

DECENTRALIZATION ISSUES IN POST-CONFLICT DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

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Résumé

L'avantage principal d'une décentralisation politique est la supériorité d'information concernant les préférences des citoyens. La production de biens publics locaux peut alors être mieux adaptée aux besoins des gouvernés. Ce document de travail analyse si cette hypothèse qui vaut pour un pays développé, est aussi valable dans un pays à faible revenu et sortant d'un conflit. Puisqu'il n'y a pas une formule unique pour une décentralisation réussie, le document confronte la théorie avec le cas de figure de la République Démocratique du Congo (DRC). Enfin l'auteur évalue la nouvelle loi sur la décentralisation dans ce pays.

1. INTRODUCTION

Development thinking has always been dominated by certain insights and fashions that prop up and then disappear after new insights more or less eclipse the former. The fifties were dominated by the concepts of take-off and accumulation of physical capital, the sixties by planning and the need for an active state to be followed by a basic needs approach and a new international order in the seventies. The eighties and nineties stressed structural adjustment and the necessity of getting the fundamentals right. The Millenium Development Goals and the new international financial architecture finally put the poverty, good governance and market democracy issues in the middle of the new concerns².

It is in this latter vein and developments that decentralization issues begot a favorable prejudice. Indeed, it was thought that good governance and the process of democratization could best be deepened by bringing policy decisions as close as possible to the needs and preferences of the population. So decentralization became a popular theme lately and embraced by the donor community. If the ideal of local governance and democracy is beyond dispute, the outcomes and implementation of decentralization processes are, especially in low income countries more problematic. So, before embarking on serious

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² HIRSCHMAN, A.O., "Against parsimony: three easy ways of complicating some categories of economic discourse", *American Economic Review*, Papers and Proceedings, vol. 74, May 1984, pp. 89-96; SEN, A., "Development: Which way now?", *Economic Journal*, 1984 and *Development as freedom*, New York, Knopf, 2000; STIGLITZ, *Economics of the public sector*, 2000.

decentralization in a low income country and in the context of post-conflict, it is worthwhile to go into that discussion.

Most of the discussion on (fiscal) decentralization was influenced foremost by processes in mature democratic countries, it did not reflect enough the specific problems of low income countries where human capital and other resources are scarcer. We will therefore first show (section II) that there are specific concerns for decentralization in LIC's and that there are as many decentralization processes as there are countries and that the extent of decentralization, measured by the ratio of sub national budget/national budget, is not the only relevant factor to measure successful decentralization. The scarce and scanty evidence on decentralization and especially on the much heralded better service delivery if local governance and democracy prevail, will show us how difficult it is to go for an across the board or 'one size fits all' decentralization. By then we will have sufficient background to develop the next section (section III). In that section we will first highlight the very specific institutional and historical context in which the debate of decentralization in DR Congo has to be framed. The DR Congo has specific characteristics which might have as a consequence that decentralization has to be tailored to this specific context. Especially the context of a failed state in recovery after a devastating conflict and with very heterogeneous conditions in terms of populations and resources make it a peculiar case. We shall then develop the deconcentration³ politics that existed before the conflict and dating back to the law from 1982, before looking at how the new law on decentralization, that is in the making, tackles this specific situation (see the "*Projet de Loi Organique, n° 018/2001 du 28 septembre 2001 Portant Organisation Territoriale et Administrative de la RDC*").

2. DECENTRALIZATION IN LOW INCOME COUNTRIES (LICS)

A lot of literature on decentralization has emerged in contexts of countries such as the United States, European countries or certain middle income countries and emerging economies. The picture and accents may be very different if decentralization is looked upon in the context of LICs, because the institutional context is very different as well as the opportunities and possibilities of local taxation.

³ By *Deconcentration* we understand that the formal decision-making at lower tiers of government is exercised by centrally appointed officials, who also decide on the allocation of funds to be spent locally, stipulated by central government. *Decentralization* means that in the units of local government, formal decision-making is primarily exercised by locally representative councilors or officials. At the fiscal level, it means that these units have not only a separate legal existence, but also its own budget to allocate material resources on a range of issues decided by law.

2.1. Specific Problems with (Fiscal) Decentralization in LICs

First, fiscal decentralization, has been propagated mainly for its capacity of improving allocative efficiency by bringing decisions on allocating local public goods and services closer to the preferences of the population. If however the major goal, as formulated in the Millennium Development Goals, is to reach and empower the poor, often living in remote areas, then success in poverty alleviation is a more important criterion than the efficiency in interregional resource allocation. Another assumption in the literature is that decentralization is intrinsically a way of checks and balances in order to restrain central government's power. However, decentralization may reinforce oppression of the minorities. Third, because of low income, cross jurisdictional mobility in order to «*vote with their feet*» is much less possible in LICs. Moreover, close knit relations in many of the rural communities in poor countries would not permit such a behavior since a sharp difference is made between «*insiders*» and «*outsiders*» making mobility difficult. Fourth, there are a number of related problems that lead to the «*coordination failures*» arguments that explain how fiscal discipline first at the sub national, then at the national level, decreases after decentralization. Indeed for decentralization to succeed, the literature assumes that different levels of government, have similar levels of technical and administrative capacity, and sufficient incentives (salaries) to perform. In poor countries, information and accounting mechanisms of monitoring these public bureaucracies are equally dependant on the level of income, the institutions of local democracy and political accountability are often weak. In this case, the public goods can be captured by local elites instead of leading to the alleged advantages of decentralization: lower transaction costs and better information lead to better provision of public goods.

As weaker governance on the central and local levels tend to relate to income levels, «*coordination failures*» are due to be more prevalent in LICs thereby jeopardizing the already fragile results of macro economic restructuring and poverty alleviation policies. We will tackle the presumed negative impact of «*coordination failures*» on fiscal discipline and another aspect arising from information asymmetry (1995) in LICs, that is the alleged improvement of service delivery by decentralization: the central government may not know what to do while the local government may not know how to do it. Of course, this asymmetry problem depends on the different kinds of service to be delivered.

2.2. Lessons learnt

For all the above reasons, «*coordination failures*», «*agency and information costs*» may be more problematic in the context of poor countries. Coordination failures may lead to increased budget deficits especially in a

context of LICs. There, accounting and control mechanisms are weaker and regional free riding enhanced because of weak political governance and the capture of local public goods and finance by local elites who may more easily dominate weaker sections of the populations. In this case «*efficiency gains*», which are the main advantages of decentralization, may be dwarfed by the challenges of ensuring macroeconomic governance and fiscal discipline in a decentralized government⁴. Of course, one has to go beyond the problematique of fiscal decentralization and look at the two components of decentralization. First, information on the local needs and preferences can better be taken into account if local administration and government are accountable and capable. Second, through that process of accountability, service delivery could be improved. Up to now, there still is very little empirical evidence of the link between better service delivery and decentralization, examples are scant and might be due to other accompanying factors). It is astonishing that not more research has gone into that crucial aspect of decentralization⁵. The empirical evidence not on service delivery but on decentralized budgets has well been documented. Usually, the ratio of sub national budgets/central budget is then taken as the measure for decentralization. The article of S. Ndegwa on «*decentralization in Sub Saharan Africa: A Stocktaking Survey*»⁶ is typical in the sense that good decentralization is measured and identified by large devolution of revenue to the lower tiers of government. Smoke argued convincingly in the comparative case between Ethiopia and Kenya, that in the latter case, decentralization is more genuine although local budgets are relatively far smaller than in Ethiopia where revenue sharing or grants from central government are far higher⁷. The more genuine decentralization in Kenya is mainly due to the fact that political accountability is far greater and linked with own restricted fiscal responsibility and less grants from central government. So more decentralized budget does not necessarily mean better decentralization.

Notwithstanding all the problems concerning «coordination failures» and information costs, decentralization still retains its informational advantage at the local and regional level and is, in principle, superior to a centralized government depending on the following conditions: local political accountability (election, control of local government and its revocation by a majority of the population with safeguards for non discrimination of minority

⁴ DE MELLO, L.R., "Fiscal decentralization and Intergovernmental Fiscal Relations: A cross-country analysis", *World Development*, vol. 28, n°2, 2000, p. 374.

⁵ BARDHAN, P., "Decentralization of Governance and Development", *Journal of Economic Perspectives*, vol. 16, no. 4, 2002, pp. 185-205.

⁶ WORLD BANK, "Appendix: Selected Indicators on Decentralization, Urbanization and the Environment", *World Development Report*, 2002.

⁷ SMOKE, P., *Fiscal decentralization in developing countries: a review of current concepts and practices*, UNRISD, Democracy, Governance and Human Right, Programme Paper, no. 2, 2001.

groups), regulation of horizontal redistribution between regions and vertical revenue sharing in public good provisions by law, their coordination and monitoring at a central level. If there is one point where literature on decentralization agrees, then it is that there is no panacea for a successful decentralization policy. It depends on the particular historical trajectory and evolution of institutional environment of each country⁸.

3. DECENTRALIZATION IN POST-CONFLICT DRC

3.1. The Specific Institutional Context and Historic Trajectory

Since specificity matters for the form that decentralization could/should take, we will try to spell out in the following paragraphs these characteristics of the DRC that are important to take into account. DRC is a vast and extremely heterogeneous country in terms of natural endowments, peoples, languages. With a territory 82 times its former colonial power and five times the surface of France, it is an important player in the region with an important economic potential (the so-called geological scandal). The heterogeneity of this vast territory in terms of endowments and peoples is at the same time a *problem* and an *opportunity* for decentralization. A *problem*, since certain regions are very differently endowed and regional frontiers do not correspond with languages and/or ethnic identity. The first aspect is a problem since certain regions would, in the extreme case of fiscal autonomy, be able to mobilize relative vast amounts of revenue (Katanga, Kivu, Bas Congo) whereas other provinces (Equator, Maniema, Bandundu) would be largely dependant on agricultural production, which in the context of very weak infrastructure puts them at a serious disadvantage. An historical example is certainly the case of Gecamines in the seventies. This copper and cobalt producing nationalized enterprise, at the apex of its production capacity, was responsible for 70 percent of all earned forex and half of the national budget revenue. Extreme fiscal decentralization in such a case is a disaster nationally. The second aspect of the heterogeneity is that one would find, only at a very decentralized level, a certain homogeneity that checks for the problem of one group dominating another. The heterogeneity is also an *opportunity* because of the complementarities. For instance, the production profile in agriculture between the East and the West is highly complementary. The West (Bas Congo, Kinshasa, Bandundu), because of its lower altitudes, produces very different produce than the Kivu and Oriental provinces⁹. With

⁸ MAWHOOD, P., "Decentralization: The concept and the practice", in Mawhood, P. (ed.), *Local government and the Third World: the experience of tropical Africa*, Chichester (West Sussex), New York, Wiley, 1983, pp. 73-98; BIRD, R. and VAILLACOURT, F., *Fiscal Decentralization in Developing countries*, New York, Cambridge University Press, 1999.

⁹ DE FAILLY, D., "Le coltan: Pour comprendre", in S. Marysse & F. Reyntjens (ed.), *L'Afrique des Grands Lacs. Annuaire 2000-2001*, Paris, L'Harmattan 2001, pp. 281-306.

higher altitudes they can produce cash and staple food production that the West cannot. To take advantage of these relative different and complementary endowments, important decentralization at the level of provinces is not advisable.

The DRC has known an exceptionally long period of decay of the formal economy and the state. Since the mid-seventies, the neopatrimonial policies under the regime of President Mobutu have led to a downward spiral where the formal economy has been dwarfed, leading to diminished state revenues. The following Table 1 illustrates more than words the economic regress and state decay, only comparable to a situation of devastation after a long civil war. The formal economy shrunk to almost a third of its value two decades ago, with a population that doubled its numbers. Especially the nineties saw the steepest decline. Since government revenue depended, to a great extent, on exports and taxation of formal enterprises, the state gradually saw its role reduced not only in absolute terms, where own revenue became ridiculously low, but also in relative terms. By 1999 and by way of comparison, the total budget of Congo was merely one tenth of that a middle large city in Europe (e.g., Brussels) for a population 60 times as large. Especially in the nineties, since the national budget had become symbolic, the Mobutu government resorted to criminal practices, by using the money press to cover its expenses and at the expense of the population who was crushed under a hyperinflation. Since the state functions and the formal economy were bankrupt, all state functions and public goods provision almost disappeared. This has different indirect implications for decentralization. Table 1 also shows that the decline of the formal economy is not linear, but that a different allocation has been realized. The copper and cobalt sector collapsed, so that the weight of the Katanga province as main industrial region has been overtaken by Kinshasa and the Kasai province. Kinshasa because of its concentration of population and the salient fact that cement production has substantially risen, points to the regional substitution but also to a shift from international tradables to (quasi) non tradables. Indeed, the rise of the cement production within the overall fall of GDP points to the partial substitution of the formal sector by the informal sector, more directed to local demand and purchasing power. That brings us to an important and underrated phenomenon.

Table 1. Indicators for State and Formal Economy Decay¹⁰

	Unit	1980	1999
Population	Millions	27	50
GDP	Millions U.S. dollars	14922	5200
GDP	Percent of 1980 GDP	100	35
Gov. Expenditure	Millions of US dollars	3870	260
Gov. Expenditure /GDP	Percent	26	5
Exports	Millions of US dollars	2507	1050
Imports	Millions of US dollars	1117	540
Copper	1000 tons	468 (in 1988)	35
Cement	1000 tons	85 (in 1988)	149
Diamond	1000 carat	18163 (in 1988)	26084

¹⁰ The data are based on World Bank, World Development Indicators and Lukusa, CEDA, 1999, IFS

The bankruptcy of the formal economy and the state led to an unprecedented informalisation of society. People had to fend for themselves and use whatever means they had to survive. The development of the informal economy compensated partly (almost half of the loss in GDP)¹¹ for the fall in formal income and employment and guaranteed a supply of private goods. The informal economy has however serious drawbacks. The tax base had eroded and public goods were non-existent except in negative terms. People, especially soldiers and police, used, before the current war, their position to earn some money by creating all kinds of «*informal taxes*». Public accountability, necessary ingredient for a successful decentralization, has in these circumstances completely disappeared. Restoring accountability will be a long task and necessarily passes through a thorough reform of the public sector. Increasing the numbers of civil servants by increasing the number of layers of government through complex decentralization must be kept at a minimum or only where political accountability is possible and capture by elites minimized. Meantime, civil society has taken over different functions of the state and a lot of public goods have been privatized and produced by the informal economy. Churches and NGOs have continued to deliver services in the area of education and health in extremely difficult situations. The most important legacy of this period, especially from 1990 onward, is that people have been creative to substitute for a collapsed economy and state. The failed state, compounded by the spill-over of the Rwandan conflict and the change in geo-politics, was one of the essential factors leading to the outbreak of the first international African war and the de-facto fragmentation of the country. The popular determination to stay united is an important factor restraining strong regional governments, but again that does not imply that decentralization on a local level is not feasible. Agricultural production e.g., in the provinces of Kivu because of plunder and population on the run declined further with the war. The following Table 2 gives an idea on the decline in a zone that was particularly struck by the war, i.e. Masisi.

Table 2. Agricultural Production in Masisi¹² (in tons)

	1992	2002
Beans	32.274	15.825
Cassava	27.074	25.150
Maïze	11.870	1.763
Peanuts	1.408	140
Millet (1)	15.522	6.935

(1) Production of millet is that of 1993.

¹¹ DE HERDT, T. and MARYSSE, S., *Le secteur informel au Zaïre*, Paris-Bruxelles, L'Harmattan, 1996.

¹² SNSA; for 2002, "Administration territoriale de Masisi".

The Democratic Republic of the Congo is a post-conflict country where recovery after the war is real but fragile. Table 3 shows that after the war there was a remarkable recovery.

Table 3. Inflation and Economic Growth Performance without and with IFI intervention¹³

Period	Years	Inflation rate Annual increase in percent	Growth of GDP Annual change in percent
Government of L. Kabila With limited ODA and without IFI intervention	1998	134.8	-1.7
	1999	483.3	-4.3
	2000	511.2	-6.9
Government of J. Kabila With ODA and IFI intervention	2001	135	-2
	2002	16	+3
	2003	8	+5
	2004	6*	+6*

The recovery is real and promising because of internal changes but also because of changes by the international community that is not anymore bound by the constraints of a cold war. On the political front, government of president J. Kabila reached an inclusive and global agreement leading to a government of national union that would lead to elections within two years. On the economic front, the opening of president J.Kabila towards the international community and the change in economic direction was a famous departure from his fathers policies and with the help of the IFI's and certain bilateral donors, the country achieved a remarkable macro-economic stabilization and for the first time in more than two decades some economic growth. The change in attitude by the international donor community is also due to the change in geopolitics. The recovery is fragile for different political and economic reasons. At the political level, the transition which was expected to be peaceful became increasingly confrontational as distrust between the former belligerents was deeply engrained and the elections were approaching¹⁴. Furthermore, «les uns et les autres ne veulent pas se séparer de

¹³ NZINGA, N.V., "Programme Intérimaire Renforcé (PIR) et Evaluation à mi-parcours du Programme Economique du Gouvernement (PEG)", *Notes de conjoncture*, Kinshasa, Octobre 2003; IMF, *DRC - Third review Under the Three-Year arrangement Under the Poverty Growth Facility and Request for waiver of Performance Criteria*, EBS/04/26, Washington, D.C., February 26, 2004, forthcoming on www.imf.org projections.

¹⁴ BONDO, N., "La transition à la loupe: Laissons Mbeki s'occuper de son pays", *Salongo Hebdo* du 21 janvier 2005; MUBALU, M., "Crise: vers des joutes électorales fratricides sanglantes", *Le Soft International*, n°782 du 25 février 2005.

leur alliés stratégiques et militaires»¹⁵; as a consequence, they all keep their military capabilities separated and a hold on their occupied territories¹⁶. However, the specificity of the new government is that former leaders of rebellion are now together in the capital city and that «*centralization*» of formerly regionally based leaders are forced to look for a compromise and permits also mutual «*control*». This thwarts the tendency of capture at the national level, because every composante of the government does not want the others to run away with the rents. This is certainly part of the explanation of the successful macro-economic stabilization¹⁷. This particular characteristic of the post-conflict arrangements does not plead again for a strong decentralization along regional or provincial lines. At the economic level, the main pitfall jeopardizing possible sustainable recovery lies in the lack of international trust.

However, only when investment by those Congolese who have their money abroad and by serious international investors, comes back, then and only then will the recovery be sustained. Up to now very insignificant amounts of private investments have come in. Distrust in the policy is still very great and all those entrepreneurs with some background information know that Congo is one of the countries where «*transaction costs*» are enormous. These transaction costs are most importantly due to the degradation of the transport infrastructure but also due to corruption and red tape. These stumbling blocks are not insurmountable but will demand still a long pre-investment period by the international donor community to lift them, because these are public goods that cannot be created by a bankrupt state. Seen from this angle first priority in order to enhance growth and combat poverty is the restoration of the minimal state by creating infrastructure that is far beyond the reach and the interest of one region or province. Because of the ranking of priorities, scarce means and because of the spillover effects, decentralization along regional or provincial lines can best be kept limited, while at the same time reinforcing the local decentralization at the lower levels and only in partnership with other actors of the civil society who are trusted. This will restore credibility in local government.

3.2. The Deconcentration Policies before the Proposed Reform

The legal text that regulate decentralization—in fact this has never been a decentralization, but much more a deconcentration in Zaire/DRC is the

¹⁵ CEDAC, *Territoriale: on attend toujours*, Bukavu, le 16 mars 2004, p. 1.

¹⁶ MONSA, F., «Application de la formule 1+4: la IIIème République piégée», *Le Potentiel* du 5 mars 2005.

¹⁷ TSHIUNZA, M. O., «La fin du triangle maléfique de l'hyperinflation, l'hyperdepreciation et l'hyperrecession?», in *Le Potentiel* du 23 novembre 2003.

“Ordonnance-Loi no. 82/006” from February 25, 1982¹⁸. This law regulates the political, territorial and administrative organization of the «*deconcentration*». The fiscal deconcentration rules are regulated by the “Loi Financière no. 83/003” of February 23, 1983, completed by “L’Ordonnance-loi #87-004” of January 10, 1987. First we will go into the organizational and administrative aspects. In the next point we will analyze the fiscal aspects of the deconcentration policies followed up to now.

3.2.1. The administrative organization of the territory or the deconcentration in Zaire/DRC

The territory of the DRC is organized in seven hierarchical entities or levels: the central state, the levels of the provinces (11 with the capital city Kinshasa)¹⁹, the cities and the districts (25) having the status of Entités Administratives Décentralisées (hereafter EAD), the «territories» in rural areas (145) and by «communes» in the cities. The capital city counts 24 communes, whereas there are 57 communes spread over the country. This seems to be a level where decentralization should focus on because it is mostly quite homogeneous and is an appropriate level where services could be organized close enough to the population, with the exception of rural health centers, primary schools and local infrastructure. At the fiscal level communes with populations averaging between 250,000 and 300,000 inhabitants could be able to raise some (mainly property) taxes.

This last level is less relevant for fiscal purposes but certainly important in terms of political decentralization, because it corresponds with the core electoral circumscription. These are the «quartiers» at the level of the communes and (476) «secteurs» and (276) «chefferies» in rural areas. The difference between «secteurs» and «chefferies» lies in the traditional homogeneous communities in the case of «chefferies». When we speak about local governance/democracy in the rest of the text, it is mainly at this level that the notion is relevant and that people refer to it. It is also at this level that basic service delivery can be relevant and viable.

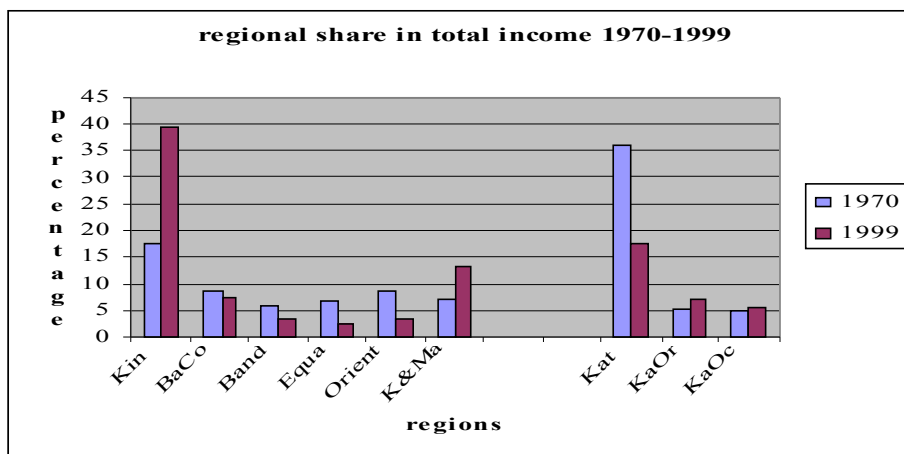
3.2.2. The importance of the regions (provinces) and its potential fiscal capacity

We have already shown (in Table 1) the collapse of the formal economy years before the war began and that was essentially due to patrimonial policies and their implicit condoning by the international donor

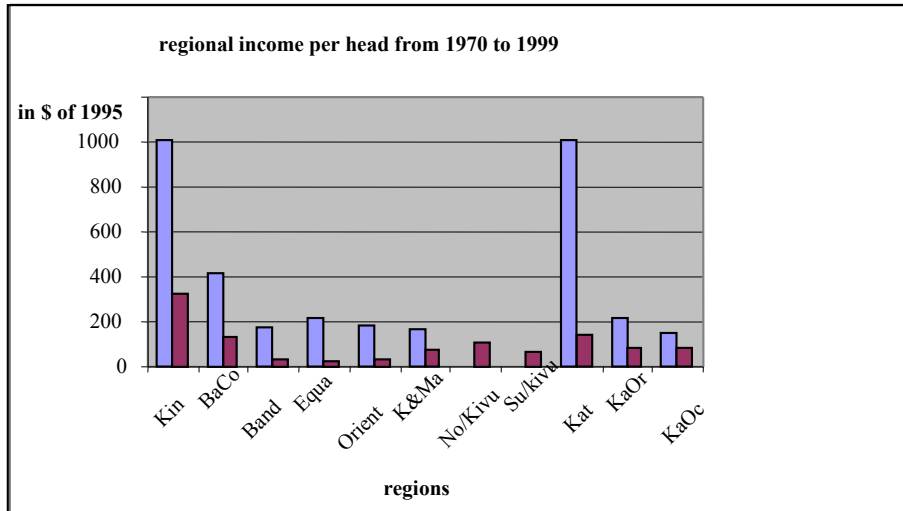
¹⁸ *Journal Officiel de la République du Zaïre*, n°3, 15 mars 1982.

¹⁹ The only exception to the status of province by Kinshasa is that it has no automatic right on the restoration of 10 percent of taxes collected on its territory. Since most of the taxes levied are in fact central taxes, it would compound the problem of concentration in Kinshasa.

community. The war was, among other factors, due to the decay of the state and its impossibility to guarantee the integrity of national sovereignty. Of course what is true for the country is necessary a reflection of the sum of the regions. However, as we can see from the following tables, regional differences are important and their importance is shifting over time. Aggregate data especially after 1990 and even simple data as population are most of the time estimates. There has not been a population census since 1984 and everything is based on projections of data, gathered from different sources. «Communes» and «quartiers» have more or less kept books and from the 322 «zones de santé» covering the whole territory data on births and mortality gave a crude idea on population growth figures. More problematic are the guestimates of aggregate indicators such as income, which became very approximate with the collapse of the formal sector and the growth of the informalization of the economy. However, the next two graphs tell something²⁰.



²⁰ For data on 1970 based on Léon de Saint-Moulin and World Development Indicators (WDI), for later data UNDP, *Rapport National sur la pauvreté*, WDI, Commission Electorale, Ministère des Finances.



Next to the general regress of the economy the most important shift is the concentration of population and income in Kinshasa. Not only has the population increased five times, without any adequate urbanization, but Kinshasa has also overtaken the province/region of Shaba/Katanga as the most important economic centre. The latter, heavily dependent on one company (Gécamines, called the mother and the father of all Katangese people), saw its industrial production of copper and cobalt fall to 5 percent of its former production capacity at the beginning of the nineties because of widespread mismanagement. Third, not only was there in all provinces an absolute decrease in income, long before the war, but the poorest provinces saw their relative inequality further increase with time. Indeed these poor provinces, mostly dependent on agricultural production and sales, suffered most by the complete degradation of the transport-infrastructure. The income gap with Kinshasa grew further and consequently the capital city attracted even more people. If one has to be realistic about decentralization, then one should look at different factors in order to assess the means to finance a sustainable reform. Of course decentralization is not in the first place «fiscal decentralization» but it is the motor of a genuine decentralization process that has as a goal the empowerment of local populations so that they can broaden their entitlements and capabilities²¹. A first factor to assess fiscal decentralization is to look at what has been done in the past. In the following table (Table 4), based on data from the IMF and the Ministry of the Interior, we look at what has been budgeted and done in the last year where we had full data (2002). Real decentralized expenditure to the regions (Kinshasa considered as a province or region included, skewing somewhat the reality)

²¹ SEN, A., *Development as freedom*, New York, Knopf, 1999

reached 18.9 percent of total expenditure of the state. The bulk of these US\$76 million went to wages, and half of that amount were wages paid in Kinshasa.

Table 4. Deconcentrated budgets in 2002
in millions of Congolese Francs (in million USD**)²²

	Expenditure	Revenue
Total state budget (excluding grants and ODA)	168,430 (441)	152,193 (398)
Regional budgets planned (6 regions)	34,831 (91)	34,831 (91)
Disbursed and spend (estimation)	8,000 (21)	
Regional budget (if all 11 regions are included)*	38,887 (101)	
Wages and retirement payments budgeted and disbursed (6 regions)	23,840 (62)	23,840 (62)
Wages and retirement payments budgeted and disbursed if 11 regions (est.)*	25,914 (67)	

*Since 5 of the 11 provinces (regions) were controlled by the rebellion/invasion troops, data are estimations on the basis of pre-war data

**exchange rate used (period average 382 FC=1\$) IFS 2003, p.302.

Of course if budgeted means had been disbursed, deconcentrated budgets in the assumption of reunification would amount to 37 percent of the whole state budget. Different remarks apply. First, only wages and retirement payments budgeted seem to be the only item that has really been disbursed more or less in line with the foreseen amount. No reliable data exist of what has been effectively disbursed e.g. in the province of East-Kasai, 34,030 active and retired civil servants received together the sum of US\$2.7 million or an average annual salary of US\$79, or US\$6.6 per month. Provisional estimates of the Ministry believe that effective disbursement of other budget items, besides salaries paid, is around CF 8000 million (US\$21 million) in 2002. If one goes into certain details, one can measure the rather insignificant amount going to the regions. Appendix 2 informs us on what should have been spent and disbursed to lower tiers of government in the regions, the so

²² Based on data "Ministère de l'Intérieur" (see appendix 1, 2, 3) and IMF country report no. 03/270 p.22-30. See also paper prepared by Mr. Ghonda (Ministère de l'Economie, des Finances et du Budget of DRC) at the international seminar organised in Paris, October 2002 on "Relations Intergouvernementales et Décentralisation Financière en Afrique Francophone", *Décentralisation Financière : La répartition inégalitaire des ressources et la péréquation. Le cas de la RDC*, Paris, oct. 2002.

called EAD (Entites Administratives Decentralisees). Bandundu e.g., the most populated province with more than 7 million inhabitants, should have received, as transfers to the lower tiers of government, some CF 138.5 million or US\$3,630,00. That is not \$5 cents per person per year. In Table 5 we give a synthesis of the financial flows between the centre and the regions.

Table 5. Financial Flows between Central Government and the Regions in 2002 (CF million)²³

Regions	Kinshasa	Bas Congo	Katanga	East Kasai	Others*	Total
Tax income of Central Gov.	46,332	30,953	9,996	3,707	628	91,616
1. customs and excise (OFIDA)	16,095	26,025	7,200	3,035	220	52,575
2. income taxes (DGC)	30,237	4,928	2,796	672	408	39,041
Transfers to regions						31,840
1. wages & pensions	16,070	1220	1,490	1,250	3810	23,840
2. other transfers	n.a.	n.a.	n.a.	n.a.	n.a.	8,000 (est)
Income from / transfer to (in %)	288	2537	670	296	16	287

Some interesting features can be deduced from this table. First, The capital city, administratively with the status of region, and Bas Congo represent about 80 percent of total revenue, mainly because you find the most important entry-points there with the main export/import port and the national airport. Since customs and excise tax income is the most important revenue, then of course taxation is concentrated there. Second, the other two regions with economic importance, Katanga and Kasai provinces are important for their mineral exports that are however less and less processed within the country, leaving too little value added in the country. Copper and cobalt from Katanga is now mostly exported as «heterogenite», a non processed ore that is mostly informally exported without being taxed. Diamonds from Kasai represent on average—since the collapse of the copper and cobalt production—60 percent of all exports (on average officially around US\$400 million in

²³ Ministries of Finance and the Interior-Appendix 4. *The others here are the regions or 'provinces' Bandundu, West Kasai and Equator. The four other provinces (North Kivu, South Kivu together with Maniema, forming one province before 1980, and Oriental Province) were under the control of rebellion/invading forces during the war.

the last five years). However, documented estimates say that total exports are at least US\$1,200 million, leaving the country, in part by Congo Brazzaville who has almost no production of diamonds, and in part by Rwanda and Uganda (Marysse & Deherdt, 2001) who have no diamond production either. We estimate the part of diamond production leaving by the provinces under rebellion/invasion forces at approximately one-third of total exports. Third, the proportion of the flows between the central government and the regions seem to suggest that the central government is extremely centralized, but that the poorest regions receive much more than they contribute. In a sense that is so and illustrate the point that decentralization in situations of important regional inequalities should be corrected by central government. Although in the «loi financière» of 1983 explicit provision is made for «péréquation» meaning an equalization fund between rich and poor regions this fund has never been active and the relative redistribution happens through the fact that in the poor provinces taxes have not been raised officially. However we have to do with extreme low figures and budgets, so that the redistribution effect realized by the mix of centralization/deconcentration is in absolute terms not very significant. The “centralization bias” of the Congolese government is only apparent. An overall restoration of the administrative capacity at central and regional level could increase the tax base for both layers of government without compromising the redistributive role of central government and give more incentives at the regional level in mobilizing taxes, that are overall too low, as can be seen from the following examples. Fourth, if our rough estimates about legal/illegal exports reflect reality, then the fiscal pressure in the Kasai provinces appears to be less than 1 percent of total value of diamond production only. In other words even in the case today, the dwarfing of the state and the general informalisation of society does not reflect a sound degree of taxation and this is may be the only reason why fiscal decentralization should also implicate and stimulate regional taxation, and have proceeds be split in a way both government entities could improve their situation. In fact 10 percent is what is already provided for in the «loi financière» but for reasons of «informal taxation» it seems as if there is no stimulus at all for levying local taxes. This is only apparent. Fifth, the four regions/ provinces that were under rebellion/invasion command during the war are not taken into account. The taxation potential and therefore financing of some potential decentralization is also underestimated in the figures of the table. Not only because the rebellion gave no estimates on tax revenue and expenditure, but for the same reason as above: an underestimation of the tax base, because of the devastated administration over the whole of the national territory. An example during the war showed the potential. In the coltan boom of 2000, the rebellion government in South Kivu was able to mobilize US\$1million a month by taxing coltan exports representing e.g. one fourth of all central government expenses to the regions in 2002. Sixth, not only the revenue side of regional deconcentration budgets is underestimated for all the

reasons mentioned above (devastated administration, informalization of society, patrimonial policies, etc.) but so is the expenditure side. Expenditure now reflects, as we have seen, only (dismal) payment of wages and pensions for the civil servants. What is not accounted for is that health and education expenses are paid for more than 90 percent by efforts of the parents, local and central actors such as the churches and donors.

4. THE NEW LAW ON DECENTRALIZATION

4.1. Characteristics of the proposed law on decentralization

A new proposition of law on decentralization has been voted in the parliament called “Loi Organique Portant Organisation Territoriale et Administrative de la République Démocratique du Congo”²⁴. The new law is a combination of continuity in the territorial organization together with a reflection of the new power relations that emerged from the peace agreement of Pretoria and a willingness to rationalize and clarify the competences of the different tiers of government. The new law contains four new features that were absent in the former legal texts on the administrative organization of the Congolese territory.

First and foremost this is a text that reflects the new power relations resulting from the political peace agreement between the belligerent parties. The «Global and Inclusive Agreement» found its legal expression in the Constitution of the Transition. Since two of the four composing parties (composantes) controlled militarily part of the territory they of course have a stake in a kind of ‘recognition’ of the regional reality. Therefore the new law is a compromise between the willingness of unity and the reality of regional based powerbases. The head of the executive power at the different decentralized levels is the representative of and appointed by the central state (on proposition of the minister of the interior and appointed by the president – art. 14-79-150). The head of the deliberative counsel however must be from another «composante» than the head of the executive power (art. 40-100-129-166). These ‘checks and balances’ have proved to be operational at the national level, e.g. in the control of expenditure and inflation. Will it work at the decentralized levels? The idea is certainly that all decisions at the regional and local levels are known and that, in the absence of public accountability based on the outcome of an electoral process, the main form of accountability that is included in the new proposal. Of course if the administration would function correctly, then that would be another form of accountability. The next most important feature is a consequence of the first and that is the intention of a greater fiscal autonomy at the decentralized levels. In the accompanying justification of the new proposal it is said that: «*Ce projet de*

²⁴ *Journal Officiel*. Numéro Spécial, 28 septembre 2001.

loi établit une équation entre le transfert des compétences et le transfert réel des ressources. Il instaure une harmonie entre les textes antérieurs...et la loi financière en cette matière»²⁵. The new law enables all lower tiers of government with the status of EAD to define and raise taxes in all matters that are not taxed by central government, as well as to borrow money and to take participations in companies operating in their territories (art. 37-95-132-209). However these regional and local loans and taxes other than those who were already in their attributions, must be accepted by the minister of the interior and only acknowledged by the ministry of finance. It is the article 280 that sums up all the possible and impressive number of sources of decentralized income. The possibility to contract loans, take participations in companies did already exist in the former "loi financière n°83-003" amended by "l'Ordonnance-loi n°87-004" of 1987 art.9 but was much more restrictive. In that former law a special law had to be voted before regional or local governments could actually make loans to finance capital outlays or it had to be permitted by presidential decree. The present law relaxes the stringent conditionality that was limiting fiscal autonomy. The new proposal has certainly the merit of determining with more clarity the attributions and competences of each level of decentralized government and the «division of labor» between the central and the decentralized units (art. 15-37-82-96-132-151-170 and title II from art. 245 to 279). Finally there is also a light rationalization exercise in that certain levels are considered less important together with a recognition of levels of local government that can play a more significant role in future by giving them the status of EAD. Thus districts have lost their status of EAD and have as ED (deconcentrated units) received a role of inspection and evaluation of the lower tiers of government. This is very much in line with the former tendency of abolishing that level of government when the old province of Kivu was split in three new provinces (Maniema, North Kivu and South Kivu). The inverse tendency happened with the «Communes» and the level below that of the «Secteurs/Chefferies». These levels, who are a reality and where government can still be close to those governed and at the same time constitute a viable level of possible service delivery, have received the status of EAD and obtain more attributions, competences and can raise local revenues.

4.2. A need for clarification

Although the law has brought some clarification especially in the competences and attributions of the different layers of decentralized government, there are still some areas of the proposal that are unclear. One such an area is in the political sphere, the other is in the domain of the fiscal autonomy for the decentralized levels. The command and head of the different

²⁵ Projet de loi, 2004, p. 9

lower tiers of government are representatives of the state and mostly proposed by the ministry of the interior and officially nominated by the president. This holds for all levels of the EAD except for the head of «secteurs/chefferies» where it is customs which define the head of these entities but which must be accepted by the central government. Since the minister of the interior and the president have to intervene in the process of appointing the governors, mayors, bourgmestres, «chefs de territoires» it is to be expected that there will be some political equilibrium exercise in the spread of these functions over the different «composantes» of the transitional government, although the minister of the interior has here a great discretionary power. Unclear is the way in which people are chosen to seat in the deliberative councils at the different levels. However, it is not surprising to note that, behind the term of reference, the «composante», lies an ethnic calculation: «On se rend compte que, pour certaines provinces, l'équilibre en terme de représentativité des communautés compte tenu de leur poids démographique et autres considérations historiques n'aurait pas intéressé les composantes»²⁶. Thus, not only the ethnic and regional imbalance is a reality, but also ethnic membership and clientship are key factors in choosing delegates to different levels of power²⁷. The new law proposal determines the maximum number of members for each deliberative council and mentions that the head of the provincial, city, commune, territoire, secteur/chefferies-councils, must be of another «composante» than the head of the executive power (e.g. art 34). One might wonder what this means at the lowest levels, but more fundamentally it is here that a possible problem may arise. Not only are the council members not elected, but they can well be members of a same group without any representative quality except of being from a particular region or locality. Noël Obotela Rashdi gives some examples drawn from Eastern Province and South Kivu Province²⁸. Given the high discretionary powers in fiscal affairs and the fact that a simple majority can decide on all matters of regional or local importance, the possibility of capture at the regional or local level is possible. No checks and balances at this level thus. The other domain of possible confusion and contradiction is that of the fiscal autonomy of the lower tiers of decentralized government.

²⁶ CEDAC, «La territoriale est enfin là! Bukavu, le 24 mai 2004», *Trou de serrure*, n°02/2004, p. 1.

²⁷ This is the reason why the Baluba of Kasai, known as Kasaiens, consistently complain of having been kept aside within the «espace présidentiel», NSAMA, B., «Prenons l'UDPS au sérieux», *Salongo Hebdo*, n°218 du 22 au 28 octobre 2004.

²⁸ OBOTELA, R.N., «L'An I de la de l'Accord Global et Inclusif en République Démocratique du Congo. De la laborieuse mise en marche aux incessants atermoiements», *L'Afrique des Grands Lacs. Annuaire 2003-2004*, Paris, L'Harmattan, 2004, pp. 121-122.

1. EVALUATION OF THE DECENTRALIZATION POLICIES AFTER THE ADOPTION OF THE NEW LAW

Up to now the paper tried to spell out that a good decentralization law should consider at the same time some general lessons drawn from the literature on decentralization and before all take into account the specifics of each country. Since the DRC is a LIC and recovering from a conflict and a long period of decay of state and economy one should be very cautious. Decentralization laws should not overstretch the role of the state and certainly not of lower tiers of government because of lack of human and material resources (realism comes into play). In the post-conflict DRC, a decentralization effort has to recognize the underlying reality of the conflict without jeopardizing the necessity of the reconstruction of the minimal functions of the state. The long decay of the state has informalized all spheres of society with long lasting consequences.

In order to assess a proposal of decentralization, we can draw the following criteria. The first criterion is its democratic content. This is not only because democracy can be valued as such and preferred over authoritarianism²⁹. The main reason lies in the fact that without accountability from the local or regional government the advantage of decentralization disappears. Moreover, a mere representation of people from the territory is not sufficient for popular representation and that it can even be at the detriment of the population since there can be cooptation and domination by one group leading to the problem of capture discussed in the literature³⁰. The second criterion is the advantage of decentralization. From an economic welfare point of view, this advantage is the superiority of allocative efficiency realized through genuine decentralization. However, in low income countries and countries with high disparities in regional endowments and wealth, fiscal autonomy should be restrained, because of the overarching priority of the other two functions of the state, being stabilization and redistribution. The new proposal gives in principle a large fiscal autonomy to the regions which can jeopardize these two functions. It can also endanger the redistribution function of the state. The third criterion is the reform itself. The issue here is to see if the proposed reform is realistic. The new law is, on a political level, realistic (see fourth criterion), but in terms of the attributions and competences of the different levels of decentralized government and in the technicality of the implementation, it is quite unrealistic. The fourth criterion is the balance between the need for unity and the recognition of the diversity of the country and the demand for more regional autonomy. As the post-conflict decentralization is concerned, the balance of the new power relations that is laid down in the "Constitution de la Transition" doesn't work at both

²⁹ SEN, A., *op. cit.*, 1999

³⁰ BARDHAN, P., *op. cit.*, 2002.

regional and local levels. Decentralization proposal should recognize that, during the long period of decay of the state, most efforts of education and health-service provisions have been dealt with, without state support, in other words it must be recognized a genuine partnership between the state and the civil society.

6. CONCLUDING REMARKS

The new proposal on decentralization in the Democratic Republic of the Congo (DRC) combines the reflection of the new power balance with the overall popular sentiment that the country should stand united, notwithstanding its diversity. The unity of the country is reflected in the continuation of the territorial organization whereby the executive levels of all decentralized units are the representatives of/ and appointed by the central state and in common agreement between the different parties to the peace agreement, the so-called «*composantes*» of the transitional government. At the legislative levels of all decentralized units, the heads of the regional and local councils must be from another «*composante*» than the heads of the executive levels. This power balance, often seen as a source of discord and potential conflict, has also proven to be operational, in the sense that it is a way of creating «checks and balances» in governance. At the central level, it is one of the mechanisms that has led to a certain stabilization of the economy through the mutual control of using government revenue more correctly and thus to break the «malignant triangle of hyperinflation, hyperrecession, and hyperdepreciation of the currency»³¹. This initial statement on the new proposal for decentralization in DRC is a transitional proposal. In this sense, the democratic contents of a decentralization is postponed and therefore the law can best be seen as laying the foundation for future deepening of the democratic contents of a real decentralization. However, the alleged informational supremacy of decentralized over centralized government hinges on two crucial assumptions.

The supremacy of decentralized government is only guaranteed if the executive and legislative levels of the decentralized units are considered legitimate or democratically controlled, and accountable. The motivational text accompanying the proposal of law on decentralization, stresses that its main reason was to reach an adequacy between the (very extensive and large) attributions of the decentralized units and the financial means to finance these activities. The «informal taxation» is however important and a source, because of its discretionary application, of high transaction costs thereby depressing most formal economic activities and initiatives. Increasing the number of taxes increases the legal insecurity and discretionary power of all kinds of administrations, thereby increasing tax evasion. Therefore the

³¹ TSHIUNZA, M.O., *op. cit.*

proposals for fiscal decentralization, instead of increasing official revenues, will depress even further the official taxation and thus continue to drive people in the informal sector. The Article 280 on fiscal decentralization needs thorough rethinking together with the articles on the possibilities of regional borrowing and participation in local enterprises and ventures. A last comment on the fiscal decentralization proposal is that it risks to jeopardize the other functions of government intervention, e.g. the stabilization and redistributive function of the state. Indeed, if the law permits that decentralized units define themselves their own tax base and are allowed to borrow, this can destabilize all efforts of fiscal balance or good governance at then national fiscal level. On the redistributive side, in a country like the DRC with large regional differences in endowment, fiscal autonomy could lead to an underinvestment and underdevelopment in the poorer regions of the country. In a post-conflict stage of its development it is important not to jeopardize the fragile re-found economic stability and to reconstruct the country by creating complementarity between regions rather than by financing divergent developments.

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