



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
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Land status of agricultural concessions in Kinshasa (D. R. Congo): Legal framework limitations to Production Incentive.

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Abstract

This article clarifies the land status of agricultural concessions of the Mont-Ngafula council in Kinshasa. This council 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 simply 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 strenuous 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: Agricultural concession, Congo-Kinshasa, land code, land status, Mont-Ngafula.



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1. INTRODUCTION

Written laws have always coexisted with customary laws in the Democratic Republic of Congo (DRC) 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 communities, competing therefore with the State which has the exclusive, inalienable and imprescriptible rights over the entire lands of Congo (Code foncier, 1973). 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).

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.

Urban population growth in Kinshasa marked by the sprawling of urban areas towards the peripheries (Kibayu, 2010) and real estate development carried out in agricultural production sites (Masiala & Lebailly, 2013) 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 land tenure security on agricultural land concessions on farmers' incentives for production in Kinshasa?**

Land tenure obtained on the basis of traditional and legal procedures guarantees the recognition of land tenure security but does not have a direct impact on the incentive to produce to farmers who obtain land in concessions. With this securitization of the land, some farmers abuse the flexibility of the land code, which gives them sufficient time to upgrade their land (after obtaining the provisional contract) and renew the contracts (after obtaining the final contract). The fiscal policy used on these concessions does not stop these slippages or the land reform that it was initiated by the Congolese government closed in 2013.

Apart from the introduction and the conclusion, this document is divided into three points: (1) the first point speaks of the methodology. It explains the procedure for choosing the analysis area, the respondents and the data source; (2) the second point concerns the theoretical framework. This section clarifies the

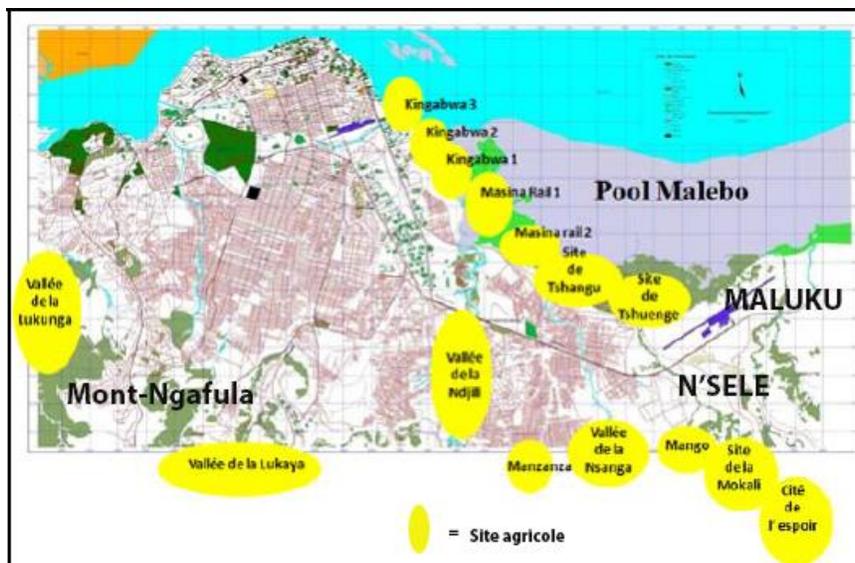


concept of "land tenure", explains the concept of "land concession" and the procedure for obtaining the agricultural concession. All these clarifications are drawn mainly from the land code and the agricultural law; (3) the third point presents the main results of the analysis.

2. METHODOLOGY

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 km² (35 892 ha) while the surface area of N'sele – Maluku district is 8846.8 km² (884 680 ha), which is 898 km² for N'sele (89 800 ha) and 7948.8 km² (794 880 ha) for Maluku. According to the 2004 statistics, the population density in the Mont-Ngafula land district was 727 hab/km² as against 32 hab/km² in N'sele-Maluku (RDC, Ministère du Plan, 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).

Figure 1 : Outline of the commune of Mont-Ngafula on the map of Kinshasa



Source: From Kasongo and Yumba (2009), adaptation by the authors (2016).



Concerning the data used for the land tenure analysis of the Mont-Ngafula agricultural concessions, they were obtained in the land register of the locality of Mon-Ngafula for the period from 1975 to 2015, over a period of 40 years. At times, to clarify the reading of the results, the forty years of observation are divided into decades.

Regarding the choice of farmers to investigate, most of the owners of agricultural land established in Mont-Ngafula live in Kinshasa. Therefore, the sample that is being analyzed consists only of farmers living in Kinshasa.

Finally, the theoretical framework of analysis of the subject is based mainly on the land code and the agricultural law.

3. THEORETICAL CONSIDERATIONS

3.1. Notion of the “land statute”

The land is the materialization of the relationship that the owner has with the physical support of his activity (Cubrilo et al., 1998). It is then understood by land status, the official status (administrative or legal) of the user of the land to the land used (Chiré, 2012). According to this author, land status is an important indicator of the territorialization of the urban space.

3.2. Concept of the “land concession” according to the Congolese land code

The land concession may be defined as: "*the contract by which the State recognizes a right of enjoyment on land, on payment of money or free of charge, to a community, a natural person or a legal person on the basis of private or public law*" (Code foncier, 1973).

Of the two beneficiaries involved in the signing of the concession contract, the Congolese State is considered the owner. So, all the lands are domanial. Thus, all land belongs to the State. Three categories of beneficiaries can benefit from land belonging to the Congolese State: local communities, natural persons (Congolese or foreign) and legal entities.

For natural and legal persons, two types of contracts are possible: a short-term occupation contract (ordinary concessions) and a permanent but renewable occupation contract (perpetual concessions). Perpetual concessions are only available to natural persons of Congolese nationality, whereas ordinary concessions extend to natural and legal persons.



3.3. Procedure of obtaining an agricultural concession

According to the agricultural law, the agricultural concession is defined as a "contract or convention between the State and the agricultural operator "(Loi agricole, 2011). The procedure of obtaining these concessions is given in the land code.

When a farmer wishes to obtain a rural land in agricultural concession, he sent his request to the Conservator of Real estate titles (C.R.E.T) territorially qualified, by registered mail, with acknowledgement of delivery. Considering the agricultural concession is granted subject to the rights of the thirds, to preserve these rights, all transactions on the rural grounds are the object of a preliminary investigation. This investigation is open only following one favorable opinion of the C.R.E.T. It is carried out accompanied by the Agronomist of the commune of localization of the land. Before the launching of the preliminary investigation, the favorable opinion of the C.R.E.T and a copy of the request of the ground are displayed in the locality where the land is located.

The preliminary investigation relates to the following points: checking of the delimitation of land requested; census of the people who are on this ground and carries on an activity of it; description of the place and inventory of what the ground in terms of forest contains, waterway, lane, ... ; hearings of the people who assert or formulate observations; recording and studies of all that will be written.

One can notice that at the time of this investigation, it is by no means question of providing elements about their intrinsic values of the land according to the object of its use. It is thus allocated to the applicant to take his measures to make sure of agronomic quality of the requested land.

At the end of this investigation, the Delegated official to carry out the investigation draws up Minutes indicating all the information above, the conclusions and any other useful document attaches to it. It will have a one month deadline to write this Minutes. After wrote it, He send it in two specimens by registered mail with acknowledgement of delivery to the C.R.E.T. The P.V received by the C.R.E.T is enriched by its opinions and considerations before being sent if the C.R.E.T does not find any reason to make take again the investigation. He will send one copy to the applicant within a period of one month and the other to the Minister of Land Business.

According to the surface and localization of the requested land (urban or rural), the PV of investigation preliminary can reach other high spheres decision of the conceding power: President of the Republic and the Parliament.



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ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



With each time the investigation is taken again on the litigious points, the new P.V follows the same control procedure, revision and validation that the first. For a file which is competence of the Minister of Land Business and who did not have obstacles throughout his administrative procedure, it is necessary to count at least 4 to 6 months for the validation of Minutes.

If the opinion of Land Business Minister is positive, the C.R.E.T closes the Minutes file and communicates the answer to the Applicant. After validation of Minutes, the contract is confirmed or established with a tenant statute for the agricultural operator.

The validation of the statute of tenant is noted by Interim occupancy title which makes it possible to the farmers to carry out his programme of agricultural valorisation deposited in the request file of land. The valorization of the land is obligatory. On the other hand, the State organizes visits and advices in favours of the agricultural operators under Final concession contract (perpetual or ordinary, according to the case).

The observation on land use is made on request of the farmer and this, with his expenses. It is based on the program of valorization indicated in the file of the land request. Satisfaction in this investigation makes it possible to the farmer to have the Final concession contract. Following that, the C.R.T. registers this contract in the book of recording and establishes a **registration certificate** for this purpose. This document is the single land title which proves that the land concession is legally established.



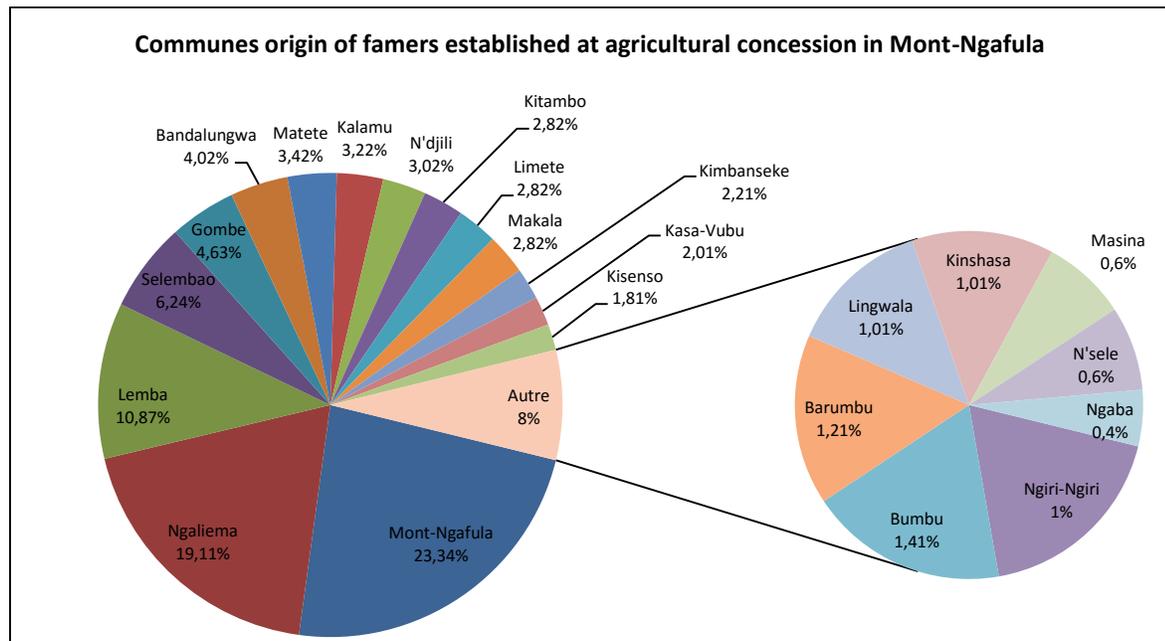
4. RESULTS

4.1. Origin of famers established in Mont-Ngafula

On the 24 communes who account Kinshasa, only the commune of Maluku is not represented in the diagram below. Beyond the distance which separates the commune of Mont-Ngafula to that of Maluku, the absence of habitants of Maluku in this figure is explained by the fact why Maluku is a rural commune also. There are a lot of lands for agricultural. Maluku is 22 times vaster than Mont-Ngafula. The commune of Maluku is at the same time rural and agricultural, as shown the “Plateau of batéké” (Kifuanikia, 2009).

As regards the inhabitants of the other communes, they hold agricultural concessions with variable proportions. Indeed, the inhabitants of the commune of Mont-Ngafula occupy the first place regarding origin of the farmers. They are followed by the farmers coming from the neighboring communes (Ngaliema, Selembao and Lemba) and then of those located more far from Mont-Ngafula. The proximity of the place of dwelling of farmer is proportional to the predisposition to acquire the agricultural land with Mont-Ngafula (Figure 2).

Figure 3 : Origin of famers



Source: authors, 2016



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ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



4.2. Destination of lands solicited by farmer

Each farmer who research of land for agricultural ends, has his personal project of valorization of land which will be conceded to him. Several kinds of vegetable or animal products can be used. In general, the agricultural products used are the same. It is generally the food crops, the breeding, the market-gardening and the fish farming. Other land applicants do not hesitate to add in their request files of the not-agricultural destinations (residential, exploitation of clay, sand ...) as mentioned in the table 2.

Table 1 : Destination of agricultural concessions solicited

	Effective	Percentage
Food crop	494	99,40
Breeding	367	73,84
Market gardening	6	1,21
Fish farming	2	0,40
Careers of sand	2	0,40
Residential	13	2,62

Source: authors, 2016

4.3. Importance of the agricultural concessions at Mont-Ngafula

The demographic dynamics of the commune of Mont-Ngafula impregnates certain evolutions on the environment in which are the agricultural concessions. This evolution makes that certain concessions which were, formerly, in the not registered rural areas are found in full heart of formally planned territorial. On the whole of the inventoried agricultural concessions, 8.5% have a cadastral number against 91.5% which do not have any.

According a spatial distribution, the land use is unequally distributed by agricultural concessions. There are quarters which are very requested, whereas others are less. On the 21 quarters which account currently the commune of Mont-Ngafula , 15 are exploited for the concessions agricultural : Kimwenza (135), Mitendi (75), Djili-Kilambu (45), Lutendele (35) , Matadi-Mayo (34), Vunda-Manenga (30), Plate (27), Musangu (27), C.P.A-Mushie (27), Matadi-Kibala (22), Mbuki (19), Mom-Yemo (10), Mom-Mobutu (6) , Kimbuta (3) and Kimbondongo (2 agricultural concessions).



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



With regard to the number of the agricultural concessions by farmer, in general, the farmers have only one agricultural concession (97.59%). But, others farmers have two agricultural concessions (1.61%), three (0.40%) or to see even four agricultural concessions at the same time (0.40%). This practice is not prohibited by the land code or by the agricultural law. Before the present land code, this practice was subjected by the principle of the totalization.

4.4. Primary investigation to concession of agricultural use

Before the preliminary investigation start, the farmer must lodge his request file of land to the Conservator of Real estate titles of the land district of Mont-Ngafula. Without this deposit of request of the ground, the preliminary investigation cannot be started.

In practice, the farmers begin by purchasing land to the traditional chief. This step is not official in the current land code, because all land of Democratic Republic of Cong Belongs to the State.

When this farmer purchase land to the traditional chiefs, they do not address him directly to the Conservator of Real estate titles, they remain quiet during several years or even never appear at the office of the Conservator of Real estate titles, being satisfied exclusively with the documents obtained near traditional chiefs. Whereas others wait less long before initiate the official procedure (Table 3).

Table 2 : Time between the agreement of traditional chiefs to use of land and primary investigation

	Effective	Percentage
Even year	264	57,02
2 to 5 years	91	19,65
6 to 10 years	41	8,86
More than 10 years	67	14,47
Under total	463	100
Be in hiding not inquired (request file not deposited)		34
Total		497

Source: authors, 2016

It is generally in the same year of obtaining the agreement of the traditional chiefs or even the year after, according to the majority, that the preliminary investigations are carried out (57, 02%, are the case for 264 concessions). Some lands are at the hands of farmers during 2 to 10 years before being subjected to a preliminary investigation (28, 51%, are nearly 132 agricultural concessions), others are not declared by

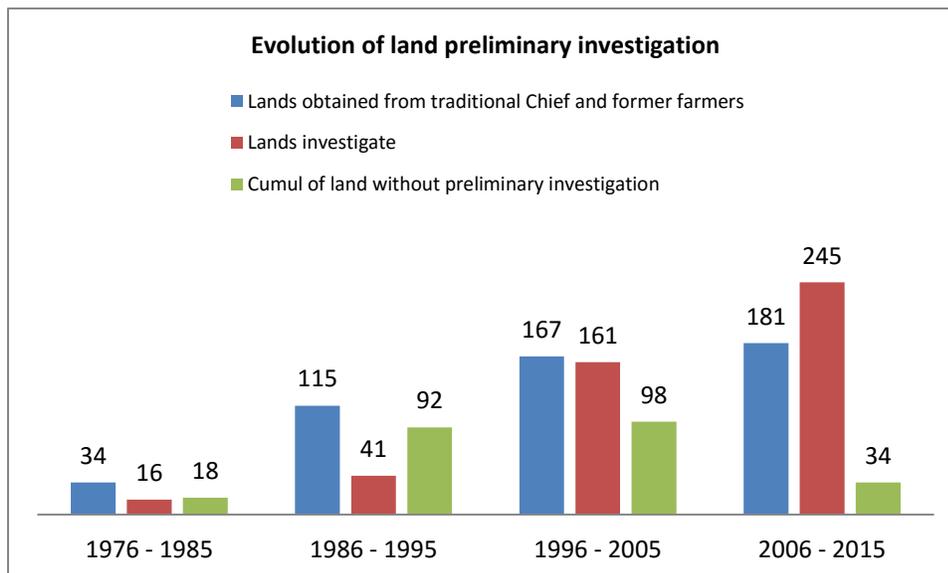


farmers and unknown by Conservator of Real estate titles. It is on these types of land that land conflicts appear most often when other farmers solicit them. It does not matter time that took, there was at least 93.16% of the agricultural concessions which were the object of a preliminary investigation, that is to say 463 agricultural concessions of the commune of Mont-Ngafula.

The interpretation of the table 3 in other words inform that : on 5 farmers out of 10, the preliminary investigations are done in less than one year after obtaining the land near the traditional chief or a former farmer. Nearly 3 farmers out of 10 waited during 2 to 10 years, between the contract signature with traditional chiefs and the moment of presentation their investigation preliminary request. Lastly, 2 farmers out of 10 announce themselves only in one case out of two and that after more than 10 years.

The evolution per decade of the period of the request preliminary investigations compared to the moment when lands was obtain to the traditional chiefs is taken again in the Figure 3 below.

Figure 4 : Evolution of primary investigations per decade



Source: authors, 2016

At the decade 75-85 to 96-2005, the number of preliminary investigation was always lower than the number of lands obtains to the traditional chiefs by farmers. It is between 2006 and 2015 that this trend was reversed.



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



This situation can be explained by policy land reform registered in the program of the government over the period 2011 to 2015 and of the adoption of the roadmap of the reform, stopped in July 2012 with the support of the PTF (financial partners and techniques).

4.5. Surface areas granted to agriculture.

The share of surface of the commune of Mont-Ngafula put at the disposal of agricultural concessions for 40 years is currently at 5491.65 ha for 497 farmers, that is to say 15.3% of the total surface area of this commune.

It can generally be said, the average surface occupied by farmers during all the period of the study is of 12.08 ha. This value hiding place enormous disparities between dealers. The variance and the standard deviation are respectively of 471.19 and 21.70 for a fashion located at 2 ha and a median to 5.42 ha.

The analysis of these same statistical parameters (number of agricultural concessions, total area, average area, standard deviation) per decade is shown in Table 4.

Table 3 : Proportion of surface areas occupied by agricultural concessions in Mont-Ngafula

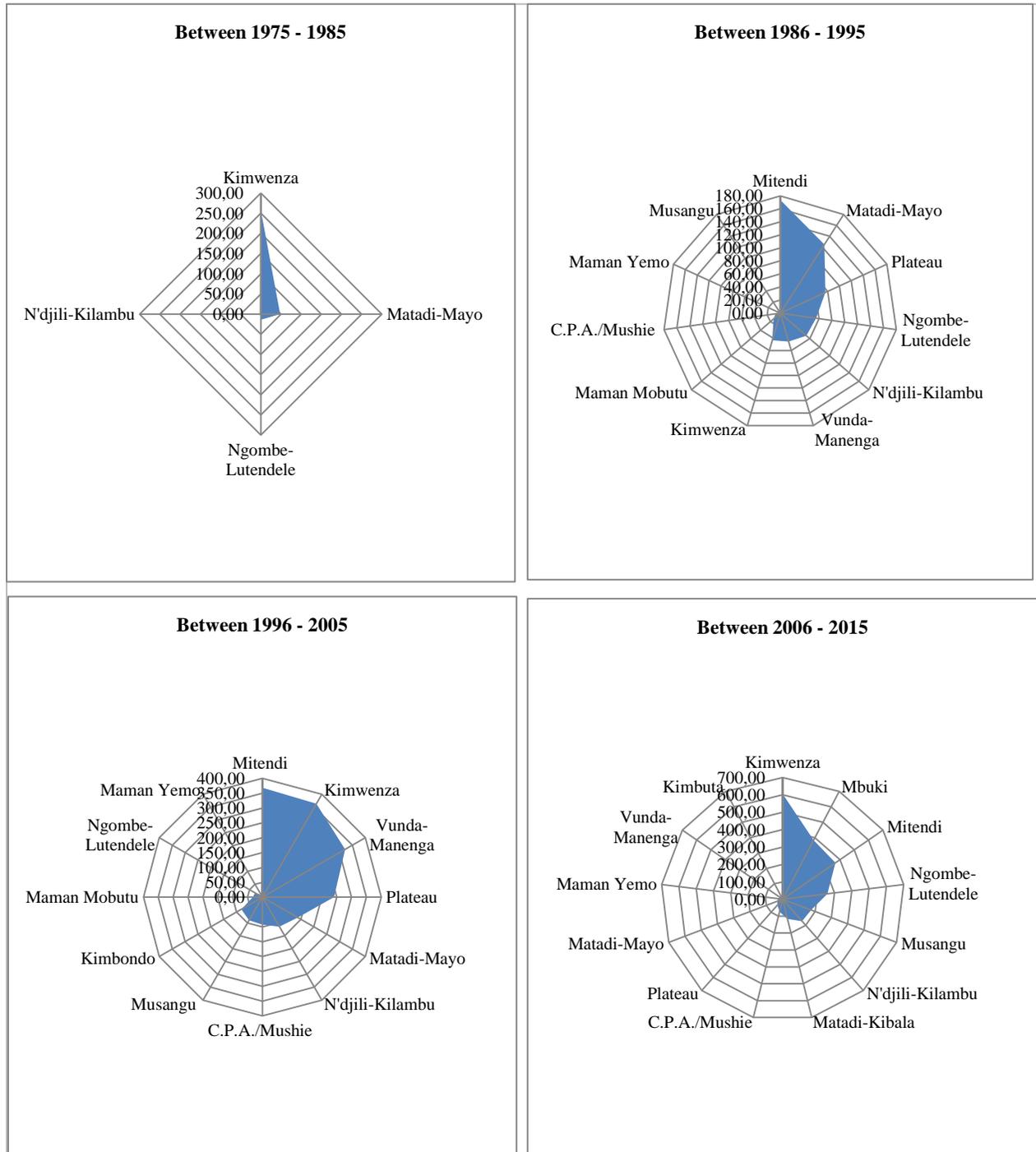
Periods	Number of concession	Total surface area (ha)	Average surface (ha)	Standard deviation
1976 - 1985	34	606,76	35,69	66,19
1986 - 1995	115	590,67	13,12	20,79
1996 - 2005	167	1912,85	11,18	21,10
2006 - 2015	181	2381,37	9,82	15,37

Source: authors, 2016

Indeed, analyse showed that increase of lands conceded is proportional to the number of farmers, but inversely proportional to the average surface. At Mont-Ngafula, during the four analyzed decades, the average surfaces and their standard deviations have decreased at the same rhythm. On the level of each quarter, the evolution of the surfaces conceded to the dealers was not done in the same way, as we can find in the following figure (Figure 4).



Figure 5 : Space and temporal evolution of the agricultural concessions in Mount-Ngafula



Source: authors, 2016



4.6. Type of contracts obtained by agricultural operators

The only document obtained after observations of the effective occupation of the ground and its development is the final contract (long lease or perpetual contract). The table below gives the general situation of the types of occupation title owned by the agricultural operators of Mont-Ngafula (Table 5).

Table 4 : Types of the contracts held by the farmers

	Effectif	Pourcentage
Final contract	10	2,01
Provisional contract	453	91,15
Unspecified statute	34	6,84
Total	497	100,00

Source: authors, 2016

There are only 2.01% farmers which hold the final contract, that is to say nearly 10 recorded farms out of 497. That means that the occupation and the valorization of the grounds in these ten agricultural concessions are real. The majority has only the Interim occupancy title (91, 15%).The others did not specify the nature of their land status.

5. Conclusion

The latter may already possess the land near traditional authorities or past farmer, but when he does not make administrative procedure near Conservator of Real estate titles (To lodge a claim for land under concession), the State can give this land to another person.

In the procedure of allocated of lands to farmers, all stages of request are triggered by the applicant (agricultural operator): The Request of using land in agricultural concession before taking the Lease, if the preliminary Investigation is positive; and, the Request of investigation of land use before taking a Final concession contract (registration certificate), if the investigation of land use is positive.

The communication shows that the farmers using the concessions in Mont-Ngafula present themselves to the traditional chiefs for permission to use the land and also present themselves to the Conservator of Real estate titles to obtain the Lease (Send of Interim occupancy title). But, do not initiate the Request of investigation of land use. This means that these farmers have an assurance of land use but do not do so for agricultural purposes, although it is in the name of agriculture that they demand agricultural concessions.



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



There is no legal provision in the Land Code who permits to Conservator of Real estate titles Conservator of Real estate titles to control these farmers before the expiry of the provisional contract (10 years) or the renewal of the final contract (25 years).

The length of time granted to farmers is too long to anticipate non-productive behavior. Some farmers take advantage of the surplus value to sell the land made available to others after several years of inactivity.

To prevent that the agricultural operators remain in the illegality vis-a-vis their approach and to lead them to really develop grounds which are put at their disposal, a certain number of the legislative measures must be taken upstream (to circumscribe the range of the common laws on the grounds of the local communities) and of the technical measures, downstream. These measurements must relate to the alignment of the popular approach of acquisition of the grounds (abstract procedure based on the respect of the traditional power) on the provisions of the land code. Then, the managers of land must dissuade the opportunist agricultural operators and encourage the professionals via the adoption of a certain number of accompanying measures (tax, obligation to reside in the concession, seasonal declaration of the level of harvests by speculation). The practical application of these measurements will allow, finally, that the agricultural concessions, to really contribute to the food supply of the surrounding populations, to fight against the food insecurity and to take part in the socio-economic development of the town of Kinshasa

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Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
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7. Tables

Table 1 : Destination of agricultural concessions solicited.....	10
Table 2 : Time between the agreement of traditional chiefs to use of land and primary investigation	11
Table 3 : Proportion of surface areas occupied by agricultural concessions in Mont-Ngafula.....	13
Table 4 : Types of the contracts held by the farmers	15

8. Figures

Figure 1 : <i>Outline of the commune of Mont-Ngafula on the map of Kinshasa</i>	4
Figure 2 : <i>Procedure of obtaining an agricultural concession in Democratic Republic of Congo.....</i>	8
Figure 3 : <i>Origin of famers.....</i>	9
Figure 4 : <i>Evolution of primary investigations per decade</i>	12
Figure 5 : <i>Space and temporal evolution of the agricultural concessions in Mount-Ngafula.....</i>	14