

# WHY DO CONGOLESE PEOPLE GO TO COURT? A QUALITATIVE STUDY OF LITIGANTS' EXPERIENCES IN TWO JUSTICE OF THE PEACE COURTS IN LUBUMBASHI

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## Introduction

Officials in D.R. Congo and outside observers have often complained about the poor functioning of the country's justice system. Official statements and reports list a whole series of 'evils', including poorly trained judges, political influence, corruption at all levels, arbitrary decisions, a low rate of judgments executed, and a general lack of accountability. Although these problems are well known, there has been no in-depth research as to why Congolese citizens continue to make use of this system in order to obtain reparation for their grievances. What leads people to take their cases to court? And once their case is before the court, how do they handle that experience?

In comparison with the level of interest these two questions have generated in Europe and North America, they have received comparatively little attention in African studies. Although an abundant anthropological literature exists concerning 'customary' justice, few authors have considered state justice, delivered by professional judges (Tidjani Alou 2001; Le Roy 2004; Bierschenk 2008; Felices-Luna 2012; Crook 2012). Furthermore, if we exclude the work of R. Crook (Crook 2004; Crook, Asante and Brobbey 2010), the authors who have written about state justice have barely studied litigants' experiences. From a broader

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perspective, there is a rapidly growing literature focused on the functioning of African bureaucracies – an area which has been long neglected in research on the African State (Anders 2005; Blundo and Olivier de Sardan 2007; Bierschenk 2010). But, like the research on state justice, this literature mainly focuses on corruption and on the social logics of public officials, paying little attention to the point of view of the users of the system.<sup>1</sup>

Based on collective research conducted between February and December 2010,<sup>2</sup> this article aims at enhancing our understanding of the relationship between the legal system and society in Congo. To do so, it offers an analysis of the experiences of 38 people who brought their cases before two *tribunaux de paix* (justice of the peace courts, below JP courts) in Lubumbashi – one court downtown, the other on the outskirts of the city.<sup>3</sup> Following a brief overview of the decline of the Congolese legal system during the postcolonial period, we will explore how our interviewees came to take their case to these courts in the first

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<sup>1</sup> With regard to Congo, we can get an idea of how ordinary citizens experience their interactions with local State institutions in Trefon and Ngoy (2007), which invites the reader to follow the daily lives of ten inhabitants of Lubumbashi as they interact with different State institutions. The objective of these authors was not, however, to understand how and why Congolese people make use of public institutions. From a more abstract perspective, they wanted to explain the resiliency of the Congolese administration, despite the failure of the modernising ambitions of the post-colonial State.

<sup>2</sup> Financed by a start-up grant from the University of Liège, this research was conducted by P. Kalume Mwamba, T. Alimasi Buyamba, N. Kalonda Sangwa, Défi Donato, E. Gallez and B. Rubbers. The objective was to assess the current situation with regard to the reform of ‘local justice’ in Congo. In order to achieve this, we compared the mode of operation of two JP courts and two ‘customary’ courts. Regarding the JP courts, we recorded interviews with 5 key informants, 12 judges, 12 lawyers and 38 litigants. We also attended hearings, spent a week in each court, and followed two judges and two lawyers in their daily lives. Finally we collected the relevant documents and statistics we could obtain. The present article concentrates on the interviews with litigants, and we refer to the rest of the data we collected only as background information.

<sup>3</sup> We met our interviewees either at court or through their lawyer. Our interviews with them (and, in certain cases, their close relatives or friends) were mainly conducted in Swahili, and sometimes in French.

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place. We will then return to their account of their experience with the courts, in order to highlight some common features. In order to put more flesh on the bones of our analysis, these two sections are interrupted at times by brief case studies and interview excerpts. Finally we will conclude by proposing a broader reflection on the consequences of judicial work within Congolese society.

### The Decline of the Legal System

JP courts (justice of the peace courts) are competent to hear misdemeanour cases (breaches of trust, fraud, illegal occupation, petty theft, etc.), family-related litigation (divorce, inheritance, child custody, child maintenance, etc.) and cases of juvenile delinquency. Established in 1968, these courts were intended to provide the first level of the judicial hierarchy (see table 1) all over the country, eventually replacing *tribunaux coutumiers* (customary courts) in rural areas. But due to a lack of funds and political will, the plan was not carried out. In 2004, of the 180 JP courts originally envisaged, only 53 were found operational, mainly in urban areas (Mission conjointe multibailleurs 2004: 76). In Katanga, there were at that time, to serve an area the size of France, a total of five JP courts, of which three were located in Lubumbashi.

Table 1. The legal system in Congo

| 'Modern' courts              | 'Customary' courts             |
|------------------------------|--------------------------------|
| Cours d'appel                |                                |
| Tribunaux de grande instance |                                |
| Tribunaux de paix            | Tribunaux de territoire        |
|                              | Tribunaux de chefferie/secteur |
|                              | Tribunaux de groupement        |

Consequently most of Congo has remained under the influence of 'customary' courts. In theory, the territorial administration is responsible for the nomination of judges in these courts, while the department of public prosecutions controls their work. In reality, state representatives avoid interfering in local affairs, and 'customary' courts enjoy a large degree of autonomy. In cases where litigants are

not satisfied with the decision of a ‘customary’ court, the law grants them the opportunity to file an appeal at a *tribunal de grande instance* (higher level court). But for a variety of reasons (distance, costs, etc.), they generally do not consider this as an option. One could suggest, therefore, that the Congolese legal system has reproduced the ‘bifurcated’ regime imposed by the Belgian colonial administration (see Mamdani 1996). In cities like Lubumbashi, JP courts have definitively replaced ‘customary’ courts<sup>4</sup>, whereas most people living in rural areas remain subjected to ‘customary’ justice.

The general decline of public administration in Congo since 1960 has not spared the legal system (see, especially, Gould 1980; Schatzberg 1980; Callaghy 1984; Young and Turner 1985; Trefon and Ngoy 2007; Rubbers 2009: chap. 4). As early as the consolidation phase of the Mobutu regime from 1965 to 1973, the judiciary was placed under political control, and clientelism and influence peddling among officeholders became common. A decline in the national economy, the bankruptcy of the State together with inflation then provoked a sharp drop in the real worth of public officials’ salaries, which led to corrupt practices becoming widespread. As early as 1980, Gould noted, “Behind the facade one finds that justice is for sale to the person who pays the most. Without bribery, the already unfamiliar procedures and language used in legal circles and in the courtroom can become Kafkaesque” (Gould 1980: 148).

Structural adjustments imposed by Bretton Woods institutions during the 1980s succeeded neither in stabilising the country’s finances, nor in curbing inflation in a lasting way. The budget for the justice system was adjusted downwards like everything else. The courts were simply not given money to maintain buildings, to replace furniture or to purchase supplies. Hence the ability of clerks, bailiffs and judges to carry out everyday tasks depended entirely on the money gained from litigants.

At the beginning of the 1990s, the withdrawal of foreign aid, linked to unrest associated with the transition to multiparty government and the looting of urban centres, caused a further deterioration in the living conditions of public officials. Faced with rampant inflation and salary arrears, these officials became accustomed

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<sup>4</sup> The law allows for the presence of two magistrate’s assistants for ‘customary’ cases in each JP court. They are supposed to sit at the hearings for these particular cases, on a voluntary basis. In the courts where we carried out our research, however, there were no ‘customary’ cases and no magistrate’s assistants.

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to coming to work for only a few hours per day, so they could develop other ways of making money (farming, petty trading, etc.). In addition, if their jobs gave them the opportunity, they might also allow themselves to participate in fraudulent practices for money, e.g., destroying the evidence against someone charged for crime, making a judgment contrary to the law, or moonlighting as legal advisers for private businesses.

After his accession to power in 1997, L.-D. Kabila drew on new recruits to the public administration, including the judiciary, and he raised public officials' salaries. But this policy of investing in public administration was forgotten once the war between Rwanda and Uganda broke out in 1998. In 2001, L.-D. Kabila was assassinated amid great unrest, and was replaced by his son J. Kabila. This succession led to the reinstatement of foreign aid to Congo in support of the peace process, with the understanding that after the installation of a transitional government in 2003, a 'state of law' would be reconstructed in the country (see de Villers 2009; Tréfon 2009).

In this overall strategy for the restoration of the legitimacy of the State, reform of the legal system (as the ultimate guarantor of citizens' rights) was considered to be of crucial importance. In 2004, at the request of a number of donors, an audit of the judicial sector was carried out, which emphasised the many difficulties faced by the population in gaining access to courts and obtaining justice (Mission conjointe multibailleurs 2004). Reiterating legislative decrees of 1968, the report suggested replacing 'customary' courts with JP courts, and taking steps to improve the quality of services provided by these courts. In order to carry out these recommendations, following elections in 2006, the government of J. Kabila produced an action plan (Ministère de la justice 2007), and then a 'road map' (Ministère de la justice 2009). This road map gave priority to the recruitment and training of magistrates and judges, to the improvement of 'local justice', and to the tighter control of institutions.

Taking into consideration what we have observed in Katanga, this entire programme has resulted in: the opening of two new JP courts in Kamina and Kalemie; the recruitment of 1500 new magistrates in 2010; and a significant rise in their salaries, from 300 dollars a month in 2005 to 890 dollars in 2010. Between 2005 and 2008, a non-governmental organisation called *RCN Justice et Démocratie* also distributed law codes to some courts, organised training sessions for those working within the legal system, and sponsored awareness-raising campaigns concerning human rights. However, nothing was done about the low pay of the

auxiliary workers in the legal system; payrolls for these jobs remained within 30-40 dollars a month. Arrears were not brought up to date, and no budget was provided for the expenses associated with the transfers of magistrates (these expenses had to be paid by the magistrates themselves)<sup>5</sup>. Eventually, no funds were earmarked for building renovations, for furnishings, or for basic operating costs (office supplies, travel expenses, etc.). It must be said that, in 2008, the budget for the court system represented only 0.1% of the State budget (Vircoulon 2009: 94).

Thus it is clear that, ultimately, in the courts that formed the subject of our research, the reform of the legal system did little or nothing to stem corruption, to mitigate the delays in cases coming to trial, to address the low number of judgments executed or to make the functioning of the legal system more transparent to the people. As we shall see, users found themselves faced with a legal system that was expensive, very slow and unpredictable. But, in order to enhance our research, it is important to understand how people came to bring their case before a JP court in the first place.

### Who Goes to Court?

The two JP courts we studied, which we shall refer to as courts A and B, employed respectively 4 and 5 judges. In accordance with the law, a ‘president’ for the entire jurisdiction assigns cases to each courtroom. Cases are presided over by a single judge with the assistance of a clerk and, in criminal cases, a public prosecutor is present.<sup>6</sup> Between January 1st and November 30th, 2010, court A handled 182 civil cases and 341 criminal cases, and court B handled 134 civil cases and 405 criminal cases. Among the civil cases, the most common types in

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<sup>5</sup> In theory, judges are reassigned every three years to a different location, but in practice most transfers arise unexpectedly. Dating back to the Mobutu regime, this policy is intended to prevent judges from building a network of personal relationships in the local community, and thus from initiating potential informal arrangements. Only women and those who have a teaching post at the university are exempt from transfers.

<sup>6</sup> When the public prosecutor is absent, the law states that magistrates can conduct hearings in his place. For this reason, magistrates consider themselves to be ‘hybrid’ judges.

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both courts included divorces, inheritance conflicts and claims for maintenance allowances. The criminal cases concerned, in decreasing order of frequency, breaches of trust, fraud, theft, illegal occupations and assault/wounding. It goes without saying that a single case may involve several different types of crime. Land disputes, for example, are often styled in terms of illegal occupation, or in terms of fraud or malicious destruction of property.

Anyone may come into contact with the justice system. Indeed, the sociological profile of the 38 litigants we interviewed was quite varied. We talked to five public officials, three private sector workers, five farmers, and thirteen workers in the informal economy (money changers, petty traders, etc.); eleven interviewees presented themselves as unemployed, retired, housewives, or students<sup>7</sup>. Their ages ranged from 20 to 82 (with an average age of 45 years old). The group included married men and women (19/38 interviewees), polygamous men (4/38), and single (7/38), divorced (5/38) and widowed (3/38) people. They had between one and 17 children (some had none). Despite their heterogeneous nature, three general points emerged from our interviews.

First, all our interviewees had completed primary school, and the majority had finished secondary school (20/38). Some of them had even continued studying at university (10/38). This suggests that there is a positive correlation between years of formal schooling and the likelihood of taking a case to court. In fact, spending a significant amount of time in schools and universities implies a certain familiarity with the kind of official practices prevalent in most public institutions, including the courts: the use of French, a culture of the written word, regulations and procedures that must be followed, or taking exams and dealing with official situations. Informal interaction with teachers and other officials in schools and universities provides people with the necessary social skills to interact with court clerks, bailiffs and judges. People need to know how to gain sympathy, to elicit favours, or to make threats. They also need to know when it is appropriate to offer money, and how much, in order to buy complicity. Finally, in Lubumbashi, the possession of an academic title confers a social status on a person that is associated

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<sup>7</sup> This classification gives a general idea about the main occupation of our interviewees. It must be taken, however, with extreme caution: the salary of public officials, for example, is often lower than what they earn from corruption and informal activities; workers in the informal economy include skilled professionals and coalmen; and those presenting themselves as unemployed or housewives generally have, in fact, a small trade to make ends meet.

with a certain level of civility, thus making physical threats and violence socially prohibited (Rubbers 2004). When we asked Martin (aged 49) why he went to court to seek the return of a plot of land that two strangers had taken away from him by force, he answered simply: “We are educated people, and we know there is a legal system. We are not the kind of people who get into fights. I have a degree in refrigeration.”

Second, almost half of our interviewees (15/38) either were working or had worked in businesses or in administrative jobs. These jobs allowed them to develop (over and above what they had learned at school) personal knowledge of the hierarchies, rules and codes of conduct commonly found in institutions. They had also been able to gain direct knowledge of workers’ rights in the course of their relationships with employers, co-workers and unions. Salaried workers in Congo generally have quite a precise knowledge of the collective agreement under which they work, and they are aware of the rules that govern their jobs and their occupations. Although workers have a tendency in practice to prefer informal arrangements, they do not hesitate to make reference to rules in order to defend their rights, to call upon their superiors to act within the regulations, or just to make a good impression in front of someone they do not know well. Although work institutions in Katanga are structured by multiple social logics, they have remained deeply marked by the formalism of Belgian colonial institutions.

The third salient fact is that men take the lead in dealings with the legal system. In 6 out of the 11 cases that involved women, be it a divorce case or a land dispute, women were represented by a male member of their family. The intervention of a male relative has in certain cases been justified by the fact that women have less experience in dealing with official institutions. It is true that women are still discriminated against at school and within the job market, and that they consequently show a social and cultural handicap in any case brought before the justice system. However, in our study, we found that women who had gained a degree and/or who had a job also allowed a male relative to speak for them when they appeared in court. In fact, it appears to be widely assumed that only men should take on the responsibility of dealing with public institutions.<sup>8</sup> For example,

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<sup>8</sup> The legal incapacity of women was written into the former civil code, which stated in article 122: “La femme doit obtenir l’autorisation de son mari pour tous les actes juridiques dans lesquels elle s’oblige à une prestation qu’elle doit effectuer en personne.” [“Women must obtain permission from their husbands for all legal actions in which they are required to appear in person.”] This provision

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when his father died in 2003, Bernard's mother was still alive. Bernard was the oldest son but was still a student. Nevertheless, he was designated after a family meeting as the person responsible for dividing the inheritance: "In my family there are many daughters. There are not many boys, not many to take responsibility. My younger brothers are too young." In the same way, Corentin wanted to bring a complaint before the court, in order to demand that the boy who had fathered his 16 year-old daughter's two children (before abandoning her) be ordered to pay maintenance allowance. In order not to miss work, he sent his wife to court. But the clerk told his wife that he would prefer to deal with her husband in registering the complaint and starting proceedings.

Germaine represented one of the cases (5/11) in our study in which a woman took the initiative to bring a case to court. She has a degree in international relations and is a secretary for the provincial Division of the [State economic] plan. She is 37 years old and, since 2002, she has lived with Emery, the father of her three daughters. After their 'customary' marriage in 2007, Emery began to beat her and to act in a violent manner toward their daughters. Germaine told her parents about this, saying also that she was hesitant about leaving Emery. One day Emery went to see his wife's family without her, and got into a dispute, which took an unexpected turn. Emery called his father, a policeman, who arrested Germaine's brother and put him in jail. Germaine's parents, thinking Emery might follow up by attacking his wife, begged their daughter to leave the marital home. But shortly after leaving Emery, Germaine realised she was pregnant with her fourth child. Emery made efforts to get her to come back home, saying he loved her, and calling on the help of a cousin that Germaine respected.

Under pressure from her parents, Germaine consulted a lawyer, who told her she would be able to keep custody of her children, and suggested taking the case to court. Germaine's parents undertook to pay the lawyer's fees; they themselves were taking Emery's father to court with a charge of assault. While Germaine's lawyer was preparing the case, Emery contacted her and asked her once again to drop the case and to return home. Two days before the hearing, she changed her

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was abrogated in the 2006 constitution, which, in order to comply with international law, established the equality of men and women in relation to public institutions (art. 14). During marriage ceremonies, however, women must still swear "faithfulness and submission" to their husbands and promise to serve them. In everyday life, women are still considered as legally subordinate to their husbands or to their male relatives (father, brother, son, etc.).

mind and dropped the case (which was simply filed away); but she did not immediately return to the house she had lived in with Emery, nor did the children. As Germaine puts it, she did not quite know what to do. On the one hand, she saw in her parents' encouragement to pursue her case a way for them to seek their own redress. On the other hand, even though Germaine wanted to give her children a normal family life, she was afraid Emery would turn violent again. Eventually, in 2011, she decided to return and live with Emery: one of her reasons to do so was that she did not earn enough money to pay a rent and to take her children in charge. Since then, her husband has stopped beating her and her parents have regretfully dropped their case against Emery's parents.

This case shows that even though a complainant, man or woman, may make an informed choice in going to court, he or she may be subjected to conflicting pressures, which in turn may give rise to shifts and reversals in the way the case unfolds.

### Taking the Decision to go to Court

It is important to recognise the differences in this respect between conflicts between married people like Germaine, conflicts between people who are related to each other, and conflicts between people who do not know each other. In conflicts between strangers (25/38), individuals tend to attach greater importance to the object of the litigation than to the social relationships involved and thus do not hesitate to go to court (Nader and Todd 1978:18). When a neighbour began to use a piece of land belonging to Olivier, claiming that it was his, Olivier understood right away that no amicable arrangement would be possible: the neighbour immediately swore at him and threatened him. Since Olivier is a law student, he contacted lawyers, who were friends of his, in order to lodge a complaint in court B against the 'illegal occupation' of his land. Such conflicts can end up being a test of the social status of the opposing parties, drawing them into a sort of legal 'potlatch' that determines which of them has the higher social rank. Some of our interviewees, like Laurent (see below), felt they had been insulted or humiliated by the people they were in conflict with, and they wanted to get back at them by having them arrested by the police and by dragging them to court. If their opponent were to react in the same way, there could be a legal escalation of the conflict.

In conflicts between relatives (4/38), by contrast, the parties normally do not go to

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court until they have made repeated attempts to find an amicable solution within the family. At the same time, in such conflicts people are likely to make the situation worse by reflecting on the benevolent gestures and services they have performed for the person who now opposes them in court, and by viewing these as debts owed to them by that person. Furthermore, a series of attempts to solve the problem peacefully can have the paradoxical effect of increasing the bitterness of the eventual court case. One case in point is Thierry, who farmed a few acres of ground on the outskirts of Lubumbashi. For years, he had tried to get his father's brother's wife and children out of a house that belonged to his own mother.

According to Thierry's version of events, the plot in question was acquired by his mother (Alice) in 1967, and then placed in the hands of his father's brother, Robert, when he arrived from Kasai in 1971. Following the death of Robert in 1989, his wife (Jacqueline) and her children continued to occupy the house. As for Thierry's parents, they decided to return to Kasai in 1993 in order to escape the violence in Katanga that was being directed against people from Kasai. Thierry's father, Paul, did not return to Lubumbashi until 2001. His aim at that time was to sell the plot there, and to suggest to his brother's widow that she return with him to Mbuji Mayi (Kasai). But Jacqueline refused, and two weeks later, Paul died suddenly. Since both brothers were dead, the issue of the house would have to be settled by the two widows and their children.

In 2007, Alice herself came to Lubumbashi to attend a wake. Thierry suggested to her that she come to live with him. At that point, realising the need to supplement their household income, Thierry decided to discuss the matter again with Jacqueline and her children, in order to take control of the house they had been occupying, and to make money by renting it out. To this end, Thierry and Alice contacted the oldest of Jacqueline's sons (David), who lived in Malawi, asking him to come to Lubumbashi and to settle the matter of the house. During a family meeting, which finally took place in 2010, Thierry not only observed that Uncle Robert's family had been living rent free for 39 years, but also that, during his lifetime, Uncle Robert had run up some debts owing to Thierry's father, Paul: Paul had paid the dowry for Robert's own marriage and for his son's marriage; in return, Robert had promised to give his brother the money for the dowry of Paul's youngest daughter when she got married, a promise that was never fulfilled. Robert's son, David, was very offended by all of this and by Thierry's tone, and so grabbed him by the shirt and asked him to leave the premises.

Following this altercation, Thierry spoke to the *chef de quartier* (district chief)

where he lived, and this official organised a meeting between the disputing parties. During this meeting, Jacqueline claimed that her husband had been invited by Paul to come live in Lubumbashi, and that eventually Paul had given Robert the deeds to the plot. She produced a document in the name of her son, David. The *chef de quartier* suspected Jacqueline of having forged the document. He recognised Alice as the owner of the house, but he proposed to let Jacqueline live there for the rest of her life. David was opposed to the solution and demanded that the case be brought before commune officials. In order to prevent an escalation of the conflict, two more family meetings were held. At these meetings, the disputing parties were encouraged to apologise to each other and to make up, but without success. At this point, the commune's housing service and even the mayor intervened, suggesting that the plot be divided between the parties. After all, the plot included a three-bedroomed house and seven outbuildings. This time, it was Thierry who declined the offer. Weary of the negotiations, he decided to take the advice of the mayor and file a complaint against David at the JP court. In May 2011, the judge decided that the house would return to Thierry and to convict Jacqueline and David to a prison sentence for forgery and use of false documents. But the clerk asked then for 500 dollars to enforce the judgment, a sum of money that Thierry has not been able to collect up to now. As a result, in October 2012, Jacqueline still lived in the house and David was still at large in Malawi. Thierry told us that David would not even have heard of his conviction.

The course of disputes involving a married couple (9/38) is difficult to predict because they involve parents, friends, and other people associated with the couple. In the case of Germaine mentioned above, the conflict led to a complaint being filed with the court fairly quickly, despite her reluctance. After Germaine's husband brought his cousin into the matter, she sought the opinion of a lawyer. In other cases of marital conflict in our study, the number of persons involved in trying to find a nonjudicial solution to the problem was significantly higher: this might include the couple's in-laws, older brothers, elder uncles, family meetings, but also, outside the family circle, personal friends, godparents of the marriage, the priest or pastor of a church; and, in some cases, an older member of the chiefdom, of the 'tribe', or of the couple's province of origin. Everything depended on the nature of the dispute, the number of children, the relationship between the families of the husband and wife, and their degree of commitment in various social networks.

Among all our interviewees, not one took their case directly to the JP court or to any other court. They initially got in contact with the police, with their *chef de*

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*quartier* or with a lawyer, and these intermediaries advised them regarding the option of filing a complaint in court, once they had exhausted the possibility of finding an amicable solution. As the oft-quoted saying goes: “better a bad settlement than a good trial.” However, recourse to the justice system may turn out to be inevitable in cases where social relationships have been formalised through an official contract, and/or reconciliation of the parties appears to be neither possible nor desirable. In such a case, recourse to the legal system may be considered early on, when it is thought that no amicable settlement will be reached.

To conclude this section, we might question the relevance of the law as a cultural schema for interpreting social relationships in Congo. Ewick and Silbey suggest that, in American society, legality, as a cultural schema, has become a structuring dimension of daily life, which organises social relationships without individuals explicitly being conscious of this (Ewick and Silbey 1998).<sup>9</sup> It is a matter of legal hegemony through which the law comes to be part of the accepted order of things. Such a conceptualisation, in terms of hegemony, is one that is too general to characterise the consciousness the Congolese have of the law; this appears to us to be both more complex and more ambiguous.<sup>10</sup> First, awareness of the law is unequally distributed, depending on the particular area of activity and even within a single area of activity. Traffic laws, for example, appear to be better known than laws relating to the family, and within traffic laws, more people know you are supposed to drive on the right than know there is a limit on the number of people who can legally ride in a vehicle.

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<sup>9</sup> Silbey elsewhere gives examples:

we pay our bills because they are due; we respect our neighbors’ property because it is theirs. We drive on the right side of the road (in most nations) because it is prudent. We register our motor vehicles and stop at red lights. (Silbey 2005:332)

<sup>10</sup> The law was one of the main tools for the legitimation of colonial rule. In Comaroff’s analysis, the law constituted a privileged language through which colonial borders were established, lands seized, workers exploited, etc. But the law was far from being applied and appropriated in the same way in every sector of society: the colonial legislative framework was more developed, was imposed with more force and was observed more in certain sectors than in others. (Comaroff 2001)

Secondly, Congolese people may know perfectly well what the law says, but they nevertheless proceed to violate it on a daily basis. They do not all drive on the right, just as they do not always have all the proper papers for their vehicles. The law is far from being hegemonic in Congo, as can be seen in the way it often gives rise to various forms of negotiation and falsification (see Rubbers 2007). But, for all that, from the point of view of our interviewees, the law is certainly not a mere fiction that has no influence in structuring social life – the contention of an entire tradition of thought concerning the State in Africa (Reno 1998; Bayart, Ellis and Hibou 1999; Chabal and Daloz 1999; Blundo and Olivier de Sardan 2007; for a critique, see Van de Walle 2008: 128; Anders and Nuijten 2007: 9). After all, the persons we interviewed, who had a more or less accurate idea of the law with regard to a given area of activity, decided to use the law to deal with their opponents, and then to call on the public authorities. It remains to be seen whether and how far this strategy allowed them to obtain justice.

### Dealing with the Justice System

Although their current cases might have been going on for years, this was the first time our group of interviewees had encountered the justice system. None of them were ‘repeat players’ (Galanter 1974). In the beginning, most of the interviewees did not understand court procedures, nor were they able to make a clear distinction between lawyers and judges, or between the different courts. All courts were considered to be part of ‘le parquet’ (the department of public prosecutions) or even ‘l’Etat’ (the State). With their origin in France and Belgium, the *tribunaux de paix* were historically designed to bring justice closer to the people (Nandrin 1998), but those same courts in the Congo today feel to Congolese people like an integral part of the apparatus of repression inherited from the colonial period. (Concerning the legacy of the ‘*Bula matari*’ State, see: Young and Turner 1985; Young 1994). Going to court felt particularly strange to our interviewees who had had little education, like Valentine. As with Germaine, Valentine went to court without being represented by a man from her family. But she did not have the educational and cultural background Germaine had, to help her decode what she had to deal with in court. She is a 42 year old petty trader, originally from Kasai. She is married to a brickmaker, and she has 12 children. One day, while she was selling some items in the market at Kalubwe, a neighbour came and told her of a serious incident at home. Her 13 year-old daughter had been raped by the friend of one of her brothers, who had immediately fled. Valentine went to the police, who passed her on to the JP court. In court, the case quickly came before a magistrate.

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But at the hearing, the accused and his lawyer denied the accusation, pleading not guilty. As a result, Valentine's daughter had to undergo several medical examinations in order to confirm that she had been raped.

We met Valentine a month after the attack. She was sitting in a corridor outside the court, a baby on her back, accompanied by her 23 year-old son and her 18 year-old daughter, who were there to assist her in bringing the case. During the entire interview, it appeared that Valentine thought we were part of the justice system or that we were 'authority figures' of some sort, because she suggested repeatedly that we would be able to intervene to help in her case. When we asked her what she thought of the justice system, she replied: "Papa, I cannot answer that question, it is you who must solve my problem." She did explain to us that she had met a young lawyer outside the court, who had offered his services. "I did not even know you needed a lawyer here. As God is my witness, I did not know. He saw me crying and took pity on me, and asked me why I was crying, what was my problem." Despite the empathic response by the lawyer, she was not sure he was up to the job of convincing the judge because he was not very charismatic – as if the decision of the judge depended only on the ability of parties to dominate the exchanges in court. "Papa, he is too calm. He does not have a lot of arguments to make. He has a little voice."

In any case, Valentine believed she had lost before she started because the system was hostile to those from Kasai ("I am a foreigner here. They insult me all the time"), and deeply corrupt ("Here money is what counts, and me, I don't have any. That's why my case is going nowhere"). Furthermore, the system did not care about her problems ("They just put themselves first and they don't even consider us at all.") At that point, it was a month since she had taken her case to court, and she had spent a total of seven dollars. But with regard to the disgrace her family had suffered, she expressed exasperation, powerlessness and humiliation in the face of the slow pace of justice in condemning the man who had raped her daughter. "I don't sleep anymore, I don't eat anymore. I am tired of this whole thing. I have nothing more to say. I am suffering from stress, it's all too much." In October 2012, Valentine told us that she decided to drop her case after the second hearing. She understood that she would not have the money to proceed and that she would probably never obtain reparation for the rape of her daughter.

Owing to their relative lack of knowledge regarding the legal system, most of our

interviewees ended up hiring either a lawyer or a ‘legal defender’ (35/38).<sup>11</sup> If they did not know one personally, they got help from parents, friends or neighbours, or else they went to the bar association or to lawyers’ chambers. If their cases happened to be transferred to the JP court by another administrative agency (the land registry, the police, etc.), they might meet a lawyer or defender there, or the clerk might recommend a name, or else they might get approached on the court-house steps by a lawyer offering his services.

Inspired by an idealised image of the legal profession on an international scale, the bar association has established fee scales that are too high for the majority of litigants in Lubumbashi. So if they want to be price-competitive with the legal defenders, most lawyers refrain from billing by the hour, preferring to quote prices for specific services. They ask for money to cover immediate expenses such as travel or telephone calls; they may also ask for fees to cover their appearances in court, or to address the court at a hearing. It is expected that lawyers will receive their fees, over the longer term, once the client has obtained the money to pay, all the more so if they win the case. But since the population is so poor, justice so slow and judgments so difficult to execute, lawyers may have to work for a long time before being paid. As the saying goes, the lawyer is working ‘*pro deo*’ whether he wants to or not.<sup>12</sup>

Generally, clients appreciate it when their lawyer or legal defender takes their case on even though they have no money, agreeing to be paid later. But the relationship between client and lawyer is often characterized by mistrust. Lawyers sometimes claim excessive money for expenses if they think the clients can pay, and

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<sup>11</sup> Legal defenders (*défenseurs judiciaires*), who must have studied law for a minimum of three years, can represent clients before JP courts and higher level courts on the same foot as lawyers. In 2010, the Lubumbashi bar association listed 825 lawyers and 515 legal defenders, the vast majority of whom were men.

<sup>12</sup> Strictly speaking there is no *pro deo* legal work in Lubumbashi. The bar claims to have organised a service for free legal aid, intended for the poorest citizens who are facing criminal trials. But this service only handles a few cases, and its existence is unknown to the general public. Such a service cannot function in a country like Congo without financial support and precise information about its target clients. The legal aid clinic that was opened in the Kamalondo commune by the United Nations in 2006 was set up to help rape victims only. But people we spoke to in the course of our research had never heard of this clinic.

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depending on the size of the amounts at stake in the case. Lawyers can take advantage of the fact that the court does not display the cost of its services, and that the judges and court officials are suspected of corruption. In general, the clients in our study had a hard time estimating what they had already spent on their lawyer; this is not surprising since the lawyer may ask for small amounts of money for expenses at regular intervals over time. Some of our interviewees reported spending less than 100 dollars, in total, on their cases; others said they had spent several thousands. Finally, as we shall see in the case of Kevin, lawyers can be suspected of secretly working for the other side.

In view of this mistrust of lawyers, many litigants try hard to monitor the progress of their own cases in court: acquiring knowledge about the law, carrying out administrative procedures themselves, filing papers with clerks, keeping copies of court papers, etc. They become full participants in their own court cases, limiting their own lawyers to providing advice and actual representation, and keeping a close watch over the services they provide. Such was the case with Bernard, who faced a number of lawsuits over property after his father died; he became interested in the justice system, its language and its procedures: “I learned about these procedures because I read through many legal documents and became interested in them, and now you’re going to see that I can even file an arrest warrant to be carried out immediately.” He considered himself competent to monitor his case before the court without needing the services of his lawyer: “Before, it was the lawyer who gave you a fixed price to do everything, like 500 dollars. Now I understand how it works. I’m able to initiate proceedings myself, I do everything I’m able to do; I can even set the hearing date. All this saves money. All the cases I have pending, for fraud and deception, I filed them myself.”

From their contact with the justice system, our interviewees mostly learned about its cost, its slow progress, and the uncertainty that ultimately hangs over any case taken up by the system. As we have seen, litigants (or their lawyers) have to pay fees to open cases, to have complaints written up, to have summonses sent to the opposing party, to obtain the written transcript of a hearing, to have a judgment executed against someone – fees that are not charged at a fixed price, and which therefore must be negotiated case by case. In view of the fact that there is no budget for everyday expenses, and in view of the low salaries paid to people working in the justice system, litigants are not surprised by these fees: as in other areas of public administration, it is necessary for court officials to buy supplies, to claim travel expenses, and even to gain ‘motivation’ in the form of a bribe. But the

litigants we spoke to complained about being victims of certain abusive practices. Clerks and bailiffs may charge them a higher rate for supplies that are available more cheaply in the shops; sometimes court employees do not manage to deliver summonses to the opposing party even after they have received a ‘motivational’ bribe; litigants may even be forced to pay a bribe to speak to the judge.

Added to all these expenses, which are paid to get a case moving along at the initial administrative level, there may also be, according to some interviewees, a sum of money paid directly to judges for a favourable verdict. While the principle is not always observed, there is a guideline among judges that you can only demand money from the party that is going to win the case. When the winning party has access to funds, or when the amount to be gained by winning the case is substantial, judges often leave their sentence pending until a litigant contacts them. At that point, they may demand a ‘motivational’ bribe, the amount of which may be negotiated, and which may range from 50 to 500 dollars. This was how Bernard obtained his favourable judgment:

In this last case, I knew someone who was close to the judge. I spoke to that person and explained my problem. I explained that this judge was presiding over a case in which I was having X charged with fraud and deception. The case was under deliberation, but it had been a month, and there had been no decision. I asked this friend of the judge if he could plead our case personally. He took my number and said, ‘Call me back in 30 minutes.’ When I called him back, he told me to go and look for something [200 dollars] to give the judge, to motivate him.

The time required to obtain justice, under these conditions, can be very long. Without even taking into consideration the fact that a losing party can still appeal a decision in two higher courts, a case may be expected to take 1-5 years to work its way through the JP courts. This slow response is the result, primarily, of the many fees that lawyers, court officials and judges impose at every step of the process. The majority of clients cannot pay all these fees immediately, and so they ‘pursue’ their cases slowly, depending on how much money they happen to have. As Bernard explained, “Moving our case forward depends on us: when you have money, things go forward. When you don’t have any more money, things stop.” Even when the litigant is able to pay all these expenses, all those involved in the legal system can be seen as having an interest in dragging things out, so that the litigant remains dependent on them, and is forced to pay over a longer period of

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time. Time is one of the main resources employed by judges and courts' employees in order to increase the amount of money users of the legal system are required to pay.

The operation of the justice system is also slowed down by the number of court appearances. Appearances can multiply as a result of actions by court officials, lawyers, or the parties themselves. Court officials often encounter problems in serving summonses to the opposing party. There are problems finding the addresses of the persons named in cases, and the clerks often have to take crowded public transport or walk long distances.<sup>13</sup> And negligence may also be in evidence here, too: clerks may fail to serve papers to the opposing party because they have not been provided with sufficient 'motivation', or they may make deliberate mistakes in official documents. Lawyers can request adjournments of court sessions, claiming to need time to find certain documents, to consult experts, or just to hone their arguments. Lawyers may be involved in many cases at the same time, and sometimes even they admit that they have not prepared well to argue a particular case. Sometimes, they do not even attend the hearing. Finally, litigants who receive a summons in proper form may simply not turn up at court, because they are afraid or because they have no money. For all these reasons, it is common for cases to be adjourned repeatedly, pushing their resolution forward into an ever more distant future (for a similar observation in Ghana, see Crook 2004: 15-16).

Given these flaws in the legal system, litigants who want to keep their cases from being forgotten or blocked are obliged to monitor the progress of their own case. Such monitoring, as we have seen, can require a large investment of time, money and expertise. In addition, the final outcome remains uncertain because of the corruption of lawyers, clerks and judges who may not keep their word, who may end up being bribed by the opposing party, or who may simply destroy key pieces of evidence in the case. Some of our interviewees felt as if they had been caught up in an administrative machinery, so that they no longer knew who to believe or what to do. Even the authenticity of official documents they themselves possessed – documents in which they had placed their confidence – might be contested in court. Their opponent might produce documents that looked just as authentic. Their original confidence about being able to win the case might be progressively

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<sup>13</sup> Street names and numbers are not always shown. People often move without leaving a forwarding address. They may also be at work, with no one available to sign on their behalf to acknowledge receipt of a summons. We faced the same difficulties in trying to find litigants for our interviews.

eroded, giving way to a feeling that “justice today is just money”. An example can be seen in Kevin’s story.

As part of a land dispute, Kevin, who worked for a security company, was attacked and beaten (with sticks, knives and machetes) by the wife and children of his opponent – a polygamous man who had sold the house these relatives were living in to Kevin without their consent. After a long period spent in hospital, Kevin hired a lawyer recommended by his brother, a member of the group of football supporters to which they both belonged, to file a complaint and have the wife arrested. The day after the wife was arrested, her two sons contacted Kevin to set up a meeting at his lawyer’s office, to try to settle the dispute. But at the meeting, the sons claimed they were not ready to negotiate. They asked the lawyer for his telephone number so they could set up another meeting at a later date. But the second meeting never took place because, a few days later, the wife was released from jail. In court, Kevin’s lawyer requested an adjournment three times, and then presented a rather weak argument. Prior to the judgment, Kevin was contacted by the judge, who asked for 500 dollars. Kevin managed to get this amount down to 70 dollars, but a few days later the judge gave his verdict, and Kevin lost the case. Outraged, Kevin called the judge to get his 70 dollars back, which the judge did repay, before being transferred to another area. Kevin asked the judge to explain himself. He was told that the doctor’s report on his condition after being beaten up, which he had given to his lawyer, had been missing from the case file. During our interview, Kevin was convinced that his lawyer had been bribed by the opposing party the day they had all met in his office. The only reason for having the meeting had been to get the lawyer’s telephone number. He told us that his suspicions were proven because his friends from the group of football supporters had told him they had seen his lawyer having a beer with one of the men from the opposing party.

A last factor that makes the outcome of litigation in JP courts particularly doubtful is the low rate of judgments actually executed. Analysing the case registers of court A, we found that, out of the 523 complaints received between January and December 2010, the decision was made known for 270 cases (116 civil cases and 154 criminal cases), and that, out of these 270 cases, in only 87 cases (29 civil cases and 58 criminal cases) was the judgment executed.<sup>14</sup> One reason for this is

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<sup>14</sup> This figure (16.6%) for judgments executed in court A is close to the one obtained in the study carried out in the Bas-Congo province (16.8%) (RCN Justice

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that the losing party at this level can still file an appeal at the higher level court, and then at the next level up, at the court of appeal. In addition, the rare litigants who are in position to gain a favourable judgment executed at the level of the JP court still have to pay in advance some notably high ‘fees’, calculated in relation to the amount at stake in winning the case. Finally, it is often the case that the person who has a judgment pronounced against him just disappears, in an effort to avoid paying or being sent to jail. In any case, it is safe to say that a proportion of litigants who win a favourable judgment from the court will still fail to obtain justice.

### Looking for Justice

Bearing all this in mind, we may wonder what would lead individuals to take their case to court, since the legal system appears to be so costly and ineffective. It is widely believed that, in general, justice has become monetarised (“people only see money”) to the point where it just benefits the one who pays the most (“the man who has money is right”). To understand this, we have to consider two factors that impel people to go to court.

Some interviewees told us that they wanted their dispute to be settled unequivocally and definitively by a superior authority, invested with the power to punish (the monopoly of legitimate violence). Few even considered the justice system as an effective weapon for attacking and humiliating their opponents, or felt caught up in a reciprocal exchange of attacks, through complaints and retaliatory arrests. Far from allowing resolution of the underlying conflict, referring the conflict to the legal system may indeed intensify it. The exchange of complaint after complaint may culminate in the level of the conflict becoming disproportionately high in comparison with the original problem. In such situations, there is no possibility of settling out of court. What is at stake is no longer the resolution of the original dispute, but the social status of the litigants. A good example of this kind of escalation can be seen in the case of Laurent.

In 2006, Laurent, an employee at a civil engineering company was thrown out of his home by Pierre, his landlord, and his rent deposit was not returned. Laurent

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et Démocratie and JICA 2009). We were not able to obtain the corresponding figures for court B due to incomplete records.

got a lawyer to file a complaint at the ‘parquet’ (department of public prosecutions) to have the landlord put in prison (sic). When this happened, Pierre’s brother-in-law, an army colonel, got Pierre out of jail, and paid Laurent back his deposit without saying anything to Pierre. Pierre was annoyed, and filed his own complaint against Laurent, in the JP court this time, for illegal arrest and fraud. Laurent was found guilty of these charges in 2007 by default: during that time he was working on a road construction project in North Katanga, and no lawyer was representing him. When he returned to Lubumbashi, he hired a young lawyer, who managed to get that judgment annulled. But Pierre would not let things rest there. He got the police and the prosecutor’s office to arrest Laurent with the aid of a fake arrest warrant, a circumstance that led to Laurent having Pierre charged with illegal arrest and forgery<sup>15</sup>. Obviously the legal system itself added fuel to the fire in the dispute between Pierre and Laurent. What was in the beginning a dispute over a small amount of money became a battle involving the honour of both men. We are far here from the romanticizing stereotype according to which Africans would necessarily give preference to informal dispute settlement institutions, where more importance would be given to reconciliation and social harmony than to individual rights<sup>16</sup>.

Many interviewees also told us that, despite their low expectations regarding a justice system they consider racked by corruption, they still hoped to be lucky enough to meet an honest judge who will really respect the law – a hope that emerges from a phrase taken from one of our interviews: “The one who has the money will win the trial, but if there really is justice, there will be no problem.” Even people who lose their case may not consider all judges to be corrupt, and they may consider appealing their case in a higher court, where they might still win. They cannot believe that all judges’ decisions would go completely against

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<sup>15</sup> In 2008, Pierre was sentenced to a three-year prison sentence and to damages for 5000 dollars. However, very much like Thierry (see above), Laurent did not have the money to pay ‘justice fees’ and have this sentence enforced. Since then, his lawyer goes every two or three month to the court to negotiate with the clerk, but without success.

<sup>16</sup> A growing body of work in law and development studies argues that non-state justice institutions is more legitimate, more popular, and more effective than state justice institutions: Penal Reform International 2000; Golub 2003; Le Roy 2004; Wojkowska 2006; Albrecht and Kyed 2011. For a critical discussion of this paradigm, see: Khadiagala 2001; Crook 2004; Henrysson and Joireman 2009.

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law and morality. As Bernard said, “Certainly there is a lot of corruption, but not in every case. The judges base their decisions on the law. They have some basis for acquitting someone, or for saying that someone has justice on his side.”

This confidence in the legal system, which exists despite people’s suspicion of corruption among court officials, is supported by an idealised discourse about the law, justice, and the State (for a similar observation in Uganda, see Khadiagala 2001: 72-73). Adopting a mode of reasoning similar to the one that sees the church on earth as separate from the kingdom of heaven, some of our interviewees put their own experiences of courts aside and focused on the ideal functioning of these institutions: even though judges and court officials are corrupt, the law, itself, would win out in the end. Rejecting the judgment of a magistrate does not imply rejection of the State as the primary actor responsible for delivering an impartial, law-based, justice. (For a similar observation regarding the education sector, see Titeca and de Herdt 2011). This faith in the law and the State was invoked as a justification for their stubborn pursuit of a case. Martin explained:

We are always confident that justice will win out, except that there are some people who have come there to make a mockery of justice through corruption. But the truth is, the truth will always find a way to make itself known, or to win out. They can try to muddy the waters, but the truth will eventually come out. The State is there, the law is there. Through the force of justice, we will overcome.

This idealised image of the law and the State is reproduced independently from the knowledge that individuals have of the real functioning of the legal system (Comaroff and Comaroff 2006). One (the idealised image of the law and the state) is acquired through schooling, media exposure and official speeches, and it is given shape, in the courtrooms themselves, in the way the law is called upon during the official rituals of court hearings. The other (the knowledge of the real functioning of the legal system) derives from behind the scenes encounters with judges and court officials and, more generally, from conversations about the state in everyday life. These two dimensions of the bureaucratic experience are, nevertheless, not completely disconnected (Hansen and Stepputat 2001; Anders and Nuijten 2007). As the ideal of the law and the State is widely shared, and is also endorsed by the actors in the justice system, the litigants can attempt to draw upon this accepted ideal in calling these officials to account (see Rubbers 2010). Over and above this performative aspect, the law is somehow taken into account in

the actual work carried out in the legal system. As our own observations in the JP courts have shown, rules and laws are certainly referred to by lawyers and judges in handling cases that come before the court. We need to get away from the paradigm that reduces the operation of all African bureaucracies to a series of informal negotiations, and to examine more closely the role played by the legal framework in the contexts of everyday life. It is not a question of disregarding the importance of informal arrangements and clientelism, but rather to have a better understanding of the way in which actors draw on different normative repertoires, including the official norms.

## Conclusion

Despite the decline of the legal system, Congolese people still take their cases to the JP courts. For reasons relating to their cultural capital and social status, such a decision is linked to their level of education (or to that of the people around them), their occupational experience (as salaried workers) and their gender. Furthermore the speed with which they make this decision depends on the degree of social proximity between the parties and the nature of their relationships. Cases handled by the JP court can be divided into conflicts of three types: firstly, between people who do not know each other (often involving property), secondly, between relatives (inheritance cases) and thirdly, between those seeking divorce. In all cases, the representatives of the bottom rung of the bureaucracy and the group of legal defenders play a determining role in the original filing of a complaint. In fact, since JP courts remain largely unknown to the public, no one approaches these courts directly, as a simple citizen.

As a result of their experience with the justice system, our interviewees remembered above all its costliness, its slowness and its uncertainty. Some litigants learned to cope with these difficulties by acquiring practical and even theoretical knowledge about legal institutions. They were then in a position to monitor their own cases more strategically. But the majority of interviewees said they felt they had been caught up in a machinery they did not know how to operate. Many had to rely completely on their lawyers, although they scarcely had more confidence in them than in the court officials or the judges. At each stage, our interviewees were liable to be asked for exorbitant sums of money in order to bring their cases closer to a conclusion; from the original filing to the execution of a judgment, there were several points at which money might be demanded.

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Despite these seemingly daunting odds against success, Congolese people continue to take their case to court and to fight for their rights for two main reasons. On the one hand, they expect their dispute to be settled by a superior authority, the opportunities of informal mediation being exhausted or unwanted. As Khadiagala puts it, “[P]eople are willing to endure delays and to pay higher costs in government courts because they want the ‘leverage of state power to obtain the redress they believe is theirs by right, not a compromise that purports to restore a social peace that never existed’” (Khadiagala 2001: 73, citing Abel 1982: 8-9). As we have seen, Congolese people even may try to use the justice system as a weapon to punish their opponent. Of course, using the law in this way makes amicable solutions difficult. Such behaviour tends to lead to escalation of the conflict through arrest warrants, through charges and counter charges. On the other hand, while the Congolese slip easily into a discourse of denouncing the general corruption of the legal system (a discourse widely repeated in the literature on the Congolese State), they play down this view when asked to explain why they themselves decided to take a case to court. Those to whom we asked this question suggested that not all judges are necessarily corrupt, and that they are bound by the law in one way or another.

Such discourse – along the lines of ‘I know justice is corrupt, but even so’ – shows that the ideal of the law and the State continues to fuel expectations and hopes among Congolese people with regard to the legal system. The legal system in the country is often characterised as ‘Kafkaesque’. While this is undoubtedly a slight exaggeration, the description does express very well the personal experience of litigants as they pursue justice. Like Joseph K. In *The Trial*, the people we talked to were faced with a bureaucracy that seemed to them to be both opaque and absurd. But even though they were sometimes disgusted by the humiliations they were forced to undergo, they continued stubbornly to believe in the effectiveness of the law and justice. They believed that sooner or later the injustice they had been victim of would be remedied by the superior power of the State.

Taking a step back from all this, we may ask, finally, what the JP courts do for litigants. As we have seen, the court does sometimes settle disputes according to the law, but that costs the litigants an unforeseeable amount of money, time and energy. At the societal level, while the court may find in favour of poor people at times, for various reasons, its decisions, on average, reproduce inequalities of gender, income and cultural capital. But the most astonishing result, and the most paradoxical, is that despite the accusations of corruption against the legal system, the system contributes to the perpetuation of the authority of the State and the law

in Congolese society. The fact that litigants go to court, that lawyers construct arguments, that records of hearings are kept, legitimates the power of magistrates, of the legal system and of the State in the eyes of the people (Hansen and Stepputat 2001; Lund 2006; Englebert 2009). Justice, for the people, is the State. Reciprocally, the fact that this administration continues functioning despite its failings reproduces the legal hegemony inherited from the colonial period – a partial hegemony that, as we have seen, relates to some areas of activity and certain practices more than others. Even though it may often be ignored or evaded, the law remains important in the daily life of Congolese people, especially because there is, in the final analysis, a superior authority that claims to enforce the law, an authority to which any citizen may in principle appeal.

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