

## **Land Status of Agricultural Concessions in Kinshasa (D. R. Congo): Legal Framework limitations to Production Incentive.**

**By : Mabu MASIALA BODE <sup>(1)</sup>, Philippe LEBAILLY <sup>(2)</sup>, Charles KINKELA SAVU SUNDA <sup>(3)</sup>, Yves ALONI MUKOKO <sup>(4)</sup>.**

(1) PhD student at the University of Liège, Economics and Rural Development Unit ; (2) Professor at the University of Liège, Economics and Rural Development Unit; (3) Professor at the University of Kinshasa, Faculty of Agronomy, Department of Agricultural Economics ; (4) Professor at the University of Kinshasa, Faculty of Law.

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### **Summary**

This article clarifies the land status of agricultural concessions of Mont-Ngafula, in Kinshasa. This area is particular given that it has a hybrid land status which is both urban and rural. This therefore entails the application of the two land tenure systems depending on whether the area concerned is urban or rural. The results of this analysis highlights that since the enactment of the 1973 Land Act, access to agricultural land in this region rarely comply with legal procedure; most land occupants rather transact with various individuals who have customary rights over lands (traditional chiefs and customary landowners) instead meeting the competent services. As a matter of fact, from a legal standpoint, most of the occupants limit themselves to awarding a provisional occupancy contract, which is just a preparatory step to agricultural concession, the issuance of which appears to be less complicate as per common practice in the constituency. The fact that land owners limit themselves at the stage of the provisional contract, usually far beyond the officially prescribed deadline, without even launching the application for the concession contract justifies the lack and poor level of development of occupied lands. Meanwhile, the value of these lands increases. The great trust gained by owners from the land administration (through the holding of provisional occupancy contract) and the payment of customary rights enables him/her to keep the funds in serenity and to receive yearly appreciation without an actual agricultural production. Thus, lands status obtained on the basis of this double recognition ensures an apparent land tenure security but does not promote agricultural production. In addition, the Land Act does not include any incentive instruments in this domain, and closer still, mechanisms set out in the law pertaining to the fundamental principles relating to agriculture are not at the verge of being instituted soon, much less the land reform policy initiated by the Congolese Government these past years.

**Key Words:** Land status, agricultural concession, land code, agricultural law, Mont-Ngafula, Kinshasa

**JEL Classification:** Q15. Q010

## **Research Problem**

Written laws have always coexisted with customary laws in the Democratic Republic of Congo ever since the colonial period. The scope of the latter on land usage and management was governed by legal instruments to harmonize the functionalities of these two types of laws on Congolese lands. That is what the lawmakers of the current land code (enacted in 1973) wished to sustain by inserting article 389 that stipulates: "User rights lawfully acquired on these lands (lands of local communities) shall be regulated by an Ordinance of the President of the Republic", which has not been enacted up to now. In the meantime, traditional authorities continue to impose themselves as licensors upon lands used by their population, competing therefore with the State which has the exclusive, inalienable and imprescriptible rights over the entire lands of Congo (Land code, 1973, article 51). It is on lands situated between rural and urban areas (Suburban or urban-rural areas) that the battle between the two powers is intense (KIBAYU, 2010, 28).

## **Research Question**

Urban population growth in Kinshasa marked by the sprawling of urban areas towards the peripheries (KIBAYU, Op.cit.) and real estate development carried out in agricultural production sites (MASIALA, 2012) focuses our attention on the issue of the land status of rural agricultural concessions. Hence, the question this article seeks to answer is set out as follows: What is the impact of obtaining a legal land status on production incentive to agricultural concessions established in Kinshasa's rural areas?

## **Hypothesis**

The access to a land status in line with legal and customary standards constitutes a focal point, a central stake which crystallises the vast majority of strategies for the control and appropriation of agricultural State lands in Kinshasa. Behind the apparent intention of land owners to ensure tenure security of their lands by a double recognition (traditional and legal), there is drift which needs to be curbed, since it leads to land insecurity which does not promote agricultural investment.

## **Methodology**

To operationalize this research, the methodological framework is based on five points: the choice of the study area, source of data, observation period, choice of agricultural operators and analytical framework.

As far as the choice of the study area is concerned, amongst the ten land constituencies of Kinshasa, this article concerns only constituents of Mont-Ngafula and N'Sele-Maluku , since they constitute both urban and rural lands. In the rural areas of these registration division lands are granted for agro-pastoral purposes. The choice of the land district to be analysed was intended to represent in terms of the number of agricultural concessions and the actual existence of the issue of demographic pressure. Amongst the two land districts mentioned previously, Mont-

Ngafula is the most representative. Indeed, this constituency has a surface area of 358.92 km<sup>2</sup> (35 892 ha) while the surface area of N'sele – Maluku district is 8846.8 km<sup>2</sup> (884 680 ha), which is 898 km<sup>2</sup> for N'sele (89 800 ha) and 7948.8 km<sup>2</sup> (794 880 ha) for Maluku. According to the 2004 statistics, the population density in the Mont-Ngafula land district was 727 hab/km<sup>2</sup> as against 32 hab/km<sup>2</sup> in N'sele-Maluku (DRC, Ministry of Planning, 2005). The Mont-Ngafula constituency is administratively composed only of Mont-Ngafu council, which is located in the Southern area of Kinshasa city (4° 25' 35" South and 15° 17' 44" East).

Data on the status of agricultural land owners was obtained in the land register of the Mon-Ngafula council. For the purpose of the analysis, the time frame running from 1975 to 2015 was retained. The choice of 1975 as entry point for this study is very significant, because it enables us to see how the supply of agricultural land owners evolved in Mont-Ngafula council, from the enactment of Land aw (1973) up to now (2015), for forty years. Sometimes, for results to be clearer, some were presented by decades.

Concerning the choice of agricultural operators, most of agricultural lands owners established in Mont-Ngafula council live in Kinshasa. Therefore, the sample which is the focus of our analysis is made of agricultural land owners from Kinshasa – living in Kinshasa.

Finally, the theoretical framework of the analysis of the status of agricultural concessions situated in the council of Mont-Ngafula is based on land law and the agricultural code, which were respectively enacted in 1973 and 2011.

## **Results**

The results revolve around the following areas : (1) Origin of lands owners from Kinshasa established in Mont-Ngafula ; (2) the silent step of the procedure for the acquisition of agricultural lands ( agricultural operators contacts with production sites , payment of customary royalty , informal lands acquisition to traditional rulers and to former buyers) ; (3) Destination of lands solicited by lands owners ;(4) Neighborhoods and number of agricultural lands owners (cadastral nature of neighborhoods, spatial dividing up of agricultural concessions in various neighborhoods, number of concessions by land owner) ;(5) prior investigation to concession of agricultural use (Deadline between the customary agreement and the execution of the prior investigation, Evolution of investigations of lands vacancy by decades) ; (6) Surface areas granted to agriculture (Proportion of surface areas occupied by agricultural concessions in Mont-Ngafula, evolution of surfaces area granted for agriculture by decade, evolution of spatial occupation of agricultural concessions by neighborhood and by decade) ; (7) Type of contracts obtained by agricultural operators and their impacts to production incentive.

## **Bibliographic**

- Amina Saïd Chiré (2012). *Le nomade et la ville à Djibouti : Stratégies d'insertion urbaine et production de territoire*, Edition Karthala, Paris
- Guillain Cirhuza Koko (2007). *De la souveraineté permanente de la RDC sur ses richesses et ses ressources naturelles : examen de l'Article 09 de la Constitution du 18/02/2006*, Université catholique de Bukavu - Licence en droit public

- Héritier Mambi Tunga-Bau (2010), Pouvoir traditionnel et pouvoir d'Etat en République Démocratique du Congo : Esquisse *d'une théorie d'hybridation des pouvoirs politiques*, Médiaspaul, Kinshasa, RDC. 240 pp.
- Jéthro KomboYetilo, « La sous-administration territoriale en République démocratique du Congo. Etat des lieux et perspectives », *Pyramides* [En ligne], 19 | 2010, mis en ligne le 11 janvier 2012, consulté le 16 août 2016. URL : <http://pyramides.revues.org/711>
- Kibayu Michel Lusamba (2010). Evolution des pratiques de sécurisation des conditions de vie dans trois quartiers populaires de Kinshasa. Enjeux et conséquences de la production spatiale et sociale de la ville, Thèse présentée en vue de l'obtention de grade de docteur en sciences politiques et sociales, Université Catholique de Louvain, UCL – Presses Universitaires de Louvain, Edition Première édition, 396p
- Kifuanikia Mayeko (2009). Wastewater use and urban agriculture in Kinshasa, DR Congo, in Mark Redwood (éd) *Agriculture in urban planning. Generating livelihoods and Food security*, New York – USA, Earthscan and International Development Research Center (IDRD), 147 – 166
- Masiala Bode, M. (2012). L'agriculture périurbaine de la ville de Kinshasa et les revenus tirés du maraîchage : Le cas de la coopérative de *Nzeza Nlandu*. Diplôme de Master complémentaire, Université de Liège – Gembloux Agro Bio Tech, Gembloux, Belgique.
- Milça Cubrilo, Cathérine Goislard, Etienne Le Roy (1998). *Bibliographie et lexique du foncier en Afrique noire*, Karthala, Paris-France, 416p.
- RDC, Arrêté ministériel n°009/93, 1993
- RDC, Arrêté ministériel n°021/CAB/MIN.AFF.FONC/2016, 2016
- RDC, Arrêté ministériel n°91-0072, 1991
- RDC, Code foncier, 1973
- RDC, Constitution, 1964
- RDC, loi agricole
- RDC, Loi N° 15/015, 2015, article 10, alinéa 3
- RDC, Loi n° 66/343 du 7 juin 1966
- RDC, LOI N°011/2002 DU 29 AOUT 2002 portant code forestier
- RDC, Ministère de l'Intérieur, 2002
- RDC, Ministère du Plan (2005) *Monographie de la ville de Kinshasa*, Kinshasa
- RDC, Ordonnance n° 74-149, 1974
- RDC, Constitution, 1967
- Séverin Mugangu Matabaro (2008). La crise foncière à l'est de la RDC, *Afrique des grands lacs. Annuaire 2007-2008*, 385-414
- Sylvie Ayimpam (2013). *Economie de la débrouille à Kinshasa. Informalité, commerce et réseaux sociaux*, Edition Karthala, Paris – France, 334 p