Foreword

This volume consists of articles written within the framework of the ninth seminar at the University of Kinshasa on the Rule of Law in the Democratic Republic of Congo which falls under the broad Program of the Konrad Adenauer Foundation namely «The Rule of Law Program for Sub-Saharan Africa ». What is special about this volume is that it is fully dedicated to the challenges facing the Congolese judicial system. In total, it is composed of eight articles: the first four discuss issues related to the functions of all courts and judicial institutions; the next two articles touch on issues related to the Constitutional Court and the last two, on arbitration.

As pertains to the judicial institutions, three articles discuss certain categories of members of staff of the judiciary. Indeed, the authors present and analyse their organisation, the nature and the respective role the staff play in the administration of justice in the DRC. The fourth article examines the practical case of administration of justice in the mining sector in the DRC. The article by **Marcel Wetsh'okonda Koso**, addresses the legal nature and independence guarantees for the Officers of the Public Prosecution Office under the Congolese Constitution of the 18th February 2006 as revised by the Statute of 20th January 2011. The author notes the number of innovations introduced by the Constitution of 18th February 2006, which among others, includes the public prosecution in the circle of holders of judicial authority. The constitutional review of 20th January 2011, removed public prosecution from judicial authority. This resulted into re-igniting the controversy on the issue of domicile for public prosecution officers in the judicial authority. His study brings a contribution to this controversy in that, although they no longer fall under the judicial authority, employees of the public prosecution remain fully judicial officers and their independence is safe. Nevertheless, compared to that of the judges, this independence appears relative.

The article by **Jacks Mbombaka Bokoso** analyses the role of a court bailiff in civil court cases and arrives at a conclusion that adherence to all requirements of the balance between different protagonists of the case is what leads to fair and equitable justice. According to the author, the work of justice owes its value not only to the task of interpreting the law, but it also means and in particular the manner of stating it. In a civil case, the court bailiff has the responsibility of serving different court copies, and in particular subpoena under Congolese law.

In the same vein, the article by **Eder Mbala Kazadi** deals with the role of the court clerk in civil procedure in the DRC. He discusses the issue pertaining to the role of the Congolese court clerk depending on whether it is before, during and after the lawsuit. The author demonstrates succinctly the position that the assistance of the court registry staff is important in the administration of justice, through their judicial and extrajudicial responsibilities such as, assistance to the judge during the hearing and keeping the Trade and personal property credit register in accordance with OHADA law. He underlines the need for harmonising the laws in the matter in order to constitute a legal protection framework

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which is easily identifiable and taking into account the habits and practices for purposes of equipping the officers of the court registry with the appropriate knowledge and protection in view of the technical aspect of their office.

The article by Moïse **Abdou Muhima** touches on promotion of the rule of law in respect to punishment for crimes related to extraction and trade of conflict minerals in the DRC. His study is based on the matter of Argor-Heraeus SA and the matter of the gold scandal in River Ulindi in Shabunda territory involving Chinese Company known as Kun Hou Mining. The author demonstrates the imperative of a good administration of justice with a view to promote proper governance of natural resources in the DRC. He demonstrates the need for sovereign power to address geostrategic challenges for purposes of defending and protecting the sovereignty of the DRC on her natural resources by ensuring an efficient control of the activities undertaken by foreign multinational mining companies working on the national territory.

On the issue of constitutional justice, the two articles analyse the foundations of the authority of the orders of the Congolese Constitutional Court and the issues of procedure in presidential election dispute before this Constitutional Court. The article by **Joseph Cihunda Hengelela** is dedicated to the foundations of the authority of the rulings by the Congolese Constitutional Court in the DRC. This article highlights these foundations which are both legal and philosophical. The author concludes that from a legal point of view, the authority attached to the decisions of the Constitutional Court would arise from the supremacy of this court on the Congolese judicial arena. From the philosophical perspective, the authority of the Constitutional Court rulings would be based on the presumption of infallibility of the Congolese constitutional judge. He however demonstrates that the two principles know the limits which make relative the authority of these rulings.

For his part, **Roger Thamba Thamba** examines the issues of procedure in the presidential election dispute before the Constitutional Court in the DRC. The author distinguishes on the one hand, the issues of ordinary procedure attached to any dispute (capacity of the petitioner, subject to appeal, time limit for action, composition of the Court, appeal proceedings, time limit for the proceedings, decision of the Court and possible appeals) and the other hand, enigmatic procedural issues unique to (Congolese) elections disputes, including the inquisitorial nature of the procedure, which requires the electoral judge to proceed ex officio and the principle of determinant influence which enables the judge to be judge of sincerity of elections and not judge of legality of elections. The author concludes with the need of systematic positioning of the supreme electoral judge for emergence of an electoral justice which inspires confidence to political players.

The last category of articles brings together articles which examine the function of arbitration as an alternative method of settling disputes in the DRC. The article by**Symphorien Kapinga K. Nkashama** covers arbitration in the DRC as organized by the National Centre for Arbitration, Reconciliation and Mediation (CENACOM). The author analyses therein the legal rules which are applied in the jurisdiction and referral to the arbitration court, the

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appointment of arbitrators, who constitutes it and the arbitration procedure to be followed. He also examines the arbitration decision and the channels of appeals offered to the parties.

The article by Mrs **Grâce Muzinga Manzanza** analyses the evocation power of the Common Court of Justice and Arbitration in appeal and its impact in the Congolese judicial system. The author demonstrates that the Congolese judicial system changed with the membership of the DRC to the Organisation for Harmonisation of Business Law in Africa (OHADA) since 2012. The immediate application of the standards of OHADA law has had tangible effects within the national legal order in particular the impact brought about by Article 14 paragraph 5 of the Treaty in Congolese law. This provision led to two fundamental consequences. On the normative level, it was inserted into the Congolese law a new standard which enshrines the appeal without referral, option left to the appellate court to mention and rule on the substance of the matter. This explains the need of unifying the procedures within the judicial system of the DRC. The Supreme Court of Justice (CSJ) acting as the Appellate court should like CCJA and other appellate courts under Romano-Germanic legal system exercise the power of hearing and ruling on the substance when the matter is in a position to be heard and determined in view of adherence to the principle of a reasonable time frame.

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