

UN Security Council Press Statement

Electoral Process in the DRC

November 28, 2017

The members of the Security Council noted the publication by the Independent National Electoral Commission of the Democratic Republic of the Congo of the electoral calendar for the combined Presidential, Legislative and Provincial elections on 23 December 2018. They recalled that the Security Council, together with the African Union, has repeatedly called for the timely publication of a credible and consensual electoral calendar, pursuant to the Political Agreement of 31 December 2016. Now that the 23 December 2018 has been set as the date for elections, the members of the Security Council emphasized the critical importance of ensuring the elections are not postponed further.

The members of the Security Council stressed that a peaceful and credible electoral cycle, in accordance with the Congolese Constitution and Security Council resolution 2348 (2017), as well as the African Charter on Democracy, Elections and Governance, is crucial for lasting peace and stability in the DRC. They called upon the Congolese authorities and all the relevant institutions to take all the necessary measures without delay to ensure that this new calendar is scrupulously adhered to, including the publication of a credible budget for the combined elections and the adoption of the required electoral legislation. They also underscored the need to do everything possible to ensure that the planned elections are organized with the requisite conditions of transparency, credibility and inclusivity, and lead to a peaceful transfer of power, in accordance with the Constitution and with the Agreement, including the provisions of its Chapter II.

The members of the Security Council reiterated that effective, swift and timely implementation of the 31 December 2016 Agreement is critical to a credible electoral process and the peace and stability of the DRC, as well as in supporting the legitimacy of the transitional institutions. They recalled the importance of taking urgent measures to restore confidence between the actors involved and to defuse the political tension, within the spirit of the Political Agreement of 31 December 2016, including full implementation of the confidence building measures agreed in chapter V of the Agreement, some of which are yet to be implemented. They note, in particular, the need for immediate progress on the release of political prisoners, the end of "unjustified lawsuits", as they are referred to in the agreement, and respect for human rights and fundamental freedoms.

The members of the Security Council welcomed the offer by the African Union, the Organisation Internationale de la Francophonie, the Southern Africa Development Community and the European Union, along with the United Nations to establish a coordinated team of experts to support the preparations of the elections, including in ensuring women's full and equal participation. They called upon the DRC authorities to disburse the funds promised for the electoral cycle as scheduled, despite the budgetary difficulties, to ensure that the electoral process proceeds in a timely manner. They further called upon bilateral and multilateral partners, once the budget has been established, to provide financial, logistical and technical support in order to ensure successful organization of elections, and on the Congolese authorities to enable adequate and timely provision of this support.

The members of the Security Council reiterated their appeal to all Congolese to work for the preservation of the still fragile gains in the path of peace and stability in the Democratic Republic of the Congo, they underscored the responsibility that all Congolese political stakeholders bear, especially by overcoming their differences to reach consensus and upholding the interests and well-being of their people above all other considerations, and strongly urged all stakeholders to redouble their efforts to ensure the inclusivity of all signatories of the Agreement in its implementation.

The members of the Security Council further called upon all political parties, their supporters, and other political actors to remain calm and refrain from violence of any kind. They reiterated their commitment to act accordingly regarding all Congolese actors whose actions and statements impede the implementation of the agreement and the timely organization of the elections.

This information is being disseminated by Akin Gump Strauss Hauer & Feld on behalf of Moise Katumbi. Additional information is on file with the Department of Justice, Washington, DC.



CONFERENCE EPISCOPALE NATIONALE DU CONGO

Présidence

BP. 3258 – Kinshasa /Gombe

Tél. : 00243 998 24 86 99

Fax : +33172703031

E-mail : cencorde@gmail.com

République Démocratique du Congo

REPORT OF THE AD HOC COMMISSION ON
EASING POLITICAL TENSION

March 2017

ENGLISH TRANSLATION

This information is being disseminated by Akin Gump Strauss Hauer & Feld on behalf of Moise Katumbi.
Additional information is on file with the Department of Justice, Washington, DC.



CONFERENCE EPISCOPALE NATIONALE DU CONGO

Présidence

BP. 3258 – Kinshasa /Gombe

Tél. : 00243 998 24 86 99

Fax : +33172703031

E-mail : cencorde@gmail.com

République Démocratique du Congo

Kinshasa, March 29, 2017

Our ref.: CENCO/PR/MUT/29/03/

0000240 /2017/BC-5°

Re: Delivery of Report of the Ad Hoc Commission on the Easing of Political Tension

To His Excellency Mr. Joseph Kabila Kabange
President of the Democratic Republic of the Congo
Head of State
Palais de la Nation
Kinshasa-Gombe

Dear Mr. President:

It is our honor to send you the report of our Ad Hoc Commission on the Easing of Political Tension, as promised during our meeting with Your Excellency on March 16, 2017.

The stakeholders in the Direct Negotiations, aside from the Presidential Majority, had tasked "CENCO with continuing its good offices with regard to all the relevant authorities for the follow-up on and actual resolution of the remaining illustrative cases, namely, those of Moïse Katumbi and Jean-Claude Muyambo, in order for them to regain their freedom" (Agreement, V. I, paragraph 4, page 14).

We believe that the information contained in this report can provide the perspective needed to assess these cases in order to reach an equitable and just outcome that would help to defuse the political situation that our cherished country is currently experiencing in this time of crisis.

In particular, we are requesting Your Excellency's benevolent consideration in examining the proposals that our ad hoc commission makes at the end of the report on page 22.

Pledging our open cooperation, we wish to express our patriotism and faith in Our Lord Jesus Christ.

[stamp]

National Episcopal Conference of Congo
Chairmanship
B.P. 3258 Kinshasa/Gombe

[signature]

✠ Fridolin Ambongo Besungu
Archbishop of Mbandaka-Bikoro
Vice Chairman of CENCO

✠ Marcel Utembi Tapa
Archbishop of Kisangani
Chairman of CENCO

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

I. THE CONSTITUTION, THE MISSION AND THE MEMBERS

CENCO's ad hoc Episcopal Commission on the Easing of Political Tension (CEDP) was created through decree no. CENCO/PR/MUT/20/01/0000199/2017/BC-4 dated January 20, 2017, by His Excellency Monsignor Marcel Utembi, Archbishop of Kisangani and chairman of CENCO, pursuant to section V, item 1, paragraph 5 of the Global and Inclusive Political Agreement of the Interdiocesan Center of Kinshasa, signed on December 31, 2016, by the stakeholders in the National Inclusive Dialogue.

CEDP's mission is to gather as much information as possible and the required documentation regarding the legal cases of Moïse Katumbi Chapwe and Jean-Claude Muyambo in order to help the political actors to restore genuine national cohesion during this preelection period in our country, the Democratic Republic of the Congo.

The members of CEDP are:

1. His Excellency Monsignor Félicien Mwanama, Bishop of Luiza, Chairman
2. His Excellency Monsignor Nicolas Djomo, Bishop of Tshumbe, Member
3. His Excellency Monsignor Fidèle Nsielele, Bishop of Kisantu, Member
4. Father Symphorien Lopoke, Secretary of the Episcopal Commission for Seminaries and the Clergy, Secretary
5. Chris-Cicéron Bakumba, Esq., Legal Adviser to CENCO
6. Mr. Godefroid Manzala Ma Ngo, Public Prosecutor Emeritus

When it gathered on January 23, 2017, at the Interdiocesan Center of Kinshasa at a meeting chaired by His Excellency Monsignor Félicien Mwanama, Bishop of Luiza and chairman of CEDP, CEDP decided to conduct the first phase of its investigation in LUBUMBASHI. Next was KINSHASA, followed by Europe (BRUSSELS and PARIS), and finally Kinshasa again.

The working methods consisted of:

- Corresponding with the institutions and significant people that had been involved in the cases in question
- Corresponding with the legal advisers of Messrs Katumbi, Muyambo and Stoupis
- Corresponding with Messrs Katumbi, Muyambo and Stoupis themselves
- Interviewing officials, prominent citizens and important people
- Studying the cases in question on the basis of the documents gathered in order to make concrete proposals to CENCO's chairmanship

II. THE COLLECTION OF INFORMATION AND DOCUMENTS

CEDP held productive meetings with all the people and figures listed above. It gathered enough information and documentation to understand the intricacies of the so-called illustrative cases.

The meetings took place in Lubumbashi, Kinshasa, Paris and Brussels. However, it should be noted that some Lubumbashi political and administrative authorities issued a total refusal to CEDP's request to meet with them. The convoluted conditions they stipulated were adequate proof of their refusal to meet with the commission.

II.1. Lubumbashi phase (January 25–28, 2017)

1
[signatures]

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

CEDP arrived in Lubumbashi at around 1:30 p.m. on January 25, 2017, via a scheduled flight on the national carrier, Congo Airways. After paying a visit to His Excellency Monsignor Jean-Pierre Tafunga, archbishop of Lubumbashi, CEDP immediately set to work. It visited the disputed building and held informative meetings with several people, including prominent ones, from the area.

II.1.1. Visit to the disputed building

The disputed building, in Mr. Katumbi's case, is the one located at the intersection of Mahenge and Kato Avenues, at numbers 6 and 8, in the Industriel neighborhood in the commune of KAMPEMBA. This building is the source of conflict between Emmanouil Alexandros Stoupis and Moïse Katumbi Chapwe, on the one hand, and between Raphaël Katebe Katoto and Emmanouil Alexandros Stoupis on the other. The same building appears on the list of buildings that Emmanouil Alexandros Stoupis is claiming from Jean-Claude Muyambo and for which Mr. Muyambo has been under arrest for two years.

Accompanied by a close relative of Moïse Katumbi's, CEDP visited the building. CEDP was surprised to see how dilapidated and abandoned the building was.

According to Moïse Katumbi's relative, the house is one of the properties owned by Raphaël Katebe Katoto, who lived there for a long time with Moïse Katumbi, his younger brother.

In order to verify the allegations of this cousin, CEDP reached out to the neighbor whose plot is diagonal to the one in question. The neighbor who was contacted confirmed the statements of the close relative. He did not have the slightest doubt that the building belongs to Mr. Katebe and not to Moïse Katumbi. It must be noted that this neighbor, who is 44 years old, has been living in the neighborhood since he was a child.

CEDP also contacted a well-known man in Lubumbashi who has a certain public renown due to the name of his deceased father as well as his current profession. He confirmed that the building is well and truly known as belonging to Raphaël Katebe and not to Moïse Katumbi. He has known the Katebe Katoto family since he was a child.

It should be noted that this man shared with the commission a secret that Moïse Katumbi told him about this building. According to this confidence, in order to decide between his eldest son Raphaël Katebe Jr. and his younger brother Moïse Katumbi, who were arguing over the ownership of the disputed building, Raphaël Katebe Katoto stated that he had given this building as a gift to his brother, Moïse Katumbi, and not to his son Katebe. Nonetheless, it was Katebe *filis* who occupied the building until his death in 2013.

II.1.2. Interview with the incumbent clerk of the Lubumbashi/Kamalondo Magistrates' Court

It must be stated at the outset that this Lubumbashi/Kamalondo Magistrates' Court is the one that handled the case of Emmanouil Alexandros Stoupis and the Public Prosecutor versus Moïse Katumbi Chapwe under the number RP7652/CD.

The clerk first recounted how the trial for this case played out. She vociferously denounced the blatant irregularities it contained. In particular, she mentioned:

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

- The fact that the court disregarded the "judgments of record" of the Lubumbashi Civil Court and the Supreme Court
- The fact that she had been completely removed from the trial because of her denunciation of irregularities
- The fact that her superiors did not avail themselves of her services until everything was over

She only certified the documents under order and at night (between 7 and 9:30 p.m.), in the office of the first presiding judge of the Lubumbashi Court of Appeals.

She then condemned her lack of safety and the fact that she had not returned to work since her temporary release. This situation is seriously harming her family and the education of her daughter, who is currently completing her university studies.

Finally, she requested urgent assistance for her daughter's studies and her own health, which has deteriorated since her arrest.

II.1.3. Interview with land title agents and agents from the Lubumbashi SONAS insurance company

These agents explained to the commission the process of buying abandoned buildings at the time. They also confirmed that Raphaël Katabe Katoto's deal had adhered to this process.

CEDP asked the registrar of deeds for permission to look at the registers. He responded that in the case of the disputed building, an express authorization from the national minister of land affairs was needed to access this file, while this is not the case for other files.

CEDP counted on receiving from SONAS a written statement with documents taken from the file on this building. The SONAS authorities reneged at the last minute, telling CEDP that their superiors opposed this action.

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

II.1.4. Interview with a former driver of Mr. Katebe's, Mr. Katebe's ex-wife, accompanied by one of her friends and a Greek resident of Lubumbashi

Raphaël Katebe Katoto's ex-wife confirmed the status of owner in Mr. Katebe's claim. In addition, all the parties stated that they did not know Emmanouil Alexandros Stoupis or Katina Vosnakis, the former owner of the disputed building. The dates and references provided by Raphaël Katebe Katoto's ex-wife matched those contained in the documents provided to the commission.

In addition, when the commission questioned its contacts on the existence of a certificate of registration that Moïse Katumbi would have acquired for his children, all the parties stated that they were not aware of it and spoke of Moïse Katumbi's good family upbringing. For them, Moïse Katumbi is incapable of such a contrivance.

II.1.5. Interview with the chairwoman of the bar and Mr. Katumbi's other legal advisers

These people provided a short summary of their client's case, in which they pointed out blatant irregularities in the investigation and proceedings of case RP 7652/CD; such is the case of not taking into account the Supreme Court's "judgment of record." There was also the

3

[signatures]

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

television broadcast of the ruling of Moïse Katumbi's culpability even though the court's decision had not yet been issued.

These lawyers deplored the manipulation of the judges by third parties to the trials. Finally, the lawyers gave CEDP a document containing their presentation to CEDP.

II.1.6. Interview with political, judicial and administrative authorities

Contacted for a meeting with CEDP, the governor of the province, the heads of the ANR (*Agence Nationale des Renseignements*—National Intelligence Agency) and DGM (*Direction Générale de Migration*—Department of Immigration) issued a total refusal to the commission's request. Nevertheless, a copy of the assignment mandate was filed with them.

CEDP paid courtesy visits to the first presiding judge of the Court of Appeals and the presiding judge of the Magistrates' Court of Lubumbashi/Kamalondo. Both of these authorities met with the commission.

The presiding judge of the Magistrates' Court, following on from the commission's request, offered some general snippets of information on the case involving Stoupis and Katumbi. He stated that he was not an expert on the case because he had just been assigned to this court.

A judge in the jurisdiction of the Court of Appeals who had accepted CEDP's invitation denounced the frequent interference of the ANR in legal affairs. He even condemned the harmful cooperation of some high court judges with the ANR.

II.1.7. Interview with public figures and members of civil society

Some local public figures and expatriates encouraged the mission of CENCO in general and that of CEDP in particular.

However, some members of civil society condemned the case of 150 people (more or less) who were arbitrarily or unlawfully being held in Lubumbashi's prisons and isolation cells. They stated that the political and social climate of Grand Katanga was more than tense because of the Katumbi and Muyambo cases. They are requesting that these cases be reviewed quickly as part of the national reconciliation.

II.1.8. Visit to Moïse Katumbi's farm

The National Department of Public Prosecutions, acting on an order of the minister of justice and keeper of the seals issued on May 4, 2016, opened a legal investigation under number 4355/RMP.V/041/PGR/MIN/2016 for breach of the internal and external security of the state, document forgery and use of forged documents, and the unlawful operation of a security company.

To verify these allegations, CEDP also went to the premises to see and visit the farm where the presumed mercenaries recruited by Mr. Katumbi were or would have been housed by him. The site visited is indeed a farm and a park that shelters some wild animals. In addition, there is a soccer school with two soccer pitches and student dormitories.

Formatted: Font: Not Bold

II.2. Kinshasa phase (January 29, 2017, and February 16, 2017)

4

[signatures]

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

The commission arrived in Kinshasa from Lubumbashi on Saturday, February [sic] 28, 2017, around 3 p.m. A meeting had already been scheduled with Emmanouil Alexandros Stoupis and his legal advisers for Sunday.

II.2.1. Interviews with Emmanouil Alexandros Stoupis and his legal advisers

The chairman of the group of attorneys for Emmanouil Alexandros Stoupis presented to the commission a summary of the case opposing the public prosecutor and its client to Moïse Katumbi. Emmanouil Alexandros Stoupis is accusing Moïse Katumbi:

- of having signed a forged bill of sale on the building located at the intersection of KATO and MAHENGE Avenues, at numbers 6 and 8. According to the document presented, Moïse Katumbi signed with Katina Vosnakis, the owner of the building that was sold, a bill of sale on September 1, 1998, even though she had died in Greece on June 28, 1997;
- of having used this bill of sale before the registrar of real estate titles in Lubumbashi in order to have certificate of registration Volume 262, Folio 103 dated April 25, 2002, issued in the names of his children, Champion Katumbi and Nissim Katumbi.

The legal adviser pointed out to the commission a certain carelessness on the part of Mr. Katumbi's head attorney, who, in his view, did not discover in time the discrepancy between the number of the case, RP 7652/CD, and that stated in the body of the judgment of record. This error would have allowed the Magistrates' Court to disregard the judgment of record, as this number was believed not to pertain to case RP 26615/I.

The account being made, Emmanouil Alexandros Stoupis and his attorneys are proposing an amicable settlement to this dispute.

The legal adviser gave a summary of the case with a brief presentation on the status of the proceedings of case RP 7652/CD in the case of Emmanouil Alexandros Stoupis versus Jean-Claude Muyambo.

Mr. Muyambo is being held responsible for having committed five cases of breach of trust regarding sums of money that would have come from the sale of several buildings belonging to Alexandros Stoupis.

Mr. Muyambo is also being sued for the offenses of detainee of documents and threats of attack.

II.3. Phase abroad

CÉDP also traveled to Belgium and France for interviews with Moïse Katumbi, Raphaël Katebe and Judge Chantal Ramazani.

II.3.1. Interviews with Mr. Katumbi, Mr. Katebe and Ms. Ramazani

Raphaël Katebe Katoto confirmed his status as owner of the building located at the intersection of Mahenge and Kato Avenues at numbers 6 and 8 in Lubumbashi, and gave the commission a photocopy of his title deed.

Moïse Katumbi did not acknowledge responsibility for the forged certificate in the name of his children or the forged bill of sale for the disputed building. He also rejected the proposal to close the case through an amicable settlement.

5

[signatures]

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

Chantal Ramazani, the former presiding judge of the Lubumbashi/Kamalongdo Magistrates' Court, confirmed the content of her letter sent to the minister of justice. She stated that she had been obligated by Kalev Mutond, deputy head of the ANR, the Presidency of the Republic, the first presiding judge of the Lubumbashi Court of Appeals, her superior and inspector of the ANR, and the public prosecutor recognized by the Lubumbashi Court of Appeals to convict Moïse Katumbi Chapwe. In her view, the goal of this judgment of culpability was to obtain Moïse Katumbi's ineligibility should he decide to run for president.

II.4. Kinshasa phase (2)

Upon its return from Europe, CEDP held more interviews with Jean-Claude Muyambo and his attorneys. CEDP believed it would be helpful to confirm some information with the Honorable Konde Vila Ki Kanda.

II.4.1 Interview with Jean-Claude Muyambo and his attorneys at the Penitentiary and Rehabilitation Center of Kinshasa (February 16, 2017)

On February 16, 2017, CEDP traveled to the Makala Central Prison to visit Jean-Claude Muyambo and discuss his case with him and his attorneys. Jean-Claude Muyambo provided a brief statement on the case between him and Emmanouil Alexandros Stoupis. He gave the commission a memorandum on this topic.

According to Mr. Muyambo, all of these buildings do not belong to Mr. Stoupis, who, moreover, owes him \$1,500,000 in fees.

Finally, he condemned multiple irregularities in the investigation of his case, RP 26615/I, especially the fact that the Ngaliema Magistrates' Court disregarded the "judgment of record" of the Kinshasa/Gombe Court of Appeals.

II.4.2. Interview with the Honorable Konde (February 16, 2017)

Upon its return from the Makala Central Prison, CEDP was visited by Konde Vila Ki Kanda. As former assistant regional commissioner of Shaba at the time of the Ordinance on Abandoned Property, he explained the process of purchasing certain buildings that belonged to expatriates but were declared abandoned on the basis of formal records made by the state commissioner for land affairs of the time.

He also acknowledged his signature appearing on a letter dating from the period and being connected with the building belonging to Raphaël Katebe Katoto, which had previously been managed by SONAS before this acquisition. Questioned on the effects of the 1984 ordinance repealing the 1976 ordinance on abandoned property, he explained that it is the government that makes a commitment to victims, not the buyers.

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

III. ANALYSIS OF THE INFORMATION GATHERED

III.1. Case of Moïse Katumbi Chapwe

III.1.1. Important review of the merits in the dispute of Moïse Katumbi

To be sure, **on the merits, the legal disputes** initiated by Emmanouil Alexandros Stoupis may follow their normal course in appeal or transfer proceedings. However:

1. This legal battle should instead oppose Emmanouil Alexandros Stoupis to the Democratic Republic of the Congo and probably to Raphaël Katebe Katoto, the holder of a real estate title tracked historically in the cadaster archives, in this case the certificate of registration Volume 197, Folio 114 of February 11, 1976, which, to date, is neither voided nor declared forged for administrative purposes, nor destroyed by any ruling and whose documentary validity currently remains intact in said cadaster archives.
2. The aforementioned certificate of registration was procured two weeks before the voiding, on the grounds of *res nullius*, by Departmental Decree no. 000011/76 of January 28, 1976, of the state commissioner for land affairs of the Republic of Zaire, of the one previously recorded there in the name of the late Katina Vosnakis under Volume 173, Folio 157 dated January 7, 1966, obtained as a replacement for Volume D.CXLV, Folio 183.
3. Emmanouil Alexandros Stoupis is sowing complete confusion in his statements, sometimes presenting himself as co-heir with two sisters to the union of the late Alexandre Stoupis and Katina Vosnakis, and sometimes presenting himself as the owner of the disputed buildings. A ruling by the Magistrates' Court of Kinshasa-Ngaliema, under number RP 26615/I, even convicted Jean-Claude Muyambo, finding that **Emmanouil Stoupis was the owner, albeit with no title.**

Thus CEDP, without presuming the merits, in no way wishes to encroach on the authority of the courts to which the cases have been referred, and it calls on the government authorities to let justice run its course freely in the context of these cases and allow the holding of fair trials that guarantee the respect for the fundamental rights of the parties involved.

III.1.2. Irregularities

Notwithstanding the brief review above of the merits, an outline that notes that the courts to which cases are referred are called on to use a good *ultima ratio*, CEDP cannot remain silent on the serious irregularities in both the motive and subject of the case and in the legal procedures. These irregularities give the impression that the trial dogging Moïse Katumbi Chapwe is actually a purely political settling of accounts.

These irregularities fall into three categories:

1. *Administrative irregularities that pertain to the subject and motive of his trial*
2. *Purely judicial irregularities that prove the influence exerted on the judges*
3. *The legal harassment of the person subject to trial*

III.1.2.1. Administrative irregularities in the assembly of the legal case against Moïse Katumbi Chapwe

7

[signatures]

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

The brief review above of the problems of the merits establishes the series of certificates of registration on the disputed building of numbers 8 and 6 avenue Mahenge, according to the history of the archiving of the cadaster:

First, on March 21, 1956, the titles passed from the company "Stoupis Frères" and "Alexandre Stoupis" to Katina Vosnakis, and certificate of registration Volume D.LXXXVII, Folio 15 was voided.

Then, on January 7, 1966, i.e., 10 years later, claiming a loss, Katina Vosnakis obtained her own replacement of the title for the one that was allegedly lost. Consequently, certificate of registration Volume D.CXLV, Folio 183, which was obtained in 1956, was voided.

Finally, on January 28, 1976, i.e., another 10 years later, on Departmental Decree no. 000011/76 of the state commissioner for land affairs recovering the building on the grounds that it was an abandoned property, certificate of registration Volume 173, Folio 157, which was obtained in 1966, was voided.

This was the case even though certificate of registration Volume 197, Folio 114, which was obtained by Raphaël Katebe Katoto on February 11, 1976—that is, two weeks after the voiding of Katina Vosnakis's last title, is still not voided to this day, neither by an administrative decision of land matters at any level, nor by a legal decision.

In keeping with the general legal principle of "*pas de nullité sans texte*" (no voidability without a legal text), it should be specified that whatever criticism may have been made about Raphaël Katebe Katoto's certificate of registration, no other certificate of registration could be issued by a registrar of real estate titles on this Mahenge 8 building without procuring its cancellation through a text beforehand.

However, on April 24, 2002, Katina Vosnakis, specifically had granted to her certificate of registration Volume 262, Folio 88 to replace Volume 173, Folio 157 from 1966 even though it had been voided since 1976. This title has no legal value because the accepted principle in this case is "*precedence*" because the KATEBE title still had its full legal value.

Moreover, the registrar of real estate titles, by issuing on April 25, 2002, without prior voidance of Raphaël Katebe Katoto's preexisting title, a certificate of registration recorded in the names of Champion and Nissim Katumbi, created a new legal situation of overlap of titles for which the same principle remains in force, namely, "*the preceding title prevails over the later title.*"

One must wonder about the magic of the mind-set of the registrars of real estate titles of the jurisdiction of this building at Mahenge 8 who were on duty on September 1, 1998, and April 25, 2002, to accept an alleged report of loss of title by Katina Vosnakis, even though it had already been reported as voided since January 28, 1976, in its own archives, first to issue the duplicate and then to allow the sale and transfer on the basis of said duplicate of a certificate of registration that had been voided 26 years prior.

This is why the commission asked the question to find out who should be considered responsible for such a forgery when it is common knowledge that citizens cannot grant themselves a certificate of registration while government employees at the cadaster who are truly responsible for such certificates are in no way concerned.

CEDP found not only that Moïse Katumbi Chapwe went into exile in 1997 when the AFDL came into power—that is, nearly one year before the date on which the bill of sale in question was signed—but also that he returned to the country in 2003 after the Sun City inter-Congolese dialogue, i.e., several months after April 25, 2002, the date on which the registrar maintained that the seller and buyer had appeared before him in Lubumbashi.

Formatted: Font: Not Bold

8

[signatures]

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

Worse, the dates cited for the signature of the bill of sale by the parties and for the transfer of the title by the cadaster are, respectively, after and long after the death of Katina Vosnakis, who had died on June 28, 1997, if Emmanouil Alexandros Stoupis's documents are to be believed.

With regard to the foregoing, the commission has reason to believe that these instruments and documents for which Moïse Katumbi Chapwe is being implicated were **created with the sole purpose of getting him to attend this trial and to convict him** while the problems of the merits that have been cited should in principle pertain to the Congolese government as well as Raphaël Katebe Katoto, who up to then was the holder of the real title that is not voided and is recognized by the government as belonging to ~~on~~ this building.

Nevertheless, the presumption of innocence that is constitutionally guaranteed to him will depend on the assessment of the trial judge and not the commission. **It is therefore advisable to give Moïse Katumbi all the means to exercise his rights to defend himself.**

III.1.2.2. Purely judicial irregularities in the trial against Moïse Katumbi Chapwe

In this regard it is possible to note serious procedural irregularities that may actually make one believe in the allegations that give an account of a strong political influence and influence by the intelligence services in the case because the law, which is supposed to remain impersonal in its enforcement, was not impersonal, such that without legal justification, the judges did not expressly and automatically speak about the preconditions, although they were related to law and order.

1. Under RP 7652/CD of the Lubumbashi/Kamalondo Magistrates' Court

In adjective law, and Congolese adjective law in particular, the merits of a case are not addressed when with regard to the procedures, the case is not in working order on either the criminal level or the civil level. Putting it in working order consists mainly of the persons subject to trial and the court completing the mandatory formalities to hold a trial.

a. The referral of the case to the court

The examination of the referral is the first formality that is legally required of a court before even beginning the trial.

Although the court investigation, in the same way as the precourt investigation, must examine both inculpatory and exculpatory evidence, the reading of the ruling made in this case confirms the allegations of the employees of the registry of this court in that **the notification of the direct filing to introduce these proceedings was irregular.**

The court stated that the case was referred to it because the instrument originally stated that Moïse Katumbi Chapwe had been affected by the intervention of Mr. Shimba Mgangole, the supervisor of the Lubumbashi commune.

The commission has three questions on this topic: first, what is the connection between this man and the summoned KATUMBI; second, as the Public Prosecutor was one, why was it not noted that it was from his supervisor that the summoned KATUMBI obtained a legal justification to leave the country; third, why did the court not state that the case was not referred to it in order to allow the resolution of the proceedings at its site as well as abroad?

The commission notes that there is no connection between the summoned Moïse Katumbi and the person named Mr. Shimba because, not only do the practices and uses of the court

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

require that the commune, by way of a report to be drawn up by the leader of the neighborhood and that must be placed in the court's files, **provides the evidence that it did in fact affect the person**, but also because the same uses and practices in this case require the bailiff drawing up the document to contact the **burgomaster**, either in person or through his secretary or an employee of the office of vital records.

In addition, CEDP found, as the court should have, that the bailiff went to the commune, and was able to confirm that there was neither a servant nor a neighbor **even though there are guards in front of the door of the residence of the summoned KATUMBI and there are also neighbors** with whom he could have spoken in order to comply with the stipulations of article 59 of the Congolese Code of Criminal Procedure regarding the hierarchical classification of people to draw up documents.

Because the referral of the case to the court was public a matter of public policy, the violation of this provision should have been automatically raised by the court or the public prosecutor. **They therefore demonstrated a passivity that is harmful to the guaranteed rights of defense.**

CEDP found, unfortunately to Moïse Katumbi's disadvantage, that the public prosecutor, who due to his high position was responsible for authorizing the departure in order to get medical attention, **requested and obtained the default judgment**, flouting said guaranteed rights of defense.

CEDP wonders how, despite the absence of the summoned- a presiding judge of the court who has the rank of civil court judge, and the entire court, including the public prosecutor, could fail to automatically give an account of these issues, which affect the referral of the case to the court or the proper reason for the referral notwithstanding.

As the plea of the referral of the case to the court was a matter of public policy, and in the context of such a trial, the commission does not find invalid the allegations of strong pressure exerted and orders received in this regard from the provincial legal authorities and the country's intelligence services.

b. The ruling issued by a court from which the case was legally removed

Aside from the violation of the rules for referring a case to a court and other preconditions discussed in item I.3 below, the Lubumbashi/Kamalondo Magistrates' Court allowed itself to do the intolerable by disregarding the Lubumbashi Civil Court's judgment of record to Moïse Katumbi on the filing of his petition to transfer courts because of reasonable suspicion that a fair trial would not be given.

For the proper administration of justice in accordance with the principle of fair trial, Congolese adjective law offers all citizens the option to refuse a judge, no matter that he is a judge, and for a fair, serious and genuine reason, to outright have their case transferred in order to be appealed, investigated, pleaded and ruled on by a court other than the one to which the case was referred, when the reason entails a presumption of subjectivity for any judge who may sit on the bench in their case.

The transfer is therefore made to a court at the same level, other than the court to which the case was referred. Persons subject to trial may request and obtain the transfer of their case even to a court of the same level as a jurisdiction of a court of appeals other than the one of the court to which the case was referred.

10

[signatures]

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

This procedure is enshrined in the stipulations of articles 60 to 62 in the second paragraph of subsection 5, section 6, chapter 2 of title I of Congolese Organic Law no. 013/011-B of April 11, 2013, finalizing the organization, functioning and authority of the courts.

To be specific, article 30, paragraph 7 states: "*upon the production of a,*" "*dispatch of this instrument by the public prosecutor or the most diligent party,*" "*the court to which the case was referred on the merits postpones ruling.*"

These terms of the law are so unequivocal that no special interpretation is needed.

The lawmaker's ~~desire~~ intent is that any composition that finds in the legal case a ruling by the court higher than its jurisdiction or by the Supreme Court must postpone ruling on the merits. This means that the judgment of record on filing of the petition to transfer courts due to a reasonable suspicion that a fair trial will not be given **legally removes the suspected judges.**

In this specific case, Moïse Katumbi Chapwe, who already had doubts about the ability of the Congolese judge to resist the political influences, had already taken the precaution, through his legal advisers, to request and obtain on June 15, 2016, from the Lubumbashi Civil Court a "judgment of record" on the filing of his petition to transfer courts due to reasonable suspicion that a fair trial would not be given.

It is befitting to note that this judgment of record was notified on June 15, 2016, six days before the trial. The duly notified copy was in the judicial file of the court; this makes it possible to conclude that case RP 7652/CD was legally removed from the Lubumbashi/Kamalondo Magistrates' Court when this "*judgment of record*" was notified.

Surprisingly, **in lieu of withdrawing from the case** by decreeing the postponement of the investigation, the Lubumbashi/Kamalondo Magistrates' Court **seriously and intentionally violated the law** by examining the merits or lack thereof of a judgment of record even though only the judge who recorded it was authorized to do so. Worse, the court rejected it with the complicity of the public prosecutor, with the explicit goal of investigating, having only the summoning person plead in order to give him all the advantages and taking the case under advisement for an immediate conviction.

Thus the judges promptly carried out the instructions received from the first provincial judicial authority, which used all its powers and threatened to sanction the judges if they tried to disobey its orders, as illegal as they were, stating, "*The case is a top priority of the ANR and head of state,*" as reported by judge Chantal Ramazani Wazuri and confirmed by some people contacted by the commission in Lubumbashi.

It should be noted that some judges were severely sanctioned in the past for the same actions because this is serious, and it should be added that when a court from which a case is legally removed due to a reasonable suspicion that a fair trial will not be given rules by disregarding said procedure, there always follows a bitter challenge from the defaulting party, supported by the General Inspectorate of Legal Services, to the enforcement of such rulings.

CEDP is thus questioning the **legal value of a ruling made by judges who are legally removed from a case**, as is the case for RP 7652/CD of the Lubumbashi/Kamalondo Magistrates' Court.

Based on the foregoing, there is reason to note that during the same hearing, two law and order pleas that were fully valid were explicitly silenced in order to give rise to an investigation that was completely unaware of defense rights and that went so far as to have the summoning person plead alone, to take the case under advisement and rule on it 24 hours later, even though in our country, even in a case of flagrancy and barring a closed session, trials that end in a lightning-fast ruling are rare.

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

2. Under RPO 7685/7652 of the same court

a. The announcement of the decision of objection, once again by legally removed judges

The time between the announcement of the decision of RP 7652/CD dated June 21, 2016, and the notification of the objection for the hearing of July 25, 2016, under RPO 7685/7652, and the conditions of judicial dysfunction experienced during the first trial under RP 7652/CD were at the start of a widespread suspicion of all the courts of Katanga Province given that, for the adversary KATUMBI and his attorneys, the politicians and the head of the ANR acted through the first presiding judge of the Lubumbashi Court of Appeals, so that consequently, no provincial court under his control could escape from his orders.

This is why that time, under RR 3309, the objecting party KATUMBI requested and received instead from the Supreme Court a "**judgment of record**" of his filing of the petition to transfer courts due to a reasonable suspicion that a fair trial would not be given; he was seeking to transfer his suit of objection to a Magistrates' Court other than the one in Lubumbashi and of a jurisdiction of the Court of Appeals in the hopes of receiving the proper administration of justice in his case.

At this point it is appropriate to cite the *mutatis mutandis* application of the entire theory cited in the preceding item both to the nature and grounds of the case being transferred because of a reasonable suspicion that a fair trial will not be given, and to the major legal effect of the removal of the judges when there is a judgment of record of the filing of the petition.

Once again, this time the judges legally removed to the extent possible **disregarded the judgment of record made under RR 3309 by the Supreme Court** and issued a ruling from the bench. Not surprisingly, this judgment did not change the ruling of the first judgment because it only declared "**null and void**" Moïse Katumbi Chapwe's challenge after having noted his failure to appear given that he also could not be represented due to the seriousness of the penalty incurred.

Therefore, the problem of the legal value posed for the first ruling is posed again acutely for this other ruling handed down by the legally removed judges under RPO 7685/7652.

Thus for the commission, the enforcement of these rulings remains legally unjustified.

b. The refusal to join the cases notwithstanding their connection

Joining because of a connection is also a law and order plea that has as a basis article 146 of the Congolese Organic Law on the organization, functioning and authorities of the courts of the ordinary court system cited above.

This entails bringing before a same judge all connected cases that are pending, either before the different chambers of the same court or before different courts, in order to avoid conflict between legal decisions. This makes it possible to make a single legal decision in two or more cases that apply to the same cases in question.

Thus, having learned that Emmanouïl Alexandros Stoupis had initiated a direct filing against Moïse Katumbi Chapwe, Moïse Katumbi Chapwe and his older brother, Raphaël Katebe Katoto, also initiated a suit against the summoning party. These are the suits under RP 7664 and RP 7665. There is also a suit initiated by Emmanouïl Stoupis and the public prosecutor against Raphaël Katebe Katoto under RP 7689.

In this case the proper administration of justice legally required that these cases initiated separately by Mr. Katumbi and his brother against Mr. Stoupis **be joined** to the one of which Mr.

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

Stoupis is the summoning party due to their connection, and that they be investigated, pleaded and ruled on by the same judge.

What is serious in this case is that in these cases, the judgment and the rulings to formally acknowledge the filing of the petition to transfer courts because of a reasonable suspicion that a fair trial would not be given produced all the effects desired by the law in that the judges decreed the deferment of the cases while waiting for the court action of the suit in order to find out which court the cases would be transferred to, and the judges removed themselves from the case.

This was done deliberately and resulted in a failure to join the cases under RP 652/CD and RPO 7685/7652, which urgently needed to lead to the conviction of Moïse Katumbi Chapwe.

Ultimately, this argument of law and order was also avoided in these two offhand procedures of the Lubumbashi/Kamalondo Magistrates' Court with the sole objective of quickly reaching the notorious decisions of "*conviction*."

III.1.3. The factual and judicial harassment of the summoned party, Mr. Katumbi

For the commission, the argument of harassment against Moïse Katumbi Chapwe with the sole objective to prevent him from being elected should not be overlooked.

This harassment is marked by all the political influences, particularly by the head of the intelligence services, exerted on the judges and the sitting public prosecutor, by orders and threats of heavy criminal and disciplinary sanctions by their respective provincial judicial authorities located at the Court of Appeals and the Lubumbashi Department of Public Prosecutions.

Among many pieces of evidence, CEDP found several indelible pieces of evidence of this tainted influence that acted on the judges and led them to seriously bend the law as we have noted, namely, by trampling on all the guaranteed rights of defense and causing a trial that was not at all fair.

III.1.3.1. The case of the mercenaries

After conducting discreet conversations with some employees of the provincial justice system and some public figures from Grand Katanga, the commission went to the Futuka farm a few kilometers from the city center; if the accusation is to be believed, this is the site of an encampment and training ground for mercenaries.

It is befitting to recall that CEDP's mission is official and is a component of the missions entrusted to CENCO in the Global and Inclusive Political Agreement of the Interdiocesan Center of Kinshasa signed on December 31, 2016.

CEDP takes seriously the allegations of the Grand Katanga public figures who were contacted and who said that the case of the mercenaries is merely a crude construct originating with the intelligence services that would not hold up in court.

Ultimately, for CEDP, according to the information it currently possesses, the trial relating to the Mahenge building is only a clumsy substitute for the case of the mercenaries. In realizing the uncertainty of the legal outcome of this case, which rallied the entire city of Lubumbashi around Moïse Katumbi, it was necessary to let it go in order to assemble a prosecution strategy that would quickly and without sparking popular enthusiasm lead to his conviction; this is the entire meaning of RP 7652/I, which gave rise to RPO 7685/7652, whose trial process was broadly criticized.

Formatted: Font: Not Bold

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

III.1.3.2. Convictions obtained overnight

The commission is nevertheless surprised, if for no other reason than that these two cases under RP 7652/I and RPO 7685/7652 of the Lubumbashi/Kamalondo Magistrates' Court, aside from any flagrancy and for an ordinary criminal trial whose conditions for proceeding are commonly known,

- that a conviction was issued a mere 24 hours after RP 7652/I was taken under advisement in the first trial on June 20, 2016, i.e., on June 21, 2016; and
- that the ruling under RPO 7685/7652 decreeing the objection of Mr. Katumbi *null and void*, thus leaving intact the conviction handed down in the first decision, was issued **from the bench** on July 25, 2016.

Moreover, both of these rulings were made under the same conditions, that is, not only setting aside the preconditions of law and order that make up the grounds for annulment and that should be automatically cited by the court, but also that they were issued by judges who were already legally removed from the case because of reasonable suspicion that they would not give a fair trial.

It must be stated that in a state governed by the rule of law that is worthy of this name, these judges should be taken to task not only in order to **have these two fraudulent decisions voided**, but also to **have them disciplined and dismissed**.

III.1.3.3. Predetermined rulings for the judges' forced support

It should be stated that these allegations cited above come from the presiding judge of the court, who was serving during these trials. CEDP has not dismissed these allegations for the simple and legitimate reason that the ruling under RPO 7685/7652 includes atypical references to the courts, specifically to the Magistrates' Court, but also typical references to courts such as the Court of Appeals.

These references are:

"The public prosecutor permitted to give his '*Opinion*': in lieu of an opinion, in a criminal trial the public prosecutor is instead permitted to give his "*closing argument*"

"Thus '*decided*' and decreed by the Magistrates' Court": in lieu of "decided," which is the cherished expression of the courts, the courts such as the Lubumbashi/Kamalondo Magistrates' Court say: Thus "*ruled*" and decreed by ...

Ultimately, CEDP is pronouncing the harassment of Moïse Katumbi. The rulings decreed, under RP 7652/CD and RPO 7685/7652 may actually originate with the first presiding judge of the Lubumbashi Court of Appeals; the district civil judges, **who in principle were already removed**, only gave their support in fear of promised retaliation.

III.1.3.4. The fraudulent investigation solely against Mr. Katumbi under RP 7652/CD and RPO 7685/7652 following his default

CEDP is fully aware that Congolese adjective law stipulates default. However, default should not be a legal mechanism contrived expressly by a court with the goal of giving the advantage to one party in a trial to the detriment of another.

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

Moreover, the default upheld against the person summoned to the criminal courts does not exempt the repressive judge from his duty to investigate inculpatory evidence in accordance with the principle of "*presumption of innocence*."

However, CEDP regrets that this principle was in no way taken into consideration in these trials because, even if we were to accept the extreme hypothesis that the summoned KATUMBI would have signed a contract for this 1998 sale and would have actually used it in 2002 at the cadaster, these combined violations have a three-year statute of limitations. In this case, both of their statutes of limitations ran out in 2001 and 2005.

Formatted: Font: Not Bold

Thus the **legal statute of limitations of these two breaches could have been cited by the judges of both these cases even in the absence of the summoned party.**

Therefore, the political influence, the pressure exerted on the judges and the orders received to issue a predetermined ruling left no place for their firm conviction, and even more so because in one case the deliberations took only 24 hours while the other needed to be issued from the bench. And therefore, such a possibility already needed to be ruled out.

III.1.3.5. Favors granted to Emmanouil Alexandros Stoupis without justified reasons

CEDP questioned, without receiving a specific response, the true motivation of the Congolese justice system, which, through Ordinance no. 593/2016 of June 28, 2016—only a week after the ruling was issued—granted Emmanouil Alexandros Stoupis a complete exemption from paying the legal costs and ad valorem duty.

CEDP is aware of the fact that this is stipulated by the relevant provisions in the Congolese Code of Civil Procedure and the Rules of Procedure of the Courts and Public Prosecutor's Departments.

However, CEDP would like to point out that the reason of destitution cited in these texts needs to be clarified. Otherwise, how can the description of "destitute" fit someone who claims to be the owner of more than four buildings in the Democratic Republic of the Congo (see ruling convicting MUYAMBO), who stays in luxury hotels in Lubumbashi and Kinshasa and who undoubtedly has been paying all these expenses himself, outside Greece, for nearly a year?

Ultimately, if he is truly destitute, Mr. Stoupis, with all this diligence done in the proceedings in both the MUYAMBO case and the KATUMBI case, and all their ramifications, it would be concluded that there is in fact also **another tainted influence that is purely financial** and belongs to an adversary keen on seeing Messrs Katumbi and Muyambo convicted.

III.1.3.6. The recurring renewal of the arrest warrant against Moïse Katumbi

In its circular note no. [sic], the national public prosecutor questioned all the heads of the national public prosecutor's departments on what he himself called the improper use of immediate arrest clauses in the decisions of harsh trial judges. This is fair because the spirit of this circular note is not only to avoid the practice of a settlement of accounts regarding some citizens, but also to avoid the policy of double standards in the enforcement of decisions and rulings of convictions.

Moreover, this adheres to the general principle of law that states that in the case of an equal fact, the treatment is also equal.

15

[signatures]

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

This is why, at this time everywhere in the country, most parties convicted in a trial court upon immediate arrest in a repressive matter who have and use the right of redress in order to either object in case of a sentencing made in absentia, or to appeal in case of a judgment rendered in the presence of the parties involved, are free. They are not bothered and they are freed on bail to await the verdict that makes the sentencing that imprisons them enforceable.

However, this is not the case in the KATUMBI suit. Not only was he convicted in absentia, but he objected and appealed, and the objection was resolved while the appeal is still pending for decision RPO 7685/7652. Yet the same public prosecutor has persisted in obtaining an arrest warrant against him under these conditions and renews this warrant every time it expires.

CEDP believes that this arrest warrant, which is continually renewed, is preventing Moïse Katumbi from returning to the country, if only to defend himself as a free man in his appeal trial. This is harassment, especially knowing that other people in the same legal situation move around freely both inside and outside the country.

III.2. Case of Jean-Claude Muyambo

III.2.1. Brief review of the merits

Just as for Moïse Katumbi Chapwe, it is the same Emmanouïl Alexandros Stoupis who initiated the suit against Jean-Claude Muyambo Kyassa. This is not posing any problems. In fact, it is forbidden for one person to simultaneously file suit against multiple individuals for different issues of infringement of his guaranteed ownership rights.

Yet on the merits of his disputes over the last two years, Mr. Stoupis continues to contradict himself with regard to the building at 8 avenue Mahenge, which is also the subject of his dispute against both Moïse Katumbi Chapwe and Jean-Claude Muyambo and **for which Mr. Muyambo is acquitted**, and with regard to the other buildings. For all the buildings, he considers himself the owner, **but holds no title**. However, it is a serious matter that he is recognized as such, by way of the ruling under RP 26.615/1 of the Kinshasa-Ngaliema Magistrates' Court, which convicted Jean-Claude Muyambo Kyassa.

Although Mr. Muyambo is being held responsible for having sold the property of his client, Emmanouïl Alexandros Stoupis, property that he would have reclaimed as attorney, all these buildings claimed as property to this day are occupied by their buyers in regard of those who held the titles to them in March 2002, when the instruments establishing the client-attorney relationship were signed.

According to these instruments, it is clearly established, on the one hand, that the attorney's task is only to **locate and reclaim** the buildings, and on the other, that the task to sell and make miscellaneous payments, such as the attorney's fees, is entrusted to a Greek person, Grégoire Hadjiyannis, who lives in Lubumbashi, at 3915 avenue Changalele.

Only the building located at the intersection of Adoula and Moero Avenues, numbers 316-328, in conflict with Mr. Cituka Mpulu, were ~~was~~ the subject of legal decisions made in favor of Emmanouïl Alexandros Stoupis, because of the duty of the prosecution of his attorney, Mr. Muyambo. However, Mr. Muyambo states that no sale took place given that the proceedings were still in progress until his arrest.

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

Contrary to a complaint sent to the national public prosecutor dated September 30, 2013, against Mr. Muyambo by his client Emmanouil Alexandros Stoupis and that contains the crux of the accusations revived in 2015 for which Mr. Muyambo is currently being sued and convicted, **we would like to note the letter dated June 25, 2014, in which Emmanouil Stoupis apologizes to Mr. Muyambo, citing his disinformation due to the lack of communication even though there were e-mails exchanged on this topic.**

From the foregoing, as was stated in the case of Mr. Katumbi, CEDP, without harming the foundation of what remains of the entire authority of the country's courts, no matter what their verdicts may be, this description highlights the need to **organize a truly fair trial that respects the guaranteed rights of defense** without harassment or political interference, and even less without various pressures from the intelligence services, in order to reestablish the truth.

III.2.2. Irregularities under RP 26 615/i of the Kinshasa-Ngaliema Magistrates' Court

In its discussion of the KATUMBI case, CEDP broadly explains the nature, grounds and procedure for **transferring courts because of reasonable suspicion that a fair trial will not be given** and its effects on the developments of the trial.

It is surprised that the same irregularity characterizes the legal decision made at the trial court by judges in the case of Jean-Claude Muyambo Kyassa.

The Supreme Court has repeated in a number of its rulings that when a "judgment of record" of the filing of the petition for a transfer of courts because a reasonable suspicion that a fair trial will not be given is notified to the suspected court after this court has already had to issue its verdict, the transfer becomes moot, **but this cannot be the case if this notification is made before a legal decision is issued.**

Hence even after the case is taken under advisement, when, during the investigation of a case, one of the parties has suspected the judges, and requests and then obtains, depending on the case, the "judgment of record" of the filing of a petition for transfer because of a suspicion of a court, and brings it through its diligence and care or those of the public prosecutor to said suspected court, either through a notification made to its supervisor in person or to the administration office, or through a notification made directly to one of the sitting judges, these judges must defer ruling on the case, and **consequently, remove themselves from the case while waiting for the court action of the suit in order to find out the court to which the case is being transferred.**

In specie, and although the investigation of the case under RP 26 615/i was deferred for the purpose of a "judgment of record" of the filing of Mr. Muyambo's petition to transfer courts because of reasonable suspicion that a fair trial would not be given, a judgment which was notified on January 6, the **Kinshasa-Ngaliema Magistrates' Court**, although the case had already been legally removed from it because of this, **hurried to have the case set, to investigate it and to take it under advisement, and issue a verdict shortly after the signature of the Global and Inclusive Political Agreement of the Interdiocesan Center of Kinshasa of December 31, 2016.**

Ultimately, and as is discussed in connection with the KATUMBI case, this decision was issued by legally removed judges. It therefore cannot justify the continuation of the imprisonment of the defendant Mr. Muyambo, who, moreover, is illegally imprisoned.

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

III.2.3. The factual and legal harassment of Jean-Claude Muyambo Kyassa

III.2.3.1. The posteriority of the complaint that led to the aforementioned trial to his arrest

CEDP points out that it is impossible not to question the real reasons for Mr. Muyambo's arrest, which occurred on January 20, 2015, even though the renewal of the complaint of his former client, the Greek man, with a view to the trial under way, did not occur until January 27, *seven days later*.

Within the context of such questioning, although the merits may give rise to a trial to reestablish the truth, the fact that beforehand the person was first arrested and taken to the premises of the intelligence agency at 4 a.m., then to the National Department of Public Prosecutions, then to the Gombe Department of Public Prosecutions, and then finally to the Makal Central Prison in early evening **without a bill of indictment**, even though a major wave of popular dispute that is well known occurred from January 19 to 21, 2015, **CEDP cannot conclude that such an arrest occurred due to the facts for which he is currently being sued under RP 26.615/I in question following RMP 6961/PG/OS, sent for determination on May 12, 2015, under number 2955.**

CEDP also finds that the bill of indictment established by the letter of request due to the first complaint for which the plaintiff had already apologized several months prior in acknowledging his disinformation and the complaint that was actually renewed for the need of resolving the proceedings **occurred several days after the defendant was deprived of his freedom through an arbitrary arrest.**

III.2.3.2. The failure to sue the perpetrators of the arbitrary arrest and the refusal to grant temporary release to the defendant Mr. Muyambo

The behavior criticized above constitutes the violation of arbitrary arrest that is stipulated and censured in the provisions of article 67 of Book II of the Congolese Penal Code.

No suit, notwithstanding any accusation, even by way of reports, was initiated against any of the participants in the process of his arrest, **as though the explicit deprivation of a person of his freedom without legal grounds is not the leaders' concern.**

In addition, freedom, if only temporary, **to be granted to someone whose conditions of arrest are those described above**, should not be a subject of controversy.

However, Jean-Claude Muyambo is still imprisoned, 25 months later, even though he is not a flight risk, his identity is not disputable and he is rather well known because he is an honorary chairman of the bar of the law society of the attorneys of his rank **in accordance with the spirit and the letter of article 27 of the Congolese Code of Penal Procedure**, and even though the security stipulated in article 32 of the same code as conditional for bail **could not pose any problems in his case.**

How many people today are being sued in the courts and public prosecutor's departments for the same facts and are defending themselves as free people because judges have released them on bail? CEDP wonders why Jean-Claude Muyambo's case is different and prevents him from benefiting from the same legal treatment as others.

III.2.3.3. The unambiguous refusal to grant the accused permission to receive surgery on his left foot

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

It is said that health is priceless. It is inconceivable that the justice system of a government disregards a defendant's right to receive health care.

The analysis of various medical reports that are found in the judicial file of Jean-Claude Muyambo, particularly the one dated April 11, 2016, clearly prove that his condition requires serious attention. Otherwise, CEDP believes that the refusal of the legal authorities with jurisdiction to authorize Mr. Muyambo to either be taken abroad or to a well-equipped hospital to receive suitable care is unfair and relentless.

IV. PROPOSALS FOR THE CENCO CHAIRMAN

The two trials **are nothing but farces**. Moïse Katumbi is being summoned to a trial for a case that does not concern him closely or remotely. Jean-Claude Muyambo is watching as a dispute that was already settled with his client turns into a political trial that does not speak its name.

CEDP recommends that the chairman of CENCO plead for:

- The immediate release of Jean-Claude Muyambo
- The immediate withdrawal of the arrest warrant against Moïse Katumbi, and his release so he can exercise his civil and political rights
- The dismissal of the proceedings against Moïse Katumbi for recruiting American mercenaries and for infringing the external and internal security of the country
- The release of the people imprisoned in the Democratic Republic of the Congo subsequent to the so-called mercenary case
- The justice system to be freed of any outside control
- The need to organize a trial that is truly fair, respects the guaranteed rights of defense, without political harassment or interference, and without pressures from the intelligence agency, in order to reestablish the truth

All things considered, as CEDP in no way wishes to encroach on the authority of the courts referred to, it recommends that the chairman of CENCO call on the government authorities to ensure that justice is administrated freely when it comes to all cases and to organize fair trials that guarantee the respect of citizens' fundamental rights.

Signed in Kinshasa, March 3, 2017

Members of CEDP:

1. His Excellency Monsignor **Félicien Mwanama**
Bishop of Luiza, Chairman [signature]
2. His Excellency Monsignor **Nicolas Djomo**
Bishop of Tshumbe, Member
3. His Excellency Monsignor **Fidèle Nsielele**
Bishop of Kisantu, Member [signature]
4. Father **Symphorien Lopoke**,
Secretary of the Episcopal Commission for Seminaries and the Clergy
Secretary [signature]
5. **Chris-Cicéron Bakumba, Esq.**
Legal Adviser to CENCO [signature]

19

[signatures]

REPORT OF THE AD HOC EPISCOPAL COMMISSION ON THE EASING OF POLITICAL TENSION

6. **Mr. Godefroid Manzala Ma Ngo**
Public Prosecutor Emeritus [signature]

20
[signatures]