FOREWORD

The articles contained in this volume of the African Law Study Library were prepared following the eleventh seminar on the rule of law in the Democratic Republic of Congo (DRC) organized by Konrad Adenauer Foundation (KAS) for PhD students from the University of Kinshasa and other legal researchers and practitioners. They deal with various legal issues relating to judicial organization, electoral disputes, police intervention, salary aspects, environmental protection and intervention of the Catholic Church in protecting the freedom to demonstrate. All of these articles provide a glimpse of progress made and pending challenges to be addressed with regard to consolidation of the rule of law in DRC.

The first five articles deal with matters concerning judicial administrative organization through the General Inspectorate of Judicial Services, structure and functioning of the National Judicial Training Institute, the manner in which judicial officers exercise their profession independently, right of appeal in commercial disputes as well as right of appeal pertaining to election related disputes for provincial Governors and Vice-Governors.

Article by Clément Shamashanga Minga entitled **"General Inspectorate of Judicial Services: Is judicial service operating within the Congolese Constitution of 18 February 2006?"** examines the General Inspectorate of Judicial Services instituted under the Second Republic by Order of 23 June 1987 in a context marked by lack of judicial independence. There was a certain opinion that the creation of this public entity, which falls under the Ministry of Justice (executive power), was an expression of erosion of the judicial independence which would subsequently undermine the principle of separation of powers, a feature in the rule of law as enshrined in the Constitution of 18 February 2006. However, the author argues that the existence of Inspectorate-General of Judicial Services does not violate the principle of separation of powers. In his view, the existence of a public entity with the mandate to monitor operations of judicial institutions and ensuring proper administration of justice by courts and tribunals and directorate of public prosecution is indeed a mechanism for strengthening the Judiciary. He recommends that this Order should be revised to repeal all powers that are unconstitutional.

Article by Moïse Abdou Muhima on **"Organization and Operation of the Profession of Judicial Officers in the Democratic Republic of Congo: Current Status and Current Issues"** interrogates the expediency to deregulate the judicial officers' profession in DRC and the role played by them in the administration of justice. The author notes that before the organic law governing the judicial officers' profession in 2016, they did not benefit appropriately from the necessary safeguards allowing them to play their role as independent and intermediary justice officers for the development of local justice. With the entry into force of this organic law, the judicial officers' profession was structured around the national and provincial chambers. Each one of these structures is composed of a General Assembly, a Board and an Auditor. These various bodies enhance the efficiency and integrity of the profession. This reform has allowed judicial officers to organize themselves into an au-

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tonomous and independent body with necessary safeguards to contribute effectively to the good administration of justice and consolidation of the rule of law in DRC. Nevertheless, it is still too early to evaluate the implementation of this organic law.

Chrispin Chubaka Kahiro's article deals with "**Establishment, Organization and Functioning of the National Judicial Training Institute and its role in the Administration of Justice in DRC".** He focuses on the Institute's contribution to strengthening efficiency of the judiciary, taking into account its organization, composition and mandate as provided for in the relevant legal instruments. The article also looks at institutions that contribute towards the attainment of the Institute's mandate. This article also analyses the collaboration between the Institute and the Ministry of Justice, which is responsible for its administration on the one hand, and the High Judicial Council, on the other hand.

Joseph Kaciunga Mbenga's article deals with the **"Right of Appeal in Commercial Disputes in the Democratic Republic of Congo"**. The author reiterates that the right of appeal is a right granted to any litigant who is not satisfied with the ruling given at first instance by the trial judge and who considers the ruling to be prejudicial to his or her interests. It entails making an appeal to a superior court. This principle also applies to commercial law given the fact that it is recognized by both the Congolese commercial law as well as in the provisions of OHADA (Harmonization of Business Law in Africa) common law pertaining to general commercial law. Congolese commercial law is governed by Act No. 002/2001 of 3 July 2001 relating to establishment, organization and functioning of commercial courts. This law gives special jurisdiction to commercial courts to determine specific procedural rules to the extent that determination of commercial matters require promptness by avoiding the burden of ordinary courts. However, the author highlights an inconsistency with the law where instituted Courts of Appeal also serve as Courts of Appeal for commercial disputes. The fact that these courts do not apply special procedural provisions, we revert back to ordinary courts with their cumbersome processes thus defeating the purpose of establishing commercial courts. As a solution, he proposes the establishment of appeal chambers within the commercial courts for settling commercial disputes at that level. This therefore, requires revision of laws pertaining to commercial tribunals in DRC.

Article by Jean Jacques Kahunga Mapela entitled **"The dispute of candidacy for the election of provincial governor in the Democratic Republic of Congo**: **National and regional appeals jurisdiction of the State Council"** analyzes the controversy that arose during the jurisdictional determination of disputes over the candidature of provincial governors triggered by some candidates who appealed to the State Council while exercising their constitutional right of appeal. Some argued that the basis for exercising this constitutional right were unfounded and that the State Council had no such jurisdiction, given that under the provisions of article 27 paragraph 4 of the electoral law, it states that the operative part of the judgment or judgment which is notified to the concerned parties as well as to the Electoral Commission is not subject to any appeal. The author argues that there was no reason for such controversy. This is because, over and above the constitutional and legal basis invoked by the State Council granting itself the appellate jurisdiction in this matter, human

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rights and rule of law are also underlying factors within the appeals jurisdiction. This means that in accordance with the principle of compliance with the Constitution of all infra-constitutional acts, the electoral law cannot provide for exemption from the right of appeal as per the Constitution. It therefore follows that there is need to revise the electoral law to avoid the inconsistency brought about by this dispute.

The next five articles deal with the minimum guaranteed inter-professional wage, police intervention, mining taxation, environmental protection and international support for the rule of law in DRC that is manifested through public demonstrations organized by Catholic Christians for the respect of the Constitution.

Article by Juslain Nsambana Bonkako on **"The inter-professional minimum wage guaranteed under the Constitution of 18 February 2006: Legal framework and challenges on effective implementation in the Democratic Republic of the Congo"** seeks to answer certain questions relating to this wage, namely, its scope of application (material, territorial and personnel), its legal status, and legal consequences for non-compliance and practical challenges regarding its implementation, particularly with regard to employers with low financial returns. According to the author, the minimum guaranteed inter-professional wage was to be compared to the basic salary. Non-compliance with the minimum wage is considered to be an offence, thus putting all employers on the same level, including low-performing employers who nonetheless employ a significant proportion of workers. To promote small and medium-sized enterprises (SMEs), the author proposes categorization of employers and institution with gradual minimum wages, with control mechanism before and after admission to a given category. This last idea is as a result of many engagements with these categories of employers during the implementation of 2018 minimum wage, which unfortunately, sets the wage for ordinary labourers at five US dollars ($5) payable in Congolese francs on a daily rate.

Martin Milolo Nsenda's article on **"The failure of the police intervention in anti-Kuluna and the attempted new eradication approach in the Democratic Republic of Congo"** highlights the limitations of the use of force (Operations Likofi 1 & 2) to eradicate this problem since the causes are multifaceted. According to author, the incapacity of police is due to several factors which are technical, logistical and strategic in nature. He proposes that an in-depth analysis be conducted on the root cause of the problem before considering a new approach to eradicate it. He recommends that the government should adopt a non-repressive approach, including social reintegration through vocational training so as to enable people to earn a living through work.

Nicole Djangi Ekila's article on **"The status of fiscal incentives for extractive industries in the revised Congolese (DRC) and Guinean Mining laws"** is a comparative study on fiscal incentives before and after reviewing of the DRC and Guinea Conakry Mining laws. It examines indicators for better management of the extractive sector and maximization of public resources from this continental context dominated by downward revision of exorbitant benefits granted to investors by the so-called ultra-liberal Mining laws of the

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2000s. The author draws a parallel comparison between the previous incentives and the changes made to them through the revision process of the relevant mining laws.

Genèse Bibi Ekomene's article on "**Promoting Women's Entrepreneurship through Microcredit in the Democratic Republic of Congo"** questions the assumption that microcredit can contribute to women's empowerment and analyzes the difficulties that women engaged in informal small business face when accessing funds through microfinance. The author first describes the current state of women's entrepreneurship in the DRC, which is dominated by informal activities, and then examines the existing legal protection for such activities and the benefits that access to bank financing can bring. The study highlights the challenges that these women must face in order to hope to achieve empowerment as povided in the framework of sustainable development objectives (SDOs) and proposes some possible solutions to achieve this.

Finally, the article by Renia Binaki Bamanganen titled **"International support for the Catholic Church in the Democratic Republic of Congo: A form of global resistance to authoritarian regimes in Africa"** highlights the international support demonstrated by the international community for the restoration of the rule of law in DRC. This international support was significant particularly relating to the public demonstrations organized by Catholic Christians demanding respect for the New Year's Eve political agreement and the respect for the Constitution of DRC as well as condemning crackdown on peaceful demonstrations by Catholic faithful. This international support forced the former President of the Republic to rescind his decision to contest for a third term.

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