



NEAR EAST UNIVERSITY
INSTITUTE OF GRADUATE STUDIES
INTERNATIONAL LAW PROGRAM

**GLOBALIZATION AS A THREAT AGAINST THE
SOVREIGNTY OF A STATE IN THE 21st CENTURY: THE
CASE OF THE DEMOCRATIC REPUBLIC OF CONGO**

LL.THESIS

ALPHRED KITENGE

Nicosia

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LL.M THESIS

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We certify that we have read the thesis submitted by ALPHRED KITENGE OMUMBU titled “**GLOBALIZATION AS A THREAT AIGAINST THE SOVREIGNTY OF A STATE IN THE 21st CENTURY: THE CASE OF THE DEMOCRATIC REPUBLIC OF CONGO**” and that in our combined opinion it is fully adequate, in scope and in quality, as a thesis for the degree of Master of Laws in International Law.

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DECLARATION

I hereby declare that all information, documents, analysis and results in this thesis have been collected and presented according to the academic rules and ethical guidelines of Institute of Graduate Studies, Near East University. I also declare that as required by these rules and conduct, I have fully cited and referenced information and data that are not original to this study.

ALPHRED KITENGE OMUMBU

1/13/2022

Day/Month/Year

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ALPHRED KITENGE OMUMBU

Abstract

GLOBALIZATION AS A THREAT AGAINST THE SOVREIGNTY OF A STATE IN THE 21st CENTURY: THE CASE OF THE DEMOCRATIC REPUBLIC OF CONGO

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The subject of globalization is a rare subject which is directly linked to the African continent, the smallest amount of literature on the issue has motivated us to address this issue. Moreover, the importance of the question that we are addressing in this research no longer needs to be demonstrated for the countries of the southern hemisphere, in particular the Democratic Republic of Congo. The sovereignty of a nation constitutes an inalienable value for a people and a strong and clear expression of the political and economic independence of a State. However, there are internal causes in some 21st century states that can easily amplify forces outside the nation against its own sovereignty. The objective of this research is to know how to restore the sovereignty of the Democratic Republic of Congo in the context of the 21st century. We will demonstrate in this research that, this situation is caused by the legacy of an administrative system not appropriate for the DRC, and the consequences of the situation in which the Congo has operated for more than 40 years, have placed it in the category of weak states. And, that the solution to this situation passes by taking into account in the first place the restoration of the authority of the State, by reorganizing the capacity of the Congo to fulfill its sovereign mission. We then demonstrated the need for a constitutional reform, progressive; this progressive march will allow a good appropriation of the control of the whole of the territory which counts more than 2,000,000 km. To carry out our research, we mainly used secondary data, such as books, scientific journal articles, online public conference debates, international reports. Our study approach during this research was the qualitative approach and the descriptive method as we tried to describe how we can restore the sovereignty of the Democratic Republic of Congo. We perform descriptive content analysis.

Keywords: Democratic Republic of the Congo, Sovereignty, Multinationals, Globalization, 21st century.

LIST OF ABBREVIATIONS

- ANR: Agence National de Renseignement [National Intelligence Agency]
- APCD: Action pour un Congo Pacifié en Développement [Action for a Pacified Congo in Development]
- BNUDH: Bureau Nations Unies aux Droits de l'Homme [United Nations Office for Human Rights]
- BNA Act: British North America Act
- COPAP: Commission permanente pour l'administration publique. [Standing Committee for Public Administration]
- CSM: Conseil Supérieur de la Magistrature [Superior Council of the Judiciary]
- CCFD: Catholic Committee against hunger and for development.
- DRC: Democratic Republic of Congo.
- EIC: Etat Independent du Congo [Independent State of Congo]
- EMRM : Etat Major des Renseignements Militaire [Military Intelligence Staff]
- ETD : Territorial Decentralized Entities.
- EU : European Union
- FARDC : Force Armee Nationale de la Republique Democratique du Congo [National Armed Force of the Democratic Republic of Congo]
- FNI: Nationalist and Integrationist Front.
- GR : Garde Républicaine [Republican Guard]
- NEF: National Equalization Fund.
- NGO: Non Governmental Organization.
- NAFTA: North American Free Trade Agreement.
- OCHA: Office for the Coordination of Humanitarian Affairs.
- OECD: Organisation for Economic Co-operation and Development.
- UN: United Nations
- PNC : Police Nationale Congolaise [Congolese National Police]
- RDC : Rassemblement Congolais pour la Démocratie
- SEC: Security Exchange Commission.
- TRIAL: Tracking Impunity Always. [Swiss NGO]
- UDPS: Union pour la Democratie et le Progres Social [Union for Democracy and Social Progress]
- UNGP: United Nations Guiding Principles on Business and Human Rights.

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CHAPTER I

General Introduction

In the first chapter of our thesis, the aim was to situate the subject in time. We have opened up the debate on sovereignty. The 21st century is characterized in terms of International Law, by the debate on the nature of Westphalian sovereignty. Some authors believe that, sovereignty, is over, and states must accept, the situation. On the other hand, other authors believe that sovereignty, which is the supreme right of a people, and which gives a state its *raison d'être*, is far from being surpassed. Next, we have detailed, the context of our subject, that of a weak state. We spoke briefly about the concept of WEAK STATE, this weakness, is exploited by the actors of globalization, in order to further weaken the sovereignty of the Democratic Republic of Congo.

1.1 Background

The Thirty Years War was sparked by the overwhelming appearance of the holy Roman Catholic Empire of the Vatican, which viewed itself as a superstructure, having a right over other entities and independent denominations. This conflict began when the Archbishop of Prague demolished several Protestant temples.¹ And after several losses in human and material terms, in 1648, the Westphalia treaty was signed by consecrating the sacrosanct principle of sovereignty.

Westphalia sovereignty is to be seen as a solution which has resolved a two-fold crisis, in the sense that on the one hand, it has made it possible to curb the disorder and interference on the international scene of the Roman Catholic Empire of the Vatican, which acted as a superstructure, and on the other hand, this sovereignty allowed a new look on the State, by conferring at the same time a place of authority and a power which settles on a well-defined territory. It is in this understanding that Samantha Besson, affirms that the principle of sovereignty, that is to say of supreme authority over a territory, is a central principle of modern international law. What counts as sovereignty depends on the nature and structure of the international legal order and vice-versa.² And on her behalf, Alina K, asserts that, there are different types of

¹Lucien Bély. (1998). *The Peace Treaties of Westphalia and the French Domestic Crisis*. Historische Zeitschrift. Beihefte, 26, 235–252.

²Samantha Besson, *Sovereignty*, Published under the auspices of the Max Planck Institute for Comparative Public Law and International Law under the direction of Professor Anne Peters (2021–) and Professor Rüdiger Wolfrum (2004–2020). P.1.

territorial sovereignty resulting from the divisibility of territorial sovereignty and the distribution of components of sovereignty.³

The shockwave of the emergence of the phenomenon of globalization made some authors think that the era of Westphalia sovereignty was over. This argument is supported in particular by Michele Marsonet,⁴ who affirms I quote:

Fundamentally, globalization increases the volume, speed and scale of flows within and beyond borders of people, ideas, goods, money, drugs, viruses, emails, weapons and more, challenging one of the fundamental tenets of sovereignty: the ability to control what crosses borders in both directions. Sovereign states are increasingly measuring their vulnerability not to each other, but to forces beyond their control.

Globalization thus implies that sovereignty is not only becoming weaker in reality, but that it needs to become weaker.... Sovereignty is no longer a sanctuary.

The effects of Globalization have affected the Democratic Republic of Congo, primarily in the mining sector.

This around the years 1997-2001, that the Democratic Republic of Congo was put to the test of accepting and putting into practice the rules of Globalization in matters of mining investment. The peculiarity of this period is due to the political crisis and institutional instability experienced by the country.

For his part, Leonid E. Grinin⁵ describes the real impact of globalization on state sovereignty, saying I quote:

As a result, globalization significantly reduces and modifies the scope of national sovereignty and undermines the position of a state as the main subject of international affairs...

And further Leonid E. Grinin,⁶ demonstrates the vacuum that globalization creates by the change of the order of things, without having an alternative solution as effective as the one erased by his new order of things, I quote:

It is important to note that establishing the contours of a new order, globalization thus shatters the old, functioning within the framework of the state system, therefore, the speed of destruction of old relationships often exceeds the speed of formation of new ones. In particular, in a number of countries this is manifested in the destruction of traditional ideology, based on

³Alina K. (2010), *Public International Law*, edition routelage, fourth Published 2010 by Routledge 2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN.p.259.

⁴Reyntjens, F. (2007). *Briefing: Democratic Republic of Congo: Political Transition and Beyond. African Affairs*, 106(423), 307–317. <http://www.jstor.org/stable/4496443>

⁵Leonid E. Grinin, *State Sovereignty in the Age of Globalization: Will it survive?* P.4.

⁶Ibid.

the sacralization of the homeland and nations, and as a result, in the weakening of previously highly valued qualities such as patriotism in due to the growth of alternatives to national preferences and identifiers. But globalization has not on the contrary created a complete ideology to fascinate the masses. This is one of the main reasons why the Western variant of globalization appears (currently) unacceptable to many non-Western societies.

The importance of carrying out a study on the question of the sovereignty of nation-states in the south of the globe, in the 21st century is justified by the appearance of new realities (the Internet and all that it brings, such as the case of cyber-attacks and others) and also the appearance of new actors such as Multi-National Corporates, as well as regional organizations (European Union, African Union...) and sub-regional organizations of all kinds. This analysis will allow us to see and understand that globalization is not seen in the same way, depending on whether we are in the south or the north of the globe. In the south, on certain aspects of the functioning of the state, globalization is perceived as a factor which comes to deepen the factors which weaken the nation-states, while, in the northern part of the globe, globalization is perceived as an opportunity for nation-states, to renounce some of their rights in favor of a supranational structure.

The context which, we carry this analysis is that of the manifestation of multi-national corporates, the liberalization of the economy and the manifestation of interconnectivity, in other words, in the context of globalization.

1.2 Literature Review

1.2.1 *The debates on the issue of globalization and sovereignty in the 21st century*

Globalization, as a threat to the sovereignty of states, is an issue that requires special attention, given the importance of the subject. Michele Marsonet⁷ says: Globalization implies that not only does sovereignty weaken in reality, but it must be weakened. To support his argument, the author cites as an example the reaction of the United States and the world to the Afghan Taliban government, which provided access and support to al-Qaeda, which was ousted from power. Similarly, the U.S. pre-emptive war against Iraq ignored the UN and was supposed to have weapons of mass destruction. However, Lathi Jotia⁸ believes states have a role to play, but their flexibility is severely curtailed. She asserts that the problem of globalization is rather related to the biased way of implementing its socio-economic and political policies that

⁷Michele Marsonet, (2017) *National Sovereignty Vs. Globalization*, Academicus International Scientific Journal, Entrepreneurship Training Center Albania, issue 15, pages 47-57, January.

⁸Lathi Jotia, (2011), *Globalization and the Nation-State: Sovereignty and State Welfare in Jeopardy*, University of Botswana, Gaborone, Botswana, in: US-China Education Review B 2 p. 243-250 Earlier title: US-China Education Review, ISSN 1548-6613.

seem to benefit the GN (Global North) rather than the GS (Global South). Martin Loughlin⁹ points out that the increase in global capital flows and the intensification of networks of social interaction are not strong arguments to conclude that the sovereignty of states is ineffective. We take this point of view, and we believe that it is appropriate to ask those who support the obsolescence of nation-state sovereignty the current question of what structure actually works on the international scene, if not this structure based on nation-state sovereignty on the sovereignty of States?

However, it will be better to see how globalization manifests itself in the world, as this phenomenon is almost ubiquitous in all walks of life. As Anderson, quoted by Daði Arnar Sigmarsson¹⁰, has shown that economic globalization is one of the main factors behind the constitutional rights crisis. I am of the opinion that globalization threatens and reduces the sovereignty of states in the world by undermining the constitutional order, mainly through the neoliberal philosophy of the economy, which commands states to deregulate and privatize the civil service, on the one hand, and on the other, states are caught in the traps by free market agreements that are protected by international economic factors such as the WTO, whose main objective is to promote and encourage free trade in goods and services. And finally, globalization reduces the sovereignty of States through the rise of private economic regimes with NRAs, and the establishment of the system of international commercial arbitration, entrusted to the hands of individuals, in the event of settlement of disputes between States and MNCs. Leonid E. Grinin¹¹, asserts that at present, what remains of Westphalian sovereignty, is only a distant memory, given the profound change of the current international world.

Carlos Fortin¹², demonstrates the universal nature of our concern, supporting the particularity of international instruments, specially edited to establish a legal framework on the question of permanent sovereignty over natural resources, it is Assembly resolution 1803. The United Nations General Assembly of 1962 (proposed by Chile), and the initiatives of the Group on the Economic Order of Non-Aligned Countries (Resolutions 3201 (S-VI) and 3202 (S-VI), of the United Nations General Assembly, 1 May 1974) and the Charter of Economic Rights and Duties of States (Resolution 3281 (XXIX), of the United Nations General Assembly, 12 December 1974). Now, let's ask how the sovereignty of the Democratic Republic of the Congo is threatened by globalization?

1.3 The weak State

⁹Loughlin, Martin, *The erosion of sovereignty*. Netherlands Journal of Legal Philosophy, 2017 (2). pp. 57-81. ISSN 2213-0721. p. 1

¹⁰Daði Arnar Sigmarsson (2008), *Globalization vs. State Sovereignty: Constitutional Rights in a Crisis?* University of Akureyri Faculty of Law and Social Sciences Law, p.12.

¹¹Leonid E. Grinin, *State Sovereignty in the Age of Globalization: Will it survive?* P.7

¹²<https://core.ac.uk/download/pdf/286046165.pdf> Accessed November 12,2021

The Fund for Peace ranks the Democratic Republic of the Congo 5th out of 179 weak countries in the world. There is no need for a specific definition of this generic term of a «weak state», this term serves to demonstrate the dysfunctions that characterize a State. It is therefore in this sense that some authors have used this term. Reyntjens¹³, speaking of the situation in Congo, asserts that the DRC ceased to exist as a state, on the same line of thought, Gros¹⁴ speaks of “a phantom state” and Migdal¹⁵, speaking of “a weak state or weak state,” and on his behalf, in his book on the decentralization of Congo, Liègeois¹⁶ qualifies the Congo as a «fragile state» or «almost bankrupt state».

It was around 1997-2005 that the Democratic Republic of the Congo was put to the test to accept and put into practice the rules of globalization in terms of mining investment. The peculiarity of this period is the political crisis and the institutional instability experienced by the country. The effects of globalization in the Democratic Republic of the Congo are clearly visible in the mining sector, in that the failing administration prevents any possibility of monitoring the application of laws in the mining sector, Mining companies are breaking the law, and I quote from the Argor-Heraeus SA, and the Swiss Gold Refinery Company, case operating the mines, in eastern Congo.

Mbuyi Kabunda and Toni Jiménez Luque¹⁷ traced the history of the Democratic Republic of the Congo, focusing on the initiative of private looting of the King of the Belgians, Leopold II, and the continuation of this looting enterprise by the Belgian colonial kingdom. The Democratic Republic of the Congo then took the path of independence after a bloody process marked by the assassination of the emblematic Patrice Lumumba, and the coming to power of Mobutu Sese Seko, which established a long dictatorship and was cruel until its departure in exile in 1997. Mobutu literally sold the country to foreign companies that for decades freely exploited the country's vast natural resources.

The political history of the Congo shows that it has never had the opportunity to build its sovereignty on the national level, and assert it on the international

¹³ Reyntjens, Filip (2007) *Briefing: Democratic Republic of Congo: political transition and beyond*, in: *African Affairs*. The Journal of the Royal African society, vol. 106, n° 423, April 2007, p. 307

¹⁴Gros, J.-G. (1996) *Towards a Taxonomy of Failed States in the New World Order: Decaying Somalia, Liberia, Rwanda and Haiti*. *Third World Quarterly*, 17(3), 455–471. <http://www.jstor.org/stable/3993200>

¹⁵Migdal, J. (1988) *Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World*, Princeton: Princeton University Press.

¹⁶Liègeois, Michel (2008) *La décentralisation en RD Congo. Enjeux et défis*, Les rapports du GRIP, 2008/1, Bruxelles, 20 p.

¹⁷César Nkuku Khonde, Mbuyi Kabunda, Germain Ngoie Tshibambe, Toni Jiménez Luque, David Bondia Garcia, David Querol Sánchez, (2009), *La République Démocratique du Congo Les droits humains, les conflits et la construction/destruction de l'État*, Édition : Fundació Solidaritat UB et Inrevés. P. 5-7

level. Georges Nzongola-Ntalaja¹⁸ establishes certain factors that have plunged the country into the position of a weak state, and these factors manifest the beginning of the crisis which, has maintained the sovereignty of Congo in a bad position. These factors are the collapse of the state under the weight of the corruption of the Mobutu regime, the Rwandan genocide and its repercussions in the region, as well as the material security impact of expansionist projects in Rwanda and Uganda.

We believe that the solution to this problem, which we are analyzing in this research, will mainly involve the adoption of a Federal Constitution, which will allow the Congo to multiply management and control centers by the establishment of federal states, the latter will propel good governance through an effective rapprochement of the administration towards the people. And thus the Congo will be able to respond to one of its sacred vows to sing in its hymn, saying «WE WILL POPULATE YOUR SOIL and WE WILL ENSURE YOUR GREATNESS¹⁹». A strong administration is what the Congolese Nation lacks.

In summary, some authors strongly believe that globalization implies that not only does sovereignty weaken in reality, but that it must be weakened. However, others believe that states have a role to play, but their flexibility is significantly reduced. It is in this perspective that we have committed ourselves in the framework of our study, to name this situation which reduces and weakens the expression of the sovereignty of the Congo, this situation is for the Congo an inadequate administrative system, and the inappropriate constitutional form. The weakening and annihilation of the sovereignty of States, and of the Congo in particular, will find the solution in the strengthening of the principle of the sovereignty of nation-States, by providing the latter with appropriate administrative systems, and capable of ensuring an effective control of the management of the Country, and an effective distribution of the wealth of the soil and the subsoil of the Nation.

1.4 The Research Gap

Two reasons motivated us to do this research, the first is the great and remarkable insufficiency of research on the question of globalization and sovereignty on behalf of the countries of the South of the globe, this lack of writings is linked to the fact of the sub- development of states south of the Sahara, and for the vast majority of its states, instability of institutions is the cause.

The second reason that prompted us to do this research is the desire to strengthen the literature on the theme of sovereignty and globalization in

¹⁸Nzongola-Ntalaja, Georges. (2003). *La Guerre, la Paix et la Démocratie au Congo*. Journal of African elections. 2. 1-11. 10.20940/JAE/2003/v2i1a1.

¹⁹ *The national anthem of the DRC*

Africa. These two realities (Sovereignty and Globalization) do not constitute an exclusive reserve of the countries of the North of the globe.

The purpose of this study is to analyse how to restore the sovereignty of the Democratic Republic of Congo in the context of the 21st century?

1.5 Research Method and Hypotheses

To carry out our research on the analysis of the restoration of Congo's sovereignty in this context of the 21st century, we mainly used secondary data, such as books, articles from scientific journals, online audience conference debates, and international reports. We carried out the socio-political analysis of the current administrative system in the Democratic Republic of the Congo, a decentralized system, which creates and grants to component entities (Provinces and decentralized territorial entities (ETDs)) the State as a legal personality. This approach allowed us to grasp the root of the weakness that characterizes the Democratic Republic of the Congo, and to affirm our hypothesis according to which: A federal constitution, as well as the administrative system defined locally by the federal States, Taking into account the specific realities of local populations, will enable the Democratic Republic of the Congo to regain a strong sovereignty, at national level, through effective and efficient control of any territory, and at regional level, that Congo will be able to make its voice and opinion heard in the concert of nations.

Our approach to study during this research was the qualitative approach, and the descriptive method because we tried to describe the solution to restore Congo's sovereignty, in this unprecedented context of the 21st century.

1.6 The Contents of the Work Chapters

Our thesis consists of five chapters, divided as follows:

- Chapter One: General introduction on our work, we presented a background on the subject of globalization and the sovereignty of nation-states. A review of the literature on this issue, allowed us to see, according to some authors, that globalization has made confusing the notion of sovereignty, which is a sacred notion in the existence of States, and a particular look at the Congo, allowed us to grasp the cause of the weakening of the expression of its sovereignty. This cause is to be analysed in the angle of weak states.
- Chapter Two: By a socio-political analysis of the administrative system, we have been able to present the deep root of the weakness that characterizes the Congolese nation at present, it is the fact of bad administrative system inherited from the colony, and that no reform has been able to bring about restoration, and that this situation has resulted in placing Congo in the category of "WEAK STATE" characterized by WEAK AND

PARASITIC ADMINISTRATION, A CLIMATE OF PERMANENT INSECURITY THROUGHOUT THE TERRITORY AND THE CULTURE OF NON-COMPLIANCE WITH THE LAWS OF THE CONGO, these are the causes that weaken the expression of the international sovereignty of the Democratic Republic of the Congo;

- Chapter Three: From the observation of the failure of the administrative system as demonstrated in the previous chapter, which placed the Congolese State in the category of states that have gone bankrupt, in our third chapter, We have shown how the strategic actors of globalization take advantage of the current situation of the Congo, to obtain its benefits, by irregular exploitation of the natural resources of the Congo. And we have also demonstrated by an analysis of legal instruments the punishable character of the conduct of these actors (multinational companies).
- Chapter Four: In this chapter, we presented the arguments that show that the DRC will not be able to reach its full potential, by operating with an administrative system of the type of a Unitary State. Taking into account such factors as the population weight, the size of its national territory (2,345,410 km²),²⁰ the potential of its soil and subsoil, we have shown in this chapter that the constitutional form of federal state is the beginning of a solution to remove the country from the category of failed states.
- Chapter Five: In our last chapter, we proceeded with a series of recommendations, to propose a timetable for the implementation of the federal system spread over a period of 20 years, for an effective federalism taking into account the current realities of the Congo – a weak state – on all its vital parameters, on the national level, and on the international level. And we drew our conclusion, answering the question asked in this research. The question: how to restore Congo's sovereignty in this 21st century context.

²⁰https://fr.wikipedia.org/wiki/Géographie_de_la_République_démocratique_du_Congo. Accessed December 02, 2021

CHAPTER II:

CONGO ADMINISTRATIVE'S SYSTEM: ORIGIN OF THE WEAKNESS OF ITS SOVEREIGNTY

In our second chapter, we set out to demonstrate the origin of the weakness in which the DRC finds itself. To do this, we analyzed, from a historical, administrative and legal point of view, in order to establish, the cause of this weakness. This weakness is due, on the one hand, to the poor form of administrative management for the Congo. And on the other hand, the continuation of intense political crises, which characterized the birth of the DRC. The consequences of this global situation, have led the Congolese Nation, in an endless spiral of dysfunction of the Republic.

2.1. Brief historical Overview of the Independent Congo

2.1.1. *The Berlin Conference*

Long before existing as a legal person under public law, the Congo existed as a structure or an instrument which allowed the Belgian King Leopold II to exploit the Congo Basin.

Joseph Conrad²¹, in his book *Heart of Darkness* presents in a succinct manner the main objectives of the Berlin conference:

It aims to peacefully settle the disputes that arose in Africa, following the colonial conquests. Three main disputes concern almost exclusively the Congo. The questions are: freedom of trade in the Congo Basin, freedom of navigation on the Congo and Niger rivers, the formalities to be completed to make the occupation of this area effective in the race for colonization. Ces trois principaux objectifs à l'origine de la conférence de Berlin, convoquée et organisée par Bismarck, le Chancelier allemand, décrivent avec précision, la véritable raison de la présence des puissances de l'époque dans le Cœur du Continent Africain.

The Berlin Congress of 1884-1885 laid the foundations for the official occupation of Africa without lastingly resolving the rivalries between European nations²².

²¹Joseph Conrad,(2009), *Cœur des ténèbres*, translated from the English and presented by Claudine Lesage, Éditions des Équateurs, 2009, p. 71

The international dimension and character of the current administration situation in Congo, in relation to the impunity of multinationals which violate the laws and regulations of the Nation, find their source in this period of history.

2.2. *The Independent State of the Congo and the origin of administration in the Congo Basin*

The origins of the administrative structure of the Democratic Republic of Congo date back to the time of the constitution of the Independent State of Congo (EIC), whose private ownership was recognized to King Leopold II of Belgium.

Behind the scenes of the conference, Leopold II directly submits maps to his interlocutors indicating the limits of his claims on the Congo²³. Breaking with the usual order of things, the EIC creates a government, only after being recognized as a state. Leopold II then sends his mercenaries who install a 'military regime'. To compensate for the lack of tax revenues, the EIC grabs or sells the land of local populations to private companies, and uses forced labor.

Historians and political scientists agree that it was with the installation of the EIC that the roots of the administrative structure of the DRC were planted, historian Nday wel-E-Nziem²⁴ affirms that, it was by the royal decree of August 1, 1888.

The official Belgian bulletin certifies the departure of the EIC administration, it reads the following, I quote:

It is by the royal decree of August 1, 1888 that the country was divided into eleven districts. Each district was administered by a district commissioner who was assisted by one or more deputies. At this time, administrative organization and action were marked by the spirit of conquest. All the administrative institutions were to contribute to the exploitation of the colony. The administration also relied on various companies to which it had granted exorbitant powers in the field of the exploitation of the colony²⁵.

²²<https://histoiretec.wordpress.com/2012/11/06/47/> Accessed December 02, 2021

²³https://www.ac-paris.fr/portail/jcms/p1_1887963/la-conference-de-berlin-1884-1885
Accessed November 30, 2021

²⁴NDAY – E - NZIEM, (1997), *Histoire du Zaïre, de l'héritage ancien à l'âge contemporaine*, Bruxelles, DUCULOT, p.69.

²⁵Cfr. *Bulletin officiel, du Congo Belge 1888*, p. 247

2.2.1. The Characteristics of EIC Administration. The EIC had its capital in the City of Boma. And here are some aspects of his administration.

2.2.1.1. *Indirect Administration.* By indirect administration, we see the fact that the EIC was ruled by the Belgian monarch, established in Belgium, and assisted by a team of Belgian mercenaries and others who represented him on the territory of the EIC.

The central government of the EIC moved to Brussels in the year of its creation. Three departments made it up:

- Home Affairs (Maximilien Strauch)
- Foreign Affairs (Edmond Vaneetvelde)
- And the Finance Department (Hubert Vanneuss)²⁶.

Politically, the EIC had been administered on the basis of an improper administration, so that, we note on the one hand, that at the very beginning, of the structuring of the administration of the EIC, the latter, is totally devoted and dependent on foreign companies, which are present on the territory of the EIC, and on the other hand, no specific attention is reserved to the population of the EIC, and even on the other hand, this population has its land resold by the EIC.

2.2.1.2. *A Unitary and Militarized Administration.* Since 1888 the E.I.C. is divided into districts, later further divided into zones and sectors. The district commissioner has a political and administrative function. He must ensure respect for the authority of the State throughout his district. He commands the Force Publique²⁷.

The military character of this administration is justified by the context of the time. The need was to master the territory, and to ensure respect for the authority of the state. Civil servants, military and civilian, are hired for a period of three years²⁸.

2.2.1.3. *An Administration for the Exploitation of the Country's Natural Resources.* The king gave a special character to this state, by setting up a 'private domain' which was reserved for the state and will be open to mixed companies with individuals in order to exploit the resources of the soil and the subsoil.²⁹

The EIC was not a colony in the true sense of the word, however the deep roots of the nature and administrative practices of the DRC find their starting point in this period.

²⁶<http://www.cobelco.info/Histoire/congo1text.htm>. Accessed November 30, 2021

²⁷Louis De Clerck *L'administration coloniale belge sur le terrain au Congo (1908-1960) et au Ruanda-Urundi (1925-1962)* Publié dans l'Annuaire d'Histoire administrative européenne N° 18/2006. P.1.

²⁸Ibidem.

²⁹<https://www.africamuseum.be/fr> Accessed November 25, 2021

The administration of the EIC was an instrument for the benefit of the King of Belgium and the foreign companies present on the territory of the State, as well as the indigenous population. After a reign of 24 years without division on the Congo, the king of Belgium will cede the EIC, to Belgium, which will make it his colony during a period of 75 years.

2.3. The Belgian Congo from 1908 to 1960

2.3.1. Characteristics of the Administration of the Belgian Congo. The administration of the Belgian Congo was characterized mainly by the realization of the priorities of the Belgian settler. These priorities were defined by the position of Belgium, as well as the interests of the kingdom.

2.3.2. Unitary and Externally Oriented Administration. The administration during the colonial period did not derogate from the main characteristics of the administration of the EIC, in the sense that the priorities of the latter were oriented and controlled for the private companies which exploited the natural resources of the Congo, and in all this, the population and the development of the national territory were not among the priorities³⁰ and agents in service, of which approximately 1750 in the territorial administration.

In 1959 there were 703 doctors in the Congo, 308 of whom were civil servants, the rest being, for the most part, hired by private companies and religious missions. These 308 medical officers are distributed throughout the country. There is at least one in each of the 132 territories.³¹

The administration of the Congo colony suffered from a lack of priority, in the sense that the preparation and participation of the local population did not concern the colonist, this is demonstrated by the fact that the preparation of future officials began only twenty years later years before the accession of the Congo to its independence, and that in addition, the first University of the Congo, was created in 1954, six years after the independence of the Congo.

The report that I have quoted opposite, describes the situation of the administration of the Congo, one year before its accession to independence,

³⁰ Louis De Clerck : *L'administration coloniale belge sur le terrain au Congo (1908-1960) et au Ruanda-Urundi (1925-1962)* Publié dans l'Annuaire d'Histoire administrative européenne N° 18/2006. P.6.

³¹ *Rapport du gouvernement belge sur l'administration du Congo belge durant l'année 1958, présenté aux chambres législatives*, p. 170 (document officiel publié par le gouvernement).

in 1960. In 1959 more than 700 Congolese were promoted to the rank of territorial agent.³²

The character of unitary administration is fully evident in the fact that nowhere is there any mention of any form of federal management.

2.2.3. Administration Separatist. In general, Africa and in a special way, the DRC suffers from a disease the seed of which was planted and maintained during this period of colonial times. In his book, Louis De Clerck says I quote:

The course program provides general training in philosophy, literature, geography, law and history, as well as specific teaching including subjects such as indigenous politics, the law of the Belgian Congo and Ruanda-Urundi, ethnography, cartography and Bantu languages...³³

Ethnography is defined both as a method of social science research and as its written end product. As a method, ethnographic observation consists in interfering deeply and over the long term in a field of study in order to systemically document daily life, behaviors and interactions of a community of people. As a written product, an ethnography is a richly descriptive account of the social life and culture of the group being studied.³⁴

Introduced in the training program for future cadres of the territorial administration of the Congo, the ethnography has made it possible to identify the member peoples of different ethnicities. In a particular way for the Congo, this caused the weakening in the construction of the national identity. It is from ethnographic writing that the manipulative character of political leaders comes from exalting one ethnic group to the detriment of other ethnic groups.

As far as Africa is concerned, the instrumentalization of ethnicities by political leaders gave birth to tribalism, which is the basis of civil and ethnic wars.

Bah Thierno³⁵, makes the following observation: "On the threshold of the third millennium, we are witnessing in Africa a kind of implosion, marked by political instability, coups d'état, civil wars, ethnic and border conflicts, which make this continent so vulnerable to misery".

³²Louis De Clerck : *L'administration coloniale belge sur le terrain au Congo (1908-1960) et au Ruanda-Urundi (1925-1962)* Publié dans l'Annuaire d'Histoire administrative européenne N° 18/2006. P.5.

³³Louis De Clerck : *L'administration coloniale belge sur le terrain au Congo (1908-1960) et au Ruanda-Urundi (1925-1962)* Publié dans l'Annuaire d'Histoire administrative européenne N° 18/2006. P.6.

³⁴<https://www.greelane.com/fr/science-technologie-mathematiques/sciences-sociales/ethnography-definition/> Accessed November 22, 2021

³⁵Brice Arsène Mankou : *Le tribalisme*, Le Portique [Online], Recherches, Online since 14 December 2007, connection on 15 December 2021. URL: <http://journals.openedition.org/leportique/1404>; DOI: <https://doi.org/10.4000/leportique.1404>

Ethnic manipulation on the African continent has produced a very profound evil; I will cite the case of the Rwandan genocide in April 1994. Brice Arsène Mankou ³⁶affirms in his article I quote:

Before colonization, Rwanda had a homogeneous population, speaking the same language, having the same culture and the same territory, and practicing the same religion. So we could not say that there were ethnic groups, although the Rwandans recognize themselves as Hutu, Tutsi, or more rarely Twa. This name was not fundamental in the social identity of the Rwandan, especially as this categorization of identity was fluid: a Hutu could become Tusti, a Tutsi Hutu, this identity varying according to the interlocutors of the region. In addition, there was an approximate opposition between the Tutsi of southern Rwanda, who recognized the sovereignty of the mwami ('king) Musinga, and served by Hutu and Twa; and the Tutsi, Hutu and Twa from the north of the country, who refused it and generally lived in a peaceful manner.

The sad observation is made, after colonization, in that all consciousness and attachment to social identification, as described by Arsene Mankou, was abandoned in favor of identification and deep commitment ethnic, which competes at times with the meaning and the patriotic value.

The interest of this historical reading of the birth of the DRC is that it allowed us to locate the roots and the origins of the weakness of the sovereignty of the Congo.

2.3. The Independent Congo from 06/30/1960 to the Present Day

On June 30th, 1960, the Congo gained independence in the midst of euphoria. This country which explorer Henry Morton Stanley called a "geological scandal" and which more than one analyst predicted a better future because of its considerable and enviable natural resources, its strategic position in the heart of Africa and of its population characterized by a rich cultural diversity, collapsed a few weeks after obtaining national and international sovereignty.³⁷

The first steps of the Congo as an independent state are characterized by crises which have had considerably heavy consequences, both on the founding of the nation, as well as on the assertion of sovereignty at the international level.

³⁶Ibid.

³⁷César Nkuku Khonde, Mbuyi Kabunda, Germain Ngoie Tshibambe, Toni Jiménez Luque, David Bondia Garcia, David Querol Sánchez, (2009), *La République Démocratique du Congo Les droits humains, les conflits et la construction/destruction de l'État*, Édition : Fundació Solidaritat UB et Inrevés. P. 32.

This institutional derapage is clearly presented by Pierre E.³⁸, I quote:

Independent, it became the scene and the reason for five years of chaos, punctuated by mutinies, secessions, rebellions, assassinations, coups and external interventions, including that of the United Nations, before giving way to 32 years of a regime suffocating, predatory and ultimately ruinous. The 'liberation' of the Mobutist regime in 1997 only added armed violence to the Congolese daily life of arbitrariness and poverty, quickly leading to the military partition of the country, the almost total collapse of the administrative apparatus and the marginalization of a still embryonic civil society. In all these years, the Congolese have never had the chance to freely choose either their leaders or their political system. The bankruptcy of the state project in Congo is added to the heterogeneity of its populations, to the dislocations of foreign occupation, to armed rebellions, and to the geographical dispersion of its natural resources, to the point that the Democratic Republic of Congo (DRC) could have rationally ceased to exist, as a state, some time ago.

And the current situation in Congo, in this context of globalization, is marked by administrative chaos. The administrative chaos is due to several factors, the most important of which relates to the failure of fiscal and financial decentralization between the central power and the provinces. The Congolese authorities are cleverly stifling reform initiatives without completely suffocating them. The dual objective is to keep them active (as part of their financing, to maintain tolerable relationships with foreign partners or to continue to participate in a process) but at the same time to slow down, block or sabotage the reform.³⁹

If real reforms were implemented, many Congolese officials would eventually lose their usefulness. They would see their ability to take advantage of "commissions" and other forms of corruption diminished. They are playing the game by working in favour of reform, while ensuring that they do not cut off the branch on which they sit.

2.4. The Causes of the Fragility of the Sovereignty of the DRC

As demonstrated by the historical account, which briefly retraced the circumstances which characterized the existence and functioning of the Congo before its accession to international sovereignty, the organization and functioning of the administration have always been the major problem directly attached to the sovereignty of the Congo.

The question of the administration remains an unresolved question for the Congo (1), and alongside it, we will also analyze the question of security (2),

³⁸Englebert, P. (2003). *Souveraineté, sous-développement et le paradoxe nationaliste congolais*. Mondes en développement, n^o 123, 63-87. <https://doi.org/10.3917/med.123.0063>

³⁹Trefon, T. (2010). *Les obstacles administratifs à la réforme en République démocratique du Congo*. Revue Internationale des Sciences Administratives, 76, 735-755. <https://doi.org/10.3917/risa.764.0735>

the non-respect of the laws of the Republic mainly in with regard to the exploitation of the country's natural resources (Mines, Petroleum, etc.). These are the major causes which reduce the expression of the sovereignty of the Congo.

2.4.1. The inadequacy of administrative systems in Congo: source of state weakness

Administrative reform has been on Congo's political agenda since independence in 1960. It was also an insoluble problem that preoccupied Belgium during the colonial period.⁴⁰

Immediately independent, the DRC faced an unprecedented situation, a mutiny that lasted five years, and which put the country's young administration to the test. The administrative instability of the 1960s paved the way for a situation, which has not yet been resolved.

2.4.2. The Various Main Administrative Reforms of the Congo. The DRC had a particular beginning as a state. Its administrative management during the colonial era created fragility in the administrative functioning of the country. Attempts to solve this problem had been undertaken, by means of various administrative reforms. We retrace the most significant administrative reforms that the Congo had known in its history.

2.4.2.1. The 1972 Administrative Reform⁴¹. Legal basis: Ordinance-Law n ° 73/023 of 04 July 1973. The Second Republic, which began in 1965, proclaimed the supremacy of activism over the control of the administrative activities of the state. This principle will permanently plant the seeds of decline that will gradually experience the public administration and the country as a whole.

Realizing the need for a functional public administration, the government launched, without consultation with the agents and civil servants of the State, considered primarily responsible for the dysfunctions of the administration.

The main thrusts of this reform have been the decentralization of human resource management, but also the elimination of the duality between the single party and the public administration.

⁴⁰Ibid.

⁴¹Diumasumbu Mukanga, R. (2008). *Réforme administrative de la République démocratique du Congo : leçons et travers du passé. Afrique contemporaine*, 227, 95-106. <https://doi.org/10.3917/afco.227.0095>

2.4.2.2. *The Administrative Reform of 1981*⁴². Legal basis: Law n ° 81/033 of July 17, 1981 relating to the status of career staff of State public services commonly referred to as the 'Civil Service Statute'. In 1981, the government, noting the failure of the 1972 reform, launched a second national reform which reverted to the decentralization of human resource management considered to be one of the main causes of dysfunctional public administration. A new statute for civil servants is adopted, and reinforces the centralization of state organization. However, no support system at the start of the reform was put in place. The ordinances for the application of the new statute were not taken, in part, until 1982, the organic structures were not reviewed, the attributions and working procedures kept as they were and the Ministry of the Civil Service, newly created to replace the Permanent Commission for Public Administration (Copap) which operated during decentralized management, inherited powers identical to those of Copap.

2.4.2.3. *The Administrative Reform of 2008*. Legal basis: Organic Law No. 08/016 of October 7, 2008 on the composition, organization and functioning of Decentralized Territorial Entities and their relations with the State and the Provinces.

This decentralization-based reform essentially focuses on the three axes following:

- The new division of the national territory, the number of provinces goes from 11 to 25 provinces in addition to the City of Kinshasa which has provincial status. This new division multiplies the number of development poles over the immense expanse of our country with continental dimensions.
- The Constitution endows the province with greater political, administrative, financial and economic autonomy than it enjoyed when it was still a decentralized territorial entity.
- At the same time, the Constitution achieves classic administrative decentralization. It confers the status of decentralized territorial entity on the city, municipality, sector and chiefdom.

Thus, the new Congolese Constitution clearly enshrines decentralization as a new mode of organization and management of public affairs in general and of local affairs in particular, replacing an excessively centralized and authoritarian management system instituted several decades ago.⁴³

⁴² Ibid.

⁴³<http://www.decentralisation.cd> Accessed December 05, 2021.

2.5. The Weaknesses of the 2008 Administrative Reform

This administrative reform initiated by the current Constitution of the DRC suffers from a great weakness. This weakness, constitute the demonstration of the theory of a weak State, which is characterized by the non-observance of the laws of the Republic, on the one hand, and on the other hand, the lack of clarity in the legal provisions of the Country. The reflection of this situation internationally is seen as the source of the problem of the weakening of the sovereignty of the Democratic Republic of Congo.

2.5.1. *The Dysfunctioning of the National Equalization Fund (NEF)*

Fiscal decentralization deals with all financial relationships between the State and local communities: own and shared field, transfers, borrowing, control ⁴⁴...

The central government bears the heavy burden of redistributing the resources of a wealthy province, with a less wealthy province. This distribution of resources is achievable by means of the equalization fund, however the law which creates this national fund in Congo does not provide any precision on the functioning of this fund.

Article 181 of the Constitution⁴⁵ constitutes the legal basis of the Caisse Nationale de Perequation. The article states, I quote:

“A National Equalization Fund is hereby established. It has legal personality. The mission of the National Equalization Fund is to finance public investment projects and programs, with a view to ensuring national solidarity and correcting the development imbalance between the provinces and between other decentralized territorial entities. It has a budget funded by the public treasury to the extent of ten percent of the total national revenue accruing to the state each year. It is placed under the supervision of the Government. An organic law fixes its organization and its functioning”.

Unfortunately, this fund is not yet effectively operational, and this situation is due to the fact that the central government risks encountering major budgetary difficulties as soon as it is deprived of 40% of its tax revenue without seeing its charges decrease in the future the same proportions.⁴⁶

The dysfunction of the National Perequatio Fund is caused on the one hand by the lack of political will on the part of the central government, and on the

⁴⁴https://www.cabrisbo.org/uploads/files/Documents/seminar_presentation_2011_led_network_of_africa_cabri_seminar_cabri_7th_annual_seminar_french_12._cabri_fiscal_decentralisation_french.pdf accessed November 09, 2021.

⁴⁵Constitution de la République Démocratique du Congo telle que modifiée par la Loi n° 11/002 du 20 janvier 2011 portant révision de certains articles de la Constitution de la République Démocratique du Congo du 18 février 2006.

⁴⁶Lietaer, Samuel. (2008). *La Décentralisation en RDC. Quelles conséquences pour la politique katangaise dans le secteur minier ?* P.20

other hand, it is produced by the lack of precision of the text of the organic law n ° 16/028 on the organization and functioning of the National Equalization Fund, which remains silent with regard to the resource allocation mechanisms and the criteria for the selection of Territorial Decentralized Entities (ETD), to receive subsidies.

Institutional development is a complex process with several components (administrative, sociological, and political) which jointly determine the performance of public management. Failure to take this into account sufficiently has contributed to the low success rate of administration reforms carried out so far in Africa.⁴⁷

The report of the National Forum on Decentralization in the DRC ⁴⁸, warns that decentralisation in Africa (and therefore also in the DRC) undermines the attitudes and behaviour of central state officials (...), that reforms at the sectoral level are often blocked by the centralization of financial management of public resources, and that governments create new institutions that delegitimize existing ones. All these obstacles are, indeed, of a political nature, and therefore the consequences of divergent political will.

The irresolution of this administrative question has led to several consequences including the sub-administration of the national territory, the distance between the administered and the administration, as well as the appearance of areas that are not covered by the presence of the State authority, it creates, in a word, the situation of insecurity.

2.6. Insecurity on the National Territory and the Consequences of the Culture of Non-compliance with Legal Texts

2.6.1. Security Situation in Congo

To rely only on recent data, relating to the security situation of the Congo, I quote the report of the OHCA which dates from 16 November 2021:

The security situation remains worrying in the north of the Nyunzu Territory where since the beginning of October several deadly attacks by armed gangs against civilian populations have been recorded in the health areas of Butondo, Kisengo and Zongwe. On October 24, a village chief was killed during an incursion into a village in the Butondo health area (about 120 km northwest of Nyunzu), prompting nearly 1,750 people from that village and

⁴⁷https://www.researchgate.net/publication/334762741_La_Decimalisation_en_RDC_Quelles_consequences_pour_la_politique_katangaie_dans_le_secteur_minier. accessed December 10,2021

⁴⁸Ibid.

surrounding communities to move between November 7 and 8, towards the villages of Kyata and Sulumba (Sulumba health area). Another displacement was reported on November 10, when about 3,900 people left their homes to seek refuge in Lengwe (Lengwe Health Area), due to an armed incursion into the village of Nkongwe.⁴⁹

After years of economic and political decline and two regional wars, the Congolese population continues to face extreme violence, mass displacement and widespread rape. The government of the Congo, which finds itself paralyzed, is unable to keep the security situation under control. The Congo war, from the beginning, to the date, counts more than 4 million deaths.⁵⁰

At present, the security situation in eastern Congo indicates a half-yearly death toll of at least 30. The majority are civilians, who are massacred by the armed groups maintained by the Multinational Companies.

According to the monthly protection monitoring report of the United Nations High Commissioner for Refugees, in May 2021, the security situation is as follows:

Violations committed against children 982 victims in total (71 of them children)
Cases of human rights violations and incidents increased between April and May in Mwenga, Uvira and Kalehe.

The majority of violations concern violations of property rights (619), followed by violations of the right to liberty (444), followed by violations of the right to physical integrity (306) and sexual and gender-based violence (84).⁵¹

The security situation in the DRC is more prevalent in the world, because several hundred souls died, following the multiple political and administrative crises that characterized the country. The nature of a weak state, and especially for the Congo, is demonstrated by the fact that the populations are far removed from the administration.

2.6.1. *The Consequences of the Culture of Non-compliance with Legal Texts*

The failure to resolve the question of the administration in Congo, as demonstrated in the preceding points, has produced a culture of impunity against any person (moral and physical) who violates the law. By law, we encumber the international legal instruments, which have primacy over national law, after their ratification by Parliament and the Senate.

⁴⁹Humanitarian information note for the provinces of Haut-Katanga, Haut-Lomami, Lualaba and Tanganyika (Novembre 2021)

⁵⁰<https://www.rescue.org/country/democratic-republic-congo>. Accessed December 20, 2021.

⁵¹ <http://unahavenir.org/wp-content/uploads/2021/07/RAPPORT-DE-LA-SITUATION-SECURITAIRE-RDC.pdf> Accessed December 20, 2021.

2.6.1. *Administrative faiblesse and judicial institutions in the Congo.*

The courts and tribunals of the Congo, suffer from a malfunction, caused by the fact of the almost total absence, of the respect of the legal texts, following the bad influence of the executive power. This climate has placed the DRC in the category of states that violate international legal instruments duly ratified by the government.

Leandro Despouy presented a report⁵² Human Rights Council, following his visit to the DRC from 15 to 21 April 2007. He said that there are fundamental problems in the judicial system, including the lack of judicial personnel, the interference of the army and the executive in its operation, the lack of access to justice for the majority of the population, the lack of will and capacity to enforce court decisions, the frequent prosecution of civilians before military courts, and the abuse of preventive detention.

2.7. The Weakness of the Administrative System and the Human Rights

The weakness of the public administration in the Congo, affects other branches and services of the State, and causes violations of human rights and the provisions of other international legal instruments. The services responsible for national security are marked by multiple violations of human rights.

2.7.1. *The Congolese National Police (PNC)*

Kinshasa Special Police Services, better known as Kin Mazière, has been operating for years as a highly politicized unit that would report directly to the Presidency. The BNUDH has recorded numerous cases of torture, cruel, inhuman or degrading treatment, arbitrary arrests and unlawful detentions by officers of this service. However, human rights officers were not always able to verify these allegations because they were denied access to the dungeons de facto (under the pretext of the alleged absence or otherwise unavailability of the officers responsible for authorizing the visits) or the detainees were moved and hidden during the visits of the BNUDH.⁵³

2.7.2. *Congolese Armed Forces (FARDC)*

The Republican Guard (GR) was created in 2004 in accordance with Law No. 04/023 of 12 November 2004 on the general organisation of defence and armed forces. The mandate of the GR is to ensure the protection of the Head of State as well as presidential facilities throughout the DRC. Nevertheless, the GR operates as a politicized service and its elements have been implicated in allegations of serious human rights violations, including arbitrary

⁵² Rapport des experts de Nations Unies A/HRC/4/25/Add.3 du 24 mai 2007

⁵³[https://monusco.unmissions.org/sites/default/files/olddnn/Rapport semestriel du BNUDH \(janvier-juin 2007\).pdf](https://monusco.unmissions.org/sites/default/files/olddnn/Rapport%20semestriel%20du%20BNUDH%20(janvier-juin%202007).pdf) Accessed December 12, 2021.

executions, enforced disappearances, abductions, arbitrary arrests and unlawful detention accompanied by ill-treatment. In Kinshasa, access to the dungeons of Camp Tshatshi and Camp CETA is rarely granted and detainees are kept there for extremely long periods. In addition, allegations of extrajudicial executions committed by the GR during the events of 22-25 March 2007 in Kinshasa were documented by the BNUDH. A member of the political party Union for Democracy and Social Progress (UDPS) of Bukavu said that he had been arrested and subjected to cruel, inhuman and degrading treatment by a GR soldier on 17 May 2007, for commenting on the celebrations in Kinshasa, in the presence of a GR soldier in civilian clothing. The victim was arrested, beaten with a stick and held in a holding cell in the GR camp, where she was stripped naked and again severely beaten before finally being released the following day. The victim was instructed not to tell anyone about the incident or she would be killed.

On 5 July 2007, after several unsuccessful attempts, the BNUDH met with the GR commander with the intention of conducting follow-up investigations into the events of 22-25 March 2007 in Kinshasa. During this meeting, the commander agreed to give BNUDH access to the dungeons of the Tshatshi camp. He acknowledged that some human rights violations had been committed by GR soldiers against the prisoners under their responsibility. He instructed RM Legal Counsel to serve as a focal point and facilitate visits to the BNUDH. He also welcomed the BNUDH proposal to hold monthly meetings with the legal advisor to discuss and follow up on cases of registered human rights violations. However, real progress remains to be made on the issue of access to GR camps across the country.⁵⁴

2.7.3. *The National Intelligence Agency (ANR)*

The National Intelligence Agency (ANR), a civil intelligence service, is governed by Decree-Law No.003/2003 of January 11, 2003, which entrusts it with the task of monitoring the internal and external security of the State. Despite the mandate given to it, the systematic monitoring of the ANR's actions by the BNUDH has shown that the vast majority of cases referred to this service are cases of ordinary criminality, without any link to State security issues. During visits to the ANR dungeons, human rights officers frequently observed the presence of detainees accused of petty theft, assault and battery, non-payment of debts, property problems, these detainees have often been subjected to torture and cruel, inhuman or degrading treatment. During the period covered by this report, ANR officials were also involved in political human rights violations, in particular against members of the opposition, of journalists and human rights defenders (see Section D). The agents of the

⁵⁴<https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session33/Pages/ListReports.aspx> Accessed November 14, 2021.

ANR may not be the subject of investigations or legal proceedings without the prior authorization of the Managing Director of the ANR.⁵⁵

In practice, the BNUDH has not been able to register a single case where a ANR officer involved in human rights violations has been the subject of investigation or prosecution.

A member of the political party Rassemblement Congolais pour la Démocratie (RCD) was arrested on 7 January 2007 at the Ruzizi border crossing in Bukavu, South Kivu Province, on the grounds that the ANR agents found in the address book of his telephone the number of Me Azarias Ruberwa, one of the former Vice President during the Transition period. They allegedly accused him of planning the recruitment of «Rwandan mercenaries» to attack the DRC. These agents would have demanded up to \$1,000 for his release.

The President of a local NGO in Mbuji Mayi was reportedly the victim of arbitrary arrest followed by cruel, inhuman and degrading treatment inflicted by the Director of the ANR in Mbuji Mayi on 18 April 2007. According to the victim, the arrest took place following a press conference she allegedly held on 14 April 2007 during which she accused the Governor's advisors of violating the human rights of the Kanyok community. The Director of the ANR accused the victim of uttering insults against the Governor during the press conference. The victim was detained for 26 hours and released without charge.⁵⁶

2.7.4. Military Intelligence Service (EMRM)

The Military Intelligence Staff (formerly known as "DEMIAP") is responsible for military surveillance inside and outside the DRC. As with the other services mentioned in this section, access to detainees from this service in Kinshasa is difficult to obtain. Officially, this service has no dungeon at its headquarters in Kinshasa.

However, the BNUDH⁵⁷ documented cases of arbitrary arrests by members of this service. Most of the documented cases involve civilians arrested in the provinces and then transferred to Kinshasa for essentially political reasons. Despite BNUDH's efforts to uncover the whereabouts of these individuals, they were kept in secret places for weeks that did not allow family members, or lawyers, to hear from the victims to visit them.

The President of the NGO Action pour un Congo Pacifié en Développement (APCD) was arrested by the FARDC Intelligence Officer (T2) on 19 January 2007 in Goma and transferred to Kinshasa on 26 February 2007 by the Military Auditor.

⁵⁵Article 25, du Décret-loi N°003/2003 du 11 janvier 2003, portant création de l'ANR.

⁵⁶<https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session33/Pages/ListReports.aspx> Accessed November 14, 2021.

⁵⁷Ibid.

The BNUDH was informed of this case but could not find out where the victim had been transferred. In the end, on 16 March, after thorough investigations, the BNUDH was able to establish that the victim was being held at the former DEMIAP headquarters in Kintambo. Following the intervention of the BNUDH, the victim was released.

CHAPTER III:

The Sovereignty of Congo in Face of the Actors of Globalization the Multinational Companies

Our third chapter is devoted to the analysis of the conduct of Multinational Companies, which exploit the natural resources of the nation (Oil, Minerals, etc.). In the light of international legal instruments, we have demonstrated the irresponsibility of these actors of globalization, who are all bound by the various international agreements and conventions. The conduct of the main actors of globalization (companies and multinational companies), is regulated by international legal instruments such as, for example, the guiding principles of OCEDE, and others... Thus, any violation, by the multinationals, must in principle open, sanctions, and reparations for the victims. But, however, this is not really the case for weak states. Because, the latter, are unable to run the machine in view of seeing the culprits receive the sanctions.

3.1. Definition and brief Overview of Globalisation

3.1.2. Definition

For his part, Charles-Albert M,⁵⁸ defining globalization affirms that globalization accounts for an interdependence between four processes: financial globalization, the world organization of production by transnational firms, the free circulation of goods and the instantaneous information.

Globalization (or globalization for Anglo-Saxons) is the process of opening up all national economies to the global market.⁵⁹

Globalization is defined as the linking of different geographical units through a historical process of progressive extension of the capitalist system in global space.⁶⁰

For some authors⁶¹, globalization is seen as the growth in the size of social systems and the increase in the complexity of intersocietal links.

In its general definition, globalization can be defined as an extensive network of economic, cultural, social and political interconnections and processes

⁵⁸ Charles-Albert Michalet, (200) *Qu'est ce que la mondialisation ?*, Paris, La Découverte. P.20.

⁵⁹ KORLAELÇİ, M. A. Ü. İ. F. (2015). *La mondialisation*. Felsefe Dünyası, 62, 5.

⁶⁰ Angela Barthes (2005). *Petit manuel simplifié pour comprendre la mondialisation*. Publibook université, halshs-00009134 p. 10

⁶¹ Jim Sheffield, Andrey K., & Leonid G. (2013) *Globalization: Yesterday, Today, and Tomorrow*, Library of Congress Control Number: 2013xxxxxx ISBN: 978-1-938158-08-7, Litchfield Park, AZ 85340, USA. P.19

which goes beyond national boundaries. However it's agreed that globalization is not a policy option but a fact to which policy makers must adapt.⁶²

Globalization is an old phenomenon that has been accelerating since the 1980s. It is a process of putting territories into competition by Anglo-Saxon liberal capitalism. Globalization is organized by a number of state and private actors. It has generated large flows that have, in turn, changed the global economic hierarchy.⁶³

3.1.3. Brief Overview of Globalization

Globalization is at once the fruit of a process; it is also the fruit of the actors. These actors are public (state actors) and private (multinational companies). Globalization takes place in stages.

3.1.3.1. Globalization as a Process.

When we look at globalization from the point of view of business, that is, the fact of the relationship that is established through trade, we can perceive several stages in the process that leads to current globalization. In the 16th century, the first globalization followed the discovery and colonization of America. To exploit the raw materials taken from the subsoil and the American soil, Europeans brought in African populations reduced to slavery. U.S. raw materials are processed in Europe; finished products are exported. In this triangular trade, there is interdependence between Europe, Africa and America. In the 19th century, following the colonization of Africa and Asia, a second globalization took place.⁶⁴

The second globalization began in the 19th century to accompany the rise of industrial capitalism. European countries are moving into industrialization. Companies are looking for cheap raw materials and opportunities. States conquer new colonies in Africa and South Asia. Trade flows are now global. Two world economies followed one another: English (around 1850) and American (from 1918).⁶⁵

The third globalization began in the late 1960s when the colonies became independent, and it accelerated from the 1990s when communism disappeared. This is called "globalization". All countries adopt the liberal capitalist model, even those that retain a reference to communism (China...). Capitalism takes a financial form because the deregulated financial sector

⁶²Yalcin, Betul. (2018). *what is globalisation?* 10.13140/RG.2.2.16793.93288.

⁶³https://www.lyceedadultes.fr/sitepedagogique/documents/HG/HGTermES/G02_cours_La_mondialisation_en_fonctionnement.pdf. Accessed November 20, 2021.

⁶⁴ <https://winscol.files.wordpress.com/2018/10/cours-4-la-mondialisation-acteurs-flux-dc3a9bats.pdf>. Accessed November 25, 2021

⁶⁵https://www.lyceedadultes.fr/sitepedagogique/documents/HG/HGTermES/G02_cours_La_mondialisation_en_fonctionnement.pdf. Accessed November 28, 2021.

(reforms of Margaret Thatcher in the UK and Ronald Reagan in the US) now imposes its rules on other sectors of the economy (very high profitability, regular publication of results, primacy of shareholder remuneration).⁶⁶

3.1.3.2. Globalisation: Flows and Actors.

The flows and actors of globalization are mainly constituted by information, the circulation of goods and money. As well as the multinational companies which constitute a type of truly strategic actor.

3.1.3.2.1. Globalization's Flows. Talking about the flows of globalization is talking about the things that make the concept of globalization understandable. The flow of globalization is constituted by all the things that are set in motion by means of the increasing accessibility of the world today. The world market, in the context of globalization, is constituted by a set of elements in terms of information, data and goods, which are set in motion by globalization.

Thus, in the context of globalization, we can cite several types of flow, we have for example; material flows. They concern consumer goods and human travel. Consumer goods mainly circulate between the three poles of the Triad (United States, European Union, Japan) and with East Asia more broadly. These exchanges represent nearly two-thirds of the total. The strategic importance of the Middle East region is reflected in the importance of oil and gas production and the fact that it has 50% of known reserves. These flows are increasingly important. Human flows are also increasing. There are now nearly 250 million migrants. Here again, there are north-south migratory flows (Latin America to the United States, North Africa and sub-Saharan Africa to the European Union), but also south-south (Indian world to the Persian Gulf) or north-north (Eastern Europe to Western Europe). These are economic migrations, including brain drain, or refugee flows. Tourism (940 million international tourists in 2010) is added to this.

Financial flows⁶⁷ are synonymous with stock market and banking transactions which are intensifying between the various financial centers of the planet, now connected to each other 24 hours a day. These are the main stock exchanges of Wall Street in New York, the City in London or the Tokyo Stock Exchange. In every major city in the world, a business center polarizes these flows at all levels.⁶⁸

⁶⁶Ibid.

⁶⁷ http://blog.ac-versailles.fr/FLUX_ET_ACTEURS_DE_LA_MONDIALISATION.pdf
Accessed December 17, 2021

⁶⁸Ibid.

3.1.3.2. Globalization's Actors. The actors of globalization, multiple, however, we focus on multinational companies, which constitute a particular class of actors, by their strategic and financial influences in globalization. Multinational Companies are defined according to the UN as an economic entity operating in more than one country or a set of economic entities operating in more than one country regardless of their legal form, whether in the country of the head office or the country of activity and whether the entities in question are considered individually or collectively.⁶⁹

Among the most important players in globalization are transnational firms. These large companies, about 80,000, which operate in several countries and have significant funds, direct flows. They account for more than half of world trade. The Multinational Companies are generally from Northern countries and very often American, such as General Electric. They contribute to a new international division of labour.⁷⁰

3.4. The threat and Violations of the Sovereignty of the DRC by the Conduct of Multinational Companies

The culture of violation of the law, is more amplified by the context of economic liberalism, which obliges States to liberalize the economic sector, by entrusting the management of public enterprises to people, or by transforming the enterprises of the State's flagship into a commercial company, under the pretext of generating a profitability capable of upsetting and restoring the national economy.

We will analyze the cases of oil exploitation, and a few cases in mining.

3.4.1. Oil Exploitation in the Congo

3.4.1.1. The case of oil exploitation in Muanda by PERENCO REP.

According to the report⁷¹ published by the Catholic Committee against hunger and for development (CCFD Terre Solidaire), an advocacy report that is part of the "Investments Out of Play" campaign, so that international investments in Southern countries really contribute to development, the oil company PERENCO REP, which enjoys deep impunity, I quote:

The Franco-British-Bahamian company has been operating in the territory of Muanda for more than ten years, without systematically worrying about the

⁶⁹ Draft norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights E/CN.4/Sub.2/2003/12/Rev.2 26 août 2003.

⁷⁰http://blog.ac-versailles.fr/ES_FLUX_ET_LES_ACTEURS_DE_LA_MONDIALISATION.pdf. Accessed November 25, 2021.

⁷¹CCFD TerreSolidaire (2013), *régulation des multinationales pétroles à Muanda : la justice au rabais. Etude des cas en RDC (République démocratique du Congo). L'impunité de l'entreprise PERENCO et la responsabilité des Etats face aux impacts, sociaux, environnementaux et fiscaux de l'exploitation pétrolière*. https://ccfd-terresolidaire.org/IMG/pdf/petrole_muanda_201113.pdf. P.61

impact of its operations on the population. Pipelines are not adequately maintained, and waste with high concentrations of toxic substances is released into the environment. While these operations take place in a particular ecosystem and the infrastructure is in the middle of the populations, no specific protection measures seem to have been taken by Perenco.

The weakness of the State, caused by the administrative crisis that characterizes the Democratic Republic of the Congo, means that updating the legislative and regulatory system for oil exploitation remains inadequate and ineffective. Unlike the mining sector, the oil and gas sector is not codified by legislation as a legal framework. In Muanda, the government has not undertaken any follow-up or study on the impacts of the oil industry on health, agriculture and fisheries, despite concerns expressed by Congolese and international communities and civil society.⁷²

3.4.2. The Exploitation of Mining Resources in Congo

3.4.2.1. Conduct and responsibility of Multinational Companies. A brief analysis of the conduct of certain transnational enterprises shows that the weak state situation characterising the eastern DRC, was exploited by these enterprises in the full light of the law and international legal instruments, both in the field of human rights and in the field of international trade ethics. Conduct of Multinational Companies. Globalization, constitutes a threat to the sovereignty of the Democratic Republic of the Congo, by the fact that the multinational companies which are the major players in globalization, and which exploit the minerals and other natural resources of the country, finances the movements of the rebellions on the Congolese national territory, because the climate of insecurity is favorable for them, in order to make great profits.

3.4.2.2. The case of Argor-Heraeus SA. This case had in its time demonstrated with eloquence the reliable character of the Democratic Republic of the Congo, in the sense that the latter had absolutely nothing, following its level of administrative slowness⁷³.

On first November, 2013, the Swiss NGO TRIAL⁷⁴ filed a criminal complaint with the Swiss Federal Prosecutor's Office against Argor-Heraeus SA, a Swiss gold refining company. The complaint alleges that the company was involved in money laundering. TRIAL maintains that Argor-Heraeus refined gold that had been looted by an illegal armed group (Nationalist and Integrationist Front (FNI)) in the northeast region of the Democratic Republic of Congo (DRC). The armed struggle for control of the mineral wealth of this region of the DRC has resulted in a particularly high number of human rights

⁷²Ibid.

⁷³ The DRC is ranked 174th in the business world out of 180 countries listed by the World Bank because of administrative red tape and tax harassment.

⁷⁴ TRIAL, Stop-pillage(2013), *Le pillage est un crime de guerre*, Suisse, pp 5-7

violations. The FNI allegedly used the profits from the sale of gold to finance its operations and buy weapons.

3.4.2.3. The Cases of Gold Exploitation by the Chinese Company KUN HOU on the Ulindi river in the Province of North Kivu. South Kivu is home to the second richest gold deposit in the Democratic Republic of Congo. The artisanal gold sector has long been an important source of jobs and income for the people of the province.⁷⁵In the territory of Shabunda, the Ulindi river is full of alluvial gold. But this landlocked and forested territory is under the control of several rebel armed groups. The activities of the Chinese company KUN HOU in this territory were protected by the armed group Raia Mutomboki. This armed group is led by local armed men and women who, when the movement was created, claimed to defend the local population, especially against the Rwandan rebels⁷⁶.

Chinese company Kun Hou Mining,⁷⁷belonging to the group of the same name registered in Shijiazhuang, in the Chinese province of Hebei, also has a subsidiary in Uganda. It is headed to the east of the Congo by a certain Michael Wang, 44, who started operations in Shabunda in September 2014 with a French partner, Franck Menard, 64. The Chinese company Kun Hou Mining, was accused of supplying firearms and other provisions to the Raia Mutomboki group, to ensure the protection of its gold mining on the river.⁷⁸

3.4.2.4. The Case of Metalor Technologies. Metalor Technologies International ⁷⁹ is a Swiss industrial group founded in 1852 and headquartered in Neuchâtel, Switzerland. It is one of the world's leading suppliers of precious metals, particularly for the Swiss watch industry.

According to the report by the international NGO Human Rights,⁸⁰Metalor Technologies, is responsible for purchasing Congolese gold from Ugandan sources. While claiming to follow all Swiss and international laws, Metalor's due diligence was problematic - they knew the gold came from Uganda. It is

⁷⁵Moise, Abdou Muhima. (2017). *ETAT DE DROIT A L'EPREUVE DE MINERAIS DES CONFLITS EN REPUBLIQUE DEMOCRATIQUE DU CONGO : CAS DE L'AFFAIRE ARGOR-HERAEUS SA ET LA SOCIETE CHINOISE KUN HOU MINING*. KAS African Law Study Library - Librairie Africaine d'Etudes Juridiques. 4. 585-602. 10.5771/2363-6262-2017-4-585. P.75

⁷⁶JASON STEARNS ET AL (2013), *Les Raïa Mutomboki : Déficience du processus de paix en RDC et naissance d'une franchise armée*, Publié en 2013 par l'Institut de la Vallée du Rift 1 St Luke's Mews, Londres W11 1DF, Royaume-Uni PO Box 30710 GPO, 0100 Nairobi, Kenya, P.43

⁷⁷Moise, Abdou Muhima. (2017). *ETAT DE DROIT A L'EPREUVE DE MINERAIS DES CONFLITS EN REPUBLIQUE DEMOCRATIQUE DU CONGO : CAS DE L'AFFAIRE ARGOR-HERAEUS SA ET LA SOCIETE CHINOISE KUN HOU MINING*. KAS African Law Study Library - Librairie Africaine d'Etudes Juridiques. 4. 585-602. 10.5771/2363-6262-2017-4-585.P.14

⁷⁸www.globalwitness.org. Accessed December 25, 2021.

⁷⁹ https://fr.wikipedia.org/wiki/Metalor_Technologies_International. Accessed December 25, 2021

⁸⁰ <https://www.hrw.org/legacy/wr2k5/wr2005.pdf>. Accessed December 25, 2021

also well known that there is virtually no production of indigenous Ugandan gold and that Uganda does not import gold from other nations. This leaves a likely source of the metal: the northeast of the Congo. Metalor's purchases were facilitated by the Swiss free port system. Free ports provide a place for the importation of goods that are legally outside the scope of government control. No duties or tariffs are applied to goods imported through these areas and, therefore, no record-keeping or government oversight takes place.

A company like Metalor can buy gold within the free zone without any official taxation and, above all, without trace of its origins.⁸¹

Globalization goes further than the mere fact of constituting a menorah against the sovereignty of the Congo we firmly believe that the term CRIMES OF GLOBALIZATION⁸² is appropriate as expressed by Friedrichs and Friedrichs to designate illegal and/or socially harmful actions produced by the anomic conditions of contemporary transnational economy.

3.5. International legal Instruments Regulating the Conduct of Multinationals in Relation to Human Rights

The UN has not remained on the sidelines of the situation of human rights abuses by certain multinational companies, which are active in the southern part of the globe. Thus, in its initiative, the UN has taken measures to regulate the conduct of multinational companies, to draw a line of conduct that States must follow on the issue of respect for human rights, and to also organize mechanisms for the legal redress of victims.

3.5.1. Standards on the Human Rights Liability of Transnational Corporation and other Enterprises

Adopted at the 22nd meeting⁸³ of the United Nations Human Rights Commission, on 13 August 2003, the Standards on Accountability for Human Rights of Transnational Corporations and Other Enterprises, sets out the responsibilities of multinational enterprises, In relation to a category of special crimes on the criminal level, this norm thus makes transnational companies justiciable before international legal bodies such as the International Criminal Court (ICC).

This pact reminds transnational corporations that, even if they are not state actors, they are citizens of the international order and are obliged to follow all

⁸¹Christopher W. Mullins & Dawn L. Rothe (2008) *Gold, diamonds and blood: International state-corporate crime in the Democratic Republic of the Congo*, Contemporary Justice Review, 11:2, 81-99, DOI: 10.1080/10282580802057678

⁸²Friedrichs, D. O., & Friedrichs, J. (2002). *The World Bank and Crimes of Globalization: A Case Study*. Social Justice, 29(1/2 (87-88)), 13–36. <http://www.jstor.org/stable/29768116>.

⁸³Draft norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights E/CN.4/Sub.2/2003/12/Rev.2 26 août 2003

the principles set out in the United Nations Universal Declaration of Human Rights, including those related to forced labour, corruption, illegal resource extraction and the need to fairly compensate workers.⁸⁴

The norms on the responsibility for human rights of transnational corporations set out in its section (E), the responsibility of transnational corporations, vis-à-vis the sovereignty of States, Articles 10-12⁸⁵ provide:

10. Transnational corporations and other undertakings shall recognise and comply with the applicable standards of international law, legislative and regulatory provisions and national administrative practices, the rule of law, the public interest, development objectives, social, economic and cultural policies including transparency, accountability and prohibition of corruption, and the authority of the countries in which they operate.

11. Transnational corporations and other undertakings shall not offer, promise, give, accept, tolerate, demand or knowingly benefit from any bribe or other undue advantage and no government, official or candidate for elected office, a member of the armed forces or security forces or any other individual or entity may not request or expect a bribe or other undue benefit. Transnational corporations and other undertakings shall refrain from any activity which helps, encourages or encourages States or any other entity to infringe human rights. They shall ensure that the goods and services they offer and produce are not used to violate human rights.

12. Transnational corporations and other undertakings shall respect economic, social and cultural rights and civil and political rights and contribute to their realization, in particular the right to development, adequate food and drinking water, the best possible physical and mental health, adequate housing, privacy, education, freedom of thought, conscience and religion, and freedom of opinion and expression, and refrain from any action that would hinder or prevent the realization of these rights and freedoms.

3.5.2. United Nations Guiding Principles on Business and Human Rights

It is an instrument that was developed and adopted on June 16, 2011. This document presents the guiding principles for companies in the area of human rights and transnational corporations. The main purpose of this document is the implementation of the United Nations framework, which consists of the three guiding values: PROTECT RESPECT and REPAIR.⁸⁶

⁸⁴Christopher W. Mullins & Dawn L. Rothe (2008) *Gold, diamonds and blood: International state-corporate crime in the Democratic Republic of the Congo*, Contemporary Justice Review, 11:2, 81-99, DOI: 10.1080/10282580802057678

⁸⁵Draft norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights E/CN.4/Sub.2/2003/12/Rev.2 26 août 2003.

⁸⁶Economiques, O. de C. et de D. (2002). Principes directeurs de l'OCDE à l'intention des entreprises multinationales La responsabilité des entreprises : instruments mondiaux Edition 2001 (Edition complète - ISBN 9264296824). Source OCDE *Industrie, Services et Échanges*, 2001(44), 1–15.

The Principles encompass three pillars outlining how states and businesses should implement the framework:

- The duty of the state to protect human rights
- The corporate responsibility to respect human rights
- Access to remedies for victims of business-related abuses

The Guiding Principles apply to all States and all business enterprises, transnational or otherwise, regardless of size, sector, location, ownership and structure. The Guiding Principles form a cohesive whole and should be interpreted, together or separately, in accordance with their objective of improving standards and practices regarding business and human rights in order to achieve tangible results for individuals and communities concerned and thereby also contribute to a socially sustainable globalization.⁸⁷

3.5.3. *The Oecd Guidelines on Transnational Corporations*

The Organisation for Economic Co-operation and Development (OECD) is an international organization of economic studies, whose member countries—mostly developed countries—share a system of democratic government and a market economy. It essentially acts as a consultative body. The OECD succeeded the Organisation for European Economic Cooperation (OEEC) resulting from the Marshall Plan and the Conference of the Sixteen (European Economic Cooperation Conference) which existed from 1948 to 1960.⁸⁸

Two basic principles in the guidelines are relevant to the case at hand. Section IV, Article 1(c) calls on all transnational corporations to “contribute to the elimination of all forms of forced or compulsory labour”. Such a provision against forced labour is generally accepted by the international community, but many failed states have struggled to enforce these provisions. Especially in the DRC, local warlords who control a region enslave local villagers and make them work in mining operations with impunity. Local and transnational corporations that buy and sell the exported minerals from these slave-managed mines are both directly and indirectly complicit in forced labour practices. Section VI requires transnational corporations to “not offer or yield to requirements to pay public officials or employees of business partners any part of the payment of a contract.”⁸⁹

It should be noted that there is little force behind the OECD guidelines; in the event of a breach, the only real course of action is the publication of a report

⁸⁷Ibid.

⁸⁸https://fr.wikipedia.org/wiki/Organisation_de_cooperation_et_de_developpement_économiques. Accessed November 30, 2021.

⁸⁹Christopher W. Mullins & Dawn L. Rothe (2008) Gold, diamonds and blood: International state-corporate crime in the Democratic Republic of the Congo, *Contemporary Justice Review*, 11:2, 81-99, DOI: 10.1080/10282580802057678

condemning the behaviour of companies and the appellants to stop their actions.

3.5.4. The Dodd-frank Act, Section 1502

On July 21, 2010, the President of the United States of America enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act with respect to financial markets in that country. Certain provisions of this Act have effect in the Democratic Republic of the Congo (hereinafter “DRC”), namely Article 1502 entitled “Conflict Minerals”.

The main purpose of this text of the American Senate is to oblige multinational companies, to establish evidence that the minerals they market, are extracted in compliance with international standards, and to report to the Security Exchange Commission (SEC).

But it should be noted that, in relation to this Senate law, there is a question of the sovereignty of the Congo. As accepted the fact that a law of the nature of an internal law of a State, can produce effects in a sovereign Country? The discussion on this issue is developed by Lwango Mirindi Patient,⁹⁰ in his book.

The theory of the weak State, which we have just described in this part of our research, has allowed us to see in some way the cause of this fragility of the Congolais State, and tends to question the validity of its sovereignty in this period of globalization. The current situation in the Congo is such that the system inherited from the regime of the colonial administration and that of the Second Republic was based on networks of patronage and clientelism, maintained through the appropriation of state revenues and the encouragement of corrupt practices.⁹¹The public sphere — including the defence and security apparatus, and public finances — has served private interests. The legal and institutional frameworks of the DRC suffer from inconsistencies. The framework encompasses legal and institutional systems of a statutory and customary nature; the former were inherited from the colonial era, while the latter were adaptations of the hereditary kingdoms and chiefdoms that preceded colonization. Under the Mobutu regime, changes were made on the basis of immediate economic interests. After the wars, major reforms were planned and enshrined in the 2006 Constitution.

The analysis of these instruments of international law, provided, the main argument, which restores the balance of the debate on the question of States, as the main actors of globalization, by their power to negotiate and ratify

⁹⁰Lwango Mirindi, P. (2014). *L'ARTICLE 1502 DU DODD-FRANK ACT : UNE MENACE POUR LA SOUVERAINETÉ DE LA RÉPUBLIQUE DÉMOCRATIQUE DU CONGO SUR SES RESSOURCES NATURELLES ?* Revue québécoise de droit international / Quebec Journal of International Law / Revista quebequense de derecho internacional, 27(2), 27–57. <https://doi.org/10.7202/1068025ar>

⁹¹https://monusco.unmissions.org/sites/default/files/issss_2013-2017. Accessed December 28, 2021.

international treaties, which establish the framework for the development of globalization. Thus, the multinational companies can in no way afford an irregular conduct because the states are involved to allow them to develop.

CHAPTER IV

FEDERALISM: THE IDEAL FORM FOR THE DEMOCRATIC REPUBLIC OF CONGO.

The fourth chapter of our thesis is devoted to an analysis on the form of the State, that must take the DRC. We relied on elements such as the size of the national territory, the demographic weight of the Congo, as well as its rich potential, to demonstrate, that, the form of decentralized Unitary State, is an inadequate form for the DRC. And that the form of federal state, is rather favorable, for the Congo. With the form of federal state, the effective management of the national territory, will be achieved, by the establishment of federal states, the administration will be closer to the base, in order to respond effectively to the multiple needs of the population.

4.1. Generality about the State.

The constituent elements of a State are three: the State is, thus, a political and legal organization operating on a population settled on a territory.⁹²

In its dimension of political organization, the State sets itself the main objective, to mark its presence in an effective and effective way, on a portion of land that constitutes its material element.

The territory constitutes for the State at the same time, the means to make itself localisable, on the physical plane, and the means to make analyze on the juridical and political level, in relation to its organization.

The process of state formation is different for the European continent than for the African continent. Modern states in Europe were formed as a result of a centuries-old evolution that broke with feudal forms of power. European societies of the Middle Ages were highly fragmented and unstable, institutionally and territorially. The growing centralization and politicization of power as a public and not a private thing, as was the power of feudal lords and corporations, has allowed the progressive institution of the triptych sovereignty, territory and people, key elements of the modern state.⁹³

⁹²<https://fallaitpasfairedudroit.fr/> Accessed December 22, 2021.

⁹³Etienne Ciapin. (2018), *Frontières et populations: territoires, mobilités, voisinages européens. Sociologie*. Université Grenoble Alpes; Univerzita Mateja Bela (Banskà Bystrica, Slovaquie), Français. NNT: 2018GREAH007. P.53

The African experience of the State dates back to colonial times. The first free State in Africa began to exist in the late 1950s. And as a result, the States of Central Africa are rocked, every day, in the hell of civil or interstate wars with a heavy toll: massive losses in human lives, waves of refugees, displaced populations, urban crime, etc.⁹⁴

4.2. Notions of forms of state and federalism

4.2.1. *Forms of the State*

Speaking of the forms of the State, the doctrine of constitutional law, retains two types of forms of State, the first is the sociological form of the State (Welfare State, Gendarme State), and the second type is the best known, it is the legal form (Unitary State, and Federal State).

4.3. Difference between Federalism and Unitarianism

4.3.1. The Unitary Form

The simplest legal form of the state because the most integrated is that of the unitary state. The latter is characterized by the unity of its political structure (a single government, a single Parliament, a single jurisdictional system) but also by the uniqueness of its legal order (a single legal order, that is to say a single pyramid of norms with at the top the single Constitution). By these two elements, the unitary state opposes the federal state.⁹⁵

The unitary States can still know a kind of functional subdivision, in Centralized Unitary State, which is characterized by the political unity and the unity of the administrative division, which corresponds to the national territory, and a decision-making centre for the management and animation of the State.

4.3.2. *The Federal form*⁹⁶

Federalism is a mode of government based on a certain way of distributing and exercising power from autonomous territorial governments that participate, in an orderly and permanent manner, in the institutions and decisions of the central government.

⁹⁴Ela Ela, E. (2001). *Les mécanismes de prévention des conflits en Afrique centrale*. Guerres mondiales et conflits contemporains, 202-203, 227-239. <https://doi.org/10.3917/gmcc.202.0227>. P.2

⁹⁵https://cours.unjf.fr/repository/coursefilearea/file.php/235/Cours/07_item/support07.pdf. Accessed December 22, 2021.

⁹⁶Ibid.

4.4. Concept of Federalism

In a globalized world, where we talk more and more about the weakness of States and where good governance is one of the criteria for international funding, the question of the choice between federalism and unitarism arises with great acuity. It is more important to resolve this question on the legal form and the administrative functioning of the DRC, in order to position itself, in order to take its development in hand.

4.4.1. Legal definition

It should be noted that there is no unanimous definition, generally in the scientific field. It is also in the area of law. There is no authoritative or even standard definition of a federal system.⁹⁷ Thus, there are several types of definitions, as well as authors.

William Riker defines federalism as: 'a political organization in which the activities of government are divided between regional governments and central government in such a way that each type of government has an activity on which it makes final decisions'⁹⁸

For Rémi Barroué,⁹⁹ Federalism is defined as an organizational system proposing an institutional framework based on coexistence between federated entities with their own governments and a separate federal entity, it also has a government whose powers are different from those of the federated entities.

The Federal State is a union of States within the meaning of constitutional law in which a new State authority is superimposed on the latter. The federal state therefore implies a plurality of constitutional orders, one of which -the major-takes precedence over all the others which are abandoned to it. In practice, sovereign States unite to give up part of their powers to the community.¹⁰⁰

Federalism, is a mode of organization of the State, which allows all its members (federal States), to have a large autonomy, and also to have the possibility of delegating some of their powers, to the central organization (federal state).

⁹⁷ Tatham, Michaël. (2007). *Fédéralisme déguisé ou ajustement marginal ? L'impact de la dévolution sur le système politique britannique*. Revue Française de Civilisation Britannique. 14. 19-42. 10.4000/rfcb.1161.

⁹⁸ William RIKER, 'Federalism' in: Fred GREENSTEIN & Nelson POLSBY (eds), *Handbook of Political Science: Governmental Institutions and Processes*, Reading, Maryland: Addison-Wesley, 1975, vol. 5, p. 101

⁹⁹ Rémi Barroué-Belou, *Analyse des outils fédératifs aux États-Unis, au Canada et au Brésil Contribution à l'étude du fédéralisme*, 2014, Université Toulouse 1- Capitole, Thèse, Toulouse, Page 03.

¹⁰⁰https://cours.unjf.fr/repository/coursefilearea/file.php/235/Cours/07_item/support07.pdf. Accessed December 22, 2021.

4.4.2. The four fundamental principles of federalism

The operation of the federal system is ensured by these four following principles:¹⁰¹

- Autonomy;
- Participation;
- Cooperation;
- Guarantee.

¹⁰¹ Mabila Mantuba-Ngoma (1997): *Fédéralisme, ethnicité et intégration nationale au Congo/Zaire*. Kinshasa, IFEP, p.12.

4.4.2.1. The principle of autonomy. According to this principle, the communities in the federal system have the rank of the States, participate in the union, while remaining autonomous in the exercise of the powers that they have not transferred to the federal government.¹⁰²

4.4.2.2. The principle of participation. This principle means that “in a federal system, the participating communities, i.e. the Member States, are associated as political entities with the organization and functioning of the public authorities which constitute the federal government”¹⁰³

4.4.2.3. The principle of cooperation. By this principle, the survival of the federal structure is ensured. That is to say, by this principle the maintenance of the minimum cohesion between its components is achieved. It is the cooperation between its components that prevents an extreme reinforcement of autonomy and a spirit of exclusion that could lead to the destruction of the State. Cooperation prevents the federal state from becoming a mere juxtaposition of independent political entities.¹⁰⁴

4.4.2.4. The principle of the guarantee. This principle enshrines dependence on the law of a federal state. The federal state remains fragile if it is not guaranteed by law. In the American constitution, for example, the secession of a state is prohibited and the rigorous clause of article IV stipulates that the laws enacted by the national administration will be the supreme law of the land and that the judges in each state will be bound by the aforesaid, notwithstanding anything to the contrary in the Constitution or the laws of any of the States. This supremacy clause means that when the central government acts within the limits of its competence, any law incompatible with its action becomes null and void.¹⁰⁵

4.5. The global situation of the Federal States

Currently the world has more than 25 federal states. The majority of these States are that have vast territories, ethnic and linguistic multiplicity.

We see this on the map, some of the states function as de facto federal states, because no legal law is taken in the sense of establishing a federal state system.

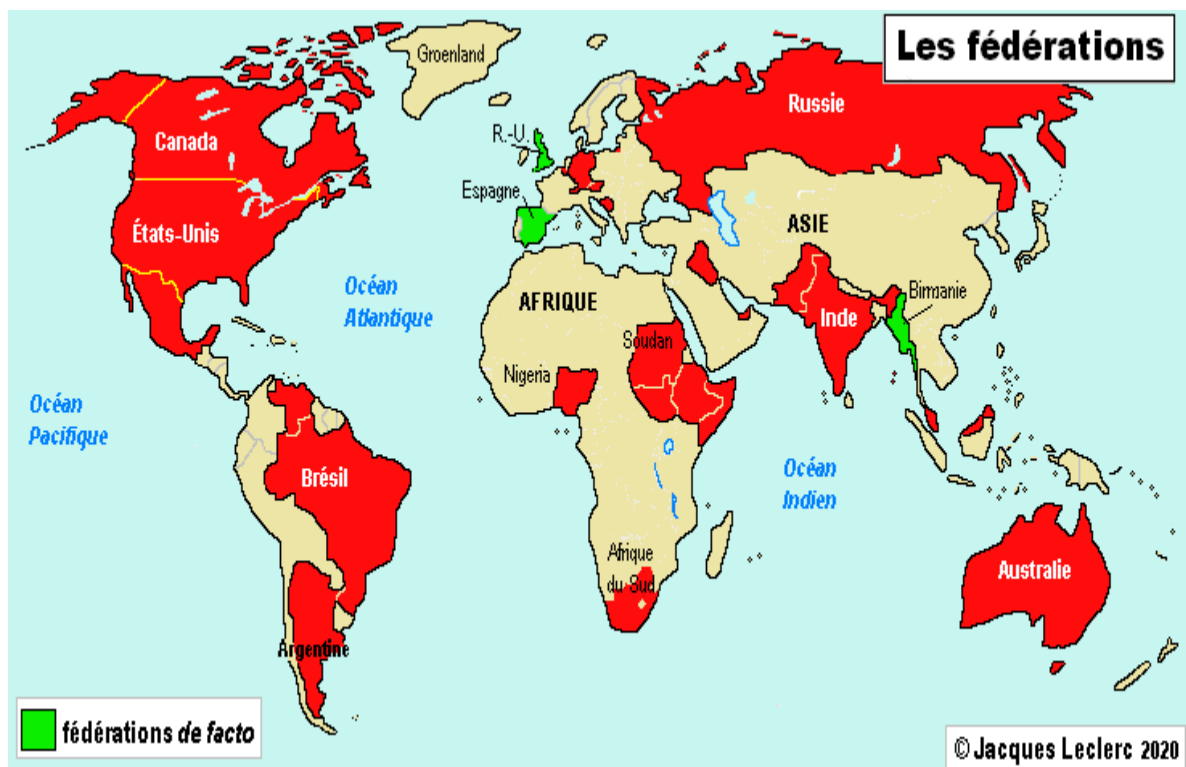
¹⁰² Seurin, J.L. (1986): *La présidence en France et aux Etats-Unis*. Paris, Economica. P.26

¹⁰³ Ibid.

¹⁰⁴ Mabila Mantuba-Ngoma (1997): *Fédéralisme, ethnicité et intégration nationale au Congo/Zaïre*. Kinshasa, IFEP, P.7

¹⁰⁵ Denenberg R. (1979) : *Introduction au système politique des Etats-Unis*. Paris, Economica, p. 28-29.

Map of Federal States in the World¹⁰⁶



The map above illustrates the federated states in the world. They are present in the five continents, of which 6 in Europe, 7 in America, 7 in Africa, 5 in Asia and 2 in the Pacific, for a total of 27. Obviously, there are different types of federations, more or less centralized or more or less decentralized, so that, for example, federalism applied in Pakistan has almost nothing in common with that in use in Canada or in the United States. Other States, such as Spain, the United Kingdom and Burma (in green on the map above), are not legally federations, but function as a true federation in so far as they are no longer unitary states and consist of regional parliaments.¹⁰⁷

4.5.1. Some models of federalism in the world

Historically, a federal state may derive from an agreement between former independent states or former colonies (the United States of America and Canada), provided that federated entities enjoy considerable autonomy.

There are a number of ways to achieve federalism. This differentiation is based on several considerable criteria which are, on the one hand, the

¹⁰⁶LECLERC, Jacques, (15 avril 2015), *L'aménagement linguistique dans le monde*, Québec, CEFAN, Université Laval, «Danemark» dans, [<http://www.axl.cefan.ulaval.ca/europe/danemark.htm>], Accessed November 18,2021.

¹⁰⁷LECLERC, Jacques, (15 avril 2015), *L'aménagement linguistique dans le monde*, Québec, CEFAN, Université Laval, «Danemark» dans, [<http://www.axl.cefan.ulaval.ca/europe/danemark.htm>], 155 Ko

plurality of nations on the same territory, and, on the other, the plurality of entities composing the federal state. We are talking about territorial federalism, multinational federalism. And other qualifying criteria of federalism are relative, to the capacity of the federal system, to ensure the stability of the state in its functioning. We are talking about centripetal federalism and centrifugal federalism.

4.5.2. Territorial federalism and multinational federalism

After having defined federalism, as this type of political organization, which implies the recognition of diversity, Michel S.,¹⁰⁸ talks about types of federalisms. Territorial federalism and multinational federalism. He explains territorial federalism, arguing that territorial federalism is this type of federalism, which takes into account the diversity of regions on the territory of the federal state. And speaking of multinational federalism, the author maintains that multinational federalism is this type of political organization, which takes into consideration the fact of the existence of a plurality of nations on the territory of a State.

Michel S., explains the notion of multinational federalism, establishing the difference between, on the one hand, de facto multinational federalism (some federations are made up of several different peoples, without this being reflected in the institutions, mentalities and constitution of the country). And on the other hand, de jure multinational federalism (the national pluralism of society must be translated into specific policies and operating rules).

4.5.2. Centripetal federalism and centrifugal federalism

For his part, Stojanović¹⁰⁹ relies on the criterion of the performance of the federal system, to establish the distinction between centripetal federalism, which he defines as being a stable but dynamic federalism, oriented towards the center while retaining the autonomy of federated entities. He comments on this type of federalism, saying that this type of federalism is able to ensure the balance between unity and diversity. The advantage of this type of federalism is against any form and threat of secessionist pressures. Because all the tendencies and particularity of the layers of the populations will be taken into account, in their claim.

And on the other hand, the author speaks of centrifugal federalism. He presents it as an unstable and rather rigid form. Federated entities, always asking for more autonomy and not being interested in having a functional and efficient center. The author argues that in this type of federalism, federal states always tend to claim independence.

¹⁰⁸ Michel S. et Guy L. (2011). *Le fédéralisme multinational: Un modèle viable?* P.I.E. Peter Lang SA 1 avenue Maurice, B-1050 Bruxelles, Belgique. P.10.

¹⁰⁹ Stojanović, Nenad. (2010). *Fédéralisme centripète et fédéralisme centrifuge: la Suisse, la Belgique et l'impact intégratif de la démocratie directe.*

5.3.3. *Federalism as instruments for a non-violent secession*

The biggest fear, when talking about federalism, is secession. It is in this order of idea, that the author¹¹⁰ offers another look at federalism. He affirms that, federalism, can be regarded as a means of solution against the ethnic conflicts and the secessionist pressures. We believe that this approach to federalism will be of great use in African countries. Because the secessionist pressure is strong, and it constitutes a blockage, for the passage from the unitary form, to a federalist constitutional form.

5.3.3.1. Some examples of federal states in the world. The American federalism, considering, its political history, American federalism, is a kind of legal compromise between the federal states, and the federal state. And this compromise consists in the constitutional division of power between the governments of the American states and the federal government of the United States. Since the founding of the country, and especially with the end of the civil war, power has shifted from states to the national government. The progression of federalism includes dual, cooperative and new federalism.¹¹¹ The Canadian Federalism. In the late 1800s, several problems coexisted in Canada. For example, United Canada wants more autonomy from the British metropolis. Economically, the end of the Reciprocity Treaty with the United States greatly weakened the colony's economy. Canada also suffers from significant ministerial instability, which complicates decision-making. The establishment of a federation is therefore seen as a solution to the various problems since it would allow to create an economic and political ensemble between the different colonies.¹¹² Following the conferences in Charlottetown, Quebec City and London, the federation was formed and officially came into effect on 1 July 1867. However, when the Constitution was signed, called the British North America Act (BNA Act), some colonies that participated in the discussions were reluctant to form a federation. The first provinces to form the Dominion of Canada were Quebec, Ontario, New Brunswick and Nova Scotia. The American and Canadian federal model shows common characteristics both in terms of the physical geography of the States (Territory), and in terms of history and politics. The Nigerian Federalism, is produced directly as a provision of the constitution.

The Richards Constitution of 1946 (named after its principal author, Sir Arthur Richards) established a legislative council with the power to legislate for the

¹¹⁰ Daniel Rodrigues, «*Fédéralisme, conflit ethnique et sécessionnisme : Le fédéralisme comme instrument de sécession non-violente*», *Fédéralisme Régionalisme* [En ligne], Varia, Volume 10 : 2010, URL : <https://popups.uliege.be/1374-3864/index.php?id=903>.

¹¹¹https://fr.abcdef.wiki/wiki/Federalism_in_the_United_States. Accessed Novembre 13, 2021.

¹¹²<https://www.alloprof.qc.ca/fr/elevs/bv/histoire/l-acte-de-l-amerique-du-nord-britannique-aanb-h1313>. Accessed November 20, 2021.

whole country, and established three regions: the North, the West, and the East. The board was composed of 45 members, 28 of whom were of Nigerian origin (4 were elected and the other 24 appointed). The Constitution also provided for the establishment of three regional legislatures which, in an advisory capacity, advised the governor on matters referred to them.¹¹³

List of states with the legal form of federal state

	Federation	Federated entities	Other entities	Official language(s)
1	South Africa (Africa)	9 provinces		Afrikaans-English
2	Germany (Europe)	16 Länder		German
3	Argentina (America)	23 provinces	1 autonomous city	Spanish
4	Australia (Oceania)	6 States	10 territories	English
5	Austria (Europe)	9 Bundesländer (provinces)		German
6	Belgium (Europe)	3 communities and 3 regions		German-French-Dutch
7	Bosnia and Herzegovina (Europe)	2 entities	1 district	Bosnian-Croatian-Serbian
8	Brazil (America)	26 States	1 federal district	Portuguese
9	Canada (America)	10 provinces	3 territories	English-French
10	Comoros (Africa)	3 islands		Arabic-Comorian-French
11	United Arab Emirates (Asia)	7 emirates		Arab
12	United States (America)	50 States	1 federal district, 14 territories	English
13	Ethiopia (Africa)	9 regions	2 cities-regions	Amharic
14	India (Asia)	29 States	7 territories	English-Hindi
15	Iraq (Asia)	18 governorates	1 autonomous region	Arab-Kurdish

¹¹³<https://nigersahellivre.blogspot.com/2011/01/lhistoire-du-niger.html>. Accessed December 01, 2021.

16	Malaysia (Asia)	13 States	3 territories	Malay
17	Mexico (America)	31 States	1 federal district	Spanish
18	Micronesia (Oceania)	4 States		English
19	Nigeria (Africa)	36 States	1 territory	English
20	Pakistan (Asia)	4 provinces	4 territories	Urdu
21	Russia (Europe)	21 republics, 46 provinces, 9 territories	1 autonomous province, 4 autonomous districts, 2 autonomous cities	Russian
22	Saint Kitts and Nevis (America)	2 islands	14 parishes	English
23	Somalia (Africa)	19 regions		Arab-Somali
24	Sudan (Africa)	15 States		Arab
25	South Sudan (Africa)	10 States		English
26	Switzerland (Europe)	26 townships		German-Italian-French-Romansh
27	Venezuela (America)	23 States	1 federal district	Spanish

4.6. Federalism: an adequate legal form for the DRC

There are several elements that encourage unity in federal states, including The Sovereignty of the Federal Constitution and a system of two legislative councils and the federal judiciary.¹¹⁴ With this system, control in the management of natural resources, will be strengthened, for the general interest of the national.

¹¹⁴NAIROOZ MUSTAFA J. (2016), *SECESSION OF STATES IN INTERNATIONAL LAW*, NEAR EAST UNIVERSITY INSTITUTE OF GRADUATE STUDIES INTERNATIONAL LAW PROGRAM MASTER'S THESIS, p.24

4.6.1. The need for effective administration for the development of a large national territory of 2.345.095 km²

The need for the federal form for the Congo, given the vastness of its territory was felt, years before its independence, as reported in the statement made by LWAMBA Bilonda M. and SANGWA Masikini B.¹¹⁵I quote:

The Congo was divided into 11 districts in 1888, which was increased to 12 in 1890 and 15 in 1895. The districts will be subdivided into zones, the zones into sectors into stations. The decisions were made in Brussels, which were passed on throughout the Congo by the local government in Boma. This centralization was somewhat attenuated by the system of concessionary companies (Katanga Company, Katanga Special Committee, Kasai Company, etc.) to which the State had delegated some of these prerogatives in parts of the Congolese territory not yet well occupied.

The organization in Unitary State rather than in Federal State, forced the political leaders of the Congo, to collaborate with companies extracting the natural wealth of the Congo, to occupy and manage portions of the national territory, as if its state enterprises from state bodies.

The question of the size of the national territory of Congo is thus a solid argument for the Congo State to take the legal form of a federal State. The weak presence of the State on the extent of its national territory has always been a factor favouring the outbreak of wars and rebellion movement in Africa. This is shown by the fact that the rebellions in Africa, begins in provinces, which cares about the effective presence of the State.

4.6.2. The need for effective administration for the effective management of natural resources on the national territory

Congo is rich in many areas, but paradoxically, this wealth, far from being a factor of development, has proven to be an obstacle.¹¹⁶The problem of management in the Congo, encounters cases of corruption following the weakness of the Unitary State administrative system, which favours the organisation of a single control and decision-making centre, and this proves to be ineffective, following the points raised in the previous chapters. In addition to soil and subsoil wealth, Congo has enormous potential in other areas, such as agro-pastoral, tourism, and others...

¹¹⁵https://RDC_MODERNITE_QUELQUES_ILLUSTRATIONS_HISTORIQUES__Presses_Universitaires_de_Lubumbashi-with-cover-page-v2.pdf. Accessed December 26,2021.

¹¹⁶*Moniteur Congolais (1ère année), n° 21bis du 27 mai 1960, LOI FONDAMENTALE DU 19 MAI 1960 RELATIVEAUX STRUCTURES DU CONGO*

4.6.3. The need for an effective economic system for the efficient management and production of natural resources on the national territory

The federal system has an economic advantage in the current context, particularly in its compatibility with the system of economy to work.

By opening up the economies of the federal states, to the market economy, in the event of success, negotiation, the flight of one of the federal states on the economic level, will create a chain effect for the other states, and even for the whole federation.

For, on the one hand, the fact that the market economy is now seen as an almost universally accepted value in the world, and on the other hand the fact that the market economy is essentially a self-governing a non-centralized organization that generates order from repeated human interactions within a legal framework. And that a federal system is also, for the most part, a non-centralized self-organized system that generates order from repeated interactions between levels of government and jurisdictions in the context of a constitution or constitutionalized treaties.¹¹⁷

In this regard, there is compatibility on important points between a federal system and a well-functioning market economy. The government of one of its components may experiment with a new economic policy: if it succeeds, the other governments, including that of the union, may adopt it; if not, failure does not necessarily harm the entire federation.

4.6.4. Reflection on the failure of the Unitarian administrative management system in DRC

The DRC, an independent state since 30 June 1960, had inherited the form of a unitary state, as set out in Article 06 of the Basic Law of 19 May 1960 on the structures of the Congo.¹¹⁸ Congo has 6 provinces (see Article 07 of the Basic Law) and the basic institutions of a Republic (a Head of State, a Head of Government (Prime Minister), the House of Representative and the Senate).

The Unitary State structure of the DRC has undergone several variations through the various administrative reforms as outlined in the previous chapter. These variations could not satisfy the requirement of an administrative system close to the citizens. With an area close to the size of a continent, the Congo

¹¹⁷Kincaid, J. (2001). *Avantages et inconvénients du modèle fédéral pour l'action économique*. *Revue internationale des sciences sociales*, 167, 89-97. <https://doi.org/10.3917/riss.167.0089>.

¹¹⁸*Moniteur Congolais (1ère année), n° 21bis du 27 mai 1960, LOI FONDAMENTALE DU 19 MAI 1960 RELATIVE AUX STRUCTURES DU CONGO*

could not start as an independent state and effectively with a single command centre, as is the case in an administrative system of the UNITARY DECENTRALISATION type. The outbreak of the civil war, which followed the revolt of the national army, is eloquent proof.

In its composition, the Congo has gone from 06 to 26 provinces, without any planned preparation, and without any commitment of will on the part of political leaders.

The unitary form in the Congo, was instituted since its independence, and the administrative management of the Congo, with all the help of the circumstances developed in the preceding chapter, have not been able to safeguard the effective presence of the State over the entire extent of its territory, and this administrative weakness has caused the bankruptcy of the Congolese State, placing it in the category of WEAK STATES.

To the bankruptcy of the Congo as a result of its administrative system and legal form, is added the weight of globalization, whose philosophy of action is defined by economic liberalism, applying to the economy the principles of freedom and equality of political liberalism. Congo, in this period of globalization, finds itself without any considerable economic power, and no security force.

CHAPTER V.

CONCLUSION AND RECOMMENDATION

The last chapter of our thesis is devoted to the answer to our research question. We asked the question, what to do to restore the authority of the DRC. First, we have shown that the restoration of the authority of the DRC will necessarily involve taking into account its ability to meet its sovereign duties. Thus, it will be necessary to give back to the Congo the possibility to put it back in position to ensure its security, internally and externally. Secondly, we have made a series of recommendations in order to achieve a good change in the form of a State. The success of a good federalism will ensure the restoration of the authority of the State. And a strong State will be able to ensure the sound management of all its resources.

5.1. Conclusion

For some, contrary to what free observers may conclude by analysing the situation in the Democratic Republic of the Congo, by making believe that the problem and the situation in which Congo finds itself are related to its judicial arsenal, this study shows that it is not a question of the quality of the laws, but rather a problem related to the lack of an adequate administrative structure, to the accumulation of major and very sensitive crises in the establishment and strengthening of institutions, and the lack of political will to manage all components of good government in the country.

As we have seen, in this research, the appropriate form of administrative management for the country is federalism; the elements (the size of the territory, the economic potential, the geostrategic position, as well as others ...) demonstrate fully that for the Congo, to reach its full potential, it would have to function as a Federal State.

The form of federal administrative management has a major advantage that it allows a serious control in the management of the Republic, because the federal system, favors the organization of an administration close to the population administered. And as far as the Democratic Republic of the Congo is concerned, its vast national territory, its dance-like population and its wealth of soils and basements require a structured and motivated administration.

We answer our research question, that of how to restore the authority of Congo in this context of globalization, by the present reflection:

5.2. Internal priorities for the restoration of Congo's state authority

5.2.1. The DRC must offer itself the new capabilities to accomplish its sovereign mission (security on its national territory)

As it's developed in the section on recommendations, the restoration of the authority of the DRC, will necessarily involve the fact for the latter, to restore the capacity to control effectively and effectively the extent of its national territory. A legitimate State is a project of society that offers good living conditions to citizens.¹¹⁹Without security, no condition for a better life is possible for the Congo.

5.2.2. The DRC must reorganize its army and its national police, in order to be able to control its national territory again, in order to stop, including the looting of natural resources.

To do so, there is a need for military cooperation with states that meet the objective criteria with regard to security. And to achieve this, while taking into account its position as a WEAK STATE, the reform of its administration must be oriented, primarily in the field of national security, before this reform is a comprehensive reform.

While keeping the focus on the issue of security, the Congo in the search for the restoration of its state authority, must reorient itself in an intense agrarian policy, in order to eradicate any form of food dependence, by the national production of basic food products, for its national population.

The question of the state authority of the DRC is at the crossroads of the expectations of society, and because of the bankruptcy of the social project of the State.

5.2.3. The DRC must offer itself new capacities to accomplish its sovereign mission (Ensured an effective Public Administration on its national territory)

The political history of the Congo, records many years lost in incivil practices in public administration, as described by Professor George N.that I quote:

From 24 November 1965 to 24 April 1990, President Mobutu Sese Seko (ex-JosephDésiré) reigned supreme in Congo-Kinshasa. Its undivided power was characterized not only by corruption and mismanagement, but also by the misappropriation of state power to the benefit of itself and its entourage, which led to the privatization of the state and its resources...

This system will have as a major result the commercialization of all human relations within the state apparatus and, consequently, the collapse of the latter. For, instead of constituting a set of impartial institutions working in the

¹¹⁹https://base.afrique-gouvernance.net/modes_de_d_livrance_du_service_public.pdf. Accessed November 29,2021

general interest, the State thus privatised had become the monopoly of the chief and his entourage. Deprived of its means of action, that is to say the human and material resources necessary for its functioning, the State had gradually become incapable of performing the most elementary functions.¹²⁰

The accumulated delay in this state, administrative disorders globally in the DRC, can only be resolved after several years. Because beyond the objective aspect of this situation of malfunctioning public administration, there is a very bad habit, to fight in the head of the Congolese administration. The various administrative reforms that have taken place in the history of the public administration of the Democratic Republic of the Congo have been splashed by the psychological dimension of this crisis of more than 50 years, of the malfunction of the entire state apparatus, through the public administration.

The restoration of this situation of public administration, of the DRC, which is the way in which the State manages to express its sovereignty over the international, and its effective presence on the extent of its national territory, this restoration, can only intervene effectively, by a constitutional reform with the objective of changing the legal form of the DRC, to that of Federal State.

5.2.4. The DRC must offer itself a new legal form to accomplish its sovereign mission (Ensured Public Administration in good governance on its national territory).

The reflection on the question of federalism in the Democratic Republic of the Congo meets the reaction of the supporters of Unitarianism, which raises the argument of the dislocation, of the balkanization of the national territory by means of the secession of the provinces. And the province with the secessionist claim, is the province of Katanga, following its subsoil which is full of strategic minerals like Coltan, Uranium, and others...

This fear no longer holds water, because, as demonstrated by Pierre Englebert¹²¹ who claims that the Congo has known worse to continue existed as a state, he says:

Everywhere we look, many elements conspire to suggest that the Democratic Republic of Congo should have collapsed some time ago under the onslaught of its own inadequacies as a state, the extreme heterogeneity and polarization of its populations, and the upheavals of globalization and foreign occupation. Yet Congo continued to challenge these expectations and continued to exhibit an astonishing propensity for resilience.... The weakness of the state, foreign invasions, the exploitation of its natural resources by transnational and

¹²⁰ Nzongola-Ntalaja, Georges. (2003). *La Guerre, la Paix et la Démocratie au Congo*. Journal of African elections. 2. 1-11. 10.20940/JAE/2003/v2i1a1.

¹²¹ Englebert, Pierre. (2003). *Why Congo Persists: Sovereignty, Globalization and the Violent Reproduction of a Weak State*. Queen Elizabeth House, University of Oxford, QEH Working Papers. P.6.

informal networks, and the multiplicity of national rebellions linked to foreign interests have failed to reduce...

It would therefore be irresponsible on the part of the political leaders of the Congo to refuse to think in this direction.

Federalism is conducive to the restoration of the state authority of the Congo, in that through Federalism the Congo will have certain possibilities to restore its administration such as:

5.2.5. The reduction of the territory to be administered

With the establishment of federal States, there will be a multiplication of ordering and control centers on all aspects of the functioning of the State, thus, this large territory of the Congo, will be divided into portions easy to control by means of federal States, and the realization of the ideology of good governance will be fully put into practice, through a fast and effective Administration to resolve the questions of the expectations of the population.

5.2.6. The effective participation of the population in the life of the Republic

The rapprochement of the State through the administrations of the governments of the federal States, will allow the launch of a new citizenship in the new administrative of Congo within the federal States. And this will allow a global restoration of the Republic from the base, to the top of the pyramid of the state apparatus, which is the federal government.

5.2.7. Accelerating the development of the national territory

Working independently in the definition of plans and strategies for sectoral and local development, Federal States will be able to launch infrastructure projects and other projects to ensure the well-being of local populations. As argued by Kincaid¹²² Speaking about the advantages of the federal system over economic action, he asserts the possibility of seeing the power of democracy, in the proper diversion of business economically, I quote:

Federal democracies offer clear benefits for economic choices, because they are likely to be able to adapt more easily to economic change by facilitating rapid and peaceful transfers of power from incompetent or discredited officials to new ones, and governments that are less competent or less efficient to others who are more so. The fluidity of the management teams found in both democracy and the federal system, which is not centralized, creates the possibility of a system of governance that is able to accommodate the fluidity of market mechanisms and human behaviour. Democratic governments also

¹²²Kincaid, J. (2001) : *Avantages et inconvénients du modèle fédéral pour l'action économique*. *Revue internationale des sciences sociales*, 167, 89-97. <https://doi.org/10.3917/riss.167.0089>

provide citizens with “speaking out” mechanisms, and a federal system offers opportunities for “defection” as well as “allegiance” at sub-national levels... It follows that a multinational federation composed of political, economic and racial communities, tribal, religious and territorially distinct languages could make an effective economic policy in a situation where the citizen has a democratic voice at the local, regional and national levels, coupled with the right of defection and admission allowing it to move between the different territorial jurisdictions of the federation and the possibility of combining its allegiances at all three levels.

5.3. External priorities for the restoration of the State authority of the Congo.

In terms of Congo’s foreign policy, we will be talking about diplomacy, it will be necessary to regain the confidence of foreign partners in order to revive cooperation bilaterally and multilaterally. Internal success will work to convince the partner internationally.

With the restoration of the state authority of the Congo, the question of the liberal economy system will be debated in depth by the legislative bodies more acutely, The new capacities of the federal States will enable both the federal State and the economic partners (Multinational Companies) to define the terms of contracts for the exploitation of natural resources. As we have shown, impunity and the violation of national legislation (Mining Code, Labour Code, and the environment of the Code), which was caused by the weakness of the administrative system will no longer be necessary.

The biggest drawback of the decentralized unitary form is that this form consists of extending the administrative framework, without speeding up the processing of administrative files.

A large part of the decisions taken by the colonial power, was justified by the realities of the time, the change and the evolution of times and circumstances forced the Congolese elite to reflect on the functioning of the Republic, to ensure the full realization of the social contract between the State and the Nation.

While taking into account the proposals and recommendations developed, in this work, the Democratic Republic of the Congo, will begin its exit from the abyss in which it currently finds itself.

5.4. RECOMMENDATIONS

Recommendations for the Democratic Republic of the Congo to restore its authority as a State in this context of globalization

We go into this chapter, formulated a series of recommendations that can serve the Congolese nation, in this century of globalization, so that it knows how to preserve its sovereignty, and be able to realize its destiny in the heart of the African continent.

This recommendation, is mainly based on the calendar that explains the most secure way for Congo, to proceed with a successful mutation of the Decentralized Unitary Form, which proves to be inadequate for the DRC, towards the Federal Form, that the Democratic Republic of the Congo demands, when we consider certain elements such as, for example, the size of its territory, its demographic weight, its geopolitical and geostrategic position in the center of the African continent.

5.4.1. Recommendation ONE: preparatory objectives for the federalisation of the Congo.

5.4.1.1. Strengthening the authority of the state. In view of the context and the configuration in which the Democratic Republic of the Congo finds itself, the restoration of its authority is essential. By state authority we mean its capacity to organize and ensure the realization of a series of services which can never be the subject of any delegation.

Constitutionalists call 'sovereign functions of the state' the great sovereign functions which are the basis of the very existence of the state and which are not, in principle, the subject of any delegation.

They are also called 'sovereign prerogatives' and are linked to the notion of 'sovereignty'.

The analysis of the concept of sovereignty generally brings out four 'sovereign functions':

- Ensure external security through diplomacy and the defense of the territory;
- Ensure internal security and the maintenance of public order, in particular with the police;
- Define the law and deliver justice;
- Define economic and financial sovereignty, in particular by issuing currency.

The various administrative reforms, as we have analyzed in the previous chapter, have failed because of a lack of firm political will, but also because of the fact that the political leaders of the Nation have not had a realistic reading of the situation and the position of WEAK STATE, in which the DRC finds itself.

5.4.1.2. Reform of the army and national police of the Congo. Some Congolese authorities and international experts argue that the most important priority is to solve security problems, placing army and police reform at the top of the list.¹²³

Considering on the one hand, the death toll of the war in the East of the Congo, rising to dozens of middle of the deaths, thus the military-political disorder of some unofficial military and political leader, and on the other hand, the malicious intentions of neighbouring states engaged in this war and determined to pursue it, the DRC, must prioritize its sovereign mission.

The length of time that we think is necessary for the restoration of the armed forces and the national police of the DRC, given its current state, is 10 years. The main thing is to define clearly, the priorities and the objectives that are aimed at. In the case under review, the first step is to raise an army capable of facing the security challenges in eastern Congo, where there is an absolutely profitable confusion among the states that plunder the natural resources of the Congo.

The main interest of this phase, is demonstrated in this sense where it prepares the capacities of the future federal state, to be able to ensure the maintenance of the federal character of the Republic.

5.4.1.3. Justice reform. The theory of the separation of powers dates back to the 17th century with Locke and the 18th century with Montesquieu. According to this theory, the state corresponds to three different powers: executive power, legislative power and jurisdictional power. These three powers must be entrusted to different bodies, so that no body holds all the powers, which would be dangerous for individual freedoms. Separation does not mean isolation. Thus, if the three powers are to be the most independent of each other, this does not mean that they have no relationship.¹²⁴

The Congolese justice, enjoyed an autonomy weakened by the multiple encroachments of the executive power, which manages to instrumentalize justice, by the annulment of some of its decisions rendered.

In speaking of the reform of this sector, we are thinking of the measures that must be taken, in the sense of making effective the independence of this body in accordance with the constitutional provisions, with regard mainly to the executive power.

The need to review and redefine the report and the mission of the Ministry of Justice, which is a sub-body of the executive, is essential to the achievement of the effective independence of the judiciary in the Congo. This

¹²³Trefon, T. (2010). *Les obstacles administratifs à la réforme en République démocratique du Congo*. *Revue Internationale des Sciences Administratives*, 76, 735-755. <https://doi.org/10.3917/risa.764.0735>

¹²⁴<https://www.fallaitpasfairedudroit.fr/images/files/Droit%20constitutionnel/Cours/Etat.pdf>. accessed December 20,2021.

independence will serve as a cement to guarantee peace and security in the federal state.

5.4.1.4. Constitutional Revisions. This review, will intervene in a preliminary way, in order to prepare the intuitions of the Republic to the new form of the latter, in order to avoid any form of surprise. The main institution concerned by this revision of the Constitution will be the Superior Council of the Judiciary (CSM). This institution is the foundation of judicial independence in the Democratic Republic of Congo.

As part of this preparatory phase, for the federalisation of the Congo, certain articles of the current Constitution, can either be revised or withdrawn, we are talking about Article 82, which gives the President of the Republic the right to appoint, raise and dismiss the magistrates of the headquarters and the public prosecutor's office, as well as other articles of the constitution which enshrines a confusion as to what the report of the Executive and Judicial power. It would be necessary to give the CSM the status of an autonomous body, and to put an end to its current function which places it totally under the direct control of the President of the Republic, which is an institution of executive power.

Thus this review will allow the officials of the Republic, assigned to the Executive, and Judicial power, to stand each other within the limits of its functions, and this will allow the establishment of a balance of separation of power, in the federation.

5.5. Recommendation TWO: Launch of major construction works for roads and communication routes of national interest and other constructions

5.5.1. The need for the road network in Congo

The Democratic Republic of the Congo includes most of the Congo River Basin, which covers an area of more than one million square kilometres. The country's only maritime outlet is a narrow strip of territory on the north bank of the river (Moanda region in the Bas-Congo).

The vast low-lying area of the central part of the country is a plateau shaped by the basin of the river flowing westward, and covered by a large rainforest. This area is surrounded by mountainous Terrace such as the Mitumba Mountains to the east and the Virunga Mountains to the north, savannah-covered plateaux to the south and southwest, the north being bordered beyond the river by dense forest. High mountains are found at the eastern end of the country (Grand Rift region).¹²⁵

The DRC is crossed by the equator, with a third of the country lying north of this line. The climate is hot and humid in the region of the river basin, and drier and cooler to the south. South of the equator, the rainy season lasts from

¹²⁵https://fr.wikipedia.org/wiki/Géographie_de_la_République_démocratique_du_Congo. Accessed December 19,2021.

October to May, and north from April to November. At the equator level, precipitation is relatively constant throughout the year. During the rainy season, thunderstorms are severe but last only a few hours. The average precipitation level for the country as a whole is 107 centimetres of water.

Considering the details of the physical geography of the Congo, we seasons the importance of building roads, railways, and other means of communication, to connect this large territory of 2 345 905 km². An old but true thought of explorer Henry M.S. described the Congo in this term: «Without the Railroad, the Congo will not be worth a penny». ¹²⁶

A strong federal state is one which has a road network linking its entire national territory.

This vision of things is supported by the great construction site of the Railroad that had undertaken the King of Belgium Leopold II, as evidenced by this historical account:

To enhance the vast basin of Congo, the Independent State had to establish a network of communication routes, the backbone of any economy. The basis of this network was the admirable hydrographic system of the Congo. In this river system, railways had to be incorporated to supplement the waterway where it was interrupted by falls and rapids. Under the impulse of Stanley who had launched the slogan: «Without the railway, the Congo is not worth a penny», Leopold II had studied the layout of a railway to bypass the cataracts of the Crystal Mountains. The railway was barely built between 1890 and 1898. ¹²⁷

5.5.2. The need for cities of good governance for Federal States

By city of good governance, we think of the basic infrastructures (buildings, provincial road network, etc.) that all provinces will have to bring together before becoming a federated state.

In addition to the buildings, under the preconditions to be met, the provinces will have to prove their capacity in terms of public finance, education at the provincial level, and the provincial police service organization. This capacity is a criterion for assessing the viability of a province in terms of the management of its public administration.

5.6. Recommendation THREE: Redefine the legal form of the state

¹²⁶<https://www.stanleyville.be/cfl.html>. Accessed December 27,2021.

¹²⁷Ibid.

The change of the legal form of the DRC is salutary for such a Nation. Its importance was demonstrated in the previous chapter.

Thus, taking into account the importance, and the advantages, that the federal system offers in terms of administrative management in all the sectors of a State, however, everything lies in the way in which this system and this legal form is put into practice for a State.

The current situation of the DRC requires that this change from the unitary to the federal form can be realized gradually.

Here are the prerequisites that we propose for the success of the federalisation of Congo.

5.6.1. Constitutional reform

With this reform, we propose that the number of current provinces (26 provinces) be revised downward, that is, 12 provinces. This reduction will allow the management of the national territory to be optimized, ensuring good governance through an effective rapprochement of the administration, towards the population.

However, the change in the legal form of the State, enshrined in the Constitution, will have to be implemented gradually. The progressive implementation is justified by two reasons, the first of which is driven by the risk of secession, given the intentions of certain political leaders, and the malicious intentions of certain neighbouring states. The second reason is related to the need to respect the conditions of viability of federal candidate state province.

A minimum of sustainability in terms of infrastructure will have to be brought together by the provinces to be federated.

5.6.2. Planning over time

Over a period of 20 years, we believe that the transition of the Congo, from a unitary state to a federal state, will be done effectively, and without fear of any institutional slippage, or anything like that.

An average of two years will be observed by the provinces in preparation for being federated.

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