

# STATE AND SUPERVISION OF CHILDREN IN FAMILY BREAKDOWN IN THE DEMOCRATIC REPUBLIC OF CONGO (Lubumbashi)

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**Abstract:** This work addresses the question of the supervision of children in family breakdown in the Democratic Republic of Congo. It should be remembered that over time, street children have appeared in the DRC, a situation far from being eradicated. thus, this work proposes possible solutions in order to overcome this question.

**Keywords:** State, family, child, supervision and Congolese legislation.

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## 1. INTRODUCTION

Over time, abandoned children have appeared in the Democratic Republic of Congo and precisely in Haut-Katanga in the city of Lubumbashi, a situation due, in our opinion, to the inability of the State, particularly in the creation of jobs. and also in the improvement of the living conditions of the Congolese.

Wanting to seek palliative measures that could enable it to keep and protect abandoned children as well as all categories of vulnerable people including the handicapped, invalids, expatriates and refugees, this situation first gave rise to the creation by the State from the Ministry of Social Affairs, which is one of the ministries that can deal with the security, insurance and protection of vulnerable people in general and abandoned children in particular.

Given the multiplicity of this type of people (vulnerable people including: the disabled, the handicapped, expatriates, refugees and abandoned children) due to the growth in the birth rate, and also the inability of the Government of the Democratic Republic of Congo in general to be able to respond to the major needs of the population, which are those of creating jobs that can enable all Congolese to work to take care of themselves, this situation in turn has given rise to the creation of NGOs, among which can also be mentioned:

The NGO Maman Espoir du Congo, which educates about 700 children from poor families in seven private schools in the city of Lubumbashi. Through this initiative, this organization aims to restore hope to these children once abandoned by their parents, by making them useful to society.

The NGO BUMI which has sites in KAMALONDO, KARAVIA, KAKILA, KANYEMESHA and which supervises and educates 660 children, including 90 living in their refuge (accommodation, clothing, food, schooling, health, leisure, family research and reunification, support and sexuality, social reintegration of young people: all in difficult circumstances.

The UFPE (Women's Union for the Protection of the Environment) of Ms. MUTEBA BYAMUNGU Brigitte, which is an NGO that has been dealing, since 2006, with girl mothers and the promotion of gender.

The question around this theme is to understand how the Ministry of Social Affairs (the incarnation of the Congolese State in the provinces) via the urban service of social affairs of Lubumbashi, manages to solve the problem of street children? What type of relationship does the state have with NGOs, is it a substitution relationship? What is the reason for this multiplicity of abandoned children commonly called chegues or sans abus in Lubumbashi?

## **II. CARE OF CHILDREN IN FAMILY BREAKS IN LUBUMBASHI**

To understand the supervision of abandoned children, it is necessary to look at the Congolese legislation on the supervision of abandoned children, and then to know its impact on the supervision of abandoned children in Lubumbashi.

### **II.1. A LOOK AT CONGOLESE LEGISLATION ON THE SUPPORT OF CHILDREN IN FAMILY BREAKS [1]**

In order to better understand legally how abandoned children are regulated, it is appropriate to speak of a general legal framework for the protection of children in which one will first find international instruments and then national instruments.

#### **II.1.1. GENERAL LEGAL FRAMEWORK FOR CHILD PROTECTION**

##### **II.1.1.1. INTERNATIONAL INSTRUMENTS**

###### **A. GENERAL**

History teaches us that conflicts have often been a reaction to inhuman treatment and injustice. The English Declaration of the Rights of Man of 1689, drafted as a result of the civil wars that arose in the country, was the result of the people's aspiration for democracy, exactly a century later, the French Revolution gave birth to the Declaration of Human Rights and Citizenship which proclaims the universal equality of citizens.

After the Second World War and the creation of the United Nations, the international community pledged not to allow atrocities such as those committed during that conflict to occur. World leaders have decided to strengthen the Charter of the United Nations.

By adopting a political commitment to the respect of human rights, for example, in 1946, States signed the Universal Declaration of Human Rights (UDHR), which was the subject of the first session of the General Assembly in 1946. The Commission considered the draft Declaration on Fundamental Freedoms and transmitted it to the Economic and Social Council for "submission to the Commission on Human Rights for consideration with a view to the elaboration of a international bill".

At its first session in early 1947, the commission cleared members for what it described as "a preliminary draft of the International Bill of Human Rights".

###### **B. INTERNATIONAL RECOGNITION OF THE RIGHTS OF THE CHILD**

The year 2008 marks the 60th anniversary of the Universal Declaration of Human Rights. On this occasion, the Secretary-General of the United Nations has launched a year-long campaign during which all entities of the United Nations system will take part in activities on the theme of "dignity for all". Among these recognitions, the very first was the Geneva Declaration adopted in 1924. It is an international text which, for the first time, defines the rights of the child. This declaration states that "the starving child must be fed" and that he "must be protected from exploitation". The short scope of this extract from the text does not seem to be taken into account by the States because they are not obliged to respect it.

The question of the protection of children after the Second World War is of great concern to the international community and in particular to the United Nations. This is the motive for which the latter created a specialized agency for children, UNICEF, a unit responsible for improving the living conditions of children.

Successively in the Universal Declaration of Human Rights of 1948, then in the Declaration of the Rights of the Child of 1959, the UN specifies that the child has the right to "special aid and assistance" because of his "lack of physical and intellectual maturity" .

After several international attempts to regulate the rights of the child, only the 1989 Convention was a reference text. This time, this text is elaborated taking into account legal systems and cultural translations.

This convention has been signed and ratified by almost all the member states of the UN, which means that these states undertake to respect it in accordance with the principle *pacta sunt servanda*. A Committee on the Rights of the Child is created to monitor the implementation of the Convention. "For the first time, civil, economic, political, social and cultural rights are recognized for children. The child is no longer considered only as a being to be protected, he is also protected as an adult, an actor in his life, his parents and the State must allow him to develop physically, mentally and socially so that he can himself exercise his rights".

The spirit of the 1989 International Convention on the Rights of the Child was linked to the semantic analysis of the concept of child: that is to say, what all the signatory States have defined together what is "a child ". This question gave rise to a definition common to these signatory States of the said convention: "a child is a human being under the age of 18". However, some states grant majority to the child sooner or later.

Among about forty rights listed in the said convention we have:

- No discrimination
- All children are equal, regardless of sex, race, color or religion;
- Survival and well-being;

All children have the right to drinking water, to adequate and balanced nutrition, to a decent standard of living, to quality medical care;

- Education;

All children have the right to access free education, they also have the right to leisure, games and rest;

- Protection against all kinds of violence and exploitation;

Each child must know that his body is his own and that each adult must respect it; the child must not carry out work that endangers his health, his development or his schooling.

- Protection against war and deprivation of: freedom: no enlistment in the army for a child under 15, no child should be tortured, sentenced to death, imprisoned for life: if so, this constitutes a crime of war under humanitarian law.
- Participation in the cultural and social life of the family: each child is free to give his opinion on all questions which concern him, to express himself or to obtain information (newspapers, radio, television).

Despite some progress observed by most States before respecting the aforementioned convention: it is nevertheless very difficult for the UN to oppose their application. Some States had already achieved the eradication of work even before the adoption of the said convention, the age of schooling and the protection of minors.

It should also be noted that every year, nearly 11 million children die in the world and particularly in Africa because of certain evils related to their living conditions, including malnutrition, endemic diseases and pandemics.

More than 150 million children live on less than a dollar a day. And about 100 million African children live on the streets. In Brazil, thousands of street children are murdered each year: and almost 300,000 children are still involved in armed conflicts.

Diametrically in all respects, 121 million is the figure given to us by this link in the encarta program, the number of children who do not go to school internationally.

In France, abuses are the persistent scourge, the United States of America has signed the convention, but has not ratified it because some countries refuse to abolish the death penalty for minors: thus, developing countries are not the only ones affected by the violation of children's rights.

We can also refer to the Convention of the International Labor Law Organization adopted in Geneva on June 17, 1999 C182 on pure forms of child labor. It formally regulates the working conditions of children.

## II.II2. NATIONAL INSTRUMENTS

We have just seen above that the term "human right" designates the set of fundamental rights which must be guaranteed to human beings, whatever their social origin.

Throughout, the ideas of "freedom", "equality" and "natural rights" develop.

Among the national texts as established by its sovereignty, the Democratic Republic of Congo with a view to the constitution, the guarantor of the State has promulgated this law of laws in favor of Congolese children in these terms in the articles with the aim of guaranteeing their rights and establishing their freedom.

### A. THE CONSTITUTION

Article 41: A minor child is any person, whatever their sex, who has not yet reached the age of 18 years. Every minor child has the right to know the names of his father and mother. He also has the right to enjoy the protection of his family and public authority. The abandonment and mistreatment of children, including pedophilia, sexual abuse and the accusation of witchcraft, are prohibited and punishable by law.

Parents have a duty to take care of their children and ensure their protection against any act of violence both inside and outside the home.

Public authorities have an obligation to ensure the protection of children in difficult circumstances and to bring them to justice. Perpetrators and accomplices of acts of violence against minor children are severely punished by law.

Article 42: The public authorities have the obligation to protect young people against any attack on their health, their education and their integral development.

### B. LAWS

Several laws have already emerged within the framework of the promotion and protection of children in the Democratic Republic of Congo.

The constitution is the master law in which several notes to this effect are included, thus establishing regulations relating to this purpose as we have said above. Other texts also followed, notably the Family Code, the Penal Code, the Labor Code, etc.

- Law No. 87/010 of August 1, 1987 on the family code. In terms of filiation, this code took as a fundamental principle that every child has the right "to have a father". The term "natural child" being no longer to be cited, the legislator innovated by using the term "filiation" to signify the recognition by the father of his child, but with this authentically African nuance, the father must also be recognized by the child's maternal family.

- We can also refer to Law No. 04/024 of November 12, 2014 on Congolese nationality, which modifies the provisions of the Family Code relating to nationality. We find articles that protect the child, we can quote the following articles as well as the wording;<sup>9</sup>

- Law No. 015/2002 of October 16, 2002 on the labor code. The provisions protecting the child read as follows: "Children cannot be employed in a company, even as apprentices, before the age of 15, unless expressly waived by the labor inspector in the jurisdiction and parental authority or guardianship.

Under no circumstances may labor inspection of parental or guardianship be granted to persons under 15 years of age.

- But the Child Protection Act 2009 sets the age at 16 instead of 15 in the Labor Code.
- the decree of January 30, 1940 amended to date on the penal code. The Penal Code, by condemning abortion, does not directly or indirectly protect the attack on the life of the unborn child, whether caused by the mother of the child herself or by any other person.

Law No. 09/001 of January 10, 2009 on child protection. It can be considered as the mother law of child protection. It explains the provisions of the Constitution relating to the protection of the child.

It should be noted that we have not quoted here all the laws at the internal level which protect the child. There are so many others like: the law on sexual violence, ... This is how legally and generally both inside and outside a child is protected.

### **III. STATE INVOLVEMENT IN THE SUPPORT OF CHILDREN WITH FAMILY BREAKDOWN IN LUBUMBASHI**

In this part we try to know the role or the task played or fulfilled by the Ministry of Social Affairs, which is a representation of the State, through the Urban Service of Social Affairs in the supervision of children in family breakdown in Lubumbashi. .

The Urban Social Affairs Service plays a very important role in offering or giving abandoned children the possibility of being supervised and reintegrated into society.

The impact of the Urban Social Affairs Service is also to protect abandoned children. To achieve this, the Urban Social Affairs Service of Lubumbashi:

- Collaborates with the Ministry of Health in the vaccination program to protect abandoned children against infectious and contagious diseases.
- Collaborates with the Congolese National Police for the protection and awareness of abandoned children against abuse.
- Establish relationships with the Education Department to provide essential training to abandoned children.

### **IV. MONITORING MEANS**

To ensure the protection and supervision of abandoned children, the Office of Urban Social Affairs of Lubumbashi uses the following means:

- Reintegration into their respective families. This means is successful thanks to the awareness or awareness of the parents of these children.
- The creation of reception centers for the supervision of the homeless. As here in Lubumbashi, such centers are rare because there is only one grassland center located in LUKUNYI; this is why the urban social affairs department sends some children to NGOs such as the NGO MAMAN ESPOIR DU CONGO, the NGO BUMI.
- Works with private orphanages to ensure the safety and survival of abandoned children.
- Organizes mentoring seminars on children's rights.

NB: despite the means at their disposal, street children exercise a certain autonomy, especially those whose parents have failed in their educational tasks. Hence the transformation of a shelter into a brothel or even a cave for thieves.

### **V. CONCLUSION**

Here we are at the end of our research which focuses on "The supervision of children in family breakdown in Lubumbashi"

The objective is to know how the State, through the Ministry of Social Affairs at the national level and the Urban Service of Social Affairs in Lubumbashi (local level), takes charge of or ensures security, protection and supervision ( schooling, hospitalization, etc.) of abandoned children.

To find out how the State manages to supervise children, we asked ourselves the following questions: What types of relationship does the State have with NGOs, is it a substitution relationship? What is the reason for this multiplicity of abandoned children commonly called chegues or sans abus in Lubumbashi?

During our research we managed to find in relation to the questions asked that;

- The relationship that exists between the State and the NGOs would be one of partnership and these NGOs would be an extension of the action of the State in the city of Lubumbashi;
- The inability of the Congolese State to be able to create jobs that can allow each citizen to work to take good care of him would be the basis of the multiplicity of abandoned children commonly called checks or homeless.

However, the impact of the urban social affairs service on the supervision of abandoned children is that the urban social affairs service plays a very important role in that it allows or gives the chance to abandoned children to be followed up and reintegrated. in the society. The impact of the Urban Social Affairs Service is also to protect abandoned children.

We don't think we've exhausted the issue and produced a perfect job. Obvious gaps due to the time and financial means at our disposal can be filled by further research

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