Foreword

This volume of the African Law Study Library is devoted to the work of the 3rd seminar attended by young researchers of the Faculty of Law of the University of Burundi, held in October 2013, under the supervision of professors Hartmut Hamann and Stanislas Makoroka.

As a continuation of the previous works, the volume contains contributions relating to the issue of the rule of law in Burundi. It focuses on the protection of individual rights especially human rights and seeks to assess in a pragmatic manner, if the strict standard is likely to respond positively to the quest for justice by the local population

In the foregoing, there are six articles which touch on several sensitive issues in Burundi, that seek to evaluate the degree of protection of the rights of citizens in case of violation of fundamental rights such as the right to property, gender equality and to also evaluate the action of judicial and administrative mechanisms provided in this regard namely the Ombudsman, National Commission for Land and other properties, ordinary courts and the Constitutional Court.

Thus, after description of the new institution for the promotion and protection of human rights, in this particular case the office of the Ombudsman, the other articles focus on the means of action offered to the petitioner to seek for protection of his rights in a general or specific manner in case of violation of the same, by turning to the active support of NGOs or on his own initiative.

At the beginning of these studies, the article by Désiré Ngabonziza touches on "the contribution of the office of the Ombudsman in the defence of the rights of the citizens in Burundi". It starts by tracing the origin of this institution and indicates that the Office Ombudsman was born in Sweden and spread across the world especially during the 1960s. In Burundi, it is provided for by the Arusha Agreement signed in 2000, reaffirmed by the Constituent Assembly of 18th March 2005 which enshrines its existence, and later established by the Act of 25th January 2010. In so doing, the office became a repository of quite a number of powers which are likely to put it into conflict with other public institutions which have similar responsibilities, in particular the National Independent Human Rights Commission.

That is why, in order to assert its authority and to effectively carry out its mandate to the satisfaction of all the citizens, the office must overcome a number of challenges, namely working for the interests of the entire population and avoid the trap of partiality, to the extent where its leadership is composed of strong supporters and high ranking officials of political parties; put in place mechanisms for witness protection and confidential information and lastly justify tangible results like an independent institution at the risk of seeing its responsibilities being overshadowed by those of other institutions having the same mandate as it has been witnessed in some other countries.

The purpose of the article by Nestor Nkurunziza is to analyze "the role of Human rights NGOs in Burundi in judicial claim of human rights". After identifying a rather strong normative and institutional framework in legal protection of human rights, he notes that this framework is largely underutilized and that the said protection is yet to find its way in judicial protection in Burundi.

To rectify this situations, the author proposes that human rights NGOs, which bring together 'organized citizens', should integrate judicial intervention and in particular the Constitutional Court in their strategy for protection and defence of human rights and grant more attention to the emancipation of the masses so that they are in a position to take charge of the fight for promotion and respect of dignity inherent to the human rights movement; in as much as fundamental rights from the category of economic, social and cultural rights largely offer this potential.

Alexis Manirakiza, in his contribution on "the issue of the implementation of the principle of equality in family law of Burundi: case for inheritance rights of women " notes that Burundi is a member of several international instruments relating to human rights which enshrine equality of men and women and Burundi has a progressive constitution in this regard.

However, the analysis shows that, this equality is far from being effectively implemented as far as women inheritance rights are concerned. Several factors which constitute the many obstacles explain this state of affairs: lack of a written law on succession, patriarchal, patrilineal and agnatic structures of the traditional family in Burundi, resistance to change, etc. However, it pertains to factors which, according to the author, can be resolved through case law. Indeed, this requirement of respecting gender equality is not subjected to a discussion to the extent where if the international norm overrides the laws and regulations, it also overrides the customary norm which is only applicable in the absence of a written law governing the matter in question.

The contribution of Emery Nukuri on " the contribution of the new land code in dispute resolution in Burundi" notes that the land certification system put in place by the land code of 9th August 2011 seeks to provide to any occupant with a land tenure security, even from customary origin, by superimposing on titles of ownership, the title deed issued by the land registrar and the land certificate issued by the Communal Land Department. However, he notes that by allowing issuance of land titles for the smallest pieces of land as is the case today in Burundi, the code seems to create more difficulties than it is able to resolve on issues pertaining to occupation of land. Land being a scarce commodity has become an object to be coveted by suitors from a big category of players.

For each category of suitors, the author identifies the type of conflict it faces and seeks for the appropriate solution by stigmatizing the hypocrisy of the state which tends to refer the solution to only the protagonists while it plays a big part in facts and deeds which are the causes of most of the conflicts.

The article by Aimé-Parfait Niyonkuru on 'the analysis of the legal and institutional framework of the National Commission for Land and other properties in reference to re-

quirements for access to justice", proposes to analyze the normative coherence of the legal and institutional mechanism put in place to settle disputes relating to land and other properties on which the victims of successive wars in Burundi claim to have rights thereto.

Surely the wish of the legislator is to institute an efficient, fast and special procedure to settle the disputes over property under litigation from the victims and put in place a mechanism for dispute resolution through an enforceable decision, the CNTB does not become a court; since it is supposed to meet the fundamental requirements of access to justice and the legal and institutional guarantees which surround this right. What is clear is that it does not have jurisdiction to pronounce or execute a judgment, its decisions do not override the force of res judicata, despite all the executory force the law which establishes it, would like to confer upon them. CNTB is and remains a commission, with administrative task; the res judicata of a decision by commission is absolutely incompatible with the requirements of the guarantee of the right to access justice.

To conclude the series, in his contribution on "individuals access to constitutional justice in Burundi : the judge censures the constituent", Bernard Ntahiraja assumes that one of the classical means to base the rule of law is by putting in place an operational constitutional justice. In the process of his exploration, he discovers that the Constitution of 18th March 2005 organizes a system of constitutional justice which is largely open and very attractive for the litigant. In so doing, he conveniently increases the ingredients for democratization of constitutional litigation.

In effect, however, by its very strict interpretation of the concept of the interest to act and by its extremely narrow determination of the controllable standard of an individual seeking for court intervention, the constitutional court reduces excessively the capacity of individual persons to seek for its intervention. This jurisprudence is incompatible with the spirit and letter of the constitution and modern constitutionalism. This position can also be criticized due to the fact that it is supposed to respond to non-existent risk in the context of Burundi: the abuse of this recourse by the litigant.

All these contributions allude to the experience of the rule of law in terms of the chance of success for the course of justice driven by the protection of rights. They pay attention to the current existing problems ranging from the right to land to family rights, without forgetting protection of fundamental rights in a general manner by the Constitutional Court.

The opinions expressed in these writings belong to the authors, despite the observations and comments given by the supervisors. They do not in any way whatsoever represent the views of Konrad Adenauer Foundation.

Stanislas Makoroka **Hartmut Hamann**