Traditional Chieftaincy and decentralization in the Democratic Republic of the Congo: Opportunities and Challenges.

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The aim of this thesis is to examine the conditions in which African traditional chieftaincies and their leaders can play a role in the democratic and decentralization initiatives and programs aiming at increasing state's legitimacy. It is not to be understood as a defence of traditional chieftaincy since from the outset I recognized that this institution is not a panacea.

My position is only that, considering both the size of the country(2 345 000 km²) and the extent of the task, it is necessary over and above the reforms at the centre of the state, to think about mechanisms that can permit an effective and efficient contribution of all the entities of the country in the measure of their potentialities. And this is only possible, in my view, if an effort of understanding the present structure is made in order to verify if and to make sure that it permits such a mobilization.

Authors do not have the same opinion concerning the part of these customary and modern norms and practices should occupy in the state-building process. Many radical modernist (evolutionist) theories propose just the banishment of traditional structures and institutions. They argue that they are contrary to the ideal of modern state, and put a brake on its establishment. From this point of view, the custom and the institutions that it has given birth to have to be removed from the state's political and administrative field. At best they should be merely restricted to the cultural or private domain. Otherwise they are fought in their very existence.[1]

Less radical modernists on their side see this removal of "traditional or primordial culture" as an unavoidable consequence of modernization. According to them, "advances toward certain

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[1] Marion Levy, « Patterns of Modernisation in Political Development », in *Annals of the American Academy of Political and Social Sciences*, March 1966, pp. 29-40, quoted by Olufeni VAUGHAN, *Nigerian Chiefs: Traditional Power in Modern Politics 1890s-1990s*, New York, University of Rochester Press, 2000, p.3. Concerning the official discourse in Benin in the seventhies against traditional institutions, see also C-H. PERROT et F-X. FAUVELLE-AYMAR (Sous la dir.), *Le retour des rois : Les autorités traditionnelles et l'Etat en Afrique contemporaine*, Paris, Karthala, p. 114.

levels of modernity within African political, economic, and social system are invariably accompanied by an equal decline in that system's traditional and primordial culture"[2]

Other authors have developed more conciliatory and even realistic approaches. For them, Africa follows a paradoxical logic in comparison with that of the nation-state at its beginnings. According to them, nation-state took advantage of a context of insecurity to monopolize the legitimate use of violence. The latter became a collective right of the societies in exchange for their security. Mwayila Tshiyembe claims that this success was due to a double postulate:

1. the one of individualism which requires from individuals to refer to the political entity instead of the community to which he belongs.
2. The one of nation-state's own credibility, i.e. its capacity to actually protect the citizen and to have enough resources to this end.

Paradoxically, notes this author, the main characteristic of post-colonial African state is the decay of the central power because of nepotism, precariousness, lack of any civic and political virtue, predation and bribery. Far from being confronted by the crisis that western feudal lords faced, African pre-colonial nations and the traditional authorities that symbolize them have got resources all the more powerful since they represent the traditional legitimacy in opposition to the legitimacy of importation that covers the official political scene.[3]

African state is thus, in the present day, necessarily a multinational state. Traditional institutions are still keeping a very important room into the collective imaginary and many Africans are still attached to them. These institutions have some values (the idea that the power is derived from the people for whom is held in trust, search for consensus when dealing with some controversial issues, existence of checks and balances[4], cohesion of the group, identity building), which can contribute to the edification of a more embedded state. It follows from that that, by rejecting these institutions, one runs the risk of leading to either a total dislocation of African societies or a rejection of the graft of what should be seen as a totally foreign state. The tendency is thus to propose a sort of articulation of tradition and modernity. Trutz Von Trotha has proposed the idea of turning the (administrative) chieftaincy of present

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[2] SCHRAEDER Peter J., *African Politics ans Society: A Mosaic in Transformation*, 2ed., Ed. Belmont, CA: Thomson/Wodsworth, 2004, quoted by BRADLEY TODD M., «The Other»: Precursory African Conception of Democracy», in *International Studies Review*, 7, 2005, p.418.
[3] MWAYILA TSHIYEMBE, *Etat multinational et démocratie en Afrique : Sociologie de la renaissance politique*, Paris, L'Harmattan, 2001, p. 121.
4 OLADIPO Olusegun, "Tradition and the Quest for Democracy in Africa", 2000, Available at www.polylog.org

days into "civil chieftaincy". This would be more just, responsive and responsible just as the new type of central government would be.[5] Mwayila Thiyembe speaks of what he calls "*republicanisation du pouvoir traditionnel*" (transformation of traditional power into republic). It is about a sort of marriage of heart and convenience of these two fields of politics. Its viability requires that tradition get into the republic and the republic into the tradition. In concrete terms, African institutions should be associated with the state project. This process implies, among others, at the micro-local level, the recognition of the traditional power and the rehabilitation of its institutions so that there are cheftaincy's government and assembly. It should be endowed with a legal status and the consequent administrative structure. It will become the place where people will be introduced to and will familiarize with democracy.[6]

I show in chapter three of this thesis that Congo is still stumbling on these two opposite tendencies. Since the royal decree issued on October 6th,1891 traditional chieftaincies have been recognized and inserted in the administration of the so called Independent State of Congo[7]. But, the subsequent legislative interventions pretend to recognize the autonomy of the traditional entities and, at the same time or immediately after, one notices the will to submit them and to substitute a new legal and political hierarchy for the existing orders. This imprecision throws quite a few people into confusion about whether the existence of traditional institutions is a transitory situation or not. (For example, in 1973, a law on the land has transferred the monopoly on the land and its management to the state. Dealing with the rural lands, this law says that its regulation will be fixed by the president of the Republic. It has never been the case until now. Is it a lack of political will? To be honest, this is one of the matters which constitutes the core of the traditional political system so that an "anarchic" intervention of the state will certainly lead the state to an open war with "its" chieftaincies!) In any case, this situation is likely not to promote any strategy of consolidation.

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[5] See Trutz Von Trotha contribution in Donal I. RAY and E.A.B. Van ROUVEROY Van NIEUWAAL (Dir.), "The new relevance of traditional authorities in Africa's future", in *Journal of legal pluralism and unofficial law*, n°37-38/1996, special double issue, Foundation for the journal of legal pluralism, Netherland, 1996, p.8.

[6] MWAYILA TSHIYEMBE, *op.cit*.

[7] This appellation was just a diplomatic way of hiding what was in reality a private property of the King of Belgians. Englebert notes for instance that "Congo was created by Leopold II, king of Belgians, as a private commercial venture. Henry Stanley had been commissioned to explore the bassin of the Congo River, and the resulting Congo Free State was created in 1885 as a personal property of the king". Quoting Winsome Leslie, he notes that "the focus was on extraction of resources, the unification of territory through military conquest, and the ecoomic destruction of pre-existing kingdoms". Englebert Pierre, *op. cit*. 107. To stress this patrimonial behaviour, if it were still necessary to demonstrate it, one should remember that Leopold II has bequeathed Congo to Belgium.

The new constitution adopted by referendum in December 2005, recognized clearly legal status to traditional entities. But it is up to the law to establish its organization and functioning. This option, made at the high level (constitution), corresponds to a largely shared opinion that the building of modern state on the debris of the old requires the adjustment of tradition to modernity, rather than the substitution of one for the other.[8] In this regard, the literature review is extremely important as it helps to bring out what is already known and, by doing so, to clear the ground for the contribution to both debate and decision-making. I will particularly focus, in the following point, on the literature which sees in the historical trajectory of African states and the "marginal" status or the role that the traditional entities have occupied in most of them as the main explanatory factors of their failure. The main hypothesis is therefore that the restructuration of these countries (Congo in particular) in such a way that these local institutions have a key role will be the guarantee for acquiring both legitimacy and developmental capacity.

<u>State legitimacy and developmental capacity:</u>

Political scientists and sociologists have recently developed very stimulating approaches to understand African states, to explain most of its failures and to indicate the way in which reforms should be led. They have focused their analysis on the articulation between state and society. On this particular issue it becomes common among them to speak of the illegitimacy of African state. This phrase expresses the fact that African state is not (ex ante) locally appropriate or rooted. It is a product of transplantation instead of being a creation of local history.[9] Pierre Englebert, using Kalevi Holsti's terminology[10], has distinguished two sorts of legitimacy: the *vertical legitimacy* and *the horizontal legitimacy*. Vertical legitimacy corresponds to the quality of the relation between society and political institutions or in others words the presence of a consensus on the content of the social contract. The exogenous process of state creation had as consequence that "*the leadership or the ruling class inherited*

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[8] Lemarchand René, "Political Clientelism and Ethnicity in Tropical Africa: Competing Solidarities in Nation-Building", in *The American Politcal Science Review*, Vol.66, n°1, March 1972, p.87.

[9] Englebert Pierre, state Legitimacy and developement in Africa, Boulder and London, Lynne Rienner Publishes, 2000, pp.4-5. See also Hyden Goran, "Problems and Prospects of State Coherence", in D. Rothchild and V.A. Olorunsola, *State versus Ethnic Claims: African Policy Dilemmas*, Boulder, Colo.: Westview Press, 1983, pp.67-84; Badie Bertrand, *L'Etat importé: L'occidentalisation de l'ordre politique*, Paris, Fayard, 1992; Davidson Basil, *The Black Man's Burden. Africa and the Curse of the Nation-State*, New York, Times Books, 1992; Dia Mamadou, *Africa's Management in the 1990s and Beyond: Reconciling Indigenous and Transplanted Institutions*, Washington, D.C.: The World Bank, 1996.

[10] Holsti Kalevi J., *The State, War, and the State of War*, Cambridge: Cambridge University Press, 1996; quoted by Englebert Pierre, *op.cit.*, pp.7-8.

the state rather than shaping it as an instrument of its existing and developing hegemony. As a result, African states were born lacking legitimacy, meaning simply that they were not endogenous to their societies, they were not historically embedded into domestic relations of power and domination, and they therefore suffered from dichotomization between power and statehood"[11]. Vertical legitimacy captures the degree to which contemporary state institutions evolved endogenously to society or were imported and, in the later case, the extent to which such imported institutions clash with pre-existing relations of authority.

Horizontal legitimacy refers to the degree of continuity between pre- and postcolonial borders and is measured by the percentage of a country's populations that belong to ethnic groups not partitioned by borders. Although the arbitrariness of borders is not particular to Africa, the characteristic of African borders is that they were drawn according to colonial interest without any regard to the social and political realities on the ground. Even if ethnicity is itself a fluid concept and unreliable source of identity or institutional affiliation, as Englebert puts it, the fact that an ethnic group exists on both sides of contemporary border, no matter how intense the ethnic identity, means that the border cuts across a pre-existing area of common political culture[12]. Therefore it becomes difficult for an imposing state to get the allegiance of a partitioned group.

The conclusion of this study demonstrates that the African countries that have a high degree of legitimacy, both vertically and horizontally, (Botswana, Lesotho, Swaziland, Seychelles, Cape Verde, Mauritius, São Tomé, and Principe) also have great developmental capacity. Freed from the immediate imperative of coercing support for building hegemony, they are more willing to invest in infrastructures, education, and health. Thus, their existing legitimacy is enhanced by the efficiency of their policies. As for their lower degrees of legitimacy, their resources are either spent on activities for rulers to establish control over society (strong bureaucracies and unnecessarily large armed forces), redistributed to competing groups (cooption) to maintain tolerance of their rule, or in current spending (salaries and wages). They resort to neo-patrimonial policies in order to substitute instrumental legitimacy for the lack of moral foundations of their power.[13] It appears from this point of view that neo-patrimonialism is not an irrational practice politically speaking, but a political choice/necessity, which in turn depends on the degree of state legitimacy. Bad governance

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[11] Englebert Pierre, *op.cit,* p.76.
[12] Englebert Pierre, *op. cit.,* p.8.
[13] *Ibid.,* pp.71-149.

becomes not a mere problem of political elites, but a structural problem linked to the state itself.

<u>My personal opinion on this approach:</u>

In my view, it is possible to speak of state illegitimacy without referring to the historical argument, which implies the necessity of cultural embeddedness of institutions. From this point of view, state illegitimacy may express (ex post) the rejection of, or the disinterestedness towards, the sate because of its poor performances and its misdeeds (predation, corruption, administrative decay, carelessness of social problems…). This illegitimacy deprives the state from any real meaning in the collective imaginary with, as one of the consequences, the lack for the state of the capacity of mobilization(army, for instance, in Congo).

Although there may be a sort of continuity between these two understandings of state illegitimacy insofar as the rejection of the transplant because of its poor performances can be logically associated with his "*exogeneity*"[14], there is a clear difference in their implications. The fact that Europeans have exported the state to Africa is a simple matter of fact, which can lead -not without mistake- to sustain that it is impossible to achieve the legitimacy of state in Africa since the birth and the development of the modern state occurred out of Africa. One can derive from this point of view that, given the fact that history cannot be changed, the state imported in Africa will never become legitimate unless we proceed by organizing Berlin II as it was proposed by the former President of Rwanda, Pasteur Bizimungu. This idea seems to have seduced Pierre Englebert[15], following in that Françis Deng[16]. Since the first steps towards this conference are not taken and supposing that it never occurs, the legitimacy(and with it, the developmental capacity) should suffer the same fate. I shall call this conception a "static or fatalist conception of legitimacy".

The second understanding of the state legitimacy is more focused on the organization and the performances of the state which generate the interest and the (affective and material) support of the citizens, make members of the same state feel more responsible one for another... From this point of view, we can distinguish for instance for the same state through a certain period

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[14] The book of Pierre Englebert above quoted sustains this thesis. It shows how state legitimacy affects policy choices and the quality of governance and condition the developmental capacity.
[15] Englebert Pierre, *op. cit*., pp. 186 and al.
[16] Deng Françis, "These Borders Are Not Sacred", *Washington Post*, 20, December 1996.

of time, the period of strong or weak legitimacy (despotic/democratic state, authoritarian/liberal state, welfare state) even in the context where the state was born. I shall call this conception the "dynamic conception of legitimacy". Understood as such, illegitimacy can strike both state and traditional entities and it is quite evident that when one speaks of legitimacy crisis in Africa, none of these two entities is spared. An abundant literature attests the fact that they are intimately linked and dependant one on the other. Fortified by their political, judicial, land, sacred, and ceremonial power, traditional authorities are called upon for acting as go-between between population and state, mobilizing population and conferring legitimacy to the state and its rulers. As for traditional authorities, they need the state to recognize their legitimacy and to get some political and economic advantages for themselves and for their entities.[17] Thus the idea of "*elite consensus*" system put forward by Donald Rothchild and Michael W. Foley[18] among others. It is shows how this system affected both state and chieftaincy legitimacy for better or for worse.

Caveat:

By underlying these two conceptions of state legitimacy(the historical or static one and the outcome-based or the dynamic one), I did not aim at opposing them or to establish the prevalence of one over the other. On the contrary, the aim was twofold:

1°. To insist on their complementarities and to underlay the danger of incompleteness run by "isolationist" explications. The institutional embeddedness teaches us that the popular perception of an institution can influence positively its performances. When it is got from the beginning, it exempts the institution from the hard task of having constantly to explain its moral or social foundation and allows it to freely devote to the mission it was created or established for. But it is not in itself a guarantee of performance, nor is it a key for perpetual legitimacy. They are both the result of the organization of the institution(structure); the quality of the leadership, the presence or not of regularized channels of communication with social groups, the adaptability to its internal and external environment... The poor

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[17] Read, among others, RAY Donal I. and ROUVEROY Van NIEUWAAL E.A.B.(Dir.), "The new relevance of traditional authorities in Africa's future", in *Journal of legal pluralism and unofficial law*, n°37-38/1996, special double issue, Foundation for the journal of legal pluralism, Netherland, 1996, pp. 4, 24-25, 42, 43; PERROT C.-H. et FAUVELLE-AYMAR F.-X.(dir.), *Le retour des rois : Les autorités traditionnelles et l'Etat en Afrique contemporaine*, Paris, Karthala, 2003, pp.20 & 119; Maurice KAMTO, « Les rapports Etat-société civile en Afrique », in *Revue juridique et politique*, 1994, p. 290.

[18] Donald Rothchild and Michael W. Foley, "African States and the Politics of Inclusive Cohalitions", in Donald Rothchild and Naomi Chazan, (1988), *The Precarious Balance: State and Society in Africa*, Boulder and London, Westview Press, pp. 233-264.

performances, the weakness or the collapse of the state are a shared responsibility of both modern and traditional entities. The question is the one of degree in terms of responsibility and not that of virginity for one and guilt for the other. And even where some traditional leaders can justify not having taken a great part in the state apparatus, *strictu sensu*, they have rarely -if ever- developed, individually and collectively, any strategy, which can impose them as an alternative to the state.

2°. To underlay the failure of the clientelism or neo-patrimonialism, to serve as an instrument for assessing developmental strategies. Inefficiency, it appears from these chapters, has generated not only real problems of legitimation but also, somewhat ironically, a constriction of central government hegemony

After having mentioned that, I examine one of the ways in which African state(here Congo) can orient its policy to get legitimacy. I chose to work on decentralization.

<u>Three reasons for choosing to work on decentralization</u>:

-The first is constitutional: the new constitution adopted by referendum in December 2005 recognizes the status of decentralized entities to traditional chieftaincies. The interest consisted in pointing out the implications of this recognition in comparison with former experiences.

-The second reason is that I am opposed to a tendency in the Congolese political opinion – influenced by a current of literature- to confuse the debate on decentralization with the quarrel about the form of the state, which may be federal or unitary. In this debate, the fear of centrifugal forces that federalism could encourage is warded off by the option for unitary and, possibly, decentralized state. Decentralization ends up in being, in their view, a property that can only be applied to unitary state. I hold that decentralization remains relevant even in the case of federal state, since the constitutive states are not the last tier of the political organization. They include cities, communes, chieftaincies, etc. which may require legal status of decentralized entities.

-The third reason is that decentralization seems to be a realist solution in the current context of Congo weak state. Although it is true that decentralization can weaken a country even more and that it would be better to achieve, first, a strong state, the question remains how can the strong state be achieved in front the ongoing claims for more autonomy for local governments. Since achieving a strong state implies achieving successfully the hegemonic project, this can be reached only in two ways: on a voluntary basis for people and entities which are involved or by coercion. Coercion is not a new phenomenon in African experience both in the colonial and postcolonial period to think that the failure of the hegemonic project is the result of insufficient violence. Africa has got more that its share

of coercion and violence so that the failure of the hegemonic project can be analyzed also as a response of the society to an alien or arbitrary state. Another element to mention about coercion is that it does not benefit any more from the same opportunities (namely tolerance) as before. To illustrate the time has changed, Laurent Gbagbo, president of Cote d'Ivoire, used the right formula in asking Africa has to make its 1789 revolution in the presence of Amnesty International.[19]

Decentralization is put in correlation with democracy so that pretending decentralizing without democratizing is likely to be decentralized despotism. Decentralization is understood in four dimensions borrowed from Dele Olowu: political (free and fair elections, accountability of the executive to public bodies empowerment of local governments), economic (support to private sector, reduction of state dominance in the economy, competitiveness), administrative (capacity building at local level, strengthening of field administration) and financial (tax power, transfer of resources from the centre to autonomous agencies, move of financial institutions away from the major capitals).

These four dimensions of decentralization served to question the decentralization rhetoric in the Congolese political leaders' discourse, in light of the legislation that has been actually applied from the colonial period until now. The result is that there is a parallel or continuation between colonial and post-colonial territorial administration and the absence of a real will to decentralize. The colonial power denatured the relationship between chiefs and their subordinates and used traditional authorities as intermediaries to reach indigenous populations and to get the compliance with demands of labour and other regulations. Ironically, this distortion of traditional authority was accompanied by their conditioning: chiefs who were recognized and inaugurated were ensured remuneration (that they were authorized to cumulate with the tribute from their subordinates[20]) and special protection in their relationships with their subordinates and their neighboring chiefs. In the same ironical vein, traditional authorities were said to be exercising their power according to the customary law as far as it was in keeping with public order and good moral standards.

Even in 1957 when elections were proposed to designate the representatives of population in the different local government, half of the members of the council of chieftaincy were appointed by the District commissioner. The latter was a civil servant appointed by the centre and the very field agent of the colonial domination. He facilitated the very centralized management of the colony. In consequence, until Congo became independent, all the different services of the central government were grouped together under seven different departments and were kept under tight control. As for the economic power, it remained in the hands of the western elite.

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[19] SMITH Stephen, *Négrologie : Pourquoi l'Afrique meurt*, Calmann-Lévy, 2003, p. 194.
[20] COQUERY-VIDROVITCH Catherine, *op. cit*., p. 55.

In the postcolonial period, we observed that Mobutu threatened seriously traditional authorities in the seventies. In January 1973, he ruled out the customary laws of the administrative organization across the country, took off chieftaincy's legal status, and prescribed to substitute civil servants for hereditary chiefs. In July of the same year, he unsecured the land power of traditional leaders with the land reform. Latter on, he proposed the election of chiefs (in 1978) and to replace progressively traditional tribunals with "*tribunaux de paix*". Although in 1982 he rehabilitated traditional leaders, who became at the same time local leaders of the single party, the threat on their land and judicial powers is still there. Some figures among traditional leaders were co-opted in the system, but it did not consist in the institutional reinforcement of traditional authority as local government. Its fiscal power remained limited to collect marginal taxes and its imbalances were irregularly and insufficiently compensated with transfers from the centre. In the meanwhile, the centre kept its dominance of economy which started with the "zairianisation" of foreigners assets in 1974.

The post-Mobutu era stared with a continuation of the logic of centralization, but one can observe some noticeable signs of decentralization which have been carried out recently, particularly in the new constitution of 2006 and laws. They include a share in the national revenue, elections of local assemblies and accountability of the executive to these assemblies. Those changes still need, of course, to mature both in their design and their implementation. This study explored some ways in which this improvement can be pursued. In this way, it examines, first, the domains in which traditional authority systems form complementary logics with decentralization like chieftaincy's effectiveness, the experience of autonomy it got from the pre-colonial period and the capacity of adaptation which allowed it to survive over the colonial period and the dictator regime of the postcolonial era. In second position, the study points out some difficulties that traditional authority systems have to adjust to the democracy and to decentralization. Third, it discusses how traditional chieftaincy should be turned into a civil chieftaincy in order to become more open, accountable. I support, in this chapter, the opinion that customary law should continue to be applied in the chieftaincies, but a space should be created for and the opportunity given to those who live under its rule to have a say on it and its functioning, to question some of its imperfections and to explore new perspectives for its improvement.

At the end of this study, the question of who is concerned with participation, representation that decentralization encompasses is examined. The study shows that the current answer according to which it is mostly citizens is not easy to decide in the context of Congo. The inheritance of the colonialism and the political dynamic of the post-colonial

period in the Central Africa's great lakes region have made the citizenship be one of the most disputed issues in Congo for about five decades. The main cause is the situation of the Kivu region where the immigration of peoples from the neighbouring countries (namely Rwanda and Burundi) engendered recurrent tensions and violent confrontations with autochthons. The latter argue the threat of territorial expansion of those populations considered as foreign and the fear, well-founded or not, that they are robbing their lands to enlarge their cultural area[21]. As a consequence, cohabitation among those groups is punctuated by recurrent tensions and violent confrontations. The text shows the correlation between these conflict and the laws on citizenship in Congo. It examines, therefore, the different Congolese laws on citizenship from the early independence until now and point out their three main characteristics: they are regionally influenced by this situation of the Kivu region. They are *ad hoc* laws used either to settle old scores or to find a compromise according to the balance of power. Finally they are ethically marked since they constantly refer to the subject's belonging to a Congolese ethnic group whose territory must be part of the current DRC. After a review of the different critiques of those laws and the solutions they offer, the paper explores new perspectives derived from an equilibrium between *jus soli* and *jus sanguinis* to solve their remaining limits (including the recent law of 2004).

After that, the study shows how the problem of citizenship has become strongly associated with the claim of minority status in the country, particularly in the Kivu region. It examines how this situation constitutes a challenge for the ongoing decentralization process. Particularly, for chieftaincy where these group of people settled, solutions should be found to include them in local governance. For that reason, it discusses the solution offered by Arend Lijphart's consociational approach.

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[21] MAFIKIRI Tsongo, « Mouvements de population, accès à la terre et question de la nationalité au Kivu », in Paul Mathieu, Pierre-Joseph Laurent & J.-C. Willame, *op. cit.*, 1996, pp. 193-194.