

**Property Taxation in Francophone Africa 3:  
Case Study of Democratic Republic of the Congo**

Jean Jacques Nzewanga

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## **Abstract**

The Lincoln Institute and the African Tax Institute (ATI ), located at the University of Pretoria, South Africa, have formed a joint venture to better understand property-related taxation in Africa. Its goal is to collect data and issue reports on the present status and future prospects of property-related taxes in all 54 African countries, with a primary focus on land and building taxes and real property transfer taxes. Each individual report aims to provide concise, uniform and comparable information on property taxes within a specific country or region, considering both the system as legislated and tax in practice. This paper provides a detailed case study of property taxation in the Democratic Republic of the Congo.

## **About the Author**

**Mr. Jean Jacques Nzewanga** of the Democratic Republic of Congo is a Ph.D. candidate in Economics at the University of Pretoria. Mr. Nzewanga received an M.Com. in Economics from the University of Pretoria, and a B.S. from the University of Kinshasa. He has served as a teaching assistant at the University of Kinshasa, and a researcher at the African Observatory for Human Rights and Democratic Development in Pretoria, South Africa. He is currently a Lincoln – African Tax Institute Fellow.

Email: [nzewanga@yahoo.co.za](mailto:nzewanga@yahoo.co.za)

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## **Introduction**

This report on land taxation in the Democratic Republic of the Congo (hereinafter “DRC”) comprises, apart from the opinions of experts on the matter, the different laws used by State-controlled financial institutions (specifically the General Tax Department (“GTD”)) enabling the Congolese State to act according to its rights and consequently to mobilise the necessary financial resources to initiate economic development which is long awaited by the Congolese people.

The report is divided into 6 parts, the first two giving a succinct overview of the DRC as a state (i.e. country), with reference to basic information as well as an outline of political development which lead to the establishment of a Republic with institutions put in place in a democratic way. The other four parts deal successively with land problems and problems relative to the property market in the DRC, taxes in general, taxes relative to real estate and finally, land and property taxation.

Land and property taxation is the main subject and it is examined in its different dimensions, namely taxpayers, exemptions, the determining of the rate of taxation, the taxation period and the payment of tax, the declaration of taxable items, the verification of declarations and the right to reminders, collection, proceedings, treasury guarantees as well as objections and appeals.

Finally, the report concludes with certain observations and criticism on the legal, social, political and economic issues, and in conclusion propose certain recommendations.

### **1. Basic Information**

The DRC comprises a surface area of nearly 2,345,000 km<sup>2</sup> and is situated in central Africa, bordering the Atlantic ocean. It is the third largest country in Africa, after Algeria and the Sudan and it is bordered by nine other countries, namely:

- The Central African Republic and Sudan to the north;

- Uganda, Rwanda, Burundi and Tanzania to the east;
- Zambia and Angola in the south; and
- The Republic of the Congo in the west.

The DRC attained its independence from colonial power on June 30, 1960 after having been governed by Belgium for approximately 75 years (1885-1960). The estimated population of the DRC is 60 million inhabitants and the urbanisation rate is a mere 32%. After its independence in 1960, the DRC did not have political stability until 24 November 1965 when the military coup d'état brought General Joseph-Désiré Mobutu to the position of head of state. From the beginning of the 1990's the Mobutu regime governed the country with a semblance of democracy, until the arrival of the AFDL under the leadership of Laurent Désiré Kabila in 1997. The Kabila regime in turn was attacked by the coalition of countries (namely Rwanda, Burundi and Uganda) which originally helped him to come to power. After his assassination in 2001 he was replaced by his son Joseph Kabila. After the South African brokered Sun City agreements in 2003, a government of national unity was established, grouping together the different protagonists apart from the UDPS of Mr Etienne Tshisekedi which was the first party to ask for the democratisation of the institutions back in 1982. The DRC witnessed free and democratic elections between 2006-2007 with a second round of presidential elections which saw Joseph Kabila as the first democratically-elected president of the DRC, 47 years after the country gained its independence.

## **2. Structure of Government**

The Constitution was submitted to a referendum in 2006 and established the following structure:

- President of the Republic;
- A Parliament with two Houses;
- Government;
- Courts and tribunals with ordinary and specialised courts.

The present administrative hierarchy in the DRC is based on **decree-law 081 of July 8, 1998** regarding the territorial and administrative organisation of the DRC. This decree divided the DRC into 11 provinces, each consisting of municipalities (in urban areas) and territories (in rural areas). The municipalities comprise of towns, communes, or groups and areas, whereas the territories comprise districts, territories, cities, areas, groups and villages.

Provinces are governed by a Governor, communes by a mayor (or “burgomaster”), territories by a territorial administrator, towns by a mayor, and districts by a district commissioner. The City of Kinshasa, which is the capital of the DRC, has one peculiarity in the sense that it is a city-province and therefore is not divided into towns and districts and does not have a mayor. Certain provinces do not comprise districts (for example South Kivu) and certain territories are not dependent on a district, but on a town, (for example Moanda). The following entities have been decentralised:

- Provinces
- Towns
- Territories
- The city of Kinshasa commune

The administrative centres and/or main towns in the provinces are populated in the following way:

1. **Bandundu Province:** the town of Bandundu comprises approximately 117,197 inhabitants and the town of Kikwit 294,210;
2. **Bas-Congo Province:** the town of Boma has 171,552 inhabitants and the town of Matadi, 245,862;
3. **Equateur Province:** the town of Gbadolite has 42,647 inhabitants, the town of Mbandaka, 262,814 and the town of Zongo 28,105;
4. **Orientale Province:** Kisangani has 682,599 inhabitants;
5. **Kasai-Occidental Province:** Kanaga 720,362 inhabitants and Tshikapa 366,503;
6. **Kasai-Oriental Province:** MbujiMayi 1,213,726 inhabitants and Mwene-Ditu 170,786;

7. **Kinshasa Province:** 7,273,947 inhabitants;
8. **Maniema Province:** Kindu 135,534 inhabitants;
9. **Nord-Kivu Province:** Beni 81,286 inhabitants, Butembo 165,333 inhabitants and Goma 249,862;
10. **Katanga Province:** Lubumbashi 1,283,380 inhabitants, Kolwezi 456,446 and Likasi 367,219;
11. **Sud-Kivu Province:** Bukavu 471,789 inhabitants

With the aim on the one hand to consolidate national unity damaged by successive wars and, on the other hand, to create new impetus and development centres from the beginning, the Constitution submitted for referendum in 2006 proposes that the DRC should administratively be restructured into 25 provinces plus the city of Kinshasa as legal entities and exercising local competencies enumerated in the Constitution. Over and above these competencies, these provinces will also exercise other powers and functions jointly with the central government and sharing the national revenue with the latter on a pro rata basis – 40% (for provinces) and 60% (for national government) – to be deducted at source.

The new Constitution is supposed to be fully enacted 36 months after the date of signature, namely in 2009.

According to section 195 of the Constitution the provincial institutions are as follows:

1. Provincial assembly
2. Provincial government.

### **3. Land Problems and the Property Market**

- a) Land system (land tax: cfr appendix)

The land system in the DRC refers to law no. 73-021 of July 20, 1973 in respect of the general assets system, land and real estate system and securities system. In these

preliminary measures, the land system clearly stipulates in sections 53, 54, 55 and 56 that the land is the exclusive, inalienable and imprescriptible property of the State and that the State's land capital consists of a public and a private domain.

The public land domain of the State is made up of all land which is earmarked for public usage or a public service. As long as it is not regularly in disuse, public domain land cannot be given out in concessions. Land which forms part of the State's public domain is governed by measures particular to assets pertaining to usage or public service. All other territories constitute the State's private domain and are governed by the so-called land system and its implementation measures.

Land which is part of the State's private domain can be urban or rural, and earmarked for residential, commercial, industrial, or agricultural use, or for animal rearing according to its purpose.

According to section 57 of the land system, in a general sense, the State's private domain can be a *perpetual concession*, an *ordinary concession* (emphyteosis, surface area, usufruct, usage and rental) or a *land servitude* which are all real rights.

In section 61 of the land system concession is defined as being the contract by which the State recognises that a group, a natural person or a juristic person according to private or public law, has the right to use a fund according to the conditions and methods prescribed by the law and its implementation procedures. Concessions are granted either free of charge or for a fee and in the latter case, at a rate in force on the date of signature of the contract, except if the contract has been concluded by virtue of the option for a fixed charge granted by a previous agreement.

In the case of areas established in urban constituencies, the President of the Republic or his representative has a map drawn up of plots to be granted. It must also be noted that in the rural regions traditional chiefs, in practice, distribute and allocate land (e.g., Kimwenza in Kinshasa).

Still according to the land system, *a perpetual concession* is defined as the right which the State recognises that a natural person of *Congolese nationality* has to use his assets indefinitely as long as the conditions pertaining to the funds and the procedures prescribed by the law are fulfilled.

In summary, and in order to give a proper summary of matters dealt with in the above mentioned land law, we will return to the various chapters of material referring to it.

Dealing with matters relative to the perpetual concession, the land law deals in turn with the rights and obligations of parties to the concession contract, the way in which concessions are terminated, special measures regarding emphyteosis and surface area rights, special measures pertaining to rental, surface area, usufruct, usage and rental.

The second chapter deals with measures particular to rural land and a third chapter comments on free concessions for Congolese physical persons and are to the advantage of public organisations for private institutions of public usage and associations.

The fourth chapter deals with servitudes, namely general measures, servitudes which arise from the situation of the area, servitudes established by the law and servitudes established by agreement. The three last chapters or sections deal with competency rules in land matters, and procedural rules, namely applications and previous enquiries regarding concessions. The last chapter deals with penalties pertaining to land matters. This summarises material dealt with by the land law in the DRC, being law no. 73-021 of July 20, 1973 pertaining to the general system of assets, land and real estate system and securities system (Cfr. Appendix).

b) Procedures and organisations of property deed market

Procedures and property deed market organisations are also governed by law number 73-021 of July 20, 1973 in respect of the general assets system, the property and real estate system and the securities system as amended and completed by law no. 80-008 of July 18, 1980.

## 1. The case of a draft contract on signature/rental contract

Such cases are governed by law no. 74-149 of July 02, 1974 determining the number and limits of the property constituencies of the DRC as well as section 190 of law no. 73-021 of July 20, 1973. According to these two laws, there must be a plot of land in existence (i.e. a generating fact) and following that the claimant must submit a request for land to the registrar of real estate titles.

### 1.1. Obligations in respect of a rental contract (draft)

These obligations are governed by section 66 of the above-mentioned law and section 2 of an inter-ministerial decree, no. 064/CAB/MIN/AFF.F/2005 and 206/CAB/MIN/FINANCES/2005 of July 7, 2005 in respect of the determination of the rates of fees, taxes and charges to be deducted on the initiative of the Ministry of Land Affairs in the context of the operation of conversion of real estate and property titles for the cities of Kinshasa and Lubumbashi.

In practice the following elements are necessary:

- a charge of 20 Ff (i.e., fiscal franc)
- an establishment tax of 5 Ff;
- transcript fee of 5 Ff;
- registration certificate of 10 Ff;
- usage notification of 2 Ff;
- measuring and boundary marking costs of 8Ff.

N.B.: The fiscal franc (Ff) is the equivalent of the US dollar in Congolese francs according to the current exchange rate.

### 1.2. Transfer of lease/change of address

In property matters, there is a change and a transfer of lease only in the case of a rental contract.

Such cases are governed by inter-ministerial decree no. 0421 CAB/MIN/AFF.F/2005 and no. 068/CAB/MIN/FINANCES/2005 of May 26, 2005 regarding determination of the rate of fees, taxes and charges to be deducted on the initiative of the Ministry of Land Affairs, item 3: special tax for transfer of rental contracts. In practice, the following conditions are required:

- Change of denomination: 400 Ff;
- transfer of rental contract: 75% of reference price (RP);
- transfer of lease (legalisation): 20 Ff;
- annotation: 7 Ff.

**N.B.:** Reference price (RP) = the surface area, multiplied by the reference price per square metre index, multiplied by the number of years of the lease.

### 1.3. Proportional rights of registration in cases of transfer

In property matters, transfer can only occur when the owner has in his possession a registration certificate. This certificate is handed out only when the upgrading is sufficient, namely the built up property multiplied by the coefficient 5 must be greater in relation to the surface area of the plot. These cases are governed by inter-ministerial decree of May 26, 2005, item 2.

In practice, the following conditions are required:

- Sale: 6% of the value of the building;
- Inheritance: 1.5% of the value of the building;
- Donation: 6% of the value of the building;
- Contribution: 3% of the value of the building;
- Consolidation: 1.5% of the value of the building;
- Subdivision: 1.5% of the value of the building;
- Emphyteosis fee: 1% of the value of the building.

## 4. Taxes

In the DRC there are three directorates or departments responsible for the collection of different taxes, namely:

1. **The General Tax Office** (DGI) who has the responsibility for collecting or deducting the following direct taxes:
  - Professional tax on remuneration (5-60%);
  - Exceptional tax on expatriate personnel remuneration (33%);
  - Tax on moveables (20%);
  - Tax on the interior turnover (6% -18%);
  - Tax on earnings and profits (40%);
  - Deduction of tax at source on earnings and profits (2%);
  - Property tax;
  - Tax on rental revenue (22%);
  - Rental deductions (20%) ;
  
2. **The General Office for Administrative and Domanial Revenue** (DGRAD) which is responsible for collecting administrative, judicial, domanial and participation revenue;
  
3. **Customs and Excise Office** (OFFIDA) which is responsible for collecting customs and excise taxes.

According to section 171 of the new Constitution, central government finances as well as provincial finances are separate, and may only be levied (and exemptions or tax relief granted) by law. Section 175 stipulates that national revenue allocated to the provinces is set at 40% and that the law shall determine the list of other local revenue sources and the method of their collection.

Section 180 of the Constitution makes clear that the National Audit Office (which is dependent on Parliament) exercises control, in accordance with procedures determined by the law, over the management of State finances, public assets as well as the accounts from provinces, decentralised territorial entities as well as all public entities.

A national cross-subsidisation fund has been instituted and placed under the authority of the government. The purpose of this fund is to finance public projects and investment programmes with a view to guaranteeing national solidarity and to correcting the imbalances in the development amongst provinces and amongst the other decentralised territorial entities. It has a budget funded by the public treasury up to 10% of the total national revenue received by the State each year (as stipulated in section 181 of the Constitution).

Amongst the matters which are *exclusive responsibility of the central government* (section 202 of the Constitution) the following can be noted:

- The Republic's public finances;
- The establishment of taxes on revenue, taxes on companies and personal taxes in conformity with section 174;
- The Republic's public debt;
- External loans for the needs of the Republic or the provinces;
- Internal loans for the Republic's needs;
- Customs and import and export duties.

Amongst matters which concern *the central government and provincial government*, the following can be noted, inter alia:

- The establishment of taxes including excise and consumption duties, excluding taxes referred to in section 174 of the Constitution;
- Property and mining duties, the development of the territory, water and forestry administration.

The following can be noted as being *exclusive to the provinces*:

- Provincial public finances;
- Provincial public debt;
- Internal loans for the needs of the provinces;
- The issuing and safekeeping of real estate titles in conformity with national legislation;
- Taxes and local and provincial duties, namely property tax, tax on rental revenue and tax on self-propelled vehicles.
- 

Section 205 of the Constitution makes clear that a provincial assembly may not pass laws on matters which are exclusively the domain of the central government. Reciprocally, the national assembly or the Senate may not pass laws on matters which concern provinces only. It must be noted that national legislation takes precedence over provincial legislation.

Customary authority is recognised in the DRC and devolves in conformity with local customs as long as these customs are not contrary to the Constitution, the common law, public order and good morals.

## **5. Taxes Relative to Fixed Property**

### **5.1 Division of fixed property titles**

Refers to sections 2 and 3 of the signed draft contract.

#### **5.1.1 Signed draft contract**

The signed draft contract is regulated in terms of inter-ministerial decree no. 04/CAB/MIN/AFF.F/2005 and no. 067/CAB/MIN/FINANCES/2005 of May 30, 2005 determining the reference price, rentals and charges for domanial plots situated in the property constituencies of the City of Kinshasa.

In practice, the rent is set according to the reference price multiplied by the rate of the rental of the annual charge.

1.1. Category A: Gombe commune 0,20 Ff up to 1 hectare. The rate varies according to the purpose of the building. The initial lease is set as follows:

- 50% residential;
- 60% commercial;
- 55% mixed;
- 70% industrial.

1.1.2. Category B<sub>1</sub>: The communes of Ngaliema, Lemba, Matete, Bandalungwa, Kalamu, Kasa-Vubu, Barumbu, Kinshasa, Kintambo, Linguala and Ndjili, up to 1 hectare 0,75 Ff. The rate also varies according to the purpose of the building and the initial lease remains the same as in Category A.

1.1.3. Category B<sub>2</sub>: Ngiri-Ngiri, Masina, Maluku, N'sele, Bumbu, Kimbanseke, Kinsenso, Makala, Selembao, Ngaba, Mont-Ngafula, Limete (Kingabwa-village area and Mombele Ndanu area) 0,50 Ff up to 1 hectare. Mososo area 0,20 Ff/ha. The initial rate and the initial lease is the same.

1.1.4. Category C: 0,10 Ff/ha and the initial rate is the same. The following communes are concerned: Ngaliema (areas parcelled out), N'djili area 7, Masina, Lemba (Gombele, Righini, Camp riche areas), Barumbu (bon-marche area), Kintambo (Jamaïque area), Lingwala (Golf mont des arts area), Mont-Ngafula (commune area), Selembao (Ngafani cité verte area).

The renewal rate is established in the following way:

(a) First renewal

- residential: 60%;

- commercial: 70%;
- mixed: 65%;
- industrial: 80%.

(b) Second renewal

- residential: 70%;
- commercial: 80%;
- mixed: 75%;
- industrial: 85%

According to section 8 of the signed draft contract (inter-ministerial decree of May 26, 2005), this rental is due each year for three years. The other costs are:

- tax on the drawing up of the contract: 3,8 Ff;
- costs for the termination of the contract: 7 Ff;
- sketching fees: 0,6 Ff.

5.1.2 Draft perpetual concession contract

This is regulated by the same inter-ministerial decree. In practice, the following items are referred to:

- reference price of land;
- product of perpetual concessions (reference price);
- tax on the upgrading report: 3Ff;
- registration certificate tax: 6Ff;
- usage account: 2,4 Ff;
- measuring and marking out fees: 3Ff;
- provisional occupation: 375 Ff.

**5.2 Cadastral division**

5.2.1 Copies of property real estate and cadastral documents

The following fees are required:

- reproduction: 6Ff;
- quoted copy extract, maps: 2,4 Ff;
- copy of contract: 2,4 Ff;
- copies of cadastral map: 12 Ff.

#### 5.2.2 Survey fees and contract relative to property matters

- Waste of time day: 3,4 Ff;
- Indivisible day: 4Ff;
- Survey report: 15 Ff;
- Hearing report in case of conflict: 7Ff;
- Transcript of area report: 3Ff.

**N.B.:** Apart from points and various matters mentioned in points **III.b** and **V**, Congolese fiscal legislation does not specifically mention inheritance duties or tax on donations, whereas it is anticipated that VAT will be introduced in 2009.

It is important to point out that the inter-ministerial decrees of May 26 and May 30, 2005 abrogated preceding inter-minsterial decrees (including those of November 21, 2001 which were not even published in the official journal, but which were more comprehensive as they determined the fees and duties for the Republic as a whole), setting fee tariffs in land, real estate and cadastral matters as well as regarding the water system and registration in the Democratic Republic of the Congo.

## **6. Annual Property Tax**

Property tax is part of taxation referred to as “real” according to Congolese fiscal legislation and it is established on a number of real estate or movable assets mentioned specifically by the law.

The expression “real” comes from the Latin term “res” which means “thing”. It means therefore that it is a tax which refers to the following “things”:

- The surface area of real estate, whether built or not built, situated in the DRC;
- Vehicles;
- The surface area of mining and hydrocarbon concessions.

However, it is necessary to mention the problem of land taxation in the DRC before examining land tax. Since this tax is based on land, one could imagine that deductions would be an easy matter to the extent that land is a “fixed” taxable object which does not move and is therefore easily identifiable. In reality this is not the case in the DRC.

Although the land law (law of July 20, 1973 in respect of the general system of assets, the land and real estate system as well as the sureties system, as modified and completed by the law of July 18, 1980) sets out the principle according to which the land and sub-soil are the property of the State, the Congolese people think, in their collective imagination, that the land belongs to them in an intimate and inalienable way, having been handed down to them by their ancestors. For this reason it is difficult for them to understand why they are required to pay land tax to anyone at all.

It is also necessary to point out that possessing land or a building in an urban centre is a definite indication of wealth which would then mean that the title holder is required to pay taxes when, in addition, one is aware of the numbers of homeless people in different urban centres. Consequently, property tax is a tax based on the surface area of built or vacant properties in the DRC.

## **6.1 Exemptions and Exclusions**

Section 2 of the relevant fiscal code has been modified by laws number 69-060 of December 5, 1969, 76/072 of March 26, 1976, 77/016 of July 25, 1977 and 87-075 of

October 4, 1987. According to this section, properties belonging to the following instances are exempt from property tax:

- 1.1. The State, provinces, towns, territories, communes, administrative constituencies as well as offices and other public institutions of Congolese who have no resources other than those coming from budgetary grants;
- 1.2.
  - a) Religious, scientific or philanthropic institutions which fulfil the conditions required by the law of September 18, 1965;
  - b) private associations dealing with religious, scientific or philanthropic work which have received civil personality by application of Section 2 of decree of December 28, 1888 and mentioned in Section 5 of the law of September 18, 1965;
  - c) institutions of public use created following the application of the decree of July 19, 1926;
  - d) non-profit associations whose purpose is to assist religious, social, scientific or philanthropic work which have received civil personality by virtue of special decrees;
- 1.3. foreign States and used exclusively as offices for embassies or consulates or for the accommodation of agents who have the status of diplomatic or consular agents. This exemption is only granted on condition of reciprocity;
- 1.4. physical persons whose net annual taxable income is equal or less than the ceiling of the 8<sup>th</sup> revenue tranche of the scale mentioned in Section 84 of law no. 69/009 of February 10, 1969 pertaining to (cedulaire?) tax on revenue, as amended by law no. 015/2002 of March 30, 2002, or in respect of all amounts proportionally equivalent for periods of less than one year on condition of proof of payment of professional tax on remuneration or of the minimum personal tax.

Section *2bis* (established by law no. 77/016 of July 25, 1977 and amended by law no.87-075 of October 4, 1987) stipulates that persons who on the 1st of January of the tax year

are over 55 years of age and widows, are exempt from land tax for buildings or one of the buildings used as a main residence, on condition that:

- a) they occupy their main residence either alone or with people considered to be dependent on them as defined in Section 90 of law no. 69/009 of 10 February 1969, or with any other person of the same age and in a similar situation;
- b) their taxable income at (cedulaire?) taxation on revenue must be equal to or less than the ceiling of the 8<sup>th</sup> tranche of the scale as mentioned in Section 84 of law no. 69/009 of 10 February 1969, as amended by law no. 015/2002 of 30 March 2002;
- c) they are required to conform to the measures contained in Sections 28 and 36 of law no. 69-006 of 10 February 1969.

According to Section 3, amended by law no. 87-075 of October 4, 1987, exemption from property tax is granted in respect of buildings or parts of buildings which are:

- 1) used by the owner exclusively for agriculture or animal breeding purposes, including the buildings or parts of buildings which are used for preparing agricultural or breeding products on condition that the latter result from the taxpayer's operations in a proportion at least equal to 80% of all products handled;
- 2) which an owner will have used, but for non-profit purposes:
  - either in cases of public religious ceremonies or teaching or scientific research or setting up of hospitals, hospices, clinics, dispensaries or other similar welfare work;
  - for normal activities of chambers of commerce who have obtained legal personality status;

- for social activities of mutual companies and professional unions who have obtained legal status, with the exception of premises used for accommodation, alcohol outlets or any kind of commercial activity.

The person in the Ministry responsible for finances will determine the conditions to which the aforesaid companies or associations are required to submit.

The same law, in section 4, exempts the surface area of land which a land owner who is not engaged in any kind of profit-making uses for one of the objectives mentioned in the in the three points above. Exemptions from land tax may be granted by virtue of the investment code or as a result of special agreements (see section 5). However, this exemption does not exempt beneficiaries from obligations imposed by the same law and in particular those relative to the statement (section 6). According to section 7 (amended by law no. 70-087 of December 23, 1970) the exemption mentioned in section 5 is only maintained on condition that the beneficiaries do not fall under one of the cases mentioned in section 56 paragraphs 2, 3 and 4.

## **6.2 Taxpayers**

According to section 8, which has been amended in conformity with law no. 87-075 of October 4, 1987, land tax is due by the title holder of the property deed, possession, emphyteosis, surface area, transfers, concession or usufruct of taxable assets as well as by persons occupying (by virtue of a lease) real estate assets which are part either of the private domain of the State, provinces, towns and communes, or of the inheritance of constituencies. Section 9 makes it clear that property tax is due by the owner even if by agreement of lease, the tenant has committed himself to pay it, and if the administration has been advised of this occurrence.

According to fiscal legislation, the payment in full of land tax is the responsibility of the owner. The administration does not intervene for purposes of the possible distribution of taxes between owners and tenants (section 9).

In the case of a transfer of a property following a sale or for any other reason, the new owner is required to declare it to the Taxation Administration within a period of one month from date of transfer. Failing that, the new owner will be required to pay all property taxes which are still due on the building, jointly with the former owner (section paragraph 1). The statement in paragraph 1 must be accompanied by a certified copy of the original document providing proof of the change of title holder of taxable assets to the satisfaction of the administration.

According to Section 12 (amended in conformity with law no. 004/2003 of March 13, 2003), the collection of land tax included in the register or the collection notice in the former owner's name of a building whose title holder has changed, can be prosecuted by virtue of the same register or the same collection notice as a responsibility of the actual taxpayer. This debtor is required to receive a new copy of the warning extracted from the register or the collection notice that it has been issued by virtue of the present measure.

### **6.3 Determination of the Rate of Taxation**

Section 13, amended by law no. 87-075 of October 4, 1987 and law no. 111/2000 of July 19, 2000 instituting land taxation, stipulates that land tax is an annual flat-rate tax on *built or non-built properties* where the amount varies according to *the nature of the buildings and the area ranking*. **However, in the case of houses situated in 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> or 4<sup>th</sup> zoned areas, property tax is imposed according to the surface area that has been built.**

According to ministerial decree no. 019/CAB/MIN/FIN/97 of October 8, 1997, section 1, localities are ranked as follows :

#### **I. First rank localities**

##### **A. City of Kinshasa**

- Gome commune: all areas ;

- Limété commune: all areas except Mombele, Musoso, Salongo and Kingabwa-village areas;
- Ngaliema commune: areas of Ma-campagne, IPN, Binza pigeon, Monts fleuris, avenue des Ecuries, Mampenza area, Golf area, Mimoza area, Utxafrica area, G.B.& Baramoto areas, Chanic area & surrounding areas.
- Barumbu area: Bon-marché area (from l’avenue de l’aerodrome to the Bitshaku Tshaku bridge) ;
- Lemba commune: Gombele area.

#### B. Other provinces

- Bas-Congo :Matadi : Soyo area (ville haute), shopping centre (ville basse) ;
- Katanga : Lubumbashi : Lubumbashi commune;
- Sud-Kivu : Bukavu : Ibanda commune;
- Nord-Kivu : Goma : shopping centre and residential, Himbi area;
- Kasa-Oriental : Mbuji-Mayi : Miba area;
- Province Orientale : Kisangani : Makiso commune, Tshopo industrial area, Mangobo area.

#### C. International airports and maritime ports

## II. Second rank localities

#### A. City of Kinshasa

- Matete commune: Marais area;
- Lingwala commune: Boyata area, Golf area;
- Lemba commune: camp-riche, cité Salongo ;
- Limete commune: Salongo area;
- Selembao commune: cité verte, Ngafani 1 area (500 metres from the main road from the avenue de l’école, crosses l’avenue Lilas), Ngafani 2 area (500 m from

- the main road from Fwakin to the residential entrance), Ngafani 3 area (500 m from the main road from the residential area to the beginning of cité-verte) ;
- Mont Ngafula commune: cité maman Mobutu, Mama Yemo area (1,50 km from the main road from the triangle to the Liyolo domaine, Munongo area (300 m from the main road), Masanga Mbila area (1,50 km from the main road from Liyolo domaine to the avenue des écologistes) ;
- Kintambo commune: Jamaïque area and shopping centre.

#### B. Other provinces

- Bas-Congo : Matadi : Matadi commune;
- Province-Orientale : Bunia : shopping centre, Isiro : Raquette area;
- Nord-Kivu : Goma, Butembo (shopping centre, M.G.L. area), Béni (shopping centre), Boeken area;
- Equateur :Gbadolité (city centre), Mbandaka (city centre) ;
- Katanga : Lubumbashi : Kapemba commune, Likasi (city centre), Kolwezi (city centre) ;
- Bandundu : Kikwit : Kikwit commune: plateau and lower town ;
- Kasai-occidental : Kananga : Kananga 2 area, industrial area, city centre.

#### C. The river ports of Kinshasa and Kisangani

### III. Third rank localities

#### A. City of Kinshasa

- Kalamu commune: all areas;
- Kasa-Vubu commune: all areas;
- Kintambo commune: all areas except those listed in 1<sup>st</sup> and 2<sup>nd</sup> ranks and Luka camp;
- Limete commune: Musoso area;
- Lemba commune: all areas except Gombele, camp riche and salongo areas;

- Bandalungwa commune: all areas;
- Kinshasa commune: all areas;
- Barumbu commune: all areas except for Bon marché area;
- Lingwala commune: all areas except for the Marais area;
- Ngiri-Ngiri commune: all areas;
- Masina commune: wireless area;
- Ndjili commune: areas 1, 2, 3, 4, 7 et 12;
- Mont Ngafla commune: all areas except for maman Yemo and cité maman Mobutu areas;

B. Other provinces

- Bas-Congo : Mwanda (1 km from the coast), Mbanza-Ngungu, Inkisi, Boma ( Nzadi commune) ;
- Sud-Kivu : Uvira : Mulongwe area, Bukavu : Bagira and Kadutu areas;
- Nord-Kivu : Goma ( Katindo area left) ;
- Maniema : Kindu (city centre), Kalima : centre Kalima ;
- Katanga : town of Kipushi, Kamina/ville, Kalémie and Lubumbashi ( Rwashi commune) ;
- Bandundu : town of Bandundu ( Salongo area), kikwit except the lower town and the plateau) ;
- Kasai-occidental : Kananga : Bianchi area, Ilebo and Tshikapa ;
- Kasai-oriental : Mbuji-Mayi nouvelle ville and Bipemba commune except for Miba, Mwene-Ditu areas, city centre, Lusambo, Ngandajika, Kabinda and Lodja ;
- Equateur : Bumba (shopping centre), Boende (shopping centre), Basankusu (shopping centre) and Mbandaka except for the city centre, Gemena (city centre) ;
- Province-Orientale : Bunia ( Nyakasanza area), Yabiyaya area and Mujipela area.

C. The other ports and airports built with durable materials.

**IV. Fourth rank localities**

All localities or parts of localities not listed elsewhere.

Additional measures created by section 26 of law number 81-009 of March 27, 1981 empowers the Minister responsible for finances to amend the rates in matters of property tax when the economic and budgetary situation requires it.

The ministerial decree number 081 of February 26, 2002 sets the land tax rates on the *surface area of the houses* in the following way :

- A) In first rank localities : 1.50 Ff/m<sup>2</sup>.
- B) In second rank localities : 1 Ff/m<sup>2</sup>.
- C) In third rank localities : 0.50 Ff/m<sup>2</sup>.
- D) In fourth rank localities : 0.30 Ff/m<sup>2</sup>.

Whereas the annual flat-rate tax is determined as follows:

## **I. BUILT PROPERTIES**

### **A. Regarding first rank localities :**

- 75.00 Ff per floor for buildings belonging to moral persons;
- 37.50 Ff per floor for buildings belonging to physical persons and situated in Kinshasa;
- 30.00 Ff per floor for buildings belonging to physical persons and situated in the interior of the country;
- 75.00 Ff for flats;
- 11.00 Ff for other buildings.

### **B. Regarding 2<sup>nd</sup> rank localities:**

- 37.50 Ff per floor for buildings belonging to moral persons;

- 22.50 Ff per floor for buildings belonging to physical persons and situated in Kinshasa;
- 19.00 Ff per floor for buildings belonging to physical persons and situated in the interior of the country.
- 37.50 Ff for flats;
- 7.50 Ff for other buildings.

**C. Regarding 3<sup>rd</sup> rank localities:**

- 30.00 Ff per floor for buildings belonging to moral persons;
- 11.00 Ff per floor for buildings belonging to physical persons and situated in Kinshasa;
- 7.50 Ff per floor for buildings belonging to physical persons and situated in the interior of the country;
- 18.75 Ff for flats;
- 7.50 Ff for other buildings.

**D. Regarding 4<sup>th</sup> rank localities:**

- 22.50 Ff per floor for buildings belonging to moral persons;
- 7.50 Ff per floor for buildings belonging to physical persons and situated in Kinshasa;
- 4.00 Ff per floor for buildings belonging to physical persons and situated in the interior of the country;
- 11.00 Ff for flats;
- 1.50 Ff for other buildings.

**II. UNDEVELOPED PROPERTIES**

**A. 30.00 Ff** for land situated in 1<sup>st</sup> rank localities;

**B. 7.50 Ff** for land situated in 2<sup>nd</sup> rank localities in Kinshasa;

**4.50 Ff** for land situated in 2<sup>nd</sup> rank localities in the interior of the country;

- C. **2.00 Ff** for land situated in 3<sup>rd</sup> rank localities in the interior of the country;
- 3.00 Ff** for land situated in 3<sup>rd</sup> rank localities in Kinshasa;
- D. **1.50 Ff** for land situated in 4<sup>th</sup> rank localities.

Sections 14, 15 and 16 of law no. 111/2000 of July 19, 2000 makes clear that fractions of square metres are not taken into account for the tax base and that the taxable surface area is that which is determined by the external walls of the buildings or the construction. Where there are no exterior walls, the taxable surface area is determined according to fictitious limits resulting from the orthogonal projection on the land of the roof edges which cover the building or part of the building including also the surface area of verandahs, staircases, passages, balconies and terraces.

The following factors must also be taken into account in determining the total taxable surface area of the building or the construction, namely: the surface area of the parts of a building or a construction whether they are cellars, ground floor, floors or attics (section 17 of the same law). Only undeveloped land located in urban constituencies is taxable.

#### **6.4 Taxation Period and Collection of Tax**

In the DRC, the fiscal year coincides with the calendar year (section 22) and land tax is due for the entire year according to the taxable surface area in existence on 1<sup>st</sup> January of the year which names the fiscal year without transfer of property during the course of the aforesaid year being able to result in an entitlement to tax relief (section 23).

Newly-constructed buildings or buildings which have been considerably modified, are taxable according to their new surface area from the 1<sup>st</sup> of January following their occupation or their transformation. The owner is required to declare to the tax verification authorities the date of occupation or transformation of newly-constructed buildings or buildings which have been reconstructed or considerably modified within a period of one month from the date of this occupation or transformation. The owner is required to attach the plan of the newly-constructed or reconstructed or considerably modified building to his tax declaration. It must be noted that considerable modifications are considered to be those

which are likely to result in an increase or a decrease of the taxable surface area by at least 20% (section 24).

Following a claim from the tax payer submitted before expiry of the time frame for claims, tax relief proportional to the land tax is granted in a case where a constructed building, unfurnished, is totally unoccupied and totally unproductive regarding revenue, for a period of at least one hundred and eighty consecutive days in the course of the tax year and as long as the tax payer has advised the tax administration within two months after the beginning of the vacancy (section 25). When the expiry date of the claim time frame occurs before the end of the year for which tax is deducted, the claim mentioned in section 25 may justifiably be submitted within one month following expiry of the aforesaid year (section 26).

- Regarding the application of the measure contained in section 25, the term “building” must be interpreted in the sense of “part of an independent building which could be the subject of a definite rental contract”. This section refers namely to buildings, twin houses and buildings with multiple flats.
- In the event of a change of owner in the course of the year following sale, donation, inheritance etc, the possible periods of unoccupancy or total unproductivity in the mind of each owner, must be added. The situation of the building may be examined according to the application of section 25 within the framework of the entire year. The title holder of the property rights on the 1st of January, is the only one empowered to query the subscription and his claim may refer to the period of the year during which he no longer exercises the right of property on the building. Possible tax relief must be granted in his favour even if the causes of tax relief have been taken note of completely or in part in the new title holder’s mind.

## **6.5 Declaration of Taxable Items**

Congolese fiscal legislation (law 004-2003 of March 13, 2003 in respect of reforms of the fiscal procedures) requires that each natural or legal person must sign a statement each year

detailing all the taxable or exempted items (section 28). However, owners of exempted properties are exonerated from signing the statement mentioned in the section above.

This declaration must be in conformity with the pro forma example designed by the General Tax Office. This form is issued free of charge by the administration. The declaration signed by the debtor or his representative must mention the items that he owns as well as all information which is necessary for the application of the law. In a case where the declarant is illiterate, he will affix a thumb print of his right hand thumb in the space on the declaration which is reserved for signatures (section 34). Once the declaration has been completed, dated and signed, it must be handed over to the person verifying taxes and who is responsible for taxable items, before the 1<sup>st</sup> of April of the fiscal year for those items which the taxpayer owns on the 1<sup>st</sup> of January.

- Except for contrary notification by the taxpayer before the 1<sup>st</sup> of January, the most recent declarations are valid for the ensuing years. However, the Tax Administration Office may partially or entirely review declarations each year or periodically.
  
- In the event of loss or of the obtaining of one of the exemptions referred to in Sections 2 to 5 the owner is required to declare this to the Tax Administration Office within a period of one month beginning from the date of loss or the obtaining of the aforesaid exemption.

Finally, those liable for land tax are required to hand in a declaration according to locality and for verification. This declaration must mention in particular:

- All buildings, whether they are taxable or not, situated on the same plot;
- The surface area of each plot.

Declaration forms are distributed to taxpayers at the opportune time. However, if the taxpayer does not receive the forms he is not exonerated from submitting the required declarations within the prescribed time frame. In such cases, taxpayers must request the necessary forms from the Tax Administration Office.

## **6.6 Verification of Declarations and the Right to Reminders**

Officials and agents from the Tax Administration Office are required to verify the accuracy of the declarations, to look for and ascertain violations. The Minister of Finance determines the conditions under which the above-mentioned officials and agents carry out their monitoring work. Land tax contributions are established by the tax verification officials or their deputies. These officials or agents automatically assess the taxpayers who have not submitted declarations on time and they review declarations which have been recognised to be false, inaccurate or incomplete. In these cases, they establish the tax base according to the best information at hand or that they are able to obtain without however, going as far as carrying out on-the-spot enquiries or verifications.

The automatic contributions take the form of declarations signed by the officials appointed according to the preceding points. When the person liable is automatically taxed, proof of the exact figure of the tax base rests with him in the event of claims.

The DRC's administrative services, including the prosecution, the courts and law clerks' offices, subordinated authorities as well as bodies and public institutions are required to furnish all information in their possession when asked to do so by an agent responsible for the establishment or the collection of taxes and to communicate to him, without displacement, all deeds, documentation, registers and documents of all kinds in their possession and to permit him to take all information copies or extracts which the above-mentioned official deems necessary.

By public body the following is understood: institutions, companies, associations and offices where the DRC participates in the administration, to whom it must supply a guarantee concerning the activity which it is supervising or whose administrative staff is appointed by the Government on its recommendation and on condition of its approval.

- All information, documentation, reports or deeds discovered or obtained during the carrying out of his work by an agent of the tax administration office, either directly

- or by the intermediary of the Minister of Finance or one of the services referred to above, may be cited by the DRC in the search for all sums due in respect of taxes;
- With a view to determining the tax base of a taxpayer, the tax verification agent may have recourse to the collaboration of provincial, regional or local authorities. The burgomaster is required to communicate to this official each month all buildings which have been newly constructed, reconstructed or significantly modified in his commune.

In the event where tax is not established during the ordinary time frames because of a lack of declaration, the late, false, inaccurate or incomplete tax which has been avoided, the tax payer concerned may be reminded of this anomaly for a period of ten years from 1<sup>st</sup> January of the tax year for which the tax should have been paid (the rate applicable is the rate in force for the fiscal year under consideration). In the event of taxation within a legal time frame, but after expiry of the fiscal year, the contribution is obtained through reminders of the fees for the closed year and the applicable rate is that which would have been used if the obtaining of that contribution had taken place before closure of the year to which the tax refers.

When a tax has been cancelled for not having been established according to a legal rule other than the rule for prescription, the Tax Administration Office may establish a new contribution at the taxpayer's cost, even if the time frame determined for the establishment of the contribution has elapsed, for all or part of the same tax items, within six months either from the date of the administrative decision or from the legal decision cancelled due to a ruling. (For the application, the following are also included: his heirs, spouse, associates in a company through shares, members of the family, company, association or community of which the head or director has already been taxed and reciprocally). The decision cancelling taxation marks the beginning of contributions.

## **6.7 Collection**

According to ordinance 76-072 of March 20, 1976, section 3, real taxation, except for vehicle tax, is the subject of registers drawn up by the receiver of revenue. The register is

made binding by the stamp of the director of taxes or the regional official who has been designated for that purpose.

A warning is sent to each taxpayer taken from the register indicating the basis and amount of taxes and these must be paid fully on the last day, at the latest, of the month following the month when the warning extracted from the register was sent. However, tax is immediately deductible in the following cases:

- A land tax in the event of the transfer of a building to which it refers;
- Land tax when it is determined automatically whether for one or several years (Law number 81-009 of March 27, 1981, Section 1).

Real or land taxes are payable to the receiver of revenue and become due immediately when the taxpayer makes arrangements either to leave the DRC permanently without leaving any movable or immovable assets in the country sufficient to guarantee the payment of due amounts, or alienates movable and immovable assets, or when he goes insolvent. Authorisation to leave the territory is subject to the presentation of a certificate to the security services issued by the receiver of revenue in the area where the relevant taxpayer is domiciled, confirming that the latter is not liable for any taxation in the DRC.

All delays in payments of all or part of taxes, duties, liabilities or any amounts whatsoever which are required to be paid in to the General Tax Office gives rise to the application of moratorium interest equal to:

- 8% per month of delays for duties issued, including penalties incurred;
- 16% per month of delays for taxation deducted at source, as well as for all or a part of the pre-deduction but not paid.

In the case of tax withheld at source, the commencement date of the moratorium interest must correspond to the first working day following that of the legal deadline (see section 9 of Law 098 of July 3, 2000).

In the case of taxes incurred, this commencement date corresponds with the day following the last day of the month which follows that of the dispatch of the warning extracted from the register. Moratorium interest is calculated from the first day of the month during which the tax should have been paid to the last day of the month of actual payment. Each period of a month that has already commenced, must be counted as one full month. Regarding the application of the said section, the paid-out amounts are charged on the oldest taxes and, for each contribution in the following order: cost of proceedings, penalties and tax.

## **6.8 Proceedings**

Collection proceedings for contributions to the register are carried out by the bailiffs at the request of the receiver of revenue. Bailiffs are responsible for summons, seizures and sales except for real estate sales. These are the responsibility of the notary. These proceedings are carried out according to constraints issued by the receiver of revenue and all claims in respect of payment of contributions and proceedings fall within the jurisdiction of this official. Except for a contrary decision by him, proceedings are disregarded, including seizure and sales notwithstanding any basic opposition. Disputes in the case of the validity and form of proceedings fall under the jurisdiction of the courts. In cases of disputes on this subject, the opposition will suspend the execution of the seizure until the judgment has been made.

All leaseholders, tenants, receivers, agents, economists, bankers, notaries, advocates, bailiffs, clerks of the court, curators, representatives and other trustees and revenue debtors, amounts, values or movables assigned to the authority of the Public Treasury (the Treasury has authority over all the movable and immovable assets of the person liable wherever they may be found) are required, on request which will be made by registered letter dispatched by the receiver of revenue, to pay the person liable and on the amount of funds or values which they owe or which are in their hands up to a limit of all or part of the taxes due by the latter. Should these third parties not satisfy this claim within a period of six days from receipt of the claim, the latter will be prosecuted as if they were direct debtors (the receipts of receivers are allocated to third parties).

However, payment may not be required from leaseholders or tenants before the expiry of their rentals or leases, but it is not necessary to renew the claim as long as taxes, which are the subject of this claim, remain covered by the authority of the Treasury and have not been totally paid with costs increase and other incidentals, including when amounts, revenues or values held by third parties are not assigned to the authority of the Treasury, these holders are not personally liable and they will be prosecuted by means of attachment. Attachment will be carried out according to formalities stipulated in Sections 105 to 119 of the Civil Procedure Code (Section 69).

Any taxpayer can be prosecuted when he has not paid his taxes on time. Before handing him over to the law, and except in a case where he would be of the opinion that a delay could compromise the interests of the Treasury, the receiver of revenue will send the tax payer a final warning, inviting him to pay within two weeks. When this delay has expired or without any delay at all if the receiver of revenue considers it necessary, a summons is sent to the taxpayer requesting payment within eight days on penalty of seizure of his movable and immovable assets.

After expiry of the time frame determined in the summons, the receiver of revenue will proceed with the seizure of any portion of movable or immovable assets or buildings which he deems necessary so that, once these have been sold, the proceeds will be sufficient to pay all amounts due. The assets seized will be sold up to a limit of amounts due and costs at least eight days after the taxpayer has been notified of the judgement. If no adjudicator is present, or if adjudication can only be carried out at a low price, the bailiff or the notary can refrain from auctioning. In this case, he is required to draw up a non-adjudication notice and the sales will be adjourned to a later date. It is possible to have several successive adjournments.

The gross proceeds of the sale are paid to the receiver of revenue who, after having deducted all amounts due, will hold the surplus at the disposal of the relevant person for a period of two years. On expiry of that period, amounts which are unclaimed will revert to the Treasury.

The measures in force regarding seizure and sales by legal authority in civil and commercial matters are applicable to seizures and sales carried out for the collection of due taxes, but only in as far as there is no departure from the measures of the said chapter. However, the receiver of revenue may, in all cases where the rights of the Treasury are in jeopardy, have the movable assets of the defaulter protectively seized with the authorization, according to the case, of the director of taxes or the designated regional official. This protective seizure is converted into an execution seizure by decision of the latter official. This decision must take place within a time frame of two months from the date of the protective seizure. The heirs of a deceased taxpayer are required to pay due taxes by the *de cuius* up to the limit of their portion of the inheritance.

The collection of real taxes prescribes after 30 years from the enforceable date of the register. This period may be interrupted according to stipulations in sections 636 and according to the Civil Code as well as by renunciation of the elapsed period of the prescription. In a case of interruption of the prescription, a new prescription, liable to be interrupted in the same way, is acquired thirty years after the last interruptive act of the preceding prescription if there is no court appeal.

## **6.9 Treasury Guarantees**

The following four points are important:

1. For the collection of taxes increases, fines and costs, the Treasury has general authority over all movable and immovable assets belonging to the debtor wherever he may be. This authority also applies to the movable and immovable assets of the debtor's spouse, to the extent to which collection of taxes may be carried out in respect of the aforesaid assets.

This authority is valid above any other and for a period of two years from the enforceable register date. The seizure of assets before expiry of this time frame, retains the authority up to their realisation. The request of the above-mentioned receiver of revenue is associated with the seizure;

2. For the collection of taxes, increases, fines and prosecution costs, the Treasury also enjoys the right of legal mortgage over all the debtors' buildings. The mortgage also applies to assets belonging to the spouse to the extent to which collection of taxes can be carried out in the case of the aforesaid assets.

The Treasury has the right to exercise this right from the time when the register has been made enforceable and at the latest on 31 December of the year following that during which the register was made enforceable. The receiver of revenue calls for the registration and grants the removal of legal or conventional mortgages guaranteeing the payment of the land tax. To the extent that there is no departure from the said Section, the measures in force regarding the mortgage system are applicable to taxes and incidentals due according to the said law.

3. Foreign companies are required to have a representative in the DRC who is required to work closely with companies regarding the payment of taxes, increases, fines and costs.
4. The collection of tax for which the husband is liable may be carried out on all assets belonging to the wife, whether movable or immovable, unless she is able to prove that she was in possession of these assets before her marriage or that these assets or the fund with which they were acquired came from inheritance donation from persons other than her husband or from her personal revenue.

## **6.10 Objections and Appeals**

Debtors as well as their authorised agents who fulfill the general or special mandate by virtue of which they are able to act, may obtain in writing and as an objection against contributions to land tax from the director of taxes or the regional official named in section 60 following whose intervention the register containing the contentious contribution was made binding. In order to be acceptable, the objection must be motivated.

At the risk of forfeiture, the objection must be presented at the latest within a period of six months from the date of the warning extracted from the register or that of payment of the tax deducted other than by the register.

As long as no decision has intervened, the debtors may complete their initial objection by newly-worded grievances in writing and the objector does not need to justify payment of the tax; he is issued with a receipt for his objection.

Even after expiry of the objection deadlines, the appointed official automatically grants the tax relief of overtaxation resulting from material errors or double employment. If the tax has already been paid, restitution is required only if overtaxation is ascertained or notified within a period of three years from date of receipt.

Section 79 makes clear the following in four points:

- In order to establish tax bases, the tax inspector may verify the debtor's entries, satisfy himself that extracts and documents produced are in conformity and be presented with all necessary documentary evidence. Whatever the amount of litigation may be, the inspector of taxes may have recourse to all means of proof allowed by common law, except the oath and if necessary, hear third parties and proceed with the carrying out of surveys;
- In order to adjudicate the objection, the tax inspector may require from the debtors and in particular from services, administrations, bodies, institutions and persons named in the preceding sections, all information of which they have knowledge and which could prove useful;
- If the objector does not furnish the information or documents which have been requested during a period of more than twenty days, his objection will be rejected;
- The aforesaid official will give a ruling according to a decision motivated by the objection which have been introduced. The taxpayer is notified of his decision by registered letter.

The decisions referred to in the preceding point, may be the subject of an appeal in the Appeal Court. No new claim may be put forward at this appeal. The appeal must be introduced on pain of forfeiture within a period of six months from notification of the decision to the person concerned. The appeal to the court of cassation is opened against all rulings under the conditions determined by the legal measures governing this matter.

Finally, lodging an objection, or an appeal or an appeal to the court of cassation, does not generally suspend the taxpayer's liability for the tax, increases, fines or costs (as the case may be). However, in special cases the aforementioned official may defer collection of all or part of the disputed tax.

## **7. Conclusion**

Since real estate properties are visible, fixed and easily taxable, the land tax yield should have been significant, but this is not the case because of the lack of a properly skilled and motivated administration. Thus, land tax only accounts for less than 1% of total revenues collected by the General Tax Administration.

According to experts and in particular the conclusions of studies carried out by the Sovereign National Conference in the chapter dealing with fiscal matters, amongst the points highlighted one notices, amongst other things, the narrowness of the fiscal base, the small number of listed taxpayers, the lack of fiscalisation within the informal sector as well as a large degree of fiscal and customs fraud resulting in lower potential returns for the Treasury.

As has been mentioned at the beginning, Congolese people in general believe that the land belongs to them and that they have no tax to pay on it. This concept is unfortunately extended in the case of all other taxes in the Congolese fiscal system. Land tax is considered to be politically sensitive as it affects citizens in an area which they consider to be the most fundamental in their lives. Hence the fact that governments which were committed to the transition process (from the beginning of the 1990's) leading to

elections, did not really make an effort to collect this tax at the risk of frightening off voters. For this reason and many other reasons, members of the Congolese political class are amongst those who have never paid land tax.

Since the Congo became independent in 1960, there has never really been true town planning of cities and no rational residential policy has ever been launched. Consequently, the tax base is not properly developed and it would be inappropriate to collect such taxes on land which is exposed to erosion on the outskirts of the towns. In addition, the low level of purchasing power of the general population constitutes a dissuasive factor in the collection of this tax. Note that the population's buying power is amongst the lowest in the world.

If one takes into account sentimental or social considerations only, legislation has made provision for widespread exemptions which in the final analysis have made the land tax insignificant. In order to make the fiscal system operational, all means must be stopped by which numerous fraudsters amongst which certain religious institutions, schools, private hospitals, non-governmental organisations, public companies, persons over 55 years of age, chambers of commerce, etc., do not pay either land tax or other taxes on the pretext that they are not profit-making organisations.

With its 2,344,900 km<sup>2</sup>, the DRC (apart from 10 % of this surface area used for agriculture and 1.4 million km<sup>2</sup> of forests) can make a commitment and succeed in increasing fiscal revenue through land tax if the economic situation improves and by putting into place a skilled and motivated administration.

**Appendix:**

**LAW ON PROPERTY AND REAL ESTATE TAX IN THE DEMOCRATIC  
REPUBLIC OF THE CONGO**

**SECTION 1:  
LAND SYSTEM**

***Chapter 1:*  
PRELIMINARY MEASURES**

**Section 53:**

Land is the exclusive, unalienable and imprescriptible property of the State.

**Section 54:**

The State's land capital comprises a public domain and a private domain.

**Section 55:**

The State's public tax domain is made up of all land which is being used or is used for a public service. This land cannot be transferred as long as it is not regularly unused. Land which forms part of the State's public domain, is governed by measures particular to assets which are used or which are used for a public service.

**Section 56:**

All other land constitutes the State's private domain. This land is governed by the said law and its implementation measures. Particular laws pertaining to development and equipping the territory, concerted investment efforts and real estate promotions can organise particular management procedures in respect of parts of the land over which they have control.

***Chapter 2:***

**MANAGEMENT OF THE STATE'S PRIVATE LAND DOMAIN**

**Section 1:  
GENERAL MEASURES**

**Section 57:**

Under the conditions contained in the present matter, land in the State's private domain may be the subject of a perpetual concession, an ordinary concession or a land servitude.

**Section 58:**

When concessions refer to partially or entirely uncultivated areas, they are subject to the condition of development of the land. The latter is determined according to regions, the nature and vocation and purpose of conceded areas, economic development plans as well as hygiene and town planning norms.

In a case of partial development the concession can be proportionally reduced. In a case of cession of the concession right, the obligations of the original concessionaire are valid for the new purchaser, except in the event of contrary contractual measures.

**Section 59:**

Except for contrary legal measures and what will be settled according to Section 210 of the said law, all land concessions or all private ownership of buildings through incorporation and envisaged separately to the original area, may only be legally established by a registration certificate of the title which serves as its base. This is in conformity with measures dealing with the establishment and the transmission of concessions and real estate rights.

**Section 60:**

Land which is part of the State's private domain is either rural or urban. Urban areas are those which fall within the limits of administrative entities which have been declared urban by law or by regulations in force. All other land is rural. According to the purpose for which it is intended, land is earmarked for residential, commercial, industrial, agricultural or animal husbandry usage.

**Section 2:  
CONCESSIONS**

**Section 61:**

In terms of the said law, the concession is the contract according to which the State recognises that a group or a physical or moral person of public or private law has the use of an area according to conditions and terms contained in the said law and its implementation measures. Concessions are granted free of charge or for a fee. It is possible to have one or several concessionaires on the same land. They are all bound to the State.

**Section 62:**

Concessions are carried out according to the rate in force at the date of signature of the contract except if the contract is concluded by virtue of an option to a determined charge, granted by a previous agreement.

**Section 63:**

In a case of localities established as urban constituencies, the President of the Republic or his delegate will have a map of plots of land to be contracted out drawn up.

**Section 64:**

Copies of plot maps or tariffs are submitted and may be consulted in the department responsible for urban planning, the department of land affairs, the place where land titles are kept as well as with the sub-regional commissioner responsible for the territory.

**Section 65:**

Land is contracted out subject to rights of third parties and without guarantee of its intrinsic quality or its industrial, agricultural, commercial or residential value.

**Section 66:**

The surface area and boundaries of the plots on the plot maps are only given as an indication. If necessary the rental and charges are due on the surface area determined by official measurements and to the extent that the difference between the actual measurement and that stated in the contract, is at least one twentieth more or less.

**Section 67:**

Except for a dispensation granted by the relevant authorities and motivated by the quantity of envisaged investment, no one is able to obtain a concession on uncultivated areas if the other areas with the same purpose in view which he owns in the same town or in the same zone, have not been the subject of a sufficient development in conformity with conditions and time frames imposed by legal and regulatory measures.

**Section 68:**

Without prejudice to the legal or regulatory measures regarding the measuring and the boundary marking of land, the boundaries of all conceded land must be indicated in a clear, sustainable and unambiguous way.

The relevant authorities may at any time, either automatically or at the request of any person concerned, proceed to this boundary marking at the concessionaire's cost.

**Section 69:**

While awaiting the fulfilment of concession formalities of an area belonging to the State's private domain, the State has the right to authorise the applicant to occupy the aforesaid area by the boundary marking, delimitation and possibly fencing and storage. This authorisation is granted precariously and at the risk of the applicant except for responsibility for public services in the event of faulty negligence or a grievance.

**Section 70:**

Without prejudice to measures pertaining to the perpetual concession, concessions are granted only up to a maximum period of 25 years, renewable according to specific conditions of each right.

**Section 71:**

A presidential law determines the following:

- 1° rules governing the creation of urban constituencies, their determination and the marketing of plots in those constituencies;
- 2° criteria which determine the various categories of land, prices, rentals and charges relating to it and the specific conditions which apply to each of these categories;
- 3° the general conditions of development for each category of land if it is necessary;

4° conditions pertaining to the maintenance and the change of purpose of land;  
5° compulsory advertising measures;  
6° criteria that determine priorities for obtaining concessions;  
7° conditions in respect of the submission of requests;  
8° costs flowing from the study of claims, the establishment of contracts, annotations, ascertaining development and the issuing of copies of contracts and maps;  
9° extraction taxes and levies from materials which are not considered to be substances that can be given out as concessions according to legislation on mines and hydrocarbons;  
10° formalities pertaining to termination, resolution, transfers and renewal of contracts as well as renunciation.

### **Section 72:**

Without prejudice to contractual clauses, ordinary concessionaires are forbidden from modifying the purpose of an area without prior written authorisation from the relevant authorities.

In a case where authorisation is granted, an extra charge equal to the difference between the rent originally agreed on and the rental value of the land, calculated in terms of its new purpose and according to the tariff in force at the time of the authorisation request may be claimed.

In the event of an illegal change in purpose, the relevant authority has the right either to request termination of the contract, without prejudice of all damages and interests if it applies, or to demand from the contravening party and at the latter's cost, the restoration of the land according to its original purpose or to authorise a change in purpose.

In the second case referred to in paragraph 3, the contravening party also owes the State for damages and standard interests, a sum equal to double the difference between the charge or the rent originally agreed to and the rental value of the land calculated in terms of the new purpose illegally granted to it and according to the tariff in force at the time when the offence was ascertained.

In the third case referred to in paragraph 3, the supplementary charge in terms of paragraph 2 is included with the benefit calculated as described in paragraph 4. The original concessionaire may only contract out the land by imposing on the new purchaser the same prohibition to change the purpose of the asset and the commitment to paying the extra duties and benefits described in paragraphs 2, 4 and 5 in the event of an illegal change.

### **Section 73:**

The relevant authorities responsible for granting concessions may agree to an exchange of land. If the exchange occurs at the State's request and if a loss of value results for the concessionaire, the State will owe him the balance. If the exchange occurs at the concessionaire's request and if it results in a loss of value for the State, the concessionaire owes the State the balance. In calculating the balance, the actual and intrinsic value of both areas and incorporated assets will be taken into account.

### **Section 74:**

The conversion from an ordinary concession to a perpetual concession is possible only for people from Zaïre, physical persons according to Sections 59 and 80 and of the relevant law.

**Section 75:**

The conversion contract will settle the rights and obligations of each party without prejudice to the particular regulations pertaining to perpetual concession.

**Section 76:**

The State has the right to refuse the granting of conversion according to Section 74 when financial charges flow from such an occurrence or when the State loses revenue as a result, or if the State estimates that it needs the use of the land and buildings on it. The decision to refuse must be followed by an outline of its motivations on penalty of cancellation. It is published in the official gazette.

**Section 77:**

If conversion has been refused and the land and buildings on it have not been put to a particular use or a public service, the concessionaire has the right to renew his claim on expiry or renewal of the concession. He may also renew his claim at the end of each 10 day period following publication of the refusal decision. Decisions taken in such a case must be published like the first decision if they confirm the renewed refusal.

**Section 78:**

In a case where the cause of refusal no longer exists, the relevant authorities are required to agree to conversion to the benefit of the concessionaire concerned, to the extent to which his right is not subject to one of the termination clauses outlined in Section 145 below. He will be notified of the decision lifting the refusal by the publication of the official gazette.

**Section 79:**

The person to whom the State opposes a flat refusal of a conversion claim to an action in cancellation of deeds taken in violation of paragraph 2 of Section 76 above.

This action must take place on penalty of loss within six months of publication in the official journal of the deed for which cancellation is envisaged.

The person concerned may, if they prefer to do so, request damages and interest from any other concessionaire benefiting from the deed which can be cancelled.

### ***§ 1. PERPETUAL CONCESSIONS***

**Section 80:**

Perpetual concessions means the right recognized by the State to a physical person of Zaïre nationality to use his land indefinitely for as long as the conditions regarding concrete and formal conditions mentioned by the said law are met.

**Section 81:**

Perpetual concessions occur free of charge or for a fee. It is possible to have one or several concessionaires on the same land.

**Section 82:**

When perpetual concession refers to land which is entirely uncultivated, it may only be granted following a rental contract with an option to perpetual concession. In a contrary case, a simple perpetual concession contract is necessary and will suffice. The perpetual concession is only transferable between persons mentioned in Section 80 above.

#### **A. RIGHTS AND OBLIGATIONS OF PARTIES IN TERMS OF THE PERPETUAL CONCESSION CONTRACT**

##### **Section 83:**

Subject to what will appear in the chapter dealing with rights acquired before publication of the said law, the State's rights and obligations as well as those of the perpetual concessionaire are stipulated by the rental contract with the option of perpetual concession and its codicils or by the perpetual concession contract.

##### **Section 84:**

When perpetual concession is carried out for a fee, the concessionaire is required to pay the State a charge in cash or in kind.

##### **Section 85:**

Depending on the nature and usage ascribed to the land, the State is obliged to allow the concessionaire peaceful use of it and that without the need of any particular stipulation, as long as the latter's right is valid. In addition, the State is required to guarantee the perpetual concessionaire against the risks of total or partial eviction and against charges which may decrease this usage and which were not known at the signing of the contract.

##### **Section 86:**

In a case of complete eviction, the concessionaire has the right to require from the State restitution of the price of the concession less one twentieth per period of five years of use which have elapsed since the signing of the contract.

##### **Section 87:**

When complete eviction occurs in terms of land which was completely uncultivated at the conclusion of the concession contract, the concessionaire may in addition claim fixed compensation, established by experts, of the actual and intrinsic value of the buildings, plantations and work which have added value to the land.

##### **Section 88:**

The perpetual concessionaire may only be evicted in part and the eviction must be of such a result, relative to its entirety, that the concessionaire could not have been interested in the concession without the part from which he was evicted. He may, failing an amicable solution, have the contract terminated by the higher civil court where the land is situated.

In this case the evicted concessionaire's rights will be evaluated in conformity with Sections 86 and 87 above.

##### **Section 89:**

Except for contrary stipulations from the parties, the disputes as well as damages following which Sections 86, 87 and 88 above may be applied, will be settled in conformity with the common law pertaining to the obligations.

**Section 90:**

Guarantees for reasons of eviction will cease when the perpetual concessionaire is convicted by a ruling handed down according to a judgement without calling the State if the State proves that there were sufficient grounds for rejecting the request.

**Section 91:**

The State may only take over usage of perpetually contracted out land according to conditions and terms expressly mentioned in the said law.

**Section 92:**

When the concession is carried out for a fee, the perpetual concessionaire's main obligation to the State is to pay the price of the concession according to agreed terms.

**Section 93:**

When the right to perpetual concession refers to entirely uncultivated land, its title holder is required (as long as his rights are valid) to add value to the land, maintain it, occupy it and make use of it according to its original intended use. All changes regarding use require the agreement of the relevant authorities which agreed to the concession, without prejudice to the laws or regulations in force in respect of town planning, the environment and hygiene.

**Section 94:**

In any event, the holder of the right of option to a perpetual concession is required to actually occupy the hired land within six months and to commence with development within eighteen months from the date of signing of the rental contract with option of perpetual concession.

An extension of the time frame may be granted by the relevant authorities to the tenant if the latter shows that he has been delayed by fortuitous circumstances, force majeure or by the nature of the project.

In a case where the tenant does not occupy the land and does not commence development within the period mentioned in paragraph 1 of the said Section, termination of the contract will automatically follow if three months after formal notice he has done nothing or he has not furnished sufficient motivation to justify the delay. Development must continue according to norms in force in respect of town planning, the environment and hygiene.

**Section 95:**

When the perpetual concession right refers to totally or partially developed land, the present economic and intrinsic value of the buildings, the plantations, work as well as furniture at the time of signing of the contract will be taken into account in determining the price of the concession. .

**Section 96:**

The holder of a perpetual concession may have full use of the land. He is the owner of all that is related to it as long as his right to the use of the land is valid.

**Section 97:**

The perpetual concessionaire has the right to build, plant, construct, to plant trees and other products which are on the land when his use of the land commences, as well as to those which he will have built, planted or produced himself. If necessary, he also has the right to hunting and fishing.

Without prejudice to the measures regarding mining legislation, he has the right to extract stones, clay and similar materials from the land.

**Section 98:**

When several persons are holders of the same perpetual concession rights, they are jointly bound to the State.

**Section 99:**

The perpetual concessionaire has the right to transmit, let, mortgage his right and the servitudes subject to measures contained in Section 59 and 80 above. He may convert his rights to an ordinary concession right according to conditions contained in Section 59 above.

**Section 100:**

The perpetual concessionaire may alienate his right completely or in part. In the event of complete cession the new perpetual concessionaire is subrogated in the rights and obligations of the original concessionaire. In a case of partial cession, the original concessionaire as well as the new concessionaire are both bound to the State.

**B. WAYS IN WHICH THE PERPETUAL CONCESSION CAN BE TERMINATED**

**Section 101:**

The perpetual concession can only come to an end for one of the reasons below:

- 1° expropriation for reasons of public use;
- 2° repurchase by the State, when the concession is for a fee;
- 3° the express and written renunciation of his right by the title holder or his legal claimant;
- 4° conventional or legal termination;
- 5° repossession according to contractual conditions;
- 6° default of heirs;
- 7° the terminating prescription;
- 8° conversion to an ordinary concession title.

**Section 102:**

When expropriation refers to a perpetual concession for which a fee is paid, compensation for the fee at which the concessionaire acquired his rights, plus expenses if they fall due, will be taken into account for evaluation.

**Section 103:**

If expropriation refers to a free perpetual concession, compensation may only refer to expenses.

**Section 104:**

Without prejudice to what appears in Sections 102 and 103 the legal and regulatory measures for expropriation for reasons of public use apply to the perpetual concession.

**Section 105:**

The repurchase, express and written renunciation as well as termination will occur in conformity with conditions of substance and form contained in the said law and its implementation measures.

**Section 106:**

The State may cite land and real estate rights of the *de cuius* only under conditions provided for by the legislation in force in matters of succession at the time when succession begins.

**Section 107:**

Apart from exceptions established by a particular law, the prescription of land and property rights of the perpetual concessionaire cause these rights to be acquired by the State under the conditions contained in Section XII (“prescription”) of Book III of the Civil Code, and particularly the measures contained in Section 648. Rights which have been neglected will be managed under the conditions contained in the second part of the said law.

**Section 108:**

Conversion of a perpetual concession right to an ordinary concession title can only take place with the approval of the relevant authority which agreed to the perpetual concession and in conformity with Section 59 above.

**§ 2: ORDINARY CONCESSIONS  
A. CONCEPTS AND CONTENT**

**Section 109:**

Ordinary concessions are emphyteosis, surface area, usufruct, usage and rental.

**EMPHYTEOSIS**

**Section 110:**

Emphyteosis is the right to full usage of uncultivated land belonging to the State on condition of improving and maintenance of the land and for payment to the State of a fee in cash or in kind.

**Section 111:**

Emphyteosis may not be drawn up for a term exceeding 25 years. This term is renewable.

When renewals take place the fees will be revised and determined according to the rate in force at the time of renewal.

**Section 112:**

Within the limits determined hereafter, the emphyteote has the right to all produce of the land. He alone has the right to hunt and fish. He may extract stones, clay and other similar materials from the land as well as fell trees for purposes of construction and improvements which he brings to the land. He may make use of the forests on condition of developing them into undergrowth as any good owner should, or to establish plantations to replace the trees. He has the right to modify their use or their nature in order to increase the value.

**Section 113:**

The emphyteote may, to the benefit of any person of his choice and for the duration of his rights, impose a rental, usufruct, usage and accommodation or a surface area fee on the assets that he adds to the ground. He may grant land servitudes in respect of the services of these assets. He may relinquish his right and mortgage it. He may only grant surface area if it is stipulated that the constructions should be improved or replaced as well as forests, trees and other plants incorporated in the land by others of equal value and use.

**Section 114:**

He is responsible for repairs of all kinds even to buildings which he has constructed without being forced to do so. If a third party usurps in any way and threatens the right of the State, the emphyteote is required to denounce it to the State.

**Section 115:**

He may not claim any discount on fees for reasons of partial loss of the land, nor for reasons of sterility or of forecasts of any crop following this fortuitous occurrence.

**Section 116:**

He may not free himself from the responsibility of his right by abandoning the land. However, he may force the owner to accept the abandonment when the fortuitous destruction of his plantations or other work he has engaged to improve the land, prevents him from receiving sufficient revenue to pay the annual fee.

**Section 117:**

In a case of transmission of emphyteosis between living persons or following death, the fees attached thereto fall to the new title holders in an indivisible way. In a case of transmission between living persons, the transferor is a guarantor of his transferee's solvency.

**Section 118:**

The State has the right to organise advisory visits to see to the maintenance of constructions and plantations.

The State may request that the emphyteote should be held responsible for all necessary work to maintain the value of the land.

**Section 119:**

The State has the right to pronounce the loss of the emphyteote with damages if necessary in the following cases:

- 1° default in payment of three consecutive annual fees or even for all defaults in payments if the emphyteote becomes bankrupt or fails;
- 2° serious negligence in the implementation of the requirement to improve and maintain the value of the land;
- 3° for all serious abuse of usage.

The emphyteote's debtors may intervene in the matter to safeguard their rights. They may offer payment for fees in arrears, reparation for abuse committed and guarantees for the future. The court has the right to grant extension of time according to circumstances.

**Section 120:**

In cases of repossession of the land or expropriation for reasons of public use, common law in matters of expropriation for reasons of public use will be applied.

In cases of repossession or expropriation for reasons of public use, no compensation whatsoever is due in respect of the land when the emphyteosis has been agreed to free of charge.

**Section 121:**

On the expropriation of his right for any reason whatsoever the emphyteote may not remove plantations and other improvements he has made. Neither may he claim any compensation for these.

As for constructions he has erected, he may not remove them either, but the owner is required to compensate him according to a fixed figure of three quarters of their actual and intrinsic value. This compensation is applied in preference to the payment of mortgage debtors registered on the emphyteosis.

**Section 122:**

With the exception of the first paragraph of Section 111 above, the aforesaid rules on emphyteosis may be amended by the clauses of the law constituting emphyteosis.

## **SURFACE AREA**

**Section 123:**

Surface area is the right of use of land belonging to the State and to have at one's disposal the constructions, forests, trees and other plants on the land.

**Section 124:**

The surface area may not be established for a period of time exceeding 25 years. This period is renewable.

**Section 125:**

It may not be established for one part of a building only.

**Section 126:**

The person occupying the surface area has all the rights of usufruct. He has the right to build and to plant as he wishes.

He also has the right to use the constructions, forests, trees and other plants which existed on the land when he commenced use.

The person occupying the surface area may only use buildings in one of the following cases:

- 1° if he pays the value to the State apart from the fees for temporary use of the land;
- 2° if he commits himself to replacing the buildings with other buildings of at least equal value and similar usage.

The terms of implementation of points 1 and 2 must be determined by the contract constituting surface area.

**Section 127:**

If a third party in any way usurps the owner's right he is required to denounce it to the latter.

**Section 128:**

The person occupying the surface area may grant usage, accommodation or usufruct of buildings on the land to third parties.

Except for stipulations contrary to the surface area contract, he may freely relinquish his right.

He remains responsible for the implementation of obligations of the new concessionaire towards the State unless the contract states otherwise.

**Section 129:**

The person occupying the surface area may be subject to loss and damages if necessary, according to the ordinary regulations of the applicable law following the nature of the title by which the surface area has been established.

**Section 130:**

Measures contained in Sections 112 and 113 on emphyteosis are *mutatis mutandis* applicable to the surface area.

**Section 131:**

In a case of repossession or expropriation, no compensation is due for the land when the surface area has been granted free of charge.

The compensation granted for upkeep undertaken by the person occupying the surface area according to the original contracts or codicils may not exceed the difference between the value of the constructions and plantations which were available to him without paying the price and the value of the constructions and plantations which he established.

## USUFRUCT

**Section 132:**

Usufruct contracted out by the State to a person for land and that person's right to use this land, in the same way as the State, but on condition of preserving its condition.

**Section 133:**

The usufruct has the right to use of the natural, civil and industrial fruits which the land may produce.

The rights and obligations of the usufruct as well as the other conditions and terms constituting the usufruct, will be determined by contract.

**Section 134:**

The usufruct contracted out by the State may occur without charge if it is limited to the usufruct's needs and to those of his family.

**Section 135:**

It cannot be stipulated for a term exceeding 25 years. This term is renewable. The usufruct thus constituted falls away on death of the usufruct before expiry of the agreed term.

**Section 136:**

On termination of the usufruct, the usufruct or his legal claimants may remove what the usufruct has added to the land. Failing that, these assets are abandoned and are handed over to the State without compensation being required.

**Section 137:**

In categories of development and equipment that he determines, the President of the Republic may provide and organise compensation by means of an extension of the usage not exceeding 10 years.

Only assets brought onto the land by the usufruct and which are useful to the State, will be taken into consideration as compensation.

Compensation may not exceed half of the value of the assets, compensated by exemption or reduction of fees.

**Section 138:**

In a case of extension of the usufruct following measures contained in paragraph 1 of Section 137 above, the State may exercise the rights of an owner in respect of the assets.

**Section 139:**

The usufruct may not transfer his rights. He may give his rights as guarantee.

**Section 140:**

When usufruct occurs following payment of a fee, the usufruct is required to pay the State a charge equal at least to a quarter of its revenue. The charge can be replaced by a payment in cash or by means of services.

**USAGE**

**Section 141:**

Usage of land is a right that the State acknowledges for a person to use for himself and his family, either by living there or by creating warehouses for himself. It may not be contracted out for a term exceeding 15 years. This term is renewable.

**Section 142:**

The user may make a part of the equipment and installations available to third parties, with or without payment, but only to the extent required for covering his costs and those of his family.

**Section 143:**

Usage can be given free of charge.

## **RENTAL**

**Section 144:**

By rental, the State gives a person the right to use land and dependent on a certain price which this person is obliged to pay the State. In principle, it is preparatory to another concession.

It may not be granted for a term exceeding 3 years. It is governed by measures contained in the said law and its implementation measures.

## **B. THE WAY IN WHICH ORDINARY CONCESSIONS COME TO AN END**

**Section 145:**

An ordinary concession may only come to an end for one of the causes below:

1° expiry of the term;

2° repossession as settled by the terms contained in Sections 120 and 131 of the said law;

3° conversion settled by Sections 74 to 79;

4° one of the causes enumerated in points 1 to 6 of Section 101 of the said law, subject to the terms pertaining to ordinary concessions.

## **C. SPECIAL MEASURES FOR EMPHYTEOSIS AND SURFACE AREA RIGHTS**

**Section 146:**

If the contracted out land becomes necessary for public interest usage during the first five years of the concession, the State may repossess it under conditions stipulated in Sections 120 and 131 of the said law. After these five years, the State is required to proceed in conformity with legal measures in matters of expropriation for reasons of public usage. The need for repossession is ascertained by an act of the relevant authority according to the division established by the appropriate regulations. In areas subject to reconversion and which are determined by presidential decree, concession contracts may contain a repossession clause making provision for a period exceeding five years.

**Section 147:**

Measures contained in Section 94 above are applicable *mutatis mutandis* to emphyteosis and surface area.

#### **D. SPECIAL MEASURES PERTAINING TO RENTAL**

##### **Section 148:**

The first rent is calculated pro rata of complete months between signature of the contract and the following 31 December. It is payable at the time of signature of the contract. The following rentals are payable in advance on the 1<sup>st</sup> of January of each year. Failing payment at fixed deadlines, the tenant will owe interest on amounts due, calculated on the arrears at the same rate as that applied in tax matters and without prejudice of all other rights.

The rental or charges can consist of either a basic sum of money, which can be revised for a determined period, or the surrender of shares in a company or in other securities or in a share of the concessionaire's profits or also in the carrying out of a particular task. The charges can include a share of the construction and maintenance costs of the road system.

##### **Section 149:**

It is forbidden for the lessee to sub-contract or to transfer a lease without the written authorisation of the relevant authorities. In a case of sub-rental, the first tenant remains responsible to the State for the entire execution of the contract.

##### **Section 150:**

At the request of the tenant, the relevant authorities may terminate the current lease by means of an annotation to the contract signed by him. In this case, the rental for the current year goes to the Treasury as compensation.

##### **Section 151:**

The rental settled by the present paragraph does not lead to the establishment of a registration certificate.

##### **Section 152:**

The other lease conditions are determined by agreement of the parties or by laws and regulations in force.

#### **§ 3 SPECIAL MEASURES FOR RURAL LAND**

##### **Section 153:**

Plots of land situated outside urban boundaries and which are contracted out for commercial usage may only include one single institution of its kind. The plots may not have a surface area of more than one hectare.

##### **Section 154:**

Rural land with a surface area of more than ten hectares and used for agriculture or cattle breeding, may not be contracted out if they have not been occupied by virtue of a

provisional occupation title for a period of five years. However, the relevant authorities may contract out the ground before expiry of this period if the development conditions to which the acquisition of the concession right are subject are carried out according to the contract.

**Section 155:**

The right to provisional occupation is granted by contract according to conditions contained in Sections 156 and 159.

**Section 156:**

During the five years of provisional occupation, the occupant is required to pay a progressive rental with a maximum equal to five percent of the concession price of the land from the fourth year. On expiry of the five years stipulated in the contract and according to what has been agreed upon, the land which is provisionally occupied and developed will be contracted out to the occupant at the tariff in force on the date of signature of the provisional occupation contract.

**Section 157:**

The conditions governing development to which accession to the perpetual concession and to emphyteosis is subject, can be determined by the contracts. However, the following will never be able to be considered as having been developed and occupied:

- a. land which is not covered for a proportion of at least one tenth of its surface by constructions;
- b. land which is not covered for a surface of five tenths at least of its surface area by food crops , fodder or other crops;
- c. land for cattle breeding purposes which is not developed according to minimal conditions determined in the agreement;
- d. land on which the following has not been carried out over a surface of at least five tenths of its area: plantations of palm trees to the extent of at least a hundred units per hectare; coffee trees to the extent of at least 900 units per hectare; chinchona to the extent of at least 6.940 units per hectare; tea plants to the extent of at least 5.470 units per hectare; tung to the extent the extent of at least 121 units per hectare; forest trees to the extent of at least 100 trees per hectare for reforestation and at least 1.000 trees per hectare for forests in open ground. In the case of other types of trees and shrubs, the minimum density will be determined by agreement between the concessionaire and the relevant services;
- e. land to which the measures determined by the convention or legally prescribed with a view to soil conservation have not been applied.

**Section 158:**

These conditions will apply simultaneously or separately for the entire surface. The ascertaining of occupation and development of the land will be carried out at the request and at the cost of the occupant.

An occupant who, without plausible reason, has not made this request by registered letter, is liable to a fine of five zaire per month of arrears.

**Section 159:**

The relevant authorities may proceed with termination of emphyteosis contracts pertaining to rural land on expiry of the ten year term following their conclusion if the prescribed development conditions are not met. This is a departure from the general rules governing emphyteosis.

**§ 4: SPECIAL MEASURES FOR CONCESSIONS THAT ARE FREE OF CHARGE  
A. IN FAVOUR OF THE PEOPLE OF ZAIRE, PHYSICAL PERSONS**

**Section 160:**

The President of the Republic determines the conditions which are to govern concessions that are free of charge in favour of Zaïre people who have rendered special services to the nation.

- These concessions may not exceed:
- A surface area of 50 hectares for ground to be used for agriculture or cattle breeding;
- A surface area of 5 hectares for ground to be used for industrial or commercial purposes;
- A surface area of 1 hectare for residential ground.

**Section 161:**

Land which is the subject of a request for a free concession must of necessity be situated more than 10 kilometres from urban boundaries, sub-region administrative centres, commercial and shopping areas. However, land for residential use of a maximum surface area of one (word missing) to the extent of at least (word missing) hectare may in certain cases left to a decision by the President of the Republic, be granted within urban boundaries and shopping centres.

**Section 162:**

Concessions may not be granted to persons mentioned in Section 160 except on condition that they are personally responsible for the development according to the conditions and time frame established in the general measures governing land concessions or by regulatory measures taken for that purpose. The buildings and constructions erected on contracted out land for residential purposes must be built with durable materials.

**B. IN FAVOUR OF PUBLIC BODIES, PRIVATE INSTITUTIONS FOR PUBLIC USE AND ASSOCIATIONS**

**Section 163:**

The President of the Republic determines the conditions governing concessions which are free of charge in favour of public institutions, private institutions for public use and in favour of non-profit associations engaged in activities of general interest and constituted according to the legislation of Zaïre or recognised by this legislation.

These concessions may not exceed a surface area of 10 hectares in the case of urban land or of 200 hectares for rural land.

**Section 164:**

The surface areas of contracted out land must correspond to the needs of the required installations. In any event, surface areas equal to or exceeding 100 hectares will only be contracted out in favour of the main centres of associations or institutions. On pain of loss of the concession contract free of charge, the beneficiaries are required to conform to the contents of Section 162 paragraph 1. The loss decision is notified to the concessionaire concerned. Loss, however, does not apply to public institutions.

**Section 165:**

Rural land which is the subject of successive concessions to the same association or institution must be situated 10 kilometres at least from land of similar nature from which they benefited previously. However, this rule will not apply in cases of normal extensions of pre-existing centres.

**Section 166:**

With a view to safeguarding the property rights of rural populations, all transactions on rural land must be submitted to a prior survey procedure according to the said law.

**Section 167:**

After the ten year period following signature of agreements regarding concessions, land which has not been developed according to the minimum conditions contained in the general measures regarding the concession of land or according to clauses of the contract will automatically return to the State.

**Section 168:**

Contracted out land will still be used for the activities of donor organisations; this land may not be contracted out, given out for rental or mortgaged from other real rights except by prior written authorisation from the relevant authorities.

**Section 3:  
LAND SERVITUDES  
§ 1. GENERAL MEASURES**

**Section 169:**

A land servitude is a servitude imposed on land for use of another land.

**Section 170:**

This servitude does not establish any order of importance of one land over another. It flows either from the natural situation of the area or from obligations imposed by law or by agreements between the State and the concessionaire of the land or between concessionaires.

**§ 2. SERVITUDES ARISING FROM THE SITUATION OF THE AREA**

**Section 171:**

The lower land is subject to the higher land for receiving water which flows naturally from it without the help of man.

The State or the lower concessionaire may not erect a barrier which stops this outflow. The State or the higher concessionaire may do nothing to increase the servitude on the lower land.

**Section 172:**

Subject to particular measures regarding the water system, the person who has a spring in the contracted out land may use it as he wishes, except for the right which the State or the concessionaire of the lower land could cite in conformity with the particular laws and regulations in force.

**§ 3: SERVITUDES ESTABLISHED BY LAW**

**Section 173:**

Servitudes established by law are intended for public use or a particular use.

**Section 174:**

The law stipulates that owners or concessionaires have different obligations towards each other separately from any agreement.

**Section 175:**

The different servitudes that can be established by law are in particular dividing walls, the distance to be kept and the work required for certain buildings, view, water drainage from the roof, the right of passage, etc.

**Section 176:**

Joint ownership is governed by measures contained in Sections 39 – 48 of the said law. The other servitudes are regulated by a common decree of the State commissioners responsible for land and town planning.

**§ 4: SERVITUDES ESTABLISHED BY MAN**

**Section 177:**

The State or the concessionaire may establish on his land or his concession or in favour of his land or his concession, any servitudes that he wishes provided that the services established are not imposed on the person nor in favour of the person but only in terms of land or a concession and for a piece of land or a concession and provided that these services contain nothing which is contrary to public order.

The use and extent of the servitudes established in this way, are regulated by the title which constitutes them. If there are no titles, they are hereafter regulated by auxiliary rules.

**Section 178:**

Servitudes are established either for the use of buildings or for the use of the land. They are continuous or non-continuous.

Continuous servitudes are those whose use is or can be continuous without man having to intervene, such as water pipes, drains, views and others of this kind.

Non-continuous servitudes are those which need the hand of man in order to be carried out, such as rights of passage, water catchment, grazing and other similar servitudes.

**Section 179:**

Servitudes are apparent or non-apparent.

Apparent servitudes are those which are made obvious by exterior items such as a door, a window, aqueduct.

Non-apparent servitudes are those which are not obvious from the outside such as for example, prohibition for building on a piece of land or to build only up to a pre-determined height.

**Section 180:**

A joint decree of the State commissioners responsible for land affairs and town planning will determine the conditions and terms of the establishment of servitudes by means of auxiliary rules as well as the rights of the State or the concessionaire of the land to which the servitude is due and the causes and methods of the termination of these servitudes.

**Section 4:  
RULES OF COMPETENCE**

**Section 181:**

The department responsible for land affairs must apply the State's policy regarding the use and distribution of land.

**Section 182:**

Land is managed by the public administrations, either through public bodies set up for that purpose or by joint companies dealing with equipment and real estate promotion.

**Section 183:**

In the case of land managed by public administrations, the concessions are valid only if they are granted according to the following conditions:

1° by contract approved by a law for parcels of rural land, equal to or greater than two thousand hectares and for parcels of urban land equal to or greater than one hundred hectares;

2° by contract which is validated following the ruling of the President of the Republic for the parcels of rural land of more than one thousand hectares, but less than two thousand hectares, and for parcels of urban land more than fifty hectares and less than one hundred hectares;

3° by contract validated by a decree of the State commissioner responsible for land affairs in the case of rural parcels of land more than two hundred hectares and not exceeding one thousand hectares and for parcels of urban land more than ten hectares, but not exceeding fifty hectares;

4° by contract signed by the Regional Commissioner in the case of parcels of rural land equal to or less than two hundred hectares and for parcels of urban land equal to or less than ten hectares.

In the case of rural land less than ten hectares and urban land less than fifty hectares, the Regional Commissioner may delegate his powers to the registrar of real estate titles. Regarding the city of Kinshasa, the powers mentioned in paragraph 4 above are exercised by the State Commissioner responsible for land affairs in the case of areas with a surface area greater than two hectares. He may delegate his powers to the head of land subdivision in the other cases.

In order to determine the parcels mentioned above, all concessions of the same kind and the same usage which have been beneficial to the applicant in the same region, are taken into account.

#### **Section 184:**

All actions in violation of Section 183 above are liable to administrative or legal recourse according to the case.

Administrative recourse occurs in the following way:

1° before the Regional Commissioner in the case of his delegate's acts;

2° before the State Commissioner for acts of his delegates or of the Regional Commissioner;

3° before the President of the Republic in the case of acts of the State Commissioner.

Legal recourse occurs when the administrative recourse alluded to in the preceding paragraph has failed.

#### **Section 185:**

A law drawn up according to measures contained in Section 46 1<sup>st</sup> paragraph, paragraph 6 of the Constitution will determine the framework status and the working rules of public institutions responsible for management of the domain.

The function of these bodies is to assist in the economic promotion of the regions and particularly, in the implementation of programmes equipping the territory by the concerted efforts of private investments.

#### **Section 186:**

The implementation of a particular industrial or real estate investment programme, either in rural areas or in urban areas, may be given to joint companies holding up to fifty one percent at least of the shares of the State and of the people of Zaïre's shares (physical persons).

In this case the State gives the concession in return for proportions of at least one tenth and at most one quarter of the capital. The State may acquire a share greater than a quarter of the capital against payment in cash.

#### **Section 187:**

The law approving the economic development plan to be carried out in conformity with Section 185 above determines the adjudication procedure of the parcel of land.

The law can also contain approval of a market which has already been set up by mutual agreement and whose dossier must be submitted at the same time as the plan and the draft law.

The group of private shareholders is required to make provision for, apart from its capital contribution, a deposit whose amount is determined by the law which approves the plan. This deposit will be in total and up to a certain limit the property of the State if the company still owes the State any title whatsoever at its dissolution or at the end of the programme.

**Section 188:**

Before putting the land on the market, the joint company must have divided it up into plots, cadastrated it and installed water and electricity as well as set up internal roadways for circulation.

The law approving the programme also determines the way in which these obligations will be fulfilled. It may not grant an extension which is greater respectively than two to five years to begin with and to finish the equipping of the land with water, electricity and roads.

Land equipped in this way will be contracted out for a period not exceeding twenty five years from the end of work. This term is renewable.

**Section 189:**

A similar joint company may intervene in carrying out several programmes.

**Section 5:  
RULES OF PROCEDURE  
§ 1st: APPLICATIONS**

**Section 190:**

Applications for land concessions are submitted to the appropriate authority by registered letter with acknowledgement of receipt.

**Section 191:**

Applications coming from physical persons must contain the following information:

1° Complete identity, profession, the applicant's nationality, his residence. When the applicant acts through a representative, the latter must supply all information enabling verification of his powers;

2° In the case of a lease, the duration for which renting is solicited;

3° The use that the applicant intends to allocate to the ground as well as the programme for carrying out the development of the land;

4° **A-** In the case of land that has been divided up into plots, the number under which this land appears in the plot map;

**B.** If the land has not been divided up, the applicant must attach the following to his application:

a. a map showing the configuration of the land and the length of the boundaries as well as all other measurements which have been used to calculate the surface area of the land, the means used to locate the land in relation to undulations in the land, constructions and work of a permanent nature etc, water courses, roads or pathways crossing the land applied for should the need arise. If the land is situated in an area for which there is

aerophotogrammetric documentation this map must consist of an aerial photograph on which the same indications are seen.

b. A sketch showing the situation of the land in relation to known points and featuring on official maps.

### **Section 192:**

All requests for land concessions introduced by a moral person or by institutions and associations referred to in paragraph 4.b of Section 2 above must contain the following indications:

1° name of the company, the association or the institution applying with an indication of the date of the ruling, if there is one, granting it civil personality;

2° full identity of his legal or statutory representatives with the date of the act approving these representatives, the full identity of the company, association or the institution's administrators empowered to introduce the application and to sign the concession contract with an indication of the publication of their appointment;

3° what the applicant intends to do with the land and the programme he intends to put into practice to develop the land;

4° **A.** In the case of an area of land which has been divided up, the number under which the land appears in the map of the plots;

**B.** If the land has not been divided up:

a. a map showing the configuration of the land and the length of the boundaries as well as all other measurements which have been used to calculate the surface area of the land, the means used to locate the land in relation to undulations in the land, constructions and work of a permanent nature etc, water courses, roads or pathways crossing the land applied for should the need arise. If the land is situated in an area for which there is aerophotogrammetric documentation this map must consist of an aerial photograph on which the same indications are seen;

b. A sketch showing the situation of the land in relation to known points and featuring on official maps.

## ***§2. SURVEY PRIOR TO THE CONCESSION***

### **Section 193:**

All concessions of rural land must undergo a survey to be carried out according to the procedure and way established by this paragraph.

The aim of the survey is to ascertain the nature and extent of the rights which third parties could have over land applied for in concession.

The survey can only be begun after a favourable opinion by the appropriate sub-regional commissioner. It is carried out by the area commissioner or by an official or agent attached thereto.

### **Section 194:**

The survey consists of the following:

1° On-the-spot verification of the demarcation of the requested land;

2° A census of persons living there and engaged in any kind of activity;

3° A description of the area and an inventory of what is there in the way of forests, water courses, roads etc.

- 4° The hearing of persons who express their claims or observations verbally;
- 5° The registration and study of all written information.

**Section 195:**

The survey is begun by billboards in the place where the land is situated according to paragraph 3 of Section 193 above. A copy of the application specifying the land concerned will be annexed to the notice.

The survey is closed by a report showing all information gathered and the conclusions of the agent responsible for this. All supporting documents will be annexed to this report.

**Section 196:**

Within a maximum period of one month, the survey's author is required to send two copies of his report by registered letter with acknowledgement of receipt to the sub-regional commissioner.

A copy of the dossier transmission letter is kept for the applicant.

**Section 197:**

If within a period of one month the applicant does not receive a copy of the dossier transmission letter he may address a letter of reminder to the authorities dealing with the survey.

Should the latter fail to respond the applicant may have recourse to the sub-regional commissioner.

During the month of receipt of the report and possibly after recourse, the sub-regional commissioner adds his opinion and considerations and transmits the entire dossier to the regional commissioner. He may have the survey taken back for reasons which he must indicate before transmitting the dossier.

**Section 198:**

If the regional commissioner is not satisfied with the report he will have the survey taken over by the sub-regional commissioner within a maximum period of one month unless he is of the opinion that he has sufficient facts to give a ruling. In this case, he will correct the report.

When the Regional Commissioner is of the opinion that all is in order, he transmits the dossier regarding this matter within the same period to the public prosecutor at the higher civil court.

**Section 199:**

The public prosecutor will then examine the dossier within a maximum period of one month from the point of view of the rights of third parties and will stamp the report, either approving it or adding his observations. In a case where the public prosecutor does not make known his opinion within the required period of time, the regional commissioner concerned will automatically make a decision.

**Section 200:**

When the public prosecutor and the regional commissioner agree, the latter decides on what is to follow regarding the application within the limits of his competence and in the

contrary case, he hands the dossier to the appropriate authority at the latest within one month after that.

**Section 201:**

If the public prosecutor makes his observations on the dossier in question, and if the regional commissioner agrees, he corrects the report accordingly. In this case the report is sent to the public prosecutor who ascertains that there is agreement.

If it fails the regional commissioner has the survey taken back regarding contentious points.

The new report is then submitted to the same procedure as that of the first survey.

**Section 202:**

If disagreement persists between the two authorities, the public prosecutor and the regional commissioner then form themselves into a special commission with the aim of closing the control and revision procedure. This is done in the best interests of the applicant.

**Section 203:**

In any event, if within a period of four months from the introduction of the application, the applicant has not received notification of what is to follow, he has the right to submit an appeal according to Section 184 above. If the applicant receives no response within a period of six months from the opening of the procedure pertaining to rural land applications, the sub-regional commissioner will then authorize the provisional occupation of the land applied for.

*Chapter 3:*  
**PENALTIES**

**Section 204:**

The following are null and void:

- 1° Any concession contract concluded in violation of measures contained in the said law;
- 2° Any contract which is contrary to compulsory town planning regulations.

**Section 205:**

The following will be liable to a penalty of six months to five years and a fine of fifty to three hundred zaire or one of these penalties only:

- 1° The authority which will have concluded a contract mentioned in Section 204 in the name of a public person, owner;
- 2° Any official who will have drawn up a registration certificate by virtue of such a contract.

The following category of person will be liable to a penalty of two to five years and a fine of one hundred to three hundred zaire or one of these penalties only: any person who through constraint, threat or any other means of pressure will have forced an official of the real estate titles or domain administration to act in violation of the measures contained in the said law.

**Section 206:**

No one may build or establish any other business on land contracted out by virtue of a contract which is null and void. All infringements of this measure are punishable by penal servitude of between two months and one year and a fine of a hundred to five hundred zaïre or one of these penalties only. In addition, the administration may order the demolition of these buildings or any other structures erected by virtue of a contract which is null and void.

Should the offender not comply with these regulations, permission may be granted to proceed automatically to the demolition of the structures entirely at his cost, either by a contractor appointed by the administration or by the administration itself. The offending party may make no claim to any compensation whatsoever.

**Section 207:**

Any act regarding usage of any land whose title is not contained in the law or a contract, constitutes an offence which is punishable by a penalty of two to six months of penal servitude and a fine of fifty to five hundred zaïre or one of these penalties only. The co-perpetrators and accomplices of this offence will be punished in conformity with prescriptions contained in Section 21 and 22 of the Penal Code.

**SECTION II:  
REAL ESTATE SYSTEM  
Chapter 1:  
PRELIMINARY MEASURES**

**Section 208:**

Real estate rights concerned in this section are those pertaining to:

1° Buildings by incorporation other than:

- Forests, trees and any kind of plants as long as they are not separate from the soil;
- Fruit and crops as long as they do not exist separately;

2° Buildings as per usage;

3° Debt duties tending to acquire or recover a real duty on buildings stipulated in points 1° and 2°.

**Section 209:**

The State's property holdings consist of a public domain and a private domain.

**Section 210:**

The State's public property holdings consist of all buildings which are being used or are used for a public service.

These buildings cannot be transferred or rented out as long as they are not regularly unused. They are governed by particular measures relating to assets allocated to a use or a public service.

**Section 211:**

All the other buildings are part of the State's private domain. They are governed by the said law and its application measures.

*Chapter 2:*  
**MANAGEMENT OF THE STATE'S PRIVATE REAL ESTATE DOMAIN**

**Section 1:**  
**GENERAL MEASURES**

**Section 212:**

Under the conditions mentioned in this section, buildings which are part of the State's private domain may be transferred or may form part of a lease contract.

**Section 2:**  
**TRANSFERS AGREED TO BY THE STATE**

**Section 213:**

Cession is the act by which the State transfers its ownership right on buildings mentioned in Section 211 above to a third party whoever that may be.

**Section 214:**

The cessionaire of the State's land asset exercises all the rights recognised to him by measures pertaining to the ownership.

**Section 215:**

The right to ownership which a third party acquires on a building belonging to the State does not prejudice the system of the right to use of the land except if the deed of purchase states otherwise.

In this case measures contained in Section 2 of Chapter 2 of the second part of this law apply. The same occurs when the owner of a building purchased from the State obtains a concession on the underlying land.

**Section 3:**  
**LEASES APPROVED BY THE STATE**

**Section 216:**

A lease is a deed according to which the State recognises the right of use of a building belonging to it by a third party, whoever he may be and under conditions determined by the State.

**Section 4:**  
**RULES OF COMPETENCE**

**Section 217:**

The management of the State's real estate assets is the responsibility of either public administrations or public bodies established for this or joint real estate companies.

**Section 218:**

A ruling of the President of the Republic will determine the conditions and terms of this management.

**PART III:  
THE ESTABLISHMENT AND TRANSMISSION OF CONCESSIONS AND REAL  
ESTATE RIGHTS  
SECTION I:  
ESTABLISHMENT OF RIGHTS**

**Section 219:**

The right to the use of land can only be legally established by a registration certificate of the deed contracted out by the State.

The private ownership of buildings by incorporation which is always considered separately from the land can only be legally established by a registration on the certificate establishing the concession of the land, of the aforesaid buildings. It may be established by a distinct registration certificate which is annotated on the certificate establishing the concession.

**Section 220:**

Transfers of property, either between living persons or following death, can only occur by means of a new registration certificate. With the exception of legal servitudes and subject to measures applied according to Section 180 of the law, the property carries no charges if it is not registered in the registration certificate.

All rental contracts of more than nine years must also be registered in the certificate.

**Section 221:**

The registration of transferred properties or all other real rights must occur within the measures contained in this section.

The registration of rentals of more than nine years' duration and of real charges must take place according to relevant measures concerning these matters.

**SECTION II:  
REGISTRATION CERTIFICATES**

**Section 222:**

In order to apply the land system the national territory is divided into land constituencies and the President of the Republic determines their number and their boundaries.

The buildings are registered at the constituency office at which they are situated.

**Section 223:**

Each constituency is administered by an official called the registrar of real estate deeds. Several constituencies can be gathered totally or partially under the authority of the same registrar. The State is responsible for the registrar's errors. This responsibility may not exceed the value of the concession and constructions as well as plantations at the time when the error was made, this value increased by a fifth.

**Section 224:**

The following is to be found in each constituency:

1° A register or registry for the registration of registration certificates as they are drawn up by the registrar. Each page of the register has an order number. Each certificate is registered on a separate page;

2° A lineage register or register of certificates for the issuing of registration certificates. Each page of the register bears the same order number as the corresponding page in the registry;

3° A register – alphabetical list of persons to whom registration certificates are issued.

**Section 225:**

The registration certificate is drawn up in duplicate; it is dated, sealed and signed by the registrar. One of the copies is filed in the registry, the other is issued to the holder of the registered right.

The registration certificate contains:

1° Precise mention of the title holder/s rights;

2° The situation, description, surface area and sketch of the building;

3° Rentals of more than nine years' duration and actual charges other than legal servitudes pertaining to the building according to advertising rules prescribed by the law. The copy handed over to the new owner also contains the page number of the registry in which the certificate has been registered.

**Section 226:**

Any subsequent annotation regarding rental or actual charges made on the certificate registered in the registry and the certificate issued to the owner, must be dated, sealed and signed by the registrar.

**Section 227:** *(amended and completed by Section 1 of law n° 80-008 of 18 July 1980 amending and completing n° 73-021 of 20 July 1973 regarding the general system of assets, land, real estate and sureties).*

The registration certificate is evidence of the concession, actual charges and possibly, property rights ascribed to it.

These rights are irrefutable and actions directed against them can only be for damages. However, the causes of resolution or annulment of the contract or the deed, the error in the investiture decree opens the way for retrocession with damages if need be, within two years after transfer.

**Section 228:**

The registry and the alphabetical listing are public. Subject to payment of taxes determined according to regulations, any person is free to consult them under the supervision of the registrar.

**Section 229:**

Apart from registers mentioned in Section 224 the registrar keeps a register/journal of all certificates, annotations and any deeds in his Ministry and of all deeds, applications and documents which are sent to him.

**Section 230:**

Every month the registrar sends the chief registrar a certified copy of all certificates which he has registered in his registry as well as cancellations and annotations which he has made.

In the event of loss or destruction of the registry, this copy has the same validity as the original.

**SECTION III:  
CONDITIONS AND TYPES OF TRANSFER  
Chapter 1:  
CONDITIONS PRIOR TO TRANSER**

**Section 231:**

Transfers by virtue of alienation contracts can only occur if the latter are passed in an authentic way. The alienation contract may be passed in the presence of the registrar who draws up its deed before registration. The registrar will only act after he has verified the identity and the capacity of the contractants.

When the alienation contract has been passed in the presence of another public official on national or foreign territory, the deed pertaining to this contract is handed over to the registrar in minutes or by means of a certified copy. The registrar verifies the validity of the deed. If he agrees the registrar demands that it be legalised.

Transfers by virtue of rulings may be carried out if they are passed in respect of the matter ruled.

**Section 232:** *(Abrogated by Section 2 of law n°80-008 of 18 July 1980 amending and completing law n° 73-021 of 20 July 1973 regarding the general system of assets, land, real estate and sureties.)*

**Section 233:**

Subject to the land system according to Section 210 of the said law, transfers following death may only occur virtue of a ruling of a judge of the higher civil court in respect of the building's situation.

The heir or legatee's request must be published in one or several State journals to be named by the judge.

The investiture of the ruling is only handed down after all deeds or documents have been examined in support of the applicant's right and any measures which the magistrate may prescribe following thorough examination. The State prosecutor must give his opinion in writing.

The investiture ruling must be handed down within four months from the day of publication of the newspapers in which the request has been published.

**Section 234:**

Prior conditions to transfers in cases of bankruptcy, seizure of property, expropriation for reasons of public use, are set by the relevant measures pertaining to these matters.

## *Chapter 2:* **TYPES OF TRANSFER**

### **Section 235:**

Except for cases where transfer is ordered by the courts and those governed by particular laws, no transfer may take place except after the certificate to be replaced has been handed over to the registrar. In all transfer cases the old certificate registered in the registry is stamped as having been cancelled and has an annotation indicating according to measures prescribed in Section 226, the reasons for cancellation as well as the date and the number of the new certificate.

### **Section 236:**

The registrar effects the transfer by recording in the registry and by issuing a registration certificate in conformity with Section 225 to the new concessionaire or the new owner. If need be, he adds to the rental and charges statement due by the concession or the building according to the former alienator's certificate, new real charges stipulated in the deed of alienation.

### **Section 237:**

When it is in respect of an exchange, division or another contract implying reciprocal real estate benefits that the registrar carries out transfers, he then records it in his registry and issues the parties as many new certificates as there are new concessionaires or new owners. In a case of partial transfer, the registrar will replace the alienator certificate with as many new certificates as there are rights.

If the concession or the building is registered in the name of many new concessionaires, or several new owners jointly, the registrar will establish and issue only one certificate. The joint owners or concessionaires are required to come to an agreement amongst themselves to whom the group certificate is to be issued with the responsibility of helping his jointly interested parties in all requisitions. If the choice is difficult, the matter will be settled by the registrar.

However, when the joint assets are used as accessories and common usage, either for particular concessions or to parts of buildings belonging to different owners, the certificates pertaining to these concessions or parts of buildings all mention these joint assets.

In addition, the certificates mention the situation of dividing walls and enclosures on each piece of land and specify if they are there as concessions, co-ownerships.

If need be, the registrar of real estate deeds will proceed with the registration of items mentioned in the preceding paragraph by means of a report established by a geometer from the cadastral office or an approved geometer and signed by agreement of the parties concerned .

### **Section 238:**

The registrar makes a note of and registers in his journal all deeds and documentation which has been given to him for purposes of the transfer which he has made.

**SECTION IV:  
OPPOSITION TO OWNER'S OR CONCESSIONAIRE'S RIGHTS**

**Section 239:** *(amended and completed by Section 3 of law n°80-008 of 18 July 1980 amending and completing law n°73-021 of 20 July 1973 in respect of the general system of assets, land, real estate and sureties).*

By means of a request to the registrar, the mortgaged debtor of the registration certificate, the debtor holding a binding deed, the preceding concessionaire or owner who has a right to retrocession for reasons of resolution or cancellation of a contract according to which he ceded the concession or the building, the bankruptcy executor as well as the holder of the right to become a concessionaire or an owner, can oppose the exercising of the right to decide for the concessionaire or the owner registered in the registry.

The applicant is required to justify by what means he has the right to oppose.

The registrar makes a note of the opposition according to the method indicated in Section 226 on the certificate registered in the registry.

**Section 240:**

The annotation prevents the right of the concessionaire or the owner to decide for six months from the time when it is made.

It can be renewed for a similar period according to a ruling from the judge of the higher civil court for a serious reason.

No transfer may take place and for any reason whatsoever, before expiry of the legal time frame unless opposition has been withdrawn by the opposer or by a ruling in terms of the ruling.

**Section 241:**

In a case of withdrawal, the annotation of the opposition is stamped with a cancellation stamp and a note dated, sealed and signed, showing the reason for the cancellation.

The registrar keeps the withdrawal deed or ruling and registers it in his journal.

**SECTION V:  
REPLACEMENT OF CERTIFICATES WHICH ARE RECOGNISED TO BE  
INACCURATE OR INCOMPLETE AND CERTIFICATES WHICH HAVE BEEN  
DESTROYED OR LOST**

**Section 242:**

When the indication of the surface area or the sketch of a registered building are found to be inaccurate or incomplete following a report of cadastral agents, and that the rectification is not such that it will affect the registered rights of neighbours, the concessionaire or the owner may request that a new certificate be issued to replace the old one.

The old certificate is cancelled in the registry as indicated in Section 235.

The new certificate is different from the old one only in terms of inaccuracies or omissions noted by the cadastral agents. It is recorded in the registry and issued to the

concessionaire or the owner with a reference to the page of the former certificate and a note of the reason for which it was issued.

The registrar keeps the old certificate and the cadastral agent's report and registers them in his journal.

**Section 243:**

In a case of loss or destruction of his registration certificate, the concessionaire or the owner may request a new one in order to authenticate the loss or the destruction which he alleges. His request must be made in writing and must contain the undertaking that he will be responsible for the damaging consequences which the issuing of the new certificate could have for third parties. The registrar takes note of the facts. If the identity of the applicant with the person named as concessionaire or owner in the registry does not appear to be certain, he may demand proof of identity from a magistrate or state official dealing with these matters. The new certificate is exactly the same as the old one as it appears in the registry. It is recorded in the registry and issued to the concessionaire or the owner with a reference to the page of the former certificate and a note of the reason for which it was issued as well as the undertaking made by the concessionaire or the owner. The old certificate is cancelled in the registry as indicated in Section 235.

**SECTION VI:  
APPEAL AGAINST THE REGISTRAR'S DECISIONS**

**Section 244:**

The Registrar's decisions may be opposed by means of an appeal to the higher civil court. An appeal is submitted by means of summons of this official according to civil procedure. The ruling is always liable to appeal.