

TERRITORIAL DECENTRALIZATION IN THE DEMOCRATIC REPUBLIC OF CONGO: A NEW LEVEL OF DEVELOPMENT OF DECENTRALIZED TERRITORIAL ENTITIES

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ABSTRACT: Our research is entitled: territorial decentralization in the Democratic Republic of Congo: a new lever for the development of the Decentralized Territorial Entities.

However, in conducting this study, we have pursued the following objectives:- Demonstrate the impact of territorial decentralization on the development of decentralized territorial entities in the Democratic Republic of Congo;- Analyze the factors that will underpin the development of decentralized territorial entities;- Identify practices that block the development process of local entities.

At the end of our investigations, we arrived at the result according to which there are certain practices which hinder local development although the Democratic Republic of Congo has opted for the new management mode which is the territorial decentralization. Finally, in order to conclude this reflection, we felt that, in order for local development to take place within the framework of territorial decentralization, the Congolese political and administrative authorities must change their mentalities in order to trace a new path of development The basis of the other countries of the world.

KEYWORDS: Decentralization, Development, Territorial Entity, Local development, Territorial Decentralization.

1 INTRODUCTION

Decentralization is a form of administrative organization aimed at transferring the decision-making process as close as possible to the citizens. It is the technical process of conferring decision-making powers on autonomous local bodies distinct from those of the State.

Thus, the new Constitution of the Democratic Republic of Congo, as revised by Act No. 11/02 of 20 January 2011 revising certain provisions of the Constitution of the Democratic Republic of Congo, creates a unitary but decentralized state composed of Today of 26 Provinces with free administration and management autonomy, administered by a provincial executive and a provincial assembly. These institutions will be financed by own resources provided by a withholding tax of 40% of national revenue. The State will also count on decentralized territorial entities (DTAs) enjoying the free administration and autonomous management of their economic, human, financial and technical resources as soon as the necessary legal framework is adopted.

Indeed, decentralization is a system of state organizations advocating a more or less extensive freedom of decision-making to local and regional authorities. It is for this reason that local authorities must have legal personality and financial autonomy in order to enable them to have the own resources necessary for their actions. They must also have executive and legislative bodies whose members are to be elected and not appointed by the central government, and must enjoy real autonomy with regard to the central government.

Decentralization thus emerges from the desire to personalize or individualize the interests to stimulate and make profitable the productivity of public services or local entities with a view to improving the living conditions of the population concerned. The latter, for its part, enshrines the role of the citizen in the management of local development through the organs of decentralized territorial entities. Development is understood as a qualitative and sustainable improvement of an economy

and its functioning. It is the combination of the mental and social changes of a population that make it capable of increasing, cumulatively and sustainably, its overall real product.¹

Despite the division of powers established by the legal texts in the field of development.²

The social practice of decentralization in the DRC has shown that the local entities are struggling with the insufficiency of the revenues thus causing the exactions and the malversation.

Our reflection will focus on the following three points: Concept of decentralization in the DRC, the resources of decentralized territorial entities and relaunching the development of decentralized territorial entities.

2 CONCEPT OF DECENTRALIZATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

2.1 DEFINITION

Decentralization is understood as a form of administrative organization which consists of recognizing the legal personality of communities of interest or of public service activities and then entrusting them with decision-making power in certain matters.³

It is also a process of administrative organization which consists in entrusting the management of certain interests to agents who are the organs and representatives not of the central power but of a particular authority, Public body other than the State⁴.

Thus, decentralization takes the form of administrative and political structures that preserve the interests of central agents in the remote regions of the capital.

2.2 DECENTRALIZATION: A POLICY OF TRANSFERRING THE ADMINISTRATIVE POWERS OF THE STATE

Decentralization is a possible answer to the question of the distribution of administrative functions between the State and other public authorities⁵.

These communities are first recognized as legal entities: they are legal persons under public law and the State delegates to them by a solemn law a certain number of its powers. These powers are exercised autonomously by the said decentralized authorities. Subject to supervisory control: This strange term seems to equate decentralized communities with minors, incapacitated, prodigal or demented⁶.

Nevertheless, it should be noted that this transfer of certain territorial powers requires three conditions for its implementation:

First of all, it is necessary to isolate, among the needs to be met by the administration, those which are primarily local in character. It is with regard to these that the transfer of competence may take place. It is excluded, in fact, from seeing the State renounce its decision-making power over regal powers;

It is then necessary to provide local authorities with legal personality and financial autonomy in order to enable them to have the own resources necessary for their action;

Finally, the executive organs of these communities must be elected from among themselves; And that they enjoy a real autonomy with regard to the central power.

¹ BIRANGAMOYA MAKOMBE, "Décentralization and development in Zaire: the division of powers in development, in Zaire – Africa, N°181, January 1984.

² BREMOND, J., and GELEDAN, A., *Economic and Social Dictionary*, Paris, Hatier, 1990

³ Microsoft, Encarta, 2013

⁴ FLAMME, M.A, *Administrative law, Volume I*, Brussels, Noisy, 1989

⁵ Microsoft, Encarta, 2013

⁶ CADART, J., *Political Institutions and Constitutionnal Law*, Paris, ed Economica, 1990

2.3 DECENTRALIZATION: PRACTICE OF LOCAL DEMOCRACY

It remains clear that a democracy which truly attributes the entire power to the people can not tolerate the formation of a state, a differentiated whole and acting in accordance with its own interests. At best, it has representative institutions, a government to which it agrees to delegate a power it considers to control⁷.

This is how the challenges of decentralization in democracy are measured. This will bring the decision-making centers closer to the citizens and thus increase the relevance of the decisions taken, based on a better knowledge of the terrain, avoiding errors due to ignorance of the data specific to local life⁸.

However, decentralization can accentuate the natural inequalities between the rich and poor communities at their disposal: geographical location and density of transport networks, level of industrial development, natural resources and an obstacle to effective spatial planning policy⁹.

It should be emphasized that control over decentralized entities comes in three forms: hierarchical control, supervisory control and judicial control.

Indeed, it should be noted that hierarchical control is exercised by state leaders over the leaders of decentralized entities, notably by the body of inspectors. It is also exercised by the leaders of the decentralized entities of the higher level on the leaders of the decentralized entities of the lower level through the body of provincial or regional inspectors.

It should be noted that the hierarchical control essentially aims at the better organization and the better functioning of the decentralized entities. In this regard, MULUMBATI NGASHA states that "From this perspective, and from the bodies of inspectors, state leaders provide advice and suggestions to the various leaders of the decentralized entities and the leaders of the higher-level entities give advice And make suggestions to the leaders of decentralized entities at the lower level for better organization and functioning of the decentralized entities "¹⁰.

The supervision of guardianship may concern the acts of the decentralized entities and the organs. Control over acts can be done by authorization or prior approval. Supervisory control allows the State to oversee the development of decentralized entities, sometimes it paralyzes the functioning of the decentralized entities by taking decisions in their place. Supervisory control may also cover the organs of decentralized entities. It is exercised in several ways, including through suspension of the leaders of the decentralized entities.

Judicial review shall be regarded as an action for annulment for over-power in competent courts within the jurisdiction of the authority whose act is the subject of an action¹¹.

Finally, there are two kinds of decentralization: technical or functional decentralization and territorial decentralization.

Technical or functional decentralization or by service is one whose management of a specific public interest is entrusted to an organically autonomous authority¹².

Here, it is no longer local authorities that manage interests, but organically autonomous authorities.

Territorial decentralization is a form of administrative organization which consists in transferring certain attributions of the central authority, that is to say the State, to other legal entities¹³.

Territorial decentralization concerns the territorial subdivision of a State and is based on the distinction between national and local affairs, only the latter falling under decentralization¹⁴.

⁷ Microsoft, *Encarta*, 2013

⁸ GRAWITZ, M. et LECA, J., *Political Science : Political Action*, PUF, 1st ed., 1985

⁹ Microsoft, *Encarta*, 2013

¹⁰ MULUMBATI NGASHA, *Introduction to political Science*, Lubumbashi, ed. Africa, 2006, 2nd edition

¹¹ MULUMBATI NGASHA, *op.cit*, p.343

¹² RIVERO, J. et WALINE, J., *Administrative law*, Paris, Dalloz, 2004

¹³ MPINGA KASENGA, *Public Administration of Zaire*, Paris, A. Pedone, 1973

¹⁴ RIVERO, J. et WALINE, J., *op.cit*, p.37

Thus, this decentralization is provided for in Article 3 of the Constitution of 18 February 2006 and organized by Organic Law n° 08/016 of 07 October 2008 on the composition, organization and functioning of decentralized territorial entities and their relationship with the " State and the Provinces, in Journal Official of the Democratic Republic of Congo, No. 49, special issue.

2.4 INTEREST OF TERRITORIAL DECENTRALIZATION IN THE DEMOCRATIC REPUBLIC OF CONGO

Decentralization is advocated for administrations pursuing development objectives, which is understood as a process whereby a community seeks to satisfy the basic needs of the majority of its members by constantly improving their standard of living¹⁵.

The latter has the advantage of bringing decision-making centers closer to local realities, which it allows for a better grasp, against the administrative slowness and ignorance of the local realities characterizing administrative centralization.

Territorial decentralization also makes it possible to involve the citizens in the management of their entity. In this respect, it reflects the democracy which, moreover, is a requirement of all decentralization. Indeed, at the political level, to decentralize is to associate the people in the discussion and management of political affairs at the level that concerns them directly, and finally to promote the political training of the citizen, the elector and the citizen elected¹⁶.

2.5 TERRITORIAL ENTITIES DECENTRALIZED ACCORDING TO THE CONSTITUTION

With a view to its development, the Constitution of the Democratic Republic of Congo of 18 February 2006, as amended and supplemented by Act No. 11/002 of 20 January 2011 revising certain articles of the Constitution of the Democratic Republic of Congo instituted the decentralized territorial entities.

However, Article 3 of the Constitution states that "the decentralized provinces and territorial entities of the Democratic Republic of the Congo shall have legal personality and shall be administered by the local bodies.

These decentralized territorial entities are the city, the commune, the sector and the chieftaincy.

They shall enjoy free administration and autonomy in the management of their economic, human, financial and technical resources.

The composition, organization, functioning of these decentralized territorial entities and their relations with the State and the provinces are determined by an organic law "

The decentralized territorial entities have legal personality and become autonomous vis-à-vis the central government, as BOB KABAMBA has written: "It is not a form of administrative organization that consists in concentrating public power in the hands of the central government and to assume by it the management of public services through hierarchical agents working under the direct authority of the government and in direct liaison with it, without the power of autonomous management. Nor is it a matter of centralizing public power, for there is no uniqueness of legal personality "¹⁷.

3 THE RESOURCES OF DECENTRALIZED TERRITORIAL ENTITIES

To ensure the development of decentralized territorial entities in the Democratic Republic of the Congo, mobilization of significant financial, economic, human and technical resources will be required.

To this end, CADART states that: 'The financial resources are of four types: own resources, resources from national revenues, resources of the national equalization fund and exceptional resources'¹⁸.

Nevertheless, it will be necessary to analyze these four resources separately as follows:

¹⁵ ISSANGO idi WANZILA, « La décentralisation administrative pour le développement, quelques écueils à éviter », in *Zaire – Afrique*, n°222, 1988, p.88

¹⁶ VUNDUAWA TE PEMAKO, « Administrative Decentralization for development, Some Petifalls to Avoid », in *Zaire- africa*, n°222, 1988

¹⁷ KABAMBA, B., *Decentralization in Democratic Republic of Congo*, available at <http://www.social protection03.be>

¹⁸ CADART, J., *Op.cit*, p.63

3.1 OWN RESOURCES

Own resources include:

- Minimum personal interest which is collected for the exclusive benefit of the communes of the sectors or chiefdoms;
- Income from participation, consisting of profits, or income from their participation in capital in public undertakings, semi-public companies and temporary associations for economic purposes;
- Local taxes and charges which include common taxes (such as special road traffic tax, annual licensing fee, various beer and tobacco consumption taxes, area tax on Forest concessions, mining, sales tax on artisanal precious materials, etc.); The taxes specific to each decentralized territorial entity are: taxes levied on local materials not imposed by the central government¹⁹.

3.2 RESOURCES FROM NATIONAL INCOME

Decentralized territorial entities are entitled to 40% of the share of national income allocated to the provinces. However, the distribution of these resources among these entities depends on the production capacity, the area and the population of each of them. And it is the edict that determines the mechanism of distribution²⁰.

3.3 THE RESOURCES OF THE NATIONAL EQUALIZATION FUND

The Constitution of the Democratic Republic of Congo of 18 February 2006, as amended and supplemented by Act No. 11/002 of 20 January 2011 revising certain articles, established a national equalization fund. This fund is endowed with legal personality. Its mission is to finance public investment projects and programs in order to ensure national solidarity and to correct the imbalance in development between the provinces and among other decentralized territorial entities. It has a budget financed by the public treasury to start from 10% of the total national income returning to the State each year. It is placed under the tutelage of the Government²¹.

3.4 EXCEPTIONAL RESOURCES

These resources come from the gifts and bequests that these entities can benefit from. And their value must be entered in receipt to the budget of the exercise of their acceptance²².

Thus, the development of these decentralized territorial entities would depend on the good management of resources, that is, the channelling of financial resources by the decentralizing and decentralized authorities for the purpose of general interest.

4 ABOUT THE RELANCE OF THE DEVELOPMENT OF DECENTRALIZED TERRITORIAL ENTITIES IN THE DEMOCRATIC REPUBLIC OF DU CONGO

Before addressing this point, it will be better to define the concept of "development", which is understood to be the economic and social transformation of a country induced by its rate of growth²³.

It is also the combination of the mental and social changes of a population that makes it grow cumulatively and sustainably its overall real product.

¹⁹ *Organic law n°08/016 of 07 october 2008 on the composition, organization and functioning of territorial entities and their relations with the state and the provinces.*

²⁰ *Organic law and articles 115*

²¹ *Constitution of 18 February 2006 as amended and supplemented by Act n°11/002 of 20 January 2011 revising certain articles.*

²² *Article 118 and 119 of the Organic Law, op. Cit., P.168*

²² *Le petit Larousse illustrated, ed. Larousse, Paris, 2014*

²³ *BREMOND, J., GELEDAN, op.cit, p.339*

To trace the itinerary towards its development, the constituent of 18 February 2006, instituted decentralization as a mode of management of decentralized territorial entities. To this end, Article 3 of the Constitution grants legal personality to these decentralized entities (city, commune and chieftaincy), which delegates real power to the local authorities.

It should be noted that decentralization has an impact on the development of decentralized territorial entities as we have listed above, politically, administratively, economically, socio-culturally and legally.

What matters is to analyze these different indicators as follows:

- From a political-administrative point of view, decentralization develops the organization of decentralized territorial entities (ETDs) by promoting the emergence of the rule of law, democracy and the promotion of human rights within the framework of a democracy of proximity. From the administrative point of view, it develops the organization and the management of the human resources of the decentralized entities in the sense that it allows the approximation of the citizens with the administration;
- From an economic point of view, decentralization improves the organization and management of the natural, financial and technical resources of local entities in that it enables local populations and local authorities to take charge of their own needs, Creativity to establish the development of their local entities;
- From a legal point of view, since the local authorities will be elected by the local population, their decisions will be executed without much problem or resistance on the part of the litigants, because the latter (population) accepts their legitimacy;
- On the socio-cultural level, the development of decentralized territorial entities in the Democratic Republic of Congo will also depend on the cohesion of the different members of the local community who know each other and their culture. Decentralization therefore permits the emergence of certain local cultural values, since the decentralized entity becomes a framework for the expression of these values. It also enables culturally and socially marginalized groups to participate in decision-making. To this end, as underlined by the participant's training vademécum in human rights, citizenship and local democracy: "the inclusive participation of all citizens in the work of collective development is a democratic principle at the heart of local democracy"²⁴.

The development of local entities will be effective when decentralized and decentralized authorities decide to break down all obstacles to its development by using good governance, combating impunity, corruption, tribalism, nepotism, regionalism, Diversion, etc. Which are considered as antivirals, a virus to be eradicated.

In the same vein, LUNDA BULULU paraphrases the following: "The Democratic Republic of the Congo is a state characterized by megestion, misappropriation of public funds on a large scale, corruption practically institutionalized in the public sector, Sanction ".²⁵

For the development of the DRC to be carried out on the basis of decentralized territorial entities, economic and social welfare concerns must be internalized by the central and local authorities.

5 CONCLUSION

In order to properly administer or manage the national territory, the grantor of 18 February 2006 chose the decentralization he provided for in Article 3 of the Constitution.

Decentralization, which gives the provinces a central role, will contribute, through a gradual transfer of powers, to the development of local democracy in order to allow the provinces to gradually assume their new responsibilities and to help the administration The public.

Finally, decentralization is not simply an addition of reforms. It is above all a state of mind, a will to go further in the deepening of democracy; Decentralization is the policy that has been chosen by the Congolese constituent and concretized by the legislator in the framework of a policy of redistribution of the administrative competences²⁶ of the State with a view to good governance and the development of the grass-roots basis. Which underpins the territorial division and the free

²⁴ *Vademecum, Participant Training in Human Rights, Citizenship and Local Democracy, UNESCO Chain, Kinshasa, February 2006*

²⁵ *LUNDA BULULU, V.P, Conducting the first transition in Congo Zaire, Paris, Harmattan, 2003*

²⁶ *CONAC, G., Africa in transition to political pluralism, economica, Paris, 1993*

administration of provincial and local governments, because democracy and development are the implementation of national and international solidarity, they characterize the system of public companies, Of those who have the concern to cooperate with each other while respecting their differences²⁷.

REFERENCES

- [1] BIRANGAMOYA MAKOMBE, "*Decentralization and development in Zaire: The division of powers in development*", in Zaire-Africa, No. 181, January 1984.
- [2] BREMOND, J., and GELEDAN, A., *Economic and Social Dictionary*, Paris, Hatier, 1990.
- [3] CADART, J., *Political Institutions and Constitutional Law*, Paris, ed. Economica, 1990.
- [4] CONAC, G., *Africa in transition to political pluralism*, economica, Paris, 1993.
- [5] Constitution of 18 February 2006 as amended and supplemented by Act No. 11/002 of 20 January 2011 revising certain articles.
- [6] DEGNI-SEGUI, R., *Administrative Law*, Abidjan, 1990.
- [7] EKILI TABU and OTEMIKONGO MANDEFU, "Zairean administrative decentralization and public finances, the case of the Upper Zaire region", in Zaire-Africa, No. 242, February 1990.
- [8] FLAMME, M.A., *Administrative law*, Volume I, Brussels, Noisy, 1989.
- [9] GRAWITZ, M. and LECA, J., *Political Science: Political Action*, PUF, 1st ed., 1985.
- [10] ISSANGO idi WANZILA, "Administrative Decentralization for Development, Some Pitfalls to Avoid", in Zaire-Africa, No. 222, 1988.
- [11] KABAMBA, B., *Decentralization in the Democratic Republic of Congo*, available at <http://www.socialprotection03.be>
- [12] *Le petit Larousse illustrated*, ed. Larousse, Paris, 2014.
- [13] Organic Law No. 08/016 of 07 October 2008 on the composition, organization and functioning of territorial entities and their relations with the State and the provinces.
- [14] LUNDA BULULU, V.P., *Conducting the first transition in Congo Zaire*, Paris, Harmattan, 2003.
- [15] MADIOT, Y., *Techniques of corrections of competences between local authorities*, RFDA, 1996.
- [16] Microsoft, Encarta, 2013.
- [17] MPINGA KASENGA, *Public Administration of Zaire*, Paris, A. Pedone, 1973.
- [18] MULUMBATI NGASHA, *Introduction to Political Science*, Lubumbashi, ed. Africa, 2006, 2nd edition.
- [19] RIVERO, J., and WALINE, J., *Administrative Law*, Paris, Dalloz, 2004.
- [20] *Vademecum, Participant Training in Human Rights, Citizenship and Local Democracy*, UNESCO Chain, Kinshasa, February 2006.
- [21] VUNDUAWE TE PEMAKO, "The Territorial Decentralization of Responsibility in Zaire, Why and How", in Zaire-Africa, No. 166, 1982.

²⁷ MADIO, Y., *Techniques of corrections of competences between local authorities*, RFDA, 1996.