

Conflict Management by the Twere in the Mbosi Community (Congo-Brazzaville)

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Abstract: *Otwere is an old institution that dealt with the justice of our "fathers". It has existed it seems in all our tribes in the Congo before being supplanted by colonial or modern justice. It also existed among whites, Jews (Jephthah). But we are going to say here how the "Mbochis" of Alima had understood Otwere in their understanding and in their region. Established for justice, Otwere was the most respectable and respected, the most consistent, the most intangible, the most sacred ancestral institution ever encountered by the Mbochis in the land of Alima. I would like to make known, before defining it in itself, what characterized it, and then reveal the preconditions required to be a member of the institution, (Bishop B. Gassongo, 1979). If Otwere is an institution dealing with justice, then its members, the Twere, can only be law enforcement judges. Experience shows that wherever there is law, there are individuals who are supposed to break it. They are those who defy the established order or who do not want social organization. On the understanding that Otwere had not provided a framework for sentences because often favoring the resolution of conflicts by the repair of faults rather than by the punishment of the guilty, then the question of its structure arises that of the management of his men so that the cases of recidivism are non-existent? This big question about the management of the city, also poses that of the qualities of the Twere on the carpet. Indeed, all these concerns about management policy precipitate, so far, researchers in Alima land to safeguard the gains that Otwere hides.*

Keywords: Custom, Modern Law, Otwere, Twere, Management, Living Together and Conflict

1. Introduction

Managing an organization, Otwere's case in this work, is just one way to create new resources for its development at the right time. Otwere, understood as traditional organization, refers to customs, social habits, which are as important as the national law because they are derived from old practices and beliefs that many people respect. Different from one country to another, all over the world, traditional systems of justice (Otwere among the Mbosi) were born in small communities that self-regulate, to deal with court cases

In Congo, these systems have survived the influences of modern justice. They are recognized by the state to handle custom-related matters. These systems aim to preserve peace and harmony in local communities.

The mbosi living in community have, in case of conflicts, often recourse to the Twere who often privilege the resolution of the conflicts by the repair of the faults more than by the punishment of the culprits. In Mbosi culture, personal virtues are necessary as prerequisites to become an invested Twere.

The Twere, as well as the Mbosi people in general, must reintegrate Otwere's values into their daily practice. Indeed, how does Otwere, which is in the realm of custom, succeed in imposing itself before the written law?

Before the Civil Code, custom was therefore an essential source of objective law. A new code has had to upset this order of things by giving supremacy to the law. This supremacy of the law is justified by various arguments: first, the written law is more precise and more certain by the presence of the text whereas the custom can be a source of insecurity due to its greater uncertainty. Above all, the law is general and applies to the whole territory whereas the custom varies from one region to another and sometimes even from one profession to another. Lastly, the law reacts more quickly to the needs of society than the custom of which the elaboration is particularly long. This law does not mean that the custom has disappeared, the insufficiencies of the law at a few levels allow deducing that for the subjects where there are no legal provisions, rules laid down by the civil code, the custom can survive.

Today, despite the rarity of "ANgaKwephe", "Ngo Twere", "Abiale" etc. to ensure the training and safety of the Twere in the Mbosi community or in the cities of Congo-Brazzaville where they are invited, the profession succeeds in imposing itself. Whereas, modern judges face the problem of ethics: Corruption, trading in influence and other acts related to the moral probity of these judges are largely at the center of the anti-maligners decried in their services. In the mbosi community, the Twere, member of Otwere ensures that the law is respected, that the truth is clearly exposed and that the regulation of the palaver is followed. The law, "mbeyiy'okili", is lived by the mbosi as official rules which everyone must obey for individual and collective security, as mentioned by J.J. Rousseau that without the law there is no organization. So how did the Twere manage to impose peace where they had no material and coercive means to get the law through? This is the question in operation in this work.

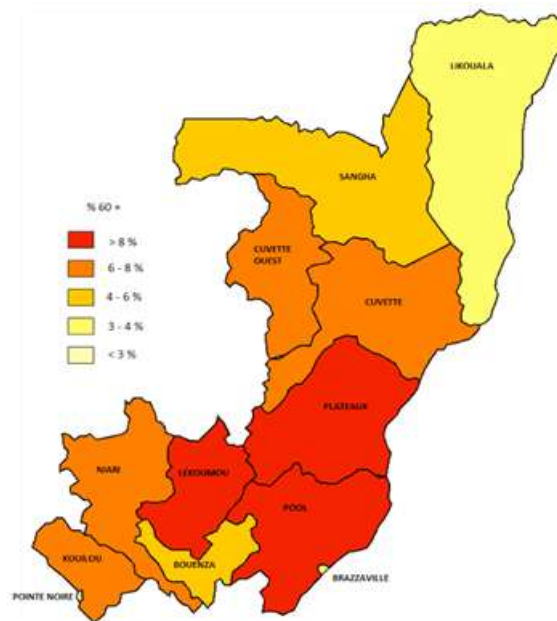


Figure 1: Map of Congo-Brazzaville

2. Study Area

The Mbosi people occupy in the north of the Congo, the geo-administrative space which includes the departments of Cuvette-Ouest (districts of Itoumbi and Mbomo), Cuvette (districts of Ntokou, Makoua, Owando, Boundji, Ngoko, Oyo, Tsikapika, Mossaka) and Plateaux (districts of Allembé, Abala, Ollombo, Ongogni, Makotipoko and Gamboma). It extends from the Bangangoulouplateaux to the banks of the Mambili. The Mbosi people live in the large Congolese basin, sharing 211,400m² of surface area with Makaa and Sangha in the north, Kota, Mbeti (Mbere) and Tegue Alima in the west, Ngangoulou (Angwengwel) in the north south and CongoRiver to the east

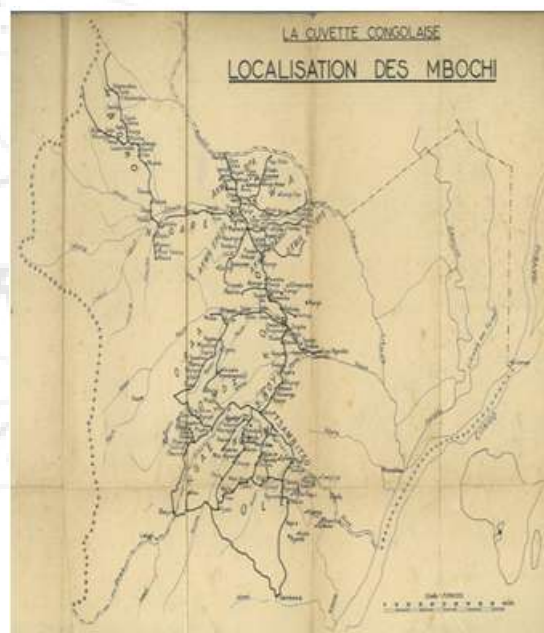


Figure 2: Localization of Mbosi

3. The Organizational Sense of the Twere

The Twere is a great manager. He has a sense of organization and works hard for social cohesion, which is the main principle in his society.

The Twere leads the palaver so that the one who wrongly feels neither humiliated nor vexed. Moreover, during these hearings the approved language in these situations where honor is engaged is made of symbols and parables, and it is

often hermetic to the uninitiated, and here the implication is integral part of the art and the exercise of the speech for the sole purpose of preserving the dignity of the personalities involved whatever they may be. This principle of honor of all parties involved in the palaver is not only the preserve of the Mbosi. The Nzoongi knows how far ruminations of self-love can go. Nzoongi is a conciliator. The parties are also assured of a fair justice (D. Ngoïe-Ngalla, 2011)

This concern to safeguard the honor of each party induces in the Twere all the patience and the great capacity of listening that this company can impose to arrive at the best result. Depending on the nature of the case to be treated an Otwere session can last a whole day. Seen from the outside, this may seem like a waste of time. But generally, the Twere manage to settle permanently and consensually the problem as to the substance, while preserving the honor of the parties, and in such a way that there is no questioning of the agreed conclusions. This is clearly part of the team and the stability of society (Didier Ngalebaye 2010).

The Twere must also not undermine the ethic of justice because his judgments are without appeal, because the Mbosi courts are not hierarchical entities, as the studies of John Gilissen prove. The latter, comparing the traditional judicial system to the so-called modern, has come to highlight two major points, elements of difference between the two systems: in the traditional system we note the combination of functions (judge, registrar, administrator, etc.) and the existence of a single level of jurisdiction before which all cases are referred regardless of the subject matter. Gilissen has also been able to establish that there are no conflicts of jurisdiction in this system despite the existence of several courses (J. Gilissen, 1969)

Another important piece of information to characterize the Twere's ethics is the fact that he does not have any coercive means to enforce judgments rendered. Yet this one, for the most part, succeeds in enforcing his sentence. We still agree with Didier Ngalebaye when he thinks that, in the case of futuristic hermeneutics, what is striking to note here is that, despite the sobriety of the mbosi judicial system, He (the Twere) succeeds for the most part, to enforce his sentences, with an almost no frequency of cases of recidivism, while opposite, the modern Congolese magistrature, despite the exhibition of its strength, does not succeed (D. Ngalebaye

2010).

The Twere are called, in the exercise of their responsibilities, to go wherever they are solicited. They are expected everywhere to find a suitable solution to a problem likely to deteriorate the social fabric. Among these judges, there are those whose experience has brought a lot of prestige. This rare species of itinerant or traveling judges has given traditional justice a high prestige. They are generalists of the civil and penal law, and regulate all thanks to the constant experience that they acquire during the different judgments that they render. The retention capacity of their memories places them above those formed at the school of the whites (S. Kidiba and J. F. Yekoka, 2013)

Speaking of the capacities of traditional judges it is noted that, what reminiscent of people at Otwere is the quality of its judges who possess perfect knowledge of unwritten laws and customs, unlike modern judges who have memorized written laws only recite them during the courts.

In general, the Twere, heard as an exceptional social subject, shows moral probity, discretion. At the eyimbi, council meetings, he acts as a lawyer and wants his client the whole truth about the facts. The eyimbi are moments in which everyone gives the facts and submits his point of view according to the outcome of the case being processed. However, it is up to the Twere to synthesize and analyze what is useful. In case of difficulties during the judgment to supplement an important detail, the Twere can request a withdrawal of a few minutes, "Ngakousa la beyaombeya" or Eyimbi, chat with his client, because, here, we do not say general public what we think. It is up to the judge to be discreet. He can use parables, proverbs, images that only the illuminated can grasp the meaning. It may in this case also resort to similar cases treated in the past. Here all the virtues of the eloquence and humor of the Twere are to prevail.

Apart from the fact that the man and the training institution have lost this entire heritage, one can ask the question, how can this act serve as a moralization of the postcolonial society in which we live? One only has to make the comparative study of the two epochs to be convinced of it. The sociological reflections that this study will generate will be able to identify the weaknesses and the strengths of each one (S. Kidiba and J.F. Yekoka, 2013)

4. The concept of justice among Mbozi

The concept of justice has many meanings. Social justice that deals with the inequalities between social groups and the individual justice that provides everyone with what is due. The word justice is also used to designate all the institutions whose legal mission is to render justice that is to say to judge, in accordance with the law, disputes between ordinary citizens between themselves or between individuals and the State.

That said, the role of Mbozi justice is to restore order where the use of violence is the only way to resolve the issues. The recourse to private vengeance is also condemned by the mbozi traditional institution, called Otwere, guarantor of justice. The Twere is the descendant of this institution to make justice in a society where issues of social inequality, disputes between individuals, etc. are recurring.

At present, it would not be appropriate to shed light on Otwere's approaches that are customary and modern justice imported from the outside.

4.1. The notion of custom

A custom is a habit followed by people, an established practice that has become a rule, a collective practice that is transmitted orally from generation to generation. It can relate to the mores, the way of life, the beliefs, the culture, the behaviors in certain situations, the speeches, etc. The term "custom" can also apply to a person's habits.

In law, custom or customary rule is a rule that derives from traditional practices and common usages that are consecrated by time and that constitute a source of law. Recognized by the courts, it can supplement the law or supplement it, provided it does not go against another law.

The good side of the custom is that it corresponds to the real needs and feelings of the social group that adopted it. A use cannot become general, it cannot acquire certain permanence, and it can only assume a compulsory character because it meets the aspirations of the given social group. When the needs that gave birth to it change, the custom changes simultaneously. The custom is both realistic and flexible. Likewise, it is accessible to many users.

4.2. The notion of the written law

Written law is written law of European inspiration. One can also speak of "written law by pointing to the textual sources of law that encompass the constitution, law, and statutory instruments as opposed to doctrine and other strictly oral law sources, such as custom.

Indeed, the written law imposed itself with the colonization. Colonial Powers generally, despite having different legislative policies, recognized the application of aboriginal rules only in cases where they were not contrary to laws, regulations, public order and morality, in short, to the written law. When the matter is not provided for by a decree, decree or ordinance already promulgated, disputes that fall within the jurisdiction of the Congo courts will be judged according to local customs, general principles of law and equity. Thus, custom appears as a source of subsidiary law that applies only in the absence of written law. Today, written law of European inspiration has invaded almost all areas of social life. Only the regime of inheritances and gifts remains the important matter governed by customary law. However, justice actors sometimes resort to custom when the law is not sufficiently clear or complete. In this case, the custom comes to fill the gaps of the law.

4.3. The coexistence of written law and custom in traditional justice

In Congo-Brazzaville, as almost everywhere in Africa, modern legislation and judicial organization have been a contribution of colonization. They have been transposed on a traditional normative order already existing of the monarchical type. Today, the coexistence of modern justice, that is to say Western type, and traditional justice interferes with the efficiency of both (E. Le Roy, 2004). Should we make a judicious choice between one of the two? Indeed, the written law imposed itself with the colonization. Colonial Powers generally, despite having different legislative policies, recognized the application of aboriginal rules only in cases where they were not contrary to laws, regulations, public order and morality, in short written law (C. Ntampaka, 2005)

Choosing customary law (traditional modes of conflict resolution), would lock society into an outmoded tradition. But also, to choose the only Western written right would lead

to imposing on citizens a modern, foreign, imported legal system that lacks a favorable reception area.

At a time when there is talk of acculturation, underdevelopment and the crisis of African society, but we are also witnessing the demand for the rule of law in Africa, the recognition of customary rights does not reveal past delectation. On the contrary, taking into account its general principles can lead to the development of a truly African modern right, thus finally having a chance to be understood, recognized and respected; a society-controlled right, a unique and original right that respects values (E. Kagisye, 2006)

5. Conflict Management

The earth is a precious good, an inalienable treasure for the mbosi people. It is a field on which the skills of the Twere are heard. The land issue poses serious problems. In Mbosi society, a family that lacks land is destined to poverty because all the necessary goods are the fruit of the earth. Hunting, farming, fishing, etc. provide autonomy both in terms of food and finance.

Mbosi land disputes are often due to the inheritance problem. The loss of land could be the result of the insolvency of a heavy fine after a dispute between villages or tribes. The dispossession of a part of territory, in case of insolvency, was the most consensual solution. Land disputes are often the cause of assassinations and settlement of accounts. This often poisons relations between individuals, villages or tribes. But all is not lost in case of insurmountable tensions. In such circumstances, consultation with a Twere is the only way to decimate the climate.

Succession conflicts are a problem between land and family in the Mbosisociety. Landholdings are often insufficient to meet the sharing between different members of the family. Girls are often excluded from the estate for the benefit of boys for the simple reason that the Mbosi family organization is patriarchal. Many land disputes are those between brothers for the sharing of family property. These cases of succession between brothers are often settled by the family council, which is also recognized by Otwere as a legal authority.

With regard to marriage, the cases that are more exposed to the Twere are those related to violence against girls and adultery. Rape is one of the most serious cases that often lead

to unending palaver. The raped girl being defiled prevents her from getting married. This often aggravates the social climate. The Twere, in such circumstances, have only to be content to negotiate the regularization of the union by the payment of a dowry or moral compensation to convert rape into a socially accepted marriage, this is what we called regularization of the offense. Adulterous cases are also among the most difficult to treat. It is on this ground where there are more cases of assassinations and witchcraft. The flagrant offenses are often the cause of assassinations. In most cases, the Twere are able to separate the conflicting parties. But, despite this outcome, recourse to private revenge or settlement of account is not excluded in case of dissatisfaction the complaining party. The death of the victim will be imminent. It can be exposed to the field or the hunt to the attack of the lion, fishing to the attack of the boa, in short, the sky will not be lenient to him. That is why, in the mbosi culture "Iepousouh or opangui", the reason, is an obvious reality and constitutes an individual protection. It is in this way that Francis Bacon has taught that we do not command nature that obeyed him. "Opangui" is a ritual that protects the innocent against any pursuit of wizards or against accidents.

The Mbosi believe in the existence of a supernatural power which gives to the one who possesses it a capacity of uncontrollable nuisance and which escapes any demonstration or any description. Witchcraft is not only the Mbosi affair but an African specificity. Since witchcraft escapes all demonstration, it becomes difficult to prove the guilt of the alleged wizards. When a case of witchcraft has just been suspected, the Twere, who is a member of Otwere, and often chief of the village, has to gather all his council to examine the matter privately in order to draw all the possible consequences. In the Mbosi culture, the wizard is often the village chief himself, because no one is supposed to have more nuisance power than him or his elders who surround him in his village "Angamboakaleotakaa", everything falls back on village chief. However, if this spell comes from another village by provocation or revenge following a conflict, Otwere sent "Ibani", emissaries, for warning if the case is less serious. On the other hand, if the case is serious, Otwere sharpens his weapons for a possible riposte, according to the proportion of the effects. Nowadays, we often see the lynching of wizards in case of accusation. Many of these lynchings often came from land conflicts and settling disputes between neighbors or families in rural conflict.

Many of those who stopped the rains for the construction of roads in the country, who protected plantations and villages against the aggression of pachyderms and other ferocious animals, who cured the populations of ailments of all kinds (mentally ill, infertility etc.) have for the most part been lynched for witchcraft under the helpless gaze of their family. Indeed, acts of witchcraft do not constitute a criminal offense in the eyes of the law. Some administrative and judicial authorities could imprison the alleged wizards for disturbing the public order; others would imprison them to protect them against the popular verdict. In the absence of justice, the people resort to private justice. The perpetrators of lynching often benefit from the support and protection of the population and thus impunity persists (E. Kagisye, 2006).



Figure 3: The Twere and his Mwandzi, special broom whose palm twigs are connected to the point of his holding in hands by a metal ring, not metaphysically innocent. Source: D. Ngalebaye, *Otwere, The traditional judicature facing the challenges of Congolese modernity*, Paris, Publibook, 2010, p. 175.

6. Conclusion and Recommendations

The Twere, the bearer of the Mwandzi as a symbol of power, is the person who has accumulated and mastered the Otwere code. He is the person who represents Otwere. In his trials the Twere implements his personality and is deeply involved in his work, whereas the modern law judge knows only “telling the law” which has nothing to do with his personal ethics. Work is work and personality is personality in modern justice. No possible match between quality of work and personal ethics. Traditional law is of an efficiency that is not observed in modern law where judges only involve themselves in “telling the law”. The judge, in his report to the diction of the

law seems to stick mostly to the technique, without getting involved.

Contemporary Africa has taken the option of systematically importing its norms of thought, speech and action applicable to such varied areas of life as public governance, university research and teaching, the regulation of living together, individual and collective behavior, speaking on public space (...), as if locally there was no historical legacy to capitalize prospectively. The more the performance of a Twere is technically and morally good and appreciated, the more he will be consulted and His reputation will go far; conversely, his reputation will fall abruptly into public opinion, and he will become the laughing stock of all, he and his family, from generation to generation. It is to prevent this kind of morally disastrous case that a special emphasis is put on his formation or the initiation of postulants to the dignity of the Twere, an intellectual reference in his milieu (Ngalebaye, 2011).

Despite the use of the non-dissuasive instrument like the Mwandzi, the Twere, with the simple persuasive word, succeeds in appeasing the warring parties and the whole community. This is what state authorities cannot do with all their law and all their devices of security, persuasion or coercion. Basically, such an instrument, of such efficiency, should be revalued at the national level to find the real reasons for its resistance or its adaptation to the current reality. How can one understand that, whatever the nature of the case to be treated, Otwere manages to defy the passions and stand up as a real instrument that soothes tensions in front of the assistance composed of the two parties opposite, without counting curious observers came to assist the event? So, there are good reasons to question the Otwere code, in order to bring it to reveal what it hides as reality.

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