

FOREWORD

Article 1 paragraph 1 of the Constitution of February 18, 2006 proclaims, "the Democratic Republic of Congo is a state governed by *the rule of law*, independent, sovereign, united and indivisible, social, democratic and secular". Among all these attributes, the first one (the rule of law) seems to enjoy a special status compared to the others. The rule of law has become one of the most used concepts not only in discussions between political actors, some of whom claim it as their own or welcome its manifestations under the impetus of the new regime, and others who call for its concretization; but also in citizen debates dedicated to evaluating government actions.

This attribute of the State that many seem to have discovered through various legal cases involving personalities who have held certain political positions fascinates people, awakens their thirst for justice and reminds them of the sense of accountability on the part of the *public administration*. But what is the rule of law? How does the population understand and experience it on a daily basis? What role do the principles of the rule of law play in local politics and in relations between political and administrative authorities and citizens? How can decentralized territorial entities, in this case the province of Kwilu in general and the city of Kikwit in particular, be developed on the basis of management that is based on the principles of the democratic rule of law?

These questions were the subject matter of the first seminar on the rule of law in the Democratic Republic of Congo (DRC) organized by the Faculty of Law of the University of Kikwit with the support of the Konrad Adenauer Foundation. The research carried out by the young jurists (magistrates, lawyers and research staff) subsequent to this first series of conferences has led to a number of works that we are pleased to present in this edition of the African Law Study Library (ALSL)

Thus, in his article on the accountability of elected officials, *David Mukulu Mukwabatu* analyses the challenges they face between loyalty to the "*Moral Authority*", i.e. the leader of the party or political grouping, and the desires of the constituents. The author finds that the powers held by the Moral Authority in the process of making a candidate an elected official largely influence the candidate's behavior.

The second contribution, authored by *Michel Muntasomo Kaling*, deals with the automatic termination of the lease contract in Congolese law. The author posits that every person aspires to become a landowner. However, the distinctive feature of the Congo is that the soil and sub-soil belong to the State, and individuals can only acquire the right to use them after signing a lease contract between the Congolese State and the applicant. This contract, far from being a definitive title to the land, is rather a precarious title, which, under certain circumstances, can be terminated by the State. Thus, this article is intended to sensitize both legal practitioners and persons who own or wish to own a lease contract on the relevant provisions of the law with respect to this, and the consequences of non-compliance with these provisions. The aim here is to prevent land conflicts; the

judicial management as examined by *Gisèle Patashi Katunda*, limits her study to the city of Kikwit. Based on a few concrete examples drawn from judicial practice, she observes serious violations of property rights resulting from certain arbitrary rulings and presents some possible solutions to reduce tensions in this area.

As for *Rodrigue Tshwana Kilolo*, he discusses the challenges faced by the administration in mobilizing tax revenues to enable the city of Kikwit to implement its development program. He criticizes the laxity of the tax administration and use of public funds by the political-administrative authorities for private purposes and calls for more responsibility and transparency in the management of public revenues in order to create a new tax culture among the population. As for *Laurette Bwenia Muhenia*, he points out that poor governance of public funds is one of the main causes of fiscal inadequacy in the city of Kikwit. It is indeed due to the revenues generated by taxes that the State would be able to meet its obligations. In particular that of guaranteeing to the population the right to a healthy environment, which, as *Jacques-Octave Kabemba Fanzal* wishes, should no longer be considered as a simple program, but rather as an emergency, given that the effectiveness of other human rights, such as the right to life, the right to access to drinking water and the right to health, etc., largely depends on it.

On another issue, *Rodrigue Mafungu Mayele* and *Dieudonné Basapi* look at the restrictions on human rights and fundamental freedoms resulting from the measures taken by the Congolese state during the coronavirus health crisis. The former focused on the possible conflicts between the freedom to demonstrate and the protection of public health, while the latter looked at the guarantee of freedom of movement in the same context.

Finally, the last articles deal with the thorny issue concerning the responsibility of the State in securing people and their property. Noting a certain resurgence of juvenile delinquency in the city of Kikwit with the appearance of the "base" phenomenon and the rise of mob justice, *Rossi Pumbulu Kipasa* calls on the public authorities to fight effectively against this new form of criminality by severely punishing the culprits. *Rachidi Mukulu Mayuma* regrets that in the exercise of their coercive powers, authorities constantly flout the presumption of innocence of people accused of committing crimes by presenting them publicly before the press in the absence of any judicial decision. The author believes that this practice constitutes a flagrant violation of the Constitution, the rights of others, and Congolese Penal Code; for in order to punish an offender, it is necessary to have first questioned him or her, to have investigated the objective and subjective circumstances of the commission of the offence, and to have established his or her guilt by means of a final judgment.

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