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Identification and Content of the Founding Texts and Organizers of the Congolese System of Promotion and Protection of Human Rights

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ABSTRACT

Congolese law of human rights is a digest of moral, philosophical or religious principles or a series of values, testimonies and actions in favor of human rights, legal sources of human rights are legal documents, better legal acts in force adopted by the States or by their organs, at the national or international level, which are intended to recognize and guarantee to all human beings (or to certain categories of persons) the enjoyment and exercise of the rights inherent in their nature or their life in society. As legal instruments, the direct sources of human rights have the necessary legal authority, which gives them the status of reference sources before the jurisdictional and other bodies for the protection of human rights¹. It is no longer just a question of proclaiming that man has rights or that the perpetrators of serious violations of these rights commit crimes before all of humanity. From now on, international, regional or national legal instruments aim to combat human rights violations and facilitate the prosecution of their perpetrators in order to build peace and guarantee good governance in the field of human rights. the promotion and protection of these so-called human rights. In the name of the principle of universality of human rights, all modern states have their own legal arsenal for the recognition, promotion and protection of human rights. This arsenal derives either from international instruments, treaties and conventions, regional instruments, or national texts. But the proliferation of general and specific instruments has lengthened the list of these rights and made them more precise. The contents. This profusion sometimes makes it difficult to inventory and classify all of these rights, which are very diverse in their wording and content, and whose methods of exercise are also very varied, in particular because some of them can be the object of development². Despite this diversity, writes Didier Rouget, there is a fundamental principle that enshrines and is inseparable from the universality of rights. No one can be discriminated against in the enjoyment and exercise of human rights. But this diversity of legal instruments also allows States to implement several legal mechanisms to enshrine, in their internal legal order, the existence, recognition, promotion and protection of these rights: it can be either of the Constitution, either of the law, of the regulations, or of jurisprudence or even of doctrine. Despite the number of mechanisms and human rights to be protected, they must be treated in a global, equitable and balanced manner, on the same footing and with the same importance: there is no a human right that is less or more important than the other, there is not one that is superior to the other. They are all on the same footing³. This is clearly expressed in the Vienna Declaration adopted on 25 June 1993 at the World Conference on Human Rights which proclaims that: All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and balanced manner, on the same footing and with the same importance. While the importance of national and regional particularities and historical, cultural and religious diversity must be borne in mind, it is the duty of States, irrespective of the political, economic and cultural system, to promote and protect all human rights and fundamental freedoms⁴. African states have not remained on the sidelines of this general movement, especially since, as far as they are concerned, the recognition, protection and progress achieved in this area constitute one of the conditionality's for development aid or good governance imposed. Developed countries and the Bretton Woods institutions (the World Bank and the International Monetary Fund). For its part, the Democratic Republic of Congo has, particularly since 1960 - the year of its accession to independence - and even a little more. Before - a significant legal arsenal for the promotion and protection of human rights. Its various Constitutions, its numerous laws and its set of implementing regulations constitute undeniable direct sources of human rights⁵.

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Introduction

The protection of individual and collective rights and freedoms in the Congo dates from a few days before its independence on June 30, 1960. Indeed, it is the Basic Law of June 17, 1960 which is the starting point for regulation in this matter, law that was adopted by the Belgian Parliament to be executed when the Congo will become independent. It is followed by the Constitution of August 1, 1964 known as *luluabourg*. As for ordinary laws, the ordinary texts taken or executed at that time and relating to human rights are the Law on Non-profit Associations, the Code of Private International Law, the Electoral Code, the Penal Code taken since 1940 but still in force until today, etc.

Since 1967 and during this 36-year period, both happy and unhappy developments in the framework of the protection of individual and collective rights and freedoms can be observed; happy because laws have been taken to protect human rights, unfortunate because, at the level of their execution, several flaws can be noted. These flaws, it cannot be doubted, are caused by the eternal search for political stability and a race to power by political leaders.

We have no intention, in this analysis, to enter into doctrinal or jurisprudential discussions on the concepts of the Constitution or the law. Our study is devoted to identifying the human rights contained in these different national legal instruments without entering into the deep definitional considerations that risk making this work more voluminous. So for this section, we are talking about the constitutional evolution of the protection of human rights first, and legislative afterwards. But let us first say a word about the constitutional and legislative guarantees offered by human rights.

I. Constitutional and national legislative warranties on human rights.

By which mechanism do States integrate into their national legal system international human rights law and what are the ways in which these human rights are applied at the national level?

I.1. Integration Or Reception Of Human Rights In The National System.

Most States receive and incorporate into their constitutional and legislative systems clauses, provisions or articles that are based on human rights standards. It is not uncommon for them to be included in a detailed (constitutionally invalid) Bill of Rights, which is a foundation upon which the courts can rely to overturn any legislation or measure. regulatory framework in contradiction with the principles they set out. However, the practice does not follow a uniform pattern. Constitutional systems generally have two parameters that determine the effectiveness of national human rights protection. The first touches the content of recognized rights and their status⁶.

¹ N-e- L. NGONDANKOY, Op. cit., p. 63.

² D. ROUGET, Op. cit, p.57.

³ idem

⁴ Avant le 30 juin 1960, la République Démocratique du Congo était une colonie Belge, régie par la Charte Coloniale du 18 octobre 1908. Celle-ci contenait quelques dispositions discriminatoires sur les droits des indigènes Congolais. L'article 2

⁵ Alinéa 5 de la Charte stipulait: « Des lois régleront, à bref délai, en ce qui concerne les indigènes, les droits réels et la liberté individuelle ». C'est seulement le 17 juin 1960 que la loi fondamentale relative aux libertés publiques a été prise. On

National legislation or the provisions of the Constitution that guarantee human rights generally reflect the priorities or values considered as valuable in the system concerned and do not necessarily reflect the content of international human rights guarantees. In some countries, a large number of rights, including civil and political rights as well as economic, social and cultural rights, may be protected by the Constitution. However, other countries recognize only a few civil rights and, where this is the case, they are provided for by ordinary legal provisions.

The pattern of human rights enforcement within different systems varies considerably, not only in terms of the level at which these rights are placed in the constitutional order, but also in terms of the possibilities of recourse. In some countries, the individual can directly invoke a human rights provision to trigger an action in the courts to eventually enforce or enforce the law. However, in other countries, human rights provisions can take the form of guiding principles that will guide decision-makers.

Government and not to give rise to any applicable individual rights. These guiding principles cannot usually be used in court except, perhaps, to help interpret other legislation.

While it is not uncommon for the Constitution of these countries to recognize, to a certain extent, economic, social and cultural rights, it is infrequent that they are subject to the same mechanisms of control or civil and political rights. As a general rule, they are often considered to be non-justiciable or politically oriented rights that are therefore not susceptible to any kind of enforcement by the courts. This approach tends to overemphasize the characteristic differences between these two categories of rights and ignores the diverse nature of rights that devote various prerogatives. This is why the trend has been in recent years to accept the possibility of legal implementation of these rights, but relegating them to areas that do not deny freedom of government decision makers⁷.

Our country, the DRC, has received several international legal instruments in the field of human rights. We can mention among others: the Universal Declaration of Human Rights, ratified since 1949; the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, ratified on 31 May 1962; the Convention relating to the Status of Refugees, ratified on 5 July 1965; the Protocol Relating to the Status of Refugees, ratified on 2 January 1968; the International Convention on the Elimination of All Forms of Racial Discrimination, accession of 21 April 1976; the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights, ratified on 1 November 1976; the Convention

peut lire ces deux textes dans IYELEZA MOJU- MBEY, MASIKA KATSUVA et ISENGINGO KAMBERE N'GISE, Recueil des textes constitutionnels de la République du Zaïre, du 19 mai 1960 au 28 avril 1991 avec, en annexe, la Charte coloniale du 18 octobre 1908, Kin, éd. Ise-Consult, 1991, pp. 24 et 143.

⁶J. ROSSI, « Art. cit ».

⁷«Les Instruments internationaux relatifs aux Droits de l'Homme ratifiés par la République Démocratique du Congo » in Journal Officiel de la République Démocratique du Congo, 40 année, n° spécial, avril 1999, pp. 1 – 124.

on the Elimination of All Forms of Discrimination against Women, ratified on 6 October 1985; the International Convention on the Suppression and Punishment of the Crime of Apartheid, ratified on 11 July 1978; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, accession of 17 February 1989; the Convention on the Rights of the Child, ratified on 21 August 1990; the Rome Statute of the International Criminal Court, ratified on 30 March 2002 by Decree-Law No. 003/2002 of 30 March 2002 authorizing the ratification of the Rome Statute of the International Criminal Court of 17 July 1998.

I.2. The internal application of international human rights law.

According to the traditional idea, it is the nature of a state's legal order that determines the internal application of an international human rights treaty. When a state ratifies a human rights treaty, these provisions are not automatically incorporated as part of the national law. The integration or non-integration of these texts depends on the nature of the legal system. In the so-called monist system, when a State ratifies an international treaty, the provisions of the treaty automatically become part of national law. As a result, international law becomes applicable. Monism rests on the notion that international law and domestic law are confused. Other states have a dualistic system. Dualists consider that international law and internal law are two distinct systems. Therefore, international legislation must be incorporated as a law before it can be applied at the national level.

It is therefore important, in defining strategies to ensure the implementation of all human rights, to take into account the nature of the legal system of the country concerned. It should be noted, however, that international human rights treaties have established certain principles governing their application at the national level, irrespective of the nature of the legal system in force: they are universal, indivisible, interdependent and inseparable. How are they born and how are they integrated into our legal system?

II. Constitutional Evolution

Before presenting the way in which human rights are organized in the Congolese Constitutions both before and after its independence, we first and very briefly mention the place occupied by collective and individual rights and freedoms in the Constitution (I) before analyzing the various Constitutions that were taken before (II) and after (III) independence.

II.1. The place of human rights in the various congolese constitutions

The Constitution, as we know, is the charter or basic law of a State. It is the basic document, the fundamental legal act which, in one State, consecrates, on the one hand, the existence of the fundamental rights and freedoms of the citizens, and on the other hand, the development of the necessary political power the functioning of the state.

Moreover, as Francis Delpérée so aptly writes, In the beginning of law is the Constitution (...). It is the legal rule that a political society organized in a state is given to allow the realization of the public good. To this end, it establishes, first, the rights and duties that accrue to the members of the political society. It also determines the rules governing the development of public authorities. This is an abstract view dear to jurists⁸.

Hence, it can be said that the Constitution is any fundamental law of a State which determines the rights, liberties and duties of citizens on the one hand and the

⁸ N-e-L.NGONDANKOY, Op. cit., p. 64.

organization of political power on the other. For the realization of the public good. It is the law of laws or, to use Tshitambwe Kazadi's expression, super-legality⁹.

Among the main objectives of the Constitution of a State is the determination of the rights, freedoms and even duties of the members of the State society it is called upon to govern. It is impossible to conceive, writes Ngondankoy, a modern Constitution without a chapter, or even a title, devoted to human rights¹⁰.

Speaking of the importance of this document, Jean Morange writes that the Constitution is indispensable to ensure public liberty and general happiness. For it to be good, it must be based on human rights, and that it protects them obviously, so in order to prepare a Constitution, one must know the rights that natural justice accords to all human rights. As individuals, it is necessary to recall the principles which must form the basis of every kind of society, and that every article of the constitution may be the consequence of a principle. A large number of modern publicists call the statement of these principles a bill of rights¹¹.

In Congolese national law and human rights law, it is still the Constitution that remains the primary source of Congolese law. But the Constitution in Congo has undergone many changes, revisions and modifications. Indeed, up to that of 2006, in the space of forty-six years, the DRC knows seven constitutions without counting the project elaborated by the National Sovereign Conference in 1992 but not promulgated, with a total of 17 modifications, whereas a country like the United States of America will have had only one Constitution with a bright future ahead of it, and barely twenty amendments in 215 years. But all these seven Constitutions infallibly reserve a place of choice for the famous rights and fundamental freedoms of citizens¹².

Thus, it follows that, in the field of human rights, the Constitution ranks first in the hierarchy of legal sources. It is the basic legal rule. It provides the social group with all the conditions for effective action in safeguarding, defending and protecting human rights¹³.

All other sources must obey him, since they are subject to him. Whether written or customary, the Constitution constitutes the supreme law of the state, the norm of norms (grundnorm), according to the terminology of the eminent Austrian jurist Hans Kelsen. The pre-eminence or supremacy of constitutional provisions, that is, the superiority of these over all other rules, is related to their content and, sometimes, to the form in which they are enacted. In the first case, we speak of material supremacy and in the second case of formal supremacy¹⁴.

The separate examination of the period from 1960 to 1967 was justified upstream by the year of the independence of the

⁹TSHITAMBWE KAZADI, *Droit Constitutionnel et Institutions Politiques*, Notes du cours dispensé à l'Université de Lubumbashi, Faculté de Droit, inédit, 1996-1997. 155 N-e-L. NGONDANKOY, Op. cit, p. 64.

¹⁰F. DELPEREE, « Le droit constitutionnel de la Belgique », Bruxelles Paris, Bruylant-L.G.D.J., 2000, p. 11 dans Idem, p. 64.

¹¹J. MORANGE, Op. cit, p. 14.

¹²CONFERENCE NATIONALE SOUVERAINE, *Constitution, République Fédérale du Congo*, Kin., Palais du Peuple, Novembre 1992.

¹³IYELEZA MOJU- MBEY (coll.), Op. cit, p. 2.

¹⁴NTUMBA LUABA LUMU, *Droit constitutionnel général*, Kin., Editions Universitaires Africaines, 2005, p. 139.

DRC followed by the establishment of the first political institutions of the country and, downstream, by the year that marks the end of the 1964 Luluabourg Constitution and the beginning of the 1967 Constitution¹⁵.

II.2. Human rights in the different constitutions before 30 June 1960.

Before 1960, the Democratic Republic of Congo was managed by a colonial Charter implemented by Belgium (A). On the eve of independence, the Belgian Parliament adopted a law to govern, in terms of human rights, the independent Congo (B).

II.2.A. The Colonial Charter of October 18, 1908

The first text that can be analyzed as a basic text is the Colonial Charter of October 18, 1908 - law on the Government of the Belgian Congo which was a constitution in its own right governing the colony, the Congo - set up by the colonizing power, the Belgium. But since no laudable commitment to human rights can be expected from this Charter, taking into account the basic objectives of its drafting and promulgation, we will not dwell on its analysis for a long time.

Nevertheless, this Charter already provided for the establishment of a permanent commission for the protection of the natives and the improvement of their moral and material conditions. It singularly places the general question of human rights under the entire empire. of the Belgian Constitution of 1830. We can also add paragraphs 4 and 5 of Article 2 of the Charter which, first, prevents any constraint on a person to work for or on behalf of particular and, secondly, refers to the jurisdiction of the law the settlement of the real rights and the personal liberty of the natives, law which was taken only on June 17, 1960 on public liberties¹⁶.

The Belgian Constitution referred to in Article 2 of the Colonial Charter, particularly in matters relating to social policy, is its indispensable complement in the process of constitutionalizing human rights and promoting human rights. natives¹⁷.

Notwithstanding this appearance of the attempt to protect human rights, Belgium has emerged as the most dangerous country in human rights violations in the Belgian Congo. Indeed, the pangs and the unfortunate consequences of colonization will place the Belgian regime among the most bloodthirsty regimes that the national history has been able to record: chores, mutilations of all kinds, the economic exploitation and the ideological regimentation established by this regime thus throw, as a balance sheet, a thick cloud of shadow in all the Belgian colonial social policy, which does not make it possible to evoke the question of human rights during this period, to add whipping. What justified, and perhaps to redeem before the Congolese on the eve of its independence, the appearance of a new text, a special text, of a constitutional nature in the field of human rights: it was the Basic Law of 17 June 1960 on civil liberties¹⁸.

¹⁵ F. DELPEREE, *Op. cit.*, p. 11.

¹⁶ Article 6 de la Charte coloniale tel que modifié par la loi du 5 mars 1912 ; Pour plus de détails de la loi du 18 octobre 1908 sur le Gouvernement du Congo Belge, lire dans IYELEZA MOJU- MBEY, (coll.), *Op.cit.*, pp. 143-148.

¹⁷ Article 2 de la Charte coloniale.

¹⁸ N-e-L. NGONDANKOY, *Op. cit.*, pp. 66-67.

II.2.B. The Basic Law of June 17, 1960

This law, of Belgian origin, forms with the fundamental law relating to the structures of the Congo of May 19, 1960, the second Congolese Constitution under Belgian colony. It is the first special constitutional text on human rights. Even if its title - civil liberties - accuses its kinship with the liberal philosophy of the West of the 18th century, it remains no less a basic text of human rights in the Congo¹⁹.

Its reading takes us directly to Article 1 which opens with a proclamation of faith in human rights and by the determination of all Congolese to apply them: This law reflects the unwavering attachment of the Congolese people to human rights. of man and the principles of democracy. It is inspired by their primary concern to ensure respect for the human person without any distinction (...). Its purpose is to define the rights that individuals enjoy in the Congo and whose authorities must ensure respect and promote achievement.

This special constitutional text comprises 21 articles, of which at least 18 are devoted to the definition and proclamation of the main rights that should be recognized for the new Congolese who became free within 12 days of its promulgation. In this law, the right to equality (Article 2 (1)), the right to liberty (Article 4 et seq.) And the right to the enjoyment of political rights (Article 2 (2)) could be established. the right to life and respect for bodily integrity (Article 3), the right to respect for the inviolability of the home (Article 9), the right to respect for the secrets of correspondence (Article 10), the right to freedom of thought, conscience and religion (Article 12), the right to property (Article 14), ... the right to a fair trial or to a better standard of living is also proclaimed, including the right to the right to strike, peaceful assembly and association (Articles 16 and 17).

As one can imagine, a people who achieved independence in a few days could not know all the meanders of the implementation of such provisions, formerly nonexistent.

The denomination of public liberties given to this fundamental law results from a terminology and a philosophy which are foreign to us, since, finds Ngondankoy, essentially coming from French public law. But despite the debate that can be held around the difference between human rights and public freedoms, we must admit the inclusion of two expressions because, as Jean Rivero concludes, public liberties correspond to human rights that their recognition and planning by the state have inserted into the positive law. In other words, public liberties would be (...) only a category of human rights recognized and developed by the State²⁰.

¹⁹ V. Loi fondamentale du 19 mai 1960 relative aux structures du Congo et loi fondamentale du 17 juin 1960 relative aux libertés publiques dans IYELEZA MOJU- MBEY, (coll.), *Op. cit.*, pp. 2-26.

²⁰ La plupart des manuels publics français insistent en effet sur cette terminologie. Pour s'en convaincre, lire notamment J. ROBERT, « Libertés publiques », Paris, éd. Montchrestien, 1971 ; J. RIVERO, « Les libertés publiques, t.I : les droits de l'homme et t.II : le régime des principales libertés », Paris, P.U.F., coll. Thémis, 1973-1977 ; G. BURDEAU, « Libertés publiques », 4eme éd., Paris, L.G.D.J., 1972 ; C.A. COLLIARD, « Libertés publiques », Paris, Dalloz, 1982. Tous ces auteurs abordent, chacun avec ses opinions, la question de la différence conceptuelle qui existerait entre libertés publiques, d'une part, et Droits de l'homme, d'autre part, dans N-e-L. NGONDANKOY, *Op-cit.*, p. 20.

It would be understandable why the 1908 Colonial Charter did not refer to the term human rights, whereas the 1960 Basic Law makes full reference to it. We believe that the reasons are related to the fact that in 1908, when the colonial charter was promulgated, there were no even international instruments protecting human rights; the Charters of the League of Nations (UN), the United Nations (UN) and the Universal Declaration of Human Rights were not yet born, except the French Declaration of Human Rights and the citizen (1789) which is a French national text²¹.

While in 1960 all these instruments already existed and, it is not clear, Belgium was a member of the UND and then the UN and had ratified the Universal Declaration of Human Rights. It is therefore, we believe, before these imperatives of the hour that she took the initiative to proclaim the fundamental law on public liberties. And the express adherence to these instruments is noticeable by the texts taken after 1960²².

II.3. Human rights in different constitutions after 30 June 1960: a progressive development

After the basic law of 1960, it is the 1964 Constitution that opens the first constitutional stage after independence. The second opens with the Constitution of June 24, 1967, called, rightly or wrongly, Revolutionary Constitution. It has undergone several revisions, most of which only affected political institutions.

It was followed by the Constitutional Act of the Transition of 09 April 1994, which resulted from the revision due to the political speech of President Mobutu of 24 April 1990 on one hand and on the other hand, multiple negotiations between political actors in the Congo. But before 1994, we must once and for all signal the intervention of a draft Constitution of 1992, resulting from the work of the National Sovereign Conference of the People's Palace in Kinshasa, which we do not intend to present in this study for not having been promulgated. After the fall of the power of President Mobutu, the revolutionaries of May 17, 1997 took a text to govern the organization and the exercise of the power during the new transition which had just opened. This is the Constitutional Decree-Law of May 27, 1997.

Two Constitutions are also important in this study, that of transition of April 4, 2003 and that of February 18, 2006.

II.3.A. The constitution of August 1, 1964

After the proclamation of independence - June 30, 1960 - Congo remained under the aegis of the Basic Law from June 17, 1960 until 1964. Indeed, it is August 1, 1964 that the Democratic Republic of Congo adopted and approved by referendum the first constitution of the independent Congo, known as the Constitution of Luluabourg.

The reading of this Constitution reveals, as of its preamble, that it proclaims adherence to the Universal Declaration of Human Rights. In total, it comprised 204 articles, of which 35 were devoted entirely to fundamental rights. In its substance, the Constitution of Luluabourg recognizes to Congolese, to foreigners and even to any person, most of the human rights²³.

It reproduces certain rights of the fundamental law and adds new rights by adaptation to the reality of independence. We can cite: the freedom of the press (Article 26), the right to

meet and to found and join trade unions and other associations (Article 28), the right to establish or join a political party (Article 30), the right not to be expelled from the territory of the Republic (Article 40), freedom of trade (Article 44), etc. With regard to aliens, article 46 stipulates that: Every foreigner who is in the territory of the Republic enjoys the protection afforded to persons and property under this Constitution ... He does not enjoy the rights reserved to the Congolese hereby constitution only to the extent determined by national law²⁴.

As in the Basic Law, the Luluabourg Constitution does not provide for any mechanism for safeguarding and protecting human rights. And, in spite of it, rebellions broke out in the country annihilating the efforts made by the constituent of 1964; human rights will be massively and horribly violated both by the ruling power and by the rebels who, at all costs, wanted to conquer power. Thus, the failure of the execution of the 1964 Constitution will be observed until, on November 24, 1965, a new regime will be set up by a military coup and will make a Declaration of seizure of power by the High Command of the Congolese National Army. And in this Declaration, the Army makes this bitter report: For more than a year, the Congolese National Army has fought against the rebellion which, at a given moment, occupied nearly two thirds of the territory of the Republic, the The Army High Command notes with regret that no effort has been made on the part of the political authorities to help the suffering populations. The race to power of politicians again risking the flow of Congolese blood, all the military leaders of the Congolese National Army, have taken the following grave decisions: The Democratic Republic of Congo proclaims its adherence to the Charter of the Organization of the United Nations and the Organization of African Unity, The rights and freedoms guaranteed by the Constitution of 1 August 1964, as provided for in Articles 24, 25, 26, 27 and 28 shall be respected. This is the case with freedom of thought, conscience, religion, expression, press, assembly and association²⁵.

The Declaration of 24 November 1965, which placed President Joseph Désiré Mobutu in power, had a political aim, that of fighting against rebellion with a view to restoring peace and protecting the population against the flow of blood. to say against the violation of the right to life. The Declaration thus renews its recognition of certain fundamental rights guaranteed by the Constitution of 1 August 1964, especially in its articles 24 (on freedom of thought, conscience and

²⁴ L'article 7 du Décret du 20 février 1891 portant le Titre II du Code Civil Congolais livre 1^{er} sur « Des Personnes » stipule que « L'étranger qui se trouve sur le territoire de la colonie (entendez la R.D.C) y jouit de la plénitude des droits civils. Il est protégé, dans sa personne et dans ses biens, au même titre que les nationaux. » ; P. PIRON et J. DEVOS, Codes et lois du Congo Belge, t. I : Matières civiles, commerciales et pénales, Léopoldville, éd. Des Codes et lois du Congo Belge, 1960, p. 52 ; P.F. KANDOLO ON'UFUKU wa KANDOLO, De la réglementation congolaise du Droit international privé (Essai de mise en commun avec notes), Lubumbashi, éd. Recherche d'une justice juste, 2004, p. 65. Le Décret précité constitue le Code du Droit International Privé Congolais. 171 C'est nous qui soulignons.

²⁵ Pour la proclamation du Haut-Commandement de l'Armée Nationale Congolaise du Mercredi 24 novembre 1965, v. M.M. IYELEZA (coll.), Op. cit, p. 80.

²¹ J. RIVERO, « Les libertés publiques, t. I : les droits de l'homme », Paris, P.U.F., coll. « Thémis », p. 23 dans Idem, p. 21.

²² Idem

²³ M.M. IYELEZA, (coll.), Op. cit, pp. 33-56.

religion), 25 (on freedom of expression), 26 (on freedom of the press), 27 (on radio and television broadcasting rights) and 28 (on the right of assembly and to found and join trade unions or other associations). It therefore prohibits the right to strike and to create the political party. Not surprisingly, taken in a context of a coup, no matter how good the power might be, it could not guarantee all human rights. Accommodation can be found in the Revolutionary Constitution of 1967.

II.3.B. The Constitution of June 24, 1967

Since Lieutenant-General Joseph Desire Mobutu seized power on 24 November 1965, it was the Constitution of 24 June 1967 that paved the way for Congolese legality after five years of civil war. This Constitution, with those of August 1, 1964 and February 18, 2006, were approved by the Congolese people, by referendum. It was approved following a popular referendum held from 04 to 24 June 1967. Some lawyers, such as Balanda, did not hesitate to salute him as inaugurating the new Congolese constitutional law²⁶.

Although achieved by the popular will, this Constitution was revised 17 times in the space of 23 years, from 1967 to 1990, and even the will expressed by the Congolese through the referendum of 1967 no longer existed. However, in its second title entitled Fundamental Rights, the Revolutionary Constitution organizes in 14 articles (from 5 to 18) only out of 85, all the freedoms that the new political regime and the new Constitution should promote²⁷.

In addition to the eternal right to equality and non-discrimination (Article 5), the right to life and physical integrity (Article 6), the right to personal liberty (Article 8), the right to the presumption of innocence (Article 9), the right to freedom of thought, conscience and religion (Article 10), etc., this Constitution recognizes political bipartisanship (Article 4), unlike the 1964 agreement which recognized full multipartism, the right to any person to marry the person of his choice (Article 12, paragraph 3) and the right and duty to work (Article 17)²⁸.

Very concise, this Constitution has not departed, too, from the liberal and individualist philosophy of the West of the eighteenth century and contains, moreover, no proper and specific institution for the promotion and protection of human rights of the man. Even revised several times, it has actually experienced few democratic innovations. On the contrary, the constitutional revision of August 15, 1974 in particular, came to corset all democratic freedoms in one and the same mold, the discipline of the Popular Movement of the Revolution-

²⁶G. BALANDA, « Le nouveau droit constitutionnel Zaïrois », Paris, Nouvelles Editions Africaines, 1972, 214p, in N-e-L. NGONDANKOY, Op. cit, p. 69.

²⁷La Constitution du 24 juin 1967 a été modifiée et complétée par : Ord-loi n° 70-025 du 17/04/1970, Loi n° 70-001 du 23/12/1970 ; Loi n° 71-006 du 29/10/1971, Loi n° 71-007 du 19/11/1971 ; Loi n° 71-008 du 31/12/1971 ; Loi n° 72-003 du 05/01/1972 ; Loi n° 72-008 du 03/07/1972 ; Loi n° 73-014 du 05/01/1973 ; Loi n° 74-020 du 15/08/1974 ; Loi n° 78-010 du 15/02/1978 ; Loi n° 80-007 du 19/02/1980 ; Loi n° 80-012 du 05/11/1980 ; Loi n° 82-004 du 31/12/1982, Loi n° 88-004 du 27/01/1988 ; Loi n° 88-009 du 27/06/1988 ; Loi n° 90-002 du 15/07/1990 et loi n° 90-008 du 25/11/1990 in M.M. IYELEZA (coll.), Op. cit, pp. 94-148.

²⁸Par cette limitation, NGONDANKOY fait observer qu'il s'agit là « d'un début de musellement des libertés politiques, se traduisant par cette volonté de limiter le multipartisme à deux » dans Idem, p. 70.

Party-State, of which every citizen was obligatorily a member, including the fetus²⁹.

The constitutional revisions of 5 July 1990 and 25 November 1990, following President Mobutu's speech of 24 April 1990, also did not change their rights and freedoms, with the exception of political pluralism. limited to three (Article 8) and then to a full multiparty system (Article 8, revision of 25 November 1990) and trade union pluralism implicitly prohibited by the revision of 15 August 1974 (Article 28)³⁰.

It was not until the National Sovereign Conference and the wind of democratic renewal that it brought to witness a mini-revolution in the field of human rights.

All constitutional texts stemming from the Sovereign National Conference movement are extremely progressive in this area. It should be recalled that the Sovereign National Conference resulted in a draft Federal Constitution, which was to be submitted to the referendum. Unfortunately, like so many other resolutions from this assembly that have failed to implement, this project could not be submitted to a referendum when human rights were seriously protected; 51 articles out of 203 (14 to 64) devote to it, although no mechanism of protection of these rights is envisaged there. However, it will be noted with Ngondankoy that the only text implemented since then, which has remained legally less controversial, is the Constitutional Act of the Transition of 09 April 1994.

II.3.C. The Constitutional Act of the Transition of 9 April 1994

As a reminder, a political conclave was held in Kinshasa, after which the compromise was sanctioned by Law No. 93/001 of April 2, 1993 on the Harmonized Constitutional Act relating to the transition period. This compromise contradicted another global compromise of 31 July 1992 from the CNS, which gave rise to the Act on Constitutional Provisions Relating to the Transitional Period. These two acts have created, of course, institutional duplication.

The Constitutional Act of the Transition of April 9, 1994 was born following these differences of views of the Congolese political class on the institutional order, divergences that aggravated the political crisis created by the duplication of political institutions (two governments, two parliaments, one from the work of the CNS and the other from the presidential movement). Thus, the political consultations took place at the People's Palace of Kinshasa from January to March 1994. They gave birth to the Constitutional Act of the Transition of 09 April 1994.

As we can see, the text is the result of a political compromise. This act, which had 122 articles, devotes 27 articles to the recognition of v fundamental rights of the human person and duties of the citizens (articles 9 to 36).

Most of his rights are classic rights stemming from Western liberal and individualistic philosophy. It contains, as an innovation, a significant number of rights and freedoms whose constitutional recognition results from the vast

²⁹Idem

³⁰S'agissant de la révision constitutionnelle du 15 août 1974 et de ses commentaires, lire J. VANDERLINDEN, « La République du Zaïre, Encyclopédie politique et constitutionnelle », Institut International d'Administration Publique, Paris, éd. Berger-Levrault, 1975, pp.36-43 in Ibidem ; M.M.IYELEZA (coll.), Op. cit., pp. 99-107.

democratic movement inspired by the Sovereign National Conference itself, without reference to the texts of the West³¹.

For the first time in Congolese law, we see the emergence of rights to resistance and civil disobedience. These rights are expressed either in the form of refusal to execute a clearly illegal order (Article 16), the right of petition (Article 19) or the right and duty to defend the Nation and its territorial integrity and to failure to exercise any de facto or unconstitutional power (Article 37 (2)). We can add the right of asylum (Article 7) to foreigners.

Apart from these freedoms, and particularly to democratic freedoms (eg the multiparty system), the Constitutional Act does not recognize any other collective right to the people, nor does it provide for any particular institution for the promotion or protection of human rights. To do this, Ngondankoy finds this Act inseparable from the blemish of his predecessors, even if the reinforcement of political liberties can be put on his account. We must therefore look for solutions in the texts that we follow³².

II.3.d. Constitutional Decree-Law No. 003 of May 27, 1997

Since the takeover of power by the Alliance of Democratic Forces for the Liberation of Congo, A.F.D.L.As an acronym, led by Laurent-Desire Kabila, a legal vacuum was created in the Congo following the suspension of all previous legal acts (of all political institutions and all political parties). The country was plunged into a period of anomie. The voices rose from everywhere to stigmatize this state of affairs, especially during the publication of the government of the Third Republic referring to the status of the AFDL. To mitigate this situation, President Laurent-Desire Kabila signed, on the eve of his oath, the Constitutional Decree-Law under analysis relating to the organization and exercise of power in the Democratic Republic of Congo. This decree-law which had only 15 articles, grants the full powers to the President of the Republic which thus intends to control and control all the cogs of the national life before the setting up of the Constituent Assembly.

This constitutional decree-law, resulting from the revolution-forgiveness of the Kabila regime, is the most mute and the most monstrous Constitution of those that existed until then, in the field of human rights³³.

It is limited, in its article 13, to declare that insofar as they are not contrary to the provisions of the present constitutional decree-law, the laws and regulations existing at the date of its promulgation remain in force until the moment of their repeal. This provision, which is the certified copy of Article I, paragraph 1 of Law No. 74-020 of 15 August 1974 revising the Constitution of 24 June 1967, shows the exercise of an authoritarian power given that it is up to the constituent and alone the power to know the laws and regulations that are not contrary. Such a stipulation gives its author alone the power to appreciate what is not contrary to the text taken³⁴.

In reality, several freedoms have been suspended including the freedom to create political parties, that of

association, so we must quickly find a text that is not contested and contestable by all.

II.3.E. the Transitional Constitution of April 4, 2003

The human rights regulations of the year 2003 to 2006 are covered by the Constitution of the Transition of 04 April 2003. This is truly a negotiated Constitution resulting from the Global and Inclusive Agreement on the Protection of Human Rights. Transitional period concluded in Sun City on 17 December 2002 between the different components and entities of the Inter-Congolese Dialogue. In reality, the text stems from the will of the belligerents who sought to put an end to the war that had plunged the entire Congo.

In its preamble, this constitutional text solemnly reaffirms the commitment of the Congolese people to the principles of democracy and human rights as defined by the Universal Declaration of Human Rights of 10 December 1948, the Charter of Human and Peoples' Rights adopted on 18 June 1981, as well as all the international and regional legal instruments adopted within the framework of the United Nations and the African Union, duly ratified by the Democratic Republic of Congo³⁵.

In other words, the Constitution recognizes, even without expressly saying so, all the rights and freedoms currently recognized by all international human rights law provided that they have been duly ratified by the DRC. Despite the procedure followed for its promulgation, this Constitution reaffirms rights which, for the most part, have already been constitutionalized. By way of example, we can cite on the one hand: the sacred right and duty to defend the nation and its territorial integrity and to defeat any individual or group of individuals who seize power by force or power exercised in violation of the provisions of this Constitution (Article 3), the rights to civil resistance and disobedience introduced by the Sovereign National Conference and inserted in the Constitution of 09 April 1994, the right which belongs to any Congolese to create a political party or to join a party of one's choice (Article 11). And, on the other hand, the institutionalization of the political opposition and the recognition

Constitutional rights related to its existence are a legacy of the National Conference on Human Rights. In short, forty-eight articles (15 to 63) out of 205, devoted to public freedoms, fundamental rights and duties of the citizen are, with a few exceptions, the fruit of the democratic struggles that have been going on for several years in the Congo and whose ultimate success is of the considerable contribution of the Sovereign National Conference.

The Constitution of the Transition, however, innovates in recognition, alongside the rights of individuals: the right to equality for the benefit of the national communities that our country includes (Article 14); duties of either the State or society in general, or to parents or individuals. It creates, for the first time, at the level of specific mechanisms for the safeguarding of human rights, a National Observatory of Human Rights, with among other missions to promote and protect human rights during the transitional period with the name Democracy Support Institution (Articles 154 and 155). This text, although praised, does not meet the consent of the people because, as we said above, it is the result of the will of the parties who were in armed warfare and not the will of the people. It is therefore necessary to find a text emanating from the will of the entire Congolese people.

³¹N-ea-L. NGONDANKOY, Op. cit, p. 71.

³²J.P. BEMBA, « Choix de la liberté », Paris, éd. Venus, 2000 cité dans N-ea-L. NGONDANKOY., Op. cit., p. 71.

³³Idem

³⁴Constitution de la Transition, in Journal Officiel de la République Démocratique du Congo, 44 année, n° spécial, avril 2003, pp. 2-70.

³⁵Préambule de la Constitution de la Transition du 04/04/2003.

The constituent of 2006 reaffirmed our country's commitment to human rights and fundamental freedoms as proclaimed by the international legal instruments to which it adhered. Thus, he has integrated these rights and freedoms into the very body of the Constitution. Apart from Article 10 on Congolese nationality, all human rights are provided for in Title II on Human Rights, Fundamental Freedoms and the Duties of the Citizen and the State. This title contains 67 articles (from 11 to 67) whereas the fundamental law, which related exclusively to public liberties, had only 21. The quantity is therefore considerable but, obviously, the new constituent tries to integrate all international and regional legal instruments on human rights.

With regard to the title given to this group Human Rights, Fundamental Freedoms and Duties of the Citizen and the State, it should be noted that since the independence of our country, several names have been given to titles, chapters or sections relating to human rights: they are sometimes called public liberties (under the Basic Law of 1960), sometimes the fundamental rights (under the constitutions of 1964 and 1967) and sometimes the human rights, fundamental freedoms and duties of the citizen and state (under the Constitution in force).

II.3.F. The Constitution of 18/02/2006

This constitution reaffirms the commitment of the Democratic Republic of Congo to human rights and fundamental freedoms as proclaimed by international legal instruments to which it has adhered. In this respect, the current constitution introduces an innovation by formalizing gender parity

III .Milieu of Study

This framework of study had as field of action the Democratic Republic of Congo but that trying to make a legal analysis of the different constitutions of the Democratic Republic of Congo in order to demonstrate which of them could offer guarantees necessary in the search for the application and the protection of right of the man, in order to release the true references of the protection of the citizens in the Democratic Republic of Congo.

IV. Methodology

This study is circumscribed within the framework of the protection of right of the man it is for this reason that we resorted to the exegetic method defined like a set of direct prescriptions legal rules used by jurists to interpret the texts of laws and legal provisions to confront them with social reality. This method was supported by the comparative technique that allowed us to assess the degree of human rights protection in the different constitutions of the Democratic Republic of Congo in order to identify which of them has much more guarantees in the protection of the right of the man.

V. Conclusion

Obviously, the Democratic Republic of Congo is in search of a constitutional denomination of human rights. To our understanding, all these expressions mean the same thing, have no substantial difference to the extent that they tend to protect the same rights. But the current expression of Human Rights seems to us to be borrowed from two sources; firstly, the name given to the Ministry of the Government responsible for the protection of human rights and established since 1998, the Ministry of Human Rights, to replace a Ministry which had existed in 1986 under the name of the Department rights and freedoms of the citizen³⁶.

³⁶Ce Département du Conseil Exécutif National (entendez Gouvernement) a été créé par l'Ordonnance n° 86-268 du 31.10.1986 modifiée par l'Ordonnance n° 87-034 du

Today, a merger of this Ministry has been carried out at the governmental level with the Ministry of Justice. Then, at the XIV Congress of the International Institute of French-Speaking Rights, held in Montreal from September 12 to 19, 1981, on the legal mechanisms for the protection of human rights, Canadian feminists obtained that all references to religion were banned. man, the word person [or the adjective human] encompassing better, according to them, the human species and without doubt having the additional advantage of being of the feminine gender³⁷.

It is understandable that the current Congolese constituent avoids the use of the expression that is reminiscent of the only adult male sex, while the objective is to protect the man, the woman, the children and the fetus.

Moreover, although several constitutional provisions imposed on the state a number of duties towards its citizens and it is he the principal debtor of the human rights, the current constituent innovates in that it adds Alongside human rights, the duties of the State, even if no chapter of Title II deals separately with these duties.

In terms of classification of rights, it is for the first time in the history of Congolese constitutional law to see a Constitution largely inspired by the ideology that was at the basis of the implementation of two International Covenants respectively on Civil and Political Rights and on Economic, Social and Cultural Rights, 1966, to classify human rights. It adds to this philosophy a collective right doctrinal classification³⁸.

Thus, the course of the Constitution of 18 February 2006 reveals that Title II relating to human rights is divided into three chapters: civil and political rights (articles 11 to 33), economic, social and cultural rights (articles 34 to 49).) and collective rights (Articles 50 to 60). Chapter 4 has been added to determine the constitutional duties of the citizen (sections 62 to 67).

In addition to these innovations, it should also be noted that the current Constitution contains other advances in the area of human rights, including the resolution of the issue of gender balance in the representation of women in national, provincial and international institutions. (Article 14), the elimination of sexual violence used as a weapon of destabilization or dislocation of the family (Article 15), equitable access to state-run audio-visual and written media to all political and social currents (Article 24), the prohibition of abandonment and child abuse, including pedophilia, the accusation of witchcraft (Article 14), the right to a healthy and propitious environment (Article 53), the right to be compensated or to receive compensation in the event of pollution or destruction resulting from an economic activity. (case of storage, handling, incineration and disposal of toxic waste) (Article 54), the right to enjoy national wealth (Article 58) and the common heritage of humanity (Article 59), prolongation rights which cannot be waived even when a state

22.01.1987 in Journal Officiel de la République du Zaïre, n° 4, du 4.2.1987, p. 21.

³⁷ [En ligne], août, <http :

//www.francophonie.org/UIJPLF/congres. 14. htm> (consulté le 4.08.2004). 185 P.F. KANDOLO ON'UFUKU WA KANDOLO, « Pour une nouvelle constitutionnalisation des droits de l'homme : La République Démocratique du Congo toujours au rond-point » in Les Analyses juridiques, n° 13-14, 2007-2008, Lubumbashi, 2008, p. 35.

³⁸Idem, p. 36.

of siege or state of emergency has been proclaimed (Article 61), etc.

VI. Bibliographie

LOUVRAGES

1. BALANDA, « Le nouveau droit constitutionnel Zaïrois », Paris, Nouvelles Editions Africaines, 1972, 214p, in N-e-L. NGONDANKOY, *Op. cit.*, p. 69
2. DELPEREE, « Le droit constitutionnel de la Belgique », Bruxelles Paris, Bruylant-L.G.D.J., 2000, Pp. 11, 64
3. IYELEZA MOJU- MBEY, *Loi fondamentale du 19 mai 1960 relative aux structures du Congo et loi fondamentale du 17 juin 1960 relative aux libertés publiques*, (coll.), *Op. cit.*, pp. 2-26.
4. J. RIVERO, « Les libertés publiques, t. I : les droits de l'homme », Paris, P.U.F., coll. « Thémis », p. 21-23
5. J. VANDERLINDEN, « La République du Zaïre, Encyclopédie politique et constitutionnelle », Institut International d'Administration Publique, Paris, éd. Berger-Levrault, 1975, pp.36-43
6. J.P. BEMBA, « Choix de la liberté », Paris, éd. Venus, 2000 cité dans N-e-L. NGONDANKOY, *Op. cit.*, p. 71.
7. J. ROBERT, « Libertés publiques », Paris, éd. Montchrestien, 1971 ; J. RIVERO, « Les libertés publiques, t.I : les droits de l'homme et t. II : le régime des principales libertés », Paris, P.U.F., coll. Thémis, 1973-1977 ; G. BURDEAU, « Libertés publiques », 4eme éd., Paris, L.G.D.J., 1972 ; C.A. COLLIARD, « Libertés publiques », Paris, Dalloz, 1982. Tous ces auteurs abordent, chacun avec ses opinions, la question de la différence conceptuelle qui existerait entre libertés publiques, d'une part, et Droits de l'homme, d'autre part, dans N-e-L. NGONDANKOY, *Op. cit.*, p. 20.
8. M.M. IYELEZA, (coll.), *Op. cit.*, pp. 33-56.
9. M.M. IYELEZA (coll.), *Op. cit.*, pp. 99-107.
10. M.M. IYELEZA *Pour la proclamation du Haut-Commandement de l'Armée Nationale Congolaise du Mercredi 24 novembre 1965*, v. (coll.), *Op. cit.*, p. 80.
11. M.M. IYELEZA *La Constitution du 24 juin 1967 a été modifiée et complétée par : Ord-loi n° 70-025 du 17/04/1970, Loi n° 70-001 du 23/12/1970 ; Loi n° 71-006 du 29/10/1971, Loi n° 71-007 du 19/11/1971 ; Loi n° 71-008 du 31/12/1971 ; Loi n° 72-003 du 05/01/1972 ; Loi n° 72-008 du 03/07/1972 ; Loi n° 73-014 du 05/01/1973 ; Loi n° 74-020 du 15/08/1974 ; Loi n° 78-010 du 15/02/1978 ; Loi n° 80-007 du 19/02/1980 ; Loi n° 80-012 du 05/11/1980 ; Loi n° 82-004 du 31/12/1982, Loi n° 88-004 du 27/01/1988 ; Loi n° 88-009 du 27/06/1988 ; Loi n° 90-002 du 15/07/1990 et loi n° 90-008 du 25/11/1990 in (coll.), *Op. cit.*, pp. 94-148.*
12. NTUMBA LUABA LUMU, *Droit constitutionnel général*, Kin., Editions Universitaires Africaines, 2005, p. 139.
13. N-e-L. NGONDANKOY, *Op. cit.*, pp. 63-71
14. ROUGET, *Op. Cit.*, p.57.
15. TSHITAMBWE KAZADI, *Droit Constitutionnel et Institutions Politiques, Notes du cours dispensé à l'Université de Lubumbashi, Faculté de Droit, inédit, 1996-1997.* 155 N-e-L. NGONDANKOY, *Op. cit.*, p. 64-70

II. ARTICLE DE REVUES II. ARTICLE OF REVIEWS

1. ARTICLE 7 DU DECRET DU 20 FEVRIER 1891, portant le Titre II du Code Civil Congolais livre 1^{er} sur « Des Personnes » stipule que « L'étranger qui se trouve sur le territoire de la colonie (entendez la R.D.C) y jouit de la plénitude des droits civils. Il est protégé, dans sa personne et dans ses biens, au même titre que les nationaux. » ; P. PIRON et J. DEVOS, *Codes et lois du Congo Belge, t. I : Matières civiles, commerciales et pénales*, Léopoldville, éd. Des Codes et lois du Congo Belge, 1960, p. 52 ; P.F. KANDOLO ON'UFUKU wa KANDOLO, *De la réglementation congolaise du Droit international privé (Essai de mise en commun avec notes)*, Lubumbashi, éd. Recherche d'une justice juste, 2004, p. 65. Le Décret précité constitue le Code du Droit International Privé Congolais. 171 C'est nous qui soulignons.
 2. ARTICLE 6 DE LA CHARTE COLONIALE, tel que modifié par la loi du 5 mars 1912 ; Pour plus de détails de la loi du 18 octobre 1908 sur le Gouvernement du Congo Belge, lire dans IYELEZA MOJU- MBEY, (coll.), *Op. cit.*, pp. 143-148.
 3. L'ARTICLE 2 AVANT LE 30 JUIN 1960, la République Démocratique du Congo était une colonie Belge, régie par la Charte Coloniale du 18 octobre 1908. Celle-ci contenait quelques dispositions discriminatoires sur les droits des indigènes Congolais.
 4. ALINEA 5 DE LA CHARTE, stipulait : « Des lois régleront, à bref délai, en ce qui concerne les indigènes, les droits réels et la liberté individuelle ». C'est seulement le 17 juin 1960 que la loi fondamentale relative aux libertés publiques a été prise. On peut lire ces deux textes dans IYELEZA MOJU- MBEY, MASIKA KATSUVA et ISENGINGO KAMBERE N'GISE, *Recueil des textes constitutionnels de la République du Zaïre, du 19 mai 1960 au 28 avril 1991 avec, en annexe, la Charte coloniale du 18 octobre 1908*, Kin, éd. Ise-Consult, 1991, pp. 24 et 143.
 5. LES INSTRUMENTS INTERNATIONAUX relatifs aux Droits de l'Homme ratifiés par la République Démocratique du Congo » *Journal Officiel de la République Démocratique du Congo*, 40 année, n° spécial, avril 1999, pp. 1 – 124.
- ## III. RAPPORT ET AUTRES DOCUMENTS
- ### III. REPORT AND OTHER DOCUMENTS
1. CONFERENCE NATIONALE SOUVERAINE, *Constitution, République Fédérale du Congo, Kin., Palais du Peuple, Novembre 1992.*
 2. CONSTITUTION DE LA TRANSITION, in *Journal Officiel de la République Démocratique du Congo*, 44 année, n° spécial, avril 2003, pp. 2-70.
 3. DEPARTEMENT DU CONSEIL EXECUTIF NATIONAL, (entendez Gouvernement) a été créé par l'Ordonnance n° 86-268 du 31.10.1986 modifiée par l'Ordonnance n° 87-034 du 22.01.1987 in *Journal Officiel de la République du Zaïre*, n° 4, du 4.2.1987, p. 21.
 4. [EN LIGNE], AOUT, <HTTP : //www.francophonie.org/UIJPLF/congres. 14. htm> (consulté le 4.08.2004). 185 P.F. KANDOLO ON'UFUKU WA KANDOLO, « Pour une nouvelle constitutionnalisation des