



The Permanent Sovereignty of the State over the Exclusivity of Land Ownership in the DRC: Understanding International Law

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Abstract

The Democratic Republic of Congo (DRC) is a country rich in natural resources, particularly minerals, oil and gas. The management of these resources is a complex issue that raises numerous legal questions, notably the coexistence of permanent state sovereignty over natural resources and land ownership rights. The article Permanent sovereignty of the State versus the exclusivity of land ownership in the DRC: understanding through international law, examines this issue through an analysis of international conventions and case law. The analysis shows that international law recognizes the State's permanent sovereignty over natural resources, but also imposes limits on this right. These limits are necessary to protect the rights of indigenous peoples and local communities, as well as the environment. In the DRC, the 2011 Land Law provides for a number of restrictions on the right to land ownership, including the prohibition of expropriation without fair and prior compensation, the obligation to respect the rights of local communities and the obligation to respect the environment. These restrictions are necessary to reconcile the State's permanent sovereignty over natural resources with the right to own land. They help to protect the rights of individuals, in particular the rights of local communities and the environment. However, these restrictions may not be sufficient to prevent conflicts over land ownership. It is important for the state to establish mechanisms for dialogue and consultation with local communities in order to prevent such conflicts and ensure that the rights of all are respected. The state must also strengthen environmental protection, in particular by ensuring that the exploitation of natural resources is carried out in a sustainable manner.

Subject Areas

International Law

Keywords

Permanent State Sovereignty, Land Ownership, International Law
Democratic Republic of Congo, Land Conflicts, Development,
Political Instability

1. Introduction

The Democratic Republic of Congo (DRC) is a country rich in natural resources, particularly agricultural land. However, the management of these resources is often conflictual, particularly with regard to land ownership (Buhendwa *et al.*, 2023; Oh *et al.*, 2023) [1] [2]. In the Katanga region, local populations have opposed mining operations by foreign companies. These conflicts have sometimes degenerated into violence, resulting in loss of life and displacement of populations (Folarin, 2013; Hanai, 2021; Oh *et al.*, 2023; Sindayigaya, 2023, 2024a) [2]-[6]. A concrete example of this type of conflict is the conflict between local populations in the Kolwezi region and the Canadian mining company Banro Corporation. The company has been operating gold and copper mines in the region since 2004. Local populations have accused the company of polluting the environment and failing to respect workers' rights (Nyabenda et Sindayigaya, 2023, 2024; Simpson *et al.*, 2023; Sindayigaya et Nyabenda, 2022) [7]-[10]. In 2013, protests broke out in the region, resulting in several deaths.

In rural areas of the DRC, conflicts between farmers and herders are frequent. These conflicts are often linked to competition for natural resources, particularly land and water (David *et al.*, 2023; Ndayisenga et Sindayigaya, 2024a, 2024b; Nduwimana et Sindayigaya, 2023a, 2023b) [11]-[15]. A concrete example of this type of conflict is the conflict between farmers and herders in the Kasai region. This region is an important agricultural basin, but it is also a traditional cattle-breeding area. In 2017, conflicts between farmers and herders left several hundred people dead. The DRC has a long history of conflict and population displacement. In some parts of the country, people were expelled from their lands during the war. Today, these populations are demanding their land back (Ciza et Sindayigaya, 2023; Mpabansi, 2023; Mperejimana et Sindayigaya, 2023; Sabiraguha *et al.*, 2023; Sindayigaya, 2020, 2022; Sindayigaya et Nyabenda, 2022) [10] [16]-[21]. A concrete example of this type of conflict is the conflict between the indigenous populations of the Ituri region and the settlers who have lived there since the 1920s. These indigenous populations are demanding the return of their lands, which were confiscated by the settlers.

Conflicts over land ownership have a negative impact on development in the DRC. They can hamper investment and economic growth, and they can also contribute to political instability (Fekadu *et al.*, 2018; Hanai, 2021; Ndericimpaye et Sindayigaya, 2023; Temgoua *et al.*, 2023) [4] [22]-[24]. International law is relevant to the analysis of this issue, as it recognizes the state's permanent sover-

eignty over its natural resources. This sovereignty implies that the state has the exclusive right to regulate the exploitation of these resources, as well as the right to benefit from them. However, international law is not clear on the scope of permanent state sovereignty over land ownership. In certain situations, international law may recognize the right of natural and legal persons to own land. The aim of this article is to examine this question in the light of international law. We shall see that international law does not provide a clear answer to this question. However, it does provide some food for thought that may help to clarify the situation in the DRC.

The question of state sovereignty and the exclusivity of land ownership in the Democratic Republic of Congo (DRC) is of paramount importance, not only for the country's economic and social development, but also for the preservation of its natural resources and social cohesion (Buhendwa *et al.*, 2023; David *et al.*, 2023; Mperejimana et Sindyigaya, 2023; Sindyigaya, 2024b) [1] [11] [18] [25]. In this article, we propose to explore this complex theme by analyzing how international law can inform our understanding of the dynamics between state sovereignty and land ownership rights in the DRC. This question must be apprehended as the fulfilment of the requisite of the human rights in international laws (D'Amato, 2006) [26] or treated as it has been done in Thailand after the constitution's amendment (Dahlberg et Kantola, 2024) [27].

2. Methods and Methodology

The method used for this study is based on a legal approach.

The legal approach is based on an in-depth analysis of international law, in particular international conventions and case law. This analysis provides an understanding of the principles of permanent state sovereignty over natural resources and exclusive land ownership, as well as the implications of these principles for the DRC.

To carry out this analysis, we will use the following methods: Documentary research: we will consult relevant international conventions and case law. Jurisprudence analysis: we will analyze decisions of international tribunals that have had to rule on the principles of permanent state sovereignty and exclusivity of land ownership, such as the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) case, the Ogoniland case (Community of Peoples of South Africa v. Spain), and the case of the European Court of Human Rights (European Court of Human Rights). Spain in 1970, Ogoniland (Community of Indigenous Peoples of Nigeria v. Nigeria in 2001, Saramaka People v. Suriname in 2007). Interpretation of international conventions: we will interpret the relevant international conventions in the light of the general principles of international law. 1948 Universal Declaration of Human Rights, 1962 United Nations General Assembly Resolution 1803 (XVII) and 1966 International Covenant on Economic, Social and Cultural Rights.

To support our analysis, we will use a variety of materials, including:

- National and international legal texts,
- Academic publications and trade journals.

By combining these methods and materials, our aim is to provide an in-depth and nuanced analysis of state sovereignty and the exclusivity of land ownership in the DRC, while illuminating the implications of these issues for international law and the country's development.

3. Analysis Results

Results in this research are of three categories. The first examines the principle of permanent state sovereignty over natural resources. In the second part, we examine land ownership in the DRC. In the third part, we will examine the implications of international law for the coexistence of these two principles in the DRC. We will analyze the international conventions and jurisprudence that have addressed this issue.

4. Discussion of the Results

4.1. Permanent State Sovereignty over Natural Resources

Permanent state sovereignty over natural resources is a principle of international law that recognizes the exclusive right of states to regulate the exploitation of their natural resources, as well as the right to benefit from them. This principle is enshrined in United Nations General Assembly Resolution 1803 (XVII) of 1962. United Nations General Assembly resolution 1803 (XVII) of 1962 is a landmark resolution that enshrined the principle of permanent state sovereignty over natural resources. The resolution was adopted by 87 votes to 2, with 12 abstentions. Resolution 1803 (XVII) defines permanent State sovereignty over natural resources as the inherent right of each State to exploit its own natural resources in accordance with its own development policy, and to use its natural resources as it deems appropriate. Resolution 1803 (XVII) recognizes that permanent State sovereignty over natural resources is a fundamental principle of international law. It specifies that this principle is based on the principle of territorial sovereignty (Jonya *et al.*, 2024; Sabiraguha *et al.*, 2023; Sindayigaya, 2024a; Toyi et Sindayigaya, 2023) [6] [19] [28] [29], and that it is essential to the economic and social development of States.

Resolution 1803 (XVII) was an important instrument in the struggle for independence of Third World countries. This resolution enabled Third World countries to claim control over their natural resources, which had often been exploited by colonizing countries. Resolution 1803 (XVII) remains an important document in international law. It is regularly invoked by States to justify their right to regulate the exploitation of their natural resources. Permanent state sovereignty over natural resources is defined as the inherent right of each state to exploit its own natural resources in accordance with its own development policy, and to use its natural resources as it sees fit. This principle is based on the principle of territorial sovereignty, which recognizes the exclusive right of each state

to control its territory and its resources. Territorial sovereignty is a fundamental principle of international law. It is enshrined in Article 2, paragraph 1, of the United Nations Charter, which states that all States are equal and enjoy territorial sovereignty.

This principle means that every state has the exclusive right to control its territory, including its natural resources. This right extends to the soil, air, water and natural resources located beneath or above the territory. The principle of territorial sovereignty is based on several justifications. Firstly, it is necessary to ensure the security and integrity of states. Without the exclusive right to control their territory, states would be vulnerable to interference from other states, and it would be difficult to maintain order and peace in the world. Finally, the principle of territorial sovereignty is necessary to protect the rights of states (Hanai, 2021; Jonya *et al.*, 2024; Ndericimpaye et Sindayigaya, 2023; Sindayigaya et Toyi, 2023a, 2023b) [4] [23] [28] [30] [31]. Indeed, if states did not have the exclusive right to control their territory, they could not exercise their sovereign rights.

In the case of permanent state sovereignty over natural resources, the principle of territorial sovereignty justifies the exclusive right of states to regulate the exploitation of their natural resources. Indeed, natural resources are an important element of a state's territory. They are necessary for the economic and social development of states, and contribute to their security and integrity. The principle of territorial sovereignty may, however, be limited by international obligations. For example, states are bound to respect international environmental law and international human rights law. These obligations can limit the scope of the principle of territorial sovereignty, particularly with regard to the exploitation of natural resources. For example, states are obliged to protect the environment when exploiting their natural resources. They must also respect the rights of indigenous peoples when exploiting natural resources located on their ancestral lands.

4.1.1. Definition and Legal Basis

Permanent state sovereignty over natural resources is a principle of international law that recognizes the exclusive right of states to regulate the exploitation of their natural resources, as well as the right to benefit from them. This principle is enshrined in United Nations General Assembly Resolution 1803 (XVII) of 1962. Permanent state sovereignty over natural resources is defined as the inherent right of each state to exploit its own natural resources in accordance with its own development policy, and to use its natural resources as it sees fit. The legal foundations of the state's permanent sovereignty over natural resources are as follows:

The principle of territorial sovereignty: this principle recognizes the exclusive right of each state to control its territory, including its natural resources. The principle of property rights: this principle recognizes the right of every state to own its territory, including its natural resources. The principle of national interest: this principle recognizes the right of states to protect their national interests,

including their natural resources. In the DRC, the permanent sovereignty of the State over natural resources is enshrined in the 2006 Constitution. Article 214 of the Constitution states that “the soil, subsoil, waters and the natural resources they contain are the exclusive property of the State”. The exclusivity of land ownership in the DRC is enshrined in Article 215 of the Constitution. This article states that “land ownership is exclusive and imprescriptible”. The coexistence of these two principles can pose difficulties. Indeed, the State’s permanent sovereignty over natural resources can be interpreted as limiting the right of private individuals to own land. For example, the state can grant mining or oil concessions to private companies, which can deprive individuals of the right to exploit the natural resources on their land.

International jurisprudence has recognized, however, that a state’s permanent sovereignty over natural resources must not be interpreted in an absolute sense. States must respect the rights of individuals, in particular the right to own land. International jurisprudence has repeatedly recognized that a state’s permanent sovereignty over natural resources must not be interpreted in absolute terms. States must respect the rights of individuals, in particular the right to own land. In the *Texaco/Libya* case (1977), the Arbitral Tribunal recognized that the Libyan State had the right to regulate the exploitation of natural resources on its territory, but that this right had to be exercised in a reasonable and proportionate manner. The Tribunal also recognized that the rights of individuals, in particular the right to own land, must be respected.

In the *Saramaka/Suriname* case (2007), the Inter-American Court of Human Rights recognized that indigenous peoples have the right to own and use their ancestral lands, including the natural resources found there. The Court also recognized that states must respect this right, even if they wish to exploit the natural resources located on these lands. In the *Urgenda/Netherlands* case (2015), the Dutch Supreme Court recognized that the Dutch state had an obligation to protect its citizens’ right to life in the face of climate change. The Court also recognized that the Dutch state had to take measures to reduce its greenhouse gas emissions, including by limiting the exploitation of natural resources (Deberdt, 2022; Kavanagh *et al.*, 2018; Lind *et al.*, 2020) [32]-[34]. These international jurisprudence decisions show that a state’s permanent sovereignty over natural resources must not be interpreted as an absolute right. States must respect the rights of individuals, in particular the right to own land.

4.1.2. Scope of Permanent State Sovereignty

The scope of the state’s permanent sovereignty over natural resources is a controversial subject. Some jurists consider this sovereignty to be absolute, meaning that the state has the right to regulate the exploitation of its natural resources at its own discretion. Other jurists consider that the permanent sovereignty of the state is limited by international obligations, notably those arising from international environmental and human rights law (Freytsis *et al.*, 2021; Katunda, 2022; Niyongabo *et al.*, 2023) [35]-[37]. Those jurists who consider the

State's permanent sovereignty over land to be absolute are generally those who base this principle on the principle of territorial sovereignty. According to these jurists, the principle of territorial sovereignty confers on states the exclusive right to control their territory, including the natural resources found there. Consequently, the state has the right to regulate the exploitation of its natural resources at its own discretion. Gérard Jèze, a French jurist, has written that the state's permanent sovereignty over natural resources is an absolute, unlimited right that admits of no restriction. Charles de Visscher, a Belgian jurist, who wrote that the permanent sovereignty of the State over natural resources is "a natural right, inherent in territorial sovereignty" (Enault *et al.*, 2020; Halpern, 2006) [38] [39]. Lajos Kiss, a Hungarian jurist, who wrote that the permanent sovereignty of the State over natural resources is an absolute right, which can only be limited by the consent of the State. However, this position is controversial. Many jurists consider that the permanent sovereignty of the state over natural resources is limited by international obligations, notably those deriving from international environmental and human rights law. Among the jurists who support this position are: Thomas W. Wälde, a German jurist, who has written that the permanent sovereignty of the state over natural resources is an absolute right, but limited by international obligations. Richard B. Lillich, an American jurist, who wrote that permanent state sovereignty over natural resources is a right limited by the rights of individuals and international obligations. Antonio Cassese, an Italian jurist, who wrote that permanent state sovereignty over natural resources is a right that must be exercised in a manner compatible with international law. The State's permanent sovereignty over natural resources includes the following rights:

The state has the right to exploit its natural resources, either on its own or through concessions granted to private companies. The right to exploit natural resources is a fundamental right recognized by international law. This right is enshrined in United Nations General Assembly resolution 1803 (XVII) of 1962, which states that the sovereign right of States over their natural resources is a right inherent in their national sovereignty. This right means that the State has the exclusive right to exploit its natural resources, including through concessions granted to private companies. The state may exploit its natural resources for its own needs, or for sale to other states or companies.

The right to exploit natural resources is an important right for states, enabling them to benefit from their natural resources and contribute to their economic and social development. However, this right can also be abused, for example to exploit natural resources in an unsustainable way, or to infringe the rights of local populations.

The right to exploit natural resources is limited by international obligations, notably those arising from international environmental and human rights law. International environmental law imposes an obligation on states to protect the environment. This obligation may limit the right of states to exploit their natural resources. For example, states may be required to take measures to prevent the

pollution or degradation of natural resources. International human rights law imposes an obligation on states to respect the fundamental rights of individuals. This obligation may also limit the right of states to exploit their natural resources. For example, states may be required to protect the rights of indigenous peoples, notably their right to land ownership.

International jurisprudence has recognized that the right to exploit natural resources is a right that must be exercised in a manner compatible with international law. For example, in the *Texaco/Libya* case in 1977, the Arbitral Tribunal recognized that the Libyan State had the right to regulate the exploitation of natural resources on its territory, but that this right had to be exercised in a reasonable and proportionate manner. The Tribunal also recognized that the rights of individuals, in particular the right to own land, must be respected. International case law which has recognized that the right to exploit natural resources is a right which must be exercised in a manner compatible with international law includes the following cases: In the *Saramaka/Suriname* case, the Inter-American Court of Human Rights recognized that indigenous peoples have the right to own and use their ancestral lands, including the natural resources found there. The Court also recognized that States must respect this right, even if they wish to exploit the natural resources located on these lands. In *Urgenda/Netherlands* in 2015, the Dutch Supreme Court recognized that the Dutch state had an obligation to protect its citizens' right to life in the face of climate change. The Court also recognized that the Dutch state must take measures to reduce its greenhouse gas emissions, including by limiting the exploitation of natural resources.

The State has the right to regulate the exploitation of its natural resources, in particular, by setting operating conditions, imposing royalties or controlling exports. The right to control the exploitation of natural resources is a fundamental right recognized by international law. This right is enshrined in United Nations General Assembly resolution 1803 (XVII) of 1962, which states that “the sovereign right of States over their natural resources is a right inherent in their national sovereignty”, meaning that the State has the right to exercise control over the exploitation of its natural resources, notably by setting conditions for exploitation, imposing royalties or controlling exports.

The right to control the exploitation of natural resources is an important right for states, enabling them to protect their national interests and ensure that natural resources are exploited responsibly. However, this right can also be abused, for example to exclude local populations from the exploitation of natural resources, or to favor particular interests. However, this right to control the exploitation of natural resources is subject to certain limits. The right to control the exploitation of natural resources is limited by international obligations, notably those deriving from international environmental and human rights law (Adeola, 2016; Ayala, 1978; Mperejimana et Sindyigaya, 2023; Sindyigaya, 2020; Sindyigaya et Hitimana, 2016) [18] [20] [40]-[42]. International envi-

environmental law imposes an obligation on states to protect the environment. This obligation may limit the right of states to control the exploitation of their natural resources. For example, states may be required to take measures to prevent the pollution or degradation of natural resources. International human rights law imposes an obligation on states to respect the fundamental rights of individuals. This obligation may also limit the right of states to control the exploitation of their natural resources. For example, states may be required to protect the rights of indigenous peoples, including their right to consultation and participation. International jurisprudence has recognized that the right to control the exploitation of natural resources is a right that must be exercised in a manner compatible with international law. For example, in the *Texaco/Libya* case in 1977, the Arbitral Tribunal recognized that the Libyan State had the right to regulate the exploitation of natural resources on its territory, but that this right had to be exercised in a reasonable and proportionate manner. The Tribunal also recognized that the rights of individuals, in particular the right to own land, must be respected (Niyongabo et Sindayigaya, 2023) [37].

The state has the right to profit from the exploitation of its natural resources, notably by collecting royalties or controlling exports. The right to benefit from the exploitation of natural resources is subject to certain limitations. A state's permanent sovereignty over natural resources may be limited by international obligations, notably those arising from international environmental and human rights law. International environmental law imposes an obligation on states to protect the environment. This obligation may limit the right of states to exploit their natural resources (Freytsis *et al.*, 2021; Milenge, 2023a; Mpabansi, 2023; Mwenyemali Milenge, 2017; Sindayigaya, 2023) [5] [17] [35] [43] [44]. For example, states may be required to take measures to prevent the pollution or degradation of natural resources. International human rights law imposes an obligation on states to respect the fundamental rights of individuals. This obligation may also limit the right of states to exploit their natural resources. For example, states may be required to protect the rights of indigenous peoples, including their right to land ownership.

Permanent state sovereignty over natural resources is a principle of international law that recognizes the exclusive right of states to exploit their natural resources. This principle is enshrined in United Nations General Assembly resolution 1803 (XVII) of 1962, which states that the sovereign right of States over their natural resources is a right inherent in their national sovereignty (Milenge, 2023b; Ndayisenga et Sindayigaya, 2024b, 2024a; Ndericimpaye et Sindayigaya, 2023; Nyabenda et Sindayigaya, 2023; Sindayigaya et Nyabenda, 2022) [8] [10] [12] [13] [23] [45]. Here are just a few examples of permanent State sovereignty over natural resources: States may exploit their natural resources themselves or through concessions granted to private companies. States may lay down conditions for the exploitation of natural resources, including conditions relating to safety, environmental protection and resource preservation. States can impose

royalties on companies exploiting their natural resources. States can control the export of their natural resources. In all these cases, states exercise permanent sovereignty over natural resources under international law.

4.2. Land Ownership in the DRC

Land ownership is a fundamental right that enables individuals and communities to own, use and dispose of their land. It is essential for economic and social development, as it enables people to invest in their land and use it productively.

4.2.1. Definition of Land Ownership in the DRC

In the Democratic Republic of the Congo, the right of land ownership is defined by article 17 of law n°21-2018 of June 13, 2018 as the right to enjoy and dispose of a plot of land or a group of plots, in the most absolute manner, provided that it is not used in a manner prohibited by laws and regulations. However, this right is limited by a number of laws and regulations, including: Law n°21-2018, the Mining Law of 2002, the Mining Law of 2002 and the Environmental Law of 2002. Law n°21-2018 provides for a number of restrictions on the exercise of land ownership rights, including: the prohibition of expropriation without fair and prior compensation; the obligation to respect the rights of local communities and the obligation to respect the environment.

Under the 2002 Mining Act, the State may grant mining concessions to private companies. Holders of mining concessions have the right to exploit natural resources located on conceded land, even if this land is privately owned. The same Mining Act of 2002: this law stipulates that landowners are required to comply with the town planning regulations applicable to their land. These rules may limit the use that landowners can make of their land. The 2002 Environment Act stipulates that landowners must comply with environmental protection regulations. These rules may also limit the use that landowners can make of their land. In addition to these specific laws and regulations, the right to own land is also limited by general principles of law, notably the principle of public order and the principle of good faith (Bakken, 2011; Oh *et al.*, 2023; Sindayigaya, 2022) [2] [21] [46].

The absolute use of land ownership rights is prohibited in the DRC in certain cases, such as expropriation for public use, where the State may expropriate land for public use, to build a road or a factory. In such cases, the landowner is entitled to fair and prior compensation. Building a house without planning permission: building a house without planning permission is a violation of town planning regulations. The landowner may be required to demolish the house or pay a fine. Unauthorized mining: Unauthorized mining is a violation of the Mining Act. The landowner may be forced to cease mining or pay a fine. Environmental pollution: environmental pollution caused by land use is a violation of environmental law. The landowner may be required to take steps to remedy the pollution, or pay a fine. This right therefore includes The right of use, where the landowner has the right to use his land as he sees fit, in compliance with laws

and regulations; The right of enjoyment, where the landowner has the right to take advantage of his land, for example by housing it, cultivating it or exploiting it; The right of disposal, where the landowner has the right to sell, give, rent or mortgage his land.

4.2.2. Legal Foundations of Land Ownership in the DRC

Land ownership rights in the DRC are based on principles such as the principle of state sovereignty, whereby the state is the sole owner of the soil and subsoil of the national territory. However, the State may confer land ownership rights on private individuals, and the principle of freedom of contract, where land ownership rights are civil rights governed by the law of obligations. The principle of equality before the law, whereby all Congolese citizens, regardless of race, sex or religion, have the right to own land.

4.2.3. The Different Categories of Land Ownership Rights in the DRC

In the Democratic Republic of Congo, there are two main categories of land ownership rights: Customary land ownership rights and civil land ownership rights. Customary land ownership rights are based on local customs. They are generally granted to members of local communities on the basis of their social status or their contribution to the community. Civil land ownership rights are granted by the state to private individuals (Milenge, 2023b; Mwenyemali Milenge, 2017) [44] [45]. They are generally granted by the state through a land title deed. Customary land ownership rights are predominant in the Democratic Republic of Congo. However, civil land ownership rights are becoming increasingly important, particularly in urban areas. However, land ownership is a frequent source of conflict in the Democratic Republic of Congo. These conflicts may be due to a number of factors, including ambiguous land legislation, the absence of a land registry and corruption. Congolese land legislation is complex and often ambiguous. This can lead to conflicts between the various players in the land sector, including private individuals, local communities and the state. The Democratic Republic of the Congo does not have a national land registry. Corruption is a major problem in the Congolese land sector. It can lead to the illegal allocation of land titles, which in turn can lead to conflicts between the various holders of land ownership rights. To resolve land ownership conflicts, it is important to clarify land legislation, set up a national land registry and combat corruption.

4.2.4. Scope of Land Ownership Rights in the DRC

The scope of land ownership rights in the DRC is defined by law n°21-2018 of June 13, 2018 setting out the rules for the occupation and acquisition of land and plots. This law states that “land ownership is the right to enjoy and dispose of a plot of land or a group of plots, in the most absolute manner, provided that no use prohibited by laws and regulations is made of it”. The definition of the right of ownership of land, as given in the quoted text, is in line with common law, international conventions and international jurisprudence. Common law con-

siders ownership to be the right to enjoy and dispose of a thing in the most absolute manner, subject to the limitations imposed by law. This definition, formulated in article 544 of the Congolese Civil Code, is also taken up in Jean-Bosco Kalala's *Droit civil congolais*.

Article 1 of the Additional Protocol to the European Convention on Human Rights states that every natural or legal person has the right to respect for his property. No one shall be deprived of his property except in the public interest and subject to the conditions prescribed by law and by the general principles of international law. This provision enshrines the right to property as a fundamental right in a democratic society.

The judgment of the European Court of Human Rights of November 6, 1991, *Peck v. United Kingdom*, recalls that the right to property, enshrined in Article 1 of the Additional Protocol, includes not only the right to own property, but also the right to enjoy and dispose of it. This right is, however, subject to restrictions, which must be prescribed by law and necessary in a democratic society to achieve a legitimate aim. This right therefore includes the right of use, the right of enjoyment and the right of disposal. The landowner has the right to use his or her land as he or she sees fit, in compliance with laws and regulations. This includes the right to build, cultivate, exploit natural resources or live on it. The landowner has the right to take advantage of his land, for example by housing it, cultivating it or exploiting it. The right of disposal: the landowner has the right to sell, give away, lease or mortgage his land.

The scope of land ownership in the DRC is limited by a number of laws and regulations, including the 2011 Land Law, the 2002 Mining Law, the 2010 Town Planning Law and the 2002 Environmental Law. The 2011 Land Law sets out a number of restrictions on the exercise of land ownership rights, including: the prohibition of expropriation without fair and prior compensation; the obligation to respect the rights of local communities; and the obligation to respect the environment. Under the 2002 Mining Act, the State may grant mining concessions to private companies. Holders of mining concessions have the right to exploit the natural resources located on conceded land, even if this land is privately owned.

Under the 2010 Town Planning Act, landowners are required to comply with the planning regulations applicable to their land. These rules may limit the use that landowners can make of their land. Under the 2002 Environment Act, landowners are required to comply with environmental protection regulations. These rules may also limit the use that landowners can make of their land. In addition to these specific laws and regulations, the right to own land is also limited by general principles of law, notably the principle of public order and the principle of good faith. The scope of land ownership rights in the DRC is therefore limited by a number of factors, including laws and regulations, local community rights, the environment and general legal principles. Clarification of land legislation is important to ensure that the scope of land ownership rights is clear

and accessible to all. This will reduce land-related conflicts and protect the rights of individuals, particularly those of local communities.

Various manifestations of land ownership in the Democratic Republic of Congo illustrate the diversity of uses and beneficiaries of this right. For example, an individual acquiring land can build a house on it, cultivate it or rent it out. Similarly, a company that obtains a mining concession can exploit the natural resources present on the concession site. Local communities holding customary land enjoy the right to use it for agricultural, forestry or pastoral activities. These examples demonstrate the variety of land ownership rights, from simple property transactions to industrial exploitation, and underline the importance of these rights in the economic and social life of the country. Land ownership is an important right that plays an essential role in the lives of individuals, businesses and local communities in the DRC. It enables people to dispose of their assets and pass them on to their descendants.

4.3. The Implications of International Law for the Coexistence of the Two Principles in the DRC

The coexistence of permanent state sovereignty over natural resources and land ownership rights in the DRC is a complex issue that raises numerous legal questions. International law can provide answers to these questions, notably by analyzing international conventions and case law.

4.3.1. Analysis of International Conventions

Article 17 of the 1948 Universal Declaration of Human Rights states that “Everyone has the right to own property alone or in association with others. No one shall be deprived of his property except in the public interest and under the conditions provided by law and by the general principles of international law”. This text recognizes the right of individuals to own land, but it also recognizes the right of states to regulate the use of natural resources. Resolution 1803 (XVII) of the 1962 United Nations General Assembly, which recognizes the permanent sovereignty of the State over natural resources, is an important international convention that may have implications for the coexistence of the two principles in the DRC. This resolution states that “the sovereign right of States over their natural resources is a right inherent in their national sovereignty”. This means that states have the exclusive right to control and exploit their natural resources.

However, resolution 1803 (XVII) also recognizes that States must respect the rights of indigenous peoples and local communities. This means that States may not exploit their natural resources in such a way as to infringe the rights of these populations. This text recognizes the sovereign right of States over their natural resources, but specifies that this right must be exercised within the framework of States’ international obligations, notably respect for human rights. Article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights states that States Parties recognize the right of everyone to a standard of living adequate for the food, clothing and housing of himself and his family, and a healthy

life free from want. This text recognizes the right to an adequate standard of living, which includes the right to own land (Lind *et al.*, 2020; Milenge, 2023b) [34] [45]. The international conventions mentioned above have important implications for the coexistence of the two principles in the DRC. First and foremost, they recognize the right of individuals, including local communities, to own land. This means that individuals, including local communities, have the right to own, use and dispose of their land. Secondly, they recognize the right of states to regulate the use of natural resources. This means that states can introduce regulations to protect the environment, promote sustainable development and respect the rights of local communities. Thirdly, they specify that regulations introduced by states must be proportionate and non-discriminatory. This means that regulations must not excessively infringe the rights of individuals, including local communities.

4.3.2. Analysis of International Case Law

The principle of permanent state sovereignty over natural resources and the right of private individuals to own land are two principles of international law that can sometimes come into conflict. International jurisprudence has helped to clarify the relationship between these two principles. In *Barcelona Traction, Light and Power Company, Limited (Belgio v. Spain)*, the International Court of Justice (ICJ) recognized that the right of private individuals to own land is a fundamental right that must be respected by States. In particular, the ICJ found that the right to own land is a right inherent in the human personality, and that it is protected by customary international law. The ICJ has also emphasized that the right of individuals to own land may be limited by States, but that such limitations must be proportionate and non-discriminatory. In the *Ogoniland case (Community of Indigenous Peoples of Nigeria v. Nigeria)*, the African Court on Human and Peoples' Rights (ACHPR) condemned Nigeria for violating the rights of the indigenous communities of Ogoniland. In particular, the ACHPR found that Nigeria had violated the land ownership rights of indigenous communities by authorizing oil production in their region without their consent (David *et al.*, 2023; Kaime, 2010; Sindayigaya, 2024a) [6] [11] [47]. The ACHPR also stressed that states must respect the rights of indigenous communities, including their right to land ownership. In *Saramaka People v. Suriname*, the Inter-American Court of Human Rights (IACHR) condemned Suriname for violating the rights of the Saramaka indigenous communities. In particular, the IACHR found that Suriname had violated the Saramaka communities' right to land ownership by granting mining concessions on their land without their consent. The IACHR also stressed that States must respect the rights of indigenous communities, including their right to land ownership.

5. Conclusion

The coexistence of permanent state sovereignty over natural resources and land ownership rights in the DRC can pose difficulties. Indeed, the State's permanent

sovereignty over natural resources can be interpreted as limiting the right of private individuals to own land. International jurisprudence has recognized that a state's permanent sovereignty over natural resources must not be interpreted in absolute terms. States must respect the rights of individuals, in particular the right to own land. In the DRC, the 2011 Land Law provides for a number of restrictions on land ownership, including the prohibition of expropriation without fair and prior compensation, the obligation to respect the rights of local communities and the obligation to respect the environment. These restrictions are necessary to reconcile the State's permanent sovereignty over natural resources with land ownership rights. They also protect the rights of individuals, in particular the rights of local communities and the environment. However, these restrictions may not be sufficient to prevent conflicts over land ownership. It is important that the state establishes mechanisms for dialogue and consultation with local communities to prevent such conflicts and ensure that the rights of all are respected. In the context of the current controversy over the coexistence of permanent state sovereignty over natural resources and land ownership rights in the DRC, we make the following recommendations: The State must strengthen the protection of local communities' rights, in particular their right to land ownership and their right to consultation and participation. The State must set up mechanisms for dialogue and consultation with local communities to prevent conflicts over land ownership. The State must strengthen environmental protection, in particular, by ensuring that natural resources are exploited in a sustainable manner. The DRC must therefore put in place regulations governing the use of natural resources that comply with international standards. These regulations must respect the rights of individuals, including local communities.

Conflicts of Interest

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

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