

Chapter 5

Competition over soil and subsoil: Land Grabbing by local elites in eastern DRC (Kalehe, South Kivu)

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1. Introduction

Population growth, environmental degradation, slow rates of economic development and land grabbing, all contributed to the transformation of Africa from a continent of land abundance into a continent characterised by increasing land scarcity and competition over land (Berry 2002). However, the contemporary struggles over land are diverse and they depend on the particular political, social and economic context in which they occur. Shifts in land access, changing property relations and land distribution patterns lead to varying results in different contexts. For some actors involved in struggles over land it opens a window of opportunity; for others, it leads to dispossession and displacement (Borras & Franco, 2010).

In this chapter, we focus on the role of local elites in cases of land grabbing, a less highlighted topic in contemporary literature on the global land rush that puts great emphasis on the role of external actors, interested in land investments as a more general response to the food, financial and energy crises (Hall, 2011; De Schutter, 2011)¹. National elites also are key players in land acquisition processes, as direct actors or as brokers between the local community and (foreign) investors. However, “national elites often fall below the radar of global-level studies because they are seldom regulated or facilitated by public agencies, and because individual transactions tend to be smaller” (Anseew et al. 2011: 21, Hilhorst et al, 2011). We study the role of local elites and their access and control strategies over land in the absence of foreign investors by focussing on two case-studies in the territory of Kalehe, South-Kivu, Democratic Republic of the Congo. These cases will demonstrate how local groups are strategically framed around issues of land use, land distribution and land control and how they are linked to broader national and regional dynamics. Local elite members of these strategic groups operate in different political arenas that are vertically and horizontally interconnected. They are therefore able to enforce their claims on land at the local level.

We argue that contemporary studies on land grabbing should situate recent evolutions in land relations within their specific historical context. Land grabbing is neither a new nor a recent phenomenon. Past cycles of land grabbing in Africa include the colonial conquest, and local elite’s interest in land as an investment opportunity in response to the structural adjustment programs (SAPs) of the 1980s (see Peemans in this volume). Local elites invested in land for direct revenue and for future financial security as a response to the devastating effects of the privatization measures take under the SAPSs. At various phases throughout history, such local elite in Africa have used their status and power and their knowledge of the institutional and legal regulations to acquire large land concessions (Berry, 2002). They are more likely to navigate in the complex institutional landscape to get comparative advantages at the expense of poorer and less connected actors.

Furthermore, land transactions do not take place in a political vacuum as demonstrated by the role of domestic aspects and the role of local elites in these processes. In its report on the

¹ For an analysis of less discussed processes driving the current global land grab see also Zoomers, A. (2012) “Globalisation and the foreignisation of space: seven processes driving the current global land grab” *Journal of Peasant Studies*, 37(2):429-447

opportunities and challenges of large-scale land acquisitions, the World Bank recognizes that land governance in most developing countries is problematic. Nevertheless, the report's recommendations are rather technocratic and remain limited to the reinforcement of the legal and institutional framework (World Bank, 2012). However, land tenure and land arrangements are embedded in a complex network of local power relations, and are part of a complex institutional landscape. Therefore "land conflicts reflect more than economic and demographic pressures, (...) land is also seen as a form of political space-territory to be controlled both for its economic value and as a *source of leverage over other people*" (Berry, 2009: 24; our emphasis). The situation is even more complex in violent contexts such as our case study setting, where over several decades – even centuries – profound ethnic, economic and political cleavages have been anchored in the social tissue.

In the next section of this paper, we specify the ways in which land tenure arrangements in Eastern DRC have evolved throughout history. We will pay particular attention to the land-conflict nexus in the specific context of Eastern DRC. We introduce theoretical concepts that will help us to understand the land dynamics in the case study settings. In the third part of the paper, our case studies illustrate how land relations are negotiated in a context of extreme uncertainty and state failure. We pay particular attention to the diverse strategies of local elites. In our conclusion we reflect on the importance of taking into account the specific political, historical and institutional context, on the conflict-land nexus and on the "victim's" perspective in these local land grabs.

2. Land tenure in Eastern DRC

In South Kivu, land tenure arrangements have been put under serious stress due to population growth, opportunistic behaviour of local elites and an increasing number of land claims for other than agricultural purposes such as the exploitation of forestry and mining resources (Utshudi Ona & Ansoms 2011). Customary tenure arrangements in South-Kivu dominate and are based on collective ownership, kinship loyalty and mutual interdependence.

These arrangements are generally embedded in a *kalinzi* system, which can be described as 'an institution that legitimizes the whole social organization by absorbing all persons within a given area into a network of dependent relations' (Van Acker 2005: 81). *Kalinzi* is a customary contract, based upon strict hierarchical relationships, with at the top the king or *mwami* who is the allocator of the land. To become integrated into the network of interdependent relationships and to obtain inheritable user rights over land, one has to address the customary chief to pay a tribute or *kalinzi*, most often in the form of cattle. By paying the *kalinzi*, one becomes the *subject* of the chief. However, over time, these customary arrangements and the power of customary chiefs to allocate user rights on land, although still persisting today, have been severely challenged and underwent some serious changes.

Colonial powers challenged customary land arrangements for the first time when introducing a dual system. They made a distinction between *terres domaniales* or state land governed by state law, and *terres indigènes* or indigenous land governed by customary law. This duality persisted until the introduction of the General Property Law in 1973, making all land official state property, including customary lands. The land law provided arrangements for customary held land: Article 389 stipulated that land occupied by local communities could be held under customary arrangements through a presidential decree. However, this decree has not been formulated to date. Since 1973, arrangements of communally held land have thus been characterized by high levels of ambiguity regarding their legal status, the rights of the land

users and the authorities responsible to govern it (Mugangu Matabaro 2005, Uthsudi and Ansoms 2011). Furthermore, due to the weak implementation capacity of the Congolese state, the de facto duality between state land and customary land persisted. Vlassenroot and Huggins (2005) describe how these historical evolutions resulted in a profound reshaping of access rights to land and the reorganisation of rural society. Traditional patron-client relationships such as the *kalinzi* contract gradually eroded, and were partly replaced by new forms of patrimonial relations based on economic gain and wealth accumulation. Local customary chiefs tried to maintain their position by becoming the gatekeepers of the transition period of customary control to the introduction of the modern legal system. The traditional order is slowly implicitly being replaced by an order ruled by social stratification. Proximity to the political centre became key for wealth accumulation. On an individual level, this radical break has led to unequal access patterns, growing tenure insecurity, land alienation and finally impoverishment. On a more institutional level, the increasing competition over land created opportunities for customary leaders to instrumentalize customary land tenure by reinterpreting local norms. In the immediate aftermath of the democratization process initiated by Mobutu in the 1990s, land issues were among the factors that lead to violence between ethnic groups.

Land dynamics further complexified during the Congolese wars. Access and occupation patterns changed through forced displacement and the hardening of social and ethnic tensions (Huggins and Vlassenroot 2005). During the conflict land was a structural cause of conflict since unequal access led to the impoverishment of the population and a growing group of landless peasants. In some particular cases, land was and still is a proximate cause or a resource of conflict. We will demonstrate later in this article how contested land transaction and disputes over resource-rich land in the territory of Kalehe are sources of local conflict and violence. It should be noticed that in Eastern DRC, a variety of different land-related conflicts exist. The majority of conflicts are inter-personal and include very low levels of violence. However, when conflicts are linked to ethnicity and identity they often create large-scale violence (CRG 2012).

Today, land tenure in the DRC is managed by a variety of authorities and institutions, which are all generating norms and rules that canalize the behaviour of individual and collective actors. A useful angle to look at these seemingly contradictions and complexities in the production of rules and norms is *legal pluralism*. This highly empirical concept is defined as “the normative heterogeneity attendant upon the fact that social action always takes place in a context of multiple, overlapping ‘semi-autonomous social fields’ which (...) is in practice a dynamic condition” (Griffith 1986:38). A society consists of different social fields such as a village, an ethnic community, an association or a state. Each field has different loci of authority that overlap and interact with other social fields. Because of this interaction and overlap, each field is semi-autonomous. This means that each social field generates internal rules and symbols but is also sensitive to decisions and rules that are produced by surrounding social fields (Moore 1978).

The institutional landscape is thus by definition heterogeneous, fluctuating, unstable and dynamic (Bastiaensen et alii, 2005). The co-existence of different institutions, norms and rules with regards to land governance might be instrumentalised by powerful actors using economic, political or social means. Customary authorities, for example, occupy a unique position on the crossroads between the transforming customary arrangements and their knowledge of, and integration in the decentralised state administration. This may lead some malicious of them (customary chiefs) to abusive practices, for example when elites register land, occupied by the local community, in the national land registry with the complicity of the

customary chief who declared the land as ‘unoccupied’ (Utshudi and Ansoms 2011). We can thus state that access to land, and control over resources from that land, are negotiated in a context that is characterized by unequal power relations.

To help us understand how access to land is negotiated in a context of increasing competition over natural resources, we propose using the explanatory concept of *political arena* introduced by Olivier De Sardan. A *political arena* is a “space in which real conflicts between interacting social actors occur around common stakes. It occurs within a *local space*” (Olivier De Sardan 2005:190). The notion of conflict is important, as Olivier De Sardan considers it as an intrinsic part of social relations: “conflicts figure among the best ways of penetrating the intricacies of society, of revealing its structures, norms and codes, or of highlighting the strategies and logics of actors or of groups” (Olivier De Sardan 2005:189). Within a particular political arena, individual social actors can gather around a common strategic issue. They may then form *strategic groups* or the “social aggregates of a more empirical and variable nature, which defend common interest, especially by means of social and political action” (Olivier De Sardan 2005:191). Strategic groups are thus temporarily formed groups of individuals who share, for a certain period, the same objectives. The composition of such strategic group may fluctuate, is dynamic, and depends upon its temporary members. The struggle over access to land may be considered as such a political arena where individual actors and strategic groups actively interact to gain and regain access and control over this natural resource.

In the next section, we analyse local land dynamics and the role of local elites’ strategic groups to understand how access to and control over land are negotiated in a context of uncertainty and state failure. We illustrate through case studies how strategic groups are formed and operate around the issue of access to land.

3. Land conflicts in Kalehe

The territory of Kalehe is one of the eight territories of the province of South Kivu in Eastern DRC, situated between the two major regional capitals, Bukavu and Goma. It has a surface of 4082 km² and an estimated population of 524.000 inhabitants (APC 2009). Main economic activities in Kalehe are agriculture, cattle breeding, and the extraction of mineral resources. The presence of different mining sites and vast concessions of fertile land in the *Hauts Plateaux* intensifies the increasing competition over land between different ethnic groups over both occupied and non-occupied land. The territory is characterized by strong cultural diversity with the coexistence of different ethnic groups such as the Bahavu, Batembo, Barongeronge, Bahutu, Batutsi and Bahunde. Ethnic groups are divided with on one side the original (*autochthon*) and on the other side the immigrant (*allochthon*) population. The frustration of the autochthon population is often articulated around the presence of a significant Kinyarwanda speaking population (Hutu and Tutsi) that entered the DRC during multiple waves of migration. In the 1950s, a first wave of Banyarwanda immigrants arrived when the Belgian colonial administration needed labour force to work on the vast coffee, tea and cinchona plantations in the Kivu region. These first immigrants arriving in Kalehe, came from Rwanda and from Masisi in the neighbouring province of North Kivu (APC 2009). Later, different groups of Banyarwanda arrived as refugees during the different episodes of ethnically motivated violence in Rwanda and Burundi.

Since the 1990s, the territory of Kalehe is characterized by the presence of different armed groups (APC 2009). At the time of our research (September 2011), six armed groups were active in the territory of Kalehe. These groups continue to contribute to an enduring fragile

security situation, regularly provoking the displacement of the local population, and enhance their social and economic vulnerability. One recent example is the armed movement *Nyatura* which was founded in June 2011. Apart from other military and political agendas (competing for grades and high functions within the national army, refusing to be deployed outside the Kivus), one of the pillars of the creation of *Nyatura* was to defend the land rights of Hutu inhabitants. *Nyatura* succeeds the *PARECO* (Patriotes Résistants Congolais), a movement born in 2008 out of the Hutu militia *Combattants or Bakobwa*. Already in the 1990s, the “Combattants” clashed with the Mai-Mai militias of Batembo around identity and land question. At the time of our research, however, elements close to *Nyatura* expressed their concern over the issue of returning Tutsi refugees, coming from Rwanda. These Congolese Tutsi had fled to Rwanda in 1994, after the influx of Hutu refugees in the DRC following the genocide in Rwanda. They are now reclaiming land they once left behind.

Tutsi dominated armed groups like CNDP (Congrès National pour la Défense du Peuple) and the March 23 movement (M23) have always listed the return of these Tutsi refugees among their political claims. They argue that the return of refugees, land issues and nationality should be taken into account in the Congolese political agenda in order to resolve the conflicts of the eastern DRC². In the territory of Kalehe, many land conflicts oppose Hutu and Tutsi and involve armed forces. Our empirical material shows that the presence of the ex-CNDP soldiers in the Congolese army facilitated the return of some Tutsi. **Their protection of the Tutsi ethnic group** might contribute to the radicalization of the position of *Nyatura* and Hutu in general as it recently happened in the struggle over the Numbi village leadership control and military commandment among Hutu and Tutsi³.

3.1. Access to land: contestation in the ‘Hauts Plateaux’

At the time of our research (September 2011), a lot of the identified land conflicts were framed around the return of Kinyarwanda speaking Tutsi, which was often perceived as problematic by the *autochtone* population of Kalehe. Originally, these Tutsi settled in Kalehe during subsequent waves of migration that took place since the 1950s. Throughout years and even decades of presence in the DRC, they had often obtained the Congolese nationality. Most of them acquired access to plots of land in the *Hauts Plateaux* through negotiations with the customary chiefs. However, after the Rwandan genocide in 1994, large groups of Hutu refugees arrived in South Kivu, fleeing for the RPF⁴’s violent retaliation actions. Subsequently, an inverse migration wave of Congolese Tutsi fled to Rwanda. UNHCR estimated that in 2011 approximately 50.000 refugees - of which a majority Tutsi - was living in refugee camps in Rwanda. The Rwandan government stated that the number of those living outside the camps was about three times higher (Minority Rights Group International 2011).

When leaving the DRC, these refugees sold their land, abandoned it or appointed a caretaker from the remaining local population (Bahavu, Batembo and Hutu) during the time of their absence. At the time of our research, however, Tutsi were gradually returning to the DRC. This caused contestation over the plots of land they had once left behind. Indeed, the returning Tutsi want to be reinstated on land that had been occupied by others for the last 17 years. Moreover, original occupants were often replaced by new actors who had bought the land in question, or had obtained it through intermediation of the customary authorities.

² See for details Stearns J, (2012)

³ See for details on the struggle for land and village controlling between Tutsi and Hutu: APC, (2012) and Stearns, J. (2013)

⁴ The Rwandan Patriotic Front took power in Rwanda after the genocide of 1994.

During our research, we came across several cases of land conflicts involving Banyarwanda Tutsi. We can group these cases into three categories. First, there were Tutsi who claimed back land that they had never sold. A second category of Tutsi had sold their plots, but – because of the urgency to leave when feeling threatened by the arrival of Hutu refugees in Kalehe in 1994 – they had agreed upon a price significantly below the market price. Finally, land was reclaimed after a legitimate sale that in several cases occurred before the arrival of Hutu refugees. We will discuss each category separately with some concrete examples.

A first group of Tutsi did not sell their land when fleeing to Rwanda. Sometimes, they appointed someone to manage the land on their behalf, often a friend or the local chief. After an absence of 17 years, the reclaiming of the land is often a difficult matter.

we came across a land conflict that opposed Majé, Freddy and Kirori in the Hauts Plateaux of Lemere in the village of Buzunga. When Maje (Tutsi) left the DRC, he entrusted Freddy (Mushi) with his cows and his land. He also asked his friend and local chief Kirori to safeguard the documents that justified his rights to the land. After Majé left, however, Kirori took advantage of his absence to sell the land and the documents in question to Freddy. When Majé returned in 2011, Freddy refused to cede his rights, considering himself as the rightful owner after having paid Kirori⁵. At the time of our research (December 2011), the case was still being discussed at the local tribunal.

Other Tutsi left their fields without appointing a caretaker. In several cases, this land has been redistributed by the customary authority to new landowners, who refused ceding their plots to the returning Tutsi because they believed they were the rightful owners of the land. One of our interviewees⁶ explained : “we thought they had left for good and that they wouldn’t come back⁷”.

Secondly, there are Tutsi who sold their land under the actual market price. Many Tutsi felt threatened by the sudden massive influx of Hutu refugees, and therefore proceeded to distress sales . During our research, however, we detected very diverse perceptions on what was to be considered as a correct prize in 1994. In quite some cases, fleeing Tutsi considered the money they received in return for their land as *mpamba*, literally a provision for ‘on the road’, a kind of compensation for being allowed to use the land during the absence of the true owner, and not as the selling price. However, those who acquired the land in return for money did consider this to be a selling transaction. The following case is an example of such a conflict, in which a local mediation initiative was trying to reach a consensus (‘Comité de Dialogue et de Médiation, CDM⁸):

In 1994, a Tutsi sold 780 hectares of land to a Muhavu for 1500 \$. This person subsequently sold the land to seven different Bahavu and Bahutu families. Recently, the original Tutsi owner returned and reclaimed his property. The CDM tried to reach a compromise by recognizing the needs of the present owners, while at the same time also admitting that the price paid in 1994 did not reflect the real market value of the plot. The mediator proposed dividing the

⁵ Interviews, 18 October and 25 November 2011, Kasheke and Lemera

⁶ To guarantee the anonymity of our informants, we used pseudonyms.

⁷ Interview, Kasheke, 18 October 2011

⁸ These informal mediation offices were set up by the Congolese NGO ‘Action pour la Paix et la Concorde’ (APC) based in Bukavu.

*land between the old owner (Tutsi) and the present occupants. At the moment of our interview, the proposition was not yet accepted by the present occupants*⁹.

A third category of Banyarwanda Tutsi did sell their land for the real market price. However, the monetary value of land has drastically increased over the past decade because of increasing land scarcity. During our research, several of such cases were cited, among which:

James, one of our interviewees, explained how his Muhavu family was implicated in a land conflict with a Tutsi named Ndaro. Ndaro sold his land to James' family and two other families in 1993. This transaction was concluded well before the influx of the Hutu refugees in the region. According to James, a reasonable price had been paid (1120\$ for 22 hectares). Ndaro recently returned to sell one of his remaining plots. He obtained a much higher price than what he got in 1993. According to James, this incited Ndaro to resell the land he once ceded to the three families to a Mushi named Ridego. This transaction was concluded in July 2010. The three families in question did not accept this transaction and refused access to the contested fields. As an argument in their favour, James mentioned that Ridego was well aware of the illegitimacy of the transaction as the three families passed a message on the radio, announcing that the land was already occupied and thus not for sale¹⁰. At the time of our research, the case was treated by a local tribunal. Ridego, living in Bukavu, had never attempted to access the contested land¹¹. James' family keeps exploiting the contested land, even though Ridego regularly passes by with potential buyers. The two other implicated families do not access the contested land anymore¹².

Another source of contestation and conflict is the destination of the land reclaimed by the returning refugees. Several Tutsi are accused of reclaiming land only to sell it to third parties. In several cases, reclaimed land had been sold to Kinyarwanda speaking families who had not lived in the region before but were attracted by the relatively low costs of land, in comparison to the even more populated Rwanda. This was perceived as very problematic by the local population. One of our interviewees stated that "nowadays everybody presents himself as a refugee¹³". Another respondent explained how the return of the refugees as such does not pose a problem but how "they are taking others with them. We are observing an infiltration of new people [...]. Often they are selling their land even if they say they are not going to sell. When they would sell to the indigenous population there would not be any problem but they should not sell their land to new Tutsi subjects¹⁴". One other person agreed by stating that "all ethnicities - Batembo, Bahutu, Bahavu and Batutsi - have the right to access land but it has become difficult to distinguish between Congolese Tutsi and foreign Tutsi. Congolese Tutsi come with their 'brothers' that are not known in the area and this is a big problem¹⁵". Another person added that "to claim a plot of land over here, one has to be the real owner or at least the descendants of the person who lived here before. Nobody should pretend being the son of somebody whereas he is not known in this area"¹⁶.

⁹ Interview office CDM, APC, Bushushu, 19 october 2011, Bushushu

¹⁰ Interview 18 October 2011, Kasheke

¹¹ Interview 25 November, Kasheke

¹² Interview, 11 August 2012, Lemera

¹³ Interview, 18 October, Kasheke

¹⁴ Interview, 19 October, Chibanda

¹⁵ Interview office CDM, APC, 19 October 2011, Bushushu

¹⁶ Interview, 19 October 2011, Kalehe

At their return, Tutsi of all three categories rarely entered into direct negotiation with the new occupants of the land. Instead, more indirect strategies were adopted. One respondent stated: “most of them [returning refugees] are not passing through the ‘little door’ [referring to local authorities or mediators] but rather through the ‘big door’ [referring to authorities at a higher level]”¹⁷. In other cases, returning Tutsi called in the help of armed forces to reinforce their claim, particularly implicating ex-CNDP¹⁸ elements who had been integrated in the Congolese Army, FARDC. One person explained that “for some [of the Tutsi], we do recognise that the land belongs to them. But why do they have to use the army to claim their rights? This gives us a bad impression”¹⁹. Another interviewee explained how some Tutsi actors used armed forces to (re)claim the land: “When a Tutsi realized he is failing [to get his land back], he is going to seek an armed group to combat the civilians. This is why we often hear about confrontations between civilians and armed groups about land problems”^{20,21}.

Indeed, Tutsi returnees’ claims seemed to be a fertile basis for other population groups’ mobilization into new armed groups with the aim to protect their interests. One example from the bordering province of North Kivu is the APCLS or the *Alliance Patriotes du Congo Libre et Souverain*. According to a 2011 report of the panel of experts of the UN, “APCLS is the strongest Mai Mai in North Kivu, mobilizing its forces on the basis of popular resistance to Tutsi refugee returns, traditional land rights, and defence against the expansion of the Tutsi and Hutu dominance in the Masisi territory” (UN 2011, para. 219: 65-66). In the province of South Kivu, and the territory of Kalehe more particularly, we already cited the armed group *Nyatura*. According to a report of a local NGO, *Action pour la Paix et la Concorde* (APC), a land conflict opposing Hutu and Tutsi lied at the basis of the foundation of this armed movement. According to one of our respondents, a Hutu, it was not unthinkable that other armed groups would be founded; “at the level of our Hutu community there is the spirit of self-defence of our interests”. When we asked if these groups already existed and how they are organized the respondent replied: “we know each other”²².

We also recorded cases where customary authorities had been instrumentalised to reinforce the land claims of returning refugees. One respondent explained how a Tutsi had mobilized the customary chief to approve his ownership rights on a piece of land that had previously been sold to two different families. Our respondent described the customary chief in question as “too young”, “he [the customary chief] doesn’t know how our custom really works” and “he is infatuated with the smell of money”²³. This perceived insincerity of some customary chiefs was cited during several of our interviews, with references made to alleged corruption and dishonesty. One respondent explained how some customary chiefs attributed the same plot of land to different persons. He continued saying that “that is the real problem with the customary chiefs: the sons of the original customary chiefs have to reposition themselves after the death of their fathers. Today, they are demanding us a paper (customary document attesting the rights to land), something that did not exist in the old days, as a proof that our parents have paid the *Kalinzi*. The young chief uses this ‘requirement’ to reposition himself. He can dispossess people, mostly the poor, and attribute the land to the rich and to elites who

¹⁷ Interview group of miners, 19 October 2011, Nyabibwe

¹⁸ Congrès National pour la défense du Peuple, a rebel party founded by Laurent Nkunda and supported by Rwanda. The CNDP were integrated into the Congolese army in 2009.

¹⁹ Interview, 19 October 2011, Chibanda

²⁰ Interview, 12 November 2011, Numbi

²¹ It should be noted that in Eastern DRC, there is a long history of rebel movements supported by Tutsi. Some examples are the AFDL (1996), the RCD (1998-2003) the CNDP (2004) and more recently the M23(as from March 2012).

²² Interview, 12 November 2011, Numbi

²³ Interview, 18 October 2011, Kasheke

often not even intend to live on the land”²⁴. Also the following case illustrates how customary chiefs try to reposition themselves to keep their authority in a quickly changing institutional landscape.

In Numbi in the ‘hauts Plateaux’ of Kalehe, customary chiefs played a pivotal role in a variety of land conflicts that opposed different ethnic communities. The history of these conflicts often dates back prior to 1994. A Muhavu interviewee explained us how the Kinyarwanda speaking population entered Kalehe from Rwanda and from Masisi in North Kivu during the 1950s. They asked land to the customary chief, Hubert Sangara. At that time, there was still enough vacant land available. But Sangara also gave concessions on land that had already been granted to local families who had not been able to exploit it. During this period, between 1950 and 1970, several Hutu and Tutsi families acquired land through the payment of the customary tribute or the Kalinzi. The real problem started when Hubert Sangara was succeeded by his son Raymond Sangara in the 1980s. The demand for land increased significantly and the new mwami adopted a new strategy. He identified weak and poor subjects, grabbed (part of) their land and kept it for himself or sold it to more powerful and rich newcomers, mostly Tutsi. The chased subjects had little maneuver to protest and to resist the eviction. One interviewee explained that “Sangara wanted more space for his plantations [...] he chased all the inhabitants who were living there and he even grabbed their land. [...] Sangara succeeded his ‘coup’ because he was not just anybody. Who could bring to trial a big personality such as Sangara? That is why the inhabitants estimated it was better to leave the area and abandon their fields”²⁵.

Then, in 1994, certain of the original occupants - who had obtained their land from Hubert Sangara – took advantage of the departure of most Tutsi to retake the land that used to be theirs. They argued that the transactions made by Raymond Sangara in the 1980s were illegal, and that they were the legitimate owners of the land”²⁶. Further complications arose during the rebellion of the Rassemblement Congolais pour le Démocratie (RCD) between 1998 and 2003. The customary chief, Raymond Sangara, maintained close relationships with this movement. He again played an important role in favouring Tutsi land claims (Namegabe 2005). During the transition period (2003-2006), Raymond Sangara played a role in the politics of massive acquisition of land in the ‘Hauts Plateaux of Kalehe’. The most recent examples date from August 2011 when Sangara was involved in a conflict opposing Hutu families and a Tutsi family in the Numbi area and his pivotal and influential role in the changing leadership of the village in which a Hutu was replaced by a Tutsi.

These various case studies illustrate how different strategic groups - often formed around a common ethnic identity – are framed around the access to land. We highlighted the ambiguous role of different customary and military elites. Both groups are able to maintain their power base; customary authorities because of their historically granted position in society and military actors because of the violent enforcement of their claims. At different occasion, customary chiefs instrumentalized their customary power to favour certain parties – in return for money – in the distribution of land. These dynamics show us how land conflicts

²⁴ Interview, 19 October 2011, Kalehe

²⁵ Interview, 12 November 2011, Numbi

²⁶ Interview, 12 November 2011, Numbi

over land (re)allocation and (re)distribution are anchored within local power struggles. Although not all land conflicts can be scaled down to ethnic cleavages, the described cases nevertheless illustrate that ethnicity is an important element in the mobilization and the re-mobilization of strategic groups and that these kinds of conflicts often produce violence. For example, the ethnic affiliation of the local military elite is a determining factor in obtaining access to the resources. The following quote could not summarize this better: “when the army changes, the problems also change”²⁷. The success of local actors to access the land is partly based on their ability to connect themselves with these military and customary authorities. This institutional connectedness makes them more successful in navigating through the complex and plural institutional landscape.

3.2. Access to the mineral resources: economic interest and land in the mining sites of Nyabibwe

The competition over land can become even more fierce and complex when minerals are found on the land. Because of the potentially high economic gains, local elites compete over the access of the resources. This adds another layer of individual actors, strategic groups and institutions. Also the competition over the land with mineral resources takes place in an atmosphere of violence and the construction of implicit or explicit ethnic agendas.

In Nyabibwe, in the *groupement* of Mbinga North, two cooperatives are disputing access to the mining site of Kalimbi, each with its own legitimizing discourses and access strategies. In the 1970s, a French company, SEREMI (*Société d’Etudes, de Recherche et Exploitation Minière*) discovered cassiterite on the hill of Kalimbi. Early 1980s, the site was exploited by the industrial mining company SMDG (*Société Minière de Goma*). Following a strong decline in the price of raw materials at the worldwide market in 1986, SMDG abandoned all its activities. They dismissed all labourers except for 22 people who were assigned to guard the site under the supervision of an engineer-geologist Muteba²⁸. Early 1990s, the chief of *groupement* Mbinga North, Jules Chirimwami, took over all goods of SMDG. After his death, his brother, businessman Placide Chirimwami took his place. In 1993, Placide Chirimwami founded the cooperative COMBECKA (*Coopérative Minière pour le Bien-Etre Communautaire de Kalehe*). He undertook several attempts to expel the artisanal diggers, who occupied the mining shafts since the departure of Muteba. COMBECKA’s members were the different team leaders, who each engaged a group of diggers. Ten per cent of the production went straight to Chirimwami, 45% went to the team leader and 45% to the diggers. However, the latter were obliged to sell their share to their team leader for a fixed price. In 1993, the provincial authorities of South-Kivu officially recognized COMBECKA and granted it the right to manage the goods left by SMDG (Cuvelier 2010).

Since its foundation in 1993, the management of COMBECKA has been contested several times by local and other actors. In response, COMBECKA used a variety of strategies to maintain its control over the mining site. During our research, it was difficult to obtain exact information about which group controlled the mine and for which period of time. Interestingly, the discourse of different actors on who controlled the mine at which time deferred, dependent upon their position in the fight over access to the site. The dates mentioned in the case study are thus approximations.

²⁷ Interview, 12 november 2011, Numbi

²⁸ Interview, 15 november 2011, mining site of Kuweit, Kalimbi, Nyabibwe

First, the creation of competing cooperatives influenced the leadership structure of the mining site. Around 2005, a group of miners founded CMDK (*Coopérative Minière pour le Développement de Kalehe*). According to one of the founders of CMDK, they controlled the mine for a period of two years between 2005 and 2007. However, according to certain representatives of COMBECKA, these miners were only there for a period of three months, coinciding with the occupation of Nyabibwe and its environment by the CNDP of Laurent Nkunda²⁹. The representatives recalled how the executive staff of COMBECKA fled the area, which incited the CMDK miners to take advantage of their absence to occupy the shafts^{30,31}. COMBECKA claims to have reinstated their control over the mine after this short occupation of CMDK.

In 2010, COMBECKA was challenged again. Former members of CMDK strategically used the general insecurity situation to create COMIKA (*coopérative minière de Kalimbi*). Since COMIKA's creation, COMBECKA and COMIKA dispute over access rights, and these disputes regularly lead to violence. According to a member of COMIKA, COMBECKA exploited the mining sites in a non-transparent fashion. Moreover, it seemed that Chirimwami (the founder and coordinator of COMBECKA) tried to install his own connections ("friends and family") in key positions: "[Chirimwami] violated the rights of the members [of COMBECKA] [...] he considers the cooperative as his private property³²". According to certain members of COMIKA, they took control over the site in 2008 because COMBECKA had abandoned the site: "They [COMBECKA] failed to organize the expenses. When they left, COMIKA took the opportunity to enter the site and to start exploitation because there was an economic crisis³³". COMBECKA – according to these interviewees – had been incapable of investing in the necessary equipment such as generators and motorized pumps. COMIKA then managed the mine for two years (between 2008 and 2010). According to its members, COMIKA received legal documents in September 2010 that granted them official exploitation rights³⁴.

An influential member of COMBECKA, however, brought up an entirely different version of the events that took place around 2008-2009. He linked the presence of COMIKA to the presence of armed Hutu in the mine. By doing so, this interviewee framed the conflict between the two cooperatives in ethnic terms. According to this informant, PARECO (a movement born in 2008 out of the Hutu militia *Combattants ou Bakobwa*) "occupied the mine in 2009"; "this seems to be the economic policy of our Hutu brothers: wanting to grab all of our wealth, land and cows³⁵". This statement should, however, be nuanced. PARECO never occupied the mine. However, the armed group was indeed quite active in the mountains surrounding the mining site and therefore did exert their influence on the transaction and trade of minerals. In 2008, after the conference of Goma, PARECO was officially integrated in the FARDC³⁶. After this integration process, some of the ex-PARECO FARDC officers started to control mining shafts in Nyabibwe.

²⁹ Congrès National pour la Défense du Peuple (CNDP) is a Tutsi-based rebellion that was created in 2004 by Laurent Nkunda.

³⁰ Interview representatives COMBECKA, 15 November 2011, Nyabibwe

³¹ Interview representatives COMIKA, 14 November 2011, Nyabibwe

³² Interview representatives COMIKA, 14 November 2011, Nyabibwe

³³ Interview representatives COMIKA, 14 November 2011, Nyabibwe

³⁴ Interview representatives COMIKA, 14 November 2011, Nyabibwe

³⁵ Interview, 20 October 2011, Mukwidja

³⁶ These integrated ex-PARECO soldiers were under the FARDC commandment of a certain colonel Guigui who had been arrested in Bukavu in 2011 because he had been caught transporting minerals in a vehicle of the FARDC.

In 2010, SEASSCAM³⁷ organized a meeting with representatives of the two different cooperatives (COMBECKA and COMIKA) to inform them that neither of the two cooperatives met the necessary legal requirements to claim the full rights over the mine. After this meeting, several armed miners wanted to occupy the shafts. They were stopped by members of COMIKA who controlled the site at that time (our research, see also Cuvelier 2010 and UN 2011). The violent confrontations resulted in one death and several persons were wounded. According to certain members of COMIKA, Chirimwami (founder and coordinator of COMBECKA) initiated the violence, having recruited labourers from his plantation to occupy mining shafts³⁸. According to COMBECKA, however, it was COMIKA who violated COMBECKA's rights by exploiting the contested site. On the 31 August 2010, the administrator of the territory of Kalehe declared that COMIKA had the right to manage the site until the installation of a neutral management committee (Cuvelier 2010). This committee with members of the two cooperatives was installed one year later by the public authorities in July 2011. For each function, two persons were assigned; one of COMIKA and one of COMBECKA. According to several members of COMIKA, this structure proved to be rather unproductive because of the lack of confidence between the two cooperatives. A representative of COMBECKA described the situation as 'provisional': "the province asked us to cooperate with the others but we can chase them later [...] I have my children who are capable and I know that one day [we] will regain control"³⁹.

The introduction of another actor led to further complications. In 2007, *Shamika Resources*, a Canadian mining company started its exploration phase in Kalimbi. One of the four exploration permits in the hands of Shamika Resources, covers the area of the mining site of Kalimbi in Nyabibwe. The presence of this industrial mining company caused contestation among the artisanal miners who feared losing their jobs (Cuvelier, 2010). Local civil society and the provincial minister in charge of mining spoke about an illegal exploitation. Shamika Resources dismissed these allegations: "we are legally authorized to do this [exploring the resources] but we are not yet exploiting. We are not yet arrived at the exploitation phase. We are in the exploration phase"⁴⁰. Up to date, the exploitation phase did not take off. According to the president of Shamika Resources, there has been a contact between the company and Chirimwami who presented himself as the legal land owner and manager of the cooperative who exploits the site (COMBECKA). Shamika proposed to pay him a compensation if his rightful ownership of the site could be proven (Cuvelier, 2010).

These three contestations - the presence and influence of armed groups, the formation of a competing cooperative and the presence of an industrial mining company - have weakened the bargaining power of Chirimwami. In order to assure control over the mining site, Chirimwami has adopted a military strategy. According to certain sources, Chirimwami was closely linked to elements of the FARDC, particularly a group with an ex-CNDP affiliation of which he appointed a military person as the manager of the mining site (see also Cuvelier 2010).

Despite the different interests of all actors involved, and the various phases of contestation, Chirimwami seemed – at the time of our research - to maintain actual control over the mine. According to some members of COMIKA, Chirimwami was the main buyer of cassiterite in the region, connected through strong commercial links with Rwanda: "Placide draws his money straight out of Rwanda. He takes money and he gives it to the members of

³⁷ The 'Service d'Assistance et d'Encadrement du *Small Scale Mining*' (SEASSCAM) has been founded 2003 to support artisanal miners.

³⁸ Interview representatives COMIKA, 14 November 2011, Nyabibwe

³⁹ Interview member of COMBECKA, 20 October 2011, Mukwidja

⁴⁰ Radio Okapi, 13 July 2007, "Bukavu: exploitation illégale de minerais, le ministre provincial dénonce"

COMBECKA. He asks his compliers to buy and to bring him all the cassiterite to take to Rwanda to sell it over there”. Additionally, the UN panel of experts stated that, according to local businessmen, Chirimwami had meetings with Bosco Ntaganda⁴¹ in Goma in March 2011 to discuss on the organisation of a military intervention by the ex-CNDP Colonel Saddam Ringo⁴², a close ally of Ntaganda. The UN report states that through the Ringo-connection, COMBECKA was able to transport the minerals across the Kivu lake to Rwanda⁴³. It is interesting to note that during the mining suspension, the same Colonel Ringo protected the trading activities of Chirimwami’s protagonist COMIKA. This clearly shows the volatility of strategic groups. Furthermore, in June 2011, Chirimwami invited colonel Nsabimana Mwandagabo, an FARDC brigade commander in Kalehe to discuss the reinstallation of COMBECKA. This has been confirmed by local authorities⁴⁴.

The case study of the mining site of Nyabibwe illustrates how access and control over resources is secured through alliances and counter alliances that implicate different actors, different levels of governance and different strategies. As is the case with land conflicts, the legitimacy and the power of each actor to access and exploit the resources, is rooted in their economic and political capacity to manipulate armed actors (army or militia) and to use state and customary services to obtain legitimizing documents. The relation between the different actors is based on economic motives but also inter-ethnic competition over resources plays a role in the competition between the two cooperatives. For example, economic transactions in Nyabibwe are dominated by Hutu while Havu are mostly involved in administration. The deployment of the ex-PARECO members (Hutu dominated) in the area in 2008-2009, reinforced the capacity of a specific group of miners linked to COMIKA. An essential part of COMIKA’s members are indeed Hutu whereas COMBECKA’s leadership is more linked with Tutsi and their clear economic links with Rwanda. This shows how the hostile climate in the mining site is to some extent based on identity cleavages and inter-ethnic competition over resources.

4. Conclusion

This chapter has analysed particular land conflicts and cases of land grabbing in Kalehe (Eastern DRC), occurring in an atmosphere of conflict and ethnic cleavages. The chapter has highlighted the roles that local elites adopt in negotiation mechanisms, and has identified their strategies to obtain and maintain control over land, mines, and their rents in a context of competition over resources and institutional complexity. The lessons drawn from the case studies bring us to four main points.

First, the different case-studies clearly show how negotiations over access to and control over land do not take place in a political or historical vacuum. They are negotiated in a highly politicised and historically specific context. The examples cited in this chapter are mainly cases of local land conflicts and over mining sites, but they are linked to dynamics at national and regional levels. Indeed, inter-ethnic competition over land is a regional issue, rooted in

⁴¹ Bosco Ntaganda was the deputy leader of the CNDP movement that was under the commandement of General Laurent Nkunda. The later was defeated in 2008 and was replaced by Bosco Ntaganda who joined the Congolese peace process in 2009. The CNDP was a Tutsi dominated armed militia that operated in the Kivu region from 2004 to 2009. Following the peace agreement of March 2009, the CNDP was integrated in the FARDC where Ntaganda became a General. Ntaganda is under an International Criminal Court arrest (warrant) for crimes against humanity. The UN Group of Experts reported in November 2012 that Bosco Ntaganda was involved in the M23 rebel movement.

⁴² Edmond “Saddam” Ringo was a former PARECO commander who integrated in the FARDC. He joined the M23 movement but he deserted and rejoined the FARDC.

⁴³ Group of Experts on the DRC (S/2011/738), paragraphe 465, p. 119-120

⁴⁴ Group of Experts on the DRC (S/2011/738), paragraphe 464, p. 119

the history of the Great Lakes region that is characterized by subsequent cross-border migration patterns and inter-ethnic conflicts. This draws the attention to the importance of including the political and historical context in the debate on land grabbing.

Second, the local institutional context influences and shapes these struggles over resources. In the DRC, the malfunctioning state apparatus contributes to the complexity of land conflicts. In the case of the mining sites of Nyabibwe, the two competing cooperatives have each at their turn presented official, though contradictory, documents recognizing their right to exploit the resources. In the case study of the returning refugees, the land issue is linked with corruption and the incapacity of the state to control its territory and its armed forces. The nature of the land conflicts change with the deployment of military and armed groups that align to ethnic agendas. This fluctuating and volatile institutional context offers opportunities for powerful actors.

Third, our cases demonstrate that there are clear linkages between the access to land and conflict. The impact of conflict on the access mechanisms of local actors is twofold. First, a situation of conflict and violence change the institutional landscape. New rules and norms are shaped. This newly formed institutional situation might offer opportunities for powerful actors to turn these rules in their advantage. Second, land grabs that occurred during the conflict, for example as a result of displacement, might be the source of new conflict. In both of our cases this duality is clear. The case of the returning Tutsi refugees showed us how complex patterns of displacement and return caused by conflict offer opportunities to powerful actors. Customary chiefs took advantage of the departure of the Tutsi to sell occupy their land. This was the cause of a new conflict. Later, the returnees used actors from the newly shaped institutional environment, the integrated ex-CNDP, to reinforce their access. Also in Nyabibwe, the subsequent presence of different armed groups created opportunities for economic actors to seize control over the mine, causing contestation of other groups.

Finally, the apparently less powerful individuals and groups affected by processes of land grabbing are not passive victims in land conflicts. Instead, they prove to be conscious actors seeking to improve their livelihoods. Our cases show how various seemingly weaker actors managed to invent and reinvent strategies for gaining access to resources. For example, in Nyabibwe, independent miners founded a cooperative (CMDK – later COMIKA) competing with the interests of local elites. Another example of the agency of ‘victims’ in land conflicts is provided through the case study described above, opposing three Bahavu families and one Tutsi family. The three families passed a message on the radio, warning people for potential ‘illegitimate’ sales. This illustrates how the power of elites is - contested at the local level. It should, however, be noted that despite these acts of resistance and protest, the room for manoeuvre and contestation is limited. Two of the three implicated families of the previous mentioned case study lost their land and the single remaining family has been treated and imprisoned at several occasions.

Overall, this chapter has shown how land conflicts and cases of land grabbing cannot be addressed in isolation of the local, national and even regional historical, political and institutional context. We have shown how, in a context of plurality of norms and rules in the land arena, the rights of the ‘strongest’ often prevail. These ‘stronger actors’ are not only more resilient in terms of financial capacity but also, and even more importantly, in terms of formal and informal institutional connectedness. Success or failure in acquiring land rights depends upon actors’ capacity to strategically use and often manipulate the Congolese army, official state agents, and/or of local customary authorities in order to maintain or regain control over the resources. These local practices of land grabbing deserve academic attention

because they are an important source of information on local practices of land governance and their political, historical and institutional context. Furthermore in the particular case of Eastern DRC, where land is a source and a resource of conflict, these local practices of land grabbing have the potential to fuel existing conflicts or even serve as a source of new conflict.

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