

## Foreword

The articles contained in this volume of the African Law Study Library were written in the context of the thirteenth seminar on the Rule of Law in the Democratic Republic of Congo (DRC), which is part of the Konrad Adenauer Foundation's programme known as the "Rule of Law Program in Sub-Saharan Africa". This seminar is organised for PhD students of the University of Kinshasa and other researchers and legal practitioners. The articles presented in this volume analyses issues related to the electoral process in the DRC. As we approach the end of the third electoral cycle under the Constitution of 18 February 2006 and the new elections scheduled for 2023, various voices have been raised on the need for reforms to improve the electoral process in the DRC. It is in this context that the participants in this Seminar resolved to join their pens to analyse certain questions relating to the reforms of the electoral process in favour of credible and transparent elections with a view to promoting the rule of law in the DRC.

The authors address various issues related to the financing of the electoral process, preparation of the electoral register, conditions and modalities for the reception of candidates, voting modalities and monitoring of the electoral process. Thus, the article by *Clément Shamashanga Minga*, entitled " Compliance with the required candidature submission fees under the Constitution and international legal instruments for the protection of human rights: Advocating for the reduction of the electoral bond", shows that the amount generally set as an electoral bond in Congolese law is very high and is not compatible with the spirit of the Congolese Constitution of 18 February 2006 and the international legal instruments for the protection of human rights, which enshrine the equality of citizens before the law and prohibit any discrimination based on wealth in terms of access to public functions. *Moïse Abdou Muhima's* article focuses on the organisation of the electoral campaign in the DRC. Based on the experiences of the 2006, 2011 and 2018 elections, the study stresses the importance of consolidating the gains already made by drawing on lessons learned from past electoral cycles. *Jean Jacques Kahunga Mapela's* article is focused on election monitoring in the DRC. This study highlights the impact of the exercise vis-à-vis the legitimacy of the institutions emerging from the elections, on the one hand, and the possible reforms envisaged on the other hand. Election observation and monitoring are subject to legal and regulatory principles. These principles are strictly and rigorously applied, especially for observers, and to a lesser extent also for the representatives of those directly involved in the conduct of elections. The article by *Paul Musungu Lono*, titled "Legal approach to the determination of the electronic voting regime in Congolese electoral law", notes that the complexity and costs in terms of means and time of the physical or paper ballot operations within modern democratic states make the organisation and electoral participation expensive and weak. To mitigate this situation, election management bodies have revitalized electoral materials and tools by introducing voting machines or computers that facilitate election processes. However, several problems and grey areas hover over

their procurement and use, thus necessitating the application of legal rules governing them. This is why it is necessary to rationalise the voting machines introduced by the CENI in the Congolese electronic voting system by offering the legislator the possibility of a legal framework for these new electoral technologies in order to ensure that the rules governing their use are sufficiently clear.

The articles by *Renia Binaki Bamanga* and *Marc Kamananga Mangaza* focus on the monitoring of the election process and election disputes. *Marc Kamananga*, whose article is titled "Citizen oversight of the electoral process and consolidation of the rule of law in the Democratic Republic of Congo", highlights the importance of the involvement of the population in the monitoring and follow-up of the electoral process. *Renia Binaki's* article analyses the electoral jurisdiction of the Congolese constitutional judge in matters of candidacy disputes. By analysing the exercise of the Constitutional Court's jurisdiction in matters of candidacy disputes, this study circumscribes the judge's reasoning, which is a legal reasoning due to the fact that the judge must apply his arguments to the legal provisions. The use of these powers is subject to two fundamental factors: the decision on inadmissibility and referral to the judge by the parties. In this same vein, article by *Fiston Le Bref Kalombo Kandu Mwabilay* examines the impact of abstention on the legitimacy of elected officials in the Democratic Republic of Congo. The study notes that since 2006, elections have been held at almost regular intervals in the DRC. Thus, the power derived from the elections seems to be the most legitimate that can exist. However, although strengthened by legality, the power, even after an election, is likely to lose all legitimacy due to the voter turnout.

*Grégoire Imembe Mabiala's* article on 'Taxation and Financing of the Electoral Process in the DRC' analyses the impact of fiscal policy on the financing of the electoral process in the DRC. It is true that the financing of elections in the DRC remains an issue that has divided opinions. The Congolese government has taken different approaches to financing the electoral process in each electoral cycle. These different experiences raise questions about the sources of funding needed to organise elections in the DRC. *Joseph Cihunda Hengelela*, on his part, examines the question with regard to the governance of funds derived from the 15% mining royalty share intended for decentralised territorial entities (DTE), based on the experience of Kasai Oriental. The study is a plea to all stakeholders to work together in tackling obstacles to the proper management of mining royalty funds at the DTE level and speed up development from the bottom up. From a comparative perspective, *Georges Bokonde Mukuli* analyses the basis for harmonisation of mining policies between the DRC and Zambia. He notes that the two countries are neighbours, but also that the Copper belt, which is a strategic mineral coveted by the industrial and technological revolution, straddles the two states. There are legal instruments on which the harmonisation of the mining policies of these two countries must be based. The article by *Genèse Bibi Ekomene* looks at the challenges associated with fiscal reforms in the Congolese mining sector. While noting the challenges and results of tax reforms in the sector, mainly those brought about by the 2002 and 2018 laws, she argues for the maximisation of state revenues as desired by all stakehol-

ders in order to contribute to the country's development and promotion of the rule of law in DRC. In the final chapter of this volume, *Jérémie Abozo Abozo* makes a critical analysis of the Decree n°18/038 of 24 November 2018 setting forth the application modalities relating to the Act n°18/021 of 26 July 2018 on the status of former elected presidents of the Republic and setting forth the benefits granted to former heads of constituted bodies. The author stresses the need to respect the legal texts in force in the DRC and the need to encourage budgetary restrictions to reduce the cost of living for the heads of state institutions in the DRC.

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