

## **Of clubs and conflict: the dissolvant power of social capital in Kivu (D.R.Congo)**

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### **1. Introduction**

Stretched out over 500 km along the borders of the Democratic Republic of Congo with the republics of Uganda, Rwanda, and Burundi, lie the Congolese provinces of North and South Kivu. These provinces consist of highlands and volcanoes to the East, and lowlands to the West. As such, they mirror the conditions of the crowded and fertile highlands of Rwanda to one side, and those of the underpopulated Congo basin to the other. Currently the Kivu is notorious as a hotbed of problems and conflicts, where rebellious armies and peasant militias hold sway. Yet this kind of turmoil is not new; as far back as the 1920's, conflicts regularly erupted. Clearly, the particular location and history of the provinces are pertinent in looking for an explanation. The colonial history of the region is one in which Rwandan and Burundian peasants were resettled in the Kivu to supply labor to the large coffee and tea estates and cattle ranches situated in the highlands there. After Congolese independence in 1960, the nature of the problem changed but not the problem itself; peasants of neighboring countries continued to flock to Kivu to escape the crowded conditions of their own homelands. Consequently, the biggest post-independence bone of content in the Kivu is that of nationality. In various political seesaw movements, nationality was granted to these immigrants and repealed again according to political convenience. Underlying this controversy, is the bigger and deeper issue of access to land.

This paper is not an occasion to attempt to unweave the complex tapestry of causes that led to the current state of conflict in the Kivu provinces. Quite often, the war that has been ongoing intermittently since 1993 in Kivu is presented as the local extension of a wider regional and exogenous conflict, basically occasioned and conditioned by the aftermath of the 1994 Rwandan genocide. Although there is certainly a large element of truth in it, such analysis has often eclipsed the endogenous elements of the conflict. Therefore, the aim here is to present an argument that brings forward those endogenous elements, by way of a historic narrative: a reconstruction of the effects that the evolution of Congo's political economy had on Kivu's institutional framework. More specifically, the focus will be on land as the integrative factor of Kivu's institutional framework.

The structure of the argument is as follows; the traditional patrimonial system revolved around the distribution of access rights to communally held land, in return for rents that were redistributed through the system. The social capital embedded in this institutional framework was a public good. The introduction of a 'modern' land law in 1973 destroyed the social cohesion of that patrimonial system, as it sanctioned efforts to capitalize and appropriate the full value of these rents. At the time of the law's introduction, market mechanisms for factor markets incl. land, were not developed, so they had to be simulated. The core of this simulation consisted of exchanging social capital, built up in networks that involved political power-holders

and state administrators, for assets<sup>1</sup>. The social capital embedded in these networks was a club good rather than a public good. Its effect was therefore marginalization and dispossession of those not belonging to the ‘club’, and the erosion of the existing social capital tied up in the traditional institutional framework by breaking the patterns of reciprocity and assurance featured in it. This evolution has contributed to a change of social structure and a crisis of legitimacy that increased social tensions and the potential for conflict.

## **2. Land and social structure**

A land tenure system can be understood as the set of institutions that structure the social organisation of space. In Kivu as in many other places in Africa, a land tenure system evolved that is characterized by three elements. First, land is held in common by a group circumscribed by the boundaries of ethnicity, clan, or lineage. Second, no property rights can be assigned beyond a simple use right (*usus*), thereby disabling the alienation of parts of the collective domain, even in those cases where a plot of land has been farmed continually for several generations by a family. Third, land relations are the means to realize a system of dependent integration, and as such land relations and social hierarchy mirror each other. To achieve the construction of social hierarchy and hence power relations, use rights (*usus*) do not entail full benefit rights (*fructus*) because of the appropriation of land rents as tribute. Tributes are then redistributed upwards in an elaborate system of dependency that configures the collective management of economic uncertainty. In this worldview, clan or ethnic boundaries are ‘soft’ and not prohibitive, as immigrants can obtain access to land as long as they also acquire the status of client which is tantamount to assimilation. Land is therefore a common good, since actors cannot be excluded yet it is rival in use; a household cannot cultivate a plot already used by another. To understand the particularities in Kivu better, it is necessary to take a closer look at the economic and political dimensions of the concept of ‘*kalinzi*’. We will then investigate the nature of social capital tied up in this particular system.

The best way to describe the contract of *kalinzi* is as a ‘structuring structure’<sup>2</sup>. Rather than a contract that legally establishes a property relation between an individual and a parcel of land, it is an institution that legitimises the whole social organisation by absorbing all persons within a given area into a network of dependent relations. This implies a tight social pyramid, at the top of which is the ‘*Mwami*’ or king, followed in hierarchical order by the ‘*Barhambo*’ (which could be described as lords), the ‘*Bashamuka*’ (landed powers with responsibility for a hill), the ‘*Bagula*’ (wise ‘pater familias’ with property), and the ‘*Bashizi*’ (subjects without any political authority)<sup>3</sup>. In economic terms, the securing of a *kalinzi* requires an initial payment (called ‘*muganda*’) and an annual rent to be paid to the particular patron, in products (called

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<sup>1</sup>The term ‘simulated transformation’ was introduced by Borocz and Rona-Tas for the analysis of change in the former communist block of Eastern Europe; BOROCZ, J., RONA-TAS, A., *Small leap forward: emergence of new economic elites*, *Theory and Society* 24, 751-781, 1995.

<sup>2</sup>MUGANGU, S., *La gestion foncière rurale au Zaïre: réforme juridiques et pratiques foncières locales, cas du Bushi*, Louvain-la-Neuve, Université Catholique de Louvain: Institut d’Études du Développement, 1997

<sup>3</sup>MUHEME, G., *Comprendre l’économie informelle (sociologie, économie et histoire de la filière mboga)*, Leuven, Bruylant-Academia, 1996. The description presented in the text is clearly an anthropological simplification that omits several sidebranches. In addition, this particular case is relevant for the Bushi only, a particular part of South-Kivu. While other ethnic groups in highland Kivu have other names (e.g. *vusoki* with the *Banande*), the basic structure however is identical. For the purpose of this text, it is sufficient as a model to relate the hierarchical nature of the social structure.

‘*isoko*’) as well as labour (‘*burhabale*’). Table 1 gives an indication of the distribution of annual tenure rents in a specific locale.

Although annual payments may run as high as one fourth of the initial payment, it is

**Table 1: Distribution of annual tenure rents (# of goats), Luhotu, Collectivity Baswagha, North Kivu, 1994**

Hierarchy	In	Out	Difference	%
Mwami	12	0	12	9.16
Noblemen	63	12	51	38.93
Underlords	87	63	24	18.32
Intermediary	110	87	23	17.56
Large farmers	131	110	21	16.03
Peasants	0	131	- 131	-

Source: Tsongo, 1994:100

Figure 2 demonstrates the distribution of the 131 goats paid as annual rents by the farmers over the different levels of the customary hierarchy

the goods from that land. With sufficient land for open access remaining, there will be no rent or tribute. What is specific to the system of *kalinzi*, is that existing rents are paid as tribute by those working the land, and recycled throughout the system, as can be seen from Table 1. So the basic principle is to avoid accumulation at the producer’s level beyond simple reproduction, but rather to redistribute the surplus to sustain the network of dependent relations. The result is a complex structure of rights where nobody has complete property rights, but few – if any - have no rights at all: at the top the custodian of the tribal land (*mwami*), and at the bottom the peasants (*bashizi*) that paid tribute without receiving any. For a peasant family, the system traded social integration and hence security for loyalty and tribute to the *mwami*, who received power in exchange for granting non-alienable use rights over the customary domain. Nevertheless, the system was not feudal in the sense of social immobility; it allowed social mobility in return for the expansion of the collective domain. When a man cleared virgin land or forest, he extended the collective domain while gaining the use rights to the cleared land. To the extent that these were further divisible and hence rendered him capable of exacting tribute, these use rights could propel him higher into the hierarchy as the head of a new lineage (*mugula*). As stated, also immigrants could obtain access to land as long as they also acquired the status of client. This underscores the basic nature of land as a common good; no social actor can be refused the right to access and use land, as long as they respect the principle that ensures social integration.

Since land is the integrative focus of social relations, this aspect of non-excludability is also a defining element of the social capital embedded in these patrimonial relations. Social capital can be described as the level of generalized trust and adherence to norms of reciprocity, embedded in the way institutions shape and constrain social interaction. Anyone can become a client, and therefore anyone can benefit from the patterns of reciprocity embedded in these patrimonial networks: tribute and expansion of the collective domain versus integration, security, and social

<sup>4</sup> MUNZHIRWA, C., “Base économiques du pouvoir monarchique a Kabare: la vache et le soc (1900-1960)”, *Revue de sociologie de l’ULB*, N°3-4, Bruxelles, 1978, pp.183-207; FAIRHEAD, J., *Securite aslimentaire au Kivu du Nord et du Sud*, London, Oxfam, 1991, 338 p.

mobility. How much tribute and security to give or receive depends on the position in the hierarchy. On the other hand, the reciprocity embedded in the *kalinzi* is non-rival. Security, which can mean many different things such as freedom from physical attack and sorcery, access to the royal food stocks in case of famine and other measures to cope with adversity<sup>5</sup>, a fair hearing in a customary court etc., can be extended to many social actors at once. In addition, there are specific exceptions where it is not necessary for an actor to first obtain land in order to be integrated in the social structure. In general therefore, the social capital embedded in the system could be defined as a public good.

In table 2, all elements have been pulled together in a summary using the terminology developed by Ostrom et.al<sup>6</sup>. The distribution of land use rights is governed by collective-choice rules, that determine three sets of rules: boundary rules that define which social actors have access, authority rules that define the conditions of access, and enforcement rules that define how compliance to the above rules shall be monitored and enforced. The situation before as well as the evolution after 1973 is presented. The latter will be the subject of the following chapters.

**Table 2: rules governing land use rights on village lands in Kivu**

	Situation before 1973	Situation after 1973
Boundary	Access for all via <i>kalinzi</i>	Access increasingly ethnically defined
Authority: assignment	Hereditary use rights on specific plot; free pasture and use rights on 'commons proper'	Kalinzi for hereditary use rights renegotiated (tribute) or withdrawn for sale of land; free pasture rights replaced by <i>bwasa</i>
Authority: technology	Actors free to choose	Actors free to choose
Authority: appropriation	No limits set	No limits set
Enforcement	Customary structures and court	Legitimacy conflict: continuity of customary set-up not sanctioned by principle defined by land law of 1973

### **3. 'Enclosure' and the rival nature of land**

The traditional system was established on the premise of sufficient land reserves to extend the collective domain in step with population growth. This basic premise was undercut by three different elements: a high natural population growth expanded by forced and spontaneous immigration, a politically induced movement of enclosure of the customary commons, and the emergence of a class of laborers not involved in subsistence farming that expanded the market for food crops. First, as the population density increased, the rival nature of the common resource became more pronounced. In terms of population growth, it is worthwhile to point out the unique position of Kivu, as the relatively less populated part of a region where population pressure

<sup>5</sup> The kings had a special granary, called '*rutindamapfa*' in Rwanda, that was used in case of famine.

<sup>6</sup> OSTROM, E.,GARDNER,R.,WALKER,J.,*Rules, Games, and Common-Pool Resources*, University of Michigan Press, 1994, 369 p.

habitually exceeds 450 persons/km<sup>2</sup><sup>7</sup>. On top of an already high natural growth rate of 3.1% in the Kivu itself<sup>8</sup>, this occasioned the influx of large numbers of Rwandan and Burundian immigrants. During the colonial era, the immigration flux was actively encouraged by policy measures. The independence of Congo however did not put a stop to it. Large numbers of Rwandans and Burundians continued to migrate to Congo (Zaire), either to escape the economic conditions of their homelands, or to escape the many waves of political violence and persecution. The effects were pronounced. Whereas in the late eighties in the DRC as a whole a mere 13.4% of the population lived in areas with a density higher than 100 inhabitants/km<sup>2</sup>, the equivalent figure for the Kivu provinces was 49%<sup>9</sup>. The latter figure certainly underestimates the actual population density in the highlands, given that the sparsely populated western lowland parts of Kivu were included in it, and that large areas in highland Kivu are not inhabited (national parks and forest reserves)<sup>10</sup>. To wit, in 1983 the 'collectivity' of Kabare in South-Kivu had a population density of 535 persons/km<sup>2</sup>. Within it the 'groupement' of Ikonde, with a stunning 600 persons/km<sup>2</sup>, had the highest density of (then) Zaire<sup>11</sup>.

Second, in looking at the enclosure movement, we find that limiting the accessibility took place in two distinct steps. In a first instance, the Belgian colonial administration had an impact in establishing limits and pushing back the extent of customary land. On the one side, it confiscated land for the purposes of establishing national parks and anti-erosion forests. Next to this, it introduced a system of land registration and private ownership in order to establish a diversified plantation agriculture that was basically cash crop and export-oriented. To achieve this, it introduced a dual system of property rights by declaring all vacant land, that is all land not actually occupied on a customary basis, property of the colonial state. This particular system had two characteristics. First, it did recognize within limits the legitimacy of the locally evolved land tenure system. Second, it defined a clear limit to the further expansion of customary lands by means of 'declarations of vacancy'. It therefore subverted the very principle of the social cohesion in place, the customary right to land, as non-occupied land was not simply vacant but rather the basis for collective security. Essentially, this colonial intervention introduced a normative duality in the social meaning of the land: its possession either as a contract that defined a social relation applicable in the villages, or a contract that ascribed alienable property rights applicable to plantation lands. A new law soon superseded these events. In 1973, a land law was introduced which declared all land property of the state, whether vacant or occupied, and no matter the type of occupation. Under this law, land could only be extracted from state possession through an administrative procedure that involved registration and cadastration. The enactment of the 1973 law provided a powerful instrument to transform Kivu's social structure. First, it discarded customary law in land transactions as a legitimate source of land rights, without according any legal status to

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<sup>7</sup> ADISA, J., "Rwandan refugees and environmental strategy in the Great Lakes Region: a report on the Habitat/UNEP Plan of Action", *Journal of Refugee Studies*, vol.9, n°3 1996, p.326.

<sup>8</sup>WORLD BANK, *Zaire: strategic orientations for reconstruction*, Working Document, 1994

<sup>9</sup> DE SAINT-MOULIN, L., "L'évolution des densités de la population du Zaire", *Revue Belge de Géographie*, Vol. 58/1995/1-2, p.95.

<sup>10</sup> Additional public expropriations checked further expansion, especially the extension of the 'Parc National de Kahuzi-Biega' from 600 to 6000 km<sup>2</sup> in 1975.

<sup>11</sup> DUPRIEZ, H., *Bushi: l'asphyxie d'un peuple*, ADI-Kivu, Bukavu, 1987; Administratively, a province is divided into zones. Each zone consist of a number of 'collectivities', themselves divided in 'groupements' and again in villages. This could be compared to the Anglo-saxon system of regions/provinces, districts, wards, and villages in use e.g. in Tanzania and Zimbabwe.

lands thus occupied. Hence, throwing out the notion of diffuse property rights institutionalized uncertainty, and introduced the possibility for a class of people without land and rights to form. Second, the law created the possibility to turn economic assets into political ones that could be used to reward loyal clients of the state. A first category consisted of the customary lands that could now be expropriated by administrative procedure. A second category consisted of the de facto nationalized concessions previously awarded by the colonial authorities to colonial planters. In terms of rent, the effect of 'enclosure' was to limit the dissipation of rents by limiting open access to 'frontier land'.

Third, the liberalization of gold mining in 1982 in Kivu's hinterlands had a definite effect on the social structure, by creating a class of people that depended on the market for their subsistence needs. As a great number of youngsters were prepared to test their luck, a migrant commerce developed between these areas and a number of border-towns where gold and other goods transited to international markets. Bruneau has documented how the population of Uvira in South-Kivu for example had one of the highest growth-rates of Zaire: 124% between 1970 and 1984 as against 19% for Bukavu in the same period<sup>12</sup>. These effects were further compounded by the proximity of Kivu to densely populated urban centers in Rwanda and Burundi. Commodity-markets had existed for quite a while by 1982. Yet, the expansion of a market for food crops, next to the existing one for cash crops (coffee, tea...), improved the terms-of-trade of the peasants. Products commanded higher prices, while the subsistence nature of the inputs (family labor, simple technology, absence of capital...) kept the production costs inelastic. The same effect was noticed with the presence of the Rwandan refugee camps from 1994 to '96<sup>13</sup>. The difference between these two components reflects the factor price of the land.

Additionally, in analyzing the process by which land was shifted from the customary to the 'modern' domain, the effect of quasi-rents needs to be taken into account. The interest of new social actors in growing crops for the urban and export markets created quasi-rents. These quasi-rents mirror opportunity costs: the loss of income that the same unit of land could have yielded in an alternative farming system and/or in an alternative use. Quasi-rents are only available in the short term. As a change in opportunity costs induces the short-term variability of supply of an inelastic production factor such as land, any extra-gain will eventually be bid away by the market since the total quantity of land would still be supplied whatever the price. In the short run however, shifting land from the customary to the modern domain could create the opportunity to appropriate these quasi-rents.

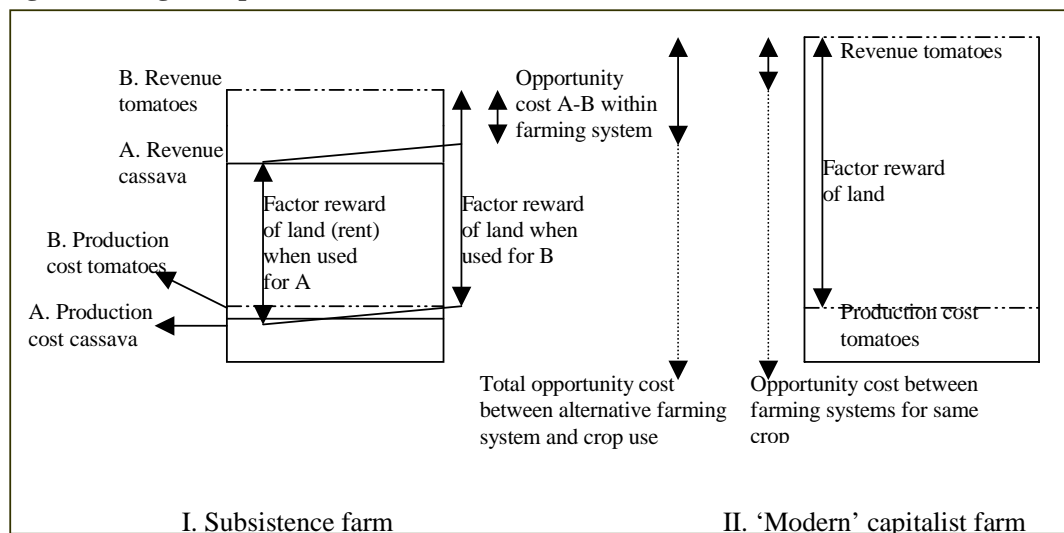
These quasi-rents could originate in two ways, as reflected in figure 1. First in terms of farming systems (and assuming capital to be constant), to be efficient 'modern' agricultural entrepreneurs maximize the yield per unit of land by adding units of labor until the marginal cost of hiring labor equals the marginal revenue from that extra labor. Subsistence farmers on the other hand, facing labor bottlenecks determined by household size, maximize the yield per unit of labor by adding units of land until the marginal cost of renting land equals the marginal revenue from that extra land. The

<sup>12</sup> BRUNEAU, J.C., "Crise et déclin de la croissance des villes au Zaïre: une image actualisée", *Revue Belge de Géographie*, vol. 58, 1995.

<sup>13</sup> Personal communication; A similar development occurred with the establishment of the 34 camps for more than 1 million Rwandan refugees in Kivu in 1994. To the extent that farmers could raise capacity to meet the vastly increased demand from the camps without extra-costs for labour or capital, their terms-of-trade improved markedly.

value of a piece of land would therefore reflect that productivity differential per unit of land between ‘modern’ cultivation and customary occupation. Second, in terms of the use of a unit of land for alternative crops, the opportunity cost mirrors the loss of income that a given unit of land could have yielded in an alternative use. For example, choosing to cultivate a bulky and slow-maturing crop with low added value such as cassava close to a rapidly expanding urban market, instead of a fast-maturing and lightweight product with high added value such as green leaf vegetables, carries an opportunity cost. This cost is equal to the revenue differential between cassava and green leaf vegetables. These two elements are consistent with the proposition that peasants minimize uncertainty rather than maximize yields<sup>14</sup>. Figure 1 shows how an opportunity cost can be turned into a quasi-rent by renting out or selling land. If extra-land is in short supply, the sale or rent of customary land at a price that reflects its value in ‘modern’ commercial use contains a quasi-rent that mirrors the total original opportunity cost<sup>15</sup>.

**Figure 1: Origin of quasi-rents**



In essence therefore, all three components strengthened a particular train of events: the rival nature of land became more pronounced and its value increased, due to the increasing population density, the enclosure of ‘frontier land’, and the emergence of markets for food crops. Two things happened in this situation. First, a higher intrinsic value was reflected in higher tributes (rents)<sup>16</sup> in an attempt to maintain the customary fiscal logic of social redistribution. This necessitated the re-negotiation of customary contracts. Second, new and old social actors attempted to appropriate the full value of these rents using the 1973 land law. Apart from these dynamics, attempts to capitalize the rents and quasi-rents were strengthened by the need to protect capital reserves from Zaire’s long-winding economic downturn and galloping hyperinflation; land in highland Kivu appeared as an attractive investment with an extra potential for later

<sup>14</sup> ELLIS, F., *Peasant economics: farm households and agrarian development*, Cambridge University Press, 1988.

<sup>15</sup> This example only serves to highlight the dynamics present in the origin and appropriation of quasi-rents. In reality, household decisions may be much more complex, and a complete theory of peasant household behavior would present a more weighted representation of the multiple goals of the household beyond profit maximization.

<sup>16</sup> FAIRHEAD, J., *op.cit.*, 1991.

speculation<sup>17</sup>. In addition, when the democratization process and the promise of elections picked up in the late eighties, politicians became increasingly aware of the need to establish a rural presence in order to attract votes. So the situation that presented itself, was characterized by a high demand for land on the part of the modern actors and an existing pool of land largely under customary occupation. Even though in principle, all rural land was public and could be privatized by an administrative procedure, in practice all land was assigned either under customary arrangements or via previous allotments as a plantation or forest reserve under colonial law. The economic operators looking for land to exploit market opportunities were confronted with circumstances in which land was largely in the customary domain under hereditary social contracts that heavily limited the benefit and transaction rights associated to it. Practically, in terms of implementing the law, it was possible to refute the legitimacy of former colonial allocations by nationalizing the plantations, but it was far less evident to simply refute the socially embedded legitimacy of customary allocations. As North pointed out, informal norms have a high degree of continuity, as antecedent institutions operate to reduce uncertainty in a period of transition<sup>18</sup>. The interplay that sought to 'funnel' land informally from the customary to the 'modern' domain and have this transfer then backed up by proper registration, allowed these actors to obtain land free of customary encumbrances. To an extent the process allowed the appropriation of quasi-rents that reflected a scarcity premium. At the center of these dynamics were the chiefs, the traditional custodians of the customary domain.

#### **4. The dynamics of alienation of land**

The main question at this point is through what conversion mechanism private ownership of land became established. Presumably, the introduction of the new land law created the necessary condition for the creation of a factor market for land. However, this condition was not sufficient to actually create a well-functioning land market in a context where the factor markets for labor and capital were far from perfect. The transformation of the property structure could not be powered by the development of a private sector from private domestic savings or rural credit. The social system had inhibited peasants and plantation laborers to accumulate a surplus, and rural credit was not available. Foreign investments could certainly not fill the gap with a history of opportunist nationalization. In these circumstances, the dynamics of a factor market for land could only be simulated by converting social capital directly or indirectly into property rights. The institutional transformation mediated the access to land in function of non-capitalist social relations (direct conversion) and by creating unequal opportunities to exercise market power (indirect conversion).

Given that the institutional set-up determines the utility of the various forms of capital, the social outcome is determined by relevant capital endowments built up previously. The normative shift under the 1973 law from an informal customary system to a formal property regime, disqualified the patron-client type of reciprocity accumulated under the customary institutional conditions. The new principle of stratification and elite-formation that was introduced with the 1973 land law put a premium on alliances of state patronage rather than customary networks. As the land

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<sup>17</sup> TSONGO, M., *Problématique d'accès à la terre dans les systèmes d'exploitation agricole des régions montagneuses du Nord-Kivu (Zaire)*, Louvain-La-Neuve, UCL, 1994, p.209.

<sup>18</sup> NORTH, D., *Institutions, institutional change and economic performance*, Cambridge University Press, 1990.



market was to be established by administrative procedures of registration and cadastration of public land, gaining access to land required access to the state and its administrative procedures. Closeness to the state, afortiori closeness to Mobutu, created the conditions that allowed economic prominence. Closeness to the state can be portrayed as the involvement in networks throughout which access to assets and opportunities is spread out. This can also be understood in terms of the theory of coalition formation and game theory. A player in this 'game' would have two preferences, a favorable outcome of the game (acquire land), and the possible coalitions in the game which are a means to obtain that favorable outcome. From the viewpoint of the agent, the outcome is exogenous in the sense that the player cannot influence it alone, while the choice of coalition is endogenous in the sense that the player can work to join a winning coalition<sup>19</sup>. Use of the term 'network' is preferable to that of 'coalition' however, as it conveys more appropriately the meaning that these groups do not exist by design. In addition, in political coalitions optimum provision does not change with membership size, reflecting the zero-sum nature of winning and losing in politics. When optimum provision changes with membership size, which is the case when pay-offs are not in terms of rival goods, it is preferable to talk of clubs<sup>20</sup>.

In this sense, the networks described above can be considered as 'exclusive clubs', and the norms of reciprocity or social capital embedded in it as a club good. An exclusive club is a voluntary but restricted group that derives mutual benefits from sharing goods characterized by excludable benefits<sup>21</sup>. The characteristics of a club good are its non-rival nature and the possibility of exclusion. The mutual favors (reciprocity) extended over this type of network of state patronage are in general non-rival. An army commander can extend selective protection, a judge can ensure the favorable outcome of litigation, or an agricultural extension officer can impose forced labor on villagers to cultivate the fields of a friend. All these selected services can easily be rendered to one person without subtracting from the consumption opportunities of another. On the other hand, some favors extended may be rival, in the sense that a piece of land taken from a farmer by a chief and sold to one party cannot be sold to another simultaneously. The relevance of this point will be clarified further on. As to exclusion, the whole point revolved around the exclusion of the peasants themselves, to whose detriment the new land law was used to simulate the conditions of a factor market for land. As Dupriez writes: "*the example of customary feudalism ... has been emulated by state institutions, entrepreneurs and agro-commercial firms and certain churches. Anyone who holds the least bit of power seizes the right to demand free labor and impose taxes, penalties, and tribute... The state administrators are the worst (and) any state representative in the rural areas plays the role of 'bad cop' ... Of all this, nothing returns to the peasants (and) the whole system that weighs on him follows the logic of plunder.*"<sup>22</sup> As the quote highlights, what the peasants are excluded from is not only access to goods and services provided by the state, but more fundamentally the insurance from arbitrariness. The arbitrary taxation of peasants in terms of cash, produce, or labor can be equated to the creation of value to sustain social exchange in these networks. In general, the conditions of the collapse of the

<sup>19</sup> VAN DEMEN, A., *Coalition formation and social choice*, Kluwer academic publishers, 1997, p.7.

<sup>20</sup> PAULY, M., *Clubs, commonality, and the Core: an integration of Game Theory and the Theory of public goods*, *Economica*, 34(135), pp.314-24

<sup>21</sup> For a review of the literature on clubs: SANDLER, T., TSCHIRHART, J., *The economic theory of clubs: an evaluative survey*, *Journal of Economic Literature*, Vol. XVIII, pp.1481-1521.

<sup>22</sup> DUPRIEZ, H., op.cit, 1987, p.33.

Zairian economy and the non-payment of wages led to a predatory state: any service that was to be rendered to the public took on the aspect of a private sale that benefited the officeholder. To the extent that the good or service was public and/or non-rival, it was made trafficable by introducing exclusion and rivalry in its delivery. For example, only the schoolchildren that contributed to the teacher's salary benefited from education, only the entrepreneurs that bribed the soldiers were spared from army harassment and regular bursts of looting. As to the peasants, by looting them of their surplus and coercing them into providing free labor, even the lowliest of administrators was able to acquire some social 'currency' that could skillfully be exchanged throughout state patronage networks to obtain another product or service. The effect of being a member of the club was first the possibility to obtain and exchange social currency, and second to realize economies of scale in terms of the transaction costs involved in obtaining any publicly provided good or service.

We can posit here the existence of two types of exclusive clubs. The limits between the two forms and the degree of exclusiveness are quite sharply drawn by a number of executive decrees that establish the competence of authorities to decide on land registration requests, based on the extent of land for registration. Above 100 ha, it is a political decision that requires authorization by the president or competent minister. Inclusion into this 'club' requires access to the inner circle of state power: direct access to (ex-Zairian president) Mobutu. In terms of land reallocations, this group benefited from the distribution of nationalized plantations and from politically influenced procedures of reclassification of forest reserves and other types of state land. Under 100 ha, it concerned mostly cases of registration of village land, and the procedure remained in the hand of the local administration<sup>23</sup>. To this 'club' belonged an amalgam of new Congolese entrepreneurs, administrators and state employees of all kinds, and the traditional chiefs, with the criterion for inclusion the power to call forth the repressive power of the state. Social capital built up in these broader circles of state patronage was used to acquire positions from where either the decision process concerning land allocations could be influenced, or from where the necessary cash could be accumulated to purchase land. We will take a brief look at these 'clubs', with emphasis on the latter.

The more 'exclusive' type of club revolved around the pinnacle of the Zairean state. From the very beginning, the political strategy guiding the former Zaire's president had been based on a parallel group of trusted military (the DSP: *Division Spéciale Présidentielle*) and a network of patronage maintained by a high rate of pay-outs. As the instance of 'zairinization' and the land law of 1973 show, he did this by constantly converting economic assets into a stock of political resources for (re-)distribution to those who had shown political loyalty. In North-Kivu for example, migrants of Rwandan descent that had obtained the Zairian nationality under the 1972 law on nationality (later repealed) were Mobutu's staunchest political allies at the time. These '*Banyarwanda*' consequently became the main political beneficiaries of the 'zairinization'. In North Kivu's very fertile highland areas of Masisi and Rutshuru, they acquired more than 90% of the colonial plantations, and some of the biggest ranches in the area passed into the hands of *Banyarwanda*. The biggest of all for example – the Osso ranch - went to Bisengimana Rwema, Mobutu's chief of staff at that time<sup>24</sup>. Clearly, these circumstances created the necessary momentum to foment

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<sup>23</sup> MUGANGU, S., op.cit, 1997.

<sup>24</sup> MARARO, B., «Land, power, and ethnic conflict in Masisi, 1940s-1994», *The international Journal of African*

the intense ethnic conflicts of 1993 in Masisi and Rutshuru, well before the Rwandan genocide. Overall though, this process of direct state patronage contained the seeds of its own undoing for two reasons. First, to prevent clients from becoming powerful enough to mount a leadership challenge required that they be regularly stripped of their privileges, while new ones filled the void. Second, this costly 'recycling' of the patronage network presented the problem of how to continue to assert authority amidst declining resources. To give an idea, in the period 1958-1993 the population of Zaire soared from 15 to 42 million inhabitants, while the production per capita shrank approximately 65% from 377 \$ in 1957 to 117 \$ in 1993. Estimates are that between 1988 and 1993, the BIP per capita contracted by 11.7% per year<sup>25</sup>.

Obviously, access to these high spheres of patronage that involved Mobutu or his closest allies was hard to come by. In addition, the number of nationalized plantations to hand out was evidently finite. Finally, these lands had been out of the customary realm since colonial times. Given these reasons, the more important process is the one in which communally held land was steadily privatized. As Tsongo documented in his survey of 84 exploitations in the zone of Luhoto (North-Kivu) in the early nineties, the average concession size awarded by the state administration was 12 ha. Concessions that were pried loose via the customary authorities averaged a mere 1.88 ha<sup>26</sup>. The dynamics of this process necessitated a close cooperation between modern administrative and customary authorities. Although the administrative authority sanctioned to deal with the land allocations under the provisions of the 1973 laws was clearly defined, in practice it was powerless and other administrative and political authorities were habitually involved in the process. A few reasons can be mentioned here. On the one hand, its administrative set-up limited it to a few upper echelons that were city-based<sup>27</sup>, so that it needed the intervention of other administrative authorities with a wider reach. On the other, the paramount role of the customary custodians of this land - the chief or *Mwami* - needs to be highlighted. As we mentioned, the *mwami* was in a unique position to mediate interaction over the boundaries of the normative duality introduced in 1973, as he occupied a cardinal role in both networks of customary and state patronage. Mobutu had underlined this paramount importance of the chiefs by allowing judicial, administrative, and political power to be united in their persons. First, the colonial system gave the *Bami* the authority of president of the customary courts, later under Mobutu integrated in the judicial set-up of the modern Zairian state<sup>28</sup>. Second, as '*chef de collectivite*', they became an official element in the administrative chain of command from the capital to the rural areas (law of 15/01/1973). Third, they became presidents of the single party MPR in these very collectivities. As administrative heads of the collectivity they could officially declare land under cultivation as free and then preside over the hearings on land allocation disputes in the customary courts. Being so centrally placed, the *Bami* were in an excellent negotiating position to appropriate the lion share of the rent of the lands being sold. As mentioned briefly, not all goods and services traded in this 'club' were

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*Historical Studies*, Vol.30, N°3 (1997),pp.503-537.

<sup>25</sup> DEVEY M., "L'économie Zairoise: état des lieux", *Marches Tropicaux*, 10/01/1997, pp. 57-96.

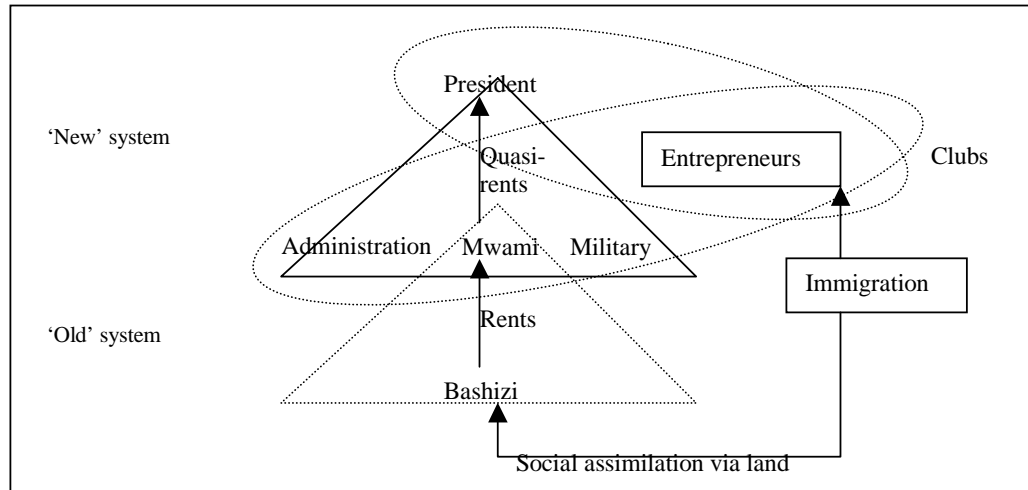
<sup>26</sup> TSONGO, M,op.cit,1994 .

<sup>27</sup> In South-Kivu there were just 2 branches of the land management office, one in Bukavu and one in Uvira. Although these were supposed to hold supervisory visits in the different zones and groupements of the province, basically they were mostly grounded because of lack of vehicles or fuel. Site visits to approve of a certain concession could then be organized by the requesting party by lending a vehicle or fuel.

<sup>28</sup> This authority was – contrary to tradition – first accorded by the colonial authorities in 1937: MAPATANO, B. J., *Administration traditionnelle et question foncière a Kabare, Région du Sud-Kivu, Zaire*, Geneve, Institut Universitaire du Développement, 1994-1995.

non-rival, the most important being land. In that sense, land is a ‘positional’ good. To acquire it, queues of interested purchasers will form. All of these interested purchasers will be forced to invest a lot of social ‘currency’ for lobbying which, in the end, will not affect the outcome but simply their rank in the queue. In the following section, we will take a closer look at the precise mechanisms the *Bami* used to ‘funnel’ land from the customary to the modern domain. The unique position of the customary authorities in this process, as well as the other elements discussed above and further on, is highlighted by figure 1.

**Figure 2: The dynamics of land allocation and alienation**



When speaking of *Bami*, the text alludes to the customary leadership as a whole. Before engaging the analysis of the role of the *bami* in the process of institutional transition, it is therefore useful to consider the structure of customary leadership. As stated, the patrimonial relations embedded in that structure are strictly hierarchical in nature, with the position in the hierarchy reflected by the ratio of ‘controlled’ vs. used land. At one extreme is the *Mwami*, who controls all the land and cultivates none of it, at the other are the *bashizi* who cultivate but control no land. In between are the various intermediary positions. This means that the discretion to alienate land from the customary domain without consultation increases the higher the position in the hierarchy. Although it would not be ‘proper’ for the *Mwami* to sell land of a subject without consulting the intermediary structure, it is not impossible. It would be much more difficult however for a ‘*mushamuka*’ (underlord) to alienate land of a subject without consulting the superior part of the hierarchy. In that sense, the *chef* sets the dominant strategy for all levels of the structure. If he wants to sell, then it is better for the lower ranks to cooperate and appropriate part of the capitalized rents; The outcomes can be represented in the form of an assurance game, where there is an incentive to contribute if the other players are contributing. Although there are multiple players, the setting can be represented as two parties – the *Mwami* and a *mushamuka*- involved in selling the land of a *mushizi*. There is a stable equilibrium where all participate in the sale, as well as one where none participates. In the first, the *mushamuka* gets a quarter of the capitalized rents (0.25R) and the *mwami* three-quarters (0.75R). The position where the *mushamuka* receives all of the capitalized rent and the *mwami* none, would be principally impossible (shaded area). The position where the *mwami* receives all and the *mushamuka* nothing, would be theoretically

possible but socially unstable, and therefore not a stable equilibrium. So when discussing the alienation of land, it is safe to assume that the whole customary leadership hierarchy leans in the direction set by the *Mwami*.

**Table 3: the alienation of land and dynamics within the customary leadership**

		<i>Mwami</i>	
		Sell	Not sell
<i>mushamuka</i>	Sell	0.25R 0.75R	1R 0
	Not sell	0 1R	0 0

### **5. Transition and the utility of social capital: the role of the *Bami***

In order to create opportunities for administrative authorities to establish titles on customary land, the *Bami* had to uproot the integrity of the customary land allocation system. This meant two things. First the weakening of the customary land use rights of farmers in general. Second, the gradual privatization of marshlands and forests that resorted under the customary authorities.

Weakening of the customary land use rights of farmers implied either offering more uncertain land contracts to new applications for land use, or disputing former appropriations and invoking a ‘right of return’ (*droit de reprise*). The chefs could achieve the latter in two ways, both of which may bring the user to stand accused of illegal occupation of the land under article 207 of the 1973 land law. First, by questioning the initial amount paid for the *kalinzi*. The right to land use under a contract of *kalinzi* is established in the presence of a number of traditional witnesses (*Baganda*). Given the hereditary nature of the right, quite often the witnesses to this initial transaction - especially in long-established areas which are also often the most productive - are deceased. In case the repeal of a *kalinzi* is brought to court in the absence of these witnesses, the judge is allowed to act on the basis of what could be called ‘deep conviction’ (*intime conviction*)<sup>29</sup>. A second way of disputing former appropriations is to cast doubt on the allegiance of the particular user by questioning the regularity or amount of rents paid. Any failure to pay the *isoko* or *burhabale* would amount to a kind of ‘customary treason’, allowing the customary authorities to seize the land. An additional strategy the *chef* could resort to was simply his authority to deliver (false) statements of vacancy. In many of such cases the population was not aware of any administrative steps that had been taken. Land could be declared vacant and registered without the knowledge of the occupants, and nothing much would happen until 2 years later when the new owners would move to occupy their ‘property’. After this expiration period of two years, the title had become legally ‘unassailable’ in court<sup>30</sup>. To give but one example of the pattern of interaction of different agents and practices, the conflict that took place in Katana (Kabare, South-Kivu) in 1989 is worth looking at<sup>31</sup>. In that year, the *Mwami-Kazi* (wife of the defunct *Mwami*) registered under her name several hectares of land belonging to villagers, denying them the contract of *kalinzi* awarded in

<sup>29</sup> Interview with magistrate, Bukavu, 27/02/1999.

<sup>30</sup> If this seems far-fetched, suffice it to recount how the size of the Park (PNKB) was multiplied by a factor 10 in 1975, yet the population only became aware of this extension by the early eighties!

<sup>31</sup> MAPATANO, B. J., op.cit, 1994-1995.

the past, simply acting as if their lands were vacant. The ‘*Youth Mutuality of Kabaguzi*’ opposed these practices, only to see its members imprisoned with the complicity of the Zonal Commissioner of Kabare (the highest administrative officer in the Zone). These lands were then sold to different planters, who were finally unable to exploit the land because of the threat of violence from the villagers.

A second way to uproot the integrity of the customary land allocation system consisted of privatizing marshland and gallery forests. These lands -forested hillsides or swampy valley-bottoms- were traditionally not attributed, that is no hereditary use rights could be established, and could therefore be considered as ‘commons proper’. They fulfilled a special function in two ways. First, specific rights such as pasture or firewood collection, were traditionally attached to the attribution of a *kalinzi* on the top of a hill. Second, at the discretion of the chief these lands could be given out to villagers under a customary contract of *Obuhashe*. The latter is a kind of public service in which marshland is made available at no cost for the duration of one season only. This could be used to temporarily accommodate newcomers or villagers who had suffered a particular spell of bad fortune. The pressure to take these areas out of the commons increased in step with their potential market value, itself basically determined by the extent of improvement or drainage. To realise the fiscal potential of these areas depended on the successful dissociation of these customary use rights from the contract of *kalinzi*, in order to attribute them preferably by a contract of *bwasa* or sell them. *Bwasa* is a short term contract of land rent, usually for the time of one particular season, that comes unattached with any of the patriarchal strings typical for a *kalinzi* arrangement. Payment is based on the assumed fertility of the soil, topped up by a share of the surplus (*ntumulo*)<sup>32</sup>. Given its short-term nature, the rents levied could follow much more closely the market value of the land. The method used by the *chef* to initialize the privatization was simply to declare these lands vacant. Also here a simple example from South Kivu may convey the essence of this institutional shift. The drainage of 100 ha of marshland in N’kombo (collectivity of Kaziba, zone of Kabare, South-Kivu) – a work of 3 years (1986-1989) – was done voluntarily by farmers under the technical supervision of the German co-operation. After 2 years of exploitation by the farmers, it turned out that the *Mwami* Na’kaziba had sold the lands to the multinational Pharmakina to grow tobacco<sup>33</sup>.

Predictably, the result of all this was a transformed landscape of rural production relations. On the one hand, the rents inherent in a system that separates use rights from benefit rights no longer lubricated the cohesion of the system of dependent integration, but were extracted and appropriated by divesting the peasants. New social actors came on the scene: a newly created class of Congolese rural capitalists next to those of the agricultural multinationals, the traditional landlords (*Barhambo* and *Bashamuka*), and the peasants. This effect can be seen from a sample survey in a locale in North Kivu, presented in table 4. The table shows how in this particular location, 66% of the land (114.7 ha) remained under the control of ‘traditional holders’, while the rest came under control of the ‘new’ social actors. It is worthwhile to compare the small amount of land (1.8 ha) that came into the hands of what could be considered ‘modern capitalist entrepreneurs’, vs. the 27% acquired by various state personnel. Certainly, the table is but a snapshot of one particular small location, and it does not allow to jump to general conclusions. In the absence of data given Zaire’s

<sup>32</sup> MASSON, P., *Trois siècles chez les Bashi*, Bukavu, La Presse Congolaise, 1966; MUHEME, G., op.cit, 1996

<sup>33</sup> MAPATANO, B. J., op.cit, 1994-1995.

notoriously bad (or absent) statistics, it does however provide an illustration of the dynamics presented. In the next part we will present graphically the effects on land and social structure of the dynamics analyzed here.

**Table 4: Use vs. control of land, Groupement Luhotu, Baswagha (Nord-Kivu) 1991**

	Land controlled (ha)	Land used (ha)
Mwami	52.60	0.00
Landlords	54.75	33.57
Peasants	7.40	70.89
State personnel <sup>1</sup>	48.00	23.60
Entrepreneurs	1.79	30.00
Other <sup>2</sup>	9.10	16.58
Total	173.64	173.64

Source: Based on TSONGO, M., op.cit., table 31 and 32.

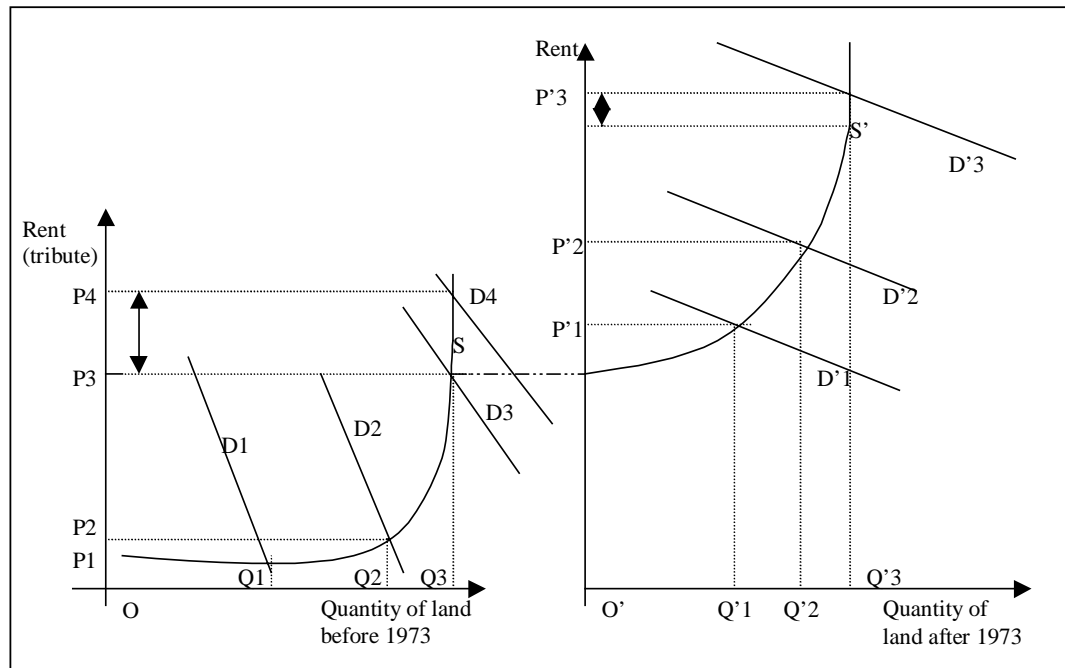
1: state administrators and military officers

2: employees of large companies

## 6. Graphical presentation of the dynamics of land alienation

The movement from Q1 to Q2 and from P1 to P2 shows the rent going up as the frontier closes and population density increases. New entrants will increasingly need to negotiate a *kalinzi* on a portion of land of an established household, rather than clear additional land. The shift from Q2 to Q3 and from P2 to P3 shows the effects of colonial land management in the fifties. The 'frontier' was effectively closed, while population density continued to increase given the policy of encouraging immigration.

**Figure 3: graphical representation of dynamics**



Getting access to land under a *kalinzi* contract would reflect these conditions in a steadily increasing level of tribute. In this situation, quasi-rents start to arise. Each new unit of land that is tempted into a *kalinzi* contract by further sub-division earns real rent, in that it would not appear unless that amount of tribute were paid. The marginal *kalinzi* will signal price (tribute)-setting for all the other (intramarginal) landlords who can now get a higher tribute. They are the potential beneficiaries of a scarcity price that gives them a bonus or quasi-rent over the tribute they originally negotiated. Whether this quasi-rent will be effectively appropriated, depends on the room for re-negotiation of existing *kalinzi*, but this situation certainly increases the pressure on the level and amount of *kalinzi*. Note that the appropriation of a quasi-rent will benefit the whole chain of redistribution, not only the landlord (re-)negotiating a *kalinzi* on a piece of land to which he has use rights. Besides the appearance of quasi-rents, the demand curve becomes more elastic. As access to land becomes a problem and immigration continues, the possibilities to obtain labor via the market expand, and the size of the household less of a bottleneck in raising the land's marginal revenue product. The latter is the logical corollary of higher rents (tribute) for a given piece of land; this requires a higher productivity that can be reached in the short term by adding labor (more weeding etc.). The movement from D3 to D4 shows the hypothetical effect of additional demand on a supply curve that has become completely inelastic as the supply of land has become fixed. The effect is simply to create quasi-rents, indicated by the arrows, for all landlords, including the 'marginal' one.

The situation created by the land law of 1973 is presented in the graph on the right. Its salient feature is the reversal of the situation that evolved, by rendering the supply of land elastic again. The pool of customary occupied land (old land) can now be re-allocated or privatized by administrative procedure (new land). There are five noticeable features presented by the circumstances of institutional transformation. First, not all of the customary land can be supplied (not everybody can be dispossessed), so that ('new land')  $\subset$  ('old land'). The supply of land that can be offered for re-allocation will become fixed at a lower quantity of land than in the graph on the left. Second, the supply of land will be less elastic than in the initial conditions that characterize the left graph. Dispossession entails transaction costs such as court hearings that are simply not present when clearing virgin land. As more households are dispossessed, transaction costs will tend to rise. Third, the demand for land will be more price elastic, since the dispossessed households that enter the labor market can contribute to a higher productivity of the land (higher marginal revenue product per unit of land). Land has become the constraining factor, rather than labor. Fourth, the minimum rent will be set at the level of the marginal tribute. The tribute fixed for the last unit of land given under a contract of *kalinzi* will determine the starting price. Between the two graphs, this is represented by the price P3. Also here, quasi-rents are created as demand shift upwards from D'1 to D'3, and 'intramarginal' landlords can potentially profit from a higher rent on the last unit of land re-allocated. In this case, contracts will be short term (*bwasa*) rather than hereditary (*kalinzi*), and therefore easier to negotiate. Fifth, different from the situation in the left graph the rents and quasi-rents will no longer be redistributed throughout the social system, but appropriated by the coalition of persons involved in re-allocating the customary land (*chefs*, state administrators...). This is also represented in figure 2. What each one will get depends on their relative negotiating position.



There remains a final remark. The graph on the right has presented a situation in which land is re-allocated via rents. In reality, land was indeed re-allocated via the replacement of long-term by short-term contracts and the renegotiation of long-term contracts, but also via the full capitalization of the rent (sale of the land). This doesn't invalidate the picture presented in the graph; the selling price of land is the discounted value of future rents, which is the rent divided by a factor that represents the opportunity cost of capital (e.g. the market interest rate). It is noteworthy that once the land is sold at a price that includes a large portion of quasi-rent, the quasi-rents becomes a real element of cost that enters the production function of the purchaser. As it drives up the amount of capital expended, it will require a market return to match.

## **7. The effects on social structure**

We have argued that changing patterns of inequality are a function of the emergence of a factor market for land and of new participants in Kivu's local economy. To enable these elements to emerge, access to the resources of the state was a prerequisite to deconstruct the use rights granted to peasants in the customary collective domain. We will now link these elements to a number of effects that conditioned the eruption of conflicts. To explore the effects more fully, the analysis is structured in two parts. First the effects on land, risk management and the labor market. Tracts of underutilized and extensively used land in the 'modern' agricultural sector existed alongside a subsistence agricultural sector under severe stress. The stress indicators were the degradation of food security and the expansion of a labor pool that could not be integrated economically into the agricultural sector, nor socially into customary society. Second the effects on social capital. The ratio of benefits of the 1973 land law relative to the costs of managing the type of exclusion engineered by means of the 1973 law proved too unfavorable for society. In order to deflect potential conflict along the newly established lines of 'haves' and 'have-nots', politicians skillfully managed ethnicity as a rallying point. The end product was a situation in which mutual assurance was ethnically defined. The social capital embedded in the traditional customary networks gradually evolved from a public good into a club good – non-rival but exclusive - of which the boundaries were defined by ethnicity. These points will be discussed one by one.

With regards to land and labor, the movement from subsistence to a 'modern' entrepreneurial agriculture loose of customary encumbrances would seem to signal an intensification of agriculture, with farming systems that employ yield enhancing inputs and technologies and profit from scale economies of production. This intensification could also be expected in the subsistence agricultural sector as the population density increased. However the picture here is mixed. First, many of the larger areas acquired were transformed into ranches. The same happened with the declassified forest reserves acquired by Mobutu cronies. In North-Kivu for example, the Hunde customary authorities (with the complicity of the Provincial Land Services) sold the vast forest reserves of Rwamikeri and Nyarunaba to *Banyarwanda* individuals, who converted them into ranches<sup>34</sup>. On the other hand, plantation areas remained underused. Of the 10,273 ha of plantation land surveyed by a land use study in highland Bushi (a part of South-Kivu) in 1984, only 7,813 ha were used. The area not used for plantation purposes was partly reserved for the laborers to cultivate their

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<sup>34</sup> MARARO, B., op.cit,1997,p.528.

own crops. So on the one hand the laborers no longer paid tribute. On the other, most laborers, especially women and children were hardly paid, so that the tribute was merely displaced in the form of labor effected in the plantation proper<sup>35</sup>. In this sense, the new social actors maintained the customary separation of use rights and benefit rights, and as a consequence failed to create the conditions for an effective factor market for labor<sup>36</sup>.

Second, the institutional transition - in combination with the population growth - induced structural changes in the traditional agricultural system. The changes are twofold. On the one hand, the land pressure reduced and fragmented holdings and pushed cultivation onto bottom lands and steep slopes previously held in pasture and woodlot that were often used on the basis of short term contracts such as *bwasa*. Historically, farmers in the Kivu highlands settled along the upper contours of hillsides where soils were more fertile and cultivation was simpler than on the steeper slopes and marshy valleys. These changes eroded traditional coping mechanisms that were incorporated in the farming system, such as crop diversification according to agro-climatic zones and the integration of livestock husbandry and agriculture. Land with the most secure tenure status, mostly close to the homestead, was increasingly reserved for cash crops (mostly bananas). Food crops were relegated to the farther fields with a more uncertain status. This evolution contributed to a shift in cropping patterns from nutritious *leguminae* to the protein-deficient cassava that was easier to cultivate and market. In the sense that food security was increasingly at risk in the later eighties - with an outright famine in 1989 - the crisis of the rural areas reached new thresholds. For the area of Bwisha in North-Kivu, Pottier documented how increased vulnerability at a time of such severe shock further enhanced inequality and the concentration of land and other assets<sup>37</sup>. On the other hand, the increasing land pressure put more strain on customary arrangements whereby every male heir was entitled to a part of the *kalinzi* or lineage land. As elaborated earlier, this signified much more than a simple failure to obtain land. Access to land was the means to social integration, so failure to gain access to land constituted a failure to become a fully integrated member of society. In view of the deficient factor market for agricultural labor, the only option for the new class of landless young men (*baginzi*) was to gain a living by cultivating marketable food crops on *bwasa* land, or by voting with their feet and sell their labor. They could do this as migrant agricultural laborers or make a living in Zaire's large gray economy of gold digging, smuggling, and poaching<sup>38</sup>. In this sense, the increased mobility of young men was an answer to a social situation under severe strain.

With regards to the effects on social capital, the above issue of the growing number of young men that failed to be integrated in the system of *kalinzi* can be put in broader terms. As the customary domain further eroded and the population density increased, the rival nature of land use became ever more pronounced. Traditionally, also

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<sup>35</sup> Most of the plantations paid the women and girls 'in kind', meaning a combination of some salt, palm oil, and firewood for a day's work. The plantation of Kinaplant in Bulonge for example, paid no more than 2 ½ glasses of salt per person per day; DUPRIEZ, op.cit, p.63.

<sup>36</sup> The planter's profit is maximized in this case at the point where the marginal revenue product produced by the labor of an additional household in the plantation, equals the marginal revenue product produced by the household on the additional unit of land accorded to them for subsistence purposes.

<sup>37</sup> POTTIER, J. et FAIRHEAD, J., "Post-famine recovery in highland Bwisha, Zaire: 1984 in its context", *Africa*, 61 (4), 1991, pp.437-470.

<sup>38</sup> In a survey conducted in Bukavu in 1987/88, GTZ estimated the clandestine market for game-meat to turnover about 400 ton per year, nearly all of it from the Parc National de Kahuzi Biega (Schaeffer).

immigrants could obtain land and be socially integrated. The increasingly rival nature of land access hardened the social boundaries, in first instance on an ethnic basis. Ethnicity became a criterion to judge previous land allocations, and especially in those areas where the disparities were ethnically tainted was the explosiveness of social conditions further enhanced. Unsurprisingly ethnic conflict first erupted in 1993 in the zone of Masisi (North Kivu), where 512 families (of which 503 of Rwandan descent) controlled 58% of the land<sup>39</sup>. The timing of this first conflict was not haphazard, as politicians and traditional chiefs alike skilfully exploited the hardening of boundaries. With the promise of the first multi-party elections since the early sixties, politicians fully played the ethnic card by mobilising the popular vote on the issue of land and nationality. The traditional chiefs rallied to the same cause, given that an ethnic vote on land and nationality would redeem and reinforce their position at the centre of customary networks that were now more rigidly defined. The effects in terms of assurance, the security of expectations about one another's intentions and actions that lies at the centre of all potential strategies of cooperation, was to limit that security to a rigid ethnic framework; ethnic distrust replaced former trust.

The outcome is known. Entrepreneurs and politicians organised and armed ethnic peasant militia, consisting mainly of unemployed young men, and ethnic retributions followed. With similar political evolutions taking place at the same time in Rwanda and Burundi, the region-wide conflict that erupted gave a chance for the diverse local antagonisms to be attached to wider economic interests, which brought elements of pure warlordism in its wake. At that point, it becomes impossible to disentangle the endogenous and exogenous elements that continue to configure Kivu's social conflict. What remains of the commons now is preciously little. Game parks and other types of land and forest reserves are being converted to farmland to accommodate the land hunger of the population<sup>40</sup>. The chiefs are in hiding or exile out of fear of foreign armies that recognise the pivotal role of customary leadership in mobilising the rural population. The customary fiscal logic has been replaced by looting, whereby marauding armies or militia confiscate not only the rents of peasants but also their assets, pushing them in a downward spiral of poverty. The private ownership of land has become meaningless, since it depends on the recognition of a larger legitimising order that is now completely absent.

## **8. Conclusion**

In this paper, we have chosen to concentrate on the endogenous elements that led to the current conflict in Kivu. Via a factor market, quasi-rents were used to allocate a scarce commodity among various claimants in function of social relations that led to the unequal exercise of market power. In hindsight an intriguing question remains: was there any likelihood that the traditional system of granting hereditary use rights on customary commons could have continued to exist, in view of what transpired? The key element in considering the issue is the fiscal principle that governed the customary system: continued expansion of the land base and the redistribution of a moderate tribute (rent) levied on an extensive farming system. Once the 'enclosure' of

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<sup>39</sup> LAURENT, P.J. et TSONGO, M., *Mouvements de populations, cohabitations ethniques, transformations agraires et foncières dans le Kivu montagneux*, Université Catholique de Louvain – Institut d'Etudes du Développement, 1996, 181 p.

<sup>40</sup> GORILLA CONSERVATION NEWS at, [www-anthro.ucdavis.edu/features/gcn/gcn97](http://www-anthro.ucdavis.edu/features/gcn/gcn97), University of California at Davis, 97.

the commons checked the potential for expansion, only migration and the intensification of agriculture (adding labor and/or capital per unit of land) could alleviate the increasing population density. To enable peasants to add capital would have signified a decreasing ratio of tribute over rent per unit of land to allow the private appropriation of part of the production surplus to enable savings and investments. This is counter to the customary logic of social appropriation of the peasants' surplus and its redistribution. So the development of a family-based agricultural sector would have necessitated a push in the direction of a fuller set of property rights on village lands, not necessarily in the sense of 'abusus' but certainly in the sense of a larger share of the benefit rights. The survival of the customary system in this case would then depend on the net fiscal effect of intensification: is the portion of the benefit rights that is socially appropriated sufficient to cover the social overhead costs (e.g. the customary court) and the redistributive arrangements of the system? Failure to engage in this could only have led to social bankruptcy; maintaining a hereditarily fixed tribute over a shrinking rent as the land/capita decreases without possibility for intensification would lead to the worst-case scenario: the complete impoverishment of peasants. Note that in all this, we have been speaking of 'necessary' rather than 'sufficient' conditions for the emergence of a more intensive and commercially-oriented indigenous agricultural sector.

Nevertheless, it is interesting to note there were signs that such a sector was indeed nascent in Kivu in the late 1960's<sup>41</sup>. Unfortunately, there was never time for the social effects to be manifested, given a series of armed uprisings that affected the Kivu provinces since that period. The situation anno 2000 represents the worst-case scenario mentioned, a complete impoverishment of Kivu's peasants, but with a significant difference. The peasants became impoverished but not the rest of the social system that depended on the redistribution of their rents. How this happened has been the subject of this paper. First, the customary leaders became a pivotal group in supplying land to the 'winning coalition' that was institutionally armed by the 1973 land law. Second, the 1973 institutional transition nullified the utility of the social capital that peasants built up in the customary patrimonial system, so they had no social 'currency' to trade for land.

Nevertheless, amid increasing social tensions, the customary leadership was able to cling to their positions by mobilizing their clientele on an ethnic platform, conveniently using the issue of nationality: 'foreigners', especially the '*Banyarwanda*' were accused of having unrightfully appropriated customary land and of having subverted the customary order. This was correct and false. It was correct to the extent that immigrants had acquired land directly via social relations that involved the pinnacle of the Zairian state, the more exclusive 'club'. To that same extent, immigrants escaped the clientelist subordination to a customary system based on ethnicity or clan. At the same time, it was false insofar as the Hunde and Nande ethnic chiefs in North Kivu for example sold land to immigrants themselves. The Zairian state that had failed to endorse social mobility via the market, became an opportunist organizer of violence to allow a modicum of social mobility but leave the roots of the crisis intact. In this sense, it is accurate to conclude that the exogenous elements of

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<sup>41</sup> An example is the 'Association des maraîchers': an association of local farmers which produced up to 300 tonnes of fresh vegetables per month. This production was exported nationally to the big mining centers in the Congo, and internationally to the Central African Republic and Tchad (personal communication from a former member of the association).

conflict were so readily 'importable' and applicable, because of a long history of social deterioration that is squarely situated in the crisis of the Zairian state.

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