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Congolese, Burundian, and Rwandan Land Rights Faced with the Challenges of Community Integration of Private Investors: The Case of CEPGL and EAC

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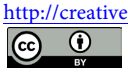


Abstract

Congolese, Burundian, and Rwandan land rights are autonomous rights of sovereign states. Their integration into a regional community is the free will of states wishing to work together towards a common goal. This is the case for these three countries, which have voluntarily agreed to join sub-regional organizations such as the Economic Community of the Great Lakes Countries (CEPGL) and the East African Community (EAC). How can these legal systems be made more integral to the growth of private community investment in member countries? Through the use of legal and comparative methods, supported by documentary and interview techniques, we have arrived at mechanisms that are more attractive to investors and more integrationist of these three legal systems in these two sub-regional organizations: "CEPGL" and "EAC".

Keywords

Land Law, Regional Integration, Property Rights, DRC, CEPGL, EAC, Burundi, Rwanda

1. Introduction

Regional integration is a common will of States which act in complete freedom when they join, by binding themselves through legal institutions invested with the power to make decisions that become definitive and enforceable against States which have ratified the legal instrument creating the said organization (Ba & Toufik, 2023). Membership thus leads to the relinquishment of a part of na-

tional sovereignty in the field of the organization's object on those elements which do not accept the possibility of reservation (Momeka et al., 2022). In other words, it is in line with the organization's philosophy and raison d'être.

However, States may join a regional organization by reserving certain non-essential or optional provisions (Yalire & Batachoka Mastaki, 2023). In the case of the EAC and CEPGL, member states have agreed to the free movement of goods and people, and the free settlement of people on the territories of member countries, which in turn allows free real estate investment on the territories of all nationals of member countries of the organization, namely: the Democratic Republic of Congo (DRC), Rwanda and Burundi for CEPGL and Tanzania, Kenya, Burundi, Rwanda, Uganda, South Sudan and DRC for EAC. Of all these countries, some are favorably opened up by their land laws and therefore call on the others to follow in their footsteps.

Some grant full land ownership to their nationals and to foreigners wishing to invest in their territories (Ngomirakiza, 2022), while others restrict this right to their nationals only (Hanai, 2021; Mendako et al., 2022), and the last batch enshrines the appropriability of land by national and foreign individuals (Nyotah et al., 2022).

This is the case of the DRC, which seems to be at the extreme limit (Hengelela & Ekila, 2020), and is, therefore, a case study in this reasoning. This is why, starting from a diagnosis of the genes of dissuasive land management of the community integration of the DRC, Rwanda, and Burundi members of the CEPGL and the EAC.

2. Methods and Methodology

To understand the situation of land tenure management in the context of regional integration, we submitted a questionnaire to 20 people at the Master's level who are interested in the issue of regional integration and especially who are familiar with, or at least support, the laws of the three member countries of the CEPGL and the EAC, in addition to the fact that they share a common colonial heritage as former colonies of Belgium.

It was these common trains of these three countries that motivated us in the spatial choice of the study site. Each of these investigators was equipped with legal and regulatory texts to facilitate the analysis. These 20 people were composed as follows:

- ⇨ 5 academic and scientific professionals;
- ⇨ 6 national economic operators, two from each country;
- ⇨ 6 Ph.D. students, two from each country;
- ⇨ 3 foreign real estate and/or agricultural investors investing in one of these three countries.

The questionnaire is divided into a series of 4 questions for each series. For each question, 20 prizes were allocated between the three countries to justify the level of openness and the difference between these systems regarding the land

supply likely to strengthen the regional integration of the CEPGL and EAC member states.

A period of 100 days was granted, from January 21 to April 30, 2022.

3. Results

The results of the survey were compiled as follows:

3.1. Quality of the Land and the Level of Accessibility to the Land by Nationals and Foreign Investors in Burundi, DRC and Rwanda (Figure 1)

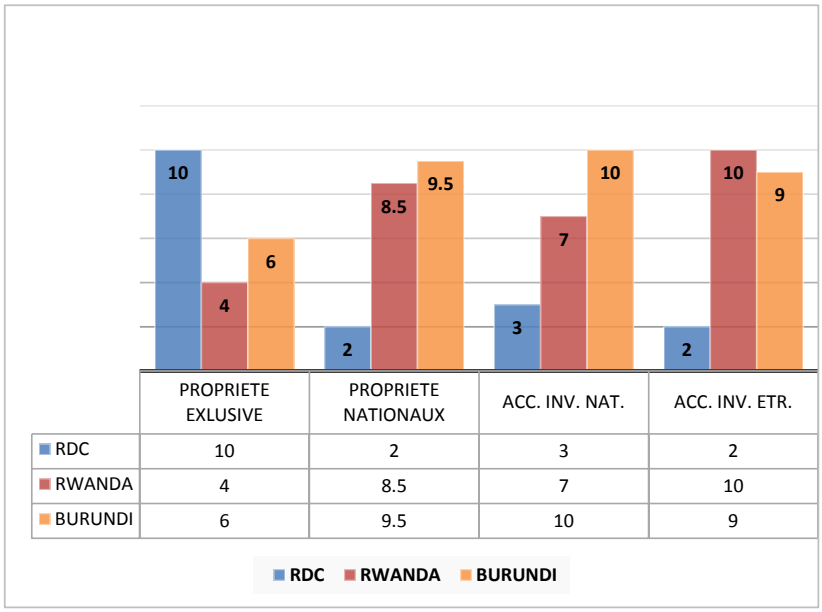


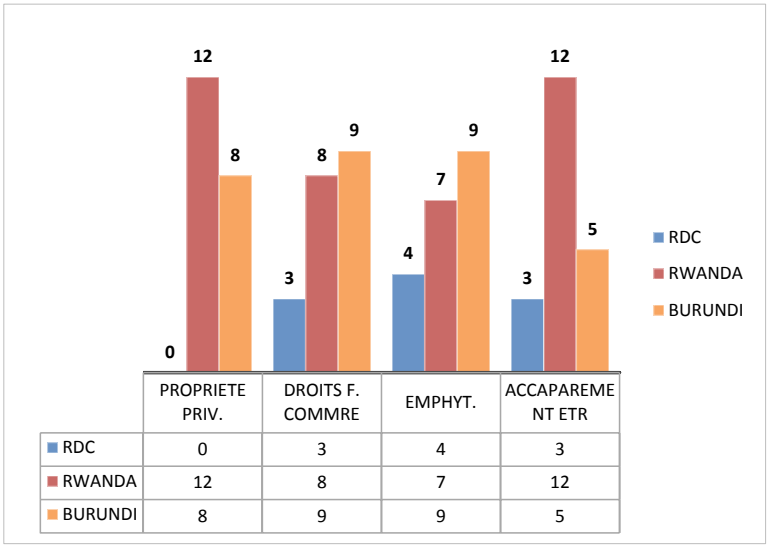
Figure 1. Land rights in DRC, Rwanda and Burundi.

This illustrative figure of the land situation accesses 4 variables: the level of exclusivity of land ownership, the level of sharing of land rights between the State and the population, the level of access to land by private national investors, and finally the level of attractiveness to foreign investors. The number of prizes per country for this series 1 is as follows: out of the 80 prizes distributed:

- DRC: 17 prizes (21.2%)
- Burundi: 34.5 prizes or 43.1%;
- Rwanda: 29.5 prizes or 36.8%.

3.2. The Organization of the Land Institutions in Favor of Private Individuals in Burundi, DRC and Rwanda (Figure 2)

This figure provides information on the level of accessibility to land by private individuals in general, about the land tenure institutions organized by these states. Four variables have been studied in this series. These were private appropriations of land (property).



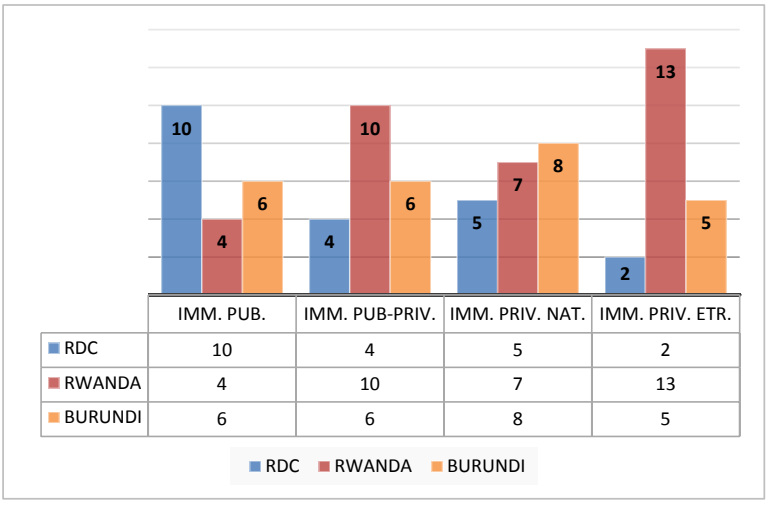
	PROPRIETE PRIV.	DROITS F. COMMRE	EMPHYT.	ACCAPAREMENT ETR
RDC	0	3	4	3
RWANDA	12	8	7	12
BURUNDI	8	9	9	5

Figure 2. Land institutions of private individuals.

The number of prizes per country for Series 2, out of a total of 80 prizes, is as follows:

- DRC: 10 prizes, or 12.5%;
- Burundi: 31 prizes, or 38.75%;
- Rwanda: 39 prizes, i.e. 48.75%.

3.3. Population's Involvement in Real Estate Investment (Figure 3)



	IMM. PUB.	IMM. PUB-PRIV.	IMM. PRIV. NAT.	IMM. PRIV. ETR.
RDC	10	4	5	2
RWANDA	4	10	7	13
BURUNDI	6	6	8	5

Figure 3. Real estate investments.

Considering the public real estate investment, the public-private real estate investment, the private real estate investment by nationals, and the real estate investment by foreigners, Figure 3 above provides information on the level of involvement of population in real estate investment. The number of awards per country for this series on the level of involvement in increasing real estate in-

vestment is as follows. Of the 80 prizes distributed:

- DRC: 21 awards or 26.25%.
- Burundi: 25 prizes or 31.25%;
- Rwanda: 34 prizes (42.5%).

3.4. The Availability of Agricultural Land and the Needs of Private Investors in Burundi, Rwanda, and the DRC (Figure 4)

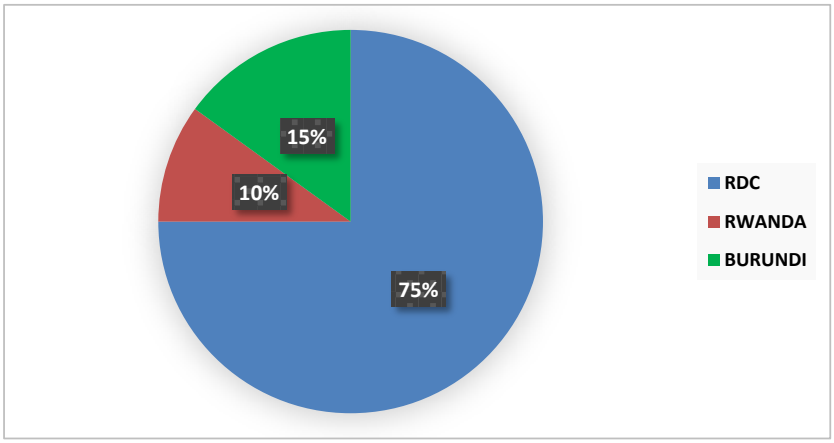


Figure 4. Land availability and the needs of agricultural investors.

Results in **Figure 4** show the level of land availability and needs for private investors in agriculture by country. The DRC is in the lead, with 75% of its agricultural land still unexploited, compared with 15% in Burundi and 10% in Rwanda.

3.5. The Attractiveness of the Agricultural Sector to Private Investors in Burundi, Rwanda, and the DRC (Figure 5)

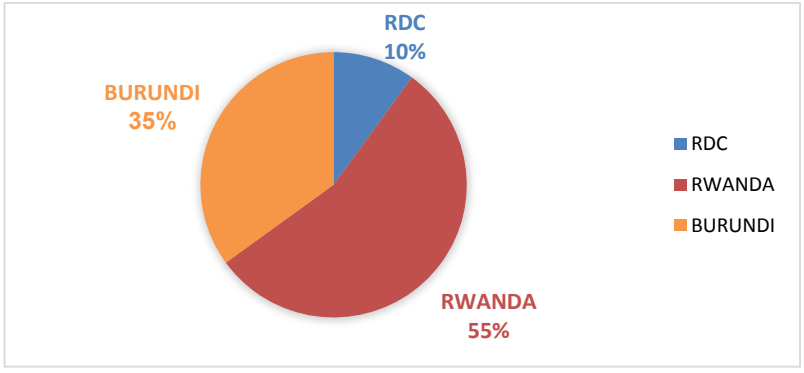


Figure 5. Attractiveness to private investors.

4. Discussion

This reflection is based on a diagnosis (I) and an integrationist therapy of these 3 systems from several angles (II).

4.1. Diagnosis of Land Management Obstacles to Community Integration in the DRC, Rwanda, and Burundi within the CEPGL and the EAC

4.1.1. Land Rights Organized by the DRC, Rwanda, and Burundi in Favor of the State and Private Investors

Results show that out of a total of 80 prizes shared between these three countries.

Burundi leads all three with 34.5 prizes, followed by Rwanda with 29.5 prizes, and at the bottom of the scale, we have the DRC with 17 prizes (See **Figure 1**). The DRC's situation is more worrying when it comes to this series of questions on the situation of land rights as organized by: the DRC, Rwanda, and Burundi.

Article 53 of the DRC's land law stipulates that "the soil is the exclusive, inalienable and imprescriptible property of the State", while Article 9 of the DRC's Constitution (of February 18, 2006) states that "the State exercises permanent sovereignty over the soil, subsoil, waters and forests, over Congolese air, river, lake and maritime spaces, as well as over the Congolese territorial sea and the continental shelf…". Apart from the case where the State is itself the owner of the soil and subsoil, private individuals may exercise rights of use, enjoyment, and not disposal over the said soil and subsoil. For example, they can graze livestock, plant, sow, harvest, build houses (i.e. buildings), live in them, operate industries, etc. The State's rights are limited to the use of the land and its subsoil. As for the State, its rights will essentially consist of regulating the manner of grazing, planting, sowing, harvesting, building houses, and so on.

This very simplistic reading might lead one to believe that private individuals investing in Congolese soil will have a similar right to property, as they will own their investments. In reality, this is not the case.

Since land is the exclusive and inalienable property of the State, no foreigner can invest in Congolese soil permanently, with no time limit. In other words, foreign investors and nationals alike can only enjoy Congolese land for a period not exceeding 25 years.

The DRC exercises permanent sovereignty over its land in accordance with Article 9 of the DRC's Constitution, in addition to the fact that the land is the exclusive property of the State. However, local community lands, while not recognized as being part of the State's private domain, are managed on a customary basis. Rwanda and Burundi grant part of their land as a domain exclusively reserved for the population, over which the population exercises full ownership.

The idea that Congolese soil belongs to the entire Congolese population is not clearly stated or mentioned in official texts. However, the Constitution recognizes that sovereignty belongs to the people. Being sovereign, the Congolese people can therefore consider themselves owners of the land they have delegated to the State.

This analogy can, however, be swept aside by those who wish to apply the law strictly. Burundi's land law (*Law n˚ 1/13 of August 9, 2011*) is clearer: all land within the national territory constitutes the national land patrimony. Specific laws govern certain aspects of real estate activity, such as urban planning, real

estate development, and the real estate professions.

Concerning the overall level of access to land by national investors, Congolese law does not facilitate this task for national investors, who are subject to the same conditions of access and enjoyment as foreigners concerning real estate investments. In the agricultural sector, the law seems to grant all rights to Congolese.

To fully understand the first table, the second is essential, as it analyses in series two the land offers made to private individuals.

4.1.2. Private Land Rights

Results show that out of a total of 80 prizes, the DRC has 10 prizes, i.e. 12.5% (See **Figure 2**) meaning that there is no private individual has full ownership of the land, which is the exclusive property of the State; Rwanda achieved 39 prizes, i.e. 48.75%, as Rwandan law allows any person, subject to compliance with legal conditions and regardless of nationality, to acquire full ownership of land (Mugabe, 2022). As for Burundi, the table shows that this country ranks second with 31 awards, or 38.75%, because Burundian law makes access to full land ownership conditional on Burundian nationality, and on land that is clearly defined by law. For foreign investors, however, Burundian law requires the application of the principle of reciprocity. This means that the foreign investor can only benefit from full land ownership if the Burundian can access the same right in the investor's country of origin.

Concerning the right to concessions, the table shows that all three countries organize temporary rights of enjoyment of land called concessions. However, only Congo organizes perpetual concessions, which unfortunately do not concern real estate investors, whether nationals or foreigners.

As for the right of emphyteusis, it is recognized and organized in all three systems under review, with the difference relating to the duration of enjoyment granted to the emphyteutic lessee. The maximum duration of the emphyteusis is decisive in attracting private investors. In Rwanda, the maximum duration is 99 years; in Burundi, 50 years; and in the DRC, only 25 years (Coquery-Vidrovitch, 1982; Labrecque, 2018). When it comes to land grabbing by foreign companies, Rwanda is in the lead because it is too open to foreign companies in the real estate sector and then in the agricultural sector.

Burundi is also open, but land availability is a problem. As for the level of protection of acquired rights, which is also a key factor in attracting investors, Burundian law is ahead of the game, for the simple reason that the Burundian state rarely uses force against an investor with ownership rights to land. Instead of expropriation in the public interest, the Burundian state prefers to resort to repurchase.

In Rwanda, given the growing demand from private investors (Id-Rais et al., 2020), the government is constantly threatening to repossess land from investors who are unfit or fail to comply with instructions.

In the Congo, instead of insecurity, the state has completely abandoned its

regulatory role, to the point of creating anarchy born of the law of the strongest. This augurs well for interference by authorities of all kinds (military, political, police, and even religious) in the management of land issues (Makonzo Ndontoni, 2020).

4.1.3. Level of Real Estate Investment

Results confirm that in terms of government involvement in the sector, the Congo is in the lead, especially when we take into account the sums in US dollars allocated to improving public real estate infrastructures (See **Figure 3**). The Congolese government has built buildings, either with the help of its partners or using its funds, which represent the country's biggest investments and are a source of pride for the country. These include the Intelligent Building and the RTNC building, to name but two.

When it comes to public-private partnerships in the real estate sector, the DRC is at the bottom of the ladder for the simple reason that national standards do not allow for these types of partnerships. Indeed, it is difficult to have a building co-owned by the State and private individuals (Perazzone, 2020).

Rwanda and Burundi do not rule out this possibility. However, in this case, the individuals can build and operate the building until they recover their contributions, and then relinquish ownership to the State. This practice can make it easier to meet real estate infrastructure needs in the short term. Rwanda is a champion in this field, with Burundi following suit. The Congo is still lagging, even if it is not at zero level, as this type of partnership exists in the water and electricity sectors, where private individuals can invest to operate for an agreed period and then transfer ownership to the State. As regards the involvement of individuals in the modernization of real estate infrastructure, Burundians are in the lead, as the majority of Burundians invest more in their country. The stability of the law and the security situation are cited as reasons for this, in addition to the love of the country, which can be difficult to prove scientifically. Rwanda comes in second place, as some Rwandans have so far been prevented from returning and investing in the country for fear of the regime currently in power. However, those who are in the country and have citizenship are investing more in their country (Ferchaud et al., 2020).

In the case of the DRC, the country's soil is a source of income for its citizens, but the Congolese are investing more abroad because of the dissuasive nature of the legal and regulatory texts, in addition to the administrative hassles, especially from uninformed people in the real estate sector, and the many illegal taxes.

The other significant aspect concerns misappropriation (Unceta, 2020). Many Congolese investors who invest in real estate abroad are invested in other official capacities in the Congo, so they fear the arrival of the rule of law and the recovery of ill-gotten gains by the State, as they are unable to justify the origin of their fortunes.

4.1.4. Land Availability for Agricultural Investors and Investor Needs

Results show that DRC takes the lead in the availability of the farming land (See

Figure 4). With this land, the DRC can feed the whole of Africa if, and only if, it finds powerful investors in this agricultural sector. To add insult to injury, this sector is a major deterrent to foreign private investors, due to the poor laws in force (Musay Mumbere, 2020). However, the following table gives an indication of the level of attractiveness to agricultural investors in terms of favorable laws and business climate.

4.1.5. The Attractiveness of Private Investors in the Agricultural Sector

Results show that the situation in DRC does not attract private sector investment in comparison to the way it is in Rwanda and Burundi (See Figure 5). The above table represents the situation, although it is contradictory if we compare Figure 4 and Figure 5. Accessibility to farmland and the legal security of agricultural investments, as well as the level of road infrastructure, are key factors in determining the attractiveness of agricultural investment.

The situation in the DRC is all too disappointing: apart from the availability of land, investors are not attracted by any other factor, even though this is the largest country in the CEPGL and EAC regions, with a wide variety of vegetation. Of all these variables, the legislative situation merits particular attention, as it may condition the improvement of the other variables.

4.2. Therapeutic Mechanisms and Community Integration through Burundian, Congolese, and Rwandan Lands in CEPGL and EAC

It is important to note at the outset that for every ill there is at least one remedy. The genes for regional integration are not inescapable. Indeed, the balance between supply and demand creates market stability. The desire to join an organization is a choice that reflects the need for assistance from other members.

However, to resolve the problems caused by the nature of the land rights granted to private investors by the three CEPGL and EAC member countries, and to facilitate integration through reciprocal access to land for the nationals of these countries, a revolutionary effort is required, leading to reforms of the laws and regulations governing land in these three countries, and by ricochet of all the other legal systems of the member countries of the community.

For this reason, we will present the land tenure mechanisms of regional integration, focusing on the deterrents in Congolese land law before taking a critical look at Rwandan and Burundian law.

4.2.1. Bringing Congolese Land Law into Line with the Need for Community Integration

1) Reconciliation mechanisms in favor of nationals

In the DRC, land issues are governed primarily by law n˚73-021 of July 20, 1973, on the general property regime, the land, and real estate regime, and the system of securities, as amended and supplemented by law n˚80-008 of July 18, 1980, and by the constitution of February 18, 2006, as well as by decrees including decree n˚00121 of December 8, 1975, setting out the procedures for convert-

ing occupancy booklets into perpetual concession titles, and decree n˚90-0012 of March 31, 1990, setting out the procedures for converting perpetual or ordinary concession titles.

While the 1973 organic law establishes the Congolese state's exclusive ownership of land, the constitution is less clear about land appropriation, since instead of the state's exclusive ownership of land, the Congolese supreme law establishes permanent sovereignty.

Under article 53 of the DRC's land law of 1973, "land is the exclusive, inalienable and imprescriptible property of the State". In other words, the State is the sole owner of the soil and subsoil. Any private appropriation of the soil is not permitted.

Even better, articles 388 and 389 of the Land Law recognize local community land rights. The first article states that "land occupied by local communities is that which these communities inhabit, cultivate and exploit in any way whatsoever—individually or collectively, under local customs and usages".

The second article goes on to state that "the rights of enjoyment regularly acquired on these lands shall be regulated by an ordinance of the President of the Republic". However, to understand the level of this exclusivity, it is necessary to compare community interpretations of this right of enjoyment.

A certain doctrinal opinion was held some time ago that land is a code of rights (Beaupré, 2019), a historical document, a geographical map that only the initiated know how to read and decipher (Wagemakers & Diki, 2011). These authors showed that the problem of land is part of a multidisciplinary dimension.

The land of ancestors, from which living beings draw the material, therapeutic, and clothing resources they need (Mushagalusa Mudinga & Kambale Nzweve, 2014). Soil is at the root of armed and inter-ethnic conflicts. The problem of soil also has a purely legal dimension. The latter is our concern in this reflection.

It will soon be 50 years since the promulgation of law N˚73.04 of July 20, 1973, designed to ensure the State's fatal control over Congolese soil. This law ordered the nationalization of all land located within the limits of the national territory, thereby consecrating the decline of land ownership by traditional communities. These days, it is clear that the desire of these communities to maintain customary land management, and the pressure of mentalities and traditions that are supposed to underlie the judicial system, is palpable.

Curiously, however, the state's desire to secure ownership of the land is still very much alive. It is systematic to note that custom, through customary authorities, plays a leading role in land management (Bambi Kabashi, 2012).

In 1994, magistrates were expelled by the people of LUOZI for having handed down judgments in which they declared that the land belonged to the State and that, without a registration certificate, no one could claim to have rights over all the State's land (Mulendevu Mukokobya, 2013). It seems that the main cause of

this conflict is the inadequacy of national land legislation, which has sought to take control and management of land out of the hands of customary authorities (Makungu, 2019).

In fact, in every traditional society, the land is first and foremost a communal property, with each clan having its landholding, comprising all the clan's land, which each member can dispose of within the limits of sound use, while respecting the rights of the rest of the community, as well as the strict rights of other members who, through the special incorporation of their labor into the soil, have asserted their rights over part of the indigenous domain. We're talking here about the right of ownership, not simply the right of enjoyment.

In any case, for the clan, the land estate is part of its personality, as it identifies its existence with that of the estate it owns. Management of the land estate is entrusted either to the clan chief or to another person known as the land chief, who may not report to the sovereign chief in the performance of his duties, even though he is politically dependent on him. By seeking to put an end to this mechanism of private appropriation of land, the so-called land law has given rise to conflict between the state and local communities.

On the other hand, local communities behave as if the land law had never existed for them; the land they have occupied or exploited since time immemorial is appropriated by them, even more so than for the benefit of non-natives, whether they be representatives of the State (Battory & Vircoulon, 2020).

These are the elements that need to be modified to adapt to the situation in other CEPGL and EAC member countries. In favor of nationals and foreigners.

2) From perpetual concessions to full land ownership

The perpetual concession was introduced by decree (*Arrêté n° 00121 du 8 décembre 1975, fixant les modalités de conversion des livrets d'occupation en titre de concession perpétuelle*) and defined as a right recognized by the State to Congolese individuals to indefinite enjoyment of the land they own (Shabani Amsini et al., 2022). Unlike ownership, which is the right to absolute and exclusive disposal of a thing within the limits set by law, public order, and the real rights belonging to others.

A perpetual concession, while not far removed from the latter, limits the rights of its holder to a simple right of enjoyment, and the other two attributes of ownership—the right to use and to dispose of—are withdrawn from the concession-holder. However, we can say that the perpetual concession can resemble ownership in its perpetual nature.

Indeed, whether the concept is "concession" or "ownership", it is the power over the soil "property" exercised by the holder of the said right that is of interest. The concession-holder has no right to change the destination of the land agreed with the State, and is obliged to develop the land for fear of losing it. This being the case, the concessionaire is less than the owner.

To reach the same level as the other member systems of the CEPGL and the EAC, the Congolese legislator can simply advance his law by granting the Con-

golese natural person full ownership of the land he exploits in some way, as is the case in Rwandan and Burundian law.

In the case of foreign natural persons from the CEPGL and the EAC, the Congolese legislator can then justify the open application of ownership in favor of foreigners, subject to the reciprocity of this same right in favor of Congolese in the country of origin of the investor who desires full ownership of the land. This means that Congolese investors, whether legal entities or individuals, will have full ownership rights to the land as a guarantee of the sanctity of their real estate and agricultural investments.

3) From ordinary concession rights to property rights for foreign investors

Congolese law makes no distinction between Congolese and foreign legal entities as regards land rights. Indeed, no legal entity has perpetual rights to Congolese soil. The so-called "land law" formally recognizes the rights of local communities, rather than the rights extended by the CEPGL and the EAC.

Article 385 of the Congolese land law is unequivocal: "As from the entry into force of the present law, land occupied by local communities becomes state land". These lands are, as stipulated in Article 386 of the law, those which these communities inhabit, cultivate or exploit in any way whatsoever, individually or collectively, under local customs and practices. On these lands, article 389 specifies, the communities have rights of enjoyment, but these will be regulated by an ordinance of the Head of State.

This ordinance, which would certainly have shed a great deal of light, has never been issued to date. Its absence is a legal loophole that has led to hesitation and differences of opinion among Congolese jurists.

These hesitations are even greater when we realize that the land law has not defined what is meant by "local community". We are tempted to assert this concerning article 386, which speaks of enjoyment under local customs and usage, and about the preparatory works of the land law, which speak indistinctly of local communities and traditional communities. If this deduction is in line with the legislator's thinking, then we can affirm that, in the Congolese mindset, by the local community we mean a social grouping that goes far beyond the restricted framework of the family and includes individuals of both sexes above and below ground, the deceased and the living, who are united by ties of kinship, marriage, adoption and so on, headed by a patrimony invested with religious, legal, social and economic prerogatives.

It is to the clan, which is also the community of soil, that we must attach the term local community. It is to this clan that the land law recognizes the right of use of all the land that its members inhabit, cultivate or exploit in any way, individually or collectively.

In short, the land law enshrines collective rights of enjoyment for the local community and individual rights of enjoyment for each member of the community, under custom (Article 388 above). It authorizes recourse to local customs

for the enjoyment rights of each member of the local community (Taska, 1976; Verdier, 1963). But the exercise of these rights is incomplete.

Investors are legal entities governed by a special law called the Investment Code. However, this code does not provide for the distribution of land rights to real estate investors. The latter is subject to land law, which organizes various ordinary concessions in their favor. This is why, in the regional context, we can suggest that legislators extend land rights to national investors, granting them full ownership of the land where they invest in real estate, and the area around buildings, up to the space required to operate the building.

4) From the right of ordinary concession to the right of ownership in favor of legal entities

The term "ordinary concession" was coined by a Congolese legislator (Lowes & Montero, 2020). However, its content covers temporary rights of enjoyment of State-owned land, with a maximum duration of between 18 and 99 years. These include emphyteusis, superficial, etc., which are qualified as very long-term leases (Claessens et al., 2021).

Emphyteusis, like all other real rights, cannot exceed 25 years under Congolese law, 50 years under Burundian law and 99 years under Rwandan land reform law. The Congolese legislator, being very much on the ball, has every interest in increasing this duration until it reaches the standard recognized in French, Belgian, and Rwandan law, which is 99 years. This improvement could make the land law more attractive (Deberdt, 2022).

5) The use of real property rights by real estate investors

Congolese law recognizes the temporary right of all real estate investors to enjoy the land, for which a contract determines the period of enjoyment for which the concession is granted, as well as the purpose for which it is granted (Starr et al., 2020). To be clearer, it should be noted that the perpetual concession is not intended for real estate investments that are commercial and therefore have a corporate purpose.

At this point, Congolese law can be seen as a model of integration, since it treats foreigners on the same level as Congolese citizens. It does not require reciprocal treatment of foreigners, based on the treatment enjoyed by Congolese in real estate investors' countries of origin. The only criticism here is that the length of the concession should be increased (Balán et al., 2022). Concerning accessibility for agricultural investors, it should be noted that no foreigner has the right to access the agricultural concession, which is reserved for Congolese.

As this position is unproductive, opening up this concession to investors from the CEPGL and the EAC in the first instance, and from other countries around the world subject to reciprocity, would be a salutary decision in favor of the starving population as a result of underproduction by national investors (Lind et al., 2020).

4.2.2. Criticism of Rwandan and Burundian Rights

Although Rwandan and Burundian land laws are more advanced in terms of

their attractiveness to private investors, they are not without negative criticism. For this reason, it is imperative to examine them separately to identify their limitations. Starting with Burundian land law (1), we will end with Congolese law.

1) Criticisms of Burundian land law

Burundian land law is more open to national investors than Congolese law. Indeed, it grants full ownership of land to Burundian nationals. However, Burundian law subjects foreign investors to the right of temporary occupation.

This mainly concerns the right of emphyteusis, which cannot exceed 50 years. However, the Burundian legislator leaves a conditional loophole in favor of foreign investors, who can access full ownership, and the EAC only if Burundians can access the same right in the country of origin of the applicant for full ownership.

Although this position is normal in international relations, it is not logical in business law. Indeed, in business law, especially where private individuals are concerned, the principle is win-win. The investor who decides to come to a host country creates his relationship with that country, without any requirement that his country of origin be in a good or bad legislative position. The foreign investor undertakes to pay all fees, taxes, and duties into the host country's treasury account.

2) Criticisms of Rwandan land rights

The Rwandan legislator is more liberal than the other two. However, the system for managing land issues is more subject to solving current problems. In other words, the Rwandan lawmaker is more flexible when it comes to the current need to attract both domestic and foreign investors.

Land management is more political in Rwanda. The administrative authority imposes itself and frightens peaceful citizens. Foreign investors are monopolizing almost all agricultural land, to the detriment of rural populations who will soon find themselves landless. Sanctions for withdrawing land from less productive farmers are constantly being documented.

The same applies to the less affluent population, who are losing their money in the big cities to big investors. This situation is very dangerous for the future, as we risk witnessing a large proportion of the population becoming landless.

5. Conclusion

From the foregoing, we can see that the current situation of land rights in these three countries requires adaptation with a view to integration into the CEPGL and the EAC. Indeed, as ownership is already enshrined in Rwanda and Burundi, it is up to Congolese lawmakers to follow in their footsteps. Indeed, property is an essential element of civilization and modernization. Only the right of ownership creates the difference between a slave and a free man.

A slave may enjoy and use his master's property, but he can never claim ownership. Concerning Congolese law, it is a vector of poverty and hinders the country's development in the real estate and agricultural sectors, on the one

hand, because of the exclusivity of land ownership rights and short-term concessions. On the other hand, the exclusion of foreigners from the acquisition of agricultural land by Congolese lawmakers is a brake on development.

To achieve this, it would be wise to grant full ownership to Congolese individuals and companies, as Burundian and Rwandan legislators have done for their nationals. This development could boost the Congolese real estate and agricultural sectors, enabling them to invest in real estate and agriculture with complete security.

As far as foreigners are concerned, it would be important to grant perpetual concessions to natural persons and ordinary long-term concessions to corporate bodies. However, we should not exclude the principle of reciprocity. Such an adaptation would indeed boost both national and foreign investment, as property is sacred, and investors would feel increasingly secure and would not hesitate to invest in these countries.

As for Burundian law, the weakness of private investment growth lies in the fact that the population lacks the financial means to exploit their land alone. The closure of full ownership to foreigners is blocking developments in the real estate sector. In the case of Rwanda, the real estate sector is in great demand thanks to the number of investors in buildings, agriculture, etc., thanks to the opening up of full ownership to both national and foreign investors. Rwanda's current problem is the lack of space.

In the interests of the Economic Community of the Great Lakes Countries (CEPGL) and the Economic Community of Central African States (EAC), the three legal systems need to be refocused to harmonize the land rights of Congolese national investors, who deserve full ownership on the same footing as their Burundian and Rwandan counterparts. Where foreigners are concerned, the principle of reciprocity need not be respected, as the relationship is between an individual and a state, not between states. Improving the land rights of foreign investors will close the border to the desire to conquer the land by force, and open the way for peace and integral development.

Conflicts of Interest

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

References

Arrêté n° 00121 du 8 décembre 1975, fixant les modalités de conversion des livrets d'occupation en titre de concession perpétuelle. https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000833451/2022-03-13

Ba, I. A. A., & Toufik, S. (2023). Zone de libre-échange continentale: Quels enseignements tirés de l'expérience de l'intégration régionale de la CEDEAO? Évaluation à l'aide du modèle de gravité. *African Scientific Journal, 3,* 580.

Balán, P., Bergeron, A., Tourek, G., & Weigel, J. L. (2022). Local Elites as State Capacity: How City Chiefs Use Local Information to Increase Tax Compliance in the Democratic

Republic of the Congo. *American Economic Review, 112,* 762-797. https://doi.org/10.1257/aer.20201159

Bambi Kabashi, A. (2012). *Le droit minier congolais à l'épreuve des droits foncier et forestier*. L'Harmattan. https://www.torrossa.com/en/resources/an/4866881

Battory, J., & Vircoulon, T. (2020). *Les pouvoirs coutumiers en RDC Institutionnalisation, politisation et résilience* (p. 25). Institut français des relations internationales. https://www.ifri.org/sites/default/files/atoms/files/note_battory_virdoulon_rdc_2020_complet_okes.pdf

Beaupré, A. C. (2019). *Droit civil des biens*. Ellipses.

Claessens, K., Bisoka, A. N., & Ansoms, A. (2021). Rethinking Communal Land Governance in the Great Lakes Region of Central Africa. *Progress in Development Studies, 21,* 144-160. https://doi.org/10.1177/14649934211006553

Coquery-Vidrovitch, C. (1982). *Le régime foncier rural en Afrique noire*. Horizon Pleins Textes.

Deberdt, R. (2022). Land Access Rights in Minerals' Responsible Sourcing. The Case of Cobalt in the Democratic Republic of the Congo. *Resources Policy, 75,* Article ID: 102534. https://doi.org/10.1016/j.resourpol.2021.102534

Ferchaud, F., Jaglin, S., Kennedy, L., & Robert, J. (2020). *La production urbaine et ses dispositifs sociotechniques* (p. 267). CNRS éditions. https://shs.hal.science/halshs-02989929 https://doi.org/10.4000/books.editionscnrs.37193

Hanai, K. (2021). Conflict Minerals Regulation and Mechanism Changes in the DR Congo. *Resources Policy, 74,* Article ID: 102394. https://doi.org/10.1016/j.resourpol.2021.102394

Hengelela, J. C., & Ekila, N. D. (2020). Les implications du principe de la souveraineté permanente de l'Etat sur les ressources naturelles sous l'empire de la Constitution du 18 février 2006 en République Démocratique du Congo. *Recht in Afrika—Law in Africa—Droit en Afrique, 23,* 80-102. https://doi.org/10.5771/2363-6270-2020-1-80

Id-Rais, A., Semlali, E. H., Ettarid, M., & El Idrissi, A. (2020). Sécurisation foncière en Afrique: Les cas du Maroc, la Tunisie et le Rwanda. *African Journal of Land Policy and Geospatial Sciences, 3,* 1-13.

Labrecque, G. (2018). *Géopolitique: Comprendre les enjeux territoriaux interétatiques*. L'Harmattan. https://www.torrossa.com/en/resources/an/4889148

Lind, J., Okenwa, D., & Scoones, I. (2020). Introduction: Politics of Land, Resources & Investment. In *The Politics of Land, Resources & Investment in Eastern Africa's Pastoral Drylands* (p. 1-32). James Currey. https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/15458 https://doi.org/10.2307/j.ctvxhrjct.7

Lowes, S., & Montero, E. (2020). *Concessions, Violence, and Indirect Rule: Evidence from the Congo Free State (27893)*. Working Paper, National Bureau of Economic Research. https://doi.org/10.3386/w27893

Makonzo Ndontoni, R. (2020). *La preuve de la propriété immobilière en droit positif congolais*. L'Harmattan. https://www.torrossa.com/en/resources/an/4863774

Makungu, U. L. D. (2019). Vers un régime foncier juridique spécial protecteur des peuples autochtones et des communautés locales des zones forestières en République Démocratique du Congo. *Recht in Afrika—Law in Africa—Droit en Afrique, 21,* 168-188. https://doi.org/10.5771/2363-6270-2018-2-168

Mendako, R. K., Tian, G., Ullah, S., Sagali, H. L., & Kipute, D. D. (2022). Assessing the

Economic Contribution of Forest Use to Rural Livelihoods in the Rubi-Tele Hunting Domain, DR Congo. *Forests, 13,* Article No. 130. https://doi.org/10.3390/f13010130

Momeka, R., Ngezirabona, S., & Makinde, S. (2022). Impact de l'intégration régionale sur le niveau de vie dans les pays membres: Analyse comparative de la CEPGL et l'EAC. *Repères et Perspectives Economiques, 6,* 1-20.

Mugabe, A. M. S. (2022). Réparations et réconciliation au Rwanda: Des attentes aux frustrations. *Histoire de la justice, 33,* 205-218. https://doi.org/10.3917/rhj.033.0205

Mulendevu Mukokobya, R. (2013). *Pluralisme juridique et règlement des conflits fonciers en République Démocratique du Congo*. L'Harmattan.

Musay Mumbere, L. (2020). Le comportement risqué des investisseurs privés du Nord-Kivu à la République Démocratique du Congo face à l'intégration. *Repères et Perspectives Economiques, 4,* 61-84.

Mushagalusa Mudinga, E., & Kambale Nzweve, J. L. (2014). *Le projet d'une réforme agraire au Nord-Kivu: Les impasses au point de départ* (p. 24). L'Harmattan. https://dial.uclouvain.be/pr/boreal/object/boreal:152250

Ngomirakiza, E. (2022). Introduction of Burundi Commercial Justice and Potentials of Investment with the Integration in East African Community. *The Journal of Law, the Postgraduate Course of Kansai University, 2022,* 151-199.

Nyotah, P., Situma, F., & Abuya, E. (2022). Getting It Wrong: Applying Public Security Limitation to the East African Community's Right of Establishment in Kenya. *The Transnational Human Rights Review, 9,* 31-68. https://digitalcommons.osgoode.yorku.ca/thr/vol9/iss1/2 https://doi.org/10.60082/2563-4631.1100

Perazzone, S. (2020). L'ennuyeux formalisme d'État. Distanciation-discipline et gouvernance urbaine en République démocratique du Congo. *Politique africaine, 158,* 223-254. https://www.cairn.info/revue-politique-africaine-2020-2-page-223.htm https://doi.org/10.3917/polaf.158.0223

Shabani Amsini, J., Kambuyi Kambuyi, B., & Ilunga Kadiongo, S. (2022). Le Principe de la domanialisation du sol et du sous-sol congolais face au droit de jouissance fonciere des communautes locales. *International Journal of Social Sciences and Scientific Studies, 2,* 815-825. https://ijssass.com/index.php/ijssass/article/view/82

Starr, C. W., Saginor, J., & Worzala, E. (2020). The Rise of PropTech: Emerging Industrial Technologies and Their Impact on Real Estate. *Journal of Property Investment & Finance, 39,* 157-169. https://doi.org/10.1108/JPIF-08-2020-0090

Taska, B. K. (1976). *Characteristics of the Contemporary African Novel of French Expression: Evolution and Development, 1960-1975*. City University of New YorkProQuest Dissertations Publishing. https://www.proquest.com/openview/9f1b795eacadb0cc6bd3b3f79e7d7171/1.pdf?pq-origsite=gscholar&cbl=18750&diss=y

Unceta, R. A. (2020). République démocratique du Congo: Revenus miniers et dépenses publiques pour le développement. *Mondes en developpement, 189,* 55-80. https://www.cairn.info/revue-mondes-en-developpement-2020-1-page-55.htm https://doi.org/10.3917/med.189.0055

Verdier, R. (1963). Ethnologie et droits africains. *Journal des Africanistes, 33,* 105-128. https://doi.org/10.3406/jafr.1963.1367

Wagemakers, I., & Diki, O. M. (2011). Governance of Urban Agricultural Space: Struggle for Land in Kinshasa (DRC). In A. Ansoms, & S. Marysse (Eds.), *Natural Resources and Local Livelihoods in the Great Lakes Region of Africa: A Political Economy Perspective* (pp. 68-82). Palgrave Macmillan. https://doi.org/10.1057/9780230304994_4

Yalire, D., & Batachoka Mastaki, D. (2023). Intégration de la République Démocratique du Congo à la Communauté d'Afrique de l'Est: Traité, domaines de coopération, défis et perspectives. *Recht in Afrika—Law in Africa—Droit en Afrique, 25,* 245-263. https://doi.org/10.5771/2363-6270-2022-2-245