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Access to Local Justice in the Democratic Republic of Congo: Diagnosis and Possible Solutions

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Abstract: ***In a state governed by the rule of law, access to justice is a fundamental issue. In keeping with this logic, this study takes stock of the conditions under which the instrument of justice is exercised in the DRC. We illustrate through the problematic the obstacles linked to the organs and even the acts of the legislators. The methodology is based on fundamental principles. The results show that the major challenge in this area is a constructivist approach. Readers will find suitable approaches to remedy this state of affairs.***

Keywords: jurisdiction, justice, access to laws, competences, public policies

1. Introduction

The problem that is at the basis of this study is that since the Belgian colonization to date, criminal justice has been established as a mechanism for resolving social problems without taking into account the distance between jurisdictions, which makes access to local justice difficult. Indeed, from this perspective, the question that is the main focus of our concern is whether access to justice is available to all in the Democratic Republic of Congo.

Nowadays Justice becomes synonymous with judicial institution, it designates the various bodies to which the national sovereignty has officially delegated the power to interpret the Law and to ensure its application by exercising the faculty to decide between the just and the unjust.

What justifies our choice is to understand the phenomenon in all its dimensions, in order to draw the attention of the country's authorities or tomorrow's legislators to certain particular aspects that litigants pose in terms of access to neighbourhood justice in the Democratic Republic of Congo, to provoke debates in order to reconcile written and customary rights for the equilibrium of social litigants.

The choice of the subject is motivated by its interest through, our researches, Of the access to the judicial institutions in Democratic Republic of Congo, it is a problem which arises for the justiciables by acquittal to the judicial instances which is like track of solution.

The subject that we develop constitutes in some way an illustration of the concrete cases of the difficulties to which the litigants are exposed by their seizures to the judicial instances as ways and means to achieve it. We have resorted to the doctrine and jurisprudence by means of which we will try to develop our subject, in this way, being in front of a seizure, the judge is called to solve the facts brought by the litigants in their courts and tribunals in the Democratic Republic of Congo. As a researcher, we say that any seizure must be free and the hearings must be public for the good functioning of courts and tribunals [1]. Indeed, in this perspective, the question that makes the essential of our concern is the following one:

Is local justice in the Democratic Republic of Congo accessible to all?

As hypotheses, we assume that there is no access to justice for all Congolese. The distance between jurisdictions is a problem. To this end, decentralization as a national objective has failed, and this has reached the rest of the state services. The administration of the administered to the access to justice, it is a chain composed of several links.

We are going to resort to the legal method or which interests us here, it consists in analyzing a norm of Right, in order to release the strong points of the Right for the solution given to a case or litigation which is subjected to him by the parts and the weak ones, with regard to its applicability. The documentary technique will also allow us to explore, different documents, to give the solution to a dispute that is submitted or seized; Documentary technique that is important for our investigation. This theme, will be limited in the space of our competent jurisdictions, where we conduct our investigations in the High Court of Lubumbashi. Here we are going to pose the principle and to raise the exceptions thereafter:

The principle of the territoriality of the Penal Law, which states that article 2 of the Penal Code provides1 : The principle of the territoriality of the criminal law, which states that article 2 of the Criminal Code, book 1, "the offence committed on the territory of the Democratic Republic of Congo is punished in accordance with the law" [2], this principle stated by this provision, shows that the criminal laws are territorial, all the offences committed in Congo are punished in accordance with the Congolese law, whatever the nationality of the author who may be national or foreign, whatever his residence, we note that even with the seizure to the justice perhaps national or foreign of any residence that the person is there, it has access to the Congolese justice for obtaining the solution of its seizure in the courts and tribunals of the place.

By the exception raised, by here, this exception is given by article 3 of the Congolese penal code, the penal law applies

to all persons, i.e. Congolese or foreign.

The person must be found on Congolese territory. Regarding the temporal delimitation, there is the principle of the non-retroactivity of the penal law in time, but in Civil Procedure, according to our work, the seizure or action to justice can be new or incidental.

In Civil Procedure, the non-retroactivity does not exist, the seizure can emanate from the plaintiff or defendant so that its cause is heard. Any person has the "freedom" to bring a legal action, however fanciful it may be, which is a matter of the universally accepted general principle of law: "free access to the courtroom".

In civil procedure, the rule is that of the "freedom to act in justice" [2], article 1, of the code of the civil procedure.

According to our work the access to justice can be present or past, that is to say, even if the fact seized in the courts and tribunals already past the court must make that the solution is given, by the parties who are in difficulty.

The rule of application of the rules of procedure in time, article 200 of the decree of 07/03/1960 had opted for the "continuation or application of the old law to the procedures in progress" [3], in order to avoid difficulties in the implementation of the new law on the code of civil procedure. The laws of civil procedure "are not retroactive", since they belong to the private order.

2. General Considerations

2.1 Definitions of concepts

1) Access to justice

The access is any action, in Law, or faculty more or less big to accede in a medium, physical or virtual, that is to say acceded to a demand or possibility to wait for a place, which allows to go towards the place [4], or to enter there in all the Congolese jurisdictions in the Democratic Republic of Congo.

It is noted that all access is recognized to the citizens, both Congolese or Congolese who are on the Congolese national territory, being said that access to justice of proximity in the Democratic Republic of Congo any person has the fundamental right that is recognized to all physical or moral persons, without conditions of the capacity to seize the judicial instances [5].

We add that the access to justice is a way of directing any request submitted to the legal staff of competent jurisdictions for the proper functioning of judicial bodies, the access to justice fill the void that is in the head of the justiciers (ères), From the access to justice is one of the basis of constitutional right recognized to citizens.

Accessed to justice this very first contact that a vigilante makes his request near legal staff, of justice so that his guilt is heard in a well determined time, we underline that any access to justice is necessary for its exercised right, the litigants who do not reach justice ask themselves many questions of knowledge such as: how to reach justice? We say here that justice is accessible to all people being civil that military, any seizure to the judicial instances of neighborhoods in Democratic Republic of Congo are accessible to all. The access to justice refers to two concepts:

2) Diagnosis

By diagnosis according to the Larousse, is the reasoning leading to the identification of the cause (origin of a failure, a problem or a fact brought before a court present), or a causal analysis of a situation, judgment made on it (diagnosis made on the present fact of a justiciable) [6].

3) Solution path

It is to be noted that justice is one of the necessary point which makes that the society can function well, in our country the Democratic Republic of Congo, the authorities as well civil as moral all, seeks that justice is the base in a society, as says the adage "there is not a society without right", that is to say that there is not a society without justice, justice must be understood in a concrete sense: which is a material thing that the public and private bodies use to put an end or peace in a conflicts in the society between the justiciables. All the courts of the judicial order are created by the organic law n°013/011-B of April 11, 2013 on the organization and functioning of competences of the courts of the judicial order in its article 6 [7].

To avoid any arbitrariness in justice, the constitution of the Democratic Republic of Congo in its article 149 which provides that the judicial power is independent of the legislative power, and the executive power [8].

It is intended for the courts and tribunals which are the Court of Cassation, the Council of State, the High Military Court, as well as the civil and military courts and tribunals. Justice must be rendered throughout the national territory in the name of the people. The State being a legal person, it intervenes in all cases to protect the rights and legitimate interests of the Congolese people both inside and outside the country.

Any justice must be accompanied with the expenses of the summons [9], to whom wants to be summoned another it must provide to the clerk of the jurisdiction where the request will be carried, all the elements necessary to the drafting of the summons, we underline that so that your cause is heard the expenses of justice, in accordance with the art 1èr of the code of civil procedure, the applicant provides the elements necessary to the drafting of the summons it consigns between the hands of the clerk the sums of the money for example of 10.000FC to the first degree.

On this point the litigants, ask themselves several questions to know is justice equal? justice in order to contribute to the popularization of the elementary nations, surrounding the notion of justice, that the NGO broad action of the women Lawyers "ALFA", to write the judicial authority designates in our republican tradition, the whole of the institutions whose function is to make apply the law by deciding the litigations. Consequently, it refers to all magistrates, jurisdictions and bodies involved in the exercise of the power to judge in the judicial system.

As a researcher, justice must therefore remain distant from political forces, which is a way of establishing its independence. But at the same time, it is separated from the heart of sovereignty, which is a way to ensure its weakening.

Beyond the exercise of the function of judging, the constitution instituted the judicial authority as "guardian of individual liberties".

These assertions paradoxically mean that the magistrates are the only ones who can infringe on an individual freedom, but this happens in strict compliance with pre-established laws.

The independence of the judiciary from the executive branch is guaranteed by the constitution, which stipulates that the judiciary is independent of the legislative branch. In reality, the independence of the judicial function is not effectively guaranteed.

Efforts must be made to ensure that this independence is real, because without it it is unlikely that the right to a fair trial will be guaranteed.

2.2. The judge's independence and impartiality

Is justice independent and impartial? Independence and impartiality are the two fundamental principles of any judicial system; they guarantee to the litigants that the act of judging will only be determined by the arguments of the judicial debate, without any pressure or prejudice [10]. The independence of the judicial authority is enshrined in the Constitution of the Republic. It results not only from the separation of the power but also from statutory guarantees that put the magistrates in the shelter of pressure or threats that could pose on their faculty of judging [Idem].

While the impartiality whose importance is consecrated in particular in several legal instruments, so much national as international, designer the absence of prejudice that must characterize the judges. In this sense, the independence concerns rather the relations of the judge with the other powers and constitute a condition (necessary but not sufficient), of its impartiality in its relation with the justiciables.

Judges are irremovable and their decisions can only be noted in the context of the exercise of appeal procedures.

Other principles of organization of courts and tribunals are specific to judicial activity:

- The principle of separation of functions, which is illustrated by the distinction between judges and prosecutors or public prosecutors;
- The principle of collegiality, which nevertheless suffers from numerous exceptions such as the principle of a single judge (Court of Peace);
- The principle of the uniqueness of the public prosecutor's office (procurer);
- The principle of irremovability of judges.

The public service of justice is structured, in its relations with its uses, by these principles of functioning.

Three traditional principles of public service are of particular importance in the functioning of justice:

- Principle of equality, which is directly linked to that of equality before the law;
- The principle of gratuity, which does not exclude the existence of legal fees;
- The principle of neutrality as a corollary to the requirement of impartiality.

The functioning of public service, of justice is governed by some specific rules, such as publicity, which is however susceptible to adjustment, or fairness, which can be linked to the guarantee given to each party that his case will be heard fairly.

This distinction is not found in the DRC constitution, which solemnly guarantees the independence of the judiciary from the other powers. Nevertheless, the Superior Council of the Judiciary is responsible for the management of their careers and can ensure that there is no abuse of power or denial of justice.

In order to guarantee the impartiality of judges, the law provides for certain incapacities to judge, for example, in case of a family relationship between several judges of the same court, or between a judge and a lawyer or a party, he can refuse to sit, in such circumstances we speak then of the deportation, there is, moreover, another procedure called recusation allow the parties to question the suspected partiality of a judge. Neutrality is the practical tradition of the principle of impartiality. The requirement of impartiality that must characterize every judge has two variants: subjective impartiality, which is always presumed and is a matter of the judge's ethics, and objective impartiality, which consists of the apparent signs of neutrality that assure the parties that their arguments will be examined objectively.

The requirement of neutrality imposes, first of all, that magistrates never fail in the appearance they give of their lack of prejudice. Consequently, the same magistrate cannot hold the successive functions of investigating magistrate or bail judge in the same case.

Neutrality also imposes on the judges to keep a reserved attitude towards what is said in front of them.

The requirements of the principle of neutrality go beyond the framework of the hearing, however, imposing on judges certain incompatibilities [11]: the exercise of a political mandate is, for example, prescribed to them, as well as their participation in public activities that taint the reserve that their function can be disciplined [Idem].

The requirement of neutrality has procedural translations: it implies, in particular, a strict respect by the judge of the adversarial principle, so that each party is able to explain what they are accused of before being judged.

The principle of collegiality designates the fact that a case, is judged by several judges, being said that of the access to the justice of proximity in DRC, to proceed to justice, it is a voice which allows the justiciable ones so that its Right is established equitably, there is collegiality by the justiciable

ones who seize several jurisdictions this so that justice is made, the judge sit and deliberate together, this mode of composition of the jurisdictions possesses multiple advantages, it find however in the practice a contrasted application.

Collegiality presents several guarantees, both for magistrates and for litigants: on the one hand, collegiality allows magistrates to train and enrich their thinking through contact with their colleagues. On the other hand, it provides them with a protection that guarantees the serenity of their deliberations and the independence of their decision;

On the other hand, the collegiality to the justiciables a measured decision purely likely to have been influenced by the partiality of a judge, and endowed with greater authority.

However, collegiality is neither a right for the litigant, nor a fundamental principle of the lawsuit, and it is thus considered not to have a constitutional value. It is rather a traditional mode of organization of our jurisdictions. However, failure to comply with the number provided for the composition of a seat is sanctioned by law.

The formation of high courts or courts of appeal are collegial, the judges sit in odd numbers, usually three.

It should be noted, however, that the courts of the peace apply the "single judge" mode.

The principle of equality of citizens before the law, which appears in article 12 of the constitution of the Democratic Republic of Congo, necessarily implies the equality of citizens before the application of the law by the judicial institution [12]. The principle of equality of all individuals before the law has a constitutional value. This means that all and one is subject to the law, regardless of their nationality, religion, political or ethical affiliation, language or culture, must be treated in the same way by the Congolese courts. In concrete terms, equality before the law translates into the consecration of a natural right to a judge: those subject to trial must be judged by the same court, according to the same procedural and substantive rules [13].

However, the privileges of jurisdictions that allow certain individuals to be judged under more favorable conditions, still exist, creating a handicap in the real pursuit of this category of litigants. In addition, the mechanism of cassation guarantees to the litigants an identical interpretation of the law throughout the territory.

The principle of equality before the law is, however, subject to some modifications, in particular the multiplication of specialized courts of exception, which indirectly encourage differentiated treatment between litigants. In the same way, the existence of two jurisdictional orders leads to the administration not being treated in the same way as those subject to legal proceedings. For example, the methods of exercising recourse, or the implementation of forced execution against it, are more favourable to it than to private individuals.

Each time there is a hearing, there must be publicity of the hearing, it is a fundamental principle of the functioning of our justice. It is enshrined in the Constitution of the Democratic Republic of Congo and written into the code of procedure, it is justified by the fact that justice is rendered "in the name of the Congolese people".

The publicity of the debate can be arranged according to considerations of the general interest such as public order, national security or the serenity of justice or the interest of the parties in this case the protection of minors, the protection of private life, which is called the huis clos or closed doors; "huis" comes from ostium which means in Latin door and "closed" from claudere which means to close, to close.

3. Justice Organization in the Democratic Republic of the Congo

Our most ardent concern is to examine the way in which Congolese justice is organized. Congolese justice comprises two types of jurisdiction, namely: the jurisdictions of written law and the jurisdiction of customary law [14].

3.1. The function of law courts

The role of the courts is to settle disputes, for this purpose, they pronounce judicial decisions, when they are pronounced by a court, they are called judgment. On the other hand, when they are pronounced by a court, the decisions of justice are called judgment, the persons who pronounce the judgments are called magistrate of the seat or judge.

Judges decide in their soul and conscience, obeying only the law and their sense of fairness. They are all appointed by presidential decree upon the proposal of the Superior Council of the Judiciary.

When the magistrates of the seat (judge), have committed a fault, that is to say that they have done some things that the law or their disciplinary regulations prohibit, every person has the right to accuse it to the superior council of the magistracy to their hierarchical head.

1) The Parquet

The role of the prosecutor's office is to search for the offences, to collect evidence of the offences, to search for their perpetrators, and to refer them to the court and tribunals for trial [15]. The magistrate of the public prosecutor's office is appointed and dismissed by presidential order upon proposal of the superior council of the magistracy when they commit a fault. Any person can also accuse them to their hierarchical head to the general inspection of judicial services, to the superior council of the magistracy or ministry of justice.

The Judicial Police assists the Public Prosecutor's Office in the performance of its work, it is the eyes and ears of the Public Prosecutor's Office, it is made up of people called Judicial Police Officers (OPJ). Before starting their work, all OPJs take an oath before the public prosecutor of their jurisdiction.

The public prosecutor's office empowers or authorizes them to do their work. They also give them a judicial police officer number and a card. Each State service that participates in the administration of justice, whether it is the jurisdiction of the public prosecutor's office, the clerk of the court, the judicial police or the secretariat of the public prosecutor's office, plays its role only in a specific part of the territory of the Democratic Republic of Congo called its jurisdiction.. The Court of Cassation

The Court of Cassation is presented as the jurisdiction placed at the top of the hierarchy of civil and criminal jurisdictions of the judicial order in order to promote the unity of the interpretation of the legal rule, i.e. the jurisprudence of the courts and tribunals of the judicial order [16].

The jurisdictions will be able to have knowledge of what of such behavior is legal or that it is not, without having to risk to fall on a judge that understands it the law or the custom in sense rather than in another. The judgments and judgments rendered in last resort is of obvious practical interest, in relation to the judgments and judgments rendered in first and last resort. Therefore, the question arises: under what conditions can an appeal in cassation be lodged against a court decision, i.e. against which court decision (judgment or ruling) can a litigant (party to the proceedings) lodge an appeal in cassation? The competence of cassation in Congolese judicial law: articles 95 and 116 of organic law n°13/011-B of April 11, 2013 pose the question of the rule of principle in matters of cassation in Congolese Law in application of the relevant provision of article 153 paragraph 2, of the constitution of February 18, 2006 [17]. The most important innovation comes from the affirmation by Congolese legislation that the treaty and agreements purely ratified by the DRC, are a source of law whose violation makes the judgment or ruling susceptible of cassation.

The appeal in cassation is open against a court decision rendered at last instance, based on the violation of the law, excess of power, incompetence, failure to observe form, lack of legal basis, contradiction of judgments or loss of legal foundation [18].

In criminal matters, the jurisdiction of the Court of Cassation extends to appeals against judgments and decisions rendered at last instance by the court of first instance and the court of appeal for the ordinary courts and the military court for the military courts.

In matters of private law, article 116 of the organic law of judicial jurisdiction constitutes the legal basis, in addition to the common provisions of articles 38 to 44 of the organic law on the procedure before the Court of Cassation, which establish the rules specific to cassation in matters of private law.

The procedure can be special before the court of cassation, on the taking to party, the referral of jurisdictions, the settlements of judges and the revision, to which must be added from now on the declinatory of jurisdictions.

The taking of part is opened against any magistrate in the case that the law determines: if there was a crime or commission committed in the course of the investigation or during the decision, if there is last justice according to article 55 to 64 the State is civilly responsible for the condemnation to the damage and interest to pronounce of the magistrate, who can turn against the author of the action for reckless and vexatious action when the taking to part was declared unfounded.

The referral of jurisdictions proceeds from common provision provided for in Articles 60 and 65 of Organic Law No. 13/011-B of April 11, 2013 [19]. Article 65 also relates to the matter of transfer for reasons of public security or legitimate suspicion.

The settlements of judges, take place when two or more judicial courts, and rule in last resort declares itself competent to know a request or a dispute, moved or initiated between the same party.

There is the revision a constant way of appeal in a particular procedure, allowing to pass beyond the definitive character of a decision of justice carry condemnation in order to make re-try the case. The right to request the revision belongs to the Public Ministry; to the condemned, or in case of incapacity, to his representative after the death or the declared absence of the condemned or to his spouse, to his descendants, to his ascendants, to his beneficiaries, must and to his universal legatees article 67 of the organic law of judicial jurisdiction.

The declination of jurisdiction was provided for under article 161, paragraph 4 of the Constitution of 18 February 2006, which defines the competence of the Constitutional Court. This concept, although it appears to be new, is of interest in matters of conflicts of attribution between two orders of jurisdiction, namely the jurisdiction of the judicial order and the jurisdiction of the administrative order, and the Constitutional Court is then called upon to play the role of judge of the duality of jurisdictions.

2) The Appeal Court

The court of appeal is beautiful is well understood in Article 19 of Organic Law No. 13/011-B of April 11, 2013 on the courts of the judicial order provides: there are one or more courts of appeal in each province and in the city Kinshasa there are two, the ordinary seat is the jurisdiction of court of appeal its set by decree of the Prime Minister [20].

The Court of Appeal is composed of one or more presidents and councillors. Also in each court of appeal there is a main clerk, assisted by one or more clerks, there is in each court of appeal institute a public prosecutor's office near each court of appeal this public prosecutor's office is directed by the public prosecutor near the court of appeal, assisted by several attorneys general or deputy public prosecutor.

3) The First Instance Court

In each city or district there are one or more High Courts (TGI). In any case, a single High Court may be set up for two or more territories, the ordinary seat and the jurisdiction of these courts are determined by decree of the Prime Minister.

The TGI is composed of a president and judges in all matters of its jurisdiction (civil and criminal law), the TGI sits in the number of three judges with the assistance of the prosecution and the assistance of a clerk, each court of first instance and attached to a prosecution called parquet de grande instance.

4) The Peace Court

One or more courts of peace are created in each territory, city or commune [21]. One may be created for two or more territories, cities, towns, the ordinary seat and the jurisdiction are fixed by decree of the Prime Minister, article 7. It may also be created one or more secondary seats, whose jurisdiction is set by order of the Minister of Justice, Article 8. The Court of Peace sits in criminal matters, with the assistance of the Public Prosecutor's Office and the assistance of a clerk, and with only one judge in civil matters, article 10 paragraph 1.

Their common provisions: the ordinary courts and tribunals are governed by common provisions provided for in Articles 37 to 64 of the Organic Law of 13 April 2013, the clerks and bailiffs of the attributions of the clerk that it assists the judge in the act and minutes of his ministry.

He signs it with him art 37 to 39 of the organic law. The judicial officer is a ministerial and public officer in charge of judicial and extra-judicial service of documents. He can be substituted for the lack of a bailiff in the interest of justice [22].

4. The access to a competent, independent and impartial tribunalright in DRC

The classical and universal jurisdictional system is substantially based on the judge; this right implicitly refers to the judge in the strict sense, the right to a remedy and the right to a good judge. The latter is the master blade, but not the only one, of the right of access to justice; without him this right loses all its reason to exist [23].

Article 14, paragraph 1, of the International Covenant on Civil and Political Rights guarantees access to a court to everyone who is the subject of a criminal charge. There are no restrictions on this right and any conviction by a body other than the legally established court is invalid and incompatible with the right of access to justice. The UN Human Rights Committee, in interpreting the above-mentioned text, affirmed at its 90th session from 9 to 27 July 2007 that "the right to be tried by an independent and impartial tribunal is an absolute right that suffers no exception" [24] Independence and impartiality are two complementary notions. While the former reflects an objective external reality, the external environment in which the judge operates, the latter refers to an internal, subjective attitude, and is concerned with the very person of the judge.

The existence of impartiality and independence to the judge is an essential condition for the enjoyment of the right to justice. The guarantee of independence concerns, in particular, the procedure of appointment of the judges, the calcifications that are required of them and their irremovability until the obligatory age of retirement or the expiration of their mandates; and the effective independence of the jurisdictions from any political intervention of the executive and the legislative.46 By impartiality we mean the neutrality of the judge, the fact that the judge has to make an internal leap to not. Not. To leave room for the lower court in his judicial decisions. The guarantee of impartiality requires of the judges, not to let parties taken or personal prejudices, influence enough resources for the assumption of his judicial case. It can also be understood as a possibility for any natural or legal person, to file a legal claim and obtain redress when his rights have been violated [25]. Consequently, the right of access to justice implies that after the judgment and the exhaustion of subsequent remedies, that is to say, as soon as the decision has become res judicata, that its execution takes place without hindrance of any kind. Instead of contributing to social peace, by leaving things in their present state, it stirs up hatred, breaks the social balance, and remains a factor of revival of tribal tensions and private vengeance in DR. The unjustified non-execution of a legal decision, whatever it is, creates a certain jurisdictional vacuity, the induction of which leads without ambiguity to a judicial insecurity; Such deficiencies in the execution of judgments, risk making the litigants lose the confidence that they must have in the State [26].

4.1. The right to an independent judicial settlement of one's dispute.

Most of the above-mentioned international and national texts also refer to legal aid and jurisdictional assistance as one of the cornerstones of a fair trial "The right to be advised, defended and represented". This principal of the annex to the UN Principles and Guidelines on Legal Aid in the Criminal Justice System, pleases the principle of legal aid at the heart of any effective criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial and an important protection that ensures fundamental fairness and public confidence in justice. In the preamble to the Lilongwe Principles, the signatories state that, "access to justice depends on the guarantee of the right to due process, the right to a fair hearing and the right to legal representation" [27]. Thus, the first recommendation already suggests that each government has a full responsibility to recognize and support access to justice for those involved in the criminal justice system. The success of a trial, a fair judgment, depends on a better defence, that is to say, on an efficient and effective handling of the litigants, putting in the spotlight, the equality of arms between parties. Only the intervention of a lawyer can guarantee that the point of view of the litigant is clear. Without legal aid, access to justice cannot be guaranteed. It is the solid foundation of the balance between parties in the courtroom. The assistance of only one party in the trial would be an irrefutable violation of the principle of equality of arms, which is the guarantee of the right of access to justice. It cannot be so in a society where it is organized the institution of legal aid or equal.

Legal aid is not organized in Congolese law, nevertheless there is a snippet of it in the scattered provisions of the Congolese legal arsenal, including Article 146 of the Code of Civil Procedure provides that "the indigent party is exempt, within the limits provided for, from the deposit of

costs" and "the costs of expert testimony and witness taxes are advanced by the Treasury". This notion has undergone a certain evolution in time and space; depending on the time and place, it is referred to as legal aid, legal assistance and currently legal aid; in France it is sometimes referred to as legal aid or legal aid in other countries [28]. It defines free legal aid as legal support provided by a lawyer or any other counsel to beneficiaries of legal aid under defined conditions. Finally, assistance in accessing the law, which intervenes outside of any legal proceedings under a quadripartite approach to action: informing people of their rights and obligations in general, helping them to take any steps to exercise a right or to fulfil a legal obligation, and assisting them during the proceedings, providing legal advice and assistance in drafting a legal document. This legal aid, it limits the beneficiaries on a principal basis, the natural persons exceptionally the legal persons with nonlucrative goal having their seat in RD The legal assistance it is the whole of actions and provisions aiming at problems of right and in particular not exclusively within the framework of judicial or administrative procedure of. In other words, legal aid is the contribution made by the State to enable people with insufficient income to assert their rights in court, both in contentious and non-contentious matters, in application and in defense, and before all courts [29].

In order to bring justice within the reach of the greatest number of people, in conditions of equality, the public service must first be free, and the competition of the auxiliaries of justice must also be free. In other countries, this system is financially based on an annual allocation from the State to each bar, calculated according to a coefficient and a unit of reference value. The scope of action of the free consultation bars is limited, as they do not receive any government funding and are little known by the users of the judicial public service in DR Congo. [30] Several possible solutions can be envisaged in order to improve access to justice and its corollary, access to judicial and legal assistance, based on the orientation of services according to demand; sustainable financing; coordination and cooperation between state and non-state actors; complementarity of formal and traditional methods of conflict resolution and para-justice.61 To conclude, each system has its advantages and pitfalls, and with a firm commitment and financial capacity on the part of the State, any model can be beneficial to society. This was the recommendation of the Estates General of Justice, asking the Congolese State to make available the funds allocated to the various bars for pro deo assistance.62 Access to justice still faces a number of obstacles, which we propose in the next section.

4.2. Obstacles to the right of access to justice.

The right of access to justice vanishes in front of fussy realities, making one of the provinces in DR Congo the legal and judicial insecurity. The superlative is not a poor word in terms of generalized insecurity in the country.

Access to justice is limited by certain structural and situational factors. The structural factors take into account the geographical, material and financial inaccessibility of a competent court, by any litigant in relation to his or her place of residence, the location of the court as well as the cost of accessing it and the difficulties related to the complexity of the procedure. In this respect, access to the courts is very limited due to the remoteness of the courts and tribunals, especially outside the provinces or the main centers of the administrative territories and cities. the corruption of the judicial actors, the trials of civilians before the military courts and the political pressure exerted on military justice [28].

As we have said above, there are legal obstacles; in criminal proceedings, some people escape prosecution because of their official capacity. For reasons of political and criminal policy expediency, some individuals are excluded from the application of certain criminal rules of form and substance. These circumstances constitute temporary obstacles to the initiation or continuation of public proceedings [28]. The jurisdictional immunities enjoyed by certain high-level personalities constitute an obstacle to access to justice, and even more so to the law. The right to reparation for a prejudicial act against a victim may come up against the immunities enjoyed by the perpetrators, in particular "These immunities are political, diplomatic and consular immunities, family immunities, judicial immunities, press immunities, etc.".

As we said above, there are obstacles of a legal nature and material obstacles, notably "Inaccessibility due to the insufficiency of jurisdictions versus the remoteness and the bad geographical distribution"; the first obstacle that the population in DR Congo faces when it tries to access the judge is the insufficiency, the remoteness of the judicial institutions: In a general way, the seats of the courts and tribunals are located in the chief towns of the province and the cities and territories in DR Congo. As Professor Kavundja says, "there are many difficulties of access to these jurisdictions by the population who live far from these chief towns" [28].

Indeed, because the Court of Cassation is located in Kinshasa; the appeal in cassation will always remain illusory and chimerical for the population that lives far from the seat of the Court of Cassation. This is the best we can do, to push very far the reflections on the decentralization of the judicial institutions as it is the case of the administrative decentralization. The idea of a new judicial division is necessary, following the example of the division of the provinces. In a word, a new judicial map is needed throughout the national territory or in DR Congo [31].

It is necessary in province its own court of cassation. In my opinion the court being competent to know the decisions of the courts its distance can paralyze the obstacles being said the access to justice will remain longer a mystery in DR Congo. The second material obstacle is: The inaccessibility linked to the ignorance of the law. The general principle of law "no one is supposed to ignore the law" is sometimes rigorously applied in Congolese law. In the constitution of 18 February 2006, in article 62 paragraph 1, it was elevated to the rank of constitutional principles, with the consequence that its violation opens the way to a possible appeal of institutionality before the constitutional court. The presumption of knowledge of the law erroneously guilts the

citizens by letting them believe that they are always at fault for ignoring or misunderstanding the law that the Michel Coipelconludes, "I believe highly desirable and this wish is ambitious that the adage must be discarded in the application of the rules of law and in the motivation of judicial decisions: it is a rule of the positive law. However, this constitutional consecration would not be enough to guarantee the knowledge of the law to the Congolese citizens.

According to prof. NyabirunguMweneSonga, in Congolese law it was held that ignorance of the law could be a cause of non-imputability if it is established that it was absolutely impossible for the agent to know the existence of a legal prescription [32]. The constitutional reversal of 2006, is a step backwards, in my opinion; illiteracy should be considered as an invincible error of law exoneration, since it constitutes an obstacle to the access to justice in DR Congo. The only knowledge of law cannot be considered as a sufficient guarantee of access to justice. In spite of this, knowledge of the law is an asset and a major tool for improving citizen participation in the action of justice. The majority of the population, the ignorance of the law is accompanied with the non-mastery of the picturesque language of the prétoire.

To overcome this deficiency, the popularization of laws, their translation into the vernacular languages of citizens and education in law are indispensable institutions. Why not translate all the codes and laws in the local languages, like what happens in Canada, the trials are done in the two official languages "French and English, bilingual". In this regard, it is necessary to think in the light of what happens in other countries like Canada, to organize the trials in the interest of the population in our national languages; why not even in the local languages, in my opinion. The third material obstacle is: the inaccessibility of the language of many of the litigants to the trial.

4.3. Alternative Dispute Resolution

In the current state of the Congolese legislation, except for some exceptions, namely in the matter of contestation of fees, the litigations concerning the violation of the code of the investments, the different mining, fiscal, labor and agriculture, it is not admitted mediations and conciliations in penal matter, but with a little bit of flat since for the offences whose benign character is proved, the judicial transaction is possible before the officers of the judicial police and officers of the Public Ministry.(Article 9 of the code of criminal procedure). On the same register, it is necessary to add the meditation as regards justice for children. The common feature of alternative methods is that they do not seek to settle a dispute by a jurisdictional act; from a formal point of view, they do not involve a court; from a material point of view, they do not propose to deduce a solution from the strict application of the existing law. The aim is to extinguish the conflict rather than to define it. [28] This is done by the alternative dispute resolution method or alternative dispute resolution.

5. Criticisms and Propositions

5.1 Criticisms

Being said that the access to justice in DR Congo optimal, passes by the re-visitation of the judicial map, as aimed, the bringing together of the justiciables of the courts and tribunals, this bringing together must be punctuated not only by an institutional proximity but also by a proximity "Right to a prompt repair". There is the access to justice but there are no more solutions on the files that the citizens bring before the Congolese jurisdictions, seen that the legal aid is not totally instituted in its totality in DR Congo, the judicial personnel who make the trade deals on the life of the citizens.

5.2 Propositions

It is necessary the creation of secondary seats of the court of cassation, in each province; It is necessary secondary seats of the court of appeal in all the territories; finally It is necessary the creation of secondary seats of the court of first instance in each of the communes, it is necessary to make effective to extend the intervention of the local committees of pacification and mediation especially in the zones post conflicts and in the rural environment. Finally, to coordinate and make collaborate the different actions of the actors intervening in criminal proceedings, especially the panoply of officers of judicial police in the multiple services for a fast settlement of the disputes, especially those susceptible to receive a transactional outcome. Openness, proactivity, collaboration and coordination must animate the way we approach access to justice for all.

Prevention and education; we cannot afford to think that access to justice is reduced to access to courts and lawyers. Our justice system must be deeply oriented towards preventing crimes when possible, and when they occur, towards providing those who need justice with the information and resources to effectively and efficiently curb impunity.

To do this some actions are imperative among others<< The improvement of statutory and material working conditions of magistrates and auxiliaries of justice finally to avoid their pauperization, and predispose them to avoid the bribe in their mission to render justice.

The establishment of a legal aid fund at both the national and provincial levels, and the strengthening of mechanisms that guarantee the right of the victim to obtain fair and equitable compensation. The. Continued reform and strengthening of the Congolese justice sector in order to make it more accessible, efficient and independent (making the budget of the judiciary to the proposed Supra judicial map, improving the means of logistics and locomotion of judicial personnel, etc.). Quality assurance in order to improve the quality of justice, and consequently the quality of judicial decisions and their execution. The reinforcement of the traditional mechanisms of the settlement of the disputes notably by the meditation and the conciliation by promoting the restorative justice, to put an end in our suggestion we ask the Congolese State to take care on the

access to justice in our courts and tribunals in DR Congo.

6. Conclusion

Our study focused on the theme "access to local justice in the Democratic Republic of Congo. Diagnosis, problems and solutions".

The problem that was at the basis of this study is that during the Belgian colonization to date, criminal justice was established as a mechanism for resolving social problems without taking into account the distance between the jurisdictions, making access to justice difficult. Indeed, from this perspective, the question that has been the focus of our concern has been whether access to justice is available to all in the Democratic Republic of Congo.

Thus, as hypotheses, we estimated that access to justice is accessible for all Congolese does not exist in the Democratic Republic of Congo. The distance between jurisdictions is a problem. To this effect, the decentralization carried out by the central power has failed as a national objective to bring the access to justice closer to the citizen. The administration of the citizen to the access to justice is a chain composed of several links, each as important as the other.

In order to arrive at the expected results of our work, we made use of a single method, namely: the legal method to interpret or explain the rules of Congolese law in a way that is appropriate in this legal study. We also used techniques such as indirect observation to collect the data, as a means of supporting our research method in order to achieve the results.

To this end, the results obtained confirm that access to local justice is hypothetical. Objectively, and in view of some of the elements raised in the above lines, any conscious Congolese can see that in this area, access has already failed even before decentralization began. It would be a mistake to consider it only in terms of elections of governors, provincial deputies and other animators of decentralized territorial entities, but above all in terms of access to local justice.

Speaking of the judicial jurisdictions, we do not feel the effectiveness of the jurisdictions called to be installed in the various provinces and EDT, which makes the access to bring the justiciable one closer seems difficult and is not yet reached its objective to this day. Without counting that the challenges which await the sector of justice concern similarly all the fields of the national life such as the police force, the army, the ANR, Direction of the taxes, DGRAD, OCC, CNSS, Office of the roads, Regie of the waterways, in short all the services of the State.

Thus, without claiming to have an absolute and definitive answer to our concern raised by such a study, we are open to any useful observation that could contribute to the edification of Law in general and Congolese Law in particular.

This work is therefore our contribution to the consolidation of the Law. Thus, we ask the indulgence of our readers for any imperfections due to human nature.

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