

**BREAD AND PEACE FOR THE DEMOCRATIC REPUBLIC OF
CONGO: IS DECENTRALISATION THE ANSWER?**

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DECLARATION

I, **DIEU-DONNE WEDI DJAMBA** declare that the work presented in this dissertation is original. It has never been presented to any other University or Institution. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of the LL.M Degree in Human Rights and Democratisation in Africa.

Signed.....
Date.....

Supervisor: Professor Nico Steytler
Signature.....
Date.....

DEDICATION

To God Almighty – for being my shepherd.

To my wife Assy WEDI – for love and support.
To my brothers and sisters

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To my God Almighty, you are the one who made this happen. I give you all the glory.

CHAPTER ONE: INTRODUCTION

1.1 Background to the study

The Democratic Republic of Congo (DRC) has been ravished by internal conflicts for the past two decades. These conflicts have come at a great cost to the people of the DRC, often resulting in a number of human rights atrocities.¹ These atrocities range from the loss of life², resulted in internal displacement³ and creation of refugees' communities⁴, as well as the destruction of property and infrastructure⁵, all contributing to prevailing conditions of poverty and deep societal divisions.⁶ While there are many underlying factors that fuel these conflicts, the key drivers of the conflict are linked to the unequal distribution of the DRC's national resources and the mismanagement of public services.⁷ Intense frustration and a sense of helplessness to change the status quo have repeatedly manifested itself in a cycle of war and ethnic cleansing. In this regard, the pattern of conflicts has been the manifestation of the frustration of the Congolese people as a whole.

¹ P Dube 'An End to Impunity? The International Criminal Court and Women in Africa' available at: http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=482:an-end-to-impunity-the-international-criminal-court-and-women-in-africa&catid=59:gender-issues-discussion-papers&Itemid=267 (accessed 29 August 2010).

² Caritas 'Six million dead in Congo's war' available at <http://www.caritas.org/activities/emergencies/SixMillionDeadInCongoWar.html> (accessed 29 August 2010).

³ United Nations High Commissioner for Refugees 'Internally Displaced Persons Fact Sheet for the Democratic Republic of Congo' available at <http://www.unhcr.org/4bfe87d56.html> (accessed 29 August 2010).

⁴ Refugees International 'DR Congo' available at <http://www.refugeesinternational.org/where-we-work/africa/dr-congo> (accessed 29 August 2010).

⁵ Ploughshares 'Armed Conflicts Report. Democratic Republic of Congo [Formerly Zaire] (1990-first combat deaths)' available at <http://www.ploughshares.ca/libraries/ACRText/ACR-DRC.html> (accessed 20 March 2010).

⁶ International Crisis Group 'Katanga : La crise oubliée de la RDC, Rapport Afrique n103 du 9Janvier 2009' available at http://www.operationspaix.net/IMG/pdf/katanga_the_congos_forgotten_crisis_french.pdf (accessed 12 February 2010).

⁷ SL Marysse 'Decentralization issues in post-conflict Democratic Republic of Congo (DRC)' available at <http://www.ua.ac.be/objs/00111832.pdf> (accessed 23 July 2010).

The conflict in the DRC can be divided into three distinct periods of time. The first is linked to the ethnic cleansing which occurred in the Katanga province between 1992 and 1993. During this period more than 5000 members of the Kasaian ethnic group were casualties of the conflict.⁸ The second cycle of conflict coincides with, the war conducted by Laurent Kabila to overthrow the former president of the DRC, Sese Seko Mobutu in 1997.⁹ The most recent wave of internal conflict took place between 1998 and 2004. During this period, the DRC government backed by Zimbabwe, Angola, Namibia and Chad waged war against internal rebel groups backed by Rwanda, Burundi and Uganda.¹⁰

In 2001, in an attempt to bring stability to the region, the Congolese government, rebel groups, opposition parties and civil society engaged in an Inter-Congolese Dialogue which culminated in the conclusion of a power sharing agreement. During this dialogue the unequal distribution of national natural resources was cited as one of the main causes of instability.

The importance of addressing past social injustices was also cited as a crucial pre-condition to securing sustainable peace in the DRC.

The Constitution which was passed by referendum in 2005 seeks to provide the equal distribution of national resources. National resources in the context of this study are the overall government services related to education, health care and clean water and electricity among other. In order to achieve the goal of equal distribution of national resources¹¹ and to secure social peace, a decentralised¹² system of governance was adopted. In this regard, Jha argues that ‘decentralisation is beneficial for functioning of a democratic system at the national level and also at the level of locality’.¹³ Indeed, decentralisation is defined as ‘the devolution of powers which is the location of decision-making power with autonomous sub-

⁸ United Nations High Commissioner for Refugees (n 3 above).

⁹ Medial Global ‘Experts present suggestions to move DRC from international conflict to stability’ available at <http://www.mediaglobal.org/article/2010-04-08/experts-present-suggestions-to-move-drc-from-international-conflict-to-stability> (accessed 23July2010).

¹⁰ N Lalji ‘The resource curse revised: conflict and coltan in the Congo’ Available at <http://www.entrepreneur.com/tradejournals/article/172835086.html> (accessed 29 August 2010).

¹¹ M Liégeois ‘Décentralisation en RD Congo : Enjeux et Défis’, GRIP 2008/1’ available at http://www.grip.org/pub/rapports/rg08-1_decentra_rdc.pdf (accessed 24 August 2010).

¹² Article 3 of the 2006 Constitution of the DRC.

¹³ S N Jha ‘Introduction’ in S N Jha and P C Mathur (eds) *Decentralization and local politics* (1999) 13.

national governments'.¹⁴ Therefore, decentralization creates a close link between the government and citizen, enables citizens, through participation, to hold their government accountable for any failure to respond to their need.¹⁵

Five years have passed since the 2006 Constitution was promulgated.¹⁶ The war has officially been declared over, the general elections have been organized, the president elected for a five year term ending in December 2011. Parliament and local assemblies and governments put in place. The peace building is ongoing throughout the country materialized by the Five Years Government Programme known as *Cinq Chantiers*. Despite these impressive institutional strides, the DRC continues to be dogged by social tensions and troubles. While heavy artillery action is no longer common place, social peace and the fulfillment of basics needs is still starkly absent in the daily lives of common Congolese people. For example, public servants have had to endure several months of unpaid salaries.

While the 2006 Constitution allows provinces to retain 40% of the revenues produced in their entities, the central government still has the power to decide on the distribution of revenue produced by provinces.¹⁷ The autonomy of the provinces over the revenues they produce, although guaranteed by the Constitution, therefore remains an illusion. Attempts by provincial representatives to claim their constitutional rights have been futile.¹⁸ Furthermore, claims by the lower levels of government related to the access of basics needs such as primary education, food, clean water, housing or health care which are guaranteed by the 2006 Constitution seem to fall on deaf ears.¹⁹

1.2 Research question

Against the background sketched above, the present study examines three research questions, namely:

- Have decentralised entities been established in the DRC?

¹⁴ J de Visser *Development local government: A case study of South Africa* (2005) 15.

¹⁵ de Visser (as above) 26.

¹⁶ Government Gazette (*Journal Officiel de la République Démocratique du Congo*) 'Constitution de la République Démocratique du Congo', 47th year, Special Issue, Kinshasa 18 February 2006.

¹⁷ Vigilance RDC 'Rétrocession des 40% : rien n'a changé'
available at <http://vigilancerdc.afrikblog.com/archives/2009/06/29/14237752.html> (accessed 22 July 2010).

¹⁸ As above.

¹⁹ Articles 42, 46, 47 and 48 of the 2006 Constitution of the DRC.

- If so, are they functioning? and;
- To what extent have decentralised entities fostered social peace in the DRC?

1.3 Objectives of the study

The DRC can be described as a country of vast contrasts. Due to its extensive natural resources, it has the potential to be one of the richest countries in the world, yet it has one of the poorest populations in the world. Seventy percent of the population are currently classified as living below the poverty line, earning less than one dollar per day.²⁰ In 2010 the DRC was ranked among the twenty poorest countries in the world.²¹

The new constitution put in place in 2006 has established decentralisation as the system of governance in the DRC. This choice was motivated by the need to correct past mistakes and to bring the administration closer to communities in order to efficiently and effectively address their needs. The equal distribution of national resources, amongst other things, could therefore be guaranteed in a decentralised system and could potentially bring conflicts in the DRC to an end. The present study is therefore significant in that it aims to assess the extent to which decentralisation has been able to facilitate the equal distribution of national resources thus strengthening social peace in the DRC and closing windows of conflict through distributive justice.

1.4 Significance of the study

The DRC has been a country in conflict for a long time, mainly fuelled by the unequal distribution of national resources. After decades of mismanagement and conflicts, decentralisation has been chosen by the Congolese people as the governance system best able to secure their daily bread and secure social peace in the DRC. This study is therefore significant for three reasons: Firstly, the DRC is experiencing its five first years under a decentralised system of governance; secondly it assesses the functioning of decentralised

²⁰ African Development Bank and African Development Fund 'Economic and sector work: Regional economic development in Bas Congo in context of decentralisation in the Democratic Republic of Congo (DRC)'

Available at http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/DRC_Etude%20decentralisation_english__01.pdf. (accessed 16 October 2010).

²¹ International Church of Christ 'The twenty poorest countries in the world' available at <http://www.icochotnews.com/?q=node/1371> (accessed 23 July 2010).

entities as well as their implementation; thirdly, the present study is amongst the few studies currently assessing to what extent decentralised entities have fostered social peace in the DRC. It is therefore hoped that the current study will be used in the future as resource to enhance the implementation and impact of decentralisation in the DRC and in any other post-conflict country.

1.5 Hypotheses

After decades of conflict caused by mismanagement and social injustice under a centralised system of governance, decentralisation can be the mechanism to allow equal distribution of national resources and create social peace between communities and within the country as a whole. There are however, inherent risks in adopting this form of governance. Decentralisation can arouse the ‘evil’ of secession in certain provinces. It can also result in provincial inequality as each province does not have the same resource potential. This notwithstanding, the elections and installation of local parliaments and governments in all eleven provinces is a strong indicator of the effectiveness of decentralisation in the DRC. Decentralisation can therefore be seen as being on track. Moreover, as unequal access to the national resources has been a source of tension and conflicts between communities, decentralisation may facilitate an equal share and secure sustainable social peace in the DRC.

1.6 Methodology and limitations

The study will be conducted through a review of existing literature related to the subject utilising on desk top and library research. Where possible, interviews with key actors involved in the decentralisation process as well as local communities in the DRC would have added to the depth of this study. Unfortunately, access to those two categories is not possible. The study will therefore be limited to library and internet research.

1.7 Literature review

Many scholars have written on the concept of decentralisation in general and decentralisation in the context of the DRC in particular. In this regard, de Visser²² talks about the role of decentralisation within the context of the development to be achieved by a state by taking

²² de Visser (n 14 above).

South Africa as a case study. Jha ²³ focuses his study on decentralisation in the context of developing countries. The current study has similarities with others cited above as it has its focus on a developing country, the DRC. However, it differs from these case studies because it is focused on decentralisation in the context of a post-conflict country. With regard to decentralisation in the DRC, Marysse²⁴ emphasises the economic aspect of decentralisation under the transitional Constitution. The current study has similarities with the latter as it has its focus on decentralisation in the DRC in the post-conflict context. However, it limits its focus in the DRC to the 2006 Constitution and tries to evaluate the role of decentralisation as tool to foster social peace in the DRC. Makgetlaneng²⁵ has also focused on the issue of decentralisation in the DRC. His study pointed out the root causes of inequality in the DRC focusing on the legislative regime for decentralisation. Contrary to the latter, the current study assesses the implementation of decentralised entities provided by the 2008 law on decentralisation.

The World Bank and the European Union ²⁶ have also conducted studies on decentralisation in the DRC. They focused on the constitutional provisions on decentralisation before the 2008 law on decentralisation was enacted and their impact on the education sector. The current study in contrast focuses on the impact of decentralisation on social peace in the DRC. Decentralisation in the DRC has also been the focus of a study by Liégeois.²⁷ In his study, Liégeois highlights challenges raised by the decentralisation process for a fragile state such as the DRC. According to him, as a fragile state, the Congolese decentralisation project raises five challenges;

- the challenges of ownership of the process by the Congolese people,
- the challenge of taxation,
- political challenges,
- macro economic and public finance cohesion challenges for donors, and

²³ Jha (n 13 above).

²⁴ S Makgetlaneng 'Decentralization as a means to ensure provision of basic social services in the Democratic Republic of Congo' *Africa Insight* Vol 39(4) (March 2010) 65.

²⁵ Marysse (n 7 above).

²⁶ World Bank and European Union, 'Democratic Republic of Congo. Decentralization of the Democratic Republic of Congo: Opportunities and Risks' Rapport N041776-ZR, January 2008 available at

<http://www->

[wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/03/12/000333038_20080312025825/Rendered/PDF/417760SR0P10401closed0March01002008.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/03/12/000333038_20080312025825/Rendered/PDF/417760SR0P10401closed0March01002008.pdf) (accessed 24 August 2010).

²⁷ Liégeois (n 11 above).

- challenges for the Belgium Kingdom.

While focusing on the DRC as a fragile state the current study aims to assess to what extent decentralised entities have been implemented and its impact on social peace. Yav Katshung²⁸ has addressed the issue of decentralisation in the DRC. He focused his study on the ongoing debate in the Katanga province about the relevance of decentralisation provision in Katanga and the conditions for successful decentralisation in the DRC. The current study, on the contrary, does not dispute the fact that decentralisation should be implemented but rather assesses its realization and its impact as a building tool for social peace. Yamba Yamba Shuku²⁹ also focuses on decentralisation in the context of the DRC. He focuses his study on the review of different decentralisation laws governing the DRC until 2005 and looks at the decentralisation concept in the DRC from an administrative angle. The current study is focused on decentralisation under the 2006 Constitution and uses devolution as a definition of decentralisation. The decentralisation in the DRC has been the focus of Mabi Mulumba.³⁰ He argues about that decentralisation has largely been the administrative decentralisation of territorial entities and focuses his study on the management of tax revenues under the new constitution. The present study looks at the way decentralised entities have fostered the social peace in the DRC. Weiss and Nzongola-Ntalaja³¹ have also focus on an overview of decentralisation in the DRC and debate on fiscal decentralisation while this study focus on decentralisation as a tool secure social peace.

1.8 Overview of chapters

²⁸ J Yav Katshung 'La <<Décentralisation-Découpage >> en RD. Congo : Une Tour de Babel ?' available at http://www.laconscience.com/article.php?id_article=8442 (accessed 20 August 2010).

²⁹ N Yamba Yamba Shuku 'Les dynamiques de la décentralisation en RDC' available at <http://www.atol.be/port/rdc/documents/Yambayambalesdynamiquesdeladecentralisation.pdf> (accessed 26 August 2010).

³⁰ Mabi Mulumba '<<Décentralisation >> en R.D.C: Comment assurer une bonne gestion des Entités Territoriales Décentralisées(E.T.D)?' available at <http://www.cooperation.net/nonokanzumba/decentralisation-en-r.-d.-c.-comment-assurer-une-bonne-gestion-des-entites-territoriales-decentralisees-e.-t.-d.> (accessed 21 August 2010).

³¹ HF Weiss and G Nzongola-Ntalaja 'Decentralization and DRC -an Overview' Issue Paper No 1: Decentralization & Governance available at [http://www.cic.nyu.edu/peace_ssr/docs/Issue%20Paper%20No.1%20\(FR\).pdf](http://www.cic.nyu.edu/peace_ssr/docs/Issue%20Paper%20No.1%20(FR).pdf) (accessed 22 September 2010).

The study will be composed of five chapters. The first chapter deals with the introduction which includes the background of the study, the research question, the objective of the study, the significance of the study, the hypotheses, the methodology and the literature review, and the overview of chapters.

The second chapter focuses on the theory of decentralisation and its relevance to the DRC. The definition of decentralisation and others related concepts, namely deconcentration, delegation and federalism are its first focus; the Congolese decentralisation framework constitutes its second focus; and the relevance of decentralization to the DRC is its third focus.

The third chapter deals with the history of decentralisation in the DRC and decentralisation under the 2006 Constitution. This chapter provides a brief overview of decentralisation in the latter colonial and early post-independence period before focusing on the two periods before the 2006 Constitution: focusing on the Mobutu and Laurent Kabila regimes. Its second focus is on decentralisation under the 2006 Constitution assessing the functioning and implementation of decentralised entities.

The fourth chapter focuses on the failure of decentralisation in the distribution of national resources and social peace in the DRC. The chapter focuses first on the distribution of public services through the assessment of access to education, clean water and electricity and health care. Its second focus relates to the failure to foster social peace.

The fifth chapter is focused on the overall conclusion of the study and the way forward.

CHAPTER TWO: THEORY OF DECENTRALISATION AND ITS RELEVANCE TO THE DRC

2.1 Introduction

de Visser argues that ‘decentralisation can be a political strategy to increase stability in regions marred by ethnic and political polarization’.³² The Congolese people have adopted decentralisation in the hope that it will help to alleviate or remedy the crisis affecting the country for decades.³³ Key questions, however, relate to whether the organic law is consistent with the Constitution. For example, has it been implemented? What is the relevance of decentralisation in the DRC? But first, there is a need to clarify a number of concepts. In this regard, the concept of decentralisation, deconcentration, delegation and federalism must be defined. The chapter focuses firstly on the definition of these concepts; secondly, on the Congolese legal framework; and thirdly, on the relevance of decentralisation to the DRC.

2.2 Definitions of concepts

2.2.1 Decentralisation

Decentralisation has been defined by different scholars. de Visser defines decentralisation as ‘devolution of power’.³⁴ As a system of governances decentralisation has been also defined by Meenakshisundram as the one which ‘creates entities which are separated by law from the national centre in which local representatives are given formal power to decide on a range of public matters’.³⁵ These entities have by law an autonomous existence in terms of the power to decide on their resources allocation, budgeting their fund and authorities holding their

³² de Visser (n 14 above) 20.

³³ T Savage ‘The Democratic Republic of Congo : Inchoate Transition, Interlocking Conflicts’ in Erik Doxtader and Charles Villa-Vicencio (eds) *Through Fire with Water: The Roots of Divisions and the Potential for Reconciliation in Africa* (2003) 130.

³⁴ de Visser (n 14 above) 15.

³⁵ S S Meenakshisundram ‘Decentralization in Developing Countries’ in Jha and Mathur (eds) (n 14 above) 56-57.

offices are elected by their communities.³⁶ According to Meenakshisundram ‘three tasks characterise decentralisation: the task of oversight of policy-making; strategy-formulation and planning; and priority-setting and implementation’.³⁷ Moreover, defining decentralisation Weiss and Nzongola-Ntalaja argue that ‘it can simply mean that a government transfers certain functions and responsibilities to lower state structures in the interest of greater efficiency’.³⁸

2.2.2 Deconcentration

Deconcentration is subject to different definitions. de Visser defines deconcentration as ‘the distribution of powers and responsibilities among different units or levels within the central government’.³⁹ While Meenakshisundram defines deconcentration as ‘the handing over of some amount of administrative authority or responsibility to lower levels within the government ministries or agencies’.⁴⁰ The key characteristic of deconcentration is ‘that the allocation of responsibility occurs within the hierarchy of the central government’.⁴¹ Despite the fact agents in deconcentrated system have ‘some discretion’ they remain ‘accountable to the government’.⁴²

2.2.3 Delegation

The delegation has been defined by de Visser as ‘the transfer of responsibilities for specifically defined functions to structures that exist outside of central government’.⁴³ Meenakshisundram argues in the same way when he defines delegation as the fact of ‘transferring responsibility for specifically defined function to organizations that are outside the regular bureaucratic structure and are only indirectly controlled by the central government’.⁴⁴ In this regard, de Visser argues that ‘delegation takes place if a power that

³⁶ (as above) 57.

³⁷ As above.

³⁸ Weiss and Nzongola-Ntalaja (n 31 above).

³⁹ de Visser (n 14 above) 14.

⁴⁰ Meenakshisundram (n 35 above) 55.

⁴¹ de Visser (n 14 above) 14.

⁴² As above.

⁴³ As above.

⁴⁴ Meenakshisundram (n 35 above) 55.

originally resides with central government is being transferred to a subnational government'.⁴⁵ In delegation system the scope of power is circumscribed by the government and once the power handled over, the government is forbidden to exercise the same power, however, the power to 'withdraw the delegation' is always given to the government.⁴⁶

2.2.4 Federalism

Odero Ouma argues that 'any scholar of federalism would acknowledge the complexity in defining federalism in view of the various ways in which it has been employed'.⁴⁷ Nevertheless, many scholars have defined federalism. Elazar argues that:

*Federalism is based on a particular kind of constitutional framework. That framework is most immediately and easily visible in the division of power among a general, or federal, government on one hand and the constituent governments, on the other.*⁴⁸

Federalism is also defined by Watts 'as a normative term and refers to the advocacy of multi-tiered government combining elements of shared-rule and regional rule'.⁴⁹ For him,

*within the genus of "federal political system", "federations" represent a particular species in which neither the federal nor the constituent units of government are constitutionally subordinate to the other, that is, each having sovereign power derived from the constitution rather than another level of government, each empower to deal directly with its in the exercise of its legislative, executive and taxing powers, and each directly elected by its citizens.*⁵⁰

Furthermore, Blindenbacher and Watts stress that 'federalism is based on the objective of combining unity and diversity'.⁵¹

With regard to federalism, the 2006 Constitution has established two levels the state power. The two levels of state power are entrenched within the Constitution through article 2 of the Constitution which provides the principle of the existence of two levels of power: State and

⁴⁵ de Visser (n 14 above) 14.

⁴⁶ As above.

⁴⁷ S Odero Ouma 'Federalism as a peacemaking device in Sudan's Interim National Constitution' unpublished LLM thesis, University of Western Cape (2005) 7.

⁴⁸ DJ Elazar *Exploring Federalism* (2006) 34.

⁴⁹ RL Watts *Comparing Federal Systems* (2008) 8.

⁵⁰ Watts *Comparing Forms of Federal Partnership* in Karmis, D & Norman, W (eds) *Theories of Federalism: A Reader* (2005) 234.

⁵¹ R Blindenbacher and RL Watts 'Federalism in a Changing World- A Conceptual Framework for the Conference' in R Blindenbacher and A Koller (eds) *Federalism in a Changing World: Learning from Each Other* (2003) 9.

provinces. Provinces have a parliament with power to legislate, an executive and taxing powers and members of parliament are elected as well as the head of the executive.⁵² Thus, it appears that the 2006 Constitution has established federalist system in high level.

While it would be interesting to conduct an in-depth study as to whether federalism has been established in the DRC, the focus of the present study, however, is limited to the decentralised territorial entities that exist below the provinces. There is need to evaluate whether the 2008 Organic Law enacted to implement decentralisation in the DRC is consistent with the 2006 Constitution.

2.3 The Congolese decentralisation legal framework

The legal framework with regard to the decentralisation process in the DRC is constituted by the 2006 Constitutional provision and the Organic- Law n° 08/16 of 07 October 2008 pertaining composition, organisation and functioning of decentralised territorial entities and their relations with the State and Province.

Article 3 of the 2006 Constitution provides that decentralised territorial entities have legal existence and have local organs. These decentralised territorial entities have their own administration and the autonomy to manage their own economic, human, financial and technical resources. The Constitution provides that the composition, organisation and functioning of these decentralised territorial entities flow from the organic law on decentralisation.⁵³

The 2008 Organic Law on decentralisation has established two organs governing each decentralised entity, namely the college representing the executive and the council, the legislative.⁵⁴ Their members are elected⁵⁵ except in sector and chiefdoms where traditional leaders are appointed according to the custom.⁵⁶ Decentralised entities, namely, the city, municipality and sector or chiefdoms are headed by a mayor, a municipality chief executive

⁵² Articles 195, 196, 197 and 198 of the 2006 Constitution of the DRC.

⁵³ Article 3(4) of the 2006 Constitution of the DRC.

⁵⁴ Articles 7, 47 and 69 of the 2008 Organic Law on Decentralization.

⁵⁵ Articles 8, 30, 48, 56 and 70 of 2008 Organic Law on Decentralization.

⁵⁶ Article 79 of the 2008 Organic Law on Decentralization.

and a traditional leader respectively.⁵⁷ Therefore, it appears that the 2008 Organic Law is consistent with the 2006 Constitution of the DRC.

2.4 The relevance of decentralization to the DRC

The DRC is a country in recovery after devastating conflicts. It is furthermore characterised by 'very heterogeneous conditions in terms of population and resources'.⁵⁸ It searches for a way to turn the tide of mismanagement⁵⁹ and conflict.⁶⁰ Decentralisation has relevance for the DRC in three aspects

- Decentralisation will allow equal access to the national resources for every Congolese citizen,
- It will potentially rebuild the legitimacy of the government, and
- Strengthen peace building in the DRC.

2.4.1 Equal access to the national resources

For decades centralisation⁶¹ and deconcentration⁶² were used as systems of governance in the DRC.⁶³ These two systems of governance have as characteristics the fact that central government was the only and final decision-maker.⁶⁴ In these two previous systems, the local communities did not have any power to make decision on issues affecting directly their livelihood. Through decentralisation, the administration of power at the local level is given to these local communities who are directly affected by decisions taken by the high level.⁶⁵ To emphasise the relevance of decentralisation for local communities, Yamba Yamba Shuku argues that:

⁵⁷ Articles 41, 60 and 85 of the 2008 Organic Law on Decentralisation.

⁵⁸ Marysse (n 7 above).

⁵⁹ World Bank and European Union (n 26 above).

⁶⁰ Savage (n 33 above).

⁶¹ Liégeois (n 11 above).

⁶² Marysse (n 7 above).

⁶³ Yav Katshung (n 28 above).

⁶⁴ JS Wunsch 'Decentralization, local government, and the democratic transition in Southern Africa : A comparative analysis'

available at <http://www.africa.ufl.edu/asq/v2/v2i1a2.htm>(Africa(accessed 12 September 2010).

⁶⁵ Meenakshisundram (n 35 above) 56.

with the size of the 2345000 km² of the DRC it is hard for a centralised system to understand the realities of local communities and to make decisions capable of positively impacting lower.⁶⁶

Thus, decentralisation has as benefit the ‘improvement of the local communities’ livelihood’.⁶⁷ The local communities will become decision-makers on their development instead of being just a point where the government implements its own development policies.⁶⁸ In the DRC, article 115 of the Organic Law on Decentralization provides for the allocation of 40% of provincial revenue to the decentralized entities. The provision allows local communities access to the national resources to turn the tide of injustice suffered by millions for decades.

2.4.2 Restoring the legitimacy of the State’s power

Marysse stresses that the ‘long decay of the state has informalized all spheres of society with long lasting consequences’.⁶⁹ In this context, ‘people had to fend for themselves and use whatever means to survive’.⁷⁰ However, Légeois has argued that ‘in post-conflict or fragile state, decentralization has as its main object to fill the deficit of legitimacy of the state which has lost credibility to citizens’.⁷¹ Therefore, as ‘a state with a strong decentralization, can respond more quickly to changing circumstance’⁷², the DRC has an opportunity to restore its credibility by implementing decentralized entities. Further, relations between the state and citizens is improved and fostered by decentralisation, the DRC has a chance to rebuild citizen’s in the state.⁷³

2.4.3 Strengthening of peace building process

According to International Crisis Group:

⁶⁶ Yamba Yamba Shuku (n 29 above).

⁶⁷ Légeois (n 11 above).

⁶⁸ Wunsch (n 64 above).

⁶⁹ Marysse (n 7 above).

⁷⁰ As above.

⁷¹ Légeois (n 11 above).

⁷² T Fleiner and LRB Fleiner *Constitutional Democracy in a Multicultural and Globalised World* (2009) 533.

⁷³ de Visser (n 14 above) 38.

The Congolese Power Sharing Agreement linked the principle of a balance of power between central government and the provinces and the establishment of genuine checks and balances at both levels to the return of lasting peace.⁷⁴

In the DRC, decentralisation has appeared as a way of ‘finding a balance between the equal sharing of national resources and the maintenance of peace’.⁷⁵ Furthermore, in the developing countries such as the DRC, decentralisation has played great role in terms of improving public services or government’s responsiveness.⁷⁶ Therefore, decentralisation will contribute to social peace in the DRC by providing more opportunities for Congolese population participation in public matter.⁷⁷

2.5 Conclusion

Decentralisation in contrast to other governance models such as deconcentration or delegation has been the option adopted by the DRC in its quest to facilitate greater distribution of national resources and a peaceful social environment. However, the implementation of decentralisation requires a legal framework. In this regard, the 2008 Organic Law was enacted and it is appeared to be consistent with the Constitution.

Furthermore, decentralisation is believed to have relevance to the DRC. It has the capacity to allow equal access to the national resources and it provides mechanisms for lower level participation in government. Moreover, decentralisation allows the restoration of the legitimacy of the state’s power for a post-conflict country such as the DRC by providing state services at the lower level. In addition, decentralisation will strengthen the peace building process ongoing in the DRC by creating a peaceful social environment through equal distribution of national resources.

⁷⁴ International Crisis Group, ‘Congo: A Stalled Democratic Agenda’

<http://www.crisisgroup.org/en/regions/africa/central-africa/dr-congo/b073-congo-a-stalled-democratic-agenda.aspx> (accessed 10 September 2010).

⁷⁵ S Makgetlaneng ‘Decentralization as a means to ensure provision of basic social services in the Democratic Republic of Congo’ *Africa Insight* Vol 39(4)(March 2010) 65.

⁷⁶ J Siegle and P O’Mahony ‘Assessing the merit of decentralization as a conflict mitigation strategy’ available at http://www.dai.com/pdf/Decentralization_as_a_Conflict_Mitigation_Strategy.pdf (accessed 20 October 2010).

⁷⁷ As above.

CHAPTER THREE: DECENTRALIZATION: HISTORY IN THE DRC AND UNDER THE 2006 CONSTITUTION

3.1 Introduction

Decentralisation is not new to the DRC as it has had a long and varied experience with the different forms of decentralisation.⁷⁸ This is partly attributable to its large size and ‘population of about sixty million people, and internal boundaries designed by Belgian colonial administrators’.⁷⁹ The long standing debate in the DRC has always been whether the state should adopt a federal or a unitary form of the government.⁸⁰ The debate can be traced to ‘the colonial Royal Act that regrouped the twenty two Districts in to four provinces each headed by a vice-governor’.⁸¹ At independence, the DRC inherited a constitution that provided for a federal form of government but the implementation of the constitutional provisions was undermined by institutional crises and secessionist conflicts.⁸² The 1964 Constitution, called the Luluabourg’s Constitution, provided a federal form of government but it was not implemented due to the Mobutu Coup.⁸³

There have been different pieces of legislations in the DRC on decentralisation during the period from 1995 to 2001 corresponding to the regimes of Mobutu⁸⁴, Laurent Kabila⁸⁵ and Joseph Kabila,⁸⁶ and more recently the 2006 Constitution. This chapter will first focus on the decentralisation process during the regimes of Mobutu and Laurent Kabila up to the 2001 law

⁷⁸ Weiss and Nzongola-Ntalaja (n 31 above).

⁷⁹ As above.

⁸⁰ Yav Katshung (n 28 above).

⁸¹ As above.

⁸² As above.

⁸³ As above.

⁸⁴ Government Gazette (*Journal Officiel de la République du Zaïre*) 37th year no 1, 1 January 1996.

⁸⁵ Government Gazette (*Journal Officiel de la République Démocratique du Congo*) 42th year, Special Issue, Kinshasa-28 September 2001.

⁸⁶ Government Gazette (*Journal Officiel de la République Démocratique du Congo*) 49th year, no Special Issue, Kinshasa-10 October 2008.

on decentralisation. Secondly, the chapter will discuss Decentralisation under the 2006 DRC Constitution.

3.2 Period from 1995 to 2001

3.2.1 Decentralization during the regime of Mobutu

Decentralization during the regime of Mobutu was governed by the Law 95-005 of 20 December 1995 pertaining to territorial, administrative and political decentralisation of the Republic of Zaire during the Transitional Period.⁸⁷ The legislation was enacted during the transitional period⁸⁸ and was meant to be a break from the centralised system⁸⁹ that existed during the State's Party System.⁹⁰ The legislation was meant to be a shift from an authoritarian regime to a democratic one.⁹¹

The new legislation on decentralisation established five tiers of decentralised government, namely region, city, municipality, territory and collectivity.⁹² The region was the highest level and the collectivity the lowest level. All of the five tiers of government were headed by two organs; legislature represented by a council and the executive represented by an executive college.⁹³ Further, each organ at each tiers of decentralised government was composed members of the ruling party and opposition parties chosen by their by respective political parties.⁹⁴ The collectivity college was the only exception where traditional leaders only were entitled to head the organ with political representatives as members of the college.⁹⁵ However, the legislation was never implemented as war broke out between the government and the

⁸⁷ Government Gazette (*Journal Officiel de la République du Zaire*) (n 84 above).

⁸⁸ Savage (n 33 above).

⁸⁹ Paragraph 10 of the explanatory statement of the Law n° 95-005 of 20 December 1995 pertaining territorial, administrative and political decentralisation of the Republic of Zaire during the Transitional Period.

⁹⁰ Ligue des Droits de la Personne dans la Region des Grands Lacs ' L'Etablissement de la Justice et l'Essor d'un Etat de Droit en République Démocratique du Congo' available at www.ldgl.org (accessed 23 September 2010).

⁹¹ Paragraph 10 of the explanatory statement of the 1995 Law on Decentralization.

⁹² Articles 2, 44, 65, 91 and 105 of the 1995 Law on Decentralization.

⁹³ Articles 4, 46, 69, 92 and 109 of the 1995 Law on Decentralization.

⁹⁴ Articles 6, 28, 47, 61, 70, 80, 93, 99 and 110 of the 1995 Law on Decentralization.

⁹⁵ Article 117 of the 1995 Law on Decentralization.

Alliance des Forces Démocratiques pour Liberation du Congo (AFDL), a rebel group backed by Rwanda and Uganda and led by Laurent Kabila.⁹⁶

3.2.2 Decentralization during the regime of Laurent Kabila up to the 2001 law on Decentralization

There are two main pieces of legislation that governed the DRC during the regime of Laurent Kabila and just after his death. These are, Decree-law 081 of 2 July 1998 pertaining Territorial and Administrative organisation in the Democratic Republic of Congo,⁹⁷ modified and completed by the Decree-Law 018/2001 of 28 September 2001.⁹⁸ These two laws, passed by decree, governed the DRC from 1998 up to the promulgation of the current law on decentralization in the DRC.⁹⁹

There four tiers of decentralised governments the two decrees provided; the province, the city, the territory and the municipalities of Kinshasa.¹⁰⁰ The same law provided for the governor of the province as the executive organ of the province. The governor was appointed and dismissed by the president while the legislature was represented by a consultative council composed of representatives of business corporations, civil society and public administration.¹⁰¹ At the level of the city, territory and municipalities of Kinshasa the mayor for the city, the administrator of territory and the municipal chief executive of the municipality were also appointed and dismissed by the president and the legislature was also represented a consultative organ.¹⁰² As evidenced by the extensive Power conferred to the president, the law on decentralisation never provided real autonomy to the decentralised entities. The local authorities did not have a real mandate and power to deliver services or promote general development in their areas.¹⁰³ Further, there was a weak link between the

⁹⁶ Savage (n 33 above) 143.

⁹⁷ Government Gazette (*Journal Officiel de la République Démocratique du Congo*) (n 97 above).

⁹⁸ As above.

⁹⁹ Government Gazette (*Journal Officiel de la République Démocratique du Congo*) (n 98 above).

¹⁰⁰ Article 7 of the 1998 and 2001 Decree-Law on Decentralization.

¹⁰¹ Article 8, 9, 18 and 19 of the 1998 and 2001 Decree-Law on Decentralization.

¹⁰² Articles 57, 68, 69, 87, 96, 105 and 106 of the 1998 and 2001 Decree-Law on Decentralization.

¹⁰³ IMC Chombo 'Speech by the Honourable Minister of Local Government, Rural and Urban Development' in J de Visser, N Steytler and N Machingauta (eds) *Local government reform in Zimbabwe: A policy dialogue* (2010) x.

decentralised authorities and local communities. This means that local communities could not participate or have voice to any process of development undertaken by the government for them.¹⁰⁴ The 1998 and 2001 decentralisation law instituted delegation as governance system rather than decentralisation as evidenced by the fact that political and administrative officials appointed by the central government were who were accountable to the central government as opposed to the local communities.

3.3 Decentralization under the 2006 Constitution

3.3.1 The functioning of the decentralized entities under the 2006 Constitution

The Constitution of the DRC provides for creation of decentralised entities, called *Entités Territoriales Décentralisées* (Decentralized Territorial Entities), namely, city, municipality, sector and chiefdoms.¹⁰⁵ The Constitution adds: ‘the composition, the organisation, the functioning of these decentralised entities as well as the relations between them and the province and the central government will be determined by legislation’.¹⁰⁶ The 2008 Organic Law on Decentralisation is the piece of legislation enacted to implement the principles on the functioning of decentralised entities set forth in the Constitution.¹⁰⁷ However, the implementation of the decentralisation framework under the 2006 Constitution is implicated two laws on decentralisation¹⁰⁸ that exist concurrently and further by the delay in local elections.¹⁰⁹ The cohabitation of laws and the delay of elections impede on competencies of decentralised entities. The two pieces of legislation existing concurrently have conflicting approaches and functions hence interfering with the smooth running of the decentralised government. It undermines also the accountability of authorities in decentralised entities as communities do have no say to their management of these local authorities.

¹⁰⁴ As above.

¹⁰⁵ Article 3 (2) of the 2006 Constitution of the DRC.

¹⁰⁶ Article 3 (4) of the 2006 Constitution of the DRC.

¹⁰⁷ Article 4 of the 2006 Constitution of the DRC.

¹⁰⁸ The 1998 and 2001 Decree- Law on Decentralization and the 2008 Organic Law on Decentralization.

¹⁰⁹ M Manduakila ‘ Comme en 2006 , les élections municipales et locales sacrifiées en 2011’ available at <http://www.afriqueredaction.com/article-comme-en-2006-les-elections-municipales-et-locales-sacrifiées-en-2011-55248988-comments.html> (accessed 22 September 2010).

3.3.1.1 The competencies of decentralized entities

The competencies of the decentralised entities are subject to article 3(3) of the 2006 Constitution which provides that decentralised entities enjoy free administration and autonomous management of their financial, economic, human and technical resources.

The relation between decentralised entities and provinces include two different control exercised by the province with regard to decisions taken by decentralised. The priori and posteriori.¹¹⁰ However, the free administration is impeded by article 95 of the 2008 Organic Law on Decentralization which provides that the governor exercises his power over decentralised decisions with regard to a number of decisions at local level under a priori control. The governor has the power to allow or reject the decisions of decentralised entities under a priori control. However, decentralised entities have administrative or judicial options to appeal a negative decision.¹¹¹ The governor can delegate his power to the administrator of the territory. This provision raises a question about the real competencies of decentralised entities. In this regard, it is easy to agree with Weiss and Nzongola-Ntalaja who see the ongoing decentralisation in the DRC as substantively a “deconcentration” of power’.¹¹²

3.3.1.2 The financial resources of decentralized entities

The financial resources management of decentralised entities in the DRC under the 2006 Constitution has been so far characterized by two periods: the period before the Organic Law on decentralisation was enacted and the period after. Generally, almost all decentralised entities in the first period were unable to raise their own revenue or if they did only raised unsustainable amounts of revenue.¹¹³ In the period before the Organic, the decentralised entities received money from provinces.¹¹⁴ However, there was no legal obligation on the minimum and maximum amount of money to be transferred from provinces.¹¹⁵ The

¹¹⁰ Article 96 of 2008 Organic Law on Decentralisation.

¹¹¹ Article 98, 99, 100 of 2008 Organic Law on Decentralisation.

¹¹² Weiss and Nzongola-Ntalaja (n 31 above).

¹¹³ As above.

¹¹⁴ Association des Gouverneurs élus de la RDC ‘ Détournement des rétrocessions par les gouverneurs de provinces’, Communiqué de presse

available at

<http://www.provincenordkivu.org/doc3/COMMUNIQUE%20%20DE%20PRESSE%20%20AU%20SUJET%20%20DES%20RETROCESSIONS.pdf> (accessed 20 September 2010).

¹¹⁵ As above.

government has not been consistent in its fiscal decentralisation policies.¹¹⁶ For instance, instead of the legally required 20 percent of domestic revenue, the central government transferred between 6% to 7% only to provinces before the elections in 2006.¹¹⁷ Furthermore, the transfers to provinces have been infrequent and not regular as provided under the relevant law.¹¹⁸ Thus, while the 2008 Organic Law on decentralisation, article 115 provides that decentralised entities are entitled to 40% of the national revenue allocated to provinces, the practice has been far from what is required by legislation.

Implementation of the provision on transfer of financial resources has not yet materialised two years from the time that law came to force and this trend is likely to go on for long time.¹¹⁹ This assertion is evidenced by the fact that the government has indicated that it will be unrealistic to implement the provision in the current context of the DRC.¹²⁰ The central government argued that the implementation of 40% without amendment will create huge inequality between provinces.¹²¹ There are two reasons that have been given to support the status quo; first, the disparity in natural resource endowment in other provinces and Kinshasa, Katanga and Bas-Congo. Secondly, the fact that Kinshasa, Katanga and Bas-Congo are entitled to levy taxes initially belonging to others provinces because of their political and geographic position.¹²² Kinshasa being the capital city and entitled to levy tax on oil from Bas-Congo province, diamond from Kasai-Oriental province and wood from Equateur province while Katanga and Bas-Congo are Congolese international borders.¹²³

A compromise has been found between the government and provinces allowing central government to donate funds to provinces according to each province's need until further order instead of taking percentage as basis of transfers.¹²⁴ However, while there seems to be a

¹¹⁶ World Bank and European Union (n 26 above).

¹¹⁷ As above.

¹¹⁸ La Prospérité 'Retrocession aux Entités Territorial Décentralisées: 10 milliards de FC aux provinces' available at <http://www.congoplanete.com/article.jsp?id=45261326> (accessed 20 September 2010).

¹¹⁹ Grands Echos Lacs 'RDC: Conference des gouverneurs des provinces', Publication mensuelle du Réseau Européen pour l'Afrique Centrale (EURAC), N056-Juillet 2009 available at www.eurac-network.org (accessed 23 September 2010).

¹²⁰ World Bank and European Union (n 26 above).

¹²¹ Liégeois (n 11 above).

¹²² As above.

¹²³ As above.

¹²⁴ Grands Echos Lacs (n 119 above).

solution for provinces through the compromise reached above, there are still many challenges related to the manner and procedure of transfer of funds to other levels below the provinces. There are also many allegations of mismanagement of funds at the provinces levels. This is evidenced by the fact that some provinces transferred between 12% and 19% while other provinces such as Kinshasa and Sud-Kivu province did not make any transfer from the amount allocated to them by the central government.¹²⁵ Furthermore, the deterioration of state infrastructure,¹²⁶ roads¹²⁷ and other public utilities are posing many challenges to the effectiveness of the decentralised territorial entities especially in rural areas. In case of any transfers to these decentralised territorial entities, the reception of fund will be difficult for them as they are not easily accessible by road and the bank system does not exist in these areas.

3.3.1.3 The accountability of the decentralised entities

According to the World Bank and European Union ‘the transfer of resources and competencies to sub-national level without equivalent strengthening of accountability mechanisms poses risk of corruption and capture of the state’.¹²⁸ They provide three ways of accountability occurred:

*The upward accountability exists when sub-national governments are accountable to higher levels of government. Horizontal accountability is the relationship between elected and appointed officials at sub-national government levels. This concerns the accountability of the provincial Division Chiefs towards the Governor or to the Provincial Assembly. The third direction of accountability is the relation between the elected officials and the voters in their constituency. This accountability is executed by elections.*¹²⁹

Furthermore, ‘the international experience shows that decentralisation programs that ignore these aspects of accountability of decentralised territorial entities will eventually fail to achieve their objectives’.¹³⁰ The accountability in decentralized entities in the DRC raises the

¹²⁵ Radio Okapi ‘Lubumbashi: Detournement de la retrocession, le Katanga se dit non concerné’ available at <http://radiookapi.net/economie/2009/07/22/lubumbashi-detournement-de-la-retrocession-le-katanga-se-dit-non-concerne/> (accessed 24 October 2010).

¹²⁶ Marysse (n 7 above).

¹²⁷ As above.

¹²⁸ World Bank and European Union (n 26 above).

¹²⁹ As above.

¹³⁰ As above.

issue of elections. The World Bank and European Union report on the DRC pointed out how critical the elections are for decentralised entities in the DRC:

*whereas the importance of the decentralized territorial entities (the ETD) is obvious, in particular in terms of creating democracy at local level and of revitalizing local economies, the election of local authorities has been postponed until summer 2008 at least, giving this issue slightly less immediate urgency at this point.*¹³¹

Unfortunately, elections have not been held and any possibilities of future elections still remain uncertain despite being scheduled in the 2011-2013 general elections calendar.¹³² The absence of elections at the local level has installed a system which does not allow accountability and increase corruption opportunities.¹³³ Article 3(3) of the Constitution of the DRC provides for city, municipality, rural district and chiefdoms as the only decentralized entities. However, authorities of these entities are still appointed by the central government.¹³⁴ With the postponement of the local elections these entities continue to be headed by these appointed before 2006 authorities.

The 2008 organic law provides that while waiting for the local elections to be organized, the decentralised entities will function according to Decree-law n°082 of 02 July 1998 pertaining the status of authorities in charge of the territorial constituency administrations.¹³⁵ This Decree law deals with the functioning of deconcentrated authorities. Thus, while the legal and institutional framework provides for a decentralised system government, the practice merely reveals a deconcentrated system of administration. This inevitably leads to corruption and lack of accountability. Indeed the existence of these two laws will create a clash resulting in the mal functioning of decentralised entities. Furthermore, the appointed decentralised authorities will seek to please those who appointed them in order to keep their position. Moreover, as local communities are excluded from the process there will be no accountability of local authorities.

3.3.2 The implementation of decentralised entities

¹³¹ As above.

¹³² Manduakila (n 109 above).

¹³³ World Bank and European Union (n 26 above).

¹³⁴ Manduakila (n 109 above).

¹³⁵ Article 126 of the 2008 Organic Law on Decentralisation.

The law on decentralisation has been in place since October 2008. However, despite that legislation, the process of implementation of decentralized entities faces challenges in terms of the territorial division and elections of decentralised authorities.

3.3.2.1 The territorial division

The 2006 Constitution has changed the administrative configuration of the DRC by increasing the number of provinces from 11 plus Kinshasa to 25 plus the capital city.¹³⁶ In this regard, Article 4 of the Constitution provides that new provinces and decentralised entities can be created by dismemberment or union under conditions provided by the Constitution and the legislation. However, the implementation of this provision is held back by tensions between those who want the territorial division immediately and those who are opposed to further division.¹³⁷

3.3.2.1.1 The tension between pro and anti territorial division

The explanation of tensions arising between these pro-territorial division or anti-territorial division can be found in the long lasting opposition between those partisan to the unitary system, on the one hand, and that supporting federalism, on the other.¹³⁸ These tensions were increased by the unclear nature of the Congolese state.¹³⁹ In this regard, neither the Constitution¹⁴⁰ defines the DRC as a unitary or federal state. Légeois argues that ‘this was the compromise between pro-federalists who feared the centralization by the central government and pro-unitary who feared the secessionist tendency of some provinces’.¹⁴¹ Unfortunately these compromises and the entrenchment of decentralisation as a governance system within the Congolese constitution do not secure the implementation of the decentralised entities.¹⁴² Indeed, other tensions are rising currently on whether these provisions should be implemented now or later.¹⁴³ These tensions have brought on board those who argue on inequality of

¹³⁶ Article 2 of the 2006 Constitution of the DRC.

¹³⁷ Yav Katshung (n 28 above).

¹³⁸ As above.

¹³⁹ Liégeois (n 11 above).

¹⁴⁰ Article 1 of the 2006 Constitution of the DRC.

¹⁴¹ Liégeois (n 11 above).

¹⁴² Article 3 of the 2006 Constitution of the DRC.

¹⁴³ Yav Katshung (n 28 above).

development between future provinces as a basis for delaying the implementation. This is the case in Katanga province where the undeveloped North is opposed to the implementation and the developed South is pushing for the implementation.¹⁴⁴

3.3.2.1.2 The lack of political will

The Constitution of the DRC recognizes the principle of decentralisation¹⁴⁵ but leaves details to enabling national legislation.¹⁴⁶ However, the ‘Parliament failed to reach consensus’,¹⁴⁷ and waited for two years to enact the law on decentralisation.¹⁴⁸ Indeed, given the devastating consequences of conflicts¹⁴⁹ and the depth of poverty¹⁵⁰ in the DRC, one could expect the law on decentralisation being amongst the priorities of Parliament during the first year.

Furthermore, the Constitution has programmed the implementation of decentralised entities 36 months after the establishment of institutions and the 2008 Organic Law providing provisions for that implementation has been enacted. However, there is an ongoing debate among political leaders about the relevant time to implement these decentralised entities.¹⁵¹ Some of the political leaders have expressly indicated even their intention to delay the process to the greatest extent possible.¹⁵²

The 2006 electoral law provided for the organization of elections at local level at the same time as the presidential and parliamentary elections.¹⁵³ These elections were postponed by the electoral commission for unclear reasons, citing lack of political will.¹⁵⁴ On 9 August 2010 the Independent Electoral Commission published the electoral calendar and the local elections

¹⁴⁴ As above.

¹⁴⁵ Article 3 of the 2006 Constitution of the DRC.

¹⁴⁶ Article 3(4) of the 2006 Constitution of the DRC.

¹⁴⁷ World Bank and European Union (n 26 above).

¹⁴⁸ Government Gazette (*Journal Officiel de la République Démocratique du Congo*) (n 98 above).

¹⁴⁹ Savage (n 33 above) 130.

¹⁵⁰ International Church of Christ (n 21 above).

¹⁵¹ Yav Katshung (n 28 above).

¹⁵² As above.

¹⁵³ Law n° 06/006 pertaining to presidential, legislative, provincial, urban and local, in Government Gazette (*Journal Officiel de la République Démocratique du Congo*), 47th year, Special Issue, Kinshasa-10 March 2006.

¹⁵⁴ Manduakila (n 109 above).

are programmed for 2013 while the general elections will be held between 2011 and 2012.¹⁵⁵ The calendar raises concerns with regard to the local elections as Congolese population fears to see the 2013 local elections being postponed *sine die* as in 2006.¹⁵⁶ The postponement of the 2006 elections at local level has kept appointed local authorities who are accountable only to the central government who appointed them.¹⁵⁷

The population's fear seems to be materialized by the decision taken on 18 September 2010 by the Lower Chamber of the Parliament¹⁵⁸ to put into place an ad hoc commission assigned to prepare the amendment of 20 articles in the Constitution.¹⁵⁹ The amendment targets the so-called 'articles with complicated implementation' which are the provisions related to the creations of new provinces and decentralised entities.¹⁶⁰ Already, in June 2010 the Presidential Majority in the Lower Chamber of the Parliament suggested the revision of the Constitution revision provisions relating to decentralisation as solution to the delay of their implementation.¹⁶¹ Indeed, their argument is that the Constitution has determined the implementation of the decentralised entities 36 months after the installation of the institutions.¹⁶² Thus, as it is impossible to respect the provision of the Constitution, the best way to avoid the violation of the Constitution will be the revision of the concerned provisions. Thus, this attempt, if implemented, will infringe the provisions entrenched in the Constitutions forbidding the constitutional revisions of, inter alia, the reduction of the prerogatives of provinces and decentralized entities.¹⁶³

3.4 Conclusion

¹⁵⁵ Radio Okapi 'RDC: la CEI fixe le premier tour de la présidentielle au 27 novembre 2011' available at <http://radiookapi.net/actualite/2010/08/10/rdc-la-cei-fixe-le-premier-tour-de-la-presidentielle-au-27-novembre-2011/> (accessed 18 September 2010).

¹⁵⁶ Manduakila (n 109 above).

¹⁵⁷ As above.

¹⁵⁸ Le Potentiel 'Révision constitutionnelle: une démarche inopportune' available at http://www.lepotentiel.com/afficher_article.php?id_edition=&id_article=99784, (accessed 21 September 2010).

¹⁵⁹ As above.

¹⁶⁰ As above.

¹⁶¹ International Crisis Group 'RDC: l'enlèvement démocratique' available at <http://www.crisisgroup.org/en/regions/africa/central-africa/dr-congo/arbour-RDC-l-enlèvement-democratique.aspx> (accessed 19 September 2010).

¹⁶² Article 226 of the 2006 Constitution of the DRC.

¹⁶³ Article 220 of the 2006 Constitution of the DRC.

The 2006 Constitution of the DRC provides for decentralisation as a system of government and lays a legal basis for the institutional and legal framework. However, this choice is not the first time to experiment with decentralisation in DRC as decentralisation has been part of history of DRC. The trend toward decentralisation can be noticed from the later colonial period, the period just after the independence, the regimes of Mobutu and Laurent Kabila till the current choice by Third Republic.

In the regime of Mobutu and Laurent Kabila, decentralisation has two different outcomes. Indeed, decentralisation was not implemented during Mobutu's regime because of the war which broke out and Mobutu was overthrown while during Laurent Kabila the model of governance was a delegation rather than decentralisation.

Furthermore, under the 2006 Constitution, although being consistent with the Constitution on paper, the functioning of decentralised territorial entities faces challenges. The fiscal decentralisation is not effective and local elections programmed for 2006 have been postponed. The postponement of the local elections has as consequence the continuation of appointed authorities at the local level and who are accountable to the central government which appointed them. Moreover, decentralisation faces other challenges in terms of implementations. There is opposition to the division of territories and the lack of political will to implement the provisions on decentralisation.

CHAPTER FOUR: THE FAILURE OF DECENTRALISATION IN THE DISTRIBUTION OF THE NATIONAL RESOURCES AND SOCIAL PEACE IN THE DRC

4.1 Introduction

The aim and objective of Decentralisation in the DRC is to provide an institutional and legal framework and arrangements upon which national resources can be shared, while at the same time preserving the country's territorial integrity.¹⁶⁴ The 2006 Constitution represents the spirit of the Congolese people to make decentralisation a reality.¹⁶⁵ However, a review of the current situation in the DRC reveals a gap between the constitutional provisions on decentralisation, sharing of national resources and territorial integrity of the DRC. Indeed, decentralisation at sub-provincial level will only become effective if provinces become effective in performance of their functions. However, Provinces in the DRC face serious challenges in terms of performing and fulfilling their set functions.

This chapter will discuss the failure of decentralisation to enhance equitable distribution of national resources in the DRC and will further look the failure of the process in promoting social peace.

4.2 The failure of decentralisation in the distribution of the national resources

Seen as a mechanism and means of 'sharing of some power with local institutions in the interest of greater efficiency', decentralisation has been proposed as the best option to secure national resources redistribution in the DRC.¹⁶⁶ Weiss and Nzongola-Ntalaja argue that 'decentralisation will give more resources to the provinces than has been the case in the

¹⁶⁴ African Development Bank and African Development Fund (n20 above).

¹⁶⁵ As above.

¹⁶⁶ Weiss and Nzongola-Ntalaja (n 31 above).

past'.¹⁶⁷ Proponents of fiscal decentralisation have often argued that it has the 'capacity of improving efficiency by bringing decisions on allocating local public goods and services closer to the preferences of the population'.¹⁶⁸ In achieving this principle purpose, the Constitution of the DRC has entrenched the sharing of national resources.

The Constitution provides that 40% of general revenue generated by each province is to be transferred to decentralised territorial entities. Initially, the national government used to reimburse provinces for resources spent on sub-provincial decentralised entities.¹⁶⁹ Thus, the shift to a requirement of a definite amount of resources shows a keen interest to achieve an effective decentralised system of government.¹⁷⁰ This requirement has made essential services such as basic and 'secondary education, the regional public service, key aspects of the management of delivery of health services and other services to be included as the function of sub-national expenditure assignments' by the Constitution.¹⁷¹ The reflection in the national resources distribution for public service delivery and public servant livelihood under decentralisation will be the focus of the present section.

4.2.1 Public services delivery

For decades now, different functions in some areas such as education and health have gradually been taken over by the private sector in terms of service delivery.¹⁷² Decentralisation is one of the mechanisms that have been employed by the state to take back these essential services. The 2006 Constitution brought a glimmer of hope that the decentralisation process will lead to improvement of the lives of citizens and end decades of suffering. This expectation becomes high with the choice of decentralisation as the governance system.¹⁷³ Furthermore, the Constitution of the DRC foresees the creation of a provincial and local public service as one of the elements of the decentralisation process.¹⁷⁴ Whereas the process of decentralisation was one of the key elements in the reform process,

¹⁶⁷ As above.

¹⁶⁸ Marysse (n 7 above).

¹⁶⁹ Weiss and Nzongola-Ntalaja (n 31 above).

¹⁷⁰ As above.

¹⁷¹ World Bank and European Union (n 26 above).

¹⁷² Marysse (n 7 above).

¹⁷³ Article 3 of the 2006 Constitution of the DRC.

¹⁷⁴ World Bank and European Union (n 26 above).

there is little or no political will to ensure that decentralisation framework provided for in the constitution is fully achieved.¹⁷⁵

Provinces and local governments are meant to provide key social services such as educations, water, electricity and health care. However, this is not the case currently as provinces and decentralized territorial entities do not have the funds required to provide such services. This has not been availed leading to a poor state of essential public services in the DRC.

This section will assess the current state of public services by looking at three essential areas; education, clean water and electricity, and health care.

4.2.1.1 Education

The transfer of responsibilities in the education sector to provinces is thing among other provided by the decentralisation.¹⁷⁶ The decentralisation of education is a major challenge, given that this sector is already facing tremendous difficulties; it employs the greatest number people who, due to limited funding, go for long periods without.¹⁷⁷ With no public funding of basic and secondary education, the cost has always been borne by parents. In most cases, parents meet the cost of salaries for teachers and school material at the primary and high school level.¹⁷⁸ With 70% of the population in the DRC living below the poverty line, public education institutions are the only places accessible to the majority of the population.¹⁷⁹ Public funding for basic and secondary education can go a long way in assisting majority of the public in the DRC. Four years after the promulgation of the Constitution, no steps have been taken to fund primary education and the same remains a burden of parents. There are many negative consequences that emanate from this situation including poor quality of education.¹⁸⁰

¹⁷⁵ As above.

¹⁷⁶ African Development Bank and African Development Fund (n 175 above).

¹⁷⁷ As above.

¹⁷⁸ Klebber–Lobservateur, ‘L’ éducation en RDC est-elle de qualité?’, available at <http://kleber-observateur.blogspot.com/2010/06/leducation-en-rdc-est-elle-de-qualite.html> (accessed 10 October 2010).

¹⁷⁹ African Development Bank and African Development Fund (n 175 above).

¹⁸⁰ Klebber–Lobservateur (n 178 above).

The government budget in the DRC allocates an annual figure of 1.5% to 7% to education.¹⁸¹ This figure is grossly inadequate to meet the required resources for supporting basic education in the DRC there is a dire need for review of the budget allocation in order to support education in the DRC to required standards. Already, following the announcement by the government to implement the primary free education in 2010 concerns have risen about the means that will be used by the government to do so.¹⁸² Provinces have a responsibility to facilitate basic education in the DRC; however, the poor state of the decentralisation casts doubt as to whether provinces are up to this task. Parents are still meeting the full costs of basic education in the DRC despite promises of a public funded primary education system. Furthermore, the government has submitted Bill for 2011 called the biggest budget ever for the DRC of 6 billion US dollars.¹⁸³ Adherence to the requirement of 40% to provinces may be a first step towards support to the education sector in the DRC.

4.2.1.2 Access to a clean water and electricity

The 2006 Constitution obligates the state to facilitate and guarantee equal access to clean water and electricity to the entire population.¹⁸⁴ The provinces have a responsibility to ensure that these obligations are performed. However, lack of adequate funds and resources has seriously hampered performance of these services. Provinces cannot secure access to clean water and electricity for their population. As a consequence, large parts of the population have no guaranteed access to clean drinking water¹⁸⁵ or electricity.¹⁸⁶ In the majority of rural areas clean water is at a long walk instance from villages. Population has to walk every day in order to fetch water.¹⁸⁷ Furthermore, while rural population face the threat of disease from use

¹⁸¹ As above.

¹⁸² Radio Okapi 'Lubumbashi: l'ONG PCDE dénonce la violation de la gratuité de l'enseignement de base' available at <http://radiookapi.net/actualite/2010/09/26/lubumbashi-long-pcde-denonce-la-violation-de-la-gratuite-de-l%E2%80%99enseignement-de-base/> (accessed 16 October 2010).

¹⁸³ Radio Okapi 'Assemblée Nationale: Muzito dépose un projet de budget 7 milliards USD' available at <http://radiookapi.net/societe/2010/10/05/assemblee-nationale-muzito-depose-un-projet-de-budget-de-7-milliards-usd/> (accessed 16 October 2010).

¹⁸⁴ Article 48 of the 2006 Constitution.

¹⁸⁵ Belgian Development Agency 'Water & Sanitation' available at <http://www.btcctb.org/theme/water-sanitation> (accessed 20 October 2010).

¹⁸⁶ Radio Okapi 'Kabambare toujours sans eau potable ni électricité' available at <http://radiookapi.net/actualite/2010/10/09/79470/> (accessed 10 October 2010).

¹⁸⁷ J Yav Katshung, 'Quand boire de l'eau devient dangereux et luxueux! <L'accès à l'eau potable- Un droit inaliénable en RD.Congo?>'

of unclean water, the urban population faces severe water shortages that often run for several months.¹⁸⁸

4.2.1.3 Access to health care

Access to health care is guaranteed to every Congolese citizen by the Constitution.¹⁸⁹ However, poor fiscal decentralization has impeded the ability of provinces to effectively provide health care services as guaranteed by the Constitution. The current amount of money transferred by the government to provinces is grossly inadequate to provide adequate health care.

The consequence of the shortcoming highlighted above is that only 40% and 50% of the population in the DRC can access proper health care.¹⁹⁰ Only 37% of rural population in the DRC are able to access health care in the DRC.¹⁹¹ Further, there infrastructure in the DRC, much of which was inherited from the colonial period, has deteriorated into a state of disrepair and poses serious challenges to public life in the DRC.¹⁹² In addition to these figures, the state of infrastructures which is in state of decay, inherited from the colonial period, remains a serious concern.¹⁹³ Most of these hospitals are not equipped and lack medicine and medical doctors.¹⁹⁴ The government has pledged to increase the budget of health care for 2011¹⁹⁵ but that promise should reflect in provinces' budget and be implemented before any celebration.

4.3 The failure of decentralisation in social peace

available at http://www.laconscience.com/article.php?id_article=8100 (accessed 10 October 2010).

¹⁸⁸ As above.

¹⁸⁹ Article 47 of the 2006 Constitution of the DRC.

¹⁹⁰ Radio Okapi 'Soins de santé en RDC: perspectives cinquante ans après l'indépendance' available at <http://radiookapi.net/tag/acces-aux-soins-de-sante-en-rdc/> (accessed 11 October 2010).

¹⁹¹ A Ejiba Ejiba 'Santé: Objectif du Millenaire pour le Developpement en 2015' available at <http://www.ammado.com/nonprofit/46502/articles/17057> (accessed 17 October 2010).

¹⁹² Radio Okapi (n 190 above).

¹⁹³ As above.

¹⁹⁴ T Hyawe-Hinyi 'Les hôtaux ruraux manquent de médecins dévoués au Sud-Kivu', available at http://ipsinternational.org/fr/_note.asp?idnews=5891 (accessed 16 October 2010).

¹⁹⁵ Radio Okapi (n 183 above).

Inequality in access to and control of public resources has been identified as one of the root causes of the conflict in the DRC.¹⁹⁶ As a result, the DRC adopted a new constitution and provided for an elaborate system of decentralisation as a means of ending the political and military conflicts that have marked its history.¹⁹⁷ Decentralisation will not be able to promote social peace if decentralised entities do not have the necessary resources (and their civil servants are not paid) which will inevitably increase the potential of future conflicts.

4.3.1 Potential threat of future conflicts

The idea of Decentralisation has received real support from the Congolese population as it is widely perceived as a means of increasing social services and improving the general quality of life.¹⁹⁸ However, the process of decentralisation in the DRC has not lived up to the expectation of the people in the DRC. Lack of access to the national resources as provided for in the Constitution is a main cause of tension and clashes between Congolese populations. There was a clash in 2007 between the Bundodia Kongo, a political-religious group centred in the Bas-Congo province (west of Kinshasa)¹⁹⁹ and the Congolese army, ending in several protesters being killed.²⁰⁰ A clear case where lack of access to and control of resources has led to conflict is Katanga province. In July 2010, hundreds of protesters claiming secession of Katanga were arrested in Lubumbashi in July 2010.²⁰¹ Earlier on, in 1992-94 the Kasaians who are perceived to have unfairly benefited from resources in the Katanga province were victims of the ethnic cleansing and thousands of them were violently driven out of the province.²⁰² As seen from the fate of the Kasaians in Katanga, the process of decentralisation

¹⁹⁶ Marysse (n 7 above).

¹⁹⁷ African Development Bank and African Development Fund (n 20 above).

¹⁹⁸ Marysse (n 7 above).

¹⁹⁹ Global Security 'Bundu dia Kongo(Kingdom of Kongo)' available at <http://www.globalsecurity.org/military/world/para/bundu-dia-kongo.htm> (accessed 18 October 2010).

²⁰⁰ Union International des Droits de l'Homme 'RDC : affrontements meurtriers au Bas-Congo' available at <http://www.iuhr.org/spip.php?article226> (accessed 18 October 2010).

²⁰¹ Radio Okapi, 'Lubumbashi: arrestation d'une vingtaine de personnes réclamant l'indépendance du Katanga', available at <http://radiookapi.net/actualite/2010/07/11/lubumbashi-arrestation-d%E2%80%99une-vingtaine-de-personnes-reclamant-1%E2%80%99ind%C3%A9pendance-du-katanga/> (accessed 14 October 2010).

²⁰² International Crisis Group (n 6 above).

has not necessarily led to the desired benefits.²⁰³ Currently, there is potential conflict in the province as the provincial Parliament Speaker, Kyungu Wa Kumwanza who is said to have been responsible for the 1992-1994 ethnic cleansing, are alleged to be mobilising his constituency against the Kasaians.²⁰⁴

4.3.2 Civil servants livelihood

It has been argued that ‘for decentralization to succeed, different levels of government should have similar levels of technical and administrative capacity, and sufficient incentives (salaries) to perform’.²⁰⁵ Decentralisation promised civil servants a rise in their income levels and a better life, through improved social, economic, and educational and health aspects of themselves and their families. However, this is not the case as the quality of life of civil servants remains the same, if not worse.²⁰⁶ Many civil servants go for several months without pay and are thus unable²⁰⁷ to afford the basic need such as shelter, education for their children, health care or food.²⁰⁸ Poor remuneration for civil servants has been a singular cause of social tension in the DRC since the promulgation of the new Constitution. Poor remuneration and support of civil servants has an inevitable impact on the effectiveness of the decentralised government institutions where such civil servants work. Thus, there is need to review the terms of service of civil servants in order to ensure a smooth functioning of the decentralised government system in the DRC.

4.4 Conclusion

²⁰³ Digital Congo ‘Kyungu wa Kumwanza interpellé par l’Assemblée Nationale pour avoir tenu des propos haineux dans un meeting à Kolwezi’ available at <http://www.digitalcongo.net/article/47769> (accessed 16 October 2010).

²⁰⁴ As above.

²⁰⁵ African Development Bank and African Development Fund (n 20 above).

²⁰⁶ Digital Congo ‘Conjoncture en Rdc: Les fonctionnaires de l’Etats délaissés par les parlementaires <http://www.digitalcongo.net/article/66373> (accessed 16 October 2010).

²⁰⁷ Documentation et information pour l’Afrique ‘RDC - Boycott de la rentrée scolaire 2010-2011’ available at http://www.dia-afrique.org/index.php?option=com_content&view=article&id=278:rdc-boycott-de-la-rentree-scolaire-2010-2011&catid=37:politique-et-societe&Itemid=29 (accessed 16 October 2010).

²⁰⁸ Digital Congo (n 206 above).

While it was widely perceived as a means of ending conflict and improving the lives of the Congolese people, the process of decentralisation in the DRC has not so far met their expectation. . Lack of effective fiscal decentralization as provided for in the constitution, especially at the provincial level, has led to poor service delivery. Rural and urban communities in the DRC still continue to face difficulties in accessing basic needs such as water, electricity, health care or to secure basic education for their children.

Further social tensions continue to escalate in the country as decentralisation has not achieved the desired level of socio-economic development and improved livelihood that it was touted to bring. This situation has created frustration which manifests itself through social tensions such as countrywide strikes and clashes between population and security services or the threat of ethnic cleaning.

There is need to strengthen the role of provinces as envisaged in the constitution. More specifically, there should be adequate transfer of national resources to provinces commensurate to the duties and obligations that are assigned to provinces. Inadequate funding of provinces, which carry the responsibility of delivering the bulk of essential services, will continue to impede performance of essential public services. This will inevitably lead to institutional failure and ultimately, the entire decentralisation system is likely to be a failure and social peace the casualty of such failure.

CHAPTER FIVE: CONCLUSION

Unequal distribution of national resources and inequalities in access to and control of such resources has been one of the key factors of conflict in the DRC. Decentralisation of government was identified as one of the ways through which the Congolese people can address the underlying causes of conflict in the DRC and achieve an improved quality of life. The 2006 Constitution gave effect to the desire by the Congolese people to have a decentralised form of government and the approval of the Constitution in a national referendum reflects the desire to end conflict and make a collective step forward.

There are several challenges that have best the system of decentralisation that was adopted in the new constitutional dispensation. The establishment of decentralised territorial entities programmed by the Constitution should have taken place 36 months after the enactment of the Constitution but this was not implemented as scheduled. Although elections of decentralised territorial entities authorities were programmed for the 2006 general elections, these elections were not organised and to date appointed authorities in local level continue to hold office. In addition, future elections at local level remain uncertain. While presidential elections have been scheduled for the 2011-2013 general elections, provincial and local elections are scheduled to be held after the presidential elections.

There is ongoing tension surrounding the plans to split the current 10 provinces (Kinshasa excluded) into 25(Kinshasa excluded) provinces and the same process is receiving both support and string resistance. Two positions have been advanced to

support or oppose the sub-division of boundaries. Firstly, the government argues that sub-division of the current provinces will lead to states that unequal development of provinces. Secondly, opponents to sub-division of the provincial boundaries have cited absence of enabling legislation to implement fiscal decentralisation and ensure that 40% tax revenue due to provinces is secured. While partisans of the implement of the territorial division argue on the respect of the constitution's provision.

There have been attempts to amend the constitutional provisions relating to the implementation of territorial divisions. The argument put forward to support this is that such an amendment will ensure that the ongoing violation of the requirement of full implementation of the decentralised system in 36 months ends. There is a call by the Parliament for the establishment of an *ad hoc* commission to submit a proposal for the amendment of articles related to the new provinces and decentralised territorial entities in order to be consistent with the practice rather than the Constitution.

Decentralisation was expected to help ordinary people in the DRC to meet their basic needs such as food, clean water, electricity or education for their children, and to secure social peace. However, five years into the implementation phase and two years after the enabling legislation was passed, the situation in the DRC remains unchanged if not worse. Majority of the Congolese people still lack basic needs and the DRC is ranked among the poorest countries in the world with 70% of the population living under one dollar per day. Social peace is threatened by secessionists' claims or deadly clashes between local population and security services. All of which are an expression of frustration of the lack of access to their national resources.

Furthermore, despite the existence of an organic law on decentralization, lack of democratic and accountable local institutions continue to impede the whole system of decentralisation. The existence of these two laws, the Decree-law n°082 of 02 July 1998 pertaining the status of authorities in charge of the territorial constituency administrations and 2008 Organic Law on Decentralisation, creates also a clash between them and establishes a delegation which impede on any positive outcome expected by lower level communities.

Decentralization is still seen as the answer to decades of suffering in the DRC as it can facilitate equitable access to resources for all Congolese peoples. If properly

implemented, decentralisation can address the core challenges of a post-conflict state such as the DRC and lead to improved livelihoods. Unfortunately, decentralization still has a long way to go in order to reach that expectation. Lack of political will continues to be a challenge to effective decentralisation in the DRC. Thus, there is need for strengthening the system of decentralisation in the country through facilitation of democratic local elections to ensure local accountability. Further, there is need for an effective system of fiscal decentralisation to empower provinces and decentralised entities, to empower decentralised governments to fully perform their functions.

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