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‘It’s not all about the land’: Land disputes and conflict in the eastern Congo

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These drawings show the same area with its land plots—the left in 1980, the right in 2005—in the village of Mumosho in Walungu, South Kivu. They illustrate increased land competition—and the decreasing size of land plots—partly as a result of demographic pressure. The pictures were drawn by participants of a focus group discussion in Mumosho in December 2005.

Key points

- Current interventions in land conflicts are focused on conflict management rather than conflict resolution.
- Land conflicts are part of a wider governance problem and need political rather than technical approaches.
- Conflicts over land are related to wider conflict dynamics, which are the result of an interplay between struggles for power and resources, identity narratives and territorial claims.
- There is a need for better donor coordination and more coherent land governance interventions, which should be integrated into larger state-building efforts.

Introduction

Land disputes are considered both key sources and perpetuating factors of conflict in the eastern Democratic Republic of the Congo (DRC). Over the years, scholars and practitioners have identified a number of critical land-related factors contributing to violence and conflict. These include a considerable diversity of forms of land governance that are fostered by: the existence of overlapping legal frameworks and weaknesses in statutory land law; increased competition over land, including among elites and between autochthonous and migrant communities, sometimes resulting from large-scale displacement; and the poor performance of the administration and justice system in the settlement of land disputes. The causes for land conflicts in the eastern Congo are multiple. The character of these conflicts is also diverse, as are the types and levels of violence associated with them. It is essential to recognize these differences if adequate solutions to this source of ongoing tensions are to be found.

This briefing argues that many land-related disputes are not only about land but also an expression of the effects of the Congo’s governance crisis. The options people have to settle their disputes in a peaceful, formal and durable manner are limited, not least due the state-led justice system’s weak performance, which is experienced as corrupt, slow, biased or barely accessible. This explains why disputants resort to a multitude

of alternative conflict resolution, mediation and arbitration mechanisms, involving a wide range of state and non-state actors and structures, some of which have been introduced with the support of external actors. While in some case these various mechanisms provide an alternative to conflicting parties, they also lead to what can be described as a context of legal pluralism. This context does not necessarily lead to a better resolution of land-related disputes. A number of factors, including accessibility, existing allegiances and assumed outcomes, tend to guide people in their choices of how to mediate land conflicts. These factors explain why some disputants continue to rely on formal justice institutions and others solicit mediation by customary chiefs, civil society or even armed groups.

The long-term impact of these various mechanisms on land disputes should not be over-estimated. To resolve the Congo's land-related conflicts, genuine land governance reform is needed. Expectations of such reform should be realistic. At present, however, there is limited political will. Moreover, successful land reform is primarily conditioned by a more capable and effective governance context than is currently the case in the Congo. Reforms should focus on the rights and livelihoods of small farmers and take into account local realities. What is needed in one context is not necessarily helpful in another. Finally, as other examples from outside the Congo show, land reform processes take a long time and thus need long-term investment.

Three categories of land disputes

The most visible land-related conflicts in the eastern Congo, and which have contributed to large-scale violence, are those that have pitted ethnic communities against each other. Land, identity and conflict are often directly connected, with competition for land undermining ethnic cohabitation and leading to large-scale violence. These inter-community conflicts, however, are not the most dominant land-related disputes in the eastern Congo. Other forms of land-related conflict are much more widespread, including community-level conflicts between farmers and large-scale concessionaires, between rural communities and mining companies, between pastoralists and farmers, and between national parks and surrounding populations. While generally accompanied by low levels of violence, the grievances related to such conflicts often have an indirect impact on security and stability at the local level. The most frequent forms of land-related conflict are those that happen at the interpersonal and intra-familial level. These relate to disputes over plot boundaries, inheritance, widows' rights to land, the validity of contracts, and illegal acquisition and occupation. These disputes have become part of daily realities both in rural and urban areas. In many cases, such disputes remain unresolved or only partially resolved.

Individual land disputes

In the eastern Congo, land disputes between individual farmers are widespread, with multiple options available to settle these disputes. Besides customary authorities (traditionally the key actors in land dispute resolution between individual farmers with customary titles but as a result of recent laws do no longer have the formal capacity to provide justice) and the formal, but malfunctioning, justice system, a variety of alternative options have been introduced by local and national actors. Although these mechanisms and structures have facilitated farmers' search for solutions, the diversity of resolution channels has also caused confusion and affected the predictability and sustainability of outcomes.

The prevalence of land conflicts between individual farmers is reflected by the sheer number of such cases heard before the Congolese courts. A survey conducted in 2010 reveals that in the city of Butembo (North Kivu), an estimated 85 per cent of cases before the *TriPaix* (*Tribunal de Paix*—Peace Tribunal); the lowest level of courts in the Congo) are land related.[1] This survey also indicates that given the partiality of the judiciary and the ambiguity of land legislation, judgments decided by the formal justice system do not guarantee that conflicts are resolved. Moreover, given the weak presence and peculiar workings of state services in the Congo, which are often heavily influenced by patronage, the execution of judgments on the ground remains a considerable challenge. In Kitchanga (North Kivu), for example, cases have been reported in which a judgment was rendered in favour of the plaintive but the police were complicit in hindering its execution.[2] This is not a unique case. In many places, the security services

have become deeply entrenched in a local political economy of arrest, intimidation and extortion, further limiting access to fair trials and effective means of conflict resolution.[3]

The current state of the Congo's justice sector—its inaccessibility and its reputation of being corrupt, expensive or unpredictable—has given way to the development of a plethora of alternative conflict resolution mechanisms and practices. These involve a wide range of state and non-state actors and structures that engage with mediation and arbitration in land conflicts. In conflict-affected areas, armed groups often play a key role and have become heavily involved in the resolution of land conflicts. In Bunyakiri (South Kivu), for example, different Raia Mutomboki factions try to assert their right to mediate in conflicts between individuals, which is an integral part of the strategy of this armed group to impose and consolidate its authority[4]. In contrast to state services, Raia Mutomboki factions render justice in cheap, fast and easily accessible ways, but with little transparency; and, in most cases, this justice is often only partial because armed groups can easily be mobilized to further anyone's own cause.[5]

People also still rely on customary authorities, who continue to be key actors in the mediation of land disputes, even though they no longer have the legal authority to adjudicate, a role has been transferred to the *TriPaix*.[6] Chiefs, who used to be the legally recognized custodians of communally owned land, still partly base their authority on their power to distribute land, which reflects the ambiguous legal framework surrounding land in the Congo.

Farmers also increasingly refer their cases to other actors and structures, including church associations, civil society groups and even business associations. At present, such actors are involved in the settlement of all sorts of disputes, including individual-level land conflicts. They also deal with far more cases than the formal justice structures do.

Similar mediation and sometimes arbitration mechanisms at the community level are piloted by the Congolese state, or set up by international agencies and local NGOs. Examples include the governmental *comités locaux permanents de conciliation* (CLPCs, permanent local reconciliation committees) in North Kivu or the NGO-backed *cadre de dialogue et mediation* (CDMs, dialogue and mediation frameworks) in the two Kivu provinces. As is the case with customary arbitration, these structures have the advantage of being free. They are also often faster in reaching a solution than existing mechanisms. Some of these structures are particularly effective in dealing with smaller land conflicts and have been shown to improve women's access to land;[7] others, however, have questionable levels of effectiveness.[8]

Despite their advantages, these mediation efforts have a number of downsides. In most cases, the means to enforce decisions are virtually non-existent, which undermines the durability of mediation and arbitration outcomes. Some of the new structures are not well embedded in local society, especially when they are satellites of civil society organizations established at the provincial level or introduced by international agencies. As experts on land-related conflicts conclude, 'This tutelary system means that these structures are widely perceived by the population as belonging to the organisation that initiated the structure rather than to the community itself.'[9] At the same time, these initiatives tend to depend heavily on external financing, in most cases for a limited period of time, both of which factors limits their sustainability. Yet, the most problematic aspect of these mediation and arbitration structures and mechanisms is the multitude of approaches they take, with only cursory attempts to promote coherence or coordination. Furthermore, many try to attract disputants and manipulate disputes from which they believe they can profit. The end result is that even though the threshold to engage with these mechanisms is usually much lower for small farmers than is the case for formal justice, the outcomes of these dispute resolution and arbitration efforts tend to become negotiable and unpredictable. This limits the chances that disputants will find sustainable settlements or resolutions for their conflicts.

Politicized and militarized community-level land conflicts

Despite their downsides, the mediation mechanisms described often have a positive effect on disputes between individual farmers. They are, however, ill-suited to address conflicts with stakes that transcend the local level, such as land disputes

entailing political or identity-based dynamics and involving powerful political, economic or military actors.

These larger conflicts must be seen within the wider context of patronage politics, state decline and protracted conflict in the DRC. Under President Mobutu Sese Seko (1965–1997), land was integrated into patronage networks. This explains why land gained increasing political value outside of the customary realm. In rural areas, the latter tended to control most of the land outside the plantations that were introduced during colonialism. In return for political loyalty, political and economic elites were offered access to large swathes of land in rural areas—often in complicity with customary authorities, who saw in this new economic opportunities. This was to the detriment of peasants, who lost their customary land rights to a new class of large-scale landowners.[10] The result was a dramatic decline in the surface of arable land available for small-scale agriculture, the effects of which were particularly dramatic in demographically dense areas such as Walungu (South Kivu), Lubero and Masisi (North Kivu).

A similar tendency for land grabbing became pronounced during and after the Congo Wars (1996-1997; 1998-2003). In particular, during the rebellion of the *Rassemblement congolais pour la démocratie* (RCD, Congolese Rally for Democracy), from 1998 to 2003 and immediately afterwards, large plots of land were redistributed to a new class of political-military leaders, further circumscribing ordinary people's access to land.[11] Land, in other words, was gradually transformed into a resource of war, becoming a new source of speculation and rent-seeking activities.

The direct involvement of influential political-military leaders in land-grabbing dynamics, make these more complex land conflicts more difficult to mediate or arbitrate. They also result in dramatic consequences for small farmers who depend on these lands for their survival, and others, such as former land labourers, who do not have land titles and can only access land via labour contracts. Around Kitchanga, for example, labourers from former plantations have been forcefully driven off the land they had been living and farming on for decades by a new class of owners (former RCD officials and other influential members of society), who mainly acquired this land during the transition (2003–2006). Thousands of these former plantation labourers and their families now live in camps in the immediate vicinity of the plantations. While they sometimes have access to the land they formerly cultivated (as the new concession-owners rent it out), no durable settlement has been found yet and tensions continue to simmer below the surface.[12]

Such heavily politicized -- and sometimes militarized -- contexts are widespread in the eastern Congo and cause increased pressures on remaining arable spaces, particularly where land is scarce. The dramatic effects for small farmers also point to the direct entanglement of land-grabbing dynamics with the wider problem of unequal land distribution in the eastern Congo. Farmers often lack the power to claim their rights and are consequently forced to develop alternative livelihood strategies. This explains, for instance, why limited access to land, in addition to insecurity and the lack of economic incentives in rural areas, is a major driver of migration to urban centres. Another option is to seek arable lands located within protected areas, such as the Virunga and Kahuzi–Biega national parks, which in turn is provoking conflicts between park administrations and farming communities.[13] The end result of these dynamics is that particularly in war-affected and densely populated rural areas, a large class of landless farmers has developed over time. Even though in most cases the growing marginalization of farming communities does not lead to large-scale violent conflict, the grievances of individual members of these communities can be easily mobilized, which indirectly contributes to instability.

Violent inter-community conflicts

In other cases, land competition has been a direct source of violence. This type of land-related dispute impacts on inter-ethnic cohabitation and contributes to larger conflict dynamics. Land competition, however, in some cases is a direct source of large-scale violence, inspiring armed mobilisation, affecting inter-ethnic cohabitation and contributing to larger conflict processes. At the core of these dynamics is the close connection between the search for power and resources, identity and territorial claims, which has been fostered by historical processes of state building.

Since colonial rule and the further territorialization of space on the basis of ethnicity, land is primarily governed by specific communities with separate and recognized authority structures in clearly defined territories, thereby reinforcing the links between the right to rule, territory and identity.[14] Land as a material basis for survival, as a result, has become a key resource of larger identity-based power dynamics. Long-term processes of politicization of ethnic identity as part of political contest help to explain why intensified land competition has often turned into an easy source of ethnic discourse and (violent) mobilization.

The dramatic and long-term impact of such inter-community struggles is illustrated by the case of Kalehe (South Kivu). Here, tensions are mainly the result of the expected return of Tutsi communities to their lands on Kalehe's *Hauts Plateaux* (High Plateaux) mountain range. These communities left the region in 1994 as a result of attacks from Hutu armed groups that were related to spill-over effects of the Rwandan genocide.[15] Prior to their departure, Tutsi communities made arrangements about their concessions, either selling the land or leaving it to custodians or guardians. At present, however, much of this land is occupied by Hutu farmers, who fear the loss of their livelihood options in case the original —Tutsi—landowners return. In this case land disputes have revived long-standing animosities and contribute to the enduring presence of armed groups.[16] While community leaders use these armed groups to ensure and protect their access to land, the persistence of these groups is also connected to land grabbing by politico-economic elites, which further reduces the livelihood options of Hutu farmers.[17]

In other areas of the eastern Congo, such as Masisi, Lubero and the Ruzizi Plains, land-related inter-community struggles are often framed in the language of autochthony (or indigenousness). In these struggles, those claiming to have arrived in a particular area first or to have originated there are pitted against those defined as newcomers or foreigners.[18] The recent migration of Hutu farmers from Lubero to southern Ituri is a good illustration. Local inhabitants claiming to be autochthones consider the arrival of Hutu farmers in Ituri an invasion, fearing that it is driven by deeper economic and political motives, namely to take their land and acquire local power. These examples illustrate how local competition over land (and other resources) has become closely connected to and translated into identity rights and discourses, and why ethnicity has been transformed into such a powerful mobilization tool.

Policy Considerations

Land in the eastern Congo is at once a source of power and identity, a condition for survival and a driver of (violent) conflict. In a context of structural connections between identity and territory, a long history of the use of land as a patronage resource and as a political commodity, and new land-grabbing strategies by political-military elites, struggles over land have gradually intensified. While in most cases these struggles remain limited to the individual level, elsewhere they affect entire communities and have become key drivers for violence.

The major issue when understanding and dealing with land disputes is the unequal distribution of and access to land. At present, large swathes of what is often the most fertile land are in the hands of a small elite. In many cases, this land is also underused. At the same time, small farmers and other impoverished people who live in the eastern Congo lack the necessary land and power to sustain themselves. Aside from artisanal mining, other livelihood sources are virtually non-existent in rural areas. Both at the national and provincial levels, plans for more efficient land use in the context of agricultural reform do exist—for example, proposing the retrocession of underused land—but so far they have not been implemented.[19] Yet, even if land were to be more equally redistributed, the issue of demographic pressure would remain. This is especially the case in multi-ethnic areas, where it is a contributing factor to intense land struggles. Land governance, therefore, should be more inclusive, based on coherent plans for rural development and take into account local contexts.

Such an approach is not just a technical and judicial matter. Above all, it is a highly political one, with those in power often having interests that are opposed to those of small farmers and other impoverished groups. Even though the legal framework theoretically provides for the more equal distribution of land, land remains a highly valued political resource. The implication

of political and military elites in land grabbing reduces the chances for equal land distribution: Addressing land issues directly challenges their interests and power. Unfortunately, many of the mechanisms and structures to address land conflicts that have been introduced by donor initiatives are ill-suited to deal with this politicization; instead, such donor-led initiatives are mostly effective for settling disputes between individual farmers.[20] Failing to deal with the fact that land remains a highly valued political and, therefore, contested resource, means that other strategies will only be remedial and provide no long-term solution to the problems encountered by a large part of the population. Campaigns aimed at creating political will are therefore indispensable for genuine reform of land governance in the DRC.

Past advocacy campaigns have proven that civil society can have an impact on policymaking. This is exemplified in the revision of the *Loi Agricole* (Agricultural Law) in 2011, when civil society groups from different parts of the country managed to exert some influence on the drafting of the revised law.[21] Although this was a promising first step, the *Commission national de la réforme foncière* (CONAREF, Congolese Land Reform Commission) that was formed in the wake of redrafting the Agricultural Law in 2013 and is responsible for a general reform of Congolese land laws in line with the roadmap created during the 2012 *Atelier sur la réforme foncière* (Workshop on Land Reform) has so far achieved little substantial progress. The biggest constraints seem to be the lack of support from high-level political actors and a disconnect between the technical level and political decision-makers.[22]

Nevertheless, in line with the steps already taken, establishing inclusive advocacy frameworks at the provincial and national levels in order to influence law reform and policy makers might have a positive effect on the current deadlock. It is paramount that these advocacy efforts are supported by those at the grassroots level and that interventions take local realities into account. Congolese civil society organizations point to the risk of uncritically introducing best practices from abroad and leaning too much on the experiences of international partners.[23] Moreover, what is good for one part of the country is not necessarily a priority for other parts of the DRC. Given the varying local contexts, a standardized top-down approach is unlikely to be able to address the structural causes of land conflicts. This could even be counterproductive. Policies should target different solutions for different geographical zones while simultaneously operating within a larger framework.

In the absence of structural responses to land governance challenges, the reality is largely one of conflict management instead of conflict resolution. While existing mediation efforts need to be supported, they also need to be made more effective and credible. This can be achieved by better grounding mediation efforts in local understandings of land tenure systems and state law, and by receiving more support from local and higher-level authorities. More coordination is also needed between donors and development organizations in order to avoid unnecessary duplication and subsequent confusion. Furthermore, to make mediation and arbitration more durable, legitimate structures involved in mediation and the decisions that are made as a result of mediation processes could be recognized by (local) state authorities in order to make them (more) enforceable. Such measures might allow efforts that primarily address individual-level conflicts to address larger-scale land disputes.

Alongside the need to ensure the durability and application of mediation and arbitration outcomes, caution with regard to an exhaustive formalization of land titles is also necessary. Experience elsewhere has shown that such regularization frequently lead to the transfer of wealth to political and economic elites, who are often based in urban areas.[24] Formal land titles or documents pertaining to land tenure are not necessarily seen as valid, hence introducing them must be accompanied by efforts to strengthen their legitimacy. At the same time, in reinforcing the value of documentation, interventions should be wary not to undermine or weaken other non-documented local arrangements that are effective.[25] In the context of the formalization processes, an escalation of conflicts and elite capture of the process—even at the local level—should be avoided.

Lastly, in order to safeguard the effectiveness of conflict mediation and resolution efforts, it is critically important that the structures involved in these processes do not compete with others. This is especially the case if these other structures are provided for in law. A more coherent and

collaborative approach between and among different state and legitimate non-state judicial and extra-judicial structures is paramount.

All these measures can potentially reduce land-related tensions and conflict. Yet, their implementation and success can only be achieved by a responsible and functioning state. The current land governance challenges in the eastern Congo, and the country as a whole, are a consequence of a generalized governance crisis. Any effort to facilitate much-needed land reform should, therefore, also address the larger political and governance issues preventing it. To move from conflict management to conflict resolution, a political approach should be developed that goes beyond a search for technical solutions and embeds land reform in wider policies of rural development. Such an approach requires the implication of high-level political and economic actors across the board and the necessary political will from all actors who are involved in land reform.

Notes

1 Hans Rouw and Rens Willems, 'Connecting Community Security and DDR: Experiences from Eastern DRC', The Hague: Peace, Security and Development Network, Working Group: Community Security and Community-based DDR in Fragile States, 2010, 14.

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3 Maria Eriksson Baaz and Judith Verweijen, 'Arbiters with guns: The ambiguity of military involvement in civilian disputes in the DR Congo', *Third World Quarterly* 35/5 (2014), 803–820.

4 Koen Vlassenroot, Emery Mudinga and Kasper Hoffmann, 'Contesting Authority: Armed Rebellion and Military Fragmentation in Walikale and Kalehe, North and South Kivu', London: Rift Valley Institute, 2016.

5 Vlassenroot et al. 'Contesting Authority'; Kasper Hoffmann and Koen Vlassenroot, 'Armed groups and the exercise of public authority: The cases of the Mayi-Mayi and Raya Mutomboki in Kalehe, South Kivu', *Peacebuilding* 2/2 (2014), 202–220.

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12 Research by one of the authors.

13 Paul Katembo Vikanza, 'Aires protégées, espaces disputés et développement au nord—est de la RD Congo', PhD dissertation, Université catholique de Louvain, Louvain, 2011.

14 Gillian Mathys, 'People on the Move: Frontiers, Borders, Mobility and History in the Lake Kivu Region 19th–20 Century', PhD dissertation, Ghent University, Ghent, 2014.

15 The 1994 genocide led to a massive influx of Hutu refugees into the eastern Congo. In addition to being refugees, some were members of the *Forces armées rwandaises* (FAR, Rwandan Defence Forces) and the *Interahamwe*, who were responsible for committing the genocide in Rwanda. Local antagonisms took on a regional dimension as the interests of radical Rwandan Hutu refugees collided with those of Congolese Hutu militia. This coalition started attacking Tutsi and other non-Hutu communities.

16 On these dynamics, see: Jason Stearns, 'PARECO: Land, Local Strongmen and the Roots of Militia Politics in North Kivu', London: Rift Valley Institute, 2013.

17 Vlassenroot, et al., 'Contesting Authority'.

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