

**ORGANISATION AND RUNNING OF PEACE COURTS IN
KINSHASA**

(NUMBER AND COMPETENCE OF PEACE COURTS, APPOINTMENT AND DISMISSAL
OF Juges)

By

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INTRODUCTION

Grappling with the recurrent political crises since its accession into independence, the Democratic Republic of Congo is involved in a process of reconstruction and re-foundation of a State targeting the setting up of institutions arising from « free, democratic and transparent » elections of 2006.

This engagement is much more manifest in the Constitution of 18th February 2006 which in its 1st article par. 1, states, « The Democratic Republic of Congo is in its borders of 30th June 1960, a constitutional State, independent, sovereign, united and indivisible, social, democratic and lay”

From the reading of this provision, one element needs to be highlighted: the constitutional State. What does this expression mean? Is it a hollow slogan or an ideal?

In spite of all doctrinal considerations, « *the constitutional State should be understood as that which acknowledges the law as the only reference. Therefore, it is a State where no other value of society imposes itself on the law because it constitutes the fundamental value or the basic reference of a society* » (1)

Thus, it reveals itself through the respect of the rules of law enacted in the society; the respect that requires a good administration of justice which undoubtedly manifests as that without which the constitutional State could only be a deception.

And the correct administration of justice to safeguard the security of people and assets favors the happiness of the human being in the totality of his attributes and aspirations, constitutes an important prerequisite to social peace, indispensable factor to political, economic and social development of both the individuals and the collectivity.

Therefore attentive care should be accorded the organization, the running and the distribution of justice by ensuring that the latter conforms to principles, rules, traditions and practices governing its good administration.

And this justice is delivered over the entire national territory by the judicial power devolved to courts and tribunals (2), including the courts of peace.

Far from being natural compounds, the courts of peace are jurisdictional institutions initiated for the purpose of a good administration of justice on the entire surface of the national territory in the framework of decentralizing the machinery of the law.

¹ LIKULIA BOLONGO, « Le rôle et la contribution du droit pénal dans l'émergence d'un Etat de droit », in BAKANDEJA wa MPUNGU (dir.), *Participation et responsabilité des acteurs dans un contexte d'émergence démocratique en République Démocratique du Congo. Actes des journées scientifiques de la Faculté de Droit de l'Université de Kinshasa*, Kinshasa, Presses de l'Université de Kinshasa, 2007, pp.322-335 ; comp. KUMBU ki Ngimbi, « Bonne gouvernance comme condition de réalisation d'un développement participatif en République Démocratique du Congo », in BAKANDEJA wa MPUNGU (dir.), *Op. cit.*, pp. 275-281.

² Read art. 149 of the Constitution of 18th February 2006.

Indeed, it is desirable for the judicial authority to be as close as possible to the citizens in order to preserve from offensive deeds and to arbitrate any dispute that will necessitate its intervention. It is in this context that the courts of peace, including those of the city of Kinshasa were created.

But what should be said of the organization and the competence of these courts? What is their exact number in Kinshasa? What is the competent authority vested with power to appoint and dismiss the judges of peace? And what qualifications these judges should have?

These are the basic questions dealt with throughout this reflection. Therefore, we will present the courts of peace in general before turning to the inventory of those existing in the city of Kinshasa.

I. PRESENTATION OF THE COURTS OF PEACE

In the Democratic Republic of Congo, the courts of peace in general did not exist at the same time as the other jurisdictions. Therefore, it is essential to recall their historical background before assessing the provisions concerning the judicial organization and competence relating to them.

I. I.1. HISTORICAL BACKGROUND

The courts of peace were organized by the law order n° 68-248 of 10th September 1968 which prescribed in its article 4 that there should be created one or more courts of peace in each town and in every municipality (territory) in replacement of police courts and customary jurisdictions.

And in the practical case of the city of Kinshasa, it is the order n° 79-105 of 4th May 1979 that decided on the head offices and the duties of the courts of peace.

By the words of the 1st article of this text, eight courts of peace are created in the city of Kinshasa, namely the court of peace of Kinshasa/Ngaliema, the court of peace of Kinshasa/Assossa, the court of peace of Kinshasa/Pont Kasa-Vubu, the court of peace of Kinshasa/Gombe, the court of peace of Kinshasa/Lemba, the court of peace of Kinshasa/Matete, the court of peace of Kinshasa/N'djili, the court of peace of de Kinshasa/Kinkole.

II. I.2. ORGANIZATION AND JUDICIAL COMPETENCE

The organization and the competence of the courts and tribunals in general and the court of peace in particular are provided by the law order n° 82-020 of 31st March 1982 providing the Code of the judicial organization and competence (J.O.C. Code)

1. I.2.1. *Administrative and judicial organization*

The court of peace includes two councils: a council of magistrates composed of one president, one or several judges and at least two assessors, and a council of clerks headed by a head clerk. This comes as a result of the combined

reading of articles 24 and 27 of J.O.C. Code. But there is also a provision for a secretariat.

a) A. The Council of magistrates

aa) a. The President of the Court

The president is the head of the jurisdiction. He coordinates all the activities of the court and leads the administrative and judicial personnel. He allocates files to different chambers and determines the dates of hearings; he organizes conservatory seizures by order and shortens the deadline. He convenes plenary meetings and receives the oath of allegiance from the new magistrates.

Furthermore, he is vested of disciplinary power on the magistrates and plans working sessions for the administrative and judicial personnel for the smooth running of the judiciary.

In case of absence or impediment, the president is substituted by the eldest judge according to the order of appointments.

ab) b. The judges of the peace

It is about the magistrates entrusted the mission to emphasizes the law, this means to settle disputes according to the law and their inner conviction.

ac) c. The assessor judges ⁽³⁾

The assessor judges are the notables who sit together with a judge of peace when the application of the custom is needed. They are appointed by the Minister of Justice among the notables from the location of the court of peace and governed by own management regulations.

b) B. The council of clerks

ba) a. The chief clerk

The head clerk is a career agent of the State public services of the commandant rank.

He is charged with the supervision of all the administrative services and coordinates all the activities of the clerk's office. He assists the judge in some deeds he poses; he hands over the copies of judicial documents to parties; he holds some files (certificate of not appealing and of not opposing, records of orders, files for appeal and opposition).

It is him who commits the clerk's office of the court. He exercises the disciplinary power on the clerks under his control whereas he is himself controlled by his hierarchical superior, the Divisional Clerk (the one of the high court).

He is assisted by several deputies responsible of their respective clerk's offices. In general, the latter play a double role:

³ Refer to art. 24, al. 3 and art. 25 of the Code of O.C.J.

- *The administrative role:* it is that the clerks receive the petitions for justice seekers and peruse the cases. They write the cases in their respective registers by means of a fee and forward the files to the president in order to allocate the chamber and determine the date for hearing.
- *The judicial role:* they essentially assist the judges during the hearings. Therefore, they have the duty to record or to mark the proceeding of the hearing.

bb)b. The clerk's penal office

This clerk's office is in charge of all the repressive cases initiated either by the public prosecutor's room or by the parties. The person in charge of this office records these cases in a record file called penal role (PR). He submits the file to the President of the court in order to determine the date of the hearing. The President sends it back so that the clerk in charge records this date in the record book for hearings.

Furthermore, the penal clerk establishes the abstracts of role in order to summon the cases for public hearing, classifies the files, typewrites the pronounced judgment in repressive matter, sits in public, itinerant hearings and the council meeting. He is also empowered to state the judgment, to prepare the inventories of files for appeal in order to transmit them to the appeal stage; he writes the annual report of penal matters referred to the jurisdiction.

bc) c. The clerk's civil office

This clerk's office deals with all the matters relating to the family (adoption, guardianship, marriage, divorce...), persons (change or addition of name) and disputes.

The civil clerk uses the civil role (CR) to record the matters brought to court by his office. He records the number in chronological order, the date and the names of the parties and forwards the file to the President for allocation of the chamber and determination of the hearing date.

bd)d. The clerk's execution office

This clerk's office aims at executing all the decisions rendered by the court. In reality, it is the *process service* of the court. And the record book of this clerk's office is called process server role. It essentially deals with the issues of seizures (conservatory seizure, sentence seizure and execution seizure).

be) e. The clerk's account office

This service is headed by an accountant who works jointly with the comptroller from the Central Office of administrative, judicial, property income and of contributions (DGRAD).

The accountant clerk is in charge of compiling the statistics and of collecting all the judicial income, namely the fees of justice and lawsuit, the fines and the proportional rights.

He also collects real gifts, debts contributed by a person to the clerk's office and he is therefore the custodian of public and private funds. Hence, he holds an outline of statements. He issues the notification of collection which he submits to the comptroller from DGRAD who approves it.

At the end of the day, he fills the banking slip for banking within 24 hours at the Central Bank through the Chief Accountant.

bf) f. The clerk's office of juvenile delinquency

It is in charge of files relating to the minors in conflict with the law, meaning children aged or apparently aged of less than sixteen years at the moment of the facts. The matters are recorded in the record book of delinquent childhood (RDC).

c) C. The Secretariat

A secretariat was initiated at the court of peace in order to facilitate the protocol, the typing of administrative documents, the recording of documents.... It is the secretary that is entrusted the mission to coordinate all the mails in the jurisdiction.

2. I.2.2. The competence

a) A. In penal or repressive matter

aa) a. The material competence

It refers to the rate of the penalty. For sure according to the wording of article 86 of the Code of judicial organization and competence, the court of peace tries offences punishable with a maximum of 5 year main term of penal servitude and a fine of whatever rate or one of these punishments alone.

It is also in charge of executing the legislation on wandering and begging, and on juvenile delinquency (articles 88 et 90 of J.O.C Code). It allows the preventive detention ⁽⁴⁾ and executes its own decisions.

ab) b. The territorial competence

In virtue of the principle of territoriality (territorial surface), it is the court of the location where the offence was committed or of the residence of the accused or also of his arrest, that is competent to know this offence. This is the principle laid down by the Congolese legislator through article 104 of the J.O.C Code.

However, when several persons are jointly taken legal action against them as co-perpetrators or accomplices of related offences, the competent court from the territorial point of view to try one of them is equally competent to judge all of them.

ac) c. The personal competence

It deals with the justice seeker. And on this issue, the court of peace tries all the persons who do not benefit from the jurisdiction privilege. Nonetheless, the

⁴ Art. 29 of the decret of 6th August 1959 concerning the Code of penal procedure.

competence to authorize the preventive detention lies with the judge of peace alone even if the accused is tried at first stage by the Court of Appeal.

Only the beneficiaries of the jurisdiction privilege, justice seekers of the Supreme Court which preventive detention, known as house arrest, is authorized by the Supreme Court of Justice.

b) B. In civil matter

ba) a. Material competence

The court of peace mainly puts in application the Code of the family and executes genuine acts; authorizes the detention sentence and conservatory seizures whatever the value of the dispute.

bb)b. Territorial competence

Only the judge from the location of the defendant is competent.

bc) c. Personal competence

In civil cases, the court of peace is competent to judge anybody without exception.

III. I.3. JURISDICTIONAL FUNCTION OF THE JUDGE OF PEACE

The law of the procedure defines the conditions in which an action should be processed in a jurisdiction. The ignorance of these conditions obliges the judge to reject the action without examination of the *raison d'être*.

1. I.3.1. Court proceeding

It is important to make a distinction between civil and penal proceeding.

a) A. Civil court proceeding

aa) a. Summons ⁽⁵⁾

The ordinary court proceeding of a jurisdiction happens by summons. The latter is an introductory trend of a process. Its drafting and meaning meet the legal demands. However, the basic principle is stated in article 28 of the civil procedure Code, "*No irregularity of procedural exploitations and deeds make them void only if it affects the interests of the opposite party*". In fact, there is no nullity without grievance.

ab) b. Voluntary appearance

b1. Voluntary appearance strictly speaking

The parties appear before the judge and submit to him their dispute. They refuse to use summoning formalities or they think that their appearance covers the summoning.

⁵ Art. 1 and following of the Decree of 7th March 1960 concerning the Code of civil procedure.

In this case, the defendant should accept to appear before the judge without being constrained by any procedural deed.

b2. Covering of summoning faults

The summons reached the defendant, but it contains the faults and therefore irregular. Despite this irregularity, the parties accept to appear in order to cover these faults.

ac) c. Petition

This situation mostly occurs for the majority of matters mentioned by the Family Code. It is exceptional that the law in this area imposes a citation (article 371: impediment of marriage celebrated in the family) or a subpoena (article 399: action of marriage nullity).

Let us note that some subjects discussed in the Code of the family explicitly escapes to the control of the peace court even if the way of petition is used. We can especially mention the deeds of notoriety (art. 155), the absence and the disappearance (articles 176, 185 and 192 of the Family Code) which is according to the law of the competence of the High Court.

b) B. Repressive or penal court proceeding

ba) a. The pre-proceeding ⁽⁶⁾

When the Officer from the Public Prosecutions (OPP) forwards the repressive file for attendance by the court, the latter is not yet really bound to exercise its jurisdiction.

This deposit constitutes the potential summoning or the court pre-summons in such a way that the court already wields some powers ⁽⁷⁾:

- Determine the date of hearing;
- Examine the petitions seeking for freedom from detention or the temporary release either from the accused or from the public prosecutions in favor of the suspect on whom he exercises guardianship

In order to communicate the file of cases to the jurisdiction of judgment after the pre-jurisdictional instruction, the chief clerk of the office of the Public Prosecutor's rooms applies for the determination of the hearing (RFFA).

Having become a practice, this petition is not provided in any text of law Congolese penal procedure.

The RFFA is a letter signed by the Public Prosecutor or the Attorney General to accompany the file to the competent jurisdiction. Therefore, it plays the role of mere administrative correspondance. However based on this same request disclosing clearly the identity of the accused and formulating the offences for prosecution, the clerk cites the accused and the procedure presumed regular.

⁶ Read article 53 of the Code of penal procedure.

⁷ Art. 67 of the Code of penal procedure.

This way the petition is like an deed of prosecutions expressing the will of the OPP to prosecute the accused before a competent jurisdiction which he identifies and for very precise offences.

bb)b. Actual proceeding

b1. Citation of the accused

It is the method ordinarily followed up to seize a repressive jurisdiction. It is a writ or a notification in original form addressed to a person accused of an offence on the opening of prosecutions before the jurisdiction.

It contains the facts, the identity of the parties, the extent of the summons, the identification of the jurisdiction, the date and the quality of the ministerial officer issuing it as an opportunity.

b2. Direct citation

In penal, the judge is also seized through a direct citation. This is directly done under the initiative of the victim of the offence. This possibility has already been raised up.

b3. Voluntary appearance ⁽⁸⁾

It is generally referred to regularize a vice of form, an ignorance of deadline or an extension of the tribunal seizure. The accused show interest for the case to be terminated.

b4. Verbal summons ⁽⁹⁾

If the penalty provided by the law does not exceed five years of penal servitude or limits to fining, the parties can be verbally summoned to appear without delay before the court.

Besides, the summons shows the nature, the date and the location of facts to which the accused should answer. Minutes of the summons are prepared.

bc) c. Civil proceeding of the repressive jurisdiction

The civil action tends to obtain adequate correction of the alleged prejudice caused by an offence. But how to include this this action?

By way of *direct citation*, the victim of an offence has a civil action which is essentially private and is inclined to obtain mending of the prejudice undergone due to a fact of breach of law.

It has also the possibility to join in the process of the action initiated by the Public Prosecutions to support its claims of mending the prejudice caused by the breach of law. The setting up of the civil party includes the statement recording the hearing or the clerk's office through the clerk supported by a fee of a certain amount

⁸ Art. 55 of the Code penal procedure.

⁹ Art. 66 of the Code of penal procedure

of money. Here is the hypothesis of a file investigated at the Public Prosecutions' room.

The advantage here resides in the fact that if the accused is acquitted, the civil party will not be prosecuted for reckless and upsetting action because it did not motivate but rather the Director of Public Prosecution did. The re-conventional deed is not therefore accepted. Only, there is a disadvantage: slowness.

On the contrary, the way of direct citation aforementioned offers an advantage of speed but at own risk of the citing who can be prosecuted by the cited for reckless and upsetting action.

2. I.3.2. Hearings

a) A. Ordinary hearings

The ordinary hearings from the court of peace are held at the head office depending on the program put on board of the jurisdiction.

b) B. Itinerant hearings and field work

The itinerant hearings are the hearings held away from the ordinary head office of the court but within the limits of the territorial competence assigned to the said court. Furthermore, some matters require that the court conducts one or several field visits in order to collect data in the field.

c) C. Chamber of the council

When the Director of Public Prosecutions (DPP) feels the need to detain the accused longer than the term of five days of his temporary warrant of arrest (TWA), he should seek for the authorization from the competent judge who is the judge of peace according to the wording of article 29 of the Code of penal procedure..

ca) a. Venue of the chamber of the council

It is the DPP vested with the obligation to petition the accused to appear before the judge and not the opposite. In principle, the suitable place is the office of the President of the court of peace, away from the public and not in the hall of ordinary hearings, not at the prison or in the office of the DPP.

However owing to the high number of the accused who may be brought in at the same time before the judge, it can be accepted that the hearing of the council chamber is held in the hall of ordinary hearings but by denying access to the public.

Besides due to reasons related to difficult conjuncture, it can be tolerated that a convenient place within the prison be reserved to hold the hearings of the council chamber.

cb) b. Role of DPP in the chamber of the council

The power to keep the accused under TWA is granted the DPP only to respond to the need of immediate action. Besides in the chamber of the council, his role will be to formulate a petition to the judge to be ordered to maintain in detention the arrested person.

cc) c. Role and power of the judge in the chamber of the council

The judge should play an eminently active role. His role should not be reduced to initialing pre-established forms for ordering the detention or the confirmation. Because it is to him that the authorization for putting or keeping the accused in preventive detention is petitioned, he has the obligation to verify whether the conditions justifying this step are met at the date of his hearing in the chamber of the council.

Therefore, the judge in the council chamber could order to put an end to the detention if he notices that all the conditions are met and thus to grant temporary freedom or to authorize preventive detention. He should also listen beforehand the accused.

cd) d. Rights of the accused in the chamber of the council

The accused bring forth the objections to the reason of the petition intending to authorize his detention. He can also oppose the accusations made against and can be assisted by a council of his choice. He can also petition either the end of his detention or his temporary release; he can appeal against the judge's order detaining him.

ce) e. Appeal against the judge's decision in the chamber of the council

It is the accused or the DPP who can appeal over the judge's decision taken in the council chamber (art. 37 of the Code of the penal procedure).

The article 39 of the Code of penal procedure sets the allotted time to 24 hours. For the DPP, the time allotted runs from the day the order was issued obliging the judge to pronounce his order in the presence of the DPP. On the contrary for the accused, the time allotted runs from the day when the order was notified him, meaning brought to his attention.

Pendant le délai d'appel et en cas d'appel jusqu'à la décision, l'inculpé est maintenu dans l'état où l'ordonnance du juge l'a placé aussi longtemps que le délai de validité de cette ordonnance n'est pas expiré.

The appeal of the orders from the judge of peace giving a ruling on the detention awaiting trial is brought before the competent TGI.

The judge notified about the appeal should first of all know about the procedure allowing the judge of appeal to interrupt or bring back ordinary hearings to give a ruling of the appeal once for all. Nonetheless, in practice, the court does not hold extraordinary hearing and the file is deferred to its most next hearing. However, the judge should rule on the appeal submitted to him within the 24 hours from the hearing where the Director of Public Prosecutions made his requisitions.

cf) f. Role of the warder of house arrest

The warder of house arrest or the Director of the prison also participates in the control of the regularity of preventive detention.

The article 34 of order n° 344 of 18th September 1965 on penitentiary regime listing the titles for which the warder can jail, detain or place a person under house arrest with the temporary arrest warrant, the order of preventive detention and the order of confirmation of preventive detention having been completed by article 106 from the same order which makes provision that every accused is released at the expiration of the heading proving his inscription in the register of jail or in the register of accommodation.

3. I.3.3. *The hybrid character of the judge of peace*

Can the judge of peace play the role of the Director of Public Prosecutions close to his own jurisdiction? Let us say that outside the hearing, the judge of peace cannot act as the Director of Public Prosecutions. It is during the hearing that he takes up the duties devolving to the DPP.

a) I.3.4. Monitoring of the registry office

The registrar receives statements and prepares the deeds of civil status to confer them an authentic character. Articles 102 to 104 of the family Code confer the inspection or monitoring of civil status to the President of the court of peace and to the Public Prosecutor.

It is made any time the need arises but it is compulsory by the law to do it at least once a year by going round the various offices concerned.

In case of omission or simply material error, the President of the court of peace alone makes their rectification by directly providing useful instructions to the registrars.

IV. I.4. PROFESSION OF THE JUDGE OF PEACE

1. I.4.1. *From recruitment*

The conditions for recruitment of magistrates are enumerated in the article 1 of the law no. 06/020 of 10th October 2006 on the magistrates' status. The applicant should particularly:

- ✓ Be Congolese national;
- ✓ Have at least accomplished his 21st year of age and not be over forty years old;
- ✓ Fully enjoy his civic rights;
- ✓ Be of excellent morality supported by a certificate issued by an administrative authority and by an abstract of police record;
- ✓ Have necessary physical and mental skills;
- ✓ Be a holder of a doctorate or a Masters' Degree in law from a Congolese university or a declared equivalent foreign university according to the Congolese legislation;
- ✓ Produce a written authorization from the husband if she is a married woman;
- ✓ Have successfully passed the application test of recruitment.

It is worth noting that since 1997 to June 2009 when we are completing our researches for publication of this essay, no official appointment of new magistrates has occurred despite the felt constant need mostly at the level of the courts of peace.

In any case, the recruitment of new magistrates in DRC remains to-date an equation of multiple unknowns.

When will the exam tests finally happen? Which criteria will be taken into consideration when it is true that thousands of application files submitted to the magistrature to-date, continue to be dealt with according to the moods of *men in charge*? Which safeguards are they providing when favoritism, authority influence, tribalism, corruption, etc keeps on leading into depravation various decision-making organs?

The aforementioned concerns are also experienced in the area of promotions.

2. I.4.2. Performance and promotions

Let us first of all note that the promotion is granted according to the length of service and the performance. And it is the hierarchical senior staff who fills performance formats annually.

This performance exercise is comprised of a card on which the activities performed during the previous year are shortly described and on which a marking provision is availed to appreciate the merit of the magistrate.

It aims especially at enlightening competent authorities on the professional output, conscience and skills of the magistrate.

Especially concerning the judges of peace, their performance exercise is established at first stage by the president of the court of peace and at second stage by the president of high court concerned; whereas the performance of the president of the court of peace himself is made by the president of the concerned high court and at second stage by the most senior president of the Court of Appeal.

The magistrate appointed judge of peace can be promoted up to the rank of president of the Court of Appeal while fulfilling his duties. But the benefice of this promotion can only be granted the magistrate who has accomplished at least three years of service on the inferior rank and who has obtained during this period at least twice the mark "Good" ⁽¹⁰⁾.

However, Dr. Joseph MVIOKI Babutana stresses, « *it is regrettable to notice that the magistrates are managed daily. There is no program to fulfill, no objective to reach at middle or short term. Promotions are granted at the contempt of statutory principles and almost according to the moods and favoritism. The cabinet of the Ministry of Justice would*

¹⁰ Refer to art. 11 of the law n° 06/020 of 10th Octobre 2006 concerning the status of the magistrates.

have substituted itself to the Higher Council of Magistrates, the organ that is competent to govern the magistrature » ⁽¹¹⁾.

3. I.4.3. Suspension of duties⁽¹²⁾

The duties of the magistrate are terminated through anticipated release of service, resignation, retirement, death...

4. I.4.4. Independence and innermost conviction from the judge

As the supreme law, the constitution of DRC guarantees the independence of the judicial power ⁽¹³⁾ as a crucial tool for the respect of the constitutional state and of democracy, and states that its members are governed by the Higher Council of the Magistrates henceforth composed of the magistrates alone ⁽¹⁴⁾.

Therefore, this subject first of all deals directly with the independence of the judge himself because the lawmaker wants to prevent the judge from worries in his career by handling correctly the law. On the other hand, justice seekers demand for this independence so that their conflicts can benefit a fair ruling from judges not subjected to social, hierarchical and political pressures.

The magistrate renders justice on behalf of the people, the holders of real power. He handles the law under the sole authority of the law for which he is only faithful servant. He has to receive order only from the law and he is accountable to it alone.

This is the will of the Congolese stakeholder stated in article 151 of the Constitution.

This means the judge should obey his conscience and submit to the law in its mission of creating social peace and preventing people from resorting to the law of Talion.

In order to organize his resistance to pressures, he should control his private and professional life in conformity with the duties and incompatibilities prescribed in the statute: honor and dignity of his duties, a cautious man, straight forward, honest, righteous and holder of professional secrets ⁽¹⁵⁾.

In order to conclude this section on judges' career, let us recall the debate prompted by the orders signed by the President of the Republic on 9th February 2008 on judicial organization in DRC and according to which the magistrates from the head office and the public prosecution were appointed and others sent on retirement

¹¹ MVIOKI Babutana, J., *Rapport sur l'état des lieux du système judiciaire congolais*, Kinshasa, août 2003, pp. 12-13

¹² Articles 42 to 44 and 70 to 71 of the statute of the magistrates.

¹³ Art. 149 of the Constitution of the DRC of 18th February 2006.

¹⁴ Read attentively the inquiry of cases and article 152 of the Constitution.

¹⁵ BALANDA MIKUIN Leliel, *Cours de déontologie des magistrats et des avocats*, Faculté de Droit, Université de Kinshasa, 2006-2007 (*inédit*)

either they had reached the retirement age of 65 years old or they had accomplished a career of uninterrupted 35 years of service.

For a jurist without any political color, these orders call for some observations because designed in disregard of the Statute of Magistrates.

In fact according to articles 150 and 152 of the Constitution of 18th February 2002, the High Council of the Magistrates is the only competent Organ capable of making proposals for appointments, dismissals, transfers and retirements of the magistrates. Neither the President of the Republic nor the Minister of Justice are not they members of this governing organ of the magistrates' career.

According to article 82 of the Constitution, if the President of the Republic is the appointing authority, he can only do it upon the proposal from an organ prescribed by the Constitution even if some people regret that the fact the stakeholder did not precise whether the opinion of the organ was optional, obligatory or consistent ⁽¹⁶⁾.

In order to justify his move, he raised exceptional circumstances « *which do not allow to convene the High Council of the Magistrates not established yet [...]* » ⁽¹⁷⁾, Professor Dr. KUMBU ki Ngimbi qualified as « *sociological and emotional which in law do not alter the illegal character of a deed* » ⁽¹⁸⁾.

In fact, there is no legal vacuum as far as the High Council of the Magistrates is concerned. The law concerning the organization and the running of this Council was expected in the context of the current constitution not promulgated yet at that time; the former one was still effective in virtue of the principle of contrary deed.

From the aforementioned, it can be concluded that these orders actually questioned the principles of the separation of powers and of the independence of the judicial power as they are stated in articles 149 and the following of the Congolese Constitution. Surely in the spirit and the letter of this fundamental text, the Minister of Justice has no power to make proposals when the President of the Republic appoints, dismisses, appoints or retires the magistrates; in law, the powers are attributed.

II. INVENTORY OF COURTS OF PEACE IN KINSHASA

The city province of Kinshasa is composed of eight courts of peace at the rate of four per jurisdiction ⁽¹⁹⁾

¹⁶ Voy. MBATA Betukumesu Mangu, « Suprématie de la Constitution, indépendance du pouvoir judiciaire et gouvernance démocratique en République Démocratique du Congo », in BAKANDEJA wa MPUNGU (dir.), *op. cit.*, pp.393-406

¹⁷ Le potentiel n° 4241 du lundi 11 février 2008.

¹⁸ KUMBU ki Ngimbi, *L'indépendance du pouvoir judiciaire remise en question*, (inédit)

¹⁹The jurisdictional area is here equivalent to the territorial competence of a Court of Appeal; and contrary to other provinces in DRC which are endowed each of only one Court of Appeal, the city of Kinshasa has two, namely the Court of Appeal of Kinshasa/Gombe and that of Kinshasa/Matete.

V. II.1. THE COURT OF PEACE OF KINSHASA/NGALIEMA

The court of peace of Kinshasa/Ngaliema has its headquarters on the avenue des Ecuries n° 7, municipality of Ngaliema, between the municipal house and the post office.

Reporting to the Appeal Court of Kinshasa/Gombe, it covers the municipalities of Kintambo, Ngaliema and Mont Ngafula.

Ten chambers have been established depending on the number of the judges of peace assigned to work here. Furthermore, there are five assessor judges and five clerks.

VI. II.2. THE COURT OF PEACE OF KINSHASA/ASSOSSA

The court of peace of Kinshasa/Assossa is located at the crossroads of Assossa and Faradje avenues in the municipality of Kasa-Vubu.

It depends on the high court of Kinshasa/Kalamu in the jurisdictional area of the Court of Appeal of Kinshasa/Gombe. Its territorial boundary extends to the municipalities of Ngiri-Ngiri, Bumbu and Selembao.

It is composed of nine chambers constituted according to the order of appointments of judges, one chief clerk, five clerks, one secretary and three bailiffs of justice.

However it is important to note in the record book of difficulties of this jurisdiction the lack of furniture, documentation, the existence of promiscuity due to lack of offices (all the clerks are confined in one unique office), frequent interruptions of electricity.

VII. II.3. THE COURT OF PEACE OF KINSHASA/PONT KASA-VUBU

Formerly tenant in a building on « l'avenue de l'Enseignement » in the municipality of Kasa-Vubu where it vacated, the court of peace of Kinshasa/Pont Kasa-Vubu is at present located in the same building as that of Assossa.

It belongs to the jurisdictional boundary of the Court of Appeal of Kinshasa/Gombe and depends on the high court of Kalamu ; it covers the municipalities of Kasa-Vubu, Kalamu and Bandalungwa.

Endowed of eleven chambers in conformity with the number of judges transferred, of thirteen clerks (ten of them being full time in office and three others are responsible of other services like the secretariat and the archives), the court of peace of Kinshasa/Pont Kasa-Vubu organizes its activities in turn by rolling them once every three months.

Furthermore like its neighbor sharing with it the palace of justice, this court is confronted with the problem of promiscuity and the lack of furniture.

VIII. II.4. THE COURT OF PEACE OF KINSHASA/GOMBE

The court of peace of Kinshasa/Gombe has its headquarters on « l'avenue de la Mission » n° 6 behind the Headquarters of the Judicial Police of the Public Prosecutor's room in the municipality of Gombe.

Depending on the jurisdictional boundary of the Court of Appeal of Kinshasa/Gombe, this court of peace includes the municipalities of Gombe, Lingwala, Kinshasa and Barumbu.

It has twelve judges of peace and therefore twelve chambers, fourteen clerks, one secretariat and a service of judicial inspectors. Besides, in spite of having assessor judges as required by the legislator, the latter are almost not on the bench in practice and are nearly invisible in the court.

IX. II.5. THE COURT OF PEACE OF KINSHASA/LEMBA

The court of peace of Kinshasa/Lemba is located on « avenue By Pass » n° 8 in the « Echangeur estate, municipality of Lemba, behind the premises of l'Alliance Franco-Congolaise of Kinshasa/Antenna of Lemba. It is important to note that this court is renting a building in an indescribable state of ruin as witnessed by the pictures below:



This court of peace relies on the Court of Appeal of Kinshasa/Matete; its territorial competence extends to the municipalities of Lemba, Ngaba and Makala.

It has nine chambers divided according to the order of precedence, five assessors, five clerks as well as the secretariat.

X. II.6. THE COURT OF PEACE OF KINSHASA/MATETE

The court of peace of Kinshasa/Matete has its head office in the premises of the Palace of Justice located in Tomba estate no. 7 behind the open market called « *Wenze ya mabende* » in the municipality of Matete.

It falls under the jurisdictional area of the Court of Appeal of Kinshasa/Matete and is answerable to the high court of Kinshasa/Matete ; the municipalities of Matete, Limete and Kisenso constitute its territorial boundaries.

At present, it has fourteen chambers corresponding to the number of magistrates transferred to it and it is led by the judge President assisted by the chief clerk also assisted by several assistants in charge of the existing five clerk's offices. We take also note of the presence of six assessors, one welfare officer and a body of judicial inspectors.

XI. II.7. THE COURT OF PEACE OF KINSHASA/N'DJILI

The court of peace of Kinshasa/N'djili is located at the « Place Sainte Thérèse/N'djili », opposite SIROP building in the municipality of N'djili.

Belonging to the jurisdictional boundary of the Court of Appeal of Kinshasa/Matete, this court of peace extends to the municipalities of N'djili, Masina and Kimbanseke. It is comprised of nine (9) chambers of judges of peace, five clerks, one bailiff service, one body of judicial inspectors and an archive service.

But it is suitable to note that despite the renovation of some buildings by the European Union, the lack of furniture has been so recurrent that the staff have been obliged to equip the offices by their own chairs purchased by themselves, many of them having taken them from their houses.

XII. II.8. THE COURT OF PEACE OF KINSHASA/KINKOLE

The court of peace of Kinshasa/Kinkole has its offices in the premises of the municipal building of N'sele and is located at the crossroads of Liyanga and Ndakala avenues in Kinkole town.

Belonging to the jurisdictional area of Kinshasa/Matete Court of Appeal and of Kinshasa/N'djili high court, this court of peace includes the municipalities of N'sele and Maluku.

It owns five chambers because it has only five judges of peace; It also has twelve assessor judges, ten clerks including one chief clerk, one secretariat and one *bailiff* service.

But in reality, there are only the penal office, the civil office and the executive office which are running; the office of delinquent childhood depends on the penal office; and the account office reports to the chief clerk ⁽²⁰⁾.

It is important to note that apart from the court normal head office, seven foreign chambers are established, namely Maluku, Menkao, Mbankana, Kikimi, Kingankati, Buma and N'djili Breweries.

²⁰ Interview conducted by Mr Eugène MBUNGU Mbuta of the clerk's execution office (13th March 2009).

Due to the scarcity of judges of peace, it is unfortunate that Maluku is the only operational itinerant chamber. In addition to this problem, there is the lack of transport means to reach different areas.

Finally, statistics of cases brought before this court shows that the most frequent custody cases especially relate to stellionate, wicked destruction, illegal occupancy, moving of boundary marks, etc.

CONCLUSION

From the realities aforementioned, it is suitable to remember that the judicial power in DRC is devolved to courts and tribunals including the courts of peace of which eight are established in the city of Kinshasa.

Organized according to the law-order n° 82-020 of 31st March 1982 concerning the Code of judicial organization and competence, the courts of peace that have been the focus of our reflection involve, each in its territorial boundary some municipalities in conformity with the text having instituted them and some of them belong to the Court of Appeal of Kinshasa/Gombe and the others to the Court of Appeal of Kinshasa/Matete.

Contrary to the courts of peace established in the towns and territories in the provinces, those of Kinshasa count a sufficient number of judges, recently renovated buildings with the exception of few of them like that of Kinshasa/Lemba to be declared hazardous building due to its buildings threatened of ruin.

Furthermore, operational problems are huge because nearly all these courts lack suitable furniture: if at N'djili, the staff were "obliged" to bring their own furniture, at Pont (bridge) Kasa-Vubu assets seized are used for the purpose, etc.

Besides, though the cost of justice as public service should have been totally under the responsibility of the State, the Government in Congo has given up to be in charge of the running costs of justice in such a way that funds collected by magistrates contribute to the functioning of justice in violation of deontological regulations ⁽²¹⁾.

Therefore, it is important that the judicial system as inherited from the previous regimes be urgently restructured and organized according to the principles established by the new Constitution and it really benefits from sufficient budgetary credits to ensure meeting running administrative expenses of justice.

Besides, the use of new information and communication technologies is indispensable to computerize the Congolese judicial system from archaism in the management of files containing very dusty papers; everything being aggravated by the lack of libraries.

²¹ MVIOKI Babutana, J., « Le système judiciaire congolais : état des lieux et perspectives », in MABIALA Mantuba-Ngoma (dir.), *La République Démocratique du Congo : une démocratisation au bout du fusil*, Kinshasa, Publications de la Fondation Konraed Adenauer, 2006, pp. 175-193

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