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Different faces of access control in a Congolese gold mine

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Mukungwe is a gold mine in eastern DRC, where mineral resources are commonly labelled ‘conflict minerals’. Although Mukungwe’s history has been characterized by conflict, we do not analyse the conflict here as a mere example of a mineral resource conflict. This article offers a more contextual understanding, starting from a detailed ethnographic and historical account and inspired by the literature on access control. In this sense, violence is understood as but one of the mechanisms of access control. Based on ethnographic and archival research, this article offers insights into the narratives and practices of the conflict’s key players.

Keywords: Gold mining, conflict minerals, conflict, access control, Democratic Republic of Congo

Introduction

The link between mineral resources and conflicts has been extensively discussed in the literature, starting with Collier and Hoeffler’s thesis that the abundant presence of natural resources increases the probability of civil war, yet ultimately resulting in a body of mixed evidence¹. Many authors however accept that the greed for mineral resources does play a role in the persistence, intensity or duration of conflicts as it changes the opportunity structure for armed actors and makes the continuation of war economically beneficial². This is especially the case for ‘lootable’ resources that are easily accessible, relatively simple to extract and control and yield large financial returns³. The case of the eastern Democratic Republic of Congo (DRC) appears to neatly fit this model. In the late 1990s, mineral exploitation and trade became integrated in a ‘war economy’⁴ in which rebel groups, foreign armies and the national army have been fighting over control of mining sites and trade routes. As a consequence, the minerals that are found in this region (gold, tin, tantalum, tungsten) are frequently labelled ‘conflict minerals’. Since the security situation is not yet stable and human rights violations are still legio, the ‘conflict minerals’ label is used until today, and has in recent years provoked the implementation of numerous legal and technical initiatives aimed at halting the trade in these contentious minerals, such as the American Dodd-Frank law or traceability and certification initiatives⁵.

Academic researchers, including the first author of this article, have argued that these legal and technical approaches are not only facing a number of practical challenges related to feasibility, accessibility and capacity, but they are also based on a misreading of the situation on the ground⁶. First, the greed discourse establishes a narrow causal link between minerals and conflict, but a) this neglects other structural conflict causes and triggers (political, identity-based, land-related etc.); b) revenues from minerals fund activities other than conflict as well; and vice-versa, c) armed groups also derive rents from non-mineral activities such as road blocks, agriculture and trade in other commodities. Second, the restricted focus on conflict minerals tends to generalize from selected cases and to neglect local contextual elements.

Third, it does not have enough consideration for the historical context in which informalisation and militarisation emerged, nor for broader governance dynamics.

This article aims to contribute to this argument and extend it by focusing on the history of Mukungwe, a conflict-ridden gold mining site in South Kivu province. Yet instead of analysing the conflict in Mukungwe as a mere example of a mineral resource conflict, this article offers a more nuanced and contextual understanding, starting from a detailed ethnographically and historically inflicted account and inspired by the literature on access, exclusion and control. In this sense, conflict and violence are understood as but one of the mechanisms of access control. In other words, revenues from minerals are used to establish and maintain control, but not necessarily through violence alone. As mechanisms may consist of both actions and speech, we focus our analysis on the *narratives* of the conflict's key players as well as on their *practices* and the strategies they use to establish control over resources and people. We consider narratives as utterances and discourses with a strategic goal. Practices are defined along the same line, as actions with political and strategic implications.

Our research is based on ethnographic fieldwork (October 2011 and May 2012), follow-up email conversations and archival data (documents, letters, court cases). Unraveling local histories in unstable institutional (post)-conflict environments such as eastern DRC is a true challenge. During our research, we were confronted with conflicting accounts, public and hidden power plays and strategic agendas. Therefore, our article does not intend to factually reconstruct history. We rather want to analyze actors' strategies and logic in order to make an argument about access, control and exclusion. We aim to demonstrate how their narratives and practices not only frame the conflict, offering us a detailed understanding of access and exclusion mechanisms, but also contribute to the rearrangement of power and authority structures. Such an analysis allows going beyond the simplistic causal link between the mineral extraction and conflict. By focusing on these local yet regionally connected power struggles, we try to offer a counter-narrative to the dominant ahistorical and reductionist understanding of conflict over mineral resources. In the next section we introduce our conceptual framework. After that, we analyse different faces of access control across Mukungwe's history, using a chronological approach.

Access, control and exclusion

We take the literature on access, control and exclusion as a starting point. If access is the ability to benefit from a resource, control is the ability to facilitate or exclude other people's access. According to Hall et al⁷, all instances of land access imply some kind of exclusion. By focusing on ability, the attention is drawn to a wide range of power relations and norms that can constrain or enable actors to benefit from resources. 'Power' is thus crucial in this literature and its interpretation goes back to a Marxist tradition in political economy that differentiates between those who possess the means of production (the ruling bourgeoisie in capitalism) and those who labour with other people's capital or means of production (the proletariat). This is translated into a distinction between 'access maintenance' (the ability to keep your own resource access open) and 'access control'. Yet in access theory this does not automatically manifest itself as a class difference, as one individual may hold 'bundles of powers' which involve both mechanisms for maintenance and control⁸. Such mechanisms have been discussed

in earlier applications of access theory in political ecology⁹. In this article we focus on the mechanisms for access control that are used by some of the protagonists in the Mukungwe conflict. These protagonists include customary chiefs, landowners, state agents and military actors; in short, we call them ‘local elites’. They are able to establish a control over lucrative resources and exclude other groups from accessing these, a process commonly known as elite capture¹⁰. In turn, the revenues from these resources are used to maintain control, but also to consolidate their power base and try to establish – through a legitimisation of their power - authority¹¹. Land or resource conflicts are thus not solely about land and resources, but also about power and authority.

The question remains as to *how exactly* elites establish control and exclude people, in other words, what mechanisms they use. Two broad and to a large extent overlapping categorisations have been proposed. Peluso and Lund¹² identify four mechanisms: privatisation, legalisation, territorialisation and violence. Hall et al¹³ talk about market, regulation, legitimisation and force. Privatisation or market refers to the commodification of natural resources and the privatisation of public spaces. It creates exclusion through setting up financial barriers, creating enclosures and incentivising people to lay individual claims on land. Those who do not dispose of sufficient financial capital are excluded. Legalisation, or regulation, is in many ways closely connected to the dynamics of privatisation, but is more ‘subtle’. It does not directly exclude people without financial capital, but rather those without legal titles that are backed by state law. Often, this comes down to the poor, the subordinate, those who do not have the capacity to conform to the rule of law. This may be because of financial reasons, but also because of social, cultural or political reasons, or because they do not have the necessary relations. So the adherence to the idioms of law and formality in fact legalizes the dispossession of the poor. Legitimisation is a related mechanism, but it refers to the *moral basis* on which exclusionary claims are made. This way, it does not refer to legality, but to legitimacy.

Territorialisation refers to social actions and claims that aim at controlling space as well as people in that space, combining different techniques and policies of classification, registration and mapping¹⁴. In this sense, such claims and actions intend to ‘governmentalize’, in the sense of Foucault¹⁵, meaning to control and discipline the subjects within that space through a very complex form of power which is not imposed top-down, but which filters through society in the form of disciplinary institutions, knowledge and discourses. Discourses of ‘identity’, ‘belonging’ and ‘ethnicity’ may be part of this. According to Geschiere and Jackson¹⁶, the term ‘autochthony’, which has frequently been used in Sub-Saharan Africa, literally implies ‘an origin of the soil itself’ and is ‘by inference a direct claim to territory’. It often translates into a claim to particular benefits or positions and is used as an instrument to mobilize support. The last mechanism implies the use of violence, force, coercion, threat or ‘bare power’, usually without a moral basis and thus not ‘legitimate’. In the literature on resource conflicts, the violence mechanism usually takes centre stage, yet our analysis will illustrate how it is closely connected to all the other mechanisms. We will indeed refer to all abovementioned mechanisms, but there is one critical point that is not sufficiently addressed in these categorisations, namely the relational mechanism. Reviewing the recent literature on land control, Peluso and Lund¹⁷ find that ‘today’s landlords are more likely to be corporate or state actors rather than local elites’. Although we agree that the actors involved in land control are

very diverse, we also think it is important to highlight the fact that there are coalitions, networks of actors who work together in an attempt to access and control land. In this sense, local elites often work together with state and corporate actors, as our case study will demonstrate. The elites build up constituencies through mobilizing popular support and making alliances with political and military power holders at the local, national and regional level. Such alliances are mostly facilitated by financial means; in other words, they make use of what is commonly called corruption. Such alliances are also strategic and thus also shift in view of the broader political economy.

Setting the stage: Congo's mining history

Before digging into the history of the Mukungwe gold mine, we need to highlight some aspects of this broader political economy¹⁸. Congo's mining history has been characterized by both industrial and artisanal mining. Having started in the colonial period, industrial mining was responsible for a large share of the state's budget until the late 1970s; and since a few years this has again been the case. In the 1980s however, artisanal mining began to spread as a result of a massive economic and financial crisis caused by Mobutu's neo-patrimonial policies, combined with fluctuating international commodity prices. In 1982 it was also legalized. The 'rush' for the artisanal mining sites still intensified during the 1998-2003 war, when industrial mining had come to a complete standstill and artisanal exploitation provided a viable livelihood and in some cases also relative security, to hundreds of thousands of young men, but also women and children. At the same time, artisanal mining and trade became integrated in a regional war economy, as mentioned in the introduction. After the end of the war in 2003, large-scale mining companies, encouraged by the 2002 Mining Code that stimulated foreign private investment, regained their interest in the DRC's mineral deposits, first in the copper and cobalt-rich province of Katanga, later particularly in gold in the eastern Kivu provinces. In the meantime, artisanal miners are working in hundreds of sites which may lay outside or inside attributed industrial concessions. For many years, these artisanal sites have been governed by their own rules, based on a flexible interpretation of the law and on illegal taxation practices by local elites. Customary chiefs occupy a particular position as they still cherish their role as managers of the land - their position in land management is characterized by legal ambiguity, but in practice customary arrangements persist. Consequently, they commonly levy taxes and contribution on artisanal production and trade in minerals¹⁹.

Mukungwe is the name of a village, situated in the locality of Mushinga, in Ngweshe chiefdom. These administrative divisions coincide more or less with customary boundaries: a locality is governed by a *chef de groupement*; a chiefdom by a king or *mwami*. The superior administrative layers are the territory (in this case Walungu) and the province (South Kivu), which are governed by elected representatives²⁰. Near the village, a miners' camp was built. It basically was a collection of a few hundred huts, restaurants, hotels and shops without any provision of water, sanitation or electricity; and was frequently referred to as Maroc. The population here consisted in majority of young men coming from neighbouring localities and chiefdoms, or from cities such as Bukavu, South Kivu's provincial capital. At the time of our fieldwork, 2011-2012, approximately 200 gold mining shafts, of which only a few were operational, were dispersed over two main hills: Kalanga and Lukwera (commonly called Kalazi). Along the Nyantanda river, alluvial gold exploitation was taking place. The yearly

production was figured to be between 50 and 100 kilogrammes, with an estimated number of 3000 to 5000 artisanal miners working underground and in rivers²¹.

Faces of access control in Mukungwe

1970s-1980s

Access to land was traditionally governed by the *kalinzi* system, a customary contract that implied tight hierarchical relationships between the *mwami* as custodian of the land and his subjects²². Adult men could give the *mwami* a symbolic payment, the *kalinzi*, mostly in the form of cattle. By doing so, they became political subjects of the *mwami* and obtained non alienable inheritable user rights over a plot of land. Nonetheless, user rights could also be taken away in case the land was abandoned or abused²³. This centralized top-down governance structure created subjects and rigid patron-client relationships based on the distribution of and the access to land.

In the 1940s Chunu Tukuwa is said to have paid the *kalinzi* to the *mwamikazi* (wife of the deceased *mwami* of Ngweshe chiefdom)²⁴. By this act, he acquired user rights over Lukwera hill, which were again confirmed by his son and heir Chunu Bagayamukwe at the time when Constantin Kurbengamuzimu had become chief of Mushinga locality. In addition, Chunu Bagayamukwe reportedly acquired the user rights over Kalanga hill. In this latter hill, gold was discovered in the late 1970s. Both Chunu - the customary land owner - and Kurbengamuzimu - the customary chief - immediately placed their claims on the hill. These claims were based on contentious interpretations of customary law. A first issue on which customary law did not provide a clear answer, was the question whether the payment of the *kalinzi* also gives the customary owner the right to extract from the subsoil. Second, we have earlier referred to the practice that customary chiefs share in the profits of gold exploitation and trade by levying taxes, which exists in many mines. Based on this practice, Kurbengamuzimu required Chunu to give him a share in the output.

But already in the early 1980s, the protagonists started to invoke state law and rely on official institutions as well. In July 1980, the chief of the local mining division – the public service in charge of administering the mines - wrote that two individuals supported by Kurbengamuzimu were exploiting gold in Mukungwe. He considered this problematic since Chunu ‘enjoys the plenitude of his customary rights’²⁵ on this land. This framing is important, it is not clear what it means to ‘enjoy the plenitude of your rights’. One year later, Kurbengamuzimu applied for a gold exploitation permit, as artisanal mining had now been legalized by Mobutu. Chunu however appealed this request, saying that Kurbengamuzimu ‘stripped him of his rights whereas he filled all the customary requirements, particularly the payment of the *kalinzi*’²⁶. The administrative authorities in Walungu territory seemed to agree with him, stating that ‘there is no doubt that the contested land is the exclusive and incontestable property of citizen Chunu who fulfilled all the customary formalities towards the chief’²⁷. They even suggested that Chunu ‘may freely benefit from his land and be protected from the arbitrariness of the chief’²⁸.

The way in which these state agents interpret customary law is remarkable. In 1973, a new property law had been introduced in Zaire, declaring all land to be state land and allowing

the state to grant concession titles. While the law also foresaw particular arrangements for the management of land held under customary tenure, these never materialized and ambiguity persisted as to who could govern and use this land²⁹. This resulted in the de facto persistence of the duality between state and customary land and the emergence of an amalgam of local hybrid arrangements. Vlassenroot and Huggins³⁰ described how this challenged the traditional power base of customary chiefs, yet provided them with new opportunities as well. Traditional patron-client relationships gradually eroded and were partly replaced by new forms of patrimonial relations based on economic gain and wealth accumulation. In this process, the meaning of *kalinzi* shifted ‘from a perpetual symbolic contract between chief and peasant towards an individualized one-to-one purchase contract that can take place between any two parties’³¹. In this case, the state agents explicitly used the idioms of customary law; they interpreted Chunu’s customary right as a private, exclusive title, while also condemning the ‘arbitrary practices’ of the chiefs.

In the late 1980s the Mukungwe case was brought to court. After the high court’s decision, which judged in favour of Kurhengamuzimu, Chunu lodged an appeal at the court of appeal in Bukavu in 1989. During the trial, Kurhengamuzimu denied that Chunu had ever acquired customary titles on the contested hills, while he did recognize him as land owner of a third hill³². According to the court of appeal’s judgment, however, Chunu was ‘the legal occupant of the contested land’. Kurhengamuzimu and his sympathizers were required to leave and pay compensations³³. In a response to this judgment, Kurhengamuzimu wrote that the *kalinzi*, even if it were paid for Lukwera and Kalanga, had no value since these hills now fell under the mining legislation. Anticipating that, Kurhengamuzimu had applied for the abovementioned exploitation permit, which he invoked again at this occasion. He thus tried to cover himself twice, saying that Chunu did not adhere to his customary obligations and if he did, that his official mining title now outweighed the concessionary title on the land. On the ground however, Chunu and his supporters continued mining. The group he gathered around him was called *Matonge*. Kurhengamuzimu blamed them for using the profits of the gold exploitation to corrupt the court of appeal: ‘Chunu and his *Matonge* group are singing in the entire locality: with 20 *tolas* of gold we will win the case!’³⁴.

In this first part of the local history, all control mechanisms can be identified. It also becomes clear that they constantly overlap and are used in complementary ways. Legal pluralist theory already drew our attention to the co-existence of multiple sources of ‘law’ and authority³⁵. These sources of law are ambiguous in themselves; they allow for different interpretations and may be used for strategic purposes. In the Mukungwe case, customary law did not provide a clear solution, but all parties made use of the idiom of customary law, so as to give their claims a ‘legal’ basis. In the case of the chief, there was a moral dimension when he referred to the fact that his subjects were obliged to pay rent. In other words, he considered this to be his legitimate share and he used it to establish authority over his subjects. In the case of the state actors, they talked about ‘customary rights’ as well, but interpreted these as private titles. This provided a good illustration of system-internal legal pluralism, where there are different, overlapping regulations with respect to land access within one legal field³⁶. Yet claims were not only backed by state or customary law or by morality, but also by corruption, which we have conceptualized before as making use of financial resources to forge strategic relations. The ‘20 *tolas*’ quote and the formation of this *Matonge* group indeed hinted at the

importance of relational mechanisms, namely the formation of constituencies, groups of supporters or clients, as well as the use of mineral revenues to corrupt officials. As will become clear, all protagonists in the conflict have assembled such groups, who need to safeguard their interests and get protection in return³⁷. Apart from corruption and territorialisation (the making of group identities), these groups also make use of violence, as one of their strategies.

1990s-2003

In the early 1990s the Kurhengamuzimu family retook the effective control over the mine³⁸. According to the Chunu family this was accompanied by excessive violence: ‘Pasteur Kurhengamuzimu [son of the then chief of Mushinga] and his men have set 32 houses on fire, they looted 15 cows, 23 goats and 9 sheep. They took clothes, kitchen tools and other objects worth 2.851.250 zaïres at the time³⁹’. On the other hand, there were indications that Chunu’s support group Matonge was turning into a armed self-defence group. Acts of violence thus occurred on both sides. Meanwhile Chunu also tried to legalize his access to the mine, with success. A ministerial decree issued on 20 July 1993 granted him a two-year authorisation to prospect for gold⁴⁰.

In the second half of the 1990s local political struggles between both families linked up with the broader war context. In 1997 Laurent Kabila and his AFDL (*Alliance des Forces Démocratiques pour le Libération du Congo/Zaire*) forces defeated Mobutu and seized power in Kinshasa. Yet Kabila soon turned against his former allies, asking his Rwandan advisors to leave the country and inciting hatred against the Rwandophones. Rwanda and Uganda then engineered a new rebel movement: RCD (*Rassemblement Congolais pour la Démocratie*), which occupied the eastern part of the country from August 1998 onwards. In reaction to this, local militia groups surfaced all over South Kivu. These militias were commonly called *Mayi-Mayi*, but had (and still have) very different characteristics. Whereas initially (before 1996) *Mayi-Mayi* had been set up as rural based movements of self-defence against social and economic marginalisation, after August 1998 they started to make more and more strategic alliances with local, national and regional actors, often engaging in profit-seeking activities through the use of violence. The ‘politics of belonging’ were thereby used as an instrument to mobilize support among the population. Yet as Geschiere and Jackson⁴¹ claimed, ‘such manipulation can be successful only because it strikes such a deep emotional chord with the general population’. It is in this context that the emergence of the Bashi militia *Mudundu 40* or M-40 in Mushinga must be situated⁴². In 1999, M-40 emerged out of the existing private militia Kurhengamuzimu used to protect his claims to the mine. Whereas its official goal was to fight against the presence of Rwandan troops in South Kivu, it also aimed to keep control over the mines and to consolidate customary power. After an internal conflict over leadership mid-1999, the young Odilon Kurhengamuzimu⁴³ took the command. The urban Bashi elite - which was closely associated with civil society in Bukavu - supported M-40, considering it to be a useful instrument to politically position itself and to oppose RCD. During the years thereafter M-40 terrorized the entire region and kept its opponents in a notorious underground prison in Mushinga. In 2001 however, they allied with RCD because the latter had placed a Bashi governor in power. However, their turning sides and the atrocities they committed deprived them of the initial popular support they had, until their dissolution in 2003. During this whole

period, the Chunu family resided in Goma in North Kivu⁴⁴, where they managed to establish new alliances, as will become clear.

At the reunification of the country in 2003, some M-40 combatants were demobilized and integrated into the Congolese army, the FARDC. Other former rebels and soldiers started to work as artisanal miners. Mukungwe was placed under the command of the 10th military region, the FARDC regiment based in Bukavu. But these soldiers soon came to be actively involved in mineral extraction, with the complicity of Pasteur Kurhengamuzimu, as the bailiff of the court of appeal said⁴⁵. The latter also concluded that the entire mining site had turned into a military camp and estimated that among the miners ‘90% are military elements, demobilized soldiers or deserters, and escaped prisoners’⁴⁶. This statement may have been a bit exaggerated and only partly valid in 2011-2012. True, many artisanal miners in Maroc were former soldiers, but we also found many young men who could not find a job in Bukavu, or who were forced to abandon their studies for financial reasons. We found partisans of Chunu and Kurhengamuzimu respectively. Others, mostly from outside Mushinga, were more neutral and sided with one party or another, depending upon their relative interests. As one local gold buyer told us: ‘There is a hierarchy you need to see first. It all depends on who you find there [who is in control]’⁴⁷. These miners were very mobile and moved from site to site in search for a high production⁴⁸. Young men typically lived here alone, while their family was based in Bukavu or in one of the surrounding villages. They enjoyed the company of women who temporarily settled in Maroc, usually combining petty trade activities or restaurant or bar keeping with prostitution. Women from neighbouring villages walked the steep path over the hill every day, in order to sell food or drinks to the miners.

In this period the mechanism of violence became more prominent. Indeed, the conflict in Mukungwe became part of wider war dynamics, stretching out to the provincial and regional level. Seeing it the other way around, the story about M-40 shows how the ‘Congo war’, often called the ‘first African world war’, unfolded as a patchwork of localized conflicts with an extremely complex history⁴⁹. This section also illustrated the importance of relational mechanisms. The conflicting parties each had their own constituencies, which were built on personal relationships and feelings of belonging. M-40 for example explicitly presented itself as a Bashi self-defence militia fighting against foreign occupation. Its leaders derived their power from the mining rents and their authority from the discourse on ‘defending autochthonous interests’. Initially this helped to mobilize popular support, but as we said, support diminished as a result of extreme violence and strategic political games. In Maroc there was also a group that was commonly called the ‘diaspora’ and was more neutral, shifting its position along with the power holder of the day. From their point of view, this was a strategy for maintaining access.

Towards the end of the described time period, the issue of ‘conflict minerals’ in Eastern DRC came to the fore. UN and NGO reports started to document how both government and rebel armed groups used mining rents to finance their war efforts, which fit in well with the greed theories we discussed in the introduction. Indeed, mining rents have been used to sustain conflict in the case of Mukungwe, and there has been frequent fighting over the mine. But this is only part of the story as revenues from gold mining and trade have also gone to support mechanisms of control other than conflict. Besides, placing the Mukungwe case in a broader

historical perspective allows us to see that control mechanisms have not necessarily been violent.

2003-2010

The 2002 Mining Code⁵⁰ and revised mining policy created an institutional and legal framework that favoured industrial companies and promoted foreign direct investment⁵¹. For the government this was a way to better control the mining rents, although in practice negotiations over mining contracts often resulted in deals that were favourable for the companies and profits have not trickled down to the communities. In the artisanal mining sector the government aimed at establishing a similar control and therefore a formalisation process had to be promoted⁵². According to the Mining Code ‘artisanal exploitation zones’ (AEZ) can be demarcated in areas where ‘the technological and economic factors are not suited for the site to be industrially exploited’⁵³. Miners can apply for a permit with one year validity to work in these zones, but they need to comply with the regulations on security, hygiene, water use and environmental protection specified in the ‘code of conduct for the artisanal miner’⁵⁴. Cooperatives can also obtain research permits within AEZ and should then ideally evolve into small-scale, semi-industrial operations. More recently all miners have been required to become member of a cooperative⁵⁵.

In November 2005 Kurhengamuzimu obtained such a permit from the Provincial Mining Division, which is quite strange, knowing that there is no AEZ in Mukungwe. Apparently the permit was granted on the basis of his previous exploitation permit from 1981⁵⁶, but this was disputed by Chunu and eventually cancelled by the provincial governor⁵⁷. Kurhengamuzimu then decided to found a company, Samiki (*Société Agricole et Minière du Kivu*), and obtained two research permits from the national mining ministry.

However, the end of the war and the new investment climate also stirred up the interest of transnational mining companies. Both Chunu and his associates and Kurhengamuzimu and his allies tried to adapt to this changing reality by establishing relationships with interested transnational companies, while at the same time maintaining their strategies of violence, intimidation and militarisation at the local level. The most important new actor was the Canada-based multinational company Banro Corporation. The company claimed that Mukungwe was part of its Twangiza concession⁵⁸, which was contested by most miners at the time of our fieldwork⁵⁹. State law did not bring a solution at first, since the geographical coordinates in the Mining Registry were not clear about the exact limits of the concession. Banro allegedly concluded an arrangement with Samiki (Kurhengamuzimu) so that the multinational would take over the research permits, and Samiki could benefit by working as a subcontractor⁶⁰. In 2008 Banro started building an exploration camp on Mwananzi hill, facing the hill of Kalanga. A similar process had unfolded in the neighbouring chiefdom Luhwindja, where Banro had started its exploration works in 2005⁶¹. This experience led the miners to fear that they would be chased from their shafts without appropriate compensation; and so they violently resisted Banro’s arrival and set fire to the exploration camp. Banro at the time retreated together with the Kurhengamuzimu family. Chunu again took control, installing his military allies and delegating the daily management to two of their allies, Alexis Rubango and ‘Marocain’. While it is difficult to find out how exactly the latter are related, both are also members of the local

elite⁶². At this point in time they allied with Chunu, but as we will show later, they also strategically and opportunistically shifted their positions⁶³.

The year 2008 was again characterized by violent confrontations between the different parties, both supported by armed groups⁶⁴. These clashes had a devastating impact: at least one dead and one wounded person, burnt houses, pillages, lootings and expropriation of mining shafts. The behaviour of the Congolese soldiers was criticized by the provincial minister of justice and human rights. In a letter to the commander of the 10th military region, he explicitly asked for the replacement of the FARDC soldiers:

‘I have the noble duty to ask you to replace the military currently quartered in Mukungwe by more disciplined and impartial troops; and to enforce a temporary suspension of mineral exploitation, until the quarrelling parties have acquired the necessary documents from the competent authorities’⁶⁵.

In his response, the commander of the 10th region argued that the presence of FARDC soldiers was absolutely necessary for the protection of the citizens and their belongings, especially in light of the nearby presence of the FDLR (*Forces Démocratiques pour la Libération du Rwanda*)⁶⁶, the Hutu rebels.

Meanwhile the Chunu family also pursued its legalisation strategies. In November 2008 they had several land titles registered in the official land registry⁶⁷. At about the same time they tried to set up an industrial company Somimu (*Société Minière de Mukungwe*), after the example of Samiki, but that project failed. Chunu then founded a cooperative, the *Coopérative Agro-Pastorale et d’Exploitation Minière de Kalanga et Lukwera*⁶⁸ on 20 January 2009. In the course of 2009 attempts at rapprochement between both families were taking place. The Chunu and Kurhengamuzimu families were negotiating with Banro, which again provoked the resistance of many miners. The miners chased away Chunu and Kurhengamuzimu and remained on the side of Marocain, who disapproved of the agreement.

Kurhengamuzimu for his part, having secured the exploration rights for Samiki, was looking for an additional investor. Through a Bukavu-based broker with connections in Japan, he came in contact with Eco-Project, a Japanese group willing to invest in infrastructure, cement production, jatropha plantations and gold mining in South Kivu⁶⁹. The position of *mwami* Ndatabaye of Ngweshe was used to convince Eco-project to invest, and after a visit of the *mwami* to Japan, the deal was concluded. Eco-Project, in which both Kurhengamuzimu and the *mwami* were associated as shareholders, acquired the research permits for four concessions bordering the Banro concession.

In the third part of this local history, we introduced companies and cooperatives. This can be understood in the context of the Congolese mining policy, which encourages industrial mining companies to apply for concession titles and artisanal miners to group in cooperatives. This created opportunities for local elites with good access to information and to financial capital, usually through their relations. They knew on which doors to knock in order to obtain a title and they established relations with (foreign) partners bringing in the capital. In other words, they used privatisation and legalisation mechanisms, which were facilitated through relations. We also found a narrative of territorialisation in the quote in which the military

commander called to reinstall ‘order’, ‘discipline’ and ‘competent state authority’. This again shows how revenues from mining have been used to establish control in many different ways.

2010-2015

But on the ground the situation remained unstable. Chunu built connections with Amani Leo soldiers based in Goma⁷⁰, while Kurhengamuzimu got support from FARDC’s 10th military region. Both groups alternately attacked Mukungwe, using a lot of violence and setting huts on fire⁷¹. In July 2011 Kurhengamuzimu assumed control with FARDC backing and installed a management structure locally known as the ‘committee of Samiki’, to which all miners had to pay contributions. But in October Chunu launched another attack. This resulted in a new agreement between Chunu, Kurhengamuzimu, Rubango and *mwami* Natabaye, who all agreed to share the rents collected from miners and traders. According to our interviewees, Chunu (together with Marocain) took 40 percent, Rubango 25 percent, Kurhengamuzimu 15 percent and the military 10 percent. Although this still reflected unequal power relations, the agreement did seem to create some calm. An interviewed miner said: ‘Now they are working together, so we are also relieved. We are working towards the same objective’⁷².

Chunu and Marocain tried to organize and control the mining activities through the cooperative they had officially created in 2009, the *Coopérative Agro-Pastoral et d’Exploitation Minière de Kalanga et Lukwera*. The cooperative gave some technical support, but in return required all miners to become a member and contribute 10 per cent of their production⁷³. This provoked resistance from the part of a rival cooperative, as well as from a structure which called itself the ‘committee’ of artisanal miners⁷⁴. One of the leaders explained why they created this committee:

‘We established the committee because of the problems we had with the organisation of the site. The problem was that the *chef de colline* [Chunu] had his staff, who was there to protect his interests, so we decided to organize ourselves in view of defending our interests and harmonising our work. [...] The *chef* demanded that we pay the military, but how can we support soldiers; that is a task of the government. We understood that he wanted to do away with the committee, but we stood firm and said that we were not going to dissolve it’⁷⁵.

From the side of the government, there were several attempts to intervene and re-establish control, both through actions and through discourses. Although the place is very remote and not accessible by road, ‘the state’ was definitely not absent. State agents and soldiers were present to levy taxes. In 2012 the mining service Saesscam, whose task it is to support artisanal miners was installed. Its representative was making an attempt to register all pits and miners, and levied (illegal) taxes as well. Yet in metaphorical terms, state actors have seen a need to ‘bring the state back into’ Maroc. The FARDC commanders for example repeatedly stated that ‘state order’ was to be reinstated. They have also pointed to the importance to remain in place for security reasons, even though according to the law a mining site should be secured by the mining police and not by FARDC soldiers. The same idea was expressed in a letter written by the administrator of the territory of Walungu (July 2011) concerning the ‘restoration of state

authority' in Mukungwe⁷⁶. Among a number of ordinances consolidating power in the hands of the *mwami*, he also promulgated a prohibition on the sale of alcohol and an obligation for every inhabitant to register and pay a tax. The following quote testifies to the territorialisation strategy that was used:

‘We noticed that many things are going on in Mukungwe without the knowledge of the political and administrative, even of the customary authorities. Roadblocks are for example set up on the road between Mushinga and Mukungwe without our consent. In order to reinstall state authority in Mushinga, the *chefferie* will proceed to identify all inhabitants of the *groupement*, as well as the activities they exercise’⁷⁷.

In 2012 the provincial government sent a delegation on the ground to map the concession borders⁷⁸. On this basis, a ministerial decree determined that Mukungwe fell within Banro's concession. This incited some, including Chunu, Kurengamuzimu and the miners' committee, to give up their resistance and join a negotiation process that was initiated and facilitated by the Bukavu-based NGO *Observatoire Gouvernance et Paix* (OGP)⁷⁹. Part of the miners however stayed and remained loyal to Rubango, who still did not agree with Banro coming in. On 1 April 2013 Pasteur Pasteur Kurhengamuzimu was shot at the doorstep of his house in Bukavu. Rumours immediately spread about the role of his opponents, more particularly the Rubango family, but the perpetrators have not yet been found⁸⁰.

In 2014, violence on the ground continued and made more than 20 victims. The negotiation process was heavily affected by this violence, as well as by the apparent political will to enforce decisions, such as the decision to launch a military operation against Rubango and his allies. High-ranked politicians in Bukavu are reportedly personally benefiting from Rubango's control over Mukungwe's gold production, reason for which the decisions to 're-establish state control' have so far remained idle words⁸¹. In September 2015 the miners' committee organized a sit-in at the Ministry of Mines, claiming a 'peaceful return of the artisanal miners, a reestablishment of order by the Congolese government authorities, and a smooth continuation of exploration by Banro, as well as a resuming of the negotiations with the company'⁸². But neither this action, nor the multilateral negotiation process led to the desired result as events took yet another unexpected turn in late 2015⁸³. A coalition of the 33th military region, the mining police and the intelligence service compelled Chunu and Rubango to reach an agreement by putting them in jail for almost a month. They came out with an agreement to again share the revenues from Mukungwe's pits according to the following percentage: 35 percent for Chunu, 30 for Rubango, 20 for Kurengamuzimu, 10 for the security services and 5 percent for the community. In early 2016 activities in Mukungwe resumed, albeit not without tensions and difficulties, especially for the miners whose activities had been interrupted for several years.

In this section we found that all control mechanisms were being continued along the same lines: the conflicting parties created cooperatives, made alliances, used violence and tried to legitimise their actions. It is now clear that privatisation is being promoted, but it is not yet clear what this would mean in terms of exclusion or dispossession of the local population. Whereas previously most miners opposed the company's arrival, part of them – represented by the committee- have now joined a negotiation process. Further research is needed to see how

the configuration of control mechanisms will evolve, and what impact this will have on the lives of the people of Maroc.

Conclusion

We analyzed the ongoing conflict in Mukungwe through the eyes of the key players. Their narratives and practices provided good illustrations of how control over resources, territories and people is established and maintained using mechanisms of privatisation, legalisation, territorialisation and violence, but also using relations and alliances.

As the Congolese mining policy favours industrial mining, a large part of the surface area in South Kivu has been given in concession to private companies. Local businessmen, customary chiefs or elites with financial capacity to do so have seized this opportunity to create companies and acquire concession titles, which they sometimes only hold for speculative purposes. This was the case for Kurhengamuzimu who created Samiki with the main intention of securing his interests and establishing himself as a viable player in the mining sector. These elites also position themselves as intermediaries between ‘the community’ and private investors, benefiting from their perceived legitimacy and/or their bare power, as Sonwabile Mnwana (this special issue) also demonstrates for the case of South Africa. In doing so, they are flexible enough to instrumentalize the changing institutional environment in order to consolidate control. The elites also used the official legal framework to consolidate their claims. This has been demonstrated with respect to the acquisition of official land titles and research and exploitation permits, the creation of cooperatives and the use of the courts’ judgments. But the law itself has also proven to be dynamic, not always straightforward and open to interpretation. This has been displayed by the confusion about the designation of concessions to one or another company, or to artisanal and industrial mining. The more recent attempts to ‘bring the site back under state’s control’ and to discipline its inhabitants have been analysed as territorialisation strategies. We have also evidenced how local elites have sought to establish and reinforce their control by connecting to, or even setting up, armed groups, and thereby inscribing themselves in broader war dynamics. Through this and a range of other examples, we have evidenced the importance of relational mechanisms.

By focusing on access control, we have provided less insight in access maintenance mechanisms by artisanal miners and other community members, those who are not part of the local elite⁸⁴. It is clear that their responses have been fragmented: allying themselves to certain power holders, refraining from doing so, resisting against a planned privatisation or against ongoing violence (as Irene Vélez-Torres discusses in this special issue), or deciding to engage with the corporate-state coalition and get the best of out the deal.

There are some lessons that are applicable beyond this particular case. First, our analysis focuses on the key players’ narratives and practices related to the conflict over land and resources, and shows how these are part of a process of claim making about legitimacy, power and authority. This allows for a more dynamic analysis of how power and authority are constantly (re)negotiated and (re)arranged. Second, these very ‘localized’ struggles do not occur in an a-political power vacuum, nor are they geographically restricted. These local conflicts are thus, in all their specificity, utterances of the broader political economy of conflict. Finally, our analysis offers a counter-narrative to the dominant discourse that establishes a

causal link between conflict dynamics in the DRC and the extraction of mineral resources. Although it is true that revenues from mining have been used to directly finance conflict, they have been instrumental in establishing other forms of control as well. This article demonstrates that violence is only one possible strategy to maintain and control access. An overemphasis on the presence of mineral resources in combination with the use of violence as an access mechanism ignores the complexity of mechanisms available and thus ignores the ‘different faces’ of each specific conflict.

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¹. Collier and Hoeffer, "On economic causes of civil war"; Blattman et al., "Civil war".

². Ballentine and Sherman, "Political economy armed conflict".

³. Le Billon, "The political ecology of war".

⁴. For an analysis of war economies in eastern DRC, see Vlassenroot and Raeymaekers, "Conflict and social transformation"; Jackson, "Making a killing"; and Nest et al., "Economic dimensions war peace".

⁵. The conflict minerals issue is highly topical and overviews of such initiatives are numerous, see Verbruggen et al., 2011.

⁶. For a critical approach, see Geenen and Custers, "Tiraillements autour secteur minier"; Perks et al., "From discourse to practice"; Geenen, "A dangerous bet"; Seay, "What's wrong with Dodd-Frank"; Autesserre, *Trouble with Congo* and Johnson, "No Kivu, no conflict".

⁷. Hall et al. "Powers of exclusion".

⁸. Ribot and Peluso, "Theory of access".

⁹. This includes literature on land and forests mainly, but also on water, fisheries, coral reefs, protected areas and topics such as climate change, community based resource management and land grabbing. Readers may want to start with Ribot and Peluso's seminal article and search for the articles that cite them; Ribot and Peluso, "Theory of access".

¹⁰. Platteau, "Monitoring elite capture" and Peters, "Inequality and social conflict".

¹¹. Lund and Boone, "Land politics in Africa". Authority is conceptualized as 'an instance of power that seeks at least a minimum voluntary compliance and is thus sought to be legitimated in some way'. Lund, "Politics and dynamics of property," 3.

¹². Peluso and Lund, "New frontiers of land control".

¹³. Hall et al. "Powers of exclusion".

¹⁴. Sikor and Lund, "Access and property," 14.

¹⁵. Peluso and Lund, "New frontiers of land control," 673.

¹⁶. Geschiere and Jackson, "Autochtony and crisis citizenship," 1.

¹⁷. Peluso and Lund, "New frontiers of land control," 669.

¹⁸. Geenen, "African artisanal mining".

¹⁹. Geenen, "Who seeks, finds".

²⁰. The legal and administrative status of these decentralized entities is surrounded by a great amount of uncertainty and ambiguity. The constitutions of 2006 and two organic laws of 2008 attributed more fiscal, administrative and financial autonomy to these formerly deconcentrated entities. However, these were never fully implemented because of the weak administrative capacity of the Congolese government. In some instance the provisions in these laws were even deliberately blocked by the central government who fears losing control over the local level. The result is a great ambiguity with regard to the status of public authority at local level and the validity of their actions. Englebert, "Incertitude, autonomie et parasitisme".

²¹. Communication by cooperative leader, 29/02/2012 and another cooperative leader, 31/05/2012. See also BICC, "A la recherché de l'or proper".

²². Van Acker, "Where did all the land go".

²³. Sosne, "Colonial peasantization".

²⁴. Letter by Chunu Bagayamukwe to the Governor of South Kivu, 5 July 2008.

²⁵. Letter by chief of the local mining division to chief of the provincial mining division, 4 July 1980.

²⁶. PV by the *commissaire de zone* of Walungu , 21 October 1981.

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- ²⁷. Ibid.
- ²⁸. Ibid.
- ²⁹. Mugangu Matabaro, “Crise foncière”.
- ³⁰. Vlassenroot and Huggins, “Land, migration, and conflict”.
- ³¹. Utshudi Ona and Ansoms, “Reconciling custom,” 32; Mugangu Matabaro, “Crise foncière”.
- ³². Letter by KURHENGAMUZIMU Bafundisire to the president of the Court of Appeal in Bukavu, 2 October 1989.
- ³³. Judgment RCA1630, Court of Appeal in Bukavu, 28 April 1989.
- ³⁴. One *tola* is equal to 11.66 grams of gold. Letter by KURHENGAMUZIMU Bafundisire to the president of the Court of Appeal in Bukavu, 2 October 1989.
- ³⁵. Griffiths, “What is legal pluralism?”.
- ³⁶. von Benda-Beckmann, “Who’s afraid”.
- ³⁷. Raeymakers, “Protection for sale?”.
- ³⁸. Interview, Mukungwe, 24 October 2011.
- ³⁹. Letter by Chunu Bagayamukwe to the Governor of South Kivu, 5 July 2008.
- ⁴⁰. Ministerial decree on attribution of research permit n.2107, 20 July 1993.
- ⁴¹. Geschiere and Jackson, “Autochtony and crisis citizenship,” 3.
- ⁴². Vlassenroot and Van Acker, “War as an exit from exclusion”; Namegabe, “Pouvoir traditionnel” and Lubala Mugisho, “Emergence d’un phénomène”.
- ⁴³. Son of Constantin KURHENGAMUZIMU, chief of Mushinga, brother of Pasteur and nephew of *mwami* Natabaye of Ngweshe.
- ⁴⁴. Interview, Mukungwe, 15 February 2012.
- ⁴⁵. Letter by bailiff of Court of Appeal in Bukavu, 30 April 2006. See also letter by first substitute of the prosecutor, 22/12/2006; Letter by chief of the office of the prosecutor and substitute of the prosecutor to governor of South Kivu province, 19/01/2007; Report by Lieutenant-colonel Kyembwa Wakagela of a mission to Mukungwe, 22 September 2007.
- ⁴⁶. Letter by bailiff of Court of Appeal in Bukavu to the prosecutor, 23 June 2006.
- ⁴⁷. Interview with trader, Mukungwe, 1 June 2012.
- ⁴⁸. Interviews with miners, Mukungwe, October 2011 and May 2012.
- ⁴⁹. Autesserre, *Trouble with Congo*; and Reyntjens, *Great African war*.
- ⁵⁰. Government of Democratic Republic of Congo, *Loi n° 007/2002 du 11 juillet 2002 portant Code Minier* and Government of Democratic Republic of Congo, *Décret n° 038/2003 du 26 mars 2003 portant Règlement Minier*.
- ⁵¹. Mazalto, “Réforme des législations minières”.
- ⁵². For a critical discussion, see Geenen, “A dangerous bet” and Geenen, *African artisanal mining*.
- ⁵³. DRC, *Mining Regulations*, 2003, T. 4, Ch. 1, Art. 109. Yet the law does also provide for a possibility to close down these zones if ‘the factors justifying its creation ceased to exist’, or if a ‘new deposit necessitating large-scale exploitation has been discovered’.
- ⁵⁴. DRC, *Mining Regulations*, 2003, T. 4, Ch. 1, Art. 111 and 112.
- ⁵⁵. De Haan and Geenen, “Mining cooperatives”.
- ⁵⁶. Letter by Ntabala Chunu to administrator of Walungu territory, 7 November 2005.
- ⁵⁷. Letter by provincial governor to administrator of Walungu territory, 5 November 2005.
- ⁵⁸. For more details see Geenen and Claessens, “Disputed access” and Geenen, *African artisanal mining*.
- ⁵⁹. Interviews in Mukungwe, October 2011 and May 2012.
- ⁶⁰. Personal communication, 21 April 2012.
- ⁶¹. Geenen and Claessens. “Disputed access”.
- ⁶². Marocain for example claims that he started working with Chunu while being a ‘member of civil society’ during the war period. He also claim that his father was the one who discovered gold in Kalanga hill: interview, Mukungwe, 15 February 2012.
- ⁶³. Interview with a member of KURHENGAMUZIMU family, Burhinyi, 26 October 2011 and personal communication by e-mail, 4 April 2012.
- ⁶⁴. In a letter from July 2008, the Chunu and Rubango families denounce that they are constantly being attacked by Pasteur KURHENGAMUZIMU, who mobilizes former rebels from Mudundu-40 who still hold their weapons. See also Global Witness, “Faced with a gun”.
- ⁶⁵. Letter by provincial minister of Justice and Human Rights to commander of 10th military region, 24 February 2008.
- ⁶⁶. Letter by commander of 10th military region to provincial minister of Justice and Human Rights, 11 March 2008.
- ⁶⁶. Letter by commander of 10th military region to provincial governor, 15 April 2008.
- ⁶⁷. Certificates in the name of the Chunu family, the Rubango family and the Mweze family, both allies of Chunu, 10 November 2008.
- ⁶⁸. Declaration of the foundation of the cooperative, 20 January 2009.
- ⁶⁹. Website Eco-Project : <http://ecoproject-group.com/mining-e.html>.
- ⁷⁰. Amani Leo (peace today) was, after Kimia I and II (peace and quiet) and Umoja Wetu (our unity) the military operation deployed in the Kivu’s to fight against remaining rebels, particularly FDLR. The Amani Leo forces consisted of FARDC and former rebels, such as ex-CNDP (*Congrès National pour la Défense du Peuple*). It was suspended in April 2012. These operations were supported by Rwanda and – logistically- by Monusco, the UN peacekeeping force. According to the Group of Experts of the United Nations (United Nations, “Final Report”), Chunu discussed the Mukungwe case with the ex-CNDP leader Bosco Ntaganda himself, see Stearns, “From CNDP to M23”.
- ⁷¹. Decision n.5072/001/BUR-AT/TER-WGU/2011 on restoration of state authority, 8 July 2011.
- ⁷². Interview with miner, Mukungwe, 2 June 2012.

⁷³. Interviews in Mukungwe, May 2012. The June 2011 data from the Provincial Mining Division show that the file of Chunu's cooperative had been introduced for verification; see Provincial Mining Division, *Relève des cooperatives minières enregistrées ayant sollicité l'agrément par le biais de l'administration des Mines du Sud-Kivu*, 3 June 2011.

⁷⁴. Interviews, Mukungwe, June 2012.

⁷⁵. Interview with committee, 9 June 2012.

⁷⁶. Decision n.5072/001/BUR-AT/TER-WGU/2011 on restoration of state authority, 8 July 2011.

⁷⁷. OGP, "Rapport de l'atelier".

⁷⁸. A first mission was cancelled because Banro had financed it, which was met with a lot of criticism from civil society.

⁷⁹. Interview, Bukavu, 12 September 2014.

⁸⁰. Personal communication, 6 April 2013.

⁸¹. Personal communication, September 2015.

⁸². Comité des creuseurs d'or du site minier de Mukungwe à Bukavu, *Mémorandum*, 13 August 2015.

⁸³. Personal communication, 28 January 2016.

⁸⁴. In Geenen, *African artisanal mining*, this point has been better developed.