Chapter 4
Land grabbing by mining companies:
Local contentions and state reconfiguration in South Kivu (DRC)

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1. Introduction: mining, land grabbing and politics in the DRC

Large-scale foreign direct investments in land are not new, as Peemans demonstrates in this volume. In the Democratic Republic of Congo (DRC), foreign investors and concessions given to multinational companies were crucial in the 'mise en valeur' of 'vacant lands' in the 19th and early 20th century (Vellut, 1983). Recently a 'new [resource] scramble for Africa' has been observed (Southall and Melber, 2009), targeting primarily oil and mineral-rich regions. For resource-poor countries and emerging economies there is a growing need to secure future supplies in non-renewable resources. As these resources are in high demand and are growing scarcer, multinational companies prospect for reserves and seek to gain and secure access to strategic mineral and energetic resources in more risk-prone environments.

Risk is a reality and according to Price Waterhouse Coopers (PWC, 2011: 1) "projects become more complex and are typically in more remote, unfamiliar territory". These 'unfamiliar territories', in which mining companies find it difficult to operate, are often inhabited by local communities who make their own claims to the land. They frequently disaccord with multinational mining companies over land use, dispossession, relocation, environmental pollution, degradation of community's resources, human rights abuse and the loss of livelihoods (Ballard and Banks, 2003: 289; Hilson, 2002: 68). Such contestations are occurring all over the world, as case-studies from Australia (O'Faircheallaigh, 1995), Papua New Guinea (Banks and Ballard, 1997; Hilson, 2002), Peru (Bury, 2004), Ghana (Aubynn, 2009; Bush, 2009; Hilson and Yakovleva, 2007), Tanzania (Carstens and Hilson, 2009) and the DRC (Hönke, 2013; Geenen and Claessens, 2013) demonstrate.

The DRC is known for its important reserves in mineral resources, including over 10 per cent of the world's copper and 49 per cent of the world's cobalt reserves, to be situated in the underground of the province of Katanga (USGS, 2009). Moreover, almost one quarter of the world's diamond reserves in terms of carats are located in Kasai; and 25 to 65 per cent of global tantalum reserves (coltan) are estimated to be found in the eastern provinces (World Bank, 2008). The eastern provinces also host important reserves of cassiterite (tin-ore) and gold, although these reserves are difficult to measure since few geological surveys have been done.

Since colonization the Congolese economy has relied extensively on industrial exploitation and export of raw materials (Bezy et al, 1981; Geenen, 2011a). Mining companies such as the 'Union Minière' in Katanga governed their vast concessions as private domains. But from the 1920s onwards they turned from an outright coercive mode of governance to a more paternalist model, providing electricity and water, schooling, healthcare and recreational facilities to workers and their families (Hönke, 2013, 2010). After independence in 1960, Mobutu sought to centralize political and economic power in the hands of the state and he nationalized some important companies. But in the mid-1970s industrial production dwindled as a result of a number of internal (perverse effects of nationalization measures, neopatrimonial practices, lack of productive investment and deteriorating infrastructure) and external (commodity price fluctuations, such as the fall of copper prices in 1975) factors

(Geenen, 2011a). At the same time individual Congolese started to extract minerals in an artisanal way, trying to find a response to the ever intensifying economic crisis. Their artisanal production was smuggled out of the country through parallel and 'informal' trade networks and thus did not generate any revenues for the state. In the mid-1990s, many industrial companies were facing bankruptcy and the state was forced to sell a number of concessions to private investors (Kennes, 2002; Nest et al, 2006). The 1996-97 and 1998-2003 wars eventually drew industrial production to a standstill, especially in the eastern provinces. At the same time, existing 'informal' trade networks linked up with armed groups and external war financiers, such as neighbouring Uganda and Rwanda (see various United Nations [UN] reports and Marysse, 2005). At the local level, the war created "new local complexes of power, profit and protection", disrupting traditional social and economic structures (Vlassenroot, 2004: 40).

In 2002 the Kabila government introduced a revised Mining Code[1] and attendant Mining Regulations[2]. These laws were in line with the liberalization, privatization and industrialization policies that the World Bank had been promoting since the 1980s (Grindle, 2007). The primary aim, to attract foreign direct investments, was to be achieved by a very liberal tax and customs regime, transparency and efficiency in granting licences, and by the provision of investment security (Mazalto, 2009). The Code does recognize artisanal mining as a production mode, and provides for the demarcation of special 'artisanal mining zones' where miner's cooperatives may apply for research permits. However, it also stipulates that these zones can be converted into an industrial concession when "a new deposit necessitating large-scale exploitation has been discovered"[3]. This suggests that industrial companies eventually have the right to take over artisanal mining zones, and it thus reduces security for artisanal miners.

Since the end of the war a number of companies have indeed taken a renewed interest in Congo's minerals. In Katanga, many foreign private investors have engaged in copper and cobalt production since 2004-2005, and industrial production is now again at unprecedented levels (Hönke, 2009; Marysse and Tshimanga, 2013). In the more conflict-ridden eastern parts of the country, foreign companies have hesitated longer. But thanks to the booming gold price in recent years – the average price increased by almost four times between 2003 and 2010 (PWC 2011: 22) - the gold deposits have become potentially profitable and thus increasingly attractive to foreign investors. A few companies have engaged in gold exploration works, such as Anglogold Ashanti in Ituri and Kilo Goldmines in Haute Uele (Van Puijenbroek et al, 2012), Loncor Resources in North Kivu and Casa Mining in South Kivu (Misisi). However, the first company that has effectively started gold production is the Canada-based multinational Banro Corporation. In South Kivu Banro holds exploitation permits for a total of more than 2790 km2[4], plus research permits for an area that is even larger than this[5]. In 2005 Banro started intensive exploration in Twangiza, a mine situated at about 40 kilometres southwest of Bukavu, the provincial capital. The exploration phase lasted about six years and targeted in the first place the chiefdom of Luhwindja, but also the

[1] Loi n° 007/2002 du 11 juillet 2002 portant Code Minier (Mining Code).

[2] Décret n° 038/2003 du 26 mars 2003 portant Règlement Minier (Mining Regulations). For a detailed analysis of the laws and policies, see Mazalto, 2009.

[3] Mining Code, T. 4, Ch. 1, Art. 110.

[4] Divided as follows: 1432 carrés for Twangiza Mining, 748 carrés for Lugushwa Mining, 902 for Kamituga Mining and 203 for Namoya Mining. Another small part of their concession lays in Maniema province

[5] In comparison, there are seven artisanal mining zones in South Kivu, with a total surface area of 219 km2[5]. Most artisanal miners – and in South Kivu there are estimated to be 100,000 to 200,000 miners – are thus not working in these zones, but outside or inside industrial concessions (World Bank, 2008: 56).

neighbouring chiefdoms Burhinyi and Ngweshe. In November 2011 the first gold ingot was produced.

This makes Banro an important case study that sheds light on some dynamics around large-scale land use by multinational companies. These dynamics include tensions between transnational, national and local politics, the impact on local livelihoods and cohabitation challenges with local communities. They might well emerge in many other mining sites in eastern DRC once more companies will have moved towards production. Section two of this chapter makes two arguments on the reconfiguration of politics. First, we argue that selling mining rights to multinational companies and promoting industrial mineral extraction by few large companies is related to a reconfiguration of national politics. For the Congolese state it is a strategy to extend its governance into areas previously out of state control. Second, we argue that this strategy implies a negotiation with local elites, including customary chiefs. As such the land acquisitions also imply a reconfiguration of local politics. Section three argues that transnational norms and regulations shape these reconfigurations of local politics. However, reference to corporate social responsibility (CSR) by Banro to some extent remains superficial and produces ambiguous results in practice. We demonstrate how the presence of a company such as Banro affects local communities and how CSR is used and contested at the local level.

The empirical parts of this chapter are based on fieldwork in South Kivu, more particularly in the chiefdom of Luhwindja (Twangiza concession), where Banro has concentrated its activities so far, and in Bukavu. The fieldwork included in-depth interviews, focus groups, collection of documents and primary observations during four periods in January-February and October-November 2011, May-July and September-October 2012[6].

2. Mining companies, land and the reconfiguration of politics

This section is built up around two arguments. The first argument is that selling mining rights to international investors involves a reconfiguration of national politics. Giving mining areas into concession to industrial companies allows the Congolese government to (re)centralize control over revenues from mineral extraction. By doing so, it also facilitates the extension of state control into areas previously out of state reach. In eastern DRC the state has been a distant absent for a long time. Yet the dysfunctional state administration is home to many powerful political players (Trefon, 2007). These take part in broader political, military and economic struggles, such as struggles over control of the mining areas. The negotiated alliances between politicians at the national level and these local elites reflect the negotiated nature of the Congolese state (Hagmann and Péclard, 2010). So far the literature has mainly focused on the different strategies of the state to establish control over distant territories (Boone, 2003). In this regard, research on the DRC focused on the role of state ideology, repression and clientelist networks - including customary chiefs - as mechanisms to keep control over the vast territory (Young and Turner, 1985; Schatzberg, 2001; Engelbert, 2003). However, multinational companies can also play a role in the extension of government control (Hönke, 2010), in particular in areas Catherine Boone has described as “l’Afrique utile” (Boone, 1998). This stands in contrast to the limited control the government has over artisanal mining. The majority of artisanal production and trade currently escapes the official circuits,

[6] We would like to thank researchers at the CEGEMI (Centre d’Expertise en Gestion Minière), a VLIR (Flemish-Interuniversity Council) sponsored project at the Catholic University of Bukavu for their help with the fieldwork. We would also like to acknowledge financial support for recent fieldwork through the DFG-funded SFB 700/D2 research project on business and governance in Sub-Saharan Africa.

especially for high value-low volume materials like gold[7]. Giving mining areas into concession to multinational mining companies thus gives central government privileged access to mineral rents (Hönke, 2010: 2013)[8]. The gold concessions in South Kivu are part of this 'useful Africa' and the case study, described below, illustrates the relationship between local conflict over land and state reconfiguration.

The second argument contends that the land grabs by mining companies are also related to a reconfiguration of local politics. In order to establish control over the concession and to build a stable working environment, companies are inclined to negotiate with local elites. In turn, these elites seek to consolidate their power, reinforce their authority and maintain their access to economic gains through such negotiations. Overall, the wars of the 1990s increased the autonomy of local actors in eastern DRC. At the same time, traditional patron–client relationships were undermined and replaced by new forms of relations based on economic gain and wealth accumulation (Vlassenroot, 2004). Some customary chiefs for example managed to reposition themselves and acquired additional power due to the breakdown of institutional capacities, public infrastructure, and the distance to the capital city (Tull, 2005). They used their political and economic power to get hold on these economic opportunities, and turn negotiation processes over access to land and resources to their own advantage[9]. In the case of land given in concession of mining companies, local elites use their power and authority to benefit from these large-scale investments. This implies "legitimizing practices" (Sikor and Lund 2009: 8) through which they seek recognition and a "minimum of voluntary compliance" with the new "extractive order" (Hönke 2009: 274) they have taken part in negotiating and maintaining. In the area we are studying customary chiefs traditionally governed and distributed the land, thereby creating patron-client relationships and dependency of their 'subjects' (Geenen and Claessens, 2013). These traditional patterns were put under serious pressure by the war and by the introduction of a legal system in which the state de jure owns all land. In practice though customary chiefs retained some control over land allocation because the law was never fully implemented (Utshudi and Ansoms, 2011). When the economic value of this land increases as a result of mining opportunities, these local chiefs try to cash in on revalued land (see also Borras and Franco, 2011: 49). As we will show, the case of Luhwindja is paradigmatic for these mechanisms.

2.1. Reconfiguration of national politics: Sominki, Sakima and Banro

This section describes the troublesome process through which Banro acquired its mining rights and demonstrates how the sale of concessions is related to a reconfiguration of national politics[10]. In the early 1990s, Sominki ('Société Industrielle et Minière du Kivu')[11], which operated gold and cassiterite concessions in North and South Kivu, was looking for a buyer. The Canadian junior company Banro Corporation, aiming at exploration and speculation on promising deposits, was interested but only in the gold concessions[12]. In first instance Banro concluded a partnership with the British Cluff Mining, which brought in most of the financial capital. Next Banro negotiated both with the moribund Mobutu regime and with Laurent

[7] It is for example estimated that 90 to 95 per cent of gold from the eastern provinces is smuggled out to neighbouring countries (Garrett and Mitchell, 2009: 32).
[8] On how governments have used the privatization of the economy in the context of neoliberal political reforms to (re)gain privileged access to rents see Hibou, 1999; Boone, 2007; Tangri, 1999.
[9] On elite capture in other contexts, see Peters, 2004; Wong, 2010.
[10] This section is based on a number of documents, letters and notes from the personal archive of Serge Lammens, former Administrator-General Director of Sominki. See de Failly, 2001.
[11] The company was 28 per cent state-owned, 72 per cent private.
[12] Sominki (1996) *Procès-verbal de la quarante-huitième réunion du Conseil d'Administration tenue à Kinshasa le samedi 10 août 1996*, unpublished.

Kabila, who had at that time started the AFDL ('Alliance des Forces Démocratiques pour la Libération du Congo') rebellion in the East and who promised Banro that if he were to seize power, he would respect the titles to the gold concessions. After months of negotiations and pressures, Banro managed to remove Cluff from the contract and in February 1997 all of Sominki's concessions were transferred to Banro[13]. Sominki was liquidated on 29 March 1997. On 6 May 1997, just a few days before the seizure of Kinshasa by Kabila, a new company was created: Sakima ('Société Aurifère du Kivu-Maniema'), with 93 per cent of the shares belonging to Banro and 7 per cent to the Zairian state.

After the coming to power of Laurent Kabila, Sakima effectively started large-scale exploration works in Twangiza, which is the major mining site considered in this paper. But the company did not honour any of its obligations towards the former Sominki personnel or to the supply companies, which caused many complaints. On 31 July 1998, Laurent Kabila therefore deprived Banro of its mining titles and created a new state-owned company: Somico ('Société Minière du Congo')[14]. This could be interpreted as a strategy to control and centralise revenues in the hands of the new regime. But there was also a more fundamental and 'nationalist' dimension to it, as the Kabila regime wanted to reform the mining sector and make it more independent from Anglo-American companies (Kennes, 2002). It was also symptomatic that Kabila appointed the mwami (customary chief) of Luhwindja, Philemon Naluhwindja, as director of Somico. Naluhwindja had always contested the concession rights of Sominki on the land that he governed in accordance with customary law, and thus represented the 'traditional' rights holder, as opposed to the external investor. Two days after Somico's creation, the RCD ('Rassemblement Congolais pour la Démocratie') rebellion broke out, and large parts of South Kivu were seized. During the war, Banro took the side of the RCD rebels, whereas Somico allegedly supported local defence groups, Mayi-Mayi, and FDLR ('Forces Démocratiques pour la Libération du Rwanda')[15], and was backed by the Kabila government. Thus the access to the gold mines was at stake in a highly politicised and militarized setting. Banro was not successful in gaining control over the concession and the gold mines were alternatively occupied by one of the abovementioned armed groups.

Banro's position only improved when on 16 January 2001 president Laurent Kabila was murdered and succeeded by his son Joseph who turned to collaborate with Banro. In the middle of the war period, this could be seen as an attempt to re-establish control over the region. But the new president also wanted to avoid having to pay USD 1 billion to Banro as a result of a lawsuit that the company had successfully filed at the United States Federal Court[16]. The rapprochement between both parties resulted in a 'gentlemen's agreement', signed on 18 April 2002. This agreement restored all titles and rights to Sakima (of which Banro owned 93 per cent), but also divided the titles. Sakima Sarl now become a fully state-owned company and kept the right to 35 tin concessions. Banro on the other hand, as a private

[13] 'Convention minière entre la République du Zaïre et la Société Minière et Industrielle du Kivu 'Sominki' et Banro Resource Corporation', 13 February 1997.

[14] The president issued four decrees: Decree n. 101 annulling the Decree that created Sakima, Decree n. 102 annulling the Agreement of 13 February, Decree n. 103 creating Somico and Decree n. 104 nominating Somico's president.

[15] Kabila's former allies Uganda and Rwanda turned against him in 1998 and supported the RCD rebellion in the East, which managed to occupy a large part of the entire Congolese territory. The Mayi-Mayi were local defence groups that fought against the foreign occupation. But there were also FDLR active in the East, Hutu-rebels who fled after the Rwandan genocide and whose presence was used by the new Rwandan regime as a justification for their invasion. Alliances between the different military groups were unstable and violent confrontations and atrocities against the population were frequent.

[16] The case was first presented to the ICSID, a member of the World Bank Group that is an international institution for arbitration of legal disputes between international investors: https://icsid.worldbank.org/ICSID/Index.jsp. It proclaimed itself incompetent in this case in 2000 and Banro then turned to the US Federal Court in 2001 invoking the 'Foreign Sovereign Immunities Act'.

company, kept the titles to 12 gold concessions in Twangiza, Kamituga, Lugushwa and Namoya. The gentlemen's agreement also extended the duration of the contract from 25 to 30 years and preserved the extensive tax holidays[17].

The gentlemen's agreement needs to be seen in the context of Kabila's overall approach to the mining sector at the time. He embraced a policy of promoting privatisation and liberalization aimed at attracting multinational companies, as was also reflected in the Mining Code we mentioned. This was part of an attempt to regain control over mining areas and recentralize mining rents in the hands of the government (Hönke, 2010). Giving mining areas into concession to industrial companies also implied possibilities to extend government control into areas previously out of reach, because they were occupied by rebel movements, or simply too far away from the capital, which gave more room for maneuver to local elites. The next section takes us down to the local level and examines the reconfiguration of local politics this process involved.

2.2. Reconfiguration of national and local politics: Banro's Twangiza concession

The struggle over the mining concessions in Twangiza involved actors at national, regional and local levels and had profound repercussions on political configurations, especially at the local level. As we have said, mwami Philemon Naluhwindja, who was appointed by Laurent Kabila as director of Somico, had always contested the fact that the mining titles were in 'foreign' hands. The mwami's death provoked a succession conflict as the eldest son had not yet attained the age of majority and resided in Europe[18]. The 'bagingi', the elders, appointed the mwami's younger brother Justin as regent, and his widow Espérance Barahanyi as 'mwamikazi' or guarantor of the customs. Both would engage in a fierce struggle to establish their control over the mining site. Justin continued to support Somico, and nourished the popular narrative that Somico had been created to mine gold on the 'people's land' for the good of Luhwindja's inhabitants. This was his 'legitimizing discourse' (see Sikor and Lund, 2009). Yet Somico was never operational due to lack of investors. In practice, Justin effectively controlled and derived rents from artisanal exploitation (interview with community leaders, 11/2011). Many former artisanal miners, who afterwards lost their jobs due to the arrival of Banro, still thank him for opposing the installation of 'foreigners'. According to their narrative, Justin's main concern was to "make sure that any company that would come, would be accountable to the community", meaning that it would create jobs and foster community development (interview with community leader 10/2011).

But the war context also pushed local actors to establish strategic military alliances. Justin contracted FDLR as personal security guards. He is also believed to have incited the population to arm themselves and organize a self-defence movement. At the time the RCD, backed by the Rwandan regime, controlled many of the urban centres in the area and tried to establish a tight control over the mines as well. However they never totally succeeded in controlling the gold sites, nor in monopolizing the gold and coltan trade (Vlassenroot and Raeymaekers, 2004). Well-established networks of artisanal miners and traders continued to channel most of the minerals to international markets via 'informal' trade routes that had been in place since the 1970s, thereby bypassing the RCD administration. Many rural areas, on the other hand, were controlled by Mayi-Mayi and FDLR, who apart from pillaging miners and traders, in some cases also cooperated with local traders for channeling the precious metals

[17] Avenant n.1 à la convention minière du 13 février 1997, unpublished document, 18/04/2002.
[18] Naluhwindja was murdered in December 2000 in France, in mysterious circumstances. Some speculate that Banro was involved, that he was smuggling minerals, or that it was a personal reckoning.

out of the region without paying taxes to RCD. The case of Luhwindja and Justin seems to fit into these patterns.

In the meantime, as we have said, Joseph Kabila had made a new agreement with Banro and wanted to smooth the company's effective control over the concessions. But there were a few obstacles. While the war officially ended in 2003, large parts of South Kivu's territory remained under the control of rebel groups. Therefore, the Congolese army launched a military operation to chase FDLR in Luhwindja in July 2005. At this occasion, Banro was effectively installed and protected by special military forces, who took violent action against community members who were accused of sympathizing with FDLR. Justin fled to Kinshasa. Banro was faced with a quite hostile environment when it started to build its first exploration camp in Luhwindja in October 2005. But the company had just announced a massive exploration programme and had listed its shares at the American and Toronto stock exchange, so investors needed to be reassured that peace had come to the region and that the time was suited for investments. Therefore, the situation at the local level needed to be appeased. An alliance with loyal members of the local elite was believed to simplify this.

Before the military campaign, Joseph Kabila had already contacted the mwamikazi, widow of Philemon Naluhwindja, who was residing in Belgium at the time. If the population were to recognize her as the legitimate customary chief, she could act as an intermediary and facilitate Banro's work in Luhwindja. From Kinshasa however Justin tried to maintain some political power and control. In the 2006 elections he was elected as a member of parliament at the national level. Shortly afterwards however the Supreme Court invalidated his mandate because of irregularities during the election. His supporters say that this decision was an obvious attempt to push him out of action (interview 06/06/2012), and Justin still retained his popularity among a part of the population.

The mwamikazi also took up a political position and came back to Bukavu. She was co-opted in the provincial assembly after the 2006 elections. The electoral legislation actually provides for 32 directly elected deputies and four co-opted representatives of the customary chiefs, to be nominated by the president. As the mwamikazi had excellent relations with the president himself, as well as with his political counsellor and current governor of South Kivu Marcellin Cishambo, she became a member of parliament at the provincial level (personal communication 15/01/2013). Apart from her political functions, the mwamikazi was also active in business and in development projects[19]. She set up a subcontracting company that provided day labourers to Banro, Cinamula, with the specific aim to create employment for the population in Luhwindja. She was also a majority shareholder of Chez Bibbas, a subcontractor that built houses for the resettled population. She was involved in the construction of the market Nabuntalaga through a company called Arcadis, of the market of Cinjira (the resettlement village) and of the primary school in Luchiga, the hill where Banro's factory was built. Her involvement in development projects went through Apef ('Action pour la Promotion des Enfants et de la Femme'), an NGO which she created and which is a privileged partner of Banro, and through her membership of the local committee of the Banro Foundation and the Community Forum that negotiated over resettlement and compensation schemes. It is clear that through a combination of strategies, she sought power, authority and access to economic gains. However, whereas she was able to gain legitimacy in the eyes of some, part of the population felt abandoned and said the mwamikazi only cared about her own interests.

[19] "Pétition de la population de Luhwindja contre Madame Espérance M'Baharanyi La Namunene" (2012).

The same was true for the head of local state administration who also acted as an intermediary between Banro and the community and represented the mwamikazi in local politics. Several informants agreed that he was "a marionette of the mwamikazi who is pulling the strings" (interview with community leaders 10/2011). Others described him as powerful man who was "like a king" (interview local NGO 10/2011). He was able to leave his mark on some of the investments the company did in community development, and was allegedly also a key gatekeeper to get access to employment at Banro. In 2010, he appeared before court and was condemned to pay a fine to a man whose house had been demolished without the latter's consent. The sentence was however never executed and the victim's compensation money has not been paid to date (interview victim 02/11/2011). These feelings of marginalization and frustration from the side of the population were reinforced and further politicized in conflicts among the local elite.

Indeed, the mwamikazi's controversial position gave rise to opposition forces. In addition to the succession dispute with Justin, a decade-old dispute with another family in Luhwindja over who is the legitimate mwami resurfaced (interview throne pretender 10/10/2012). Moreover, a petition calling for the mwamikazi's abdication was launched by a local human rights organization, UJCC ('Union des Jeunes Congolais pour le Changement') in late 2011[20]. They accused her of violating customary law, showing no respect for the population, serving personal business interests and embezzling money. On 24 January 2012 the petition was officially submitted with 4044 signatures. On 17 March 2012 two leaders of UJCC were arrested in Bukavu. UJCC was now openly supported by Codelu ('Comité de Développement de Luhwindja'), a solidarity association of Luhwindja's elite (businessmen, church and NGO leaders) in Bukavu (interview Codelu 20/05/2012). They claimed that "the population has lost confidence in the mwamikazi"[21] and tried to make themselves known as spokespersons for 'the community', or more particularly for the marginalized voices. On the other hand, it was also obvious that they pursued some private interests. Some members of Codelu had in the past won contracts to do for example construction work for Banro, but felt they were losing access to these opportunities because of the growing power of the mwamikazi. Other members of Codelu are prominent leaders of NGOs, who probably had their eyes on the development money flowing through the Banro Foundation. The opposition forces also got support from Kantintima, South Kivu's governor under RCD rule and former minister of agriculture, now Member of Parliament at the national level (interview local elite 06/06/2012), who allied himself with them in order to win political support.

On 19 March 2012 people in Luhwindja protested against the arrests of the initiators of the petition. According to the latter, the manifestation was violently knocked down by the head of local state administration, assisted by the national police, and nine more people were arrested[22]. In the meantime 42 persons had introduced a claim at the tribunal, saying that their name was on the petition, but that they had not signed. Besides, there would be names of underage and of fictive persons on the list. More protests followed in Luhwindja, and on 28 April eight prisoners were released. Both Codelu and the mwami claimed accountability for this release[23]. The three remaining prisoners were accused of forgery and unlawful use of

[20] Letter to president on "Pétition de la population de Luhwindja contre Madame Espérance M'Baharanyi La Namunene", 2012.
[21] Letter from Codelu to Banro, « Retrait de la confiance de la population de Luhwindja à Madame Espérance M'Baharanyi », 28/03/2012.
[22] "Note de plaidoirie pour Mukenge Barhegine Totoro, Bachoke Ganywamulume Gustave et Beka Ngekema. RP 13 802." Mail by UJCC « Dossier arrestation » 21/08/2012. Mail by UJCC « Retroacte de l'arrestation des défenseurs des intérêts et des droits des Bahwindja par la Namunene » 21/08/2012.
[23] "Rapport de la réunion présidée par sa majesté mwami Naluhwindja Chibwire V Tony en sa résidence à Bukavu avec une délégation de la Codelu en date de vendredi 10 aout 2012", 10/08/2012.

signatures. Their case was introduced on 15 May 2012. After the hearings in August and September 2012 the defendants were charged with forgery and condemned to one year in prison and five years on probation (interview lawyer 02/10/2012).

We may conclude that upon its installation, Banro stirred up the hornets' nest of local politics in Luhwindjan and that this was probably not what they aimed to do. In order to create a stable working environment for themselves, they aligned themselves with selected members of the local and national elite. But this also meant that they contributed to the marginalization of competing voices at the local level, and nourished grievances and frustrations[24]. While the company initially used the mwamikazi to secure its position and win the population for its cause through a supposedly legitimate intermediary (the customary chief), some company agents now fear that they have become "far too entangled in local politics" (personal communication Banro 06/2012).

This section has shown that in an attempt to gain control over their concession, and to reduce tensions within local communities, companies align with local elites. In turn, local elites use their power and authority to gain access to resources. In this case, the mwamikazi had trouble being accepted as the legitimate customary chief because of local history and politics. In our understanding, associating herself with Banro, presenting herself as an intermediary and attracting funding and development money for the community, was a way to increase her power, legitimize it and gain access to resources at the same time. However, her legitimization strategies were only successful in the eyes of some. She does get support of part of the community, and people are appreciative of the efforts that have been done to invest in schools, hospitals and roads. But part of the community openly challenges her position and accuses her of embezzlement of money and abuse of power. The actors who oppose the incumbent local authorities, like Codelu and UJCC, also seek to get access to the financial and development possibilities created by Banro's presence. But they also challenge, and seek to renegotiate, what a legitimate extractive order around industrial mining should look like.

3. Impact on local livelihoods, transnational norms and local contestations

In contrast to the other chapters in this book, the management of land use by mining companies is much more shaped by transnational norms and regulations, in particular the norms of corporate social responsibility. But corporate social responsibility is often not clearly defined and may therefore include all sorts of social investments a company makes at the local level. In fact, an entire 'industry' (Welker, 2009) has developed around this term with consultancies, journals and websites, initiatives, fee-based certificates and study programs. Moreover, we argue that reference to corporate social responsibility and voluntary standards often remains superficial, and that in the local arena ambiguous practices prevail. These result from the prevalence of multiple 'transnational meaning systems' that provide company practitioners, security officers and local political actors with particular 'practical norms', to use Olivier de Sardan's (2008) concept, that produce different sets of 'normal' behavior (Hönke, 2013). In the local arena CSR guidelines and voluntary standards have not guided all or even most of company agents' practices. They also did not necessarily guide the practices of other actors whom Banro closely worked with in order to implement its security and development policies. Consequently, the case shows that negative effects of the mining project prevailed and remained uncompensated and that CSR and voluntary standards could

[24] See Hönke, with Thomas (2012) for a broader discussion of potential unintended consequences and externalities of companies' activities.

have been better implemented and monitored[25]. In fact, significant parts of Banro's CSR activities did actually not live up to the transnational standards for companies, as some of them increased the power of a small group of elites and mostly benefited these people and their clients on whose support the new extractive order in Luhwindja was built. In what follows we illustrate the impact of Banro's 'land grabbing' on local livelihoods. We examine in particular how the company used transnational norms to manage the negative effects of its large-scale use of land, and the problems and contestations associated with these attempts.

The use of the term 'land grab' in this chapter refers to Banro effectively taking control of the Twangiza concession from 2005 onwards. This implied that the local population lost access to land. But actually the image of 'one big land grab' is not capturing reality very well. When Banro acquired the research permits on the gold concessions, they were given the right to prospect for gold within this perimeter, within a definite time period. As their exploration program proceeded, the company targeted specific sites for drilling, for setting up their camp and for tracing roads. This way, they initiated a whole series of little 'land grabs', each time chasing away families who lived of the land, or artisanal miners who were working the gold deposits. In this early period (2005-2009) there were no general agreements on resettlement and compensation, so people affected by these 'little land grabs' were not systematically indemnified. This of course raised protest, and local communities openly resisted against these practices, also because of a more general feeling of resentment against the company due to the political and historical reasons outlined above. A teacher and fierce opponent of Banro explained why they frequently took the streets in this period:

> "Because our rights were being violated. We have done everything: we opposed to Banro, we blocked the roads, we passed information to the radio […] we told them we were ready to die. Because my field is my life!" (interview community leader 01/2011).

Members of the local community thus base their claims to use the land, or at least to be compensated for its loss, on 'traditional' rights and reference to their livelihoods (Geenen and Claessens, 2013). From 2009 onwards Banro intensified its activities, started to build a factory, and moved towards the production phase. This engendered impacts on a much larger scale. People lost agricultural land and were relocated, houses and shops were destroyed, fields were damaged because of drilling, and the environment was affected because of erosion, landslides, and the construction of water dams. In the core area, Banro identified 463 households - or 2,000 to 2,500 individuals (on a total population of 52,000 for the whole of Luhwindja) - who had to be moved to a 'resettlement site' (interview community relations manager Banro 01/2011). In addition, artisanal mining sites - both underground and alluvial - were closed down. Civil society organizations estimated that the number of artisanal miners working in this core area amounted to 6,000 individuals (OGP, 2008)[26]. Overall Banro's activities directly and indirectly affected the livelihoods of thousands of people: miners and their families, but also for example traders and shopkeepers, cooks and prostitutes.

In order to mitigate the negative effects, Banro reinforced its community policies, for which it referred to a number of transnational standards. In 2008 for example the company contracted a renowned consultancy firm (SRK) for an initial social and environmental impact study

[25] We do not deal with this in this chapter but for a discussion on shortcomings of transnational standards themselves, see for instance Hönke, with Thomas (2012).
[26] A survey that was carried out jointly by Banro and the Congolese government in order to list the artisanal miners in the targeted area identified only 1267 individuals. But many miners told us they did not register as a strategy of resistance.

which was based on the IFC's (International Financial Corporations) Environmental and Social Performance Standards. Banro also committed to respect the IFC Guidelines for Resettlement and Compensation (see Szablowski, 2007) and the Equator Principles, a voluntary standard for banks to manage risks in project financing (interview with Banro's community relations manager 01/2011)[27]. These guidelines require involving representatives of the local population in negotiations over the modalities of resettlement and compensation. Hence Banro initiated a 'community forum' in 2009, consisting of teachers, religious leaders, customary chiefs, health workers and women (interview with community leader 08/01/2011). Later this community forum split up in four committees, discussing resettlement and compensation, infrastructure building, planning, and artisanal mining respectively.

As a result of these negotiations, a Protocol of Agreement on resettlement and compensation was signed in January 2010[28]. The agreement stipulated that the houses (main structures) would not be compensated in cash money, but would be replaced by new constructions at another location, adhering *at least* to the same standards as the previous constructions. They also agreed on the company's contributions to social services in the communities directly affected by the mine. Banro set up local development projects, such as the building of new schools and the initiation of sports projects with marginalized youth. They did this through the Banro Foundation, which was financed by the company and active both within and outside Banro's concessions[29]. On the issue of artisanal mining, Banro agreed to integrate a number of artisanal miners in its workforce, and to assist others in finding alternative livelihood options. The 2010 agreement provided for 875 former miners to be employed by Banro in various jobs associated with the construction of the mine. An additional 400 artisanal miners, who had been identified in a survey carried out in the artisanal sites, would participate in different professional training programmes carried out by local NGOs under the supervision of Banro and the Banro Foundation, with financial support from the company[30].

With respect to local development, the Congolese Mining Code and the 2010 annex to the agreement between Banro and the government stipulated that Banro had to contribute by paying an annual 4 per cent on its net revenues and 1 per cent royalties to the Congolese state, starting from the production phase. The contract specified that these 4 per cent had to be used "for infrastructural and development projects in the communities where Banro operates"[31]. Since it was not defined through which mechanisms this payment would take place, and how exactly to define these communities, this also gave rise to heavy contestations, especially between local elites. In a letter addressed to Banro, Codelu for example asked to be involved in the set-up of a special fund that would study and decide on how the money would be managed, and where it would go[32]. This was fiercely contested by the mwami and his allies, who insisted that Codelu had no right whatsoever to represent 'the community'[33]. It thus remained a controversial issue who could 'legitimately' represent the community.

[27] The IFC Handbook for preparing a Resettlement Action Plan can be found at: <http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_resettle/$FILE/ResettlementHandbook.PDF. Information on the 'Equator Principles' at: http://www.equatorprinciples.com/index.php/about-ep/about>.

[28] Protocole de d'accord passé entre la chefferie de Luhwindja et Twangiza Mining Sarl, unpublished document, 28/01/2010.

[29] See http://www.banro.com/s/CorporateResponsibility.asp#foundation [last accessed 23/09/2012]; interview with Banro Foundation, Bukavu, 10/02/2011.

[30] Protocole d'Accord passé entre les comités des creuseurs artisanaux des chefferies de Luhwindja et de Burhinyi et la société Twangiza Mining sarl relativement à l'évacuation de la mine de Twangiza. Unpublished document, 05/06/2010.

[31] Avenant n.2 à la convention minière du 17 février 1997, unpublished document, 13/07/2010.

[32] Codelu "Mot de circonstance à l'occasion de la remise du premier chaque entre Banro-communauté de Luhwindja", 10/08/2012.

[33] Letter by Mwami to Governor of South Kivu on "Message de la Codelu au Président Directeur Général de la société Banro", 08/2012. Letter by Intellectuels et amis du mwami on "Notre réaction aux impertinences continues dans la lettre vous addressée par la Codelu en date du 11 septembre 2012 », 21/09/2012.

But on the basis of these examples we may conclude that Banro has done a good effort to abide to transnational standards. The company is a medium-sized multinational that is not as well-known as the major corporations in the sector, such as BHP Billiton or AngloAmerican. Nevertheless, in the international specialized press, Banro is depicted by some as a model company, with “a community development program that would put many majors to shame, let alone other juniors" (Mineweb, 2007). The Banro case thus confirms an argument in the business and governance literature according to which multinational companies who build on reputation in order to finance their operations at international stock exchanges, and who are likely to be targeted by shaming campaigns, will make attempts to comply with transnational voluntary standards (Börzel and Thauer, 2013). Banro also attracts a lot of attention in South Kivu and eastern DRC more generally. International organizations, bilateral donor agencies and international NGOs have a strong presence in this post-conflict area and are closely watching the company’s actions. Therefore, Banro also publicly commits to due diligence and efforts aimed at combatting so-called ‘conflict minerals’[34].

However, despite the efforts described above, Banro was faced with fierce resistance from the population’s side. The latter heavily contested the 2010 Protocol of Agreement and the way it had been negotiated and implemented on two levels (interviews with community leaders, 10/2011; see Geenen and Claessens, 2013). First, there were deficits proper to the transnational standards and procedures. These were not always adapted to local conditions. In the context of its resettlement and compensation policy, for instance, Banro imposed a moratorium on the building of new constructions or the planting of new crops in selected parts of its concession, which made it difficult for people to continue their normal agricultural activities. Furthermore, extended families – with married children and daughters-in-law - often lived together in different housing structures on one plot of land. But these secondary building structures were not compensated by Banro. Even more problematic was the fact that Banro based its compensation scheme on the Congolese land code, according to which only an official land title – and thus not an ‘occupation’ as considered by customary land rights - entitled people to be compensated for the loss of land (Banro 2010, interview with lawyer 10/2011). As a consequence, families with a customary title, the majority of the peasant population, were not compensated for their land as such, but only for crop types being cultivated on the plot for more than six months and for primary building structures (interviews in Luciga 10/2011). By late 2011, at least 28 cases related to compensation had been brought to court in Bukavu, and many more problems are believed to exist, taking into account that few people have access to legal procedures (interview local NGO 10/2011). These findings confirm what Szablowski has argued with respect to the World Bank resettlement guidelines: transnational law is limited in its reach and applicability when it comes to local communities in contexts in which customary institutions and land rights are widely used but may be in conflict with state law (Szablowski, 2007).

Second, Banro’s community policies provoked resistance because local elites served as gatekeepers between the company and the broader population. These partnerships led to exclusive deals that did not benefit important parts of the population. In principle, the community was to be consulted on the implementation of local development projects. But the community forum that had been set up in 2009 was disbanded after the conclusion of the

[34] In its CSR reports (Banro, 2012 and 2013) Banro explicitly refers to the Voluntary Principles on Security and Human Rights, the Conflict Free Gold Standard of the World Gold Council and the OECD Due Diligence Guidelines for Multinational Companies.

protocols in 2010. Instead, the mwamikazi put a local development committee in place, which has been severely criticized. because it would consist of partisans of the mwamikazi only (interview civil society organization 09/2012). Obviously the selection of representatives for such committees is in itself a political process, as several authors have indicated in other cases (Ballard and Banks, 2003: 302; see also Reno, 2001; Hönke, 2012). It is difficult to identify to what extent Banro's management was aware of the clientelist practices used by the mwamikazi, the head of the local administration and local Banro personnel. We have argued above that one may assume that Banro did not actively set this up. At least the headquarters might not have been involved and not even aware for a while. However, it was the job of some local staff to closely monitor local events and they may have been involved in establishing the clientelist arrangements, or at least in tacitly accepting them. Overall, the company as a whole did not seem to monitor or question the implementation of community policies as long as they ensured more or less stable working conditions. Only when over time, the exclusionary arrangements did not prove sustainable and protests by parts of the local population increased, the company became more concerned. Other research supports this interpretation that multinational companies do use clientelist arrangements in order to maintain stable working conditions (see Reno, 2004; Hönke, 2012).

The local political power play also weighted heavily upon Banro's projects for job creation and the professional reintegration of artisanal miners. About 400 artisanal miners, who had been identified in a survey carried out in the artisanal sites, would participate in different professional training programmes. These programmes were to be executed by four local NGOs under the supervision of the Banro Foundation, with financial support from Banro. The selection of these NGOs, however, was also co-opted by local elites. At least two organizations were controlled by members of Codelu (LAV, 'Laissez l'Afrique Vivre' and ADMR, 'Action pour le Développement des Milieux Ruraux'). Another one was managed by the local catholic priest (ADEPED, 'Action pour le Développement des Peuples en Détresse') and the fourth by the mwamikazi herself (APEF). In addition to problems with the embezzlement of funds in one case (ADEPED), the overall number of people that have been trained was also quite limited in view of the total population traditionally active in artisanal mining, which amounts to 6,000 for the core area and up to 12,000 for the entire chiefdom (Geenen and Claessens, 2013). Thus the perception arose that participation in this reintegration programme was only for well-connected people, which again provoked resistance from the population's side.

Apart from these training programmes, the 2010 agreement for the compensation of artisanal miners also stipulated that 850 former artisanal miners could be employed by Banro. These would be 'relatively stable jobs', as the agreement specified, for a period of 12 to 15 months, corresponding to the period of construction of the factory. By mid-2011, however, almost all these unskilled workers had been laid off, as the exploration phase came to an end. As a reaction, hundreds of miners reoccupied the artisanal sites of Kaduma and Lukunguri, which had previously been closed by the company, in April 2011. In order to secure social peace, the company tolerated them for the time being, but the presence of private security guards reminded the miners of the fact that they were working in Banro's concession. The trespassing of artisanal miners into these sites can be interpreted as another form of protest against the company's policies, in a context where the majority of the population was directly or indirectly dependent upon artisanal mining activities (see Geenen, 2011).

We have shown in previous sections that the arrival of Banro in the Twangiza concession has reconfigured national and local politics and gave rise to a powerful alliance between local elites, the company and the national government. The protests against the way Banro dealt with compensation and resettlement demonstrated that this alliance compromised the company's compliance with CSR guidelines. Its commitment to transnational guidelines with respect to community policies benefitted the population, as the building of schools and hospitals and some of the compensation and resettlement efforts illustrate. However, it has so far also (re)produced an elite alliance for stability that is fairly exclusive and not perceived legitimate by an important part of the local population. Despite the company's development efforts, many local people who are negatively affected by the mining project feel frustrated and disadvantaged.

4. Conclusion

The concept of the 'global land grab' is often used in the context of large-scale land acquisitions for mass production and export of food and biofuels (Borras and Franco, 2011: 34). But in the mining sector we have observed similar phenomena. For the case of an industrial mining concession in South Kivu, this chapter analyzed the political dynamics and contestations that the large-scale land acquisition engendered. The 'land grab' in question implied reallocations of access to land, to resources, and to the revenues that flow from mineral extraction. Since the company we studied, Banro, has been the first one to start gold extraction in eastern DRC, the dynamics we outlined are highly relevant for the future of mining and land use in the region more generally. More large-scale land use by mining companies in the near future is likely to give rise to similar problems and conflicts as discussed in this chapter.

We have argued that the Luhwindja case first of all illustrated the reconfiguration of the Congolese state with the help of foreign direct investment. The return of industrial companies to South Kivu was part of a process of extending control by the incumbent government into areas previously out of their reach, partly because of geographical distance, but especially because of conflict. We argue that in this case, granting vast concessions to multinational companies was a strategy adopted by the Congolese state in order to (re)centralize control over mining rents. This extension took place through negotiations with local elites, such as the customary chiefs in Luhwindja. This brings us to our second main conclusion, being that these 'land grabs' also led to a reconfiguration of local politics. In collaboration with Banro, local elites used the opportunities opened up by the arrival of the transnational company for establishing their political power, and for gaining access to economic resources. At the same time, they sought to legitimize their position and constitute their authority. In these attempts they were endorsed by the company, which tried to establish effective control over its concession and to guarantee stable working conditions. These findings support the argument that multinational companies build on clientelist mechanisms in order to create stable working conditions (Hönke, 2012, 2013; Reno, 2001; Welker, 2009).

This does not mean that external investors are all-powerful and co-opt local elites as if the latter had no agency in these matters. The case of Luhwindja illustrates that local elites play an active part in negotiating and appropriating external opportunities. But 'the local elite' is not a homogeneous group, as we have seen, and the selective alliances between company and elite members result in serious power struggles at the local level. Elite members who are not included in the strategic alliance with the company may protest and contest the authorities in place in their own attempt to legitimate their position and gain access to economic benefits. Also 'local communities', this heterogeneous group of farmers, miners, traders and others, exercise some agency. This has been exemplified by the violent protests, barring of the streets, participation in the petition, and reoccupation of artisanal mining sites we described.

As opposed to other land conflicts discussed in this volume, the way multinational companies such as Banro use large chunks of land is mediated by transnational standards. We have shown that transnational voluntary guidelines and the discourse of corporate social responsibility to some extent shaped the way in which the impact of ‘land grabs’ on local livelihoods was managed, guaranteeing compensation and resettlement standards. However, the impact of Banro’s land use on local livelihoods has been ambiguous, and the effectiveness of transnational guidelines has been compromised by a number of factors. The chapter pointed to problems such as the inadequacy of transnational standards to local needs and practices, the contested role of gatekeepers and the exclusionary effects of clientelist politics allowing for the appropriation of corporate compensation and community engagement by local elites and company managers.

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