

## LAND, MIGRATION AND CONFLICT IN EASTERN D.R. CONGO

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This policy brief is a summary of a full-length case study, funded by the United States Agency for International Development (USAID), to be published in December 2004 by the African Centre for Technology Studies (ACTS) and the Institute for Security Studies (ISS). It examines the role of land access in the conflicts which have affected Eastern Congo, especially since 1993. Based on fieldwork in Ituri Territory and Goma as well as extensive review of secondary literature, it includes a number of recommendations for the Government of the DRC, the international community, and civil society actors, for both short-term and the long-term horizons. It concludes that land shortage or exclusion has provided a conducive environment for local, national and regional actors to strengthen their control over territory, social mobility and natural resources. Since the start of the Congolese war, land has turned from a 'source' of conflict into a 'resource' of conflict. Land is a key element for the development and consolidation of new systems of power, profit and control<sup>1</sup>. Rebel leaders have mobilised existing patterns of 'unfree labour' and have turned land into an asset to be distributed among its members.<sup>2</sup> Because of the links between control over land and conflict, the study recommends that a commission on land ownership should be established and charged with the responsibility to analyze the dynamics of land access nationwide, with a focus on areas where land access issues have been related to conflicts, and deliver a report within a limited timeframe. The commission should conduct extensive consultations, involving real community input from rural areas. Their recommendations should be approved by consensus amongst the concerned parties.

The findings of the commission would be brought to parliament for enactment of a new policy on land distribution, allocation and distribution. The policy would seek to define 'customary land rights' in order to provide the majority of Congo's people with secure access to land. On the basis of this experience, a new land law should be formulated.

### Introduction

Violent conflict has engulfed parts of the Democratic Republic of Congo (DRC), principally the East, for much of the last decade, during which some 3.3 million people have died, making it the world's most deadly conflict since World War II. With the signing of the Lusaka Ceasefire Agreement, the Sun City Accords, and the subsequent establishment of a Transitional Government, there is optimism for the future. But areas such as North and South Kivu Provinces and Ituri Territory remain volatile, as was seen in June 2004, when opposing army factions battled in Bukavu, or in July 2004, when new clashes broke out between militia groups near Bunia.

It may be asked why this study chooses to focus on access to agricultural and pastoral land, when other factors are more commonly identified as sources of conflicts in the DRC. These include the military and economic strategies of neighbouring countries and Western powers; the nature of the state in DRC (a classic case of the 'failed state'); the historical relationships between ethnic groups; and natural resources of great value and 'lootable' character, such as diamonds, gold, cobalt, cassiterite, and coltan.

Nonetheless, land remains important for several reasons. Firstly, insecure or insufficient access to land is a significant factor in the impoverishment of thousands of rural people, and is therefore a 'structural' cause of conflict. Marginalisation as a result of land alienation has given an important stimulus to militia formation in many parts of eastern DRC. Secondly, in the case of Ituri Territory, contested purchase and expansion of agricultural and ranching concessions have been identified as one of the proximate causes of violence; the same may be true in Masisi. Thirdly, the present conflict has radically changed land access patterns, through a number of mechanisms including forced displacement; and shifts in the level of authority enjoyed by different customary and administrative leaders. Conflict is producing new competition for land, as part of a wider renegotiation of the local economic space and re-drawing of ethnic, class, and other 'boundaries' between groups.<sup>3</sup> This is especially the case because land was turned from a 'source' into a 'resource' for the perpetuation of conflict.

### The local political economy of land-access

In many parts of the eastern provinces of the DRC, land has been a source of conflict for

many years. Changes introduced during the colonial period tended to politicise and exacerbate conflicts over disputed access to land. On the one hand, colonialism institutionalised the link between ethnic identity and land access within the political structures of the state. On the other hand, it intensified local competition for land with the promotion of migration of labour forces from neighbouring Rwanda. Before the colonial conquest, large parts of eastern Congo were characterised by markedly stratified patriarchal social structures. Access to land was regulated by a hierarchical administration based on communal territorial ownership.

The Belgian colonial power took notice of the existence of these indigenous systems and pushed them into a new regime of customary law, which, consequently 'containerised' the local population<sup>4</sup>. The process of 'containerisation' involved a 'rigidification' and in some cases a re-definition of ethnic identities and a codification of customs. A second characteristic of the land tenure system was the introduction of a double system of property rights. Next to 'custom' existed a 'modern' system for the white settlers enabling them to establish their plantations, through application to the central state. All vacant land was declared to be the property of the colonial state. Land was expropriated for settler-owned concessions, and compensation was paid to the customary leaders (*mwami*), rather than to the people. The dual nature of the system allowed for 'forum shopping' in order to gain access to land, which eventually undermined the legitimacy of both the customary and statutory systems.

### The issue of border identities

Long before the creation of the "Independent State of Congo" in 1885, significant numbers of Kinyarwanda speaking people were living in the highlands of Kivu. In what is now called North Kivu, there were important settlements of Banyarwanda, while in the southern parts of the Kivu highlands there was a presence of a group of Banyarwanda that were mainly of Tutsi-origin and later would be better known as Banyamulenge.

After the First World War, the Belgian colonial administration strongly promoted the migration of significant numbers of Rwandan farmers in an attempt to counteract a strong demographic pressure in Rwanda and to provide the necessary labour for the newly created agricultural plantations and mining cen-

tres. The colonial administration never succeeded in finding a sustainable resolution to the identity problem. The so-called “social revolution” of 1959 in neighbouring Rwanda — partly the result of colonial policies of ethnic favouritism — was responsible for the arrival of additional Rwandan refugees.

In 1910, Belgium, Germany and the United Kingdom signed the Convention of Brussels in order to redraw the boundaries of the Independent State of Congo.<sup>5</sup> From then on, the Kinyarwanda speaking population in North Kivu and the Kirundi-speaking population in South Kivu were considered as indigenous and were attributed their own customary authority, which was immediately disputed by the other ethnic groups living in these regions.<sup>6</sup>

#### Alienation of customary land

Competition for land would always remain an important source of tension between the local population and the Banyarwanda immigrants. When denied free access to land through custom after independence, the Banyarwanda finally started purchasing land. The Banyarwanda succeeded in acquiring most of the land in Masisi by simply buying it. The Hunde chiefs, for their part, were still expecting tribute from these Banyarwanda for the use of land that they still supposedly held under their customary powers. This explains the first major conflict: the ‘*Guerre des Banyarwanda*’, which lasted for two years, was the first rebellion against abuse of the chiefs’ powers, and the first step of a spiral of unending local violence.

The confusion brought about by the co-existence of ‘customary’ and ‘modern’ land access systems increased after the introduction of a land law, which was based on individual ownership, in 1973 by the independent Zairian state.<sup>7</sup> This legislation discarded customary law, so that land occupied under customary rules no longer had any legal status. The law was to be supplemented by a Presidential Decree designed to offer some security to customary land users, but the Decree was never issued. This diffusion forced most peasants into a position of general uncertainty about their legal access to land. What was meant as a measure of national integration, giving every Zairian citizen equal access to land, in its application proved to be a perfect instrument for those already holding a position of political or economic power to appropriate any land not yet titled. The traditional authorities became the privileged intermediaries for the sale of land.

In Masisi, the Hunde-chiefs played a crucial role in the selling of large tracts of land. Since the introduction of modern land rights and the new legislation on property, it was impossible to buy land without their permission; and they would generally benefit from land sales. This opened the road to clientelistic relations but at the same time reduced the power of the chiefs, including a loss of their local legitimacy.

Rewarded with ministerial posts and armed with the 1972 law on Zairian national-ity (which granted them Zairian citizen-

#### Text box: Side-stepping the land law in Ituri

Land-related conflicts are partially a result of systemic failings of the land tenure legislation and the administration and justice system. In Ituri, local perceptions of community rights mean that market-based systems cannot operate as provided for in the legislation. In response, some members of the local elite short-circuited the land administrative system through corruption. In areas where the concessions were bordered by villages and farmland, officials were sometimes bribed to ignore various stages of the titling process, including surveying and consultation with local people.<sup>8</sup> In some cases, the local chief may have been paid to accept the expansion of the concession, while in other cases he may have been ignored. The landowner would then receive a title document, sometimes bypassing the district and province level altogether and going direct to higher authorities in Kinshasa. Many of the landowners would then do nothing to expand the concession for a period of at least two years. After this time, the inhabitants lose the right to appeal against the claim of the landowner. When this situation was exacerbated by the use of force and administrative changes implemented by the UPDF, the result was violent conflict of an ‘ethnic’ character. The situation in Ituri reflects a wider national challenge to land administration and local governance. Many apparently consider the violence in Ituri to be separate from the patterns of conflict in the Kivu Provinces, with its own ‘historical dynamics’.<sup>9</sup> However, while each portion of the vast country that is DRC has its own particular characteristics, the political economy of land ownership is a national-level issue.

ship), the Banyarwanda were able to concentrate a large number of former colonial estates in their hands. In Ituri, similar developments could be observed. Here, it was members of the Hema that profited from their easy access to education and to employment opportunities within the local colonial administration, the mines and plantations.

Regions such as Bushi, Rutshuru and Masisi, were faced with unrelenting population growth. By the end of the eighties, 49 per cent of the population in Kivu lived in areas with a density higher than 100 inhabitants per square kilometre, whereas this number was only 13.4 per cent in Zaire as a whole<sup>10</sup>. A survey in Mulungu (Kabare) in 1985 demonstrated that, even with intensive cultivation, the land holdings of nearly 90 per cent of the population were insufficient to support a family. More than two thirds of all households worked plots of less than one hectare. One third of all families had less than 0.3 hectare.<sup>11</sup> In areas with a large presence of immigrants, competition for land was easily manipulated to transform the struggle over land into ethnically motivated conflicts. This was especially the case for the zone of Masisi (North Kivu) where 512 families (of which 503 were of Rwandan descent) occupied more than half of the land.<sup>12</sup>

This dynamic has put the resources of poor peasant households under growing pressure, leading to a) a shift in the economic use of the available space which resulted in land dispossession and alienation, producing a large agricultural labour surplus; b) young men opting for a strategy of temporal migration, causing shifts in local mobility patterns; and c) intensified competition for wealth accumulation through land which led to a hardening of social boundaries on an ethnic basis.

With a peasant population under growing stress, one might have expected more (or earlier) protest or regular outbursts of violence by these farmers against their rulers. To understand why this did not happen, the traditional authorities need to be the focal point of analysis. In order to guard their position, and avoid blame for land sales, ethnic discourse proved to be a perfect instrument. This significantly raised eth-

nic tensions. These conflicts, however, were not limited to areas where immigrants had settled. Ethnic tension increased between the indigenous communities of Babembe and Babuyu in the southern parts of South Kivu when the “indigenous” community of Babuyu rejected the land rights of the “exogenous” community of Babembe on the premise that historically, they were the sole owners of the land.

It was only after the announcement of the democratisation process, in April 1990, that local competition for land turned into the material basis of intensified political competition and, eventually, violent conflict. Mobutu’s announcement of a democratisation process, in April 1990, could be best described as yet another strategy to ensure his power. He knew precisely how he could manipulate the process of democratisation. Local politicians were forced to build themselves a strong power base, from which to exploit popular sentiments. Mobutu encouraged exit-strategies based on ethnic criteria. The introduction of the notion of “*géopolitique*” in the early phase of the democratisation process, was the first element to intensify local ethnic competition. In North Kivu, a wave of inter-ethnic violence erupted for the first time in March 1993. Poor Hutu farmers from Masisi had lost their land because the local customary chiefs had sold it to rural capitalists of Banyarwanda origin. These farmers settled further west in Walikale where they hoped to get access to land under the control of the local Nyanga chiefs. Fearing a growing influence of these newly arrived Hutu-Banyarwanda, the local population and their chiefs supported the formation of local militias. Secondly, a coalition of local Nande and Hunde politicians, afraid of losing their political power if the Banyarwanda were registered as Zairian nationals and participated in the coming elections, had started an exclusion campaign to prevent the Banyarwanda from political participation. Also, the local Hutu-Banyarwanda asso-

ciation Magrivi (*Mutuelle des Agriculteurs de Virunga*) encouraged its members to refuse paying tribute to the “indigenous” chiefs and to no longer recognise their authority. Fourthly, the Rwandan presidency also encouraged local tensions to cut the support lines between the local Tutsi population and the Rwanda Patriotic Front (RPF), who were fighting a guerilla war across the border. The result was a bloody confrontation that lasted for more than six months and killed between 6,000 and 10,000 people, while displacing more than 250,000 people.

The fragile settlement between the different communities in North Kivu, which was eventually forged at the end of 1993, lasted until the arrival of more than one million Hutu refugees from Rwanda and the settling of the ex-Armed Forces of Rwanda (ex-FAR) and Hutu extremist (*Interahamwe*) militia in camps in Masisi and the Ruzizi Plain. Local antagonism between autochthonous and Banyarwanda communities was now altered by a new coalition of local Hutu-Banyarwanda, the refugee-leadership and militias, creating the concept of ‘Hutu-land’ and hunting down the local Tutsi population.

In the southern parts of South Kivu, the unresolved question of land rights and the quest of the Banyamulenge to have their own “*territoire*” was linked to the national debate on political representation. In addition, the Banyamulenge were held responsible for the growing insecurity since the arrival of the Burundian Hutu-refugees after the assassination of the Burundian President Ndadaye, in October 1993, and the Rwandan Hutu-refugees in 1994. Local political and economic competition was directly linked to regional dynamics of conflict. All Tutsi in the area (including the Banyamulenge) were characterised by politicians as “recent refugees” and “foreigners”.

By September 1996, the Kivu provinces had become a toxic brew of local and regional antagonisms that risked escalating at any time. These local and regional elements explain the dynamics behind the formation and the start of the military campaign, in October 1996, of the *Alliance des Forces Démocratiques pour la Libération du Congo/Zaire* (AFDL). This alliance of local and regional forces easily defeated the remnants of the Mobutu regime and, in May 1997, arrived in Kinshasa. While the regional allies were expecting some remuneration for their war efforts, the AFDL leadership felt a growing need to distance itself from them if it was to build for itself a domestic political power base. The dilemma of the new Congolese authorities turned out to be the *raison d'être* of a second rebel movement, the *Rassemblement Congolais pour la Démocratie* (RCD). Yet, what was expected to be a simple imitation of the 1996 rebellion soon proved to be the beginning of a conflict that set in motion new strategies of political and economic control.

#### Land and conflict in Masisi after 1998

The Kivu Provinces, along with Ituri Territory, have been the main arena of conflict between armed actors (often acting as proxies for sig-

natories of the Lusaka Agreement) since the cease-fire was signed in 1999. For this reason, the Kivu Provinces have been identified by some experts as the key area in the Great Lakes conflict system.<sup>13</sup>

The region is one of the most densely populated in the country. The majority of the land is the property of a small number of landowners, who each have extremely large land holdings as a result of their former access to the inner circles of Mobutu’s patronage system. In a survey in the zone of Luhoto (North-Kivu) in the beginning of the nineties, it was found that 31 per cent of these concessions covered 71.2 per cent of the cultivable area.<sup>14</sup> In addition to farms and ranches, a large proportion of the area is also devoted to conservation, in the form of the Virunga National Park.

The area was depopulated during the late 1990s due to conflict. From 1999 until 2002/2003, many returnees from Rwanda and other parts of the DRC were able to cultivate as ‘squatters’ on ranch land. When original land owners returned, along with livestock, some squatters who would not or could not pay were forcibly evicted by the landowners. However, others used force if necessary to be able to stay: these occupations are reportedly enforced by armed elements.<sup>15</sup> Some believe these armed people – who are reportedly rarely in uniform – are part of the Local Defence Forces (LDF), under the command of the Governor of North Kivu. It is also believed that some ex-RCD troops have effectively become a private security force for wealthy and politically connected land-owners.<sup>16</sup>

Due to the importance of the customary authorities in land issues, their role has been politicized. A number of customary chiefs have been prevented from taking their posts, especially through political interference in the process of succession. Frequently, leaders seen as anti-RCD have been accused of being sympathetic to the Mayi-Mayi, or of neglecting their duties.<sup>17</sup> Those who oppose the RCD often claim that violence has been used or threatened against legitimate chiefs who oppose them.

This situation is partly due to the failure of the national legislation to defend customary land rights of the peasants, but is also a failure to implement the law properly. For example, unlike most parts of the DRC, some 75 per cent of land in Masisi is under title. However, these titles are often simply not respected. Lack of information about the land law is one element which enables inequities to continue.

The interference of the provincial authorities in the activities of customary authorities has served to exacerbate local land tenure insecurity. If leadership changes in controversial circumstances, local communities tend to become divided over the issue. In a situation where customary land tenure arrangements for subsistence production (including sharecropping and other rental agreements) are secured through

verbal contracts and testimony through neighbours and customary leaders, and titles generally do not exist, anything that tends to undermine local social cohesion has negative effects on land tenure security.<sup>18</sup>

Though systematic data on the current status of land claims is difficult to obtain, the characteristics of governance in North Kivu suggest that the land claims and interests of one community may be given pre-eminence above others. Generalized insecurity is likely to continue for some time, until a genuinely unified Congolese army is able to impose order in rural areas. A greater threat, however, is posed by a possible collapse of the transition process.

The UN Panel of Experts has warned that the use of force and administrative coercion to pursue land claims, against the backdrop of ethnic violence that has plagued the region, particularly over the last ten years, “could rekindle long-standing conflicts with other ethnic communities over land.”

#### Conclusions

Our analysis has pointed out that the political manipulation of the land issue is part of a larger, historical process. Local elites have tried to consolidate their power position or escape from state control and gain some economic autonomy by control over land. In return, Mobutu turned land into a reward to be distributed among the members of his own patronage system. Both processes have led to large-scale poverty and food insecurity.

Second, in eastern DRC, the relationship between land and conflict is complex and multidimensional. While land shortage or exclusion did not necessarily lead to conflict, these structural elements have provided a conducive environment for local, national and regional actors to strengthen their control over territory, social mobility and natural resources. Land, in this sense, has become an objective of armed struggle while at the same time land insecurity could be manipulated to mobilise rural populations.

Third, since the start of the Congolese war, land has turned from a ‘source’ of conflict into a ‘resource’ of conflict. Land is a key element for the development and consolidation of new systems of power, profit and control. Rebel leaders have mobilised existing patterns of ‘unfree labour’ and have turned land into an asset to be distributed among its members. These practices are both based on inclusion and exclusion: those belonging to the ethnic network in control are granted free access to land; those not belonging to it become the main victims.

#### Recommendations

- Foreign governments, particularly neighbouring countries, should desist from any military support to military or other actors in the DRC. If neighbouring governments are found to be engaging in destructive, destabilizing politics, the international community should condemn their actions and reduce or freeze foreign assistance accordingly.
- Despite their historical role in the aliena-

tion of land, the customary chiefs retain some legitimacy, particularly in areas where many local people see the ex-rebel authorities as illegitimate. They must therefore be involved in the mitigation and ultimately the resolution of land conflicts, but only through a process of open discussion about the role of various parties in the land access crisis.

- This should be part of a wider process of network-building between local, national and international institutions in order to build a constituency for peace and justice. The process should involve a long-term but low-profile programme of engagement by donors, informed by close grassroots involvement and research.
- Evidence from Ituri and other areas suggests that local markets are a practical focus for local peace-making agreements. These spontaneous agreements should be supported, not just by NGO efforts to reconstruct market facilities and roads, but also by the United Nations Organisation Mission in the Democratic Republic of Congo (MONUC) in terms of security arrangements.
- The judiciary should be strengthened in order to become more effective, and the Transitional Government should take steps to ensure that they are able to operate without political interference. Strengthening of judicial institutions should aim to improve access to justice, particularly for the rural peasant population. In relation to land, this should eventually involve awareness-raising of the legal frameworks to land ownership.
- A commission on land ownership should be established and charged with the responsibility to analyze the dynamics of land access nationwide, with a focus on areas where land access issues have been related to conflicts, and deliver a report within a limited timeframe. The commission should conduct extensive consultations, involving real community input from rural areas. Their recommendations should be approved by consensus amongst the concerned parties.
- The findings of the commission would be brought to parliament for enactment

of a new policy on land distribution, allocation and distribution. The policy would seek to define 'customary land rights' in order to provide the majority of Congo's people with secure access to land. On the basis of this experience, a new law should be formulated within a year of the policy being finalized.

#### Notes

1. See Vlassenroot, K. and T. Raeymaekers, The Politics of Rebellion and Intervention in Ituri: The Emergence of a New Political Complex?, in: *African Affairs*, Vol. 103, 2004, pp. 385-412.
2. Pottier, J., *Emergency in Ituri, DRC: Political Complexity, Land and Other Challenges in Restoring Food Security*, Paper presented at the FAO international workshop on 'Food Security in Complex Emergencies: building policy frameworks to address longer-term programming challenges', Tivoli, 23-25 September 2003.
3. See Tilly, C., *The Politics of Collective Violence*, Cambridge University Press, Cambridge, 2003.
4. Mamdani, M., *Citizens and Subject. Contemporary Africa and the Legacy of Late Colonialism*, Princeton University Press, Princeton, 1996, p. 22.
5. Another consequence of this convention was that it cut through existing local Kingdoms and divided ethnic communities.
6. The Tutsi-minority of Rwandan descent (or Banyamulenge) living in South Kivu, however, was not entitled to the same rights. The fact that the Belgian colonial powers did not treat this minority in the same way as it did the minorities living in the Ruzizi Plain and North Kivu, resulted in an exclusion from the right to institute their own customary authority.
7. Law No. 73/21 of 1973, later amended and supplemented by Law No. 80/8 of 1980. See also Aide et Action Pour La Paix, *Ce Qu'Il Faut Connaitre Sur Le Sol En Droit Congolais*, *Etude Juridique* No. 1., Aide et Action Pour La Paix / Norwegian Refugee Council, Goma, 2004.
8. Interviews with civil servants and FAO personnel, Bunia town, May 2004.
9. SIDA, *A Conflict Analysis for the Great Lakes Region*. Division for Eastern and Western Africa, Stockholm, 2004.

10. De Saint Moulin, L., L'évolution des densités de la population du Zaïre, in: *Revue Belge de Géographie*, vol. 58, no. 1-2, 1995, p. 95.
11. Schoepf, B.G. & C. Schoepf, *Food Crisis and Agrarian Change in The Eastern Highlands of Zaïre*, p. 11.
12. Laurent, P.J. and M. Tsongo, *Mouvements de populations, cohabitations ethniques, transformations agraires et foncières dans la Kivu montagneux*, Institut d'Etudes du développement, Louvain, 1996.
13. See e.g. Cogen, M. and Reyntjens, P., *The Great Lakes, Kivu and the Search for Peace*, 1999 (Unpublished paper available online at [http://allserv.rug.ac.be/~mcogen/KIVU\(mc\).html](http://allserv.rug.ac.be/~mcogen/KIVU(mc).html)). It should be remembered, of course, that conflict systems are by nature dynamic, and the epicenters of conflict change over time.
14. TSONGO, M., *Problématique d'accès à la terre dans les systèmes d'exploitation agricole des régions montagneuses du Nord-Kivu (Zaïre)*, Louvain-La-Neuve, UCL, 1994.
15. Interview with Ngo personnel in Goma, July 2004; and Aide et Action Pour La Paix, *Les Conflits Fonciers et Les Mouvements Des Populations Dans Le Masisi: éviter la retour a la case de depart*, Aide et Action Pour La Paix, Goma, 2004.
16. Interviews with national and international NGOs, Goma, July 2004.
17. Interview with Director of North Kivu Province, Goma, March 2004.
18. Land tenure security is here understood as a function of the perceptions of local people, not just a legal or social 'objective reality'.

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