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Contested Land in the Eastern Democratic Republic of the Congo

Anatomy of the Land-Related Intervention

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Abstract

Land is fiercely contested in the densely populated and ethnically heterogeneous eastern provinces of the Democratic Republic of the Congo. Competition over land is intimately intertwined with violent conflict and simultaneously constitutes root cause, sustaining factor and consequence of war and human suffering. For the great majority of the rural population, access to land is the primary condition for subsistence. Frequently, the same piece of land is claimed by various parties, but legal pluralism hampers the unambiguous determination of the legitimate owner. The state and its judicial structures being largely absent after almost two decades of armed conflict and insecurity, law and order have widely been replaced by the right of the strongest. Since a few years, there has been increasing acknowledgement of the urgent need to address the land issue if the country is to sustainably recover from conflict. National and international actors have initiated programs directed at the prevention and resolution of land-related local conflicts, with the long-term objective of fostering more comprehensive and secure access to land for the Congolese population. This paper examines the problem of contested land and its manifestations in the province of North Kivu and reviews and analyzes the corresponding national and international land-related intervention in order to identify gaps, opportunities and future challenges.

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List of Acronyms

AAP	<i>Aide et Action pour la Paix</i> (Congoese NGO)
AFDL	<i>Alliance des Forces Démocratiques pour la Libération du Congo</i> (Rebel movement during First Congo War)
APCLS	<i>Alliance des Patriotes pour un Congo Libre et Souverain</i> (Congoese rebel militia)
CCFD	<i>Comité Catholique contre la Faim et pour le Développement</i> (Catholic humanitarian aid NGO)
CCMF	<i>Centre Communautaire de Médiation Foncière</i> (UN-HABITAT's mediation centers)
CLPC	<i>Comités Locaux Permanents de Conciliation</i> (Local conflict prevention committees foreseen by STAREC)
CNDP	<i>Congrès National pour la Défense du Peuple</i> (Former rebel group integrated into FARDC)
CNKi	<i>Comité National de Kivu</i> (Colonial institution organizing the establishment of settler-owned plantations)
DDR	Disarmament, Demobilization and Reintegration
DRC	Democratic Republic of the Congo
FAO	Food and Agriculture Organization
FARDC	<i>Forces Armées de la République Démocratique du Congo</i> (Congoese National Army)
FAT	<i>Forum des Amis de la Terre</i> (Congoese NGO)
FDLR	<i>Forces Démocratiques pour la Libération du Rwanda</i> (Rwandan Hutu militia operating in Eastern DRC)
FPJ	<i>Forums de Paix des Jeunes</i> (Local youth forums for peace, conflict prevention structures established by AAP)
GRET	<i>Groupe de recherche et d'échanges technologiques</i> (international NGO)
ha	Hectare
HAP	Humanitarian Action Plan
HLP	Housing, Land and Property
ICCN	<i>Institut Congolais pour la Conservation de la Nature</i>
ICLA	Information, Counseling and Legal Assistance
IDP	Internally Displaced Person
ISSSS	International Security and Stabilization Support Strategy
LRRD	Linking Relief, Rehabilitation and Development
MIB	<i>Mission d'Immigration des Banyarwanda</i> (Institutionalized resettlement of Rwandan Hutu peasants to North Kivu by the Belgian authorities between 1937 and 1955)
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo (now MONUSCO)

MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
NGO	Non-governmental Organization
NRC	Norwegian Refugee Council
NRCF	<i>Noyaux de Résolution des Conflits Fonciers</i> (Land conflict resolution groups, conflict prevention structures established by AAP)
OCHA	UN Office for the Coordination of Humanitarian Affairs
PNC	<i>Police Nationale Congolaise</i>
PNVi	<i>Parc National des Virunga</i>
RCD	<i>Rassemblement Congolais pour la Démocratie</i> (Rebel movement during Second Congo War)
SIDA	Swedish International Development Cooperation Agency
STAREC	<i>Programme de Stabilisation et de Reconstruction des Zones Sortant des Conflits Armés</i> (National stabilization and reconstruction plan for the eastern provinces)
UN	United Nations
UN-HABITAT	United Nations Human Settlements Program
UNDP	United Nations Development Program
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNOPS	United Nations Office for Project Services
USAID	United States Agency for International Development
USD	United States Dollars
WWF	World Wide Fund for Nature

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I. Introduction

Since the 1990s, the Democratic Republic of the Congo (DRC) and particularly the eastern provinces North Kivu, South Kivu and Orientale have been shattered by a human tragedy which has been described as the deadliest conflict since World War II (Coghlan et al. 2006; Coghlan et al. 2007), culminating in ‘Africa’s First World War’ (Reyntjens 2009).

Despite the formal end of the war in 2003, Eastern DRC is still facing one of the world’s most complex humanitarian crises, marked by the presence of numerous armed groups, massive displacement, land and food insecurity, extreme poverty and appalling human rights violations. Violence, often directed against civilians, erupts and re-erupts locally in a seemingly unpredictable way, hence inhibiting the achievement of a stable situation which would enable state and civil society institutions to be rebuilt. Even though the presence of the world’s largest United Nations (UN) peacekeeping force MONUSCO (United Nations Organization Stabilization Mission in the Democratic Republic of the Congo)¹ and the massive delivery of humanitarian aid were able to contribute to the common appraisal of the situation as a post-conflict transitional phase, the conflict still smolders and a general climate of insecurity prevails. In order to consolidate this volatile situation and lay the foundations for durable peace, it is therefore essential to go further by tackling the root causes of conflict and instability in the region and to examine how corresponding efforts can be integrated stronger into the national and international response to the crisis.

An element that has received growing attention in the recent years, first by NGOs on the ground and the academic community, later by humanitarian and development policy-makers, is the issue of land.² The struggle for control over land, disputes over land and the lack of secure access to land for great parts of the rural population constitute deep-rooted structural causes for human suffering, violence and ecological degradation in the region. In post-conflict Eastern DRC, where large numbers of internally displaced people and refugees are awaiting return to their places of origin, disputes over scarcely available land furthermore bear an enormous potential to generate new outbreak of large-scale violence.

Resolving these disputes and securing land rights in post-conflict Eastern DRC is particularly challenging due to the contradictory coexistence of a customary land law regime, which governs more than 80% of the country (Sylla 2011), and statutory law, codified in the 1973 General Property Law. The resulting ambiguity of different land rights and property relations gives rise to a cacophony of overlapping land claims. Originating from the colonial system and being accompanied by the virtual absence of accountable and functioning state structures, this legal dichotomy is a crucial catalyst of a long tradition of expropriation and land-grabbing by political and economical elites

¹ MONUC (United Nations Organization Mission in the Democratic Republic of the Congo) before July 2010.

² The land issue has long been neglected by the international intervention and significant international donor support has only begun very recently with the creation of the UN-HABITAT Land Program in Eastern DRC in 2009.

while the rural peasant population is confronted with land insecurity, expropriation and marginalization (Vlassenroot/Huggins 2005). As a plot of land to cultivate is the only means of subsistence for the great majority of the rural population, land conflicts are an inevitable consequence. It is important to note here that land disputes are nothing extraordinary, in contrary, they naturally accompany property relations. According to Alden Wily (2009) “even in peaceful agrarian societies land disputes account for 40 – 60% of cases entering the courts.” (p. 32) However, in Eastern DRC, the state has so far proven unable to provide a functioning framework to settle these disputes peacefully on a large scale. Furthermore, demographic pressure, enhanced by migration, and the contested citizenship status of many Congolese with Rwandese ancestry aggravate the situation and allow for political rallying and the fostering of ethnic hatred.

Assuming that the issue of land is among the fundamental causes for the outbreak and the perpetuation of violent conflict in Eastern DRC, the solution of land conflicts consistently constitutes a crucial element for the consolidation of peace and must hence be addressed cautiously but with the proportionate effort. But what can be done, what should be done and how and by whom can it be done? This work analyzes current land-related problems that lead to and emanate from violent conflict in Eastern DRC as well as the response by national and international actors to these problems. The objective is to identify strengths and flaws of the current land-related intervention in order to reflect on future needs and strategies that can contribute to the peaceful solution and prevention of land disputes and to foster secure access to land for DRC’s rural communities. This work focuses on the province of North Kivu, in particular the territories of Masisi and Rutshuru (see Figure 4), which look back on a long history of ethnic competition over land and which constitute key regions in the search for stability and reconciliation in Eastern DRC.

1.1 Research landscape

The conflict and the humanitarian crisis in Eastern DRC as well as their consequences and the international response to them have been addressed in countless studies by national and international scholars, researchers and think tanks. Nevertheless, research which focuses on the issue of land in Eastern DRC has been limited to a comparably small but growing circle of researchers. The world was still shocked by the genocide in Rwanda when war broke out in DRC in 1996 and it seems that it has taken some time for the international community to realize that the reasons for conflict in Eastern DRC were not only to find in the events that had occurred in the small neighboring country in the east. This subsection will provide an overview of the most influential works and theories of the land-related research process in Eastern DRC so far. The present work is partially based on these findings, in particular section 2.1 draws from existing literature.

Mararo (1997) and Mathieu et al. (1998) were among the first scholars who pointed towards the deeper underlying problems of land competition and comprehensive land tenure insecurity as a cause for ethnic antagonisms and finally large-scale ethnic violence in the Kivus in 1993, particularly in Masisi. They describe war in Eastern DRC as the result of a long historical process of steadily increasing tensions and deterioration of ethnic cohabitation, with control over land being essential to this process. Mathieu

and Mafikiri Tsongo (1998) recapitulate a series of ‘rural wars’ in North Kivu throughout the 20th century that emerged from “questions of identity, land conflicts, customary power, Zaïrian citizenship” (p. 386), along with imposed cohabitation and political maneuvers. Vlassenroot and Huggins (2005) provide the probably most comprehensive analysis of the influence of these historical processes on the Congolese wars and describe land disputes as a cause and sustaining factor, or ‘resource’ of conflict. Matabaro (2008) further underlines “the inadequacy and ambiguity of the normative and institutional framework of land management” in DRC and points towards the land issue being part of a wider agrarian crisis.

Paluku Mastaki and Kibambi Vake (2008a; 2008b) pioneered in approaching local communities and customary authorities in order to assess land-related problems and needs in a participatory way. Their documentation of the dissonance between customary and written law and of the manifestations of land disputes on the ground essentially contributed to the initiation of concrete land-related action in Eastern DRC. Autesserre (2010) with her hard but well-founded critique of the international peacekeeping effort during the post-war transitional phase 2003–2006, finally brought local issues, including land conflicts, to the awareness of a wider international audience. She states that the international intervention was a failure, with the argument that it focused too much on the external and regional causes of the conflict, while neglecting local causes and antagonisms. Ongoing insecurity and local violence as well as recent research support her theory. Nevertheless, while there is an immediate need to stronger address local issues, the national and regional levels must not in turn be neglected, as the land issue pervades all these levels.

In one of the most recent works on the land issue in Eastern DRC, Huggins (2010) starts to analyze the land-related intervention, which has seen the light of day during the recent years. He suggests that interveners might address land issues best at a ‘middle level’ between local and national or regional issues, probably referring to provincial or smaller-level interethnic commissions and institutions. Today, all major organizations that work on land in Eastern DRC cooperate with or have initiated such commissions. Huggins also stresses the urgent need for further research, which examines the ‘political economy’ of land as well as mediation activities. Besides attempting to deepen the understanding of these issues, the present work will further analyze the land-related intervention with the objective to provide an overview of existing strategies, tools and activities and think forward to future challenges and opportunities on the way towards a more secure and comprehensive land tenure for the Congolese people.

1.2 What is a ‘land conflict’?

The problem of contested land in Eastern DRC manifests itself in numerous land conflicts. While this observation is rather obvious, the exact definition of a ‘land conflict’ is all but trivial and should be clarified before getting immersed in the problem of contested land and the land-related intervention in Eastern DRC. In order to be able to systematically identify, categorize and quantify land conflicts in view of a corresponding intervention, it is necessary to have a clear conception of what constitutes a land conflict. According to North Kivu’s provincial land administration, a land conflict is a “dispute

associated with the bad repartition of individual or collective interests”³, a very general definition which involves in fact all kinds of conflicts. Even when specifying this definition to “a conflict, which is related to the repartition of and access to space”⁴ or embedding it into the wider class of housing, land and property (HLP) disputes⁵ and thereby conceptually linking the conflict to land, the question remains of how to define the ‘severity threshold’ for a situation to be classified as a land conflict.

The Congolese non-governmental organization (NGO) *Aide et Action pour la Paix* (AAP, see page 29) commonly distinguishes latent, semi-open and open conflicts, depending on the position of a conflict in the continuum between tension and physical violence. Still, conflicts over land vary considerably in their severity in the sense of their potential to cause further negative repercussions like physical violence or displacement. So far, national and international actors concerned with land commonly present bare numbers of land conflicts documented and/or resolved in their activity reports, hence avoiding to provide an unambiguous answer to these – admittedly extremely challenging – questions. When dealing with these numbers, it is therefore important to keep in mind that they provide no information about the complexity and severity of the respective conflicts. However, including such information in conflict documentation and analysis is crucial not only for capturing and quantifying the existing problem, but also for measuring and evaluating the impact of corresponding interventions.

A useful approach might be the categorization of land conflicts according to the type of land involved (e.g. land in the customary or state domain, pasture or agricultural land), the type of tenure claims made (access or ownership right) and the type of actors involved (concessionaires, internally displaced persons (IDPs), etc.).⁶ So far, AAP, the United Nations Human Settlement Program (UN-HABITAT) and the NRC (see page 30) have gone furthest in the classification of land conflicts. Besides distinguishing between individual and collective land conflicts, these organizations are working on a system to carry out documentation in accordance with a standardized typology of land conflicts, allowing for capturing the different issues at stake in a more systematic way. The goal is to create a reliable database which enables statistical analysis. A preliminary typology developed by UN-HABITAT comprises 17 different types of land conflicts, mainly depending on the type of rights that are claimed and the nature of parties involved.

Despite the ongoing progress in understanding and capturing the complexity of land conflicts, it is hard to define objectively verifiable indicators that go beyond quantifying the absolute output of the intervention in terms of the number of conflicts registered and/or resolved or the number of persons sensitized to land legislation. So far, there are no OVIs that allow for the measurement of the impact of land-related activities and the

³ Presentation by North Kivu’s minister for land, urban, housing, transport and communication affairs in Kiwanja, Rutshuru, October 19, 2011.

⁴ Interview with AAP representative in Goma, October 8, 2011.

⁵ The Norwegian Refugee Council (NRC) defines HLP disputes as “disagreements over access, use, possession or ownership of land, resources found on or under it, or other forms of property such as houses, crops or livestock. They commonly develop when individual or collective interests related to HLP are in conflict.”

⁶ Unpublished document by Chris Huggins.

achievement of their declared objectives like the reduction of local violence and the fostering of social cohesion. While acknowledging that clearly proving causal relations between these activities and their impact in a complex open system like post-conflict Eastern DRC is only very limitedly possible, it seems nevertheless that a lot of work and research remains to be done in this regard.

1.3 Methodology

Any research project has by definition a limited scope, hence the researcher is forced to distinguish between elements which he considers relevant regarding the object of his study and which he considers not immediately necessary to study in detail.

In the case of land, which even in times of peace is a highly complex and multifaceted issue, drawing these limits while ensuring at the same time that potentially important factors are not omitted is a virtually impossible task. It is legitimate to state that the issue of land is interlinked with practically every other prominent dimension of the current conflict in Eastern DRC, be it migration, displacement, citizenship, the invasion into protected areas like the Virunga National Park or illegal exploitation of natural resources. Even when focusing only on the land component of the wider field of concern known by the term ‘housing, land and property’⁷, prioritization and omission are inevitable. The author is therefore far from claiming to cover all relevant land-related issues in Eastern DRC within this work. However, in an attempt to capture a broad spectrum of existing theories about land and its relation to conflict in Eastern DRC, this work has been prepared by an extensive literature review, conducted at the School of International and Public Affairs, Columbia University, New York. Findings from this literature review provided a preliminary overview and understanding of the land issue, contributed to the preparation of fieldwork and complemented the results.

Fieldwork has been conducted in Goma, Masisi and Rutshuru in North Kivu during October and November 2011 with support from the UN-HABITAT Land Program in Eastern DRC, based in Goma. The findings of this work are based on a total of 25 semi-structured interviews with a range of representatives of UN-agencies and NGOs, MONUSCO personnel, customary chiefs, representatives of the provincial government and civil society members in Goma, Masisi and Rutshuru. The findings are furthermore complemented by information from email communication and numerous informal conversations with members of the same target groups. Moreover, information has been drawn from the passive observatory attendance of mediation activities at UN-HABITAT’s mediation center in Kitchanga, of a reunion of the Land Coordination Group in Goma and of two workshops organized by UN-HABITAT in Rutshuru on October 18/19, 2011 and in Kitchanga on October 25/26, 2011. Each of these workshops saw the participation of a wide range of beneficiaries and interveners, including customary authorities, high rank representatives of the provincial land administration, pilot *Comités Locaux Permanents de Conciliation* (CLPCs) (local conflict prevention committees foreseen by *Programme de Stabilisation et de Reconstruction des zones spartant des conflits armés*

⁷ This term comprises any property issues that occur in humanitarian crises, particularly the ones that commonly arise in the context of IDP and refugee return and subsequent claims for restitution of property that has been left behind during displacement.

(STAREC), a national stabilization and reconstruction plan for the eastern provinces), UN-HABITAT employees and MONUSCO Civil Affairs officials.

Regarding the case study of contested land in Bibwe, Masisi, it proved cumbersome to collect detailed information during the politically sensitive pre-election phase in late 2011. UN agencies were understandably rather reluctant to take a clear stance and share their internal views on this case. Moreover, due to time restrictions and general insecurity, it was not possible to conduct research in the Bibwe area. Information has been drawn from interviews with UN-HABITAT and United Nations High Commissioner for Refugees (UNHCR) representatives as well as local customary authorities in Kitchanga. Moreover, the information has been complemented by interviews with United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and United Nations Office for Project Services (UNOPS) officials in Goma. Unfortunately, planned interviews with IDPs from the Bibwe area in the camps near Kitchanga were not authorized by the camp authorities due to the sensitivity of this issue. Entering the camps as an expatriate would have required a formal permission by Camp Coordination and Camp Management in Goma, which could not be acquired due to time constraints. The case study therefore provides only an overview and no in-depth analysis of the situation in Bibwe, nevertheless serving to illustrate some of the most severe problems associated with contested land in Eastern DRC.

This work principally constitutes a qualitative analysis. If available, qualitative information has been complemented by quantitative data. Throughout this work, the singular form of the expression 'land-related intervention' is applied. This expression is meant to comprehend all land-related activities by national and international NGOs, UN agencies, the Congolese government and foreign donors.

Throughout this work, the author generally avoids to attribute the collected information to individuals or organizations, unless such an attribution is without doubt harmless. The views expressed in this work are the exclusive views of the author and do not necessarily reflect the views of the different organizations mentioned. The author hence bears exclusive responsibility for potential errors or inaccuracies.

1.4 Outline

The scope of this work is to explore the relation of land and conflict in North Kivu, in particular the territories of Masisi and Rutshuru, and to review land-related activities by national and international actors in these areas in order to identify gaps as well as opportunities for future intervention.

In chapter 2, the role of land in Eastern DRC and the relation between land and conflict will be explored in order to set the scene for an analysis of existing land-related interventions. After a review of the most relevant historical developments with respect to land tenure, the direct and indirect links between land and conflict will briefly be analyzed. Finally, the different types and dimensions of land conflicts will be presented in order to provide an overview of the issues and interests at stake.

In chapter 3, the land-related intervention by national and international actors in the humanitarian, peacebuilding and development sector in Eastern DRC will be reviewed.

After a reflection on general problems of land-related interventions, a mapping of the most relevant national and international organizations and institutions and their corresponding activities will be presented in order to gain an overall picture of land-related efforts in Eastern DRC. The aim of this mapping is to identify different approaches and strategies as well as success stories and failures in order to determine the preconditions that have to be fulfilled for the successful prevention and settlement of land conflicts and to identify gaps in the overall intervention.

Chapter 4 provides a case study of contested land in Bibwe, Masisi, in order to identify the most important current and upcoming land-related challenges in a concrete case.

Finally, chapter 5 will analyze the findings of the preceding chapters and present reflections on future key challenges and opportunities regarding land in Eastern DRC.

2. The relation between land and conflict in Eastern DRC

Already before the two Congo Wars between 1996 and 2003, which saw the participation of armed actors from up to nine African countries, there had been armed conflict in Eastern DRC, without the involvement of regional powers. Violent clashes and conflicts had been a constantly recurring feature of local history since the colonial period, resulting from a cumulative interplay of tensions due to massive migration, uncertainty about the citizenship and political rights of migrants and the growing insecurity regarding land tenure for great parts of Eastern DRC's rural population (Mathieu/Mafikiri Tsongo 1998). In the 1990s, these tensions discharged first in 1991 over the denial of citizenship for most communities with Rwandan ancestry ('Banyarwanda', ethnic Hutu and Tutsi). In 1993, large-scale violent conflict in the Kivus started with a wave of ethnic violence between '*autochtone*' (Hunde, Nande, Nyanga, Tembo, Twa, etc.⁸) and Banyarwanda militias in North Kivu, which left between 7,000 and 14,000 dead between March and September of that year and led to the displacement of more than 200,000 (Mathieu/Mafikiri Tsongo 1998). With the attitude 'them or us', armed groups from both sides committed massacres and acts of ethnic cleansing (Mathieu/Mafikiri Tsongo 1998a) in a rural civil war which has been termed "a concrete example of *violence identitaire*", "directed against the existence of a community in order to remove it from its territory" (Mararo 1997, p. 503).

Land is by far not the only source of conflict in Eastern DRC, as the following two Congo Wars were determined not only by local, but also by regional agendas and dynamics. They were strongly driven by Rwandan security concerns and increasingly by the interest of regional powers in Congolese natural resources. However, the main argument of this chapter is that competition over land, the extremely unequal distribution of land and the lack of access to land for large parts of the rural population have strongly contributed to the conditions that made the eastern provinces of the DRC so susceptible for extremist political rallying, ethnic hatred and finally large-scale violence. The land issue and the

⁸ The terms '*autochtone*' and 'indigenous' will be used interchangeably to refer to these communities throughout this work. All these ethnic groups claim to be indigenous to the region. While the Twa, or Pygmies, lived as semi-nomadic forest peoples on nowadays Congolese territory before all other ethnic groups, all mentioned groups consider themselves indigenous compared to people of Rwandan ancestry.

problems revolving around it are at the same time structural and proximate cause as well as sustaining factor and consequence of suffering and violence in Eastern DRC.

The purpose of this chapter is to illustrate the tight links between land and conflict in Eastern DRC and to present a structural overview of land-related issues at stake in order to demonstrate the crucial importance of the land issue – if it remains unresolved – as an inhibitor for stability and durable peace. As it is impossible to understand the current land-related problems without considering Congolese history, the following section will summarize the most relevant historical developments which contributed to increasing competition over land and the deterioration of land tenure security since the beginning of Belgian colonialism. An issue which deserves special attention is the existing legal dichotomy between customary and property-based land tenure and the accompanying lack of a working legal mechanism to provide comprehensive tenure security for the Congolese people. After this retrospective, the causal bonds between land and conflict will be analyzed. Finally, the different dimensions of tensions and conflicts over land will be presented in more detail in order to provide an overview of current issues and interests at stake.

2.1 Land tenure in Eastern DRC: From integration to insecurity

In a predominantly agrarian state like DRC, access to land is and has always been of crucial importance. The great majority (more than 80% (Pèlerin 2010)) of the rural population being peasants and living from subsistence agriculture, secure and permanent access to land is simply a necessary condition for survival. Off-farm livelihood options are scarce and mainly limited to jobs associated directly or indirectly with the aid industry (Büscher/Vlassenroot 2010). At the same time, land is a source of identity and important for political, social and spiritual reasons, particularly in the context of the ethnic heterogeneity in Eastern DRC, where political and land rights have become strongly linked to ethnicity. Since Congolese independence, there has been an ongoing struggle about the nationality of people with Rwandan ancestry (i.e. ethnic Hutu and Tutsi) living on Congolese territory, considered as ‘fake’ Congolese by parts of ‘indigenous’ ethnic communities. The nationality question, and with it the right for Banyarwanda to political representation and to legitimately acquire and own land, has constituted a source of political rallying and ethnic mobilization by authorities and political entrepreneurs of both sides and at all hierarchical levels.

In order to understand the current situation, it is indispensable to consider the historical evolution of land tenure and the developments that contributed to the increasing competition over land in the Kivus. It is useful to distinguish three periods between which land tenure changed considerably and which finally led to the first outbreak of large-scale violence in 1993. These are the time before colonialism, the colonial era under Belgian rule and the post-independence era under Mobutu’s rule.

2.1.1 Traditional customary land tenure

Before Belgian colonialism, land tenure in Eastern DRC was commonly incorporated into the organizational structure of small centralized ethnic kingdoms with a rigid pyramidal hierarchy. They were headed by the *Mwami*, who was the holder of the land

with the exclusive right to allocate parcels to his subjects. The latter enjoyed land rights in exchange for a regular tribute, usually in form of natural produce, which was to be paid to the respective person at the next higher level in the hierarchy.⁹ Nevertheless, the land was the collective property of the entire community (Paluku Mastaki/Kibambi Vake 2008a). As therefore nobody could claim absolute private ownership of land, land tenure in the sense of private property did not exist, instead it meant the right to access, cultivate and live on the land in exchange for tribute to the *Mwami*.

While land rights could be inherited by male successors within a family, land and its use rights were inalienable, hence the land remained in the collective domain, controlled by the customary authorities. Land rights were not registered or codified, but recorded with the help of witnesses, and could only be revoked by the *Mwami* in case of severe infringements. This system was in principle also open for migrants, as long as they recognized the customary authorities and paid tribute. It allowed the customary chiefs to bear enormous power and to hold the peasants, their subjects, in a strong dependence. This form of land tenure therefore constituted a system of social control and dependent integration, where ethnic belonging and social hierarchy manifested themselves particularly in land relations (Van Acker 2005). However, while nobody had complete property rights in this system, there was virtually nobody who had no rights at all (Van Acker 2000). Hence, everybody was granted access to land under the conditions of accepting to being subjected to the chief, paying tribute and living in a rigid social order.

2.1.2 Belgian colonialism and the introduction of property

The Belgian colonizers decided to take advantage of the traditional political and land tenure system in order to govern the Congolese territory via indirect rule. While upholding the authority of customary chiefs, they appropriated the most fertile areas, like the heartland of Masisi in North Kivu, for plantation agriculture and settler-owned concessions. To this end, they superposed an alien, European-style land tenure system over the existing traditional order, which allowed them to limit the competence and spatial extent of the customary land administration. This step laid the foundation for the ongoing conflict between the property-based and the traditional land tenure system in DRC. Apart from this direct effect on land tenure, externally imposed changes like the deliberate delineation of national borders and the transplantation of large numbers of Rwandan labor forces into the Kivus had severe impacts on ethnic composition and boosted competition over land. Today, more than half a century after Congolese independence, the repercussions of colonialism on the present crisis in Eastern DRC can hardly be overestimated.

The new legal system introduced by the colonizers aimed at limiting the power of customary chiefs as well as the extent of customarily-held land while at the same time recognizing and sustaining customary power over the latter in order to rely on the existing social and administrative structures to run the colony. To this end, the colonial administration declared all vacant land as property of the colonial state. As the meaning

⁹ This tax and tribute system varied between different ethnic communities, but the general structure described here was the same among most indigenous (*autochtone*) communities in Eastern DRC.

of 'vacant land' was not clearly defined, in fact all land that was not inhabited or cultivated was considered vacant.¹⁰ This step drastically limited customary land and deprived it of any possibility for expansion and of previously customarily held, but uncultivated areas. Furthermore, it froze the 'borders' of customary territorial entities, which previously had still been in flux and 'containerized' the local population in its respective customary chiefdom (Vlassenroot/Huggins 2005). Indigenous, semi-nomadic forest people were considered to have no land tenure system and were hence expropriated of virtually all their land (Nobirabo Musafiri 2008).

In the Kivus, this extraction of land from the customary domain was organized by the *Comité National de Kivu* (CNKi). The CNKi selected the best lands and constituted different blocks which accordingly went over into state domain. The confiscated land was used for the creation of large settler-owned concessions in the private state domain, or wildlife parks and anti-erosion forests in the public state domain. While the traditional link between land and social structure prevailed on customary land, it did not exist in the state domain, where land was treated as an alienable property (Van Acker 2005). As of 1944, it is estimated that the colonial authority controlled approximately 12 million hectares (ha) (120,000 km², approximately twice the surface of North Kivu) of land in DRC (Salacuse 1985).

Apart from this large-scale extraction of land from the customary domain, colonialism had a tremendous impact on demographics and ethnic composition in the Kivus. The creation of the Congo Free State at the Berlin Conference in 1885 and the redefinition of its borders in 1910 laid the foundation for a still ongoing dispute about the citizenship of people with Rwandan ancestry living on Congolese territory, particularly in parts of North Kivu. Ignoring the ethnic and cultural borderlines of the previous Rwandan Kingdom, the new borders confined Kinyarwanda-speaking populations, which had previously been attached to the Rwandan Kingdom (like e.g. the inhabitants of the *Chefferie de Bwisha* in Rutshuru), together with other ethnic groups like Hunde, Nyanga and Tembo within the same territorial entity. Nevertheless, cohabitation was still rather unproblematic, as the region was scarcely populated at that time.¹¹

Ethnic balance started to de-equilibrate with the 'implantation' of large numbers of Rwandan Hutu peasants in North Kivu, organized by the colonial administration. Facing a need for labor force on their plantations as well as demographic pressure and famine in Rwanda, the colonizers simply transferred workers and their families from Rwanda to North Kivu, obviously underestimating the impact of this imposed exodus on existing local ethnic and socio-political structures. This migration was institutionalized by the *Mission d'Immigration des Banyarwanda* (MIB) in 1937. The Belgians brought 85,000 Rwandan Hutus to Masisi between 1937 and 1955 (Mathieu/Mafikiri Tsongo 1998). The latter were settled in the Hunde-dominated heartland of Masisi in the autonomous enclave of Gishari, which had been 'conceded' by Hunde customary chiefs after insistent

¹⁰ Salacuse (1985) provides a good account on the ambiguity of 'vacant land'. He notes that certain scholars claim that in pre-colonial times there was in fact no vacant land, as any area was claimed by one group or another.

¹¹ By the beginning of the 1940s, the estimated population density was still only 12 habitants/km² in Masisi and 25 habitants/km² in Rutshuru (Mathieu et al. 1998).

negotiations and land expropriation of Hunde (Mararo 1997). Hence, the newly arrived did not have to participate in the traditional integration mechanism for migrants (Matabaro 2008), i.e. they did not have to subordinate to customary Hunde authorities and pay tribute in exchange for access to land and social integration. On the contrary, having been granted autonomy and allocated land by the colonial administration and growing in numbers, the Rwandese migrants tried to extend the territory under their control (Mathieu/Mafikiri Tsongo 1998). This development led to severe tensions between the indigenous communities and the migrants and finally the colonial authorities reacted in 1957 by dissolving the enclave of Gishari and formally subjecting its inhabitants to Hunde rule. While this step temporarily brought relative calm to the region, it left the political status of the immigrants unclear and did not resolve the underlying problem of externally imposed ethnic cohabitation.

In addition to official migration in line with the MIB, a wave of uncontrolled migration from Rwanda to the Kivus took place in the same period. It consisted mainly of Hutu peasants fleeing from famine in Rwanda and looking for land in the Kivus. All in all, estimates vary between 200,000 and 300,000 individuals that migrated from Rwanda to the Kivus during the colonial period (Mathieu/Mafakiri Tsongo 1998; Vlassenroot/Huggins 2005) and settled mainly in areas that had been extracted from Hunde rule. Not being obliged to subject themselves to the prevailing customary system in order to have access to land and claiming tenure rights as developers of the territory they occupied (Mararo 1997), many of these immigrants started to take advantage of the dual legal system and to purchase land, particularly after 1973 (see next section).

The change in demographics as well as the additional property-oriented way of securing access to land gave rise to intensified political and land competition. This competition has predominantly occurred across ethnic lines and, therefore, resulting dynamics and tensions have been ethnically translated. Fuelled by the fear of losing their land to ‘the others’, people and communities from all sides hence have got mobilized and radicalized with respect to identity, nationality and ethnicity.

Around Congolese independence, between 1959 and 1962, a new wave of Tutsi migrants arrived in North Kivu, fleeing ethnic violence in line with the so-called ‘social revolution’ against Tutsi hegemony in Rwanda (Bigazozo et al. 2002). Fearing loss of their political influence due to growing Banyarwanda presence in their former territory, Hunde authorities evicted all persons with Rwandan ancestry from political positions in Masisi in 1963 and replaced them by Hunde politicians. Ethnic tensions discharged violently in the *révolte des kinyarwanda* (revolt by the people from Rwanda) in Masisi in 1965 after provincial elections and an outcome that overwhelmingly favored Hunde. Hutu and Tutsi resistance was suppressed bloodily by the Congolese army and was followed by a 25-year period without major bloodshed (Mathieu/Mafikiri Tsongo 1998). However, as described in the following subsection, ethnic antagonisms further accumulated and land insecurity further deteriorated during this period.

2.1.3 Mobutism and the 1973 General Property Law

Governance in Mobutu’s Zaïre was dominated by political opportunism, clientelism and state patronage. Political decisions seem to have been driven mainly by the pursuit of

self-enrichment and later increasingly by the struggle to maintain power at all price. The virtual absence of governance accountability had devastating consequences for social cohesion and land tenure security. Mobutu's strategy of maintaining his authority was not to generate acceptance for his leadership by building a strong nation, but to weaken any potential opposition by divide-and-rule tactics and to use Congolese state resources to reward political loyalty.

A crucial instrument of this policy was the General Property Law of 1973. This law, which is "effectively a compilation of colonial texts" (S.M. Matabaro in Paluku Mastaki/Kibambi Vake 2008b, p. 5), forms the basis of the current land tenure system in DRC. It aimed at resolving once and forever the ambiguity of the colonial dual land tenure system, which had been retained after independence, by declaring all Congolese soil, customarily-held or not, exclusive and inalienable property of the state. Before, by virtue of the so-called *Bakajika* law in 1966, the Congolese state had already affirmed its control over all land that had been extracted from the customary domain by the colonial authorities. The General Property Law, although not granting absolute land ownership to individuals, now in fact constituted the decisive step towards a property-based land tenure system as it had already been introduced by the Belgian colonizers. It guaranteed individual, alienable land rights in form of temporal and perpetual concessions. From 1973 on, a land market thus emerged, and an official registration certificate became the only legal source of land rights.¹² Consequently, the General Property Law deprived the customary system of virtually all legal recognition,¹³ as customary land tenure, which previously had constituted the major source of authority for the customary chiefs, was formally abolished and the role of the traditional chiefs accordingly reduced to a merely administrative task. The law hence further undermined the traditional social structure associated with customary land rights and completed the comprehensive shift towards a new paradigm of property-based land tenure.

However, despite the *de jure* abolishment of customary land tenure by the 1973 General Property Law, the customary system prevailed as the widespread norm of land tenure in rural areas, because state control over the Congolese territory and administrative capacities were always too weak to thoroughly implement the new legislation.¹⁴ Article 389 of the law therefore foresaw the issuing of a presidential decree which should define the legal status of customary land rights in communal territories.¹⁵ Such a clear definition constitutes not only a highly-charged political issue, but also an extremely complex task given the heterogeneity of traditional land tenure systems in DRC. Consequently, this supplement has never been issued and the legal status of customary

¹² An ordinary certificate grants land use rights up to 25 years. The perpetual certificate is only available for Congolese citizens under the condition that the corresponding land is under constant use. The certificates are alienable. They become uncontestable 2 years after expenditure (Matabaro 2008).

¹³ According to the law, every case of land use which was not based on a regular title could be sanctioned with 2 to 6 months of imprisonment.

¹⁴ By the end of the 1980s, only an estimated 3% of the entire Congolese territory was registered under the new legislation (Huggins 2010).

¹⁵ Article 388 of the same law defines the respective territories as the land which "local communities inhabit, cultivate or exploit [...] according to local customs and habits" (Matabaro 2008).

land remains unclear to the current day. Ambiguity, overlapping claims over land, and a *de facto* dual legal land system therefore still characterize land tenure.

Unfortunately, the General Property Law played almost exclusively to the advantage of economical and political elites in DRC, while generating uncertainty among the rural masses regarding their legal access to land. Although the new legislation had been designed initially as a measure of national integration by giving every citizen equal access to land (Vlassenroot/Huggins 2005), its implementation and hence its effect on reality on the ground were diametrically opposed to this intention. The new law turned out to be the catalyst for a new dimension of land-grabbing and state-supported expropriation. Land that had been already in the private state domain was distributed among political and economical elites to reward political loyalty. In North Kivu, it was mainly Banyarwanda, often powerful Tutsi, who benefitted from these developments, as they were Mobutu's closest allies in the region. From the late 1960s on, in order to consolidate his rule and prevent the formation of any strong opposition, Mobutu applied divide-and-rule tactics by assembling representatives of allegedly weak but loyal minorities around his center of power. One of the most prominent beneficiaries of this strategy was Barthélemy Bisengimana, a Tutsi of Rwandan origin, who was Head of the Bureau of the President between 1969 and 1977. In this position, he was a strong promoter of the political and economic rights of Banyarwanda and particular Tutsi and driving force behind a law in 1972, which granted Congolese citizenship to any person that had immigrated to the country prior to 1950. Having been granted Congolese citizenship, powerful Banyarwanda from then on had the possibility to acquire land commercially or through their political ties in line with the General Property Law.

Going hand in hand with a government policy of promoting extensive cattle ranching in North Kivu (also strongly encouraged and supported by international actors like the Food and Agriculture Organization (FAO) and the United Nations Development Program (UNDP) (Mararo 1997)), the 1973 law further enabled the emergence of a new class of cattle farmers originating from the urban bourgeoisie, who used the new legislation to obtain new concessions or to extend their existing ones. These were also often members of the Tutsi community, which is traditionally closely attached to cattle. The new law allowed them to break their dependency on indigenous customary chiefs (mainly Hunde) regarding access to land and to obtain formal land titles. In the course of this redistribution of land in the private state domain, many former plantations were transformed into pasture land and many former plantation workers lost their jobs.

In the new system, many *Bami*¹⁶ were officially appointed administrators of the customary land under their control by the government.¹⁷ They were hence at the interface of the two competing legal systems. Trying to adapt to the new legislation and somehow retain their customary power, many customary chiefs (mainly Hunde) took advantage of their local knowledge and their position at the top of the customary system in order to act as facilitators of land deals, often without notifying or negotiating a

¹⁶ Plural of *Mwami*.

¹⁷ The *collectivités chefferie* are still headed by a *Mwami*, while in the *collectivités secteur* the *Mwami* has been replaced by a government-appointed administrator. See Figure 3 for a schematic overview of the different administrative entities in DRC.

compensation for the population that had inhabited or cultivated the respective land before. They personally benefitted from the sale of customary land and the accompanying transfer to the state domain, while their 'subjects' suffered from the diminishment of customarily available land (Vlassenroot/Huggins 2005).

Overall, the new law induced a shift of formal control over land between different ethnic groups, mainly to the benefit of Banyarwanda and to the detriment of indigenous communities. Banyarwanda are estimated to have gained control over 90% of the former CNKi blocks after 1973 (Mararo 1997). While indigenous communities perceived these shifts in control over land as a hostile acquisition of their 'father's soil', the Banyarwanda who benefitted from this development claimed to simply enjoy their rights of which they had been deprived before, because many Banyarwanda were granted Congolese citizenship only in 1972. Competition over land and the sensitive nationality and ethnic identity issue, which had already begun with the creation of the Congo Free State, therefore mutually aggravated each other. In addition, land, which still had been abundant during the colonial era, became increasingly scarce for the great majority of the rural peasant population.

Between the 1940s and 1970s, the population density had grown from 12 habitants/km² to 62 habitants/km² in Masisi and from 25 habitants/km² to 103 habitants/km² in Rutshuru (Mathieu/Mafikiri Tsongo 1998). Natural population growth was complemented by ongoing migration from Rwanda to North Kivu. In Masisi, a former Hunde-dominated territory, it is estimated that Banyarwanda represented more than 70% of the population by the beginning of the 1990s. Apart from vast natural reserves,¹⁸ land in the state domain was used for cattle ranching and plantations, while the effective population density in cultivation areas rose up to 300 habitants/km² (Mathieu et al. 1998). Increasing land scarcity for peasant populations and the unequal distribution of land enhanced ethnic antagonisms and led to the impoverishment of the peasant population and a large agricultural labor surplus (Vlassenroot/Huggins 2005).

These grievances in combination with the unresolved nationality issue provided powerful arguments for political extremists, the latter often being customary chiefs who sought to maintain their traditional influence by nurturing collective hatred against non-indigenous groups, particularly in the context of the fragmenting effects of Mobutu's concept of *géopolitique* in the early 1990s, which brought the issue of Congolese nationality once more to the center of attention. A new class of impoverished and landless peasants, who were forced to sell their labor on plantations, was just too susceptible for radical messages and provided a fertile ground for the formation of militant groups.

Summarizing, as competition about land and resulting tensions and conflicts had been strongly translated into ethnic cleavages, this competition constituted an important contributing factor to radicalization of communities and the flourishing of armed groups in Eastern DRC. The state monopoly on the use of force being increasingly undermined and the security situation deteriorating, rural communities increasingly relied on the support from their ethnic militias in order to secure their land and physical security.

¹⁸ E.g., the Virunga National Park covers almost 2/3 of Rutshuru (see Figure 4).

2.1.4 Land tenure in post-conflict Eastern DRC

After the first wave of ethnic violence in 1993 in North Kivu, the Rwandan genocide and the subsequent influx of about 1 million mainly Hutu refugees to Goma in July 1994 provided the final ingredient for war in a region that seems to have been carefully programmed for calamity by its respective authorities throughout the previous century.

While the First Congo War in 1996 is perceived to have been principally politically motivated, the Second Congo War in 1998 is considered to have been driven mainly by the scramble for DRC's natural resources, hence being termed as “the continuation of economics by other means” (Lemarchand 2001, p. 41). The two wars led to the further decline of any remaining accountable state structures in the east of the country, and faded into a protracted crisis – commonly classified as a post-conflict situation – in which control over most parts of Eastern DRC is exerted by armed groups. During and since the wars, millions have been displaced, often repeatedly, and nowadays property relations and land rights, which had been strongly disputed already before the wars, are in shambles. Since 1996, some parts of North Kivu have seen the successive (Rwandan-backed) control by Laurent Kabila's *Alliance des Forces Démocratiques pour la Libération du Congo* (AFDL), the RCD and Laurent Nkunda's *Congrès National pour la Défense du Peuple* (CNDP), while other parts have been controlled by the *Forces Démocratiques pour la Libération du Rwanda* (FDLR) or ‘autochtone’ Mai Mai militias. Often, these groups have installed parallel administrative and taxation systems, which were in favor of their ethnic kin. Land rights were often arbitrarily conceded by the respective ruling faction and, if necessary, asserted and protected with armed force.

Today, most of these rebel movements have been formally integrated into the Congolese army *Forces Armées de la République Démocratique du Congo* (FARDC), but many still constitute *de facto* independent factions.¹⁹ It is hard to capture the chaos of overlapping land claims that prevails after 15 years of parallel administration and massive population movements. If anything remained intact, it is the extremely unequal distribution of land, as big private concessions still are in the hands of a few and cover vast areas. In Masisi and Rutshuru, these concessionaires are still perceived to be principally Tutsi who protect their vast pasture grounds with the support of allied militaries. In Masisi, where 95% of the population is dependent on agricultural activities, one third of the arable land is controlled by a small class of landowners (Vlassenroot 2006).

For those who have no official land certificate, i.e. the great majority, land tenure security remains critical. To large parts of the rural population and even many customary chiefs, the statutory land law and corresponding procedures are still completely unknown. Moreover, securing land access by registration with the cadastral service and obtaining

¹⁹ The most prominent example is certainly the CNDP, a Rwandan-backed former rebel movement which controls large parts of Masisi and Rutshuru. While agreeing to formally participate in the integration process and officially transforming into a purely political movement, CNDP refused to participate in the foreseen processes of *mixage* and *brassage*, which aimed at creating a more homogeneous Congolese army by splitting up former rebel groups and creating mixed FARDC troops. Hence, while having in mind that CNDP has been formally integrated and is widely referred to as ‘ex-CNDP’ (at least in Goma), it continues to operate autonomously and will consequently be referred to as ‘CNDP’ throughout this work.

an official certificate (minimum cost 200 United States Dollars (USD))²⁰ is out of financial and often geographical reach for most peasants.

Most land claims are hence still based on customary and informal contracts which provide far less security. Former peasants are increasingly forced to sell their labor to large land owners. Secure access to land, legal or not, seems available only for those who enjoy protection from warlords or high rank military. Without any legal basis, the latter often proclaim themselves authorities over an area (see chapter 4). In addition to formal land law, this phenomenon called '*traffic d'influence*' further undermines the authority of customary chiefs and the functionality of traditional conflict resolution mechanisms. Customary chiefs often face intimidation by armed actors and many are forced to retreat to relatively safe urban havens like Goma.

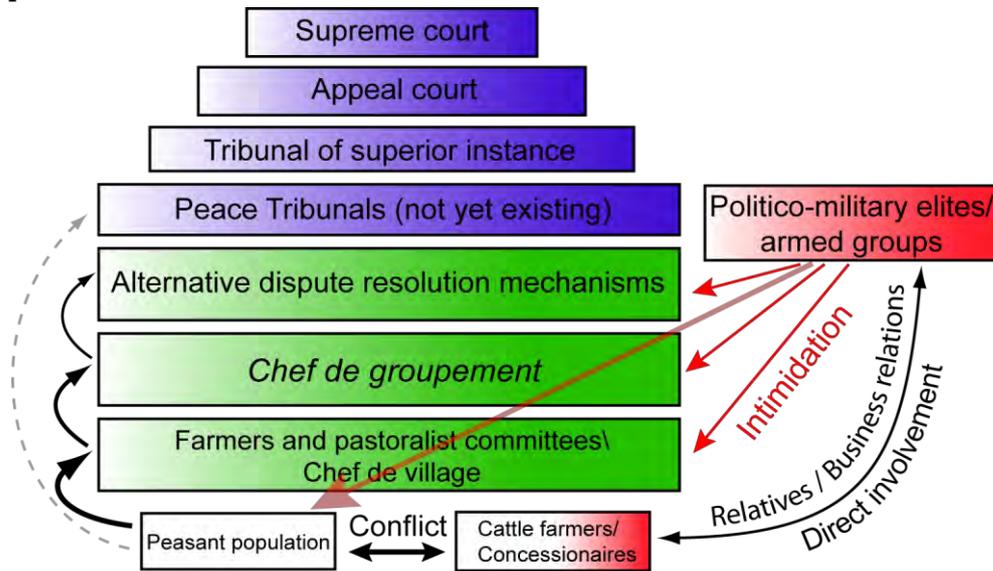
In this setting, the state's functions of governance like the provision of security, taxation and dispute settlement are partially or fully assumed by non-state actors, leading to a situation which can be described as "hybrid political order" (Boege et al. 2008, p. 3). Governance and regulation, including the settlement of land conflicts, are increasingly exercised through hybrid arrangements involving non-state actors like armed groups and customary authorities. However, it is important to note that while the discourse on state weakness might suggest that the state is completely absent, in fact state agents remain players in these arrangements, even if in a less visible way and at a possibly much lower hierarchical level.

Informalization of the judicial system

When asked about their biggest concern with respect to land conflicts, many customary chiefs in Masisi and Rutshuru mentioned the buzzword '*traffic d'influence*'. It describes the informalization and undermining of the customary and formal judicial system through the informal exercise of influence by powerful, often armed members of politico-military circles on customary authorities and the population with respect to land distribution procedures and traditional dispute resolution mechanisms.

²⁰ Information by the provincial *Conservateur des titres immobiliers*. His office and the cadastral service are in Sake close to Goma and are to cover the territories of Masisi and Walikale. Considering the limited financial, technical and logistical means of these services along with the catastrophic state of the rural transport infrastructure, it seems illusory to expect to reach more than a small minority of the population with the existing administrative structures.

Figure 1: Schematic illustration of the hierarchy of different conflict resolution mechanisms (extra-judicial mechanisms marked in green and judicial in blue) and the phenomenon of traffic d'influence



Source: Own composition

Figure 1 schematically illustrates this phenomenon. Many local land conflicts occur between the peasant population and cattle owners and/or concessionaires (see section 2.3.1). Traditionally, the conflict parties refer to local customary chiefs or to local conflict resolution committees in order to find a solution to these disputes. If the guilt of the perpetrator and the scale of damage for the victim are determined, the perpetrator is to pay compensation to the victim in form of produce or money. If no solution can be found at this instance, the case is referred to the *chef de groupement* and finally to the highest instance of extra-judicial dispute resolution mechanisms, like the *Comités des Sages* (created upon initiative of UN-HABITAT), the *Noyaux de Résolution des Conflits Fonciers* (AAP initiative), the *Commissions d'Accueil et de Réinsertion* (NRC initiative) or the foreseen *Comités Locaux Permanents de Conciliation* (government initiative, STAREC).²¹

With the proliferation of armed groups as well as politico-military and economic-military elites increasingly having stakes in land disputes (see section 2.3), these alternative conflict resolution mechanisms (marked in green) are however increasingly bypassed and their authority undermined and replaced by the principle 'might is right'. Intimidation (red arrows) ranges from threats against conflict parties or customary authorities to open violence. Customary authorities are usually powerless against this type of interference. Judicial mechanisms (marked in blue), which are not as prone to suffer from *traffic d'influence*, are either not yet existent, like the Peace Tribunals, or their services are out of financial and/or geographical reach for the majority of the rural population (dashed grey arrow). The few cases that make their way to judicial courts like the *Tribunal de Grande Instance* in Goma suffice to totally overwhelm the capacity of the latter and their solution thus suffers from significant protraction.

²¹ See section 3.2 for more detailed information on these mechanisms.

This influence hence further reduces land tenure security, impedes the resolution of land disputes and leads to the militarization of land issues. Moreover, it further deprives customary authorities of their legitimacy, which had already been severely damaged by the negative role of many chiefs in the sale of customary land. In many areas, customary authorities are openly challenged by armed actors and replaced by arbitrary rule (see chapter 4).

2.1.5 Conclusion

To summarize the section, while land remains the basis of subsistence for the majority of the rural Congolese population, the privatization of its access and use rights in the sense of private and alienable concessions as well as the informalization of both customary and legal land acquisition procedures turned its meaning from a basic element of a system of social order and integration, open for virtually everyone, into an object of craving and competition and hence into a source of tension and conflict in the context of increasing population density and ethnic diversity. Considering Congolese history since the end of the 19th century, it seems as if the creation of a structure ensuring comprehensive land tenure security has been systematically avoided by the respective ruling authorities. The mere introduction of a property-based system would probably not have proven so fatal if the Congolese authorities had been able and willing to manage an ordered and well-defined transition towards this system. Instead, Congolese land legislation – where the state has enough influence to enforce it – still seems to serve mainly the interests of few powerful land-owners, while leaving customary authorities in limbo and the major part of the rural population in despair. Where state influence has been replaced by the control of armed groups²² – meaning the major part of Eastern DRC – land law, customary or statutory, has been replaced by the right of the strongest. To put it in the words of a customary chief interviewed in Masisi in October 2011: “Law is dead”.

2.2 The entanglement between land and conflict

Considering Congolese history, large-scale conflict in Eastern DRC can be seen as the result of an extremely adverse accumulative chain of unfavorable factors and events which mutually reinforced each other and which finally led to a situation in which conflict sustains itself. The struggle for land seems to be directly or indirectly related to virtually all of these factors, be it imposed ethnic cohabitation, contested nationality, state weakness or illegal exploitation of natural resources. This section aims at illustrating the different causal links between land and conflict.

To begin with, land, or respectively competition over it, constitutes a structural or root cause of violent conflict. The links between a structural cause and the outbreak of violence are not necessarily obvious. In the case of Eastern DRC, where ethnic antagonism and the contested nationality issue of Banyarwanda dominate the political landscape, the latter seem to be much more important for the outbreak of conflict. While

²² Including FARDC entities which are formally part of the national army, but operate *de facto* completely autonomously.

this is certainly true, the question remains where these antagonisms come from and why they could reach such a fatal dimension.

Competition over increasingly scarce land in the context of a tenure system which is perceived to play chiefly to the advantage of members of certain ethnic communities is definitely part of an answer to this question. Insecure access to land for large parts of the population as well as the failure of the Congolese authorities to establish an equal, or at least transparent regulatory mechanism regarding access to the country's resources generated local conflicts over land and contributed to an increased collective susceptibility towards identity-based rallying and hence the intensification of ethnic cleavages.²³ Furthermore, land dispossession (*'spoliation'*) created a fertile ground for the proliferation of armed groups, as many of the landless facing the choice of working on private plantations for low salary or joining an armed group opted for the latter. However, not only the loss of land, but also the mere perceived threat of a hostile invasion into a community's territory can suffice for the creation of militant movements.

This has manifested in the formation of numerous so-called Mai Mai armed groups.²⁴ A concrete example is the *Alliance des patriotes pour un Congo libre et souverain* (APCLS), an ethnic Hunde Mai Mai group active in North Kivu which mobilizes "its forces on the basis of popular resistance to refugee returns and land conflicts with ethnic Hutu and Tutsi communities" and whose "financial backers include politicians in Goma and Kinshasa" (Debelle et al. 2010, p. 17). APCLS refused integration into FARDC with the argument that Congolese authorities could not guarantee land tenure security for the local Hunde population. Its leader further claimed that "APCLS defends this population against invasions and land grabs of the former CNDP" (Debelle et al. 2010, p. 17).

However, land competition is not only a unidirectional cause for conflict. Today, after almost two decades of war and armed conflict, the displacement of millions and the emergence of a predatory war economy, a clear causality is no more given and land disputes also constitute both a sustaining factor and a consequence of violence.

In the fragmented landscape of DRC's formal and informal armed groups, there is increasing involvement of military elements in land disputes and land grabs, which frequently results in forced displacement and violence (Debelle et al. 2010). As a consequence of this militarization of land competition, land conflicts also constitute a proximate cause of local violence, which – as it is often perceived to have an ethnic dimension – can in turn foster collective antagonisms at a larger scale and hence contribute to the protraction of conflict. E.g., only referring to the Kasai province between February and October 2007, Vircoulon and Liégeois (2010) reported a range of land disputes which resulted in open violence, while indicating that the most severe conflicts take place in the eastern provinces of North- and South Kivu and Ituri.

²³ E.g., referring to the Ituri conflict between 1999 and 2003, which caused approximately 60,000 casualties, Vircoulon and Liégeois (2010) write that "Ituri illustrates the transformation of a land conflict into open tribal warfare."

²⁴ Indigenous 'self-defense' armed groups recruiting their fighters among marginalized youngsters. 'Mai' is Swahili for 'water'. Mai Mai fighters often rely on support by witch-doctors and the use of 'magic' water for protection during combat.

Finally, land conflicts are also a consequence of the turmoil of war and are well known to constitute major inhibitors to the transition to peace in post-conflict situations, particularly in the context of the return of displaced populations (Pantuliano/Elhawary 2009) (see subsection 2.3.3). As of October 2011, there are an estimated 1.65 million IDPs in DRC, roughly one third of them in North Kivu (Source: OCHA office in Goma). Furthermore, a total of more than 100,000 Congolese refugees in Rwanda, Uganda and Burundi²⁵ are awaiting their repatriation to Eastern DRC under supervision of UNHCR, however generally being strongly rejected by local communities (Sylla 2010). When the security situation allows, these displaced populations seek to return to their places of origin, frequently causing disputes with populations who occupied the land during their absence and claim to be the rightful owners. In the ethnically heterogeneous landscape of Eastern DRC, the contested nationality issue of many Banyarwanda adds a particularly explosive element to these disputes, which in turn threaten the fragile stability.

Land issues thus must be handled extremely carefully in the context of organized resettlement in order to avoid the recurrence of violence. The same holds true for disarmament, demobilization and reintegration (DDR) campaigns. Facing a lack of alternative livelihood options, it is important to think about a means of subsistence for demobilized combatants if reintegration is to be sustainable. Many DDR candidates being former peasants, it is therefore important to ensure at least their secure access to land in order to make them permanently exchange their guns for hoes.

Summarizing, land insecurity and disputes not only constitute structural and proximate causes of conflict in Eastern DRC, but they are also a consequence of war. Frequently causing new displacement and violence, land disputes are therefore also sustaining conflict. In order to break this cycle, it is thus essential to find mechanisms for the prevention and peaceful resolution of disputes over land. However, before considering concrete responses to the land issue, the next section will present the most common and important manifestations of land disputes in North Kivu.

2.3 Manifestations of land conflicts

The struggle for land in Eastern DRC manifests itself in many different local conflicts and disputes. The different motives vary considerably, thus this section aims at providing an overview of the most important issues at stake in Masisi and Rutshuru. The following subsections attempt to identify the main categories of land conflicts and the division lines along which most of these occur. These categories are not mutually exclusive. On the contrary, they are in interplay and often mutually reinforce each other. It is important to note that these antagonisms – while not allowing for generalization – tend to be aggravated by ethnic cleavages and vice versa. To a large extent, these division lines are perceived to be congruent with ethnic divisions, e.g. the traditional attachment of Tutsi to cattle in contrast to the widespread focus of many indigenous and Hutu peasants on agricultural activities. The deepest ethnic rift still lies between the ethnic groups that claim to be indigenous (Hunde, Nande, Tembo, Nyanga, Twa, etc.) and

²⁵ Many of these refugees are former Rwandese Tutsi refugees who had arrived in DRC before independence in 1960 and who have acquired Congolese citizenship in 1972.

Banyarwanda (Hutu and Tutsi), although the 2008 rapprochement between the presidents of DRC and Rwanda, Joseph Kabila and Paul Kagame, lead to some adventurous reconfigurations of alliances between previously fierce opponents, e.g. former CNDP officers that got close to FDLR (International Crisis Group 2010).

The ethnic component is further exacerbated by the frequent involvement of armed actors in land disputes. Armed groups are often reciprocally attached to their ethnic kin (e.g. CNDP to Tutsi or Mai Mai groups to indigenous ethnic groups), as the former depend on support and taxes from the latter, while the latter seek protection and support in land disputes by the former. This militarization along ethnic frontlines brings corresponding tensions and their manifestations to another, more violent level.

2.3.1 Farmers vs. Pastoralists

In Masisi and Rutshuru, disputes between farmers (mainly Hutu, Hunde and Nande) and cattle ranchers (mainly Tutsi²⁶) constitute the most visible and one of the most common sources for land conflicts. As arable land in these regions is strongly limited, there is harsh competition between these two factions, with most of the former struggling for sufficient space for subsistence agriculture and the latter struggling to recapture, hold and extend the grazing grounds for a big number of cattle. Asked about the average size of land available per peasant household (5.5 persons in average)²⁷ in their respective *groupement*, the response by three different customary chiefs in Rutshuru varied between 0.5 and 1 ha. On the other hand, one single traditional cattle (bovine) needs approximately 1 ha for grazing each year,²⁸ meaning that the land accessible for an average peasant family in Rutshuru is less than the yearly surface necessary for a single cow.

Big scale cattle ranching started in North Kivu with colonial rule and intensified after the introduction of the General Property Law in 1973, when particularly many powerful Tutsi started to obtain vast concessions and to bring in cattle from Rwanda.²⁹ While the extension of pasture lands in the state domain grew considerably, agricultural lands became increasingly fragmented into smaller parcels due to demographic pressure and through heritage (see e.g. Vlassenroot 2006, p. 15). Traditionally, the coexistence of livestock and agriculture in the customary domain was organized by the state as well by customary authorities, e.g. by delineating communal pasture grounds, corridors for cattle passage, etc. After the outbreak of war, the number of cattle in Eastern DRC decreased drastically, as many cattle were killed, looted or brought to safety to Rwanda

²⁶ Cattle, in particular traditional bovine cattle, and also smaller livestock like goats are nevertheless of high cultural importance also for other ethnic groups as a definitive measure of prosperity, not only in South (see Cox 2012), but also in North Kivu. Many farmers, who previously focused exclusively on agriculture, start to have cattle. Furthermore, the traditional bride wealth for marriage still nowadays commonly consists of either two cattle or 12-14 goats.

²⁷ Interview with Provincial Inspector for Agriculture, Fishery and Cattle breeding, Rutshuru, October 18, 2011.

²⁸ Ibid.

²⁹ In 1991, the number of cattle only in Masisi was estimated to amount to 250,000 heads (Paluku Mastaki/Kibambi Vake 2008b).

and Uganda. Subsequently, many former communal pasture lands and cattle routes were occupied by farmers for cultivation.

Since the end of the wars, large numbers of unidentified cattle have been brought back to North Kivu due to land scarcity in Rwanda, first under the supervision of RCD, later of CNDP. A local customary chief, interviewed in Rutshuru on October 19, 2011, confirmed furthermore that many cattle are brought from Rwanda or Uganda across the border, stay for several months for grazing, and are then brought back. Often, local pastoralists are employed to herd and protect these cattle. This development is commonly called '*vaches sans frontières*' (cows without borders) throughout Masisi and Rutshuru. The eastern national borders are extremely permeable and the Congolese state lacks the means to control them sufficiently. It is an open secret that many among the big cattle owners are high rank CNDP members or elements from Rwandan politico-military circles, operating from Goma or Kigali. The high demand for pasture grounds by powerful actors generally being perceived to be of Rwandan origin as well as some of their corresponding strategies to acquire and extend their land enhance ethnic antagonisms and cause both further pauperization of the rural peasant population as well as the large-scale destruction of forest reserves.

In Rutshuru, the strong presence of foreign cattle along with the lack or occupation of former cattle-reserved areas by farmers gives rise to numerous land-related conflicts. E.g., lacking pasture land, many herders do not prevent cattle from accessing agricultural areas, resulting in the destruction of plants and enhanced erosion of fields. This can result in turn in retaliatory acts by the victims, including even in the killing of cattle (Vlassenroot 2006).

Traditionally, resulting disputes are resolved by committees consisting of local farmers and pastoralist, embedded into the customary system. If the guilt of a perpetrator is acknowledged, he has to pay a corresponding compensation. With the influx of migrants, who do not recognize these customs, and the proliferation of armed groups, however, this structure has been widely undermined due to *traffic d'influence* (see Figure 1). Customary authorities from Rutshuru complained about frequent intimidation by strongmen who are chiefly associated with cattle owners. According to them, farmers in this region often do not dispose of the same legal resources and do not enjoy the same support from armed elements as these cattle owners do.³⁰

2.3.2 Customary vs. state domain

The vast terrains, which had been extracted from the customary domain by the colonial authority, i.e. plantations and ranches in the private state domain and conservation areas in the public state domain, were appropriated by the Congolese state after independence. What could have been a chance to redistribute the land and at least partially undo the colonial mistakes, proved to work in the opposite direction and serve exclusively political and economic elites, who were even able to extend their concessions. Nowadays, many land conflicts emerge at the borders between customary and state domain due to increasing land scarcity within the former and the ongoing extension of the latter. The

³⁰ Interviews with customary chiefs from different *chefferies* in Rutshuru, October 19, 2011.

legal dichotomy strongly advantages the wealthy and well-informed, who have access to the pricy legal procedures which provide written land certificates, while the majority of the rural population – not knowing about statutory law or not having the means to employ it – is forced to rely on informal or oral agreements concerning their access to land.

Land in the private state domain

After appropriation by the Congolese state, the CNKi blocks in North Kivu were almost completely distributed among or sold to political and economic elites. Many of these were members of the Tutsi community, which had influential representatives in Mobutu's innermost circles, most notably Barthélemy Bisengimana, who was the motor behind a law in 1972, which granted Congolese citizenship to all Banyarwanda that had arrived in DRC before 1950. After decades of being only reluctantly tolerated by indigenous customary authorities and of having had no political rights, many wealthy Banyarwanda subsequently after 1973 were able to legally buy their own land. This sudden change of legal conditions allowed them - however with active support by some Hunde chiefs seeking personal benefit – to turn the tables and to appropriate former Hunde-dominated areas. It is obvious that these large-scale acquisitions were often not pursued for economic reasons, but to exert political control over land. Many large concessionaires, termed 'absentee landlords', did not cultivate their land, but rented it to peasants, who had no other choice but paying or selling their labor in order to secure their access to land.

According to information provided by FAO in November 2011, there are 51 major plantation concessions in Masisi, covering a total area of almost 8,000 ha. Only 16 of these concessions are cultivated, while an area of 4,800 ha (60%) is not exploited. In Rutshuru, there are 84 plantations covering a total area of 14,500 ha, 39 of which are cultivated. The non-exploited area comprises 12,000 ha, being more than 80% of the total area in these private concessions.

When travelling through the mountainous highlands of eastern Masisi, this scandal becomes immediately apparent. On one hand, there are the high fertility of the region and the lush cattle grazing lands of vast extensions.³¹ On the other hand, there are the extreme poverty of the rural population and the shocking degree of deforestation. Large parts of Masisi's population live in land and food insecurity, while the fertile soil could easily nourish the entire population and furthermore – if managed properly – allow the production of surpluses for commercial distribution. Contrary to an often-stated view, even despite the existence of vast conservation areas like the Parc National des Virunga (PNVi) (see page 19), there is no land scarcity in Masisi, at least not when considering the overall population density. Beside the destructive effects of insecurity and displacement on agricultural production, the core problem lies in the distribution of the land. Vast terrains in the private state domain are reserved for cattle and, e.g. in the *groupement* of Bashali Kaembe, agricultural areas seem like small islands in a sea of green grazing grounds.³²

³¹ This hilly region is therefore often called the 'Switzerland of DRC'.

³² According to FAO, the 12 major cattle ranches in Masisi alone cover a total area of almost 3,500 ha.

Nowadays, with some degree of stability in the region (often called a ‘negative peace’ (Galtung 1969)) and the accompanying resumption of commercial activities on many concessions that had been rented to or occupied by peasant communities during decades, many land owners try to evict the populations occupying their land, which leads to severe land conflicts and often forced displacement. Furthermore, many concessionaires try to extend the land under their control, frequently causing land conflicts about limits with neighboring communities, whose land is still in the customary domain (see e.g. the case of Luhonga, page 28). Once again, as many land owners belong to politico-military networks associated with CNDP, customary authorities are often powerless against this encroachment, unless they are themselves supported by a Mai Mai group. It is obvious that these collective land conflicts, which see the involvement of large land owners, exceed the capabilities of alternative conflict resolution mechanisms (see Figure 1) and bear a huge potential for violence and displacement.³³

Land in the public state domain

The public state domain consists mainly of conservation areas. In North Kivu, the most important of these is the PNVi, founded under colonial rule in 1925 and acknowledged as a United Nations Educational, Scientific and Cultural Organization (UNESCO) world heritage site in 1979. It comprises a total area of 741,000 ha (7,410 km²) and covers large parts of Masisi and particularly Rutshuru (see Figure 4). Any farming activity in these protected areas is prohibited by law and habitation is only permitted to a limited extent. The park is managed by the *Institut Congolais pour la Conservation de la Nature* (ICCN).

While constituting a last refuge for many endangered species, the park and its limits nowadays become increasingly contested in the face of demographic pressure and the desperation of landless populations. These grievances are often capitalized for rallying and attention-seeking by political elites and local chiefs, who in their campaigns blame the mere existence of the park to be the principal reason for the lack of land for the poor (Matabaro 2008). This propaganda distracts from the unequal distribution of land in the private state domain and is not without self-interest. E.g., in the eastern parts of Masisi, populations increasingly invade the land in the PNVi and clear it for farming and cattle ranching under control and to the benefit of CNDP. These populations reportedly include unregistered immigrants from Rwanda (Sylla 2011). It was estimated in 2010 that CNDP already controlled 1,000 km² of the park area in eastern Masisi (Debelle et al. 2010). When driving along the route from Sake to Kitchanga, which follows the western park borders, this sad reality becomes obvious. Vast parts of the western park sector have been entirely cleared of forest. Numerous charcoal-loaded trucks, accompanied by soldiers, give evidence that armed groups control the illegal charcoal business. In addition, armed groups are profiting from deforestation through the simultaneous

³³ This kind of land conflicts has been confirmed to be among the most severe by a customary chief interviewed in Rutshuru, October 19, 2011.

creation of pasture land for their members or associated high-rank militaries.³⁴ Apart from that, the PNVi also constitutes the refuge of FDLR and Mai Mai elements, who live and operate from within the park and participate in illegal charcoal, timber and bush meat trade (Debelle et al. 2010).

This situation leads to severe conflicts between the populations invading the park and the state, represented by ICCN rangers. The fact that these populations are often controlled by CNDP elements, themselves formally part of the Congolese army, clearly illustrates the failure of the FARDC integration process. After the forced eviction of park invaders by a joint campaign of ICCN and FARDC, 15 ICCN rangers have been killed between January and March 2011 (Sylla 2011).

2.3.3 Migration, displacement and return

In its 2010 report on IDPs in Eastern DRC, (Human Rights Watch) describes the ongoing displacement situation as a ‘vicious cycle’. Since the outbreak of violence in 1993, millions of people have been displaced, many of them repeatedly and over years. The issue of land is a central element of this vicious cycle. Land conflicts frequently lead to displacement and the return of displaced populations in turn often leads to new trouble, if their land has been occupied by others (not unusually themselves IDPs) during their absence or if it is claimed by concessionaires.³⁵ In Eastern DRC, displacement patterns are diverse and highly dynamic, therefore it is extremely challenging for external actors to keep pace with the displacement situation and to reliably monitor population movements, not to mention to provide comprehensive protection and assistance which reaches all IDPs. The same is true regarding the unambiguous reconstruction of rightful ownership from a plethora of overlapping property claims in a context of legal pluralism, formal and informal land deals and secondary contracts lacking written proof. Most IDPs tend to stay close to their homes, often moving back and forth between their displacement sites and home villages.³⁶ Others move from one displacement site to the next. Others again occupy or seek refuge in other, previously abandoned villages.

³⁴ According to Debelle et al. (2010) 60,000 trees are chopped per year alone for Goma’s construction market and 50,000 tons of charcoal are sold per year in Goma, where 97% of the population rely on charcoal as source of energy. An estimated 80% of this charcoal originates from the park.

Outside the park, ongoing illegal charcoal activities have already deprived Masisi’s hills of all but a tiny rest of the original forest. The situation has been called an ongoing “genocide at trees” by a UN-HABITAT employee in Kitchanga. It is questionable whether there will be a single tree left in Masisi’s highlands in a future not very far from now, if the current total dependency of virtually the entire population in the region on charcoal as the only source of energy persists and no countermeasures like reforestation programs are put in place.

³⁵ Vircoulon and Liégeois (2010) outline this situation by describing a cycle of “violence – displacement – illegal occupation – return – violence – displacement – illegal occupation.”

³⁶ According to customary law, abandoned land (termed ‘*Ngungu*’ in Swahili) returns to the disposal of the *Mwami* after a period of six months to one year and is hence free for redistribution. While customary authorities generally confirm that this rule does not apply in case of forced displacement due to violence, it is obvious that many displaced fear the definite loss of their land if they move away too far or too long (Source: Survey among customary chiefs at a workshop organized by UN-HABITAT in Kitchanga, October 26, 2011).

As of October 2011, an estimated total of 1.65 million IDPs, approximately 80% of them staying with host families,³⁷ are waiting for the opportunity to return to their homeland or to settle elsewhere. North Kivu currently accounts for approximately one third of this figure (Source: OCHA office in Goma). While there is some return to areas which are considered safe, this is nullified by new displacement,³⁸ hence the number of IDPs has been fluctuating between one and two million during the last five years, after a peak in 2003 with an estimated 3.4 million internally displaced (Internal Displacement Monitoring Center 2011). As national and local tensions are generally expected to rise in the wake of the presidential and provincial elections on November 28, 2011, it is probable that these numbers increase again in the post-election phase.

Displacement and return of IDPs and refugees are closely linked to numerous types of land conflicts both at the individual and collective level. At the same time, land occupation is one of the major inhibitors to the return of IDPs and refugees (Sylla 2010). When being forced to leave, people often sold their land under distress to ridiculous prices. When they return in case of an improved security situation, many claim not to have sold, but only rented the land to the current occupants/owners. In other cases people were forced by armed groups to sign over their land titles before being evicted from their land (Human Rights Watch 2010).

The probably most severe issue regarding contested land in DRC, aggravated by the disputed citizenship status of many Banyarwanda, is the presence of 58,000 UNHCR-registered Congolese refugees in Rwanda,³⁹ who are awaiting return to the territories of Masisi and Rutshuru in line with a tripartite agreement between DRC, Rwanda and UNHCR. The majority of them are Tutsi and their return is heavily contested by indigenous leaders (International Crisis Group 2010). Many of these refugees own concessions in Masisi and Rutshuru and fled ethnic violence in 1993 or – originally being Rwandan but having obtained Congolese citizenship in 1972 – returned to Rwanda after it had been secured by Kagame's troops in July 1994. Their concessions have subsequently been occupied and cultivated by indigenous peasant communities, who now claim to be the rightful owners of the land (or who claim to have been the rightful owners before it had been acquired by the refugees) and who fear its loss (see case study in chapter 4). The pending return of the Tutsi refugees, claiming the same land and being equipped with their official land registration certificates, has been termed a 'time bomb' by Matabaro (2008).

There is also spontaneous and undocumented return of refugees going on under supervision and support of CNDP (Human Rights Watch 2010). The latter views itself as the crucial guarantee of physical security for Tutsi in the region (Huggins 2010) and is interested in consolidating political and economic Rwandophone dominance in the

³⁷ Only roughly 10% of IDPs seek refuge in official IDP camps, while another 10% stay at informal sites (Source: OCHA office in Goma).

³⁸ Several FARDC operations since early 2009 against the FDLR caused massive new displacement.

³⁹ These comprise 54,000 individuals in camps and 4,000 in towns. CNDP officials even raised a number of 150,000 additional non-registered Congolese refugees in Rwanda. Furthermore, there are 75,000 UNHCR-registered Congolese refugees in Uganda, awaiting their return to the provinces of North Kivu and Orientale (International Crisis Group 2010).

region by ensuring “favorable demographics for its Hutu and Tutsi supporters” (Refugees International 2010, p. 2). Therefore, clandestine immigration and the prospect of a massive return of refugees in line with the tripartite agreement give rise to strong fear among local communities of Rwandan demographic dominance on Congolese territory (Pole Institute 2010). Congolese armed groups benefit from this fear and mobilize local communities through the allegation that CNDP is planning the creation of a ‘Tutsi land’ on Congolese soil (Spittaels/Hilgert 2008). Hence, the return of refugees from Rwanda and the strong involvement of CNDP generate enormous resentments which feed the local Mai Mai counter-movements with new recruits. In a case documented by (Human Rights Watch), at least 270 civilians were killed in western Masisi in 2009 by CNDP members with the motive to terrorize the local population and clear the land for the return of Congolese Tutsi refugees. Control over scarce land in Masisi and Rutshuru is at the core of this issue, which however seems to exceed the potential of any existing conflict resolution mechanism and constitutes a major threat to the entire peace process.⁴⁰

2.3.4 Intra-community disputes

Finally, there is a large class of land conflicts which mainly occur within a community. While most of these emerge within the customary domain, the increasing impulse of people to ultimately secure their land rights by registering their parcels under an official land title, after having been conceded their land by the *Mwami*, adds further tensions and puts the customary system additionally under pressure. The most common intra-community land conflicts are disputes about limits of parcels, either within a family or between neighbors. Many conflicts also arise when the owner of a field dies and his legacy is to be distributed.⁴¹ Tensions also occur in case if the head of a household unilaterally concedes a parcel without consulting the rest of the family (Paluku Mastaki/Kibambi Vake 2008b). These disputes undermine social cohesion within communities and can lead to the dislocation of families and even violence, particularly if a regulatory authority and opportunities for conflict resolution are not perceived to be neutral or if they are lacking.

An example for an additional issue that generates a lot of confusion within communities and which furthermore illustrates the danger of the premature implementation of development policies imposed by the state is the regrouping of villages, called ‘*Rusisiro*’. This program has been advocated in Masisi after 1975 in order to concentrate the small settlements, which were traditionally dispersed over Masisi’s hills, in larger agglomerations. It affected at least 80% of all villages in Masisi (Source: UN-HABITAT). The official justification for this step was to counteract generalized insecurity, enhance

⁴⁰ See chapter 4 for a case study of a land conflict which illustrates above problems.

⁴¹ An NGO expert explained that, in the traditional system, there was no doubt that the land would be inherited by the oldest son or brother of the deceased. However, there was also no doubt about the duty of the new land owner to take care of the widow. Interestingly, nowadays, in line with increasing awareness of gender equality, the widows of the deceased often claim rights over the respective land, falling into disputes with others. While fully acknowledging the need for empowerment of women in DRC, this example shows that this empowerment is not possible without creating tensions.

administrative capabilities and increase the coverage of institutions like hospitals and schools.⁴²

Unfortunately, the implementation of this ambitious program lacked sound planning and its repercussions are still felt today in form of many disputes over the parcels conceded by the state in the newly formed agglomerations. Every family moving from the hills received permanent use rights over a parcel for habitation in the target village. These parcels were carved out of existing parcels to the detriment of the original owners of the land in the village. The latter did not receive any compensation for the land they lost due to the state-led campaign. What the architects of this policy failed to consider was the question of who would be the legitimate owner of these parcels when the new owners would die or move on to another place. The original owner? The beneficiaries of the ‘villagization’? Or would the land go back to the disposal of the *Mwami*? Or the state?

The current land legislation does not give a clear answer. Therefore, the respective land is nowadays heavily contested, in particular when beneficiaries of the policy come back after having been absent long time and claim access to ‘their’ parcels, which often have been reoccupied, sold or rented to others by their original owners. More than a quarter of the cases referred to UN-HABITAT’s land conflict mediation center in Kitchanga are related to the *Rusisiro* policy. The inadequacy of the current land legislation makes mediation of these disputes extremely difficult. This example illustrates the need for a comprehensive, but sensitively and well-planned harmonization between statutory and customary law in order to mitigate tensions arising from legal ambiguity and to lay the foundation for the sustainability of future development projects.

2.4 Chapter conclusions

This chapter has retraced the relation between land and conflict in Eastern DRC from the arrival of the Belgian colonizers to the current day.

Land competition *per se* is by far not the only cause for violent conflict. Factors like ethnic cleavages, demographic pressure, the anarchical struggle for natural resources in the face of state weakness, imposed, forced and deliberate migration, the contested nationality question and finally strong regional factors each contributed to the escalation of conflict. However, as demonstrated in this chapter, land tenure affects most of these issues and vice versa. Identity, politics and economic issues are intimately linked with the control over land. The increasing scarcity and extremely unequal distribution of land in the presence of above issues – facilitated and exacerbated by the legal pluralism concerning land tenure and the imposed shift towards private property – created a high susceptibility of the rural poor to extremist rallying and an increased readiness of politico-military and commercial elites to take advantage of these grievances. Hence, DRC’s eastern provinces already constituted a socio-political powder-keg when the Rwandan genocide induced the final spark for the region to explode.

Although the regional wars have officially ended, the structural causes for conflict have not disappeared. On the contrary, land insecurity seems rather to further deteriorate

⁴² However, according to an observer interviewed in Kitchanga on October 26, 2011,, the main motivation of this policy was to facilitate state control over the population.

with the massive return of IDP and refugee populations and the increasing involvement of armed actors into land conflicts, undermining the peaceful resolution of disputes and causing new violence. As demonstrated, land conflicts manifest themselves in many different ways, the most severe of them along ethnic division lines and at the interface between customary and state domain. Some of the most severe land conflicts are related to migration and resettlement and therefore reach beyond DRC's borders with Rwanda, Uganda and Burundi, demanding for a regional approach to their resolution.

It has been argued that the land issue in Eastern DRC is not only a legal and/or political issue, but that it is part of a wider agrarian crisis (Matabaro 2008; Huggins 2010). In fact, considering the various manifestations of land conflicts and their repercussions, it seems more appropriate to argue that the land issue goes furthermore hand in hand with a food, economic and ecological crisis (see Figure 2). In the Human Development Report, published in November 2011 and comprising the evaluation of the development situation of 187 countries, DRC occupies the final rank (UNDP 2011). A piece of land remains the only means of subsistence for the great majority of the rural population and guaranteeing comprehensive and secure access to it is not only a necessary condition for durable peace in Eastern DRC (Paluku Mastaki/Kibambi Vake 2008a), but also for a return to economic stability. Sustainability has become a foreign word for most Congolese people, who cannot afford to plan or invest beyond the near future in the context of land insecurity. If an end of the humanitarian crisis in Eastern DRC is to be achieved and hundreds of thousands Congolese are to become independent of humanitarian aid, it is an imperative to tackle the underlying causes of these crises.

Considering the far-reaching repercussions of the struggle for land in Eastern DRC, it is important to adequately address the land issue and further integrate it into the humanitarian, peacebuilding and development interventions, if these are to provide sustainable solutions. But what is being done to tackle the land-related problems in Eastern DRC? In the following chapter, the existing national and international land-related intervention as well as its major actors and their activities will be reviewed.

3. The land-related intervention: Actors, tools and strategies

The 1994 refugee crisis in Goma triggered a humanitarian intervention of epic dimensions in Eastern DRC.⁴³ Since then, the number of humanitarian organizations present in the eastern provinces increased steadily. Moreover, following the Lusaka Ceasefire Agreement in 1999 between DRC and five regional states, the world's largest peacekeeping force MONUC (United Nations Organization Mission in the Democratic Republic of the Congo) has been deployed in DRC, with the highest troop concentrations in the eastern provinces. In July 2010, the peacekeeping mission was renamed to MONUSCO (United Nations Organization Stabilization Mission in the Democratic Republic of the Congo), with the argument that the DRC "is now entering a new phase of its transition towards peace consolidation" (UN Security Council 2010, p. 3) and illustrating the mission's increased focus on stabilization. Today, thousands of

⁴³ Within two months after the arrival of one million Rwandan refugees in North Kivu, almost 150 humanitarian organizations arrived in Goma (Büscher/Vlassenroot 2010).

peacekeepers,⁴⁴ most UN agencies and hundreds of national and international NGOs are active in Eastern DRC.

As humanitarian needs remain tremendous, the great majority of above actors focuses on protection and the provision of emergency relief. While the importance of addressing the root causes of the humanitarian crisis, in particular the land question, is increasingly acknowledged, land-related activities are still restricted to a comparably small group of national and international actors.

As of 2011, the land-related intervention in Eastern DRC has been described as one of only two operational interventions worldwide (together with Colombia), which are implementing a long-term strategy to address housing, land and property (HLP) issues and “think long term while acting short term” (Leckie/Huggins 2011, p. xii). The present chapter will describe this intervention in more detail and show how land-related problems are being addressed so far. After discussing general concerns and challenges of intervening in the contested land issues of a sovereign state, the major stakeholders among UN agencies, national and international NGOs and the Congolese state will be identified and their existing strategies and activities reviewed.

3.1 General considerations: The delicate issue of land

While the previous chapter demonstrated the urgent need for addressing the land issue in order to create sustainable peace in Eastern DRC, it also illustrated the extreme sensitivity of this issue, which is strongly tied to identity and political power. Appropriately dealing with land conflicts requires considerable local knowledge and corresponding programs cannot be set up *ad hoc*. Customary land tenure systems and the issues at stake can differ considerably depending on the region and its ethnic composition. Furthermore, land cannot simply be provided and brought from abroad like ‘classic’ humanitarian services, e.g. medical care, food, shelter materials or clothes. Finally, the immediate benefit of addressing the land issue is not as visible as aid which aims at directly saving lives in acute situations.

These obstacles certainly explain why humanitarian actors have long been reluctant to consider the land issue as within their field of responsibility. The land question has traditionally been regarded as a mere development issue. However, particularly the massive phenomenon of protracted displacement demands for corresponding action by both humanitarian and development actors, as overlapping land claims are one of the major obstacles to return (see subsection 2.3.3 and chapter 4). The issue of land should therefore be of crucial concern for humanitarian actors, at least for any agency dealing with displacement and aiming at the creation of sustainable solutions for the people it is providing assistance to.⁴⁵ Having a huge impact on the work of humanitarian as well as

⁴⁴ As of October 2011, MONUSCO comprises a total of almost 19,000 uniformed personnel and an annual budget of USD 1.4 billion (Source: <http://www.un.org/en/peacekeeping/missions/monusco/facts.shtml>).

⁴⁵ There is already genuine recognition for the importance of the land issue in DRC and, accordingly, it has been integrated into the Humanitarian Action Plan (HAP) at the national and provincial level. However, corresponding activities still receive comparably little funding.

development actors, the land question thus constitutes a crucial element for linking relief, rehabilitation and development (LRRD).

The debate about the need to integrate HLP issues into humanitarian efforts has first been stimulated in 1998 by the UN's Guiding Principles on Internal Displacement (Deng 1999), which were a response to the drastic increase of the number of civil wars and IDPs after the end of the Cold War. In 2005, the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons ('Pinheiro Principles') went further and declared that "all refugees and displaced persons have the right to have restored to them [or to be compensated for] any housing, land and/or property of which they were arbitrarily or unlawfully deprived" (Pinheiro 2005, p. 2). While these principles constitute a clear framework, it is questionable whether this demand is applicable to the current situation in Eastern DRC. Where land claims overlap, land registers are lacking and the land legislation is all but unambiguous, it is impossible for external actors to rigorously implement the Pinheiro Principles. It is furthermore questionable whether it is desirable in a post-conflict situation to work towards restoring the *status quo ante* by 'the mechanical application' of these principles (Pantuliano/Elhawary 2009). As they define an ideal objective (which is definitely worth to be worked towards) in a far-from-ideal environment, a literal comprehensive execution of these principles seems illusory. While they rightfully express the imperative to support displaced populations in land and property issues, the complex displacement and property situation in the fragile environment of Eastern DRC demands for more humble measures in the short term and for more extensive measures in the long term, as comprehensive restitution or compensation of lost land rights requires the unambiguous reconstruction of land rights and the commitment of the state to put corresponding mechanism in place. However, this seems to be out of reach after decades of violence, corruption and lawlessness in the Kivus.

Being a sovereign state and the exclusive owner of all Congolese soil, the Congolese state bears the ultimate responsibility for the distribution of its land, land legislation and the enforcement of the latter. It is therefore impossible for external and non-state actors to unilaterally interfere in the repartition of land or to take legally binding decisions in land disputes. Land-related efforts, even more than other humanitarian and development activities, must therefore be planned and conducted in close cooperation with state authorities. Furthermore, given the weakness of the state in Eastern DRC, it is crucial to support and – if lacking the will – persuade the state to meet its responsibilities. Besides creating awareness regarding the importance of the land issue and advocating the state to sensitively but effectively address the issues of land tenure insecurity and unequal land distribution, corresponding activities can include technical support for the establishment of respective administrative and judicial structures and infrastructure as well as the development of corresponding policies.

On the other hand, considering the conflict between statutory and customary regulatory frameworks concerning land, any land-related intervention aiming at fostering social cohesion and reducing poverty must not fail to involve customary structures and civil society, which are strikingly alienated from and often left alone by the state in the case of DRC. As convincingly argued, local grievances and violence constitute a main vehicle for ongoing insecurity in Eastern DRC and consequently demand for a response which

takes into account local actors and their needs (Autesserre 2010). To avoid undermining state authority and responsibility, the intervention's objective must include the construction of local mechanisms that put the population in charge of its fate without resorting to violence and contribute to social cohesion and the mitigation of tensions at the local level. To begin with, extra-judicial local mediation institutions are well-suited for this purpose, as they know and take into account local peculiarities much better than centralized judicial structures. Besides preventing and resolving disputes by mediation, such structures can enhance awareness towards legal issues through sensitization campaigns.

While acting in close cooperation with the state on one side and local communities on the other, the long-term objective of the land-related intervention in DRC must be to bridge the gap between the state and its population. In order to bring together the state and its society and harmonize the respective clashing norms, external actors engaged in the land issue should therefore take the role of an intermediary between all relevant stakeholders from the state, the customary system and civil society. This requires action at each the local, provincial and national level.⁴⁶

Transparently engaging all relevant actors is not only necessary in view of the potential success and sustainability of the intervention, but also a condition for the mere possibility to work safely on the sensitive issue of land in DRC's post-conflict environment. Chapter 2 has demonstrated the high political and economic stakes and different agendas that a wide range of non-armed or armed, statutory or informal, marginalized or influential actors have with respect to land. Maintaining a neutral stance is therefore particularly essential for interveners directly or indirectly working on land. The self-perception of an intervening organization can vary considerably from the perception it has among different stakeholders in its working environment (Dijkzeul/Wakenge 2010), therefore it is crucial to maintain continuous dialogue with all relevant parties. Failure to act accordingly in DRC's politically sensitive environment can have fatal consequences. E.g., given its mandate for the repatriation of refugees from Rwanda, UNHCR is constantly struggling to counteract the widespread perception among indigenous communities that it supports 'Rwandophone' agendas and provides preferential treatment to Rwandan refugees compared with indigenous populations displaced within DRC (see chapter 4).

Regarding the creation and support of local community-based conflict resolution structures, the well-balanced integration of representatives from all ethnic groups is a basic condition in North Kivu's ethnically heterogeneous environment. The functionality of any conflict resolution mechanism is critically dependent on being perceived to be perfectly neutral, otherwise these structures can even be counterproductive, as the

⁴⁶ Maybe even the regional level, regarding the strong involvement of the Rwandan and Ugandan governments in Eastern DRC's political economy. E.g., the case of Laurent Nkunda and the CNDP clearly demonstrates the fundamental influence that Kigali has on war and peace in the Kivus. The arrest of former CNDP leader Laurent Nkunda by Rwandan troops in 2009 was only possible after a rapprochement between Joseph Kabila and his Rwandan counterpart Paul Kagame in late 2008, in which Kabila had to grant military integration and political recognition of CNDP as well as military support for Rwandan troops to fight FDLR on Congolese soil (International Crisis Group 2010).

collapse of the formerly successful mediation structure *Barza Inter-Communautaire* and its negative effect on the potential establishment of similar structures elsewhere has shown.⁴⁷ Furthermore, it must be underlined that compromises achieved through alternative conflict mediation do not enjoy the same legal weight as decisions by judicial authorities. Mediation is therefore no full-fledged substitute of the latter, but rather a means of mitigating tensions at the community level and restoring confidence between the rural population and their direct authorities.

The next section will present the major actors of the existing land-related intervention in North Kivu and review their activities, tools and strategies.

3.2 Review of existing land-related activities

Land-related activities in North Kivu are coordinated by the Land Coordination Group, which is embedded into the protection cluster and which is holding monthly reunions in Goma to coordinate activities and exchange information. According to a first evaluation workshop of the land-related intervention conducted in April 2010, there are about 30 organizations focusing on the land issue in North Kivu, ranging from numerous Congolese civil society organizations over international NGOs to UN agencies (see Table 1). While it is hard to compile an exhaustive list of all organizations that in some way address the land issue, there is a core group of actors which have gathered substantial expertise as well as financial and logistical means and accordingly have advanced the furthest in their efforts. The purpose of this section is to provide a descriptive presentation of these major actors of the land-related intervention as well as their strategies, tools and activities.

3.2.1 United Nations

The United Nations are actively engaged in the land issue in DRC since mid-2009, when the UN-HABITAT Land Program in Eastern DRC was created. The main donors of this program are the United States Agency for International Development (USAID) and the Canadian government. UN-HABITAT conducts the largest land-related initiative in Eastern DRC and has consequently taken the lead of the Land Coordination Group, which is a sub-group of the protection cluster. It thus works in close cooperation with UNHCR, the lead agency of the protection cluster. UN-HABITAT furthermore cooperates with MONUSCO within the framework of the International Security and Stabilization Support Strategy (ISSSS), which is the main vehicle for international support of the Congolese government's Stabilization and Reconstruction Plan for war-

⁴⁷ The *Barza Inter-Communautaire* was an inter-ethnic community-level conflict mediation institution which operated rather successfully between 1998 and 2004 in North Kivu, particularly with respect to the resolution of conflicts concerning land ownership. However, it suspended operations in 2005 after being increasingly perceived by the general population to be "little more than an RCD mouthpiece" and hence everything except a neutral conflict mediation institution. Efforts to establish another *Barza* in South Kivu in 2005 were cancelled in the face of thousands of demonstrators in Bukavu, claiming that "it was simply another form of political imposition from Kinshasa." Furthermore, increasing tensions between Banyarwanda and indigenous groups in 2004 enhanced cleavages within the *Barza*, instead of being mitigated by it (Clark 2008).

affected areas (STAREC, see page 32). Beside many national and a few international NGOs, another UN agency in the Land Coordination Group is the World Wide Fund for Nature (WWF), which mainly focuses on issues concerning natural reserves⁴⁸, like the encroachment into the PNVi (see page 19).

The UN-HABITAT Land Program in Eastern DRC encompasses an incremental strategy aiming at a range of objectives. The global objective is to foster comprehensive land tenure security in line with a pro-poor land reform. In the short term, the objective is to contribute to the stabilization of conflict-affected zones by creating the necessary conditions for the safe return of IDPs and refugees. This is to be achieved by virtue of alternative (extra-judicial) conflict resolution structures which systematically contribute to the prevention and peaceful settlement of land disputes. The main tasks of these structures are mediation and the sensitization of the population for the legal situation. In the midterm, UN-HABITAT aims at strengthening the land administration at the local, provincial and national level by building capacity, creating awareness for the land issue,⁴⁹ providing know-how and logistical support and by assisting in the development of a robust policy framework.

UN-HABITAT is active on the ground in North Kivu and Ituri and is about to extend its mediation activities to South Kivu by the end of 2011.⁵⁰ Its strongest presence is in North Kivu. The program's main office is in Goma and there are mediation centers (*Centre Communautaire de Médiation Foncière* (CCMF)) in Kitchanga (Masisi) since 2009 and in Kiwanja (Rutshuru) since April 2011.⁵¹ Further CCMFs are to be established in Nyanzale (Rutshuru) and Beni in the near future after the 2011 presidential elections.

The CCMF's main tasks are the documentation and mediation of land conflicts, local capacity-building with respect to alternative dispute resolution and statutory and customary land law and the sensitization of the population towards legal land acquisition procedures. The UN-HABITAT staff in these mediation centers includes professional land mediators, most of them being lawyers. They provide free mediation for conflict

⁴⁸ WWF focuses on the prevention of ecological degradation, the latter being strongly driven by land insecurity. Activities include projects for the prevention of deforestation, community-based reforestation projects, the participative demarcation of PNVi borders and the collection of information about illegal encroachment and land use within the park's borders (including the use of satellite images). Furthermore, an integrated land use planning project to create alternative resettlement patterns in order to avoid encroachment is in the planning stage in partnership with WWF, UNESCO, UNDP, FAO and UNOPS (Sylla 2011).

⁴⁹ UN-HABITAT employs a consultant in Kinshasa whose task is to direct the central government's attention to the land issue in general, but in particular to its importance in the eastern provinces. He furthermore gives technical advice to the Ministry of Land Affairs with respect to the land law reform process at the national and provincial level.

⁵⁰ In Ituri, UN-HABITAT maintains a coordination office in Bunia and a CCMF since roughly one year in Fataki. In Ituri, the program mainly assists Ituri's Land Commission in the implementation of a decentralization process at the community level. In South Kivu, there is a coordination office in Bukavu and a mediation center will open up soon in Minova. For 2012, a further extension of the program to North Katanga is planned.

⁵¹ The CCMF in Kitchanga covers the northern part of Masisi and the north-western part of Rutshuru. The CCMF in Kiwanja covers the eastern part of Rutshuru. Other parts of these territories are covered by NRC's land-related intervention, while others again cannot be accessed at all due to security reasons.

parties who could not achieve a compromise via conflict resolution mechanisms that are available in their village and who often cannot afford or reach the services of judicial structures, like the provincial *Tribunal de Grande Instance* in Goma. Depending on the complexity of the case and on the readiness of the conflict parties to find a compromise, the entire mediation procedure can vary considerably.⁵²

A typical mediation procedure is usually initiated by the party of a conflict which perceives itself to be the victim. This party comes to the CCMF and describes the case to the mediator. Afterwards, UN-HABITAT invites the accused party to the CCMF in order to record the perspective of the latter on the dispute. Often, these initial steps are followed by a field visit by UN-HABITAT staff in order to capture the situation on-site and to collect information from all local witnesses, i.e. neighbors, customary chiefs, state authorities, etc. This allows the mediators to interpret the case with respect to both customary and statutory law and to find the most appropriate solution. The conflict parties are then invited again to the CCMF, where they are asked to bring up their own solution suggestions. The mediators thereby just guide the process, but do not impose compromises, as the latter are to come from the conflict parties themselves. If a compromise is found, UN-HABITAT sets up a formal accord which is signed by the parties of the dispute. This accord is then referred to local customary authorities like the *Comités des Sages* (see page 29) or CLPCs (see subsection 3.2.3) for follow-up and in order to enhance the likelihood for adherence to it. This cooperation with customary authorities is to be enhanced in future and further cooperation with the state administration is envisaged in order to formally register compromises and thereby give them more legal weight.

In general, this service seems to be well-accepted. Beneficiaries seeking mediation come to the CCMFs from far away, often by foot, and accept to possibly wait for several days for their turn. In the CCMF in Kitchanga, there has been a daily average of roughly 40 individuals awaiting mediation between September and November 2011.⁵³

As of October 2011, UN-HABITAT has resolved (documented) by its own account a total of 484 (1682) land conflicts since the birth of the program in 2009. While in 2009, there were 26 cases resolved, being 8% of 312 cases documented in the same year, the proportion of resolved cases climbed to almost 20% in 2010 (62 resolved vs. 314 documented cases) and to almost 40% (396 resolved vs. 1056 documented cases) in 2011. As the average delay between the registration and the resolution of a case is significantly less than a year, these numbers indicate that not only the program itself expanded considerably, but also its know-how and effectiveness. However, as mentioned before, these numbers unfortunately contain no information about the complexity, the severity and the number of affected persons of the resolved cases.

Apart from these numbers, there are cases which qualitatively demonstrate the potential of UN-HABITAT's intervention. E.g., in Hewa Bora (an urban quarter in the former

⁵² There are cases which can be resolved in a single session, but also cases which take a year for mediation or which are never resolved. Other cases, which involve refugees that are still in neighboring countries, cannot be resolved before their return.

⁵³ The number of corresponding land conflicts is significantly lower, as many conflict parties bring their relatives and/or friends.

refugee camp of Mugunga, Goma), joint engagement by UN-HABITAT, the provincial administration and local customary chiefs secured land rights over 12 ha for 160 households of Pygmies who had left an IDP camp in Goma and faced fierce opposition at their new destination. Advocacy, mediation and sensitization by UN-HABITAT enabled to set up this compromise with the local customary authorities (UN-HABITAT 2010b).

In Kitchanga (Masisi), 183 Pygmy households were secured the land rights over 2 ha via mediation by UN-HABITAT, after they had been deprived of their land by an illegitimate land deal which had bypassed the required previous examination of the ownership status of the respective soil (UN-HABITAT 2010a).

Another strong example is the case of Luhonga (Masisi), where a single concessionaire, occupying 375 ha, opposed the entire population of Luhonga, which he blamed to occupy parts of his concession. Due to threats by the population, which in turn accused him of encroaching upon their land, the concessionaire⁵⁴ was not able to access his concession without armed protection. In cumbersome negotiations with both the land owner and Luhonga's inhabitants, UN-HABITAT finally brought both parties to agree to a participative re-measurement and demarcation of the concession, involving the responsible cadastral service. This measurement found an excess of 24 ha regarding the area claimed by the concessionaire, as his regular concession 'only' comprised 351 ha. This area today hosts 512 returnee households of previously displaced inhabitants of Luhonga. Furthermore, according to UN-HABITAT sources, nowadays there is peaceful cohabitation between the villagers and the concessionaire. Participative delimitation of concessions and community areas might be a useful tool for this type of conflicts.

All the above-mentioned cases – in general all cases where mediation is to be successful – require a certain readiness for compromise by the conflict parties as necessary condition for their success. Furthermore, while these cases demonstrate the possibility for compromise and the peaceful solution of collective disputes that even involve entire communities, the results do not go far beyond securing a piece of land to live for dispossessed populations and – at least in the case of the Pygmies, who remain marginalized and at the lowest level of society – do not provide enough means for a sustainable subsistence, let alone allow them to live according to their traditional lifestyle. Blatant inequality regarding the distribution of land remains and demands for action in the longer term.

Apart from its mediation activities, UN-HABITAT organizes monthly sensitization reunions including customary as well as state authorities in order to identify the major land-related problems by collecting information and opinions by the participants, provide information, create dialogue and reflect on possible solution strategies. UN-HABITAT works strongly on the involvement of provincial government authorities into these reunions in order to bridge the wide gap between custom and state. The agenda of these reunions is developed in cooperation with the participants and these sessions provide a platform for all participants to express themselves. E.g., the pilot CLPC of

⁵⁴ Emanuel Kamanzi, a politician from Goma and candidate for the position of national deputy for CNDP in the November 2011 elections.

Bashali Mokoto, consisting of customary chiefs from the same *groupement*, brought the case of Bibwe (see chapter 4) on the agenda of such a workshop.

In order to foster local legitimacy and ownership of the extra-judicial mediation processes, strengthen participation of local customary authorities, build local mediation capacities and decentralize mediation structures in Masisi and Rutshuru, UN-HABITAT furthermore created the *Comités des Sages* (Committees of Elders), which are local conflict resolution mechanisms at the level of a *Collectivité*. They consist of customary chiefs who are mainly members of the Hunde community. However, e.g. in Bashali Mokoto, the latter independently co-opted representatives from other ethnic groups, like Hutu and Tutsi, in order to guarantee a balanced ethnic representation. The *Comités des Sages* conduct conflict mediation in remote areas that are inaccessible for UN-HABITAT. Moreover, the latter refers cases for mediation and follow-up to these committees. In the long term, such structures are envisaged to shoulder all extra-judicial conflict resolution activities themselves.

3.2.2 NGOs

There are numerous smaller local and national NGOs working on the land issue in Eastern DRC, and it goes beyond the scope of this work to capture them all. In the following, the approaches by one national and one international NGO, each perceived by the author to be among the most visible NGOs active on the land issue in North Kivu, will be reviewed in more detail.

Aide et Action pour la Paix (AAP)

AAP, founded in 2002, is a Congolese NGO that focuses strongly on the land issue. Its long-term objective is to secure equal access to land in Eastern DRC via a pro-poor land reform. AAP's area of intervention is the whole of North Kivu, with the strongest activity in Masisi. Significant donor support started in 2007, and since October 2009, AAP has established two different structures which work on conflict prevention and resolution in the field. These are on one hand the *Forums de Paix des Jeunes* (FPJ), local youth forums for peace, on the other hand these are the *Noyaux de Résolution des Conflits Fonciers* (NRCF), the land conflict resolution groups.

The FPJ work at the level of villages and consist of local adolescents. Their objective is to prevent conflicts, overcome ethnic barriers and to foster peaceful cohabitation by performing sketches, songs and poems and by organizing community events like soccer matches in villages.

The NRCF are AAP's equivalent to the *Comités des Sages* established by UN-HABITAT and the commissions established by NRC (see page 30). They operate at levels between a *groupement* and a village and consist of local community leaders, including customary chiefs. Their composition ideally reflects local ethnic and tribal diversity and includes female representatives. The NRCF's responsibilities cover three areas of activity. First, the NRCF are in charge of the dissemination of the statutory land law and all associated legislation, like the (projected) *code agricole*, the *code minier* or the *code forestier*, in order to sensitize the rural communities for these issues. Second, they monitor land conflicts and report them to AAP. Third, they do active mediation of land conflicts. This

mediation activity is however limited to rather 'mild' cases, i.e. individual disputes or collective cases, in which the parties are open for compromise. More severe cases, particularly cases which involve influential persons, big landowners or militaries, and in which intimidation by armed actors is probable, are referred to international actors like UN-HABITAT or NRC. The latter enjoy some degree of immunity due to their international status and are hence able to go further than AAP in these situations. E.g., additional activities by these international actors include advocacy with government authorities in order to bring the case to a political level, at which the notorious *traffic d'influence* does not work as easily. Conversely, UN-HABITAT and NRC refer cases to AAP for follow-up or if they occur in areas that are better accessible for the latter.

By September 2011, the NRCF have resolved (documented) a total of 297 (1006) land conflicts since their creation in 2009. In 2009, AAP resolved approximately 15% of the land conflicts it documented (15 resolved vs. 97 documented). This fraction increased to 33% in 2010 (170 vs. 508) and roughly remained at this level with 28% in 2011 (112 vs. 401). According to AAP officials, AAP does not intend to further extend the activities of the NRCF in the near future. Instead, the consolidation of the existing structures and the improvement of coordination with similar structures of other organizations will be priorities for 2012.

In addition to these activities on the ground, AAP provides free legal support in cases where alternative conflict resolution did not work. In line with its pro-poor policy, AAP employs three lawyers, called 'land rights defenders', who assist disadvantaged parties of a land conflict in the judicial law courts, if regular lawyer fees exceed the financial possibilities of the latter. This is particularly helpful if an influential concessionaire is involved and constitutes another way to overcome *traffic d'influence*, which undermines alternative conflict resolution mechanisms. Yet, AAP enters thin ice with this approach, as the latter endangers its neutral position and can cause the emergence of strong enemies, e.g. if an influential person loses a trial due to AAP's involvement. This is why the International Land Coalition, a global alliance of organizations concerned with land issues and one of AAP's donors, has created a special 'emergency fund for the protection of land right defenders', which in case of serious threats, e.g., pays for the evacuation of the respective lawyer.

While going further with this approach than any other actor, it is likely that the direct impact of this service (currently limited to three lawyers) is rather marginal when considering the overall needs for access to legal assistance in Eastern DRC.⁵⁵ Nevertheless, it can have a strong symbolic effect and improve the perception of and belief into the Congolese judicial system.

Norwegian Refugee Council (NRC)

The NRC is the largest international NGO conducting land-related activities in Eastern DRC. Its presence in the country began in 2001 in North Kivu and was extended to South Kivu in 2004. Its main donors are the Norwegian Ministry of Foreign Affairs and the Swedish International Development Cooperation Agency (SIDA). Explicitly being a humanitarian NGO, NRC does not go as far in its global objective as UN-HABITAT or

⁵⁵ As of mid-November 2011, AAP provides legal assistance in 46 cases.

AAP, who advocate for a comprehensive pro-poor land reform in the long term. NRC focuses rather on the creation of sustainable return and reintegration solutions for IDPs and refugees in the short and midterm.

NRC's land-related activities started with the ICLA (Information, Counseling and Legal Assistance) program for IDP protection in 2004, which emerged from reflections on the possible implementation of the Guiding Principles on Internal Displacement. It focuses on the prevention and resolution of land disputes related to displacement and return of populations. The core element of this program are the *Commissions d'Accueil et de Réinsertion* (Commissions for Reception and Rehabilitation), community institutions which are supported by NRC. They consist of local customary chiefs as well as representatives of IDP populations, churches and local civil society associations. Their composition takes into account ethnic and religious diversity as well as representation from both genders. By late 2011, there were 13 commissions active in North Kivu, 10 of them in Masisi and 3 in Rutshuru, each at the level of a *groupement*. These commissions are responsible for the mediation of land disputes that occur in the context of IDP return and resettlement. They were formed upon initiative and under supervision of NRC in participative workshops.

Unlike UN-HABITAT, NRC takes no active role in mediation activities, but limits itself to the provision of education and training regarding the land law and conflict resolution techniques as well as logistical and material support to the commissions. This more participative and bottom-up approach aims at creating structures that grow from within the society and which are hence expected to be more sustainable than an intervention from 'outside', which employs professional mediators. UN-HABITAT started to follow this approach with the creation of the *Comités des Sages* and its support for the CLPC pilot project. A drawback of this approach, however, is the potential weakness of these commissions resulting from the relative freedom of its protagonists and the danger of the latter being drawn into conflicts with an ethnic component. Experience shows that the effectiveness of these commissions strongly depends upon the individual competence and motivation of its members. While some of the commissions have achieved remarkable results, others seem to have taken advantage of the '*laissez-faire*' character of this approach. Close consultation and follow-up is therefore recommendable in order to guarantee the functionality of these structures.

Further activities by NRC include sensitization campaigns on HLP rights, inheritance rights, civil documentation, etc. via radio programs and the distribution of leaflets. Moreover, NRC works on capacity building of judicial, administrative and local political authorities, the provision of legal counseling to individual beneficiaries and the collection of information regarding land tenure in Eastern DRC.

For 2012, further components aiming at the support of IDPs are foreseen, including the provision of the temporal access to land while in displacement and the increased fostering of access to land in the area of displacement for local integration of IDPs.

3.2.3 Congolese government

It is no coincidence that the Congolese government's land-related intervention is presented only at this position. Despite legally being the exclusive owner of all Congolese

soil and resources and bearing the ultimate responsibility for guaranteeing secure access to land for its citizens, the Congolese state currently seems to be least able or willing to contribute decisively to the improvement of the situation. Due to the weakness of state structures in Eastern DRC, the land-related intervention is almost completely shouldered by the UN and national and international NGOs. While there is increasing recognition for the problem and – at least at the provincial level – some political will to solve it, responsible state structures are generally lacking technical expertise as well as financial and logistical means. The alienation between the statutory and customary system is still striking.

Recognizing that a centralized administration in Kinshasa cannot cope with the vastness and the customary heterogeneity of the country, a decentralization process has been initiated in line with DRC's new constitution in 2006. Despite there has been some progress, the land administration is still centralized at the provincial level and too isolated from the communities. Concerning administrative and judicial services, there is a scandalous disparity between their functional and geographical mandate on one side and their capabilities on the other. While expecting from the population, which they are mandated to serve, to cover considerable procedural fees and distances in order to utilize their services, the state structures stand out above all through their inertness and dubious procedures, as they are totally overwhelmed by the existing caseload, the lack of competent personnel and the absence of financial, technical and logistical means.⁵⁶ Additional judicial structures, like the *Tribunaux de Paix*, which are to be established in line with the decentralization process at the territorial level and which could possibly disburden the current (defunct) judicial system, do not yet exist.

In 2009, the Congolese government launched the Program for the Stabilization and Reconstruction of war-affected areas (STAREC). One key objective of STAREC is local conflict prevention and resolution, particularly in the context of IDP and refugee return. STAREC consistently foresees the establishment of corresponding local extra-judicial mechanisms at the *groupement* level in North Kivu, called *Comités Locaux Permanents de Conciliation* (CLPC). The CLPCs are to consist of three sub-commissions, namely one sub-commission for conflict prevention and resolution, one for social and humanitarian affairs and one for security. As of November 2011, 7 CLPC sub-commissions for conflict prevention and resolution are operational. They have been installed in a pilot project carried out by UNHCR and UN-HABITAT.⁵⁷ There are 3 CLPC sub-commissions in Masisi, 3 in Rutshuru and another one in Nyiragongo.⁵⁸ Their members are customary

⁵⁶ E.g., Vircoulon and Liégeois (2010) describe the situation in Ituri, where an estimated 6.5 million people inhabit an area of about 65,000 km² and which is to be managed by a total of 139 individuals in the entire responsible land administration. Reportedly, more than one hundred of these administrators are only employed informally and have not enjoyed a proper training concerning their tasks.

⁵⁷ In the March 2009 peace agreement between the Congolese government and CNDP, the Congolese government assumes the responsibility for the installation of the CLPCs. According to their terms of reference, the CLPCs are to be installed in each *groupement* of North Kivu. North Kivu comprises 97 *groupements*.

⁵⁸ In Masisi, these are in the *groupements* of Bashali Mokoto, Biiri and Kamuronza. In Rutshuru, CLPCs exist in the *groupements* of Kihondo, Binza and Kisigari. In Nyiragongo, there is a pilot CLPC in the *groupement* of Buhumba.

chiefs who have been trained in conflict mediation and sensitized towards the land law by UN-HABITAT. Ideally, these sub-commissions are to consist of two representatives (1 male, 1 female) from each of the seven major ethnic groups (Hunde, Nyanga, Tembo, Hutu, Nande, Tutsi, Twa) in North Kivu.

In the long term, a comprehensive land reform seems to be inevitable in order to achieve a functioning legal system regarding land tenure and the distribution of land. While seemingly having acknowledged this need already in 1973 with Article 389 of the General Property Law, which demands for a specification of competences regarding the administration of land in the customary domain, the Congolese state authorities have never started any credible effort to bring such a reform on the way. In 2010, a committee with the mandate to review the 1973 General Property Law under leadership of national legal experts has been created. However, while being very ambitious in its rhetoric, there is *de facto* no progress on the ground. When talking about their visions, government representatives tend to get lost in technical details like advanced urban development, while leaving the core problem at the margin and seemingly ignoring the importance of including customary chiefs in the law-making process in order to harmonize statutory and customary law. Without appropriate international support, it is therefore questionable whether this commission will produce much more than paper in the near future.

3.3 Chapter Conclusions

This chapter has reviewed the strategies applied by some of the major actors working on the land issue in Eastern DRC.

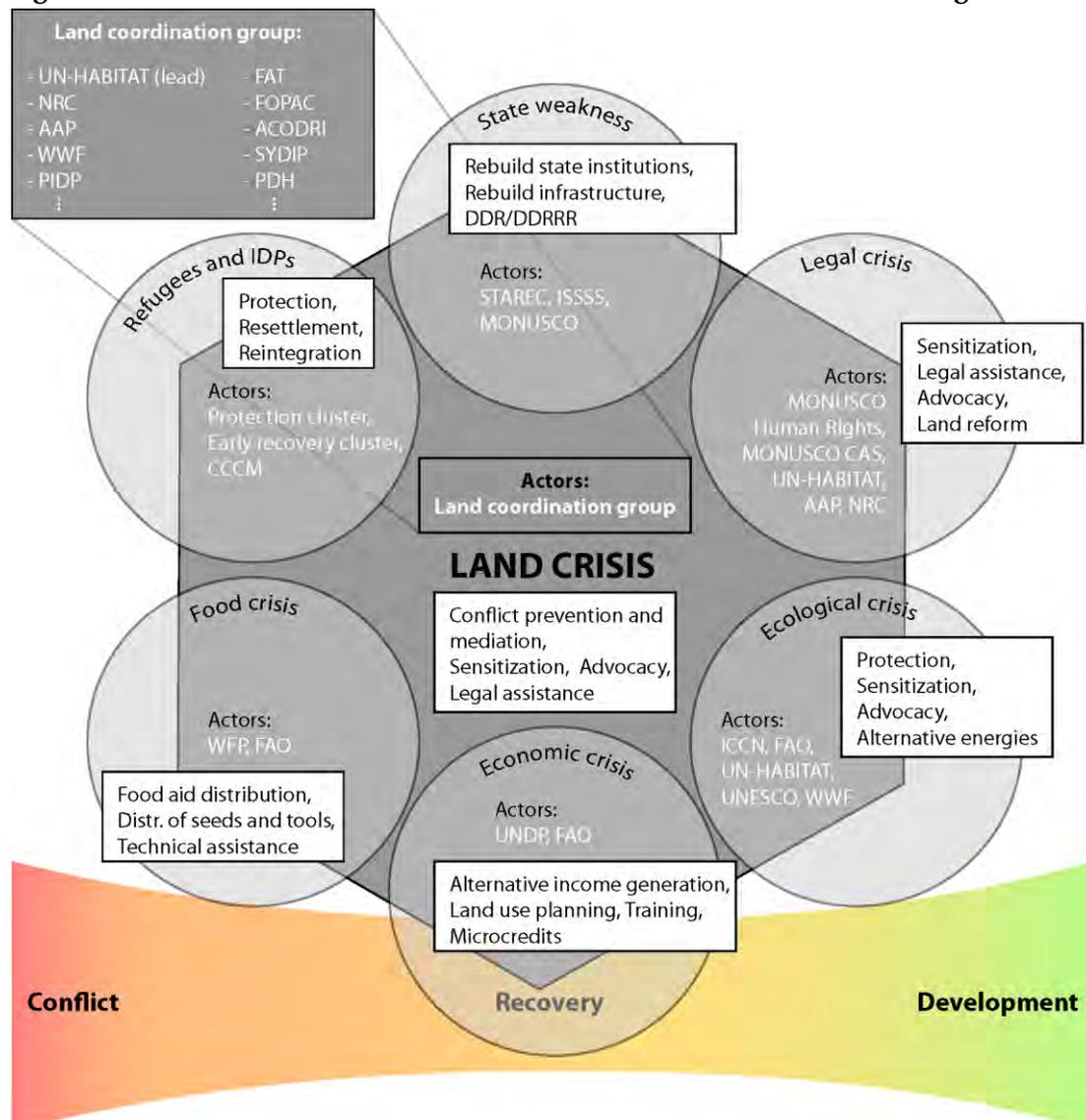
As described, short term activities include concrete conflict mediation, legal assistance and the organization of sensitization sessions in order to foster social cohesion and reestablish the trust of the population in their authorities, which has been severely damaged during decades of abuse, corruption and finally war. Activities like capacity building and training for customary authorities, civil society actors and state functionaries on the other hand aim at creating the structures and means for these authorities to handle land disputes themselves in a peaceful and efficient way in the midterm. The long term purpose is the creation of the conditions necessary for the country to solve its land-related problems itself. Central to this goal is the development and implementation of a pro-poor land policy, which is to address the discrepancy between customary and statutory land legislation. In order to generate the necessary political will for such a reform, intervening organizations like UN-HABITAT try to support state structures, involve them into their work, bring their attention to the issue and advocate for resolute, but well-prepared action. Figure 2 depicts not only the land-related intervention and its actors, but also cross-cutting issues and the respective intervening actors, whose work is affected by the land crisis in Eastern DRC. For a more comprehensive list of organizations in the Land Coordination Group, see Table 1.

The land issue in Eastern DRC has severe repercussions on the intervention sectors not only of development actors, but also humanitarian actors and all these actors should reflect if and how they could contribute with their expertise to the improvement of the situation. While some of them, like e.g. UNHCR, NRC or MONUSCO, clearly

acknowledge the close links between the struggle over land and their field of intervention, the protection of IDPs and refugees, others have the potential, if not the need, to integrate land-related efforts much stronger into their work if they want their efforts to be more sustainable and to go beyond palliative treatment. Despite the land issue being a highly politicized issue, the actors presented in this chapter have demonstrated with their work that it is possible to address the problem without corrupting one's neutrality, as long as the intervention is transparent and includes all stakeholders.

However, the land-related intervention has also its limits, as the following case study will show. In cases where powerful and/or armed actors have high stakes in the struggle for land, it is hard for current mediation approaches to cope with the corresponding challenges in the context of blatant state weakness. After considering the case of contested land in Bibwe (Masisi) in the following chapter, chapter 5 will provide a comprehensive analysis of the land-related intervention and further discuss the most important challenges.

Figure 2: Schematic overview of the land-related intervention and cross-cutting issues



Source: Own composition

4. Case study: The struggle for land in Bibwe (Masisi)

The conflict over land in Bibwe seems like the prototype of a class of severe land conflicts that – if not addressed properly – can be expected to occur more frequently in future in line with the resettlement of IDPs and the implementation of the tripartite agreements for the repatriation and resettlement of Congolese refugees in Rwanda, Uganda and Burundi. The case of Bibwe includes many of the severe problematic elements presented in section 2.3, including the problem of displacement and return, ethnic antagonisms, the high political stakes in the control over land and the involvement of armed actors and wealthy cattle owners.

Constituting a very sensitive issue, particularly in the fragile pre-election phase in late 2011, agencies were understandably rather reluctant to take a clear stance and share their internal views on this case. The following sections therefore provide only an overview of the situation, which nevertheless serves to illustrate not only the problem and the urgent need for a comprehensive response regarding contested land in Eastern DRC, but also the limits of existing local conflict resolution approaches.

4.1 Case-specific context

Bibwe is a village in the *groupement* of Bashali Mokoto in the northern part of Masisi.⁵⁹ Throughout recent Congolese history, this formerly Hunde-dominated region has seen the influx of different ethnic groups, mainly Hutu and Tutsi.

Historically, the area of Bibwe was in the customary domain of the Hunde community and under authority of the *Mwami* of the *chefferie* of Bashali. However, there was no major settlement until 1965. The first population that inhabited the Bibwe area was a group of an estimated 3,000 Rwandese Tutsi refugees, which were settled in an area of approximately 400 ha in 1965 under supervision of UNHCR.⁶⁰ These refugees had fled large-scale ethnic violence against Tutsi in Rwanda and had arrived in Goma already in 1958 and 1959.⁶¹

In 1972, all Banyarwanda that had lived in Congolese territory before independence in 1960 – hence also the refugees in Bibwe – were granted Congolese citizenship. However, despite having formally acquired Congolese nationality and technically no more being refugees, most Banyarwanda never abandoned their strong identical ties with Rwanda, which they continued to consider their homeland. Consequently, after 1994, when Paul Kagame's Rwandan Patriotic Front had secured Rwanda after the genocide, the Tutsi population in Bibwe decided to return to their homeland, also being

⁵⁹ See Figure 4. The Bibwe area is marked with a red circle.

⁶⁰ At a workshop organized by UN-HABITAT in Kitchanga on November 27, 2011, several participating customary chiefs raised the assumption that UNHCR had bought the area from the *Mwami*, while an UNHCR official confirmed that this was not the case, as UNHCR never buys land. Turner (2007) claims that UNHCR along with Kivu's provincial government strongly advocated the movement of the refugee population to Bibwe against fierce local opposition, while according to UNHCR, this movement took place upon initiative of the refugees and UNHCR only acted as facilitator.

⁶¹ Before being settled in Bibwe, they had found refuge in Goma in the building that nowadays constitutes the Goma University.

threatened by the massive presence of Hutu refugees in DRC, among them the perpetrators of the genocide. In 1995, the ex-refugees left Bibwe and send an official letter to the *Mwami* of Bashali, thanking him for hosting them for more than 30 years and asking for his support in the repatriation process.⁶²

While the status of land in Bibwe had been rather clear until this point, it became increasingly confusing in the turmoil of war during the decade to follow. Due to limited sources of information, it was impossible to gather a lot of clear information about this period, and an exact reconstruction of all legal and illegal occupation of the area – if possible at all – will prove extremely cumbersome.

According to various sources, the land of Bibwe has rightfully returned to the disposal of the *Mwami* after 1995, either instantly with the formal handover by virtue of above-mentioned letter, or because it had been abandoned by its customarily acknowledged occupants, and was therefore free for redistribution. However, instead of being formally redistributed, the land was soon being occupied, mainly by Hutu populations who had fled from Rwanda in 1994. During the Congo Wars, the area was in the midst of the turbulences of conflict, seeing strong FDLR and Mai Mai presence. During the Second Congo War, the Tutsi-dominated RCD took control over Bibwe, followed by the CNDP after the wars.

A key in the region since RCD rule has been Erasto Ntibaturama, reportedly a warlord, wealthy cattle owner and high-ranking member of first RCD and then CNDP, who proclaimed himself authority over the Bibwe area and still exerts control over it,⁶³ while not being recognized as legitimate authority neither by the local '*autochtone*' population nor by the state. According to the 2010 UN Final Report of the Group of Experts on DRC, he is "using his own private militia to resolve land disputes which he claims to have the right to distribute" (p. 73). The same report also confirmed a "movement of cows towards locations [...] such as Bibwe and Nyange" (p. 74) as well as attacks by former CNDP soldiers in early 2010 in the north-western region of Masisi "that [...] were meant to drive the local Bahunde population out so that former CNDP officers could take over the lush pasturage of the Lukweti zone [approximately 10 km south-west of Bibwe]" (p. 74). Since October 2011, the area of Bibwe is controlled by Colonel Justin Gacheri, commander of the 81st FARDC battalion (ex-CNDP) and – not surprisingly –

⁶² This document is registered under the number 346/M.217.32, 23rd July 1995, and signed by the representative of the Tutsi refugee community, Jerome Rugabya.

⁶³ The 2010 UN Final Report of the Group of Experts on DRC describes him as an "ethnic Hutu landlord who styles himself as a traditional chief in the area north of Kitchanga", who was given the "verbal order [by CNDP leader General Bosco Ntaganda] not to participate in the integration process [of his units into the civilian administration in September 2010], as his militia was still needed." The report furthermore states that with support by former governor of North Kivu, Eugene Serufuli, "Erasto has seized large concessions of land which he rents out to local farmers for a significant profit" (Debelle et al. 2010).

Erasto's son. This situation is yet another demonstration of the extensive failure of the integration process of former rebel militias into the FARDC.⁶⁴

The traditional customary authorities, who are acknowledged by the state to be the legitimate administrators of the land in Bibwe, have in turn completely lost their authority over the region, which even constitutes a no-go-area for them. Claiming authority over the region and supporting this claim with bare firepower, Erasto constitutes a severe threat to them.

Since the 2008 clashes between CNDP and FARDC and particularly in early 2011, in line with the *Amani Leo* ('Peace Today') FARDC military operation against FDLR in the region, there has been major displacement of the Hunde and Hutu populations from Bibwe. Many of them stay now in the IDP camps of Nyange, Mpati, Kivuye, Kitso, Bweru and Kalengera.⁶⁵ Allegedly, this displacement has taken place under major involvement of Erasto, who pressured the population to leave with the argument of insecurity due to ongoing military operations.

During the course of this year, however, a new population moved to Bibwe and started to occupy the area, construct houses and cultivate the land. This population reportedly consists mainly of Banyarwanda, but it is unknown who they are exactly and where they are originally from. Many of them are said to come from CNDP-controlled areas like Burungu, Kirilirwe and Rubaya in the east of Masisi as well as from the CNDP-controlled part of the western PNVi. According to customary authorities in Masisi, they are originally clandestine immigrants from Rwanda.⁶⁶ This population movement in turn is supported by Erasto, who in August 2011 issued a formal request to the local state and customary administration as well as the *Police Nationale Congolaise* (PNC) to guarantee unhindered passage for the new arrivals and support their installation.⁶⁷ He furthermore supported the distribution of parcels of land in Bibwe to the new occupants, who reportedly receive 1 ha of land per head of household.

⁶⁴ The peace agreement signed by the government of DRC and different Congolese rebel groups in Eastern DRC at the Goma conference in 2008 included the political acknowledgement of these rebels and their military integration into the FARDC. However, instead of dispersing former rebels within the FARDC in order to create a homogeneous army, this process was poorly implemented and proved counterproductive because it failed to integrate rebel groups beyond a formal level and rather strengthened their position because of giving them legitimation. E.g., CNDP gained considerable political and military influence in the Kivus through the agreement. Yet, while formally being part of the FARDC, ex-CNDP battalions maintain their previous chains of command, operate quite autonomously in parts of Eastern DRC and CNDP leaders are in command of further battalions which have not participated in the integration process (Debelle et al. 2010).

⁶⁵ According to IDP representatives, the displaced population from Bibwe comprises 2,723 families, with a family in average consisting of 5 to 6 persons.

⁶⁶ E.g., in Burungu there are major concessions which were previously part of the CNKi blocks and which have been acquired by Banyarwanda in line with the installation of RCD rule. During the years before the first democratic elections in 2006, the RCD fostered the immigration of Banyarwanda to Eastern DRC in order to increase its political weight and extend its electorate (Vlassenroot/Huggins 2005). The National Commission for Refugees furthermore reported a CNDP-supported spontaneous (return) movement from Rwanda to the Masisi, Ngungu and Kitchanga areas involving 12,000 individuals non-registered by UNHCR between May and September 2009 (International Crisis Group 2010).

⁶⁷ A member of the state administration in Nyange has been suspended upon initiative of Erasto after rejecting this request, illustrating the impotence of state authorities vis-à-vis Erasto's rule.

Today, the land around Bibwe is heavily contested by Hunde, Hutu and Tutsi. While the core area is controlled by Erasto's militias and (ex-CNDP) FARDC troops under command of Erasto's son, the area in the east of Bibwe is held by FDLR elements and the area towards south by Mai Mai militias like APCLS. According to UN-HABITAT employees that are monitoring the situation in Bibwe, these militias are extremely hostile towards the newly arrived population in Bibwe, considering them to be foreign invaders of their soil. The latter are therefore confined into the limited area controlled by ex-CNDP/FARDC troops and going beyond the village boundaries for more than a few hundred meters can constitute a lethal enterprise.

4.2 The stakeholders and their interests

As shown above, there are several different parties who have stakes in the conflict over the land in Bibwe and who struggle for control over it.

The internally displaced Hunde and Hutu populations, who have lived in the area during and after the wars,⁶⁸ are seeking to return to their land. While their return has been prevented by ongoing insecurity, it is now also inhibited by the arrival of the new occupants. The longer their displacement situation persists, the more they fear the total loss of their land, as abandoned land traditionally returns to the disposal of the *Mwami* after a certain period of time. However, customary chiefs from Masisi agreed at a workshop held in Kitchanga on October 25/26, 2011, that this rule does not apply in the case of displacement due to violent conflict.

The local customary authorities, mainly Hunde, therefore seem to support the legitimacy of the IDP's claim to the land in Bibwe. However, they are confronted with a deep authority crisis, as they are defenseless against the rule of armed actors attached to CNDP. While considering themselves the rightful holders of the land in Bibwe and being recognized by most of the internally displaced as their legitimate authorities, their sphere of influence is limited to only a fraction of the *groupement* of Bashali Mokoto and its population. Most of them stress the urgent need to credibly restore state authority in the region and demand in turn for action from the state to restore their authority. The pilot CLPC of Bashali Mokoto, consisting of local community leaders from all major present ethnic groups, brought the Bibwe case on the table at above workshop, expressing its perplexity in this issue and urging state authorities to take action.

The state authorities however seem not willing or able to face the problem and confront Erasto's illegitimate exercise of authority. While bearing the exclusive responsibility for controlling its troops, exerting authority over its territory and protecting its population, there has so far been no significant and evident effort from the Congolese government to reassert its authority over the area. Rhetoric of state authorities tends to downplay the problem, seemingly in order to conceal its weakness or even tolerating Erasto's practices.

Erasto's exact agenda is hard to verify. Being a large cattle owner and attached to CNDP, it is likely that he is driven by wider agendas of the latter. Little is known about the

⁶⁸ Note that it is not clear whether these have lived in the area since the departure of the Tutsi ex-refugee community in 1995, or if there have been additional population movements (and/or displacement) since the outbreak of war in 1996.

people that have started to occupy the Bibwe area under his supervision, apart from the indication that they are mainly Banyarwanda.⁶⁹ A local customary chief furthermore confirmed that they are civilians during the day, but carry arms during the night. This behavior in the face of the constant threat emanating from the presence of FDLR and Mai Mai coincides with the reported CNDP practice of using “armed cattle herders as auxiliary militias” (Debelle et al. 2010, p. 42). Local aid workers furthermore hinted towards the likelihood of Erasto following orders from high-rank politicians close to CNDP. He maintains close ties to s like Eugène Serufuli, the former governor of North Kivu who is known for his efforts to reinforce ‘Rwandophone’ domination in parts of Eastern DRC by installing foreign Banyarwanda populations (Debelle et al. 2010; International Crisis Group 2010).

4.3 Potential interventions

The struggle for land in Bibwe threatens to lead to serious trouble as the unknown newcomers are considered illegitimate occupants by the previous inhabitants as well as the customary authorities of the area. As long as Erasto’s militia is in control, there will probably occur no concrete land conflicts, as it is simply too dangerous for the IDP population to go back and claim their land. However, the situation constitutes a severe latent conflict, threatening to foster ethnic antagonisms, radicalization, support for Mai Mai armed groups and potentially finally escalating into open violence.

The scale and severity of this case lie beyond the scope of existing mediation mechanisms. Both customary structures like the *Commissions d’Accueil et de Réinsertion*, which consist of local leaders, and structures like UN-HABITAT’s CCMF, which employ professional mediators, are not able to deal with armed actors that are not open for mediation. The intervention possibilities for land-focused actors are therefore very limited. So far, there has been a first joint assessment mission by UN-HABITAT, UNHCR and MONUSCO Civil Affairs in October 2011, with the objective to collect information on the case. UNHCR’s mandate does not allow for more than monitoring the situation and to try to direct the attention of Congolese state authorities towards this issue and urge the government to meet its responsibilities.

More information is needed in order to be able to reconstruct legitimate ownership and exact concession limits in the Bibwe area and to out concrete intervention activities. E.g., it has been proposed to conduct a further assessment mission, including the *Mwami* and the cadastral service, in order to clarify the status of the contested land from the customary and statutory perspectives and determine the exact dimensions of the contested land in Bibwe. Such missions are not without danger and afford armed MONUSCO protection. CLPC representatives furthermore demanded for a joint commission by the land administration, representatives of the national and provincial government, the CLPC Bashali Mokoto, other local customary authorities and UN-HABITAT. This commission should further assess the situation and work on the reinstallation of customary authorities in their entities and the restoration of state

⁶⁹ These people are not registered by UNHCR. Arguing that this population movement constitutes an internal movement for ‘economic reasons’, UNHCR rejects any responsibility and does not take any official stance in this sensitive issue.

authority in the region. However, assembling such a broad commission, coordinating the actors and guaranteeing its functionality constitutes a major challenge itself in post-conflict Eastern DRC. It is furthermore questionable whether a commission that does not involve all actors, meaning also Erasto and the new occupants of the Bibwe area, can succeed.

In general, it is crucial to create the political will within the government to address the situation and restore legitimate authority in the area. At this stage, organizations working on the land issue can contribute mainly by collecting information, capturing the perspective of all stakeholders in the conflict, determining the legitimate owners of the land in Bibwe and advocating the state authorities to act. Furthermore, with regard to future refugee repatriation and resettlement, it is crucial to sensitize the population towards the Tripartite Agreement, the legitimate claim of the corresponding refugees for a place to live in DRC, and the difference between returning refugees and undocumented immigrants. There seems to be a natural reflex among '*autochtone*' communities to immediately associate unknown Banyarwanda populations with refugees coming from Rwanda and with UNHCR-supported resettlement in line with the Tripartite Agreement. Any perception of UNHCR being associated with the unknown Banyarwanda population can have devastating consequences regarding the future implementation of this agreement.

4.4 Chapter conclusions

The case of Bibwe clearly demonstrates that control over land in Masisi is a strongly politicized issue. Politico-military elites seem to have high stakes in this conflict, while the state so far lacks the means or the will to decisively address the situation. The scale of the conflict and the strong involvement of armed actors exceed the capacity of national and international actors working on land conflict mediation.

The case furthermore illustrates the explosiveness of the issue of refugee returns from Rwanda. While not being confirmed to be Rwandan, the unknown occupants of the Bibwe area are automatically associated with Rwandan refugees by indigenous communities. This urges agencies to distance themselves from the former and demonstrates the need to extremely carefully plan, prepare and conduct future refugee resettlement from Rwanda in a transparent way. The implementation of the latter is probably not possible before the situation of internal displacement is solved, as otherwise any agency involved would inevitably be confronted with accusations of preferential treatment of Rwandan refugees.⁷⁰ A UNHCR official has confirmed that –

⁷⁰ UNHCR expressed this concern already in line with the signing of the Tripartite Agreement in February 2010 (International Crisis Group 2010). Like many other aid agencies and NGOs operating in Eastern DRC, at the beginning of its program and still unknown by the local population, UN-HABITAT saw itself confronted with similar problems and allegations of pursuing a 'hidden agenda' in favor of refugees from Rwanda (UN-HABITAT 2010a).

still far from concretely implementing refugee repatriation⁷¹ – the agency’s focus is now directed at the identification of returning refugee families in cooperation with local indigenous customary chiefs as well as UN-HABITAT and AAP, in order to generate acceptance for their return case-by-case. Real acceptance can however only be created in areas where these customary chiefs are indeed able to exercise their authority, which is evidently not the case in areas like Bibwe. If these highly sensitive issues are not addressed, population movements like the one in the present case have the potential to create bloodshed and conflicts over land at a scale that goes beyond the scope of any existing intervention mechanism related to the resolution of local land conflicts. Nevertheless, clarifying land rights and urging and supporting the state to enforce these rights must be a crucial element of any solution approach.

The next chapter will provide an analysis of the existing land-related intervention, identify corresponding gaps, limits and challenges and discuss possibilities to overcome the latter.

5. Analysis: What could and should be done to address land conflicts?

The land-related intervention in Eastern DRC is still very young and in constant development. So far, a lot of valuable knowledge has been accumulated and a growing number of organizations have started to transform this knowledge into concrete action on the ground. Considerable work has been done by intervening agencies, and programs pursuing a long-term strategy to sustainably address the land issue have been set up. In many cases, the intervention demonstrated the urgent need as well as possibility for the peaceful settlement of land conflicts. Nevertheless, a lot remains to be done and improved.

Growing donor interest and the foreseen extensions of activities and geographical areas that are to be covered by the different organizations demonstrate that this intervention field is in a stage of expansion. As in many young and expanding fields, problems regarding coordination emerge when new actors enter the scene. Furthermore, in the adverse environment of post-conflict Eastern DRC, it is extremely hard to entirely capture the problem in all its complexity, comprehensively cover all the needs and unambiguously determine whether the efforts bear fruit or if its benefits are nullified by destructive factors that lie beyond the influence of the intervening actors.

The following sections will identify these challenges and analyze how they are dealt with. Moreover, following the author’s intention to constructively contribute to the further development of the land-related intervention, this chapter will present reflections on how land-related issues could be better dealt with in future.

⁷¹ According to Human Rights Watch (2010) “an informal timetable annexed to the March 23, 2009 agreement called for IDP returns to begin within 30 days and refugee returns within 90 days”. In an interview conducted in November 2011, a UNHCR official pointed towards the possibility of the concrete initiation of repatriation activities after the elections, “if the situation remains calm.”

5.1 Critique of the current intervention

In chapter 3, the hitherto activities of the major actors of the land-related intervention in North Kivu have been presented. These activities range from mediation over capacity building to advocacy. While some organizations provide special services, like UN-HABITAT's professional mediation or AAP's legal assistance, the basic approaches of the different actors seem to be largely congruent. Moreover, most organizations seem to share the same global objective of the creation of a pro-poor land tenure system.

However, while this broad consistence provides a good basis for fruitful cooperation and mutual enhancement between the actors, there are still major gaps and challenges, which must be overcome in order to make the intervention more effective and fruitful. The following section will analyze these gaps.

5.1.1 Impact

When providing humanitarian and development aid, it is crucial to constantly and (self-)critically verify the intervention's effects and impact in order to ensure to do no harm, to be able to improve and possibly adapt the applied strategy and to justify donor support. Regarding the land-related intervention, major objectives of current activities are the prevention of land conflicts and the fostering of social cohesion. But how can their achievement be measured?

So far, all organizations present their output exclusively in form of the bare number of documented and resolved land conflicts, the number of cases where legal assistance has been provided or the number of people trained or sensitized to statutory land legislation. However, this rather minimal approach has major quantitative as well as qualitative shortcomings.

First, these numbers constitute absolute numbers and therefore do not allow for any conclusion about the impact of the intervention regarding the overall needs. While the large number of documented conflicts and the strong demand for mediation by beneficiaries illustrate the urgent need for action, the total number of existing, but unreported land conflicts is unknown. E.g., many people involved in land conflicts might face the opposition of armed actors and consequently be afraid of reporting the case. The enormous number of latent land conflicts related to the pending return of IDPs and refugees might be indirectly derived from the number of displaced persons (which are estimates themselves), but they would not include conflicts resulting from unregistered migration. So far, there are no detailed and justified estimations that capture the entire problem. It is therefore unclear whether the existing intervention only touches the tip of an iceberg or it manages to comprehensively address the problem in its areas of activity.

In order to shed light on this issue, a comprehensive study in a limited representative area, which suffers from many different types of land-related problems, could prove useful. Results of such a study might provide an idea regarding the overall size of the problem in order to determine the impact of the land-related intervention in relative figures.

The second drawback concerns the lack of qualitative information provided by these numbers. As discussed in section 1.2, land conflicts vary considerably in their

complexity, their severity in terms of their potential to trigger violence and the number of persons they affect. As long as this information is not somehow captured in the results, the latter are not very conclusive. E.g., while the information that 30% or even 40% of all documented land conflicts have been resolved sounds impressive, it would not mean a lot if the resolved cases constituted exclusively ‘mild’ disputes and the really severe cases were among the unresolved. While most actors are working on a systematic distinction of land conflicts, it is crucial to further differentiate and try to take into account the potential consequences of a conflict.

Acknowledging that this would constitute a very challenging and subjective enterprise, a possibility might be to classify land conflicts additionally with a ‘severity coefficient’, which attempts to capture the destructive potential of a case, and consequently give each case a corresponding statistical weight in the analysis.

Summarizing, the determination of the impact of the land-related intervention beyond bare numbers or isolated qualitative cases is extremely challenging. While leaving no doubt about the benefit of existing land-related activities, the hitherto common way of presenting the corresponding results is only of limited informative value regarding the overall problem. Furthermore, apart from recording (subjective) local perceptions, there is so far no way to measure the achievement of rather abstract objectives like social cohesion. A lot of work remains to be done in order to develop objectively verifiable indicators that shed light on the impact of an intervention in a field as complex as the land issue in Eastern DRC.

5.1.2 Coordination of land-related activities

The term ‘local participation’ has become extremely fashionable among donors of humanitarian and development funds during the recent years. Consequently, this concept is an almost obligatory part of new project proposals and approaches. Land-related activities therefore increasingly include participatory workshops and the creation of local alternative conflict resolution mechanisms, consisting of customary authorities and local leaders. This approach ensures that these structures are developed and carried by the local communities and is therefore expected to be based on local knowledge, create less dependency and to be thus more sustainable than exclusively external support.

In accordance with this logic, most of the major organizations working on the land issue have therefore established their own local committees and commissions for alternative dispute resolution (AAP’s *Noyaux de Résolution des Conflits Fonciers*, NRC’s *Commissions d’Accueil et de Réinsertion* and UN-HABITAT’s *Comités des Sages*), sometimes covering the same geographical area.

While fully acknowledging the general need for and benefit of such alternative structures, the question arises whether the simultaneous existence of several of these mechanisms is primarily responding to these needs or whether it is also a result of competition for funds. The foreseen comprehensive installation of CLPCs in each *groupement* in North Kivu in line with the government’s STAREC plan possibly adds an additional institutional layer. Careful cooperation and coordination between these organs is therefore crucial. If covering the same area, an overlap of competences between the

different committees can prove counterproductive. First, from the view of beneficiaries, a 'jungle' of overlapping conflict resolution institutions is not only confusing, but also undermines credibility of each single organ as it allows for opportunistic forum shopping. Moreover, these different structures can fall into competition and undermine each other's authority and reputation.

Organizations should thus look beyond their need for donor support and enhance their coordination in order to create complementarity and avoid overlapping competences, either by segmenting their areas of intervention or by covering the same area with different activities that complement each other, but do not compete. This issue has also been raised by customary chiefs (many of them being members of mediation commissions) at a workshop in Kitchanga in November, who demanded for the clarification of competences of the different conflict resolution structures.

However, also donors should contribute their part, as unbalanced funding can hamper complementarity. E.g., an NGO official described the following paradox: Local NGOs, like e.g. AAP, can access rather dangerous zones for conflict mediation in contrast to organizations like UN-HABITAT, who are geographically limited due to strict UN security guidelines. However, the former often lack the logistical means to reach these areas,⁷² while the latter face much less logistical restrictions. In the end, this results in restricted access to the same areas for both actors.

These restrictions could also be overcome by enhanced cooperation between different organizations. Concrete inter-agency cooperation within the Land Coordination Group is currently mainly limited to case referral. Cases which have been documented by one organization, but which are perceived to lie more in the geographical or professional competence of another agency, are referred to the latter and vice versa. While this is a reasonable approach, the concern of cases being counted twice and appearing in the final reports of both the organizations involved, has been expressed. There is hence a huge need and potential to improve cooperation and division of labor.

Currently, all major agencies seem to be working on their own typologies of land conflicts and the registration of cases in their own databases. However, if all organizations would work together to capture their data in one central land-related database (e.g. for the province of North Kivu), the latter would possibly constitute a powerful tool for statistical analysis. E.g., it would enable to capture all inter-agency case referrals in a systematic way and hence avoid double-counting. Furthermore, if being established in line with a standard conflict typology employed by all participating organizations, it would allow for the identification of hotspots of certain types of land conflicts in certain areas. Corresponding responses could then be tailored more specifically towards the particular problems in these areas. Moreover, if this data was combined with cartographic applications, the land problem could be visualized in maps, e.g. as practiced by UNOPS and OCHA for the visualization of IDP concentrations and movements.

Admittedly, making all participating agencies to comply with the necessary conditions of the rigorous application of a standard typology and corresponding procedures is

⁷² AAP, e.g., disposes of one single car and mediators often have to reach their destination by foot.

challenging. For a central database to work, honest cooperation built on trust between the organizations is required. UN-HABITAT, being the lead agency of the Land Coordination Group, could initiate efforts to implement this project. If conducted well, the benefits of central data acquisition would easily exceed the challenges.

5.1.3 Limits and concerns

The limits of mediation

While having achieved remarkable results regarding the peaceful settlement of land disputes, it is important to keep in mind that the mediation approach, which is applied by most land-related actors, has also its limits. When facing severe conflicts over land, like the case of Bibwe presented in chapter 4, alternative dispute mechanisms simply do not enjoy enough authority or power to force the conflict parties to agree to negotiations. The willingness of all conflict parties to find a peaceful solution is a necessary condition for mediation to work. If a conflict party simply does not appear or refuses to participate in mediation sessions, there is not much left for the corresponding mediators to do. Mediation is therefore principally effective for the settlement of rather low-level disputes involving comparably weak parties.⁷³

Experience shows that the time and resources needed for the mediation process scale with the complexity of a conflict. Successful conflict resolution, as e.g. in the case of Luhonga (see page 28) which took more than a year, requires cumbersome negotiation and careful follow-up. It cannot be expected from the land-related intervention to replace the absent judicial system. Extra-judicial mediation should therefore rather be seen as a tool to mitigate tensions at the local level, providing a free service to conflict parties who seek a peaceful solution and who need a neutral authority in the absence of more robust structures.

Extra-judicial mechanisms seem to start to be ineffective as soon as a conflict involves parties like wealthy concessionaires, commercial and political elites and armed actors, who have access to a range of other means to enforce their perceived right.⁷⁴ Intimidation and *traffic d'influence* can impede conflict parties from seeking mediation or even directly affect mediation structures. Furthermore, as the case of the *Barza Inter-Communautaire* has shown, there is danger that the conflict resolution mechanism's own members are drawn into the conflict when the latter opposes different ethnic groups, rendering the mechanism useless, as a perception of neutrality, once lost, is hard to regain.

In general, the entire land-related campaign depends on an at least minimal level of stability in its areas of intervention. This results in the inaccessibility of many areas in

⁷³ The same appears to be true for sensitization workshops, in which major problems are discussed and ideas for their solution are developed and gathered. These workshops are well-accepted among traditional authorities, but they seem not able to involve all relevant stakeholders. While the involvement of powerful elites in land conflicts constitutes a major problem, it is rare that big concessionaires or cattle ranchers participate in these workshops.

⁷⁴ Working under UN flag and cooperating closely with state authorities, UN-HABITAT is able to go furthest in such cases.

Eastern DRC for corresponding activities. Moreover, DRC seems still in a phase that includes constant danger of re-eruption of large-scale hostilities, which can cause new displacement and undo a lot of land-related and mediation work.⁷⁵ The constructive effects of the local land-related campaign and the sensitive preparation of refugee and IDP resettlement occur on a much longer timescale than potentially destructive events. It is therefore important not to neglect activities that cannot be easily reversed, like local capacity building and training.

Beyond these concerns, it is not impossible that future efforts in cases like Bibwe (see chapter 4) can be based on mediation. It is to be seen whether a broad coalition of customary authorities, state representatives and intervening organizations, as it has been proposed in the Bibwe case, can bring warlords like Erasto to the negotiation table.

State weakness and the war economy

It seems that the fragile peace in Eastern DRC is currently built on the condition that formally integrated rebel groups can enjoy relative autonomy, free of any accountability, in order to access their share of DRC's resources. The processes of *brassage* and *mixage* have largely failed. Most areas in the eastern provinces are under *de facto* control of armed militias, sometimes due to absence of state security mechanisms like the FARDC or the PNC, sometimes tolerated by the latter. Formal and customary law is therefore widely replaced by informal law, arbitrarily imposed by the ruling faction. This situation is often characterized as 'state weakness', 'state failure' or 'state collapse'. However, this does not mean that any form of governance has disappeared entirely, but it is (at least partially) exerted by non-state actors, while the state is just one player among many. Therefore, it is useful to go beyond the failed state view by analyzing this situation in terms of 'hybrid political orders', in which non-state actors contribute significantly to governance functions like security, frameworks for conflict regulation and social services (Boege et al. 2008). On a continuum between the two extremes of governance being exerted exclusively by the state or exclusively by non-state actors, parts of Eastern DRC can certainly be found close to the latter extreme. However, in the extremely ethnicized environment of Eastern DRC, non-state actors tend to exclusively propagate and fight for the cause of 'their' ethnic group, hence preferring their ethnic kin and not providing services equally to the entire population in their area of dominance. Therefore, as long as the state authority is not re-established, it seems that there will be no rule of law in these areas which applies for all inhabitants equally. The latter, however, is key for a more comprehensive land tenure security. A customary chief in Masisi pointed towards this problem, saying that "UN-HABITAT can stay for 50 years and do mediation, but nothing will change essentially if the state authority is not reestablished."

In many aspects, the current image of DRC's state apparatus resembles the continuation of Mobutu's system under a different name. The notion of 'state' still seems like a facade that serves to conceal the self-serving rule of powerful elites. On its way down the

⁷⁵ International Crisis Group (2010) even writes that the "politicization and militarization of the largest land conflicts risks to reduce the work of land mediation to nothing." While this is certainly true, similar arguments can question not only the land-related intervention, but all humanitarian and development efforts in Eastern DRC.

political hierarchy, the significant fraction of DRC's state revenues, mainly gained from the exploitation of the country's rich resources, seems to trickle away into the pockets of politicians and their clients. At the base, there is almost nothing left to be invested to the benefit of the Congolese people. The administrative and judicial system as well as any type of infrastructure (roads, energy, water, sanitation, waste management) are in a catastrophic state. Many national police officers and FARDC units receive insufficient or no salary.

Given these conditions, it is no wonder that the state is not able to enforce its law and provide corresponding services. Accordingly, as witnessed in October 2011, provincial authorities even often do not have the financial means to attend sensitization workshops in the field and must hence be subsidized by international organizations. While there seems to be a certain political will – at least at the provincial level – to address the land issue, state authorities are totally incapable to materialize this will due to the striking lack of means.

This situation also severely affects the effective implementation of the STAREC program. More than two and a half years after the initiation of the CLPCs, only 7 (sub-commissions) are operational to a certain extent. Their installation has been mainly shouldered by UN-HABITAT and UNHCR. In order to avoid a premature comprehensive installation of CLPCs, these pilot structures are to collect the necessary experience and expertise to guarantee the effectiveness of the entire program. However, the existing CLPCs lack financial means and infrastructure. So far, they have no formal office buildings where mediation efforts can be conducted. Furthermore, they are still unknown in their areas of intervention and it will probably take some time, until the local population will develop trust in these institutions. In their current state, the CLPCs still seem to be far from being able to fulfill their mandate of determining whether the reception conditions allow for the return of refugees and accompanying the reinsertion process of refugees.

Nevertheless, a lot of hope lasts on the CLPCs, particularly by customary authorities. According to customary chiefs interviewed in Rutshuru in October, the CLPCs are perceived neutral so far, as they represent all ethnic groups. In this sense, the CLPCs constitute a great chance for the Congolese government to bring together state and custom and to rebuild the trust in its structures, which has been completely destroyed during the last decades. International actors should use all their available means to persuade and support the state to use this chance.

While the struggle for land contributes without doubt to the protraction of conflict, another important sustaining factor is the struggle for DRC's vast natural resources. The 2010 Final Report of the Group of Experts on DRC clearly illustrates the worrying scale of this problem. The issues of land and illegal resource exploitation are strongly connected. However, not only the land-related, but the entire international intervention does not manage to address the war economy. It has virtually no influence in mining areas or on illegal timber trade and charcoal production, as these sectors are controlled by armed groups, who do not accept any interference in their business.

It seems that stability and the necessary conditions for comprehensive land mediation activities in these areas cannot be achieved unless these armed elements are *really*

integrated into FARDC, the illegal exploitation of minerals under their direction ends and security is restored. In this regard, the primary responsibility is with the state, which however seems far from being capable of restoring its authority if it does not manage to fully control the different troops within the FARDC and create a strong and more homogeneous national army.

5.2 Thinking forward

The previous section has identified some major gaps, obstacles and challenges of the land-related intervention in Eastern DRC. But what could be the medicine to overcome them? In the present section, possible solution strategies will be discussed.

5.2.1 Integration of land-related activities

As demonstrated in chapter 2 and illustrated in Figure 2, the land issue affects many fields of intervention of other humanitarian and development actors. As the objective of all these actors should be to make their own future presence in the country obsolete, it is important to see how relief can be linked to development, with the aim to make the aid efforts sustainable. Land seems to be a major LRRD issue and should therefore be further integrated into the overall intervention. The close links between the land issue and the problem of displacement and return have already been acknowledged and the close cooperation of agencies from both IDP and refugee protection and the land-related intervention can serve as a model for other collaborations. Many actors in other fields still seem to be exclusively focused on their sector without recognizing the severe mutual repercussions between DRC's land crisis and the grievances they are trying to overcome.

E.g., land insecurity in DRC has resulted in a general agricultural crisis, strongly affecting food insecurity, economical means and boosting ecological degradation. Organizations like FAO, who are active in all these areas, have gathered a lot of tools and experience on how to deal with these grievances. However, they seem to address the land issue only marginally,⁷⁶ despite the latter being at the very core of 'food and agriculture'. Numerous conflicts between farmers and cattle herders could possibly be prevented with the improvement of agricultural and cattle herding techniques and a stronger provision of seeds, fertilizers, medicine and vaccinations for cattle, etc. FAO could contribute its expertise in these issues.

The call for stronger integration of the land issue into the overall intervention does not mean that all organizations should start their own land conflict mediation. The major competence regarding the land issue should remain with actors in the Land Coordination Group. But cooperation, the exchange of information, ideas and expertise and joint integrated projects could enhance not only the effectiveness and sustainability of the land-related intervention, but the intervention in other sectors as well.

⁷⁶ A joint project with UN-HABITAT is foreseen, but this only aims at the situation in the PNVi.

5.2.2 Bridging the gap between state and custom

As described, the alienation between the state and the customary system and frequent abuse of their competences by each of these actors is the source for widespread tenure insecurity and many land conflicts. If aiming at restoring a working and accountable land management system in DRC, it is therefore inevitable to address the legal dichotomy. While the primary responsibility for this lies with the state and the customary chiefs, the land-related intervention can act as a facilitator to bridge the gap.

Possible strategies for interveners

Extra-judicial mediation currently constitutes the core element of the land-related intervention. Considerable expertise has been gathered in this field and the service seems well-accepted by the population. Given its limits, it is important to find on ways how to make mediation more robust in order to further increase its potential. So far, there is not much information available on the sustainability of agreements achieved by mediation. However, organizations have started to enhance legal weight of mediation outcomes by cooperating with local customary authorities, who can register agreements and monitor their compliance. This is of course only of value if the customary authorities are accepted by the conflict parties. This procedure could be extended to cooperation with judicial mechanisms, which could register extra-judicial agreements and use them as a first basis for litigation in case of later land conflicts.

Moreover, there have been appeals for customary authorities to issue written customary land contracts in order to facilitate the future reconstruction of rightful land ownership. This, however, should be carefully planned, as otherwise there could be just a cacophony of written instead of oral land claims. First, a standard procedure should be developed in cooperation with customary authorities, the competences clearly defined and the according information disseminated. In this case, however, this could help to restore the (state-acknowledged) authority of customary chiefs to a certain extent and bring them closer to the state administration.

Also, the legal support in judicial courts in individual cases, as pioneered by AAP, could be extended in the near future. This could strengthen the authority of extra-judicial mediation mechanisms. In case of intimidation, they could refer the victim party to a lawyer, who supports the beneficiary in a judicial court, which is more unlikely to suffer from *traffic d'influence* as it enjoys much more official attention than any extra-judiciary organ. Facing referral of the case to a judicial court, the readiness of accused parties towards extra-judicial negotiations might therefore be increased. Furthermore, if proving effective, this approach can help to (re-)build the population's trust into the judicial system.

The duty of the state

While being a means to mitigate tensions in the current situation, extra-judicial conflict mediation cannot fully replace robust judicial structures in the long term. However, while demanding for adherence to statutory land law, the state is not capable of sufficiently providing the necessary corresponding services. So far, in the almost 40 years since being the lawful owner of all Congolese soil, the Congolese state has never

been able to exert real control over land, not to mention to organize a complete inventory, to determine the exact area, etc.

The 1973 General Property Law seems to have been the ambitious plan to reflect the traditional land tenure system in a nationwide centralized legal system, where all land belongs to the state and where state authorities concede the land to the people. In principle this could be a useful system. However, it requires a state which has control, access and local knowledge over all its territory. Furthermore, as the acquisition of concessions is not for free, it requires that the people have the corresponding purchasing power. While a strong state with a rather small territory may approach this ideal, the DRC with its enormous and inaccessible territory, a volatile security situation in the eastern provinces, state structures that are somewhere between weakness and absence, extreme poverty and corruption seems to deviate from it in almost all aspects.

So far, the state has failed to clarify the legal status of land in the customary domain. However, the pending presidential decree regarding the clarification of customary land rights in communal territories could also be a chance for conciliation and harmonization between the state and custom. Under its umbrella, the land administration and corresponding competences could be further decentralized in order to stronger embed customary authorities in the administrative system and the land law could be reformed in a way that supports land tenure security for the poor. Such a reform could furthermore include the definition of a maximum land area that can be owned by a single person or corporation (Huggins 2010). Another reasonable rule might be the prohibition for any politician that actively holds an office or held an office not long ago, to engage in any private land and resource deals. Admittedly, it is extremely hard to design and enforce such rules without leaving loopholes for abuse. Nevertheless, they could deter at least some players from abusive practices. Finally, in areas like Masisi, which see a scandalous inequality in land distribution, a partial redistribution of land in the state domain would be able to decisively contribute to the mitigation of tensions and contribute to stability. In order for such a land redistribution to be constructive, however, the presence of a strong and stable state is necessary.

Until an appropriate land reform is in place and land tenure security for the Congolese people is improved, further land grabbing must be prevented. It might therefore be an option to freeze any large-scale land acquisitions and transactions until the appropriate administrative and legal structures are in place.

Unfortunately, ambitions expressed in state rhetoric stand in stark contrast with its capabilities and the reality on the ground. The Congolese state seems still far from being able and willing to carry out reforms that do not only look nice on paper, but also have a major positive impact on land tenure security. E.g., plans by the land administration include detailed rules for the width of roads or the exact position of buildings in urban agglomerations, while the state at the same time is not able to provide a tarmac road system in most cities, let alone in rural areas. As witnessed in October 2011, state representatives started to explain their ambitious urban visions to an audience consisting of mainly customary chiefs at a meeting that was aiming at addressing the most urgent local problems regarding rural land tenure and conflicts.

This example illustrates that the state and its administration still has not entirely realized

the essential problem or easily lose focus. For any organization working on land in DRC, it is thus necessary to try to raise awareness, bring the attention of the state to the problem and urge the government to meet its responsibilities.

In contrast to the classic World Bank approach, international donors should therefore continue and increase their support for the state in the development of a sound policy framework *without* advocating for a premature liberalization of land acquisition towards outside actors. The UN has already gathered considerable expertise and can play a major role as facilitator. It appears that DRC must address internal problems of land tenure insecurity and put corresponding policies and structures for their enforcement in place, before the conditions for large foreign investments can be established. Otherwise, the latter could have the effect of further catalyzing land tenure insecurity and inequality instead of contributing to economic development. Durable foreign investments furthermore require a level of stability which does not seem to be possible without sustainably solving DRC's internal land-related problems.

6. Conclusions

The struggle for land remains a central issue in the protraction of conflict and suffering in Eastern DRC. Particularly in the context of large-scale displacement, clandestine migration and the pending return of refugees, land tenure insecurity leads to numerous land disputes and has the potential to trigger severe conflicts and new displacement. Ethnic rallying prevails, often including indications that 'the others' threaten to invade the people's land (Human Rights Watch 2011).

Currently, the land-related intervention mainly focuses on the mitigation of this conflict potential by preventing and solving land conflicts through mediation at the local level and filling the void of absent administrative and judicial state mechanisms. Without doubt, many disputes have been resolved in an extra-judicial way and the intervention seems to be well-accepted among the local population. However, the effectiveness of local extra-judicial mediation is limited and little is known so far about its overall impact. Given the urgent need for working together with the communities at the local level, particularly in view of a possible implementation of the Tripartite Agreement, much remains to be done at this level.

The legal void in Eastern DRC is the result of decades of war and bad governance. Today, there are tremendous gaps between the state and its people and between the state's ambitions and its current abilities. The land-related intervention is aiming at bridging both these gaps by raising awareness, capacity-building and providing technical, logistical and financial support. While all agencies cooperate with customary leaders, only few involve state representatives in their work. Intervening organizations should be aware that unbalanced support and the filling of the legal void primarily by non-state institutions can have the counterproductive effect of further weakening state authority and legitimacy. If the situation is to change structurally in the mid and long term, therefore, organizations working on the land issue must not fail to include state agents into their corresponding efforts at each the local, provincial and national level.

Many Congolese say that what DRC needs is a strong leadership and good governance. They are without doubt right. Given the anarchical conditions regarding land tenure and resource exploitation in major parts of Eastern DRC, durable stability and security necessary for sustainable development will not be possible without the comprehensive establishment of accountable state structures. Otherwise, DRC threatens to remain a dysfunctional, fragmented state, which resources will be eaten up by its own constituents until there is nothing left.

While there is some cumbersome progress, the Congolese state seems still far from being capable to manage all the challenges alone. If the international community, one day, wants to leave the country, it should not close its eyes towards complex challenges and contribute further to the addressing of the root causes of the crisis. Years after the end of war, it is obvious that mere palliative action is not enough to allow the country to recover. Resolving the land issue is central to sustainable recovery. Social and economic stability in the long term will only be possible, if the state manages to get a hold on its land and natural resources and ensures that all Congolese can enjoy these riches. Without naively providing funds and without expecting fast visible results, humanitarian and development organizations, corresponding donors and governments around the globe should do their possible to further support the Congolese state and its people on the way to these goals.

Recommendations

To intervening organizations:

- Clarify competences and distribute intervention areas for extra-judicial mediation mechanisms in order to avoid overlap of competences, forum shopping and competition between these organs (see page 51).
- Include not only customary, but also state authorities into sensitization and capacity-building activities and bring these actors together.
- Establish a central database for land conflicts which captures cases from all organizations working in the land coordination group according to a standardized typology for advanced statistics (see page 52).
- Develop objectively verifiable indicators that allow for measuring the impact of the land-related intervention (see page 50).
- To organizations outside the land-related intervention: Examine the impact of the land issue on the own field of intervention and extend or adapt approaches accordingly. Foster cooperation and the exchange of expertise (see page 56).

To the Congolese government:

- Recognize the importance of strengthening comprehensive land tenure security in view of the consolidation of peace and future stability and development.
- Enhance support for the CLPCs in order to increase their constructive potential in the peace and conciliation process (see page 55).
- Establish clear guidelines and requirements for provincial administrators. Provide sufficient means for the provincial administrative structures to fulfill their mandate.

- Set less ambitious, but achievable goals regarding decentralization and land management, which do not only look good on paper, but actually can be implemented. Set new goals step by step, in line with developments and reality on the ground.
- Initiate a land reform process to harmonize formal and customary law and guarantee comprehensive land tenure security (see page 58). The reform process must occur in close cooperation with customary authorities and civil society leaders and take into account local particularities.

To donors:

- Strengthen support for the land-related intervention and foster integration of land-related efforts into all cross-cutting intervention sectors (see Figure 2).
- Support the establishment of extra-judicial community-based mediation structures in areas where such mechanisms already exist only under the condition that corresponding agencies prove the need for these structures and their coordination and complementarity with existing ones (see page 51).
- Facilitate an external evaluation by international and national land, law, agriculture and human rights experts which allows for the acquisition of a data baseline regarding the total number of land conflicts and the overall size of the problem. Furthermore, this evaluation could work on the development of OVIs that allow for measurement of the intervention's impact (see page 50).
- Urge the central Congolese government to recognize the land problem without demanding for premature action and the liberalization of the land market towards foreign investors. Support the government in the development of a sound pro-poor land tenure policy framework.

7. Appendices

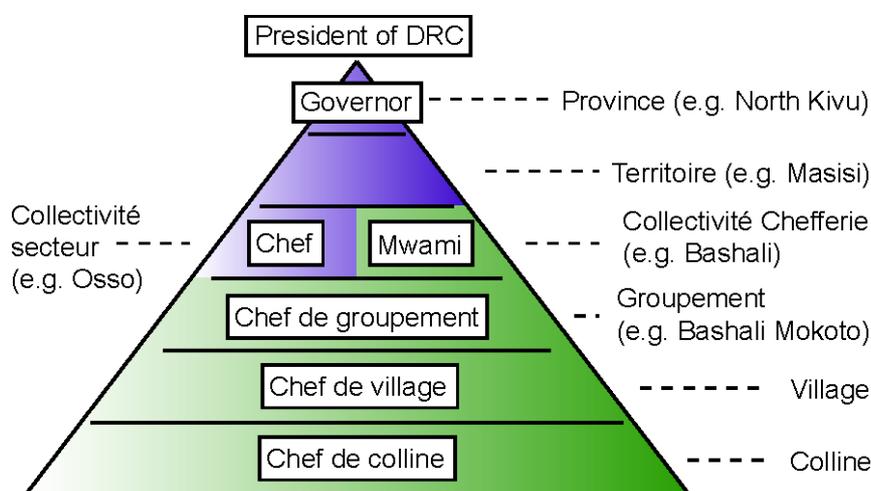
Table 1: (Non-exhaustive) List of agencies in the Land Coordination Group for North Kivu

Acronym	Organization	Type of organization
AAP	<i>Aide et Action pour la Paix</i>	National NGO
ACODRI	<i>Action Communautaire pour le Développement Rural Intégral</i>	"
ADPD	<i>Action pour le Développement des Populations Défavorisées</i>	"
APED	<i>Action pour la Promotion de l'Environnement et du Développement au Kivu</i>	"
ARAL	<i>Arche d'Alliance</i>	"
	<i>Bons Samaritains</i>	"
	<i>Centre Dorika</i>	"
FAT	<i>Forum des Amis de la Terre</i>	"
FOPAC	<i>Fédération des Organisations de Producteurs Agricoles du Congo</i>	"
GAD	<i>Groupe d'Action pour le Développement</i>	"
IA	International Alert	International NGO
NRC	Norwegian Refugee Council	"
PDH	<i>Programme pour la promotion de la Démocratie et le droit de l'Homme</i>	National NGO
PIDP	<i>Programme d'Intégration et de Développement du Peuple Pygmée</i>	"
SYDIP	<i>Syndicat de Défense des Intérêts Paysans</i>	"
UN-HABITAT	UN Human Settlement Program	United Nations
WWF	World Wide Fund for Nature	"

Source: UN-HABITAT Land Program in Eastern DRC (lead agency of Land Coordination Group)

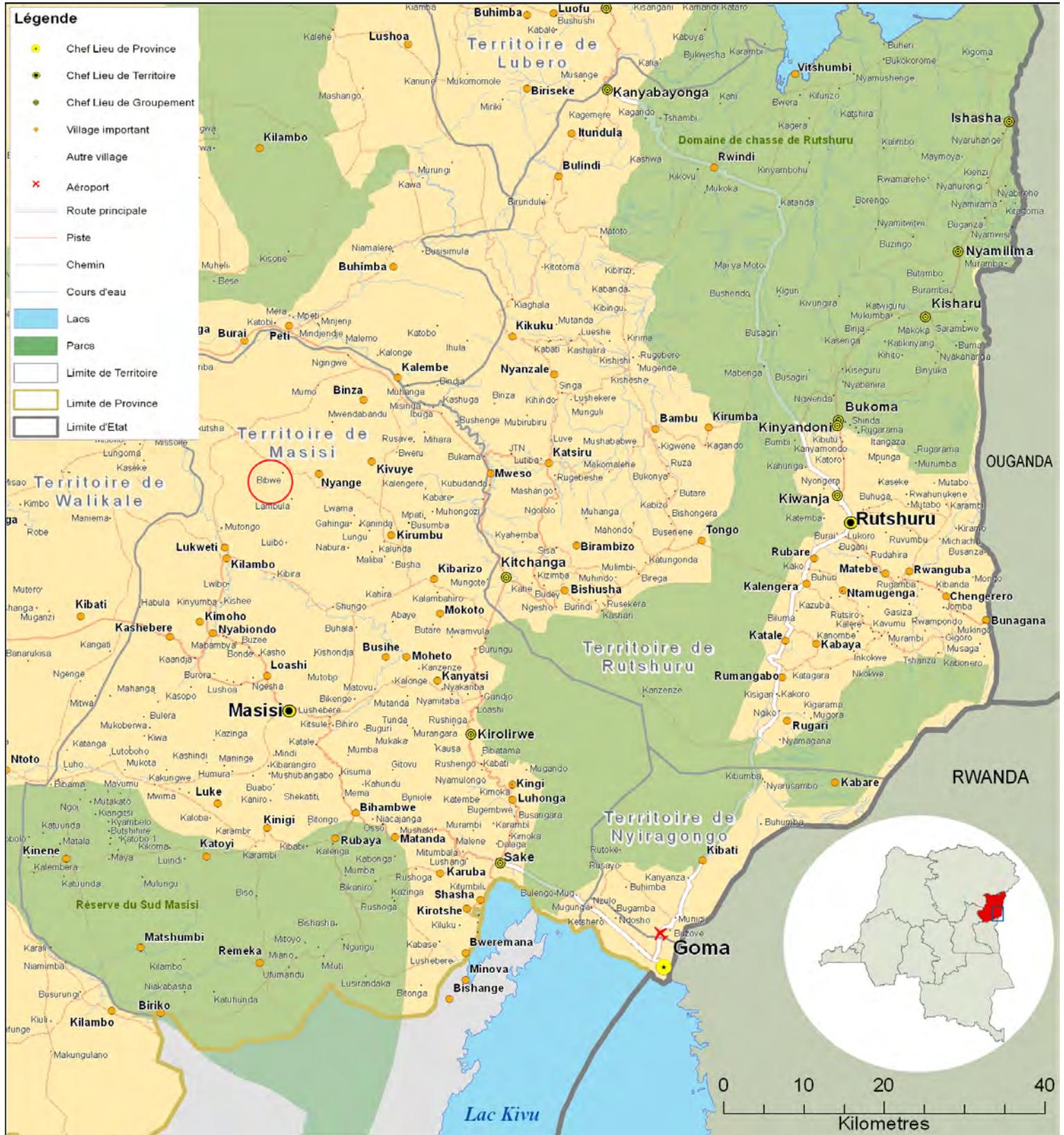
Figure 3: Schematic illustration of the administrative hierarchy in DRC

Entities governed by functionaries appointed by the state are marked in blue, entities managed by customary authorities are marked in green.



Source: Own composition

Figure 4: Map of the territories of Masisi and Rutshuru



Source: Modified OCHA map, with kind permission by the OCHA office in Goma

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