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From resolving land disputes to agrarian justice – dealing with the structural crisis of plantation agriculture in eastern DR Congo

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ABSTRACT

Land disputes in conflict-affected settings are often considered as a security threat, to be addressed through mediation and strengthening the rule of law. This overlooks the roots of land conflicts in longer-term processes of agrarian development and worsening conditions of land and labour access. A case-study of a dispute between former plantation labourers and concession holders in eastern DR Congo shows mediation's incapacity to counter perceived structural injustices in land access and difficulties in making a living. While dispute resolution may temporarily calm down tensions, it cannot substitute for fundamental political choices vis-a-vis wider questions of agrarian development and justice.

KEYWORDS

Land disputes; peacebuilding; mediation; agrarian change; agrarian justice; political economy; DR Congo

Introduction

During my recent stay in Masisi, I noticed, not without regret, that land conflicts constitute the biggest plague threatening peace, security, and public order in this zone [...] where the economically-strongest grab, as they wish, the pastures and agricultural plots of the poor peasants whose entire villages are sometimes burned. – *the Governor of North-Kivu, describing the situation in Masisi, the area from which we draw examples in this paper, in 1988*¹

More than 30 years ago, forecasting the violence awaiting eastern DR Congo, the Governor of North-Kivu recognized how land disputes in the countryside originated in the ongoing processes of elite appropriation. Today, this connection between land disputes and deepening inequality and dispossession seems to be largely overlooked in international peacebuilding efforts. In the eastern DRC, as in other places affected by protracted conflict, peacebuilding and development organizations tend to consider land

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¹Gouverneur Konde Vila-ki-Kanda to 'commissaire de zone' of Masisi-territory, N° 01/783/CA5/PR-MPR/GR-NK/88, 'Mesures Préventives conflits fonciers à Masisi', Goma, 28 December 1988. In Authors' possession. Translation by the authors.

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disputes primarily as an issue of instability and insecurity. From this 'security frame', interveners propose mediation between the parties and strengthening the rule of law as appropriate solutions to land disputes. This paper argues that this comes at the expense of recognizing longer-term processes of exploitation and enclosure, and what we call a structural crisis of plantation agriculture that has been unfolding in the region. While resolving land disputes may temporarily calm down local tensions, we argue that it cannot substitute for engaging with questions of agrarian justice and making fundamental political choices about agrarian development.

We develop this argument by going into a case of mediation around former tea plantations around Kitchanga (North Kivu province, eastern DR Congo). Former plantation workers, many of whom are now in camps for the internally displaced, claim loss of access to land and wage labour at these plantations. North Kivu has experienced significant violence since 1992–93, and grievances over land and identity have been an important part of the conflict dynamics (Mamdani 2001; ICG 2003; Vlassenroot and Huggins 2005; Pottier 2008; Stearns 2012, 2013; Verw eijen and Marijnen 2018). Kitchanga has also been a site of intense programming by both Congolese and international peacebuilding and development organizations, especially concerning land conflicts. Underlying these interventions is an understanding of land disputes as both cause and consequence of the broader protracted conflict and violence in the region. Led by a concern with security and stabilization, interventions focus primarily on bringing an end to violence and resolving land disputes, through mediation and promotion of the rule of law. More fundamental questions about the origins of land disputes and why they persist – which ultimately are questions of agrarian justice – are not considered. Such omissions have important implications for how interventions eventually work out. The case study of the land dispute in Kitchanga highlights that, as interventions fail to root land disputes in historical processes of marginalization and dispossession, resolving land disputes may promote solutions that maintain the status quo and benefit those already in the strongest positions.

Following Charlotte Mertens' call to 'undo' research on sexual violence in DR Congo and question received knowledge (Mertens 2018), we call for 'undoing' the land problem and its default connection to ongoing violence in eastern DRC. Instead, we argue, organizations need to develop a more critical and political perspective on land disputes, in which popular grievances surrounding the access to land and labour take centre stage. We thus call for a shift from understanding current land disputes in eastern DRC as a security and stabilization challenge, to considering them as issues of agrarian reform and transformation (Borras 2009). From such a perspective, resolving individual land disputes is not enough. Mediation should be accompanied by strategies to nurture reforms of land and agrarian policies that meet local understandings of justice, and engage with larger questions of agrarian transformation. In this, we build on Paul Richard's call for connecting conflict to agrarian justice (Richards 2005). This means understanding land conflict as reflecting structural transformations in the organization of agricultural production, and as a reaction against exclusion and dispossession (cf. Cramer and Richards 2011). Such a shift of perspective resonates with critical peacebuilding literature. This literature highlights that effective peacebuilding requires addressing underlying structural injustices and inequalities, beyond quelling violence (Galtung 1996/2003; Lederach 1997/2004; Fetherstone 2000; Fisher and Zimina 2009; Richmond and MacGinty 2015; and for

DRC: Gaynor 2015), and warns that interventions that fail to recognize this may effectively maintain and legitimize the prevailing socio-political order (Duffield 2001; Pugh 2005; Chandler 2017).

This paper builds on original material collected over the course of different projects and visits between 2012 and 2019. The discussion of intervention practices builds on interviews with representatives of 24 international and Congolese development organizations and with local government in Goma, Bukavu, and Masisi in 2012 and 2013 (see also Van Leeuwen and van der Haar 2014), and interviews with 18 international and Congolese peacebuilding and development organizations in 2016 (see also Van Leeuwen et al. 2019). Historical analysis and ethnographic fieldwork for the Kitchanga case – including interviews with all key stakeholders – as well as an update of reflections on intervention practices, was conducted over 2015 and 2016 by Gillian Mathys together with four Congolese researchers.² The analysis further builds on material from 5 workshops with participants from peacebuilding and development organizations, local government representatives, and residents of Kitchanga that we organized in 2015 and 2016, as well as from our participation in a land conference in Bukavu in 2019.

Land, conflict, and agrarian justice

Addressing land conflicts features prominently in stabilization and peacebuilding agendas (see e.g. Alden Wily 2009). This should come as no surprise. Over the last decade, both academics and practitioners have highlighted how land disputes significantly contribute to insecurity and violence in conflict-affected settings (De Waal 2009; Anseeuw and Alden 2010; Unruh and Williams 2013), and hamper the recovery of livelihoods and sustainable agricultural production when violence is over (e.g. Pantuliano 2009). Land disputes tend to be considered as a damaging yet common side-effect of civil war and as fuelling the broader dynamics of conflict. Population movements and erosion of institutions to protect resource users enable misappropriation and result in new claims on land and renewed violence (Unruh 2003; Korf and Funfgeld 2006; Anseeuw and Alden 2010; Unruh and Williams 2013). A particular concern is that land claims get closely connected to questions about belonging and identity and deepen or re-ignite ethnic competition (e.g. Hirblinger 2015).

While a concern with the security-risks posed by land issues in conflict-affected environments is legitimate, we warn for the danger of what Goodhand has called the 'conflict fetish': 'the assumption that violence is the problem and the only lens through which to look at people's lives' (Goodhand 2000, 15). The conflict fetish implies that everything – event, dispute or otherwise – that occurs in a conflict-affected area is interpreted as a part of conflict dynamics, rather than placing issues in the wider social, economic or political context in which they belong. Although analyses of how localized land disputes result from or get caught up in large-scale violence are important, they offer only limited clues on the structural processes of exclusion, dispossession and impoverishment underlying them. Moreover, conflict around land is not unique to conflict-affected environments, but – to a certain degree – a 'normal' aspect of agrarian transformation. By

²LN, ON, JN and one anonymous researcher. LN died in 2018, and this article is dedicated to him (see 'in Memoriam' at the end).

understanding land disputes mainly as an issue of insecurity and violence, land disputes get conceptually disconnected from the patterns of agrarian change which they (also) reflect. In the DR Congo, dominant readings of the conflict have centred on state fragility, patronage and predation, displacement and ethnic tensions. Even perspectives that highlight the role of 'local conflict' (Autesserre 2012) have obliterated the view of the agrarian crisis that is unfolding in the background. This has direct consequences for interventions on land issues. As land disputes are primarily understood within a frame of security, interventions aim at stabilization. This urges peacebuilding and development organizations to focus on reducing violent behaviour and resolving land disputes, either in the short term (through mediation and enhancing local dispute-resolving capacities) or the longer-term (promoting the rule of law, and strengthening a legitimate state). Yet, this leaves the more fundamental contradictions of agrarian transformation unaddressed.

Scholarship to date on the DRC has problematized narrow understandings of the conflict (Autesserre 2012) and of issues surrounding land in particular. Historical analyses of land in eastern DRC show a trend of problematic agrarian transformations since the colonial period: the systematic exploitation of rural labour; peasants being pushed off their lands; the erosion of customary protection mechanisms; and – more recently – the wider contestation about political authority and citizenship (Vlassenroot and Huggins 2005; Ansoms and Hilhorst 2014; Peemans 2014). However, the uptake of these insights in the land-related interventions of peacebuilding and development organizations has been limited. Our case study in Kitchanga shows what this may lead to: a failure to recognize patterns of agrarian transformation and a failure to engage with questions of agrarian justice. This results in interventions that risk entrenching rather than disrupting forms of exploitation.

We argue that in conflict-affected settings like the DRC land disputes need to be understood in relation to structural processes of exclusion and dispossession. To make this argument, we turn to insights from critical agrarian studies (see e.g. Borras 2009), a body of literature not usually connected to (mainstream) peacebuilding. We bring the engagement with questions of agrarian transformation, social and economic justice – which we see as the essence of critical agrarian studies – into the analysis of land conflict and land governance interventions in the DRC. We maintain that land conflicts in particular times and places need to be considered in a broader understanding of patterns of agrarian change and land-labour relations. Behind the more 'spectacular' manifestations of violence, less visible processes of rural differentiation may unfold in which the interests of landed elites and the rural poor increasingly diverge. This deepens existing inequalities and leads to multiple forms of dispossession (e.g. Berry 1993, 2009; Boone 2007; Peters 2004; Fairbairn et al. 2014). Given the importance of plantation agriculture in the eastern DRC, questions arise around the conditions of access to land and labour for the rural poor. They may lose access to both, due to land concentration and enclosure and/or extensification of land use.

Land conflicts may be a reaction to enclosures and land concentration. However, as suggested by White et al. (2012), they might also – or primarily – reflect changing labour relationships and contention over the appropriation of harvests and surplus. In the words of Hall et al. (2015, 472) the rural poor may be concerned with 'labour justice' as much as with 'agrarian justice'; and disputes between rural dwellers and large landholdings may involve both a 'struggle against dispossession' and a 'struggle

against exploitation' (Hall et al. 2015, 467). Building amongst others on the work of Borrás and Franco (2013) and McCarthy (2010), these authors draw attention to the importance of the 'terms of inclusion' when poor people are incorporated into large holdings. Where their work is primarily concerned with new enclosures, we see it as relevant also to situations where landholdings have a longer history but where the conditions of inclusion change to the disadvantage of plantation labourers.

Persistent rural poverty and inequality have been identified as key challenges in development. We argue that they are also critical challenges in peacebuilding. Peacebuilding – and conflict resolution as part of broader peacebuilding endeavours – needs to engage with debates on the future of agrarian development in Africa. A key debate concerns the future of the nature and scale of agricultural production, in which strongly opposing views prevail. One side in the debate urges for modernization, intensification and large-scale production, while the other advocates for strengthening smallholder agriculture, diversification of agrarian livelihoods, protection of local producers, and ecological sustainability (Peters 2013). Choices made in this debate are highly political (see Borrás 2009; Edelman and Wolford 2017) and have implications for agrarian justice.

In sum, rather than problematizing land disputes in terms of the violence and security-risks they bring, we propose a critical agrarian perspective, which normalizes and contextualizes land disputes and sees them as manifestations of wider, ongoing struggles about agrarian development. From such a perspective, the resolution of land disputes requires engaging with the more fundamental questions of whose interests, livelihoods and tenure security need to be promoted and protected; what relations of land governance should be nurtured; what type of agrarian development policies should be promoted; and, ultimately, how to assure agrarian justice (Richards 2005). Such a perspective also urges us to explore the political nature of peacebuilding and development interventions themselves, and recognize how intervention fuels political struggles around agrarian development, wittingly or unwittingly propagating certain interpretations of conflict and violence (cf. Autesserre 2012), endorsing the land claims of some stakeholders at the expense of others, or favouring specific pathways of agrarian development. What we aim to show in our analysis of the particular case of Kitchanga is how interventions risk to be seen as legitimizing and perpetuating the unequal land and labour relations that are at the roots of land conflict.

Land conflict and the transformations in land and labour relations in eastern DR Congo

Interveners and academics alike highlight the urgency of addressing conflicts around land in eastern DR Congo (see e.g. Vlassenroot and Huggins 2005; Stearns 2013; Mathys and Vlassenroot 2016). Prolonged violence and displacement resulting from the First (1996–1997) and Second (1998–2003) Congo Wars have increased competing claims to land, e.g. when returning refugees found their land occupied by people displaced from elsewhere, or sold in their absence by relatives or customary authorities. In the new millennium, continuing displacement, migration and new interests of (cross-border) investors in rural lands have added to existing pressure on land and tenure insecurity, particularly around towns. Pressure on land also contributed to conflict between communities and large landowners, mining companies or national parks. While many land disputes

mainly played out at community level, they were easily drawn into broader conflict dynamics around ethnic belonging, rivalry between state and customary power, and political representation. Land disputes have served as a rallying point for armed groups, mobilizing people to join or support them (see Stearns 2013; Verweijen and Vlassenroot 2015). In other instances, customary authorities have incited youngsters to take up arms to protect customary land. Furthermore, the context of violence provided opportunities for irregular land acquisitions. Armed individuals have sometimes been recruited to grab land or chase away tenants on concessions, which are private plantations on long-term lease contracts from the state (Stearns 2013; Verweijen and Vlassenroot 2015). In some instances, land has turned into a 'resource of conflict', serving as a reward for loyalty to new politico-military leaders (Vlassenroot and Huggins 2005).

Even if many land disputes resulted from, or were fuelled by, the dynamics of war and continuing instability thereafter, they need to be situated in the context of longer-term agrarian transformations in the country, some of which originated in the colonial system (late nineteenth century–1960). The Belgian colonial authorities established an export-oriented, extractive industry and agricultural system that built on capturing the labour and land of the Congolese peasantry (Peemans 1975, 2014). To facilitate 'progress', the colonial authorities declared large quantities of customary land vacant, turned them into state property and gave out private titles to Europeans to develop plantation agriculture of a.o. coffee, tea, and tobacco. To assure cheap labour for both the mining sector and the plantations, the colonial authorities introduced forced recruitment, price controls, monopolies and mandatory crop cultivation (Peemans 1975, see also Fairhead 2005). Moreover, in Kivu, expropriation of customary land for the plantations, as well as the creation of the Parc National Albert (which is nowadays Virunga National Parc) reduced land available for cultivation and pushed people into wage labour (see Nzabandora Ndimubanzi 2003, 53). The need to resort to wage labour deepened with population growth. Already in 1953, a colonial report warned that this situation could lead to peasants merely becoming 'squatters' on plantations, or being 'evicted' from Kivu altogether.³

These colonial measures set a trend of subjugating the interests of smallholders to large-scale, commercial farming; of advancing exploitative labour relationships, elite-appropriation of rural lands, and impoverishment and land loss of small-scale rural producers (Peemans 2014). After independence, the Mobutu government (1965–1997) continued to prioritize the mining sector and the interests of those close to the regime. Apart from the plantations, the agricultural sector and rural areas received little support (Peemans 1975). Agricultural extension declined, and deterioration of roads and security made rural producers dependent on intermediaries for accessing markets, deteriorating their terms of trade, and many shifted from market to subsistence crops (Newbury 1986; Fairhead 1992). A General Property Law in 1973 declared all land to be the property of the state (as part of a nationalization campaign called '*Zairianization*'), supposedly to modernize agriculture and stimulate private investment in land. In practice, land turned into an important reward in the system of patronage, resulting in the massive appropriation of plantations by powerful allies of the regime from outside the area (Van Acker 2005), while new plantations and ranches were established on customary land, often

³African Archives Belgium, RF (4609), RUDI (165) 1321, Congo Belge, 2ième direction générale, 1re direction, Bréban, Problème foncier indigène au Kivu, Léopoldville, 3 Décembre 1953.

with the complicity of 'customary' authorities (Katuala 1984; Vlassenroot 2006). Accumulation of land was required to get credit for investment from financial institutions and to be recognized as 'big man', even if these lands remained underutilized (Katuala 1984; Peemans 2014). The concentration of landholding in the hands of a few, combined with a substantial increase in population, contributed to pressure on the remaining land (Bucyalimwe Mararo 1990; Mathieu and Tsongo 1998) and furthered the formation of a class of landless peasants (see Van Acker 2005). Liberalization policies in the 1980s, related to IMF requirements for structural adjustment, further dismantled agricultural infrastructure and brought privatization and a concentration of agro-industrial projects in the hands of few, who could rely on cheap labour from the impoverished peasantry (Peemans 2014). During the Congo Wars and thereafter, enclosure continued and smallholder access to markets decreased further. These developments resulted in an agricultural production system in which peasants till very small pieces of land for subsistence and are excluded from cultivating perennial and cash crops; in which they access land by renting it from big landowners and increasingly rely on employment as farm labourers (Vlassenroot 2006). In the post-war period, agricultural policies have not reversed these trends. The 2011 'Loi du Code Agricole' as well as the 2013 National Agricultural Investment Plan prioritize large-scale, industrialized farming, with little concern for smallholders (Peemans 2014; Huggins 2015; Nyenyezi Bisoka 2014).

Colonial policies implied a departure from existing tenure relations in eastern DRC and negatively affected tenure security on customary land outside the plantations. Prior to the colonial period, inheritable land rights were granted by the *mwami* [king] to subjects, in exchange for tribute; often in the form of cattle; although access to land through 'clearing' also existed (Van Acker 2005; Mathys 2014). The colonial authorities introduced a dual system of land ownership that differentiated between the *terres domaniales* [state-owned land], governed by the colonial state, and *terres indigènes* [indigenous land], to which local people had access through their customary authorities (see Mamdani 2001; Vlassenroot and Huggins 2005, 150; Mugangu Matabaro 2008). Customary authorities were integrated into the state bureaucracy. This effectively boosted their role and powers in land governance as they became responsible for levying land-related taxes, while this decreased the bargaining power and tenure security of their subjects (Mathys 2014). The 1973 General Property Law annulled the legal status of land governed by customary rules. While the law provided that customary land could remain under customary authority, a presidential order necessary to enable this never materialized, leaving the status, governance and rights of customary users unclear (Claessens, Mudinga, and Ansoms 2014). Even though customary chiefs lost *de jure* authority in land distribution, the weak implementation capacity of the state and legal ambiguities allowed them to maintain their powerful position and they continued to collect land-related taxes. Moreover, customary authorities found themselves in a pivotal position to sell customary land to people from outside their communities, including state agents, military and business people (Mathieu and Tsongo 1998; Mugangu Matabaro 2008). This promoted the commoditization of customary land, the emergence of a new class of landholders, and tenure insecurity for peasants (see on these processes Van Acker 2005).

These changing land and labour relations increasingly interacted with identity politics. The dual system of land ownership introduced by the Belgian colonizers effectively institutionalized the link between ethnic identity and land access: peasants could only access

land through the customary authorities of their own ethnic group (see Mamdani 2001; Vlassenroot and Huggins 2005, 150). People that did not belong to ethnic groups that were acknowledged as 'indigenous' by the colonizers or that did not pay allegiance to the *mwami*, lost out.

This was particularly problematic for the so-called 'Rwandophones', denoting people speaking Kinyarwanda, the language also spoken in Rwanda, and encompassing both Hutu and Tutsi. Many Rwandophones had been living in Congo centuries before the colonial border had been demarcated, and had their own 'customary' authorities. During the colonial period, tens of thousands of people from Rwanda were resettled in North Kivu to provide colonial plantation owners with cheap labour, while alleviating land pressure in densely populated areas in Rwanda (Bucyalimwe Mararo 1990; Tegera 2010). Initially, those immigrants were granted their own chieftaincy (Gishari). However, in 1958 the colonial authorities abolished this chieftaincy again, as a result of which these people lost the possibility to exercise 'customary' power over land (Vlassenroot and Huggins 2005). The arrival of refugees from Rwanda, notably in 1959–63 and 1973, further added to the number of Kinyarwanda-speakers and their labelling as 'non-autochthonous'. When the 1973 legislation turned all land into state property, this offered opportunities to those people that were considered non-autochthonous and did not have access to customary land: many Rwandophones consequently accessed land through the market instead. Political elites of Rwandan descent were the main beneficiaries from state patronage and the distribution of nationalized plantations in the Kivus, dominating the class of large landowners. Customary authorities of other groups, while privately profiting from the sales of customary land, blamed these Rwandophones for the increasing pressure on land and tenure insecurity (Van Acker 2005).

Democratization and ethnic divisionism in the early 1990s reinforced the linkage between land access and identity, and enabled ethno-political mobilization around land in the run-up to violence in the 1990s. Many analysts consider that this issue was at the heart of conflict dynamics in eastern DRC (Lemarchand 2000; Mamdani 2001; Vlassenroot and Raeymaekers 2004; Vlassenroot and Huggins 2005; Young 2006; Pottier 2008; Brabant and Nzweve 2013; Stearns 2013; Verweijen and Marijnen 2018). To reinforce their positions in the upcoming elections, 'autochthonous' politicians blamed Rwandophones for the ongoing land alienation in North Kivu. This led to a first wave of communal violence in Masisi in March 1993, targeting Kinyarwanda-speakers (Vlassenroot and Huggins 2005, 143ff). Support to the rebellions that sparked the Congo Wars by Kinyarwanda-speakers and large-scale land appropriations by people associated with the Rwandophone politico-military establishment further fuelled the perception that Kinyarwanda-speakers were non-autochthonous and posed a threat to land from indigenous communities.⁴ This autochthony-land nexus remains problematic up to today.

Hence, land conflicts in eastern DRC are not just a matter of local competition in a context of increasing pressure on land and ethnopolitical violence. Rather, they are manifestations of longer-term agrarian transformations, including the exploitation of the labour of rural smallholders, patronage politics and elite appropriation of smallholders' land, erosion of customary tenure, and increasing contestation about belonging and

⁴Interviews van Leeuwen in Goma, August 2005; Vlassenroot and Huggins 2005, interviews Mathys in Kitchanga in 2015 and 2016.

land rights. These processes have resulted in insecure livelihoods for a large part of the rural population, and deeply felt injustices, which enabled mobilization around ethnic citizenship and rights to land governing authority.

Land disputes and intervention rationales in eastern DRC

With few exceptions, international organizations⁵ tended to understand land disputes in eastern DR Congo mainly from a stabilization perspective, rather than from an agrarian justice perspective. Narratives of programme officers represented land disputes as an issue of *security*, both resulting from and furthering ongoing violence and instability, thereby threatening food security and economic recovery.⁶ Such an analysis implied a need for stabilization: for reducing violence and bringing conflicting parties to a compromise. To this end, interveners established local dispute resolution bodies and offered training in mediation and reconciliation.⁷ Some organizations mediated disputes themselves, sometimes involving politicians at higher levels.⁸ Stabilization was also to be achieved through longer-term efforts of promoting access to justice and rule of law. Years of conflict were seen to have reduced presence and capacities of the state judiciary system and land administration, while customary institutions had weakened. Such an interpretation urged for strengthening land governing institutions and making them more accessible. This was to be achieved through supporting land administration services at the community level and decentralized *Tribunaux de Paix*, among other ways.^{9,10} Moreover, interveners found that community members lacked knowledge on their legal entitlements and were unsure whom to turn to with their disputes. This motivated interventions to train local people on state legislation on land, to build capacity of state land administrators, and to support customary institutions to document land tenure.¹¹ As we will see in the case study below, this concern with access to justice did not guarantee the enforcement of existing laws, nor a reconsideration of how these laws might fail to address justice needs of the poor (cf. Franco 2008).

We certainly found organizations that understood land disputes in relation to more structural problems and that highlighted the need for agrarian justice. Such an understanding was noticeable especially among Congolese organizations, but increasingly also among external interveners. These organizations underscored the role of irregularities in land acquisitions in the past, and how land concentration had resulted in staggering inequalities in land ownership and put rural livelihoods under pressure. They pointed out that to address these issues would require land reform at the national level. Yet, in our experience, this type of concern was not prominent in intervention

⁵This section is based on interviews by van Leeuwen in Goma and Bukavu, eastern DR Congo, 2013; and by Mathys in 2016.

⁶An illustration of this tendency to frame land disputes as a security issue was that within Monusco (*Mission de l'Organisation des Nations Unies pour la Stabilisation en RD Congo*, the UN-peacekeeping force established in 1999, during the Second Congo War), land dispute resolution was the responsibility of the stabilization office.

⁷E.g. Life & Peace Institute, Search for Common Ground, UN-Habitat, ZOA, as well as Congolese organizations like APC and Adepae, SCC-DRC, Caritas, UEFA, Heritiers de la Justice, Pax Christi.

⁸E.g. UN-Habitat, Life & Peace Institute, and their Congolese partners.

⁹The *Tribunal de Paix* is the lowest level court in the RD Congo.

¹⁰E.g. Cooperation Suisse, Cordaid, LPI, and Congolese organizations such as APC, RIO, Adepae, Arche d'Alliance.

¹¹E.g. NRC, and Congolese organizations such as AAP, APC, Adepae, CTA.

practices. When advocacy work was undertaken it rather focused on the need for mending contradictions and gaps in existing legislation, rather than on asking for more fundamental reforms.

Some organizations advocated with national and provincial authorities for legal acknowledgement of customary tenure, for the codification of customary law, and for possibilities to facilitate registration of customary land.¹² Such advocacy contributed to the 2011 'Loi du Code Agricole', which granted land committees in the communities a role in land allocation and recognition of land claims. Awaiting legislation at the national level, organizations in North Kivu facilitated the formulation of a provincial by-law to clarify land governing responsibilities of customary and state authority, and good practice on the collection of land taxes.

The political debate on more structural challenges of the agrarian sector gained momentum, however, when the President called for a comprehensive land reform in his inaugural address in December 2011. This was followed by the creation of a Land Reform Steering Committee, *Commission Nationale de la Réforme Foncière* (CONAREF), and the adoption of a road-map for land reform deriving from a nationwide stakeholder workshop in July 2012. This road-map envisaged consultation and integration of peasant organizations and customary authorities in the process.¹³ It highlighted the need to deal with land disputes and set up transitional measures to improve land governance, reconcile customary with statutory land management and to develop a new legal framework based on a comprehensive and consultative land policy process (for more details, see Sylla 2013). As such, the road-map might have provided space to discuss more fundamental questions around agrarian development: how to secure (alternative) livelihoods of small-scale producers, how to protect customary land ownership, and how to facilitate productive agriculture in an increasingly connected economy.

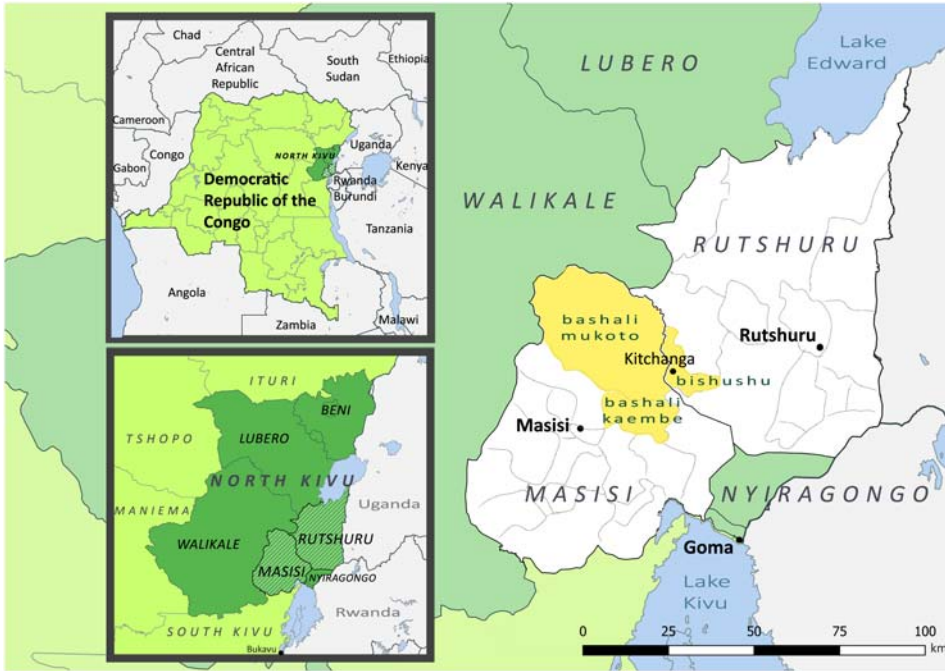
The process of land reform stagnated, however, due to shifts in the leadership in the Ministry of Land Affairs and the political crisis of the Kabila regime. Political will to take this agenda forward seemed lacking (see also Huggins 2015; Huggins and Paluku 2020). Many important political and military actors, including the presidential family, are large-scale landowners themselves (Claessens, Mudinga, and Ansoms 2014) and would be directly affected by these reforms, and thus resisted them. In addition, foreign development organizations and donors do not seem to have a shared perspective on agrarian development (see Peemans 2014), while at least part of the donor community seems to privilege large scale commercial agriculture.

With the failure of policy reform at the national level, international development organizations resorted to supporting local land registration, the transitional justice sector, and local mediation and dispute resolving capacities. In this, one particular international development organization which we shall call IDO,¹⁴ has taken on a coordinating role, and has accepted to mediate 'large' conflicts, such as those between the big concessionaires (large-scale landowners) and the population, which we discuss below.

¹²E.g. NRC, as well as Congolese organizations such as FAT and FOPAC.

¹³*Projet de feuille de route pour la réforme du secteur foncier en République Démocratique du Congo*, Kinshasa, Juillet 2012.

¹⁴This is a pseudonym.



Land enclosure in Kitchanga and the structural crisis of plantation agriculture

Kitchanga lies in a mountainous area at the boundary of Masisi and Rutshuru Territories. In this case, the earlier discussed dynamics of agrarian transformation come together in what we call a structural crisis of plantation agriculture – an agricultural system of unproductive concessions that no longer provides livelihoods to its labourers, that increases pressure on land outside of the plantations, and that fuels resistance of local residents who increasingly perceive these developments as ‘unjust’.

Colonial authorities considered the Kitchanga area as very suitable for cultivating tea and pyrethrum. The CNKi (*Comité National du Kivu*), a colonial parastatal institution, leased the land expropriated by the colonial administration to colonial settlers, who established plantations on the basis of long-term renewable contracts (*emphytheose*) (see Mendiaux 1956). In addition, land was allotted for the settlement of labourers brought in from neighbouring Rwanda from 1937 onward to solve the labour deficit on these plantations. These labourers settled either on land under the control of the customary authorities, or in Gishari, a chieftaincy created by the colonial administration and led by a Rwandan chief (Bucyalimwe Mararo 1990; Tegera 2010; Mathys and Büscher 2018). Labourers from Rwanda with a long-term labour contract often settled directly on the plantation with their families. In return for their wage labour on the plantations, they were allowed to live and grow crops on small pieces of land allotted to them within the plantation (for more on labour relations on these colonial plantations in Kivu, see Ost 1979). In the post-colonial period, large-scale private ownership of land further expanded, as customary authorities sold customary land to wealthy buyers, often Kinyarwanda-speakers who had no ‘customary’ means to get access to land (Van

Acker 2005). This enclosure of land and its concentration in the hands of a few owners caused problems already in the 1980s, as shown by the citation with which this article opened.

Today, around 40% of the surface of the Bashali chieftaincy, where Kitchanga is located, is occupied by 'concessions', private plantations, with those same long-term renewable lease-contracts as in the colonial period.¹⁵ Until the 1980s these plantations were dedicated to cash crops (mainly tea) or mixed agricultural and agro-pastoral use and had provided opportunities for wage labour. Yet, already during the 1970s, many plantations were no longer profitable but retained their labourers through unfree labour contracts (Fairhead 2005). In the 1980s, concession holders increasingly left the countryside, many plantations got in disarray, and demands for labour dropped. Wage labour on the plantations was increasingly replaced by diverse rental and sharecropping agreements (Claessens 2017). Nowadays, plantations are predominantly extensive cattle ranches, which require much less labour input. While in some cases the labourers could stay on the land, in other instances they were sent or chased away, and were forced to search for crop land or employment elsewhere. This is not easy. The concessions severely limit the land available, while subsistence agriculture is still the primary livelihood activity of most people in the region. To illustrate this: by the early 2000s, 40–50 per cent of rural households in Masisi held plots below one-third of a hectare (Vlassenroot 2006). People ended up producing for household-consumption on tiny, often rented, plots or had to become agricultural wage labours. Pressure on land is especially high in and around the town of Kitchanga, once a small settlement to house those working on the plantation, but which grew considerably since the First Congo War, largely as a result of conflict-induced displacement (Mathys and Büscher 2018). It is surrounded by IDP camps, hosting about 30,000 displaced people, mainly Congolese Rwandophones.

In Kitchanga, the enclosure for plantation agriculture and increasing land pressure got closely connected to the autochthony-land controversy. During the nineteenth century, the majority of people in the highlands of Masisi were Hunde, organized in small Hunde polities; and that part of Kitchanga located in Masisi was ruled by the Bashali royal family. The large influx of immigrants from Rwanda rapidly changed the demographic make-up of the region. Already during the colonial period, Kinyarwanda-speaking immigrants started outnumbering the Hunde. That the Belgians organized part of these immigrants under the control of a Rwandan chief led to much frustration among Hunde customary authorities, even if many also welcomed immigrants on their lands (Mathys and Büscher 2018). Tensions between Banyarwanda and those self-declared 'autochthonous' people turned violent for the first time in the 1960s, in the wake of local elections, in what is called the 'Kinyarwanda war' (Turner 2007), and played a role in the coming about of the Congo wars, as explained above.

During, and shortly after, the 1998–2003 rebellion of the *Rassemblement Congolais pour la Démocratie*, Rwandophone political-military elites that had spearheaded the RCD acquired the former plantations and additional plots of land. Moreover, Kitchanga became an important site of the RCD for the resettlement of Tutsi refugees returning from Rwanda, to which they had fled between 1994 and 1996 (Pole Institut 2009). In the 2006–2009 period, Kitchanga became the stronghold of the *Congrès National pour*

¹⁵Interview member of the land administration, Sake, April 2015.

la Défense du Peuple (CNDP, National Congress for the Defense of the People),¹⁶ the RCD's ideological successor. With the return of Congolese Tutsi as one of CNDP's key action points, the resettlement of Tutsi refugees into Kitchanga provoked renewed mobilization of Hunde and Hutu armed groups that claimed to protect the 'autochthonous' population and their property against 'Tutsi dominance' (Mathys and Büscher 2018). Against this tense background, accessing land is especially problematic for the former labourers of the plantations, considering that many of them are Kinyarwanda-speakers, who fear and sometimes encounter resistance to resettle elsewhere.

The case of the *anciens ouvriers* and EIAC

Let us now focus on the conflict around one such large enclosure: the former tea-plantations of the *Entreprise Industrielle pour l'Agricole et le Commerce* (EIAC),¹⁷ where former plantation workers contest their eviction by those that took over the plantation during the war, and now claim land on the plantation.

The extensive lands of the EIAC, 4,000 hectares, are located in the *groupements*¹⁸ of Bishushu, Bashali-Mukoto (in Rutshuru) and Bashali-Kaembe (in Masisi). They were part of the domain of the CNKi in the colonial era and came into the hands of one of Mobutu's allies after the '*Zairianization*' in 1973. The plantations were home to many labourers – their number was estimated at 3,000 households in 1991¹⁹ – some of whom had lived on the plantations for generations and cultivated small plots of land there. In the 2003–2006 period, large parts were transferred to important military and political players of the RCD-movement. While most of the new owners have legal titles, it is not clear if these cover the complete extension of these concessions. Moreover, the validity of the titles is questionable, as the new owners may have used their positions of power to acquire these lands in irregular ways.

While the colonial authorities, by law, had destined these plantations for agriculture or mixed agricultural and agro-pastoral use,²⁰ the new owners mainly used their concessions for extensive livestock-keeping and saw no use in maintaining the original labour force. Over the course of years, the new owners chased away the former labourers, sometimes by using violence, e.g. setting houses aflame, sometimes by bringing cattle into their fields which destroyed their crops.²¹ As a result, many of these residents, locally known as *anciens ouvriers* [former labourers], have been displaced.²² While some of them found plots of land in the vicinity of the plantations or within Kitchanga town, probably thousands of the *anciens ouvriers* and their families got stuck in IDP camps in the immediate vicinity of the plantations. Some continued to access the land they formerly cultivated, paying rent to the *gérants* [managers] of the new plantation owners. Others access the land through a *métayage* contract – a local form of sharecropping – with the concession

¹⁶CNDP was a militia in North Kivu established by Laurent Nkunda, a former senior officer in the RCD, claiming to defend the Congolese Tutsi.

¹⁷This is a pseudonym.

¹⁸Administrative sub-division of the *chefferie/secteur*, comprising several villages/*localités*.

¹⁹Internal note IDO.

²⁰RDC, Gouvernement Provincial du Nord Kivu, Ministère Provincial des Affaires Foncières, 'Rapport relatif au conflit [sic.] opposant certains membres des communautés locales (agriculteurs) aux nouveaux concessionnaires-éleveurs autour des concessions appartenant à XXX en territoires de Rutshuru et de Masisi', Goma, juillet 2014.

²¹Interviews with *anciens ouvriers* and their families, Kitchanga, May 2016.

²²Interviews with *anciens ouvriers*, Kitchanga, February 2015, May 2016.

holder, or perform *salongo*, or manual labour on the land of the plantation owner.²³ They experience strong competition for land with other displaced and residents from the area.

For years, these *anciens ouvriers* have been claiming outstanding arrears and pensions, still due from labour on the plantations.²⁴ More recently, they also started to contest their eviction from the plantations by the new owners. Since November 2009, the international development organization that we referred to as IDO has tried to mediate this conflict, mainly through organizing a series of encounters in Kitchanga and Goma between the concession holders and the *anciens ouvriers*. The new owners, for instance, accused the *anciens ouvriers* of 'illegally' entering the plantations to cultivate, without paying the *métayage* fees, or destroying their property. The new owners also used their influence to put some *anciens ouvriers* in jail.

This first round of mediation had limited impact only and the conflict escalated again in 2013. In July of that year, 150 cows of one of the most prominent owners were stolen, and in the days thereafter, some of the *anciens ouvriers* entered the pasture –which had become vacant after the cattle theft– and started cultivating. The Congolese army then arrested several people, provoking what the landowners referred to as an 'uprising' of the people of Kitchanga in September 2013.²⁵ The landowners framed the people responsible for this as 'criminals' and 'lawless'. Other residents of Kitchanga referred to them as *twigarurire ibyacu* ['give us back what is ours' in Kinyarwanda], and accused them of obstructing the opportunities for others to work on the land in question. Many of the *anciens ouvriers*, however, defended these actions, as a lasting solution to their lack of livelihoods had not been found.²⁶

The events led to firmer efforts of both the IDO and the Provincial Ministry of Land Affairs to solve the issue. In December 2013, at a meeting of the different parties in the conflict, it was recommended that: (1) those that had been displaced because of the dispute should return to their villages on the plantations; (2) that the concessions illegally occupied would fall back to the state, and, related to this, that there would be official measurements and delimitations of the concessions; (3) that there would be an effort to improve security; (4) that there would be efforts to restart the industrial activities on the concessions; and (5) that the 'barbaric acts', the violence and the destruction of pastures would be stopped. While these recommendations recognized irregularities in the ownership of the plantation, solutions effectively upheld property rights for the concession holders and included few measures to address the demands for land of the *anciens ouvriers*, nor compensation for the past loss of labour.²⁷ Tensions persisted, leading again to the arrest of some of the leaders of the *anciens ouvriers*. Eventually, in September 2014, some of the leaders of the *anciens ouvriers* and the representatives of the plantation owners arrived at a compromise, and agreed that: (1) the *anciens ouvriers* would no

²³On the details of these arrangements, see Claessens (2017).

²⁴It is difficult to say who is responsible for paying these arrears and pensions: both the new owners and the former Director-General of the EIAC claim that the other party should have paid these (Internal note IDO, confidential documents in possession of Authors).

²⁵RDC, Gouvernement Provincial du Nord Kivu, Ministère Provincial des Affaires Foncières, 'Rapport relatif au conflit [sic.] opposant certains membres des communautés locales (agriculteurs) aux nouveaux concessionnaires-éleveurs autour des concessions appartenant à XXX en territoires de Rutshuru et de Masisi', Goma, juillet 2014.

²⁶Several interviews with *anciens ouvriers* and their family in Kitchanga, May 2016.

²⁷Plan d'Exécution des recommandations adressées à son excellence monsieur le Gouverneur de Province du Nord Kivu sur le dossier ex-EIAC en Territoire de Rutshuru et Masisi.

longer encroach on the land of concession owners, but could ask the local representatives of the owners to be assigned a plot of 30 m² (a so-called 'carré'); (2) *anciens ouvriers* would pay 6 USD per harvest season for such a plot; and (3) the concession-owners would resettle on their land those *anciens ouvriers* that had earlier resided on the concession.²⁸

At the time of fieldwork, this compromise was assessed in quite different ways by the different parties. The IDO and representatives of the concession holders called the mediation a 'success' and believed it had achieved a fair compromise, which enabled the *anciens ouvriers* to regain access to land. Many *anciens ouvriers*, however, felt that their concerns had not sufficiently been addressed. First, they considered the solution to be incomplete. They pointed out that not all of the concession-holders agreed to resettle people: while a substantial number of *anciens ouvriers* returned to the plantations, many continued to reside in the displaced camps. *Anciens ouvriers* that were resettled on the concessions complained that the land they had received was unsuitable for agriculture. Moreover, in practice, eligibility for resettlement was limited to those that still possessed a valid labour contract (*carte de service*). As the plantations had been defunct since the end of the 1980s or beginning of the 1990s, this was a relatively small group. Many others that were born on the plantations had not been old enough to ever receive a *carte de service*. Second, *anciens ouvriers* also worried about the sustainability of the compromise, as land renting was not secured nor guaranteed. Many concession holders ignored the maximum price agreed for seasonal lease, or asked for a part of the harvest or for *salongo* in addition to the rent. If after the harvest *ancien ouvriers* failed to pay for the next season, they could lose the plot and investments made on it, and had to accept a plot of lesser quality with poorer soil conditions in the next season. Also, competition evolved between the *anciens ouvriers* and other people in search of arable land with more money, who were willing to pay more than the agreed upon 6 USD a plot.²⁹ They also continue – until today – to experience threats and intimidation.³⁰ Not surprisingly, *anciens ouvriers* kept questioning the fairness of the deal.

Next to doubts about the inclusiveness, sustainability and fairness of the deal, to the *anciens ouvriers* the compromise failed to address what they considered as the root causes of the dispute: their disenfranchisement and the unfair structure of landholding that failed to provide land and labour to local residents, while many of the concessions were largely underused. Especially those *anciens ouvriers* in the IDP-camps contrasted their previous situation on the plantations with their actual situation. They pointed out that the land they had had on the plantations had been sufficient to provide in for their needs; that they used to be able to pay the school fees for their children; and they mourned the loss of their banana plantations and the burial sites of their ancestors. They pointed out that while in the past the EAC plantations were used for intensive production of cash crops and offered employment to numerous people, nowadays they were largely used for extensive cattle keeping, requiring a very limited number of labourers.³¹

²⁸Acte d'engagement (mapatano)', Goma, September 2014 (handwritten, Swahili).

²⁹Several interviews with *anciens ouvriers* and their families, Kitchanga, May 2016.

³⁰Private communication, Mathys, June 2020.

³¹It is difficult to assess the nature of land and labour relations (and the extent to which these were contested) on the EAC plantations when they were still in operation. *Anciens ouvriers* might not only have a rosier outlook on their previous conditions due to their dire conditions today, but might as well emphasize the benefits they experienced as plantation labourers as leverage in the current conflict.

According to state legislation, unless indicated in the contract, concession holders cannot change the destination of the concession without the prior and written authorization of the competent authorities. In case of unlawful change of the destination, the competent authority may request termination of the contract, without compensation of damages, or might require the offender, at their costs, to rehabilitate the land to its original intended destination, or authorize the change of destination.³² For many concessions in Masisi, including the former EIAC plantations, such a prior written approval had never been given when the purpose of the plantations changed. It might have been that war-related violence had destroyed the facilities necessary for large-scale plantation agriculture and had so propelled a change of use. In many cases, though, it was clear that the production and processing of cash crops had already come to an end before the war. In principle, such failure to respect the destination as stipulated in the contract might serve as a starting point for discussing the legitimate ownership of the plantations.

Moreover, the *anciens ouvriers* suspected that there had been irregularities in the way in which the current owners had acquired the land in the first place. While the December 2013 meeting identified this issue, it was not effectively followed up. Finally, a particularly sensitive issue was that –in contrast to other displaced people, who eventually might return to their own land– the *anciens ouvriers* that had been dismissed from the plantation had little alternative. Most of them were Rwandophones whose ancestors had come to Congo during the colonial period. They found it very difficult to acquire land outside the plantations in a regular way, being considered as outsiders who should not be awarded rights to local land. A ‘just’ solution required not only a response to their exclusion from, but also outside the plantations.

The mediators of IDO understood some of the dissatisfaction among the *anciens ouvriers*. They conceded that indeed, on the ground, resettlement to the concession did not materialize.³³ They argued, however, that this compromise was the best that could have been achieved. They agreed that the current owners failed to comply to legal provisions on the use of the concession and that for this reason, the land might eventually have fallen back to the state. Yet, they considered that insisting on the enforcement of existing regulation would not have brought relief to the former labourers. They saw a high risk of endless judicial procedures at best, and physical harm for the claimants at worst, considering that the new owners were all part of a very powerful politico-military elite. Hence, for the sake of security – also their own – they promoted this compromise. For the same reason, interveners hesitated to address the irregularities in the acquisition of the plantations. Reportedly a decision from the court existed that might well render at least part of the transfer of the lease void.³⁴ However, interveners feared that advocating for execution of the court decision might result in violence.³⁵ Finally, interveners considered that the difficulties that *anciens ouvriers* experienced because of the fact that they were Rwandophones were beyond their influence, and too politically sensitive to discuss. Effectively, the intervention thereby came to focus on stabilization through

³²Loi n° 73-021 du 20 juillet 1973 portant régime général des biens, régime foncier et immobilier et régime des sûretés, telle que modifiée et complétée par la loi n° 80-008 du 18 juillet 1980, art. 72.

³³See for example, IDO internal document, ‘EIAC: A success story’.

³⁴Journal Officiel de la RDC, Kinshasa, 1 décembre 2013, Requête en investiture, RC 16969, Jugement RC 17201. See also Tribunale Grande Instance Goma, RC 16969.

³⁵Interviews, Goma, April 2015 and May 2016.

mediation only, as interveners considered upholding the rule of law in this case as too risky an ambition.

The *anciens ouvriers*, however, were disappointed by this outcome. To them, it failed to address past injustices: their eviction from the plantations without due payment, the perpetuation of unequal property structures, and the prevalence of the interests of the most powerful. Many of them had the feeling that their concerns had not been taken seriously. Some even considered that by participating in the dialogues, they had effectively legitimized outcomes in which they could not recognize themselves.³⁶ Such concerns found no audience. Strikingly, when the *anciens ouvriers* expressed dissatisfaction about the outcome, they were portrayed as opportunistic trouble makers by government representatives and some staff-members of IDO.³⁷ Feeling unheard, some of the *anciens ouvriers* considered the use of violence as the only option to achieve justice.³⁸

The shortcomings of land dispute resolution

The example of the contested compromise in the case of EIAC does not stand alone. Even if the EIAC case is extreme in terms of the number of stakeholders involved and the power differences between them, the focus on dispute resolution is also questioned in other conflicts in Kitchanga. Many critiques on mediation concerned the lack of coordination, follow-up and sustainability of its outcomes. Residents of Kitchanga pointed to a proliferation of mediation initiatives and lack of coordination between intervening organizations. This enabled local 'forum-shopping' – parties in a dispute approaching those institutions most likely to favour their claims, or searching out the help of different institutions consecutively – a problem that interveners themselves acknowledged.³⁹ Some authors even observed an increase rather than a decrease in the number of conflicts in communities where local mediation and reconciliation committees had been established (Paddon and Lacaille 2011). Interviews with residents of Kitchanga also highlighted the problematic follow-up of mediation in land disputes (see also Morvan and Kambale Nzweve 2010). Compromises could be violated with military and political support, and contestants lacked possibilities for recourse if compromises failed. Due to the voluntary nature of the process of mediation, outcomes had limited legal value, and could not be enforced by the tribunal. Lack of actual implementation effectively undercut the legitimacy of mediation,⁴⁰ as we have also seen in the case of EIAC.

We found in our interviews with residents⁴¹ and some interveners,⁴² however, that the main problem with mediation was not so much the sustainability or legality of solutions, but rather its failure to address the more structural problems of land access and distribution, and lack of livelihood opportunities; in sum, its failure to produce solutions that were locally perceived as 'just'. This was also why strengthening the rule of law was

³⁶Final workshop and Self-assessment, Hôtel Mbiza, Goma, 10 October 2016.

³⁷Workshop stakeholders land conflicts Kitchanga, Hôtel Case du depart II, Goma 5–6 October 2016.

³⁸One branch of the Nyatura (which are militia consisting of Congolese Hutu, see Stearns (2012) was rooted in the grievances of the *anciens ouvriers*, but the group is no longer active (Sungura, Mbamba, and Kitonga 2020).

³⁹UN-Habitat, 'Guide de médiation foncière. Basé sur l'expérience de l'Est de la République Démocratique du Congo, 2013.

⁴⁰Interviews Mathys; Final workshop and Self-assessment, Hôtel Mbiza, Goma, 10 October 2016.

⁴¹Interviews Mathys in Kitchanga in 2015 and 2016.

⁴²Final workshop and Self-assessment, Hôtel Mbiza, Goma, 10 October 2016.

seen to have limited impact. While in theory strengthening the rule of law might prevent abuses of power and legislation, it could do little about the problem that legislation tended to privilege large, commercial landholders at the expense of small-scale producers (see also Nyenyezi Bisoka 2016). Rather than insisting on rule of law interventions, the more critical voices amongst Congolese and international interveners⁴³ argued for institutional and legal reform, to protect smallholders and redress past land appropriations. These interviewees understood disputes like the one around the plantation in Kitchanga as a conflict on how access to land in eastern DRC is organized and the perceived injustices in this. Instead of mediation or transitional justice, they pointed to the need for agrarian reform to remedy the current unproductive use of large landholdings, the terms of inclusion of the labourers in the plantations, and the inequality in land distribution in a context of land scarcity. To their minds, mediation in fact prevented the necessary reconsideration of a flawed model of large scale, extensive agriculture in eastern DRC, as well as a more general discussion on how agricultural production and local livelihoods could best be developed: through large scale commercial farming, or through enabling small-scale agriculture?⁴⁴

The shortcomings of land dispute resolution were also recognized when discussing other dynamics of land tenure, land governance, and agrarian livelihoods in the area.⁴⁵ First, despite the loss of legal status of customary land, in practice, a dual system of land tenure persists in Kitchanga. Customary leaders continue to fulfil key functions in local land administration and dispute resolution and are often in competition with the state about who should be in charge of land governance, especially in peri-urban settings. This contributes to tenure insecurity and (continuation of) disputes. There is no agreement among policymakers, international interveners and local organizations on the way forward. While some interviewees claimed that enhancing land administration by the state might de-ethnicize landownership – which might also help enable land access for the *anciens ouvriers* – and facilitate investment in land, others feared it would effectively strengthen patronage and disregard customary rights to land.⁴⁶ This issue is not solved by promoting existing legislation and enhancing institutional capacities only but requires a debate on the nature of land governance and the role in this of customary institutions.

Second, displacement in the Kitchanga area adds to pressure on land, particularly around the town, which increases land prices and competing claims on land. Intervening organizations tended to wishfully think that these were temporal phenomena, which might be countered through mediation between displaced and pre-war occupants. However, displacement in Kitchanga seems to turn more permanent and is, in fact, close to urbanization (Mathys and Büscher 2018). In addition to the resolution of the land disputes evolving from this migration, there is a need for policy strategies to improve the integration of displaced in land tenure systems and enhance urban planning.

⁴³Final workshop and Self-assessment, Hôtel Mbiza, Goma, 10 October 2016; personal conversations van Leeuwen and van der Haar at the 'Conférence sur les conflits fonciers dans l'est de la RDC', Bukavu, 17–20 June 2019.

⁴⁴Final workshop and Self-assessment, Hôtel Mbiza, Goma, 10 October 2016; personal conversations van Leeuwen and van der Haar at the 'Conférence sur les conflits fonciers dans l'est de la RDC', Bukavu, 17–20 June 2019.

⁴⁵Interviews Mathys in Kitchanga in 2015 and 2016.

⁴⁶Final workshop and Self-assessment, Hôtel Mbiza, Goma, 10 October 2016; as well as interviews Mathys 2016.

Third, in Kitchanga, many land disputes are interpreted locally in terms of wider contestations about belonging and legitimate rights to land, which result in a structural disadvantage for those considered non-autochthonous. As mentioned, this dynamic also played a role in the EIAC case: as most of the *anciens ouvriers* were Rwandophone, it was difficult for them to acquire land outside the plantation. Dispute resolution tends to leave this more structural dynamic in land disputes unaddressed. Intervening organizations and their local partners try not to position themselves vis-à-vis these contestations, considering them politically sensitive. Yet, particular notions about ‘who belongs where’ also feature in the discourses of interveners, echoing local people’s accusations on misappropriation of land by powerful ‘Rwandophones’, or arguments about the need of displaced to return home.⁴⁷ A long term perspective on how agricultural production should best be organized would have to take this issue into account.

Conclusion: from stabilizing land disputes to agrarian justice

Our analysis shows how framing land disputes in conflict-affected settings as an issue of instability may come at the expense of understanding the roots of land conflicts in longer-term processes of agrarian transformation and injustice. In the case of eastern DRC, while several peacebuilding and development organizations acknowledged the more fundamental contradictions of agrarian transformation that undergird land disputes, stabilization remained their main concern. This explains their emphasis on mediation and local dispute-resolving capacities. Several interveners also considered the lack of enforcement of existing legislation as an important source of land disputes. In their view, existing legislation – notably on the use and development of concessions – might in principle solve contestations on the concessions.⁴⁸ Strikingly, in the case of the *anciens ouvriers*, while interveners were aware of these legal opportunities, they refrained from upholding the law, as they feared resistance or even violence from powerful politico-military elites. Effectively, out of concern for stability – including their own – they gave in on an important ambition of the international community to contribute to a legitimate state.

What explains this emphasis on stabilization? Autesserre (2012) has argued that problematic interventions in eastern DR Congo by international peacebuilders result from simplified narratives about the conflict, based on preconceived ideas, which enable concrete action and resonate with interveners’ expertise and funders. Similar tendencies certainly played a role in international organizations’ analyses of land disputes as a security challenge. By default, mediation, local dispute resolution, and strengthening the rule of law appeared as obvious strategies to reduce violent tensions around land and maintain local security. In addition, the fact that the *anciens ouvriers* who had been chased from the plantations ended up in the IDP settlements made them literally invisible as victims of worsening terms of inclusion on the plantations. To interveners, they were just another group among many people displaced from their lands, and they remained out of sight when the compromise only enabled a limited number of them to return to the

⁴⁷Interviews Van Leeuwen in Goma and Bukavu 2013, 2015/2016; Mathys in 2016; personal conversations Van Leeuwen and van der Haar at the ‘Conférence sur les conflits fonciers dans l’est de la RDC’, Bukavu, 17–20 Juni 2019.

⁴⁸Final workshop and Self-assessment, Hôtel Mbiza, Goma, 10 October 2016; Interviews Bukavu 2019.

plantations. And while from a security frame interveners acknowledged the role of land in ethnopolitical mobilization, the challenges that *anciens ouvriers* experienced in accessing land because they were considered as 'non-autochthonous' were not seen by interveners, or were considered too political.

What we might add to Autesserre's analysis is that interveners' strategies did not just derive from a particular analysis of the conflict, but also from an assessment of their own room for manoeuvre. The eventual focus on mediation was given in by pragmatism. Considering the limited political space for land reform at the national level, as well as their lack of leverage on the politico-military elites to assure the enforcement of legislation, they assessed that the best they could do was trying to make daily life a bit better through compromises. Finally, relationships between interveners and stakeholders in the conflict might have played a role in defining intervention strategies. We noticed that interveners found it easier to socialize with representatives of the plantation owners, than with the *anciens ouvriers*. This might well have contributed to their preference for compromise – and to their disappointment and even annoyance with the continuing protest – rather than for radical change. Our case thus brings out the role of political space and positionality in explaining intervention strategies.

The analysis highlighted how this framing of land disputes in terms of security produced a blind spot regarding longer term agrarian transformations. As explored in this paper, land disputes in eastern DRC are rooted in more structural dynamics, including elite-appropriation of land since colonial times, a dual tenure system, the ethnicization of land rights, and worsening conditions of land and labour access of the rural poor. The wars added to these dynamics by further eroding land governing institutions and generating displacement. In Masisi, a structural crisis of plantation agriculture led to worsening terms of inclusion of the labourers, increasing pressure on land outside the plantations, and difficulties to access land for ex-labourers that were not considered autochthonous. As the case of the dispute on a plantation around Kitchanga illustrated, mediation was ineffective to deal with these dynamics. It failed to compensate for the loss of labour and land, did not address perceived injustices around the unequal land distribution in the region, and ignored questions about the legality of the current ownership and use of the former plantation. Even if the compromise reached did temporarily calm down tensions, and interveners were right that insisting on the law or lobbying for reform might have been unsuccessful or counterproductive, to the local tenants involved, there was still no just solution and the conflict continued.⁴⁹

Our analysis holds broader relevance. It warns peacebuilding and development organizations working in conflict-affected settings not to frame land disputes as a security issue to be effectively dealt with through mediation and rule of law. Land conflict may require addressing more fundamental questions of how to deal with past injustices and what model of agriculture to promote, e.g. to focus on small-scale family farming and/or large-scale commercial farming, and how to arrive at this model in a fair and equitable way. Land conflict may resonate with challenges around the roles of customary

⁴⁹There are some promising developments, however. With the 2019 installation of Tshisekedi's government, political space for discussing questions of agrarian justice and the future of agrarian development seemed to be opening. At a conference on land organized in Bukavu in June 2019 by the Congolese Government, the Dutch Embassy, UN-Habitat and Monusco, representatives of several Congolese organizations clearly spoke out about the structural injustices in the agrarian sector and their role in land disputes.

institutions in securing tenure, transformations like urbanization and commodification of land, and identity-based claims of land in times of increasing mobility of people. These are not only important questions in eastern DRC but also in other settings in sub-Saharan Africa (see Peters 2013). Particularly, the analysis highlights the need for normalizing land disputes in conflict-affected settings (see also Richards 2005), and seeing them as manifestations of wider, ongoing struggles about agrarian development and how to support smallholder production.

Mediation in the case we analysed failed to recognize that the dispute of the *anciens ouvriers* was rooted in what they perceived as an 'unjust' system of unproductive concessions that no longer provided livelihoods to their labourers, and ended up legitimizing this system and protecting the interests of the powerful. Even more worrying was that some interveners blamed the *anciens ouvriers* for their own misfortune and unwillingness to compromise. In Kitchanga, while interveners considered that by mediation they evaded resistance from power-holders and circumvented complex questions about agrarian development, wittingly or unwittingly they contributed to the propagation of certain directions of change, e.g. by their preference for state actors in governing land, or taking over discourses on who belongs where. Also, in other settings, such questions are politically sensitive and existing power-holders may be expected to resist changes that harm their interests. Particularly in conflict-affected settings, interveners might feel unable or afraid to deal with such structural and highly political questions and opt for a minimalist approach (Call and Cousens 2008): to bring an end to violence, to create conditions for security, and to assure that people may pick up their livelihoods in the short term. Even then, as literature on conflict-sensitivity points out, development interveners should consider how their particular interventions effectively position them vis-à-vis such sensitive questions and legitimize certain stakeholders and interests (see Anderson 1996). In eastern DRC as well as other settings, taking agrarian justice into account requires interveners to recognize the contestations and grievances around agrarian transformation, address these injustices, and enable discussion on how to correct these in agrarian reform.

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