

FOREWORD

Articles contained in this volume of the African Law Study Library were prepared as part of the tenth seminar on the rule of law in the Democratic Republic of Congo organized by the Konrad Adenauer Foundation for graduate students, PhD students, researchers and legal practitioners (lawyers and judges). After ten years of experience (2008-2018), synergy has been created between Congolese lawyers of two generations through the organization of these seminars in Kinshasa, while at the same time contributing to the fight against fragmentation in the field of legal research in the DRC. This volume symbolizes a transition between the first and second generation for whom the determination to conduct the research is similar to the one of applied on the authors of the very first volume produced by the Kinshasa-based researchers.

The six articles in this volume cover legal issues that repeatedly emerge in the process of consolidating the Rule of Law, particularly in the spheres of public freedoms and economic rights in the political context of challenges that preceded the first political and peaceful change of power since the country gained its independence.

Four articles of this volume fall under the category of civil liberties: two articles deal with the right of access to Internet and the other two with the right of public demonstrations and the right of persons in pre-trial detention to vote. With respect to Internet access, *Jean Jacques Kahunga Mapela's* article analyses the legal framework and practice of the right of access to internet in the DRC. He demonstrates that this right is the extension of the freedom of expression, opinion and the right to information to the new information and communication technologies. According to him, the legal protection provided to these rights by international treaties and national laws is the same when these rights are enjoyed through internet. Thus, any unjustified interruption of Internet as it has been the case in the DRC constitutes a violation of human rights. Victims have the right to have recourse to courts and tribunals to seek for redress.

Eder Mbala Kazadi agrees with this. The author conceptualizes the right of access to Internet and brings it closer to the right of access to information and freedom of expression. Similar to Jean Jacques Kahunga, the author analyses the legal bases of the right of access to Internet and highlights the limits of its exercise within the context of the DRC.

The unfortunate fate of the right of access to Internet seems the same, according to *Martin Milolo Nsenda*. With reference to the judicial protection of the freedom of demonstration, the author indicates that this freedom allows the exercise of other rights such as freedom of expression, the right to participate in the management of public affairs. It is an effective means of civilian oversight of state institutions and respect for the Constitution. However, the exercise of the right to public demonstration was subject to several restrictions at the time the author wrote his article. The author's contribution lies in the fact that he is trying to assess the protection of the freedom of demonstration by the judicial authorities in the DRC.

The year 2018 was politically dominated by the organization of presidential, legislative and provincial elections. As with any electoral or referendum process, one of the major challenges is the protection of citizens' political rights. *Moïse Abdou Muhima's* article addresses this perspective when it deals with the exercise of the right to vote for people in pre-trial detention. According to the author, all these people are presumed innocent and therefore entitled to continue enjoying all their political rights (including the right to vote), as evidenced by the legal and regulatory instruments relating to pre-trial detention in force in the DRC. However, the author notes from the 2006, 2011 and even 2018 elections that no practical measures had been made by both the judiciary and the National Independent Electoral Commission (CENI) to enable these people to exercise their right to vote.

The other two articles fall under the category of economic rights and focus on environmental crimes and the illegal extraction of minerals. The article by *Genèse Bibi Ekomene* examines the jurisdiction of the courts in the DRC with regard to environmental crimes. The author notes a certain degree of impunity in respect of these crimes, given the rarity or non-existence of case law in this field, particularly in the courts and tribunals of the city of Kinshasa. After analysing, defining and listing environmental offences, she in turn examined the institutional framework for punishing these offences and drew attention to some of the obstacles that prevent judges from exercising their jurisdiction over these offences.

The same observation is made by *Renia Binaki Bamangana* with regard to the prevention of the illegal extraction of minerals in the DRC, which is, furthermore, a violation of the mining legislation. According to the author, illegal extraction of minerals is at the heart of human rights violations, but also of the destruction of the Congolese economy through loss of funding that would make it possible to fight poverty among the Congolese population. According to her, legal mechanisms have been put in place at the international, sub-regional and even national levels to combat this phenomenon, but their effectiveness is being severely tested by the divergent interests of the stakeholders involved and by the inadequacies of the Congolese judicial system. This weakness is in particular manifested by the absence of case law on this matter.

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