

Foreword

The articles contained in this KAS African Law Study Library were written within the framework of the eighth seminar on the Rule of Law in the Democratic Republic of Congo (DRC) organized in May 2016 at the University of Kinshasa. These seminars are part of a comprehensive training and research program aimed at creating synergy between Congolese and African lawyers with a view to sharing experiences on issues pertinent to the promotion of the rule of law and regional integration in Africa.

The ten articles in this volume deal with different issues related to the Rule of Law. This includes four articles touching on issues of socio-economic rights focusing in particular on the protection of workers' rights in foreign companies operating in DRC; international protection of investments in DRC; economic cooperation between DRC, Rwanda and Burundi; and banking law in respect to the remarkable increase in the number of private banks in DRC. Two articles touch on issues pertaining to democratic change of government by analyzing on the one hand, legal guarantees of political change of power in the constituent Charters of the AU, SADC and ICGLR and on the other hand, the stakes and challenges of the recent establishment of the Constitutional Court to hear and determine disputes relating to presidential and legislative elections in DRC. Four articles have an interest on issues of political crisis, armed conflicts, peace and security by focusing in succession on the protection of constitutionalism and adherence to the Constitution which have direct relationship with prevention of political crisis and armed conflicts in Africa; promotion and protection of the rule of law in DRC in light of the upsurge of terrorism in Central Africa and management of low caliber and small arms in the DRC.

The article by Stéphanie Nsomwe Musangie analyses the problems facing protection of workers in DRC working in foreign companies in respect to the Unilever affair. The author demonstrates that workers of a company which undergoes profound transformations in the DRC, in this particular case Marsavco under the British Group of companies, the Lever Brothers whose entire shareholding was bought by Rawji Group does not get real social and legal protection due to non-adherence of laws supported by the complexity and inadequacy of the previous laws to OHADA standards. The article by Guy-Prosper Djuma Bilali Lokema analyses *Patrick Mitchell* matter to support the existence of efficient international judicial mechanisms in the DRC for the protection of foreign investments. The author states that the weakness of the Congolese judicial system riddled with corruption, partiality of the judges as well as a dysfunctional judiciary should not, and cannot constitute a slowdown in private foreign investments in the DRC since protection of these investments is obtained at the international level, in addition to the existence of appeal proceedings before the Common Court of Justice and Arbitration (Abidjan, Côte d'Ivoire) within OHADA law, without forgetting the fact that the International Court of Justice (at the Hague, Netherlands) can also provide the said judicial protection through the diplomatic protection mechanism enjoyed by States.

Besides protection of workers and investments in DRC, the article by Camille Ngoma Khuabi argues that the signed cooperation and economic integration agreements establishing sub-regional markets provide a larger economic space for DRC and her neighbours. It analyses the state of affairs and the perspectives of the economic cooperation between DRC, Rwanda and Burundi and notes that, within CEPGL's framework, the private sector is not sufficiently associated with the development initiatives required to lead to integration of the economies and quite insufficient means are allocated to sub-regional infrastructure developments, to such an extent that the States still remain landlocked. Pertaining to economic cooperation within the framework of ICGLR, the remarkable imbalance in regards to the inclusion of the Eastern part and the Western part of the DRC must be corrected with a view to enable the Western part to develop a very vital economic cooperation with her other two neighbors in the West, namely Angola and the Republic of Congo (Congo Brazzaville).

The article by Juslain Nsambana Bonkako touches on issues pertaining to protection of clients, bank incentives and State security in respect to proliferation of private banks in DRC. He demonstrates that the exercise of bank supervision is not only in the interest of the banks themselves and their clients, but also in the interest of the State and humanity. Private banks are subjected to some legal and regulatory obligations by the State, in this particular case of the DRC, through the Central Bank of Congo. Thus, the author argues that clients and banks protection cannot be envisaged in the absence of effective bank supervision and the interest for the State and humanity are justified in the need to fight against money laundering and terrorism funding, to the extent where it appears that the activities of private banks are exposed to these practices.

Analyzing issues relating to democratic change of government for consolidation of the rule of law, the article by Joseph Cihunda Hengelela on legal guarantees for political change of government in the Constitutive Charters of the AU, SADC and ICGLR demonstrates that political change of government ensures consolidation of democratic principles and the rule of law without which Africa will not be able to hope for sustainable development before the year 2030. Since it has been demonstrated that political change of government among States is a guarantee for peace, stability necessary for economic, social and cultural development and, DRC in particular and Africa in general, should not be an exception to this rule. As a follow-up, the article by Symphorien Kapinga K. Nkashama, analyses the stakes and challenges of establishing and putting into operation the Constitutional Court of DRC in respect to supporting the electoral cycle especially in regards to the election of the President of the Republic ranging from suitability of candidates to the disputes on election results.

The articles by Galance Milambo Ngalamulume and Benjamin Bakadisula Kangoma, on the contribution to the discussion around non-derogability and the « possibility to revise » Article 220 of the Constitution of DRC of 18th February 2006 as amended in 2011 and on non-derogable Constitution as a mechanism for prevention of conflicts and constitutionalism crises in DRC, Rwanda, Burundi and Congo-Brazzaville show in succession that the protection of constitutionalism and respect of the Constitution have direct relationship

with the prevention of political crises and armed conflicts insofar as constitutionalism and respect to constitutional provisions go hand in hand with armed conflicts and several endless political crises which started immediately after attainment of independence.

The last two articles of this volume analyze issues relating to security of States and populations. The Article by Moïse Abdou Muhima comes as a wake-up call for leaders of DRC, so that they can grant more importance to the need and challenges of preventing and suppressing terrorism in DRC, a State which, according to the author, has a stake and a major player in geo-strategies and geopolitics pertaining to the upsurge of terrorism in Africa and in particular the Central African region, thus threatening the consolidation of the rule of law. The article by Timothée Bahellaby examines the problem of a legislative reform imperative for legal framework on manufacturing, holding and controlling of light and small caliber arms in DRC. The author demonstrates that manufacturing, holding and illegal trafficking of fire arms, their spare parts, items and ammunitions, are activities which are prejudicial to State security and well-being of the people, which are realities that DRC is currently facing.

Opinions expressed in the articles published in this volume are those of the respective authors and do not necessarily represent our opinion or those of Konrad Adenauer Foundation.

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