

# LAND, POWER AND IDENTITY

Roots of violent conflict  
in Eastern DRC

Chris Huggins

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Roots of violent conflict in Eastern DRC

## Author profile

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Chris Huggins specialises in the relationships between land rights, governance of natural resources, violent conflict, and post-conflict development, particularly in Africa. He has practical experience addressing these issues in countries including Burundi, D.R. Congo, Kenya, Rwanda, Sudan, Tanzania, and Timor-Leste. He spent the last decade in Eastern and Central Africa as Research Fellow for an inter-governmental organisation, the African Centre for Technology Studies (ACTS) and consulting with several major non-governmental and UN organisations. He has published extensively, and is co-editor (with Scott Leckie) of *Conflict and housing, land and property rights: A handbook on issues, frameworks and solutions* (Cambridge: Cambridge University Press, 2011) and (with Jenny Clover) *From the ground up: Land rights, conflict and peace in sub-Saharan Africa* (Nairobi: ACTS Press/Pretoria: Institute for Security Studies, 2005). He is currently a PhD candidate in Geography, with a specialisation in Political Economy, at Carleton University, Ottawa.

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## List of acronyms

<b>AFDL</b>	<i>Alliance des Forces Démocratiques pour la Libération du Congo-Zaïre</i> (Alliance of Democratic Forces for the Liberation of Congo-Zaïre)
<b>APCLS</b>	<i>Alliance des Patriotes pour un Congo Libre et Souverain</i> (Alliance of Patriots for a Free and Sovereign Congo)
<b>APREDECI</b>	<i>Action Paysanne pour la Reconstruction et le Développement Communautaire</i> (Farmers' Action for Community Reconstruction and Development)
<b>ASPD</b>	<i>Action Sociale pour la Paix et le Développement</i> (Social Action for Peace and Development)
<b>CBO</b>	Community-based organisation
<b>CLPCs</b>	<i>Comités Locaux Permanents de Conciliation</i> (Permanent Local Conciliation Committees)
<b>CNDP</b>	<i>Congrès National pour la Défense du Peuple</i> (National Congress for the Defence of the People)
<b>DRC</b>	Democratic Republic of Congo
<b>FAR</b>	<i>Forces Armées Rwandaises</i> (Rwandan Armed Forces)
<b>FARDC</b>	<i>Forces Armées de la République démocratique du Congo</i> (Armed Forces of the Democratic Republic of Congo)
<b>FDLR</b>	<i>Forces Démocratiques de Libération du Rwanda</i> (Democratic Forces for the Liberation of Rwanda)
<b>FPJC</b>	<i>Front Populaire pour la Justice au Congo</i> (Congolesse Popular Front for Justice)
<b>ICCN</b>	<i>Institut Congolais pour la Conservation de la Nature</i> (Congolesse Institute for Nature Conservation)
<b>IDP</b>	Internally displaced person
<b>IFDP</b>	<i>Innovation et Formation pour le Développement et la Paix</i> (Innovation and Training for Development and Peace)
<b>MAGRIVI</b>	<i>Mutuelle des Agriculteurs de Virunga</i> (Farmers Mutual Society of Virunga)
<b>MONUC</b>	<i>Mission de l'Organisation des Nations Unies en RD Congo</i> (UN Mission in the Democratic Republic of Congo)
<b>MONUSCO</b>	<i>Mission de l'Organisation des Nations Unies pour la Stabilisation en RD Congo</i> (UN Organisation Stabilisation Mission in the Democratic Republic of the Congo)
<b>MPR</b>	<i>Mouvement Populaire de la Révolution</i> (Popular Movement of the Revolution)
<b>NRC</b>	Norwegian Refugee Council
<b>PARECO</b>	<i>Patriotes Résistants Congolais</i> (Congolesse Patriotic Resistance)
<b>RCD</b>	<i>Rassemblement Congolais pour la Démocratie</i> (Congolesse Rally for Democracy)
<b>RCD-G</b>	<i>Rassemblement Congolais pour la Démocratie-Goma</i> (Congolesse Rally for Democracy-Goma)
<b>RCD-ML</b>	<i>Rassemblement Congolais pour la Démocratie-Mouvement de Libération</i> (Congolesse Rally for Democracy-Movement for Liberation)
<b>RCN</b>	<i>Réseau Citoyens</i> (Citizens Network)
<b>RDF</b>	Rwanda Defence Force
<b>RPF</b>	Rwandan Patriotic Front
<b>RPA</b>	Rwandan Patriotic Army
<b>STAREC</b>	<i>Plan de Stabilisation et de Reconstruction pour l'Est de la RD Congo</i> (Stabilisation and Reconstruction Plan for the East)
<b>UN-HABITAT</b>	UN Human Settlements Programme
<b>UNHCR</b>	UN High Commissioner for Refugees
<b>UPDF</b>	Uganda People's Defence Force

## Executive summary

This study examines access to, use of and management of land and its links with the root causes of conflict in the two Kivu provinces and Ituri in the Democratic Republic of Congo (DRC). The study's aim is to identify key gaps in the international community's understanding of land issues in Eastern DRC, as well as gaps in the kinds of interventions that are being conducted at the current time (2009-2010).

In the DRC, as in other countries, customary, informal and statutory land-tenure systems “overlap” geographically, in the sense that a certain parcel of land might be claimed by different actors under different systems. Individuals and sometimes communities may claim land through a variety of systems simultaneously, resulting in confusion and dispute. Eastern DRC encompasses a vast area and huge diversity in terms of geography, forms of local governance, ethnic composition, and other aspects. However, while acknowledging this diversity, it is useful to identify two sets of dichotomies, or “opposites”, which are of great significance across much of Eastern DRC: the dual system of land access (customary and statutory) and the conceptual contrast between ethnic groups which are “local” or “indigenous” to a particular area, and those which are seen as “migrants” or “foreigners”. The weakness of the statutory land law, as well as widespread corruption, has led to massive alienation of land held under custom. Customary leaders, who traditionally held the land “in the name of their community”, have essentially privatised community properties, pocketing the proceeds from alienated land which has been sold to wealthy and powerful individuals or foreign and Congolese companies.

In the DRC, political representation at the local level is linked directly to “ethnic territories”. There is therefore a structural link between claims to land ownership by ethnic communities, and claims to political autonomy and power. Communities that have lacked local representation have long made claims to land ownership in order to have their own chiefs, and these claims have often been resisted by neighbouring communities. The result in many areas, particularly the east, has been violence.

Land is essential to most rural livelihoods, but it is also bound up very strongly with issues of “identity and power”.<sup>1</sup> While land scarcity and alienation of customary land has led to land disputes at the micro-level, the tensions around such “local” and “intra-community” conflicts (or conflicts between “ethnic citizens” and their chiefs who make decisions over community land) have generally been transferred into the “inter-community” level. This has been achieved through discourses utilising the concepts of “indigenous” and “immigrant” groups. For some communities, notably Hutu and Tutsi, the issue of immigrant status is linked to an uncertain or contested right to citizenship. This dynamic has led to widespread violence and the return of internally displaced persons (IDPs) and refugees – particularly those of Tutsi ethnicity – to parts of North Kivu in recent months and years risks renewed violence unless it is handled very carefully.

In addition, control over land is a “sustaining factor” in conflict. Those individuals and cliques that have benefitted from changes in control over land during conflict do not necessarily require a continuation of war to maintain *de facto* control over their spoils. Rather, they need to avoid having wartime transactions and population movements scrutinised and potentially undone, for example through the establishment of land commissions, mediation processes, the return of IDPs and refugees, or other state or non-state interventions. In order to avoid the loss of wartime gains, such actors will likely attempt to gain influence with politicians or maintain a certain level of “instability” in order to prevent international and local NGOs and state services from gaining a foothold in areas under their control, and to prevent the return of those claiming land ownership.

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1 Interview with civil society organisation, Goma, 5th October 2010.

A realistic assessment of the current situation in many eastern parts of the DRC, is that while some measures of stability have periodically been introduced since 2003, there is still chronic violence, outbursts of acute violence and a risk of more systematic and far-reaching conflict.

The DRC is characterised by a very weak state presence outside of the main urban centres. This creates certain problems for actors aiming to break the links between land disputes and violence in Eastern DRC. Most of the interventions usually implemented in post-conflict situations depend upon the existence of a responsible, capable and non-partisan state. In the absence of a functioning or impartial state, the usual recourse is to non-state institutions which enjoy local legitimacy and influence. Customary authorities usually top the list of such actors, as well as religious institutions in some countries. Here, again, there are problems because the role of customary authorities is legally ambiguous, and many of them are accused of corruption and generally pursuing their own political and economic interests rather than those of the community.

Given the weakness of both customary and state structures, many organisations have trained local people in mediation skills and some have established local mediation centres. Mediation tends to be effective in addressing local-level disputes between parties of similar social, economic and political status. Where power disparities are more acute, and particularly where armed groups are involved, the effectiveness of this approach is very limited.

It is important that all actors involved in current mediation efforts, in particular the *Comités Locaux Permanents de Conciliation* (Permanent Local Conciliation Committees, or CLPCs) which are being established as part of the Government's stabilisation plan STAREC, consider land issues to be complex and multi-dimensional, encompassing social, political, economic and cultural aspects, as well as the legal and "technical" aspects, which are often emphasised by professionals working in the land-tenure field. Simply supporting the legal system in its current form will only provide legitimacy to those who use the land registration system to dispossess customary claimants. Legal-technical activities should only be promoted as part of a broader package of interventions which together seek to transform the political economy of land tenure in Eastern DRC.

Specifically, there are concerns that the CLPCs will be unable to manage the delicate socio-political balancing act necessary to provide a fair hearing to the various disputants involved in land conflicts. There is a risk that due to pressure (either from elements of the local community, politico-military organisations, or government), the CLPCs will put certain political and/or economic interests ahead of the important issue of justice. As a result, the return of IDPs and genuine returnees could be blocked in some areas, or dubious claims by IDPs and returnees could be supported in other places, leading to the unjust eviction of those currently using the land.

It is important that the CLPCs are not only fair and balanced in their decision-making, but are also *perceived* to be fair and balanced. The extent to which the CLPCs are *perceived* to be fair and effective will depend on a number of factors, including the ways in which elements of the national and provincial government attempt to influence them, and the ways in which international organisations are involved in various aspects of their overall design and day-to-day functioning. If the decisions handed down by the CLPCs are *not* locally perceived as fair, it is highly unlikely that they can be enforced. The state security apparatus has neither the experience, capacity or political will to defend the physical security of those involved.

The land question in Eastern DRC is not a legal issue, nor is it purely a political issue. More profoundly, it is part of a wider agrarian crisis with cultural, social and economic aspects. The agrarian crisis stems from a combination of structural constraints on the "extensification" of livelihood systems as well as the intensification of smallholder systems, the massive levels of inequality in the size of landholdings in certain areas and the more generalised crisis in terms of trade for agricultural produce that is being experienced all over Africa linked to various processes of globalisation. This agrarian crisis is exacerbated, of course, by the lack of alternative livelihoods

and the obstacles to material “development” and social “cooperation” due to the threat or reality of armed conflict. Any sustainable resolution of land-tenure conflicts in Eastern DRC must be comprehensive enough to address a wide variety of economic, environmental, social, political and other issues.

Nevertheless, an incremental approach is probably the only means open to individual NGOs and other non-state organisations. This can produce some results in the long term, if it is: a) sustained and expanded over time; and b) well-coordinated with other activities by the state, NGOs, the *Mission de l'Organisation des Nations Unies pour la Stabilisation en RD Congo* (UN Organisation Stabilisation Mission in the Democratic Republic of the Congo, or MONUSCO), and other key actors. Therefore, it is important to increase levels of dialogue, information-sharing, joint training, etc. between such organisations on land issues and related interventions. Such interventions can only work with the participation of state and customary leaders. Yet neither can be expected to be the sole “legitimising authority” behind the intervention, which need to involve the significant participation of a representative range of local citizens. Due to the risks that interventions will be “captured” by powerful forces of one kind or another, thereby losing legitimacy and neutrality, international actors can usefully play an active monitoring and guidance role, but should avoid shouldering responsibility for decisions. Local actors must come to completely “own” the process. This is difficult, as evidenced by the Ituri Land Commission, which is still, some three years after its inception, heavily dependent upon its foreign donors.<sup>2</sup>

The ongoing influx of “returnees” into North Kivu, the continuing influence of armed groups over this process, and the presence of a number of armed movements opposed to the land claims of “returnees”, represent a clear risk of large-scale conflict. In order to prevent such a potentially cataclysmic outcome, independent and critical research into the situation in North Kivu, particularly Masisi, should be conducted with the ultimate aim of identifying a combination of diplomatic, informal, developmental and humanitarian interventions that could improve the situation.

The report makes the following recommendations:

1. There is an urgent need to initiate an independent, large-scale and multi-stakeholder research project in order to shed light on changes to control over land in North Kivu, specifically areas that are currently seeing large numbers of returnees. The research should examine the “political economy” of land in these areas and attempt to fully document and understand mediation activities in a sample of villages. The research should examine local perceptions of the process and the outcome, and note the ways in which the emerging socio-political dynamics are affecting the risks of conflict. Similar research should be conducted in Ituri and South Kivu, but at the present time, it is in North Kivu where the risks of large-scale violence over land are greatest and most urgent.
2. In order to be successful, any mediation and reconciliation processes must not only be “in tune” with local socio-political realities, but must also be part of a much broader attempt to seek consensus over key issues such as the return of IDPs and refugees to politically-sensitive or highly-contested areas. Any intervention in the land sector, such as that being spearheaded by the UN in Eastern DRC, must be prepared for a long-term engagement with the issues at the diplomatic as well as technical level, and must be based upon a thorough understanding of the complex local and regional histories of violence over land.
3. In the short to medium term, the various actors in the land-tenure domain should continue to document and better understand ongoing interventions addressing land-tenure issues implemented by local and international actors in the DRC, in order to identify ways in which

2 T. Vircoulon and F. Liegeois (2010). *Violences en Brousse*. Brussels: IFRI.

separate initiatives could be combined or adapted. This research should also explore ways in which innovative tools which have been used effectively in other “post-conflict” countries, such as participatory delimitation of community lands, could be piloted in Eastern DRC. A combination of approaches, such as roundtables, conferences, commissioned studies and external evaluations, should be used. The resulting report(s) should be widely shared and used to advocate for the more widespread adoption of the most successful approaches.

4. In the medium to long term, actors in the land-tenure domain should identify credible and legitimate district- and provincial-level state or customary institutions which have a mandate to address land issues. International and national actors should engage in a targeted and sustained process of dialogue in order to convince such organisations to adopt some of the approaches discussed in this report. In particular, emphasis should be placed on seeing land tenure not purely as a legal concern, but as a multi-dimensional set of issues embedded within a generalised agrarian crisis. This crisis is the result of many interrelated factors, including highly unequal access to land, in a context where many smallholder farmers lack adequate land to feed their families; a general lack of purchasing power to acquire sophisticated agricultural equipment, fertilisers and other inputs which could improve productivity; a deteriorating ecological base, due to a decline in traditional conservation methods such as fallow areas; an inadequate and poorly maintained roads and communications network; and a corrupt and largely dysfunctional rural governance system.<sup>3</sup> Over time, it will be necessary to elaborate provincial land policies, a national land policy and to reform the land law.

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<sup>3</sup> These issues are more or less relevant in different parts of the east. The high levels of food insecurity across the east are evidence of a general agrarian crisis, which plays out in different ways at the local level.

## Introduction

This study examines access to, use of and management of land and its links with the root causes of conflict in the North and South Kivu provinces and Ituri. The study's aim is to identify key gaps in the international community's understanding of land issues in Eastern DRC, as well as gaps in the kinds of interventions that are being conducted. This report includes some suggestions about how these gaps may be addressed by various actors working on peacebuilding and/or land issues, including International Alert.

The term "land issue" covers a multitude of problems, including demographic pressure and migratory waves, returning refugees and displaced people, land-use conflicts (farmers versus pastoralists), historical land claims and local power struggles. There is a need to deconstruct "land issues" in order to examine (in each province/district) how access to, use of and management of land is a factor in ongoing violent conflict (or a risk factor for future violence), and to what extent existing initiatives address land as a factor in violent conflict.

This paper is based on fieldwork conducted in North Kivu, South Kivu and Ituri during September and October 2010. Fieldwork included 32 in-depth interviews with a wide range of key informants, including staff of international organisations, actors in the statutory land administration system (e.g. cadastral personnel), local-level state authorities, customary authorities, local NGOs and community-based organisations (CBOs), unofficial "opinion leaders", academics, members of local communities affected by land disputes, and parties directly involved in land dispute. The results of fieldwork were complemented by a review of published and unpublished literature.

# 1. Land tenure in Eastern DRC: An overview

## 1.1 Introduction

In any part of the world, and at any moment in history, the concept of “land” is complex and incorporates many different aspects. Even when narrowly defined as a question of control over agricultural and pastoral land (rather than rights to natural resources such as water, minerals or forests, which are linked to, and to a large degree “embedded” within, the question of land rights), the land question is multi-dimensional, with economic, legal, political, social and spiritual facets. For example, land is often significant as a means of production for subsistence or commercial sale; an area where political authority is expressed and taxes may be raised (the concept of “territory”); a means by which families and individuals maintain social influence and status; and also as a source of feelings of ancestral “belonging”, as ancestors are buried within traditional territories. As one Congolese civil society actor stated: ‘When one loses their land not only do they lose their livelihood, but they also lose their identity’.<sup>4</sup>

The idea of “land” is particularly complex in post-conflict situations, especially in places like Eastern DRC, which have seen the establishment of colonial state boundaries and major movements of people and communities over the last 125 years. Eastern DRC, like in many countries in the global south, has a number of different institutions which claim decision-making powers over land, which can be simplified into “customary”, “informal” and “state-run” (or “statutory”) systems, as follows. The section below is based upon a general model of land tenure in African and “post-conflict” countries. As shall be described further below, the DRC is by no means a typical post-conflict country and it is debatable whether this term is applicable at all to many parts of the east, where violence continues. Nevertheless the description below provides a framework for the discussion that follows.

- There are a great number of different *customary* systems, usually administered by local chiefs, *Bami* or other leaders who base their authority on leadership of an ethno-geographic community.<sup>5</sup> Their authority over the land stems both from a position of leadership within a particular ethnic community, but also from that community’s historical claim to residence and use of land in a particular geographic area. Political authority and historical claims to land are mutually dependent. Customary systems tend to favour the land claims of men over those of women, and widows, women separated from spouses, and female children are often denied their land rights under these systems.
- *Informal* land-tenure systems include those that have emerged from situations in which the state has not been present, and customary systems do not apply. Examples of informal systems include peri-urban “squatter” settlements comprised of internally displaced persons (IDPs). Claims under such informal systems may be tenuous as they are not usually respected by the state.
- *Statutory* systems are based on national laws and regulations, and utilise a state-run land administration structure incorporating titling procedures and cadastral records. However, statutory systems may not be enforced across the entire country because of lack of capacity or political will. In many countries (including the DRC) urban land is registered under the statutory system, as are large commercial farms, ranches, mines, forestry plantations and other valuable parcels. In some areas, such as Masisi District, most of the land has been registered, due to the significance of large plantations and ranches. However, across the country as a whole, the vast majority of land under smallholder farming systems remains under customary tenure.

<sup>4</sup> Interview with civil society organisation, Goma, 5th October 2010.

<sup>5</sup> *Bami* is plural of *Mwami*, sometimes roughly translated as “King”.

Customary, informal and statutory systems “overlap” geographically, and a certain parcel of land might be claimed by different actors under different systems. A situation of *legal pluralism* results, where individuals and sometimes communities may claim land through a variety of systems simultaneously, and those involved in land disputes tend to utilise the full range of options open to them, meaning that disputes may simmer for long periods without leading to open conflict, but without being resolved. This is sometimes described in positive terms, as the endless round of appeals can act as a “safety valve”, reducing the tensions that might arise from a definitive “win-lose” decision. However, it does not necessarily lead to equitable outcomes, as claimants with sufficient money to continue the dispute in the statutory courts will tend to win, whereas the poor will be unable to afford the lawyers, transport and related expenses of the statutory system, and will eventually be forced to accept a negative verdict.

Conflict leads to an even more complex situation. As noted above, individual and community use and ownership of land are regulated by the state (to the extent of its capacity and interest in doing so), but are also conceived and reproduced through social processes of definition. During periods of rapid social change, crisis and conflict, social institutions are shaken and fragmented, and control over land and natural resources changes. Society-environment relations are reconfigured through activities based on desperation (e.g. foraging for wild foods) as well as profit-seeking (e.g. organised logging of protected areas). Definitions of “community” also change, according to shared experiences of hardship, survival, displacement and other wartime dynamics.<sup>6</sup> The result is a fragmentation of institutions and loyalties, which affects the ways that “place” is defined and rights to land are regulated at the local level.

Following the restoration of stability after crisis or war, there may be immediate attempts to consolidate state control and constrain so-called “anarchic” uses of land. These are often linked to efforts to manage the return of IDPs and refugees, to address land disputes, and to ensure that land is not illegally occupied. Humanitarian agencies, UN institutions (particularly the UN High Commissioner for Refugees, or UNHCR), and other international bodies are usually deeply involved in such efforts, along with local CBOs and NGOs. In post-genocide Rwanda, for example, an emergency housing programme was implemented, alongside a highly problematic “villagisation” policy.<sup>7</sup>

Over a longer timeframe, the government is often called upon by a variety of actors (including local elites, foreign donors, conservation organisations and investors) to define and enforce legal rights to land in order to improve “security of tenure”. The post-conflict state may develop land policies, reform laws, change the means of registering claims to land, and extend its bureaucratic reach across the national territory. Of course, the ways in which such reforms are designed and implemented will determine the impacts on control over land at the local level. While land-tenure reform may increase tenure security for some land users, others may lose control over land. Unless land reforms are very carefully designed, smallholders, women, orphans and other vulnerable categories of the population may lose control or access to land, as parcels are registered in the name of men and those most able to “work the system”.

In Eastern DRC, efforts by the state to regulate land use and manage disputes over land since the Sun City Peace Accord was signed in 2003 have been largely *ad hoc* and hindered by ongoing violence and political instability. While the government has reformed several important laws with a bearing on land tenure (such as the Agricultural Code, the Mining Code, and the Forestry Code), these include contradictory positions on land ownership and use, and the state has yet to address the land question in any substantial, coordinated or systematic way. Efforts to manage land disputes in the east are constrained by the lack of an effective or uncontested state presence in many areas. These issues are discussed in more detail in sections 5 and 6 of this report.

<sup>6</sup> J. Unruh (2005). ‘Land policy reform, customary rule of law and the peace process in Sierra Leone’, *African Journal of Legal Studies*, Vol. 2, No. 2, pp.94-117.

<sup>7</sup> While many thousands of people benefited from housing through the programme, some villages have since proven to be unsustainable, and the programme was associated with coercion and human rights abuses in some parts of the country. See: C. Huggins (2009). ‘Land in return, reintegration and recovery processes: Some lessons from the Great Lakes Region of Africa’ in S. Pantuliano (Ed.). *Uncharted territory: Land, conflict and humanitarian action*. Rugby: Practical Action.

## 1.2 Two problematic dichotomies: customary vs. statutory, and indigenous vs. immigrant

Eastern DRC encompasses a vast area and huge diversity in terms of geography, forms of local governance, ethnic composition and other aspects. However, while acknowledging this diversity, it is useful to identify two sets of dichotomies, or “opposites”, which are of great significance across much of Eastern DRC. These two dialectics are in many ways linked to each other and mutually reinforcing, as described below.

### 1.2.1 Customary and statutory land-tenure systems

As noted above, most of the land in Eastern DRC is held under customary law, though there are important exceptions to this. There are many different kinds of customary law associated with different ethnic communities, and custom may be interpreted in many different ways at the micro level.<sup>8</sup> Indeed, the flexibility inherent in an oral customary tradition is one of the reasons for the resilience of such systems in the face of conflict and rapid socio-economic change. Some of the major differences between customary systems reflect different socio-political forms of organisation. In much of Western DRC, for example, land tenure is based on a clan system, and decisions are made between relatively local-level leaders who each have somewhat equal status (such socio-political systems are sometimes called “segmented”). Some ethnic communities in the east are also characterised by such a segmented structure, including the Bafulero, Bavira and Babembe (South Kivu) or the Walendu (Ituri).<sup>9</sup>

In most parts of the east, governance systems were historically more hierarchical. Customary chiefs exercised authority over members of their ethnic group. Local chiefs, headed in many areas by a *Mwami* (a head-chief or “King”) held land “in trust” for the people that they governed, and allocated land to those households under their jurisdiction. Despite the variety of forms of customary land tenure, we may identify some aspects that seem to be common to most systems in the east.<sup>10</sup> First, access to land is primarily determined by membership of an ethnic community, clan or lineage. Second, land cannot be alienated from the customary system – in other words, land traditionally cannot be sold or permanently transferred to anyone outside of the ethnic community, clan or lineage. This means that members of these communities hold rights to use land, but do not hold full ownership rights as they are usually defined under western law (e.g. common and civil law). Thirdly, access to land depends on the payment of tribute (in kind e.g. goats, agricultural produce or cash) to the local leaders. Tribute flows up the hierarchy, from one level to another, so that use of land is intimately tied to socio-political status. Amongst the Bashi community of South Kivu, for example, there are customarily three levels of leadership. At the lowest level, the *Mushamuka* is responsible for the distribution of land at the level of a hill. He channels tribute to the *Murhwali*, who exercises his power at the level of a region known as a *Mulagi*. At the pinnacle of this structure is the *Mwami*.<sup>11</sup> As noted above, customary systems place control over land at the household level in the hands of the male head of household, despite the fact that women usually contribute more agricultural labour in the household than men.

A few minority ethnic groups – including those seen as “newcomers” to an area – did not have their own chiefs, and were seen as tenants of the majority ethnic group in their area. In order to access land, they had to maintain favourable relations with local chiefs, including through the payment of tribute. The social status of members of such minority groups was always limited to the level of “clients” of the chiefs, who acted as “patrons”. Such systems were effective in the

8 For example, not only is Nande customary law different from Hunde customary law, but there may be many varieties of both Nande and Hunde custom, as different chiefs choose to interpret these systems differently.

9 K. Vlassenroot and C. Huggins (2005). ‘Land, migration and conflict in Eastern DRC’ in C. Huggins and J. Clover (Eds.). *From the ground up: Land rights, conflict and peace in sub-Saharan Africa*. Nairobi/Pretoria: ACTS Press/Institute for Security Studies. p.124; Interview with civil society organisation, Bukavu, 20th September 2010.

10 F. Van Acker (2005). ‘Where did all the land go? Enclosure and social struggle in Kivu (D.R.Congo)’, *Review of African Political Economy*, Vol. 32, No. 103. pp.79-98.

11 K. Vlassenroot and C. Huggins (2005). Op. cit. p.124.

sense that no one, not even a member of a “newcomer” community, was denied access to land.<sup>12</sup> However, they were fundamentally rooted in socio-political and socio-economic hierarchies and inequalities. The status of Hutu migrants, brought by the Belgians from Rwanda into Masisi District (see below), provides an example of this.<sup>13</sup> Under the first phase of colonial land settlement in Masisi, Hutu immigrants were placed under the control of Tutsi administrators in Rwanda. The second phase of immigration, however, saw a reversal of this policy and the subordination of Hutu settlers to local Hunde authorities.<sup>14</sup> This represented an attempt by colonial actors to provide compensation through political power for the Hunde’s loss of land. This policy, however, proved ambiguous and contradictory. When land scarcity became a pressing issue for both Hunde and Hutu populations in the late 1950s, these contradictions and ambiguities concerning the relationship between land and political power facilitated localised conflict. While access to land for Rwandan immigrants was affirmed by colonial policies, this was dependent upon payment of tribute and tied to political subordination, as described further below.

The Belgian colonial authorities practiced indirect rule, working through existing customary leaders. The colonial regime thereby institutionalised this form of “ethnic” governance. While most Congolese continued to access land in the traditional manner (which became known as “native” tenure), colonial personnel, missionaries and other expatriates accessed land through a parallel system based on the Belgian civil code and administered by the central state. Payment was made to the state in return for title to the land. As was the case in many other African countries, the colonial regime legislated that all “vacant land” was the property of the state and was therefore no longer under the control of the chiefs.<sup>15</sup> The definition of “vacant land” paid no attention to customary rights of ownership and use and to the “extensive” forms of land use practiced in many areas.<sup>16</sup> This affected vast swathes of land – some 27 million hectares – customarily reserved for hunting and gathering, seasonal grazing or future settlement.<sup>17</sup> Huge plantations were established in certain parts of the country, including Ituri territory in Orientale Province, and the Kivu provinces. In the 1950s and 60s, Congolese elites purchased land under the statutory system, alienating it from customary systems with the help of some chiefs. In North Kivu, some Banyarwanda elites purchased land, leading to tensions with members of “indigenous” communities (*autochtones*, in French). During the civil war of 1960-65, some administrators used the fluid political situation to seize and grab or re-distribute land that had been purchased by Banyarwanda.<sup>18</sup>

The dual system of land access (customary and statutory) continued after independence, and only a small fraction of land in the country – three percent of the total, by the late 1980s – was registered under the statutory system, meaning that most land remains under customary tenure.<sup>19</sup> In Eastern DRC, large areas were converted into protected conservation zones, such as the Virunga National Park (in North Kivu) and the Kahuzi-Biega National Park (South Kivu), which was registered as a national park in 1970 and extended in 1975. Some districts are dominated by large-scale commercial plantations and conservation areas to the extent that only a small proportion of the overall land area is available for occupation and cultivation by the local population. Such is the case in Rutshuru and Masisi (North Kivu) for example.

12 The rights of women, however, were always derived from those of men (typically husbands or fathers), and women who fell outside of the family circle (through the death of the husband, divorce or separation) were vulnerable to losing access to land. Customary systems had some “safety nets” for such women (such as temporary access to land) but these safety nets tend to become less available as vacant land becomes scarce.

13 In the first phase of the *Mission d’Immigration des Banyarwanda* (MIB), both Hutus and Tutsis emigrated to the Kivus from Rwanda. Later waves of immigration were restricted to Hutu, who were more willing to work as farmers than the Tutsi.

14 B. Mararo (1997). ‘Land, power, and ethnic conflict in Masisi (Congo-Kinshasa), 1940s-1994’, *The International Journal of African Historical Studies*, Vol. 30, No. 3. pp.503-538.

15 Decree issued by King Leopold, 1st July 1885.

16 Colonial concepts were based on “intensive” land use, such as settled agriculture, familiar to Europeans rather than the “extensive” livelihoods approaches which involved periodic rather than permanent use of land.

17 S. Leisz (1998). ‘Zaire country profile’ in J. Bruce (Ed.). *Country profiles of land tenure: Africa, 1996*. Research Paper No. 130. Wisconsin: Land Tenure Centre, University of Wisconsin.

18 G. Prunier (2009). *From genocide to continental war: The “Congolese” conflict and the crisis of contemporary Africa*. London: C. Hurst & Co. p.49.

19 S. Leisz (1998). Op. cit.

The dual system was hypothetically overturned by the promulgation of the General Property Law in 1973 (amended 1980).<sup>20</sup> This rather clumsy law has been described as ‘a collection of colonial-era texts’, but involved at least one major change from the colonial system.<sup>21</sup> In theory, the land law brought all land in the country under state control and took control over land away from customary authorities, who were assigned the role of state administrators, rather than decision-makers. The category of “native” land was abolished, and these rights were converted to rights of use, not ownership. Native land was transformed into a category of state land. The law stated that a presidential ordinance would be issued in order to clarify the definition and status of customary land. However, no such ordinance has ever been issued, leaving customary land rights holders in a very unclear and weak legal position.

This law made it relatively simple for individuals and corporations to purchase land, including land ordinarily considered to be held under customary arrangements. In theory, local chiefs were reduced by the 1973 law to mere administrators, legally barred from benefiting directly from land sales. However, in practice chiefs used whatever means they had to retain some power and influence after 1973. Their principal method was to use their local knowledge and networks to act as middle-men in land deals. The customary leaders (who traditionally held the land “in the name of their community”) essentially privatised community properties, pocketing the proceeds from alienated land.

These transactions were problematic in other ways, as well. Population densities in parts of Eastern DRC are very high and by the 1970s vacant land was already scarce. Population density in Masisi District, for example, increased from 35 inhabitants per km<sup>2</sup> in the 1940s, to an estimated 123 inhabitants per km<sup>2</sup> in 1983;<sup>22</sup> in Rutshuru, a density of 26 inhabitants per km<sup>2</sup> in 1957 had increased to 91 inhabitants per km<sup>2</sup> by 1984.<sup>23</sup> Some of the land alienated by the chiefs and wealthy elites was already inhabited or cultivated. The law demanded that verification of the landholding and consultation with communities be conducted prior to sale, to ensure that local households were informed and were not losing land that they directly occupied or used (e.g. settlements, farmland or pasture). Frequently, local officials, including chiefs, were bribed in order to skip this requirement. Some households lost access to their fields. More commonly, the chiefs sold customary land held in reserve for future use by communities, or common-property resources such as marshlands which were used during episodes of drought. Elite members of some ethnic groups were particularly well-positioned to register land under the statutory system due to their close association with state structures, their preferential access to education and hence their ease with such “written” systems, and their access to the formal economy and the wealth needed to purchase land. In Ituri, for example, some members of the Bahema ethnic group, which had been favoured by the Belgian system, started to buy land which was customarily under the control of the Balendu chiefs, converting farmland into pasture for commercial ranching. The Bahema elite tended to be better educated, wealthier and more fully integrated into the cash economy than their Balendu counterparts. Very often, land was alienated on the orders of powerful political players in Kinshasa or Goma, and used to reward political loyalty.

It is difficult for poor smallholders to register their land rights, as the process is quite complex and usually involves travel to major cities (such as Goma or Bunia) and other expenses, including bribes in most cases. According to key informants, the cost of registering a small plot of land is about US\$500 in Masisi, but can exceed US\$1,000 in parts of North Kivu.<sup>24</sup> This is a vast amount of money for the average smallholder farmer, putting registration out of reach for most.

20 République de Zaire, *Loi du 20 juillet 1973 portant régime général des biens, Régime foncier et immobilier et régime des sûretés*, Kinshasa, 1973.

21 S. Mugangu (2006). ‘Preface’ in C. Mastaki and C. Vake. *L’implication des communautés locales dans la production du droit et la résolution des conflits fonciers en milieu rural*. Goma: AAP/ILC.

22 B. Mararo (1997). *Op. cit.*

23 G. Prunier (2010). *Op. cit.* p.48.

24 Interview with religious organisation, Goma, 5th October 2010; and interview with “returnee”, Ntamugenga, Rutshuru District, 4th October 2010.

## 1.2.2 Indigenous and immigrant communities

The issue of “indigenous” or “local” status is important in many parts of DRC, as it is in other parts of Africa. The concept of indigenous communities – so-called “sons of the soil” – is tied up with political power and control over land, which (as explained above) are thoroughly intertwined. Claims to indigenous status can only be made through the discursive creation of an opposite – an “immigrant” (*allochtone* in French). Given the history of migration, cultural assimilation and inter-marriage across Africa, narratives which reproduce indigenous identities are always based, to some extent, on a mythologised idea of ethnic purity and historical simplicity. While the idea of indigenous and immigrant identity is often presented as a simple binary distinction, articulations of indigenous status operate at multiple scales (local, provincial, national and regional) and, rather than being rigid distinctions, are often fluid, overlapping and at times contradictory categories which are temporally, geographically and politically relational.<sup>25</sup> The uncertainty and variety of the indigenous designation at multiple scales provides for a slippery, flexible and inherently conflictual mode of identification.

This phenomenon exists in many parts of the DRC, and often stems from the forced displacement by the colonial regime of some communities who were selected to provide labour for specific projects. In Kasai Province, for example, members of the Luba community were uprooted and settled in areas inhabited by the Lua community in order to provide labour for the diamond mines. Clashes between the “local” Lua and the Luba led to the first internal civil war.<sup>26</sup> Migration by communities such as the Banande and Bahunde in North Kivu, the Babembe in South Kivu (who came into conflict with the Babuyu, who claim “indigenous” status) and other groups in DRC have been associated with tensions over land and economic opportunities. In Ituri, the Balendu claim greater “indigenous” status (based on long-standing residence) than the Bahema, who (according to the Balendu and many historians) were later arrivals to the area. Notwithstanding this chronology of migration, the Bahema have without a doubt lived in Ituri for many centuries.<sup>27</sup>

As noted above, the political importance of “indigenous” status was institutionalised by the Belgian regime, which formalised local customary systems (and the geographical units of governance upon which they were based) and brought them within the administrative structure of the state. Under the “Native Rule” system, citizens could only claim political representation, and only access land through the ethnically-defined administrative system. As Mamdani has shown, the Belgians (like other colonial powers) created separated legal and political spheres, firstly according to distinctions of race (with Europeans, for example, enjoying more rights than black Africans) and secondly according to distinctions of ethnicity amongst the so-called “natives”.<sup>28</sup> Mamdani argues that these divisions were continued in the post-colonial period, as the concept of citizenship was bifurcated into *civic citizenship* – which bestowed individual rights specified in the constitution, such as the right to bear a Congolese passport – and *ethnic citizenship*. While civic citizenship could in theory be accessed by anyone claiming Congolese nationality, *ethnic citizenship* depended upon membership of an ethnic community with historic claims to land and hence a customary leadership structure. Those minority communities who, as described above, were “clients” of the customary leaders, had difficulties claiming ethnic citizenship, and hence difficulties claiming land.

### The Citizenship status of Hutu and Tutsi in the Kivus

For some communities, notably Hutu and Tutsi (the so-called “Banyarwanda”, also known as “Kinyarwanda speakers” living in parts of Eastern DRC), the issue of “immigrant” status is

25 S. Jackson (2006). ‘Sons of which soil? The language and politics of autochthony in Eastern D.R. Congo’, *African Studies Review*, Vol. 49, No. 2, pp.95-123.

26 K. Vlassenroot and C. Huggins (2005). Op. cit. p.117.

27 J. Pottier (2003). *Emergency in Ituri, DRC: Political complexity, land and other challenges in restoring food security*. Paper presented at the UN Food and Agriculture Organisation (FAO) international workshop on ‘Food security in complex emergencies: Building policy frameworks to address longer-term programming challenges’, Tivoli, 23rd-25th September 2003.

28 M. Mamdani (2001). *When victims become killers: Colonialism, nativism, and the genocide in Rwanda*. Princeton: Princeton University Press, pp. 24-27.

linked to an uncertain or contested right to citizenship. Some Hutu and Tutsi communities have lived within what is now the DRC since before the national borders were established in 1910 as a result of the Conference of Brussels. Since that time, their numbers have been swelled by other members of their ethnic communities crossing the border from what is now Rwanda (and to a lesser extent, from Burundi). According to some analysts, Kinyarwanda speakers now represent some 40 percent of the population in North Kivu (they are concentrated in the Petit Nord region, comprising Masisi, Rutshuru and Walikale), whereas some indigenous communities such as the Bahunde and Banyanga each represent just five percent.<sup>29</sup> However, Banyarwanda represent a much smaller proportion of the population of South Kivu. As will be described below, the political relationships between Hutu and Tutsi in Eastern DRC have fluctuated over time, with prominent Hutu leaders sometimes taking the side of the Nande and Hunde against Tutsi land claims and economic networks, and sometimes aligning themselves with Tutsi. Of course, none of these ethnic groups are completely homogenous in terms of political outlook and divisions exist within them.

The colonial regime encouraged or forced some 85,000 workers and their dependents from neighbouring Rwanda to migrate into North Kivu Province, in order to provide labour on colonial plantations.<sup>30</sup> According to Turner, more than 25,000 Rwandans were settled in Masisi between 1937 and 1945, and another 60,000 between 1949 and 1955, while others crossed the border of their own accord.<sup>31</sup> Some analysts estimate that the total number of immigrants during the colonial period could have been as many as 300,000.<sup>32</sup> Some Kinyarwanda- and Kirundi-speaking communities were also found in South Kivu, such as the ethnically Tutsi Banyamulenge community of the *Haut Plateau*. Few of these communities customarily had rights to land through their own chief or *Mwami*, with the exception of one community located in Bwisha, an area that had historically been under the control of the Rwandan *Bami*.<sup>33</sup> The colonial regime sometimes interfered in customary succession struggles, rewarding those who promised loyalty to them, and these issues continue to affect the legitimacy of some chiefs today. This was part of a wider administrative reorganisation of parts of the Kivus, which generally reinforced an ethnic approach to territoriality.<sup>34</sup> As part of the project of Rwandan immigration, the Belgians created the *Collectivité de Gishari* in 1936 for the Banyarwanda in Masisi territory, North Kivu, with its own Tutsi *Mwami*. However, hostility from neighbouring communities meant that the Belgian authorities reversed their decision in 1957 and handed power over land in Gishari back to the Hunde customary leaders.

The status of the Banyarwanda remained contentious and was not resolved prior to independence. Tensions around migration resulted in violence shortly following independence in Kasai (where, as mentioned above, members of the “local” Luala community attacked members of the “immigrant” Luba) and in North Kivu, where the “*Guerre des Kinyarwanda*” was caused by inter-ethnic disagreements over chiefly authority between Hutu and Hunde in Masisi.

For communities such as the Banyarwanda, who lacked ethnic citizenship but could claim civic citizenship (with the exception of certain periods when their nationality was called into question, see below), the 1973 land law provided an opportunity to purchase land, hence removing it from the customary system and avoiding the need to pay regular tribute to local chiefs. In the 1970s, some Banyarwanda politicians and businessmen became part of President Mobutu’s

29 G. Prunier [2010]. *Op. cit.* p.48.

30 Ibid.

31 T. Turner [2007]. *The Congo wars: Conflict, myth and reality*. New York: Zed Books. p.113. Turner cites Kraler as the source of this latter observation. See: A. Kraler (2004). *The state and population mobility in the Great Lakes: What is different about post-colonial migrations?* Sussex Migration Working Paper No. 24. University of Sussex, Sussex Centre for Migration Research.

32 Vlassenroot, citing L. De Saint-Moulin (1995). ‘L’évolution des densités de la population du Zaïre’, *Revue Belge de Géographie*, Vol. 58, No.s 1–2. p.95.

33 J. Fairhead (2005). ‘Transnational dimensions to environmental resource dynamics: Modes of governance and local resource management in Eastern DRC’ in O. Gausset, M. A. Whyte and T. Birch-Thomsen (Eds.). *Beyond territory and scarcity: Exploring conflicts over natural resource management*. Stockholm: Elanders Gotab.

34 T. Turner [2007]. Ibid. p.111, citing Vlassenroot (no specific citation provided).

inner circle, and translated their access to power and money into massive landholdings, especially in their home areas in the east. Elite members of other communities bought plantations for profit or speculation, often leaving them under-utilised. By the 1990s, 512 families (of which 503 were Banyarwanda) occupied more than half of the land in Masisi *territoire*, for example.<sup>35</sup> Prunier describes the extent of this “land grabbing” as “incredible”, citing the attempt by a Banyarwanda businessman to take control of 230,000 hectares of land in 1980, in a context where the average landholding in the Kivu provinces was less than one hectare.<sup>36</sup> Nevertheless, the vast majority of Banyarwanda were of similar poor smallholder status as their “autochtone” counterparts.

At the national level, the idea of “indigenous” status is linked to civic citizenship, and is largely determined by a claim to a Congolese blood line. However, as will be described further below, the constitution and the Law on Nationality link the issue of “Congolese identity” to ethnic identity.<sup>37</sup> The idea of “truly” Congolese communities has been developed to make the citizenship claims of others – such as the Banyarwanda, who include large numbers of recent (post-1959 and post-1994) immigrants from Rwanda – more ambiguous. This process has been used as a political tool to discredit political figures who have opposed powerful state forces. During the 2006 elections, now-President Kabila’s rival Jean Pierre Bemba encouraged popular suspicions that Kabila is a “foreigner” (allegedly because his mother was not indigenous), while he himself was “100 percent Congolese”.<sup>38</sup> Recognising that the Banyarwanda were a potentially powerful economic and political force in Eastern DRC, but were vulnerable due to their exclusion from “ethnic citizenship”, President Mobutu (who ruled from 1965 to 1997) instrumentalised the laws on citizenship, changing them repeatedly in order to make the civic status of the Banyarwanda dependent upon political loyalty to him. A 1972 amendment to the citizenship law which granted citizenship to anyone resident in the DRC (then Zaire) prior to 1950 was overseen by Barthélemy Bisengimana Rwema, a Rwandan Tutsi refugee who was then Mobutu’s chief of staff, but in 1981, following Bisengimana’s fall from political power, this was overturned, and citizenship was once more dependent upon descent from an ethnic group found within the borders of Zaire on 1st August 1885.<sup>39</sup> Citizenship has therefore been used as a political tool, evoked at times of turbulence when the very definition of the state and the legitimacy of state power are contested. Nationality and citizenship rights have been defined, granted and revoked as a divide-and-rule measure by powerful political players.

Following the 2003 Peace Agreements, civic citizenship has remained somewhat ambiguous for the Banyarwanda. Importantly, Kinyarwanda-speaking communities were generally able to vote in the 2006 elections, which were subject to close monitoring by the *Mission de l’ONU en RD Congo* (UN Mission in the Democratic Republic of Congo, or MONUC) and the international community.<sup>40</sup> However, the 2004 Nationality Law does not conclusively resolve the question of civic citizenship for Kinyarwanda-speaking communities.<sup>41</sup> The new law defines two categories of nationality, one based on origin and one based on acquisition. By origin, citizenship is granted to: the child of a Congolese parent, anyone falling under the provisions of Article 6 (see below), any child born on Congolese territory of unknown parenthood, or any child of a stateless parent or foreign parent whose nationality does not pass to them by inheritance. Acquisition of nationality is determined on a case-by-case basis and pertains to processes of naturalisation, adoption, marriage or birth and residence.<sup>42</sup> Article 6 of the new law, which was hotly contested, was eventually passed and states the following: ‘All persons belonging to ethnic groups or nationalities whose people and territory constituted that which became the Congo at independence, are Congolese by origin’.

35 K. Vlassenroot and C. Huggins (2005). *Op. cit.*

36 G. Prunier (2010). *Op. cit.* p.49.

37 Article 10 of the Constitution: ‘Est congolais d’origine, toute personnes appartenant aux groupes ethniques dont les personnes et le territoire constituaient ce qui est devenu le Congo à l’indépendance’.

38 M. Boas (2008). “Just another day” – The North Kivu security predicament after the 2006 Congolese elections’, *African Security*, Vol. 1, pp.53-68.

39 S. Jackson (2007). ‘Of “doubtful nationality”: Political manipulation of citizenship in the D.R. Congo’, *Citizenship Studies*, Vol. 11, No. 5, pp.483-488.

40 There were, however, some Banyarwanda who were physically prevented from voting, in specific areas.

41 2004 *Loi No. 04/024 relative à la nationalité congolaise*.

42 S. Jackson (2007). *Op. cit.* p.490.

While this represents a broadening of the definition of nationality, a key concern is that determining which groups are “authentic” under this statement will remain a highly politicised and difficult process, given the complex, contested, and layered history of migration to the DRC.<sup>43</sup> Notably, a particular reading of this section might insist that any group attempting to qualify for citizenship under Article 6 be able to demonstrate not only presence in the territory by the specified date, but “ownership” or “control” over a part of the territory that constituted the Congo: in other words, ethnic citizenship as defined above. Given the historical exclusion of the Banyarwanda from ethnic citizenship, this provides a means for some political actors to exclude Banyarwanda from claiming Congolese nationality.

As documented by Turner, some colonial-era ethno-linguistic maps, which continue to be used to justify claims to ethnic belonging and accusations of foreignness, omit Kinyarwanda-speaking communities. Initially used as tools by the Belgian colonial administration to govern diverse populations, maps which delineate the supposedly historical territorial occupation of ethnic groups in the DRC are even today used by local groups attempting to lay claims to autochthony.<sup>44</sup> For example, as recently as 2010 in Ituri, the use of colonial-era maps by Bahema leaders to lay claims to land led to a walk-out by Balendu leaders during a mediation exercise.<sup>45</sup> A map recently published by a Catholic cleric<sup>46</sup> omits the Banyamulenge in South Kivu. The criteria for inclusion of a particular ethno-linguistic group on maps derived from colonial data such as that of Saint Moulin’s, had much to do with the size of a particular group and its social and administrative cohesion. Because the Banyamulenge population in South Kivu was divided between three “official” territories (Uvira, Fizi and Mwenga) and thus constituted minorities in each territory, they are entirely omitted from maps of South Kivu. Likewise, in North Kivu, the maps only show one bloc of Banyarwanda who are labelled as the “Banyabwisha”. The text indicates that they were given a chieftainship in 1920. No indication is given that the Banyabwisha inhabited the area prior to the colonial period, although evidence from other sources suggests that Hutu and Tutsi were present.<sup>47</sup> Across the Rwandan side of the border, the concept of “Greater Rwanda” is still sometimes discussed, and can be seen on some maps used in the tourist industry.<sup>48</sup> The central idea of “Greater Rwanda” is that in the pre-colonial period, communities living well inside the modern borders of what is today the DRC paid tribute to the Rwandan *Mwami*, and hence that the pre-colonial boundaries of “Rwanda” extended into areas such as Rutshuru. Former President Bizimungu of Rwanda brandished a map showing Greater Rwanda during an international press briefing in 1996, apparently in order to justify Rwanda’s involvement in the events then occurring across the border in South Kivu.<sup>49</sup>

Returning to the Law on Nationality, we may note that Article 22 states that nationality through acquisition may be refused for those who have ‘delivered oneself to the profit of a foreign state’ or have committed ‘economic crimes’. The prominent role of some Kinyarwanda speakers in networks controlling the exploitation of minerals and other natural resources and the association of many Kinyarwanda speakers as a “cross-border” community with links to Rwanda mean that Article 22 could potentially be used as a blanket means of continuing to deny citizenship rights to Banyarwanda.<sup>50</sup> In addition, the fact that the Rwandan constitution allows for dual nationality and provides that anyone of “Rwandan origin” can claim Rwandan nationality encourages a view that all Kinyarwanda speakers are potentially Rwandan.

Researchers such as Jackson argue that changes to the legal definition of citizenship (civic citizenship) need to be accompanied by parallel shifts, if not wholesale restructuring, in local-

43 Ibid. p.491.

44 T. Turner (2007). Op. cit.

45 Confidential aid agency report.

46 Cfr. L. de Saint-Moulin (1998). ‘Conscience nationale et identités ethniques. Contribution à une culture de la paix’, *Congo-Afrique*, No. 330, pp.587-630 cited in T. Turner (2007). Op. cit. p.65.

47 T. Turner (2007). Op. cit. p.66.

48 Maps showing the borders of “greater Rwanda” for sale in the gift shop of a Ruhengeri hotel in 2007, for example. Personal observation.

49 G. Prunier (2010). Op. cit. p.71.

50 S. Jackson (2007). Op. cit. p.491.

level political structures and their relations to land distribution, in order to short-circuit the exclusionary logic of ethnic citizenship. Hovil agrees, arguing that the 2004 citizenship law ‘still employs ethnic groups and the identification of historical ties to territory as the primary category for the acquisition of citizenship, thus keeping the philosophy of ethnicity as the basis for national membership alive’.<sup>51</sup> This, it is argued, forces a reification of ethnic identities and boundary lines which have the potential to become violently enforced in the competition for land access and power.

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51 L. Hovil (2010). *Who belongs where? Conflict, displacement, land and identity in North Kivu, Democratic Republic of Congo*. Citizen and Displacement in the Great Lakes Region, Working Paper No. 3. International Refugee Rights Initiative and Social Science Research Council. p.34.

## 2. Some dynamics of violent conflict in Eastern DRC

### 2.1 Introduction

As demonstrated by historical studies such as that of Hochschild,<sup>52</sup> violence and oppression has long been a feature of governance of the territory now known as the DRC. The structural dimensions of conflict were put in place during the colonial period, and were reinforced by Mobutu's ruthless and corrupt policies of divide-and-rule. The imperative during the colonial period was unconstrained exploitation of local labour and natural resources, perhaps best characterised as a simple "looting" of resources under a very thin veneer of state authority. Efforts to build a functional and equitable Congolese state apparatus were minimal, as can be judged by the fact that upon independence, there were only ten Congolese university graduates in the entire country.

Immediately upon independence, assassination and armed conflict dominated political life, both as a result of internal struggles and the importance of this vast country to the geopolitics of the Cold War. While this paper does not go into a thorough discussion of the post-colonial history of the DRC, we can simply note that the "hollowing out" of the state under Mobutu's corrosive and opportunistic regime ensured that state institutions lacked the capacity to provide services or, in particular, to act as a neutral arbitrator when disputes occurred between individuals, groups or institutions. The judicial sector, like all branches of the public service, was underpaid and poorly run, and became highly corrupt. The land administration machinery was similarly starved of funds, meaning that those with some access to power and wealth could easily use it to dispossess those with valid claims under custom or statutory law. Particular regions of the country were especially disenfranchised, resulting in numerous uprisings and attempts at secession during the post-colonial period. The erosion of public institutions and associated poverty and instability was partly a result of Mobutu's lack of regard for the public good (famously summed up in popular Congolese culture by the fictional article 15 of the constitution: "fend for yourself") but was not merely a form of "anarchy". As argued by scholars such as Chabal and Daloz,<sup>53</sup> the disorder in Zairean public life was partly a result of conscious political and economic tactics of the ruling elite.

Mobutu was skilled in balancing the fortunes of political and economic elites, playing off his political rivals against each other. The ethnic nature of political brokerage meant that the "indigenous"/"immigrant" dichotomy described above was frequently evoked and reinforced, so that struggles between political and economic elites radiated out into their broader ethnic communities. When Mobutu's tactics failed to contain the inherent tensions within the dysfunctional Congolese political system and violence broke out, he could rely on the use of force, such as when he sent troops to quell violence between Bahema and Balendu factions in Ituri in 1993, or deployed the elite troops of the Presidential Division in North Kivu, in the same year.<sup>54</sup>

By the early 1990s, Mobutu's power was waning. His role in regional politics had changed since the end of the Cold War, he was struggling to deal with a new multi-party context and the country's economic collapse. In addition, despite his ability to benefit from inter-ethnic rivalries in the Kivus, he had never been fully in control of political and economic dynamics there. Indeed, the Kivu provinces were extraordinarily complex by any standards and difficult to fully understand, never mind govern effectively. According to Prunier, the Kivus in 1993 represented a combination of unique factors:

52 A. Hochschild (1998). *King Leopold's ghost: A story of greed, terror, and heroism in colonial Africa*. New York: Mariner Books.

53 P. Chabal and J. P. Daloz (1999). *Africa works: Disorder as a political instrument*. International African Institute, James Currey and Indiana University Press.

54 K. Vlassenroot and C. Huggins (2005). Op. cit. p.165; G. Prunier (2010). Op. cit. p.51.

*They had been an essential factor in the 1960's revolt against the Leopold government; they were an extension of the ethnic and political problems of Rwanda itself; they were a zone of high-density population with demographic and tribal contradictions of their own; they were connected with the Rwenzururu conflict in Uganda; and they were the backyard of the civil war then going on in Burundi.*<sup>55</sup>

It is no surprise then that “Africa’s world war”, as the conflict in the DRC would become known, had its genesis in the Kivus. The conflict was complex and the actors and issues changed over time. The brief account that follows is not intended to be comprehensive, but rather to provide some context to a discussion of the links between land tenure and violence. Land is by no means the only issue, and is perhaps not even the most important issue, in DRC’s conflicts. However, it is key to an accurate understanding of conflict, particularly at a local level.

## 2.2 Land and conflict in North Kivu

### 2.2.1 Causes of conflict

The dynamics of conflict in North Kivu have been linked to demographics – the relative population sizes of different ethnic communities in particular areas – as well as the economic fortunes and political aspirations of such communities. The example of Masisi Territory, which has seen much violence between Hutu, Tutsi, Hunde and Nyanga militia forces, is instructive.

Following from the Fundamental Law of 19th May 1960, which sanctioned democratic elections as the mode of access to power, elections became organised at every level of administration. Locally, in Masisi, Kinyarwanda speakers who were demographically dominant began to win elections and more than 80 percent of elected local counsellors were Banyarwanda.<sup>56</sup> At the provincial and national levels, however, Banyarwanda did not run for office (ostensibly due to the lack of educated and politically-aware candidates). Key political positions within the national and provincial context, were then held by Bahunde, along with Banande and Banyanga groups. Anti-Hutu sentiment proliferated, often stated in terms of the rights of “sons of the soil” (those who, in Swahili, should inherit the *udongo ya baba*, or “land of their fathers”).<sup>57</sup> Provincially dominant, Hunde began taking control of strategic services, which put pressure on local Banyarwanda politicians. By 1963, three years after independence, areas of Masisi such as Muvunyi-Kibabi were fully controlled by Hunde politicians. Mobutu’s consolidation of the *Mouvement Populaire de la Revolution* (Popular Movement of the Revolution, or MPR) as a state party in 1972, which presented itself as a “solution” to ending micro-regional nationalisms, further entrenched Hunde political strength at local levels, inscribing them into the larger national system of administration.<sup>58</sup> The Kinyawanda-speaking groups, which became increasingly economically powerful and gained influence in national-level politics in the early-mid 1970s, found themselves frustrated by their exclusion from local political positions and the powers over land that went with them.

By the late 1980s, demographic pressure in some parts of the east – notably Masisi and Rutshuru territories in North Kivu – meant that land was increasingly scarce, and grievances around alienation of customary land came into sharper focus. Land pressure was exacerbated by environmental decline in some areas. Unable to maintain soil fertility through the use of fallow areas (due to the inadequate size of their landholdings) and unable to afford any means of agricultural intensification (such as chemical fertilisers), smallholder farmers saw their yields diminishing and were unable to compensate by opening up new land, due to the multiple constraints (such as alienation of customary land for large commercial ranches and plantations, nature reserves, and hostility from some communities). There is little published data on the number of intra-community land disputes from this period (such as disputes between neighbours over boundaries,

<sup>55</sup> G. Prunier [2010]. Op. cit. pp.46-47.

<sup>56</sup> B. Mararo [1997]. Op. cit. p.519.

<sup>57</sup> Ibid. p.520.

<sup>58</sup> Ibid. p.525.

or between siblings over inheritance of land), but it seems reasonable to assume that the number of disputes increased along with demographic pressure. While such “local” disputes are often ignored by those trying to understand the dynamics of violent conflict, the social and economic tensions that they bring can be significant. A well-known study from just across the border in Rwanda, conducted in the years immediately prior to the 1994 genocide, demonstrates the effects that such disputes can have on a community.<sup>59</sup> With so many neighbours and family members involved in disputes with one another, the bonds of trust within the community were seriously weakened, and suspicions of witchcraft, poisoning and other social ills increased. During the three-month period of the genocide, dozens of people in this almost exclusively Hutu area were killed, often seemingly due to their involvement in land disputes.

If we assume that at least some of the same dynamics were emerging in the most densely populated areas of North Kivu, then we can understand why local leaders wanted to avoid taking responsibility for the alienation of customary land. While it was clear that “indigenous” chiefs (such as Bahunde and Banyanga in North Kivu) had been implicated in corrupt deals, many local leaders managed to place the blame on those who had bought the land, particularly those belonging to “migrant” or minority communities. For example, Bahunde claims to land centred on their assertions of autochthony and customary rights which were embodied in the political offices that they held, while Hutu, who lacked their own chiefs, made reference to colonial definitions of land tenure which were predicated on first occupancy status and the development of the land.<sup>60</sup>

Poor Hutu farmers in Masisi, deprived of land, moved into neighbouring Walikale territory, to the annoyance of local Banyanga communities and chiefs. Ethnic tensions were further inflamed by the introduction of the “*géopolitique*” policy following the introduction of multi-party politics in 1993. Mobutu used this policy, which stated that membership of state institutions be based on regional quotas, to exacerbate ethnic competition and hence maintain his position at the top of the pyramid of patronage. Under colonialism and throughout independence, political posts and land had been fundamentally tied to ethnicity, yet the antagonisms produced therein could be largely contained through the highly centralised and dictatorial state and coercive apparatuses. Upon opening the political field to multi-party democracy, ethnically-defined interests predominated over the need for a common project for national society.

In North Kivu, Bahunde and Banande elites cooperated in order to prevent Banyarwanda candidates from gaining access to regional posts. Partly in response to this, members of the Hutu farmers’ organisation *Mutuelle des Agriculteurs de Virunga* (Farmers Mutual Society of Virunga, or MAGRIVI) encouraged its members to refuse to pay tribute to local chiefs. Over time, MAGRIVI transformed into an armed Hutu militia force, with the support of President Habyarimana of Rwanda, who saw it as a recruitment tool for forces that could combat the Tutsi-led Rwandan Patriotic Front (RPF) that had invaded Rwanda from Uganda in October 1990.<sup>61</sup>

Tensions were therefore very high in the early 1990s, and were focused on land and economic competition. Politicians manipulated grievances in order to benefit politically within the context of multi-party politics. Banande, Bahunde and Banyanga militia had already been formed and had attacked Banyarwanda communities in 1993. Leadership posts in North Kivu at the provincial and *territoire* levels were dominated in the early 1990s by Nande individuals. The Nande, an economically powerful community, are historically seen as rivals of the Tutsi (who also have a relatively numerous wealthy elite) and the Banyabwisha Hutu, whose claim to Congolese citizenship was the most difficult to undermine.<sup>62</sup> The Nande political leadership started one of the first militias to be called Mayi-Mayi, the Ngilima militia, in 1991. The violence of 1993

59 C. Andre and J. P. Plateau (1995). *Land relations under unbearable stress: Rwanda caught in the Malthusian trap*. Namur, Belgium: Centre de recherche en économie du développement. The community in question is the former commune of Kanama, in the former prefecture of Gisenyi.

60 B. Mararo (1997). Op. cit. p.518. The Hutu of Bwisha were the only such community to have a chief.

61 G. Prunier (2010). Op. cit.

62 T. Turner (2007). Op. cit. p.124.

was encouraged by a public speech by the governor of North Kivu, who incited violence against Kinyarwanda speakers.<sup>63</sup> Banyarwanda communities counter-attacked, and several thousand people were killed in the process, forcing Mobutu to temporarily install himself in Goma to attempt to quell the violence.

The situation was therefore already one of uncertainty and conflict when the 1994 Genocide in neighbouring Rwanda and the eventual military victory of the RPF led to a flood of Hutu refugees and armed groups (the *Interahamwe*, former government troops of the *Forces Armées Rwandaises* (Rwandan Armed Forces, or FAR), now known as ex-FAR, and others) into the Kivu provinces. This further exacerbated ethnic strife, as Hutu extremists trained and re-organised in the refugee camps around Goma, and called for the creation of a “Hutu land” in Masisi and Rutshuru. Some Congolese Hutu who had not previously voiced anti-Tutsi sentiment became influenced by these newcomers, whose access to guns provided Hutu with a defence against the hostility of “indigenous” communities. Many Tutsi in North Kivu had already fled violence in 1993; others crossed the border into Rwanda following the victory of the RPF and the influx of Rwandan Hutu militia who carried out ethnic massacres of Congolese Tutsi. Mobutu supported the remnants of the former Rwandan government diplomatically and materially, and integrated the “Hutu land” concept into his strategy for winning the 1997 elections.

These local tensions around land, as well as regional politics, explain the dynamics behind the formation, in October 1996, of the *Alliance des Forces Démocratiques pour la Libération du Congo-Zaïre* (Alliance of Democratic Forces for the Liberation of Congo-Zaire, or AFDL), and the start of the “first rebellion”. Combined forces of the Rwandan Patriotic Army (RPA) and local allies attacked refugee camps in the Kivus, with the intention of destroying the refugee camps, forcing Hutu refugees back into Rwanda, and killing the *Interahamwe*, ex-FAR and other armed elements. In the process, an unknown number of Hutu civilians were killed, either as a result of the indiscriminate shelling of mixed groups (comprising refugees and armed elements) or the intentional targeting of Hutu. Violence was also inflicted upon “indigenous” Congolese communities by the AFDL and the RPA, feeding anti-Tutsi sentiment. In some cases, local “indigenous” communities sympathised with Hutu, and gave credence to ideas of a “Tutsi plot” (involving Tutsi and members of ethnic groups which are seen to be related, such as the Hema and Banyankole) to control the entire Great Lakes Region. In the face of this mythological “Tutsi conspiracy”, Hutu – as a Bantu tribe – came to be perceived as closer to indigenous Congolese. This illustrates both the fluctuating nature of the indigenous category, and some of the contradictions amongst definitions of indigenous status which are employed at different scales: for example a regionally-defined autochtony which includes Congolese Hutu, is contradicted at the national level in DRC in which this group is generally defined as “immigrant”.<sup>64</sup>

In contrast to Masisi and Rutshuru, the so-called “Grand Nord”, which comprises Beni and Lubero, has generally experienced relative stability since the end of the “Second Rebellion” in 2003. Beni and Lubero are more ethnically homogenous than other parts of the province, being dominated by the Nande. Nevertheless, parts of the Grand Nord are extremely densely populated and are the site of many land disputes. An extremely wealthy Nande elite has invested in plantations, leading to extreme inequalities in landholdings in many areas. For example, a survey in Luhutu at the beginning of the 1990s estimated that 31 percent of the large concessions covered 71.2 percent of the cultivable area.<sup>65</sup> While disputes in Beni and Lubero are important, they are less directly linked to the threat of massive conflict as those found in other parts of North Kivu, and are hence not discussed in this report.

<sup>63</sup> K. Vlassenroot and C. Huggins [2005]. Op. cit. p.146.

<sup>64</sup> S. Jackson [2006]. Op. cit.

<sup>65</sup> Vlassenroot (2006) citing M. Tsongo (1994). *Problématique d'accès à la terre dans les systèmes d'exploitation agricole des régions montagneuses du Nord-Kivu (Zaire)*. Louvain-La-Neuve, UCL.

## 2.2.2 Land as a sustaining factor in conflict in North Kivu

As noted in analysis from Vlassenroot and Pottier, for example, land in the DRC is not only a cause of conflict, it is also a factor in the perpetuation of conflict.<sup>66</sup> It has moved from a “source” of conflict to a “resource” of conflict.<sup>67</sup> During periods of conflict or instability, armed groups and other powerful actors can benefit from the institutional vacuum to gain revenue from transactions over land, carry out other rent-seeking behaviour around land and natural resources, and grab land for speculative purposes. These revenues in turn allow armed actors to purchase ammunition, political influence and other assets that help them sustain the conflict. If conflict ends and the state presence increases, such transactions may be challenged or overturned, creating an incentive for these actors to maintain a certain level of instability.

Though it is unnecessary (and impossible, in this short report) to document the events of the first and second rebellions, it is important to note that rebel movements, such as the *Rassemblement Congolais pour la Démocratie-Goma* faction (Congolese Rally for Democracy-Goma, or RCD-Goma, which controlled much of North and South Kivu between 1998 and 2003), *Rassemblement Congolais pour la Démocratie-Mouvement de Libération* (Congolese Rally for Democracy-Movement for Liberation, or RCD-ML, which controlled the Beni-Butembo area during the same period), and the *Congrès National pour la Défense du Peuple* (National Congress for the Defence of the People, or CNDP, which controlled parts of Masisi and Rutshuru between 2007 and 2009), have financially and politically benefited from distributing or controlling arable and ranching land, and re-drawing administrative boundaries.<sup>68</sup> This demonstrates the importance of so-called “warlord tenure” in the region.<sup>69</sup> In order to secure these land transactions, politico-military organisations such as the CNDP have manipulated the succession process in several chieftainships, or simply intimidated or killed those customary authorities who opposed them. Parallel state structures (such as police forces and administrators) were established, with the result that those individuals, families and ethnic communities who aligned themselves with the movements in *de facto* control were victorious in any land disputes in which they were involved. The leaders of politico-military organisations such as RCD-Goma, RCD-ML, CNDP and others have also used money accruing from the minerals trade (cassiterite, coltan, gold, etc.) to purchase large concessions across North Kivu, which has led to the eviction of many local customary landowners. Local militia also gain funding from providing “security” for large-scale landowners whose claims to land are disputed, or who wish to evict people farming or living on land that they control. In some cases, disputants have been killed by such militia.

Various communities and armed groups have encroached deep into the Virunga National Park, which has suffered serious degradation as a result of encroachment, poaching and deforestation for firewood. IDP camps housing Tutsi were constructed on the park boundaries in 2002 and have expanded since then, and residents farm within park boundaries with the apparent blessing of the CNDP.<sup>70</sup> The state park authority, the *Institut Congolais pour la Conservation de la Nature* (Congolese Institute for Nature Conservation, or ICCN) has no access to the park in this area due to the militarised nature of local governance. Fishing camps, charcoal operations and other informal businesses operate within park boundaries. Some communities have encroached up to 15km within park boundaries.<sup>71</sup>

## 2.2.3 Some Current Land Issues in North Kivu

The situation in North Kivu, which has generally been highly unstable, has changed somewhat since the arrest of Laurent Nkunda, former head of the CNDP, by the Rwandan authorities and subsequent

66 J. Pottier (2003). Op. cit.

67 K. Vlassenroot and C. Huggins (2005). Op. cit. p.175.

68 For example, see: UN (2008). *Final report of the Group of Experts on the Democratic Republic of the Congo*. New York; and T. Turner (2007). Op. cit. p.142.

69 The term “warlord tenure” is used in J. Unruh (2006). *Resource rights in transition*. Burlington: ARD. The dates of rebel control are somewhat fluid, as the official end of a rebellion does not necessarily reflect a real change in the influence of individuals and networks.

70 International Alert (2010). *Refugees in Eastern DRC: A discussion document*. London: International Alert.

71 Interview with civil society organisation, Goma, 30th September 2010.

negotiations between the CNDP and the Government, which culminated in the Ihusi Accords. However, it should be noted that the CNDP consists of different factions, which has already led to internal bloodshed and may lead to future instability. While CNDP has been officially integrated into the *Forces Armées de la République Démocratique du Congo* (Armed Forces of the Democratic Republic of Congo, or FARDC), this was done through a “rapid integration” process rather than a process of *brassage* (which involves troops being deployed in different areas of the DRC), and the parallel administrative structures put in place by CNDP remain effective in some areas such as part of Rutshuru.<sup>72</sup> The CNDP therefore still has one foot outside of the state structures.

The joint FARDC/Rwanda Defence Force (RDF) operations (called “Umoja Wetu” and carried out in February 2009) against the *Forces Démocratiques de Liberation du Rwanda* (Democratic Forces for the Liberation of Rwanda, or FDLR) has resulted in many serious human rights abuses, both those directly inflicted by the FARDC and RDF troops, and those inflicted by the FDLR in a twisted form of retaliation. While the operations appear to have only displaced the FDLR, and improved security only in select locations, they do signal a certain *rapprochement* between the authorities in Kinshasa and Kigali, which may also bode well for future stability. However, the sustainability of the current *entente* is questionable given the structural factors (such as demographics, economics and geopolitics) that impose their own logics on DRC-Rwanda relations.

There have been slow but steady population movements since 2002 from Rwanda into parts of North Kivu, particularly Masisi, with many of those crossing claiming Congolese citizenship. These have increased in recent years. More can be expected to arrive in the coming months and years: according to UNHCR, there are approximately 50,000 official refugees in Rwanda, 20,000 in Burundi, and 45,000 in Uganda. There are also an unknown number of former inhabitants of the DRC who are not registered by UNHCR but live in villages in Rwanda. Some of this population may also return to the DRC, although they are not covered by the 2010 Tripartite Accord. Many of these refugees can expect to find their land and houses occupied by others. In many cases, land will be occupied by family members who may be unwilling to relinquish control, or neighbours or strangers who have gained control over the land through force or by purchasing it from third parties. Some of those currently occupying land vacated by refugees are armed.

Many of the refugees, especially those currently in Rwanda and Burundi, are Tutsi, and their return is particularly sensitive.<sup>73</sup> This is because of the historical issues around the citizenship of the Banyarwanda mentioned above; claims by some “indigenous” chiefs, civil society organisations and politicians that some of the refugees are in fact Rwandans who have never lived in the DRC; and because of the ways in which the security and citizenship concerns of Tutsi have been articulated by the CNDP, which justifies its existence by projecting itself as a guarantee of physical security for Tutsi, as well as a highly organised and disciplined organisation. Armed groups which remain outside of the peace process, such as the *Alliance des Patriotes pour un Congo Libre et Souverain* (Alliance of Patriots for a Free and Sovereign Congo, or APCLS) and branches of the *Patriotes Résistants Congolais* (Congolese Patriotic Resistance, or PARECO), such as the Lafontaine group, oppose the refugee return, arguing that it opens the way for “Rwandans”, particularly Tutsi, to consolidate and increase their control of land.<sup>74</sup> There are claims that CNDP has evicted some smallholders (a trend some describe as a “forced displacement”) to favour returning refugees.<sup>75</sup> In addition, there are claims that a significant number of cattle have been brought from Rwanda into the DRC.<sup>76</sup> As has happened in the past, it is possible that cattle owned by Rwandans are being grazed by relatives or paid helpers in the DRC, where land is more plentiful.<sup>77</sup>

<sup>72</sup> Interviews with key informants, Ntamugenga, Rutshuru District, 4th October 2010.

<sup>73</sup> Practically all of the refugees in Rwanda are Tutsi. Some 10,000 of the refugees in Burundi are Banyamulenge.

<sup>74</sup> International Alert (2010). Op. cit. The APCLS comprises mostly Bahunde combatants, while the PARECO-Lafontaine recruits mostly from the Banande.

<sup>75</sup> Ibid.

<sup>76</sup> Interview with civil society organisation, Goma, 30th September 2010.

<sup>77</sup> K. Vlassenroot and C. Huggins (2005). Op. cit. p.158.

As documented by International Alert, the return of the refugees has until now been spontaneous (rather than assisted by UNHCR) and largely undocumented. There is no official information on the numbers of people who have crossed the border.<sup>78</sup> This poses a great risk for stability in the area. Organisations such as the UN Human Settlements Programme (UN-HABITAT), which have been overseeing mediation activities in Masisi, have faced suspicion that they are facilitating an organised influx of “Rwandans”.

The ongoing influx of “returnees” into North Kivu, and the potential for similar flows into South Kivu, means that there is an urgent need for interventions which can provide *temporary* stability, through identifying win-win outcomes for parties involved in land disputes. However, if these outcomes result in an uncritical acceptance of the land claims of all the “returnees”, many of whom are viewed with suspicion by “indigenous” communities and several armed groups, these temporary solutions will likely result in a massive conflict at a later date. Given the overwhelmingly Tutsi character of the “returnee” movement, the role of the CNDP in facilitating their return, and the history of conflict in the region, this violence would not only be extremely bloody, but could quickly drag in regional actors, most notably Rwanda. This implies that some of the mediation exercises that are currently being conducted – such as those organised under the auspices of UN agencies – may be storing up problems rather than contributing solutions. More research is needed to fully understand the dynamics involved and to identify possible mitigating measures, but some preliminary observations are offered in Section 4.2.

## 2.3 Land and conflict in South Kivu

### 2.3.1 Causes of conflict

The context in South Kivu is different from that of North Kivu. This is partly because of the much lower population densities in most of the region, which slightly reduces the socio-economic and political tensions around access to and control over land. The *territoire* Fizi-Itombwe, for example, has a population density of only 28 persons per km<sup>2</sup>.<sup>79</sup> Nevertheless, parts of the province, such as Bushi (areas inhabited by ethnic Bashi), are very densely populated. By 1959, households in Kabare (South Kivu) on average owned less than one hectare.<sup>80</sup> This is likely to have diminished to perhaps half that figure today; well below the minimum landholding necessary to support a family. Parts of Kabare, Walungu and Kalehe are home to over 400 inhabitants per km<sup>2</sup>, which is higher than the average in neighbouring Rwanda.<sup>81</sup> However, we should beware of making overly simplistic linkages between population density and violence. While high population density (and associated scarcity of land) is generally associated with a high number of disputes, the question of whether these disputes will lead to widespread violence depends largely on political factors, which are often external to the area in question. As Vlassenroot points out, disputes only become associated with large-scale violence through the intervention of political and military actors.<sup>82</sup>

The dynamics in South Kivu are also different partly because of the very different history of relations between “indigenous” and “immigrant” groups. It took longer for the ethnic violence of the early-mid 1990s to commence in South Kivu,<sup>83</sup> but eventually in 1996 some broadly similar dynamics developed.

<sup>78</sup> International Alert (2010). Op. cit.

<sup>79</sup> Interview with Bulongo Safanto, an independent researcher on land-tenure issues in South Kivu.

<sup>80</sup> K. Vlassenroot (2006). *Households land use strategies in a protracted crisis context: Land tenure, conflict and food security in Eastern DRC*. Belgium: University of Ghent.

<sup>81</sup> T. Hyawe-Hinyi. ‘Sud-Kivu: De plus en plus de paysans sans terres’, *Syfia Grands Lacs*, 6th May 2010. The average population density in Rwanda is more than 320 persons per km<sup>2</sup>. See: H. Musahara and C. Huggins (2005). ‘Land reform, land scarcity and post-conflict reconstruction: A case study of Rwanda’ in C. Huggins and J. Clover (Eds.). Op. cit.

<sup>82</sup> K. Vlassenroot and C. Huggins (2005). Op. cit. p. 147.

<sup>83</sup> Vlassenroot and Huggins (2005). Op. cit., p. 147.

As in North Kivu, the Belgian administration intervened in the administrative boundaries and governance structures of South Kivu. Turner notes that Belgian policies towards the Banyamulenge were ‘incoherent and self-serving’, and are partly to blame for the conflicts between the Banyamulenge and their neighbours.<sup>84</sup>

Relatively small numbers of Kinyarwanda speakers have inhabited parts of South Kivu for several centuries, arriving in several waves.<sup>85</sup> During the colonial period, some 7,000 labourers from Ruanda-Urundi were brought into the DRC to work in the mines. Some migrants also crossed the Rusizi plain from neighbouring Burundi during the post-colonial years and are known as “Barundi”. While they represent some 15 percent of the population of the Fizi-Baraka area according to Prunier, they have historically maintained reasonably cooperative relations with their indigenous neighbours.<sup>86</sup> Some individual Kinyarwanda speakers reached accommodations with local chiefs, essentially taking the role of “clients” (by paying tribute) to indigenous chiefs, such as Bahavu and Batembo leaders in Kalehe.<sup>87</sup> However, over time, as their numbers increased, Kinyarwanda speakers in places such as Ziralo (Kalehe) demanded political representation. Some local chiefs used this to their advantage: a chief in an area neighbouring Ziralo offered them autonomy over land if they became associated with his *groupement* (*Buzi*). Presumably, increasing the population under his political authority would increase his prestige and influence.<sup>88</sup>

One prominent group of Kinyarwanda speakers is the Banyamulenge, who are a Tutsi community which settled on the high-altitude pastures of the haut plateau of Itombwe, above the Rusizi plain. This area is at the centre of three territorial units (the *territoires* of Fizi, Uvira and Mwenga) and hence the Banyamulenge, as noted above, formed a relatively insignificant proportion of the population of each *territoire*.<sup>89</sup> They were therefore seen as a minority, unable to claim land and political power through ethnic citizenship. However, they represented perhaps 80,000 people in their entirety during the 1990s, and have consistently sought more local political autonomy, which was denied by the Belgians.<sup>90</sup> The Banyamulenge remained isolated from national-level political events until the Simba rebellion of the 1960s.<sup>91</sup> In 1965, Simba troops, losing the rebellion, fled into Itombwe and killed and ate cows belonging to the Banyamulenge. The Banyamulenge accepted arms from Mobutu loyalists in order to chase out the Simba guerrillas, many of which were from the neighbouring Babembe, Bafuriiru and Bavira communities.<sup>92</sup> After the rebellion was suppressed, some Banyamulenge were rewarded by the government with positions in the national army and access to health, education and other services. These events caused long-standing tensions between the Banyamulenge and the other communities.

The Banyamulenge gradually increased in wealth and influence during the decades that followed. However, the demands of the Banyamulenge to be granted control of their own territory were resisted by other communities. Tensions with local communities increased following the influx of Hutu refugees after the assassination of the Burundian President Melchior Ndadaye (a Hutu) by Tutsi army officers in 1993.<sup>93</sup> In the popular discourse, the Banyamulenge were guilty by association for the problems caused by their ethnic brethren in neighbouring Burundi, which had been ruled for decades by an oppressive Tutsi military regime, and in Rwanda, where the RPF were blamed for starting the civil war and shooting down the jet carrying the presidents of Rwanda and Burundi

84 T. Turner (2007). Op. cit. p.80.

85 Ibid. p.79 notes that the date of their arrival is difficult to ascertain; G. Prunier (2010). Op. cit. p.51.

86 G. Prunier (2010). Op. cit.

87 J. J. Kanjira (2010). ‘La problématique de gestion des terres et des carrés miniers dans le territoire de kalehe’ in IFDP (Eds.). *La problématique foncière et ses enjeux dans la province du sud-kivu, RDC*. Actes de la Table Ronde organisée à Bukavu du 10 au 11 mai 2010. Bukavu: CORDAID/ICCO.

88 Ibid.

89 M. Mamdani (2001). Op. cit. p.248.

90 Prunier notes that estimates of the Banyamulenge population have been systematically under-estimated by their rivals and inflated by Banyamulenge leaders, for political purposes. See: G. Prunier (2010). Op. cit. p.52.

91 The Simba rebellion was led by leftist politicians in Eastern Congo (Orientale and Kivu provinces). Following the murder of the socialist former Prime Minister Patrice Lumumba in 1961, these leaders fought in opposition to the pro-western and pro-capitalist nature of the government in Kinshasa. The rebellion peaked in 1964 and was suppressed by 1965.

92 T. Turner (2007). Op. cit. p.86; G. Prunier (2010). Op. cit. p.52.

93 K. Vlassenroot and C. Huggins (2005). Op. cit. p.146.

on 6th April 1994. Anti-Tutsi extremists argued that the Banyamulenge were part of a wider project of Tutsi regional domination involving Rwanda and Uganda. While individual members of the Banyamulenge community had indeed joined the RPF, the community as a whole had not yet positioned itself within the wider regional dynamic of conflict. However, that was to change as local politicians in the Uvira area started publicly calling for the persecution of Banyamulenge, who they described as foreigners and immigrants, and as Babembe youth formed militias to kill and loot Banyamulenge households in 1996. They were supported in this by Mobutu, who was looking for votes prior to the 1997 elections and seeking to gain the support of the “indigenous” communities (who generally disliked Mobutu) by scapegoating the Banyamulenge.<sup>94</sup> A campaign of ethnic hatred had already been developed by Mobutu allies such as parliamentarian Anzuluni Mbembe, who in 1995 signed a declaration stating that all Banyamulenge, regardless of how long they had lived in the country, were recent refugees. The Banyamulenge started to arm themselves, acquiring weapons from the RPF in Rwanda and even buying them from the Zairean armed forces. The RPF sent undercover commandos into the Itombwe area, clashing with Zairean government troops, and later in 1996 members of the Banyamulenge themselves attacked Hutu refugees in Uvira.<sup>95</sup> Members of the Banyamulenge community became fully involved in the AFDL, and tit-for-tat attacks and atrocities were exchanged between the Banyamulenge and their ethnic neighbours over the next few years as the rebellion, and later the second rebellion of the *Rassemblement Congolais pour la Démocratie* (Congolese Rally for Democracy, or RCD), rumbled on. However, tensions between the Rwandan direction and *de facto* leadership of the AFDL, on the one hand, and the Congolese members of the AFDL, eventually led to outright mutiny by a Munyamulenge, Commander Patrick Masunzu, in 1999, culminating in heavy fighting between Banyamulenge troops and the Rwandan armed forces in 2002.<sup>96</sup>

### 2.3.2 Land as a sustaining factor in conflict in South Kivu

Like all parts of the DRC, most land disputes in South Kivu are between neighbours, members of the local community and family members (such as boundary disputes, arguments over the terms of verbal rental contracts, and inheritance disputes). For the most part, these kinds of land disputes are particularly conducive to informal mediation and would not normally become associated with violence. However, such is the availability of weapons and the willingness of militia members to act as “guns for hire”, that even common disputes may be settled by violence. For a relatively small fee, members of armed groups will intimidate or kill those involved in such disputes. In some cases, tit-for-tat killings may ensue. The militarisation of society therefore prevents the sustainable resolution of such disputes.

Both local businessmen and multinational corporations are involved in expropriating land from smallholders who access land under customary systems. While these actors do not require outright conflict to expropriate land, and indeed rely upon a minimum level of stability in order to maintain control over the landholdings, they are likely to provide payments to local armed movements in order to receive “protection” from other armed groups or from local communities who might otherwise attempt to re-occupy disputed concessions. These payments finance ongoing low-level violence and enable armed groups to continue to prey upon communities, by imposing arbitrary and illegal “taxes”, or simply robbing civilians.

Likewise, those military groups controlling or indirectly benefiting from the various mines in South Kivu are able to do so only because the state has not yet achieved complete control over the province. The FARDC, as well as the various Mayi-Mayi groups, FDLR, PARECO and other armed actors, maintain influence over mining networks because civilian structures are unable to do so. It is therefore in the interests of many actors – within the military and some other parts of the state machinery as well as in armed groups – to maintain an ongoing situation of “no war, no peace” in order to skim the proceeds of the mining industry and other such profitable enterprises.

<sup>94</sup> G. Prunier [2010]. *Op. cit.* p.69.

<sup>95</sup> *Ibid.* p.72.

<sup>96</sup> T. Turner [2007]. *Op. cit.* p.93.

### 2.3.3 Some current land issues in South Kivu

The political issues outlined above interact with lower-level disputes, which fall into many categories. One example is disputes over grazing rights. Seeking pastures for cattle during the dry season, pastoralists often move outside of their home *groupement* or *territoire*. This seasonal movement (known as transhumance) is a necessary adaptation to ecological factors practiced by herders around the world. As is common in many parts of Africa, tensions rise over cattle eating or destroying crops in the fields, and the herders may be asked to provide compensation or simply give some cows to the local customary leaders as a form of tax. If they refuse, the herders are often attacked by local Mayi-Mayi or other armed elements.<sup>97</sup> Such disputes and conflicts often involve Babembe farmers and Banyamulenge herders.<sup>98</sup>

As elsewhere in the DRC, disputes arise over the alienation of land from customary systems through the market (registration through state cadastres). Large-scale expropriation of land is a significant cause of grievances amongst smallholders and land-poor peasants. In South Kivu, these disputes are at risk of provoking low-intensity violence because of the wide availability of arms and the variety of small, semi-organised Mayi-Mayi groups.<sup>99</sup>

Another set of disputes, often associated with other land-related disagreements, centre on demands for the creation of new administrative units. In Kalehe, for example, there are two examples of such disputes. The first pits members of the Batembo against the Bahavu, over the creation of a new territory called Bunyakiri which would be dominated by Batembo. Bunyakiri was created during the RCD regime, which also interfered with the customary leadership system in the area, but the territory was abolished in 2008. These events created divisions, particularly between the Batembo customary leadership, which persist today.

Also during the rule of the RCD, a new *groupement* called Mianzi was created, which was inhabited primarily by Banyarwanda.<sup>100</sup> The creation of Mianzi meant that Banyarwanda no longer depended on client status with Havu and Tembo chiefs to have access to land, and put valuable mining areas under their administrative control. However, the *groupement* was abolished after 2003.

Before the joint DRC-Rwandan operations against the FDLR, the FARDC troops stationed in South Kivu tended to avoid areas where FDLR were based. Rather than securing parts of the province against FDLR and other armed groups, the deployment of FARDC troops has been motivated by attempts to control the lucrative mining industry. Often, mines are not controlled by one single armed group, but instead the proceeds from mining are “taxed” by a number of armed groups at different stages in the process of mining, transport and distribution. The operations against the FDLR, which have been undertaken by FARDC along with rapidly- and informally-integrated elements of other armed groups, have altered the lines of control in certain areas but have not fundamentally changed this dynamic. In most parts of the province, the various armed groups tend to pursue their economic agendas (which in addition to mining, rely upon “taxation” of the population at local markets and roadblocks, and other trades) with military objectives being second to this profit motive.

Recent military operations against the FDLR have led to recriminations against civilian populations in South Kivu. Less acutely, they have caused FDLR and FARDC combatants to move into new areas of South Kivu, which creates new pressures on land as combatants and their dependents occupy land for agriculture. According to local NGOs, the military and their dependents either directly occupy land (e.g. FARDC troops occupying land and houses belonging to civilians in

<sup>97</sup> Mayi-Mayi are usually called local “self-defence” groups, but like other armed groups, are often involved in various forms of illegal and exploitative resource extraction, taxation, and violence against communities. Interview with Action pour le Développement et la Paix Endogènes (ADEPAE), September 2010.

<sup>98</sup> Interview with international organisation, Bukavu, 27th September, 2010.

<sup>99</sup> Ibid.

<sup>100</sup> Confidential report.

Bulambika, Kalehe District) or demand “payments” in agricultural produce or cash from local people.<sup>101</sup> PARECO, as well as Mayi-Mayi groups, also operate in Kalehe. According to some observers, attempts to integrate armed groups in recent years (under the Amani process) led to a multiplication of militia, each seeking a share of the state resources available through negotiation and integration.<sup>102</sup>

## 2.4 Land and conflict in Ituri

### 2.4.1 Causes of conflict in Ituri

Disputes over land access between communities and within communities have a long history within Ituri, which probably predates the arrival of the Belgian colonialists. However, as elsewhere on the continent, the colonial power exacerbated these tensions by restricting the movement of some communities, intervening in the local customary administrative structures, and providing more material and political support to some communities than others.<sup>103</sup> The two communities at the centre of the violence in Ituri – though by no means the only ethnic groups involved or affected – are the Balendu and the Bahema.<sup>104</sup> The Lendu, who are the larger group in terms of population size, lived in dispersed settlements and were organised by clans, which had a strong sense of autonomy and a tendency to disagree (sometimes violently) with one another. Control over land was also highly decentralised, with heads-of-households and lineages enjoying considerable authority. The Hema had a hierarchical system, in which the chiefs dominated decision-making around land. The Belgian regime found the system of the Bahema easy to utilise within its strategy of indirect rule, and the Hema community became more fully integrated into the market economy and better educated than other communities, particularly the Lendu.<sup>105</sup>

Long-standing land disputes between Balendu communities, who were mainly agriculturalists, and Bahema businessmen (who specialised in commercial ranching) were exacerbated by “development projects” funded by international donors in the 1980s, which focused on investment in pastoralism, reportedly at the expense of agricultural land.<sup>106</sup> While those agriculturalists who lost land for pasture were reportedly compensated, their descendents typically do not recognise the legitimacy of those expropriations.<sup>107</sup> The 1973 land law had already led to the alienation of some land from communities in Ituri. In addition, there were numerous boundary disputes, notably claims by smallholders that the boundaries of large commercial ranches were being expanded, with the result that community lands were encroached upon.

Tensions over land, particularly between the Hema and Lendu, had already led to violent clashes (acts of violence had occurred in every decade since the 1960s,<sup>108</sup> but were contained by the customary dispute-resolution systems) but these escalated rapidly from 1998 onwards, when the Ugandan army, the Uganda People’s Defence Force (UPDF), occupied Ituri as part of its role in the “Second Rebellion”. The UPDF, in collaboration with local militia groups, supported Bahema interests, appointing Bahema to important administrative positions and often acting as paid bodyguards to wealthy Bahema landowners involved in disputes. It also unilaterally raised the status of Ituri from a district to a province. Balendu communities had long complained that Bahema businessmen were purchasing land illegally, through corruption, without following the verification and consultation procedures outlined in the 1973 General Property Law. Examples

101 Interview with local civil society organisation, Bukavu, 27th September 2010, and confidential report.

102 Confidential report.

103 For a summary, see: K. Vlassenroot and C. Huggins (2005). *Op. cit.* pp.164–165.

104 There are in fact numerous sub-groups within the Lendu, identified according to their geographical location, including the Lendu-Pitsi, Djatsi and Tatsi of the north, and the Ngiti (or Bindji) of the south. The Hema also have sub-groups, such as the Gegere and the Hema Boga of the south, who became sedentary at an earlier point than other groups. See: Bureau du Projet (1982). *Ituri: Rapports de projet*. Bunia.

105 For more detailed discussions, see: J. Pottier (2003). *Op. cit.*; and J. P. Lobho (1971). *Impact de la colonisation belge sur les structures sociopolitiques au Congo: Le cas de la société hema en Ituri*. Revue Congolaise des Sciences Humaines.

106 Interviews with local civil society organisations, Bunia, February 2004; and Bureau du Projet Ituri (1982). *Op. cit.*

107 Confidential aid agency report, October 2010.

108 O. Sematumba (2003). *Ituri: the war within the war*. Pole Institute, Goma.

are found in Kasenyi, in the southeastern part of the district, where eight substantial concessions (each several hundreds of hectares in size) were established during the 1980s, and were stocked with thousands of heads of cattle.<sup>109</sup> Balendu claimed that as the church is also a Bahema-dominated institution, when church land was sold, Bahema were given priority in purchasing it.

In late 1999, members of various communities in Djugu *territoire* met and agreed that those households living in ethnic enclaves as minorities in areas where other ethnic groups were politically represented (in other words, outside of areas where they enjoyed “ethnic citizenship”) should move to areas where their ethnic group was dominant, in order to avoid being the targets of violence. This insistence upon return to the ethnic “homeland” approach was called the *Nyakasansa Accord*.<sup>110</sup> However, in practice it was not put into place until violence had already overtaken efforts to manage tensions, and those who found themselves at risk due to their minority status were attacked and/or fled spontaneously to areas where members of their ethnic group were in the majority. Without recourse to traditional or formal justice systems, which had been undermined by UPDF intervention and the quasi-absence of the state (even prior to the “Second Rebellion”), some Balendu in Djugu, and then members of other ethnic groups, turned to violence. The conflict was not only about claims to agricultural or pasture lands; control of gold mines and other valuable resources was also hugely important, as was control of infrastructure, which allowed armed forces to tax the civilian population; and a desire to oppose or opportunistically benefit from the presence of foreign powers in the district.<sup>111</sup> At least seven different militia groups emerged in Ituri, with alliances changing frequently.<sup>112</sup> The resulting war triggered massive population displacements and killed more than 50,000.<sup>113</sup> In some cases, local communities which were involved in land disputes with neighbouring villages reportedly collaborated with armed militia in order to have the militia displace the opposing community.<sup>114</sup> In addition to land-grabbing, the looting of cattle was also a feature of the war.

#### 2.4.2 Land as a sustaining factor in conflict in Ituri

As argued by Pottier, the war and the resulting displacement in Ituri benefited armed actors and those local leaders (customary and otherwise) who collaborated with them.<sup>115</sup> Through the provision of “security” in certain zones – necessitated, of course, because of the same armed groups’ role in causing insecurity – such leaders enjoyed almost total control over the labour of the population under their “protection”. By encouraging civilians to become directly involved in the violence, and by targeting civilians of other ethnic groups, armed actors ensured that the violence quickly took on an ethnic aspect. Ethnic communities could only consider themselves secure in territory controlled by certain militia groups, and became semi-dependent upon them. By making decisions on access to land, imposing taxes on marketed produce, and controlling population movements, politico-military figures found ways to make war profitable for them. While control of valuable resources such as gold mines and coffee plantations provided the most revenue, control over less valuable land yielded minor benefits as well. Fieldwork in Komanda in 2004 revealed that some IDPs were being denied access to land by the politico-military authorities, and were therefore forced to provide cheap labour on the fields of others. By limiting access to land, leaders who controlled land were able to keep the price of labour artificially low, increasing their profit margins as absentee landlords.<sup>116</sup> Leaders, including chiefs, also oversaw the secondary occupation of vacated land. The redistribution of land abandoned during conflict represented a windfall for leaders, who gained either through direct payment of gifts and tributes, or through the enhanced prestige and influence generated. It may be assumed that leaders will not be keen

109 Confidential aid agency report, October 2010.

110 Confidential aid agency report, May 2010.

111 Rwanda was also influential, providing support to some armed groups.

112 G. Prunier (2010). *Op. cit.* p.293.

113 K. Vlassenroot and C. Huggins (2005). *Op. cit.*

114 T. Vircoulon (2010). ‘The Ituri paradox’ in W. Anseeuw and C. Alden (Eds.). *The struggle over land in Africa*. Pretoria: The Human Sciences Research Council.

115 J. Pottier (2003). *Op. cit.*

116 K. Vlassenroot and C. Huggins (2005). *Op. cit.*

to evict these same secondary occupants in order to allow the original landowners to return, lest they lose that influence.<sup>117</sup>

### 2.4.3 Some current land issues in Ituri

Following the cessation of major hostilities, efforts were made to establish a land commission for Ituri, which is part of the state machinery (though reliant on donor funding) and designed to provide a “rapid response” to land disputes, organise mediation efforts, and publicise the land law.<sup>118</sup> Although efforts to operationalise the commission began in 2007, it did not become fully operational until the beginning of 2009, due to political obstacles.<sup>119</sup> The attempts to block the operations of the commission, which have required the intervention of powerful donors to ensure that it could function, suggest that there are vested interests in the disputes and the remnants of “warlord tenure” still found in Ituri.

The return of IDPs has in most areas been difficult, due to secondary occupation of abandoned homes and fields (particularly in areas subject to population pressure). Efforts to ensure the return of IDPs have been moving extremely slowly, as secondary occupants refuse to leave. Mediation efforts have not necessarily led to “reconciliation” between different communities, and there are calls by some for the provisions of the Nyakasansa Accord to be upheld – i.e. for an ethnic Balkanisation of the territory to be maintained.<sup>120</sup> In addition, some IDPs have yet to return, meaning that more disputes may become evident in the coming years.

The problem is complicated by the growth of the population over the decade since violence broke out. In some cases, communities have expanded and taken over “abandoned” land which is now claimed by IDPs and returning refugees. In such cases, those returning may be asked to relinquish their claims to a portion of the land, in order to accommodate those already living there.<sup>121</sup>

It is not just the return of people which is problematic: the return of the hundreds of thousands of cattle which have grazed in parts of Ituri is also blocked in many instances. Ituri has long been the major supplier of beef to other parts of the country, with ethnic Hema dominating the trade. Many of the vast cattle ranches (some of which have long been the site of boundary disputes and other disagreements) have been converted to smallholder farmland during the last decade after the cattle were stolen, killed or moved out of the territory by their owners.<sup>122</sup> Cattle-owners complain that in some cases, schools and houses have been constructed on privately-owned pasture, with assistance from NGOs.<sup>123</sup>

Not all land disputes are inter-ethnic. According to Belgian NGO *Réseau Citoyens* (Citizen’s Network, or RCN), only nine percent of all land disputes in Ituri have an inter-ethnic dimension.<sup>124</sup> However, this does not mean that they are necessarily less violent. In Mahagi *territoire*, which is inhabited almost exclusively by the Alur community, tensions between farmers and pastoralists have escalated in recent years, with conflicts over grazing land resulting in 80 houses being burned down in July 2010, and two people being killed due to a separate dispute in August.<sup>125</sup>

Interviews with local actors reveal that there are a variety of actors – primarily chiefs at various levels, and the state cadastral staff – who take responsibility for allocating land and overseeing

117 Naturally, this depends on local dynamics. In some cases, chiefs may seek to benefit economically or politically from their role in brokering the removal of secondary occupants, for example if a large landowner promises something in return.

118 M. Djoza (2010). ‘Les conflits fonciers en Ituri’ in Réseau Citoyens (RCN) [Ed.]. *Conflits fonciers: défis et résolution. Actes de la Conférence, 14 Juin 2010*. Brussels: RCN/coopération Belge.

119 T. Vircoulon and F. Liegeois (2010). Op. cit.

120 Confidential aid agency report, May 2010.

121 Interview with trained mediators working with local NGO, Bunia, 13th October 2010.

122 Interview with NGO staff, Bunia, 12th October 2010.

123 Interview with pastoralists’ cooperative organisation, Bunia, 14th October 2010.

124 Note, however, that this may be because some IDPs and refugees have yet to return and claim land occupied by members of other ethnic groups.

125 Confidential aid agency report, October 2010.

land transactions.<sup>126</sup> The reality then is that in addition to the disputes over land between various individuals who claim to be the legitimate owners, there is also a “turf war” between various institutions who claim the right to govern land. This institutional conflict leads to confusion and duplication in the allocation of land rights (e.g. overlapping claims). The state at present has very little capacity to *effectively* and *fairly* register land or to manage disputes. NGOs in the area talked of a ‘complete absence of the state’ in this regard.<sup>127</sup>

Since 2007, *Barza communautaires* have been held regularly at which community and inter-community problems and disputes are discussed in public. These are organised by local NGOs as well as customary leaders and other key local figures. Land disputes have dominated these discussions.<sup>128</sup> Following the identification of the major land disputes and those involved in them, the communities involved are asked to agree to a mediation process. Parties to the dispute nominate individuals who are usually educated or influential in the area to represent them, and the mediation then proceeds in private.<sup>129</sup> Slow progress is being made in reducing instances of violence through various mediation processes. However, there are some disputes, particularly involving areas rich in resources (such as minerals), which NGOs and customary authorities have difficulty mediating. The state is directly or indirectly implicated in these disputes, but has not taken any role in resolving them.

When MONUC forces planned to withdraw from Ituri in early 2010, there was a united attempt by residents of Ituri to urge them to stay. This represents, according to some observers, a popular acknowledgement that some of the root causes of the conflict have not been resolved, and renewed fighting is a possibility. Although there has been significant demobilisation of armed groups in Ituri, some militias are still in existence, most notably the *Front Populaire pour la Justice au Congo* (Congolese Popular Front for Justice, or FPJC), who, who resumed attacks against the FARDC in May 2009.<sup>130</sup> There are indications that the FPJC, which includes both Lendu and Hema elements, is actively recruiting in some parts of Ituri. There are rumours that the FPJC, which appears to be well-armed, may be supported by a foreign state, perhaps because of the important natural resources in Ituri (including oil fields).<sup>131</sup>

Thus, while some analysis describe the situation in Ituri as ‘calm but fragile’, there is clearly much work to be done to resolve land disputes and ensure that ongoing disputes are not exacerbated and amplified by armed actors and political figures, whether local, national or foreign.

126 Interview with cadastral staff, Bunia, 14th October 2010.

127 Interview with NGO staff, Bunia, 12th October 2010.

128 Interview with NGO staff, Bunia, 12th October 2010.

129 Interview with trained mediators working with local NGO, Bunia, 13th October 2010.

130 K. Vlassenroot and T. Raeymaekers (2009). ‘Kivu’s intractable security conundrum’, *African Affairs*, Vol. 108, No. 432, pp.475–484.

131 Confidential aid agency report, May 2010.

### 3. Conceptualising the links between land tenure and violent conflict

Many local and international experts would agree with the statement of an informant interviewed during fieldwork in Goma, that land primarily represents “identity and power”.<sup>132</sup> Indeed, Section 2 above has focused mostly on what rights to land mean for certain communities, mostly defined according to ethnicity and geographic location. The focus then has largely been on land as territory – an area that can be administered, and that confers rights and responsibilities on the leaders of the population living there. While land scarcity and alienation of customary land has led to land disputes at the micro-level, the tensions around such local and intra-community conflicts (or conflicts between “ethnic citizens” and their chiefs who make decisions over community land) have generally been transferred into the inter-community level. This has been achieved through discourses utilising the concepts of “indigenous” and “immigrant” groups.

The preceding section has also focused on land as a “cause” – one of several causes – of violent conflict. Land-related grievances, seized upon and reproduced by politicians and some customary leaders, feed into narratives of the perceived economic dominance, aggression, or duplicity of certain “ethnic groups”. In Eastern DRC, women are losing the precarious hold that they had on land, as the few “safety nets” for women within customary systems are eroded due to the decrease in availability of vacant land, and the state system is prohibitively expensive and generally benefits male family members rather than women.<sup>133</sup> The children of landless women (such as widows, separated or divorced wives, informal wives, etc.) grow up in poverty with few off-farm livelihood options available. These grievances provide motivation for recruitment of civilians from ethnic groups who feel that they have “lost” land to others. These links are therefore *indirect*: the result of a cumulative pattern of events.

Where local disputes lead to murder, tit-for-tat killings can quickly escalate into inter-ethnic conflict involving armed groups. This is particularly the case when militia groups are directly employed by large landowners to “guard” their landholdings against encroachment by smallholders, or to simply intimidate potential disputants. There are also some cases involving local politicians, who inflame segments of the population and fund armed groups to attack “large landowners”, often for their own economic and political interests. This kind of linkage is more *direct*, as killings can be traced back to a specific dispute over land.

In addition, control over land is a “sustaining factor” in conflict. We should note, however, that those individuals and cliques that have benefited from changes in control over land during conflict do not necessarily require a continuation of war to maintain *de facto* control over their spoils. Rather, they need to avoid having wartime transactions and population movements scrutinised and potentially undone, for example through the establishment of land commissions, mediation processes, the return of IDPs and refugees, or other state or non-state interventions. In order to avoid the loss of wartime gains, such actors will likely attempt to gain influence with politicians or maintain a certain level of “instability” in order to prevent international and local NGOs and state services from gaining a foothold in areas under their control, and to prevent the return of those claiming land ownership. This situation is particularly visible in Masisi, Rutshuru and some other parts of North Kivu, but may also have resonance in other areas.

<sup>132</sup> Interview with civil society organisation, Goma, 5th October 2010.

<sup>133</sup> In many customary systems, women who do not fall under the “protection” of a male (such as a husband or relative) may be granted temporary access to vacant land.

Before drawing conclusions on the most “accurate” or most “practical” ways to conceive of the links between land tenure and conflict, it may be useful to consider how some influential analysts have looked at conflict in the DRC, more generally.

Turner demonstrates how conflicts in the DRC have been structured by divisions amongst peoples at the local level which have been imposed from the national level, from the colonial period onward.<sup>134</sup> Amongst local populations upon whom these divisions have been imposed, playing into these divisions has also become a survival strategy, in various instances providing the necessary support for political, physical and economic protection. Thus, Turner implies that while ethnic divisions are often defined and imposed from above, the political, material and ideological weight that is attached to them (on either side of the conflict) has led to the micro-level affirmation of such divisions, where the communities themselves come to define themselves by these externally ascribed divisions. Turner insists upon the importance of defining conflicts accurately and understanding issues of scale, arguing that ‘two quite different types of conflict have been conflated: local-level conflicts involving land tenure and chieftancy, in which Rwanda-speakers are pitted against so-called “autochthonous” or “native” populations, and regional-level conflicts pitting Rwanda-speaking elites against others, led by the Nande of North Kivu and the Shi of South Kivu’.<sup>135</sup> It should be noted, however, that the two levels are linked by the actions of political leaders, who arm local groups, make changes to administrative units for political reasons, or seek to expand their own political and economic networks through the mobilisation of violence.

Autesserre focuses on the ways in which international actors, particularly MONUC, have conceptually “framed” violence in the DRC.<sup>136</sup> When local violence was brought to the attention of the international community, popular framing as to the expectations of “normal life” in the DRC attributed such violence little accord, as violence at a small scale was viewed as endemic to Congolese life. This Hobbesian view saw Congolese society as essentially prone to brutality and struggle. The framing of local violence as both inevitable and separate from the “big issues” at the national level was partly a self-interested exercise: international agencies were not interested in getting involved in local issues, seeing their mandate as suited to organising national-level processes, such as elections.

However, Autesserre argues that local issues are of considerable importance to the dynamics of conflict. She contends that despite the absence of the master cleavages of the Congolese war following the 2002 peace agreement in areas such as parts of South Kivu, North Katanga and Ituri, violence erupted stemming from locally-specific problems, which gained international attention only when reaching the level of gross atrocities and massacre. In each of these provinces, following the war, micro-level militias (particularly those described as Mayi-Mayi) continued to fight over claims to various lands, natural resources and political/administrative positions. While often distinctly local, however, these conflicts also contained linkages with national- and regional-level conflicts, manifest in competing militia’s alliances with Rwandan Hutu groups in some areas.

Boas critiques two of the most popular interpretations of ongoing conflict in North Kivu, and the DRC more broadly: conflict as the result of political corruption, and conflict as a result of greed and grievance dynamics.<sup>137</sup> Boas asserts that it is important to move beyond such simplistic explanations and understand how conflict is embedded within the nexus of migration, land rights and identity. While greed and grievance (or resource plunder) and political corruption are useful in explaining how conflict has been sustained or exacerbated in North Kivu, Boas characterises the conflict as an “agrarian war”, which pits smallholders against those controlling large plantations, ranches

<sup>134</sup> T. Turner (2007). *Op. cit.*

<sup>135</sup> *Ibid.* p.106.

<sup>136</sup> S. Autesserre (2009). ‘Hobbes and the Congo: Frames, local violence and international intervention’, *International Organization*, Vol. 63. p.259.

<sup>137</sup> M. Boas (2008). *Op. cit.*

and mines and necessitates resolutions of Banyarwanda citizenship and land rights issues if lasting peace is to be achieved. Political and military measures need to be supplemented by developmental approaches. Boas argues that many smallholders who have been forced out of farming due to local land disputes have turned to militia formation as an alternative survival strategy.<sup>138</sup>

Finally, Vlassenroot and Raeymaekers concentrate on the international community's incorrect characterisation of the DRC as a "failed or collapsed state" and its failure to understand how local informal networks and governance systems function.<sup>139</sup> In an analysis that broadly supports that of Autesserre, they argue that the international community's emphasis on national-level processes of negotiation and integration into state structures, coupled with measures meant to punish those who remain outside of this "peace process", has merely led to a fragmentation of politico-military groups, as Congolese actors position themselves to benefit economically and politically from "integration", often by choosing to stay outside of such "peace processes" in order to negotiate greater rewards. Such a model assumes that integration into the state leads to a more stable central system of governance and ignores the fact that the national army, members of the government in Kinshasa and their local allies around the country are engaged in systems of resource exploitation that are not so different from the "looting" that has characterised much of the DRC's history from colonial times through to Mobutu's reign, and into the "warlord" period. In the words of the authors, 'violent coercion was increasingly adopted as a government technique after the transition period'.<sup>140</sup> Complex networks of resource exploitation have developed, bringing together a variety of actors (we might identify, for example, national-level politicians, local administrators, local militia groups, certain FARDC brigades and businessmen) in ways which blur the boundaries between "public" and "private" activities. Rather than encouraging stability, (as it was often assumed that state-sanctioned post-conflict resource exploitation would do), such networks can actually benefit from local insecurity. Meanwhile the provision of services remains scant. In a conclusion worth quoting, the authors argue that:

*While peace builders still define Congo's conundrum at worst as a "resource war" or, at best, as a problem of peace "spoilers", the current strategy of power sharing and institution building in the DRC has slowly but steadily become constitutive of a dialectic of structural violence and privatized governance that forms an essential impediment to genuine change and peace building for the bulk of the Congolese population.*<sup>141</sup>

What can we conclude from this brief review of some recent publications on international perspectives of violence at different scales in the DRC? Most importantly, perhaps, we can conclude that any attempt to understand the scale or level at which conflict occurs should avoid conceiving of national, regional, local or other categories as fixed and discrete. One cannot understand the local without framing it within the national context, while one cannot comprehend the actual impacts of the national without considering the myriad ways in which it is appropriated, embraced, opposed and amplified at the local level. The need to understand the dynamic relationship between scales is illustrated, for example, in the ways in which citizens of Eastern DRC who claim indigenous status often speak of the state. On the one hand, the state (in the abstract) is seen as a national institution that can be a potential bulwark against foreign influences and forces, and the need for a strong state is often emphasised. On the other hand, the daily local experience of the state – as something that is characterised mostly by its absence, and often as a grasping hand, looking for a bribe or a tax payment – means that citizens have a highly ambiguous view of the national government.<sup>142</sup> One informant argued that most interventions by international actors in the DRC are either at

138 Boas specifically refers to Hutu who resided in North Kivu prior to the Rwandan genocide and who have joined the *Forces Démocratiques de Libération du Rwanda* (Democratic Liberation Forces of Rwanda, or FDLR) despite having no intention of "returning" to Rwanda, by force or otherwise.

139 K. Vlassenroot and T. Raeymaekers (2009). Op. cit.

140 Ibid. p.477.

141 Ibid. p.484.

142 P. Clark (2008). 'Ethnicity, leadership and conflict mediation in Eastern Democratic Republic of Congo: The case of the Barza Inter Communautaire', *Journal of Eastern African Studies*, Vol. 2, No. 1. pp.1-17.

a “high” level (involving diplomatic efforts, often termed Track 1 diplomacy in peacebuilding circles) or at a very local level (involving, for example, awareness-raising or mediation in villages). The informant contended that it was necessary to carry out activities at a “middle” level.<sup>143</sup> Indeed, it may be at the middle level where the links between land disputes and large-scale conflict can best be dealt with.

How then are organisations to work at the middle level, which connects national political issues with local disputes? One obvious means is to influence district or provincial-level institutions. Unfortunately, there are currently few such organisations which seem to be promising ground for progressive change on land-tenure issues. The once-effective *Barza intercommunautaire* of North Kivu is now defunct; provincial assemblies have yet to prioritise the land issue, and there are few signs that provincial politicians are keen to take a responsible and non-partisan approach to land issues. In the words of one key informant, ‘Politicians in general are profiting from the mismanagement of land, so it is against their interests to address these issues’.<sup>144</sup> Nevertheless, organisations working on peacebuilding and/or land issues should remain open for windows of opportunity at the middle level.

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<sup>143</sup> Interview with civil society organisation, Bukavu, 27th September 2010.

<sup>144</sup> Interview with civil society organisation, Goma, 5th October 2010.

## 4. Conducting “post-conflict” land-tenure activities in a situation of ongoing struggle

### 4.1 Introduction

Through comparative analysis of interventions around the world, specialists in post-conflict land-tenure issues have developed what could be called a broad consensus on the options open to governments and other key actors aiming to address land disputes and reduce the extent to which disputes cause violence. These are usually structured according to a simple model of phases of conflict and recovery, as follows:

**Table 1: Simple model of sequenced land-tenure interventions in conflict and post-conflict contexts**<sup>145</sup>

Stage of Conflict	Examples of Possible Interventions
<i>Land-related tensions (potential for large-scale violent conflict)</i>	<p>Support mediation and other forms of alternative dispute resolution (ADR).</p> <p>Support dialogue around structural factors driving tensions and causing grievances.</p> <p>Ensure all interventions are conflict-sensitive.</p> <p>Advocate for de-escalation of tensions through high-level political and social processes.</p>
<i>Open conflict</i>	<p>Support local actors in order to monitor and document major abuses regarding rights to land, such as forced displacement. Publicise findings and lobby in order to put diplomatic pressure on those carrying out abuses.</p> <p>Start to identify local land experts, and international experts with knowledge of the country in question, in order to prepare for interventions in the immediate post-conflict period.</p> <p>Protect land records (e.g. cadastral offices) if possible.</p> <p>Ensure that both humanitarian actors and peace operations forces (if applicable) understand the land-tenure dimensions of the conflict and do not exacerbate these by their actions.</p> <p>Advocate for peace operations forces (if applicable) to prevent secondary occupation of vacated homes and land.</p> <p>Ensure that most significant land issues are incorporated into peace agreements.</p>

<sup>145</sup> This is intended to be illustrative, not exhaustive. Freely adapted from table by Huggins in S. Pantuliano (2009). 'Charting the way: Integrating land issues in humanitarian action' in S. Pantuliano (Ed.). *Uncharted territory: Land, conflict and humanitarian action*. Rugby: Practical Action; and forthcoming EU guidelines on land and conflict; forthcoming UN-HABITAT guidelines on land and conflict.

<i>Immediate post-conflict period</i>	<p>Support IDP and refugee return through establishing and/or supporting “welcome committees”, incorporating ADR mechanisms to address secondary occupation and other land disputes.</p> <p>Support access to information for poor and vulnerable households regarding laws and procedures around land.</p> <p>Provide advocacy and training for key institutions (customary and statutory) on obstacles to the reclamation of land rights for women, minorities, poor and vulnerable households.</p> <p>Monitor and analyse land disputes.</p> <p>Assist poor and vulnerable in accessing identity documents, if necessary.</p> <p>Put in place measures to prevent land-grabbing (e.g. seek public commitment from top leadership to prevent it, support local organisations that can “blow the whistle” on land-grabbers, support moratoria on land transactions or other legal/regulatory measures).</p> <p>Identify vacant public land for resettlement of landless returnees, if necessary.</p> <p>Support temporary protection (security of tenure) for informal settlements situated on public land, to prevent forced evictions.</p> <p>If necessary, promote transparent, organised, peaceful removal (eviction) of secondary occupants on private land.</p>
<i>Transition period (consolidation of state legitimacy and capacity structures)</i>	<p>Support the development of a land policy, based on extensive dialogue between key actors and consultations with the general public.</p> <p>Support institutions with decision-making powers on land (e.g. local land committees, customary institutions, the justice sector) if necessary and appropriate, in order to address land disputes.</p> <p>Build advocacy capacity of local institutions, support networks and other platforms for collaboration.</p>
<i>Exit from transition (return to “development” programming)</i>	<p>Support land law reform if necessary, through an in-depth, multi-stakeholder process of consultation.</p> <p>Support re-distributive land reform, if appropriate.</p> <p>Support systematic or sporadic land registration, if appropriate.</p> <p>Support institutional reform in the land sector (e.g. land administration systems).</p> <p>If necessary, support a multi-stakeholder land commission to address particularly complex and sensitive issues.</p> <p>Build capacity of key institutions, particularly those that are in the best position to safeguard the land rights of the vulnerable (e.g. build capacity for independent social and environmental impact assessment of “development” projects).</p>

Of course, the table above comes with many caveats. First, a linear progression from “conflict” to “peace” is by no means inevitable and a return to violence or instability is actually very likely in most “post-conflict” countries. Secondly, the situation in different parts of a single country may be different: while one region may be stable, another may remain volatile. Thirdly, every

situation is different, and the exact timing and sequencing of interventions cannot be laid down in a blueprint fashion. Tools and recommendations designed to assist in sequencing land-tenure interventions emphasise the need to build upon “what is” in a flexible way, rather than adhere to an idealised, linear vision of “progress”.<sup>146</sup>

## 4.2 Applying experiences of “post-conflict” land-tenure programming to Eastern DRC

A realistic assessment of the current situation in many eastern parts of the DRC, the so-called “former rebel areas”, is that while some measures of stability have periodically been introduced since 2003, there is still chronic violence, outbursts of acute violence (massacres of civilians, direct combat between armed groups) and a risk of more systematic and far-reaching conflict. To provide just a few indicators of this continuing volatility: new militia groups continue to emerge in North Kivu and Ituri, sections of the CNDP remain outside of the “*mixage*” and “*brassage*” processes, military actions against the FDLR have resulted in human rights abuses committed by the FARDC and brutal “retaliation” by the FDLR against civilian populations, and the citizenship status of the Kinyarwanda-speaking population is by no means secure or widely accepted. The non-acceptance of the Kinyarwanda-speaking population’s citizenship rights is perhaps best illustrated by the regular tensions that arise (influenced also by wider political events at provincial, regional and national levels) around the return of Kinyarwanda-speaking Congolese refugees from neighbouring countries (in particular those living in Rwanda). This is in addition to the many tensions around land tenure discussed in this report, which also interact with the above problems.

This situation, which might be described by some as a “negative peace” (in which many of the causes of conflict remain unresolved) or as “no peace, no war”, does not fit easily into the idealised schema of an emergence from conflict. While the DRC is in a period of transition out of widespread violent conflict, it is arguable that in Eastern DRC, that transition is either: a) moving extremely slowly, compared to the rest of the country; or b) it is a transition not out of conflict, but from one form of conflict to another, perhaps less acute, and more chronic in nature.

Most importantly perhaps, the DRC is characterised by a very weak state presence outside of the main urban centres. Many informants interviewed for this study said simply that ‘the state doesn’t exist’.<sup>147</sup> State actors maintain that if state capacity could be rebuilt, there would be few land problems, implying that the system of registration is not to blame. One cadastral officer contended that there was no need for the land law reform, as ‘the law is not ambiguous – it’s the application that is ambiguous’.<sup>148</sup> However, evidence contradicts this viewpoint. Registration is a long, expensive process which systematically marginalises customary claims and is open to corruption. More fundamentally, where the state is present, it cannot be seen as a neutral arbitrator of disputes, or as an effective provider of basic services. As argued by Prunier, attempts to ‘bring things back to normal’ cannot be taken seriously, as ‘things were not normal in the first place’.<sup>149</sup> The state continues to be part of the problem as much as part of the solution, and not just because of corruption, in the financial sense, but because of the fundamental ways in which state institutions are established and oriented, especially those responsible for decisions over land and natural resources. Particularly in terms of land tenure, interventions should not be designed simply to “rebuild” the pre-conflict systems, as it was these systems that contributed to the social, political, economic and ethnic tensions behind the conflicts in the DRC. The lack of political will (and capacity) to implement the land law was noted by some actors, who asked the rhetorical

<sup>146</sup> For example, see: C. Augustinus and M. Barry (2004). *Strategic action planning in post-conflict societies*. Paper presented at the International Federation of Surveyors (FIG) symposium on ‘Land administration in post-conflict areas’. Geneva.

<sup>147</sup> Interview with civil society leader, Bunia, 12th October 2010.

<sup>148</sup> Interview with cadastral staff, Bunia, 14th October 2010.

<sup>149</sup> G. Prunier (2010). Op. cit. p.359.

question: Why would you change the law when the state isn't even present [to implement it]?<sup>150</sup> One civil society actor commented that those organisations working on land disputes have to be cautious in dealing with the government, as 'it has its own agenda',<sup>151</sup> and is often unconcerned with the needs of local people. Another argued that state actors 'only get involved when they perceive a potential for personal gain'.<sup>152</sup>

This creates certain problems for actors aiming to break the links between land disputes and violence in Eastern DRC. Most of the interventions listed in Table 1 above depend upon the existence of a responsible, capable and non-partisan state. It is the state, after all, which has primary responsibility over land tenure, particularly given the "legal vacuum" regarding customary rights created by the 1973 law. However, the land sector is not a high priority for the government.<sup>153</sup> In the absence of sustained efforts by the state, 'the people are in a spirit of waiting, they feel they have nothing and are waiting to know what to do'.<sup>154</sup>

In the absence of a functioning or impartial state, the usual recourse is to non-state institutions that enjoy local legitimacy and influence. Customary authorities usually top the list of such actors, as well as religious institutions in some countries. Here, again, there are problems. The role of customary authorities (the chiefs, etc.) is legally ambiguous, while the extent to which they can be relied upon to work towards non-partisan and equitable outcomes is questionable. While they enjoy some legitimacy in certain areas, they are also accused of corruption (allotting the same parcel of land to several different users or registering community lands in their own name without telling the community) and of blocking efforts to resolve land disputes in some zones.<sup>155</sup> In other words, chiefs are often accused of pursuing their own political and economic interests rather than those of the community. Many chiefs have become more closely connected to political elites, from whom they draw their power, than to the community. There are signs that the decentralisation process, which will give chiefs at the local (collectivité) level much more power, is provoking power struggles between different members of the same customary families, further complicating the situation.<sup>156</sup>

As noted elsewhere in this report, there are many capable and responsible local civil society organisations in Eastern DRC, many of them already carrying out important work on land-tenure issues. They must certainly play an important part in any future interventions. However, their role (as facilitators of dialogue and change, educators, implementers, convenors, witnesses, lobbyists, etc.) should not be confused with those of the authorities (customary and statutory) in Eastern DRC. While local NGOs may even develop, in practice, their own mechanisms for registration of land, or their own "land tenure systems" in their project areas, they are not decision-makers within the DRC's official governance structures. Hence, while NGOs may play a support role, or may even pilot new approaches, they cannot by themselves institutionalise land-tenure interventions, or provide interventions with the legal status or political support necessary to give them a sense of permanency (land-tenure security). In the words of one civil society actor, the main weakness of many promising interventions by local NGOs is questionable sustainability.<sup>157</sup>

Given the weakness of both customary and state structures, many organisations, including UN-HABITAT, *Action Sociale pour la Paix et le Développement* (Social Action for Peace and Development, or ASPD) in Rutshuru, *Action Paysanne pour la Reconstruction et le Développement Communautaire* (Farmers' Action for Community Reconstruction and Development, or APREDECI) in Masisi, *Réseau Hakina Amani* in Ituri and *Innovation et Formation pour le*

<sup>150</sup> Interview with International agency, Goma, 6th October 2010.

<sup>151</sup> Interview with civil society organisation, Bukavu, 27th September 2010.

<sup>152</sup> Interview with civil society organisation, Goma, 6th October 2010.

<sup>153</sup> M. Djoza (2010). Op. cit.

<sup>154</sup> Interview with civil society organisation, Goma, 23rd September 2010.

<sup>155</sup> Interviews with various civil society actors, Goma and Bukavu, early October 2010.

<sup>156</sup> Koen Vlassenroot, personal communication, 29th October 2010.

<sup>157</sup> Interview with civil society organisation, Goma, 23rd September 2010.

*Développement et la Paix* (Innovation and Training for Development and Peace, or IFDP) in Walungu have trained local people in mediation skills and some have established local mediation centres. Norwegian Refugee Council (NRC) has probably gone furthest with this approach, establishing “commissions” in areas where IDPs and refugees have returned in recent years. These multi-stakeholder commissions have been established in 13 *groupements* of the *Petit Nord* (about one third of the total number of *groupements* in that part of North Kivu). Reports suggest that mediation tends to be effective in addressing local-level disputes between parties of similar social, economic and political status. Where power disparities are more acute, and particularly where armed groups are involved, the effectiveness of this approach is very limited.<sup>158</sup> For example, large-scale landowners may send their representatives to mediation processes, but argue that their title is inviolable, and rarely if ever agree to give up control of any land.<sup>159</sup> In addition, customary leaders may sometimes oppose mediation processes as they feel that the committees are usurping their traditional responsibilities.<sup>160</sup> In Ntamugenga, Rutshuru District, for example, the representative of the local chief asserts that customary power is intact and that the chief mediates all disputes himself.<sup>161</sup>

Mediation tends to involve compromises in order to keep land disputes out of the statutory court system. The extent to which these compromises result in “equitable” and sustainable outcomes is as yet unclear, as some mediation processes are not systematically monitored and evaluated, while others have yet to be concluded. Advocates argue that mediation programmes act as a disincentive to land-grabbing, effectively increasing the risks and transaction costs experienced by land-grabbers. However, parties to a dispute rarely face any sanctions or negative impacts if they choose to ignore attempts at mediation.

UN-HABITAT, in conjunction with UNHCR, introduced a land-dispute mediation programme in North Kivu in 2009. UN-HABITAT utilises trained teams of mobile mediators who travel to areas which are, or soon will be, hosting large numbers of returning IDPs and refugees, as well as a few permanent centres. It has therefore commenced its work in some of the most challenging areas of the east, such as Masisi, and Ituri where issues of citizenship, identity and indigenism are most relevant. Given the role of UNHCR in the assisted return of large numbers of Banyarwanda refugees, the UN-HABITAT mediation project has been sometimes viewed with suspicion by those who see it as having a “hidden agenda”.<sup>162</sup> UN-HABITAT has organised meetings and “go-and-see” visits by provincial- and national-level politicians and other key actors in order to improve its local standing and is working towards the coordination of land activities in the areas of Eastern DRC in which it works. It is also seeking to expand and institutionalise its mediation approach within the structures of the *Plan de Stabilisation et de Reconstruction pour l’Est* (Stabilisation and Reconstruction Plan for the East, or STAREC), the government’s stabilisation plan. However, the extent to which it is supported by local NGOs is questionable. The agency has been “on the ground” in Eastern DRC for a relatively short period of time, and there are concerns that as an institution, it suffers from limited contextual knowledge and legitimacy.

One of the most effective forms of high-level mediation was the *Barza Inter-Communautaire* in North Kivu, which provides some lessons for present or future efforts. The Barza is comprised of leaders from the province’s nine major ethnic groups (Hunde, Hutu, Kano, Kumu, Nande, Nyanga, Tembo, Tutsi and Twa), and its central goal was to facilitate inter-ethnic dialogue regarding community-level disputes (particularly concerning ownership and land tenure) with an aim to resolving conflict before it escalated to violence. According to some reports, the Barza was an effective method of conflict mediation prior to its collapse in 2005.<sup>163</sup> Popular perceptions of the Barza in North Kivu as increasingly allied with the RCD, exacerbated by the 2004

<sup>158</sup> Confidential civil society reports, North Kivu, 2006.

<sup>159</sup> Interviews with local actors, Ntamugenga, 4th October 2010.

<sup>160</sup> Interview with civil society organisation, Bukavu, 28th September 2010.

<sup>161</sup> Interviews with local actors, Ntamugenga, 4th October 2010.

<sup>162</sup> UN-HABITAT (2010). Op. cit.

<sup>163</sup> P. Clark (2008). Op. cit.

politicisation of “Rwandaphonie” by Governor Serufuli and increasing divisions within the Barza amongst Banyarwanda and non-Banyarwanda, led to its eventual breakdown. After its collapse, the national government as well as MONUC attempted to revive the Barza. This is significant, particularly where MONUC is concerned, as it reflects a growing acknowledgement within the peacebuilding community as to the significance of local-level violence, often concerning land distribution, in national and regional conflicts. This also speaks to the indispensability of peace initiatives at the grassroots level. Yet, it would appear that national and international proponents of the rehabilitation of the Barza are missing a significant point: that the viability and legitimacy of such local-level projects is contingent upon their perceived neutrality. Such institutions need to be seen as fundamentally and singularly concerned with the matters and concerns of the communities. The national and international involvement in rehabilitating Barza, while on some levels commendable, is inherently problematic as it creates the (real or imagined) perception of political stakes and interests in local-level disputes. There are several potential problems. First, international support for the Barza can unintentionally encourage its members to focus on gaining access to donor funds, thereby turning it into a clientelist structure which does not serve its purpose. Secondly, the actors consulted by the *Mission de l'Organisation des Nations Unies pour la Stabilisation en RD Congo* (UN Organisation Stabilisation Mission in the Democratic Republic of the Congo, or MONUSCO) and the government for the revival of the Barza may not comprise a representative cross-selection of actors or well-intentioned individuals.<sup>164</sup> Thirdly, the same problems that have affected the Barza in the past (problematic relationships with the provincial authorities and other political movements) could make it collapse again, unless there is a conscious effort to avoid this. The North Kivu Barza is currently operational, though it is still plagued with problems.

It is important that these lessons are also learnt by those actors involved in current mediation efforts, in particular the establishment of *Comités Locaux Permanents de Conciliation* (Permanent Local Conciliation Committees, or CLPCs), which were established following the Ihusi Accords.<sup>165</sup> Specifically, there are concerns that the CLPCs will be unable to manage the delicate socio-political balancing act necessary to provide a fair hearing to the various disputants involved in land conflicts. What is necessary (among other things) is to methodically and impartially document each dispute, understanding the histories of the disputants, and to make a decision which is just but also goes some way to satisfying both parties to the dispute. There is a risk that due to pressure (either from elements of the local community, politico-military organisations, or government), the CLPCs will put certain political and/or economic interests ahead of the important issue of justice. As a result, the return of IDPs and genuine returnees could be blocked in some areas, or dubious claims by IDPs and returnees could be supported in other places, leading to the unjust eviction of those currently using the land.

More than this: it is important that the CLPCs are not only fair and balanced in their decision-making, but are also *perceived* to be fair and balanced by local communities, and other actors at provincial and national levels. The extent to which the CLPC are *perceived* to be fair and effective will depend on a number of factors, including the ways in which elements of the national and provincial government attempt to influence them, and the ways in which international organisations are involved in various aspects of their overall design and day-to-day functioning. For example, the fact that members of the CLPC will be paid may give the impression that they are “clients” of the government and/or key actors overseeing the establishment of the CLPC. If the decisions handed down by the CLPCs are not perceived locally as fair, it is highly unlikely that they can be enforced. The state security apparatus does not have the experience, capacity or political will to defend the physical security of those involved, nor to use the threat of force to ensure that decisions of the CLPC are implemented.

<sup>164</sup> In July 2010 MONUC was renamed the UN Organisation Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO).

<sup>165</sup> The CLPCs are being established in parts of North Kivu under the government's Stabilisation and Reconstruction Plan in Conflict-Affected Areas of Eastern DRC (STAREC), launched in July 2009, but are not yet operational at the time of writing (November 2010).

Despite these pessimistic comments, the “good news” emerging from existing material on post-conflict land reform is that there is a formidable range of interventions that have been tested under different conditions. Land-tenure specialists have developed a toolbox of potential activities, many of which could potentially bear fruit if used effectively in the DRC, following comprehensive research into the context of each conflict, and accurate diagnosis of the dynamics of the disputes. Such tools include forms of community-level registration of land, which have been used in Mozambique and the Nuba mountains of Sudan.<sup>166</sup> Registration of “community rights” is usually conducted in order to prevent alienation of land, for example through encroachment on community boundaries or the sale of individual holdings within the community. It may be accompanied by a time-bound moratorium on sales of land within community boundaries to “outsiders”.

### 4.3 Some guiding principles for interventions in the land-tenure sector in Eastern DRC

- The land question in Eastern DRC is not a legal issue, nor is it purely a political issue. More profoundly, it is part of a wider agrarian crisis with cultural, social and economic aspects.<sup>167</sup> The agrarian crisis stems from a combination of structural constraints on the “extensification” of livelihood systems (e.g. insufficient vacant land to enable new farms and ranches to be created) as well as the intensification of smallholder systems (notably extreme poverty, but also the absence of any state extension services, subsidies for agricultural inputs, etc.), the massive levels of inequality in the size of landholdings in certain areas (notably Masisi, Rutshuru, parts of Ituri), and the more generalised crisis in terms of trade for agricultural produce that is being experienced all over Africa as a result of various processes of globalisation. As a result of the global financial crisis, for example, farmers saw hikes in fuel and transport charges to get their goods to market.<sup>168</sup> This agrarian crisis is exacerbated, of course, by the lack of alternative livelihoods and the obstacles to material “development” and social “cooperation” due to the threat or reality of armed conflict. The point here is that any sustainable resolution of land-tenure conflicts in Eastern DRC must be comprehensive enough to address a wide variety of economic, environmental, social, political and other issues.
- Nevertheless, an incremental approach is probably the only means open to individual NGOs and other non-state organisations. This can produce some results in the long-term, if it is: a) sustained and expanded over time; and b) well coordinated with other activities by the state, NGOs, MONUSCO, and other key actors. Therefore, it is important to increase levels of dialogue, information-sharing, joint training, etc. between such organisations on land issues and related interventions.
- The ongoing influx of “returnees” into North Kivu, the continuing influence of armed groups over this process, and the presence of a number of armed movements opposed to the land claims of “returnees”, represent a clear risk of large-scale conflict. In order to prevent such a potentially cataclysmic outcome, independent and critical research into the situation in North Kivu, particularly Masisi, should be conducted with the ultimate aim of identifying a combination of diplomatic, informal, developmental and humanitarian interventions that could improve the situation.
- Neither the state nor customary leaders can *by themselves* provide a solid, transparent and reliable leadership of land-tenure interventions, due to their implication in ongoing disputes

<sup>166</sup> For details of the Mozambique case, see: S. Norfolk and C. Tanner (2007). *Improving land tenure security for the rural poor – Mozambique case study*. Rome: FAO.

<sup>167</sup> The existence of an agrarian crisis was raised by Prof. Matabaro, a Congolese land law specialist (interviewed in Bukavu, 28th September 2010).

<sup>168</sup> Interview with civil society organisation, Goma, 5th October 2010.

and the possibilities of corruption, political interference and favouritism. However, they cannot be excluded from such interventions, as this will simply motivate them to undermine whatever gains are made. As one key informant stated, it is important that local authorities do not feel that NGOs ‘go behind their back’.<sup>169</sup> Indeed, excluding such leaders could prove dangerous to NGO personnel as well as citizens working with them. In addition, another informant argued that ‘Leaders in Kinshasa need to be recognised. They have power. They need to be included in all processes, or they can derail the process’.<sup>170</sup>

- Therefore, both the state and customary leaders should be invited to participate in such interventions, but neither can be expected to be the sole “legitimising authority” behind the intervention. Multi-stakeholder institutions are to be preferred, involving significant participation of a representative range of local citizens, who must enjoy decision-making powers. Due to the risks that interventions will be “captured” by powerful forces of one kind or another, thereby losing legitimacy and neutrality, international actors should play an active monitoring and guidance role, but should avoid shouldering responsibility for decisions. Local actors must come to completely “own” the process. This is difficult, as evidenced by the Ituri Land Commission, which is still, some three years after its inception, heavily dependent upon its foreign donors.<sup>171</sup>
- The improved land-tenure security of people in Eastern DRC who currently access land through customary mechanisms (the vast majority of the population) requires that customary claims gain some form of legal-political “protection”. However, legal-technical solutions such as legal clinics, technical support to cadastral offices, or improved awareness of the land law will not provide a solution, because the majority of the population cannot afford to access a judicial system which is, in the opinion of one local actor, “broken”.<sup>172</sup> Simply supporting the legal system in its current form will only provide false hope, waste money, and provide legitimacy to those who use the land registration system to dispossess customary claimants. Legal-technical activities should only be promoted as parts of a broader package of interventions which together seek to transform the political economy of land tenure in Eastern DRC.

<sup>169</sup> Interview with religious organisation, 5th October 2010.

<sup>170</sup> Interview with civil society organisation, Bukavu, 27th September 2010.

<sup>171</sup> T. Vircoulon and F. Liegeois (2010). *Op. cit.*

<sup>172</sup> Interview with civil society organisation, 5th October 2010.

## Conclusions and recommendations

In the long term, the link between land and violence in Eastern DRC may only be broken if the concept of “ethnic citizenship” is abandoned. This would mean severing the link between “indigenous” claims to land and local political power. The trajectory of control over land in Eastern DRC is towards commercial transactions, which means that a land market, rather than local chiefs, may become the most significant way through which land is distributed. However, the transition from customary systems to market-based systems is never smooth, and this process is likely to be particularly rough in the DRC if the state continues in its *laissez-faire* approach to land tenure, in which customary rights are not even legally defined. The result would be increased inequality in landholdings, an exacerbation of the agrarian crisis, and increased socio-political tensions. Given the fact that the elites of certain communities in Eastern DRC are better placed than others to acquire land through market transactions, unregulated market-based approaches are likely to lead to renewed violence over land.

The current situation of legal pluralism, with the chiefs playing an ambiguous but active role in land-tenure issues, is undoubtedly a cause of conflict. However, in some situations, it represents a safety valve, reducing the likelihood that land disputes lead to violent conflict. This is because chiefs can sometimes find ways to provide access to land for those customary land owners who have lost land through competing claims through the state’s market-based system.<sup>173</sup> Organisations facilitating local mediation of land disputes can also reduce tensions around land, as mediation processes usually try to avoid a situation in which one of the parties is an absolute loser, and the other a winner. In terms of the generalised chronic situation of land disputes, various activities, such as registration of group tenure for some communities, documentation and awareness-raising regarding customary norms, mediation of disputes, and/or the formalisation of some kind of “intermediate” form of tenure could all be promising. These would help to reduce the social, economic and political friction resulting from the ongoing transition towards market-based systems. The state must eventually play a key role, for example, by attempting to improve regulation of the land-tenure sector, monitoring and overturning irregular registration of land, and enforcing the ceiling on the size of landholdings that can be owned by a single individual or corporation.<sup>174</sup> However, it is likely to be a long time until the state is able to play a neutral and effective role in the land sector.

Because of the problematic roles of both customary and state actors, steps to reform local-level land governance may rely upon semi-democratic institutions such as local land committees. These might include customary chiefs (either as sitting members of the committee, or in *ex officio* advisory positions) as well as elected members representing different sections of the community (different ethnic groups, women, youth, smallholders, agricultural cooperatives, etc.) and would serve the needs of so-called “immigrant” groups as much as “indigenous” groups. They would have the responsibility to ensure that all land transactions were legal and would try to achieve an equitable division of lands and natural resources.

A number of concrete suggestions emerged from interviews with key informants in Ituri and the Kivus, which are of varying feasibility. These include:

<sup>173</sup> As noted throughout the report, chiefs are implicated in many questionable market-based transactions that involve the alienation of customary land. They are therefore part of the “problem”.

<sup>174</sup> Land ceilings are notoriously difficult to enforce. However, systematic enforcement of this ceiling would at least send a signal that massive inequalities in landholdings are unwanted.

1. A state-managed redistribution of land in order to overturn unequal land ownership patterns (e.g. redistribution of part of large landholdings to smallholders and/or landless households). Some informants argued that the dimensions of national parks should also be reduced in order to provide land for local communities. While redistributive land reform may prove to be an important tool in the long term, an attempt to carry this out in the near future would be disastrous, as agents of the state are corrupt and too heavily invested in the private accumulation of land, and armed elements would be quick to oppose redistribution.
2. Decentralisation of land administration services, so that citizens can register their land through locally accessible offices (Madagascar was offered as a positive example of this system). In the medium term, decentralisation of land-related services will be important, but its success will still depend on reform of the processes for land registration and clarification and strengthening of customary rights to land.
3. Efforts to institutionalise the evolution of customary land-tenure systems.<sup>175</sup> These efforts should not be imposed from outside, but should come from those involved in order to reflect the diversity of customary systems in existence. Nevertheless, institutional changes should recognise the inexorable transition towards more individual and market-based forms of land-holding.
4. The introduction of an intermediate form of land registration, which is accessible and affordable for local smallholders, and could eventually lead to the registration of land through state cadastral services. In order to be useful (rather than adding further confusion), it would have to be simple enough to be implemented in a straightforward way and be free from the institutional struggles (arguments over the mandates and responsibilities of different institutions). At this current time, it appears that the context is not conducive to such an approach, but in the medium to long term this may be one way to avoid smallholders being completely overwhelmed by market forces, which in many cases amount to outright land-grabbing of customarily-owned land by political and economic elites.

All of these suggestions have some merit, though each has their drawbacks as well. They should be considered as part of a long-term commitment to land-tenure issues by organisations working on peacebuilding and/or land issues in the DRC.

## Recommendations

1. There is an urgent need to initiate an independent, large-scale and multi-stakeholder research project in order to shed light on changes to control over land in North Kivu, specifically areas (such as Masisi) which are currently seeing large numbers of returnees. This should bring on board actors such as the CLPCs, UN-HABITAT and NRC as collaborators, but should retain its overall independence from these implementing actors. The research should examine the “political economy” of land in these areas and attempt to fully document and understand mediation activities in a sample of villages. The research should examine local perceptions of the process and the outcome, and note the ways in which the emerging socio-political dynamics are affecting the risks of conflict. The research should be carefully designed according to principles of conflict sensitivity to avoid exacerbating any existing tensions over the issues. Similar research should be conducted in Ituri and South Kivu, but at the present time, it is in North Kivu where the risks of large-scale violence over land are the greatest and most urgent.

<sup>175</sup> Efforts to codify customary systems are usually criticised by land-tenure specialists, who argue that documenting and regulating custom robs it of the flexibility and diversity that is its most effective characteristic. Nevertheless, there may be ways in which custom can be “supported” without being undermined.

2. While the CLPCs are founded upon the Ihusi Accords and are being implemented as part of a state programme, this formal sanction does not necessarily translate into legitimacy and credibility at the local level. In order to be successful, any mediation and reconciliation processes must not only be “in tune” with local socio-political realities, but must also be part of a much broader attempt to seek consensus over key issues such as the return of IDPs and refugees to politically-sensitive or highly-contested areas. Experience demonstrates that efforts at the local level – no matter how well-intentioned – are easily undone by interventions from powerful actors at district, provincial or even international levels. More important than the “technical” aspects of mediation and alternative dispute resolution are the more political and culturally-sensitive aspects, which must be pursued at several levels and in several areas simultaneously. Any intervention in the land sector, such as that being spearheaded by the UN in Eastern DRC, must be prepared for a long-term engagement with the issues at the diplomatic as well as technical level, and must be based upon a thorough understanding of the complex local and regional histories of violence over land.
3. In the short to medium term, the various actors in the land-tenure domain should continue to document and better understand ongoing interventions addressing land-tenure issues implemented by local and international actors in the DRC, in order to identify ways in which separate initiatives could be combined or adapted. This research should also explore ways in which innovative tools, such as participatory delimitation of community lands, that have effectively been used in other “post-conflict” countries (noting the various caveats explained in Sections 4.1 and 4.2) could be piloted in Eastern DRC. A combination of approaches, such as roundtables, conferences, commissioned studies and external evaluations should be used. The resulting report(s) should be widely shared and used to advocate for the more widespread adoption of the most successful approaches.
4. In the medium to long term, actors in the land-tenure domain should identify any credible and legitimate district- and provincial-level state or customary institutions that have a mandate to address land issues. Provincial assemblies may fall into this category in the future, if they demonstrate an increasing level of political maturity over time. International and national actors should engage in a targeted and sustained advocacy campaign in order to convince such organisations to adopt some of the approaches discussed in this report. In particular, emphasis should be placed on seeing land tenure not purely as a legal concern, but as a multi-dimensional set of issues embedded within a generalised agrarian crisis. A potential priority for provincial authorities, in particular, is to engage in consultations in order to develop a provincial policy on land, which would ideally address the ambiguous role of the customary authorities, and work towards the gradual erosion of the concept of “ethnic citizenship”, allowing for free movement within the DRC whilst also regulating markets in land to reduce abuses and inequalities. Over time, it will be necessary to elaborate a national land policy and to reform the land law. Redistributive land reform may prove to be an important tool in the medium to long term, but an attempt to carry this out in the near future would be disastrous, as agents of the state are corrupt and too heavily invested in the private accumulation of land to play an impartial role in such an exercise, and armed elements would be quick to oppose redistribution.



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