

FOREWORD

The articles contained in this volume of the African Law Study Library were developed within the framework of the seventh seminar on the rule of law in the Democratic Republic of Congo organised in April 2015 at the University of Kinshasa. Indeed, the organisation of these seminars is part of the wide programme of training and research that aims at creating synergy between Congolese lawyers and Africans, with a view to sharing experiences on pertinent issues relating to the promotion of the rule of law and regional integration in Africa. The nine articles in this volume tackle different issues; two of them touch on politics, two on economy and five on social problems faced by the Congolese people.

On the political front, two major issues which concern Congolese political players were discussed within the framework of this seminar. They pertain to the issue of political change of power and electoral corruption. The article by Joseph Cihunda Hengelela analyses the legal guarantees of political change of power in the Democratic Republic of Congo under the 18th February 2006 Constitution. The author is of the opinion that, in conformity with the constitutional order currently in force, political change of power is irreversible and any legal argument to justify its impediment does not hold any water. According to him, any plan aimed at placing an obstacle to political change of power constitutes an infringement of reversing a constitutional regime. This plan in itself is a serious threat to peace and security both for the DRC and the entire Great Lakes Region of Africa. The article by Roger Thamba Thamba is devoted to electoral corruption in the DRC and the author tries to propose legal solutions for prevention and punishment. This article highlights the dangers posed by electoral corruption on Congolese democracy. For him, electoral corruption is lethal to democracy and, it undermines the legitimacy of leaders much sought after in this country and, annihilates any development effort.

The two articles devoted to the economy discuss the banking system and Sino-Congolese economic relationships. The article by Wily Wogbo Koberelo discusses the legal framework of Sino-Congolese relations and its impact on socio-economic rights of the Congolese people. The author shows that economic and trade relations between the DRC and China are to be understood in two ways. The first which touches on inter-state relationships as regulated mainly by the principles and rules of international law and the second on transnational relationships marked in particular by the collaboration agreement dated 22nd April 2008 in relation to development of a mining project and an infrastructure project in the DRC. According to him, this agreement has not yet met the expectations of the Congolese people. For the agreement to be useful in the promotion and protection of socio-economic rights of the Congolese people, the Congolese State must put in place a favourable framework for the emergence of principles of good governance in this regard.

The article by Juslain Nsambana highlights the imbalance between the protective measures existing between banks and the clients to the disadvantage of the latter. The author proposes, on the one hand, as solution to this imbalance, the need to put in place a real sys-

tem of deposit guarantees to the extent where the risks of not being paid are clear even for a bank and, on the other hand, to institute, within the Central Bank, a special office for management of complaints and follow-up of files from clients in respect to commercial banks. The effectiveness and efficiency of the responsible control of the Central Bank constitutes a guarantee for the protection of clients considered as the weakest part in the banking system.

The other articles in this volume are devoted to social issues. They pertain mainly to urban transport, protection of jobs and access to electrical energy. The article by Samba Mukiramfi touches on the legal framework for urban transport by bus in Kinshasa. The author highlights the advantages and limitations of the mechanisms put in place to fight against the phenomenon of « *Esprit de mort* ». According to him, the phenomenon « *Esprit de mort* » presented an opportunity for reflecting on the reliability of the traffic law in Kinshasa, from the standpoint of the rights guaranteed to road users. The partnership between the public and private sectors in the implementation of the traffic law, in view of recurrent abuses, which is necessary for its sustainability, requires ethical training of the public officers seconded to manage road transport and their support, as well as real punishment for the violations.

The article by Stéphanie Nsomwe Musangie touches on subcontracting in the perspective of job protection in the DRC. The author is of the view that workers subjected to « subcontracting » in the telecommunication sector are not protected in respect to the Employment Act of Congo. According to her, the issue of « sub-contracting » in the DRC is related to the legal nature of these kinds of services and to the direct action in case of settlement of disputes which would arise between the « sub-contractee » and the « main contractor » or even the « sub-contractee » and the prime contractor. Beyond the semantic confusion maintained mainly by the public authorities, sub-contracting is not regulated by the Congolese law. She advocates for the law maker to direct his attention on this issue so as to ensure legal protection for the Congolese people subjected to these kinds of services.

The article by Symphorien Kapinga K. Nkashama discusses the issue of the right to access electrical energy in the light of the Act n° 14/011 of 17th June 2014 in relation to the electricity sector in the DRC. The author shows that the DRC is an energy scandal and her rate of access to electrical energy is the lowest in the continent. It is this deficit which the new law wishes to address. Thus the new law establishes electricity as a public service and liberalizes the sector. It prohibits flat-rate pricing basis and gives the state the obligation to subsidize consumption of electricity. However, the success of this law is also dependent on a conducive business climate and its application.

The two remaining articles touch on a current issue in mining industries in the DRC. They pertain to corporate social responsibility of petroleum and mining companies. The article by Camille Ngoma Khuabi touches on the problem of payment of ecological damages due to pollution by hydrocarbons in the coastal town of Moanda in the Province of Bas-Congo. The author attributes lack of reparation to the defectiveness of the legal framework in the hydrocarbons sector. We hope that the adoption and promulgation of the proposal on the general programs of hydrocarbons in the DRC will bring lasting solutions to the prob-

lems of pollution. It is on this basis that Timothée Bahellaby presents an article examining the international legal framework of the corporate social responsibility of mining companies in Africa.

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