

Congolese Land Rights Put to the Test by the Private Real Estate Investment Revolution

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How to cite this paper: Milenge, C. M. (2023). Congolese Land Rights Put to the Test by the Private Real Estate Investment Revolution. *Open Journal of Social Sciences*, 11, 12-31.

<https://doi.org/10.4236/jss.2023.119002>

Received: June 16, 2023

Accepted: August 29, 2023

Published: September 1, 2023

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Abstract

Private investors' land rights vary from country to country, depending on the legal system in place. The degree of openness of land laws determines the degree to which both domestic and foreign investors are attracted, as the latter aims to invest in countries with legal systems offering the most secure and sustainable interests. How can Congolese land laws be made more attractive to private investors in the real estate sector? Using exegetical and comparative methods, we will test our hypothesis that reform to increase the rights of private national and foreign investors to access land would be an asset. By comparing Congolese land law with other legal systems, and with current social and economic realities, we have concluded that accommodating land rights is a prerequisite for increasing both domestic and foreign private investment in real estate and an essential step towards boosting and modernizing real estate investment in the DRC.

Keywords

Land Rights, Private Investment, Real Estate Law, Agricultural Investment, Congolese Land Ownership Law

1. Introduction

A country's economic growth depends on several factors, including the level of public and private investment, the level of production, and the level of competitiveness between countries in trade. However, to achieve this, each state must develop a legal system that is more attractive to investors, especially in sectors open to the private sector, so that its citizens or foreigners can play their part in developing the national economy and meeting the social needs of its population.

In the Democratic Republic of Congo, people gave up mining activities due to environmental and socio-economic problems associated with abandoned mines as well as activities including Artisanal and Small-Scale Mining (Otamonga & Poté, 2020). They are suffering from the long-term effects of severe acute malnutrition during childhood on adult cognitive, academic, and behavioral development in African fragile countries (Mwene-Batu et al., 2020). Maternal education and maternal health services helping access prenatal care and emergency obstetric care have been viewed positively in DRC health interventions on maternal healthcare promotion taking into consideration the effect of maternal education and developing specific interventions strategies according to the mother's educational level, among other socioeconomic indicators (Wang et al., 2021).

DRC is a theater of artisanal copper mining and the conflict at the intersection of property rights and corporate strategies (Katz-Lavigne, 2019) where conflicts and migration do not permit land property in a complex cycle even though regional and international diplomacy has been searching for their solutions for decades (Nagabhatla et al., 2021).

The Democratic Republic of Congo (DRC) is currently a member of the East African Community known as the EAC, which currently comprises seven countries (Kenya, Tanzania, Uganda, South Sudan, Burundi, Rwanda, and the DRC) (Djangwani et al., 2021; Hoebeke & Sematumba, 2022; Mulindwa, 2020) and is open to trade and investment, allowing their nationals mobility and the freedom to carry out their economic activities, among others, in the most favorable member country (Enns & Bersaglio, 2020; Koomson et al., 2022).

This is why it is necessary to question the level of land rights of private individuals under Congolese law, and their attractiveness to investors in the real estate sector which requires rapid growth, as Congo is lagging far behind other countries in the region.

As the law is the compass of any modern society, its orientation must determine its attractiveness. How can Congolese land rights be made more attractive to private real estate investors?

Adapting the legal system to current realities is a "sine qua non" condition. The legal and comparative methods used in this study are supported by documentation. The comparison of Congolese land law with other legal systems and current social and economic realities led us to the conclusion that the accommodation of land rights is a necessity. Many studies have approached the question of land tenure from different angles, bringing them closer to our study, which differs in several respects. These include:

⇒ A previous study showed that since 1885, two major land appropriation systems have coexisted before coming into conflict in the DRC. Indeed, in 1908, the independent State of Congo undertook to respect existing practices in Congo, as well as the acquired rights legally recognized by third parties, both indigenous and European settlers. It was only with the new land law that the soil and subsoil became the exclusive property of the State. This reflected the

exclusion of customary chiefs from land management in the area they ruled (Munyungu, 2020).

- ⇒ A second study demonstrated that land is the basis of investment for companies, particularly those involved in real estate, agriculture, mining, and oil. The author has compiled, analyzed, and explained the land legislation of 14 OHADA member countries: Benin, Burkina-Faso, Cameroon, Central African Republic, Congo-Brazzaville, Congo-Kinshasa, Ivory Coast, Gabon, Guinea-Conakry, Mali, Niger, Senegal, Chad and Togo (Amboulou, 2020).
- ⇒ A third study demonstrated that land tenure promotes economic progress, as it enables economic activities to be carried out, notably livestock rearing and agriculture (Kabaka, 2020).

Our study differs from those mentioned above in that its field of study is the DRC (Momeka et al., 2022), and it aims to reflect on Congolese land rights as a basis for private real estate investment. This study, therefore, begins with a diagnosis of the land rights situation of private Congolese investors and their legal consequences on real estate investment, before proposing mechanisms for reorganizing land rights: conditions for increasing real estate investment.

2. Diagnosis of the Land Rights of Private Congolese Investors and Their Legal Consequences on Investment

As ownership of land is exclusively reserved to the State (*Loi n° 73-021 du 20 juillet 1973 portant régime général des biens, régime foncier et immobilier et régime des sûretés, telle que modifiée et complétée par la loi n° 80-008 du 18 juillet 1980. Journal Officiel de la République Démocratique du Congo, 45ème année, Numéro Spécial du 1er Décembre 2004*), the conditions under which private individuals may enjoy it are laid down by law. Congolese citizens and foreigners alike can only acquire the right to use State land, known as a “concession”. The State always retains an absolute right to the land it has granted to nationals or foreigners (de Quirini, 1985).

It is, therefore, necessary to analyze land titles due to the loss of private ownership before discussing the conversion of land and real estate titles following the transition from one concession to another.

2.1. Land Rights Derived from the Conversion of Private Property Titles

Land law n° 73-021 of July 20, 1973, on the general property regime, was enacted to rectify and ease the tensions arising from the 1964 ordinance-law “known as the Bakajika law”, which had only a conquering connotation on the one hand, and an evolutionary one on the other, in the wake of the Democratic Republic of Congo’s accession to independence, the tenor of which was “the soil and subsoil belong to the State”, to sum up, this legislation in one major sentence.

This ordinance marked a definitive break with the colonial regime, which had divided ownership of Congo-Belgian land between private individuals and the

State. With this in mind, the current land law is a first-rate legal instrument for the responsible management of land affairs in the Democratic Republic of Congo. No individual or legal entity, private or public, other than the State, can claim to own land. All have only so-called concession rights. It is therefore important to understand this institution by examining its origins before unveiling its legal regime.

2.1.1. The Congolese Origins of Land Concessions

Since the term “concession” is not Congolese in origin, even its contents, we agree that the Congolese legislator has the merit of converting the right of ownership, however sacred under other skies, into simple rights of enjoyment known as concessions. Indeed, land ownership rights existing before the promulgation of law 73-021 were regulated by law no. 80-008 of July 18, 1980, notably in article 4 amending article 369 of law 73-021, which states:

“The right of land ownership which has been regularly acquired by Zairians, natural persons, before the entry into force of the present law, is converted, provided that it has been materialized by development following the laws and regulations, into a right of perpetual concession, as regulated by articles 80 to 108 of the aforementioned law of 1973. The same article sets out conversion procedures, again for the benefit of Congolese individuals only, for land which has been granted but which has not been fully or partially developed, under very specific conditions”.

a) Concessions resulting from previous occupancy titles

A conversion is a legal act that transforms an old land ownership right into a concession under the law of July 18, 1980. For example, a landlord’s title could be converted into a certificate of registration, given that the population. In the past, the right of occupancy, which is the original mode of accession to ownership, as evidenced by the “livret de logeur”. Accordingly, article 390 of the 1973 Land Law stipulates that, with effect from the entry into force of the present law, the right of occupancy evidenced by a livret de logeur or other equivalent title issued in a town or area of the Republic is abolished. Thus, the holder of a livret de logeur may obtain the conversion of his title by obtaining a certificate of registration.

The “livret de logeur” was issued to natural or legal persons under Congolese or foreign law, as a title to occupy a plot of land in an urban center (Luhindi & Augustin, 2020). In this sense, the holder of the right, i.e. the person whose name was entered on the livret de logeur, had the real estate right, or even ownership of the portion of land covered by the livret de logeur. One doctrine has concluded that the right of occupancy of a plot of land governed by the “livret de logeur” is a real estate right that could only have been sold in the presence of a notary (Luhindi & Augustin, 2020).

However, it remains to be seen how this initial operation of converting the livret de logeur into a certificate of registration could be carried out. The Congolese government itself has made this clear through law n° 73-021 of July 20,

1973, and decree n° 121 of December 08, 1975, issued by the State Commissioner for Land Affairs.

Apart from its status as a land title, which can be converted, the *livret de logeur* was still issued as a title justifying a person domiciled or residing in a State-owned house under a lease contract with the Office National de Logement, and sometimes it covered public agents and civil servants living in State-owned houses.

This is why article 390 of law n° 73-021 was worded as follows: “This provision does not apply to all those who, although they hold a *livret de logeur* or equivalent title, are still bound by a hire-purchase contract with a public body and were issued by the public works and land development department”. For the first quality of this title, the law confers suitability for conversion, regarding articles 369 and 374 of the land law; for the second quality, the law confers unsuitability for conversion.

b) Land ownership rights transformed into concessions

It should be remembered that, under the 1973 law, only natural persons of Congolese nationality are entitled to a perpetual concession, while legal entities only benefit from an ordinary concession valid for a limited period. We can then qualify this by speaking separately of the rights of individuals, before examining the specific consequences that accompany the conversion of titles.

2.1.2. For Individuals

Under article 74 of the land law, the conversion of an ordinary concession into a perpetual concession is only possible in favor of Zairian individuals, under the provisions of articles 59 and 80 of the present law.

The analysis of decree no. 90-0012 of March 31, 1990, setting out the terms and conditions for converting perpetual or ordinary concession titles, should be carried out on two levels, starting with the terms and conditions for converting perpetual concession titles a), before moving on to the terms and conditions for converting ordinary concession titles b).

a) Procedures for converting titles to perpetual concessions

Under Article 80 of the 1973 law, a perpetual concession is a right granted by the State to a natural person of Zairean nationality, to enjoy his or her land indefinitely for as long as the conditions of substance and form laid down in the present law are met. If the concession relates to undeveloped land, it must be granted under a lease contract with an option to convert it into a perpetual concession once the land has been developed by the conditions laid down in the contract. In the opposite case, a simple concession contract will suffice. The perpetual concession is assignable and transferable, but only between natural persons of Congolese nationality. In other words, the situation is one of ownership, but the object is not the plot of land defined as a “surface asset” but as the right to a perpetual concession.

Once again, this is a clear example of the importance of dealing with the object of property rights, and not just with “ownership”, an uncertain term that

improperly merges the right itself with the property that is its object. A further illustration of this interpretation can be found in Article 96 of the law, which states that “the holder of a perpetual concession has full enjoyment of the land. He is the owner of everything incorporated therein for as long as his right of enjoyment over the land lasts”.

In the same vein, it should be noted that under Article 101, one of the causes of the termination of a perpetual concession is expropriation in the public interest.

b) Procedures for converting title deeds to ordinary concessions

Alongside perpetual concessions are ordinary concessions, which may differ from one another. Ordinary concessions include emphyteusis, superficie, usufruct, use and habitation. These are autonomous rights in rem under Congolese law, recognized as rights in rem resulting from the dismemberment of the right of ownership under French and Belgian law. Certain conditions are specific to certain plots of land or contracts must be added. Article 154 is particularly important. It stipulates that rural land can only be conceded after having been the subject of a provisional occupation title for at least five years, during which time the land must be developed.

2.1.3. Specific Consequences of Title Conversion

Anyone currently holding a right of occupancy covered by a “livret de logeur” or another similar title on an urban allotment plot is invited to convert this right into an ordinary or perpetual concession, depending on whether he or she is a Congolese natural person, a foreigner or a legal entity under Congolese law (*Arrêté n° 90-012 fixant les modalités de conversion des titres de concession perpétuelle ou ordinaire*).

To obtain the registration certificate directly in place of the livret de logeur, all you had to do was apply to the registrar of real estate titles in the place where the property was located, attaching to the application the cadastral records and all documents concerning the parcel, the identity of the holder, his nationality, the status of the applicant, etc. When the registrar received the application, he had to publish the request for conversion in one or more local newspapers to enable anyone to identify the parcel for which the registration certificate was requested.

When the registrar receives the application, he must publish the conversion request in one or more local newspapers to enable anyone to identify the parcel for which the registration certificate is requested. The request will be posted on the premises of the real estate title registry, the zone, and the house of the district chief concerned.

During the same period, the Registrar of Immovable Property Titles is required to order the land registry to visit the site to record any buildings erected or the extent to which the land has been developed and to take measurements. This report may also mention any objections raised by anyone during these operations. And if all the required conditions were met, the applicant was granted a certificate of registration.

The converted booklet was then sealed with a “canceled” stamp and kept in

the archives of the real estate title registry, along with the related documents (*Arrêté n° 90-012 fixant les modalités de conversion des titres de concession perpétuelle ou ordinaire*).

2.1.4. The Legal Status of Concessions

It should be remembered that land is an exclusive and inalienable property, as stipulated in Article 53 of the land law. However, this same law recognizes the right of private individuals to use land in the State's private domain, known as a concession (Luhindi & Augustin, 2020). Under the terms of Article 61 of the Land Law, a concession is defined as a contract by which the State recognizes a right of enjoyment over a piece of land to a community, an individual, or a public or private legal entity.

To grant a land concession, certain prerequisites must be met, including subdivision (Emerich, 2009; Lequette, 2003) (which is the subdivision of undeveloped land into several plots to erect buildings on each of these plots), followed by the demarcation of the concession by the land registry (Katunda, 2022) either at the request of the competent authority or at the request of any person proceeding with the demarcation of the surface to individualize the concessioned land from neighboring concessions (Simonneau et al., 2021).

Based on the definition of a concession given above, we understand that a concession may be granted to a natural person or a legal entity, national or foreign, hence the perpetual concession and the ordinary concession. A perpetual concession is understood as the right granted by the State to an individual of Congolese nationality, to enjoy his or her land indefinitely, following Article 80 of the land law.

The legislator has not defined ordinary concessions, but has limited himself to enumerating them as follows: ordinary concessions are: emphyteusis, surface area, usufruct, use and lease (*Loi n° 73-021 du 20 juillet 1973 portant régime général des biens, régime foncier et immobilier et régime des sûretés, telle que modifiée et complétée par la loi n° 80-008 du 18 juillet 1980. Journal Officiel de la République Démocratique du Congo, 45ème année, Numéro Spécial du 1er Décembre 2004*). In accordance with article 70 of the Land Law, ordinary concessions are granted for a maximum term of 25 years, renewable under the conditions specific to each right.

Under the terms of Article 219, ordinary concessions may only be granted to foreign individuals and to all legal entities, whatever their nationality. As is already well known, the right to enjoy land is legally established only by a certificate of registration under the title granted by the State.

Having given you a general idea of concessions, let's move on to discuss how land titles are converted when a landed property is converted to a perpetual concession or an ordinary concession.

2.2. Converting Title to Land and Real Estate When Moving from One Concession to Another

Converting from one concession to another is not left to the free choice of the

concession-holder. This is explored in turn with an analysis of the conversion of an ordinary concession into a perpetual concession and the conversion of a perpetual concession into an ordinary concession.

2.2.1. Converting an Ordinary Concession into a Perpetual One

The conversion of an ordinary concession into a perpetual concession is only envisaged in favor of Congolese individuals, as indicated in Article 74 of the land law, and under Article 80, which stipulates that perpetual concessions may only be established for individuals of Congolese nationality. This conversion implies a contract setting out and regulating the rights and obligations of each party.

The State may refuse to grant the conversion provided for in article 74 when:

- ✚ Conversion is likely to create financial charges for the State;
- ✚ Conversion is likely to result in a loss of revenue;
- ✚ The conversion is likely to prevent the State from enjoying the land and buildings incorporated therein.

To avoid arbitrariness, the legislator stipulates in Article 76 that refusal, on pain of nullity, must specify the reasons and be published in the official gazette.

Where conversion has been refused and the land and buildings incorporated therein have not been assigned to public use or service, the concession-holder may renew his request for conversion on expiry of the concession (after 25 years) or on renewal of the concession if the decisions taken overturn the refusals, which must be published in the official gazette.

This conversion, initially refused, may nevertheless be granted by the competent authority when the reason for refusal ceases to exist, insofar as its right has not been extinguished following the expiry of the term of the ordinary concession granted by the State following article 145. The decision to refuse the conversion of an ordinary concession into a perpetual concession must be published in the official gazette.

A new contract is thus drawn up in accordance with article 183 of the land law (*Arrêté n° 00121 du 8 décembre 1975, fixant les modalités de conversion des livrets d'occupation en titre de concession perpétuelle, Ordonnance n° 74-148 portant mesures d'exécution de la loi n° 73-021 portant régime général des biens, régime foncier et immobilier et régime des sûretés*). Once authorization has been granted by the competent authority, the parties, in accordance with article 59, go before the local registrar of real estate titles to have the transfer carried out by drawing up a certificate of registration in his book and issuing it to the new concession-holder (article 236).

Here we understand that the difficulty in converting an ordinary concession into a perpetual one lies in the competent authority's acceptance of this operation, for the reasons listed above. Once authorization has been granted, the task becomes straightforward, as the parties need only appear before the Registrar of Real Estate Titles to obtain the transfer. The newly-established concession will be indefinite, as it is perpetual.

2.2.2. Converting a Perpetual Plot into an Ordinary Plot

The conversion of a perpetual concession into an ordinary concession is provided for in Article 101, paragraph 8 of the land law, as a means of extinguishing the perpetual concession. The conversion of a perpetual concession into an ordinary concession is also expressly provided for by the provisions of Article 99 as a possibility for the holder of a perpetual concession to transform it into an ordinary concession right. This conversion can only take place with the agreement of the competent authority that granted the perpetual concession. Once the agreement has been given, a new contract will be drawn up by article 108 of the land law. Once the new contract has been drawn up, article 219 will be applied, which stipulates that the right of enjoyment of land can only be legally established by a certificate of registration of the title granted by the State, implying registration of the concession contract, i.e. its entry in the land titles register.

This means that, with the appropriation of land by the State, private individuals can only enjoy it through a concession contract, which may be perpetual or ordinary (Mwenyemali Milenge, 2017). This being the case, the conversion of land and property titles from a perpetual concession to an ordinary concession requires the submission of a conversion application to the competent authority (Jules et al., 2022; Mbongo, 2018). This means that the authority that awarded the initial perpetual concession contract will analyze and rule on the matter, and a new contract will be drawn up, subject to rules distinct from those that applied to it at the outset. Finally, this contract will be presented to the registrar of real estate titles of the land registry, who will register it and issue a certificate of registration.

Finally, we note that among the grounds for a refusal to convert an ordinary concession into a perpetual concession that the State or the competent authority may raise is one that seems a little contradictory with the attributes of the property, i.e. the rule is that the owner of real estate by incorporation has the right to use, enjoy and, further still, abuse this property, but, surprisingly, the latter may be refused the right to convert his ordinary concession into a perpetual concession when the State deems it necessary to enjoy the land and intangible real estate. This could lead in one way or another to a degree of negligence in the development and operation of the concession, as it will be felt that in the end, all the efforts made may end up benefiting the State and not the desired person.

3. Mechanisms to Attract Real Estate Investors

Let's start by noting that, more than any other property right, property rights are a faithful reflection of civilization, with its dominant ideology and economic organization. It is impossible not to consider that property rights are the most absolute legal form of a social and economic phenomenon (Maneno, 2016; de Mari, 2011; Pouliquen, 2000). Following the transition from the old law, which recognized land ownership by private individuals, to the new law, which recognized land ownership solely by the Congolese State and only concessions by private

individuals, it became necessary to regulate the fate of former landowners through the procedure of title conversion. The need to revise Congolese land rights is absolute today, to enable the Congolese to invest in their country in complete security. It is also necessary to review the land rights of foreigners on Congolese territory to encourage them to come and invest in sectors requiring land control. To this end, we will outline the inadequacy of land rights for investment needs and the mechanisms for extending the scope of foreign investors' land rights.

3.1. The Unsuitability of Land Rights for Investment Purposes

The situation of concessions organized by Congolese law seems ill-adapted to current realities. This is demonstrated by the unsuitability of concession rights granted to national investors and the discouraging effect of concessions in attracting foreign investors.

3.1.1. Concessions to Promote Domestic Investment

The inadequacy of concessions, which are organized by law, is only revealed if we analyze them separately. We shall first look at the limits of perpetual concessions a), before shedding light on the walls erected by ordinary concessions b).

a) The dissuasive features of perpetual concessions for private investors

The perpetual concession was not designed for large-scale economic investment. It is granted only to Congolese citizens, to provide cover for makeshift housing. As a reminder, article 80 of the 1973 law defines a perpetual concession as the right recognized by the State to an individual of Congolese nationality, to enjoy his or her land indefinitely, as long as the conditions of substance and form laid down in the present law are met.

One of these conditions is respect for the intended purpose. However, the intended purpose of the concession is only the construction of a dwelling house, since all real estate investment activities require registration. Therefore, land used for such activities cannot be granted as a perpetual concession, which is only granted to people for non-commercial purposes. The current reality is that every concession holder believes he has the right to exploit his land as he sees fit. Some, for example, erect commercial buildings (hotels, boutiques, canteens, party halls, restaurants, etc.), while others transform their *de jure* perpetual concessions into *de facto* ordinary concessions (and therefore in violation of the law) following the activities for which these concessions are illegally assigned.

These include houses of worship and youth centers built on perpetual concessions, whereas their activities are societal and require legal personalities on perpetual concessions. In this way, we have a *de facto* superposition of concessions (perpetual and ordinary) on the same plot of land. It should be noted that this illegal behavior is gaining ground more and more in practice, as many investors tend to avoid being under the sway of ordinary concessions, the latter being less secure for investment due to their short duration (25 years maximum), the obligation to pay royalties and the lack of certainty of the cost of renewing the con-

cession contract (Brabant & Nzweve, 2013; Pélerin et al., 2011).

Given the principle that fact precedes law, it makes sense for the legislator to adapt his law to regulate social situations, as society is already sailing against the law under the powerless eyes of the land authority (El Berhoumi, 2020). The conversion of property rights formerly exercised by Congolese individuals into a perpetual concession appeared to be a simple change of terminology since the Congolese just needed a plot of land where he could live with his family and leave his offspring after his death.

The Congolese legislator has transformed a former Congolese “de jure” landowner into a “de facto” landowner because any Congolese holding a concession right (especially a perpetual one) considers himself to be a de facto landowner while considering that in the DRC the soil belongs to the State. And that through the perpetual concession, while maintaining state ownership, the Congolese enjoys his land in perpetuity, to the point of being tempted to believe that he has the right of ownership over his perpetual or ordinary concession. In reality, a concession holder, whether perpetual or ordinary, is not an owner. He or she enjoys a real right over the property of others, and is always dependent on the owner, who places him or her under his or her watchful eye, and who must approve the destination of his or her property.

The aim was also to balance the rights of nationals with those of foreigners, who had been stripped of their property rights on Congolese soil since the 1964 ordinance-law known as the “Bakajika law” granted full ownership of Congolese soil and subsoil to the State. It should be noted that soil is not only useful for family housing needs but is also a source of economic, social, and cultural wealth.

b) Ordinary concessions as obstacles to major national investments

It is no longer important to distinguish between the rights of an individual and those of a Congolese legal entity because subjecting Congolese legal entities to ordinary concessions in the same way as foreigners who own land in their own countries is a decision that discourages the efforts of national investors. By way of illustration, Burundian and Rwandan investors are treated in the same way by Congolese lawmakers as regards the land rights of legal entities, even though the latter has more rights than the Congolese on their territories.

To illustrate our point further, it should be noted that Burundian and Rwandan law recognize full ownership of land firstly to their nationals and, in certain cases, to foreigners, subject to reciprocity. This condition of reciprocity directly excludes the Congolese investor from the right of access to full land ownership in both Burundi and Rwanda.

What’s more, since the perpetual concession discourages teamwork, being granted only to Congolese individuals and not to a group of people (except in the case of joint ownership and indivision, which the law formally discourages), it pushes every Congolese to want to work alone (Bourassin, 2019; Pfister, 2020) (although it has been shown that to produce a lot, teamwork is often more appropriate (Mazenc, 2020)) so as not to lose the perpetual right they had over

Congolese soil, the ordinary concession also impoverishes the Congolese, as it takes away the perpetual right they had over their land.

Today, the conversion of the perpetual concession into land ownership could only be a normal recognition of the real limits and negative nature of this concession, which is no longer adapted to the reality of the Congolese community and the needs of both regional and international competition (Defrise, 2020; Santander & Vlassis, 2020). It may be important to refer to the land law of the Republic of South Africa, where real estate investment is virtually forbidden to foreigners, but encouraged to nationals by a wide openness of accessibility to the land up to full ownership if the latter expresses this need (Migozzi, 2020). This is how real estate investments have been developed by nationals, both individuals and legal entities, who have exercised full ownership of the land since the abolition of apartheid (Guyot & Dellier, 2008).

As a reminder, we note that the Democratic Republic of Congo's neighboring countries, members of the EAC, recognize the right of their sons and daughters to own their land so that their populations can invest in the development sector without much hardship. In the case of Rwanda, every Rwandan citizen has the right to full ownership of land for residential, industrial, commercial, social, cultural, or scientific use (Bouderbala, 1996). Rwanda, like the DRC, is a member of the EAC, so its land legislation (Ansoms et al., 2011) is more attractive to investors than that of the DRC, as it offers more rights to national investors and allows foreign investors to own land on an equal footing with national investors (Ansoms, 2018; Huggins, 2018). As a result, a study has shown that Rwanda, despite its land deficit, is more coveted by foreign agricultural investors and that this small country is now an agricultural granary for the eastern part of the Greater Congo (Jacquemot, 2014; Révillon, 2014).

The right to full land ownership also applies in Rwanda to land where infrastructure is being built, as well as to strictly necessary surrounding land. Co-owners, commercial companies, associations, or organizations with legal personality acquire the right to full ownership of land when only 51% of the shares are held by Rwandan citizens. This obligation is not a limitation or restriction on access to property rights for nationals and legal entities. However, mixed companies should have more shares held by nationals to obtain full land ownership. In addition, for land designated as Special Economic Zones, the requirement to hold at least 51% of shares is waived. The procedures for obtaining full title to land are determined by the order of the Minister responsible for land (*Loi n° 43/2013 du 16 juin 2013 portant régime foncier au Rwanda*). In Burundi, land ownership is established and recognized for private individuals of Burundian and foreign nationality:

- Either by a land title issued by the Registrar of Land Titles;
- Or by a land certificate drawn up by the communal land registry, recognizing regular appropriation of the land in the form of a personal or collective, permanent and lasting hold, according to the customs of the time and place, and according to the vacation of the land (*Burundi—Loi n° 1/13 du 9 août*

2011 portant révision du Code foncier).

In the Democratic Republic of Congo, land ownership is recognized exclusively by the State under article 53 of the 1973 law, as amended and supplemented by law no. 18 of July 18, 1980. However, the Constitution of February 18 stipulates that private property is sacred. The State guarantees the right to individual or collective property, acquired under the law or custom. It shall encourage and ensure the security of private investment, both national and foreign. However, this constitutional provision seems obscure, as it does not specify whether land ownership is open to Congolese or foreigners (*La constitution congolaise du 18 février 2006 telle que révisée par la loi n11/002 du 20 novembre 2010 en ses articles 11, 12, 13, y compris même 14, 15; 16, 17, JO de la RDC*). We can continue to believe that the principle of state ownership of land has never changed.

However, speaking of collectively and individually acquired property, we may be tempted to assert that the Constituent would be inclined to lean towards opening up land ownership to private individuals and that the adoption of a clearer organic law on the subject is, therefore, more necessary.

In addition, the Congolese people need to be encouraged to work together as a society to achieve high levels of production. One way of facilitating the creation of several real estate and agricultural companies is to standardize Congolese land rights (legal entities and individuals, especially for legal entities created for an indefinite period) and convert these rights into property rights.

3.1.2. The Discouraging Nature of Concessions in Attracting Foreign Investors

The situation of foreign investment poses a major concern in terms of security. Foreigners, whether individuals or legal institutions, are subject to ordinary concessions. This concession, which only grants rights for a limited period, discourages anyone wishing to invest for a longer period, notably beyond 25 years. The improvement of investors' land rights on Congolese soil a) and its necessary limitations b) are worth considering.

a) Discouraging investors from the highest-bidding countries

Certain legal systems recognize the right of their nationals and foreigners to full ownership of land. Nationals of these systems will find it difficult to invest in the Democratic Republic of Congo, where they can only benefit from a very limited right that cannot exceed 25 years, although it is renewable. Other systems grant foreign investors temporary rights of enjoyment (emphyteusis, superficial, etc.), but for longer periods (50 years in Burundi, 99 years in Belgium, and 999 in Kenya). Investors from these countries may be reluctant to invest too much in real estate in the Congo.

b) Investors aiming to perpetuate their investments for future generations

Perpetuity is not recognized for foreigners on Congolese soil. A term of no more than 25 years, the renewal of which is subject to the State's often subjective assessment, can discourage real estate investors, as the building is definitively

erected on the land. Indeed, investors whose aim is to build and then lease their apartments are not overly encouraged by Congolese land legislation. The same applies to investors who wish to invest in the personal use of the property for open-ended activities such as education, hotels, and other forms of commercial activity requiring permanent installation.

3.2. Mechanisms to Broaden the Scope of Foreign Investors' Land Rights

Real estate development depends on the policy of managing investor access, often through long-term leases at low prices. This practice, often referred to as "land grabbing", gained notoriety following the 2008 food and energy crisis (Deininger & Byerlee, 2011). It is therefore important to justify the rationale for increasing foreigners' land rights and the limits of this openness.

3.2.1. The Rationale for Increasing Foreign Investors' Land Rights

National and foreign investors carrying out a lawful activity, whether or not they have been approved, benefit from all the general guarantees arising from the 2002 law, except for the customs, tax, and parafiscal advantages provided for in Titles III and IV of the same law, which are reserved for investors approved per the procedure laid down by the aforementioned law (*Loi n° 004 du 21 février 2002 portant code des investissements de la RD Congo*).

The aforementioned law institutes a single regime, namely the General Regime, with special provisions for Small and Medium-sized Enterprises (SMEs) and Small and Medium-sized Industries (SMIs). However, Article 2 of the law distinguishes between direct investment and foreign direct investment (FDI) and says nothing about access to land for real estate investors. This silence is not to be considered as a vacuum, however, but rather as a desire to subject the latter to the application of the law governing the fund, the so-called land law.

a) Comparative law position

Previous studies show that, by the end of 2009, land investment agreements covered a total of 56 million hectares (ha) of agricultural land worldwide (FAO, 2009). As a result, fund managers, private investors, and nations anxious to ensure their food security in the future have applied for and obtained large-scale farms abroad.

Under Belgian law, the right of emphyteusis cannot legally be granted for a term of less than 27 years or more than 99 years. Renewal is not automatic, and the fee is not known in advance, as it is not identical from one year to the next. The concession-holder is not free to transfer his ordinary concession to a perpetual one.

b) Justification based on the fact that the land law is exceeded

Real estate investments require a long or even indefinite period to build and operate. When the law limits the enjoyment of investments to a short duration, only opportunistic operators come forward. Congolese law only allows foreigners to exploit the land for a short period, up to a maximum of 25 years. The conversion of land rights and titles, like the renewal of a concession, is subject to

the discretion of the State, which does not need the concessionaire to be at fault to refuse to renew or convert his title.

From the above, we can see that Congolese laws do not encourage the growth of private investment in the real estate sector. The conversion of land rights and titles in the light of comparative rights would be a salutary win-win initiative. We can see that the introduction of both perpetual and ordinary concessions was not conducive to the growth of private investors. Rather, it discouraged both domestic and foreign investors from entering the real estate sector. The need to reform the law in the direction of openness is more than opportune at a time when all investors need more security before allocating their resources ([The World Bank, 2017](#)).

3.2.2. The Limits of This Openness

The openness of the law in favor of foreigners must obey the principle of reciprocity a) and the limit of national public interest b).

a) Principle of reciprocity

The situation of Congolese nationals must be at the heart of every concern of the Congolese State. Accordingly, the Congolese legislator can only extend his law to nationals of countries that grant the same rights to Congolese.

Indeed, according to the Food and Agriculture Organization of the United Nations (FAO), investment in land can create a “win-win” situation ([Deininger & Byerlee, 2011](#)). In the same vein, the World Bank has put in place a set of principles governing “responsible agricultural investments” which, in theory, would help achieve this objective. While our concern has been to enable the Congolese to acquire full ownership of their land, in favor of foreign investors, we can instead envisage an increase in the duration of emphyteusis and other land rights due to ownership.

b) National public interest limit

We believe that opening up land ownership to national investors, on the one hand, and increasing the duration of ordinary concessions of the emphyteusis type to a maximum of more than 50 years, as is the case in many legal systems in developed countries such as Belgium, on the other, could boost investment and increase capital in the real estate sector, thus helping to combat anarchic construction by unqualified individuals following the intervention of large investors, both national and foreign, alongside the State.

However, the State’s absolute power over land must remain a shield against foreign investors who abuse the right granted by the State, or who violate the destination of the funds acquired from the State. The State must therefore not lose its rights as a public authority, which places the general interest above private interests.

4. Conclusion

A right that is not or only loosely regulated is fragile, and its holder runs the risk of losing it at any time. Rights are best protected by the main texts, the laws.

However, as a law is an expression of the current will of the people, it is limited both in time and in the geographical space in which it was adopted to govern relations between people and between people and things.

This is why, once outdated, it can either be repealed or amended to adapt it to new realities. Adopted in 1973, the land law of the Democratic Republic of Congo was amended and supplemented in 1980. This adaptation was to meet the present need to manage the fate of individuals whose land ownership had been withdrawn, and to implement the option put forward by the Political Bureau of the ruling “Mouvement Populaire de la Révolution; MPR parti État” party, which was that the Congolese State should have “full ownership of its soil and subsoil for its development”.

This position, which was valid at the time when sovereignty was being strengthened in the face of the former colonialists, is no longer valid today. Opening up full ownership of land to nationals poses no threat to the country’s sovereignty. It strengthens the people’s sovereignty over their land.

In fact, by dispossessing all private individuals of their landholdings, the Congolese legislator has created concessions in their favor. The former owners, both private and public, were granted either perpetual or ordinary concessions, depending on whether they were Congolese nationals (perpetual concessions) or foreign nationals, or legal entities of any nationality (ordinary concessions). After more than 40 years, the Congolese have found themselves stripped of land in their private patrimonies.

The economic issues of the day have shown that without land ownership, a person’s wealth is less rich, given that no asset is more economically overvalued than the soil, starting with its durability and importance (Enault et al., 2020).

However, in the DRC, land cannot legally be the property of private individuals or public bodies other than the state. This means that the assets of private investors, and indeed all individuals in the DRC, are devoid of land.

That’s why this study proposes adapting land and property rights to the need to increase real estate investment. To achieve this, it would be wise to grant the Congolese (individuals and corporate bodies) full ownership of land, enabling them to invest in real estate in complete security. Perpetual concessions are not conducive to major investments, as they cannot cover large investments, even those belonging to individuals, such as universities, schools, hotel companies, galleries, etc. As far as foreigners are concerned, it would be important to grant a perpetual concession to natural persons and an ordinary long-term concession to legal entities. However, we should not exclude the principle of reciprocity. This adaptation would indeed enable an increase in both domestic and foreign investment, as property is sacred, and investors would feel increasingly secure and would not hesitate to come and invest in this region.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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