Baldwin WIKHA TSHIBINDA dedicated his reflection on the Armed Forces of the Democratic Republic of Congo: organization, structure and legal basis in carrying out their task of defending the integrity of national territory and borders. They participate in the economic, social and cultural as well as the protection of persons and their property in peace time. The army plays an important role of deterrence as a way of preventing conflict between states.

The study shows the different phases through which the Congolese army has increased to reach the current structure. The desire is to see the army of the Democratic Republic of Congo become a professional army that knows the limits of its functions. It must avoid the interference in the political life of the nation to faithfully fulfill its mission. It must be Republican, non-political, serving the entire nation. The incompatibility between the elective and the position of the civil service or military must be strengthened to establish a true democracy in the Democratic Republic of Congo.

On his part, Mayembe Cyprien Mushonga, a PHD student retains a largely negative assessment of decentralized territorial entities in the city of Lubumbashi. Indeed, members of the legislative and executive bodies have never been elected, either at the town hall or at all seven municipalities currently in the city of Lubumbashi. This is a departure control system needed for effective decentralization, since decentralization is a connection between rulers and ruled.

Financial autonomy to be enjoyed any territorial entity in the context of decentralization has never been realized. No return of funds has been conducted monthly, with that; the mayor of the city of Lubumbashi should receive only 15% of its monthly revenue, 85% returning to the Central Bank of Congo (BCC) on behalf of central government. It is the same in both Ruashi and Lubumbashi that each receives only 10% of its monthly revenue. Decentralization aims at involving the development of basic management. However, no funds of its own and without proper rebates, decentralization can only lead to failure.

A standard becomes invalid if the effectiveness is totally or permanently absent. Thus, the Faculty of Law at the University of Lubumbashi including Professor Adalbert SANGO Mukalayi and Professor Kalala Ilunga MATTHIESEN researchers and doctoral students and assistants of the waiver, take the last few years in conjunction with the HAMANN HARTMUT Professor at the Free University Berlin, researching the right balance with the reality on the ground in order to contribute to the emergence of the rule of law.

With that, we thank the Rector of the University of Lubumbashi, for his availability in the context of this work and moral support necessary for the success of this work which, moreover, would not be possible without the financial and material support of Konrad Adenauer Foundation.

Adalbert Sango Mukalay **Hartmut Hamann** **Kalala Ilunga-Matthiesen**

ORGANIZATION, OPERATION AND COMPETENCES OF THE JUDICIAL COUNCIL IN DEMOCRATIC REPUBLIC OF CONGO

By Jean Marc MUTONWA KALOMBE Pacific*

INTRODUCTON

Under section 152 of the Constitution of the Democratic Republic of Congo of February 2006, the Superior Council of Magistracy is the management body of the judiciary[1]. Its organization, functioning and powers are determined by the Organic Law No. 08/013 of 5 August 2008 on the organization and functioning of the Superior Council of Magistracy[2].

The importance of this law shall in particular be that under the constitution of, 2006 the judiciary is independent of the legislature and the executive[3]. This proclamation is a constitutional guarantee of separation of powers, fundamental principle in a democratic society[4].

This independence is subject to the constitutional mechanisms that serve as a counterbalance to the exercise of each power and its implementation is ensured by the Superior Council of Magistracy. This ensures, as mentioned above, managing the careers of judges and has, to this end, the powers of proposal for appointment, promotion, resignation, retirement, removal and rehabilitation of the judiciary. It also exercises disciplinary authority.

However, the President of the Republic and Head of State, is and remains the sole authority for the appointment, promotion, retirement, removal and restoration of all judges upon the recommendation of the Superior Council of Magistracy. To this end, he may comment on the proposals he receives[5].

This article intends to discuss the judiciary in the DRC (I), organization and skills (II), structures and operation (III) of the Superior Council of Magistrates in respect of which there are questions again (IV). However, and rather than make a comment block diagram of the organic law on the organization and operation of the Council, it seems useful to conduct as much as possible, a critical analysis in order to set ourselves on the effectiveness, the effectiveness and efficiency of the action in the skills of the body.

*Assistant at the University of Lubumbashi

1 Article 152 of the Constitution of the Republic of Congo, 18 February 2006, Official Journal of the DRC, Office of the President of the Republic, the 47th year Kinshasa, February 18, 2006, Special Issue.

2 Organic Law No. 08/013 of 5 August 2008 on the organization and operation of the Higher Judicial Council, Official Journal of the DRC, the Office of the President of the Republic, Kinshasa 11 August 2008, Special Issue.

3 See Article 149 of the Constitution of February 18, 2006, Op. cit.

4 Principles of democracy generally concerning:
- A civic equality
- A separation of powers
- At the political pluralism

5 Extract from the Explanatory Memorandum of the Organic Law No. 08/013 of 5 August 2008 on the organization and functioning of the Council of the Judiciary, Op. cit.

I. The judiciary in the DRC

The Constitution of the Democratic Republic of Congo of 2006 reaffirms the independence of the judiciary whose members are managed by the Higher Judicial Council now composed of judges only. Under section 150 of the Constitution, an organic law on the status of the judiciary as to ensure the independence of the judiciary including the President of the Republic is the guarantor; is a cardinal principle mentioned in the last paragraphs of this article which states that "judges are appointed for life." That is why the judges, who are not officials, enjoy a special status due to the Organic Law No. 06/020 of 10 October 2006 on the status of judges which specifies the conditions for the implementation of this guarantee a truly independent judiciary[6].

For efficiency, specialty and rapid processing of cases, the Courts have been split into three judicial orders:

- The courts of the judiciary under the control of the Court of Cassation;
- Those of administrative capped by the State Council, and
- The Constitutional Court[7].

The judicial power thus defined is the subject of articles 149 and following of the Constitution referred to above. Under Article 149, the judiciary is independent of the legislature and the executive. The judicial power is vested in the following courts and tribunals the Constitutional Court, the Court of Cassation, the Council of State, the High Military Court, the courts and military prosecutors as well as attached to these courts.

Thus the judiciary has a budget prepared by the Council of the Judiciary and sent to the Government for inclusion in the general budget of the state. The First President of the Court of Cassation is the authorizing officer. He is assisted by the Permanent Secretariat of the Council of the Judiciary.

To the extent that sovereignty belongs to the people and that all power emanates from the people who exercise it directly through a referendum or elections and indirectly through their representatives[8], justice is also made throughout the country on behalf the people[9]. However, and because of the political regime characteristic of the management of power in the DRC, the decisions and judgments and orders of courts and tribunals are run on behalf of President of the Republic[10].

The judiciary makes the basis of its independence from this that in the exercise of its mission is the guarantor of individual freedoms and fundamental rights of citizens in accordance with Article 150 of the Constitution of 2006. Based on this fact, judges are subject, in the exercise of their function, as the rule of law then an organic law determines the status of judges[11].

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6 One can read in the preamble of the Organic Law that "the current status of magistrates set by the Ordinance-Law No. 88/056 of 29 September 1988 no longer fits the spirit and the constitutional order New proclaiming the independence of the judiciary vis-à-vis the legislative and executive powers. In accordance with Article 150 of the Constitution, it was essential to develop a new organic statute for the wishes of the constituent meeting. "

7 Extract from the preamble of the Constitution of February 18, 2006

8 Article 5 of the Constitution of February 18, 2006

9 Article 149 of the Constitution of February 18, 2006

10 Article 149 of the Constitution of February 18, 2006. It seems rather contradictory that the spoken justice is rendered on behalf of the President of the Republic so that justice is done for the people.

11 In this case it is the Organic Law No. 06/020 of 10 October 2006 on the status of judges.

As members of the judiciary find their constitutionally guaranteed independence within the meaning of Article 150 of the constitution that magistrate's position is irremovable. He cannot be moved by a new appointment or at the request or driven rotation decided by the Supreme Judicial Council.

However, it is worth noting that "the principle of tenure of judges is not absolute, it does not preclude disciplinary action being taken against a judge in compliance with the guarantees of the Constitution and the Organic Law. It may consist in particular of moving stations, compulsory retirement or dismissal measure, that cannot therefore claim that the act who had appointed him to head the judicial office should continue to have effect when he was the subject of a sanction of dismissal imposed by the Council of the Judiciary acting as a disciplinary body for judges, followed by a decree the radiant, as a result, executives of the judiciary, thus the plea alleging infringement of the principle of tenure of judges could not obviously be welcomed[12]. "

It should be noted here the nuance has wanted to bring the component on the distinction between judges and fellow prosecutors concerning the principle of judicial independence.

Indeed, it is logical to ask whether, contrary to the sitting judge specifically cited the 2006 Constitution, the public prosecutor or prosecution would also be removable?

It is precisely here that CONTE Philippe and Patrick Maistre of CHAMBON noted that the organization of prosecutors is adapted to its function.

These authors provide information that the various prosecutors have no independent existence: they are based in the unit of prosecution and are otherwise subject to a special status[13].

With regard to the unity of the prosecution, it is obtained by the combined effect of the indivisibility of its members and their hierarchical subordination, or unity in the representation and management in accordance with the terms of MM. MERLE and VITU[14].

Indivisible, the various members of the same floor are in the sense that, all representing the same interest, they are interchangeable: the prosecution "has a head and many arms." So they can replace each other in a trial stage of the prosecution, the investigation as the trial (the representative of the prosecution may change), while judges, however, must be involved in all discussions of a case. But, despite the indivisibility, the case law considers that the Director of Public Prosecutions, subsequently appointed to the seat, may validly meet if it has not participated directly or indirectly to the continuation of the case considered[15].

As for the hierarchical subordination of the prosecution, it is important to remember that the organization of it is pyramidal, to ensure the dissemination of information, the judges however, and depend only on their conscience.

At the top of the hierarchy, is the Minister of Justice, who, if not for the prosecution, has authority over its members and has the power of issuing injunctions. This follows in

[12] Cases & CSM, Council of State decision in litigation, No. 294,971, Mr. X, Order of July 10, 2006, French Republic, on behalf of the French nation.
[13] CONTE Philippe and Patrick Maistre du Chambon, Criminal Procedure, Paris, Masson / Armand Colin, New, 1995 p. 89
[14] MM. Merle and Vitu, T.2, No. 185, quoted by Philippe Conte and Patrick Maistre du Chambon, Op. cit., p. 89
[15] Crim. December 17 1964, JCP1965, 14042, note Combaldieu

particular the provisions of the Ordinance-Law No. 82-020 of 31 March 1982 on the Code of Organization and jurisdiction[16] of courts in which Article 10 states that "public prosecutors are under the authority of State Commissioner for Justice." That reinforces the provisions of Section 12 of the text according to which "the Attorney General of the Republic has the the functions of prosecution, including public policy.

"He may, however, on the orders of the Commissioner of State for Justice, initiate or continue any pre-trial on the unlawful acts that do not show the jurisdiction of the Supreme Court.

"He may also, on the orders of the Commissioner of State for Justice, or office mandated to perform same duties, order the Attorney General, at the Court of Appeal and the Court of State Security.

"Similarly, the Attorney General of the Republic may, on the order of the Commissioner of State for Justice, require public action and support to all courts at all levels[17]."

One can only deplore the persistent discrepancy between the clear provisions of the Act mentioned above and the wording of Article 151 of the constitution of 2006 which states that "the executive cannot give order to the judge in the exercise its jurisdiction or rule on disputes or obstruction of justice or oppose the execution of a court order.

"The Legislature cannot decide on jurisdictional disputes, or modify a court or opposing its enforceability.

"Any law which aims to provide a clear solution to an ongoing trial is null and void[18]."

The direct consequence of this philosophy led Economic Order - Law above is simply that the executive can print a general point of view, the mark of its policy through circulars and in particular direct the Attorney General of the Republic, as the Generals at the courts of appeal, the institution of proceedings, such and such other submissions in a given case. This goes against the very principle of judicial independence, a guarantee of democracy. This is all the more so that the powers granted to the Minister of Justice in his duties extended, albeit indirectly, to prosecutors, through the Attorney General, has authority over all officers' prosecution under the jurisdiction of their courts and have the same powers as the minister does to them[19]. The prosecutors, in turn, have authority over their substitutes and the public prosecutors[20].

Note however that certain limits, be they minor, just to relax as a result of hierarchical subordination of public prosecutors. And indeed, the Attorney General and the prosecutor, as heads of their respective levels, enjoy a power of its own: they are competent to perform the acts of their function, so that even if they do not comply with the instructions, their

[16] Official Journal of Zaire No. 7 1 April 1982, p. 39

[17] Note that since the end of the mono partism in April 1990, the term "Commissioner of State" has been replaced by "Minister", title given to members of the executive.

[18] One can establish a strong parallel between the provisions of the Code of Organization and judicial powers in 1982 with those of Article 5 of Ordinance No. 58-1270 of December 22, 1958, in France, is organizing the Guard Minister of Justice has direct authority over the Attorney General at the Court of Cassation and the Generals at the courts of appeal (Article 6 of the French Code of Criminal Procedure).

[19] Article 13 of the Code of Organisation and judicial powers according to which "almost every Court of Appeal, shall be an attorney general. The exercise of public action in all its fullness and in front all courts within its jurisdiction belongs to the Public Prosecutor at the Court of Appeal. The Public Prosecutor at the Court of Appeal shall, under the authority of the State Commissioner for Justice, the functions of Public Prosecutor nearly all courts established within the jurisdiction of the Court of Appeal. "

[20] We will return below to the nature of the relationship may exist between the Minister having Justice in his duties and the Council of the Judiciary.

superiors cannot substitute for them to make decisions for them and, therefore, acts done in violation of orders by a floor leader are not less valid[21].

At the same level, hierarchical subordination is more rigid: if, for example, a substitute is rebellious to the instructions, the prosecutor may withdraw his delegation and appoint another substitute or take the matter personally. But even then, it operates on the principle that "the pen is used but the word is free." This freedom, which is a rule written in French procedural law[22], not a simple adage, guarantees the independence of speech common to all members of the prosecution of any kind: they may, orally, to know that their personal opinion is that they have, in obedience, developed writing and no sanction can be applied to them for this attitude (although the history and practice shows that their progress may suffer)[23].

Moreover, although under the authority of the Minister of Justice in his duties, the Crown is not less independent in the sense that, subject to hierarchical subordination, the prosecution is free to decide, without any account its decisions.

This is particularly so only informed of an offense, the prosecutor discretion regarding whether or not to continue, under the principle of prosecutorial discretion[24]. This freedom extends to the stage for prosecutions: it is the sole judge of how to conduct the prosecution and may, in particular, return to his submissions requesting the release of the accused or by invoking the irregularity procedure: this could be the basis of the principle that "the minister educated at public prosecution and defense."

As a result, the Crown is independent with respect to the judges as private parties.

This reflection on the independence of the judiciary in the DRC is of particular importance on the understanding that we will, thereafter, to judge the very independence of the Supreme Council of Magistracy, a body whose individual members are the prosecution.

To conclude this point, the judiciary in the DRC has in its structure, the courts composed of civilian and military under the control of the Court of Cassation (Article 153 of the Constitution)[25], the administrative courts comprising of the State Council and of the courts and tribunals (Article 154 of the Constitution)[26]. The military courts preside over offenses

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[21] CONTE Philippe and Patrick Maistre du Chambon, Op. cit., p. 90

[22] Article 33 of the French Code of Criminal Procedure

[23] CONTE Philippe and Patrick Maistre of the Chambon, Op. cit., p. 90

[24] It should be noted here that procedural law, the law enforcement systems must take sides between two principles: the rule of law and of the opportunity. This choice determines all criminal matters, substantive (mandatory or discretionary offenses and penalties) and on the procedure (mandatory or discretionary prosecution). If the rule of law must necessarily opt for the principle of mandatory criminal, however, their policies do not exclude the rules of prosecutorial discretion, which may appear as an element of flexibility to mitigate procedural phase, the first rigidity.

[25] Under the terms of Rule 153 under the conditions set by the Constitution and laws of the Republic, the Supreme Court knows the first and last instance of the offenses committed by:
- Members of the National Assembly and Senate;
- Members of the Government other than the Prime Minister;
- Members of the Constitutional Court;
- The judges of the Supreme Court and this Court by the prosecution;
- Members of the Council of State and members of the Public Prosecutor at the Council;
- Members of the Court of Auditors and prosecutors about the Court;
- The first Presidents of Courts of Appeal and the Attorneys General around the course;
- The former Presidents of the Administrative Courts of Appeal and prosecutors about these courses;
- Governors, Vice-provincial governors and provincial ministers;
- The Presidents of the Provincial Assemblies.

[26] Within the meaning of section 155 of the constitution of 2006 without prejudice to other powers conferred upon it by the Constitution or law, the Council of State has first and last resort for any violations of the law against acts, regulations and decisions of central administrative authorities. It hears appeals of appeals against decisions of the Administrative Courts of Appeal. He knows, in cases where there are no other courts, of claims relating to the outstanding compensation for damage, material or moral resulting from action taken or ordered by the authorities of the Republic. He shall rule in equity, taking into account all the

committed by members of the Armed Forces and National Police. In times of war or when martial law or emergency is declared, the President of the Republic, by a deliberate decision by the Cabinet, may suspend all or part of the Republic and for the duration and the offenses that it fixed the repressive action of courts of common law in favor of the military courts. However, the right of appeal may not be suspended as provided by Article 156 of the Constitution of 2006.

Also the combined reading of Articles 158 and following of the constitution, there is a Constitutional Court comprising of nine members appointed by the President of the Republic, including three on his own initiative, three nominated by House of Congress and three appointed by the Council of the Judiciary. Two-thirds of the members of the Constitutional Court must be lawyers from the bench, the bar or academia.

It is responsible for monitoring the constitutionality of laws and acts with force of law while the organic laws, before promulgation, and internal rules of parliamentary chambers and the Congress, the Independent National Electoral Commission and the Superior Council of Audiovisual and communication prior to implementation, must be submitted to the jurisdiction of the court for a ruling on their conformity with the Constitution.

The same for review of constitutionality, the law may be referred to the Constitutional Court before their promulgation by the President of the Republic, the Prime Minister, and the President of the National Assembly, the President of the Senate or a tenth of members of parliament or senators.

The Constitutional Court must rule within a month. However, at the request of the Government, if there is urgency, this period may be reduced to eight days[27].

Under the provisions of Article 161 of the Constitution of 2006, the Constitutional Court hears appeals in interpreting the Constitution referred by the President of the Republic, the Government, the President of the Senate, the President of the National Assembly, one-tenth of the members of each chamber of parliament, provincial governors and presidents of provincial assemblies. It presides over disputes from presidential and legislative elections and the referendum. Also jurisdictional disputes between the executive and the legislature and between the State and the Provinces.

It hears appeals against judgments of the Court of Cassation and the Council of State, just as they decide on the allocation of the dispute to the courts of the judicial or administrative. The action shall be admissible only if a jurisdictional objection was raised by or before the Court of Cassation or Council of State.

Moreover, the Constitutional Court shall decide the objection of unconstitutionality raised before or by a court. Any person may petition the Constitutional Court as unconstitutional any law or regulation. He can also address the Constitutional Court by the procedure except for the unconstitutionality invoked in a case which concerns the court. The Constitutional Court may stay the case and take over all other cases[28].

Finally, the Constitutional Court has the criminal jurisdiction as relates to the Head of State and the Prime Minister in the cases and conditions stipulated in the Constitution. It is the

circumstances of public or private interest.

[27] Article 160 of the Constitution of 2006

[28] Article 162 of the Constitution of 2006

criminal court for the President of the Republic and the Prime Minister for political crimes of high treason, in contempt of Parliament, attacks on the honor or integrity[29], as well as insider trading and for other common crimes committed in the course of or in connection with the performance of their duties. It is also competent to judge their co-authors and accomplices[30].

II. Organizational skills and the Superior Council of Magistrates in the Democratic Republic of Congo

a. The organization and powers of the Council of the Judiciary

In terms of organization of the Supreme Council of Magistracy, section 152 of the constitution states that it consists of:

- Chairman of the Constitutional Court;
- Public Prosecutor of the Constitutional Court;
- First President of the Court of Cassation;
- Attorney General at the Court of Cassation;
- First President of the State Council;
- Public Prosecutor of the State Council;
- First President of the High Military Court;
- The Auditor General to the High Military Court;
- First Presidents of Courts of Appeal;
- Prosecutors General of the Courts of Appeal;
- First Presidents of the Administrative Courts of Appeal;
- Generals at the Administrative Courts of Appeal;
- First Presidents of the military;
- Auditors senior military,
- Two trial judges by spring Court of Appeals, elected by all judges of the spring for a term of three years;
- Two prosecutors' spring of Court of Appeals, elected by all judges of the spring for a term of three years;
- A magistrate seat spring of Military Court;
- A magistrate for prosecution by military court jurisdiction.

"It drafts proposals for appointment, promotion and dismissal of judges. It exercises disciplinary authority over judges. It provides advice for clemency."

"An organic law determines the organization and functioning of the Council of the Judiciary."

It is therefore under this constitutional provision that the Organic Law No. 08/013 of 5 August 2008 on the organization and functioning of the Council of the Judiciary was adopted and promulgated. It contains forty-eight articles divided into four articulated as follows:

[29] Under section 165 of the Constitution of 2006 and without prejudice to other provisions of this Constitution, there is high treason when the President of the Republic has violated the Constitution or intentionally when he or the Prime Minister recognized authors, co -perpetrators or accomplices of serious and characterized the human rights, transfer of part of the country. There is damage to the honor or integrity especially when the personal conduct of the President of the Republic or the Prime Minister is immoral or that they are recognized authors, co-authors or accomplices of embezzlement, corruption or illicit enrichment. There are insider trading in the hands of the President of the Republic or the Prime Minister when making securities transactions or commodity for which he has inside information and he takes advantage before the information is known to the public. Insider trading involves the purchase or sale of shares based on information that would never be disclosed to shareholders. There is contempt of Parliament when issues raised by either House of Parliament on government activity, the Prime Minister has not replied within thirty days.

[30] Articles 163 and 164 of the Constitution of 2006

- Chapter I: General provisions.
- Chapter II: Organization and operation.
- Chapter III: Finance.
- Chapter IV: Transitional and Final Provisions.

This is the substance of this Organic Law.

Under Article 2 of the Act on the organization and functioning of the Supreme Council of the Judiciary it is the management body of the judiciary. It develops proposals for appointment, promotion, retirement, dismissal, resignation and rehabilitation of judges.

It exercises disciplinary authority over them and provides advice for clemency.

It decides the rotation of judges without prejudice to the principle of tenure, in accordance with Article 150 of the Constitution.

It means, in accordance with Article 158 of the Constitution, three members of the Constitutional Court.

It provides technical management of the judicial magistrate not made available. It makes its assessment and report to the Government. It prepares the budget of the judiciary.

As one can easily see, the Supreme Judicial Council is a constitutional body whose mission is defined by sections 149 and 152 of the Constitution of the Democratic Republic of Congo of 2006. It is the same in France where the Supreme Judicial Council is a constitutional body whose mission is defined by Article 64 of the Constitution of the French Republic of October 4, 1958 amended in this respect by the Constitutional Act of July 27 1993. Its composition is defined by Article 65 of this text.

It's the same in several other states like in Italy[31], Cameroon[32], Ivory Coast[33], or at most recently, in Burundi[34], the Superior Council of Magistracy ranks among the agencies Republicans constitutionally enshrined.

It remains that despite this remarkable Constitutional progress , the institution of the Supreme Judicial Council does not always mean that the judicial systems of the states mentioned above, as in many others, among them the Democratic Republic Congo, justice is truly independent and that, unfortunately, unlike the same democratic principles of republican values bearing characteristics of genuine rule of law[35]. To see this, comparative

[31] The Supreme Council of the Judiciary of Italy is called in Italian: Consiglio Superiore della Magistratura

[32] Paragraph 2 of Article 37 of the Cameroonian Constitution provides in part that judges shall, in their judicial role that the law and their conscience. Guarantor of the independence of the judiciary, the President of the Republic appoints the judges. In this mission, he is assisted by the Higher Judicial Council which advises on proposed appointments and disciplinary sanctions on judges.

[33] The Council of the Judiciary in the Ivory Coast falls within the provisions of Article 104 of the Constitution of this country. Cf Act No 2000-513 of 1 August 2000 Constitution of the Republic of Côte d'Ivoire, Official Gazette of the Republic of Côte d'Ivoire, No. 30, Abidjan, Thursday, August 3, 2000, p. 529-538

[34] Sections 170 and 175 of the Constitution of Transition in Burundi establish the Council of the Judiciary, whose role is purely advisory

[35] It should be remembered that a rule of law, lacto sense, is, in simple terms, a concept referring to any State which applies to ensure respect for civil liberties, that is to say, respect for human rights and fundamental freedoms, the establishment of legal protection. As a rule of law, the political authorities themselves are subject to the rule of law. The rule of law is then defined, at least in its first consideration as a state that required legal limits in its relations with its citizens regarding their individual status. Thus, the requirements for citizens should they proceed in a formal law, not the will of the monarch. Today, the meaning of rule of law tends to refer more to a state guarantee, through its legal and constitutional system, the individual rights of its citizens against arbitrary power. In its current definition, therefore dissociates from the democracies on one side, similar to state law and, on the other totalitarian states who deny basic civil liberties. The rule of law is, Leo suggests KYENGO wa Dondo, a state in which all citizens enjoy real and full rights, not as a gift or favor, but a fee payable because they are women and men in nature. It also specifies that if the rule of law is defined mainly by the fact to guarantee

analysis of the composition and functioning of the Superior Council of Magistracy is very critical.

b. The organization of the Superior Council of Magistracy

Democratic Republic of Congo, the organization and operation of the Higher Judicial Council are prescribed in Chapter II of the Organic Law No. 08/013 of 5 August 2008 on the organization and functioning of the Council of the Judiciary.

We will analyze and what was the Council of the Judiciary before the Constitution of 18 February 2006, the advent of this and what it is after its review in January 2011.

b.1. Council of the Judiciary under the Ordinance No. 87-394 of 18 December 1987

Ordinance No. 87-394 of 18 December 1987 on the Superior Council of Magistracy is the legal organization and functioning of the institution prior to the implementation of Law in 2008.

This order whose foundations were in section 45 of the revised constitution of 1967, the law no86-006 of 23 November 1986 on the organization and functioning of the judiciary, especially in its Articles 10 and 11 and Order No. 87-215 23 June 1987 establishing the General Inspectorate of Services of the Judicial Council.

The ordinance of 1987 is thus presented as contrary to the Act of 2008, a very brief text, in that it consists only of some 13 articles, taking only what can be called essential rules and essential to the organic-functional structure of the Council of the Judiciary in the Democratic Republic of Congo, then Zaire.

This text contains five chapters and is presented as follows:

- Chapter I: awards;
- Chapter II: composition;
- Chapter III: operation;
- Chapter IV: procedure and
- Chapter V: Final provisions.

So Article 1, which also constitutes the whole of Chapter I, which defines the powers of the Council of the Judiciary. Under it, "the Supreme Council of Magistrates shall exercise disciplinary authority of the judiciary as the headquarters of the prosecution and develop proposals for the appointment and promotion of magistrates."

It is therefore not surprising to realize the narrowness of the "responsibilities" of the body which, rather than management of the judiciary, are reduced to one dimension with regard to disciplinary and consultative appointment and promotion of judges.

This is the real consequence management of the judiciary within the jurisdiction of this body called a typical "Judicial Council" with the organization and operation were the subject of law no86-006 of 23 November 1986. The particularity of this Council was from this that

all citizens the enjoyment of their rights, the fact remains that these rights are likely to progress in their recognition. The rule of law itself is, as well as in the case of the DRC, which may progress. Cfr Kengo wa Dondo, L., Leadership in the rule of law, in Congo-Africa, No. 430, December 2008, pp.799-800.

members of other institutions, including the executive, were also, unlike the very principle of the independence of the judiciary. So why are explained in the Code of Organization and Jurisdiction that we have already mentioned, which were then-Minister of State Commissioner, having Justice in his duties, the supervisor, In many ways, the judiciary.

On the composition of the Supreme Council of Magistrates, Articles 2 and 3 of the above Ordinance, 1987 have amongst other things that, sitting as a disciplinary jurisdiction, it is composed of three members.

When the magistrate continued is coated with an equal or higher rank than the Chief Justice of the President of the Court of Appeal or the Court of State Security[36], or Attorney General, it is composed President of the Judicial Council or its successor, the First President of the Court of Appeal or the Court of State Security and the Attorney General at these courts[37].

Where the President of the Supreme Court or the First Advocate General of the Republic, the First President of the Court of Appeal or the Court of State Security or the Attorney General at such courts is put concerned, the Council of the Judiciary is composed of the President of the Judicial Council or his deputy and the first President of the Supreme Court of Justice and Attorney General of the Republic[38].

And where the First President of the Supreme Court of Justice or the Attorney General of the Republic that is implicated, the Higher Judicial Council is composed of the Chairman of the Judicial Council, or his deputy and other officers of Judicial Council.

Reading of this provision can logically ask whether the First President of the Supreme Court could be the President of the Judicial Council on the one hand and on the other hand, if the Chairman of the Judicial Council could be a magistrate as no provision explicitly applies disciplinary against him in connection with the powers of the Supreme Council of Magistracy.

But when it sits as an advisory body for proposed appointment and promotion of judges, the Superior Council of Magistracy shall, in accordance with Article 3 of the Order, consisting of the Chairman of the Judicial Council, other members of the Office of the Judicial Council, the Presidents of the Supreme Court, the First Advocate General of the Republic, the First Presidents of Courts of Appeal, the First President of the Court of State Security, the Generals at the Court of Appeal and the Attorney General at the Security Court.

As regards the functioning of this Council of the Judiciary, it is, pursuant to Article 4, chaired by the Chairman of the Judicial Council or his deputy and seat properly in any place of the Republic. It is convened by its President, notices are sent two weeks before the meeting and the place and the agenda of the meeting.

It has to do a Permanent Secretariat that the instability arises because the organization and functioning are determined by the Chairman of the Judicial Council in accordance with Article 5.

Articles 7-11 specify the procedure in disciplinary matters and in an advisory capacity. As the deliberations do they do that if two thirds of the members are present and when, in the

[36] That court ceased to exist.
[37] Article 2 para. 2 of Ordinance No. 87-394 of 18 December 1987
[38] Article 2 para. 3, Op. cit.

case of proposed promotion, the number of candidates is higher than that of vacancies, the Higher Judicial Council draws up a list called "waiting" Magistrates unsuccessful, which is considered a priority in the following promotions.

As for the procedure and skills in the strict sense of the Higher Judicial Council, are those provided by the provisions of the Statute of Magistrates on the disciplinary system. This statue, under Article 11, first and last resort.

Finally, note that the order of 18 December 1987 had repealed the No. 83-127, May 23, 1983 on the organization and functioning of the Council of the Judiciary in the Republic of Zaire before being it repealed by Act 5 of no08/013 August 2008.

b.2. Council of the Judiciary in the Democratic Republic of Congo

That first article 4 of this text that recalls the composition of the Supreme Council and that in accordance with Article 152 paragraph 2 of the Constitution of 18 February 2006 referendum wording above. In this regard certain considerations are retained.

Indeed, found in the composition of the Supreme Council of Magistracy, and the highest peak of this structure, the President of the Constitutional Court and the Prosecutor General of the Constitutional Court, Prosecutor General of the Constitutional Court, Prime President of the Supreme Court and the Attorney General at the Court of Cassation, the First President of the State Council and the Public Prosecutor of the State Council as the first presidents of the Administrative Courts of Appeal and the Attorneys General by the Administrative Courts of Appeal.

We know, moreover, that neither the Constitutional Court or the Supreme Court nor the State Council, let alone the Administrative Courts of Appeal are only set of installation being constitutionally provided[39]. As a result, and pursuant to the transitional provisions of Articles 223 and 224 under which the Constitution provides that:

"Pending the installation of the Constitutional Court, the State Council and the Court of Cassation, the Supreme Court shall perform the duties they performed under the present Constitution. "Pending the installation of the administrative courts, the Courts of Appeal shall exercise the powers delegated to Administrative Courts of Appeal."

The most obvious result of this delay in the implementation of these constitutional provisions is clearly that the structure of the Superior Council of Magistrates is reduced, both in its composition, the President of the Supreme Court, the Prosecutor General of the Republic, the First President of the Supreme Military Court, the Auditor General to the High Military Court, the first presidents of the Courts of Appeal, the Attorneys General of the Courts of Appeal, the First Presidents of the military , the chief military prosecutor, two trial judges Spring Courts of Appeals are elected by all judges of the spring for a term of three years, two judges from prosecution by spring Court of Appeals elected by the all judges of the spring for a term of three years, a magistrate seat spring of military court and a magistrate for prosecution by military court jurisdiction.

Observe that are not represented in this structure: the judges of commercial courts and the

[39] Yet it is the organs of the judiciary under Article 149 of the Constitution of February 18, 2006.

courts to children[40].

Another observation is that in the Council of the Judiciary is there is only one formation which depends on both the judges and those of prosecutors. This is totally separate from the system adopted in France, as regards the Council of the Judiciary in which French co-exist two distinct formations.

b.3. The impact of Law No. 11/002 of 20 January 2011 amending certain articles of the constitution of the Democratic Republic of Congo on the organization and functioning of the Council of the Judiciary

The Constitution of the Democratic Republic of Congo from 18 February 2006 was nearly five years only to know its first review in January 2011. This revision is fundamental in that it also covers Article 149, the same one that defines the judicial power in our country. It carries a total of eight items and underlying purpose is defined in the preamble of the Act of 20 no11/002 janvier2011 revising some articles of the Constitution of the Democratic Republic of Congo.

In the opinion of the legislature and since with the entry into force of the Constitution, the functioning of central and provincial political institutions has shown concrete situations, constraints and problems not covered by the original constituent[41].

Indeed, he argues, on one hand, some provisions have proven inadequate and debilitating to the political and socio-economic of the Democratic Republic of Congo. On the other hand, unexpected malfunctions by the settler originally appeared in the institutional life of the Republic at the national and provincial levels[42].

As the Law of January 20 was above the stated purpose of giving adequate answers to the problems posed to ensure the proper functioning of the state and the young Congolese democracy.

Yet it is somewhat surprising that these specific situations, constraints and problems not covered by the original constituent and these provisions have proved inadequate for disabling and thus lead to unexpected malfunctions at the risk of said State and the young Congolese democracy is also found covered by Article 149 of the Constitution.

This last item now reads:

"The judiciary is independent of the legislature and the executive. It is vested in courts and tribunals are: the Constitutional Court, the Court of Cassation, the Council of State, the High Military Court, the courts and military. Justice is administered throughout the country on behalf of the people. The decisions and judgments and orders of courts and tribunals are run on behalf of President of the Republic. It cannot be created extraordinary or exceptional courts under any name whatsoever. The law may establish special courts. The judiciary has a budget prepared by the Council of the Judiciary and sent to the Government for inclusion in the general budget of the state. The First President of the Court of Cassation is the authorizing officer. He is assisted by the Permanent Secretariat of the

[40] They exist, however, by virtue of Law No. 002-2001 July 03, 2001 setting, organization and functioning of commercial courts. (JORDC., # 14, July 15, 2001, p. 4.) And the Act 09 / 001 10 January 2009 on the protection of children in Democratic Republic of Congo.

[41] Explanatory Memorandum to the Act of 20 no11/002 janvier2011 revising some articles of the Constitution of the Democratic Republic of Congo.

[42] Idem

Council of the Judiciary. "

So the last part of the second paragraph of that section has been removed. Indeed, in its an edited version that paragraph provided that the judicial power "*is vested in courts and tribunals are: the Constitutional Court, the Court of Cassation, the Council of State, the Military High Court, courts and civil courts and military and* ***public prosecutors attached to these courts.*** "[43]

It is therefore the questions of whether prosecutors remain part of the judiciary which is now exclusively composed of only courts and tribunals.

The legislator explained this by arguing that the amendment introduced in this section 149 involves the removal of the prosecution in the list of holders of the judiciary. It is devoted solely to the courts. This amendment brings into harmony with Article 149 Articles 150 and 151 which proclaimed the independence of the only sitting judge in his mission to state the law and its tenure[44].

Several consequences can be drawn from this review of Article 149, first and justify rather than any consistent set of some items, it abandons the prosecution without any details as to its nature: it becomes part of the executive a new structure whose nature remains to be defined? In all the legislature fails to specify it as voluntary. Between independence and remaining tenure there is still a gap and we have specified about it.

Then, the legislature does not seem to measure the importance of the implications of the amendment to certain other provisions, like those of Article 152 concerning the organization of the Superior Council of Magistrates, make certain public prosecutors of the Member management authority of the judiciary. Should we conclude that because under the prosecution, and because it no longer participates in the court, those judges of this nature should no longer be part of a management authority of a power which they are constitutionally excluded? Definitely, common sense would require clarification of law are made with the most urgent of all questions.

Finally, we may be able to rejoice that the paragraph in the bill to the aforementioned constitutional amendment was the Minister having Justice in his duties, the supervisor of Prosecutors was not selected in the adoption of the text in Parliament[45]. Should we consider the fight against the independence of prosecutors in particular and the judiciary in general as over? Only have to hope that reality will not catch up soon enough with the facts on the ground.

III. Structures and functioning of the Council of the Judiciary in the Democratic Republic of Congo

The structures of the Supreme Council of Magistracy shall, under Article 5 of the Organic Law on the following:

- The General Assembly,
- The Office
- Disciplinary rooms
- The Permanent Secretariat.

[43] Emphasis
[44] Explanatory Memorandum to the Act of 20 no11/002 janvier2011, Op. cit.,
[45] Article 149 paragraph 6 of the Bill amending certain sections of the Constitution of February 18, 2006 in Democratic Republic of Congo.

a. General Assembly

The General Assembly is the subject of Articles 6 to 13 of the Organic Law on the organization and functioning of the Superior Council of Magistracy.
The General Assembly is the organ of decision guidance of the Supreme Council of the Magistrate in matters within its jurisdiction. It is composed of the members listed in Article 4 and its decisions as a resolution necessary to the judiciary.

In exercising its powers, the General Assembly examine the files of magistrates for appointment, promotion resignation, retirement, dismissal and, where appropriate, rehabilitation[46]. Which corresponds to the spirit and letter of the Organic Law No. 06/020 of 10 October 2006 on the status of judges, Article 2 provides that "all recruitment is done at the initiative of the Supreme Council of the Judiciary and requires a prior publication by means of official notice in all capitals of provinces, with a deadline for the introduction of useful applications."

Other functions of this body are subject to sections 8 and following of the Organic Law No. 08013 of August 5, 2008 on the organization and functioning of the Superior Council of Magistracy. And under sections 10 and 11 of the Act the General Assembly meets in ordinary session once a year, the first Monday in April, convened by its President. The session length cannot exceed thirty days. It may be called special session by its President, on a specific agenda at the request or the Office, or two thirds of its members. For its part, Article 13 determines that the General Assembly shall be valid only when it meets at least two thirds of its members, and if so required quorum, the President shall convene a further meeting with the same agenda days within a week. In this case, the absolute majority is sufficient. Decisions are taken by absolute majority of members present.

b. Office

The organization and operation of the office of the Superior Council of Magistrates within the provisions of Articles 14-19 of the Organic Law on the Council. Therefore, it is composed in accordance with this Article 14 above, to:

1. President of Constitutional Court;
2. Attorney General at the Constitutional Court;
3. First President of the Court of Cassation;
4. Public Prosecutor at the Court of Cassation;
5. First President of the State Council,
6. Prosecutor General of the State Council;
7. First President of the High Military Court;
8. Auditor General at the Supreme Military Court.

It is Article 15 which specifies that the Board meets quarterly, convened by its President. It can hold extraordinary meetings on a specific agenda at the request of its Chairman acting on his own initiative or at the request of one third of its members. It may meet at any place of the national territory.

How it works, Article 16 provides information that the provisions of Article 11 shall apply mutatis mutandis to the operation of the Bureau.

[46] Article 7 of the Organic Law on the organization and functioning of the Council of the Judiciary

With regard to its functions, may be mentioned that the Office carries out the decisions and recommendations of the General Assembly. He submits to his deliberations, proposals for the organization and functioning of the judiciary. He shall prepare the draft of the Rules of the Superior Council of Magistracy. It prepares the draft budget of the judiciary. It means, among the professional judges, members of the Council of the Judiciary, the Permanent Secretary, First Secretary and Second Secretary reporter. He gives the opinion of the Supreme Council for Judicial of clemency. It will forward for promotion. It reports to the General Assembly. It provides an annual report of the Council of the Judiciary in the Official Journal[47].

c. Disciplinary Chambers

The Council of the Judiciary is within the meaning of Article 20, the disciplinary jurisdiction of magistrates. This disciplinary power is exercised by the Chamber of National and Provincial Chambers of the discipline (Article 21).

The disciplinary provincial chamber knows, first degree disciplinary offenses made judges dependent springs Courts of Appeal, the Administrative Court of Appeal, necks and those of military prosecutors about these jurisdictions[48].

As for the National Chamber of discipline, she knows, first and last instance, regarding disciplinary charge made judges of the Court of Cassation, the Council of State, the High Court and those of military prosecutors about these courts. It knows, on appeal, the decisions of the Provincial Chambers of discipline.

Thus, under Article 23 paragraph 2, the disciplinary system for judges of the Constitutional Court is governed by the Organic Law on the organization and functioning of this Court. And without prejudice to Article 22, the National Chamber of discipline also faces disciplinary offenses being dependent of the first presidents of the Courts of Appeal, the Administrative Courts of Appeal, Courts of Chiefs and military prosecutors' offices near these jurisdictions.

National Chamber of discipline sits with three judges in active service, selected from the Higher Judicial Council, each from the Supreme Court, the State Council, the High Military Court and prosecution and civil Military courts did not close the disciplinary penalties incurred during the last twelve months[49].

National Chamber of discipline, pursuant to Article 25, headed, so mixed and cross by a civil magistrate seat or a magistrate of the Military Court, when it challenged a magistrate or civil prosecution magistrate of the Prosecutor higher.

When it involved a civil magistrate's office or a judge of the Military Court, it is chaired by a civil magistrate the prosecutor or a magistrate of the Prosecutor higher. It is chaired by the President of the Constitutional Court When it challenged one of the following authorities:

1. The First President of the Court of Cassation;
2. First President of the State Council;
3. First President of the High Military Court;
4. One of the leaders of the flooring near the courts.

[47] Article 17 of the Organic Law on the organization and functioning of the Superior Council of Magistracy.
[48] Article 22 of the Organic Law on the organization and functioning of the Superior Council of Magistracy.
[49] Article 24 of the Organic Law on the organization and functioning of the Superior Council of Magistracy.

However, Article 26 is to bring the precision chaired by a senior magistrate or equal to that of the magistrate and continued under a different order than this, and crossing the seat and the floor, following is that the magistrate continued the prosecutor or the seat.

Note also that the provisions of Articles 24, 25 and 26 first paragraph of the Organic Law in question apply mutatis mutandis to the composition and chairmanship of the Provincial Chamber of discipline. And when the composition is in short supply, it is called on members of the magistrates of the Judiciary springs nearby[50].

d. Permanent Secretariat

The Permanent Secretariat of the Higher Judicial Council is composed of nine members, six chosen from outside the Council of the Judiciary. Two judges of the judiciary at a rate of one judge and one prosecutor, two judges of the administrative order at the rate of one judge and one prosecutor, and two judges of the Military Justice in respect of a judge and a prosecutor.

Members of the Permanent Secretariat are appointed by the board taking into account their experience and integrity[51]. At this point we can only observe that these members who have to be chosen from outside the Superior Council of Magistracy are or even cannot be considered members of this one because they are not included among those listed in Articles 152 to the Constitution and, under it, under Article 4 of the Organic Law on the organization and functioning of the Superior Council of Magistracy. Ultimately, one can consider them, even from the body of judges, as mere administrative secretariats of the Council. This obviously contrasts with the organization of the Board of the Judiciary in Italy, as we have indicated above.

And yet, however, Article 35 lets us know that the Permanent Secretariat has an administrative staff, agents selected from the career of public services of the state, justifying a specialized vocational training, a degree of higher education or university and / or professional experience of at least five years.

One can only wonder about the status of the six members of the secretariat to have to be chosen outside of the Board members listed in Articles section 152 of the Constitution and the Organic Law 4 aroused.

The Permanent Secretariat is headed by the Permanent Secretary assisted by a First Secretary Reporter and Second Secretary Reporter (Article 33).

For the understanding of the requirements of Article 34 of the same text it states that the Permanent Secretary shall assist the Board in the administration of the Council of the Judiciary. To this end, his task is to:

1. Manage files of judges;
2. Prepare the work of other structures and keep the records and archives;
3. Maintain the general file of judges.

And without prejudice to other provisions of this Act, the Permanent Secretariat shall assist the First President of his Court of Cassation in the scheduling of the budget of the judiciary.

[50] Disciplinary proceedings and the penalties are set by the Organic Law on the status of judges while without prejudice to the relevant provisions aforesaid Act, the Board of Discipline may be referred by the Minister of Justice or upon complaint of any interested person. Certified copy is made for information of f to the Minister of Justice (Article 28).

[51] Article 33 of the Organic Law on the organization and functioning of the Superior Council of Magistracy.

Note finally that Article 18 requires that the President of the Constitutional Court Law be Chairman of the Judiciary.

He represents the Council of the Judiciary. It convenes and chairs meetings of the General Assembly. It directs the Bureau. He presides over disciplinary proceedings for judges of the Court of Cassation, the State Counsel, the Supreme Military Court and judges of these courts by prosecutors (Article 18).

In addition, and under Article 19, the President of the Supreme Judicial Council is assisted by four Vice-Presidents and Secretaries of three reporters who are:

1. First Vice President: The Prosecutor General of the Constitutional Court;
2. Second Vice President: The First President of the Court of Cassation;
3. Third Vice-President: The Prosecutor at the Court of Cassation;
4 Fourth Vice President: First President of the State Council;
5. First Secretary Reporter: the Public Prosecutor of the State Council;
6. Second Secretary Reporter: First President of the High Military Court;
7. Third Secretary Reporter: the Auditor General at the Supreme Military Court.

In case of absence or incapacity of a member of the Office of the High Judicial Council, the interim is assumed in order of precedence established in the previous paragraph.

That sums up the functional structure of the Council of the Judiciary in the Democratic Republic of Congo. If so much has so far been observed, the fact remains that these achievements should be consolidated and the essential sustained to allocate resources to the organization of its work.

IV. Questions that arise again

Some questions about the Higher Judicial Council, beyond those already raised above, continue to occur and probably will remain for a long time and may be presented as well, though briefly:

- **The question of the mission of the Superior Council of Magistrates:** indeed it argued that in fact is the management authority of the judiciary if it is known that in any budget allocated to the judiciary is less than 1% of national budget on the one hand and, on the other hand, the effective available to the Council the subject, we know of some ulterior calculations of the executive which is the proper spending authority even if they are in the field record?

- **The question of democracy and social model**: because the separation of powers is claimed as one of the requirements of democracy, can we not, however, question the model of democracy that would be suitable for dives of our models companies? Because the models of society are not the same everywhere, there exists a kind of democracy that the assumptions are universal?

- **The question of the concept of justice**: what about the role of justice in our societies? In this deep Africa democracy is fundamentally non-authoritarian and libertarian: each member plays his role at a pace which is unique and it is this diversity that creates life. Democracy is not a rigid cast into molds fixed once and for all. It is primarily to serve the community and the vital needs of the collective

consciousness, where plasticity, if the elasticity, spontaneity same rules and solutions implemented. African democracy is a democracy of the "liberation" rather than the regimentation, nor that of disempowerment; it is a democracy and the full sovereignty. This calls for refocusing the debate on African democracy. From this it emerges that the issues relating to justice and its "independence" are most often trapped in this sense rather than punish, the role of justice in Africa is contrary to that of balancing each other around this African wisdom under the palaver tree. There can be no question in our society of justice exclusion, confrontation or challenge, and is a justice of communication or rather intercommunication and mutual understanding: people speak and listen with the meaning that justice is more than an instrument of social regulation in the service of the ruler and has been commissioned to manage the powers: the executive branch.

In conclusion

"It is better the arbitrariness of a Keeper of the Seals that passes as a Higher Judicial Council, which remains." These words of Pierre Henri TEITGEN, one of the first Minister of Justice of the Fourth French Republic, summarize the nature of the often tense relations between the two institutions. Relationships that can only be conflicting given the role constitutionally assigned to the Superior Council of Magistracy.

Is it not the management authority of the judiciary and court administration? It is therefore placed at the head of a justice that the constituents wanted independent with regard to the legislative and the executive. However, the organic law which provides for the terms (and gives the Council of the Judiciary means that power ambitious) has indeed emerged.

One has the impression that the executive, through the Ministry of Justice, assisted by the kidnapping of political and historical justice by the executive, and again a tendency to preserve its own territory. It results to permanent disputes between the Council of the Judiciary in particular and the judiciary in general and the ministers of justice.

We are therefore of the opinion that the reform of the judicial system as a whole in the Democratic Republic of Congo (DRC) is required to complete the establishment of the rule of law. Such reform will involve consideration of several factors, including sanitation of the body of the judiciary, improving working conditions for judicial personnel, and, moreover, staffing the Council of the Judiciary of material and possible legal to make effective operational and the issue of judicial independence.

Otherwise, it remains malfunctional if not unoperational constitutional body. This opinion is shared by Denis Trossero when he stigmatizes, as regards the judiciary, "Independence: the old fantasy" and that it is surprising: "Ah! the unbearable lightness of independence. Coveted old dream never touched the finger. " And this was echoed in making the judiciary an "authority" mean "power", the constituents had been willing to explain to judges that "they must have felt in the service of the state and nothing else. [2]Independence is not a personal prerogative of the judge, let alone something his or her property.[2], if the judge or rather, the magistrate, was made independent, that is to protect the defendant, not to enslave it. Protect the act of judging is to ensure the litigant against arbitrary. "Independence is not a comfort, but an obligation. The judge is independent, except the law. The law is their oppressor, his creed, his daily Confiteor."

Let us finalize that "judges of the nation are just the mouth that pronounces the words of the law," reminds us of Montesquieu. The judge is neither judge, nor redemptive nor contemptuous. The statutory independence does not allow him to be walled in his ivory tower. It protects only against the encroachments of the executive, the new tyranny of public opinion, but mostly against himself, his "passions" in the Latin sense of the term, its temptations, its weaknesses, its excesses, its ambitions and beliefs.

The independence of the judiciary is unique in that it does not bother anyone, when it comes to you and me; it attacks the weak, the "helpless" to "without a compass". Strangely, that's when it began to visit that Pierre BIRNBAUM called "the summit of the state", the elite, the small political world of its tense impunity, the independence of judges is scary. And in this, the Council of the Judiciary in the Democratic Republic of Congo still has work to do.

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DECENTRALIZATION: THE PROBLEM OF COMPLIANCE WITH THE CONSTITUTION-THE LAW ON FREE PROVINCIAL ADMINISTRATION: STATE LEVEL AND APPLICATION

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INTRODUCTION

February 18, 2006, the new Constitution of the Republic of Congo was proclaimed, marking the advent of the Third Republic. This has resulted in deep political reforms in all spheres of national life, including the reorganization of territorial administration now based on the ''decentralization'', one of the principles of good governance

This reform substantially changes the status of the province and gives specific responsibilities, in line with the central government. The constitution thus established the power of the State exercised in harmony with three complementary and mutually reinforcing levels: central government, provinces and decentralized territorial entities.

Three levels of power, but also three levels of responsibility in promoting local development and the fight against poverty under the principle of subsidiary.

Under the leadership of bicameral parliament at two levels, central or provincial according to the constitutional division of powers, the President of the Republic and the provincial governors, the implementation of decentralization is already committed through the enactment of three laws Edicts to include

1. Law No. 008/012 of 31 July 2008 Basic Principles on the free administration of Provinces;
2. Organic Law No. 008/015 of 07octobre 2006 laying down rules for the organization and operation of the Conference of Provincial Governors;
3. Organic Law No. 008/016 of 07 October2008 on the composition, organization and operation of decentralized territorial entities and their relationships with the State and the Province
4. Edicts on the composition and organization of the provincial public service[52]
5. As part of the autonomy of financial resources especially stand out from the tax originally categorized among the decentralized services and emphasize the distinctiveness of provincial finances to those of the central government[53], provincial governments have adopted and promulgated Edicts establishing branches of provincial revenues.

The constitution being the fundamental law raises basic principles which are carved all the laws they are organic, regular or special and limited Editions. If one of them is in contradiction to these basic guidelines, then it is unconstitutional.

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[52] Article 204 point 3 allows provinces the power to create their public and local codes.

[53] Article 171 of the Constitution of the Democratic Republic of Congo, establishes the separation of finance from central government and the provinces.

As to the issue, two main questions must be asked: the first is to consider if the Act No. 008/012 of 31 July 2008 Basic Principles on the free administration of Provinces, is consistent with the constitution?

The second is to raise the level of applicability of the constitutional provisions on the one hand and those of the other law.

By using the exegetical method, we will explain some relevant provisions of the Act respecting the self-government (Chapter I) and assessment of the level of implementation of the provisions as constitutional law (Chapter II).

According to the dynamic force, no one can escape the coercive effects of the Act on the free administration of the provinces because it was regularly passed by both chambers and be enforceable upon the promulgation by affixing the signature of the President of the Republic and binding because it was published in the Official Gazette of the Democratic Republic of Congo

For more information, look at the chapter where we discuss the state of the place of the Act vis-à-vis its unconstitutionality.

CHAPTER I: STATE OF THE LAW NO 08/012 OF JULY 31, 2008 ON UNCONSTITUTIONAL PRINCIPLES ON FREEDOM OF ADMINISTRATION

This discourse is based both on the doctrine of comparative law, developed in various studies on this subject than on the constitutional history of our country, analysis of concepts such as decentralization, the authority, decentralization, the principle the presentation of the central government in the provinces by the Senior Official, the dissolution of the provincial assembly by the President of the Republic, the source of such withholding that stopped in the Act of July 31 no 0O8/012 2008 on the basic principles of self-government of provinces, like them under our current constitutional arrangements and demonstrates the unconstitutionality finally given the federal nature of our constitution.

In this chapter, it will be a question of first discussing the various present concepts so as to speak the same language (Section I) followed by a philosophical reflection which had guided the spirit of the component (Section II) and finally the analysis of certain provisions of which the list is not exhaustive of the Act on self-governance to be unconstitutional.

SECTION I

GENERAL CONSIDERATIONS

For better understanding of the topics, the following concepts are fundamentally important and deserve a deeper explanation, it is about words or group of words below:

PARAGRAPH 1

Definitions concepts

- **The Constitution**, means according Guillien Raymond and Jean Vincent, in the material sense, all written or customary rules which determine the shape of the state, devolution and exercise of power. In the formal sense paper on political institutions, including the development and modification follow a legislative procedure different from ordinary legislative.

- The **decentralized unitary state** called for in the draft of the Senate turned into a federal state in the draft constitution of the National Assembly, which project was submitted to referendum and adopted by the people, as federalism is unnamed but studies show that the current constitution of the DRC government is federal[54].

- **Control of the Constitutionality of laws** is reviewed to ensure compliance of laws with the constitution requirements. Reserved for public or open to citizens, the constitutional complaint is a reserve of the Constitutional Court[55].

- The **unconstitutional law** refers to that which does not meet the requirements of the constitution of a State.

  Organic Law No. 0O8/012 31 July 2008 contains basic Principles on the free administration of Provinces; it answers the requirements of the Constitution of 18 February 2006? This is the main concern of the approach we propose in this exercise.

- An unconstitutional law which is contrary to the organic law of a political regime[56].

- Decentralization, according to Annie SAYE, to tell the difference between decentralization and devolution? The author presents the following typology: in decentralization, skills and resources are transferred from central government to provinces and decentralized territorial entities (ETD). Those in power are elected. While in devolution, the powers are delegated from central government to agents appointed by him and under its control hierarchy[57].

  On **federalism**, the author continues, the federal entities are autonomous administrative and internal management. As such, parliament legislates on the matter distributed in advance by the single constitution, it has an own executive and legislative. Taking into account the confusion by those in power between regionalism and the constitutional regime enshrined in the constitution du18fevrier 2006 that it did not set the principle of supervision or control of the administrative control of legality of the state the provinces and that unlike the old laws on decentralization, especially establishing supervisory control, the fundamental law of privilege rather than judicial.

  The fundamental and defining characteristic that distinguishes the state unit of the federal state is undoubtedly supervisory control[58]. The view of Annie SAYE is

[54] Oderic Nyembo-Y-Lumbu, the constitution of the Federal Republic is the third, African scholars publish, Kinshasa, 2009, p. 9
[55] Guillien Raymond and Jean Vincent, glossary of legal terms, Dalloz, Paris, 1999, p140.
[56] Ibid.
[57] Annie SAYE, decentralization, n. Ed, Kinshasa, 2008, p. 268.
[58] Oderic Nyembo-Y-Lumbu Op. cit., p 9.

identical to that of Professor Tshitambwe KAZADI SHAMBUYI the University of Lubumbashi, in the course of major public services of the state. The Congolese man of science, in order to meet the unique characteristics of federalism, which we affirm very well, that strongly emphasizes that federalism knows, through communities - the case of Provinces in the Democratic Republic of Congo''-are members of true "governors" that affix themselves on money, than facing decentralization. Federalism is a political one, while decentralization is administrative only[59].

These bodies of local members are not subject to the supervision of central authorities. On the contrary, they may participate as such in the description of certain central organs[60]. In case of conflict between the central bodies and the federated bodies, there are remedies organized before the constitutional courts or supreme courts[61].

The constitution plays a role in federalism as it defines the areas of competences between the central government and provinces; local members find their essential safeguard.

Unlike what happens in a decentralized system in which the competence of the member communities is limited by the specialty in the federal system, the constitution assigns often conferred powers to the central power and jurisdiction to the provinces considered as waste community members.

However, in the case of concurrent jurisdiction, the federal government has the power that is not federal.

After analyzing the basic criteria that characterize federalism, under our constitution, we interrogate the type of management in force in our country.

The reluctance of the constituent Congo, on the express appointment of the management method in force in the DRC, has paved the way for the unconstitutionality of the Act respecting the self-government.

• The **free administration of Provinces** is a substance from article 3 and 197 of the Constitution, under this provision, the provinces are not only endowed with legal personality and enjoy the free administration and the autonomy to manage their vital resources, but they are equipped with the Assemblies who deliberate and control its government and public services.

As such the provinces have greater autonomy in relation to the decentralized territorial entities that are managed administratively decentralized, while that of Provinces is federal policy, although the latter form has not been specifically cited. This form of economic management of the Congolese state that Professor Vunduawe TEPE MAKO called regionalism political or constitutional[62]

It should be noted the character above generis hybrid of the constitution of February 18, 2006, in its economic aspect, especially in regard to the form of the state, it is both federalist

[59] Duguit, administrative law,
[60] Section 104 al.4 shows how provincial assemblies refer to the Senate
[61] According to Article 161 of the constitution al.4 of the DRC, the Constitutional Court of jurisdictional disputes between the executive and the legislature and between the State is of the Provinces.
[62] PR Vunduawe in the official journal of the DRC, special issue of July 31, 2008, Kinshasa, p.9: says that the provincial civil service and the local shall be governed by edicts. This is, indeed, the will of the national legislature has complied with section 204 paragraph 3 of the Constitution, in particular through Article 35 of the Act point2 No. 08/012du 31juillet2008 establishing basic principles relating to self-government of provinces,

in the relationship between the state and the province that some qualify as constitutional regionalism each entity, according to the criteria set by the teacher Tshitambwe, legislate in the exclusive jurisdiction provided for in the constitution, much more, this constitution is unitary in its aspect of decentralization in the report between the State and the decentralized territorial entities in the case of city policy, industry and leadership that are, according to the Basic Law, the decentralized entities and finally called decentralized unitary form in the relation of the State and Entities decentralized administrative, such as territory, grouping and estate.

PARAGRAPH 2
PHILOSOPHY OF THE PARTICIPANT

After several attempts, to rebuild our country, it was found that the concentration of power at the top of the state did not allow the full development and integrated as desired, the constituent reported suppression Provincial Initiatives to focus on the other hand, in the name of national unity, Unitarianism excessive and perpetual as this would constitute disregard for the development of the Democratic Republic of Congo from the base.

Aware of the delay that undermined the country in the process of reconstruction, it was only fitting that the component bracket for greater autonomy in relation to the decentralized territorial entities, the provinces, for against, true centers of impulse to enjoy 'broad autonomy bordering on federalism, which was developed for the country at the base is the main reason which has prevailed and led the framers to opt for autonomy of the provinces as other centers in the pulse the same way as the central government.

SECTION 2.
STATE OF UNCONSTITUTIONAL LAW ON FREE PROVINCIAL ADMINISTRATION

African countries, the vast majority still face the problem of respect for the texts: falsification, violations, selective applications are part of their common lot.Democratic Republic of Congo is no exception to the rule.

Recovery work has been undertaken by those who could not see their ideas being accepted by the majority. This offensive was organized during and after the transition proceeding in the same methods.

On this point, we will address the cases that print the unconstitutionality of the Act respecting the self-government including:

Articles 3 and 195 to 206 of the constitution in principle spend federalism that Professor VUNDWAWE calls political regionalism, these institutions determine the Provinces and allocate responsibilities between them and the central government.

Unfortunately Act No. 08/012 instead of spending the self-government and self-management of vital resources of man, it creates an arm's length for the sole purpose to exercise supremacy over the provinces and the central government regarding them as simple decentralized administrative entities over which it exercises control over guardianship

The unconstitutionality will be examined successively on the heading of Title III relating to the relationship between central government and the provinces, the representativeness

of the State province and disciplinary consequences, on the principle of self-dissolution of provincial assemblies and the allocation of revenue to national character.

Paragraph I: reports between central government and the Provinces

The central government is represented by the Provincial Governor. In this respect he wears many hats, but the existing constitution has made him head of the provincial executive accountable to the provincial assembly[63]. The law on self-government makes him the head of decentralized services[64] and the other to be the chief executive of the decentralized territorial entities[65]. However the last three are not subject to regulation, it is the final cap on a special function that the Governor assures peaceful this represents for example, a minister in a purely national regal in this case it can represented by a delegation of foreign minister to negotiate an international agreement or of national defense to order by a military delegation.

With regard to the unconstitutionality of the law on the free administration, seeing the title III announcing the relationship between central government and the provinces, they would be a more collaborative relationship than representative[66].

Indeed, Title III of Law No. 08 / 012 of 31 July2008 on the basic principles of self-government of provinces is clearly unconstitutional through its title, as it is anachronistic with the fundamental spirit of the law. Through the term [the self-government] think it more collaborative relationship than representative. Because the latter requires accountability to the client and if this deviation occurs then sanctions is applicable.

Section 123 of the Constitution, considered the foundation of the law on self-government, has not spent any precedence relationship between central government and provinces, because the constitution did not provide a hierarchical relationship that could exist between the two autonomous centers distinctive pulse[67].

This collaborative relationship is achieved better through the conference of provincial governors who explains in the explanatory memorandum, the role, which is to serve as counsel to the state level. Under Article 2 of Organic Law No. 08 / 015 7 October 2008 laying down detailed rules for the organization and operation of the conference of provincial governors, the conference of provincial governors is defined in this law as the instance consultation and harmonization between the central and provincial governors, its mission is to provide advice to make suggestions on the policy to be and to enact legislation by the Republic. It would be absurd to consider the consultation and harmonization of two administrative people with unequal strength.

Although the law distorts the meaning, because the harmony must exist between institutions and not between an institution which is the central part and the provincial governors as provincial authorities entrenched from the ''province'' institution

Ultimately, it is important to remember that the two levels are not subject to any constraints of dependency, but rather two independent centers of political leadership that changes each under the direction of the President of the Republic. Its composition reflects the equality

[63] Al.8 Article 198 of the Constitution provides the motion of censure and of defiance.
[64] Section 64 of Act No. 08 \ 012 with basic principles of the free administration of Governor fake Provinces, supervisor and coordinator of services under the authority of the central power to safeguard the national interest.
[65] Section 95 provides the authority supervising the provincial governor by controlling a priori and a posteriori
[66] Section 205 prevents the national Parliament to legislate in the area of exclusive provincial jurisdiction unless the Edict of empowerment
[67] L'article 220 interdit formellement la réduction des prérogatives des Provinces.

of members, neither Prime Minister nor the national minister of the interior none of these authorities has the power to order the provincial governor and the prime minister and provincial governors would act as each partner state is the head of government that would respond politically to Parliament appropriate and distinct.

The provincial governor, provincial chief executive is elected by Members of parliament in province and respond politically to the provincial assembly while the Prime Minister appointed according to the majority in the national parliament[68], meets its political responsibility before the National Assembly[69]

Moreover, at each of the legislative branch, the two parliaments at national and provincial operation at all independent, except in the case of authorization provided for by the Constitution[70].

The bitter fact refers to an artificial construction of a dependency between two autonomous entities. Where is the constitutionality of this law? Now consider case by case:

It should be stressed that the legislation in question has its basis in the relevant section 123 of the constitution[71] is a constitutional requirement of devoting special provinces autonomy. Its coming will not reduce any prerogatives of Provinces[72]. Although it is not a review but a legislative attempt dangerous ultimately lead to a possible constitutional amendment.

This text would create a functional dependence of the central government to the provinces, so that the constitution established the conference of provincial governors, the ideal of dialogue where the prime minister and the provinces behave political partners led by the President of the Republic.

The review of Chapter 2 of this Act operates one back to the reliance on self-devoted.

Paragraph II: From the top official in province

At this stage of our work, it should be noted, however, that the notion of official with the task of directing state departments and provinces in the relationship called for by ensuring coordination between provincial and central institutions is not new in our constitutional history.

Indeed, Article 180 of the Basic Law of 19 May 1960 on the structures of the Congo already devoted to the principle of presence in the province of a State Commissioner, representing the central government, but this principle, although constitutional has frequently raised challenges in its implementation. Such was the case of M Sendwe appointed Commissioner of State for Katanga: the eve of independence the Congolese authorities in addition to basic law enforcement, to have control over the Katanga secession that came from, they Sendwe have appointed, the appointment created thereafter a jurisdictional dispute between him and the governor Tchombe.

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[68] Section 19 8 of the Constitution the Governor and Deputy Governor are elected in the second round on a list, the governor form the provincial government of at least ten members

[69] Section 146 of the Constitution holds the appointment of the Prime Minister.

[70] Section 205 prohibits the national parliament to legislate in areas of exclusive provincial jurisdiction, and vice versa except empowerment

[71] The last paragraph of the preamble of Act No. 012 \ 2008 on the fundamental principles of a free administration of Provinces

[72] It was purchased outside the spirit of Article 220 of the Constitution which forbids any review with the project or reduce the powers of the provinces and decentralized territorial entities

But the appointment of the provincial governor as unconstitutional legal representative and the central government in the provinces, this is another way to subject the provinces to the central government to the provinces. Here, the constitution has never considered any subordination of the central government to the provinces, the ratio of two public administration based on the sacred principle of separation of power of the collaborative relationship is provided in the constitution. The conference of provincial governors is the only constitutional framework of collaboration. Clearly the central government and provincial institutions treat them as partners under the coordination of head of state regulatory body on top of the state

We understand that the legislature was swept away by the synergy of the fourth paragraph of Article 3 of the Constitution which provides for the subordination of the decentralized territorial entities to either the provinces or the States represented here by the central government. While between the state and the provinces there must exist a partnership relationship that is regulated by the head of state.

This is justified by the will of the settlor under the accumulated experience in the development of the Democratic Republic of Congo. He wanted to avoid the influence of the central government, having as a direct consequence: the stifling provincial initiatives. In addition to these experiments, it should be noted that since the accession of our country's independence, the concentration of power at the top of the state did not allow the provinces to implement the policy of proximity that would be of implement projects to develop from the base.

The provincial governor lives in a double bind, the satisfaction of the general interest at the same time as that of local interest. For local interest the governor is placed under the sword of Damocles of the Provincial Assembly, but to satisfy the national interest, which initially must take precedence over that of the province.

Indeed, the problem becomes possible in case of conflict between these two interests, firstly the national interest that the governor intends to stand as a representative of the Central Government in the Province and other provincial interest as the head of the provincial executive. This is by way of example, if the withholding tax of 40%: the provincial governor can not obey the injunction of the provincial assembly, which is hell-bent to get the recipe for the development of the province. As a representative of the governor of the central government must adopt an contrary attitude although these are members of parliament in provinces who have conferred the power to the governor.

This is so that articles 63 to 71 were introduced into the legal text for the reasons of legitimating. The dependence of the provinces to the central government is an affirmation of the supremacy of the central government, is the province to stifle the provincial initiatives, on what basis the hope of the Congolese people who confirmed this hope by referendum.

From the above we can ask the question, under what authority, the National Minister in charge of the affairs and security has suspended the activities of the Provincial Assembly of Katanga in January 2009 following aggression have four MLAs by the militia of a political party. Although belligerent action is reprehensible, but the question is that of identifying the competent authority to suspend a Provincial Assembly. This action is rooted in the constitutional law on the free administration of Provinces.

On the law No. 2008/012 examined under the article123 based on the constitution, should reaffirm that self-government, economic and financial already enshrined in the constitution in accordance with the conditionality of regionalism (federalism), this Act has aim to reduce the power of simple decentralized provinces where skills are award conferred by the nature of administrative law.

Paragraph III. Refusal of the creation of provincial public services by Edict

Another case of unconstitutionality is spent through the articles 35 and 36 that list the materials that are in the field of law, pursuant to section 123 of the constitution to the point where the creation of two companies, institutions and organizations public are in the area of law that is to say in the Edict Province but Article 37 of the Law on the free administration excluded the prerogative of the field of publishing for the benefit of the regulatory act. This inadequacy identified at this stage which is to be noted that the same material that is eligible for the law but the province is in the regulatory field as if Edict is not a law of the province

Paragraph IV. Supervisory control not provided by the constitution

For their official trips abroad, the provincial governor and members of the provincial government are subject to prior approval from central government[73]

The word "compel" draws us back to the constraint of a painful duty when the provincial governor or members of the government travel abroad without permission from central government, they are subject to penalties or disciplinary measures.

On the contrary, logically, the political institutions in different provinces evolve in parallel and are each responsible for what are the concerns to its parliament. As a result the famous authorization could be issued by the President of the Republic or the Presidents of the Provincial Assemblies.

For example we include the relaxation of the Governor of Katanga in China with the Rector of the University of Lubumbashi, the trip of a member of the provincial government has escaped the control of provincial members of parliament. Otherwise would fall as the artificial dependence not provided for in the constitution in force in the DRC.

Paragraph V.

The principle of self-dissolution resistant constitutional provisions

In this context we will examine the self dissolution and removal of the provincial governor by the president of the republic.

Our analysis focuses on the constitution before the addition and modification. The principle of self-dissolution of the provincial assemblies chosen by both houses and enshrined in law it identified as listed above in sections 19 and 20 fall within the ambit of Articles 59 and 85 of the constitution which he may be invoked only in strict compliance with the provisions of Articles 114 and 145 of the same constitution.

[73] Article 70 of Law on self-government is monitoring authorities in the provinces by central government authorities.

Leaving this framework, not only the ordinary legislature has deprived the President of the Republic of his constitutional means of action but also placed the provinces in a situation of legal uncertainty: the approach clearly violates the spirit of the constitution.

The provincial assembly subject to stricter conditions than the national assembly, Oderic NYEMBO reveals in his book ''the constitution of the Federal Republic[74] was the third. It is in the three cases under Article 19, cases of interruption of operation of the institutions whose president has an obligation to ensure the proper functioning in its role as arbitrator under Article 69 of the constitution.

The review of constitutional provisions to the central government shows also that the Constitution has never provided for the self-dissolution of the provincial assembly.

Certainly, the article148 of the constitution provides in its first paragraph that in case of persistent crisis between the Government and the National Assembly, ''but its paragraph 2 provides a size restriction:

> "No dissolution can not intervene in the year following the election, or during periods of emergency or state of siege, or while the Republic is headed by an interim president."

But in the case of dissolution under section 19 under review, it may take as much as one year after the election that during periods of emergency rule, martial law, war or during that the Republic is headed by an Acting President.

This means that the provincial assembly is subject to stricter conditions than the national assembly. Therefore, a question may arise: in the name of what principle, legislators usually can weaken a political institution that the framers intended to protect?

The presidential order under section 20 last paragraphs has a remarkable effect, the President of the republic hasty and remarks. We can then legally wonder how the ordinary legislator can make a passive president that wanted to see the constituent assets. Given all these considerations, Articles 10 and 20 appear as an obstacle to freedom of provincial administration and tend to "reduce the prerogatives of the provinces and decentralized territorial entities."[75]

The practical case is that of the Provincial Assemblies of Ecuador and South Kivu who have experienced persistent crises paralyzing the functioning of institutions in the provinces.

The dismissal of the Governor by the President of the Republic is a new material introduced On the contrarytitutional amendment. It is afterwards that you can realize: The Case of West Kasai Governor KAPUKU is explicit, before the revision it was difficult to make a decision because the governor is guilty of assault under natural course and courts, the Provincial Assembly was not entitled to dismiss a motion of censure or no confidence, because it is an act not within its responsibility.

[74] Od2ric Nyembo-YA-Lumbu, the constitution of the Third Republic is federal, academic publishing in Africa, Kinshasa, 2009, pp146-147
[75] Section 220 of the Constitution prohibits the reduction of the prerogatives of the provinces or unconstitutional.

Paragraph VI. The allocation of revenues to a national character

Another case of unconstitutionality on the allocation of revenues to a national art 171 of the Constitution and Article 54 of Law No. 08/12 of July 31, 2008 which provide that *"the share of revenue allocated to a national provinces is set to 40%. It is withholding. "*

But the study shows, however, that the phrase (in accordance with the financial law brought to the last paragraph of Article 54 of the law may be a real thorn in the side of the province and to provide a challenge to the principles previously stated.

The law adds that the withholding is effected by an automatic payment of 40% in the income of the province and 60% in the general treasury account. This mechanism is implemented by the Central Bank of Congo in accordance with the financial law[76].

It should be noted the inadequacy of this Act with the Constitution, to the extent that the strong central power of the gun law that the law makes use of it to create red tape in the proceedings involving the central bank, cashier without a central government authority to intervene there, not that disbursement can take place.

The effect of trade in question is enforceable only if it is coated with an authorized signature. It is therefore superfluous to imagine a drop automatically without the National Finance Minister intervenes as part of its responsibilities.

This legal provision has been drafted on the basis of Article 175 of the Constitution which does not submit the withholding tax to any other prior, while on the one hand, Article 54 shall submit to the leveling that would be operated by the Bank Central Congo and also Article 55 in order to play down the revenue of a national character, establishes a categorization.

This procedure appears to us, more complex, it has the purpose of delaying the development of the country from the ground up.

The selected source mentioned in Article 175 is not the Central Bank of Congo, but the taxpayers who carry out payment transactions. We trust that the clear instruction given to taxpayers on the payment of their dues in the separate accounts of various state entities [province or state] beneficiaries would be the true source of course referring to taxpayers' returns that determine, ultimately the destination.

It is utopian to imagine a difference in level automatic sale by the law on self-government as one can imagine a cashier operating a distribution amount of the account of a client without the latter cannot give orders in this case; it is the involvement of a central authority of the effectiveness of the operation.

This automatic mechanism provided for in Article 54 of Law No. 08I012 of July 31, 2008 is likely to make it difficult the effectiveness of the application of withholding tax, it is an imaginary construction of the National Parliament in order to suffocate the provinces, depriving them of the means of their policies for the realization of the social contract between the President of the Congolese people.

The reality on ground is that the withholding tax has become hypothetical sometimes for reasons relating to the repayment of foreign debts of the central government sometimes

[76] Article 34 provides that the mechanism al.3 revenue allocation has national character is executed by the Central Bank

charges to binding of the State, while the population who voted in a referendum the Constitution based its hope of distributive justice guarantee of good governance

In view of this interference against the relevant provisions of Article 3 of the Constitution, it is necessary to note the flagrant violation of the Basic Law and the impoundment of the financial autonomy of provinces. This, consequently, prevents the full and integrated development of the country from the ground up.

As a partial conclusion of this chapter, several acts bordering on the unconstitutionality of Law No. 08/012 of July 31, 2008, is the case of suspension of the activities of some provincial legislatures by the National Minister in charge internal affairs and security, the representative of the State province and its disciplinary and criminal consequences the assertion of the supremacy of the central government is in the province for provincial initiatives to stifle the dissolution of right meetings Provincial Crisis persistent institutional and administrative burden created by the law on the free administration of the Province to delay the effectiveness of the withholding tax.

All these acts and provisions which unfortunately are an artificial construction of the national parliament in order to suffocate the provinces and deprive them of the means of their policies, reflect the blatant unconstitutionality of the law on the free administration of Provinces.

CHAPTER II.: LEVEL OF IMPLEMENTATION OF THE CONSTITUTION AND LAW

Several actions were taken including one by the central government of the Provinces, the other by the Province on the decentralized territorial entities:

1. The facts of the central government on Provinces

- suspension of the activities of some provincial assemblies by the National Minister in charge of the affairs and security in the context of safeguarding the public interest and to ensure security and public order, the national minister from the inside as part of its allocation should take precautionary measures to restore public order disturbed.

In our country, many provinces have experienced this kind of disruption; it is particularly the case in South Kivu where two governors of the national order of the Minister of the Interior were forced to resign.

In the province of Ecuador, where the crisis was continuing the Governor MAKILA resigned following the conflicts recorded in the Chamber of the Provincial Assembly of Ecuador. The same arguments were nearly won the Governor BAENDE the grounds of financial wrongdoing was found by the Senate committee control by the intervention of the Supreme Court of Justice ruled that the illegality of the act of the Senate .

It was just yesterday when Governor KAPUKU NGOIE of West Kasai in order of national minister of the Interior resigned following the assault he was guilty.

Katanga has continued the assault as victims were four members of parliament in the provincial hall of the plenary; this act has cost the suspension by the national minister of the interior of the activities of the Provincial Assembly of Katanga.

- In view of article 63 of the law on the free administration, the Governor, representing the Central Government in the Province, may also suspend the activities of a provincial assembly. Although he can be removed from office by MPs by voting a motion of no confidence. To do so, Katanga provincial minister of the interior DIKANGA KAZADI had ordered on behalf of the National Minister of Interior, the resumption of the Provincial Assembly of Katanga. The reverse may also be possible.

2. The facts of the Province of the decentralized territorial entities

The Central Government and the Provincial Governor shall have the right, everyone that is concerned, shall exercise supervision over the decentralized territorial entities. But they do not get orders like hierarchical decentralized administrative entities.

It raises the question of under what provision as constitutional law that the head of the provincial executive of Katanga respondent about the city authority of the city of Lubumbashi to proceed by means of an order for demolition of urban buildings in the compound of the University of Lubumbashi.

The act's regulatory authority is challenged city of Lubumbashi for annulment before the Court of Appeal in its administrative section, but it seems wrong that the human right bodies are wrong on target, apply to a court that lacks jurisdiction 'is the peace court of Kamalondo.

The second concern relates to the official implementation of the unilateral act of the executive city without complying with the procedure of expropriation for public utility in avoiding any possibility of compensation for the injury to the victim.

• *The sharing of revenues to the benefit of national character in Provinces*

Although such revenue were provided in the constitution and law on the free administration of Provinces, but nevertheless these provisions are inapplicable to the following constraints which are essentially political.

Despite the legislative character that we recognize has an Edict, those of Finance, although they are adopted and promulgated by provinces, is the subject of substantial changes in their fields by the national parliament. The examples are lesions in this list of non-application of orders both constitutional and legal.

Democratic Republic of Congo has committed to a democratic process irreversible, the Provinces and the decentralized territorial entities are managed as in the past and this is maybe by the inertia of the Second Republic[77].

By decentralized territorial entities, we must mention: The City, The commune, sector and leadership, and they enjoy self-government and self-management.

The question of effectiveness, on land, the law on self-government of provinces, leads us to question one hand on the free administration of the provinces (Section I) and self-management (Section II) on the other.

[77] The clause 3 of the Constitution states: "The provinces and decentralized territorial entities of the Republic of Congo are endowed with legal personality and are managed by local bodies."

The provinces and decentralized territorial entities are managed by local bodies. But they do not have democratically elected leaders but against the Provinces which have do not have the effectiveness of self-government such that the constitution decreed.

It should be noted that in the constitution, although the Congo to be united, the constitution in force organizes a hybrid mode of management, because the distribution of constitutional competencies already assumed to face a federal provinces, this form can be decentralized should be decentralized, unitary form of decentralized management with respect to decentralized territorial entities, although the form unitary decentralized management with respect to decentralized administrative entities. Between the Provinces and the central institutions, in principle no report could be considered outside the recommended collaboration through the forum which is the constitutional conference of governors, but not of subordination as it is experienced not only on land but also enshrined in the famous law on the free administration.

This management focuses on various resources not only human but also economic and financial.

SECTION I.

SELF-MANAGEMENT OF HUMAN RESOURCES.

When we propose to analyze the situation of human resources of a province, we are referring to the political and administrative personnel in the province. In the first category we must mention the politicians which is composed of elected representatives and government officials at the provincial, city, municipal and local levels as well as members of their cabinets, on the one hand and administrative staff budgeted by The province, they are the servants of the province. This second category is comprised of career staff and is managed by the provincial public service. In this series, there are former career officers of the governorate, who will be hired to manage the provincial utilities to create and those ministries in the field of exclusive provincial jurisdiction as well as concurrent jurisdiction. The latter two categories are the provincial office that the central government is in the process of transfer

Logically the transfer of load is not a problem as it is about delivering or deflating effective giving at the central level. The hesitation is justified by the fact that the transfer of the accessory necessarily implies that the principal is the 40% of revenues to be allocated to a national provinces. This is the reason for the non-application of Article 3 of the Constitution on the management of human resources.

Faced with this confusion is how to frame the relationship between members of two governments between the two levels of power.

Indeed, when a member of the Central Government is visiting inspection in the provinces, it is our responsibility to see that the corresponding members of the Provincial Government behave in real agents of the central government devolved to the provinces, meeting the same prerogatives that division chief in the provincial ministerial correspondent. While areas of expertise of both entities (states and provinces) are clearly defined in the Basic Law.

The relevance of sections 146 and 198 of the Constitution place, clear each of these two categories to account. Each government is responsible, respectively, corresponding to the Assembly under both state level and in mutual respect of the distribution of constitutional powers.

The first case involves national ministers hold office in the areas of sovereignty. These are departments with their charges: foreign affairs and international cooperation, national defense, justice, ...

These departments exercise their supreme authority throughout the country and it is only natural that departmental authorities are based not only on members of provincial governors, but also on their decentralized services in the provinces, for the accomplishment of their tasks. Here, the vertical relationship is binding on all structures present in the country. The second case concerns national ministries whose functions are the materials of the exclusive competence of the central government.

These are ministries whose task: foreign trade, the national civil service, finance of the Republic, the central government budget, the national economy, higher education and university posts and communications, National Public Works ...

No legal relationship could not exist if only for moral and ceremonial. After visiting the province, in the vertical hierarchical relationship, the obligation is to apply to devolved services in the province through the Provincial Governor and not his ministers. For, it should be noted that the Governor represents the central government in the provinces, not his ministers, as provided by Article 64 of Law No. 2008/012 under which the provincial governor at a time coordinate and supervise decentralized services under the authority of the central government, and this contradicts the constitutional spirit.

The third category concerns the departments whose subjects are in the field of concurrent jurisdiction. As a result, these ministries are present simultaneously at national and provincial levels: These are the ministries of labor and social welfare, health, mining, land affairs, energy and hydrocarbon, youth and sports, such and families ... There is an extension of state action and interpenetration.

From the above, so this is an area of collaboration and / or in this framework the appropriate provincial minister must act as direct collaborator as well as the head of division in the provinces.

The fourth case concerned departments, which are outside the scope of exclusive jurisdiction of provinces, which logically should exist in the provinces. The departments have in their charges: the provincial public service, the province's finances, the provincial economy, nursery, primary and vocational ...

Provincial ministers listed above should behave as true ministerial authorities and it is in these areas that the province should really apply the self-government. It is that in practice things, the central government deliberately keeps blur to perpetuate its hegemony. One may question the existence, at the national level, the Ministry of nursery, primary, secondary and vocational education while logically a centralized service would be erected for the coordination of these educational activities.

The chart below clearly illustrates the possible relationships between the state and the administrative and territorial units through the Ministry of the Interior.

Under the constitution, the central government and those provinces are all decision-making centers for Reconstruction and improvement of the daily routine of people.

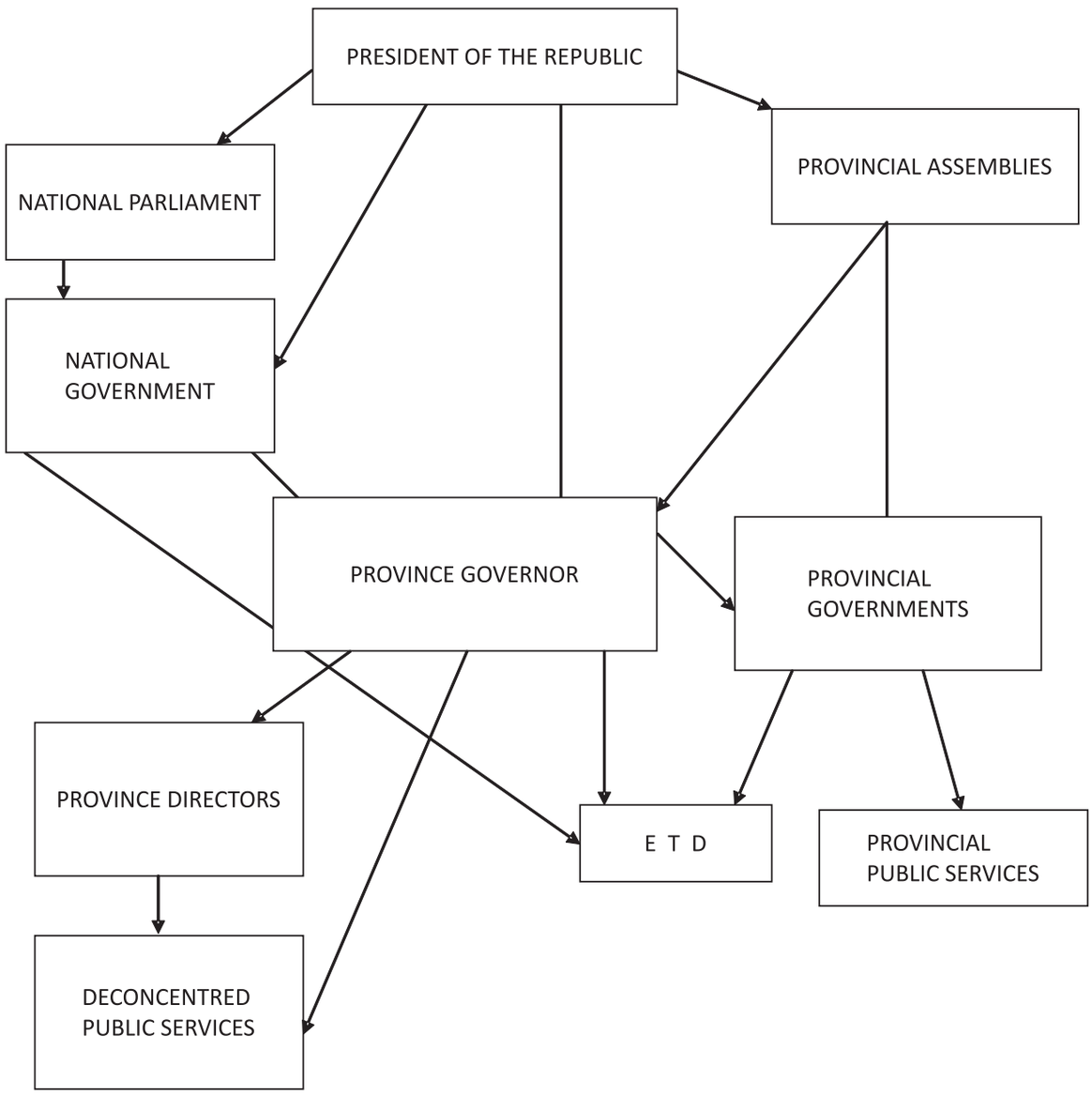
Provincial public services in the provinces would be coordinated and supervised by the director of province.

The provincial governments such as central are, each in respect of them, as required to control supervision, supervision of the decentralized territorial entities.

Thus, according to the Constitution as the finances of the Province are distinct from those of the Central Government, interest would be different, because the Governor is clothed with many hats and do are in a dilemma because no one knows what interest should be preferred to others.

The notion of representation introduced in the Act 2008/012 is likely to cause confusion, because now the governments and the provincial assemblies are reduced to simple decentralized services: The most illustrative case is that recently experienced a Kinshasa and the Presidents of the assemblies to claim the fees went to the Prime Minister while no constitution nor the law provides no way. It can be argued that Law No. 2008/012 has distorted the fundamental spirit that animated the component of Sun City.

This is how, in principle the organization presents its self contrary to this instrumentalist Act on free administration.



This spider web design explains the error without total control of the central government throughout the country, like centralized complete, totally ignoring the existence of the Provinces as centers of constitutional decision.

The merit of the famous Act No. 2008/012 is to stifle the momentum of the other centers of pulses that are the province from the rest, are reduced to simple decentralized services, serving the central Government receiving the orders of this single center pulse in the country. Under the Constitution, between the two institutions, there is no arm's length but of cooperation and compliance of this prescription of the law governing the Conference of Governors.

Consider by way of example, through this organization, the roles of the National Minister of the interior provinces: Province level, under section 63, the Governor of the Province as a body and not the provincial government, is the only legal representative of the central government in the provinces. As such, the provincial governor, unlike the practice of contributing to the Provincial Ministers, acts with the support of the provincial director and the head of the provincial division of the interior. It is the provincial governor who coordinates the decentralized services in the provinces and not the provincial government.

Thus, the National Ministry of the Interior and the provincial governor must be supported by the head of the provincial division of the Interior, the rest happens to be between it and the Provincial Minister of the Interior. It follows from this approach there is no link or functional, or subordination, or even hierarchical them. The division chief of the Interior has delegated the power received from the central government devolved to the territorial entities[78].

Territories, groups, villages, neighborhoods in urban areas.

It is clear that the decentralized territorial entities, the National Minister of the Interior has the power simultaneously functional and hierarchical while for the decentralized territorial entities that are the cities, municipalities (urban or rural) areas and chiefdoms the National Minister of the Interior and the Provincial perform simultaneously within a functional authority and supervisory control, no control by hierarchical cons cannot exist unless encroachment.

It has been shown that the two institutions in the province[79] have their hands tied in the performance of their tasks. The intervention of the Court of Auditors, which is originally an organ of the National Assembly, the encroachment of the National Assembly in budgetary matters provincial and ministerial intervention by the authorities in matters of national domain of exclusive provinces in this regard, the existence at the central level the Ministry of nursery, primary, secondary and vocational education remains unjustified.

There is some encroachment of departmental authorities of the central government on the exclusive powers of provinces. So the provinces do not enjoy the self-governance such as is required by Article 3 of the Constitution.

When the constitutional provisions on the autonomy of provinces require a misinterpretation, particularly on the hybrid and atypical of the Democratic Republic of Congo, it creates

[78] Article 5 of Law No. 2008/016 of 17 October 2008 on the decentralized territorial entities
[79] Section 195 provides two province's political institutions: the Provincial Assembly and the provincial government.

an overlap of functions among the members of the provincial government and heads of divisions Provincial. These are often in uncomfortable situations because, being decentralized agents, which in principle is an extension of the central government in which they depend hierarchically. In this context it creates an involuntary professional insubordination.

SECTION II. SELF-MANAGEMENT OF ECONOMIC AND FINANCIAL RESOURCES

This autonomy implies that the provinces, as noted above, are equipped with the Assemblies who deliberate in their dedicated skills and control its government and public services and facilities. As such the provinces have greater autonomy in relation to the decentralized territorial entities that are managed administratively decentralized, while that of Provinces is federal policy, although the latter form has not been specifically cited. This form of economic management of the Congolese state that Professor Vunduawe TEPE MAKO called regionalism by mitigating the political or constitutional, so that through this form through the teacher did not consider that the constitution has not established the principle of control or supervision of legality of administrative control of the State of the Provinces and unlike the old laws on decentralization, especially establishing supervisory control, this fundamental law focuses more on judicial review.

The question will turn on economic and financial resources.

It says that autonomy does not mean the independence of the decentralized entities, but a management that is consistent with the decentralization than striving each other. But others require political empowerment of new centers of power from where the impetus for some hope for development.

Opponents of federalism euphemistically refer to as the ''decentralization'' argue strongly that this type of management that he brings the administration of the centers of decision, it is more aggressive because it creates conflicts of jurisdiction between the power and Central Provinces[80].

It is clear that the central government, with its dominant position, through the democratic rules of the game by holding the rule of law the provinces and other decentralized territorial entities. The law on the free administration of Provinces introduced the principle of representativeness of the central government in the provinces, the dissolution of the provincial assemblies, the heaviness in the applicability of the deduction at source has a national revenues and the refusal by the Authority established by the central Edicts other provincial taxes are expressions of legal pre-eminent position of the central government.

This issue leads us to ask ourselves whether in the current context can afford hierarchical subordination, including a balance of Unitarianism.

Indeed, an examination of three provisions of organic laws translates to the rule of law on the Edict[81]? Can we ensure the constitutionality or exacerbation from the central government?

The concepts of law in the broadest sense, allow us to understand the exact scope of the issue. In general, the law is defined as any rule laid down by the state and which everyone without exception, must comply.

[80] Art. 161 al.6 of the Constitution provides the mechanism to resolve disputes of competence between the executive and parliament and between the State and the Provinces.

[81] Although the public finances of Provinces and those of central government are separate under Article 171 of the Constitution, the Finance Act of the national parliament includes the Edict of Finance promulgated Province where the rule applies.

The state is a first legal entity of public law which can take many forms and can be represented at every level by a body empowered. In the latter case, the law takes the form of a regulatory act when it is a political and administrative authority to legislate.

Thus, in a unitary state, the central authority or national has all the attributes of power. As such, the law is considered any expression Democratic People passed by parliament and promulgated by the President of the Republic.

But Democratic Republic of Congo, state-run hybrid that some describe federalism as areas of responsibility is clearly defined in the Constitution. It is a system in which the provinces are autonomous administrative and internal management. There are laws in provinces such as legislation and legislation that take the name "national" when it is passed by the national parliament, "the National Assembly and the Senate" promulgated by the President of the Republic. On the contrary, when the law was passed in the provinces, in the field of exclusive competence, the Provincial Assembly and promulgated by the Provincial Governor, this legislation is the domination of Edict. No confusion can be maintained on this subject[82], however, the National Assembly and the Senate may, by law, authorize a provincial assembly to take Edicts on matters within the exclusive jurisdiction of the central government.... Similarly, a Provincial Assembly may by Edict, empower the National Assembly and the Senate to legislate on matters within the exclusive jurisdiction of the province.

Taken to mean organic or formal legislation is a measure of general and impersonal power law enacted by parliament, while in the material sense, a law can include even acts of the Executive taken on matters within the domain of the law: for example, order-law, Decree Law and Order. By way of, for example the President of the Republic or the Governor of the Province can take in all that concerns, in case of vacation of Parliament, a legislative order or an order-Edict in materials found in the area of Edict or law.

The constitution of the Third Republic, in Article 197, said the provincial legislatures the power to draw legislative acts under the name of Ed. An edict is a true law of provincial scope[83].

With regard to the rule of law and the decree: the edict of a provincial parliamentary assembly, in principle, a binding and enforceable lower only in subjects of concurrent jurisdiction with that of a national law .

However, a vote on an Edict exclusive jurisdiction of a province has a force of law as well as national law in the said province. Thus, the violation of a provision Edict exposes the culprit has a penalty of up to the imprisonment, penal servitude.

As a result, the parliament and national governments are bound by the edicts of provincial parliaments developed on matters within the exclusive legislative authority of provinces, under penalty unconstitutional.

As for the conflict of law and independent of the edict: proclaim the principle of legislative measures to implement its specific provisions, the constitution declared to return details of the "regulation" of certain issues with the law.

[82] Section 205 of the Constitution states that a provincial legislature can not legislate on matters within the exclusive jurisdiction of the central government. Conversely, the National Assembly and the Senate can not legislate on matters within the exclusive jurisdiction of a province. Except empowerment.

[83] EYALA MBWAKAMA ISESE YA MPEYA , Elements of Congolese disciplinary law, Volume I, PUC, Kinshasa, 2009, P.44.

Since, the law refers to how the constitution should it be a national law? Some argue that it can also involve the Edict.

Such views could be inspired by the reflexes of the mind centralizing antithetical to the legislative autonomy of provinces[84]

This view would be capable of leading the national legislature to systematically encroaching on the exclusive jurisdiction of the provincial Legislature and the Assembly to swallow it to the rank of room for recording and executing of national law even in the same legislative matters within the exclusive competence of the province. And, especially in the provincial public service[85], the nursery, primary, secondary and vocational education, provincial government finance[86], taxes[87], taxes and state and local rights.

In line with the management autonomy of the provinces the option of legislative policy within the letter and spirit of the constitution and the Act No. 08/012 of 31 July 2008 establishing basic principles on the free administration Provinces should be one that leaves the edict, real provincial law, the task of fixing the implementing provisions of the Constitution that refer jurisdiction to the law, when materials in the field of exclusive legislative jurisdiction of the province. Except where the Constitution expressly refers the matter to the organic law. In short, the law is a national law, while Edict is a provincial enactment.

To better understand the exact scope of these concepts, we must analyze the skills that govern the jurisdiction; it may be physical, personal or territorial jurisdiction, as appropriate:

The matter jurisdiction: the entire contents of which will be governing national law and is the province. They are clearly defined in Articles 201-205 of the Constitution: Section 201 of the Constitution divides the powers between the central government and provinces.

Under section 122 which establishes the subject matter jurisdiction of the law limiting a number of subjects, the residual power is entrusted to the regulatory domain in the context of relations between the executive and the legislature regardless of level that is to say, the national executive or provincial as national or provincial parliament.

Thus, the extensive materials listed in Article 202 if they are found in the area of the law are legislated through a national law. For cons, the same subjects of Article 122 when they go to in Article 204, they are in the field of publishing.

As for the materials in the field of law listed simultaneously in section 203, an area of concurrent jurisdiction, these matters are legislated commutatively by law or by the Edict to the availability of parliaments at different levels. The scope of these laws are indeed

[84] EYAL MBWAKAMA ISES YA MPEYA, Op. cit., p.45

[85] Professor Vunduawe in the official journal of the DRC, No. Special 31 July 2008, Kinshasa, p.9 says the Ontario Public Service and the Local shall be governed by edicts. This is, indeed, the will of the national legislature has complied with section 204 paragraph 3 of the Constitution, in particular through Article 35 of the Act point2 No. 08/012du 31juillet2008 establishing basic principles relating to self-government of provinces,

[86] In the development of the state budget to be assigned to the role of provincial assemblies instance Estimates proposal to integrate, change in the state budget. Yet notwithstanding the fact that the state budget must include the budget of the central government and the provinces, the budgets of provinces should no longer, as before, be considered as draft budgets to be amended by the ad libitum central government and national parliament. For under sections 175 and 204 of the Constitution as well as articles 35 et56 of "Hard Act the basic principles of self-government of provinces, provincial budgets must be sanctioned by the edicts before being inserted in budget state as is.

[87] Section 47 of the Law on the free administration of provinces is unequivocal on the fact that the provincial tax should be established under provincial legislation. Thus, a provincial tax is established by an edict, not by national law. Thus, in the context of fiscal autonomy, it is not forbidden a province to create a new tax within its exclusive competence, but which takes into account the specific economic circumstances of the population of the province.

defined in Article 205 which prohibits each parliament to interfere in the area of exclusive jurisdiction is concerned except the clearance on each other.

Paragraph 3 of Article 205 removes the ambiguity in the event of any conflict or inconsistency between the law and Edict. It is only in this case that can meet the rule of national law on the Edict considered a provincial law until proven otherwise.

Personal jurisdiction is to review the authority or the Parliament power to legislate so by law, the bicameral parliament composed of the National Assembly and the Senate who adopt, with regard to the edict is Provincial Assembly who is the legislator.

Regarding jurisdiction, the law is applicable throughout the national territory while the edict is in the province concerned

This logic is supported by a relevant provision of the Constitution, namely Article 205 paragraph 1 of the Constitution. Under the latter, a Provincial Assembly cannot legislate on matters within the exclusive jurisdiction of the central government. Conversely, the National Assembly and the Senate (national parliament) cannot legislate on matters within the exclusive jurisdiction of a province, except in cases of delegation of authority by the mechanism of empowerment.

Logically the two laws fulfill the same function, each in matters within its exclusive jurisdiction. The only time the rule is enshrined in the Constitution that provided for in Article 205 paragraph 3 of the Constitution that is to say, only one provided in the area of concurrent jurisdiction between the state and province. It is in this case only when there is conflict and that national legislation prevails over provincial.

Here, in what follows, is how this interpretation at the national level, we believe it departs from the truth. Clearly, the conflict is the interpretation that are members of the Ministry of Budget on Article 122 paragraph 10 of the Constitution under which it is stated that "without prejudice to other provisions of this constitution, the law establishes the rules for paragraph 10: base, rate and methods of collection, of charges of any kind, the system of issuing currency. "

Indeed, all forms of the state, whether unitary or composite (decentralized or federated) attribute issue of currency is in the national sovereignty. It is the sovereign domain of the State. But the tax as the offense appears together in the exclusive domain of central government and the provinces.

Article 204 paragraph 14 and 16, provides that "without prejudice to other provisions of this constitution, the following subjects are within the exclusive jurisdiction of the provinces: a. Paragraph 14 the establishment of fines or imprisonment to ensure compliance with edicts in accordance with national legislation. The relevant provision sufficiently demonstrates that using Edict, you can build a wrongdoing offense and establishing a criminal penalty. (Fine or penalty of penal servitude).

Furthermore, Article 1 of the Congolese penal code in his first book, lays down the fundamental principle of criminal law said the legality of sentences and offenses. According to this principle, there is infringement and penalty by law. The same principle is echoed by a constitutional provision, namely Article 17 which states that "no person shall be arrested, detained or convicted in accordance with law and in the manner it prescribes."

It is clear that in paragraph 14, the Edict performs the functions of a law in the exclusive domain of the Provinces.

b. Section 16 ... taxes, taxes and duties provincial and local In particular, property tax, tax on rental income and the tax on motor vehicles...."

In this arrangement, we used the word in particular, according to the dictionary, this adverb means in a special way, among others, remarkably, relative to other elements of the set, particularly or especially.

Under this constitutional provision, the province in its exclusive domain can create an arsenal of taxes other than those that were specifically enumerated, provided only that the tax base is reflected in the dominant exclusive jurisdiction of the province. In addition, the province can also create several other taxes. It is finally an edict that the Province may establish, under Article 122 paragraph 10, the base, the rate and manner of collection of taxes of any kind.

We should read the title of Section 2 of the Constitution, "the relationship between the executive and legislative power." To check the accuracy of our interpretation, we must understand that the settler would escape the tax, the crime or the criminal sanction of the regulatory act, because it does not reflect a popular and democratic expression because it is taken unilaterally by a political-administrative authority

Finally, it should be noted that the draft organic law on public finances, especially Article 9 which states that "in accordance with Articles 122, 174 and 175 of the Constitution, the Provincial Assemblies and legislative bodies of decentralized territorial entities do can create or tax or tax or fee or tax of any kind. They can take the initiative to submit to the National Parliament. "

It is clear that the obstruction is clearly remarkable when the project allowed the provinces to create a tax and to establish a tax of any nature whatsoever. Because according to this project, the tax is in the field of law. The question is what law is it? In our humble opinion, it sets aside the tax field of the regulatory act and not legislation such as Edict. It is for this reason that the validity of the interpretation is its importance as required in the analysis of relevant texts.

The approach to demonstrate that the materials provided for in Article 122 shall be governed by the law; they are by the Edict as they find themselves in the allocation of provinces as provided for in Articles 203 and 204 of the Constitution. It is therefore important to remember that Edicting is a law that can determine the tax offenses such as when the materials involved are found in the area of exclusive jurisdiction of provinces.

On this point, we have demonstrated that the supremacy of the law ''artificial'' national of the Edict has the advantage to stifle the enjoyment of economic and financial autonomy of the provinces and hinders the development of the DRC from the base.

Given the article197 of the Constitution, apart from its legislative function, the Provincial Assembly is the only body empowered to exercise parliamentary control over the provincial government and the provincial and local public services, while articles 178 to 180 establishing the Court of Auditors, gives him the power to control the provinces and ETD.

From the foregoing, it should be noted that control of the court of auditors appears to be unnecessary particularly since the financial resources of the provinces are already mortgaged their uses. There instead of putting in place a provision that will evolve simultaneously control between Assembly and Provincial Court of Auditors for good efficiency and effectiveness. It is best to establish the province as a branch of the Court of Auditors for a possible merger, which we hope to effectively and efficiently, instead of a concentrated and investigation at a distance. On the contrary, these important institutions that court account would be attached to the respective provincial assemblies and at central level the Court of Auditors ensure coordination.

It is necessary to expose the involvement of national parliaments in the edicts of the finances of provinces, under article175 al1 budget revenue and expenditure, namely the central government as well as the provinces, were arrested and issued each year by the law. This provision does not cause harm to the separation of the two financial entities that are the central government and provinces. This provision allows the Republic to be able to consolidate a statistical data to give and to have an overview of the macroeconomic situation and evaluate the country's economic objectives. But on the contrary, we see substantial changes in certain budget categories in the province of Katanga, by the National Assembly.

It follows from this that the 2009 budget had been reduced which cut the province's vast resources: for example the national character set revenues for the Province were in the range of 121,263,679,723.00 FC and views are reduced 84425037 .435 in CF. This view and to clearly and appropriately reflects the encroachment of the National Assembly on the powers of the Provincial Assembly.

CONCLUSION

In conclusion, the exegetical approach allowed us to assert that the law on the free administration of the province expected to be more inconsistency in connection with the spirit of the grantor. The separation of power between the two levels is the main focus of the existing constitution. Unfortunately, the concentration of power as a mode of administration of the plan before the decision-makers leads to power being drawn into unconstitutionality. Thus, several scenarios are mounted to create a hierarchical dependency through the law on the free administration.

On land, the Law on the free administration is effective in that it uses more erroneous practices to create a dependency unconstitutional: the case of the representation of the central government in the provinces, self-dissolution of assemblies provincial and the undervaluation of the Edict from the National Housing Act.

If at both levels interpretation required the present truth, the central government would have no reason to stifle the financial autonomy of the province which also severely limits the means of their political might to consider the implementation of the five sites of the Republic from the base.

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CONSTRAINTS OF APPLICATION OF THE LAW NO 08/012 OF 31 JULY 2008 ON FREEDOM OF PROVINCIAL ADMINISTRATION IN DEMOCRATIC REPUBLIC OF CONGO (Issues and Perspectives).

Jean Marcel Salem Israel KAPI Kabes *

INTRODUCTION

The constitution of February 18th 2006 proclaimed united and indivisible character of the DRC and establishes two levels of exercise of state power: the central government and the province within which move the decentralized territorial entities that are the city, the community and the leadership and other administrative districts.

Sunday, 26 March 1967, Pope Paul VI issued his encyclical letter on *populorum progresso* [88]"the development of peoples." This was an early and prophetic plea for the renewal of the international economic order which was the subject of the dialogue between developed and under-equipped.

The sovereign pontiff tried to explain, not only Christians and other believers, but also "to all men of good will" that humanity would run to ruin if it did not undertake an urgent reform and generous radical in the world economy and especially international trade. it was necessary, he said, put the economy at the service of man "of every man and every man"-and reorganize international trade on the basis of humanity and morality.

In Kinshasa, on 1 December 1976, at the opening of the preparatory meeting of the 11th Special Session of the OAU, the Zairian State Commissioner for Foreign Affairs was cited as very pronounced today by President Mobutu to the General Assembly UN October 4, 1973: "we must always bear in mind that the world is at a crossroads. It is no longer divided by ideology, not even so much by race or by the political geography, but by economic means "."

Already, it is known that decentralization is a concept that has evolved in the DRC in saw teeth from the fundamental law of 19 May 1960 relating to the structures of the Congo, which marks June 30, 1960 at the accession of our country national and international sovereignty and to the constitution of February 18, 2006 which currently governs the country.

However, it was envisaged under the current constitution after 36 months, the country would do the territorial division to foster the emergence of development in the decentralized territorial entities, but this approach is still impractical utopian view to date political actors considered inappropriate because the policy of the program most heavily indebted poor countries of the world (HIPC) which the country was facing in order to benefit from the alleviation of external debt to the Bretton-Wood institutions.

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[88] René Beeckman, S.J., the revival in economic thought Ten years after "populorum progessio" in Congo-Africa, No. 435, May 2009, Lubumbashi, 2009, pp.363-368. ; The message of Populorum Progressio is no longer a prophet who preaches in the desert, but a man speaking to men of his time with them and seek solutions to current and future progress of all of men and peoples.

Despite the difficulties faced by the government to comply with the constitution and the implementation of the decentralization policy, a recent report by the World Bank notes that a reduction of 80 percent or about 9 billion U.S. dollars, for if the rich countries agree to reduce the burden of debt that plagues the under-equipped. This problem, mentioned in No. 54 *populorum progresso*, took a few years the proportions it has become essential to the evolution of decentralization in our country.

The component of the February 18, 2006 opted for decentralization as a way of managing some territorial entities of the republic that the Organic Law No. 08-016 of October 7, 2008 is in fact accomplished that the realization of the announcement already made by the grantor, in Article 3 paragraph 2 and 4 of the constitution, to develop an organic law to establish rules governing the composition, organization and operation of decentralized territorial entities and their relations with the state and the provinces. "

It should be noted that decentralization is a factor in proper functioning of the administration since the latter could be local affairs, or specialized, to make quick decisions, appropriate to the circumstances and in full knowledge of the needs of citizens whose it is close.

Naturally, Law No. 08 / 012 31 July 2008 Basic Principles on the free administration of provinces indicates in its explanatory memorandum that "the complexity of rules and operational mechanisms between central government and the province of and between provincial institutions to the other makes it essential to develop a law establishing the fundamental principles governing the self-government of the province and the order management of its human, economic, financial and technical, in accordance with Article 123 of the constitution. "

Moreover, the Constitution of 18 February 2008 after the decentralized territorial entities listed, it poses and announces the rules for their composition, structure and functioning and their relationship with the state and the provinces.

It is in this context that the preamble of the Organic Law No. 08/016 of 2008 on 17th October composition, organization and operation of decentralized territorial entities and their relationships with the state and provinces in which reads as follows: "this organic law does not exhaust the extensive decentralization that has a series of other laws that may govern specific matters. This is particularly the case law establishing the limits of the provinces as well as the city of Kinshasa, with the territorial division within the province or on the arrangements for the organization and operation of the Conference of Governors[89]" .

Rightly Jean-Marie AUBY notes that fact, decentralization is not a pure state, since it would then lead to dissociation, that is to say, anarchy, what would happen if State recovering all of his powers to others administrative So we assume that it retains a fraction of them and can control those are decentralized[90] and TSHITAMBWE Kazadi increasing cost that decentralization pushed to the extreme leads to federalism or decentralized components are the States themselves[91].

We believe that in determining the shape of the state, the constituent of February 18, 2006 violated this conceptual dichotomy that translates into money that no constitutional regionalism calls "a highly decentralized unitary state." So it is a management approach intermediate between a decentralized unitary state and a federal state.

[89] Simon Stone Meten M'nteba "decentralized territorial entities (DTE)," why? In Congo-Afrique, No. 433, March 2009, pp.187.
[90] Jean-Marie Auby, Administrative Law Course, University of Bordeaux, Bordeaux, 1987, p.104
[91] Tshitambwe K, duplicated course during large state services, the first license UNILU, 2007-2008, p.57

And that Article 3 of the Constitution which establishes administrative decentralization when it states that, "the provinces and decentralized territorial entities of the DRC are provided with legal personality and are managed by local bodies. These decentralized territorial entities are the city, industry and the leadership. They have the self-government and autonomy to manage their economic resources, human, financial and technical. "

Moreover, Article 171 of the constitution and article 43 of Law No. 08-012 of 31 July 2008 on basic principles on the free administration of the provinces state that "the finances of the central government and the provinces are distinct ". What is the confirmation of the fiscal and financial decentralization of the country[92]?

In addition, Article 175 part 2 and 3 of the Constitution states that "the share of revenue allocated to the national character is established in 40 provinces ° / °. It is withholding, the law establishes the nomenclature of other local revenues and the terms of their distribution. "

The reforms in the land took the form of a block of three laws known as "decentralization laws." these are: Law No. 8 / 012 of 31 July 2008 on the basic principles of self-government of provinces, Law No. 08/015 of 7 October 2008 laying down detailed rules for the organization and operation of the conference of provincial governors and the Organic Law No. 08/016 of 7 October 2008 on the composition, organization and functioning of territorial entities (SED) and their relationship with the government and the provinces

To achieve the legislature's concern in revenue management and administrative rules for their distribution in the provinces of Katanga provincial parliament passed a law that was enacted by the Governor of the province under the name EDICT No. 004 of September 25, 2009 Establishing the management of revenues from Katanga "DRKAT" in acronym.

In this approach, it is essential to understand the issue of compliance with the constitution of the law on the free administration of provinces, the inventory, the level of implementation, challenges and future prospects.

1. STATE OF DECENTRALIZATION IN THE DRC.

Decentralization is the recognition by central government interests distinct from those of state government. Whatever the form of decentralization, the administrative, is characterized by the existence of a power of administrative authorities. This means that decentralized authorities have no power to organize themselves.[93]

Professor KITOPI KIMPINDE think in technical and political organization, administrative decentralization and territorial development must aim at the base, by giving territorial entities with legal personality of the civil affairs or specific skills, with an independent management by the local elected bodies[94].

In other words, drawing the consequences and attributes of legal personality, to decentralize the entity shall:

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[92] Mabi Mulumba, decentralizing and problems of taxation, in Congo, No. 432, February 2009, pp 126 -

[93] BAGAHUA MUHEME (2005) Regional Economy in the decentralized management of projects. Academia-Bruylant, Louvain-la-Neuve, p. 30.

[94] KITTOPI, KIMPINDE, economic behavior and events to the resistance to taxation and the need for tax reforms in the DRC, PhD in Law, UNILU 2010, p.

- ♣ To have a proper name or a name;
- ♣ To have their own assets include not only real and personal property as well as finance and own specific skills and own or competitors;
- ♣ Have own elected governing bodies called upon to translate the wishes of the members of the community by managing own business, thanks to the democratic game.

It is obvious that the mechanism of representation and the democratic process, members of the executive branch emanating from elected or not, but at least, to report to the legislative body (legislative) and, through him to citizens.

1.1. The imperatives of decentralization

Decentralization is defined as "system of organizing the administrative structures of the State granting the power of decision and management of regional or local autonomous bodies."

The reasons underlying the policy of administrative decentralization may vary from one country to another. But generally, the basement is mainly based on the following considerations:

- The need to develop a local administration;
- The need for socio-economic development;
- The politically motivated; Grounds of social and organizational reasons

a) The need to develop a local administration

Apart from a few small countries (eg Belgium) have used decentralization to federalism made primarily for reasons other than those developed in this section (cultural autonomy of the communities and regions: the Flemish Community, French and also that germanophone regions of Wallonia, Flanders and Brussels).

The first imperative for countries geographically too large, as the Democratic Republic of Congo, is the need to bring together leaders of government or the administration of the governed. The aim is to achieve better management of the country, also allowing managers to respond appropriately to the concerns of citizens within a reasonable and timely.

Indeed, "the central bodies can not by themselves ensure the fulfillment of administrative tasks at each point of the territory. There must be loyal to relay their action because the existence of aspirations to parts of the territory should not be ignored, the administration must adapt to the diversity of the governed. "

b) Need for socio economic development.

Mr. Debbasch, notes that "central governments are also unable to appreciate the requirements of each category of citizens. Decentralization frees the central power and entrust responsibilities to those most competent to resolve them. It is a condition of effectiveness for any large enterprise[95]. "

Territorial decentralization is also related to political liberalism, economic, social and so on. It seeks the empowerment of bodies or local authorities in taking appropriate decisions and adapted to the environment concerned, on matters that concern them.

[95] Debbasch, CH, The Decentralization, in Universal Encyclopedia, volume5, Paris, 1988, p.1022.

c) Politically motivated

On the political, territorial decentralization meets its political aspirations, because it "involves the management by the administration, cases that concern more directly involving them in decision-making. It is a necessary corollary to democracy. It may be, in fact, a convenient framework for political education[96]. "

Indeed, in territorial decentralization, local officials are elected by citizens and not appointed by the central government. On local matters, it is recognized in recent power management which involves the addition of accounts in the elections.

d) Social and organizational motivations

Territorial decentralization is "an excellent form of work organization in the state. The development of state functions is such that the central agency decision may be paralyzed or at least slowed in their work[97]. "It is clear that decentralization, the central government is pursuing objectives that are the benefit that 'we expected.

1.2. The benefits of decentralization and territorial administrative

They may appreciate the same plans as those described above is to say, administrative, political, economic and social development.

a). Administratively

By giving local authorities the affairs of local interest, the central government shall discharge its tasks of local to devote himself more to the concerns of national interest or subject to national sovereignty in order to maintain a minimum of consistency that must exist in its administrative action applied to the whole country, otherwise the unit or national cohesion disappear.

b). On the political

In a vast country with many cultural, economic and social administration, territorial decentralization is usually a kind of safety valve of the central government, enabling it to meet the aspirations to parts of the territory. So, unable to satisfy their political ambitions at the national level, some protesters central government can assure them locally.

By territorial decentralization, the central government is also pursuing an objective of education policy for the exercise of democracy. That education increases the understanding of the management of state affairs by the majority of citizens and strengthens the foundations of democracy in a country.

c). Socioeconomically

It has been said above that decentralization implies territorial management by the directors, matters that affect them most directly involving them in decision-making. Thus, the construction or rehabilitation of a health center or a road of local interest, the organization of social or economic activities of local and so on. can not be dependent on the hypothetical intervention of central authorities.

[96] Debbasch, ch. (1988), Op cit, 1021
[97] Debbasch, CH, Ibid.

Moreover, the direct involvement of people in decision-making on projects and their realization gives them a sense of ownership which enhances their interest and desire to see them succeed.

1.3. The process of territorial decentralization

"Decentralization is located on the ground as an administrative law defining the powers of the decentralized entity. Business management own (local) is subject to supervisory control of the state[98]. "

The decentralization law is to the national level, local authorities or administered not intervene in determining the skills to recognize entities to decentralize. However, in consideration of the particularities and aspirations of the peoples concerned, this decentralization can take many forms and be stronger or weaker depending on the country.

Thus, one can find countries with decentralized administrative entities placed on an equal footing and undergo a supervisory control of the central government both local bodies on their actions regarding their mandatory or discretionary. So, for example, the Democratic Republic of Congo under the Ordinance Act No. 82-006 of 25 February 1982 and Legislative Decree No. 081 of July 2, 1998 in which the regions or provinces, cities, urban areas or municipalities, rural areas or territories were placed on an equal footing. This is the case of the Republic of South Africa, divided into nine decentralized provinces[99] and the Republic of Cameroon, subdivided into six provinces, namely Bafoussam, Bamenda, Douala, Garoua, Maroua and Yaounde[100].

"Decentralization is also higher when the regulator is given the power to penalize only illegal without being able to control the timing of decisions[101]."

This is the case of decentralization in France after the 1982 reform.

2. ADMINISTRATIVE DECENTRALIZATION AND TERRITORIAL DEMOCRATIC REPUBLIC OF CONGO

In the words of the teacher in his time Vunduawe Te Pemako Feli[102], the development of structures of local government in the Democratic Republic of Congo does not date from 1982. Instead, it has evolved in three phases, starting in 1960. The first disorderly development at national level was between 1960 and 1966.

Then, from 1966 to 1977, there was strong centralization of power in seeking the restoration of State authority throughout the national territory. During this period, there was the promulgation of laws ordinances No. 67/177 of 10 April 1967 on the common territory, administrative and political provinces, No. 68/025 of 20 January 1968 on the organization of cities other than the city of Kinshasa , No. 73/015 of 05 January 1973 on the administrative organization in the Republic of Zaire and No. 77/028 of 19 November 1977 on the common areas and in urban areas. The third phase, running from 1977 to 1982, devotes a progressive path towards the benefit of local government.

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98 Debbasch, PS (1988), 1022

99 Dominique and Michele Fremy (2004): Quid 2005. Robert Laffront, Paris (2004): 1088 is the 9 provinces: Bosho, Bleemfontein, Johannesburg, Kimberley, Cape, Minabatho, Nelspruit, Pieterburg and Ulundi.

100 Idem

101 Debbasch, Ch. (1988): Op cit, 1028.

102 Vunduawe Te Pemako (1982): The decentralization of responsibilities in Zaire. Why and how? I. Local government in Zaire from 1885 to 1982. In Zaire, Africa (May 1982), 165: 261-273.

The political crisis exacerbated by the wars of 1977 and 1978 (Shaba war I and Shaba war II), domestic economic crises (and unpopular Zairianization incoherent and radicalization of 1973 and 1974, monetary reform in 1976) and external (crisis 1973 oil currency crisis that led to the replacement of the standard dollars by the Special Drawing Rights or SDR ...) have shaken the economy, the effects of excessive centralization of power and pervasiveness of a single party conveys disastrous anti-value consequences, eventually making the unstable foundation of power that sought to survive in the headlong rush by carrying out administrative decentralization that has not stopped evolving, but inconsistently.

It is the purpose of all laws that have been taken and promulgated respectively in 1982, 1995 and 1998. Unfortunately, the practice field of the theory of decentralization has not met the objectives of this management administrative as intended in theory. It is the same expected benefits.

a. **The exercise of local democracy**

Democracy is a political system in which the people exercise their sovereignty through a representative. From 1982 to 1990, local communities have exercised democracy by choosing their representatives but were excluded from management and management control, as the chief executive was appointed and had no accountability to the governing body and through it, the people, the sovereign primary.

Since 1990, the choice of representatives in legislative bodies has stopped the start of the political transition that changed everything. Although highly demanded by the Sovereign National Conference, democracy at the local level, has gradually disappeared and the final legal text in force until 2004, i.e. the Legislative Decree No. 081 supra, has devoted more. Until before the implementation of the constitution of February 18, 2006, the only body responsible for managing the affairs of the province was a political and administrative framework called (that is to say, not elected), who accountable to that authority which appointed him. He was assisted by two deputy provincial governors in charge respectively of the economic and financial issues and political and administrative matters.

Today, management of public affairs through the exercise of democracy requires compliance by officers, rules of transparency, ensuring good governance. Indeed, the transparency in the management allows taxpayers to track and monitor indirectly the use made of the different taxes they pay to the local treasury. Public debate in legislative bodies or in connection accountability between representatives and voters, critics and position (s) of civil society, surveys and disclaimers possible through media and sanctions courted the electorate when requested or during a consultation, the electorate should further improve public management business' own EAD.

b. **Specific Self-management business entity-**

Admittedly, in both legal systems in 1982 and 1998, the volume of business' own EAD is very important and disproportionate compared to the known means of action available. Therefore, this issue fuss she self in this context to speak of a self-management? At twenty years of decentralization in eight provinces (Bandundu, Bas-Congo, Kasai Occidental, Ecuador, and Kasai Oriental Province Orientale) and fifteen years of decentralization in the three provinces from the cutting of the former Kivu (Maniema, North Kivu and South Kivu), none of the provinces have areas of assessment evidence to support it has had to deal with a certain autonomy, its own business.

On the contrary, there has been a deliberate confusion, maintained by the central authorities, between state budget and budget entities "provinces." To before, the establishment of provincial governments, they often were instructed to support the central government authorities on official business in their jurisdictions, to act on behalf of armed troops and the Congolese National Police, to ensure supply of Prisons (mission of the Department of Justice) and, most recently to fund costs resulting from various campaigns and negotiations for disarmament and demobilization of armed groups of different elements such as the former Mayi-Mayi and others not otherwise identified. Moreover, management autonomy in a decentralized entity does not imply, in theory control the action of the executive by the legislative body to which the first is accountable for its management.

We have shown above and found on land that the provincial governor does not report to the legislative body and, since the beginning of political transition in 1990 until the promulgation of the constitution of 2006, this legislative body has disappeared and the provincial governor not account for its management at the appropriate Minister who, to be sure, doing spot checks by inspectors of finances and those of the inspectorate of the land.

c. **The existence of an entity's own resources**

Autonomy own business management requires the existence of its own assets include not only real and personal property but also financial resources. The latter upon it is by taking pieces of this legislation.

In the case of decentralization in 1982, own resources to do their EAD has been recognized two years later, in 1984, by Ordinance No. 84-102 of fiscal April 9, 1984 supplemented by carrying 84 - 153 of July 5, 1984. The text of the acts listed decentralized generating revenue and gave them the power to create new acts generators and prior authorization from the supervisory authority.

Unfortunately, the regulatory authority having control of specificity for each entity and taking into account that this decentralization was not the primary objective to lay the foundation for economic and social development from below, few EAD who have led the prior approval of the authority to create new revenue-generating actions by them to the control were not acted upon.

Thus, confronted on the one hand to the enormous needs of a malfunction of their respective entities and on the other hand, have to regularly demonstrate their feelings of allegiance to the central authorities have appointed sentiments embodied by the delivery to them, goods to "kind or hard cash," the leaders of the EAD were forced to imagine various tricks that can allow them to raise some more money to meet this requirement altogether singular part. The strategy for the EAD to create new sources of revenue and was simply easier to get around the difficult and uncertain procedure of prior approval of the guardianship. To do this, the executives of interested entities contrived to hold their proposed budget of revenues, revenue-generating targeted actions.

The legislative bodies examined the draft budgets and adopted it. The local executive subsequently submitted them for approval by the supervisory authority which did not have time to analyze the material content of the budgets of many EAD.

Once the budget is approved by order of the minister, the new revenue-generating act provided for in the said budget was considered automatically approved. This is how many

charges have been created and in the absence of coordination or a filter at the ministry, there has been a proliferation of local taxes, often overlapping, the same material is often taxable ordered to pay more taxes accruing to different entities.

Deprived of their actual tax revenues transferred to the order aforementioned fiscal 1984 which were received by the service tax but not surrendered, the EAD were ingested and find other sources of revenue and thus also there has been a proliferation of taxes that some critics have also decried[103].

These taxes of EAD, which were more than 300 large, were a real local taxation "racketeering" that has ruined most small taxpayers that are small and medium enterprises or hindered the development of many others in some areas of economic life as a small industry. In other cases, it has only deterred the developer, created the SMEs to fund any pre-established program. Socio-economic development which continue to wait for specific goals, such taxes have been used On the contrary for years, to satisfy the insatiable spirit of "enjoyment and gathering[104]" that animated the top down, leaders of the Second Republic.

A real local taxation under development has emerged and has been full of factors that are the basis for the aversion of taxpayers or the feeling of rejection of taxes owed to local, natural or legal persons.

The methods used to force the debtors to pay their taxes went to the peace of the techniques of blackmail, threats and refusing to issue the official documents which had been fully entitled. Indeed, the recalcitrant taxpayers saw themselves simply "stuck" as the anti-revolutionary "," militants cold, "of" subversives. "

Finally force them to walk in the direction desired by the leaders. Any contrary attitude usually leads to the deliberate blocking of recalcitrant economic activities with the whole cohort of unfortunate consequences such as arrests and arbitrary detention in jails, the refusal to issue the required official documents, payment of gratuity which the amounts were determined by the beneficiaries themselves and so on.

In other circumstances, blackmail and veiled threats were the (s) flat (s) regularly served to the supporters of the resistance to local taxes. The character of an all-out "racketeering" directed by the public authority. The impact of these taxes, legal or implied, is known as one of the most important factors negatively affecting the country's economic development. "Indeed, denying the public to enjoy the fruits of his effort, (because of the high legal fees or implied), the excessively high tax rates discourage work, investment, savings, the entrepreneurship and many other activities necessary to promote the sustained rate of economic growth[105]. " It is easy to see that "when all the marginal revenue is collected by the state (including legal form of taxes or implied), the taxpayer no longer has any interest in working and the tax base falls to zero[106]."

[103] Read about this topic KITOPI KIMPINDE (1989): The proliferation of taxes in Zaire and its impact on the promotion of SMEs in economic and social books, Vol. XXIII, No. special, December 1989, pp .177-204.

[104] Read KITOPI KIMPINDE and MPOYI KABEYA (2001): Reflections on the causes of the decline in tax yield in the Democratic Republic of Congo from 1990 to 2000. In Justicia (July 2001), volume IV, Faculty of Law, UNILU, Lubumbashi.

[105] Bruce Bartlett (1986): The effect of implicit taxes on economy growth. Flight Num. 2. National Chamber Foundation. 1615, and Stre and N.W. Washington DC 20062, 2nd Quarter, Washington (1986): 20.

[106] Aimee MANZENZA Dieudonné (1988): Economics of public funding: document 1, the resistance to tax. University Marien Ngouabi, APPU. Brazzaville (December 1988): 11. Better the taxpayer desist outright from performing acts generating the tax liability or taxes (that is to say, taxable income, no tax or tax payable).

3. DECENTRALIZATION AND LOCAL TAXATION: FUNCTIONAL MECHANISMS BETWEEN THE GOVERNMENT AND THE PROVINCES

When the unitary state is decentralized, the governing bodies of law exercise all the powers of public law, they share with no one No, that is to say there is no public figure outside of it in principle and in law [107].

Decentralized administrative entities in a unitary state are equipped with legal personality. Article 4 of Act 08/012 of 31 July 2008 native "province is subdivided into cities and territories. These are subdivided within the province:

- The town common;
- The common areas and / or incorporated groups;
- The territory in common areas and / or chiefdoms;
- The leadership in the sector or group;
- The group in the village.

Under Article 5 of the Act, "the city, the municipality and the leadership of the territorial entities are endowed with legal personality[108]. The territory, the area, the group and the village are decentralized territorial entities without legal personality. Note that a judicious distribution of powers between the various decentralized territorial entities to ensure their harmonious development. The free administration of a territorial entity decentralized as it is free to decide in the sphere of the powers conferred without interference of the provincial authority except in limited cases by law.

The right of the decentralized territorial entities to 40% of the revenue allocated to the province and the opportunity to benefit from the resources of the national equalization fund. An entity or regional authority has exceptional resources. It is however forbidden to cover the children outside[109].

III. DECENTRALIZATION AND TAXATION IN R.D.C.

3.1. FINAL TERMS OF RESOURCES OF THE STATE: TAX.

1. Fiscal resources: tax

The tax is the main fiscal resource. It is the main source of income in a state. The evolution of the tax is linked to that of the state[110]. Democratic Republic of Congo, the term "contribution" was preferred to that of the tax when in fact the two terms are synonymous, but the tax term is universal[111]. The current definition is such that its technique, the tax is a cash benefit required of members of the community, collected by means of authority, as final and against party[112].

We can therefore distinguish:
a. The distinction between the actual tax and personal tax

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107 Djelo EMPENGE, General theory of political institutions of the African unitary state, Kinshasa, 1978, p. 64.
108 Article 4, 5 of Law No. 08/012 of 31 July 2008 on the basic principles of self-government of provinces
109 Explanatory Memorandum of Law No. 08/016 of Op. cit., 2008 on the composition, organization and operation of decentralized territorial entities and their relations with the State and the provinces.
110 G, BAKANDESA wa Mpungu, Law on Public Finance, ed. Noraf, Kinshasa, 1997, p. 55.
111 François Deruelle, Public Finance - Taxation, 10th ed. Dalloz, Mementos, Paris 1995, André Neurisse History of the tax, what am I, PUF, Paris 1973.
112 Bakandeja wa Pungue, Idem, p. 56

The actual tax is one that "sits on a property. It takes into account only the tax base, apart from the taxpayer's situation[113]. " As against the "personal income tax takes into account the contrary, not only the tax base, but also the personal situation of its holder. "

It is a tax that can be personality, in other words that can be arranged depending on the personality of the person who supports it, its ability to pay, family responsibilities and the same incentive as an instrument for birth (on taxation of single and married zero-rating). The professional tax on wages is the type of personal tax par excellence.

2. The distinction between specific tax and ad valorem tax

"Taxes are told specifically when it is established, not according to the value of the tax base, but depending on the amount of it. It is expressed in relation to the unit more convenient to the tax base subject ": The square meters (m2) for the area, the kilogram (kg) for weight, per cubic meter (or m3) per hectolitre (hl) or liters (for volume etc)[114].

Today, specific taxes are extremely rare at the national taxation. No longer exist at the level of local taxation and customs duties. On the contrary, "the ad valorem tax is one that hits the taxable product in terms of value. It is calculated as a percentage. Human consumption, income taxes (except the regime of fixed income of SMEs), taxes on sales, some customs duties and taxes on the outstanding salaries of expatriate personnel that falls in this category[115]. "

3. The distinction between direct taxation and indirect taxation

A direct tax is one whose charge remains definitively borne by the person who is subject (67). In other words, the subject does not, in principle, the ability to transfer it to others. Actual taxes (property tax, vehicle tax and vehicle tax and tax on the concession area mining and hydrocarbons) and the scheduler taxes on revenues (rental, furniture and professional) are direct taxes.

The indirect tax, for against, is one that is paid in taxes by the taxpayer but the burden is borne by the taxpayer. Otherwise expressed the indirect tax is a tax that involves two people, on one hand the legal taxpayer or liable, on the one hand, the actual contribution is reached indirectly through the first.

The indirect tax is also called tax expenditure because it hit the consumer to buy (or sell) and the movement of products. It is based on the idea that every product must have supported a tax rate when he is free to consumers and tax revenue. Supported by the final consumer, indirect taxation is likely to pass easily.

4. The distinction by the final consumer, indirect taxation is likely to pass easily

The administrative charges are payments or payments that the use or the beneficiary of a service to be rendered by the administration. In other words, the tax due is not required. It is supported only by one who seeks and receives a service from the administration.

On the contrary, there are Congolese in the tax system, taxes that do not represent compensation for services rendered. So, on the one hand, tax is nothing but a "taxation of

[113] Barilari A.; DRAPE R. (1995): op. cit., (1995): 102 and Deruelle FR. (1995): op. cit., (1995): 24. This is the case of tax on vehicles (symbolized by the road tax, if paid), property tax and tax on the area of mining concessions and oil.
[114] Barilari A., DRAPE R., (1995), op. cit., (1995), 201 and Deruelle FR. (1995), 24.
[115] Buabua KAYEMBE WA (1993), Op cit, (1993), 24.

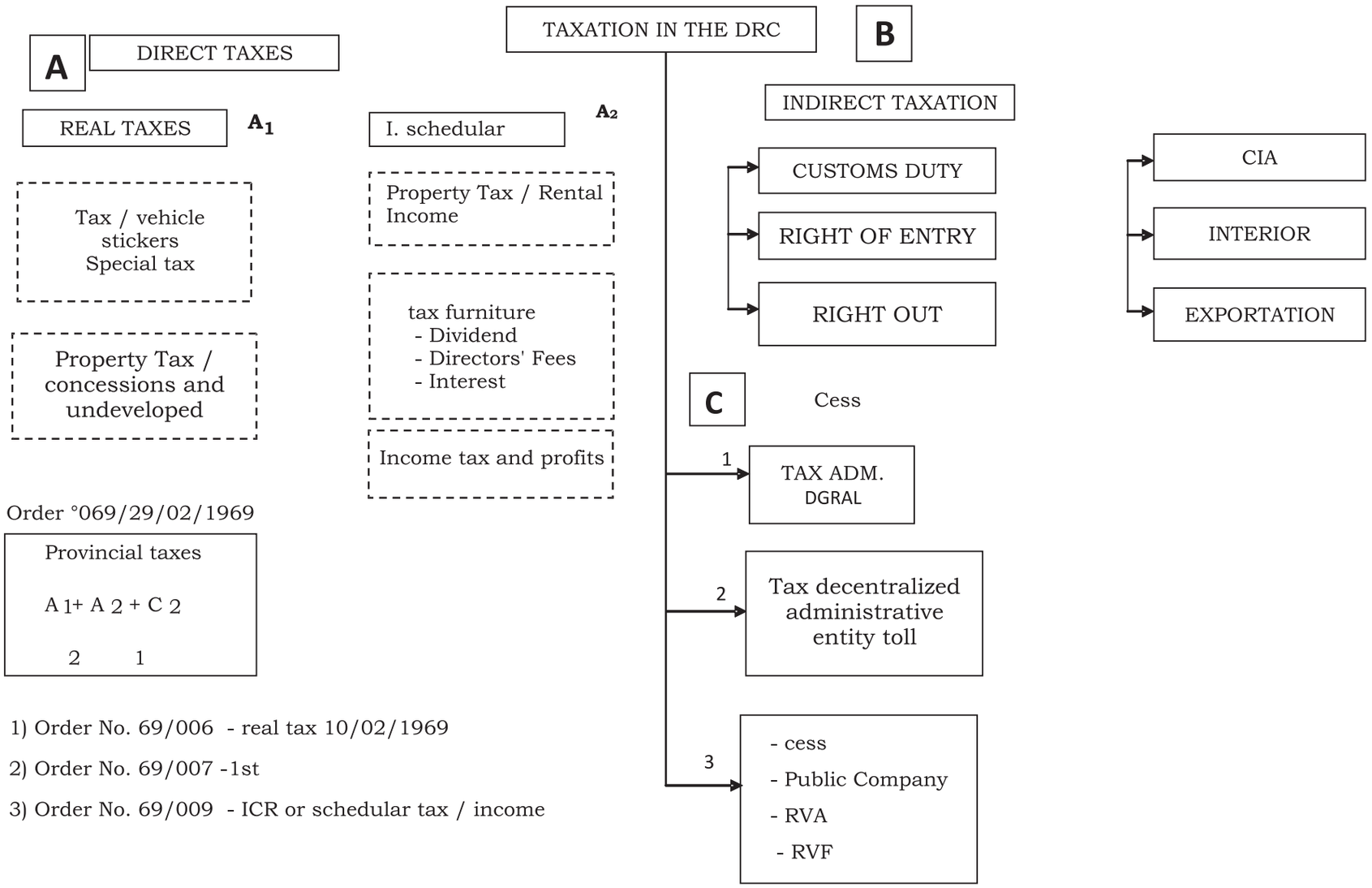
every kind" (as in piecemeal tax, tax on boats, canoes, bicycles, large and small livestock, etc.). and, secondly, from the special tax.

In a more recent, the tax is the notion of incidental taxes. The special tax is "one that is perceived in an economic or social benefit of a legal person under public or private other than the State, local, territorial and public administration[116]."

The cess is similar to tax by virtue of its binding and its recovery by coercion and also by its legal basis which happens to be the law. In short, taxes and tax parafiscal characters are similar to them and the taxpayers have the same behavior because they cover the same reality, namely the tax burden. Another aspect of taxation which raises the reaction is the taxpayer's tax burden.

[116] DUVERGER M. (1968), op. cit., (1968), 98.

TABLEAU SYNOPTIQUE DES IMPOTS ETAT DE LA FISCALITE EN R.D.



1) Order No. 69/006 - real tax 10/02/1969

2) Order No. 69/007 -1st

3) Order No. 69/009 - ICR or schedular tax / income

3.2. FINANCIAL RESOURCES OF THE PROVINCE.

Law No. 08-012 of 31 July 2008 establishing basic principles on the free administration of the provinces apart, on the one hand, the resources of the province (art 48) and on the other hand, funds from revenue nature National (art 55).

1. OWN RESOURCES OF THE PROVINCE.

1. Concepts and Enumeration.

These include taxes, taxes, fees and state and local revenues for Participation (Article 48). The province established the mechanism of recovery in accordance with procedures established by law. Taxes, provincial and local rights include: taxes of common interest, taxes specific to each province and each entity and the revenue generating administrative acts related to the decision of which falls under provincial jurisdiction (Article 40).

A. Taxes of common interest (Article 50) include the special charge of traffic, the annual fee for the issuance of the patent, various consumption taxes on beer, liquor and spirits and tobacco, the area tax on forest concessions, the area tax on mining concessions, the tax on sales of precious materials for craft production, all the other taxes instituted by the central government and returning in whole or in part to the provinces under law.

2. The key

The allocation of the total fees of common interest between the provinces and decentralized territorial entities (ETD) is fixed by the law which established the said tax, after consulting the Conference of the provincial governors.

In addition, the Province is entitled:

a. Revenue from specific taxes levied on local matters not imposed by central government. These special taxes are either compensatory or tax under the laws of the nomenclature of provincial taxes and fees. The rules for collection of specific taxes are determined, after consultation with the conference of provincial governors, the law establishing the nomenclature of local revenues (article 51).

b. revenue generating administrative acts related to the decision of which falls within its jurisdiction.

c. revenue participation including profits or income of its equity business and non-profit organizations.

3.3. RESOURCES FROM INCOME

National character.

1. **RECIPES national character**.

According to Article 54 of Law No. 08-012 of 31 July 2008 on the basic principles of self-government of provinces, the share of revenue allocated to the national character is

established in 40 provinces ° / °. It is withholding. It is clear that the withholding is done automatically by the payment of 40 ° / ° in the account of the province and 60 ° / ° in the general account of the treasure. This mechanism is implemented by the Central Bank of Congo in accordance with the financial law.

Are recognized as revenue in national character (art 55). :

Revenue administrative, judicial Crown and participation;

Revenue from customs and excise,

The revenue from taxes collected on the major oil producing companies and other taxes can be levied on which they are implemented.

Resource, the province can benefit from resources from the national equalization fund under section 181 of the Constitution (Article 57). Exceptional resources can also fuel budget revenue of the province. It may resort to domestic borrowing to finance its investments under the conditions set by law and financial law on Edict. In addition, the state may contract and guarantee in accordance with the constitution and the law of foreign loans to financial needs of the province. This can also benefit from donations and bequests under the conditions defined by law.

3.4. FINANCIAL RESOURCES DECENTRALIZED TERRITORIAL ENTITIES

The composition, organization and operation of decentralized territorial entities and their relationships with the state and the provinces are governed by the Organic Law No. 08-016 of October 7, 2008 which stipulates in its Article 100 that "finance the Decentralized Territorial grafted are distinct from those of the provinces. " This organic law also differs in regard to own resources and, pat, resources from the revenue allocated to the provinces national character, the resources of the national fund equalization and the exceptional resources. The decentralized territorial entities (ETD) establishes the mechanisms of recovery (art105).

1. **OWN RESOURCES OF THE TERRITORIAL ENTITY decentralized**.

Own resources of the decentralized territorial entities include (art 108),

a. The minimum personal income tax, which is seen for the exclusive benefit of the common areas or chiefdoms. It is established and collected according to law. "The allocation of the total fees of mutual interest between the decentralized territorial entities is fixed by the law which established the said tax, after consulting the Conference of the provincial governors."
b. Revenues from participation; They include profits or income of their equity in public enterprises, mixed economy companies and temporary associations for economic purposes.
c. local taxes and duties. ; Include taxes of mutual interest, special road tax, annual tax on the patent, various consumption taxes on beer and tobacco, the area tax on logging and mining concessions, taxes on sales of precious materials handicraft production and other taxes imposed by central government and returning in whole or in part to the decentralized territorial entities under the law (Article 112).
d. The specific taxes decentralized territorial entities are taxes levied on local matters not imposed by central government. They are either winding or tax under the law on

the classification of taxes and state and local. "The rules for the collection of specific taxes are determined, after consulting the Conference of Governors, by the law establishing the nomenclature of local revenue."

e. Revenue related to administrative acts generators whose decision is the responsibility of the decentralized territorial entities.

3.3.2. RESOURCES INCOME FROM A NATIONAL CHARACTER.

The decentralized territorial entities are entitled to 40 ° / ° of the share of revenue allocated to the national character provinces. "The distribution of resources among decentralized territorial entities is based on the criteria of production capacity, area and population. The Edict determines the allocation mechanism. " Resources relating to the national fund equalization (Article 117) and exceptional resources: a decentralized territorial entities may use domestic borrowing to finance its investments and may also receive gifts and bequests under the conditions defined by law.

3.3.3. THE STATE BUDGET AND THE PROVINCE

The state budget includes the central government budget and the budget of the province. It is decided each year by law (Article 44 of Law No. 08-012 of 31 July 2008 on the basic principles of self-government of provinces).

The budgets of the decentralized territorial entities are included in revenue and expenditure in the budget of the province in accordance with the financial law (Article 45 of Law No. 08 -012 July 31, 2008). The provincial budget is transmitted to the central government by the provincial governor on or before August 31 (article 16 of the Act).

IV. LEVEL OF LAW ENFORCEMENT ON FREE PROVINCIAL ADMINISTRATION AND OUTLOOK.

4.1. ECONOMIC ACT

Law No. 08/012 of 31 July 2008 Basic Principles on the free administration of the provinces of Article 36 indicates

- The provincial governor represents the central government in the province
- It provides the framework in safeguarding the national interest, compliance with laws and regulations of the Republic in the province.

However, the distribution of powers between central government and the province carried out in accordance with Articles 202, 203, and 204 of the constitution. The finances of central government and the provinces are distinct (Article 43), tax is determined in accordance with the provincial income tax legislation (Article 47), but the own resources of the province include taxes, state and local rights and revenue participation. (Article 48).

The province established the mechanism of their recruitment in accordance with the procedures laid down by national legislation.

Provincial institutions are:

- The provincial assembly;
- The provincial government (Article 6).

Notwithstanding the provisions of the constitution and this Act, the media and control of the provincial assembly of the provincial government, provincial public enterprises, the provincial utilities are:

- The oral or written question whether or not followed by discussion sas vote;
- The current issue;
- The arrest;
- The board of inquiry;
- The hearing by the Commissioners.

These means of control exercised under the conditions determined by the internal regulations of the provincial assembly.

4.2. LEVEL OF IMPLEMENTATION OF PROVINCIAL REVENUE MANAGEMENT

The state revenue of the province

Under Article 55 of the Act are national characters:

- Revenue Administrative Court, Crown and participation;
- Revenues of Customs and Excise;
- Revenue from taxes collected on large companies, individuals and producers of other taxes can be levied at the place of execution.

However, taxes, duties include state and local taxes of common interest, taxes specific to each province and each entity and the revenue related to administrative proceedings where the decision falls within the jurisdiction of the provinces (Article 49) .

In addition, taxes specific to each province shall be entered on local matters not imposed by central government. They are compensatory, or tax under the laws of the nomenclature of provincial taxes and fees. The rules for collection of specific taxes are set after consultation with the conference of provincial governors by the law establishing the nomenclature of local revenues (article 51). However, revenues from participation of each province, including the profits or income from its equity stake in public enterprises and associations momentary profit (Article 53).

In compliance with the constitution: Edict No. 004 establishing the revenue management of Katanga.

a. **Position of the question.**

That Ordinance-Law No. 82-OO6 of 25 February 1982 on the common territorial, political, and administrative of the republic that had established territorial decentralization in both urban and rural areas. For, as stated by the Head of State, the territorial decentralization is seen as a "strategy to bring together activists from the administration to better organize the development of their bodies.[117]"

If devolution is to improve the efficiency of state action, decentralization tends to bring decision-making of citizens, which promotes the practice of local democracy and good

[117] Mobutu Sese Seko, Speech at the opening of the 4th Congress of the MPR, May 16, 1988, "Speeches and messages, 1983-1988, t. 4. Paris, Éditions du jaguar, pp.631-632.

governance[118]. " In doing so, the Constitution has structured the Congolese government in 25 provinces plus the city of Kinshasa endowed with legal personality and exercising the powers of nearby provinces are administered by a provincial government and a provincial assembly. They include each of the decentralized territorial entities that are the city, the community, industry and the leadership[119]. "

Section 171 of the constitution and article 43 of Law No. 08-012 of 31 July 2008 on the basic principles on the free administration of the provinces state that, "the finances of the central government and the provinces are different." What is the confirmation of the fiscal and financial decentralization of the country? In addition, Article 175 para 2 and 3 of the Constitution states that "the share of revenue allocated to the national character is established in 40 provinces ° / °. It is withholding, the law establishes the nomenclature of other local revenues and the terms of their distribution"

And according to Article 54 of Law No. 08-012 of 31 July 2008 Basic Principles on the free administration of provinces, the share of revenue allocated to the national character is established in 40 provinces ° / °. It is withholding.

To comply with the spirit of the constitution in revenue management and administrative rules for their distribution in the provinces and under the law on self-government of provinces, the Governor enacted a law passed by the provincial parliament in Katanga No. 004 of 25 September 2009 establishing the management of revenues from Katanga "DRKAT." The provincial leadership had to raise provincial taxes the local government of Katanga.

Thus, to induce a certain discipline to be observed by all parties and to avoid confusion, all taxes accruing to the provinces should be codified[120] as par the view of Professor KITOPI, K. Cited above. In concrete terms, it should be noted that the constitution of February 18, 2006 in Article 204 and Law No. 08/012 of 31 July 2008 on the principles of the free administration of his articles and provinces, the provinces recognize the right to set the rules for provincial finances, taxes, taxes and state and local rights (including property tax, tax on rental income and the tax on motor vehicles) as well as to legislate the establishment of taxes, including excise duties and consumption, therefore it is quite normal for a codification could be developed in this direction continues.

Moreover, because under the same constitution of February 18, 2006 in Article 171 and Law No. 08/012 in Article 43, the finances of central government and the provinces are distinct and should be avoided that the provinces are financially dependent on central government (in the mobilization and use of revenues) and, secondly, to make them fully accountable for their failure and / or constrain their success and good governance by rigorous application of the principles of modern management of public finances, it is necessary to put into consideration verbs of KITOPI "fiscal federalism and quasi-one" between the two political bodies (central and provincial level) to end the controversy over the 40 percent of a national returning to the provinces.

Moreover, regionalism was a mode of political organization that seeks to promote and defend the identity of specific regions within the same nation and give them a political and economic autonomy, it is quite logical that the provincial tax and incidental taxes based on the exploitation of these economic characteristics.

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118 Tshiama, J.R and SANA Clarisse, "deconcentrated and decentralized entities to establish good governance" in the Citizen newspaper, a weekly independent civic education, p.1.

119 Explanatory memorandum to the constitution of February 18, 2006, in Official Journal of the DRC, 47th year, special issue.

120 KITOPI, K, thesis cited above,

Similarly, regionalism involving competition policy (positive) between regions and even between regions and central government, should they have sufficient financial resources to adequately meet the concerns of local people, hence the need to have their own tax laws so that the inspection of the collection entirely their responsibility, the current tax laws, leaving only a peripheral role to the provinces in revenue mobilization at the national character which they expect their share.

Provinces, such as Katanga, not receiving their 40 percent guaranteed by the constitution, why would they penalties if they are not rewarded accordingly, because, they say "no interest, no Action "and why they would work for others?

Finally, although costly in its implementation, the codification of the tax has the advantage of tax laws in a single document, to facilitate the use and understanding by both agents of the tax administration by taxpayers and / or accountable. Their understanding and exploitation would be more facilitated by the combination of those of them that complement or make references to other laws. Finally, consolidation would deprive the tax and the misconception that it is only matter of a few insiders.

To prevent escape to tax, tax evasion and tax fraud that the anti-corruption brigade established by the provincial authority or control service and have the necessary resources to see the taxes generated and participate in efforts to rebuild National.

To this end, we believe that we must depoliticize the tax administration and make it more technocratic. It is not enough to declare that constitutional "government is apolitical, neutral and impartial: no one can turn for personal and partisan" (Article 193 of the Constitution of February 18, 2006); still be there come to translate it into practice, which is a challenge, this politicization is top of mind rooted in Congolese because it goes back to the aftermath of independence.

In the same vein, it is imperative to conduct a thorough behavioral reform as the politician, the tax officer that the Congolese citizen, period. For if today many of the reforms in the country have failed, mainly because it is the behavior of each other were not positive about this.

b. **Of the Edict No. 004 of 25 September 2009 establishing the direction of the recipes in Katanga (DR KAT)**

DR KAT is a provincial utility has an administrative and financial autonomy, will have to exercise, on an exclusive basis, all duties and prerogatives of tax revenues, and other non-tax, returning to Katanga province with the faculty to come in support of decentralized territorial entities as part of revenue mobilization of their competence[121].

The Katanga provincial legislature concerned to meet the requirements of provincial revenue management establishes the protocol even more true that under the revenue of the material consists of non-tax revenue and for which recovery must master include:

- The revenue to the national character that is the subject of withholding tax of 40% under section 175 of the Constitution as well as 54 and 55 of Law No. 08/012 of July 31, 2008 supra;
- Tax revenue from provincial taxes including taxes on mining claims, property taxes on rental income and real taxes on motor vehicles, whose jurisdiction became exclusive to

[121] Explanatory memorandum, Issue No 004 of 25 September 2009 establishing the direction of revenue Katanga. "D. R. Kat."

the provinces in accordance with Articles 171 and 204 point 15 of the Constitution and from 43 to 53 of Law No. 08/012 supra;

- ♣ Tax revenues of common interest;
- ♣ The revenue from specific taxes in the province in this case the tax fiscal, administrative and remunerative;
- ♣ The windfall;
- ♣ Revenues from participation.
- ♣ The tasks and powers vested in the DR are shown in KAT 2 articulates the Edict above namely:
- ♣ The tax base, control, collection and litigation of state and local taxes;
- ♣ Control, scheduling, recovery and treatment of non-tax revenues litigation;
- ♣ Monitoring and keeping statistics on a national income and those relating to materials concurrent jurisdiction;
- ♣ The study and submission to the competent authority projects edicts, orders, circulars and decisions within the law.

Revenue Branch of Katanga has a budget in which resources are able to:

- ♣ A budget allocation equal to 22% of provincial revenue tax and nontax made with 20% for compensation expense and operating and 2% for capital expenditures in its implementation phase;
- ♣ 50% penalty tax and non tax and nontax component recovered the body of the litigation;
- ♣ The provincial government grants;

The amount of 20% of non-tax revenue collected under paragraph 1 of Article 5 shall be distributed as follows:

- ♣ 80% for staff salaries and operation of the DR KAT;
- ♣ 20% return for each taxation service in proportion to its achievements. For exceeding monthly assignments, the DR KAT has a return of about 20% of surplus in the form of added value for the motivation.

3. Critical assessment and future prospects.

Law No. 08/012 of 31 July 2008 on the basic principles on the free administration of the provinces and the Organic Law No. 08/016 of 7 October 2008 on the composition, organization and operation of decentralized territorial entities and their relationships with the State and provincial call and oppose criticisms and suggestions.

Thus:

- ♣ The share of 40% devolved to the provinces could not be surrendered in this Parliament, the government felt the urgent need to compensate for the reduction of public debt by the year 2010 enjoy, done, the country effectively benefited from the debt to 80%.
- ♣ The creation and erection of new provinces under Article 3 of the Organic Law 08/016 supra has remained almost utopian lack of political decision-makers, the government estimated that the country was not yet realize this goal, so that some members proposed changing the constitution in its Article 2 that provides;
- ♣ The decentralized territorial entities find their rationale in turn that the strict application of territorial Otherwise, their existence would be a disaster for tax purposes;
- ♣ The next general elections scheduled for 2011 remains a challenge facing the government so that decentralization seems to diminish the benefit of those who create cutting political chaos;
- ♣ About tax evasion and tax fraud are mechanisms that taxpayers use to escape the tax. It would thus burdening the advantage of the weakness of the legislation and its control

means, the taxpayers of this fortune to jump despise the rules, it is therefore appropriate that the policy of single window or application.

Despite the diversity of the legal system in the DRC, usage or custom is a serious constitutional problems so that certain constitutional provisions and laws have some difficult to apply because they are impregnated or copied based on the model of the West.

The same is true of decentralization laws that have gone unheeded, not only by lack of political leadership but also because they are enacted to please the people while their immediate application would cause problems in relation to reality . Sentences like these, the show clearly: "God as the law does not watch people's faces[122]," so the first term (five years) after the formation of February 1, 2006 has not resolved and applied laws on decentralization, while the 2011 elections on the horizon.

JEROME FISHER[123] believes that the social values underlying the legal system, they are intended to relay the idea of justice rooted in an actual court practice. The ideal permeates all legal mechanisms invisible it guide the assessment of the facts, the interpretation of texts and decisions of Justice. It then becomes possible to obtain a law similar to the ideal because the trial will conform to justice, and all those whose heart is the right to approve.

If so, there is no decentralization in the pure state, SOUPIOT believes that the individual making the alpha and omega of legal thought, forget the certainty that can bring the study of law: it is no identity without limits, and who does not find its limits in him is on the outside of him.

Think Europeanization and globalization as a process of erasing differences and consistency of beliefs is to prepare tomorrow deadly, universal beliefs, its categories of thought and pretend to impose on the world is the way in which leads to disaster[124].

CONCLUSION

Decentralization is the sum Congolese conflicting national policies and administrative issues that have occurred in our country since the fundamental law of 19 May 1960 on the structures of the Congo to the current constitution of 18 February 2OO6.

The Constitution has decided the issue of resource sharing between the central government and provinces and decentralized territorial entities, the future challenge is for national authorities is to balance respect for constitutional provisions with "the imperatives of equity (all decentralized territorial entities should benefit from the transfer criteria for equitable distribution), and the safeguarding of public finances. "

Moreover, Article 171 of the constitution and article 43 of Law No. 08-012 of 31 July 2008 on basic principles on the free administration of the provinces state that "the finances of the central government and the provinces are distinct ". And according to Article 54 of Law No. 08-012 of 31 July 2008 Basic Principles on the free administration of provinces, the share of revenue allocated to the national character is established in 40 provinces ° / °.

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122 122 KAPYA Kabesa Salem Israel jean marcel, Kyungu Nsenga Justin Musonda Masaka and Leander, Congolese law and justice to the test of time: tradition or modernity? In books of CRESA, No. 38, July 2010, Lubumbashi, pp.93-102. ; Cfr interview given to notables and Yeng Kamwanya Kabulo Nsenga Monique Martin of the chiefdom Kyona-nzini Pweto territory, Katanga Province in the DRC, this sentence is translated into Ki-Zeel language in these terms: "Leza kapapanga Kilunga kya muntu ... "

123 JEROME FISHER, the moderating power of the French Civil Justice, P u Aix-Marseille, Marseille, 2004, p.124.

124 Alain soupiot, anthropological test the function of law, ed. threshold, Paris, 2005, p.29

In addition, taxes specific to each province shall be entered on local matters not imposed by central government. They are compensatory, or tax under the laws of the nomenclature of provincial taxes and fees. The rules for collection of specific taxes are set after consultation with the conference of provincial governors by the law establishing the nomenclature of local revenues (article 51). However, revenues from participation of each province, including the profits or income from its equity stake in public enterprises and associations momentary profit (Article 53).

Because under the same constitution of 2006 and Article 171 of Law No. 08-012 of 31 July 2008 Basic Principles on the free administration of the provinces in Article 43 of the central government finances and those of provinces are distinct and should be avoided that the provinces are financially dependent on central government (in the mobilization and use of revenues) and, secondly, to make them fully accountable for their failure and / or success and force them to good governance through the rigorous application of the principles of modern management of public finances, it is necessary to spend as verb KITOPI "fiscal federalism and quasi-one" between the two political bodies (central and provincial level) to end the controversy over the 40 percent national character returning to the provinces.

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One can read in populorum Progressio[126] that economists themselves are now more willing to acknowledge with Paul VI, that "the world is in trouble for lack of thought" that "development cannot be reduced to mere economic growth" and that to be "authentic, it must be integral, that is to say, every man and promote the whole person" that "the integral development of man cannot go without the development of all mankind" and "social justice demands that international trade be human and moral, restore to the participants a certain equality of opportunity."

- It is attached importantly to the restoration of justice in trade than the increase in financial aid. Because, the current financial support comprises very partially only on offsetting the deficit caused by declining terms of trade against first producers. To end the mechanism that keeps the poor poorer and the rich richer, they must agree to amend the deep system for calculating pricing of commodities.
- Too, the rich countries agree to reduce the burden of debt that plagues the under-equipped.

To achieve the major changes required of the international economic order, the obstacles and objections to be overcome are not economic in nature. For the economic arguments you could raise for the old order have already been refuted by leading economists. And material and financial resources to implement are not lacking, they are known, inventoried, identified, placed on computer research institutes that multiply and perfect all the time.

Economics knows better its purpose that is why Mr. Eyskens can say somewhat paradoxically that there is more to solve in terms of economic problems[127].

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125 Explanatory memorandum, Issue No 004 of 25 September 2009 establishing the direction of revenue Katanga. "D. R. Kat."
126 René Beeckman, s.j., article cited, pp.363-368.
127 Idem

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ARMED FORCES OF THE REPUBLIC OF CONGO DEMOCRATIC ORGANIZATION STRUCTURE AND LEGAL BASIS

By Baldwin WIKH Chibinda *

INTRODUCTION

The former Belgian colony, Congo is the largest country in Africa. It is most populous after Nigeria, Ethiopia and South Africa. Under dictator, Marshal Mobutu since the1965 coup, it became representative of the corruption in Africa.[128]

Democratic Republic of Congo is a post-conflict country. The various crises that the country has experienced date back to the time of the country's independence. The country was plunged into a multifaceted crisis that prompted the army to run the country for over thirty years unchallenged. The army set up a dictatorial regime that was followed by a long transition to finally arrive in 2006 to the establishment of democratic institutions needed to restore stability in order to allow for development.

The period before the 2006 elections saw the emergence of armed factions that resembled those that followed independence. The conflict in DR Congo will involve fourteen parts in the struggle: the government, the RCD, MLC, RCD-ML, the Mayi-Mayi, the Hema and the Lendu, the foreign guests and uninvited Angola, Namibia, Zimbabwe and Rwanda, Burundi, Uganda, the Hutu Interahamwe and each for mobile individuals[129].

The army plays an important deterrent for each state. Deterrence is a way of preventing conflict in relations between states. It consists of a state to arm themselves fully to discourage any other State which may have expansionist intentions of the state armed. Arming allows states to have power[130].

In fulfilling their mission, it happens that the military posed some behaviors that affect either the military discipline or the law. These acts do not go unpunished. The authors are exposed to either the disciplinary or legal action by military courts.

In approaching a study of the Congolese army, it raises a number of questions related to its organization and structure:

Does the army play its role of protecting the territorial integrity
How the Congolese army is organized to fulfill its mission
What are the structures of the Congolese national army
What are the various legal texts constituting to the legal basis for the military?

What about the submission of the military to civil power and contribution to socio-economic development?

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[128] An attack against society, Emotion Edition, Paris, Tome I, 1999 316.

[129] Kalaba MUTABUSHA, The socio-economic crisis, civic education seminar organized by Konrad Adenauer on the conditions of crisis prevention and sustainable peace in the Democratic Republic of Congo, 17-19

[130] MERLE, M., Life International, Armand, Paris, p. 119.

We will try to follow up this series of concerns raised in this analysis which will form the hypothesis of our work:

The history of the Congolese army date back to the colonial period. The Berlin conference gave birth to the Congo Free State (CIS) which like any country adopted an instrument of defense and security. The police force, which is mixed between an army, a police station and police[131]. At that time, the defense of territorial integrity was guaranteed by the police which was relayed by the Congolese National Army in the mission of protecting people and property.

It should be noted that from the accession of the DR Congo to its national and international sovereignty, it was a serious problem of succession to the Belgian and European officials who supervised the Congolese in the army, they occupied the grades below that of sergeant, a school until 1959 Warrant was created. But the events that followed failed to train officers to take over in the army. Some troops were assigned higher grades without any proof of training. Independence leaders advocated for the replacement of the white man with black man at all levels. The black man was to be master of his own destiny.

Every country needs an army to defend its territory against a number of potential threats, which can be internal (rebellion, secession, crime, etc.) or external attack of a country that has referred expansionist. This situation creates insecurity which does not allow the public to go about their business as usual. The important role of the army is to secure the country.

The mission of defending the national territory is not the only prerogative of the army.

Section 62 of the current constitution is a duty and a right to all Congolese to defend the country and its integrity against a threat or external aggression and compulsory military service may be established under conditions laid down by law[132].

As for structures, the Congolese army has three forces with their support service, this is the land force that is often supported by tanks and armored vehicles. Of the naval force that patrols the lakes, rivers and ocean, with naval vessels and air force at the end which protects DRC's airspace. These structures are headed by a Joint Staff.

Regarding the organization structure that manages the defense is the Supreme Council of Defense which is chaired by the Head of State, in his absence or incapacity by the Prime Minister. There are the General Staff that manages the three forces, it is headed by the Chief of Staff General. Each force also has a Staff at the national level, by province, district and territory.

The Armed Forces are governed by the Constitution of the Republic, we have the articles 187 and following that speak of the Armed Forces and many other laws and regulations. There is also Law No. 023/2002 concerning military justice code, the Legislative Decree of 24 November 1964 on the organization of the repressive action of military courts when they are substituted for the courts of law.

Our study focuses on the Armed Forces of the Democratic Republic of Congo, how they fulfill the mission of protecting the territorial integrity and the protection of persons and property on an area which is the Democratic Republic of Congo. How they are organized and structured on

[131] Preface by Professor Kaumba Lufunda Book Mabialla Mantuba on the social history of the police (1886-1960) the living conditions of soldiers in the colonial army in the Belgian Congo.
[132] Article 62 of the Constitution of February 18, 2006.

the legal basis. Delimitation in time, brings us to the date of independence which is the starting point of the Congolese army, with a look at the colonial period to understand its evolution.

Our thinking apart from the introduction and conclusion focuses on four key points. The first point concerns the general considerations. This defines the military, gives the mission of the army and the various phases through which the Congolese armed forces have increased. The second point is how the Congolese army is organized, at the head of the army there is the supreme commander of the armed forces who chairs the Board of Governors of the defense that decides on the movement of troops, then comes the staff joint, followed by the forces. The third point deals with the structure of the Congolese army, it identifies the different structures of the Congolese army. The fourth talk of the legal basis of the Congolese army. These are various legal texts constituting the legal basis for the army of the Democratic Republic of Congo. These texts live from colonial times to date.

I. GENERAL CONSIDERATIONS

I.1. DEFINITION OF THE CONCEPT

The armed forces of a country representing different organizations and the military means that a State dedicated to the implementation of its policy of defending its territory. It is a military unit of a large enough variable depending on the nations and over time. Thus we can mention the example of the Soviet army, French, American, German, Angolan, Rwandan, Burundian, Congolese, etc.. Each country has an army that ensures the protection of the integrity of its territory.

The army can also refer to a structured set of soldiers with their equipment and infrastructure. Large amount of people, animals, of similar objects.

Greater or lesser number of troops assembled in a body to make war, great power, great army, a small victorious army, invincible army failed, beaten, routed army, army in good order, army headquarters, etc[133]..

Section 51 of the Charter of the United Nations grants a right of legitimate defense to a state before an armed attack on the use of force or use of force to repel the aggressor. Thus, according to the idea of this provision, only the armed attack justifying the use of force. A state can not cope with this situation when it has an army capable of dealing with this attack.

The army is called sometimes in the circumstances, so we have a lot of nicknames in the armed forces, sometimes these are units within the army that is nicknames. In DR Congo, there were units with nicknames including, Ngum, Kamanyola, moura, Colagrel, DSP, and Tiger Diabos of DR Congo that was based in Angola, red beret, green beret, military police, Kadogo , GSP, GSSP, Republican Guard.

The professional army is recognized by the fact that she knows the limits of their duties, confined to homeland defense and combat readiness. The military have expertise and skills in the management of violence, but must be placed under civilian authority legitimate, without the right to intervene in the selection of the latter.

The officer should not be driven by economic or political interests but rather motivated by a sense of social obligation codified by such notions as honor and support[134].

[133] http://www.mediadico.com/dictionnaire/définition/arme. (July 12, 2010)
[134] Dubus, A. and REVISE, N., People's Army, King's Army, L'Harmattan, Paris, 2002 170.

This design gives the military a relative autonomy from the rest of society. The job of the military is to fight or prepare to do so and in any case to participate in the political life of a nation.

I.2. MISSION OF THE ARMY

The mission of the military is defined by Article 187 paragraph 2 of the 2006 Constitution which states: *Their mission is to defend the integrity of national territory and borders. Under the conditions laid down by law, they participate in peacetime the economic, social and cultural development and the protection of persons and property.*

The "threat against national security" is an existential concept in which the military tend to include both the separatist guerrillas or ideological, that organized crime or political protest[135].

The military mission is to ensure at all times in all circumstances and against all forms of aggression, security and territorial integrity and the lives of the people. It can also be serious when circumstances threaten the security and territorial integrity of a friendly country or in case of aggression at the request of that country, the army may involve combat units[136]. If necessary the Congolese Armed Forces can also be supported by troops of friendly and allied countries. During the War of 02 August 1998, troops of Zimbabwe, Namibia and Angola fought alongside the Congolese army in the framework of SADC countries.

The threat of internal security is emerging as a result of the interference of the military in civil cases. The Congolese army since the eve of independence and its development has had to deal with riots, rebellion and secession. This has continued with the Mulelist rebellion and the East (1964), the mutinies of the former Katanga gendarmes in Stanleyville (1964), the War of Bukavu with the 10th commando battalion Schramm (1967), the attack of Luashi Kisenge and by mercenaries from Angola, under the command of Bob Denard (November 1967) war of "eighty days" (March 1977 June 1977) the war of Kolwezi (May 1978); War Moba Moba 1 and 2 and the War of the ADFL. During all these wars, the military played an important role inside the country. The mission of the army is confused between it and the police[137].

I.2.1. DUALITY ARMY-POLICE

In a number of interventions is to disperse the demonstrators is to subdue the insurgents, the military is often in support of the national police, when it can not neutralize the protesters or in the event of overflows.

Several times in the city of Lubumbashi, where the student demonstrations, or the common people claim against the power cuts or against murder, the police are often supported by either the Republican Guard or military police are special units of the national army. These units often operate to control the situation which is beyond the police.

But the coexistence of these two units is not always easy, because the line between the two bodies is unclear. The police and army are two rival bodies. The army still treats the police

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135 Dubus, A. and REVISE, N., Op. cit., p. 75

136 Articles 1, 2 and 3 of Law Decree No. 001/2002 of 26 January 2002 on the general organization of defense and the Congolese Armed Forces.

137 Mukendi Nkashama and KABEYA Mukamba War, and sociolinguistic mutations in the Democratic Republic of Congo (1960-1999), PUL, Volume II, Lubumbashi, 2000, p. 133.

to be poorly trained, poorly paid, corrupt, considered to have the conscendence the army. Jurisdictional disputes were numerous, but clashes have been limited. Both institutions are still in competition, but respect each other. The military often apply for internal security missions. The elite corps of the army are such occurred alongside the police[138]

The Congolese army has not as a specific mission, in theory the police responsible for internal security and the military for external security, but in reality the boundaries are blurred compared to the operational strategies adopted. For the simple reason the police management is often entrusted to officers of the armed forces often based on the model of the army to organize the police. They create in the police special intervention units, elite units. This creates an ambiguity between the army and police.

I.2.2. ARMY FOR DEVELOPMENT

The very notion of development is unclear. It is indeed often confused in the minds of key players, with the concepts of growth, modernity and national integration[139].

The army of the DRC has within it a specialized unit "engineering company", a unit filled several skills, she specializes in almost all areas. There are mechanics, masons, drivers, engineers, electricians, plumbers, etc..

During the massacre on the campus of Lubumbashi in 1990, such as military engineering company, based in Likasi with government funding Lunda Bululu had rehabilitated the halls of Lubumbashi. The same company had built the Lualaba District Office and its annexes, the office that houses her life the services of the state.

Pursuant to section 187 of the Constitution of February 18, 2006, in peacetime, the military can contribute to the development of the country.

From 50 years, a question arises in every country was then called the Third World: that the military or civilians assume the mission of better socio-economic development?

At the time, most Western authors opt for the military. Civilians are too corrupt and acting on their own sectoral interests, they would prove unable to provide conditions conducive to political progress of nations. On the contrary, the military detached from party politics are supposed to place the collective interest above special interests.

But the case of DR Congo is inversely to the principle of economic growth experienced by some third world countries. We have seen the military be involved in the looting of mineral resources of the country, is used as a cover or cover for a fee. The army instead of being for the benefit of the people working in the smuggling, drugs, arms trafficking, prostitution, rape, crime, gambling houses or counterfeit currency.

The consequence of an army involved in the anti-values, it becomes less effective, send a real battle, the soldiers are not prepared. This is an opportunity to make money, sell arms, bullets, diverting food for the military front, sometimes being in league with the enemy to deliver the troops.

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[138] Dubus, A. and REVISE, N., Op. cit., p. 120.
[139] Ibid, p. 125.

The case of the entry of ADFL troops of Laurent Kabila's army against MUBUTU shows an example of an army engaged in anti-values. Kabila's troops took all the territory without a fight, with a few fronts as KISANGANI and Keng where the Marshal drew a line impassable to test the degree of loyalty of his army against the famous slogan military in Lingala, a language National Democratic Republic of Congo, "Makila na Biso na po Ekolo, po na guide, live Zaire Zaire deep", which literally translates as "our blood for their country, for the guide[140], long live the Congo, RAM DR Congo". There has been despite the slogan of an army disorganized, poorly prepared, poorly paid, which brought Laurent Désiré Kabila to power in the struggle of 1997.

I.3. HISTORY OF THE CONGOLESE ARMY

The Congolese army has changed names several times, passing through several stages. It began with the police since 1885 until 1960, and Congolese national army after independence (ANC), becoming Zairian Armed Forces (FAZ). At the advent of Mzee Laurent Desire Kabila, she moved to the Congolese armed forces (FAC) only to be armed forces of the Democratic Republic of Congo (FARDC).

I.3.1. PUBLIC POWER

It was created in 1885 when Leopold II had just taken possession of the Independent State of Congo, now Democratic Republic of Congo, he commanded the Department of Home Affairs. Thus it will create a military force and police for the state.

In 1886, many officers were seconded to the Belgian Congo to set up a military force. The police force was not comprised solely of Belgian officers, there was also the Swedes, Danes and other Europeans.

The police conducted a military campaign during the World War 1914-1918, was in East Africa, Cameroon, Rwanda, Burundi and especially in the territory of present-day Tanzania. She won several military victories (Tabora, Mahenge) thus gaining the respect and confidence of their allies the Portuguese and British[141].

During this period, the police was organized in 21 companies, plus the separate units of artillery and engineering, each company was to include four white officers and one hundred fifty soldiers Africans, 80 completed the Congolese staff.

History tells us that the Congolese and Belgian officers took place automatically Europeans of different organs that were the officer corps in the CIS The troops deployed in Katanga was specially constituted an autonomous force of six companies and unit cycling.

Overall, the police consisted of a body of twelve thousand one hundred men, divided between twenty-one companies. Over time, the police already had about 1914 more or less 17,000 soldiers recruited under the quota system and the conditions for continued forced recruitment.

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[140] Marshal Mobutu as head of the party-state has allocated himself qualifiers, among other guide of the revolution, father of the nation, founding president and others to just sit dictatorship.

[141] BANZER WA Banza, study behavior of the armed forces of the Democratic Republic of Congo, Memoire licensing Criminology, University of Lubumbashi, Lubumbashi, February 2010, p. 42

I.3.2. Congolese National Army

The Congolese National Army (ANC) was founded after independence which took place June 30, 1960. It was obtained after numerous discussions with Belgium, which held that it takes place after 30 years. He landed a very serious problem among Congolese to take over white officers for the control of the situation throughout the territory or the situation had become unmanageable. The claims, repeatedly expressed by men in uniform, had attracted the attention of person: the Africanization of cadres, readjustment of wages, improved working conditions, implementation of promises made to deserving soldiers[142].

The mutiny was the logical consequence of the negligence claims of the men in uniform. In this regard General Janssens addressing the Congolese troops who demanded he wanted discipline, he will tell them in this term: "Before independence tied after independence." This term shocks the conscience began Congolese troops by men who did not understand the merits of independence and in political circles it was a challenge to the independence of the young Republic.

Lumumba's speech created a climate of hostility against Belgium. The situation will be widespread throughout the country due to lack of officers able to master the troops to be raised throughout the country.

On the eve of independence, the Democratic Republic of Congo was torn by wars of secession and rebellion: the secession of Katanga led by Moise Tshombe and the secession of South Kasai (1960-1962) led by Albert Kalonji Mulopwe; Antoine Gizenga rebellion in the Eastern Province (1960-1961); the Mulelist rebellion and those of the East (1964), these wars have affected the ability to deal with all these movements[143].

During this period, the ANC was facing a lot of resistance groups, including the army of Katanga, the resistance of Albert Kalonji South Kasai, the rebel group of Antoine and Mulele-Mai[144] and various mutinies. Faced with this reality the ANC found itself unable to contain all these movements on the ground.

War is a good time to Congo where people believe in magic, witchcraft. Note the military leaders running in the house became for processes of multiplication, invulnerability to bullets, disappears when one is in an ambush.

A more contemporary use of deception ancient sorcerers was updated during the recent civil war in Congo. Witchcraft always increases in wartime, but this example of deception is exceptional

African youth were recruited to join the rebel army that swept south-western Congo. They controlled at some point one fifth of the territory. To ensure an army of vicious and fearless leaders of the rebellion made use of witchcraft to convince that they were invincible warriors, promising them that if an enemy bullet touched them it becomes straw. August 14, 1964, after the ritual of witchcraft, the soldiers were heading Luluabourg (now Kananga) full of confidence. Dr. Alexander Reid tells of the battle that ensued:

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142 Elikia M'BOKOLO, Director of the School of Advanced Studies in Science, afterword to the book of MABIALA MANTUBA.

143 Mukendi Nkashama and KABEYA Mukamba War, and sociolinguistic mutations in the Democratic Republic of Congo (1960-1999), In 40 years of independence, Volume II, PUL, 2004, p.133

144 Mulele Mai: is a resistance group led by Pierre Mulele who opposed the power of Leopoldville, the group practices used fetishists who were to undergo rites during a ceremony to make them invulnerable to bullets and other sharp objects during the combat.

On the morning of August 14, they (the army of the ANC) ambushed eight truckloads of rebel soldiers with two-thirds of the way to Lusambo and cut down almost all. The few survivors Lusambo informed of their losses, which made the victory that changed the camps in our region of Mongo and destroys the fear of witches and taboos.

These are the animistic beliefs that make so rependu such deception possible. It is estimated that this army, with its forces rooted in witchcraft was responsible for over 100,000 deaths before being defeated. Soldiers and civilians alike had lost their ability to reason clearly and able to defend themselves, because they had put their faith in witchcraft[145].

I.3.3. ZAF

HOROLD CROUCH by a comparison of Southeast Asia is noted that in the country or social structures are still relatively unstable governments dominated by the military can bring political stability that fosters economic growth[146].

This rule has not spared the DR Congo after the discord, political strife, secessions, rebellions and mutinies since independence, allowed the army to take power. A statement by the commander of the Congolese National Army will decide the following: *For over a year, the Congolese National Army fought against the rebellion, at one point, held a nearly two-thirds of territory of the Republic. While it is almost defeated, the High Command of the Army regrets that no effort was made on the side of the political authorities to help the suffering people coming out now in mass of the bush by confidence in the Congolese National Army. The race for power of politicians likely again to bloodshed Congolese, all commanders of the Congolese National Army, meeting this Wednesday, November 24, 1965 around their commander in chief, took in consideration of the foregoing, serious decisions:*[147]

The army has taken and continues to assume a major role politically, but economic and sociocultural. It is conventional in the developing countries that the military take over running the country. Some argue that this commitment is needed in emerging nations. The involvement of military policy aimed at stabilizing the political situation and contributing to nation building.

According Horold[148], factors promote the politicization of the armed forces: the loss of credibility of the civil government due to incessant bickering for power, the persistence of serious internal security problems, the absence of an imminent external threat and the belief of Army to be the guardian of the nation.

There are also historical circumstances that may explain the commitment of the military struggle for independence, the army based on the revolutionary legitimacy (the inability of the traditional policy has managed the country)[149]

Jean-Jacques Rousseau wrote: "The strongest is never strong enough to be always the master unless he transforms strength into right and obedience into duty[150]."

The name of the Democratic Republic of Congo continued until 1971 to be replaced by the

145 WOLFORD, M., truly free from the bondage of witchcraft, Zambia, Christian Literature Press, SD p. 67.
146 HOROLD CROUCH, quoted by Dubus, A. and REVISE, N. , Op. cit.cit, p. XVII.
147 Excerpt from the proclamation of the High Command of the Congolese National Army on 24 November 1965
148 CROUCH HOROLD cited by Dubus, A. and REVISE, Op. cit., p. XVIII.
149 Ibid
150 ROUSSEAU, JJ., The Social Contract, Flammarion, Paris, 1992 32.

name Republic of Zaire, which, according to supporters of Mobutu regime was confusing the need to avoid. The seizure of power by Mobutu's army plunged into tribalism; many officers were in Ecuador, where he himself was a citizen. He ended up making the military Lingala language.

I.3.4. Congolese Armed Forces

Since 1965, the country experienced a strong regime that plunged into a total crisis, Laurent Desire Kabila at the head of a movement called the Alliance of Democratic Forces for the Liberation of Congo acronym AFDL will fight for the Mobutu regime free the country from the dictatorship that lasted 32 years.

The army may be cited as the Congolese Armed Forces to defend territorial integrity. The forces of Laurent Désiré have been called liberation by having left the country in a regime without sharing that ruined completely the Democratic Republic of Congo.

I.3.5. Armed Forces of the Republic Of Congo

After the death of Laurent Desire, the country was plunged into a crisis similar to that of the years since independence. The various movements that have fought with Laurent Desire will dissociate to start their own struggle. After the death of Laurent Desire Kabila, took power will be Joseph Kabila Kabange, son of the late Laurent Kabila in agreement with the Kabila government and the military father.

Over time the military will become the Congolese Armed Forces of the DRC, "FARDC" in acronym.

II. ORGANIZATION OF THE CONGOLESE ARMY

Armed Forces of the Democratic Republic of Congo headed by a Supreme Council of Defense which is chaired by the President of the Republic. The Board coordinates all activities relating to the security and defense. It decides all movement of troops as the army of the Congolese National Police

II. 1. THE BOARD OF DEFENSE

II. 1. 1. SUPREME COMMANDE

The Congolese Armed Forces are organized on the principle of a single structure. The direction is exercised by the president. He is supreme commander of the Congolese Armed Forces, he chairs the High Council of Defence[151].

The President declared war by order in council of ministers deliberate on the advice of the Superior Council for Defence and approval of the national assembly and senate. Section 192 of the Constitution of February 18, 2006, establishes the Board of Governors of the defense, it is chaired by the President in case of absence or incapacity, by the Prime Minister.

[151] Articles 83 and 86 of the Constitution of February 18, 2006

The High Council of Defence is responsible for:

- Formulate guidelines for the negotiation of the defense;
- Decide and coordinate all activities in defense of all interested departments and agencies;
- Identify the human, financial and material resources to devote to the defense;
- The measures to promote the needs of the Armed Forces[152].

In wartime, it is established a special committee of the defense
This committee assists the president in the conduct of the war.

II.1. 2. Joint Staff

The Congolese Armed Forces include a ground force, air force, a naval force, a logistics base, services and specialized body of military justice and military colleges.

They are headed by a general officer bearing the title of Chief of Joint Staff. The Chief of Staff controls all forces, the central logistics base, the military regions and specialty services. He is assisted by the Chief of Staff Headquarters and assisted by three deputy chiefs of staff headquarters.

II.1. 3. States Forces Staff

At the head of each force, there is a general who holds the title of Commander of force. He is assisted by a Chief of Staff and three deputy chiefs of staff. They ensure the operation of their respective forces under the authority of the Chief of Joint Staff.

There are also specialized units that are managed by senior officers or generals. The commanders of the units operate under the authority of the Chief of Joint Staff. This is the case of central logistics base which is under management of the commander of the logistics base, the Republican Guard with its various detachments in several provinces and districts is managed by a commander of the Republican Guard. Colleges are run by a military commander of the military groups of colleges.

The body of military justice is organized to punish acts committed by elements of the armed forces and the Congolese National Police. This repression is in accordance with Article 1 of Legislative Decree of 24 November 1964 on the organization of the repressive action of military courts when they are substituted for the courts of law: When following the proclamation of State of Emergency, the repressive action of military courts shall be substituted, in whole or part of the territories to those of courts of law under Article 124 of the constitution, the powers and jurisdiction of military courts are fixed by this decree.

The Military Judicial Code governs the organization and operation of military courts. Personal skills and material to each instance is determined by the Judicial Code. Military courts know the territory of the Republic, military offenses punishable under the provisions of the Military Criminal Code. They also experience all kinds of offenses committed by the military and punished in accordance with the ordinary criminal code.

They are competent to interpret administrative acts, regulations or individual and to assess the legality of this review when, depends on the outcome of criminal proceedings before them. Submission to the military law begins to militia and volunteers of all kinds from that

[152] Article 15 of Decree-Law No 001/2002 of 26 January 2002 on the organization of defense and Congolese armed forces

moment or agent committed to this end, they did, after having first read of military law, the statement that they are subject to these laws.

II.1.4. Military Region

It includes all units of land forces, air force, naval force, the logistics base and regional specialist services is below the designated zone defense. Military Region is comprised of one or more levels of operational command international force whose mission is to coordinate the military efforts of defense. The boundaries of the military region may correspond to those of one or more administrative provinces. The commander of Military Region is appointed and relieved of these duties by the president. He meets the Chief of Joint Staff.

Military Region is subdivided into one or more brigades that control effectively the battalions. The battalions are in turn subdivided into companies. The brigade is under order from a superior officer or general named commander of the brigade. It meets the Commander of Land Forces of the operation of units under its authority. Other structures are organized as specialized units throughout the Republic.

II.2. ORGANIZATION OF GRADES

In accordance with Legislative Decree No. 226 of 7 May 1999 establishing the wearing of distinctive signs and ranks among the Congolese Armed Forces "FCC" ranks in the Armed Forces are classified in three categories:

1. Extra-Category: is reserved for senior executives at the summit of the military command of the country. This distinction returns automatically to the Supreme Commander and other executives appointed by the supreme commander wearing badges other than the Supreme Commander;

2. Category: is a class reserved for officers, noncommissioned officers and officers;

3. Order: is reserved for soldiers.

II. 2. 1. GENERAL OFFICERS

- The first category is equivalent to lieutenant general, three stars and two gold bars resting on a passing red;
- The second category is equivalent to Major General, two stars and two gold bars resting on a passing red;
- The third category is equivalent to brigadier general: one star and two gold bars from one based on red.

II. 2. 2. SENIOR OFFICERS

- The fourth category is equivalent to Colonel: three stars and a gold horizontal bar resting on a black background;
- The fifth category is equivalent to lieutenant colonel, two stars and a horizontal bar gold based on a passing black;
- The sixth category is equivalent to Major: a star and a horizontal bar gold to black.

II. 2. 3. Junior officers

- The seventh category is equivalent to the captain, three gold stars from one based on green
- The eighth category is equivalent to lieutenant: two gold stars on a green way;
- The ninth category is equivalent to lieutenant: one based on a gold star from green.

II. 2. 4. SUB-OFFICERS AND GRADES

- The tenth category is equivalent to the CWO: a star between two silver bars on a passing blue;
  The eleventh-category is equivalent to Warrant Officer First Class: a star and a silver horizontal bar resting on a passing blue;
  The twelfth-category is equivalent to Warrant Officer Second Class: a silver star based on a passing blue.

II. 2. 5. ORDERS

The first-order equivalent to corporal;
The second-order equivalent to private first class;
The third-order equivalent to the soldier.

It should be noted that the aforementioned Decree Law establishing the grades in the Democratic Republic of Congo lends some confusion in practice with regard to the category of warrant officers and soldiers. Thus, another act was waiting for the regularization of the port of grades.

II.2.6. FIFTIETH ANNIVERSARY OF THE DRC

Since June 30, 2010, the Congolese armed forces have changed the rank insignia and holding that now remains in force throughout the whole of the Republic. These loops which determine the colors in the rows, red shall be displayed by the generals, while the stars above determine the grades.

A star will be a brigadier general, two major generals, lieutenant general three and four army general. The category of senior officers will be remarkable for the yellow color which will be placed on the head of a leopard as it is major (a leopard head) Lieutenant Colonel (two head) and three full Colonels.

Junior officers will focus on the bottom (from) blue arrow to a second lieutenant, first lieutenant for two and three for the captain. NCOs will first class from the green.

III: THE STRUCTURE OF THE ARMY

The Congolese Armed Forces are headed by the Joint Staff which covers all the forces in the Democratic Republic of Congo. The Joint Staff is composed of three forces (army, navy and air), the central logistics base, specialized services and body of Military Justice.

III. 1. The Joint Staff

The Joint Staff is headed by a Chief of Staff. He has authority over all forces, the central logistics base, Specialty Services, the military regions, as well as the heads of specialized units[153].

He is assisted by the Chief of Staff headquarters and assisted by three deputy chiefs of staff headquarters, respectively, which manages the administration, operations and logistics. Whoever is responsible for administration oversees the administrative operation of the Armed Forces. It deals with staff, administrative, correspondence, payroll, military, etc..

Deputy Chief of Staff for Operations handles the movement of troops whenever the external security is threatened. While that of logistics, responsible for the management of cartage, the filing of armament, military clothing and military ration.

III.2. LAND FORCES

It includes Actuator:

- Battalions and regiments of infantry and tanks;
- Support units;
- Support units;
- Support services and schools.

It may also include other major units.

The battalion is a basic tactical unit whose organizational structure includes elements of combat, combat support elements, support elements and elements of support services. In each province, there are a number of military regions, which consist of one or more brigades, also in turn consist of several battalions. The area is a military tactical unit whose organizational structure enables:

- Order effectively battalions;
- Provide a safety distance to all of the brigade;
- To provide supplements to support battalions;
- To increase the autonomy of organic battalions.

Military Region is under the orders of a superior officer or general. It is called "brigade commander," it depends on the commander of land forces.

Katanga Province has a military region called "6th Military Region," it consists of several battalions, the battalions are based in Likasi, Kolwezi, Kipushi Lualaba, etc.. There are also specialized units, like the Republican Guard that is in the 6th Military Region. The units of the naval force are based in Kalemie patrolling along Lake Tanganyika. At the airport the Luano is also based elements of air power. All these forces are coordinated by the military region.

III. 3. AIR FORCEIt is also known as the Air Force, it is made:

Units-hunting;

[153] Article 17 of Decree Law No. 001/2002 on the general organization of defense and Congolese armed forces.

- Transport units;
- Units, attack helicopters and air defense ground components;
- Schools.

All these units are under the authority of the commander of the Air Force. The structure and staffing of the units above are determined by the order of the President of the Republic[154].

III. 4. NAVAL FORCE

The naval force is called navy, it includes:

- Coastal units;
  Lake-units;
- Battalions of marines;
- Logistical support units;
- Schools.

These units depend on the command of the naval force. The structure and staffing of these units mentioned above are determined by the President.

III.5. BASED LOGISTICS CENTER

Command of the logistics base station is placed under the authority of the Chief of Joint Staff. It is headed by a senior officer or general. He is appointed or removed from office by the President of the Republic.

Central logistics base is composed of regional logistics bases that are responsible for providing logistical support of all units deployed forces in all military regions.

Logistics base station is responsible for:
- To constantly upgrade the supply of logistics bases and other regional;
- Receive any equipment disposed of in a regional logistics base and ensure repair and maintenance;
  Common-store operational and strategic reserves.

III. 6. MILITARY JUSTICE

Body of Military Justice, the organization of military courts as a legal basis of Law No. 023/2002 of 18 November 2002 Code of Military Justice. This law creates a pyramid of military courts in the DRC as follows:

At the bottom we have the police courts, military courts in the following garrison, followed by military courts and courts operating at the top of the pyramid, we have the highest military court.

The high military court has its headquarters in Kinshasa is the capital of the Republic, its jurisdiction extends throughout the national territory. But in exceptional cases, the seat of

[154] Article 39 of Decree Law No. 001/2002 on the general organization of defense and the Congolese armed forces.

the High Court can be attached to any other place on order of the President of the Republic[155]. The military courts were established in the capital of each province. The seats of the garrison courts are established in each district and city, it is established in each jurisdiction of the court garrison, one or more police courts.

The example of the city of Lubumbashi, which is also the capital of Katanga Province, is a full military court that covers the extent of the province. It is as Garrison Court, which covers only the city of Lubumbashi and police courts. The headquarters is located in Lubumbashi at the intersection of avenues Mama Yemo and DJAMENA in the town of Lubumbashi.

III. 7. SENIOR MILITARY SCHOOLS

This is a group of military high schools, is managed by a group commander of military colleges that the rank of officer or general. Established by Decree No. 106/2002 of 19 August 2002 setting up a group of military colleges of the Congolese Armed Forces.

He is responsible for:
- Provide training and development of all officers of the Congolese Armed Forces;
- Approve documents and studies on various doctrines for its publication and broadcast production;
- Participate in the development of regulations, directives and instructions;
- Carry out various studies in the context of training and military education in favor of the supreme commander of the Congolese Armed Forces;
- Assist the Supreme Commander of the Congolese Armed Forces in the organization and control of military education.

The structure, organization and functioning of the group of military colleges are set by the President.

III.8. DIRECTORATE GENERAL FOR DETECTION OF MILITARY Anti-Patriotic Activities

In the Congolese Armed Forces, there is a service detection of anti-country. Established by Decree No. 018/2002 of 24 February 2002, called "Branch Military Detection of Anti-Patriotic Activities," DGDEMIAP in acronym. This structure stop and suppress any activity within the armed forces is likely to endanger the homeland. It has units throughout the country.

III. 9. MILITARY HOME

Its mission:
1. To assist the President in the design and development of defense policy and security;
2. To assist the President in leading and coordinating all activities related to planning, training and equipment of the Congolese armed forces;
3. Do or perform all tasks assigned by the President of the Republic.

The military household includes:
- A firm;
- Three departments namely:

[155] Article 7 of Law No. 023/2002 on the Code of Military Justice.

1. Department operations and organizations;
2. The Department of Information and Security;
3. Department administrative and logistical support.

- The departments in turn are subdivided into cells and each cell has a respective spot in the military household.

The firm's mission:
- Assisting the head of the military household in its daily tasks;
- To study the cases submitted to it by the head of the military household.

The firm is composed of:
- A legal adviser and his deputy;
- An assistant chief of the military household;
- An administrative secretary and his deputy;
- Head of a financial service;
- A secretary.

Departments are specialized services covering the following areas:
1. organization, operations and training;
2. intelligence and security;
3. administrative, logistical and technical.

A. The Department of Peacekeeping Operations and organization of cells is composed as follows:
- Operations;
- Organization;
- Training.

It is responsible for:
1. Evaluate the operational units of the Congolese armed forces, national police and the mood of the troops;
2. Ensure the application instructions and directives of the supreme commander of the Congolese armed forces in the organization, operations and training
3. Liaison between the military household and the Department of Defense, the Joint Staff, the forces and the Congolese National Police.

B. The Department of Intelligence and Security is responsible for:

1. Continuously reassessing both internal and external threat that hangs over the Democratic Republic of Congo;
2. To exploit, analyze and evaluate information relating to defense and security;
3. Maintaining records security of neighboring countries;
4. Maintaining security files of senior army, police, national service and the staff of the military household;
5. Develop standards of military security;
6. Continuously reassessing the security situation of the units, facilities and equipment of the army, police and National Service;
7. To liaise between home and the military security service.

This department includes the following cells:
1. Studies, analysis and evaluation;

2. Documentation;
3. Military security.

C. **Finally, the Administrative Department and Logistics is responsible for**:

1. To hold the senior administrative file of the army, police and National Service;
2. Ensure the administrative management of the aides of the Head of State;
3. To develop the guidelines of Supreme Commander for the management of military and civil defense, military and national police;
4. To develop the guidelines of Supreme Commander for the acquisition, purchase and management of military equipment and supplies;
5. Verify compliance steps of materials and equipment by the Department of Defense, the Joint Staff, the various forces, the Congolese national police and national service.

This department consists of:
1. Staff;
2. Equipment;
3. Technique

Personnel management of the military household is subject to Law No. 81/003 of 17 July 1981portant Staff career of public service as well as the state administrative regulations specific to the armed forces.

The head of the military household names and dismisses the heads of departments and legal counsel after approval by the President. They rank of adviser to the minister.

Recruitment of other members of the military household are made by the head of the military household.

IV. THE LEGAL BASIS OF THE ARMY

IV.1. CONSTITUTIONAL TEXTS

Section 219 of the Basic Law[156] listed the materials that are the exclusive responsibility of central government, of these materials included the armed forces. The reason for the award was justified in Article 6 which stated: "The Congo is in its present limits, an undivided and democratic state."

Made up of six provinces, it was inconceivable that each province is endowed with its own army, plunging the country into a total balkanization. Although the military has been the domestic jurisdiction, it had been unable to deal with rebellion and secession.

Section 251 was devoted to the Armed Forces which provided: "*The military contingent is set annually. The law determines, has force only for one year, unless it is renewed*[157]. "

The constitution of the first in August 1964 called Title X Luluabourg devoted to a chapter on law enforcement. It should be noted that the constitution provided for a federal state. The police were held in police, gendarmerie and armed forces. Each province had a police force that depended on it. The Gendarmerie was part of the national army while having its own structure[158].

156 Article 219 of the Basic Law of 19 May 1960 on the structures of the Congo.
157 Article 251 of the Basic Law of May 19, 1960.
158 Articles 159, 160, 161, 162, 163 and 164 of the Constitution of the 1st August 1964.

The army was in the service of the Congolese nation as a whole. No authority could divert it from its own ends. No one could organize training military, paramilitary or militia or maintain a private army or subversive youth.

Recruitment, organization, rules of discipline, service conditions and the rights and military obligations were fixed by legislation. The establishment of foreign bases was prohibited; no foreign troops could occupy or cross the territory in violation of the law.

Regarding the intervention, the army could not operate outside the country under the conditions determined by law.

The armed forces could intervene in the internal affairs of a province and thus supplement the police in the case set by national law.

As for the constitution of June 24, 1967, Article 30 provided: "*The President shall appoint and dismiss provincial governors.*

He shall appoint and dismiss prosecutors.

It is the supreme commander of the armed forces and police. He appoints and dismisses officers of the armed forces and police ..."

The constitution recognizes the February 18, 2006 the President of the Republic of quality supreme commander of the armed forces and chairman of the Supreme Defence[159].

Sections 187 and above determine the structures and missions of the armed forces, which are those of defending the territorial integrity and national borders.

In peacetime, they contribute to the economic, social, and cultural and protect people and property. The constitution prohibits on pain of high treason, the organization of military or paramilitary formations.

IV. 2. LEGAL TEXTS AND REGULATIONS

Apart from the constitutional, we also have laws and regulations. With regard to regulations, there are texts made by the President in matters in the field of law and regulations. Still speaking of regulations, there are also texts made by the Minister of Defence.

The Presidential Decree No. 86/014 of 27 June 1986 focuses on national defense and homeland security. This Order organizes the personnel management department of national defense in two directions, one responsible for civilian personnel and general services and the other in charge of military personnel.

Ordinance No. 94/025 of 4 April 1994 on the body of transmission within the FAZ. This act creates transmission troops under the authority of the Chief of General Staff. This body advises the Minister of Defence and the Chief of Staff. Ensure the command, coordination and control units. It provides, coordinates and develops the efficiency and speed of information transmission, information, instructions, orders and decisions between levels of command, coordination and execution of the Zairian armed forces.

[159] Article 83 of the Constitution of February 18, 2006.

Decree Law No. 226 of 7 May 1999 establishing the port of grades and distinctive within the Congolese armed forces "FCC". This Decree-Law establishes the ranks in the armed forces and the classification of three categories namely:

1. Extra-category;
2. Category;
3. Order. The extra category is reserved for the summit of the military command of the country. Class officers, NCOs and officers. And the order is reserved for soldiers

Decree-Law No 001/2002 of 26 January 2002 which deals with the general organization of the defense and the Congolese armed forces. This Decree-Law on Defence which is to ensure at all times in all circumstances and against all forms of aggression, security and territorial integrity, and the lives of the people.

This law regulates the use of forces and resources. Conditions in relation to age, gender, how the government can do, the identification of persons, animals, materials, products and others may be requisitioned.

The same decree contains provisions on the management of the war, the direction of the defense as its territorial administration and operation of the defense, the organization of the Congolese armed forces.

Decree No. 024/2002 of 24 February 2002 establishing the military household of the President of the Republic. This text establishes a structure that is designed to manage the security, military, national service and the Congolese National Police, as the head of state is the president of the Superior Council of Defence.

Decree No. 019/2003 of 2 March 2003 on the organization and functioning of the military household of head of state. It considers all matters relating to defense and security and all other matters submitted to him by the head of state. It prepares the decisions to be taken by the Head of State concerning national defense, police, national service and the security service.

The military household evaluates the operational units of the Congolese armed forces, national police and the mood of the troops. It operates and analyzes all military intelligence, political and other.

It gives technical advice on the purchase and acquisition of equipment and military equipment. She is the liaison between the Chief and Department of Defense.

Decree No. 018/2002 of 24 February 2002 setting up a specialized service called the Congolese armed forces branch of the Military Detection of Anti-Patriotic Activities, DGDEMIAP. This structure is responsible for suppressing the armed forces in any anti homeland.

Decree No. 106/2002 of 19 August 2002 setting up a group of military colleges of the Congolese armed forces. These colleges ensure military training and development of all officers of the Congolese armed forces. Approve the documents and studies on various doctrines ensure publication and dissemination produce, etc..

Decree No. 108/2002 of 19 August 2002 creating the Directorate of Logistics. This is a structure within the armed forces who oversees the transport, supply, order, production and agriculture.

Within the logistics base, there are central repositories that are non-mobile facilities and depend on the general staff. Logistics base station is responsible for logistical support, supplies, transportation of military regions and logistics units. These logistics bases are located at: Boende, Bukavu, Kananga, Kikwit, Kindu, Lubumbashi, Matadi, Mbandaka, and Mbuji-Mayi.

Decree No. 110/2002 of 19 August 2002 laying down the structures and organization of the logistics base station Congolese armed forces. This Decree determines the structures that comprise the logistics base station:

1. A main state;
2. Battalions;
3. Central repositories;
4. Cells logistics.

Central logistics base of the Congolese armed forces operates administratively under the authority of the Chief of Joint Staff of the armed forces and the operational and strategic under the authority of the President of the Republic, Supreme Commander of Armed Forces Congolese.

Decree No. 066 of 9 June 2002 on the demobilization and reintegration of vulnerable troops present in the fighting forces. Following the war situation in DR Congo has known in the ranks of armed groups as the armed forces, there have been vulnerable. By this means the child soldiers, girls or boys under 18, disabled, chronically ill, elderly, widows and orphans.

These groups should be protected for their integration into the socio-economic development in the Democratic Republic of Congo. By this act, two structures were responsible for the implementation within each jurisdiction, namely the Ministry of Defence and Human Rights.

IV.3. MILITARYJUSTICE

Military justice is governed by three documents, namely:

Legislative decree of 24 November 1964 on the organization of the repressive action of military courts when they are substituted for the courts of law. This act regulates the enforcement action following the declaration of a state of emergency. Military courts replace the ordinary courts on all or part of the territories concerned.

Ordinance-Law No. 71/082 of September 2, 1971 focuses on disciplinary system for judges and clerks military. This order holds the disciplinary judge or clerk of the duties of his state, honor or dignity of his duties that constitutes a disciplinary offense. It establishes the various disciplinary measures, the procedure for disciplinary action and punishment and the authorities empowered to impose disciplinary sanctions.

Law No. 023/2002 of 18 November 2002 is on the military justice code. This text organizes the military courts in the Democratic Republic of Congo, the jurisdiction of the courts, proceedings before military courts, judgments and remedies ordinary extraordinary.

IV.4. INTERNATIONAL INSTRUMENTS

Democratic Republic of Congo, like other countries of the world had to ratify international instruments in several areas. On the Condition of the Wounded and Sick in Armed Forces in

the campaign on improving the wounded, sick and shipwrecked members of armed forces at sea, on treatment of prisoners of war, the protection of victims of conflict international armed, the Non-Proliferation of Nuclear Weapons, the limitation or prohibition of the Use of Certain Conventional Weapons which may be regarded as the traumatic effects and the prohibition of the use and stockpiling of antipersonnel mines .

IV.4.1. IMPROVING THE FATE OF WOUNDED AND SICK

This convention is in time of war declared or any other armed conflict, the contracting parties are treated humanely in all circumstances, people who do not participate in combat, including members of armed forces who have laid down their arms people who have been out of hostilities by sickness, wounds, detention or any other cause.

The International Committee of the Red Cross, as an impartial humanitarian body, may offer its services to warring parties, collect and treat the wounded and sick.

The wounded and sick of a belligerent fallen into enemy hands shall be prisoners of war and rules of international law applicable to them.

IV.4.2. THE WOUNDED, SICK AND SHIPWRECKED

This is the Geneva Convention II of 12 August 1949 for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.

The Contracting Parties undertake to deal with humanity in all circumstances and without adverse distinction based on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

The wounded or sick and shipwrecked are collected or treated by the International Committee of the Red Cross. The Convention applies to forces embedded in the operations

IV.4.3. TREATMENT OF PRISONERS OF WAR

This is the Geneva Convention III of 12 August 1949 relative to the Treatment of Prisoners of War. The parties to this convention are obliged to implement these protective measures, whenever in time of war or other armed conflict. While this condition is not recognized by one of them, same is the case of occupation of all or part of the territory. They must treat them humanely and in all circumstances the prisoners.

Prisoners of war:

- Members of the armed forces of a party to the conflict
- The other militias and members of other volunteer corps, including those of organized resistance movements belonging to a party to the conflict;
- Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power;
- Members who accompany the armed forces without actually being members thereof;
- The crew members, including commanders pilots and apprentices of the merchant marine and the crews of the aircraft;
- The territory of a non-occupied territory to the approach of the enemy, spontaneously take up arms to fight the invading forces.

The Convention applies from the fallen power of the enemy until their final release and repatriation. The agreement authorizes the representatives or delegates to visit all places where prisoners of war.

IV.4.4. PROTECTION OF CIVIL PRISONERS

This is the Fourth Geneva Convention of August 12, 1949 on the Protection of Civilian Persons in Time of War. During the war or other armed conflict, the contracting parties have an obligation to protect civilians. The Convention does not apply to non-signatories. The parties not participating in hostilities must be treated humanely in all circumstances without exception.

The Contracting Parties shall refrain from any treatment that affects the life and person, hostage taking, attacks on the dignity and the conviction and execution without trial. These provisions of Part II cover all people in the conflict.

IV.4.5. International armed conflicts

The Additional Protocol to the Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts. This protocol applies in cases of declared war or other armed conflict which may arise between two or more of the high contracting parties even if the state of war is not recognized by one of them.

In addition, is case of occupation of all or part of the territory of the Contracting State. It applies to all powers parties to the agreement. People who do not participate in combat must be treated with humanity without distinction. They should not be damage to life, physical integrity, the taking of hostages, in the dignity and conviction without trial.

IV.4.6. NON-INTERNATIONAL ARMED CONFLICT

This is the Protocol II Additional to the Geneva Conventions of 12 August 1949 on the Protection of Victims of International Armed Conflicts. The protocol obliges all contracting parties to respect and ensure respect for this Protocol in all circumstances.

It requires states to the protection and the rule of the principles of international law, civilians and combatants. This Protocol supplements the Geneva Convention of August 12, 1949.

IV.4.7. NUCEAIRES WEAPONS

The Treaty on the Non-Proliferation of Nuclear Weapons on 12 February 1970. This treaty is an obligation on States with nuclear weapons that are part of the Treaty undertakes not to transfer anyone to nuclear weapons or other nuclear explosive devices directly or indirectly, or assisting, or to encouraging or inducing a state that does not have to acquire or manufacture

Non-nuclear states that are part of the Treaty not to receive anyone transfer a nuclear weapon or other nuclear explosive device, not to manufacture or acquire or receive any assistance. The state non-nuclear weapon party to the Treaty undertakes to accept safeguards, as stipulated in an agreement to be negotiated and concluded with the International Agency for Atomic Energy, in accordance with regulations of the Agency. The institution shall ensure the use of nuclear weapons should not be diverted from peaceful use. The Treaty provisions should not be interpreted as affecting the inalienable right.

It should be recognized that the international community still remember the atrocities that the world has experienced during the two world wars. The bomb on Hiroshima and Nagasaki, whose raw material came from the Democratic Republic of Congo Shinkolobwe pushes the international community to ensure the export of raw uranium to international security.

IV.4.8. WEAPONS EFFECTS AND INJURIOUS

That the Convention on Prohibitions or Restrictions on the Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of October 10, 1980.

In the procedure, the Convention provides for the ratification, acceptance, approval or accession and the Secretary General of the United Nations is the depositary.

IV.4.9. ANTI-PERSONNEL MINES

This is a convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and on Their Destruction, Convention of 18 September 1997.

Article 2 of the Convention defines "anti-personnel mine" come as a mine designed to be detonated by proximity or contact of a person and that will incapacitate, injure or kill one or more persons.

States commit to never under any of the circumstances:

1. Use antipersonnel mines;
2. Develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, antipersonnel mines;
3. Assist, encourage or induce any way anyone to engage in any activity prohibited to a State Party to the Convention.

CONCLUSION

Congolese constitutions were inspired by the Belgian constitution, which establishes the incompatibility between the position of elected officials and the civil service or military. It was also established that the Prime Minister has a majority in parliament which excluded the military. In 1965, the army had come to counteract the political class to seize power in violation of the constitution which excluded certain military functions and management of political power.

In DR Congo, the army managed to paralyze the business, the peasantry, the working class, trade union associations, the press, NGOs, religious groups that did not take advantage counterbalance the weight of the army. It was a kind of safety net for those who ran the political power under the pretext of public interest or national level.

Currently, there is the resignation of army officers seeking to manage the power. But the same reflexes military always come back when it comes to leading the destiny of the population. Excite does a spirit of military cultures that distinguish national cultures?

Yet this question is meaningless in the developing countries and the military were able to exercise an unchallenged domination of the political, economic and social[160]. The military

[160] Boulègue, J., "From the military republican forces: two centuries of questioning of the army in the French company, quoted by

spirit guides the universal political and economic behavior regardless of local context. The perception that the military can have their special qualities is of course not spontaneous. It is the product of socialization gained in the military academies and in the units themselves. Training and education of staff generate the values, skills, specific logic, a particular worldview. They influence the perception they have of themselves and by extension, the image they have of civilians[161].

Professor Kaumba LUFUNDA speaking from the Congolese army said about the course of our history, we note a gradual evolution of the army, which is part of the political, the Colonial Army, the police, was an army of occupation. At independence, the Congolese National Army is an army of peace because of the rebellions. Under the Second Republic, at least those lucky days, the Zairian armed forces reached the moment to become a military deterrent. What should be the new Congolese army? It should not consider calmly and courageously the establishment of an army whose key concept would be the response[162].

When analyzing the various steps that the Congolese army has known of the Police Force to the Army Forces of the Democratic Republic of Congo. It should be added to the qualifications of Professor Kaumba other concepts that have characterized this army before arriving at the concept intervention. The period of the ADFL with Laurent Désiré Kabila in 1997, the DRC has experienced a so-called army of liberation that the Congolese people out of the dictatorship. A union of the rebel factions to make a coalition to drive Mobutu from power. With the advent of Joseph Kabila in power until elections have become a FARDC army integration, which must include all the movements of former rebels to build a republican army to become a military intervention.

The mission of the military is constitutional; defend the integrity of national territory and borders. Under the conditions laid down by law, they participate in peacetime the economic, social and cultural as well as the protection of persons and property.

The army must be republican, apolitical, serving the entire nation. It should not be at the service of an individual or away for their own purposes under penalty of high treason. The Congolese have questions about the army: its composition, in terms of geography, so even if the Lingala language of the police force has become the most widespread language of the country's different regions, human groups and ethno-cultural training are still very unequally represented in the army.

The army must be subject to civil authority, it is a constitutional principle which exempts the military from the political management of the country to establish a democratic regime. The number of military personnel at all levels and functions of command at all times and under all circumstances, must take into account objective criteria related to physical fitness, education sufficient to morality and a representative of the provinces.

The constitution prohibits any person, under penalty of being prosecuted for high treason, the organization of training military, paramilitary or vigilante groups. It is strictly forbidden to maintain an armed youth[163].

At the top of the Congolese army, there is a Supreme Council of Defense which is chaired by the President of the Republic, which in turn is absent or unable to be replaced by the Prime Minister.

DUBUS and REVISE, Op. cit., p. 219.

161 Dubus, A. and REVISE. N., Op. cit., p. 220.

162 Kaumba LUFUNDA, Notes, School of Criminology, University of Lubumbashi, 2006-2007

163 Mabile MANTUBA, Op. cit., p. 65.

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PROBLEM OF COMPLIANCE WITH THE CONSTITUTION OF THE ORGANIC LAW ON DECENTRALIZED TERRITORIAL ENTITIES (State and application level)

By Cyprian MUSHONGA MAYEMBE *

INTRODUCTION

The component of the February 18, 2006 opted for decentralization as a way of managing some territorial entities of the Democratic Republic of Congo (DRC).

After having enumerated in Article 3, it establishes the principles of self-government and autonomy to manage their human, economic, financial and technical.

It announced the development of an organic law to set rules for their composition, structure and functioning and the relationship with the state and the provinces[164].

Indeed, decentralization is a system of state organizations advocating freedom more or less extensive decisions of local authorities. It is for this reason that communities must have legal personality and financial autonomy to enable them to have the resources necessary for their own actions. These communities must also have executive and legislative bodies whose members must be elected and not appointed by the central government, and must enjoy real autonomy from the central government.

However, four years after the forming of the February 18, 2006 is expected and two years after an organic law or implementation of the decentralization of territorial entities, was enacted, the toll remains alarming heavily Democratic Republic Congo in general and in the city of Lubumbashi in particular.

Thus, in the context of our work, we will give the general theory on the concept of decentralization (Chapter I) and the balance of it in the Democratic Republic Congo, and this only in terms of territorial entities the city of Lubumbashi and its two municipalities (Ruashi and Lubumbashi), which we used as samples.

CHAPTER I: DECENTRALIZATION IN DRC TERRITORIAL ENTITIES

1st SECTION: GENERAL

§ 1. DEFINITION

Decentralization is a system of state organization recognizing a freedom more or less extensive decision-making, administration, of "self-government" as the British and

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164 104 Article 3 of Law No. 08/016 of 7 October 2008 on the composition, organization and operation of decentralized territorial entities and their relations with the State and the provinces.

Americans (a term which can be translated, but incompletely, by self-administration) at various local authorities[165]. It is also understood as a form of administrative organization is to recognize the legal personality to communities of interest or public service activities and to entrust them with decision-making authority in certain matters[166].

However, it should be noted that both directions can be reconciled with decentralization, it is both a policy of transferring administrative powers of the State (1) and practice of local democracy (2).

1°. DECENTRALIZATION: A POLICY OF TRANSFER OF ADMINISTRATIVE JURISDICTION OF THE STATE

Decentralization is a possible answer to the question of the division of administrative functions between the state and other public authorities[167]. These communities are first to recognize the legal status: they are legal persons of public law and the State delegated to them by a solemn law in a certain number of skills. These powers are exercised independently by those decentralized communities, subject to state control known as the administrative supervision or control of guardianship (France), this term seems strange assimilate decentralized to minors, incompetent, the prodigal or dementia[168].

On the contrary, the devolution is to insert between the centers and administered a cascade of hierarchical authority that is closely entrust the exercise of certain powers of the state on the instructions and under the control of central authorities. Odilon Barrot said: «It's the same hammer strikes, but they shortened the race.»[169]

However, we must remember that this transfer of certain functions or specialized authorities (decentralization) requires three conditions for its implementation:

- It is first necessary to isolate, among the needs that the administration must be filled, those who are, primarily, a local character. It's about them that the transfer of jurisdiction can take place. It is excluded, in fact, that the state give up its decision-making on issues affecting the whole population or within its sovereign powers (in terms of national defense, for example);
- It should provide the following local legal personality and financial autonomy to enable them to have their own resources for their action;
- We must, finally, that the executive bodies of the communities within them are elected (not appointed by the State) and they have a real autonomy from the central government.

From this point of view, we can estimate that decentralization is implemented when the law grants to bodies elected by a local custom, decision-making power over local affairs[170].

2°. DECENTRALIZATION: THE PRACTICE OF LOCAL DEMOCRACY

It is obvious that a democracy that gives real power to the people as a whole will not tolerate the formation of a state, all differentiated and acting according to its own interests. At best, it adopts representative institutions of government to which it agreed to delegate powers

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165 CADART, J, Political Institutions and Constitutional Law, Paris, ed. Economica, 1990 61.
166 Microsoft Encarta, 2009.
167 Idem.
168 CADART, J, Op. cit., P. 61;
169 JACQUES, J, Constitutional Law and Political Institutions, Paris, Dalloz, 4th ed., 2000, pp. 13, 15.
170 Microsoft Encarta 2009.

as it considers control[171]. Thus we measure decentralization issues in the democracy. This by bringing decision-making centers of the governed, and thus increases the relevance of the decisions taken, based on better knowledge of the terrain, avoiding errors due to ignorance of data specific to the local life[172]. However, decentralization can increase the natural inequalities between rich and poor communities (depending on the respective strengths) at their disposal: geographic location and density of transport networks, level of industrial development, natural resources and an obstacle to effective policy of development planning[173].

It should be noted, regarding the control of decentralized entities, which comes in three forms: hierarchical control, supervisory control and judicial review.

Hierarchical control is exercised by the state leaders of the leaders of the decentralized entities including the inspectorate. It is also exercised by leaders of the decentralized entities of the upper stratum of leaders of the decentralized entities of the lower level through the inspectorate provincial or regional. It should be noted that hierarchical control is essentially the best organization and the better functioning of decentralized entities. From this perspective, from the inspectorate, the state leaders give advice and make suggestions to the various leaders of the decentralized entities and leaders of the upper echelon give advice and make suggestions to the leaders of decentralized entities of the lower level for better organization and better functioning of decentralized entities[174].

Supervisory control may include acts (administrative decisions) decentralized entities and organs. Control over the acts may be done by cancellation, by way of reformation, by suspension and by authorization or prior approval. Supervisory control allows the state to oversee the development of decentralized, but sometimes it paralyzes the functioning of decentralized entities where the regulator replaces the decentralized bodies in making decisions for them. Supervisory control may also be decentralized bodies. It is carried out in several ways, including through the suspension of the leaders of the decentralized entities.

Judicial review is actions for annulment for excess of power to the courts the responsibility of the authority whose act is subject to appeal[175].

However, decentralization can be technical or territorial, decentralization or technical service is also known as functional. It is to be entrusted to specific public legal persons or institutions specified activities: Post and tele-communication, transportation, ... It is territorial or geographical, when led to the creation of local authorities endowed with legal personality[176]

SECTION II: SKILLS FOR DECENTRALIZED ENTITIES

The skills of decentralized entities may be more or less wide. They can be quite small or even very small[177], such as communities, sectors or chiefdoms and municipalities or territory, or, conversely, extremely large, such as town halls, but in any case, there can be decentralized if a number of decision-making powers are reserved exclusively for bodies of those communities.

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171 GRAWITZ, M and LECA, J, Treaty of political science: political action, Paris, PUF, 1 st ed., 1985: 644.
172 Microsoft Encarta 2009.
173 Microsoft Encarta 2009.
174 MULUMBATI NGASHA, Introduction to Political Science, Lubumbashi, ed. Africa, 2006, 2nd edition, p. 342.
175 MULUMBATI NGASHA, Op. cit., P. 343.
176 NTUMBA LUABA LUMU, General Constitutional Law, Kinshasa, African academic editions, 2005, p. 63.
177 CADART, J, op. cit., pp. 61-62.

Thus, in this section, we show the skills of the mayors of the city as a city executive (§ 1), the municipal executive: the Mayors (§ 2), as well as Heads of Sectors or chiefdoms (§ 3).

§1. CITY

The city is governed by a mayor and deputy mayor, elected on the same list by indirect suffrage and majority vote in two rounds On the contraryultants Urban, within or outside the council for a term of five years renewable (10). The mayor or deputy mayor candidate meets the following conditions:

- Be a Congolese national, be 18 years of age on the date for submission of application; enjoy his civil and political rights, be a qualified elector[178].

Thus being the authority of the city and he is the Chief Executive of the college areas. As such:

- He ensures the responsibility for good general jurisdiction;
- He is an Officer of Civil Status;
- He is the principal authorizing the city budget;
- He represents the city in court vis-à-vis third parties[179].

To this the Executive Council which city leads is responsible for:

- *To direct the services of the city;*
- *To administer the institutions of the city;*
- *To manage the revenues of the city, to order the expenditures and to inspect the accounts;*
- *To implement the development plan of the city;*
- *To administer the properties of the city and preserve its rights, etc.*[180] .

§2. MUNICIPALITY

The municipality is governed by a mayor and his deputy. They are elected on the same ticket by a majority vote in two rounds by city councilors, within or outside the Board for a term of five years renewable[181].

As the local authority, it assumes responsibility for the proper administration of its jurisdiction; it is believed that OPJ general jurisdiction and an officer of civil status, principal officer of the municipal budget and one that represents the municipality in justice and vis-à-vis third parties, etc[182].

§3. SECTOR AND LEADERSHIP

1°. SECTOR

The sector is a partition of territory; it is headed by a chief and his deputy. They are elected on the same list by a majority vote in two rounds On the contraryultants in the sector or within

178 Art. 183 of Law No. 06/006 of 09 March 2006 presidential elections law, provincial, urban, municipal and local.
179 Art. 185, idem.
180 Art. 41 of Organic Law No. 08/016 of 7 October 2008 on the composition, organization and operation of decentralized territorial entities and their relations with the State and the provinces.
181 Art. 39, Idem
182 Art. 199 of Law No. 06/006 of 9 March 2006 on the organization of presidential, parliamentary, provincial, urban, municipal and local.

or outside the Council for a term of five years renewable[183]. OPJ is general jurisdiction, an officer of the state ... Being the head of the executive sector, it provides: the protection of fauna, flora, water, it develops the budget, ensures improved housing, etc.[184]

2°. LEADERSHIP

The voting and skills of heads of industry are the same for the heads of chiefdoms.

SECTION III: ORGANS DECENTRALIZED TERRITORIAL ENTITIES

The entity or regional authority should be administered and governed by members from the election: the requirement of decentralization suffers only a very few exceptions. Normally if one of the authorities governing the community or entity is not elected, there are strong reasons to believe that it is not really a decentralized community[185].

That being the case, we will show in this section the different organs of decentralized territorial entities of the DRC, as provided by law, some of their powers and voting systems.

§1. ORGANS OF THE CITY

There are two: the Urban Council and College Executive areas.

1°.THE CITY COUNCIL

It is the legislative body of the city, its members, called urban counselors they are elected by municipal councils by proportional representation with open lists with preferential one voice with an application of the rule of the jungle, for a term of five years renewable[186]. Each municipality is represented by four advisers[187].

However, in view of its powers, it discusses:
- The construction, rehabilitation, equipping and maintenance of school buildings owned by the State within the jurisdiction of the city;
- The construction and development of collections urban drainage and sewerage;
- Urban lighting;
- The issuance of license to operate a bus service and taxis, parking permit on public roads;

The organization and management of a health service, construction, maintenance and management of the mortuaries, the sanitation program, promoting the fight against HIV / AIDS and endemic diseases, etc[188].. . On the contrary, we will not give more to those of executive urban college because it has been already mentioned.

§2. MUNICIPAL OR LOCAL BODIES

It should be noted that the emphasis will be placed on the municipal council; municipal

183 Art. 60 of Organic Law No. 08/016 of 07 October 2008, composition, organization and operation of decentralized territorial entities and their relations with the State and the provinces.
184 Art. 215 of Law No. 06/006 of 09 March 2006 presidential elections, parliamentary, provincial, urban, municipal and local.
185 Art. 84 of Organic Law No. 08/016 of 7 October 2008 on the composition, organization and operation of decentralized territorial entities and their relations with the State and the provinces.
186 CADART, J, Op. cit., P. 62.
187 Art. 7 of the Act.
188 Art. 175 of Law No. 06/006 of 9 March 2006 on the organization of presidential, parliamentary, provincial, urban, municipal and local.

councilors are directly elected by proportional representation with open lists with preferential one voice with an application of the rule of the jungle [189].

They deliberate on the following subjects:

- The rules of procedure;
- The communal lighting;
- The development plan of the municipality;
- The partnership between the municipality, the private sector and NGOs, etc[190].. .

§3. INDUSTRY BODIES OR LEADERSHIP

It is obvious that there is the area council or executive leadership and the college sector or chiefdom. However, we simply quote the powers of the council area or chiefdom. It should be noted that the council must decide the following matters:

- The rules of procedure;
- Organization of Agricultural companies, promotion of livestock and fisheries;
- The creation and management of cultural centers and libraries;
- The organization, management of cemeteries of the entity and organization of the funeral;
- The construction and operation of mini - power for power distribution, the installation of solar panels, the development of sources and drilling water wells for distribution, etc[191].. .

SECTION IV : ADMINISTRATIVE SUPERVISION

However, the same decentralized territorial entities governed and administered by elected officials cannot act freely. A decentralized community has only limited powers. This limit is guaranteed by control "supervisory control[192]". In DRC, the provincial governor who has, in the manner prescribed by laws, the authority of the acts of the decentralized territorial entities. He may delegate this power to the administrator of the territory. Guardianship over the actions of the decentralized territorial entities is exercised by controlling a priori and a posteriori control[193].

This control is exercised on a priori acts such as:

- *The preparation of the preliminary draft budget to validate compatibility with the macroeconomic assumptions in the projections from the central budget and national revenue projections and the inclusion of mandatory spending;*
- *The creation of taxes and the issuance of debt under the law on the classification of taxes and financial law;*
- *The creation of industrial and commercial companies, equity participation in companies;*
- *The signing of contract involving financial commitments in various forms of equity* participation, etc.[194].

189 Art. 174 al. 2 of Law No. 06/006 of 09 March 2006 presidential elections, parliamentary, provincial, urban, municipal and local.
190 Art. 11 of Organic Law No. 08/019 of 7 October 2008, Op. cit., pp. 134-135.
191 Art. 191 of Law No. 06/006 of 9 March 2006, Op. cit., p. 46.
192 Art. 50 of Organic Law No. 08/016 of 7 October 2008, Op. cit., pp. 147-148.
193 Art. 73, Idem, pp. 154-155.
194 CADART, J, Op. cit., P. 62.

On the contrary, the negative decision of the regulator is motivated. It is subject to administrative and / or the courts[195].

It should also be noted that supervisory control should not be confused with the hierarchical power that the state exercises over its decentralized agents or not. Hierarchical power gives the supervisor the power to issue orders in any area at any time the agent decentralized, while the supervisory control is only limited power in the act of decentralization in some subjects only and using techniques also provided for the decentralization law[196]. DRC is the Organic Law No. 08/016 of 7 October 2008 on the composition, organization and operation of decentralized territorial entities that regulates this matter. In addition, when the authority has exceeded the limits set by law, it can be attacked by the entity or regional authority to the competent court. The decentralized corporation can obtain the annulment of an act, a decision of the governing body acting illegally. On the contrary, it is avoiding a subordinate hierarchically subject to his superior, as decentralized authority, can not get a judge to quash a decision of his supervisor.

This freedom, the autonomy of the decentralized territorial entities is certainly limited, but real. Supervisory control is always on the legality of acts. Sometimes it may also cover their opportunity in certain matters as provided in the French system. In fact, only the judicial review shall fully respect the autonomy of the decentralized territorial entities, control of opportunity makes them a subject to control close to the government hierarchy[197].

SECTION V : RESOURCES DECENTRALIZED TERRITORIAL ENTITIES

It should be noted already that the decentralized territorial entities have the self-government and autonomy to manage their economic resources, human, financial and technical[198]

However, these funds fall into four categories: own resources (§ 1), the resources of the national equalization fund (§ 3) and the unique resources (§ 4)[199].

§1. OWN RESOURCES

These resources include:

- *The minimum personal interest which is seen for the exclusive benefit of the municipalities areas or chiefdoms;*
- *Revenues from participation, consisting of profits or income from its equity stake in public enterprises, mixed economy companies and temporary associations for economic purposes;*
- *Taxes and fees include local taxes of common interest (such as special tax for road traffic, annual tax on the issuance of the patent, the various consumption taxes on beer and tobacco, the tax on land logging concessions, mining, sales tax of precious materials from craft production, etc..) tax-specific decentralized territorial entities such are taxes levied on local matters not imposed by central government[200].*

195 Art. 95 and 96 of Organic Law No. 08/016 of 7 October 2008, Op. cit. Cit., pp. 162-163.
196 Art. 97, Idem, p. 163.
197 Art. 99, Idem, p. 164.
198 CADART, J, Op. cit., p. 63.
199 Idem.
200 Art. 108, 110, 111 and 113, Idem, pp. 165-167.

§2. RESOURCES INCOME FROM A NATIONAL CHARACTER

It should be noted that the decentralized territorial entities are entitled to 40% of the share of revenue allocated to the national character in provinces. However, the distribution of resources between these entities is made according to production capacity, area and population of each of them. And that is the edict which determines the allocation mechanism[201].

§3. RESOURCES OF THE NATIONAL EQUALIZATION FUND

It is obvious that it has established national fund of equalization. This fund is endowed with legal personality. Its mission is to finance projects and public investment programs to ensure national solidarity and the imbalance in development between provinces and the decentralized territorial entities. It has a budget supplied by the public purse up to 10% of all revenue accruing to the national character from the state each year. It is under the supervision of the government[202].

§4. EXCEPTIONAL RESOURCES

These resources come from donations and bequests that these entities can benefit. And their value must be recorded as revenue in the budget for the year of acceptance[203].

It should also be noted, and this is the first conclusion of this first part on the general study on decentralization, as it is a form of collective freedom, as it is still in democratic states. It can be more or less pronounced, as is the case in France, however, it plays a triple role, in a democracy Capital:

1. *It educates people by teaching them to effectively manage the business they know better, those closest to them, and to do so outside of abstract ideologies.*
2. *It can relieve the central government for many minor issues and leaving its time to concentrate on major issues and to better fulfill its role of referee, since it is not part of the discussion. In addition, can be avoided and passionate disputes at the entire nation about sensitive issues such as education (university) or religious problems, especially in the field of education, giving provincial and local solutions to these questions .*
3. *Finally, decentralization is, when it is quite pronounced, and probably a useful counterweight to state power required: it may even make an effective bulwark against the temptations of authoritarian rulers by creating an additional form of division of power, separation of powers, as Montesquieu had already seen, and even better, Alexis of Tocqueville a century later*[204].

We must finally show that the nature of decentralization is discussed.

Legally, the state delegates exercise certain sovereign powers to decentralized and customized skills which can always take same as it can get rid of these autonomous entities whenever it wants, in its princely pleasure.

Sociologically, however, this argument seems very inaccurate and even profoundly contrary to the deepest sense of freedom: the decentralized autonomous communities are the legal

201 Art. 115 and 116 of the Organic Law No. 08/016 of 7 October 2008, Op. cit., p. 167.
202 202 Art. 181 of the Constitution of February 18, 2006, p. 61.
203 Art. 118 and 115 of the Organic Law No. 08/016 of 7 October 2008, p. 168.
204 CADART, J, Op. cit., P. 64.

expression of very old social phenomena, spontaneous, often spanned several millennia and many previous states such that they exist today[205].

CHAPTER. II: THE SUMMARY OF DECENTRALIZATION AND FUTURE PERSPECTIVES

I. SUMMARY OF DECENTRALIZATION

We must remember already with that decentralization in the DRC as provided for in the Constitution of 18 February 2006, and the Organic Law No. 08/016 of 7 October 2008 on the organization and functioning of the decentralized territorial entities and their related government and the provinces is not applied in the DRC in general let alone in the city of Lubumbashi. Otherwise, some leaders of these entities take the opportunity to enrich themselves. However, as our field of investigation was only that of the city of Lubumbashi, it will be impossible to give the remains of reality on the decentralization of these entities for the whole country as stipulated by the grantor. That being the case, we will take stock of the decentralization of the city council of Lubumbashi in the first place (1st Division) and then we'll talk about that of the municipality of Lubumbashi and that of Ruashi (2nd Division). Indeed, with respect to the municipalities, we used only two municipalities, as a sample.

1st SECTION: THE CITY COUNCIL OF THE CITY OF LUBUMBASHI

By conducting a raid in the city council of Lubumbashi, our curiosity was more focused on the question of how the city council are held (§ 1), the Urban Executive College (§ 2) and how is it managed by urban authorities, that is the issue of financial management (§ 3).

§1. THE CITY COUNCIL

As taught by MONTESQUIEU[206], the separation of power is in the criminal proceedings that the separation of legislative, executive and judicial. However, the legislative body is an organ of executive control, which must necessarily be the city council, which does not exist in the city council of Lubumbashi, against the wishes of the grantor. Thus, the executive body exists only to that institution.

The absence of this body (city council) is justified by the non-municipal elections as provided by Law No. 06/006 of 09 March 2006 presidential elections, parliamentary, provincial, urban, municipal and local. These elections are not held over the whole of DR Congo, the mayor of the city of Lubumbashi is devoid of this important body in the management of public affairs.

Thus, the urban authorities in Lubumbashi are only at one point controlled by the provincial assembly of Katanga, which rarely address some oral questions or question Madam Mayor, Mary Gregory TAMBILA SAMBO or her deputy[207].

What is already a violation of the Law. Indeed, Law No. 08/012 of 31 July 2008 on the basic principles of self-government of provinces does not provide anywhere that the provincial assembly can replace the city council.

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205 CADART, J, Op. cit., Pp. 64-65.

206 PRADEL, J, Criminal Procedure, 10th edition, CUJAS, 2001 23 quoted by Mushonga Mayembe, prosecutors face to respect the rights of defense under Congolese law: the problem of reducing the power of prosecutors, DEA memoire, unreported, UNILU, from 2009 to 2010.

207 Interview with Division Chief Metropolitan mayor of the city of Lubumbashi.

§2. THE CITY EXECUTIVE COLLEGE

In the city council of Lubumbashi, there are two mayors: one incumbent and his deputy appointed by the central government therefore all decisions come only from the central government and they obey only their hierarchical authorities.

§3. MANAGING FINANCIAL RESOURCES IN THE CITY OF LUBUMBASHI

As we noted in the previous chapter, the law provides that an entity's own resources include decentralized territorial personal income tax minimum, income for participation, taxes and local duties.

The minimum personal income tax is levied for the exclusive benefit of the municipalities' areas or chiefdoms.

1) Municipalities

However, it should be noted that the municipalities: the RUASHI of Lubumbashi, the tax actually received by their collectors and agents are paid to the municipality. Then the accountant is expected to pay the money to the Bank. But currently, there is each municipality of the office related to the DGRAD that their assigned agent of municipalities, take this money and pay to the Treasury (Bank). But beside that, what amount goes to the municipality?

According to the decision of Minister of Finance of the central government, the municipality may receive only 10% of income at source[208]. Why this decision? Because according to the instructions from Kinshasa, the Congolese state was forced by the World Bank, IMF to reduce or clean up its debt. Otherwise, the famous program agreements signed five projects by the Chinese will not be executed. With this in fear, that is why the Kinshasa government had taken such a decision[209].

This is why; it is the minimum personal income tax, local taxes and duties: taxes of common interest, specific taxes, and all revenues from these taxes are collected every Friday of the week by agents of the DGRAL (Directorate General of Revenue Administrative, lands and participation) in our offices[210];

In respect to the resources from revenue to national character, that is to say, these are the revenues from the patent that small traders pay which are found in municipalities, and these revenues are paid directly to accounts of State which is the governorate, and is the one who will pay them in turn to the Bank and from there, 40% is to be allocated to the province which too is to be surrendered in the municipalities, but this has never applied despite the money being paid in the state account[211].

As for the equalization fund, although this was prescribed by law for the decentralized territorial entities, this has never been applied to municipalities.

Regarding the exceptional resources, including gifts and bequests, the municipality of RUASHI since last year had received only gifts of plastic chairs offered by RUASHI MINING

208 Interview with the accountant of the Ruashi municipality.
209 Idem
210 Ibid
211 Interview with the accountant of the Ruashi municipality.

So far, it has never received any gift and the town of Lubumbashi, has never received any too.

2°) THE MAYOR OF LUBUMBASHI

Note that the mayor also faces serious difficulties in regard to the handover. Of course, he collects many of the taxes which generate revenue, but this money goes where? This is the question that our interviewees that we found in the Town Hall of the city of Lubumbashi tried to answer, for better or worse. Indeed, as a matter consistent with the secret of the town hall, it is not easy to answer. But as science has no limits; a few of them had the courage to tell the truth.

It is obvious that the law on decentralization decentralized territorial entities provides that the finances of these entities are distinct from those of the province (Art. 104). Then, their financial resources consist of:

- Resources from the proceeds of a national character, allocated to the provinces;
- The resources of the national fund equalization;
- And the unique resources (Art 105).

The law also provides that any decentralized entity with a budget that must be integrated revenue and expenditure in the budget of the province (Art 106). And the General Inspectorate of Finance and the Court of Auditors to conduct the audit of these entities (Art. 107).

However, it must already hold as tax revenues collected by the mayor of the city of Lubumbashi by its collectors which are paid into the accounts of the town hall, the latter in turn pays them to the Office of the detached DGRAL thus established at the town hall. Then, the DGRAL pays also to the Bank[212]. But what amount of the town hall?

According to the circular of the Minister of Finance and the Prime Minister, the mayor can only remove the source that is 15% of all revenues it collects at the end of the month. And with that the mayor pays its officials and some finance maintenance of the city.
What is the purpose of this measure?

The head of division, the Congolese state is obliged to clean up its debt to the World Bank, in this case the state must maximize revenues to go out this obligation in order to better achieve the program's of the Head of State (5 yards) to pay the staff of the state, ministers, police, ...[213]

1. FUTURE PERSPECTIVES

The assessment of decentralization is largely negative in the city following the unwillingness of the Congolese political and passivity of the offending population, it is therefore suitable to propose solutions as remedies for these anomalies. This is the reason for this.

Premium on board, the Congolese population in general and in particular Lushoise should

[212] Interview with Division Chief Metropolitan mayor of Lubumbashi.
[213] Interview with the Head of Division of urban municipality.

know how to claim for their rights by forming strong associations, non-partisan. Because we should not say that "when one is alone feels powerless?" These associations are to meet so as to report the dead cities to require the applicability of the law on decentralization of these entities, this way via election by making their city authorities, municipals and locals that will take into account local interests. Rather than be led by "vultures" who are just in the interest of their superiors and their own. Indeed, the power comes from the people (democracy), why is it still necessary to select or appoint officers? Is there no way we conduct ourselves? By choosing the leaders in our place, we run the risk of falling into the hands of dictators. However, the DRC, said to be the rule of law, democratic. True, once it was the people who ran by themselves, it was a meeting of village elders or clan gathered around the head to decide on major issues in the community. It was already like that in the Greek cities.

As for urban councilors, municipal, after being elected, they should remember they are representatives of the people because they were elected by the people and they need to serve the people. They must at all times get to know the basic problems of the population in order to find solutions. Thus, they must vote for good laws that are consistent with the public interest.

It is not enough just to vote for these good laws if they are not enforced. They must monitor the implementation of these laws, and must provide for the efforts to be known by the population because there are laws designed to protect the people, but they remain unimplemented because nobody knows them.

Mayors, heads (of sectors and chiefdoms), to be elected, should promote the economic; developing wealth through the money they collect taxes, to improve ... life of the population. It is therefore necessary to give everyone the opportunity to access a certain economic independence through work, commerce; these rights are guaranteed by the Universal Declaration of Human Rights.

As for the population, it should know that urban counselors, municipal,… It is they who decide on local affairs. And mayors, the mayors should carry out through their decisions. That all residents must follow, be informed, attend urban counseling sessions often, municipal, ..., obviously they cannot speak. But they can see how they perform their duties. In other words, people must be interested in business management. Instead of staying in churches every day oblige to fast and pray.

They must consider what the advisers are to improve schools, clinics, markets, ...

For, if we are used to manage our local interests, we will easily turn our attention to national problems.

And if there is money diverted by local authorities, people can use legal remedies, such as:

- The legal action, either by filing a complaint with the prosecutor to initiate investigations or to the Court of Accounts;
- Use Policy, the Urban Council, Municipal Mayor shall require the mayor to justify the missing;
- The administrative appeal, it can inform the Governor or Minister of the Interior.

In my opinion, I think if you get used to follow this policy as mayor of the city of Lubumbashi and its municipalities, it will be the right school to actively participate in national politics.

CONCLUSION

The Constitution of 18 February which provided for the decentralization of these entities, was inspired by the spirit of any constituent voting good laws that are consistent with the economic, social, industrial, ... that must have any state which claims to be democratic . However, the results we have just established as part of this research is largely negative in the DRC in general and in the city of Lubumbashi in particular. Indeed, an outlook on the functioning of the decentralized territorial entities in the city of Lubumbashi, does not inspire confidence. Strategic decisions are always the central government. Poverty continues as before. People are not always associated with local governance through their elected representatives (Councillors urban, municipal, ...), despite the stated intention. The same people do not really know how to participate. The environment continues to deteriorate.

The demographic explosion is without advance back. No strategy is taken to stop this malicious progression. Decentralization and local entities has remained more a slogan than a practical political ideology. In the various texts and official speeches, the decentralization of these entities is effective. The various governments that have succeeded have emphasized. All laws on territorial organization of the utmost importance to give. But the reality on the ground the result is bitter. Therefore, this work contains two chapters: the first focused on a general theory of decentralization, the second focused on the balance sheet that is painful, for all the authorities who run these entities have not been elected, and financial management is not accurate.

And finally, we have proposed remedies as future prospects, which result in the realization of the population by forming their union or association, declaring the dead cities to demand for the effective implementation of this law and ask for the election of their own leaders that they will elect.

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