INTRODUCTION

Violent conflict has engulfed parts of the Democratic Republic of Congo (DRC), principally the East, for much of the last decade, during which some 3.3 million people have died, making it the world’s most deadly conflict since World War 2. With the signing of the Lusaka Ceasefire Agreement, the Sun City Accords, and the subsequent establishment of a Transitional Government, there is optimism for the future. But areas such as North and South Kivu Provinces and Ituri Territory remain volatile, as was seen during June 2004, when opposing army factions battled in Bukavu, or in July 2004, when new clashes broke out between militia groups near Bunia. Even the Transitional Government itself came under serious threat in August 2004, after one of its members suspended its participation and Rwanda and Burundi sent a new warning to Kinshasa that it had to deal with Burundian and Rwandan militias operating on Congolese soil.

The interplay between local, national and regional dynamics in the DRC conflict has attracted much attention and has been illustrated in numerous reports. One of the key issues in these analyses is the competition for natural resources, which is presented as one of the dynamics that has shaped warfare in the DRC. It is argued that international competition for Congolese resources has prolonged the war and has shaped the power strategies pursued by the different belligerents. While most of these analyses tend to focus mainly on how ‘greed’ has become the dominant military strategy, they also tend to limit their scope to the macro-level structures and patterns of economic control and exploitation. One element that is often missing from the debate about the links between economic resources and violence, is the role of control over agricultural and pastoral land. Despite a relative lack of analytical attention, competition for land has played a dominant role in local disputes and can be pointed at as one of the root causes of violence and conflict in Ituri and the Kivu-provinces. Even more, since the start of the Congolese war, local disputes over land have become linked to the regional struggle for economic control and politico-military power.

This chapter examines the role of land and migration in the genesis and perpetuation of conflicts in the East of the DRC. The objective is to study how land issues have had an impact on the DRC conflict, either as a structural cause or as a dynamic of conflict. This analysis is based on a
number of arguments. The first argument is that although the conflict in the DRC is regional in scope, involving direct intervention of foreign powers on Congolese soil, internal and indeed local struggles are a very important part of the conflict system, allowing various actors to use them to their own advantage. The second argument is that the structural organization of land access and control is one of the root causes of local conflict. This organization, which is the result of a longer historical process of colonial land reforms and post-colonial patrimonial rule, has turned land into an asset of economic and political power and has marginalized large parts of the rural population. The consequent unequal access to land has intensified local competition. This competition was transformed into disputes and violence between ethnic communities when local elites from the early nineties started to mobilise entire communities on the basis of ethnic belonging and collective land rights. The third argument is that since the start of the DRC conflict, land has also become a ‘resource’, driving and sustaining conflict. Land has been turned into an asset to be distributed by local warlords, leading to additional levels of land insecurity and conflict.

Analysis of the land issue will demonstrate that land-related structural factors, which underpin some of the violence in eastern DRC, should be addressed if sustainable peace is to be achieved. If post-conflict recovery does not represent a fundamental structural shift in relationships between the government and the governed, then the result is likely to be a continuation of the status quo – inequality, dissatisfaction and cycles of political tension, as well as impoverishment of the Congolese people. For this reason, the analysis of the role of land access in the conflicts in Ituri and North Kivu – despite the geographical, historical and political particularities that mark these areas – holds lessons for other parts of the country. Customary land rights, which are the norm across some 97% of the country, are not adequately defined or protected in the land law. Reform of land laws and land policies is vital, but in addition, the arguments presented in this chapter imply that the inequalities around land, which have indirectly contributed to the genesis of violent conflict in Eastern Congo, cannot be solved purely through legislative reforms. The structures – political, economic, and social – through which land access is mediated, must also be reformed. This is in addition to the improvements in regional relationships, particularly in regard to Rwanda and Uganda, which must be achieved if land-related sources of conflict are to be effectively addressed.

THE SIGNIFICANCE OF THE HISTORICAL CONTEXT

As is now being demonstrated, the violence of recent years is not a historical anomaly. Instead, violence, the implicit threat of violence, and the manipulation of identity groups and political formations that make mass violence possible have been a continuous feature of Congolese life, since the very idea of ‘the Congo’ first emerged. From the first contacts
with European powers, the area has been seen as a bottomless source of valuable goods – rubber, copper, cobalt, diamonds, gold, timber and others. The extraction of these resources was accompanied by a horrifying degree of direct or indirect (structural) violence. It is estimated, for example, that during the first forty years of King Leopold II’s ruthless plundering, ten million Congolese died in the process of rubber tapping and the construction of the Matadi-Leopoldville Railway. The achievement of quotas for production of rubber was ensured through inhuman punishments for failure to deliver – such as the severing of hands of less productive workers. As elsewhere, the violence of the occupying European power was generally meted out through proxies, hence increasing tensions within and between indigenous identity groups.

The ripple effects of exploitative actions during the rule of King Leopold and the colonial era are still felt, often in terms of conflict between ‘local’ communities and ‘immigrant’ communities who were forced or encouraged to move for economic purposes. This is to some degree the case in North Kivu province, as will be described in this chapter, and was also the case in Kasai, where clashes between the ‘local’ Luala and the Luba people, who had originally been moved into the area to work in the diamond mines, became the first internal civil war. Another example is the conflict between Luba-migrants from Kasai and the autochthonous population in Katanga in the early nineties. Yet, these conflicts are not merely ‘local’ issues of competition between local and migrant populations. As will be demonstrated in detail in the following sections, the impact of colonialism on the local balance of power cannot be neglected.

From this perspective, the early years of independence (marked by civil unrest, the intervention of the UN, and the assassination of Patrice Lumumba) and the rule of Mobutu (1965–1997) can be seen as a continuation of existing norms and socio-political structures. These norms, which included bureaucratic centralism, repression and economic exploitation, were further consolidated as the guiding principles of Mobutu’s rule through policies related to Zaireanisation. Control over natural resources, including agricultural and pastoral land, was an important currency in political transactions that aimed at ‘buying in’ local elites and preventing the formation of a counter-force. When economic inefficiency (the logical outcome of these norms) started to undermine the economic basis of Mobutu’s patronage network, he operationalized a range of exit strategies, including political divide-and-rule tactics and the eventual decision to formalize ‘geopolitique’, or the officialization of ethnicised local governance. The outcomes of this process, which were felt most in parts of the East, will be described in this chapter.

At the same time, it is arguable that just as in the pre-independence period, external factors emanating from Western metropoles remained a key focus of the regime. Zaire became, to the West, a bastion against communism and a loyal ally and business-partner, and hence gained access to massive amounts of foreign aid. This aid – which was siphoned
off into Mobutu’s personal bank accounts and utilized to maintain a shifting network of patrimonial relations – allowed Mobutu to maintain his hold on power despite attempted uprisings and the near-collapse of the economy by the late 1970s. The economic malaise, combined with the disempowerment of customary leaders and the intense competition between different potential beneficiaries of the Zaireanisation programme and other state-allocated benefits, all contributed to a situation where law and order was an extremely fluid concept. With public goods, including land, being blatantly ‘personalised’ for individual profit by government employees or local leaders, the state had lost legitimacy and hence the perception of a monopoly on violence. With soldiers and governors using their connections and their power to enrich themselves through smuggling and extortion, others, abandoned by the state and peripheral to the economy, felt that they were also justified in doing so. Historical evidence, then, suggests that structural violence – in terms of elite predation, lack of service provision, unaccountability and arbitrary governance – is to a large degree a ‘normal’ function of the Congolese state system. In some respects, legal and policy instruments are the crux of the matter. As shown in this chapter, the lack of legal definition of ‘customary’ land effectively disenfranchised the Congolese rural masses and left them with insufficient legal protection against land expropriation by powerful elites. However, the exploitation of the legal and policy weaknesses occurred because of the political, economic and social relationships between communities, their customary and administrative leaders, and the provincial and national powerbrokers.

In this sense, parts of eastern DRC which have been particularly affected by violent conflict in recent years are not, as some would have us believe, ‘unique’ in terms of their governance context. They are often referred to dismissively as ‘rebel areas’ (which indeed have been hotbeds of dissent against central government, long before the ‘first rebellion’) and hence written out of national-level analysis for economic recovery. These areas are also seen as unique in terms of land access, because the high population densities found in pockets of the East (particularly parts of North Kivu Province and the region around Bukavu in South Kivu Province) are not typical of the country as a whole. While areas around Kinshasa, the coastal strip in Mayumbe region, and Bandundu are fairly densely populated, the vast majority of the country is very sparsely populated: average national density was estimated at just 19 people per sq km in 1997. But the political structures which govern public life are not so fundamentally different from West to East. The exploitation of natural resources is inequitable and predatory across the country. The conflict experienced in the East is indicative of a difference in ‘scale’ of predation, not a difference in the ‘type’ of resource management regime.
LAND, NATURAL RESOURCES AND CONFLICT

It may be asked why this chapter chooses to focus on access to agricultural and pastoral land, when other factors seem to be far more important sources of conflict in the DRC. In addition to various economic and political issues – ranging from the military and economic strategies of neighbouring countries, to the nature of the state in DRC (a classic case of a ‘weak state’) and the historical relationships between ethnic groups – there are natural resources of much greater value, and much more ‘lootable’ character, than agricultural or pastoral land. Many are found in the conflict zones of the DRC, including diamonds, gold, cobalt, cassiterite and coltan. Indeed, ACTS has already conducted research into the role of coltan in the DRC, which concluded that:

*Natural resource wealth can generate as well as further perpetuate wars and conflicts... the illegal exploitation of coltan has added to the complexity of the war in the DRC... Measures must be taken in order to respect and implement the existing regulatory framework for the exploitation of natural resources in the DRC... a regional framework regulating the exploitation of natural resources wealth; and the equitable distribution of benefits must be put into place....*

Other organisations, including the UN, have documented the important role of natural resources in fuelling violence – by paying for the operational costs of armed forces, and contributing to national or private coffers in those neighbouring countries who intervened in, or invaded, the DRC. The wealth generated by the exploitation of the country’s riches helped to sustain the war. In addition, control over these valuable resources is directly fought over between different armed groups. The various battles between Rwanda and Uganda in Kisangani are thought to have been a struggle over control of the diamond industry, for example, and the domination of natural resource-based industries by members of particular identity groups is a source of grievance to many, including Mayi-Mayi militia groups. A number of other mechanisms through which precious resources act as structural or proximate causes of conflict in the DRC have been identified by various researchers.

Why then look at land? The reasons are several. Firstly, the ‘causes’ of conflict (which are numerous, and interlinked in dynamic relationships) may, for convenience, be categorized as either a) ‘triggers’ of violence, which are generally sudden and often unexpected events, and act as catalysts for a move from tension to overt violence; b) ‘proximate’ causes, which tend to be highly visible and are commonly identified as the reasons for violence; of conflict; or c) ‘structural’ or ‘background’ causes. The latter are less visible, and generally provide a conducive environment in which conflict may take place. Insecure or insufficient access to land is a significant factor in the impoverishment of thousands of rural people, particularly in the areas examined in the case study. As mentioned previously, migration (both internal and external) has been a
feature of Congolese life over the last two centuries. Particularly through migration for industrial and commercial agricultural purposes under Leopold II and in the colonial period, thousands of people were moved permanently out of their indigenous rural sphere, without being satisfactorily or permanently incorporated in the industrial or urban sphere, or granted secure claims to land in their new milieu.¹⁴ Also, as described later in this chapter, entire households lost the land access which was guaranteed them under custom. The reduced access to land in areas of North Kivu, for example, worked in concert with other socio-economic forces to produce a highly mobile population of young men with few economic opportunities, who were ready recruits for armed groups.¹⁵

Secondly, in the case of Ituri Territory, contested purchase and expansion of agricultural and ranching concessions have been identified as one of the proximate causes of violence. As will be explained, these relatively recent controversies are by no means the first land issues to be cited as grievances that have undermined ethnic co-habitation in the area. However, the chapter situates these land-related factors within a wider context, which includes external (domestic and foreign) interference in local affairs, and competition for gold mines and other valuable ‘point’ resources.

Thirdly, the present conflict has radically changed land access patterns through a number of mechanisms, including forced displacement; shifts in the level of authority enjoyed by different customary and administrative leaders; and changes in the various social, economic and political structures that allow people to enjoy the benefits of agricultural and pastoral production (such as market access). Conflict is producing new competition for land, as part of a wider renegotiation of the local economic space and re-drawing of ethnic, class and other ‘boundaries’ between groups.¹⁶ This is especially the case because land was turned from a source into a resource for the perpetuation of conflict.

Fourthly, as mentioned above, access to land (either as a productive resource, speculative investment or as a source of collateral for credit) has been one of the currencies of power. It is therefore important to an understanding of the political economy of the DRC. Control over land, as a resource with multi-dimensional aspects (as a community territory, as an economic resource, as a source of administrative revenue, as a social asset, for example) is significant in terms of ethnic identity-formation, the powers and revenue-streams of local customary leaders, and market penetration of rural economies. In areas such as the Kivu Provinces, for example, access to land is intimately bound up with perceptions of national identity. The stories of the ‘Banyarwanda’ and ‘Banyamulenge’ are, as we will see, to some extent stories of local struggles for land and the ‘rents’ accruing from land, yet at the same time point at structural roots of political exclusion. Examining land access therefore allows for a deeper understanding of the overall governance context within which the conflicts in the DRC have emerged.¹⁷
ORGANISATION OF THE CHAPTER

The chapter is structured as follows. The following section looks at the local political economy of land-access. It describes customary land tenure in parts of eastern DRC and the ways in which the colonial regime created a statutory means of access, which resulted in a dual system – with the customary systems further divided according to colonial impressions of ‘tribal’ identity. The import of the post-independence land legislation is elucidated. This section also maps out the nature of migration in North Kivu and describes the processes by which rural capitalism emerged, and the impacts on the role of local customary authorities.

The third section, entitled ‘From social fragmentation to conflict: the effects of land-alienation’, looks at the ways in which the legal and political opportunities for land to be expropriated from the customary domain were acted upon by elite groups in the post-independence period. The impacts of land alienation on local communities are explained, with North Kivu providing an example of various effects, including an increase in renting or sharecropping arrangements, increased migration, impoverishment and food insecurity.

The fourth section provides two detailed case studies of the land dimension in two current conflicts, one from Ituri Territory and one from Masasi District, North Kivu Province. The conflicts in these two areas – which have their own individual dynamics – are also placed within the context of the wider Great Lakes conflict system.

The conclusion summarises the arguments and offers recommendations for national and international policy-makers.

THE LOCAL POLITICAL ECONOMY OF LAND-ACCESS

Introduction

In many parts of the eastern provinces of the DRC, land has been a source of conflict for many years. Changes introduced during the colonial period tended to politicise and exacerbate conflicts over disputed access to land. On the one hand, colonialism institutionalised the link between ethnic identity and land access within the political structures of the state. On the other hand, it intensified local competition for land with the promotion of migration of labour forces from neighbouring Rwanda. As will be demonstrated in this historical overview, the links between land, ethnic identity and nationality were further instrumentalised for political gain during Mobutu’s patrimonial rule. In conjunction with commercialisation of land access and wider political processes affecting the Great Lakes Region, these factors have led to regular outbursts of violence in different parts of eastern DRC.

Soon after their arrival, at the end of the nineteenth century, the Belgian colonialists discovered the potential that this extremely fertile soil offered for the development of plantation agriculture. Yet, in order to get access to local lands, an efficient power structure needed to be
instituted. The first problem the Belgian settlers were confronted with was how to stabilise their alien rule. Local ethnic communities were administratively formalised into proto-political entities. Given the fact that in some regions the fertile soil had already produced a well-developed consciousness of communal territorial ownership (in other words, higher potential areas had more well-developed tenure systems before colonialism), the way in which the colonial authorities dealt with the issue of indigeneity produced some catastrophic effects. It limited the access to customary land, consolidated the link between identity and land-access, provoked competition between ‘autochthonous’ and ‘allochthonous’ groups, made customary chiefs more powerful than traditionally was the case, and introduced a double system of ownership, which led to growing confusion about land-ownership.

In order to consolidate its rule, the Belgian colonial administration relied on existing rural structures, yet at the same time reshuffled this rural order to such extent that it set in motion an intensified struggle for land and, finally, also produced a number of local dynamics of conflict related to land-access. Before the colonial conquest, large parts of eastern Congo were characterised by markedly stratified patriarchal social structures. Under these systems, access to land was regulated by a hierarchical administration based on communal territorial ownership. Land was defined as a customary communal holding under control of customary chiefs. Every peasant had access to it, in return for the payment of tribute. The result was a well-defined rural order and political organisation both based on kinship and clientelism. The Belgian colonial power took notice of the existence of these indigenous systems and turned them into the backbone of the colonial political administration. These tributary states and chiefdoms were pushed into a new regime of customary law, which, consequently ‘containerised’ the local population.\(^1\) The process of ‘containerisation’ involved a ‘rigidification’ and in some cases a re-definition of ethnic identities and a codification of customs. In some cases, imposition of customary chiefdoms was actively resisted by the local population.\(^2\)

As had also happened under British rule elsewhere in Africa, every ethnic group was turned into a proto-political entity, but guarded its distinctive customary rules. A second characteristic of the land tenure system was the introduction of a double system of property rights. For the local population, a plural customary law was the legal basis for land access. Next to it, however, existed a ‘modern’ system for the white settlers enabling them to establish their plantations, through application to the central state. Only Europeans could own land through title. Under Article 2 of the Decree of 1\(^{st}\) July 1885, King Leopold declared that, “vacant lands must be considered as belonging to the state”. In common with many other countries, the central state often confused ‘uninhabited’ land with ‘vacant land’ – failing to recognise customary rights of use exercised over land.\(^3\) Customarily, a lot of land which was not permanently cultivated or grazed belonged to customary authorities,
for allocation in times of need – such as future situations of land shortage. Access rights were also important for hunting, right-of-way, and collection of timber and lianas, for example.21 During King Leopold’s rule, a system of inquiry was established to determine if land was really vacant; however, decades later in places such as Masisi, many people lost lands to which they had customary rights, when it was allocated to Europeans by the Comité National de Kivu (CNKI) for commercial agriculture.22

After Independence, this led to confusion as it essentially provided two routes to land access, which were used opportunistically by those able to do so. As in many other cases, the dual nature of the system allowed for ‘forum shopping’ in order to gain access to land, which eventually undermined the legitimacy of both the customary and statutory systems.

This confusion would never disappear and was even strengthened after the introduction of a ‘modern’ land law in 1973 by the independent Zairian state.23 Even if this new law aimed at the destruction of the existing traditional customary rural order, this order became an integral part of new networks of land control based on alliances between new rural capitalists, politicians, administrators and representatives of the rural customary systems. It is the underlying hypothesis of this historical review that the entrance of new participants via the market and politics on the one hand eroded the existing customary social organisation; and on the other hand created processes of commercialisation of rural space and relationships, which altered the social and economic structure. These processes produced a political economy of social fragmentation, leading to land alienation and marginalisation of large parts of the rural population, and eventually to violent conflict for access to land. It is the aim of this part to demonstrate that the evolution of the organisation of the rural economic and social space created a high potential for conflict. Given the institutionalised character of ethnic identity, in eastern DRC these conflicts easily found their expression in terms of ethnicity rather than in terms of class identity. Local competition for economic resources were easily translated into ethnic terms, while at the same time ethnic antagonism was a result of a wider process of divide and rule practised by Mobutu.

The structuring consequences of customary land ownership

Long before the colonial conquest, most parts of eastern DRC were characterised by a centralised political organisation.24 Small tributary states and chiefdoms, headed by a Mwami, formed the institutional framework for a strongly stratified and patriarchal social structure.25 In eastern DRC, the economic use of space traditionally reflected the social organisation. In fact, socio-political relations were determined by the way of
production. This explains why the control of access to productive land and animals was the core element of the power of these Bami. As the proverb ‘Udongo ni mali ya mwami’ said, the land was the property of the Mwami. Access to land was regulated by multiple political and social relations based on ethnic ties and clientelist relationships. In different parts of the Kivus, especially the most fertile regions such as the volcanic highlands in North Kivu and the Bushi region around Bukavu, different land-tenure systems formally organised these relationships. Although some differences could be noticed between these systems, the basic structure was the same: they all aimed at integrating everyone living within a well-defined territory into a network of dependent relationships.

Other land-tenure systems in eastern DRC, such as those developed by the Bafulero, Bavira and Babembe (South Kivu) or the Walendu (Ituri) were less hierarchical and much more flexible. One of the reasons for this was the availability of large tracts of land for agriculture, which strongly limited the power of the customary chiefs. Indeed, in some systems, lineage heads were significant political leaders, and higher-level leaders were relatively powerless.

Despite some differences however, in general, the use of land was granted to every subject in exchange for the payment of a tribute. The land tenure system in most regions was, like its administrative organisation, a three-tiered and complex power structure. In the Bushi-region, perhaps the best example of this structure, at the top came the Mwami, or the ‘chef de collectivité’, followed in hierarchical order by the Murhambo or Murhwalí who exercised his power at the level of Mulagiro. At the lowest level, the ‘chef de localité’ or Mushamuka was responsible for the distribution of land at the level of a hill, for which he was also called Munabudaka or ‘chief of his land’. Finally, the Bagula (‘pater familias’ with property) and the Bashizi (‘subjects without any property’) were subjects without any political authority of their own.

Land allocation was regulated by the payment of a principle tax. Each ethnic community had a different tax-system (kalinzi in the Bashi-community, vusoki in the Nande-community or mutulo for the Bahunde), although the general principle was similar for most groups. These taxes formed the structural basis of the local moral economy. According to this principle, access to land depended on an initial payment of tribute to the chief. Once this tribute was paid, the peasant obtained user rights over a part of the customary land - though, in practice, the peasant regularly had to pay tribute. Also, these user rights were non-alienable. No subject could legitimately gain full control over land through the existing land tenure system. Even if these user rights were hereditary, rights of alienation could never be obtained. Land remained customary, which put farmers in a relatively insecure position.

The main objectives of the system of kalinzi, vusoki or mutulo were to recycle the rents paid as tribute by those given access to land, and to enable the nobility to extract the surplus generated by the labour of farm households. The different rents paid by the producers and redistributed
to higher levels of the hierarchy had to guarantee the sustainability of
the network of dependent relations and thus, of the existing social order.
Even if these systems offered every peasant social integration and pro-
tection in exchange for the acceptance of the position of the customary
authorities, at the same time it sustained his dependent position. For a
farmer in the Bushi region for example, his “dependence on land ties
him to his village, keeps him firmly subjected to his chiefs, and obliges
him to pay illegal tribute”.

The result of this system, thus, was

A complex structure of rights where nobody has complete property rights,
but few—if any—have no rights at all: at the top the custodian of the tribal
land (mwami) and at the bottom peasants that paid tribute without
receiving any. For a peasant family, the system traded social integration
and hence security for loyalty and tribute to the mwami, who received
power in exchange for granting non-alienable use rights over the
customary domain.

As Mugangu demonstrated, this taxation principle was some kind of a
‘structuring structure’: not merely a mechanism for financial adminis-
tration but a fundamental form of social control. The relationship
between subject and patron was determined by the social identity one
had within the hierarchy. Another consequence was that one’s ethnic
identity, or ethnic belonging, had a clear material basis: the right to use
land as a source of livelihood. Since land in eastern DRC was a common
good held by a community circumscribed by its ethnic identity, ethnic
identity became institutionalised as the main organising principle of society.
For those not belonging to the ethnic community, it became extremely
difficult to have access to land before being recognised as a ‘client’, i.e.
having accepted the existing social order and traditional authority.
Allochthonous members were only granted rights to land equal to those
of the autochthonous population if they accepted the power position
and rules of the traditional authorities. As the Mwami was in control of
access to land, long before the colonial conquest, ethnicity came to be a
very rigid principle of social division and exclusion.

The impact of colonialism

What originally could be described as a customary system of land
tenure controlled by traditional chiefs, evolved into a ‘modernised’ ver-
sion of land control as a result of the impact of colonialism and the evo-
lution of legislation after independence. Both dynamics had a consider-
able effect on the accessibility to land.

The Belgian colonial administration was the first to limit the extent of
customary land when it introduced a normative duality in the social
meaning of land. The pre-colonial system of communal territorial
ownership practices formed the basis for the Belgian colonial
administration’s version of indirect rule. Because the extremely fertile
soil of the Kivu highlands and some parts of Ituri (especially Irumu and
Djugu) offered the potential for the development of export-oriented plantation agriculture, the colonial administration introduced a second system of land control and ownership. In doing so, it initiated a dual system of property rights. The colonial powers declared all vacant land as property of the colonial state and introduced a system of land registration and private ownership, in order to regulate the access of the colonialist commercial class to these vacant lands so they could be turned into plantations. The legitimacy of the existing customary land tenure system was recognised only to the extent that land was already under the practical control of the traditional authorities, thus limiting any further expansion of customary lands. This expansion became even more limited with the confiscation of land for the institution of a system of wildlife parks and anti-erosion forests. Land was also expropriated for settler-owned concessions, and while compensation was paid, this seems to have gone directly to the Mwami, rather than to his people. In addition, the notion of compensation (and the sums involved) cannot adequately redress the loss (in economic, social and cultural terms) represented by the loss of prime land. Commentators have argued that the chiefs involved in expropriation in colonial times were often motivated primarily by self-interest.

Agricultural production at these plantations was based on forced labour, which did not offer a very viable alternative to the traditional peasant. As average wages were extremely low, this colonial policy provoked the start of a process of peasantisation and proletarisation. Also, agricultural colonisation and speculation strongly reduced access to land for peasant families living in densely populated regions such as Masisi and the Bushi region. Hecq and Lefèbvre estimated that a four-member family needed the produce of a plot of 1.2 hectares and a supplement of palm oil and salt to have sufficient nutrients. Already in 1959, households in Kabare (South Kivu) on average occupied less than 1 hectare.

Another result of this colonial policy, was the transformation of the traditional, ethnically based rural political order into units of a much larger modern administrative system. One could not escape to ethnic belonging. Even more, ethnic identity now was transformed into a rigid juridical category. This led to a complete restructuring of the existing social rural environment, while it also transformed the political leadership. On the one hand, the leaders were stripped of some of their central powers. On the other hand, they gained power by their relationship with the colonial world. The ‘chefs medaillés’ had the support of the white power, and through the courtier’s art of flattery and intrigue, many arrived at strengthening their position. Generally speaking, however, most of the customary chiefs could hardly be presented as the spearheads obstructing the colonial powers. In most cases, they looked for the best of both worlds to maintain their influence. Even more important and devastating was the further institutionalisation of ethnicity. Ethnic citizenship, itself the result of local ethnic community membership, was recognised as the sole basis for the right to access land and thus continu-
used to be the basis for existing economic relations. The practice of indirect rule, however, did not create one single customary system but was based on the colonial claims that every ethnic community had its own traditional system. It created

A different set of customary laws, one for each ethnic group, and [established] a separate Native Authority to enforce each set of laws. The result was a Janus-faced power, with two faces. The difference between them was that while civic power was racialised, the Native Authority came to be ethnicised. 34

Ituri is another example of the devastating impact of colonialism. Here, before colonialism, newly arrived Hema pastoralists had imposed their own authority structures on existing Lendu-communities. According to Lobho, these Lendu groups saw no other option than to integrate into this Hema society and to accept the authority of the Hema chiefs that “used diplomatic skill to maintain law and order”. This integration led to a first process of social stratification, with “every Hema family head gathering around him Walendu clients, whom he called ‘ma bale’, my Walendu.” On the eve of colonialism, Hema dominance was both political and economic. While “the Hema political role became so enormous that the Hema imposed upon all Walendu an entire political organisation imported form Bunyoro”35, the Hema also gradually encroached upon Lendu territory, and “ended up dispossessing the Walendu of a part of their domain”.

This existing order drastically changed after the arrival of the Belgian colonial administration. As elsewhere in eastern DRC, the Belgian colonial administration had to deal with these local socio-political structures if it wanted to impose its territorial control. One strategy was to disinvest the Hema king of his powers over all Hema and their ‘Lendu subjects’, and to regroup local ethnic communities into separate administrative centres, which gave the Lendu the right to self-rule.36 Already in 1923, the colonial administration delimited the Hema- and Bindi-collectivities in Irumu and the Hema- and Lendu-collectivities in Djugu, aimed at the prevention of clashes between both groups. Another strategy was the introduction of a system of land registration and private ownership. To do so, it carved out the necessary land from the collectively held communal lands by declaring all vacant land property of the state. Besides the creation of mono-ethnic territories, this colonial policy also had an impact on the existing social order, as will be described below.

**Issues of border identities**

As the example of the Lendu in Ituri demonstrates, since the colonial period, parts of society have found themselves in a marginalised position as the customary system denied access to those not belonging to a particular ethnic group or those not respecting the authority of the Mwami. Access to land was further complicated by the nature and effects
of pre-colonial and colonial migrations. The strong presence of immigrants of Rwandan descent, for example, led to intensified competition between different ethnic communities first in North Kivu, and later also in South Kivu.

Long before the creation of the ‘Independent State of Congo’ in 1885, significant numbers of Kinyarwanda speaking people inhabited the highlands of Kivu. In what is now called North Kivu, there were important settlements of Banyarwanda, while in the southern parts of the Kivu highlands there was a presence of a group of Banyarwanda that were mainly of Tutsi-origin and later would be better known as Banyamulenge. Colonialism and regional political events had a major impact on the number of these immigrants living in the Kivus. It is commonly agreed that both historical developments are responsible for the consolidation of regional migration patterns from the east to the west, which, in the case of the Kivus, resulted in the extremely heterogeneous composition of the local population.

Even if it is difficult to find credible evidence of the first arrival of immigrants of Rwandan descent in the Kivus, most sources agree that their presence dates back as far as the sixteenth century. According to Kagame, the arrival of the first Kinyarwanda speaking population dates back to the first half of the sixteenth century, when the actual zones of Rutshuru, Goma, Karisimbi and parts of Masisi came to be integrated into the Rwandan Kingdom. Furthermore, in the seventeenth century, members of the Rwandan clan of Basinga settled in Bwisha (Rutshuru). Some thirty years later, the influence of the Rwandan Kingdom extended to the zones west of the actual Lake Edward. This political expansion was followed by the settlement of a considerable number of Kinyarwanda speaking people in these areas. In the late 19th century, Rwanda also tried to integrate the zones of Masisi, Kalehe and Idjwi into its territory. Just before the arrival of the first European colonial powers, the Bwisha region, under the rule of Mwami Yuhi V Musinga (1895–1931), became a full part of the Rwandan Kingdom and was completely integrated into the Rwandan administrative system.

Contrary to North Kivu, in South Kivu the immigrant minority originated from both Rwanda and Burundi. The first settlement of Barundi in the Ruzizi Plain dates back to the end of the eighteenth century. At that time Ntorogwe, a prince of Mwami Ntare of Burundi, was in search of grazing lands for his cattle and settled in the Ruzizi Plain from where he extended his control from Katumba to the northern parts of Uvira. After a conflict between Mwami Ntare of Burundi and Ntorongwe’s successor Rudengeza (resulting in the killing of the latter), the Barundi living in Ruzizi settled in Luberizi and disassociated themselves from the Burundian Kingdom. The origins of the first immigrants of Rwandan descent in Uvira and Fizi (later to be called Banyamulenge) are significantly less documented and even until today remain a subject of debate among historians. Most written sources agree that a significant number of them arrived at the end of the nineteenth century, and was followed by several successive migrations.
Even if it is hard to find a coherent explanation about why the first Tutsi migrants moved from Rwanda to what would become Congo, the history of the minority question in South Kivu is less complex than in North Kivu. While the influence of these minorities on the local situation in North Kivu has always been very significant, and to some extent determined by developments in Rwanda, until recently this was not the case in South Kivu.

Colonialism eventually cut through the existing relations between the Rwandan monarchy and some parts of eastern DRC through the creation of the Independent State of Congo in 1885 and the definition of its borders in 1910. The impact of colonialism on the demographic composition of the population in eastern DRC, however, was not restricted to defining the territorial limits of the newly created colonial states. Firstly, after the First World War, the Belgian colonial administration strongly promoted the migration of significant numbers of Rwandan farmers in an attempt to counteract strong demographic pressure in Rwanda and to provide the necessary labour for the newly created agricultural plantations and mining centres. Secondly, the colonial administration never succeeded in finding a sustainable resolution to the identity problem. On the contrary, the Belgian version of indirect rule resulted in two different and opposing types of identity, which regularly clashed. Thirdly, the so-called social revolution of 1959 in neighboring Rwanda – partly the result of colonial policies of ethnic favouritism – was responsible for the arrival of additional Rwandan immigrants (this time of Tutsi-origin) who were fleeing political violence in Rwanda.

In the early stages of their colonial power, the Belgians tried to restrict the influence of the Rwandan monarchy (that was under German colonial rule) on the population of eastern DRC. In 1910, Belgium, Germany and the United Kingdom signed the Convention of Brussels in order to redraw the boundaries of the Independent State of Congo. From then on, the Kinyarwanda-speaking population in North Kivu and the Kirundi-speaking population in South Kivu were considered as indigenous and were attributed their own customary authority, which was immediately disputed by the other ethnic groups living in these regions.

The demographic reality was complicated even further and the identity problem became even more confused after the creation of the Mission d’Immigration des Banyarwanda (MIB). The first reason for the institution of the MIB in 1937 was to counteract the demographic pressure in Rwanda, which had regularly led to food crises and famine. The MIB decided to displace parts of the Rwandan population and to resettle them in the low-density areas of North Kivu, such as Masisi and Rutshuru. Of course, another reason was the ever-increasing need for labour. As the Belgian colonial occupation of the region was in full expansion, there was a strong need for labour at the plantations, mining centers, road construction programmes and local industries.

It is estimated that between 1937 and 1945 more than 25,000 people settled in Gishari (Masisi), with this number reaching more than 60,000 people between 1949 and 1955. When taking into account the traditional
and uncontrolled migration, the total number of immigrants of Rwandan
descent that settled in Kivu during the colonial period is estimated at
300,000. At this time, Rutshuru and Bwito were also faced with the
arrival of large numbers of Nande- and Hunde-immigrants originating
from Beni-Lubero and parts of Masisi. These populations were forced to
leave their homes due to social tensions and demographic pressure.
These migrations forced the Belgian colonial powers to create a Mission
d’Immigration des Populations in order to prevent densely populated
zones from further demographic pressure.

These local patterns of migration finally led to growing confusion
about the rights to create customary authorities. Even if the Banyarwanda
of Bwisha (Rutshuru) were already present in North Kivu, and thus
were considered by the Belgian colonial administration as indigenous,
the claims to their own customary rights of new migrants from Rwanda
led to different reactions. The reaction of the local population, which
expressed its hostility towards these new migrants that were seen as
competitors for land, was in sharp contrast to the initial position of the
traditional authorities. For the local Hunde authorities of Masisi, the
influx of large numbers of immigrants meant an important additional
source of income, since these immigrants were supposed to pay tribute
in return for the use of land. The Belgian colonial authorities, however,
accepted the demand of these Banyarwanda to have their own custom-
ary system installed. In 1936 the Collectivité de Gishari was created, which
was cut off from the Hunde chiefdom and from then on was headed by
a Tutsi. Protests by the Hunde customary powers against what they saw
as a violation of their ‘customary rights’ and the extremely negative
reactions of the local population finally convinced the colonial powers
to suppress the Collectivité de Gishari and to re-establish Hunde power.
Competition for land, however, would always remain an important
source of tension between the local population and the Banyarwanda
immigrants. The Banyarwanda continued to express a residential claim
of having certain rights on the territory they lived. The local traditional
authorities, supported by their population, saw this appeal to rights as
the start of a slow but certain “occupation”.

Denied free access to land, the Banyarwanda finally tried to take
advantage of the dual system that was institutionalised by the colonial
powers. In order to escape the powers of the local customary
authorities, they started purchasing land. The Banyarwanda succeeded
in acquiring most of the land in Masisi by simply buying it. The Hunde
chiefs, for their part, were still expecting tribute from these Banyarwanda
for the use of land that they still supposedly held under their customary
powers. The Belgian colonial administration never succeeded in resolv-
ing the problems it had created. Even during the Round Table Conference
prior to the hand-over of power from the colonialists to the Congolese,
the status of the Banyarwanda remained undecided. This explains why,
at the beginning of independence, the first major conflict between both
sides broke out. This ‘Guerre des Kinyarwanda’, which lasted for two
years, was the first rebellion against chiefly abuse and the first stage of a spiral of unending local violence.

To conclude, the Belgian version of indirect rule drastically changed the administrative and economic organisation of the Kivus and Ituri. This policy also had a serious impact on the existing social order. On the one hand, the introduction of the dual system of property rights affected the economic relations inside ethnic communities. On the other hand, the formalisation of ethnic citizenship as a state-sanctioned phenomenon had serious consequences for the relations between ethnic communities. Although the population living in the newly created collectivities was multi-ethnic, customary power, which now represented state authority, was defined mono-ethnically and awarded to the ethnic community considered as indigenous.

**Patrimonialism and land-access**

The system of land control and alienation as introduced by the colonial powers, continued to exist during the first years after independence, including the reproduction of a double form of citizenship (a civic Congolese and an ethnic one). In 1973, however, the mechanisms of land-access were further complicated and confused by new legislation: the General Property Law, based on the so-called Bakajika Law of 1966. This new legislation declared all land (including the land under customary control) property of the state and integrated the traditional rural order into the urban-controlled modern political system.

However, once again the traditional, ethnically defined, territorial organisation formed the basis for the new territorial structure, thus confirming the territorial basis of ethnicity. In addition, many of those employed to work the land that came under indigenous Congolese control were recruited according to bonds of kinship with the new landowners, amounting to a “renewal of ethnic based access to the state and its resources”, which Mobutu had to some extent avoided until this point. More important, however, was that under this new law the traditional, customary authorities lost their legitimate control over the land distribution and were assigned the role of simple administrators in the institutions of the new Zairian state. The 1973 law declared all land state property. From then on all transactions of land based on customary law became illegal. Land could only be extracted from the state through an administrative procedure, which included an official survey, registration and cadastration.

As a result of this new legislation, the customary system was confronted with a deep authority crisis while the existing social and economic order also drastically changed. Since the 1973 legislation discarded customary law, land occupied under customary rules no longer had any legal status. The law was to be supplemented by a Presidential Decree designed to offer some security to customary land users, but the Decree was never issued. This diffusion forced most peasants into a
position of general uncertainty about their legal access to land. A second consequence of this new legislation was that it provided a newly formed class of rural Congolese capitalists with a new and powerful instrument. What was meant as a measure of national integration giving every Zairian citizen equal access to land, in its application proved to be a perfect instrument for those already holding a position of political or economic power to appropriate any land not yet titled. The nationalised colonial plantations were redistributed to reward the loyalty of a political elite, through either a) leases of up to 25 years; or b) perpetual concession, as long as the land was under constant agricultural or pastoral use and other land management conditions were met.

Despite the criminalization of land sales, in practice communal land also became subject to redistribution. The 1973 legislation not only drastically changed the social structure of Kivu and Ituri, but also was an expression of the changing political and economic conditions under the Mobutu regime. The policy of nationalisation offered the material basis for the formation of a new political elite. Loyalty, from now on, would be economically rewarded.

Although the new legislation was meant to limit the power of the traditional authorities, in reality these actors continued to play an important role in the control over land. The modern legislation, at odds with cultural norms, abolished the customary land rights and gave access to land only on the basis of individual property rights. In reality, however, the state was not capable of successfully implementing this new law. It never succeeded in describing the legal position of the traditionally distributed land, while at the same time the administration lacked the capacity to manage the distribution of land. As a consequence, a double system of land property rights (the de facto traditional order based on ethnic citizenship and the modern order based on individual property rights) continued to exist, which not only caused general confusion but for certain actors also opened up new opportunities.

These must be understood within the political and economic context of the time: the economy had gone into a steep decline in the early 1970s and was in tatters by the end of the decade. GNP steadily declined, and the formal means of production and exchange became non-profitable. Instead, people sought to survive through the parallel economy, and corrupt dealings were almost the norm, rather than the exception. On the one hand, new and powerful opportunistic alliances involving state administrators, traditional authorities, new land-owners, the freelance army, police and large land holders, have resulted in the reaffirmation of clientelism to the advantage of both traditional authorities and a new class of rural capitalists. In North Kivu, it was the combination of the nationality law of 1972 and the new legislation on property that worked to the advantage of migrants of Rwandan descent. This citizenship law, which was believed to be the result of the strong influence of a number of Banyarwanda on the central government, attributed Zairian nationality to those migrants who were living in Congo before 1950.
While it gave the Banyarwanda the right to vote, this law also included the right to buy land.

On the other hand, the traditional authorities became the privileged intermediaries for the sale of land. According to Mamdani:

_To the extent that they were able to combine their chiefly status with important positions in the administration and the party hierarchy, [some Bwami] could claim authority on both traditional and political grounds, and make use of this situation to secure compliance with [their] decisions._46

Mugangu concludes that by their control over the ethnic territory,

_Not only did the traditional authorities become crucial partners in the territorialisation process of the state, they also were able to consolidate, within this new political context of the modern state and through the exploitation of the land tenure system in place, the traditional clientelistic relationships between elites and farmer. In doing so, the traditional relationship between rulers and ruled were reaffirmed._47

**The development of networks of control and the emergence of rural capitalism**

The introduction of a modern land system through the new legislation on property rights, as introduced in 1973, had two effects. Firstly, the traditional system of reciprocal patron-client type relations embedded in a customary framework was undermined and a new type of patrimonial relations emerged, based on state patronage. Secondly, the inherent traditional social order was replaced by social stratification in which closeness to the political centre was a premium condition for the accumulation of wealth. This new social structure included a transformation of the property structure. The new land law was part of a policy of opportunistic nationalisation in order to reward political loyalty through the distribution of land, which became part of the patrimonial system.

From 1973 on, the best way to secure access to land was to get close to the state. This included the involvement in patronage-networks throughout which economic advantages were converted into political resources and distributed to those who expressed their political loyalty. Since access to land became regulated by administrative procedures, political power-holders and state administrators came to be crucial members of these networks of patronage, and thus, became enormously powerful. Since the property rights of new landholders were never secure (concessions could be re-allocated by the state when defined as ‘insufficiently dynamic’), access to land was always conditioned by political favour.48 All members of these networks derived mutual, but non-rival benefits from which most peasants were excluded. These informal alliances between a new class of rural capitalists, agro-industries, traditional authorities and state administrators have made it pos-
sible for a lot of land to be expropriated from poorer claimants, and for new claimants to extort heavy taxes or labour dues from those who lived on the land they claimed.

Perhaps even more important for the rural population’s position, was the introduction of arbitrariness and land insecurity. These alliances that were seeking peasant-occupied lands also expropriated land held in the ‘inalienable’ customary tenure (such as the kalinzi or vusoki system), resulting in dispossessions of entire communities for the creation of new plantations and ranches. This would not have been possible if the traditional authorities had not participated in the expropriation of their subjects. As Newbury writes, “state and local authorities collaborated in forcing residents off their land and providing labour and other resources, in return for certain services and other prerogatives from the plantation companies”. Even worse was the generalised climate of arbitrariness. Every public act or service was seen by the administrator as an opportunity to benefit from it and by the public as predation.

Both at a local and at a national level, members of these opportunist alliances benefited from the redistribution of nationalised plantations and customary land, and from the different re-classifications of anti-erosion forests. The objectives of these new coalitions were clearly to limit access to land to their members’ advantage. In terms of land reallocations, the nationalised plantations were of particular importance, since these were an access-point to one of the most profitable economic sectors. In the colonial period and the first years after independence, European planters dominated this sector. In 1973, however, Zairianisation opened the road to this very profitable sector for Zairians. As elsewhere in the country, in the Kivus and Ituri, agro-commercial firms, politicians, military officers, local chiefs and local businessmen and women became the new owners of the plantations.

Due to a lack of necessary capital inputs, however, many of these plantations were mismanaged or even neglected by their new owners, leading to a dramatic decrease in the production of cash crops. In Upper Zaire, coffee production dropped between 1972 and 1976 by more than 20% from 74,052 tonnes to 59,444 tonnes. However, the spectacular rise in the world price of coffee in 1976 (which was a result of a general shortage due to the Angolan civil war and weather conditions in Brazil and Colombia), provoked a local rush to get into this profitable sector of the economy. During that same year, local production increased to 108,613 tonnes. Nevertheless, this world shortage of coffee could not prevent general mismanagement or bankruptcy of the enterprises by many of the new owners. As early on as 1976, the Zairian government decided to return most of the plantations and businesses to their former foreign owners. This new policy, however, included a decree of retrocession, which obliged the former owners to take Zairian partners if they wanted to restart their agro-businesses. This condition facilitated the creation of new business opportunities for a young class of indigenous entrepreneurs.
As already mentioned, land that was still under the customary land-tenure system also became privatised, through the co-operation of the traditional authorities. Even if the property law of 1973 strongly limited the power of the traditional authorities when it came to the right to allocate land, in reality these authorities could maintain their position. On the one hand, the administrative authorities responsible for the approval of concessions were highly understaffed, so supervision or control over transactions was not always possible. They were also underpaid, making corruption more likely. On the other hand, the traditional authorities were perfectly positioned to become gatekeepers for shifting the assets from customary control to the modern legal system. Present in both networks (the customary one and the modern patronage system), they occupied the perfect position to manipulate the duality of the new land legislation to their own advantage. This was all the more so because, even when their power after 1973 was strictly limited, they still held some judicial and administrative power. The Bami became the local representatives of the only political party, the Mouvement Populaire de la Révolution (MPR) in their collectivities. They could maintain their presidency of customary courts and they were nominated as chefs de collectivité, or the administrative heads of the rural collectivities. This lack of separation of functions (the chiefs represented the executive, the judiciary and civil service simultaneously) was open to abuse of power. Furthermore, most smallholder farmers and agro-pastoralists were largely unaware of the laws and regulations governing land, and, without access to education, information or money, were unable to defend their legitimate rights. Indeed, it could be argued that the law did not reflect the perceptions or wishes of local people, many of whom still identified the chief as the custodian of land access. There was therefore a fundamental conceptual disconnect between the de jure situation and the de facto reality in rural areas.

The clientelistic relations between traditional authorities, politicians and rural capitalists were prominently present in North Kivu. Here, the selling of land was mainly to the advantage of migrants of Rwandan descent (Banyarwanda), who, as already mentioned, had obtained Zairian citizenship under the nationality law of 1972, mainly because they were Mobutu’s main ally in the Kivus at that time. Their precarious position caused by the nationality issue benefited Mobutu’s ‘divide and rule’ tactics. The Banyarwanda acted as his instruments of influence in parts of North Kivu, and were heavily reliant on him because of their vulnerability to political manipulation of their ‘allochthonous’ status. Also in this case, land titles were part of political resources to be rewarded to the most loyal parts of society. Banyarwanda often bought their land-rights in Kinshasa to come back to Kivu and claim large tracts of the most fertile land. It is estimated that after 1973 about 90% of the land of the Comité National du Kivu (CNKi) came under the control of the Banyarwanda, who were perceived as gaining wealth not just through their political connections, but also through their success as farmers and livestock-keepers.
To acquire large tracts of land, the new class of rural capitalists could easily exploit modern legislation. In Masisi, the Hunde-chiefs played a crucial role in the selling of large tracts of land. Since the introduction of modern land rights and the new legislation on property, it was impossible to buy land without their permission. They would generally benefit from land sales, while the population did not receive any benefit. An example of the practices of the Hunde-chiefs was the selling, with the direct involvement of the Services Fonciers Provinciales, of large parts of the forest in Rwamikeri and Nyarabana to these new rural capitalists that transformed the land into ranches. This opened the road to clientelistic relations but at the same time reduced the power of the chiefs, including a loss of their local legitimacy.

**The role of the Bami**

Before heading to the consequences of these processes of land alienation, one should have a closer look at the precise role played by the Bami in shifting land from the customary to the modern domain, a process of land-alienation within which the traditional authorities occupied a very unique position. As Van Acker demonstrates, to guard their position the Bami needed to create opportunities for members of the new alliances to establish titles on customary land. This could only be realised when the integrity of the traditional land allocation system was undermined. The customary land use rights of farmers were weakened, and customary controlled land that could not be attributed to farmers through the principle of kalinzi, vusoki or mutulo, such as the anti-erosion forests and the swamps, was gradually privatised. As a result, the economic basis of the chiefs shifted from the control of land to new forms of social control.

In order to undermine the customary land rights of farmers, the Bami developed different strategies. One strategy that became widespread in the Bashi-community, was to dispute the legal status of the land use rights of farmers and to invoke a ‘right to return’. Given the hereditary character of the customary contract, the best moment to question its validity was after the first user died or when the traditional witnesses of the establishment of the contract were no longer living. Another option was to offer a new kind of land contract no longer based on the heritable use rights through the payment of kalinzi or vusoki. Other forms of user rights such as the bwasa contract gave farmers the right to cultivate on rented land for a well-defined period, usually for the duration of one season, in return for a share of the agricultural surplus and an initial payment according to the supposed quality of the soil. A third strategy of the Bami was simply delivering false statements of vacancy, without informing the local population so it could be registered. As Van Acker posits,

"Land could be declared vacant and registered without the knowledge of the occupants, and nothing much would happen until two years later"
when the new owners would move to occupy their ‘property’. After this expiration period of two years, the title had become legally ‘unassailable’ in court.\textsuperscript{56}

Since the introduction of the new property law of 1973, the Bami discovered the market value of land. It became a widespread strategy of local politicians and businessmen to buy large tracts of land in their region of origin, as a form of \textit{thésaurisation} or investment.\textsuperscript{57} This practice introduced the notion of absentee landowners, or owners that were not depending on the productivity of their land for their economic success. Plantations, even when turned into ranches, became storehouses for wealth accumulated in other ways or as a means toward capital accumulation. In some cases, property titles were used as collateral to obtain loans for different uses.\textsuperscript{58} Traditional authorities not only facilitated the buying of land but were often directly involved. In most areas close alliances between traditional authorities, politicians, some churches and rural capitalists could be witnessed. Traditional authorities either sold land to local capitalists or maintained a fierce grip on tracts of land that were supposed to be collective property.

Aside from the effect of the creation of a new class of Congolese rural capitalists, including some of the Bami, the role played by these Bami after the introduction of the new legislation on property rights transformed the economic basis of their power position. Even if in some cases the selling of their lands had a negative impact on their social position, they rarely lost their economic strength. Land-control as such was no longer the economic basis of the chiefs. A hierarchical system of social control guaranteed the generation of an alternative income to the traditional authorities. Although the \textit{kalinzi} or \textit{vusoki}-holders continued to pay tribute to their chiefs, most of the chiefs’ income came to be generated from tax-raising at local markets and from a wide variety of taxes, or \textit{amandes}, imposed at random by traditional authorities in order to demonstrate their authority.

**FROM SOCIAL FRAGMENTATION TO CONFLICT: THE EFFECTS OF LAND-ALIENATION**

The previous part of this chapter revealed that the existing rural order in large parts of eastern DRC has been modified as a result of colonial rule and the implementation of post-colonial legislation. In this part, it will be investigated how both colonial and patrimonial rule have produced a number of effects on rural populations of eastern DRC. As will be demonstrated, these effects have had a considerable impact on the local social cohesion and economic competition and have guided local political strife. It is one of the main objectives of this section to trace the ways in which land issues finally have fed into local and regional conflicts.

Even if colonialism had introduced a dual system of property rights, it did recognise the legitimacy of locally evolved customary systems.
The introduction under Mobutu of the land law of 1973 meant a radical break with this tradition. First, the rise to prominence of the new breed of Congolese entrepreneurs meant an increase in heterogeneity of local society – in the form of inter-household social differences in wealth and interests – over and above the degree of heterogeneity that had been introduced mainly by the colonial politics of massive labour import from nearby Rwanda. As the controlled labour migration reflected the political economic conditions of the colonial era, so the emergence of a new class of people reflected the political economic conditions of the post-colonial time. The new principle of stratification and elite-formation represented one of the core elements of Mobutu’s patrimonial rule: political loyalty allowed privileged access to economic resources. While granting large estates to members of the ruling political class, patrimonial rule also introduced the notion of absentee-landowners that were not dependent on the productivity of the land for their economic success, unlike the former colonial planters.

In some places in Kivu, the conditions underlying the political economy of the colonial and post-colonial era came together in what was to become one of the triggers of the current conflict, when certain Banyarwanda became Mobutu’s closest allies in the seventies. Rewarded with ministerial posts and armed with the 1972 law on Zairian nationality, they were able to concentrate a large number of former colonial estates in their hands. In Ituri, similar developments could be observed. Here, it was members of the Hema that profited from their easy access to education and to employment opportunities within the local colonial administration, the mines and plantations. By the end of colonial rule, they formed a strong partnership with the Belgian colonialists, which at the same time guaranteed the stabilisation of alien rule and consolidated the Hema’s advantage in the religious, educational, political and economic spheres. Given this favoured position, the Hema-elite had easy access to the inner circles of the post-colonial Mobutu-regime and could further increase its economic and political dominance in Irumu and Djugu.

Second, extracting land from the system of customary ownership had the effect of wearing down the social structure based on it. Capitalising the rents embedded in the land eroded the web of mutual dependency that was built on the careful extraction and (re-) distribution of these rents over time. Land-based social organisations form a stable structure as long as rents are created and are not destroyed by rent-seeking. The capitalisation of the full rent (the cashing in of the discounted future benefits of the land by means of subjecting land to the laws of the market), however, in eastern DRC had a disastrous effect. In regions such as Bushi, Rutshuru and Masisi, which were faced with unrelenting population growth, this dynamic has put the resources of poor peasant households under growing pressure, to the extent that large parts of the peasant population were faced with complete impoverishment. Three effects can be traced:

- The shift in the economic use of the available space resulted in land
dispossession and alienation, producing a large agricultural labour surplus.

- As mostly young men opted for a strategy of temporal migration, local mobility patterns shifted.
- Intensified competition for wealth accumulation through land led to a hardening of social boundaries on an ethnic basis.

With a peasant population under growing stress, one might have expected more (or earlier) protest or regular outbursts of violence by these farmers against their rulers. Why this did not happen is of particular relevance since it helps to explain the distinctiveness of the Zairian political system and gives an additional perspective on how land issues finally fed into conflict. Again, the traditional authorities need to be the focal point of analysis. In order to guard their position, ethnic discourse proved to be a perfect instrument.

It will be illustrated how in different cases, the link between territory and ethnic identity was exploited to redirect social tensions to their own advantage. In many cases these chiefs were helped by the presence of non-indigenous communities that could be held responsible for the very insecure land position of large parts of the population. Of course, this argument was a false one. Even if some members of these communities were able to acquire large tracts of land through their membership in the state bourgeoisie, this could never have been realised without the collaboration of the same customary authorities. The debate on the nationality rights of non-indigenous parts of the population was a successful strategy for the traditional authorities, as it was for local politicians in the mobilisation of their subjects. Even if the eastern parts of DRC were faced with growing pressure on the existing mechanisms of land distribution, it was only after the announcement of the democratisation process, in April 1990, that land issues were mobilised in the reconstruction of identity discourses and became crucial elements of local political competition, in March 1993 leading to a first outburst of violence.

**The individual level: Growing land-insecurity and impoverishment in the Kivus**

As concluded before, the entrance of new participants via politics and the market not only produced a qualitatively different economic use of the available space, but also eroded the customary social organisation, leading to structural changes in society.

The first, and most important, effect of the wearing down of the traditional social structure and the introduction of a different economic use of space, was a growing alienation of land. Many of the plantations distributed to members of the political entourage of Mobutu remained under-utilised while large parts of the land formerly held under customary law were accorded to indigenous rural capitalists or international agro-industrial companies. Even though these plantations
offered new labour opportunities to the local population, since independence and the distribution of these plantations among the members of Mobutu’s patronage network, most of these plantations were either left vacant (with a loss of labour opportunities as a consequence) or guarded by a gérant that rented parts of the land to landless farmers. Land- and food-insecurity and a labour-surplus among the rural population were among the most severe consequences.

Since in the most highly populated regions such as Masisi (North Kivu) and Bushi (South Kivu) access to vacant land through the former customary contracts was no longer possible and the rural population did not have the means to buy land through modern individual contracts, traditional coping mechanisms came under serious stress. Due to processes, including natural population increase and (limited) immigration, many farmers became landless. They were forced to use land under short term and very insecure contracts (the so-called ‘rental contracts’), or to work as labourers on plantations or land of other farmers, thus paying ‘tribute’ in the form of labour.

A second effect was a shift in mobility patterns. The increasing land pressure mainly affected the position of the younger generations. For this new class of landless young men, the only option left was to sell their labour. They could do so either as migrant agricultural workers or as participants in the informal economic spheres of artisanal mining and smuggling high value goods around the mining sites.

The final effect was the impact on the existing social organisation. As already stated, accumulation of wealth through land provoked competition between members of the newly established patronage-networks. Such competition not only provided the opportunities for self-serving ethnic discourse

Before discussing these different effects, however, the significance of the growing demographic pressure in parts of South and North Kivu needs some further explanation. The first reason for this population growth is the high natural growth rate. In Kivu in the early nineties, this rate was 3.1%. The second reason is the arrival of large numbers of immigrants from Rwandan or Burundian descent. These two demographic tendencies explain why in Kivu, the growth rate exceeded 4% between 1948 and 1970. By the end of the eighties, 49% of the population in Kivu lived in areas with a density higher than 100 inhabitants per km sq, whereas this number was only 13.4% in Zaire as a whole. A survey in Mulungu (Kabare) in 1985 demonstrated that, even with intensive cultivation, the land holdings of nearly 90% of the population were insufficient to support a family. More than two thirds of all households worked plots of less than 1 hectare. One third of all families had less than 0.3 hectare.

Nevertheless, food security in Kivu was not dependent on the extent of agricultural resources (food and land) as such but much more on access to these resources. To give but one example, when in 1979 the
Bushi region was suffering from a serious food shortage, it remained at the same time an important export region for food products. This clarifies why even today, in absolute terms we cannot speak of any land shortage in Kivu: land distribution and access are the key issues.

These figures bring back the effects of land alienation. As demonstrated, since the introduction of colonialism the extraction of land from customary ownership and the inherent capitalisation of rents embedded in land, changed the patterns of inequality in the rural areas of Kivu or Ituri to the advantage of the owners of the plantations. As customary land became limited, the effect was land alienation, which in many cases condemned farmers to exploit marginal land, resulting in the further degradation of these lands due to insecurity of tenure. Most of the land under customary control had been distributed or sold to new rural capitalists. For the affected farmers, the only options were ‘buying’ a tract from someone who had already paid a customary tribute (this practice was called second-degree customary tribute) or renting land, which were both less secure forms of land tenure. The bugule contract (or the practice of buying land, which transfers the control over land from the traditional authorities to the state, giving definitive land-access to the new owner) was beyond their reach due to a lack of financial resources. The only option left was to rent a tract of land under a short-term contract such as bwasa. As for bugule contracts, in principle this offered a possibility to escape from land alienation. In practice, renting land was beyond the means of most of the local farmers. In extreme cases, farmers were forced to work as agricultural labourers on a daily basis, often in return for extremely low wages.

On the one hand, land insecurity negatively affected the existing cropping patterns. Crop diversification was no longer in accordance with agro-climatic zones, but came to be dependent on security of tenure. Perennial crops (such as bananas and coffee, which are grown mostly for cash) are only traditionally grown on land to which the farmer has a long-term entitlement, while seasonal or food crops are cultivated on marginal land with less secure tenure such as the marais or steep hill-sides. These latter lands, which were most susceptible to erosion, were formerly governed by rules of open access, but came to be rented to poorer farmers under bwasa contracts. Seasonal crops were planted on these insecure lands, while the crops themselves changed from food crops to crops that could be more easily marketed, such as cassava. As was demonstrated in Bwisa (North Kivu) at the end of the eighties, this put food security increasingly at risk. The shift to other crops was producing additional effects. Perennial crops are traditionally the domain of men (even when the help of women is needed), while women are excluded from secure customary tenure systems and cultivate food crops. Today, women are relegated to the most insecure lands that they can only cultivate for a short period. Therefore women are the first victims of the effects of food-alienation.
What about resistance against this policy of dispossession, locally described as ‘spoliation’? In some of the regions where entire communities had to leave their land in order to make way for the introduction of ranches or plantations, some significant resistance could be observed. Acts of repression, crop destruction and arbitrary arrests were used to convince the farmers to abandon their land. At the title registry office in Goma, between January 1979 and July 1983, 61 formal complaints against spoliation and 116 requests to annul the decisions of the customary powers for fraudulent appropriation were made. In other cases farmers used violence against new titleholders or their agents. Even if mediation by churches and local co-operatives sometimes resulted in the restitution of lands to the original users or owners, in most cases the state expressed a very limited tolerance to this rural resistance. The Zairian government, as it did in North Kivu in 1985, was even prepared to send troops to end the activities of ‘rebellious elements’.

Another option in the search for land was to extend the customary land into the forest reserves and wildlife parks. The Kahuzi Biega forest, for instance, which was transformed into a national park in 1970 and extended in 1975 and, thus, was not accessible for agriculture, was seen as a possible option by excluded farmers as a way to get access to new land. In 1999, a demand was even addressed by the new authorities (see the memorandum of the ‘Comité des eleveurs et agriculteurs de Mulumemunene, Lushanja et Kalubwe’ of 15 February 1999). It is not surprising that this popular demand has the support of the traditional authorities, as it would extend their control if the forest was to become accessible for farming.

The second effect of the process of land alienation was the shift in mobility patterns. Traditionally, the customary land system discouraged migration away from largely populated regions. Poor farmers often hesitated to leave their region of origin for an uncertain future in an area where one did not belong to the ruling clan. Another reason was the strong socio-political and economic control of the customary authorities that prevented farmers from any form of social mobility or migration to other regions. The chefs de groupement and the Mwami had the power to confirm ethnic belonging, allocate customary land for livelihood, oversee administration, hold tribunals through which customary justice was meted out, collect taxes at local markets, etc. For the rural population there was often no escape from the customary power, especially in those areas confronted with a severe land-shortage, since this land-shortage only strengthened the position of these customary authorities. In some regions this prevented any form of migration.

The social structure simply did not leave any space for migration. When land became scarce, farmers found themselves extremely dependent on the traditional authorities for their own survival. For them, leaving their homes meant losing their local rights to land-access so they preferred to stay. As a result, there was a high risk of failure in all attempts to attract young farmers to migrate to areas where tracts of
fertile land were still available (such as Walikale, Mwenga and Shabunda).  

Given this impediment, the options for a growing class of landless young men to escape from the effects of land alienation remained very limited. In the absence of any industrial development some tested their luck in the artisan production of bricks. Others became involved in the large informal economy as traders. More often, however, these young men opted for a career as temporary migrant agricultural workers or tried to make a living in the illicit economy of gold and mineral digging and trading. In both cases, since the eighties an increased mobility of mostly young men has been the answer to social exclusion. In both cases, this increased mobility also resulted in the development of a trading economy. Many of the temporary migrant agricultural workers traded goods on their way home. Others gained their living through participating in the migrant commerce between local mines and border towns such as Uvira, Bukavu and Bujumbura (Burundi). The prohibition of artisan mining discouraged production by this method, but expanded rapidly after the liberalisation of gold mining in 1982. Since then, mineral-rich areas such as Walikale (North Kivu), Mwenga and Kamituga (South Kivu) became very attractive destinations for landless young men in search of access to the ‘fruits of modernity’.  

Gold, cassiterite and other minerals, as well as coffee, tea, cattle and agricultural products were smuggled out of the country to international markets in Bujumbura (Burundi), western Uganda, Kigoma (Tanzania) or even further in Dar es Salaam (Tanzania) in exchange for scarce consumer goods to be sold in the hinterland of eastern DRC. In other words, those parts of the rural society that were most vulnerable to land alienation were also the most successful in developing survival strategies through a skilful exploitation of their increased mobility. Gold revenues enabled them to substantially improve their standard of life. However, this shift in mobility patterns set an important precedent for the future, as it had severely disturbing effects on the social structure. These landless young dwellers from the early nineties onwards became an easy reservoir for mobilisation by leaders of armed peasant militias. As gold mining did before, these militias offered them a means for the achievement of some form of immediate redress against, or revenge for their grievances.

The politicisation of ethnic citizenship

This brings us to the next effect of the entrance of new participants via politics and the market. Accumulation of wealth through land provoked competition between the several components of the patronage-networks. Moreover, on a lower scale the rival nature of land became more pronounced, especially in those regions where an increase in the population density further exacerbated the effects of the erosion of customary land-control (such as the Bushi and Masisi). In areas with a large presence of immigrants, competition for land was easily manipulated to
transform the struggle over land into ethnically motivated conflicts. This was especially the case for the zone of Masisi (North Kivu) where, as Tsongo described, 512 families (of which 503 were of Rwandan descent) occupied more than half of the land.\textsuperscript{71} Schoepf and Schoepf illustrated this dynamic perfectly with an example from the same region, recorded in 1985:

*An elected member of the National Legislative Council from Kivu reports the acquisition of several large estates in his area by wealthy absentee businessmen from another ethnic group. Since his group lays claim to be the ‘original owners’ he disputes the right of any members of the other ethnic group – including long-resident families of herder-cultivators – to land there. A son and heir-presumptive of the ‘traditional’ collectivité chief, he has registered title to 200 hectares in his own name, which he stocked with cattle. He did not chase the occupants off, since he wanted them to work for him ‘to develop the land together’. He does not see why they have departed unless it is due to ‘those people in ACOGENOKI stirring up trouble’.*\textsuperscript{72}

Similar conflicts erupted in other regions as well. The historical competition between the Barundi and Bafulero in the Ruzizi Plain has already been mentioned. These conflicts, however, were not limited to areas where immigrants had settled. Between the indigenous communities of Babembe and Babuyu in the southern parts of South Kivu, the competition for land intensified and provided local leaders with opportunities for the building of ethnic agendas. As with the Bafulero-leaders in the Ruzizi Plain, the ‘indigenous’ community of Babuyu rejected the land rights of the ‘exogenous’ community of Babembe on the premise that historically, they were the sole owners of the land. In all cases, local politicians and commercial interests mobilised the population on the issue of land by the use of self-serving ethnic discourse. Not surprisingly, these campaigns served the interests of the traditional authorities as well, since these offered them new opportunities to regain or reinforce their control over land. However, it was only after the announcement of the democratisation process, in April 1990, that local competition for land turned into the material basis of intensified political competition and eventually, violent conflict. The democratisation process set in motion a number of dynamics:

- As Mobutu encouraged stirring up the cauldron of ethnic resentment (in order to ensure his own survival), local political leaders started to mobilise their followings on an ethnic basis. Ethnicity was used as a vehicle to propel politicians into national politics on the basis of old but unresolved grassroots conflicts.
- In the Kivu-provinces, as a result of mobilisation strategies of local political and traditional leaderships, the nationality issue came to be directly linked to the issue of land ownership.
• Soon after the announcement of the democratisation process, ethnic discourse and violence replaced the strong demand for democratisation and introduced new processes of exclusion. Marginalized youngsters, and introduced violence as a strategy of resistance and control.

Mobutu’s announcement of a democratisation process, in April 1990, could be best described as yet another strategy to ensure his power. As this process set into motion a fierce competition between former members of the centrally led patronage network and new political actors contesting their power position, it permitted Mobutu to exploit this ‘politique du chaos’, which was exactly what he had planned. He knew precisely how he could manipulate the process of democratisation. Local politicians were forced to build themselves a strong power base, for which it was necessary to exploit popular sentiments. Mobutu encouraged exit-strategies based on ethnic criteria. The introduction of the notion of ‘géopolitique’ in the early phase of the democratisation process, was the first element to intensify local ethnic competition. But the building of ethnic agendas marginalised the more moderate political actors to the advantage of a new generation of strongmen. These new actors developed a much more extremist approach. The exploitation of ethnicity was soon intensified by new strategies of mobilisation that introduced violence based on ethnicity as a legitimate instrument for political change. Reference to land rights came to be an integral part of these strategies.

In the Kivu-provinces, the democratisation process resulted in a further decrease in the resources needed to feed patronage networks, forcing local strongmen to develop new strategies, whereby local conflicts became linked to a much larger debate regarding political representation, over the, for example, the rights of ‘allochthonous’ populations.

The introduction of the notion of géopolitique had the effect of intensifying local ethnic competition. According to this principle, national institutions were to be created on the basis of regional quotas. While it was very clear that this was just another strategy, introduced by the Mobutu regime to divide all political opponents, the racist implications of its interpretation became obvious in Shaba and Kisangani in 1992\textsuperscript{73}, and in North Kivu in 1993. Here, the principle of géopolitique was used to argue that all positions of authority could only be awarded to those who were indigenous to the region concerned.

In North Kivu, a wave of inter-ethnic violence erupted for the first time in March 1993. Several elements helped create a context of intensified ethnic tension. Firstly, poor Hutu farmers from Masisi had lost their land because the local customary chiefs had sold it to rural capitalists of Banyarwanda origin. These farmers settled further west in Walikale where they hoped to get access to land under the control of the local Nyanga chiefs. Fearing a growing influence of these newly arrived Hutu-Banyarwanda, both the local population and their chiefs protested.
against their presence and supported the formation of local militias. Secondly, since the announcement of the democratisation process in April 1990, a coalition of local Nande and Hunde politicians, who were afraid of losing their political power if the Banyarwanda were registered as Zairian nationals and participated in the coming elections, had started an exclusion campaign to prevent the Banyarwanda from political participation. Once again, reference was made to the citizenship issue. Thirdly, as a response to the position of these local autochthonous elites, the local Hutu-Banyarwanda association Magrivi (Mutuelle des Agriculteurs de Virunga) in the Rutshuru region encouraged its members to refuse paying tribute to the autochthonous chiefs and to no longer recognise their authority.

Fourthly, the Rwandan presidency also encouraged local tensions to cut the support lines between the local Tutsi population and the Rwandan Patriotic Front (RPF). And finally, the indigenous customary authorities in Masisi felt their position threatened by the Banyarwanda communities and, within a context of intense political animosity, started a campaign against these Hutu-Banyarwanda. The best way to do so, was to mobilise those local youngsters that had shown their preparedness to take up their machetes for the defence of their own community. Local traditional authorities, as they had sold large tracts of land for their own profit to a Banyarwanda-class of rural capitalists without even consulting or informing the local population, risked finding themselves in a seriously marginalised position once there was no more land to divide amongst their subjects. To prevent being rejected by their own population, they needed a scapegoat that, within the context of growing political competition, was found in the Banyarwanda communities.

The trigger for the first wave of massive violence was a public speech by the governor of North Kivu, in which he asked security forces to assist the efforts of the Nande, Hunde and Nyanga to exclude and exterminate the Banyarwanda. According to local sources, the governor, himself a Nande, together with the vice-governor (a Nyanga from Walikale) and the latter’s nephew (who was the local assistant administrator in Ntoto, Walikale) mobilised some local militias to exclude the Banyarwanda population. Other Nande paid and recruited members of Ngilima and Batire militias. In March 1993, these militias killed several people at a local market in Ntoto. Although these attacks did not spread further into Walikale, Hunde militias started attacking Banyarwanda in the Masisi District for which they received some help from Nande militias from Ruwenzori and from local Forces Armées Zairoises (FAZ) factions. The result was a bloody confrontation that lasted for more than six months and killed between 6,000 and 10,000 people, while displacing more than 250,000 people. At that time, Mayi-Mayi/Bangilima became used as a loose term to describe any local armed youth group, suggesting a somewhat premature unification of all these local groupings. Since this first outbreak of massive violence in North Kivu, however, semantics and reality have grown closer together, as these local
militias started playing a crucial role in the development of informal militarised social networks. Fighting became the best way to escape from marginalisation because it proved to offer these militia members, who included landless youth, easy access to livelihoods.

The fragile settlement between the different communities in North Kivu, which was eventually forged at the end of 1993, lasted until the arrival of more than one million Hutu refugees from Rwanda and the settling of the ex-Armed Forces of Rwanda (ex-Far) and Interahamwe militias (who had taken the lead role in the genocide) in the different camps in Masisi and the Ruzizi Plain. The presence of the Rwandan refugees had some major effects on the local security situation. The Rwandan refugee crisis of 1994 had the effect of reinforcing the view that violence based on ethnicity and carried out by groups of mobile youth had become the dominant principle to effect structural change. Given the particular position of the Zairean state, the influx in 1994 of more than one million refugees that were armed and resourced from the outside, affected the local population in many ways and created the logic for future conflict, putting the Rwandan Hutu-Tutsi antagonism at the heart of local struggle. Local antagonism between autochthonous and Banyarwanda communities was now altered by a new coalition of local Hutu-Banyarwanda, the refugee-leadership and militias, creating the concept of ‘Hutu-land’ and hunting down the local Tutsi population.

This underlying logic of political competition and conflict finally also spread to the southern parts of South Kivu, where a coalition of local politicians and traditional authorities picked up the discourse developed in North Kivu to start a campaign of exclusion against the Banyamulenge community. Since the start of the democratisation process, the unresolved question of land rights and the quest of the Banyamulenge to have their own territoire was linked to the national debate on political representation. In addition, the Banyamulenge were held responsible for the growing insecurity since the arrival of the Burundian Hutu-refugees after the assassination of the Burundian president Ndadaye, in October 1993, and the Rwandan Hutu-refugees in 1994. The Banyamulenge were perceived as being part of a regional Tutsi-coalition, which aimed at consolidating Tutsi-control over the entire Great Lakes Region. As a result, local political and economic competition was directly linked to regional dynamics of conflict. All Tutsi in the area (including the Banyamulenge) were characterised by politicians as “recent refugees” and ‘foreigners’. Until the summer of 1996, the struggle was based on memoranda, provocations and detentions. In July 1996, however, the district commissioner held a public meeting in a Pentecostal church in Kasenga, where he incited a “chase of the snakes” (“une chasse au serpents”), aimed at the Banyamulenge population.

From then on, politicians started activating a process of ethnic cleansing; first by encouraging others to take over all Tutsi property, later, by physically attacking Banyamulenge communities. For that purpose, local political leaders mobilised local youngsters to form armed groupings. Popular demonstrations and an increasing number of incidents
involving the harassment of Banyamulenge by the FAZ and youth militias turned Uvira into a zone of insecurity. Bembe-militias, supported by FAZ soldiers and Interahamwe factions, started attacking Banyamulenge villages, killing local residents and forcing those who survived to flee.

By September 1996, the Kivu provinces had become a toxic brew of local and regional antagonisms that risked escalating at any time. The effects of a shift from patrimonial to military control over state resources, and an intensified political competition as part of the democratisation process, became interconnected with the destabilising effects of the refugee crisis in 1994. Both local (the Tutsi-Banyarwanda in North Kivu and the Banyamulenge in South Kivu) and regional actors (Rwanda, Uganda and Burundi) started developing alternative strategies for their own security. The position of the Congolese Tutsi-populations has been documented in the previous parts of this chapter. For the neighbouring countries, the presence of Ugandan, Rwandan and Burundian militias in eastern Zaire posed a threat to their own national security. These local and regional elements explain the dynamics behind the formation and start of the military campaign, in October 1996, of the Alliance des Forces Démocratiques pour la Libération du Congo/Zaire (AFDL).

It is not the objective of this chapter to document the formation and campaign of this regional movement, but only briefly to focus on the events following its formation. This alliance of local and regional forces easily defeated the remnants of the Mobutu regime and arrived in Kinshasa in May 1997. Yet, what had been the key element for its military success, became one of the most significant obstacles for the consolidation of its internal political power. While the regional allies were expecting some remuneration for their war efforts, the AFDL leadership felt a growing need to distance itself from them if it was to build for itself a domestic political power base. The dilemma of the new Congolese authorities turned out to be the raison d’être of a second rebel movement, the Rassemblement Congolais pour la Démocratie (RCD). Once again, the Kivu provinces were the territorial base for the start of its military campaign against Kinshasa. Once again, the conflict was producing a formidable coalition of regional and local forces.

Nevertheless, what was expected to be a simple imitation of the 1996 rebellion, soon proved to be the beginning of a conflict that set in motion new strategies of political and economic control, in which the struggle for local resources came to be a central element. Since 1998, however, this struggle no longer only concerned access to land for agriculture or cattle-raising, but also aimed at controlling the vast wealth of Congo’s natural resources. In addition, this competition no longer only included local actors but also regional political, economic and military strongmen. The next part of this chapter will focus on this competition and will present a detailed analysis of the struggle, since 1998, for local resources, including land, in Masisi and Ituri.
CASE STUDIES: LAND AND CONFLICT IN MASISI AND ITURI

As has been demonstrated above, the land issue, even when defined as an issue of control over agricultural and pastoral land (rather than land containing mineral deposits and other more valuable resources) is multi-dimensional, with economic, political, social and spiritual aspects. For example, land may often be significant as: a means of production; 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 status; and also as a source of feelings of ancestral ‘belonging’, as ancestors are buried within traditional territories. Conflicts might be related to natural resources not only in terms of physical control over the resources themselves, but also over the control of labour, capital, technology, trade routes, markets and other factors that are necessary to make them valuable. Therefore, while the resources themselves may be categorised as ‘local’, these factors extend geographically far beyond the local or national borders. While conflict may be fought by local actors, the influential actors in these conflicts may be hidden from view and far from the scene of the violence. Therefore, the conflicts in the DRC are multi-dimensional and can be analysed at different levels or scales, each of which are intertwined and interpenetrating.

Before looking at the local level, it is important to first put the current situation in Masisi and Ituri into the regional context.

Regional background

The regional conflict is often referred to as the Great Lakes conflict system. The use of the term ‘system’ is appropriate because different conflicts have impacts on one another, often involve the same actors (though in different formations), can be analyzed in terms of structured ‘levels’, and have ‘synergistic’ effects. This is an extremely complex system, which changes over time, and a great number of important issues can be identified, including (but not limited to) the international trade in cassiterite, coltan, diamonds, gold and other important resources; ‘reciprocal destabilisation’ through support for rebel groups operating in the region and initiating cross-border attacks from safe havens in neighbouring countries; the manipulation of ethnic identities, leading to large-scale antagonism between ethnic groups, the most pivotal currently being Hutu and Tutsi; intensified local competition for access to political power and control over economic assets; and international geopolitical considerations, including those of Western powers (with Francophone and Anglophone interests often in competition).

To a certain extent, control over land and its produce is also a part of the regional picture, because the economies of the Great Lakes countries, particularly Rwanda, Burundi, Uganda and Northeastern DRC are linked. Regional trade has been important for centuries in all of the
countries, particularly since the final years of Mobutu’s regime, when the Kivus were largely ignored by the central government, and Kinshasa was no longer a significant point of economic reference for the East. More recently though, regional trade – particularly in food goods – has been negatively affected by conflict (the trade in minerals, of course, has been phenomenal, but is not officially taxed and replaced by systems of pré-financement, meaning that little goes back to the local population). The reduction of trade in foodstuffs between South Kivu and Burundi, for example, and Masisi and Rwanda, has negative consequences for both the local Congolese communities, and their neighbours. The cross-border aspects of agriculture and pastoralism are also seen in the tendency for out-migration from Rwanda, which has a very high population density and rising numbers of land-scarce or landless families; as well as, for example, the history of in-migration into Ituri.

As has been well-documented, the regional aspects of the conflict have been reflected in the presence of foreign armies on Congolese soil – most recently Rwandan, Burundian and Ugandan troops (which were all officially withdrawn during 2002), but also Angolan, Zimbabwean, Namibian, Zambian, Chadian, Sudanese and possibly other forces. At the national level, conflict has its roots in the structures of political and economic governance that were developed during the time of Leopold II – continued by the Belgian administrative authorities who ensured close collaboration between state agents, the church and large commercial enterprises – and were if anything reinforced by the strategies of Mobutu, especially from the late 1970s onwards. The ‘predatory state’, operating through exclusion, patronage and violence has been a fact of life in the DRC, it could be argued, for as long as the concept of ‘Congo/ Zaire’ has been in existence, and is not merely a result of recent conflict. The ‘citizenship’ issues related to the political representation, land rights and nationality of the Banyarwanda (in addition to some other groups) which have been identified above, while perhaps central to an understanding of the current conflict, are just one aspect of this massive governance failure. Again, control of natural resources, including trading networks, are highly important. To a degree, aspects of territorial control are an integral part of national political struggles, as they are factors in the legitimacy of ethnic-based political units such as chief-taincies at various levels.

Because of the links between national questions and land access, separating the local level from national level questions (and due to the political and military influence of regional countries on a number of rebel movements, the regional conflict) is to some extent an arbitrary exercise. What is clear, however, is that local issues in the conflict are highly significant, both as political issues deemed to be worth fighting over, and as part of the wider governance failure that causes widespread impoverishment and hence makes violence a viable option for many. Given the collapse of the formal economy and the impoverishing effect of the conflicts on the general population, many young men with access
to arms have simply taken to banditry and extortion as a means to survive, cloaking their activities under a politico-military identity in order to gain some legitimacy.

In this sense, lack of land access – whether through the individualisation and commodification of land described in the sections above, or due to lack of physical security to cultivate land – is a structural cause of poverty, and thus a reason for many people’s recruitment into armed groups.\textsuperscript{86} Because of the structural inequalities in land distribution noted above, which have been formalised and legalised through purchase of title by wealthy landowners, the maintenance of political instability has been adopted as a strategy by some groups – particularly the Mayi-Mayi – to ensure that the \textit{de jure} legal ownership cannot be translated into \textit{de facto} control over those resources.\textsuperscript{87} This analysis suggests that far from being solved by the inclusion of Mayi-Mayi leaders in the Transitional Government, conflict associated with local Mayi-Mayi agendas will continue until the structural causes are resolved. Despite the long-standing and continued importance of issues such as land rights, and the economic and political dominance of certain communities, these have been ignored by the Lusaka Peace Process and, according to some analysts, by MONUC as well.\textsuperscript{88}

\section*{Masisi Territory, north Kivu Province}

The Kivu Provinces, along with Ituri Territory, have been the main arena of conflict between armed actors (often acting as proxies for signatories of the Lusaka Agreement) since the cease-fire was signed in 1999. For this reason, the Kivu Provinces have been identified by some experts as the key area in the Great Lakes conflict system.\textsuperscript{89}

\section*{Conflict patterns after 1998}

While there is insufficient space here to document the entire complex history of the most recent conflicts, it should be noted that in most parts of northeastern DRC, the years following the signing of the Lusaka Agreement were characterised by a process of fission of armed groups and their political counterparts – such as the RCD and others – partly as a function of competition and conflict between their sponsors (principally Rwanda and Uganda). For example, the RCD split into three main factions in September 1999, partly due to competition between their foreign backers (Uganda and Rwanda) and partly due to the different demands made by political/military leaders during the peace process. For their part, the Congolese government, before the establishment of the Transitional Government, supported ex-FAR and \textit{Interahamwe} groups as well as many of the numerous Mayi-Mayi forces, which were, alongside rebels and their backers, responsible for widespread banditry and human rights abuses against civilians. There are credible accusations of continued support to some of these groups.\textsuperscript{90}
The withdrawal of Rwandan troops in September 2002 provided an opportunity for numerous Mayi-Mayi groups to take advantage of the sudden weakness of the RCD, resulting in bitter fighting in numerous localities.

The result, in many areas, was a shifting and unstable politico-military environment, where power-vacuums in many areas prevented any kind of long-term recovery of the local economy. By January 2003, more than three-quarters of the Kivus lacked any public authority, public services, or other effective governance mechanisms at the inter-community level. Prior to the Congolese wars, the local communities in many areas relied on a combination of traditional leaders and modern institutions, working together, for local governance and formed cooperative associations, income-generating projects, and the like.

However, these common-action approaches tend to be based on ethnically-homogenous units and are often of limited effectiveness in ensuring collective action between communities.

The Kivus is one of the most ethnically diverse regions of DRC, making for a high degree of complexity in local economic and political networks. In many areas, overlapping structures imposed by rival politico-military forces competed for dominance, with destabilising effects. In the absence of functioning national or provincial governance structures, large areas came under the de facto control of ill-disciplined and predatory armed groups, who extort money and goods from the civilians at will. In Shabunda, South Kivu, for example, women are routinely forced to hand-over as much as 50% of the fuel wood or foodstuffs they transport to and from their fields and the marketplace. Losses of such magnitude to extortion or 'taxation' are likely to stifle local trade, and result in each household attempting to produce more from the farm, through expanding land holdings where possible. The net result is negative impacts on local food security, and possibly a greater threat of local land disputes as households attempt to expand production.

However, parts of North Kivu which came under control of the RCD (Masisi, Nyaragongo, Goma, Rutshuru – though not Walikale) have experienced a slightly higher level of stability, especially from 2000–early 2004. Analysts attribute this to the objectives of the Government of Rwanda, which is the RCD’s political and military backer and is intimately involved in high decision-making in the area, to ensure security of the border region against possible incursion by Interahamwe/ FDLR/ AliR elements. However, though some basic service-provision resulted, there was, and there remains, widespread lack of regard for the rule of law. Human rights abuses are frequent and clashes between armed groups sporadically occur. Violence and robbery in rural areas have greatly increased since the violence in Bukavu in June 2004, which increased tensions between groups claiming to represent autochtonous interests (especially Mayi-Mayi groups) and people associated with RCD (including Rwandaphones in general, and Tutsi in particular). In addition, the RCD administration has attempted to pursue a political agenda which seems to include close management of
land access issues, to the benefit of favoured actors but the detriment of many others.

**Land and livelihoods**

Masisi is part of North Kivu Province. Together with South Kivu, this has the potential to rank as one of the most productive areas of Africa. It is a critical watershed area and supplies water, energy and food to surrounding areas, with most farmers able to gather three harvests per year. However, the region is one of the most densely populated in the country, and despite this resource abundance, in Masisi, any land access issues are dominated by a condition of structural scarcity, which is exacerbated by population pressure, detailed above. In addition to immigration from Rwanda at various times in history, the area also saw an influx of Nande people, from the neighbouring Beni/Lubero territory.

The second issue is land distribution: the majority of the land, which is well-suited to pastoralism as well as farming, is the property of a small number of landowners, who each have extremely large land holdings as a result of their former access to the inner circles of Mobutu’s patronage system. In a survey in the zone of Luhoto (North-Kivu) in the beginning of the nineties, it was found that 31% of these concessions covered 71.2% of the cultivable area. In addition to commercial extensive ranching, traditionally perceived to be Tutsi-Banyarwanda interests, there are large pyrethrum, coffee and tea plantations, some of which have a controversial history of alienation from customary systems – documented above – and sale and purchase by those in political favour or disfavour at particular times. In the context of the high levels of corruption and personalization of power relations that have affected the country for decades, some of these transactions lack local legitimacy.

In addition to farms and ranches, a large proportion of the area is also devoted to conservation, in the form of the Virunga National Park. This is used by some communities for firewood, charcoal, artisanal mining and limited cultivation, but these activities are risky because of the activities of *Interahamwe* in the park. The extent of land scarcity is such that there are many requests from local people, supported by local chiefs, that the Park boundaries be revised and the Park area reduced.

It is for these reasons – demographic pressure and inequitable land distribution – that observers argue that:

> Nothing is more bitterly contested in North and South Kivu than control over land; the land issue has been, and remains to this day at the heart of ethnic violence throughout much of the region.

The majority of the population in Masisi, as noted above, is Rwandaphone. The Banyarwanda community was estimated to represent about 75% of the population by the early 1990s. This area, and neighbouring Rutshuru, represent the two areas of Rwandaphone numeric dominance. Indeed, many of the big landowners are also identified as
Rwandaphone, or specifically ‘Tutsi’ – though it is noted that the term Tutsi is often applied haphazardly by local people, and is sometimes associated more with the combination of money and cattle, than any particular ethnic origin. Indeed, some Hunde and other autochthonous people, including customary chiefs, claim ownership of large areas. Before the violence of the last ten years, ranching was the primary activity on these large farms.

Conflict in North Kivu has had horrific consequences for local people: many villages and fields of crops were burned, women raped (many armed groups are accused of the systematic use of sexual violence against civilians), goods and properties looted, and entire areas depopulated. During the height of the violence in North Kivu, a significant proportion of the population was displaced to neighbouring Rwanda (mainly in the case of the Rwandaphone communities) as well as to IDP camps around urban centres and other areas, depending on extended family connections. It is also reported that many of the inhabitants sold their parcels of land cheaply before fleeing, for prices as low as $50 – considered a small sum in a highly populated area such as Masisi. Others trusted their lands, including grazing rights, to other people to manage in their absence. The violence (as well as the effects of the 1994 Hutu refugee influx) also cleared the area of cattle, (estimated at up to 450,000 heads before the war) which were either eaten or sold by combatants, or herded to safety elsewhere.

**Changes arising from population movements**

Currently, levels of tension remain high in the area between autochthonous and non-autochthonous groups, and armed groups still pose a threat to civilians in many areas, due to ill-discipline and lack of political will to enforce the rule of law. Sporadic violence still occurs – largely due to the activities of local and foreign armed forces, particularly between Mayi-Mayi, Interahamwe and former RCD forces. The insecurity is such that there remain, in North and South Kivu, some 1.2 million IDPs. In general however, though some areas of Masisi remain highly insecure, different ethnic communities are living side by side. In particular, relations between Hutu and Tutsi civilians have improved, partly due to the political strategies of Kigali and the RCD, which have aimed to bring Hutu community leaders within RCD, which was previously viewed as a Tutsi-led organisation.

Much of the population has now returned. By 2003, for example, it was estimated that 80% of the population that had been displaced from North Masisi to Rwanda had returned. In the northern Plateau area, for example, there were three waves of returnees from Rwanda, in 1999, 2000 and 2002. Because the human population has returned, land scarcity is again an issue. For the poor, relying on small plots of approximately 0.25–0.5 ha, their harvests can no longer sustain them. Whereas in 1999 only about a quarter of ‘poor’ households relied on employment
as farm labourers, in 2002 this figure had risen to as much as a half. This makes the poor section of the population particularly vulnerable to future disturbances to the terms of this labour exchange.108

Agricultural production has increased since stability has improved. However, due to lack of access to markets in western DRC, prices of staple foods tended to be extremely low, and the population is generally cash-poor. This has slightly improved since the resumption of air traffic between Kinshasa and eastern DRC after the Global and All-Inclusive accord and the subsequent reunification process.

From 1999 until 2002/2003, many of the returnees from Rwanda and from other areas within the DRC were able to cultivate as ‘squatters’ on ranch land, due to the absence of cattle. Some rented land from the owners, at high prices – as much as US $50–80 for a family plot, which left little if anything as a profit-margin for the farmer.109 In other cases, land access was granted to local people on a sharecropping basis, with about 10% of the crop being claimed in return.110 Some squatters who would not or could not pay were forcibly evicted by the landowners, though others were able to stay. In 2002, for example, in the groupements of Nyamaboko and Banyungu, some 500 households, primarily Hutu, reportedly occupied a large concession. In Bapfuna groupment and Nyamaboko groupment, a plantation belonging to Victor Kambale Ngezayo and a plantation called ‘Kishengo’ were occupied and cultivated by the local population, primarily autochtones, and by the former workmen of these plantations. The tea plantations were uprooted to allow cultivation of food crops.111 In recent years some of these occupations are enforced by armed elements.

Some believe these armed people – who are reported to be generally not in uniform – are part of the Local Defence Forces (LDF), under the command of the governor of North Kivu, and generally associated with Rwandaphone interests. It is also believed that some ex-RCD troops have effectively become a private security force for wealthy and politically connected landowners.112

Many farmers who had sold their lands because their lives were in danger, returned and attempted to negotiate to regain their lands, resulting in some disputes. In some cases, local agreements have been reached regarding land disputes, often with the help of inter-ethnic groups of elders. For example, in Burungu, it was decided that those who sold land for very low prices in 1996, due to the security situation, would be supported by the elders to negotiate in order to have their land returned and money refunded.113

In other areas, such as Nyamitaba, land disputes resurfaced, as inhabitants refused to pay tribute to local chiefs. In this case, Rwandaphone families refused to pay tribute to Hunde chiefs due to a claim that the land was legitimately owned by the Hutu, as implied by the creation of the Gishari chefferie in 1936.114 However, the chefferie was abolished in 1957.115
Land and governance: The role of political, military and economic elites

The ‘governance’ approaches of the RCD are a function of at least two sets of interests: firstly, the interests of sections of the elite Kivutian population (especially the Rwandaphone elite), and secondly, the political objectives of authorities in neighbouring Kigali, which was faced with the possibility of a ‘Hutu-Power’ stronghold on its porous borders. In order to minimize the influence of the genocidal ideology of the Interahamwe amongst local Hutu communities and ensure their loyalty, the RCD ensured that local Hutu youth – in addition to Hutu ex-FAR – were integrated into the Local Defence Forces and RCD military.116 After the death of the former governor of North Kivu, a Congolese Tutsi (Gafundi Kanyamuhanga), a Congolese Hutu, Eugène Serufuli Ngayabaseka was appointed as his successor. Governor Serufuli has, according to reports, absolute control over the LDF, which are estimated at some 18,000 troops. Many of the LDF recruits are child soldiers,117 and households in Masisi allegedly have to provide money or livestock, or see their young men forcibly recruited into the LDF.118 This military structure has given the North Kivu governor de facto control over the North Kivu area, and some autonomy from the RCD Military High Command.119 Although Rwanda maintains considerable control over the RCD-administrated areas, Governor Serufuli is seen as a political power in his own right. The fact that probably the majority of members of the LDF are of Hutu origin may also prove to be significant in future, both in terms of competition for land and political power within the Rwandaphone elite, and the wider regional dynamic.

The second main instrument for the pursuance of the elite political agenda is a so-called NGO, though it is effectively a branch of the provincial apparatus, Tout pour la Paix et le Développement (TPD, ‘All for Peace and Development’), which was established in 1998. While the organisation is ostensibly devoted to provision of humanitarian and development assistance, it represents a strong network at the local level, composed of those loyal to the governor and his allies, and has evolved into an alternative, parallel system of decision-making at the village level. Local authorities, particularly those deemed unsympathetic to the governor, are systematically replaced, or bypassed and marginalized by the TPD structure. Even RCD military recruitment, reports suggest, is vetted by TPD: an indicator of the governor’s political strength.120 In addition, though proof is lacking, Congolese civil rights activists allege that TPD, and some of the customary chiefs, distribute weapons to Rwandaphone civilians, outside of the LDF structure.121 These reports further link this alleged arms accumulation to the armed defense of illegal occupation of land, for cultivation and ranching.122

The political and strategic nature of the organisation can be judged by the results of a programme for the return of Congolese Tutsi refugees from Rwanda, which was run by TPD. According to published sources,
the programme was also a means to covertly bring Rwandan civilians and military into the area.123 It is significant that the return of the refugees is believed to have been forced rather than voluntary.124 It is also alleged that some of the refugees received military training whilst in Rwanda. On return to North Kivu, the refugees reportedly received little if any support and spent months living in poor conditions in Kichanga, far from their original homes. As of March 2004, there remained several thousand living in Kahe, Rutshuru Territory, adjacent to Masisi.125 They were unable to return to their villages either because their lands were controlled by others, or their villages remained insecure. This was despite promises by RCD officials that security, land and humanitarian aid was available for them.126 Reports indicate that many thousands returned spontaneously to Rwanda, particularly in the immediate post-election period. While speculation over the ultimate aims of this approach is problematic, given the lack of evidence, some observers suggest that an enlarged Tutsi constituency in and around the Masisi area could fulfill a number of functions. Given the forced nature of the movement, it would perhaps not be overly cynical to suggest that political motives were deemed more important than humanitarian ones. Indeed, the livelihood insecurity that was the likely result of this programme could be seen as a wider trend, of a local constituency for the authorities being constructed through various means – with the land access and physical security of this constituency being contingent on the authorities in Goma.

The interests of the local elites are served both politically and economically. Politically, the pre-eminence of Rwandaphone interests was secured by RCD interference in the selection and succession of chiefs in the area. Particularly in the case of the chiefs de groupement, it is believed that the governor has the final word over who will be allowed to take the post. A number of customary chiefs have been prevented from taking their posts, especially through political interference in the process of succession. Frequently, leaders seen as anti-RCD have been accused of being sympathetic to the Mayi-Mayi, or of neglecting their duties.127 Those who oppose the RCD often claim that violence has been used or threatened against legitimate chiefs who oppose them.

The interference of the RCD in the activities of customary authorities has served to exacerbate local land tenure insecurity. If leadership changes in controversial circumstances, local communities tend to become divided over the issue. In a situation where customary land tenure arrangements for subsistence production (including sharecropping and other rental agreements) are secured through verbal contracts and testimony through neighbours and customary leaders, and titles generally do not exist, anything that tends to undermine local social cohesion has negative effects on land tenure security.128

The economic interests of local elites are served by a number of strategies. Until the fall in coltan prices in 2001, coltan exploitation was extremely profitable. Many of the deposits are found on private
ranchland. In some cases the landowners attempted to take part in the business, while in others they were unable to benefit. Since then, cassiterite (often found alongside coltan deposits) has become more significant, especially since its local price rose from about US$1 to about US$2 in late 2003. Protection from military and para-military forces, such as former RCD troops and members of the LDF, are important elements of the business.

More recently, a re-activation of large-scale ranching operations in the area has been evident, while their poorer constituents are able to gain access to land for cultivation due to the support of the local LDF troops. It is notable that ranching operations, as a fairly ‘diffuse’ means of resource accumulation – as herds can be split, moved and sold easily – may be less visible as a source of centralized wealth than mineral concessions, which are ‘point’ resources. As such, this issue may not be receiving as much attention as it deserves, as a potential cause of land access disputes. Since some stability has returned to the area, the cattle population has risen to about 50,000, and land pressure has increased accordingly. Small livestock, such as goats, are also on the increase.

There is speculation in many quarters that these cattle belong not just to local Rwandophone communities, but also to senior members of the RCD and Rwandan politico-military establishment. Seen in this light, the various aspects of control over land access which are exercised by the RCD are to some degree part of a plan for personal enrichment of influential leaders, at the expense of others. For example, it is reported that as recently as February 2004, a large area of land inhabited by local subsistence farmers was purchased by a senior member of the provincial administration, leading to the eviction of the inhabitants.

This situation is partly due to the failure of the national legislation to defend customary land rights of the peasants, but is also a failure to implement the law properly. For example, due to the large areas under commercial plantation agriculture or ranching, some 75% of land in Masisi is under title. However, these titles are often simply not respected. Lack of information about the land law is one element which enables inequities to continue, and prior to the incorporation of RCD within the transitional government, the then RCD Minister for Mines and Energy explicitly refused to grant permission for a summary of the land law to be distributed locally. Efforts by an international NGO to tackle the land issue through research, programming and advocacy were halted by the arrest of some of their personnel and the (related) hostility from a politically powerful large landowner.

Despite the common perception that those benefiting most from the current situation are ‘Tutsi’, some of the large land-holders who have seen their farms invaded, apparently with tacit government blessing, are Tutsi or part-Tutsi in origin. It is not entirely clear to what extent struggles over land within the economic and political elite in North Kivu represent business rivalries, political maneuvering, or ethnic (e.g. Hutu-Tutsi) relations; though it is likely that all three aspects are significant. It
seems clear that access to land in Masisi is gained through political and economic connections to an elite group associated with the provincial governor. This elite group has used a variety of strategies, including control over customary institutions, as well as military power, to increase its control over land. It seems that access to land has been used as a resource by those in control of North Kivu to ensure they build a loyal constituency, composed primarily of the Rwandaphone population. Ensuring that many Rwandaphones, both Hutu and Tutsi, have access to land is one way for the ex-RCD-G group and its ally, the Rwandan government, to ensure unity amongst the Rwandaphone population, and to assure political support in the event of future elections.

The situation in Masisi cannot be separated from neighbouring areas. Many people expect that due to land shortage in Masisi and Rutshuru, less densely populated areas such as Walikale will see an influx of people. Indeed, it is reported that the governor himself stressed the importance of migration as a strategy in the face of the land scarcity in Rutshuru. Local people indicate that in response to this, in early 2004 Mayi-Mayi and some customary leaders in Walikale were asking local people to ensure that they have their land claims clearly established, due to the possibility of in-migration.\textsuperscript{135} It was precisely the migration of poor Hutu-farmers (who were pushed off their land by a new class of landowners in Masisi), and the subsequent competition for local access to land, that is cited as one of the root causes of the 1993 conflict. Walikale, it should be remembered, was also the scene of fighting between the RCD and Mayi-Mayi in 2003, and was again wracked by violence in mid-2004, when fledgling cooperation between ex-RCD troops and Mayi-Mayi, who were both locate in the centre of Walikale town, was disrupted by ethnic tensions related to violence in Bukavu.\textsuperscript{136} In Walikale, as well as other areas, lack of infrastructure (such as roads), services and security guarantees are likely to limit the extent of out-migration from Masisi, Rutshuru, and other densely-populated areas. However, the ‘post-conflict’ reconstruction plans of international actors include infrastructure development in this area and are likely to change the situation.\textsuperscript{137} Conflict early-warning, mitigation and prevention measures should therefore be an important part of the design and implementation of these programmes, with migration and land-access issues being key indicators.

**The risks of further conflict**

Though systematic data on the current status of land claims is lacking, the characteristics of governance in North Kivu suggest that the land claims and interests of one community may be given pre-eminence above others, through the various stratagems described here. There are aspects of the current situation of mal-governance and mistrust which are particularly at risk of undermining sustainable solutions to the citizenship issue. For example, some autochthonous leaders assert that the RCD leadership in Goma is providing Rwandans with citizenship
documents. While it is difficult to say whether this is definitely true or to estimate how many individual cases there might be, this perception will of course undermine the claims of those Rwandaphone families who have been in the Congo for generations.\textsuperscript{138}

Generalized insecurity is likely to continue for some time, until a genuinely unified Congolese army is able to impose order in rural areas. A greater threat, however, is posed by a possible collapse of the transition process. Currently, there is a political balancing act underway in Kinshasa, as former rebels work within the transitional government – up to a point – while at the same time ensuring that military and political power-bases are maintained in North Kivu. Analysts predict that former rebels are holding on to their position of military strength in the region in order to gain political capital and push for as much autonomy in the Province as possible, under a federal system if possible.\textsuperscript{139}

Given the bloody history of the region, use of illegitimate means is likely to have tragic consequences, mainly for the poorest members of those ethnic communities associated with them. The UN Panel of Experts has warned that the use of force and administrative coercion to pursue land claims, against the backdrop of ethnic violence that has plagued the region particularly over the last ten years, “could rekindle long-standing conflicts with other ethnic communities over land.” This warning is particularly germane currently, as the events in Bukavu in July 2004, as well as a memorandum writing by ex-RCD politicians citing the weaknesses of the transitional government, illustrate the delicate and fragile nature of the transition process. Unfortunately, the murder of 160 predominantly Banyamulenge refugees in a refugee camp near Bujumbura, Burundi, in August 2004, is a reminder of the continued resonance of ethnic tensions across the region.

**Conflicts over access to land in Ituri district, Orientale province, DRC**

Ituri District, in Orientale Province in the North-East corner of DRC, has since 1999 been the scene of some of the bloodiest fighting in the DRC’s civil war; fighting which has been characterized by large scale ‘ethnic’ slaughter, the involvement of foreign troops and sophisticated weaponry, and the displacement of an estimated half a million people. Some areas have been transformed into empty ‘no man’s land’ areas between different armed factions. While some towns, including Bunia, the administrative centre of the territory, have seen the return of people from various ethnic backgrounds, some areas remain ‘ethnically cleansed’ of certain communities. In general, it can be seen that some groups have lost access to a considerable size of territory, whilst others have gained almost ‘exclusive’ access to territory, markets and trade routes which have in the past been multi-ethnic.

More than 50,000 people, most of them unarmed civilians, have been killed in the fighting since 1999.\textsuperscript{140} Many areas have been completely
emptied of livestock, thousands of which were stolen, killed and consumed during the conflict, while others were moved to neighbouring Uganda for safekeeping. Key resources – in particular, the valuable gold mines – are tightly controlled by particular armed groups. Although the level and frequency of violence has generally decreased since the horrors of mid-2003, the area continues to experience sporadic clashes, massacres and attacks on MONUC forces. The situation remains fragile, and we are reminded that lack of large-scale conflict does not necessarily mean that there is ‘peace’. Militia-leaders may come to agreements between one another, but this does not mean that local communities are free from threat, extortion and violence. Rebel commanders tend to have lost a degree of control over their rank-and-file combatants.

The conflict in Ituri has been characterized in several ways. Many identify ‘tribalism’ or ‘external interference’ as the most important factors. They emphasize the significance of foreign intervention in the conflict, including the arming of all parties to the violence, as well as political interference that often constituted incitement to violence. They also point to the extreme violence involved (which included ritualistic elements, such as cannibalism) as proof that this is not a ‘conflict over land’. At its worst, the emphasis on ‘tribal violence’ echoes the ‘Coming Anarchy’ ideas of Robert Kaplan, and amounts to gross stereotyping of African communities. However, external actors are not the only ones to stress the ‘tribal’ dimension: many local actors talk of ‘attempted genocide’ of particular communities.

The conflict is indeed clearly multi-causal – it could to some extent be described as a cluster of different conflicts, rather than a single war – and many factors must be taken into account, including political, economic and cultural dimensions. These include the military support provided by Uganda and Rwanda to various groups at various times; the value of the mineral deposits found in the region (especially gold and coltan) as well as the other resources such as timber and livestock; the perceived need for ‘shows of strength’ and territorial control in order to bargain for strong positions in the Transitional Government; and the financial benefits accruing from control over customs posts, trading routes and markets. Though we do not focus on these elements, they are undoubtedly important, as argued in several studies.

The importance of land disputes, particularly as a ‘triggering’ factor that added to an already conflictual situation, has been recognized by many. However, it would be misleading to merely identify a particular dispute, in a specific place and time, as the ‘start’ of the current conflict. There is a risk that a focus on a particular dispute will distract from a broader and more historicized view of the importance of land as a structural factor, as an ‘indicator’ of class and ethnic power relations in Ituri, and as a product of an inadequate land tenure system.

Another risk is that the situation is classified as a ‘classic’ case of ‘herder-agriculturalist’ conflict. The delicate relations between predominantly pastoralist and predominantly agriculturalist communities,
especially around the ecological border zones, has often led to disputes over land encroachment, across Africa and elsewhere in the world. However, each situation has its own complexities, and classifying communities as simply ‘pastoralist’ or ‘agriculturalist’ grossly simplifies the social, political, cultural and economic dimensions of their existence. Importantly, it reduces awareness of the highly commercialized nature of much livestock-keeping, in which wealthy, urbanized elites play an important role. Culturally, it ignores class differentiation as well as vertical differentiation within ‘communities’ which are in fact made up of several ethnic sub-groups (for example, there is a clear ‘north’ and ‘south’ division within Balendu and Bahema communities). It also tends to reinforce images of ‘tradition’, which have been given considerable attention due to the emergence of cannibalism and other ritual aspects of violence, at the expense of an emphasis on very modern ways in which war has been waged (e.g. through use of sophisticated commercial and political networks, heavy weaponry and urban-based extortion and murder). Lastly, it ignores the alliances that have taken place between ‘Lendu’ and ‘Hema’ factions which should, according to the ethnic dichotomy, remain enemies.

However, it is vital to address land issues in Ituri, as elsewhere in the DRC, through a variety of measures, including reform of land tenure legislation, an overhaul of the administrative and justice system, and conflict-sensitive planning for the return of IDPs and refugees. In neglecting them, analysts ignore factors which are undeniably ‘real’ to many primary actors in the conflict, and lose track of the means by which local relationships are manipulated by powerful actors (local and external). In discussions with local people – chiefs, householders in towns and villages, members of the Interim Administration, personnel of local and international NGOs, government administrators and academics – the majority identify land issues as a ‘fundamental’ or ‘root’ cause of the conflict. Disputed claims of access to land predate the arrival of the Uganda Peoples’ Defence Force (UPDF) in Ituri, link directly to issues of ethnic or social ‘identity’, and are also of significance to other areas in DRC, because they are partially a result of systemic failings of the land tenure legislation and the administration and justice system.

The first part of this section provides a historical background to the current conflict and suggests how this history has been transformed and mythologized – a cause as well as a consequence of the conflict. The second part looks at the procedures involved in the purchase or expansion of land concession, and the means by which they were bypassed. These are the issues which triggered the violence. The land disputes are then given some context in terms of different governance norms between communities, and the ways in which ‘custom’ and ‘statutory rights’ are dealt with in the Land Law are described. Finally, some conclusions on the role of land legislation and policy in the current conflict are offered.
Land, politics and mythology in Ituri’s history

Ituri is home to eighteen ethnic groups, as well as many people originating from elsewhere in the DRC, though many of them have fled due to the conflict. Population numbers are difficult to define with any certainty, and are inflated or underestimated for political purposes. Generally, the Lendu population is estimated at 700,000 or more, while the Hema community is estimated to number between 150,000 and 400,000. Together, the two groups comprise about 40% of the total population.

Disputes over land access between communities and within communities have a long history within Ituri, which predates not only the ‘second rebellion’, but also, most likely, the arrival of the Belgian colonialists. The region, as most others in Africa, has a history of migrations of different ethnic communities. Many anthropologists believe that the Lendu, a Sudanic group, migrated into the area sometime in the middle of the second millennium AD (apparently displacing some groups already resident there, such as the Lese and Nyari).

Sometime later, probably in the late 17th century, the Hema migrated to the region, from the West. The Hema are a Nilotic group, related to the Ankole and other traditionally pastoralist groups in Western Uganda and elsewhere in the region. Their pastoralist heritage has been manipulated in order to become a factor in the land-related causes of the conflict: some anti-Hema elements assert that as ‘nomads’, the Hema ‘have no ancestral land’ of their own, and have characterised them as ‘visitors’.

According to some anthropologists, the Hema were quickly able to integrate themselves into Lendu society and territories and to gain a predominant position, because of structural differences between customary Hema and customary Lendu socio-political organization. The Lendu lived in dispersed settlements and were organized by clans, which had a strong sense of autonomy and a tendency to disagree (sometimes violently) with one another. The Hema, on the other hand, had a hierarchical system (these differences were also reflected in customary land tenure systems, described below). The stability which this hierarchy provided, it is claimed, allowed them to provide a conflict-mediation and leadership role in the Lendu territories. Some even claim that the Hema, whether by example or by direct influence, essentially led to the Lendu adopting a more hierarchical social structure, similar to that in Bunyoro, which has a population ethno-culturally related to the Hema.

A land tenure study in Ituri in the early 1980s provides details of customary tenure systems, which remain influential. Amongst the Lendu, land acquisition is based strictly on inheritance: “each person lives on the land of their ancestors and noone else has rights over this land... in effect, the land is apportioned to individuals. This is in contrast to the situation in Hema areas, where the chief of the collectivity is in full control of land access: “In Bahema areas, the chief of the collectivité remains solely responsible for the land in his area. No other person has the right to to decide anything on land matters.”

Koen Vlassenroot & Chris Huggins
From the ground up

resté seul responsable de la terre de son entité. Aucune personne n’a droit de décider quoi que ce soit en matière de terre.” This profound difference in governance norms and in the way in which land is customarily conceptualized (as family property in the case of the Lendu; as the property of the chief who administers it on behalf of the community in the case of the Hema) may provide an insight into the controversies over land acquisition in Ituri, as we shall see.

Anthropological data suggests that controversies over land access existed before the colonial period. The Bahema are believed to have expanded their pastures through a process of encroachment on Balendu lands. However, the abundance of lands (in a situation of low population numbers) meant that the Balendu did not put up resistance to this process at the time. However, there were evidently some tensions between the two groups, and between the Alur (a Nilotic Luo-speaking people inhabiting Northern Ituri) and the Lendu. By the late 19th century, the Alur had purchased guns from Arab traders and slavers, and used these against the Lendu, across much of Ituri, partly at the request of the Hema King, Nblukba. Many Lendu were killed. Perhaps in revenge, in 1911, a Hema chief, called Bomera, was assassinated by the Lendu-Ngiti in Irumu territory and other violent incidents continued in the early 20th century.

In response to this violence, the Belgian colonial administration made changes to the administrative system, and to the settlement patterns in the district, that have a direct bearing on land access. The borders between collectivités were delineated, to stop the Hema encroaching on land controlled by the Lendu, who were given chiefs of their own. The movement of people from one collectivity to another was controlled. For example, local sources suggest that there was a slow but steady trickle of Lendu people into the territory of Mahagi, apparently to provide labour on Alur lands, which the Belgians blocked by returning the Lendu to their homes – if necessary, by force – whenever possible. Others see the movement of Balendu as part of a social relationship which had become exploitative, leading the colonial administration to provide the Lendu with chiefs of their own in order to avoid economic dependence on the Hema and the Alur. In Djugu territory, for example, the Lendu were provided with 28 chefferies, while the Hema had just one. In the south, the Hema had more chefferies, and according to local sources, the creation of these was not always without controversy.

The treatment of the different groups under colonialism is the subject of some debate. Many observers argue that the Belgians favoured the Hema rather than the Lendu, perceiving the monarchical system and pastoralist lifestyle of the former as inherently ‘superior’ to the more segmented and agricultural society of the latter. Some also assert that they were more receptive to colonialism, while the Lendu were more resistant. Lendu assert that they were systematically discriminated against in terms of education opportunities, though like other marginalized groups, they may not necessarily have seen the benefits of
education. Indeed, as late as the 1980s there was low school attendance by Lendu children, many of whom were instead sent by their parents to work in local coffee plantations. The vast majority of Lendu continued to rely exclusively on smallholder agriculture or provided cheap labour in the mining centres, and did not participate as actors in such networks of economic expansion. It has been argued that the colonialists situated many schools, missions and mining operations in Lendu territory, thus favouring the Lendu; but geographical location does not necessarily equate to equal access. While many provided labour in the mining concessions, they did not necessarily find the terms of labour acceptable: it is reported that many left the area for Uganda, where there were opportunities for higher wages.

Members of the Hema community came to form the majority of the educated people in the district, tended to gain many administrative positions and also invested their cattle-based wealth in the vehicles, buildings and other investments necessary for commerce and trade. When the territory of Kibali-Ituri was formed in 1962, for example, no Lendu gained a position in the administration. Similarly, there are practically no major businessmen from the Lendu community, but very many from the Hema/Gegere community. This tendency has come to represent an urban-rural divide between Hema and Lendu, and the desire of some Hema leaders for exclusive control of Bunia after 1999 represents the extreme nadir of this pattern.

In the post-independence period, there is evidence that pastoral land, in some areas, was expanded at the expense of agricultural land. A study on land tenure in Ituri found that following independence, in the collectivity of Mitego, a predominantly Hema area, areas which were enclosed and considered private property were little by little encroached by pastoralists, and some field boundaries were destroyed. During the 1960s, and at points during every decade thereafter, Lendu and Hema communities were involved in clashes over fishing and land rights. These were mostly addressed by customary leaders, though in 1993, troops were sent in to quell the violence. Predictably perhaps, they fought fire with fire, turning heavy artillery on Lendu villages.

The early 1980s saw another change to existing land use patterns. The *Bureau du Projet Ituri* (BPI), a development project funded by international donors, sought to improve pastoral productivity, in part by delineating areas across the entire district as either ‘pastoral’ or ‘agricultural’ lands. BPI documents suggest that in many places, the delineation exercise was unproblematic, but in certain areas – for example, in the collectivity of the Lendu-Bindi, in Irumu – there was resistance to the exercise from cultivators: “The delineation of land between the pastoralists and the farmers is at a dead-end in this collectivité. In effect, the farmers believe that in sharing the land with the pastoralists, they [the pastoralists] will be able to definitively possess the land.”
In general, the exercise was delayed by several months in Lendu areas, due to local resistance. Indeed, a number of respondents interviewed in 2004 remembered the BPI as a Hema-dominated institution (which may be expected, given its focus on pastoralism), which resulted in many Lendu being displaced from their homes to make way for pasture. Informants also alleged that Hema members of BPI also purchased large farms during the exercise, and saw it as a tool of ‘Hema domination’. While these claims are difficult to verify, a certain disregard for popular opinion is certainly evident in the BPI’s recommendations regarding opposition to the delimitation exercise. The BPI urged the government cadres to put pressure (faissent pression) on the customary authorities, and to use their influence on the agricultural population, to ensure that the exercise went ahead. The BPI certainly reflected a more general trend of ‘top-down’ governance within the country.

**Purchase of private ranching concessions: De facto and de jure procedures**

Djugu, the area where conflict first erupted in 1999, is one of the most fertile areas of Ituri, and also contains a number of profitable mining operations (such as Mongbwalu, the site of much fighting, and the well-known Kilo-Moto mines). It is inhabited predominantly by the Gegere (generally known as the ‘Northern Hema’) and the Lendu (of which there are several local sub-groups), and is the most densely populated territory in Ituri. The fact that this was the area where large-scale conflict first broke out in 1999 fits with the theoretical rule-of-thumb that where population density is greater, boundaries are stricter with fewer ‘buffer areas’ to provide flexibility, and disputes are more likely.\(^{171}\)

There are a number of large colonial-era ranching and farming concessions located in Djugu. During the Zairianisation process, which involved the handover of foreign-owned assets to Congolese, several Hema were reportedly granted ownership of the concessions. They were, because of the importance of Hema traders and politicians, influential within the Mobutu regime and able to take advantage of the networks of patronage and favouritism, in a similar fashion to many other ethnic communities during this period. A considerable amount of land was also owned by the church. The perception of some informants is that the church is also a Hema-dominated institution, and when church land was sold, Hema were given priority in purchasing it.\(^{172}\) Of course, as they formed the majority of the trading and administrative class, members of the Hema community would be among the few locals with the necessary access to funds to purchase land, whether church-owned or otherwise.

According to most accounts, the main conflict surrounded the expansion of the concession borders. Another type of dispute could arise when colonial-era concessions were passing into the hands of Congolese owners, after being abandoned for some time: local chiefs and communities often assumed that ownership had reverted to them, whereas by law, it
was still under the control of the state.\textsuperscript{173} Another typical scenario involved the purchase of ‘vacant’ land, which, as described in the sections above, was an ambiguous category, due to the failure of the land law to define it adequately. In the words of one respondent, “the state, the chiefs, the people – they all think that they own the land!”\textsuperscript{174}

In any case involving the leasing of a new plot of land, there is a clear procedure. First, an application is made to the provincial governor. The governor will assign the district commissioner in the relevant district to organize a lands survey, which will involve district administrative personnel in addition to technical officers from the Lands Office. This will involve a visual inspection of the site, and consultations with local people, especially with the locality chiefs and the traditional elders. The participation of the local population – those living there or performing activities there – is stipulated in Article 194 of the 1973 Law. One of the most important functions of the survey is to identify the existing land uses, and in particular, to see whether the area is inhabited. Once the survey is complete, a report is given to the district commissioner and then passed on to the provincial governor. From the governor’s office, the file will be sent to the Ministry responsible for Justice, for approval. The dossier is then returned to the district level, and a full survey is done, including delineation of borders. The final approval of the application depends on the size of the area in question. If it is less than 10 ha, the Registrar of Land Titles can sign the order for the title to be granted. If it is less than 200 ha, then the provincial governor has the authority to sign; if greater than 200 ha the Minister responsible for Lands signs; if 1000 – 2000 ha, only the President of the country has the authority to sign; while if more than 2000 ha, a law must be passed to legitimize the purchase.\textsuperscript{175}

However, these procedures were, in many instances, not properly followed. The root problem involved the corruption of the administrative organs involved, reportedly at all levels. Particularly at the district level, during the late period of Mobutu’s rule, wages were rarely paid, which made corruption a way of life. Cases of double-titling are apparently numerous, especially in urban areas, which risks the legitimacy of the whole land registration exercise. Political patronage networks also encouraged administrative shortcuts: the Minister for Agriculture, who was a Hema, reportedly made the process more accessible to his kinsmen.

In areas where the concessions were bordered by villages and farmland, officials were sometimes bribed to ignore various of the stages of the titling process described above.\textsuperscript{176} Most significantly, the physical survey was not done, or if boundary delineation was done, the local people were not consulted. In some cases, the local chief may have been paid to accept the expansion of the concession, while in other cases he may have been ignored. The landowner would then receive a title document, sometimes bypassing the district and province levels altogether and going directly to higher authorities in Kinshasa. Many of the landowners would then do nothing to expand the concession for a period of at least two years. This is because, under Congolese law, anyone living on land which has been
leased to an individual is granted a grace period of two years before being legally obliged to vacate the area. After this time, the inhabitants lose the right to appeal against the claim of the landowner.

Research indicated that after this two year period, the landowner would arrive at the concession, often accompanied by members of the district authorities, and ask the local people to leave. For the local population (with the possible exception of the chief), this may have been the first they would have heard about the land lease. Their anger or disbelief would have been increased by a sense of the illegitimacy of the concept of sale of customary land. The 1966 and 1973 laws were not effectively disseminated in rural areas and most people were – and perhaps remain – unaware of them. While increased awareness of the laws would not alter their fundamental flaws, it would at least have enabled some local people to find out from the Registrar of Land Titles whether title had been issued to land which they occupied.

Disputes over expansion of the concessions reportedly became frequent from 1975 onwards – which coincides closely with the general decline of the Congolese economy and state apparatus – and took on a more acute, potentially dangerous character. Until this time, the controversies over land acquisition might best be described as structural causes of conflict. This is because they were part of the ‘dual’ economic structure, described above, where elites, many of them Hema, benefited from the market economy, whilst the vast majority – including practically all Lendu people – remained limited to the subsistence economy. Specific disputes over illegitimate land purchase or expansion of boundaries could be classified as proximate causes of violence, because they often involved the eviction of households and were highly ‘visible’. After the arrival of the UPDF, these issues became triggers for violence. The district authorities were compromised through their involvement in the conflicts, and hence lost the impartiality which is needed to mediate such conflicts. The close connection between the authorities and the UPDF (based partly on exploitation of gold, livestock and other resources) at the start of the mass violence further blurred the lines between the administration, military forces and economic agents, making mediation impossible.

This fits with the hypothesis that one of the most important factors in determining whether parties involved in a conflict will resort to violence, is the nature of mediation and dispute resolution mechanisms: if they are seen as partial or ineffective, violence is more likely. Administrative changes were also made, in order to increase the political autonomy of the area, thus benefiting those who profited from the local balance of power. Ituri Territory, which was under the control of the commander of the UPDF in the DRC, Brigadier James Kazini, was promoted to the status of a province, and a Gegere businesswoman, Adele Lotsove, was appointed as governor. The UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo heard evidence to suggest that
she “contributed to the reallocation of land from Lendus to Hemas”.\textsuperscript{179}

In early 1999, Ugandan troops, who were paid by members of the Hema elite to further their economic interests, supported a wealthy Hema man to evict Lendu people who had laid claim to part of his land. A number of Lendu customary leaders were imprisoned and tensions were extremely high. The trigger for violence came in June 1999, when Ugandan troops reportedly intervened in a reconciliation meeting and arrested more Lendu. Tension turned to violence. The UPDF was therefore directly involved in the escalation of the conflict, especially in terms of arming and training different groups in return for payment in cash and kind, and even supporting rival groups simultaneously.\textsuperscript{180} This has been well documented elsewhere and will not be detailed here.\textsuperscript{181}

**Customary and statutory land tenure: De jure theories, de facto realities**

As noted above, the fundamental concept of land ‘ownership’ differs radically between different actors. Although customary land tenure regimes are no longer legally recognised, in practice, customary and market-based means of land access and acquisition operate side-by-side, and are often in competition and conflict. As noted in the sections above, the chiefs were formally stripped of their powers to allocate land. Mobutu denounced “feudal” customary tenure regimes in the East. The legal notion of customary rights was never defined. This has led some experts to criticize the legislation for fundamentally ignoring customary land rights.\textsuperscript{182} Elsewhere in Africa, customary rights are being codified and protected through legislation, due to widespread recognition that attempts to legislate them out of existence have failed, and that they represent a flexible package of use rights often better suited to social and ecological realities than individual title.

On the other hand, customary rights are to some extent built into the land legislation, in a way that reflects custom. In the eyes of local people, the ‘right’ to allocate land – or at least to be consulted before land distribution – belongs to them, through their customary leaders.\textsuperscript{183} In order to avoid possible conflicts over land, an individual or group seeking to be granted a lease to a particular area, even a ‘vacant’ area, will typically consult the chief and the elders of the locality before applying to the province. During local consultations, the local elders and influential people will be informed of the intended uses of the land and will be requested to grant permission. A gift – largely symbolic – will be offered to the chief and elders, often consisting of a cow or goat, which may be slaughtered and eaten during the discussions.

This custom is reflected in the land legislation, which provides that when an application for lease of ‘vacant’ rural land is made, activities are carried out, “…with the aim of protecting the rights of traditional populations. The posting of a notice authorising this research needs to be done in the locality where the site is situated. The research should
include… a census of the people who are there or who are participating in any activity, …[and] interviews with the people to hear their complaints and observations.”

Clearly, this does not provide local people with the right to veto the purchase. However, local practicalities often preclude strict application of the law. The Registrar of Land Titles for Bunia District stated that during the ‘survey’ of the land prior to a title being issued, the local people essentially had a de facto right of veto over the acquisition process: “If the elders refuse, you can’t do anything”. Other surveys have also confirmed that in practice, access first has to be granted by customary leaders before state leases can be issued. This then suggests that the relationships between local people and their chiefs are crucial. Indeed, the Registrar implicated the local chiefs in several of the contentious land disputes. In an example from Komanda town, Irumu District, South-West of Bunia town, local people, and sources in related that the former chef de collectivité had, before the war, distributed land as a concession to a Bahema individual, but that local people had not been happy with the decision. They stated that the chef de collectivité had ‘liked cows too much’, suggesting that most if not all of any benefit to local people had in fact accrued to him. Before the conflict, there had been a series of court battles to overturn the Bahema man’s title to the plot, but all had been unsuccessful. This confirms the point made in section two above, that despite legislation and state rhetoric limiting the powers of the chiefs, they remained highly important players in the political economy of land. In Ituri, as elsewhere, the land issue pivots around the nature of relationships between local communities, their chiefs, local elites and political and technical state functionaries.

Some former government officials argue correctly that the 1973 law and the 1980 modifications are the only regulations governing land leasing in DRC, and the chiefs should not, therefore, have such a role. However, despite this official position, it seems that they are also aware of the importance of local custom. A former provincial governor, after initially denying that the right to veto or droit de regard existed, later confirmed its importance asked about land issues in Bas Congo, where inheritance runs through the maternal line, “and all of the aunt’s sons have the droit de regard”. While in the eyes of the law, such local rights may seem like outdated custom, with no legal basis, the history of land management in Africa and across the world is replete with examples that prove that such customs cannot simply be ‘legislated away’. For changes to occur in practice, legislation has to be accompanied by local consultations, awareness-raising campaigns, and effective implementation of legal provisions by staff who are sympathetic to local attitudes but also rigorous in their application of the law. Most importantly, of course, in order to be followed legislation must be designed to be practical and responsive to local needs and build upon existing realities.

Interestingly, there may be socio-cultural reasons why Hema and Lendu perceptions of the correct ‘protocol’ for land acquisition differ. As
mentioned above, the Lendu see land as primarily a function of individual inheritance rights, within a broader framework of community ownership. The Hema, in contrast, entrust land administration to their chiefs. This profound difference in governance norms and in the way in which land is customarily conceptualized (as family property in the case of the Lendu; as the property of the chief who administers it on behalf of the community in the case of the Hema) provides an insight into the processes at work in Ituri. For the Hema elite, who are also more urbanised than the Lendu, it may be socially acceptable to negotiate directly with the chief, and to exclude other members of the community. For the Lendu, the concept of the chief, the local administration or anyone else being able to alienate what they see as ‘their lands’ may be alien and unacceptable.

**Land and ‘unfree labour’**

Land access has, of course, been massively altered by the conflict, with large-scale ethnic cleansing being carried out in many parts of the territory, affecting not just the Lendu and Hema, but many other communities as well. Some communities like the Bira and Alur were effectively split, with local leaders supporting different sides in the conflict, and have hence become embroiled in violence against, and at the hands of, both Hema and Lendu militias.°

Internally displaced persons (IDPs) are particularly vulnerable to violence, food insecurity, disease and a host of other problems. They are, like all civilians, dependent on physical security in order to settle, however temporarily, and cultivate. As such, they are very vulnerable to becoming controlled in various ways by those in a position to grant, or deny, land as well as security. Fieldwork was conducted in an area traditionally inhabited by the Bira community, which is now experiencing influxes of IDPs from other places. This indicates that there is a high degree of control over land use by the authorities. All the respondents identified the chief de collectivité as the custodian of land rights, and all cited the importance of seeking the permission of the chief before clearing any land for cultivation – even uninhabited forest.

While all the respondents stated that the chef de collectivité was involved in a continual process of identifying plots of land for the IDPs, most IDPS interviewed reported that they had not received land, even though they had been in the town for several months. The chief de collectivité stated that on average, about 300–400 households arrived every month.° Given this workload, a delay in allocating land for each household may perhaps be expected. However, administrative overload may not be the only, or the main reason for landlessness amongst IDPs. It emerged that some IDPs who do not have access to land are providing paid labour for those households who do have farms. Labourers complained that wages were low (reportedly about half a dollar per day), which may be partly due to the availability of a predominantly landless labour force. In theory, those who control land can, by denying access to land for a sufficient number of people, create a large, hungry labour
pool and thus reduce the cost of labour on farms belonging to the upper stratum of society (which the chiefs, for example, generally belong to). Scholars have pointed to the importance of an “unfree labour force”, which exists because of insecure land tenure and the need for physical security, which at present is provided by predatory militias: “protection is offered by powerful elites, often the very same elites who are responsible for the present condition of insecurity”. The basis of this phenomenon lies in the ‘ethnic’ nature of violence. Because of the role of civilians in violence – as perpetrators and victims – entire groups of people become vulnerable to violence and in need of protection. By mobilizing and incriminating local civilians in violence, leaders can exert control over them and benefit from the ethnic cleansing that results.

The creation of an “unfree” labour force in Ituri, as mentioned above, is based not on the issue of availability of land per se, but rather on the issue of physical security in particular areas. The availability of ‘safe’ land is further reduced in the area in question by the existence of a huge strip of pasture, some 10–12 km wide, which is effectively a ‘no-man’s land’ between the areas controlled by different politico-military forces and associated with different ethnic groups.

A statement by the chef de collectivité hints that some aspects of control over land may be important for him, politically or economically. He mentioned that a cash-for-work programme being implemented by a local NGO was “stopping people from working in the fields”. This may be a simple exaggeration, calculated to generate more international assistance. However, it may indicate that by providing off-farm income, the cash-for-work programme is actually undermining local elite efforts to control farm labour by limiting access to land. This remains a possibility, here and elsewhere in the DRC.

Most of the IDP households are being settled on land perceived locally as belonging to the state, and previously unoccupied. Eucalyptus plantations, formerly belonging to a Belgian, had been cleared in one area visited. While it is not certain if these IDP households will remain in the area permanently, this pattern may have important implications for future land use in the area. The villages in question are at the time of writing under the practical authority of one of the former rebel groups, and the central authorities in Kinshasa are yet to have any real influence at the local level.

Some of these IDPs are receiving land located on a concession to which a Bahema businessman claims legal ownership, and have planted crops. The chef de collectivité stated that 10–12 IDP households came to his area every week, suggesting that the number of houses and fields could increase fairly rapidly. It seems that the local authorities (in this case the chief, in collaboration with the rebel group in control of the area) are using IDP populations to stake a community claim on a disputed concession. This is unlikely to be the only example of this situation.

This puts aid agencies in an awkward position. While some organisations assert that they do not provide resources to ‘squatters’, it is often...
difficult to know the status of lands in an emergency situation.\textsuperscript{193} It is also difficult to negotiate humanitarian access with some of the military groups, and this may prevent effective investigation of such issues. An international NGO operating in the area has already distributed seeds and tools to the population, without discriminating between IDPs and returnees, as all were considered ‘vulnerable’. It was to distribute more in early-mid 2004, and was aware that by doing so, it would contribute to the cultivation of a disputed concession. This is in some ways a similar dilemma to that faced by agencies operating in post-genocide Rwanda in 1994, who by distributing seeds and tools, were strengthening the claims of those who had access to land – if only on a temporary basis.\textsuperscript{194} Such international assistance may possibly have some influence – no matter how ‘indirect’ – on possible future conflicts.

Land issues are of great pertinence to post-conflict reconstruction and cannot be ignored by any of the stakeholders involved, including operations such as MONUC, which may, consciously or otherwise, have an impact on resettlement patterns through the (unavoidably) uneven provision of security. As noted above, land-related conflicts are partially a result of systemic failings of the land tenure legislation and the administration and justice system. In Ituri, local perceptions of community rights mean that market-based systems cannot operate as provided for in the legislation. In response, some members of the local elite short-circuited the land administrative system through corruption. When this was exacerbated by the use of force and administrative changes implemented by the UPDF, the result was violent conflict of an ‘ethnic’ character. The involvement of civilians in violence of a ‘genocidal’ nature has resulted in massive population movements and creation of no-go areas for members of particular ethnic groups. This has created problems not just in terms of future restitution of property rights, but also in terms of local economies. With 80\% of livestock missing from the local economy (either killed or moved across the border to Uganda), and ethnic communities divided into separate blocs, agricultural communities have little access to meat and milk, and pastoralist households little access to grain and vegetables. This problem is at the same time part of the solution, as the mutual suffering has encouraged local people to form agreements which provide access for certain groups to markets. These small beginnings can be built upon in order to gradually encourage movement of goods and people.

The role of the chiefs, in some cases, is somewhat similar to that documented above regarding the Kivu Provinces. The situation in Ituri therefore reflects a wider national challenge to land administration and local governance. Many apparently consider the violence in Ituri to be separate from the patterns of conflict in the Kivu Provinces, with its own ‘historical dynamics’.\textsuperscript{195} While each portion of the vast country that is DRC has its own particular characteristics, the political economy of land ownership is a national-level issue. The exploitation of natural resources throughout the DRC is inequitable and predatory, based as it is on
patronage networks developed during Mobutu’s era, transformed by conflict, and protected by contacts with military forces. The main difference between the ‘stable’ West of the country and the unstable East, is the amount of overt violence and chaos associated with it. Land and environmental governance issues should not be ‘ghettoised’ through an underestimation of the governance factors which are systemic, even though they lead to different outcomes in particular places.

In the DRC, the return of refugees and IDPs and the restitution of property should be based on principles of justice, and in light of the widespread manipulation of the law in the past, should also be pragmatic.

CONCLUSIONS

The objective of this chapter was to analyse how the issues of land access and control have influenced the Congolese war, either as a structural cause or as a dynamic of conflict. As stated in the introduction, the reasons for this analysis were multiple. First, access to land since the start of colonialism has shifted from a structural basis of social identity to a currency of political power and economic wealth, through commoditisation and alienation of land from customary tenure systems. While these historical shifts have turned land into an important economic and political asset for some, they have marginalised large parts of the rural population. Second, in Ituri and Masisi, the two case studies of this chapter, land issues have been pointed at by many observers as one of the main proximate causes of violence and intensified competition between ethnic groups. Third, the conflict in the DRC has produced a serious impact on the existing patterns of land access due to shifts in authority structures, (forced) displacement and the consolidation of new power structures. And finally, the problematic system of land distribution in eastern DRC is one of the constraints to a peaceful resolution of local conflict.

From the study of the structural organisation of land access and control in eastern DRC, and of the role of land in local conflicts in Ituri and Masisi, a number of conclusions can be drawn:

First, our analysis has pointed out that the political manipulation of the land issue is part of a larger, historical process. The DRC is no exception to Herbst’s observation that “the role of local elites in the distribution of land is critical to the autonomy of the state. As a result, states have continually sought to alter property rights in order to disempower local elites.” In different regions of eastern DRC, local elites have tried to consolidate their power position (the customary chiefs, the Hema elites in Ituri) or escape from state control and gain some economic autonomy (Banyarwanda elites) by the control over land. In return, Mobutu – through his politics of zaireanisation – turned land into a reward to be distributed among the members of his own patronage system, in order to guarantee their loyalty and to prevent the formation of local counter-forces. Both processes have led to large-scale poverty and food insecurity.
Second, in eastern DRC, the relationship between land and conflict is complex and multidimensional. While land shortage or exclusion did not necessarily lead to conflict, these structural elements have provided a conducive environment for local, national and regional actors to strengthen their control over territory, social mobility and natural resources. Land, in this sense, has become an objective of armed struggle (see the strategy of the Hema elites in Ituri) while at the same time land insecurity could be manipulated to mobilise rural populations (see the continuous competition between ethnic communities in Masisi).

Third, since the start of the Congolese war, land has turned from a ‘source’ of conflict into a ‘resource’ of conflict. In the cases of Masisi and Ituri, land was a structural cause and also a trigger for violent clashes between local militias. In both regions, several examples point to the importance of land as a key element for the development and consolidation of new systems of power, profit and control. Rebel leaders have mobilised existing patterns of ‘unfree labour’ (thereby giving new meaning to this notion) and have turned land into an asset to be distributed among its members. These practices are both based on inclusion and exclusion: those belonging to the ethnic network in control are granted free access to land; those not belonging to it become the main victims. It explains why conflict in Ituri and the Kivus has had the effect of hardening ethnic boundaries and why the problematic systems of land distribution need to be addressed in order to reverse the dynamics of conflict into dynamics of peace.

**A history of patronage and exclusion**

Analysis of the shifts in the access, use and control of land in eastern Congo has pointed at a number of elements that help to elucidate why this land issue, at several times in history, has triggered local conflict. Two different dynamics could be distinguished. First, colonialism has produced a qualitatively different use of land. Traditionally, the local economic space reflected the local social organisation and gave a material basis to ethnic belonging, a process that was described by John Lonsdale as ‘moral ethnicity’. Colonialism, however, had the effect of eroding this customary social order (or precolonial hierarchies). On the one hand, these ethnically based structures were integrated into the colonial administration and became crucial ingredients of the Belgian version of indirect rule. The effect was that it institutionalised ethnic identity as an organising principle of the colonial state. On the other hand, the introduction of individual ownership by the colonial administration turned agriculture into a source of accumulation. As the economic success of the individually owned plantations depended on the availability of labour, the colonial settlers introduced the practice of ‘unfree labour’. This colonial agricultural economy had two additional effects: it limited the available space of the rural population to the customary held land and drastically changed the ethnic composition of
some parts of eastern DRC, as it facilitated the immigration of labour from Rwanda into North Kivu. Both effects led to increased competition for the available space and announced large-scale economic marginalisation due to insecure land tenure of the rural population.

A second dynamic was the use of land, after Independence, as a political currency. Under Mobutu, agriculture was further consolidated as a source of accumulation and the customary authorities were integrated into new networks of patronage. A double process could be witnessed. While Mobutu distributed land amongst the members of his own patronage network (as part of a strategy to consolidate his control over the Zairian territory), other forces tried to escape from the control of the political centre or customary chiefs by buying large tracts of land. This last strategy was one of the few options of the immigrant Banyarwanda communities, who did not – given their immigrant status – have free access to (customary) land and thus tried to purchase it. In order to guarantee his control, Mobutu introduced in the early seventies a new land law (the ‘Bakajika law’, which confirmed the double notion of ownership) as well as a process of zairianisation of the existing economic infrastructure and resources. For many observers, this legal framework is at the roots of large-scale violence, because its implementation further marginalised large parts of the population and provoked regular contestations by food insecure farmers. According to Pottier, this law institutionalised ‘political and economic protection’ by those elites that were “responsible for the existing conditions of insecurity”.

In other words, the Bakajika law provided a coalition of comprising elements from the state bourgeoisie, traditional authorities, administrators, etc. with easy access to land. At the same time, resources of poor peasant households were put under growing pressure. Parts of the peasant population were faced with complete impoverishment as the shift of land to a source of capital accumulation led to land dispossession and alienation. By the early nineties, competition for land had become very tense. When local elites were forced to reposition themselves during the democratisation process, in different regions they started mobilising the class of landless people on the premise that other parts of the population were responsible for their limited access to land.

Land struggle as part of the Congolese war-complex

The direct relationship between problematic access to land and conflict was further consolidated after the start of the Congolese war in 1996. On the one hand, local disputes for land came to be linked to the larger, multi-level conflict for political power and control over local resources. On the other hand, land has become integral part of strategies by new coalitions – comprising local and regional actors – to get control over local economic spaces, territory and social mobility.

A perfect example of how local dynamics of land access became integrated into a larger, multi-level struggle between local militias, national
elites and foreign army commanders for territorial and economic control, is the conflict in Ituri. Here, as was demonstrated in this chapter, contested purchase and expansion of agricultural and ranching concessions have stirred up the cauldron of ethnic conflict, turning this part of the DRC into a scene of mass violence and displacement. Since 1999, based on opportunistic interpretation of the Bakajika law, local Hema elites have tried to improve their economic power position. The generalised context of disorder was skilfully exploited, while the necessary support for their strategies was provided by greedy UPDF commanders. The subsequent reaction of food-insecure Lendu farmers was the start of a conflict that has given impetus to the proliferation of rural militias and until now has not found its resolution. From this example, it can be concluded that while the existing mechanisms of land distribution have been one of the most important dynamics of local conflict, it was only after the start of the DRC war, and the involvement of local rebel movements and foreign armies, that this dynamic led to mass-scale violence. The reason for this is that land had become a useful asset for a number of actors involved in the conflict. Closer analysis of the Ituri conflict reveals that mineral resources are not the prime objective of armed actors, but land is the most important economic resource. Another conclusion is that insecure land tenure helps to explain the success of militia groups. While landless youth are an easy mobilisation reservoir for militia leaders, warlords can extend their control over social mobility and territory through the control over land. As Pottier states, “warlords have loyal militias because they control the unfree labour of the unprotected. He who can claim a piece of land, or an entire region, can claim its people.” While it was stated in the introduction that structural violence – in terms of elite predation, lack of service provision, unaccountability and arbitrary governance – was to a large degree a ‘normal’ function of the Congolese state system, the Congolese war has given this form of violence a new meaning because of the shifts in the relationships between the ‘rulers’ and the ‘ruled’.

Since 1996, land has also shifted from a source of conflict, into a resource of war. The most visible illustration is the confiscation by local commanders of land that they cannot legally claim. The case study of Masisi points at the importance of land for the consolidation of alternative power structures. While the AFDL- and RCD-campaigns advantaged the Banyarwanda elites in their claims to land, the same land has become one of the crucial assets around which a new local power complex under control of the Banyarwanda elite has been constructed. This power complex offers a good example of how local elites have instrumentalised a context of state decline and conflict and have combined foreign and national support networks for their local interests. Access to land, in the case of Masisi, has several functions. It provides this new complex with the necessary economic basis, yet at the same time helps to consolidate the support of the grassroots population, which in return is granted access to land. The informal governance
structure that has emerged from the unequal resource attribution – and which include both military and political elements, foreign and local actors – has laid the basis for a further reinforcement of ethnic boundaries, as this structure is based on processes of inclusion and exclusion.

It was one of the underlying arguments of this chapter that access to land is crucial to an understanding of the political economy of the DRC. It has been demonstrated that the relationship between access to land and local conflict is structural as a result of the introduction of double systems of land ownership by the colonial administration and the skilful manipulation of land as resource under Mobutu’s rule. Since the start of the Congolese war, a number of important shifts in local land access patterns could be observed. While unequal access to land was one of the local causes of conflict, the Congolese war has provoked new competition for land, a re-negotiation of the local economic space, the formation of new complexes of control over territory, social mobility and economic exploitation (with land as one of the main assets), and a hardening of ethnic boundaries. It is highly unlikely that these processes can be stopped without addressing its root causes. The outcomes of our analysis point at the urgent need for agricultural reform and the strengthening of the capacities of the grassroots populations to claim their rights. Without this reform, insecure access to land will continue to push people into militias and will continue to offer rebel leaders a means to consolidate their informal systems of power, profit and control.

**FINAL THOUGHTS AND RECOMMENDATIONS**

This chapter has identified a number of different causes of land-related problems, which include the historical legacy of migration; the deficiencies of the legislative framework for land tenure; the shortcomings of under-paid authorities which implement that legislation; the manipulative divide-and-rule policies of neighbouring countries; and the wider economic and political dynamics which have reduced off-farm opportunities and altered the role of land in the rural economy. In addition to these ‘systemic’ or ‘structural’ problems, land access for many households and communities has been fundamentally altered by violence, which has displaced millions. The extent of geographical, political and cultural variation across this vast country also rules out ‘blanket’ prescriptions. Even within eastern DRC, as we have seen, the issues and actors are very different in Ituri, North Kivu and South Kivu.

The wide range of inter-linked causes suggests that there are no simple solutions. Clearly, none of the issues above can be addressed in isolation from each other. The reform of the land tenure law, and the formulation of an effective policy, would, for example, be rather meaningless in a context where the rule of law is not respected and central government has little influence on day-to-day affairs. Security for all is paramount: a title deed is of little value if one cannot live on one’s plot due to the threat of violence. For this reason, land access in the
post-conflict environment should be understood as the ability to access and use land, free from threat.\textsuperscript{202} In this understanding the most important issue is the establishment of the authority of an accountable, legitimate central government throughout the country. However, this process will take some time to occur, especially as politicians will increasingly be looking towards the forthcoming elections; stabilizing the situation in the east may not be a priority for many until after the elections.

For this reason, we have separated our recommendations into two categories: short term and longer term. The recommendations for short-term action assume the continuation of the status quo: that is, relative stability (with the possibility of sporadic but contained violence) and a high degree of regional autonomy in decision making \textit{vis-à-vis} central government. The recommendations for longer term action assume that a reasonable level of stability can be maintained and the central government can gradually increase its influence over the East.

\textbf{Recommendations for short-term action}

\begin{itemize}
\item Foreign governments, particularly neighbouring countries, should desist from any military support to military or other actors in the DRC and should resist the temptation to destabilize Eastern DRC for their own political or economic purposes. If neighbouring governments are found to be engaging in destructive, destabilizing politics, the international community should condemn their actions and reduce or freeze foreign assistance accordingly.
\item Aid agencies should ensure that all programmes are designed through a conflict-sensitive planning process, in order to ensure that potential negative impacts of their activities are avoided or mitigated. This is particularly important for any programme which may influence population movements or resettlement, livestock movements or land use patterns. Detailed information on land access and historical land claims should be collected in order to inform conflict-sensitive planning.
\item The role of community representatives in land issues should be addressed. Despite their historical role in the alienation of land, the customary chiefs retain some legitimacy, particularly in areas where many local people see the ex-rebel authorities as illegitimate. They must therefore be involved in the mitigation and ultimately the resolution of land conflicts, but only through a process of open discussion about the role of various parties in the land access crisis. International actors should be ready to facilitate such a process, but aware that dialogue can easily be hijacked for partisan ends. All local communities should be involved in identifying legitimate customary leaders, in order to avoid political manipulation of the office.
\item Evidence from Ituri and other areas suggests that local markets are the practical focus for local peace-making agreements. In the Irumu District of Ituri, for example, certain areas have no livestock, which forces them to make access agreements with opposing groups in order to buy meat
\end{itemize}
and milk. These spontaneous agreements should be supported, not just by NGO efforts to reconstruct market facilities and roads, but also by MONUC in terms of security arrangements.

- The key to avoiding future recourse to violence lies in the establishment or reinstatement of effective and impartial dispute resolution mechanisms. The judiciary should be strengthened in order to become more effective, and the Transitional Government should take steps to ensure that they are able to operate without political interference. While their influence may be less significant in remote rural areas, the judiciary will be particularly important in promoting the rule of law in urban areas, where there are many disputed ownership claims to valuable property. Strengthening of judicial institutions should be an ongoing, nationwide process and should be aimed not just at improving the quality of decision-making, but also improving access to justice, particularly for the rural peasant population. In relation to land, this should eventually involve awareness-raising of the legal frameworks to land ownership.

**Recommendations for longer-term action**

- A commission on land ownership should be established and charged with the responsibility to analyze the dynamics of land access nationwide, with a focus on areas where land access issues have been related to conflicts, and deliver a report within a limited timeframe. The composition of such commission should respond to a number of criteria agreed upon by major parties concerned in the land problem, particularly as it relates to the volatile issue of citizenship in North and parts of the South Kivu. At least a third of the members of the commission should be qualified people from outside the contested region. The commission should also include customary chiefs and elders, although not those who have been particularly compromised in terms of land expropriation or relationships with armed groups. Current or former politicians and military personnel (government or ex-rebel) would be excluded from the commission. The commission should conduct extensive consultations, involving real community input from rural areas. Their recommendations should be approved by consensus amongst the concerned parties.

- The findings of the commission would be brought to the parliament for enactment of a new policy on land allocation and distribution. The policy would seek to define ‘customary land rights’ in order to provide the majority of Congolese people with secure access to land. This policy should be implemented through local by-laws and regulations and monitored within government and by civil society groups. On the basis of this experience, a new law should be formulated within a year of the policy being finalized.
• A process of network building between local, national and international institutions should be instigated in order to build a constituency for peace and justice. The partisan and self-serving nature of many civil society groups (which has partly been a result of the modes of external support) should be counteracted through a long-term but low-profile programme of engagement by donors, informed by close grassroots involvement and research.

• As has been noted throughout this chapter, land access disputes are not the only problems related to the conflicts in the DRC. Political struggles and attempts to monopolize access to precious minerals and other resources are also extremely significant. They are relevant to this study because they have a direct bearing on land rights issues and related conflicts. Inciting violence around the issue of land rights through supporting proxies, for example, is a convenient way to access mines, forests and other valuable resources without going through central government. A number of contracts have been signed between various parties in the DRC (especially the Kabila-faction of the government) and investors, for example in the mining, oil, and timber sectors. The government and local authorities should consider the effects of possible activities by such investors on local land rights, particularly in disputed areas such as parts of Ituri and the Kivu Provinces. If such activities can be undertaken without major disruption to land rights, then they should be conducted without the use of private security or tacit support for militias, as both are likely to have repercussions on local inter-community relations.

• Given the importance of natural resource exploitation in the structures of patrimonialism in the country, the international community should encourage and enable the government to reform the governance environment and put in place benefit-sharing agreements for local communities adjacent to mines, forests, and other sources of revenue. Given the complexity of the factionalized politics in Kinshasa, the extent to which such enterprises benefit local people should be the benchmark by which they are judged ‘legitimate’, rather than whether they have gained official recognition. This will provide off-farm sources of income, hence reducing pressure on land, and also reduce the extent of ‘patronage politics’ in the country, which affects the whole nation, not just those parts recently affected by conflict. The international community should therefore restrain, if necessary, foreign investment which is likely to compound inequalities and entrench exclusionist political-economic structures.

ENDNOTES

1 This chapter is based on research conducted by Koen Vlassenroot over a period of several years, and research conducted by Chris Huggins for this study in Ituri Territory and Goma, April–May 2004. The field research, which involved semi-structured interviews
with a range of stakeholders (including internally displaced households, local householders, civil society representatives, landowners, district officials and international NGO personnel) was complemented by a review of secondary literature. The chapter was reviewed by Professor Makumi Mwagiru and John Katunga.


4 A Tegera, op cit.

5 Between 1965 and 1967 there were six major uprisings, each of which was violently repressed. Ruthless suppression of peaceful civil society opposition was also practiced. See J McCalpine, *Historicity of a Crisis: The Origins of the Congo War*, in JF Clark, *The African stakes of the Congo war*, Fountain Publishers, Kampala, 2002.

6 Scholars have warned of the dangers of imposing Western definitions of ‘legitimacy’ and ‘criminality’ on African realities, as these depend on the extent to which the benefits accruing to individuals are redistributed throughout communities. From such a viewpoint, clientelism becomes ‘illegitimate’ when it is judged to be too exclusivist. See P Chabal and J-P Daloz, *Africa works: Disorder as a political instrument*, International African Institute/ James Currey/ Indiana University Press, 1999.


8 The state, of course, is not the only actor involved in the running of day to day lives. Congolese communities in many areas, facing a state governance vacuum, established their own, locally legitimate structures, encompassing natural resource management, income generation and service provision functions. See, for example, D Beke, *Local government and administration, traditional and new leaders in the DR Congo conflicts*, (draft) unpublished paper, University of Gent, Belgium, 2004.

9 Figure from ISS website: [http://www.iss.co.za/AF/profiles/DRCongo/Table_Population.html#Anchor-4257](http://www.iss.co.za/AF/profiles/DRCongo/Table_Population.html#Anchor-4257) See also C Moyroud and J Katunga, *Coltan Exploration in the Eastern Democratic Republic of Congo*, in J Lind and K Sturman (eds), *Scarcity and surfeit: The ecology of Africa’s conflicts*, ISS/ ACTS, Nairobi/ Pretoria, 2002.

10 C Moyroud and J Katunga, op cit.


12 See for example S Jackson, *Fortunes of war: the coltan trade in the*
A variety of terms may be used, and some theorists only distinguish between ‘proximate’ and ‘structural’ factors, including triggers, accelerators, and other terms within the concept of proximate causes. See A Schmid, *Thesaurus and glossary of early warning and conflict prevention terms*, FEWER, London, 1998; and S Verstegen, *Conflict prognostication: Toward a tentative framework for conflict assessment*, Clingendael, The Hague, 1999.

The conflicts are, of course, not merely domestic but regional in nature because of the extent of foreign involvement. The present study acknowledges that fact and does not seek to suggest that the conflicts are entirely internal to Congolese groups, or are based entirely on ‘local’ issues.

One example of this traditional organisation was the very hierarchical administrative structure of the Bash community. At the top of the pyramid, the Mwami was bestowed with supreme power. In their position of representing the ancestors, they were the owners of both the land and the cattle. The country was subdivided into provinces, each of them ruled by a Nahano or Murhambo. Next came the chiefdoms, which were headed by a Mushamuka. At village-level, the power was exercised by a Mugula (or ‘pater-familias’), who was responsible for tending to at least 15 cows and who could
claim patronage over four to five families. Although those in power ruled in an autocratic way, ancient laws and customs always controlled their behaviour. The same well-organised structures were in place if we look at the Bahunde. The proverb ‘ozigara bushige ateta mukoro’ (‘one has to submit to the decision of the chief’) demonstrates this quite clearly. See RP Viane, La religion des Bahunde, Kongo-Overzee, 1952, (5), pp 25–26.


27 The difference between a Murhambo and a Murhwali is difficult to trace, but according to Mugangu only relates to a different origin. The Barhambo originate from the grassroots population, while the Barhwali are members of the royal family. In most cases, only the Barhwali have the right to distribute land, while the Barhambo only represent some form of political authority. See: S Mugangu Matabaro, La gestion foncière rurale au Zaïre. Reformes juridiques et pratiques foncières locales, Cas du Bushi, Louvain-la-Neuve: L’Harmattan, Academia Bruylant, Paris, 1997.


31 In the Kivus, colonial entrepreneurs claimed the most fertile lands and did not hesitate to chase the local peasants from their parcels. This was for instance the case in Kavumu, which is located some forty kilometres north of Bukavu. Here, 431 ha were acquired through two operations (in 1926 and 1929). The local administrator had declared that these parcels were vacant but after verification it turned out that an estimated 500 or 600 people were forced to leave their lands. C Bashizi, Processus de domination socio-économique et marché du travail au Bushi (1920–1945), in Enquêtes et documents d’histoire Africaine, 1978; Drevet, Les Plantations Industrielles du Kivu


36 J Pottier, op cit.


42 Another consequence of this convention was that it cut through existing local kingdoms and divided ethnic communities.

43 The Tutsi-minority of Rwandan descent (or Banyamulenge) living in South Kivu, however, was not entitled to the same rights. The fact that the Belgian colonial powers did not treat this minority in the same way as it did the minorities living in the Ruzizi Plain and North Kivu, resulted in an exclusion from the right to institute their own customary authority.

44 L De Saint Moulin, *Mouvements récents de population dans la zone de peuplement dense de l’est du Kivu*, in *Etudes d’histoire africaine*, 7(10), Presses Universitaires du Azire, Kinshasa, 1977–1978, pp 113–24. This figure must be regarded with caution, since there were also an unknown number of illegal economic migrants that were established in Kivu.

45 J McCalpin, op cit.

46 M Mamdani, op cit, p. 4.


48 B G Schoepf and C Schoepf, op cit, p 22.


53 Mobutu’s chief of cabinet, Bisengimana Rwema, was even rewarded for his political loyalty with the Osso ranch, one of the biggest colonial plantations.

54 Fieldnotes collected in Masisi, September 1999 and July 2003.

55 F Van Acker, *La ‘Pembénisation’ du Haut Kivu: Opportunisme et droits fonciers revisités*, in S Marysse and F Reyntjens (eds),
From the ground up


56 F Van Acker, op cit, p 13. In 1989 the Mwami-Kazi (the Mwami’s mother) in Katana succeeded in getting the legal rights over a large tract of land that belonged to local farmers under the principle of kalinzì. She later sold this land to rural capitalists who were unable to exploit their plantations in fear of local unrest.


58 B G Schoepf and C Schoepf, op cit, p 24.


60 L De Saint Moulin, op cit, p 114.


62 B G Schoepf and C Schoepf, op cit, p 11.

63 K Vlassenroot and F Van Acker, op cit.

64 A Macintosh, *Consultancy visit to North and South Kivu*, Save the Children Fund (UK), London, 1998.

65 F Van Acker, op cit, p 18.


67 In Bunyakiri, the attempts of father Yves Lacoste to attract young farmers from Walungu were unsuccessful. After a short stay in Bunyakiri, most of them returned home because no guarantee was offered that the land they were cultivating would in fact belong to them.

68 As the authors observed in Kaziba (South Kivu), every week hundreds of very young people walk from Walungu (South Kivu) to Fizi and Baraka (South Kivu), where they hope to find some temporary employment as farmers or as gold-diggers at extremely low wages (less than one dollar a day). Fieldnotes, Kaziba (South Kivu), June 1998, September 1999 and July 2003.

69 There were several methods for the marketing of gold. The first one was through direct sale to gold traders at the mining site. In most cases, gold diggers were members of the local community, while the traders were mainly landless young men or small businessmen from other regions such as the Bushi region. In most these buyers would either sell their gold to the comptoirs (authorized counters) in the cities or to (foreign) businessmen. Gold purchased by this last method does not pass through the authorized counters but is smuggled across the frontiers to be sold on the international market in Bujumbura or Tanzania. Migrant diggers sometimes try to market their production themselves and sell to licensed counters or (foreign) businessmen in the cities.


ACOGENOKI is a co-operative association for livestock-keepers, associated with Tutsi-banyarwanda interests. B G Schoepf and C Schoepf, op cit, p 25.

For an analysis of the eruption of violence in Shaba in 1992, we refer to: J Gorus, Ethnicity in Katanga, in D Goyvaerts (ed), Conflict and ethnicity in Central Africa, Institute for the Study of Languages and Cultures of Asia and Africa, Tokyo, 2000.

The installation in Kinshasa of the ‘Conférence nationale et souveraine’ (CNS) and later the ‘Haut Conseil de la République’ (HCR) as part of the democratisation process, was a turning point for many reasons. Disputes were concentrated around the issue of who would represent Kivu at the conference. At first, indigenous leaders and some Hutu-representatives found agreement in the exclusion of the Tutsi population. However, in the end the Hutu population was subject to exclusion as well, although some Hutu-leaders managed to participate at the National Sovereign Conference (CNS). The citizenship question again became a contentious issue and representatives from eastern Congo in the CNS and HCR urged that priority be given to its resolution. The issue became even more contentious when, in 1992, the CNS confirmed the 1981 Citizenship law. The final report, however, stated that it could not be an objective of the conference to render people stateless or to retroactively deprive them of their rights.

It is said that soon after the arrival of the Nande-fighters in Masisi, serious problems arose between them and the local Hunde fighters, who refused to follow the orders of these Nande commanders. Finally, these Nande were forced to return to the Ruwenzori mountains.


The role of Western governments and multinational companies, while vitally important (especially in terms of mineral, and timber exploitation, as well as diplomatic and financial support to particular regimes or peace processes), is not dealt with in depth in this report. Readers are referred to reports such as UN Panel Of Experts, Current situation: Exploitation, arms flows and trends, 2003; and C Moyroud and J Katunga, op cit.
From the ground up

81  C Moyroud and J Katunga, op cit.  
82  D Beke, op cit.  
83  Confidential aid agency report, drafted in 2004.  
84  O Afoaku, Congo’s Rebels, in J Clark (ed), op cit.  
86  See for example F Van Acker and K Vlassenroot, op cit.  
87  See for example the interview with a ‘senior civil society figure’ cited in International Crisis Group, 2003, op cit, p 28. Mayi-Mayi forces are found in the Kivu Provinces as well as further West, in Kasai and Katanga. While they are now part of the national-level struggles, with representation in Kinshasa and the unified Congolese army, the various groups were originally formed, in most cases, as local ‘self-defence’ groups.

88  Ibid.  
91  It is widely believed that despite the official withdrawal of Rwandan troops, undercover units remain, whilst RCD structures are intimately connected to the Rwandan military system, and troops covertly cross the border on a regular basis. MONUC forces stated that they spotted Rwandan troops in North Kivu on the 22nd April. See for example Concertation Chrétienne pour l’Afrique Centrale/ Great Lakes Advocacy Network/ Resau Europeen Congo, *MONUC in the DRC: Strengthen its Mandate, Denounce the Warmongers*, Brussels, 2003.

95  International Crisis Group, op cit.  
96  The violence in Bukavu took place between different units of the national armed forces (units of the 10th and 8th Regions), and involved gross human rights abuses against civilians. One of the triggers for the fighting was violence carried out by soldiers loyal to Kinshasa against Banyamulenge (Congolese Tutsi). Interviews with local and national NGOs, Goma, July 2004. Also see Human Rights Watch, *DR Congo: War Crimes in Bukavu*, Human Rights Watch Briefing Paper, New York, June 2004.
97 C Moyroud and J Katunga, op cit.

98 As defined by Thomas Homer-Dixon, structural scarcity refers to a condition of unequal distribution of resources, while an increase in demand due to population increase or increase in per-capita consumption is termed ‘demand-induced scarcity’. See Homer-Dixon, T and Blitt, J Ecoviolence: Links among environment, population and security, Rowman and Littlefield, Massachusetts, 1998.


100 M Tsongo, Problématique d’accès à la terre dans les systèmes d’exploitation agricole des régions montagneuses du Nord-Kivu (Zaire), Louvain-La-Neuve, UCL, 1994.

101 Interviews, Goma, April 2004.


104 Interview with civil society activist, Goma, April 2004; see also S Jackson, 2003, op cit.


106 H Romkema, op cit.

107 Save the Children (UK), Update of the household food economy analysis of the rural population on the Plateaux Zone, Masisi, North Kivu, DRC, Goma, 2003.

108 Ibid.


111 Interview with NGO personnel in Goma, July 2004; and Aide et Action Pour La Paix, , op cit.

112 Interviews with national and international NGOs, Goma, July 2004.

113 CREDEAP, op cit.


121 Several reports also suggest that TPD vehicles were involved in the transportation of armed personnel in support of General Nkunda’s attack on Bukavu in May/June 2004. Source: interviews with local and national NGOs, Goma, July 2004.


124 Interview with human rights researchers, February 2005.

125 Interviews with international human rights activists who visited the area, Goma, March 2004.

126 J Frushone, op cit.

127 Interview with Director of North Kivu Province, Goma, March 2004.

128 Land tenure security is here understood as a function of the perceptions of local people, not just a legal or social ‘objective reality’. See D Beke, op cit.

129 H Romkema, op cit.

130 Save the Children (UK), 2003, op cit.

131 Aide et Action Pour La Paix, op cit.

132 Interview with NGO personnel, Goma, July 2004.

133 Interviews with NGO staff, Nairobi, April 2004, and aid agency internal reports.

134 Interview with members of major land-holding families, Goma, April 2004, and members of civil society, July 2004; also information derived from *Tableau récapitulatif des plantations dans le Masisi* based on data provided by Inspection Régionale de l’Agriculture, Pêche et Elevage du Nord-Kivu, reproduced in Aide et Action Pour La Paix, 2004, op cit. It should be remembered of course that Governor Serufuli is of Hutu origin, as are many members of the Local Defence Forces.

135 Very few plots in Walikale are registered

136 Of the 16,000 population, only 900 remained in town in July 2004, the rest having fled into the forests to avoid violence. Interview with international NGO, Goma, July 2004.

137 For example, plans for an extension of the road from Kisangani to Goma are at an advanced stage.

138 During field research, local civil rights activists made available photocopies of Rwandan and Congolese national identity documents allegedly proving that a single Rwandan individual simultaneously possessed both documents. This is in contravention of Congolese law, though Rwanda has offered citizenship to all people of Rwandan origin, wherever they may reside.


The violence can, indeed, be described as ‘genocidal’. But whether genocidal impulses are root causes, or the defining feature of the violence, is another matter.


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

These alliances are opportunistic and it remains to be seen whether they will survive for long. However, their very existence does prove that strategic interests sometimes outweigh ‘ethnic’ agendas.


The Nande population of Bunia town, for example, was systematically forced out *en masse* in 2003, by the ‘Hema’ UPC who were controlling the town at that time.

As mentioned above, the ‘Lendu’ and ‘Hema’ are made up of numerous sub-groups. However, for clarity, we will refer to them in terms of their broader identities for most of this section. Recently, divisions have appeared between the Hema and Gegere communities, partly because of economic differences, though due to limitations of space, this issue is not addressed in this chapter.


Some dispute this: one Hema intellectual, for example, argues that the Hema arrived in the region in the 11th century, before the Lendu (interview in Bunia, February 2004). While ancient history should not be used as the basis of land claims (as the constitution of the country guarantees freedom of movement and the right to claim property for all citizens), it has a certain propaganda value to some actors.

See FEWER, op cit.; and J Pottier, op cit.

J Pottier, op cit.

The Lendu during this period have been characterized as a ‘war-like’ people by some. See FEWER, 2003, op cit.

“Chacun reste sur la terre ou le fief di ses ancestres et personne n’a le droit sur cette terre... in effet, la terre appartient aux individus”.
“Chez la Bahema, le chief de collectivité reste seul responsable de la terre de son entité. Aucune notre personne n’a droit de décider quoique ce soit en matière de terre.” Ibid.

Clearly, ancient history does not determine current events, as some sections of the Alur community now support the Lendu, while others support the Hema.

Their lack of participation in formal education and economic networks is reflected in the leadership of Lendu military/political groupings such as FRPI, who tend to be less educated than those of some other armed groups. Source: Confidential military intelligence briefing, and interviews with NGO personnel.

Sale of church land has been technically illegal since the 1973 land law, as the state is the owner and the church is merely a lessee.

Under Congolese law, all land belongs to the State. Use rights are conferred through leases of up to 99 years.
177 Interview with former administrator, Bunia, April 2004.
180 Asadho, op cit.
181 See for example International Crisis Group, 2004, op cit; Asadho, op cit; O Sematumba, op cit; M Malan and J G Porto (eds), op cit.
182 S Leisz, op cit.
183 This is locally referred to as *droit de regard*, the right to ‘look after’ the land – though in the eyes of the law, the term *droit de regard* refers to rights of management enjoyed by either the state (in which the correct term is ‘eminent domain’) or the landowner.
184 “une large publicite visant a proteger les droits des populations coutumières. L’iffichage de l’avis autorisant l’enquete doit se faire dans la localite ou le terrain est situe. L’enquete comporte… le recensement des personnes s’y trouvant ou y exercant une quelconque activite…l’audition des personnes qui formulent verbalement leurs reclamations ou observations.” Aide et Action Pour La Paix, op cit.
186 The *chef de collectivité* was killed in an ambush on his vehicle during the conflict.
189 In many cases, administrators exaggerate figures in order to make a better case for relief assistance. However, the figures broadly tally with figures given by a chief de localite, and the co-ordinator of an international relief organisation based in the town found them feasible.
190 A plot belonging to one chief de localite which was visited was noticeably larger than surrounding plots being cultivated by IDPs.
191 J Pottier, op cit.
192 The group in question is part of the Transitional Government, but practical linkages between the local level and Kinshasa are not yet in evidence.
193 Security issues constrained fieldwork conducted for this chapter, as such sensitive issues could not be approached through direct questioning.
194 See J Pottier, op cit. In Rwan da, once a crop was planted, the cultivating household would generally be allowed to continue to cultivate and live in the house until harvest time, even if seen as an illegal ‘squatter’.
195 SIDA, op cit.


199 J Pottier, op cit.

200 J Pottier, op cit.
