

FOREWORD

The spread of Covid-19 pandemic, which began in early 2020, has forced people to change their lifestyles in new and unusual ways, to the point of denying themselves certain fundamental rights and freedoms even before the government intervened with adjustments to the legal provisions in the new context. This pandemic has put the fundamental values and principles of the Rule of Law to test for purposes of public health safety. The Democratic Republic of Congo (DRC) has not been spared from this global scourge that has destabilized States. The President of the Republic was prompted to declare a state of health emergency to deal with Covid-19 pandemic on 24 March 2020. Urban areas were locked down, unlocked and locked down again, schools and universities, markets, churches and other public places were closed for a period of time.

Despite the lack of adequate infrastructure, government officials were obliged to adapt to working from home. The private sector, political and socio-economic actors were also forced to adjust to the same conditions in order to prevent the spread of the pandemic as much as possible. It was time for solidarity and cooperation between different actors in order to fight against the pandemic and its spread. The articles in this Special Edition are devoted to the future promotion and protection of the fundamental values and principles of the Rule of Law in the context of global changes influenced by Covid-19 pandemic within DRC. Articles by various researchers from Kinshasa in DRC involved in this Special Edition address issues that touch on different aspects of the Rule of Law during this period, especially on the effectiveness of the state of health emergency.

Marcel Wetsh'Okonda Koso and Eder Mbala Kazadi focus on matters relating to constitutional justice during the state of health emergency. They discuss and assess the role of the Constitutional Court, with regard to its constitutional oversight mandate, in the proclamation and duration of the state of emergency, which nonetheless took place in unprecedented special circumstances, thus creating room for possible violation of human rights. The authors also examine the constitutional legality regarding the declaration of a state of emergency in DRC, which, according to the current Constitution, must be approved by the Executive arm of the Government in consultation with the Legislature. Marcel Wetsh'Okonda Koso's article **focuses on the constitutional presidential powers' in exceptional circumstances with reference to previous rulings made by the Constitutional Court on matters pertaining to State of Health Emergency against the Covid-19 pandemic.** The author analyses the Constitutional Court's compliance with the legal procedures pertaining to proclamation and extension of a state of emergency as well as adherence to legal requirements for emergency measures to be adopted by the competent public authorities.

Eder Mbala Kazadi's article, entitled **"Framing of jurisprudence by the Congolese constitutional judge on the applicability of the state of emergency provisions in the wake of Covid-19 pandemic"** examines the intervention of the Congolese constitutional judge in this matter pertaining to the declaration of the state of health emergency. The au-

thor notes that the Constitutional Court issued one interpretation after another regarding the procedure for proclaiming this exceptional legality. While in 2007 the Court refers to consultation in accordance with article 85 of the Constitution of 18 February 2006, in 2019 and 2020 it admits that the approval by Congress is mandatory under article 119 of the same Constitution. Furthermore, the author notes that in 2020 the Court changed its position by saying that the matter must be assessed on the basis of the facts to determine which of these two procedures can be followed. According to the author, this points to the fact that these three different positions of the Court do not stem from the same context and that, consequently, each context mentioned makes it possible to identify the particularity of the role played by the constitutional judge in framing of its jurisprudence and strengthening of the Rule of Law.

Another group of researchers, Symphorien Kapinga Kapinga Nkasha, Clément Shamashanga Minga and Moïse Abdou Muhima, focus on the issue of **the effective management of the state of health emergency in DRC by the Government**. At the center of their analyses, they examine the aspect of coordination and collaboration between the executive, legislative and judicial arms of government to deal with the Covid-19 pandemic and the need to manage the country in accordance with the values and fundamental principles enshrined in the Rule of Law.

Symphorien Kapinga Kapinga Nkasha's article focuses on **a brief evaluation of the legal framework of the state of health emergency to deal with the Covid-19 pandemic in DRC**. In his study, the author illustrates how the management of the health crisis by the Congolese political authorities has brought to the fore, the inconsistency of the constitutional provisions regarding the state of emergency and the legislative gaps on this matter. Similarly, intervention of the National Assembly and the Senate in small numbers, without the quorum as required by the Constitution and internal rules of procedure, to extend the state of health emergency revealed the inadequacy of the operating rules of procedure for these two Houses of Parliament with regard to the requirements for the fight against Covid-19 pandemic. Hence, the need for the Congolese Parliament to fill the legal vacuum by adopting the law on the modalities of application with regard to the state of emergency as an exceptional regime derogating from the established legal order and to downsize the rules on quorum in exceptional circumstances such as those related to Covid-19 pandemic.

On the other hand, Clément Shamashanga Minga analyzes **"the collaboration of public authorities in the context of the fight against Covid-19 pandemic in DRC"**. The author reveals that, during the state of health emergency, relations between the President of the Republic and the Parliament, on the one hand, and between the Parliament and the judiciary, on the other, were marked by tension and mistrust. Tensions between the President of the Republic and Parliament are considered to be occasioned by the crisis that shook the FCC-CACH coalition and the desire of each camp to exercise control over the Independent National Election Commission (INEC) and the Constitutional Court. Mistrust and tension between Parliament and the judiciary are due to the desire by the Judiciary to guard its independence and free itself from interference by politicians in order to play its role as the

guarantor of individual freedoms and fundamental rights of citizens, as well as the perception that parliamentarians have with regard to their immunities and autonomy of their parliamentary chambers. The author also demonstrates that all these tensions have a negative impact as far as the future of the Rule of Law and democracy in DRC is concerned. These differences have hindered these arms of government from having a common and unified approach towards responding to the crisis caused by Covid 19 pandemic. The author also shows that these tensions have led to a situation in which the rule of law and democracy in DRC are being undermined.

Moise Abdou Muhima's study on **"the state of play and the challenges of promoting the rule of law in DRC by the specialized responsive institutions to Covid-19 in DRC"** notes that the public authorities have not been satisfied with the capability of the existing institutions to deal with the Covid-19 pandemic. Thus, several other specialized institutions were created to intervene in various sectors of the response against the coronavirus. The institutions in question are the DRC Covid 19 Response Unit; the Presidential Task Force; the Technical Secretariat; the National Coronavirus Solidarity Fund; and the Multi-Sectoral Response Committee (MRC-COVID-19). It is clearly noted that almost all of these institutions are directly attached to the Presidency of the Republic and report directly to the President of the Republic. Most of these institutional heads are health personnel who have little attention on matters pertaining to the Rule of Law. We therefore see a risk in duplication of these entities which is in contravention of the values and principles of the Rule of Law in DRC with regard to the promotion and protection of these values and principles. The solution would therefore be strict limitation with regard to creating new institutions and consequently use the existing institutions with government authorities ensuring that they are well equipped with a clear mandate.

William Katembo Kasilam, Juslain Nsambana Bonkako and Jean Pierre Kabemba Kapenga focus on the enjoyment and protection of human rights during the state of health emergency period. The first researcher focuses on economic, social and cultural rights in general. The second one looks at labour rights during the state of emergency period in response to Covid-19 pandemic and the last researcher throws a spanner in the works by questioning the appropriateness of establishing an emergency criminal law that is adequate and adapted to emergency situations for the protection of human rights in DRC. William Katembo Kasilam's article on **"The Limitation of Economic, Social and Cultural Rights in the DRC during the State of Health Emergency"** notes that the measures taken by the public authorities in declaring a state of health emergency to combat the spread of Covid-19 pandemic have curtailed many human rights. The author asks whether all human rights can be subject to limitations in such circumstances and, if not, which rights can be limited and what are the requirements for such limitations in terms of time and space.

Juslain Nsambana Bokako, whose article is entitled **"Maintaining jobs during the state of emergency following Covid-19: a critical analysis of measures instituted in DRC with regard to labour laws"**, critically analyses the measures instituted in the DRC to deal with Covid-19 pandemic with regard to labour law and the need to maintain jobs

during the state of health emergency period. He examines the applicability of the State's prohibition of mass dismissals during the state of emergency declared in the wake of Covid-19 in DRC with regard to the devastating situation of employers, by specifying both the legal nature of Covid-19 in labour law and its effects on labour relations between workers and employers, as well as assessing the prospects the State has in the face of a phenomenon pandemic in the nature of Covid-19, that will ensure the effectiveness of job protection against the effects of such a pandemic.

To close this chapter on the protection of human rights, Jean Pierre Kabemba, whose article is entitled **'Emergency criminal law: for a penal theory for exceptional circumstances'**, points out that, between prevention of the pandemic and protection of people's rights, the decisions by the Government has had harmful effects, so much so that serious violations of human rights have been observed. In particular, arbitrary arrests and sanctions based on the will of police officers, unlawful extensions of detentions due to lack of a judge, and so on have been observed. The author notes that this trial-and-error approach is undoubtedly as a result of the general surprise and panic caused by Covid-19. Measures and practical arrangements applied in fighting the pandemic have undermined a number of fundamental principles with regard to criminal law, including the presumption of innocence, the principle of legality, etc. Therefore, in order to avoid arbitrariness and to respond to the dictates of criminal law, a rationalized adaptation should be made and should be on a permanent basis. He concludes that, given the evidence of an imbalance between the rights of individuals and the repressive mechanism during the Covid-19 period, there is a need for a criminal theory for exceptional circumstances.

The preceding articles were followed by contributions from Genèse Bibi Ekomene, who questions the future of the economic victims resulting from the measures taken by the Government to deal with Covid-19 pandemic. He reflects on the ways and means of implementing reparations for the exceptional prejudice suffered by women who were engaged in small-scale informal trade before the outbreak of Covid-19 pandemic. His article entitled **"the notion of exceptional damage as a basis for reparation on the prejudices suffered by women engaged in small-scale informal trade during the state of health emergency in the city of Kinshasa"** is an advocacy voice for women engaged in small-scale informal trade who were severely affected by the state of emergency measures enacted to combat the spread of Coronavirus in DRC. He explores the possible solutions in restoring the rights of women victims, at least before Covid-19. The laid down range of economic measures by the Government to mitigate the adverse effects of Covid-19 can be applied. These include tax exemptions and relief. On the other hand, the author considers the possibility of using the National Solidarity Fund against Coronavirus (FNSCC), whose main purpose is, among other things, to support people whose economic activity has been affected by the negative consequences of the pandemic. However, the first hypothesis does not apply to people engaged in small informal trade despite the fact that they all lost all their income following the cessation of their economic activities, whereas the second option is ineffective. Only the legal approach which could lead to referring the matter to the Cabinet

for exceptional damage in order to obtain compensation as provided for by the legal provisions in force is viable. Finally, Jean-Victor Mboyu Epenge argues on the need for a special tax regime for goods intended to combat Covid-19 pandemic. His article on **"tax regime for the free delivery of goods intended to combat Covid-19 pandemic by Congolese companies"** focuses on the need for the Government to introduce emergency administrative measures with the view to providing tax relief to companies that, during or after the state of emergency, complied with the duty for solidarity necessitated by Covid-19 for the sake of taxpayers' health security and for the general public common good.

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