

FOREWORD

This volume of the African Law Study Library is made up of articles written in the framework of the twelfth seminar on the rule of law in the Democratic Republic of Congo (DRC), which is part of the Konrad Adenauer Foundation's regional Rule of Law Program for Sub-Saharan Africa. This seminar was organized for doctoral students of the University of Kinshasa, researchers and other legal practitioners. The articles presented in this volume deal with issues relating to economic justice in the DRC. All these articles allow for a qualitative assessment of the progress made and the challenges that remain in the process of consolidating the rule of law in the DRC.

One article, by **Eder Mbala Kazadi**, focuses on the strategy for collecting motor vehicle tax and its contribution to the Congolese state budget. The article analyses the legal framework governing this sector and addresses some factual aspects of the implementation of the tax, which is mistakenly referred to as a "vignette" in current language.

The articles by **Marcel Wetsh'Okonda Koso** and **Moise Abdou Muhima** focus on the control and management of public finances. Marcel Wetsh'Okonda's article examines the constitutional control of finance laws and the protection of fundamental rights in the Democratic Republic of Congo. The author notes that the Congolese Constitution of 18 February 2006 contains an extensive catalogue of fundamental rights, including social rights. He believes that in order to ensure their implementation, the government and parliament should take them into account when drafting and adopting annual finance laws. Moise Abdou's article, entitled "Management rules and control mechanisms of the general State budget in the Democratic Republic of Congo: Legal framework and current issues", analyses the legal framework governing the management and control of the general state budget in the DRC, as well as the institutions and procedures that interact with national budgetary policy.

In the same perspective of public financial management control, **Clément Shamashanga Minga**, whose article is entitled 'The institutional framework on the fight against corruption in the DRC: A critical analysis of the legal framework of the Agency for the Prevention and Fight against Corruption', examines the legal framework governing the Agency for the Prevention and Fight against Corruption (APLC) established by ordinance n°20/013 bis of 17 March 2020. The study shows that the legal framework governing the APLC has a number of weaknesses that undermine the legitimacy and credibility of this agency, thus compromising the chances of succeeding in its mission.

The articles by **Joseph Kaciunga Mbenga**, **Elie Katenga Maku** and **Robert Mikobi Minga** focus on some of the institutions that make up the Judiciary and the important role p they play in the administration of justice. **Elie Katenga Maku's** article on the 'Organisation, functioning and competence of the Commercial Court' is based on an analysis of the legislation governing the Commercial Court in the Democratic Republic of Congo. Joseph Kaciunga Mbenga's article titled "The jurisdictional control of the breach of the employment contract for gross misconduct in the DRC" addresses a socio-professional

issue, gross misconduct, which is defined under the terms of Article 72 of Law No. 015–2002 of the Labour Code as amended and supplemented by Law No. 16/010 of 15 July 2016. The author points out that this fault can be committed by either party to the contract and that, at the same time, the injured party has the right to immediately terminate the contractual relations without giving prior notice to the party presumed guilty. The article by Robert Mikobi Minga on 'The place of the Public Prosecutor's office within the judiciary in the Democratic Republic of Congo' notes that following the revision of Article 149 of the Constitution of 18 February 2006, which removed the public prosecutor's office from the judiciary, the question of the constitutional status of the public prosecutor's office is raised in the DRC.

The articles by **Marc Kamananga Mangaza** and **Jenny Betu Kumeso** focus on enterprises operating in the DRC and the study by **Katambo Kassilam William** addresses the issue of investment promotion in the DRC. Marc Kamananga Mangaza, in his article titled "The Federation of Congolese Companies: Organisation, functioning and competences", points out that in the DRC, private actors involved in the entrepreneurship sector at national level have taken the decision to regroup on their own initiative around the Federation of Congolese Companies (FEC), which is a non-profit association under the terms of law n° 004/2001 of 20 July 2001 on the general provisions applicable to non-profit associations and institutions of public utility.

Jenny Betu Kumeso's article is titled "The responsibility of multinational companies for international crimes: The case of the crime of pillage in Congolese criminal law". The author notes that the international crime of pillage, particularly of natural resources, is one of the major issues in the conflicts within the Democratic Republic of Congo (DRC). Katambo Kassilam William's article titled "The National Agency for the Promotion of Investments and the Promotion of the Rule of Law: Legal Framework and Current Challenges" focuses on the challenges of the investment sector with regard to the legal mechanisms for the promotion of investments in the DRC. The study presents the organisation, functioning and missions of ANAPI which is a national institution to support the government in investment promotion.

The article by **Genèse Bibi Ekomene** on "Women's eligibility for mining rights in the Democratic Republic of Congo. Challenges and Opportunities" focuses on the issue of women's access to mining resources in the DRC in view of all kinds of inequalities that they experience, whether they work in the companies that deal with them or in artisanal exploitation. To conclude this Volume, the article by **Jean Jacques Kahunga Mapela** titled "Exception of unconstitutionality during trial of the defendant Vital Kamerhe & others: The unconstitutionality of the decision by the trial judge? This article examines the exception of unconstitutionality raised during the so-called hundred-day trial involving Mr. Vital Kamerhe, Director of Staff and ally of the President of the Republic. It showed that the

decision of the judge violated the provisions of Article 162 of the Constitution, which enshrines this argument, both in the procedure used and in the arguments put forward.

Hartmut Hamann

Jean-Michel Kumbu ki NGimbi