Limitations and prospects of tenant protection in the democratic republic of Congo positive law: the case study of gbado-lite city in nord Ubangi province

Urbain Mazo Nyate¹, Modeste Ndaba Modeawi², Jonas Mbaya Kusagba³, Gédéon Ngiala Bongo⁴, Ghislain David Kasongo Lukoji⁵, Koto-te-Nyiwa Ngbolua⁶

¹, ², ³, ⁴, ⁵, ⁶ University of Gbado-Lite, Faculty of Law, Gbado-Lite city, Democratic Republic of the Congo

Abstract
According to the lease agreement, many people in the Democratic Republic of Congo generate income that will enable them to meet their basic needs. In fact, in the landlord-tenant relationship, a significant amount of imbalance has always emerged from which the tenant is victim because, as the non-owner of the building to be rented, nevertheless, the said contract, the autonomy of will, i.e. each party has a freedom in the conclusion of the contract. This situation is almost identical throughout the Republic and even in the city of Gbado-Lite where landlords reign as absolute masters, imposing the rent rate, causing a lot of abuse during the execution of the contract. To remedy this situation and ensure the protection of the consumer as a vulnerable person, legislative intervention was needed that could strike a balance between the landlord and the tenant. Thus, a series of texts have been adopted in this direction, namely the decree of 30 July 1888 on contracts and contractual obligations and law n°15/025 of 31 December 2015 relating to non-professional leases. The first text, having failed to provide effective and efficient consumer protection, could be corrected by the second in order to strengthen this protection by providing for even criminal sanctions in its provisions against any offender (especially the landlord). In the context of this study, in the sense of consumer law, the tenant must be considered as a consumer in matters of leases, which must be protected against abuse by the professional landlord.

Although Law No. 15/025 of 31 December 2005 is promulgated and published in the Official Gazette, it continues to suffer from its application. It is bitterly noted that this law remains a dead letter in the sense that the State, which is called upon to play a leading role in its implementation, is failing. There is therefore an urgent need to ensure the effective and efficient protection of tenants in the Democratic Republic of Congo in general and those in the Gbado-Lite city in particular.

Keywords: landlord, tenant, lease, consumer law, gbado-lite

1. Introduction
The lease is one of the main usual contracts performed in the Democratic Republic of Congo (DRC). Depending on its purpose, it has two forms; on the one hand, the non-professional (or civil) lease, and on the other hand, the professional (commercial) lease. The commercial lease is defined by the Uniform Act on General Commercial Law [¹] as any agreement, whether written or not, between a person invested by the law or an agreement on rental law all or part of a building, and another natural or legal person, allowing this contract, the lessee, to carry on a commercial, industrial, craft or any other professional activity on the premises with the agreement of the lessor. It is therefore the contract by which the lessor leases his building to the lessee to enable the tenant to carry on one’s professional activity by periodically paying rent to the lessor (the owner) [²]. This is a contract between the lessor (merchant or not, natural or legal person) and the lessee (natural or legal person who must necessarily be a merchant).

Unlike the first, the purpose of the civil lease, which is the subject of our analysis, is a use that is not linked to a commercial, industrial, craft or any other professional activity. For a long time, it was subjected in the Congolese law to the rules relating to the "contract of lease of things". The contract is defined, by the Congolese Civil Code, as a contract by which one of the parties undertakes to allow the other to enjoy something for a certain period of time at a certain price which the latter undertakes to pay [³]. The purpose of this contract of lease is very broad and includes movable property that is outside the scope of this study. As a result, it does not sufficiently integrate all the issues of the lease. For this reason, Act No. 15/025 of 31 December 2015 defines a lease as a contract by which one of the parties, called a "lessor", undertakes to grant the other party, called a "lessee", access to a building or premises for a given period of time at an agreed price called a "rent" which the lessee undertakes to pay at mutually agreed dates [⁴]. Collart and Delebecque define it as "a contract

¹ Article 103 de l’acte uniforme révisé portant Droit Commercial Général
² Masamba MR., Manuel de droit et comptabilité OHADA, Commission Nationale OHADA, Kinshasa, avril 2015, p.48
³ Article 371 CCL3
⁴ Article 2 point3 de la loi n°15/025 du 31 décembre 2015 relative aux baux à loyer non professionnels.
giving rise to a personal right, offering to the lessee an exclusive and continuous use of a thing in return for the payment of a rent”» [5].

As for us, we believe that a lease is a contract by which the lessor gives the lessee the use of something, in return for an agreed price called rent and for a fixed period of time. It therefore appears that the lease is a matter of great concern to different legislators who are so different that they are subject to national (in 1886 and then in 2015) and conventional (uniform act) regulations. Is it appropriate to question the motivation and necessity of such an interest? Moreover, in view of this legislative over-activity and the triple regulation of the lease may lead to a more effective and efficient protection of the Congolese lessee, more precisely the non-civilian lease? From the outset, we believe that the 2015 text that corrected the imbalance between the landlord and tenant would not yet be effectively implemented.

This leads us to believe that the protection of the Congolese tenant would not yet be effective or efficient. To demonstrate this, our reflection is based on two main articulations; the first one (i) the legislative evolution of the lease, and (ii) the effectiveness of this contract in the city of Ghado-Lite.

1. Legislative evolution concerning leases

It will be a question here of pinpointing the characteristics and limits of leasing as regulated by the Civil Code as well as the contributions of Law n°15/025 of 31 December 2015.

1.1. From the contract of renting to the contract of lease: decree of July 30, 1888

According to the Civil Code, Book III (above-mentioned decree) in its article 373, all kinds of movable or immovable property can be rented, as long as they are not things without a master (res nullius) or common (res communi). In other words, when we talk about renting things, we distinguish between renting furniture, qualified as renting or renting out, and the one of buildings, called lease. The decree of 30 July 1888 therefore generally regulated the lease by prescribing the common rules for leases of houses and rural property (articles 374-407) and the specific rules for leases and farm leases (articles 408-416).

As the common law of contracts, the 1886 text certainly gives general characteristics of all contracts of lease (1) but has, to this end, limits for the lease contract (2).

i. Characteristics of the contract of lease

The contract of lease has several characteristics, including:

- A contract is considered because the use and enjoyment of the thing is granted to the lessee with a view to the lessor benefiting from the rent;
- A synallagmatic contract since the lessor undertakes to provide the lessee with the use of the leased property, the lessee to pay the price [6];
- A successive contract in the sense that the obligations of two parties are carried out over a period of time;
- A temporary contract: this is a contract concluded for a specific time or period, which is reflected in the terms of the legal definition of the contract of lease.

ii. Limits of the decree of 30 July 1888

The decree of 30 July 1888 did not provide sufficient protection for the Congolese tenant. There is a lot of abuse in this area because, although it only governed rent and firm leases at the end of the law, this decree is in fact a legal instrument applicable to all contracts of which the purpose is the precarious use of property against equivalent performance.

In fact, in view of its contractual nature, the lease is governed by the principle of autonomy of will or contractual freedom, which would require the parties to freely determine the content, varieties and effects of the contract [7]. Unfortunately, there is usually a kind of imbalance between the parties.

Constrained by circumstances of all kinds and orders, the tenant is often in a position of weakness, fragility, precariousness, even vulnerability [8]. Since this principle is often detrimental to the economically weak party, State interventionism is necessary to restore the balance between the parties and the heritage by replacing legal equality with substantive equality [9]. It acts through legislative interventions in order to establish a legal basis and place boundaries [10].

Hence the adoption of Act No. 15/025 of 31 December 2015 on non-professional leases with a view to strengthening the system set up by the Decree of 30 July 1888 on contracts and contractual obligations (Civil Code, Book III), of which contributions deserve to be analyzed.

1.2. Contributions of law №15/025 of 31 December 2015

It should be noted that the law of 31 December 2015 introduced innovations in the field of leases by giving precision and/or clarity (1), by protecting the tenant (2), who is economically and psychologically weak in the face of probable abuse by the landlord, and by providing for criminal sanctions (3). It contains 49 provisions.

i. Precision or clarity

Unlike renting, which is not subject to any formal requirement and for which the deed drawn up serves only as literal proof, the lease at the end of Article 3 of the law under examination is a written deed, freely concluded by the parties, drawn up either by notarial act or by private deed. Within 30 days of its conclusion or in the event of an amendment [11], the parties to the lease or, where applicable, the estate agency shall submit three copies of the contract or any amendment for registration to the competent department. Failing this, the lease booklet [12] is applied to contractual relations. It is also subject to registration.

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[12] Lelivret de bail est un document administratif contenant des renseignements sur le bailleur et le preneur ainsi qu’un modèle de contrat de bail.
It is therefore understandable that this constitutes one of the limits to the freedom of contract enshrined in Act No. 15/025 of 31 December 2015. Failure to comply with this provision exposes the offender to one of the penalties provided for by the same law.

ii. More protection for the tenant

This law only strengthened the decree of 1888 on contracts and treaty obligations without repealing any of its provisions. It is certainly intended to protect tenants who have long been exposed to abuse by their landlords. This is reflected in its provisions, including:

- Article 10, which provides: "the fees of the real estate agency at the conclusion of the lease, corresponding to one month's rent and are payable by the person who requested its services. However, when both parties simultaneously seize the same agency, the fees are borne by half by the lessor and the lessee.

- Article 11, point 6, states: "The lessor shall bear the taxes and levies borne by the owner of the premises to be rented. He is prohibited from distributing it to the lessee. The lessor as owner of the leased property must therefore bear alone the costs related to taxes and duties in this regard and not endorse them on the lessees.

- Point 7 of this article adds: "The lessor shall not have the right to change, during the term of the lease, the destination of the leased object, except by agreement with two parties". The lessee is also protected here because the lessor can no longer continue to act as a dictator in his contractual relationship with the lessee by changing the destination at his discretion.

- Article 12 provides an important element for the protection of the lessee because it reserves a right of first refusal which requires that if the lessor wishes to sell his leased property, he must first inform the lessee in writing, in order to avoid any unpleasant surprises.

Paragraph 3 of the same provision adds that in the event of a sale of the leased property, the lease shall run until its term, if it is for a fixed term. If the lease is for an indefinite period, the new buyer may only evict the lessee found on the premises if he complies with the conditions laid down in Article 30 (3 months' notice or the month, as the case may be) and Article 31 (if the lessee does not always have accommodation after the notice has expired, he is entitled to one month more or 4 months more depending on whether the lease is for residential or socio-cultural purposes).

This provision secures the lessee because he will never be able to support the law of the new purchaser as he once did. The new buyer is no longer allowed to evict the tenant who entered into the lease agreement with the former lessor according to his will, on the contrary he must now comply with the provisions of Article 12.

- Article 18 provides that the rental guarantee may not exceed an amount equivalent to three months' rent and not 10 months previously required by the landlord.

- Under Article 22, the landlord is prohibited from requiring advance payment of the rent. Moreover, the lessor's social needs cannot be borne by the lessee following the requirement of an advance payment.

- The lessor must pay its share of the water, electricity, telephone and/or other bills in the event of cohabitation with one or more lessees.

- Another important provision protecting the tenant is provided for in article 39, which stipulates that any landlord who receives a rental guarantee of more than 3 months for the residential lease is punished by one to three months of the maximum servitude and a fine of three to six months' rent or only one of the penalties. It can therefore be seen that this criminal provision protects the lessee with regard to the rental guarantee.

But are the various provisions protecting the tenant provided for by the law of 31 December 2015 being respected? What do we see then?

iii. Criminal sanctions

- As the State is the guarantor of society, it is responsible for the protection of its citizens. The citizens to be protected in this case are the tenants. Thus, the first way to protect these tenants against abuses by their donors is to rigorously apply the sanctions provided for by law against these recalcitrant lessors. These criminal and civil penalties are provided for in articles 39 to 45 of the law of 31 December 2015. For instance: Article 39 states: "Any lessor who receives a rental guarantee of more than three months for a residential lease or six months for a socio-cultural lease shall be punished by one to three months of main criminal servitude and a fine of three to six months' rent or only one of these penalties".

- If this criminal sanction were scrupulously applied to 10, 20, 30, 50, 50, or 100 landlords in DRC and precisely in Gbado-Lite, no one should have continued to receive 10 months or 12 months' rent. What is also remarkable is that among the lessors, there are also senior political and administrative authorities who are deliberately starting to violate the law. No one is above the law, they say. If these authorities behave like any landlord and respect the law, otherwise, that the judicial authorities punish them without complacency in accordance with the law to set a fine example for other landlords.

- Article 40 states: "Any lessor who fails to give notice in accordance with article 30 of this law shall be punished by one to three months' main criminal servitude and a fine of three to six months' rent or only one of its penalties".

This case is common in the countryside of DRC. For instance, in Gbado-Lite the good number of landlords terminates the lease contract without respecting the notice period, yet they remain...
unpunished. If the population learns that a particular landlord is in prison because of non-compliance with the notice period, everyone will put themselves in order. It was necessary to instill a culture of respect for the law in the minds of the Congolese people through the sanctions that would be imposed on them. There is no point in enacting good laws that always remain a dead letter as to their applicability.

2. Weakened protection of the Congolese tenant

It is important to note that the law No. 15/025 of 31 December 2015 is really salutary in terms of protecting Congolese tenants in their relationship with their landlord, but its effective implementation is problematic. To do this, it is first necessary to proceed by facts on the ground before giving reasons justifying the inapplicability of these rules.

2.1. The blatant inapplicability of the law

The situation is so bitter that this law still continues to suffer from inapplicability. Some aspects of it are constantly violated, according to industry advocates. And this jeopardizes the interests of tenants, consumers in this area.

In particular, it was observed that:

- The fees of the real estate agency, instead of being in charge of the person who requested its services, are in most cases in charge of the tenant and this, not corresponding to a month as provided by law.
- The rental guarantee is received by the landlord for an amount equivalent to 10 to 12 months' rent instead of 3 months.
- Lessors continue to spread the burden of taxes on them and lessees despite this being a serious and flagrant violation of Article 11(6) of the law under review. Similarly, landlords never pay their share of water, electricity and other bills to leave tenants alone.
- Inability to repay the rental guarantee to the landlords at the end of the lease. The rental guarantee is a sum of money paid by the lessee to the lessor to prevent its insolvency, or damage to the leased asset.
- The requirement to pay rent in advance and, this is also common in Kinshasa. Some Kinshasa tenants have several times been victims of the social problems and imperatives facing their landlords. For example, when they have a bereavement problem, they require advance payment to resolve it immediately. What the law prohibits.
- The change during the term of the lease, of the destination of the building, even without agreement with the lessee.
- The payment of taxes and duties that are in charge of the rented place as well as the totality towards the tenants. It should be noted that the innovation of this text lies in the regime of criminal and civil sanctions it imposes.

However, under article 46 of the Act under review, the penalties provided for in the present Act would apply six months after its publication in the Official Gazette, i.e. the Act would already have been applied since 1 July 2015. It is therefore noted with bitterness that the owners of houses for rent in Congo are ruining the tenants under the indifferent eye of the competent authorities called upon to apply sanctions to them, in the meantime, the tenants are suffering. The law is there, why not respect it?

2.2. Causes of the law's inapplicability

Let us say that social parameters have a significant effect, not only on the development of the legal standard but also on its application. Indeed, a rule of law may indeed apply or fall into disuse, either because it is known or unknown by the members of the community concerned, or because it is adapted or inappropriate to the socio-cultural realities of that same community.

As far as Law No. 15/025 of 31 December 2015 is concerned, this is more the first hypothesis. Thus, the non-application of the 2015 text is due, on the one hand, to the parties and, on the other hand, to judicial authorities, even administrative authorities.

i. Non-application of the law due to the parties

The parties to the lease agreement may inadvertently disregard the relevant legal requirements or may knowingly refuse to enforce them even though they have sufficient knowledge of them.

- Unintentional disregard for the law

Congolese landlords and tenants have sometimes ignored the requirements of the law governing the lease, not knowing their respective obligations. Thus, each party, the lessor and the lessee, have reciprocal obligations.

i. Obligations of the lessor

The lessor is bound by the following obligations under article 11 of Act No. 15/025 under review:

- Make the building available to the lessee in a condition appropriate to its destination. It is prohibited for the lessor, in a common space, to lease buildings with incompatible destinations likely to cause prejudice to the various lessees;
- To ensure the lessee's quiet power over the leased property, in particular by guaranteeing it against disturbances of power caused by the lessor or members of his family and against any partial or total eviction;
- Guarantee the lessee against hidden defects that prevent the normal use of the leased asset;
- Take charge of major repairs to be carried out on the building; this is what Article 377 to 2 CCL III calls the obligation to maintain. Here, only major repairs as opposed to rental repairs will be the responsibility of the landlord. These major repairs can be those related to large walls,
vaults, beams, roofing, underground and fence walls and septic tanks [20];

- Pay its share of the water, electricity, telephone and/or other bills, in the event of cohabitation with one or more tenants;
- To bear the taxes that are charged to the rented premises. It is prohibited to distribute them among the lessees.
- Not to change, during the term of the lease, the destination of the leased object, unless agreed with two parties;
- Refund the rental guarantee at the end of the lease.

In addition to the above-mentioned mandatory principles, article 12 of the same law provides:

"The lessor who intends to sell the leased asset shall inform the lessee in writing so that he may exercise the right of first refusal. In the case of refusal or silence by the lessee within fifteen days, the lessor is free to sell his property to any person of his choice. In the case of a sale of the leased property, the lease shall run until its term, if it is for a fixed period. If the lease is for an indefinite period, the new buyer may only evict the lessee found at the place by observing the forms and notice period provided for in Articles 30 and 31 of this Law”

ii. Obligations of the lessee

Under article 13 of the Law on Non-Professional Leases, the lessee is bound by the following obligations:

- Pay the rent according to the agreed terms;
- Use of the rented thing as a father of the family;
- To be liable for any loss or damage caused to the rented property during the term of the contract and attributable to him, throughout the lease, the lessee shall be liable for the damage he causes to the rented property [21];
- Maintain the building and equipment mentioned in the contract and carry out rental repairs except those caused by obsolescence, wear and tear, defects, construction defects and fortuitous events.
- Inform the lessor of any destruction caused by any of the causes listed above or requiring major repairs;
- Do not undertake major repairs without the authorization of the lessor. The quotation is approved by both parties: (a) The cost of the work will be fully recovered by the tenant through monthly deductions from the rent; (b) Until the costs incurred by the lessee are fully recovered, (c) The lessor may not terminate the leasing agreement or readjust the amount of the rent and In the event of a capital gain, both parties enter into an amendment [22];
- Not to modify or transform the leased property without the prior agreement of the lessor. In the case of failure by the lessee to comply with this obligation, the lessor may either require the premises to be returned to pristine condition or retain the modifications or alterations without the lessee claiming any compensation;
- Agree in advance with the lessor on the arrangements to be made which do not constitute a modification or transformation of the leased object;
- Let the landlord inspect the premises at the agreed frequency.

Another obligation of lessees is clearly defined in article 16, which states: "Lessees of a building with several housing units are required to participate in common charges and to respect the rules of cohabitation. They self-organize and appoint a trustee whom they pay and who represents them vis-à-vis the landlord. Subject to the trustee's regulations, neither the trustee appointed by the lessees shall properly carry out his duties; the lessor shall have the right to choose another one remunerated by the lessees. An order of the Minister having the leases in his attributions regulates the syndic of tenants". This unintentional ignorance is most often the result of the parties' lack of education and the regular practices to which they have become accustomed.

ii. Lack of instruction on the part of the parties

The lack of knowledge by the parties to the lease of the legal requirements in DRC is due to the lack of instruction on the part of the parties to this contract. In Gbado-Lite, for example, the majority of the city's constituent population is illiterate. This is at the root of ignorance of the existence of this law, which leads to its inapplicability.

iii. Regular uses

The practices we are talking about here are generally followed in lease matters. Use or custom can be understood as a rule of law that has arisen from tradition, from prolonged practice, the author and date of which are sometimes unknown and is established without any express manifestation of the legislative power [23].

iv. Voluntary non-compliance by the parties

Parties to the lease who are well aware of the law in this area deliberately violate it. Let us also say that at the root of the inapplicability of the law in this sense, we cite the bad faith of the landlord as well as the resignation of the tenant.

- Lessor's bad faith

This bad faith is manifested above all in the landlord's behaviour towards its tenant. The striking example in the city of Gbado-Lite is the disturbance of enjoyment caused by the landlord or his family members. Clearly, the lessor is required by law to provide the lessee with full enjoyment of the leased thing, which is not always respected by any lessor. The landlord tends to worry his tenant who has not paid the rent on time this time and is taking good care of his family when he usually pays on time. Many examples through the above-mentioned observation show how often lessors use bad faith.

- Resignation of the tenant

In principle, the tenant's right should not be attributed to him, but rather declaratory. It can be seen that some tenants, although educated and who could claim their rights at stake by complaining to the competent authorities, choose to resign themselves, i.e. to renounce the exercise of their rights.

v. Non-application by the authorities

Corruption and African culture can be cited as reasons for not applying the consumer tenant protection law to leases.

- Corruption

[22] L’aventant est un document contractuel modifiant ou complétant un contrat déjà existant.
Congolese authorities called upon to apply the law to ensure protection are in most cases corrupt. Lessors continue to act against legal provisions under the watchful eye of these authorities. Even when the case is pending before these authorities, instead of implementing the law by punishing all offenders, we simply turn a blind eye to it.

- **African culture**
The palaver tree is the aerated framework through which problems are solved in Africa. Thus, these same authorities proceed to amicable settlement between the parties to the lease contract instead of strict application of the law.

4. **Conclusion and Suggestions**
At the end of our reflection on the need to protect tenants, consumers in the field of rental leases, we are bitterly concerned that Law No. 15/025 of 31 December 2015 on non-professional leases continues to be neglected. It follows that the State is failing in its mission to ensure the effective implementation of this law. Among the reasons justifying this situation are the failure to apply the sanctions provided for by this law and the timid intervention of the State in the field of rental leases. Thus, for law n°15/ of 31 December 2015 to apply effectively and for the tenant to be truly protected, it is necessary:

i. **For the Government**
- To ensure the scrupulous application of the law under review while criminally punishing recalcitrant donors who no longer wish to comply with it;
- To have ownership of buildings that it can make available to its population as a rental. In this case, the landlord who is currently the State could under no circumstances violate the law it has itself enacted.

ii. **For tenants (lessees)**
- To form a mass of tenants in order to collectively defend their rights. To do so, this mass should inform them in advance of their rights and obligations with regard to leases;
- To denounce at any time any act perpetrated by donors in violation of their rights;

iii. **For landlords (lessors)**
- To simply comply with the law on leases.

**References**
2. Loi n°15/025 du 31 décembre relative aux baux à loyer non professionnel, 2015.
12. https://www.radio okapi.net, le 19/10/2018 à 15h55’