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## **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 granted to multinational companies were crucial in the *mise en valeur* of ‘vacant lands’ in the nineteenth- and early twentieth centuries (Vellut, 1983). More recently, a ‘new [resource] scramble for Africa’ has been observed (Southall and Melber, 2009), targeting primarily oil and mineral-rich regions. Resource-poor countries and emerging economies face a growing need to secure future supplies in non-renewable resources. As such resources are in high demand and becoming scarcer, multinationals continue to prospect for reserves and are seeking 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 clash with multinational mining companies over issues such as 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 now occurring all over the world, as demonstrated in 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).

The DRC is known for its large reserves of mineral resources, including over 10% of the world’s copper and 49% of the world’s cobalt reserves, situated mostly in the underground of the province of Katanga (USGS – United States Geological Survey, 2009). Moreover, almost a quarter of the world’s diamond reserves in terms of carats are located in Kasai; and an estimated 25 to 65% of global tantalum reserves (coltan) lie in the eastern provinces (World Bank, 2008). The eastern provinces also host substantial reserves of cassiterite (tin ore) and gold, although these are hard to estimate because few geological surveys have been conducted.

Since colonization, the Congolese economy has relied extensively on the industrial exploitation and export of raw materials (Bezy, Peemans and Wautelet, 1981; Geenen, 2011a). Mining companies such as ‘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, 2010,

2013). After independence in 1960, Mobutu sought to centralize political and economic power in the hands of the state and hence he nationalized some important companies. But in the mid-1970s industrial production dwindled as a result of a combination of factors, both 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) (Geenen, 2011a). At the same time, individual Congolese started to extract minerals in an artisanal way, as a way of coping with the ever intensifying economic crisis. Their artisanal production was smuggled out of the country through parallel and ‘informal’ trade networks and consequently generated no revenue for the state. By the mid-1990s, many industrial companies were facing bankruptcy and the state was forced to sell off a number of concessions to private investors (Kennes, 2002; Nest, Grignon and Kisangani, 2006). The 1996-97 and 1998-2003 wars eventually brought 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<sup>1</sup> and attendant Mining Regulations<sup>2</sup>. These laws were in line with the liberalization, privatization and industrialization policies that the World Bank had been promoting since the 1980s. 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 the provision of investment security (Mazalto, 2009). The Code recognizes artisanal mining as a production

mode, and provides for the designation of special ‘artisanal mining zones’ where miners’ cooperatives may apply for research permits. However, it also stipulates that such zones may be converted into an industrial concession if ‘a new deposit necessitating large-scale exploitation has been discovered’<sup>3</sup>. This implies that industrial companies ultimately have the right to take over artisanal mining zones, which is obviously a source of insecurity for the artisanal miners involved.

Since the end of the war, a number of companies have 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 output is now 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) – Congo’s gold deposits have become potentially profitable and thus increasingly attractive to foreign investors. A few companies have engaged in gold exploration activities, including AngloGold Ashanti in Ituri and Kilo Goldmines in Haute Uele (Van Puijenbroek, Mongo and Bakker, 2012), Loncor Resources in North Kivu and Casa Mining in South Kivu (Misisi). However, the first company to start effective gold production was the Canada-based multinational Banro Corporation. In South Kivu, Banro holds exploitation permits for a total of more than 2,790km<sup>2</sup><sup>4</sup> and further research permits for an even larger area<sup>5</sup>. In 2005, Banro started intensive exploration in Twangiza, a mine situated about 40km southwest of Bukavu, the provincial capital. The exploration phase, which focused primarily on the chiefdom of Luhwindja but extended into the neighbouring chiefdoms Burhinyi and Ngweshe, took six years. In November 2011, the first gold ingot was produced.

This makes Banro an important case study that can shed light on some of the dynamics induced by large-scale land use by multinational companies. These dynamics include tensions between transnational, national and local politics, as well as impacts on local livelihoods and cohabitation challenges with local communities. Such effects may also be expected to manifest themselves at many other mining sites in eastern DRC as more companies move towards production. Section two of this chapter presents two arguments concerning the reconfiguration of politics. First, we argue that selling mining rights to multinational companies and promoting industrial mineral extraction by a limited number of large companies is commonly associated with a reconfiguration of national politics. For the Congolese State, it constitutes a strategy for extending its governance into areas previously out of state control. Second, we propose that this strategy involves negotiations with local elites, including customary chiefs. Hence such land acquisitions also imply a reconfiguration of local politics. As argued in section three, these reconfigurations are shaped by transnational norms and regulations. 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 precisely 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, and May-July and September-October 2012<sup>6</sup>.

## 2. Mining companies, land and the reconfiguration of politics

This section revolves around two arguments. First, it is asserted that selling mining rights to international investors is conducive to a reconfiguration of national politics. Giving mining areas into concession to industrial companies enables the Congolese government to (re)centralize control over revenues from mineral extraction. In so doing, it also facilitates the extension of state control into areas previously out of state reach. In eastern DRC, the state has been a distant absentee for a long time. Yet, despite its dysfunctions, the state administration remains home to many powerful political players (Trefon, 2007). These take part in broader political, military and economic struggles, including struggles for control of the mining areas. The alliances between politicians at the national level and these local elites reflect the negotiated nature of the Congolese state (Hagmann and Péclard, 2010). Thus far the literature has focused mainly on the various strategies deployed by the state to establish control over distant territories (Boone, 2003). In this regard, research on the DRC has highlighted the role of state ideology, repression and clientelist networks – including customary chiefs – as mechanisms for keeping control over the country's vast territory (Young and Turner, 1985; Schatzberg, 2001; Englebert, 2003). However, multinational companies can also play a role in the expansion 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 of government over artisanal mining. The majority of artisanal production and trade currently occurs outside the official economy, especially in the case of high-value low-volume minerals such as gold<sup>7</sup>. Hence giving mining areas in concession to multinational mining companies can yield central government privileged access to mineral rents (Hönke, 2010; Reno 2001)<sup>8</sup>. 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. These elites will in turn 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 superseded by new relationships based on economic gain and wealth accumulation (Vlassenroot, 2004). Certain customary chiefs, for example, succeeded in repositioning themselves and were able to acquire 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 grab such opportunities and to turn negotiation processes over access to land and resources to their own advantage<sup>9</sup>. In the case of land given in concession to mining companies, local elites use their power and authority to benefit from the large-scale investments involved. 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) that they have helped negotiate and maintain. In the area under study, customary chiefs traditionally governed and distributed the land, thereby creating patron-client relationships and inducing dependency among 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). As the economic value of this land tends to increase with mining opportunities, the local chiefs will generally try to cash in (see also Borrás 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<sup>10</sup>. In the early 1990s, Sominki ('Société industrielle et minière du Kivu')<sup>11</sup>, which operated gold and cassiterite concessions in North and South Kivu, was looking for a buyer. The Canadian junior company Banro Corporation, specialising in exploration and in speculation on promising deposits, was interested but only in the gold concessions<sup>12</sup>. In the first instance, Banro concluded a partnership with the British firm of Cluff Mining, which provided most of the financial capital. Subsequently Banro negotiated with both the moribund Mobutu regime and rebel leader Laurent Kabila. The latter had launched the AFDL ('Alliance des forces démocratiques pour la libération du Congo') offensive in the East and he promised Banro that, if he were to seize power, he would respect the titles to the gold concessions. After months of negotiations and pressure, Banro managed to remove Cluff from the contract so that in February 1997, all of Sominki's concessions were eventually transferred to Banro<sup>13</sup>. Sominki was liquidated on 29 March 1997. On 6 May 1997, just a few days before Kabila took Kinshasa, a new company was created under the name of Sakima ('Société aurifère du Kivu-Maniema'), with 93% of the shares belonging to Banro and 7% to the Zairian state.

After the accession to power of Laurent Kabila, Sakima effectively started large-scale exploration works in Twangiza, the major mining site studied in this chapter. But the



company failed to honour any of its obligations towards former Sominki personnel and supply companies, resulting in a wave of protest. This prompted Laurent Kabila on 31 July 1998 to strip Banro of its mining titles and to establish a new state-owned company called Somico ('Société minière du Congo')<sup>14</sup>. This could be interpreted as a strategy on the part of the new regime to gain control of and centralize mining revenues. However, there was also a more fundamental, 'nationalist-inspired' rationale behind the move, as the Kabila regime aimed 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 land that he governed under customary law, and thus represented the 'traditional' rights holder, as opposed to the external investor. Two days after the creation of Somico, the RCD ('Rassemblement congolais pour la démocratie') uprising broke out, and it was not long before large parts of South Kivu fell to the rebels. Banro sided with the RCD rebels, while Somico allegedly supported local defence groups, Mayi-Mayi, and FDLR ('Forces Démocratiques pour la Libération du Rwanda')<sup>15</sup>, and received backing from the Kabila government. In other words, access to the gold mines had become the stake in a highly politicized and militarized conflict. Banro failed to fully control the concession and the gold mines were then alternately occupied by the abovementioned armed groups.

Banro's position only improved after 16 January 2001, when President Laurent Kabila was assassinated and succeeded by his son Joseph, who sought to collaborate with the company. Amidst the war, this could be seen as an attempt by the regime to re-establish control over the region. However, the new president also wanted to avoid having to pay USD one billion in damages to Banro as a result of a lawsuit that the company had successfully filed with the

United States Federal Court<sup>16</sup>. The rapprochement between both parties resulted in the signing on 18 April 2002 of a ‘gentlemen’s agreement’ whereby all titles and rights were given to Sakima (of which Banro owned 93%). Sakima Sarl now became a fully state-owned enterprise, retaining the rights to thirty-five tin concessions. Banro, for its part, as a private company, retained the titles to twelve gold concessions in Twangiza, Kamituga, Lugushwa and Namoya. The gentlemen’s agreement also extended the duration of the contract from twenty-five to thirty years and preserved the extensive tax holidays<sup>17</sup>.

The deal should be seen in the context of Kabila’s overall approach to the mining sector at the time. He embraced a policy of promoting privatization and liberalization with the aim of attracting investment by multinational companies, as was also reflected in the aforementioned Mining Code. This was part of an attempt to regain control over mining areas and to recentralize mining rents in the hands of the government (Hönke, 2010). Giving mining areas into concession to industrial companies also opened up the prospect of extending government control into areas previously out of reach, either because they had been occupied by rebel movements or because they were so distant from the capital. In the next section, we consider how the process at hand induced a reconfiguration of local politics.

## **2.2. Reconfiguration of national and local politics: Banro’s Twangiza concession**

The struggle over the mining concessions in Twangiza involved actors at the national, regional and local levels and had profound repercussions on political configurations, especially locally. As previously stated, 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 death of the mwami triggered a succession struggle, as the eldest son had not yet attained the age of majority and was residing in Europe<sup>18</sup>. The ‘bagingi’ or

elders appointed the mwami's younger brother Justin as regent and his widow Espérance Barahanyi as 'mwamikazi' or guarantor of the customs. The two would become embroiled in a fierce struggle for 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). However, Somico would never become 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 subsequently lost their jobs with the arrival of Banro, are still grateful to him for opposing the installation of 'foreigners'. According to their narrative, Justin's main concern was to 'make sure that any newly arriving company would be accountable to the community', meaning that it would create jobs and foster community development (interview with community leader 10/2011).

However, the war also drove local actors to enter into strategic military alliances. Justin contracted FDLR to provide personal security guards. He is also believed to have incited civilians to arm themselves and to set up a self-defence movement. At the time, the RCD, backed by the Rwandan regime, controlled many of the urban centres in the area and it also tried to obtain tight control over the mines. Yet it would never succeed in gaining full control of the gold sites, let alone 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 the 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, sometimes also cooperated with local traders in order to channel the precious

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

As previously mentioned, Joseph Kabila had, in the meantime, come to a new agreement with Banro and now intended to facilitate the company's effective control over the concessions. There were however a number of obstacles to clear. While the war had officially ended in 2003, large parts of South Kivu remained under the control of rebel groups. Hence, in July 2005, the Congolese army carried out a military operation whereby the FDLR was driven from Luhwindja. At the same time, Banro was effectively installed and subsequently protected by special military forces, who also took violent action against community members suspected of sympathizing with FDLR. Justin fled to Kinshasa. Banro was faced with a rather hostile environment when it started to build its first exploration camp in Luhwindja in October 2005. However, the company had just announced a massive exploration programme and had listed its shares with the New York and Toronto stock exchanges, so investors needed to be reassured that the region was safe and ready for investment. It would therefore be in the interest of the company if the local situation could be appeased, and it was felt that an alliance with loyal members of the local elite would further that cause.

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. He emerged from the 2006 elections as a member of the country's national parliament, but it was not long before the Supreme Court cancelled his mandate because of electoral irregularities. His supporters claim that the ruling was part of an obvious ploy to

sideline him (interview 06/06/2012), and Justin retained his popularity among a section of the population.

The mwamikazi also took up a political position and returned to Bukavu. She was co-opted in the provincial assembly after the 2006 elections. The electoral system provided for thirty-two directly elected deputies and four co-opted representatives of the customary chiefs, to be nominated by the president. As the mwamikazi maintained excellent relations with the president himself, as well as with his political counsellor and current governor of South Kivu Marcellin Cishambo, she was appointed to the provincial parliament (personal communication 15/01/2013). Apart from fulfilling her political functions, the mwamikazi was also active in business and in development projects<sup>19</sup>. She set up a subcontracting company that provided day labourers to Banro, Cinamula, with the specific aim of creating employment for the population in Luhwindja. She was also a majority shareholder in 'Chez Bibbas', a subcontractor that built houses for the resettled population. She was involved in the construction of the Nabuntalaga market through a company called Arcadis, as well as the market of Cinjira (the resettlement village) and a primary school at Luchiga, the hill where the Banro plant was located. Her involvement in development projects went through APEF ('Action pour la promotion des enfants et de la femme'), an NGO that she had created and a privileged partner of Banro's, and through her membership of the local committee of the Banro Foundation and the Community Forum that negotiated 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 accused the mwamikazi of merely looking after her own interests.

This also held for the head of local state administration, who likewise 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 a powerful man who was ‘like a king’ (interview local NGO 10/2011). He was able to stamp his mark on some of the company’s investments in community development, and was allegedly also a key gatekeeper of employment at Banro. In 2010, he appeared before court and was ordered to pay a fine to a man whose house had been demolished without the latter’s consent. The sentence was however never implemented and the victim’s compensation money had not been paid yet a year after (interview victim 02/11/2011). These feelings of marginalization and frustration among the population were reinforced and further politicized in conflicts between members of the local elite.

Indeed, the mwamikazi’s controversial position gave rise to local opposition. In addition to the succession dispute with Justin, a decade-old dispute with another family in Luhwindja over who was the legitimate mwami resurfaced (interview throne pretender 10/10/2012). Moreover, in late 2011, a petition calling for the mwamikazi’s abdication was launched by a local human rights organization called UJCC (‘Union des jeunes Congolais pour le changement’)<sup>20</sup>. They accused her of violating customary law, disrespecting the population, serving personal business interests and embezzling money. The petition, bearing 4,044 signatures, was submitted on 24 January 2012. On 17 March 2012, two leaders of UJCC were arrested in Bukavu. The human rights organization 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 ha[d] lost confidence in the mwamikazi’<sup>21</sup> and tried to represent

themselves as spokespersons for ‘the community’, particularly those without a voice. However, the group was obviously also pursuing certain private interests. Some Codelu members had, for example, previously won contracts for construction work for Banro, and now felt they were losing access to these opportunities because of the growing power of the mwamikazi. Others were prominent leaders of NGOs, and possibly had set their sights on the development funds flowing through the Banro Foundation. The opposition forces also gained support from Kantintima, the governor of South Kivu under RCD rule, a former minister of agriculture and member of the national parliament (interview with local elite 06/06/2012). He allied himself with the opposition 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 suppressed by the head of the local state administration, assisted by the national police, and nine more people were arrested<sup>22</sup>. In the meantime, forty-two individuals had submitted a complaint with the tribunal, on grounds that their names were on the petition while they had never signed. It was also alleged that the petition contained fictitious names and names of underage persons. More protests followed in Luhwindja, and on 28 April eight prisoners were released. Both Codelu and the mwami claimed credit for these releases<sup>23</sup>. The three remaining prisoners were accused of forgery and the unlawful use of signatures. Their case was introduced on 15 May 2012. After hearings in August and September 2012, the defendants were found guilty of forgery and sentenced to a year in prison and five years on probation (interview with lawyer 02/10/2012).

We may conclude from the foregoing that, upon its installation, Banro unwittingly stirred up the hornets’ nest of local politics in Luhwindja. In order to create a stable working

environment, it aligned itself with selected members of the local and national elites. But in so doing, it at once contributed to the marginalization of competing voices at the local level, nourishing grievances and frustrations<sup>24</sup>. While the company had 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 feared that they had 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 in order to reduce tensions within local communities, companies may choose to align themselves with local elites. Local elites may in turn use their power and authority to gain access to resources. In this instance, the mwamikazi experienced difficulty in gaining acceptance 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 were strategies to augment and legitimize her power, and to gain access to resources. However, her legitimization strategies were only successful in the eyes of some. She received the support of part of the community, and many people were appreciative of her efforts to secure investment in schools, hospitals and roads. Another part of the community, however, openly challenged her position and accused her of embezzlement and abuse of power. The actors opposing the incumbent local authorities, such as Codelu and UJCC, sought access to the financial and development opportunities created by Banro's presence. However, they also sought to renegotiate the legitimate order around industrial mining.

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



In comparison to the issues outlined in the other chapters of this book, land-use management by mining companies is shaped more by transnational norms and regulations, particularly the notion of corporate social responsibility. However, corporate social responsibility is not clearly defined and may therefore include all sorts of local social investment initiatives by the company concerned. In fact, the notion has given rise to a veritable ‘industry’ (Welker, 2009), with its own consultancies, dedicated journals and websites, purposely designed initiatives, and fee-based certification and study programmes. Moreover, it can be argued 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 certain ‘practical norms’, to use Olivier de Sardan’s (2008) concept, that engender different sets of ‘normal’ behaviour (Hönke, 2013). In the local arena, CSR guidelines and voluntary standards have not guided all or even most of company agents’ practices. Nor did they necessarily guide the practices of actors closely associated with Banro and entrusted with implementing its security and development policies. Consequently, the case shows that negative effects of the mining project prevailed and remained uncompensated for, and that CSR and voluntary standards could have been better implemented and monitored<sup>25</sup>. In fact, significant parts of Banro's CSR activities failed to live up to the transnational standards for companies, as some increased the power of a small group of elites and mostly benefited these people and their clients with whose support the new extractive order in Luhwindja was constructed. 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.

In the context of this chapter, the term ‘land grab’ refers to Banro’s taking control of the Twangiza concession from 2005 onwards, as a result of which the local population effectively lost access to the land. However, the notion of a single land grab does not accurately capture reality in this instance. When Banro acquired the research permits on the gold concessions, the company was granted the right to prospect for gold within this perimeter, within a defined period of time. As the exploration programme proceeded, Banro targeted specific sites for drilling, for setting up camp and for tracing roads. This way, it initiated a whole series of smaller ‘land grabs’, each of which drove away farmers or artisanal miners whose livelihoods depended on that land. In this early period (2005-2009), there were no general agreements on resettlement and compensation, so people affected by these small land grabs were not systematically indemnified. This of course led to protest and open resistance from local communities, inspired in part by a more general resentment of the company for the political and historical reasons outlined above. A teacher and fierce opponent of Banro explained why they frequently took the streets during this period:

Because our rights were being violated. We pulled out all the stops: we opposed Banro, we blockaded the roads, we passed on information to the radio [...], we told them we were ready to die. Because my land is my life! (interview with a community leader 01/2011).

Members of the local community thus base their land-use claims, or at least their entitlement to compensation for its loss, on ‘traditional’ rights and reference to their livelihoods (Geenen and Claessens, 2013). From 2009 onwards, Banro intensified its activities, constructing a factory and generally moving 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 by drilling, and the environment was affected through erosion, landslides, and the construction of water dams. In the core area, Banro identified 463 households – some 2,000 to 2,500 individuals out of a total population of 52,000 in Luhwindja – who needed to be moved to a ‘resettlement site’ (interview with the Banro

community relations manager 01/2011). In addition, artisanal mining sites – both underground and alluvial – were closed down. Civil society organizations estimate that the number of artisanal miners working in this core area amounted to 6,000 individuals (OGP – ‘Observatoire gouvernance et paix’, 2008)<sup>26</sup>. Overall, Banro’s activities directly and indirectly affected the livelihoods of thousands of people: miners and their families, but also 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) to conduct an initial social and environmental impact study based on the IFC’s (International Financial Corporations) Environmental and Social Performance Standards. Banro also committed to respecting the IFC Guidelines for Resettlement and Compensation (see Szablowski, 2007a, 2007b) and the Equator Principles, a voluntary standard for banks to manage risks in project financing (interview with Banro’s community relations manager 01/2011)<sup>27</sup>. 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 was split up into four committees, devoted to 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 eventually signed in January 2010<sup>28</sup>. The agreement stipulated that the houses (main structures) would not be compensated for in cash, but would be replaced with new constructions in another location, and built *at least* to the same standards as the destroyed

homes. 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<sup>29</sup>. 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 livelihoods. 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 four hundred 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<sup>30</sup>.

With respect to local development, the Congolese Mining Code and the 2010 annex to the agreement between Banro and the government stipulated that Banro should pay to the Congolese state an annual contribution of 4 per cent on its net revenues and 1% royalties, starting from the production phase. The contract specified that the 4% should go to 'infrastructural and development projects in the communities where Banro operates'<sup>31</sup>. The fact that it was not specified through which mechanisms this payment would take place and precisely which communities should benefit gave rise to serious disputes, particularly 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 supervise how the money should be managed and spent<sup>32</sup>. This was fiercely contested by the mwami and his allies, who insisted that Codelu had no right whatsoever to represent 'the community'<sup>33</sup>. It thus remained a controversial issue who could 'legitimately' represent the community.

Nonetheless, on the basis of these examples, we may conclude that Banro made quite some effort to abide by transnational standards. The company is a medium-sized multinational that is probably less well-known than the leading corporations in the mining sector, such as BHP Billiton or AngloAmerican. Yet in the international specialized press, Banro is portrayed 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 that 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 an effort to comply with transnational voluntary standards<sup>34</sup>. Banro has also attracted 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’<sup>35</sup>.

However, despite the efforts described above, Banro was faced with fierce resistance from the local population. 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 cultivation of new crops in selected parts of its concession, which made it difficult for people to continue their regular agricultural activities. Furthermore, extended families – with married children and daughters-in-law – often lived together in separate accommodation on a single plot of land. However, these

secondary structures were not compensated for 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 – not a mere ‘occupation’ as recognized under customary land rights – entitled people to compensation for the loss of land (interview with lawyer 10/2011)<sup>36</sup>. As a consequence, families with a customary title, the majority of the peasant population, were not compensated for their loss of land, but only for the loss of crop types having been cultivated on the plot for more than six months and for the loss of primary buildings (interviews in Luciga 10/2011). By late 2011, at least twenty-eight compensation-related cases had been brought before the court in Bukavu, and many more problematic situations are likely to exist, considering that few people have access to litigation (interview with 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 where 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 population at large. These partnerships led to exclusive deals that bypassed large parts of that population. In principle, the community was to be consulted on the implementation of local development projects. However, the community forum that had been set up in 2009 was disbanded after the conclusion of the protocols in 2010. Instead, the mwamikazi installed a local development committee, which has been severely criticized for being made up exclusively of partisans of the mwamikazi (interview with civil society organization 09/2012). Obviously the selection of representatives for such committees is in itself a political process (Ballard and Banks, 2003: 302). It is difficult to ascertain to what extent Banro’s management was aware of the clientelist practices

employed by the mwamikazi, the head of the local administration and local Banro personnel. We have argued above that one may assume Banro did not actively seek to influence local politics in this way. At least, the headquarters may not have been directly involved and, initially, may not have been aware. However, some local staff members were entrusted with closely monitoring local events, and it is not inconceivable that these individuals were involved in establishing the clientelist arrangements, or may at least have tacitly accepted them. Overall, the company seems not to have monitored or questioned the implementation of community policies as long as they ensured more or less stable working conditions. It was not until the exclusionary arrangements proved unsustainable and protests by parts of the local population grew stronger that the company became more concerned.

The local political power play also weighed heavily on Banro's projects for job creation and the professional reintegration of artisanal miners. About four hundred 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 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 ultimately received training was also quite small relative to the total number of people involved in artisanal mining, namely 6,000 in the core area and up to 12,000 in 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 prompted popular protest.

Apart from these training programmes, the 2010 agreement for the compensation of artisanal miners also stipulated that 850 former artisanal miners would be employed by Banro. These would be 'relatively stable jobs', as the agreement specified, for a period of twelve to fifteen 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 gradually came to an end. In response, hundreds of miners reoccupied the artisanal sites of Kaduma and Lukunguri, which had been closed down by the company in April 2011. In order to maintain the social peace, the company tolerated them for a while, but the presence of private security guards served as a reminder to the miners that they were working in Banro's concession. The trespassing of artisanal miners into these sites may 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, 2011b).

We have shown in previous sections that the arrival of Banro in the Twangiza concession resulted in a reconfiguration of 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 handled the issues of compensation and resettlement demonstrate that this alliance compromised the company's compliance with CSR guidelines. Its commitment to transnational guidelines with respect to community policies has 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 as 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 continue to 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 the mass production and exportation of food and biofuels (Borras and Franco, 2011: 34). However, similar phenomena are observed in the mining sector. In this chapter, we have examined the case of an industrial mining concession in South Kivu, focusing in particular on 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. As Banro, the company involved, was the first to commence gold extraction in eastern DRC, the dynamics outlined in this chapter 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.

We have argued that the Luhwindja case first of all serves as an illustration of 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 its reach, partly because of geographical distance, but mostly through conflict. We propose that, in this case, the granting of vast concessions to multinational companies was part and parcel of a strategy adopted by the Congolese state and designed 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, namely 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 and consolidating 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. The case study illustrates how company practitioners together with local elites sought to fabricate social peace and stability through clientele practices. Two mechanisms were identified in this respect: controlling the distribution of economic opportunities in order to co-opt parts of the local population, and manipulating representation in institutions on which participatory community engagement is built. Such clientele practices remain an integral part of the ‘hybrid regime of security practices’ (Hönke, 2013) that multinational companies and other local and transnational actors enact in order to protect industrial mining sites.

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 may give rise to 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 ruling authorities in an attempt to legitimize their own positions and in order to gain access to economic benefits. Also ‘local communities’ – a typically heterogeneous group of farmers, miners, traders and others – exercise some agency. This is exemplified by the violent protests,

barring of the streets, participation in the petition, and reoccupation of artisanal mining sites described in the course of this chapter.

Unlike in other land conflicts discussed in this volume, the manner in which 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 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 ambivalent, and the effectiveness of transnational guidelines has been compromised by a number of factors. The chapter has pointed to two problems in particular: the inadequacy of transnational standards to local needs and practices and their coexistence with other 'normal' ways of fabricating local order that allow for the appropriation of corporate compensation and community engagement by local elites and company managers.

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<sup>1</sup> Loi n° 007/2002 du 11 juillet 2002 portant sur le Code Minier (Mining Code).

<sup>2</sup> Décret n° 038/2003 du 26 mars 2003 portant sur le Règlement minier (Mining Regulations). For a detailed analysis of the laws and policies, see Mazalto, 2009.

<sup>3</sup> Mining Code, T. 4, Ch. 1, Art. 110.

<sup>4</sup> Divided as follows: 1216 km<sup>2</sup> for Twangiza Mining, 635 km<sup>2</sup> for Lugushwa Mining, 766 for Kamituga Mining and 172 for Namoya Mining. Another small part of their concession lies in Maniema province.

<sup>5</sup> By comparison, there are seven artisanal mining zones in South Kivu, with a total surface area of 219km<sup>2</sup>. Hence most artisanal miners – there are estimated to be 100,000 to 200,000 in South Kivu – do not work in these zones, but outside or inside industrial concessions (World Bank, 2008: 56).

<sup>6</sup> The authors wish to thank the researchers at CEGEMI (Centre d’expertise en gestion minière), a project at the Catholic University of Bukavu sponsored by VLIR (Flemish Interuniversity Council [Vlaamse Interuniversitaire Raad]) for their help with the fieldwork.

<sup>7</sup> It is for example estimated that 90 to 95% of the gold from the eastern provinces is smuggled out to neighbouring countries (Garrett and Mitchell, 2009: 32).

<sup>8</sup> 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; Tangri, 1999.

<sup>9</sup> On elite capture in other contexts, see Peters, 2004; Wong, 2010.

<sup>10</sup> This section is based on a number of documents, letters and notes from the personal archives of Serge Lammens, former Administrator-General Director of Sominki. See de Faily, 2001.

<sup>11</sup> The company was 28% state-owned, 72% privately owned.

<sup>12</sup> Sominki (1996). ‘Procès-verbal de la quarante-huitième réunion du Conseil d’Administration tenue à Kinshasa le samedi 10 août 1996’. Unpublished.

<sup>13</sup> ‘Convention minière entre la République du Zaïre et la Société Minière et Industrielle du Kivu “Sominki” et Banro Resource Corporation’, 13 February 1997.

<sup>14</sup> 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.

<sup>15</sup> Kabila’s former allies Uganda and Rwanda turned against him in 1998 and supported the RCD rebellion in the East, which eventually led to RCD occupying a large part of the Congolese territory. The Mayi-Mayi were local defence groups that fought against foreign occupation. However, there was also FDLR activity in the East.

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FDLR is made up of Hutu rebels who fled Rwanda after the genocide and whose presence in Congo was used by the new Rwandan regime as a justification for invasion. Alliances between the different military groups were unstable and violent confrontations and atrocities against the population were frequent.

<sup>16</sup> 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>. [Date last consulted: 20 January 2015]. It proclaimed itself incompetent in this case in 2000 and Banro subsequently turned to the US Federal Court in 2001, invoking the 'Foreign Sovereign Immunities Act'.

<sup>17</sup> 'Avenant n. 1 à la convention minière du 13 février 1997'. Unpublished document, 18/04/2002.

<sup>18</sup> Naluhwindja was murdered in December 2000 in France, in mysterious circumstances. Some speculate that Banro was involved. It has also been suggested that he was smuggling minerals or that it was a personal reckoning.

<sup>19</sup> 'Pétition de la population de Luhwindja contre Madame Espérance M'Baharanyi La Namunene' (2012).

<sup>20</sup> Letter to the President on 'Pétition de la population de Luhwindja contre Madame Espérance M'Baharanyi La Namunene,' 2012.

<sup>21</sup> Letter from Codelu to Banro, 'Retrait de la confiance de la population de Luhwindja à Madame Espérance M'Baharanyi,' 28/03/2012.

<sup>22</sup> '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.

<sup>23</sup> '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 août 2012,' 10/08/2012.

<sup>24</sup> See Hönke and Thomas (2012) for a broader discussion of potential unintended consequences and externalities of companies' activities.

<sup>25</sup> We do not deal with this matter further in the present chapter, but for a discussion on the shortcomings of transnational standards, see for instance Hönke and Thomas (2012).

<sup>26</sup> A survey that was carried out jointly by Banro and the Congolese government for the purpose of listing the artisanal miners in the targeted area identified only 1,267 individuals. However, many miners told us they did not register as a resistance strategy.

<sup>27</sup> 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](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_resettle/$FILE/ResettlementHandbook.PDF) [Date last consulted: 20 January 2014].

Information on the 'Equator Principles' at: <http://www.equatorprinciples.com/index.php/about-ep/about> [Date last consulted: 20 January 2014].

<sup>28</sup> 'Protocole d'Accord passé entre la chefferie de Luhwindja et Twangiza Mining Sarl.' Unpublished document, 28/01/2010.

<sup>29</sup> See <http://www.banro.com/s/CorporateResponsibility.asp#foundation> [Date last consulted 23 September 2012]; interview with Banro Foundation, Bukavu, 10/02/2011.

<sup>30</sup> '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.

<sup>31</sup> 'Avenant n. 2 à la convention minière du 17 février 1997.' Unpublished document, 13/07/2010.

<sup>32</sup> Codelu 'Mot de circonstance à l'occasion de la remise du premier chèque entre Banro et lacommunauté de Luhwindja', 10/08/2012.

<sup>33</sup> Letter from Mwami to the 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 adressée par la Codelu en date du 11 septembre 2012,' 21/09/2012.

<sup>34</sup> See for instance Börzel and Thauer (2013).

<sup>35</sup> In its CSR reports (Banro, 2012, 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.

<sup>36</sup> 'Barème des taux d'indemnisation et modalités de remplacement des biens immobiliers.' Unpublished document, 2010.