

# Insecurity and Local Governance in Congo's South Kivu

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**Abstract** South Kivu Province of the Democratic Republic of the Congo (DRC) has experienced recurrent wars for more than 15 years. This article, based on the original report,<sup>1</sup> explores the way local systems of governance and networking in South Kivu have been affected by the civil war and the ways in which local communities have tried to cope with chaos and the absence of the state. It also explores the role of various local organisations and groups in conflict and post-conflict governance. Governance does not completely disappear when the state collapses. Its structures remain hidden and in retreat, but ready to sprout into existence again. Multilayered, networked governance is a reality and is much less of a threat to viable states than might be imagined. However, when the state is incapable of assuring the security of its own population, it is difficult for social mechanisms and local institutions alone to substitute for the lack of a functioning state.

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## 1 Introduction

Thomas Hobbes famously argued that life without the state is 'nasty, brutish and short' (Hobbes 1939 [1651]). And when the government of Zaire finally collapsed in the face of the 1996 revolutionary invasion from Rwanda, Burundi and Uganda, the consequences for the peoples of eastern Congo were all of these disasters and more. But if the national state collapsed for a time, what happened to local governance? What role did its institutions play in coping with human insecurity? How, in turn, were they affected by it? And what has been their part in rebuilding governance? State reconstruction usually is approached from the top-down, with a focus on core central government functions; in this article I look at it from the bottom-up.<sup>2</sup>

Local governance is defined by Anwar and Sana Shah (2007) as the formulation and execution of collective action at the local level. Thus, it encompasses direct and indirect roles of formal institutions of local government and governmental hierarchies as well as the roles of informal norms, networks, community organisations and neighbourhood associations in pursuing collective action by defining the framework for citizen–citizen and citizen–state interactions, collective decision-making and delivery of public services.

Understandably, institutions work better in situations of peace, when they result from a long evolution of delineated administrative entities. Institutions of local governance find anchorage in identifiable spaces. But what happens to local institutions and governance when they face situations of war, conflict and delocalisation? Some communities in South Kivu Province have experienced periods of recurrent wars and unending violence for more than 15 years. Did this fate help consolidate local traditional institutions by relying on them in order to find ways of living without the state or supplementing its inabilities in sustaining peace, stability and development? It is interesting to explore the way local systems of governance and networking in South Kivu Province of the Democratic Republic of the Congo (DRC) have been affected by the civil war, how their changes have affected the recreation of human security in that province, and what governance structures and networks the various communities created or used to try and provide for their human security (broadly understood as physical security, shelter, health, food and education).

What aspects of their social structures did they mobilise and which ones broke down? What new structures were created? What kind of networks of relationships with external actors did they

develop as part of their coping strategy? The particular situation of South Kivu, during the revolutionary war of 1996, the rebellion of 1998, the regime of the late President Laurent Kabila and the current one of Joseph Kabila, proves that life in South Kivu has been indeed uncertain and challenging. However, a combination of internal and international actors, each serving its own interests has contained the deterioration of the social fabric to a certain degree and maintained the existence of a greater community.

Since 2003, sustained efforts have been made to reunify the country. Presidential and parliamentary elections were held in 2006 and in November 2011. How did governance and network structures and their changes affect the recreation of human security in South Kivu once the major combatants at the national level had negotiated a peace? As the violent conflict subsided, how were the various communities reincorporated into the larger political order and how did they re-establish the various dimensions of their human security? What social structures were central to the reincorporation and/or improvements in security? What networks were employed?

These questions matter for many reasons. Democracy and lasting peace in the DRC depend on how local communities are reintegrated in the larger Congolese nation and how they work together and share the future despite their differences and early antagonisms. As has occurred before, a threat to the security of a particular group because of its exclusion might also have negative backlash on the security of other communities.

Policies dealing with early recovery and fragile states often consider that the stabilisation of post-conflict countries should initiate combined actions aiming at humanitarian relief and at strengthening the authority of the state. Although the institutional building of local communities is also listed on the agenda, this process is sometimes little emphasised. The policy ends up ignoring structures of local governance, initiated by local communities during the period when the state was away. Yet, during the absence of the state, local communities engineer ways to survive, using some old pre-existing institutions, creating new ones and drawing on international resources.

South Kivu is also interesting because of the involvement of Rwanda and Burundi, to different degrees, in the games local actors and communities play to foster their interests. When communities can draw on external resources or backing, the extension of such networks might establish another dimension or axis for maintaining fear and distrust among groups and limit their ability to cooperate in finding appropriate and uncontested solutions for their common future. The interests of communities, or of some factions within them, and the interests of states might differ at some point and maintain simmering conflict and tension which, on occasion, may trigger again open confrontation.

## **2 Methods**

This article, based on the original report (Mushi 2011), is based on unstructured interviews with traditional authorities, territorial administrators, church representatives, journalists, medics, elected representatives and former members of Mai Mai rebel groups throughout all of South Kivu Province (save for the Shabunda Territory<sup>3</sup> and the island of Idjwi) during October and November<sup>4</sup> 2010.

Interviews also extended to influential civil society members at the provincial level, and staff of local and international non-governmental organisations (NGOs) and the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO).

The report further draws on documentary evidence, including the regular reports of the various territorial administrators. Also consulted were various reports and articles written on the region and previous research studies.

This article is structured as follows: it starts with the administrative configuration of South Kivu in order to provide an understanding of its local structures of governance. It next discusses the background to the war and its causes. Then the article describes major findings on governance, security at large, and on networking, before drawing conclusions.

## **3 The administrative and institutional configuration of South Kivu**

The DRC has been dominated for many decades by mismanagement, poor governance, recurrent insecurity, war,<sup>5</sup> and institutional instability. The

east of South (Sud) Kivu Province has experienced major insecurity over the last 15 years. South Kivu shares its borders with the provinces of North Kivu, Maniema and Katanga, and three countries: Tanzania, Burundi and Rwanda. It covers a surface area of 64,719 square kilometres (Ministère du Plan 2005) and its current population was estimated at 4,687,744 inhabitants in 2009 (*ibid.* 2009). Its industrial base is weak. The province is composed of the territories of Kabare, Walungu, Kalehe, Shabunda, Mwenga, Uvira, Fizi and the island of Idjwi in Lake Kivu.

The administrative architecture is composed of three layers: the provincial layer, the intermediary layer and the community layer.<sup>6</sup> According to the recent constitution the provincial administration is a decentralised entity which shares some powers with the national government and yet possesses some domains of regulation in which the province is self-determined.<sup>7</sup> The main political arena is the provincial assembly to which deputies are elected during local elections.<sup>8</sup> The governor and the vice governor are elected by the provincial assembly, which also possesses powers to approve their programmes and/or to dismiss them.

The governor assumes political leadership over the whole province. From 1996–2006 the governor was designated as the President's representative in the province. He led all provincial services and supervised public offices and services that hierarchically derived from the central power, such as the intelligence services, the police and the army. Yet since independence this position has mostly been volatile. According to *Mwami* Auguste Mopipi Mukulumanya, from 1966–2010, the province had 15 governors.

Since the 2006 elections, South Kivu has been governed by four successive provincial governments. The provincial political arena has been dominated by instability and the inability of the provincial government to build an autonomous local coalition capable of seriously tackling insecurity and development problems.<sup>9</sup>

The capital city of the province, Bukavu, also constitutes a decentralised entity managed by the mayor and his assistants. Since elections have not yet been organised at this level, the occupation of this position depends on patrons and good favour within the hierarchical levels of

the governate of the province, the Minister of the Interior and the President.

Territories are extended branches of state administration, representing the central government. Their officials are designated by the central Ministry of the Interior, and included in the budgetary provisions of the state.<sup>10</sup> Territorial administrators depend directly on the Ministry of the Interior, although they are obliged to respond to the governor who represents both the President in the province, and the Ministry of the Interior.<sup>11</sup> Territorial administrators are meant to represent the state at the local level and supervise collectivities, but they are largely unable to function independently. At a lower level traditional powers are exercised by chieftaincies, also called collectivities.

Traditional authorities have managed their entities since the colonial period. The collectivity groups one culturally homogeneous community whose powerholder is decided according to ethnic traditions and recognised or formalised by the state following the application of traditional rules. The head of the collectivity carries the traditional title of *Mwami* (king, pl. *Bami*).

The collectivity is subdivided into *Groupements*, which extend traditional power at the level of regrouped villages, which are themselves supervised by chiefs of villages. Territorial Administrators and their assistants in rural areas are often drawn from outside the community and need to govern with the *Bami*, the real powerholders, if they want to be obeyed by the local population.<sup>12</sup>

Various new elites are a challenge to traditional authorities. Elites in South Kivu include career civil servants and politicians, church leaders, renowned intellectuals, businessmen<sup>13</sup> and civil society members, army and various militia personnel who helped defend their territory during troubled periods, etc. They constitute a heterogeneous group, with different backgrounds and educational qualifications.

Other leadership present in the local governance arena derive from a transitional or temporary presence in the region. These include humanitarian agents within the health system and those providing various social services during periods of duress. Elites that participate in the

management of the province can be considered outsiders, i.e. they may not be natives of Kivu, but they control resources that are valuable to the nation and the province, such as the armed forces, the police, information services, and the public administration. In this respect, UN Organization Mission in the DRC (MONUC) and MONUSCO commanders, directors of public enterprises, financial private and public services, tax collecting agencies, etc., each one within his/her own realm, controls a parcel of power and resources that may be used positively or negatively, according to rule or in an informal manner, to secure and build status for him/herself within the immediate surrounding community.

The provincial judiciary system also fits into the hierarchy established by the state. The Supreme Court is unique and accessible only in Kinshasa. The highest court in the province is the Court of Appeal, followed by the High Court and the Peace Tribunal. The Court of Appeal operates in Bukavu, along with the Prosecutor General (*Parquet Général*). They are supported by only two first-instance tribunals and prosecution offices in Bukavu and Uvira. Secondary tribunals have been de-concentrated in order to make the distance somewhat more manageable.<sup>14</sup>

The Tribunals of Peace are a lower level of justice administration. They are supposed to be closer to the people and are to gradually replace urban and city tribunals (in Bukavu, Kadutu and Uvira) and traditional tribunals in the rural areas.<sup>15</sup> Administrative authorities like the territorial administrator, the chief (*Mwami*) of a collectivity and the chief of the grouping (*Groupement*) combine at the same time the role of administrator and judge.

Security in the DRC is mostly perceived as: (i) the defence of the integrity of the territory and consequently the sovereignty of the state, from invasion and external threats, and (ii) the maintenance of domestic law and order. The President is almost solely responsible for security issues. More broadly, security services comprise the army, the police, and the intelligence and information-gathering services such as the National Security Council (Conseil National de Sécurité, CNS), the National Information-gathering Agency (l'Agence Nationale de Renseignements, ANR). The General Directorate of Migration (Direction Générale des Migration,

DGM), military information services, and the frontier police may also be considered as security actors at the provincial level.

#### **4 Background to the wars and their causes**

Explanations abound for the recurrent wars in the eastern provinces of the DRC. Some outside observers claim the region possesses a culture that is oriented toward violence. This view contradicts, however, the peaceful nature of most communities living in the area, which claim self-defence as the only factor which may explain their participation in any kind of violence or aggression against another group.

The presence in the region of substantial mineral deposits which could be used to finance military adventures and enrich the countries and individuals involved, is also a potentially important factor (Collier and Hoeffler 1998, 2000). Indeed, South Kivu is endowed with minerals like gold, cassiterite, coltan and wolfram, exploited on an artisanal basis. Yet, the presence of minerals by itself does not suffice to explain the violence and its escalation into a security issue among communities. Much or even possibly most of their production is smuggled to Rwanda, Burundi, Tanzania, and even Kenya,<sup>16</sup> and mostly the minerals are produced in those areas of persistent insecurity due to the presence of Interahamwe and other foreign militias. This explanation therefore points toward international intrusion.

##### **4.1 Rwanda and Rwandaphones**

The fundamental causes of the wars may therefore lie in the ways in which the Government of Rwanda, under Paul Kagame, has responded to matters in the DRC. At first, the cause of war was the presence of large numbers of Hutu refugees from Rwanda in South Kivu. They had fled to Congo after the Hutu genocide of Tutsis and moderate Hutus and the victory of the Tutsi Rwanda Patriotic Front (RPF) in 1994. The refugees included members of the previous Rwandan army and the Hutu militia (the Interahamwe), who had not been disarmed at the border. The refugees were packed into camps near the Rwandan border, from whence the militia continued to organise minor intrusions into Rwanda in 1995–6 and planned its return to topple the RPF regime. The tracking down of armed Hutu refugees has given legitimacy to the cross-border adventure of

Rwanda in the DRC and its occupation of its eastern provinces. But as the continued involvement of Rwandaphone forces in eastern Congo since the overthrow of the Mobutu government demonstrate, the issues that provoked Kagame's attention went well beyond the armed Interahamwe refugees.

German and Belgian colonialism interrupted a period of state consolidation and territorial expansion on the part of Rwanda and Burundi, which are closely related linguistically and socially. The dynamics of these states had led, by the mid-nineteenth century, to the establishment of Barundi and Rwandaphone Tutsis in what became the South Kivu Province of the Belgian Congo – the former in the Ruzizi plains near Uvira and the latter in the highlands above Lake Tanganyika, eventually in Shabunda. Although the Barundi and Banyarwanda were often trying to *escape* from the centralising power of their states, their presence often was used as a rationale for an expansion of borders by their monarchs (Newbury 1988). This process was interrupted by colonialism, however. Additionally, in the 1930s Belgium encouraged the settlement of Hutu labourers from densely populated Rwanda in the Masisi area of North Kivu Province. Although population movement has been a constant in African history (and indeed of the world) the presence of these Rwandaphone enclaves in Congo had not become socially or administratively stabilised at the time of independence. Tutsi numbers in Congo probably increased after the 1959 revolution in Rwanda brought the Hutus to power there. The presence of these Banyarwanda and Barundi in Congo became a part of the concerns of Rwanda and to a lesser extent Burundi from 1996.

Congolese Rwandaphones (in South Kivu generally known as Banyamulenge) were among Kagame's RPF forces when they first invaded Rwanda. They also responded positively to the call of President Kagame to rebuild and resettle Rwanda after the genocide, and subsequently joined in the Alliance of Democratic Forces for the Liberation of Congo (l'Alliance des Forces Démocratiques, AFDL) rebellion that toppled Mobutu in 1996.<sup>17</sup> What explains the participation of Congolese Rwandaphones in these military struggles with other Congolese and the unusual antagonism felt toward them by their neighbours?

Of course there are tensions between other ethnic groups in South Kivu, driven by competition for the appropriation of the state and its favours, and over the issue of land. Political representation is itself dependent on the possession of a territorial space which a group might claim as its own exclusive domain. So the two issues are not unrelated – but it is only for the Rwandaphones that they have led to war.

Bosco Muchukiwa advances another source of conflict that seems to be appropriate in the plains of Ruzizi: the unequal stabilisation of ethnic entities into established and durable administrative spaces during the colonial period. He postulates that the reconfiguration of ethnic territories into administrative entities and their transition or integration into state territory is the fundamental issue of the political dynamics of communities which explains the persistence of local conflicts in the territory of Uvira. He believes that the integration of communities in the state space is problematic and is a source of conflict between ethnic groups, particularly between the Banyamulenge and the Babembe (Muchukiwa 2006: 1–4). It is therefore important to devote some words to the claims of communities over land.

#### 4.2 *Claims of communities over land*

The population of South Kivu Province is composed of various ethnic groups. Each *group* claims a portion of land as its own over which it should possess implicit rights of admittance and exclusion.<sup>18</sup> South Kivu is usually considered to be comprised of four sets of ethnic groups: the Shi-Havu group (Bashi-Bahavu), the Lega-Bembe group (Barega- Babembe), the Fuliru-Vira (Bavira-Bafulero) group and then other ethnic minorities. Most political action since independence involves stable coalitions or compromises between the first three. Their leaders, although at times antagonists, have developed permanent ways of collaborating and negotiating when it comes to politicking either at the national level or power-sharing at provincial levels.

The fourth group, termed minorities, comprises groups that are assimilated internally to dominant groups, or externally to other nations. These include the Barundi and Banyamulenge, who originate from the former kingdoms of Burundi and Rwanda. However, the perception of them is different from other minority groups.

The Barundi were well established in the Ruzizi plain and gained formal status as a collectivity and chiefdom in 1928. Although they live near the Ruzizi River, claim families and relatives on both sides of the river, in Burundi and in Congo, they live harmoniously with other groups.

The Banyamulenge, on the other hand, are not similarly integrated. As already noted, they were present in Congo in the pre-colonial period and are basically composed of, or assimilated to, the Tutsi. Banyamulenge identity<sup>19</sup> has remained fluid because of recent migrations of other Rwandese populations to DRC during the conflicts around independence and the recurrent conflict between Hutu and Tutsi in Rwanda. Their quest for a personalised identity, better integration into South Kivu life and a clear distinction from their Rwandan origins has been diversely misperceived as a way of changing history or seeking to claim lands which belong to other ethnic groups.<sup>20</sup>

At present the Banyamulenge do not formally possess their own administrative entity, collectivity, or uncontested land. In 1998, however, when the Rwanda government-supported Rassemblement Congolais pour la Démocratie (RCD) occupied the territory during the Second Congo War, an administrative territory of Minembwe was erected in favour of the Banyamulenge, but it did not survive the reunification of Congo after the Sun City accords of 2003.

Minembwe was created by assembling portions of lands drawn from three neighbouring territories, Uvira, Fizi, and Mwenga, which allegedly the Banyamulenge group could claim because numerically they are the main inhabitants in the areas involved. Although they do indeed represent large portions of the populations of most of the areas, as soon as the reunification occurred, portions of this new territory were reclaimed by the leadership of the original territories, leaving all the Banyamulenge community unhappy at having reaped no tangible benefits from a war which bore their name (the Banyamulenge War).<sup>21</sup>

As pastoralists, the Banyamulenge cannot be located at one single space. This hinders them from constituting a political force capable of competing with other groups in the electoral process. Although every ethnic group is

considered to be a minority in the larger DRC, the Banyamulenge can be indeed considered as a minority even locally because they lived isolated, for a long time, from other groups.

Although now changing, a central concern for the Banyamulenge has long been how to protect their way of life and cultural values against the invasion of others, particularly how to graze their cattle during the dry season, and protect them from diseases and theft. This concern determined their involvement in politics and wars during independence.<sup>22</sup>

Note that the issue for the Banyamulenge and their neighbours is *not* access to land but jurisdiction over it. Land in the contested areas is not scarce, and in any case the Banyamulenge are already using it without serious challenge. The issue instead is who has suzerainty over the land and whether the Banyamulenge have their own formal administrative territory, for these niceties determine recognition by the state and the ability to participate effectively in elections and decision-making processes.

## **5 War and governance**

### **5.1 Coping with chaos**

Communities coped with the multiple dimensions of insecurity with great difficulty during the war, but they remained intact and their pre-war (traditional) leadership structures continued to provide a degree of governance response after the central state apparatus disappeared.

Individual families used kinship mechanisms to cater for their security. Some families, children and wives were sent to secure places, hidden and known only by the members of the group. The Barega identified secure areas in the forests and built what are called *lubunga* where they retreated until a danger was gone. Babembe from Baraka and Fizi migrated to Kigoma in Tanzania, and to the peninsula of Ubwari. The Bahavu of Kalehe found refuge on the island of Idjwi and others went to scattered islands on Lake Kivu. Even among the Banyamulenge, those with family ties in Kigali or elsewhere in Rwanda sent their families there.

Displacement to major cities like Bukavu and Uvira or areas which are secured by neutral armies such as the MONUSCO also increased. Small towns along the road in the plains of

Ruzizi, in Nyangezi, Kabare and Walungu, increased the number of their new migrants,<sup>23</sup> leaving the interior depopulated and therefore propitious for occupation.

Others chose to join one of the belligerent groups by creating a stable relationship with them, for example by providing either a daughter to high-ranking officers in exchange for security or a son as a new recruit for a militia. The territory of Shabunda, the region of Kaniola and the chieftaincy of Burhinyi, which are currently under the control of the (Hutu) Interahamwe, mostly employed these strategies.<sup>24</sup>

### 5.2 Self-defence

Self-defence movements also sprung up in all communities under various labels like the Maï Maï, Ngumino Forces (FRF), the Mudundu 40, etc. South Kivu's populations were stung by the defeat of the Congolese army in 1996 by Rwandan troops. After the disintegration of the Congolese State's army and the fact that the Interahamwe, its ally, was left alone to curb the advance of the Rwandan army, the population decided to take matters of defending the motherland in their own hands as in ancient times. This movement was supported by the diasporas and encouraged by most traditional chiefs.

When communities understood, from the propaganda of Laurent Kabila's AFDL entering from Rwanda, that it was only interested in passage not occupation, the allied forces gradually received the support of local communities and changed its image from Rwandan intruders to a revolutionary force. Most organised resistance groups disbanded and some of them joined Kabila's troops all the way to Kinshasa. Resistance was most active among the Babembe Maï Maï and continued after other militias had agreed to incorporation into a reorganised Congolese army.

Populations returned to the bush to reorganise networks of popular self-defence mostly after the second rebellion led by the RCD, the Rwandan branch of AFDL, which was unhappy about the way Kabila handled relations with them.

Local resistance forces were efficient in destabilising the Rwandan army. To counter the action of the Maï Maï resistance groups particularly, the Rwandan army tried to organise

its own militias. These groups seem to have been better equipped in Luhwinja and Kaziba than elsewhere, probably because some of their leaders joined the RCD rebellion. The Bashi group called the Mudundu 40 protected its territory of Walungu with weapons supplied to it by Rwanda in a deal that it would establish a barrier against the Interahamwe. They maintained peace with RCD until 2004 when the latter's troops invaded Bukavu.

Most of the self-defence groups evolved with no provincial coordination until 1998 when the Kinshasa government, which had completely lost control in the province, tried to unify them, supply military equipment, and help them to continue to resist from the bush. This governmental intrusion may have led to leadership competition among the groups.

Although they were efficient in harassing and embarrassing Rwandan troops, the locals suffered many massacres during the process. If Rwandan soldiers suffered a heavy loss nearby in confrontation against the Maï Maï, they would take revenge on those presumed to be the latter's supporters.<sup>25</sup> Entire villages were burnt to the ground and populations were massacred without distinction. The more massacres were perpetrated, the more the Maï Maï felt compelled to resist and to liberate their lands.<sup>26</sup>

These forces were less active in the north of South Kivu Province, where there was little history of conflict with Rwandaphones (Banyamulenge) and where traditional leaders (such as the two *Bami* of the Bahavu) were more likely to seek accommodation with Rwandan (and Burundian) forces as they passed through to attack refugee camps and to secure a hold on the DRC and its mineral resources.

### 5.3 Militia matériel

Those groups that were able to gain control over mines in the interior of the Kivus were able to use them to purchase munitions and other supplies. Most of the mining areas were captured by the armies of Rwanda and (in North Kivu) Uganda and the continuing export of their minerals (produced by the artisanal activities of Congolese miners) supports their military budgets. The Rwandaphone militias have been provided with military support and *matériel* from Rwanda (and Burundi in the early stages).

The opposing militias received some support from Congolese patrons (typically fellow ethnics in the capital) or, more usually, relied on raiding. The proximity of Tanzania and the resistance of Mai Mai on the peninsula of Ubwari facilitated the group in getting supplies, including ammunition, from Tanzania. The Bavira and Bafulero were unable to secure enough ammunition and concentrated on using elite shooters in order not to waste ammunition. The national government in Kinshasa may also have been able to parachute in some weapons, ammunitions and communication mostly in the territories of Shabunda and in other areas in Walungu and Mwenga.

## 6 Post-conflict local governance

### 6.1 Traditional authorities

The institutions of chieftaincy and kingship are still quite popular and were easily and universally re-established after the war. Although the power of traditional chiefs is still respected, a number of traditional leaders are developing new venues of power within a larger polity. They are represented in the local assembly, they run for election to the national assembly, and they provide patronage to their relatives or enter into other deals with politicians. Most of the *Bami* no longer live permanently in their villages. They possess new homes in Bukavu or nearby cities.

Further, it is hard for politicians to be elected without the backing of their traditional village or place of origin. That backing may depend on traditional chiefs, who can use their traditional capital and almost 'sell' their subjects' votes. This may be done in expectation of a positive outcome for the chief, his immediate relatives or the community.

Traditional authorities felt also the need to speak out with one single voice, the COBASKI (Collège des Bami et Autorités Traditionnelles du Sud Kivu or the Assembly of *Bami* and other traditional authorities of South Kivu). They organised conferences from which they issued statements and recommendations to *de facto* authorities on how to improve relations with communities, and also delivered messages to the international community and even to the government in Kinshasa. Such organisations were useful in convincing the population on what attitude to adopt in relation to the *de facto* power of Rwanda during RCD invasion, and who to blame in case of disorder.

### 6.2 Local justice

Despite the resurrection of the chieftaincy and its popularity, many of the features of Native Administration (NA) that once made it so strong have been weakened. The NA courts now compete with alternative dispute resolution agencies created by donor-financed NGOs during the war. When these new structures are paired with the newly extended magistrates' courts they appear to be an increasingly preferred alternative for most people.

The provision of justice was already biased and corrupted during the reign of President Mobutu and worsened during war. Warlords considered it their right to rule and render justice in places under their control. The leader of any militia could order punishment leading even to death for a person, village or a group of persons accused of collaboration, spying, providing mystical powers, or some other kind of support to the enemy. The justice of the conqueror was punitive, unilateral and with no appeal.

For the population, a justice system in the hands of the enemy could only be illegitimate and partial. The denial of justice and its de-legitimation led people to renounce it. It was socially inimical to bring a case against a member of one's group before this kind of justice. The community witnessed the development of alternative forms of justice, some of which were indeed expeditious, while others insisted on soft ways of ruling through reconciliation, mutual agreement and arbitration.

Mob justice was exercised mostly in cases of armed robbery, killing with guns, accusation of collaborating with the enemy or being a sorcerer. Most persons interviewed see this practice as a revolt against prevailing impunity, especially against seeing persons accused of high crimes being released and continuing to threaten the community.<sup>27</sup> When the state doesn't correctly perform its duties, people return to their own ways of getting justice. This kind of justice did not stop with the end of war.<sup>28</sup>

Alternative ways of curbing this kind of justice evolved from churches and civil society.<sup>29</sup> They all preach arbitration, negotiated arrangements and resolving matters within the community. They consider that when issues are beyond their ability, they can provide assistance and



accompany the victims through the legal procedures for getting justice.<sup>30</sup> Catholic parishes have organised permanent subunits of the Commission on Justice and Peace.<sup>31</sup> A group of protestant churches also instituted a local NGO to address justice and human rights.<sup>32</sup>

In rural areas, some traditional chiefs continue to provide justice with limited results by running traditional courts or the *Baraza la Shirika*; in urban communities elected patriarchs establish a 'committee of wise persons', who provide advice and judgement and negotiate intra-communal settlements when a member of their community has a grudge against a member of another.

The case of Banyamulenge in Uvira is an illustration of this. No Munyamulenge, whether living in Uvira or coming directly from their area in the mountains may go to court in Uvira, without seeking first the advice and the judgement of the elders or other appointed persons. Apparently *mutualités* control, orient and help their members during legal battles. They provide for justice better than the magistrate and the magistrate often seeks their opinion before rendering justice.

### 6.3 Militias

It is common for those who play prominent roles in a war to then claim civilian leadership positions when it is over. Despite the valuable role played by the local militias during the war proper, abuses by some of their members have, however, kept all but a few of their leaders from assuming civilian leadership roles in post-conflict Congo – even those who cooperated during demobilisation. Most Maï Maï from Kivu did not join civilian politics.<sup>33</sup> Those true Maï Maï who gained anything from the war joined the Congolese army, where some of them became officers.<sup>34</sup> Most of the youth who joined the Maï Maï movement did not have any ambition other than defending their motherland against the invaders or occupiers.

### 6.4 The Congolese army (*Forces Armées de la RDC [Armed Forces of the DRC], FARDC*)

The Congolese army has been restructured to include the various militias that fought during the civil war. Communities have been exploited in the integration process by some individuals whose personal ambitions were not satisfied in the new power-sharing system and decided to

manipulate or recruit followers in order to increase their bargaining powers. The game of advancing a personal career through rebellion may also explain the current survival of some Maï Maï groups in the plains, with the tacit approval of politicians who may be located in Bukavu or in Kinshasa.<sup>35</sup>

### 6.5 Policing

The Congolese Police has not been subject to serious reform since the war<sup>36</sup> and its mandate continues to prioritise the protection of the state rather than the population.<sup>37</sup> In any case police presence has always been thin on the ground in the rural areas, where Native Administration police under the direction of the *Bami* and chiefs provided local security. However, these forces are underfinanced, underpaid and ineffective.

### 6.6 Mutualités

The role of *mutualités* is important in policing and judging, and in bargaining with other groups and outsiders, in matters pertaining to security and political participation. When there are conflicts between the citizens of different communities the leaders of the respective *mutualités* negotiate a settlement. Tribal and ethnic *mutualités* in Bukavu are based on ethnic cultural acquaintances in order to defend a certain number of interests, among which representation and participation in the political arena rank high.<sup>38</sup>

These *mutualités* in Bukavu comprise three kinds: *mutualités* representing communities from other provinces, i.e. Congolese who do not consider themselves as people of South Kivu; *mutualités* based on ethnic lines, associating wider groups for better political action; and *mutualités* representing villages or communities on a spatial dimension.

Some citizens like the Banyamulenge find protection by living in ethnically homogeneous areas. In South Kivu, the organising of *mutualités* and their activities reached a peak during the period of war (Mulotwa 2006).<sup>39</sup>

Although most communities maintain a grudge against the Banyamulenge, the real enemy is still or was Rwanda, as it exploited the Banyamulenge, who also suffered in the confrontations. The purely local conflicts (most importantly between the Babembe and the Banyamulenge) that

underpinned the larger international and national conflicts and gave them energy and persistence have not been adequately addressed and help to fuel the larger conflict today (Autesserre 2010).

Although the populations disagree with atrocities which may be committed by their resistance forces, they do not share the official idea of now labelling all resistance movements as negative. This is perceived as ingratitude by the state, which was absent for a long time and could not protect or defend the population against the enemy.

## **7 The recreation of human security: lessons learned**

### **7.1 Networked governance and the churches**

Governance does not disappear when the state collapses. Its structures remain hidden and in retreat, but ready to sprout into existence again. While true for all parts of government, it is especially true for local and rural governance structures. Consequently, post-conflict states have much more need for decentralisation – and possibilities for achieving it. Multilayered, networked governance is a reality but it is much less of a threat to vital states than might be imagined.

The Catholic Church's leadership during and after the war makes people see it as one of the most important institutions sustaining society, maintaining hope and helping to avoid the oppressive official state and working for the gradual renewal of the legitimate state. The organisation of the Catholic Church transcends national boundaries. From a parish in Uvira, to Rwanda and Burundi, and from Bukavu to Kinshasa, Rome and the whole world, messages of various kinds were sent to sensitise the world about the hell the Christians and populations of South Kivu were suffering. Although the war took a heavy toll on priests, nuns and bishops, most priests remained in their parishes or left them only for a short time and helped continue to provide services.<sup>40</sup>

Inside South Kivu, civil society messages were read through all parishes, recommending the correct attitude people should follow and the way they must behave in relation to the new power holders. Church networks proved most beneficial to communities in South Kivu.

Churches also served as important advocates for human rights, justice and democracy. The

(Catholic) Commission for Justice and Peace was the most vocal advocate of alternative means of restoring the state and the necessity of taming the behaviour of the militias and armed groups. Under its leadership, other NGOs and church organisations such as the (Protestant) *Héritiers de la Justice* (Heirs of Justice) joined together to get neglected voices heard.<sup>41</sup>

Churches have emerged as one of the most accessible and durable channels of outside assistance to local communities. During the war, the church played an important role in providing basic and other services necessary to its own deployment such as small airport runways in remote areas, roads leading to churches and within the community, building dams and generating electricity via solar energy.<sup>42</sup>

### **7.2 Local conflicts**

The purely local conflicts that helped to fuel the larger conflict in the Great Lakes region have been barely addressed. MONUSCO has focused on denying rebel militia's control of territory, and has not been actively engaged in building the citizen foundations for peace. MONUSCO is an anglophone operation in a francophone country. When this is combined with the six month tours of duty of MONUSCO soldiers and many of the senior civilian staff, tools for understanding local complexities and conducting local peace negotiations are lacking.

A key failing in the state reconstruction process in Kivu is that the purely local conflicts (most importantly between the Babembe and the Banyamulenge) that underpinned the larger international and national conflicts and gave them energy and persistence, have not been adequately addressed.

The social contract between the state and society has largely been re-established in Congo. Partly, this is due to the powerful negative lesson of what the alternative represents. The war was truly devastating. However, there are tensions that will need to be addressed. Security Sector Reforms of the Congolese army and police have not begun in the province, adding to insecurity. In fact, in Kivu, the informal ceding of the army to Rwandaphones is a source of conflict and insecurity.

Rwanda and/or Rwandaphones cannot be allowed by the international community to

become an army of occupation over the other groups. This will require (i) a negotiated settlement between the Banyamulenge and Babembe that gives security to both groups (together with a similar set of agreements in North Kivu), and (ii) the return to an ethnically balanced army. The latter will require (a) the departure of non-Congolese Rwandan soldiers and a break in the link between those who remain and Rwanda, and (b) a more genuinely national posting process for soldiers in the army. Point (i) (security for the Rwandaphones) is a prerequisite to the others and that is why locally negotiated settlements are so important.

Granting Minembwe territory status on a permanent basis also should be put on the agenda of settlement as well as the intensification of exchanges between the Banyamulenge and other ethnic groups. It is important to open up roads toward the mountains of Itombwe so that communication can flow easier. Changing methods of farming may take longer but it may prove in the end a way of changing the habits of isolation of Banyamulenge groups.

### **7.3 Rebuilding the formal state**

A focus on rebuilding and financing the purely local aspects of governance should consider the following actions:

- i enabling Bami, chiefs and Native Administration police to be functional and to do without the revenues of the now discredited traditional courts (it is unwise to rely upon an expanded national police force as it is clear that it is resistant to reform); and
- ii providing adequate funds for the travel and functioning of the territorial administration and magistrates.

Paying the wages of soldiers, policemen, magistrates and administrative officers on a regular basis and improving them would diminish their predation on the population and improve their professionalism. It is a priority demand which was expressed in almost all our interviews conducted in the original report (Mushi 2011).

Elections are increasingly seen as a tool the population might use to voice its demands to the polity. In the last 2011 legislative elections Maï Maï contested under the label of Parti Republicain Maï Maï (Maï Maï Republican Party), rather than

trusting politicians in Kinshasa. They contested in the territories of Fizi (3), Shabunda (2), Uvira (5), Mwenga (4), and in the city of Bukavu (5). They joined the coalition of the presidential majority. Yet, none of the candidates was elected to a seat as representative in the national assembly. Municipal and local elections were postponed, which does not allow us to assess what the outcome would have been at the local level.

The Congolese army has been restructured to include the various militias which fought during the civil war. This has become a major problem in the Kivu provinces, as the Rwandaphones who were incorporated refused to be posted outside their home provinces, while the soldiers from the other groups were sent elsewhere. This has left an overwhelmingly Rwandaphone Congolese army in Kivu. The other ethnic groups see this force as a foreign army of occupation. The resulting hostility between the army and those whom it ostensibly protects has resulted in atrocities against the locals and has led to petitions in some areas for the army to leave. In short the army is seen as a source of insecurity. Clashes between the Maï Maï Yakutumba and the governmental army, and clashes between the Ngumino Banyamulenge and the Congolese army are more likely to occur nowadays than clashes between both cited groups.<sup>43</sup>

### **8 Conclusion**

Life during the absence of a real state in South Kivu was precarious; economic activities were disturbed and poverty became severe. People living in a state of precariousness are more concerned with themselves, less cooperative, prone to conflicts and easily exploited by external forces.

Despite the end of violent confrontations, and the return of a more peaceful state in many areas, the situation in South Kivu remains volatile. The behaviour of many groups is determined by the fear that another cycle of war by Rwanda is in the making, with the aim of separating North and South Kivu from Congo, and that steps to this end are already being taken through subtle political and administrative manoeuvring as well as economic and military infiltration.

This threat makes all groups feel uneasy, fearful and suspicious against one another. Local

communities believe strongly that South and North Kivu are evolving under Rwandan imperialism, and that the Banyamulenge in South Kivu and other Tutsi in North Kivu may again constitute a Trojan horse.

This affects also the vision that communities have regarding current international and national institutions. The army and other security organisations are distrusted and considered to be controlled by Rwandans through the Banyamulenge. The police are not deployed in rural areas, and therefore the security of the population is threatened constantly.

Although MONUSCO's presence is helpful, its deployment is also sometimes associated with complicity. Yet no one wants MONUSCO to leave South Kivu. Instead, people want it to be more committed and to improve its methods of

protecting the local population and fighting against infiltration.

Security will remain precarious and justice partial in South Kivu, as long as unemployment remains severe, the army continues to be unevenly controlled and undisciplined, civil servants are left in miserable conditions, and uncontrolled militias from within and neighbouring countries control large portions of Congolese land.

When the state is totally incapable of assuring the security of its own population against external threats, when its own protective services engage in arbitrary activities and live off the people, and when impunity goes unchecked, it is difficult for social mechanisms and local institutions alone to substitute for the lack of a decisive body capable of assuming the role of the leviathan.

#### Notes

- 1 An extended report on the research discussed in this article can be found in Mushi (2011).
- 2 Indeed such a course has been recommended for the Congo by Autesserre (2010).
- 3 The Shabunda Territory could not be reached because of distance and accessibility. However, interviews were carried out with prominent Shabunda leaders and various local NGO coordinators who live in Bukavu for security reasons.
- 4 Prof. David K. Leonard from the Institute of Development Studies joined me and participated in the second round of interviews in October 2010.
- 5 These include the 1960 army mutiny, secession wars in various provinces, the Marxist-backed rebellion in the Bandundu (1963–7), the Schramme war in Kisangani (1976), the Shaba wars (1977 and 1978), plunder by the army in 1991 and 1993, the so-called liberation war (1996–7) that toppled the dictatorial regime of President Mobutu, and the 1998–2002 conflict.
- 6 The state is subdivided into provinces, and provinces into territories; territories comprise either collectivities ruled by traditional chiefs (called chieftaincies) or collectivities managed by designated administrative authorities because they combine numerous non-homogeneous groups (called *collectivités secteurs*).
- 7 Except for chieftaincies, the assembly votes in the executive committee and holds the power of its dismissal. The provincial assembly also holds the power to designate senators who represent the province in the national senate.
- 8 Representatives in legislative bodies are elected thus: candidates may run as independents or designated persons on a party list. In any electoral constituency, parties are represented according to the proportion of all votes won by the sum of their candidates. A candidate who has a high score gains enough points to win not only his seat, but also helps to pull up lower scoring candidates of the same party. The current system therefore decreases feelings of representation.
- 9 The population considers that the nomination of various governors stems from Kinshasa's various electoral strategies as well as its international relations, particularly those with Rwanda, since the 1996 and the 1998 wars.
- 10 Local and municipal elections planned in 2006 were postponed indefinitely. According to the new electoral calendar, they are now scheduled to be held in 2013.
- 11 The governor is elected and dismissed by the provincial assembly. In reality, however, the party determines the outcome from Kinshasa, presenting the candidate for election at the provincial level and decides when he gets removed.
- 12 Some collectivities, however, are not ruled by a *Mwami*. Their head is designated by the administrator of the territory, in line with elections held by the council of the collectivity.

- Such an entity is referred to as a 'collectivity sector'.
- 13 The 'new rich' draw their standing from: plantations left by Belgians of *quinquina*, tea, coffee and timber; minerals trading, particularly gold and coltan; and urban real estate ownership. Like traditional chiefs, newly rich people also capitalise on their wealth in order to gain access to political power.
  - 14 They serve the province according to proximity. Given the distances, poor means of communication, the harshness of the terrain, and the long-lasting insecurity, this judicial architecture cannot efficiently cover all of Kivu and guarantee access to due process.
  - 15 In rural areas in South Kivu this comprises territorial tribunals and principal collectivity's tribunals. In 2004 this comprised seven tribunals organised by the territory and 22 tribunals organised by collectivities.
  - 16 A World Bank (La Banque Mondiale 2008: 65) report confirms the intensity of mineral smuggling from Congo to neighbouring countries, but provides no clear data on the volume and value of this process. A company called TransAfrika discovered gold in Rwanda for the first time in 2008 but even before then, mineral exports by private companies in Rwanda contributed to the Rwandan balance of payment.
  - 17 During the 1996 war, the Banyamulenge sided early with the rebellious army of Laurent Désiré Kabila, probably under the instigation of the larger Rwandan community in Rwanda and in Kivu. Other groups joined later after being opposed to what they termed the war of the Banyamulenge requesting a territory of their own. The experience of the first war led the Banyamulenge to split up during the 1998 war led by the Rassemblement Congolais pour la Démocratie (RCD). Some of them remained loyal to the Congolese state, others joined in the new rebellion. Therefore, the main source of conflict over the last decade in South Kivu is the intrusion of Rwanda into Congolese politics and its manipulation of some local groups against others.
  - 18 During the colonial era, lands inhabited by indigenous communities were protected by law. Any other lands belonged to King Leopold and after him to the colony. However, in 1969, Mobutu decreed by law that all land belonged to the state. Despite this, traditional chiefs continue to exercise rule over the land that they claim as belonging to their tribe by custom.
  - 19 Banyamulenge are increasingly identified as a separate group with their own identity, drawn from their long autarkical life on the high plateaus of the chain of Mitumba.
  - 20 Until the 1920s the Banyamulenge paid tribute to the *Mwami* of the Babembe, and although Babembe land is not scarce the group resents the loss of recognition of its suzerainty.
  - 21 The popular discourse among the other groups alleges that the objective of the formation of Minembwe was to annex the territory to Rwanda but the creation of a Banyamulenge territory could actually be an alternative to annexation. Other populations perceive, however, that the territory would be used in the long run by Rwanda to claim rights over the provinces of North and South Kivu.
  - 22 The patriarchs of the Banyamulenge recall that one settler called Reagan had a farm over the hills in the area in which the Banyamulenge live. During the 1963 Mulele rebellion the Simba in this area fed this settler's cattle until his entire farm was looted. At first, the Banyamulenge attempted to associate with the rebellion against the state together with the other communities, the Bembe, the Fuliru and the Vira. But when the other groups started to feed themselves on the Banyamulenge's own herds, they shifted alliance and became the best servants of the Congolese national army. Their knowledge of the corridors of the mountains helped the Congolese army to regain control over these spaces and crush the rebellion. This left a feeling of betrayal among the other groups who have since considered all Banyamulenge as traitors.
  - 23 The word 'migrant' is not fully appropriate. The correct phrase would be internally displaced families in the same ethnic group. Most chiefs interviewed reported that their communities were heterogeneous and that everybody lived peacefully. Integration in South Kivu does not generally pose a problem to communities provided the new migrant obeys the rules of first recognising the local traditional ruler and seeking his protection.
  - 24 These strategies had unfortunate future consequences for these communities and on the status of women.

- 25 Registered massacres on the road to Mwenga and on the roads to Fizi are a testimony of how the idea of vengeance and the assurance of impunity during disputed sovereignty left the soldier to become the ruler on parcels of land. Innocent civilians suffered during the RCD period because of the Maï Maï resistance, where women were buried alive because they were considered to have been sorcerers who prepared medicine to make the Maï Maï invincible and fearless.
- 26 Unfortunately, massacres committed by Rwandan soldiers, or by other persons who joined in this adventure, were indiscriminately associated with the Banyamulenge, reinforcing the antagonism of other communities and their image as a heartless people.
- 27 As one respondent put it, mob justice constitutes a response of the population to the state's abdication of its duties. Thus, the population takes matters in its own hands.
- 28 Mob justice during Mobutu's era was checked and controlled. In some areas, for example among the Barega, death by mob justice is still rare. It remains a phenomenon contained in the cities for robbers. In villages, persons suspected of witchcraft could also be victims of such justice but it was uncommon during the colonial and Mobutu eras. Impunity today seems to depend on who is involved. However, it is recidivism that makes the youth in urban areas decide to settle such problems themselves.
- 29 Many other NGOs have fostered alternative ways of getting justice in a similar manner in South Kivu.
- 30 The Commission for Justice and Peace is operated by the Catholic Church throughout its entire organisation. It and the Protestant *Héritiers de la Justice* (Heirs of Justice) are examples of mechanisms which evolved from churches and civil society, backed by numerous international charities in order to improve advocacy for neutral justice and the access of neglected people to decent justice.
- 31 A Commission for Justice and Peace is instituted in all parishes. The most common conflicts registered through these commissions deal with landownership, debt default and suspicion of witchcraft.
- 32 *Héritiers de la Justice* also specialises in advocacy for human rights and justice, developing alternative ways of doing justice, training the paramilitary and assisting poor victims and raped women to seek justice by providing them lawyers and defenders at no cost. They also organise training sessions, radio and television broadcasts, and teach courses on human rights in primary schools.
- 33 Congolese politicians or bureaucrats gained by using the Maï Maï to foster their political existence.
- 34 Those who were unhappy with the deal like Zabuloni and Yakutumba returned to continue resistance in their native areas.
- 35 There are tales, for example, of some former Maï Maï and the soldiers of the DRC from different ethnic groups joining the CNDP (People's Defence National Congress) with the hope that future negotiations with the state would help them advance.
- 36 Nlandu (2012) provides a comprehensive overview of policing in post-conflict DRC.
- 37 The police in the rural territories are almost non-existent. In Shabunda for example, there were only four policemen stationed at the territory. Territorial administrators and assistant administrators therefore rely mostly on individuals recruited out of necessity and not recorded with the national administration of the police body.
- 38 Flourishing at the end of the colonial era, *mutualités* of this kind were not tolerated during the Mobutu era. It was only at the beginning of the democratisation process in 1989 that the power of *mutualités* was unleashed.
- 39 In terms of local politics, these *mutualités* end up regrouping in the most important axes: SBB (or Solidarity of Bashi and Bahavu) and the LUSU-LEGA (Mutuality for the Barega), particularly when it comes to designating the Governor and the Vice Governor and the provincial ministers of his administration.
- 40 Archbishop Munzihirwa's order to all members of the Catholic clergy whether European or local, that no matter what happened they had to stay on duty and continue to help their parishes, was totally obeyed. Abbeys, missionaries and nuns continued to serve the community, and the Church's external links were not broken. Maria Mason, a consecrated woman, did magnificent work maintaining medical activities throughout the province and indirectly mobilised the aid of charity organisations linked with the universal church, such as Misereor, Caritas, Christian Relief Aid, and so on.

- 41 The Commission for Justice and Peace in Bukavu also helped develop alternative ways of providing justice by preaching negotiation and reconciliation between groups. It helped commissions at the parish level take over the process of settlement of issues through mutual agreement and understanding instead of using an unfair and oppressive justice system.
- 42 The Church took an important lead on two services: the Bureau Diocésain des Oeuvres Médicales (Diocesan Office for Medical Action, BDOM) maintained the health system in the name of the state and provided, without discrimination, assistance to all; and the Bureau Diocésain de Développement (Diocesan Office for Development, BDD), sometimes in cooperation with other NGOs, implemented small development activities such as the provision of

water, the building of schools, roads, etc. Caritas also mobilised charitable assistance from within and without to the country.

- 43 Since May 2012, the DRC is facing a new rebellion, the M23 rebellion, which was initiated in North Kivu, led by General Bosco Ntaganda, a former lieutenant of Laurent Nkundabatware, following attempts by the Congolese Government to arrest him. General Ntaganda had helped to end the CNDP rebellion by signing a peace agreement, and fostered the integration of Rwandaphone soldiers in the Congolese army in 2009. The M23 rebellion was launched by former CNDP and Parti des Résistants Congolais (PARECO) soldiers based in North Kivu, in spaces formerly controlled militarily by Laurent Nkunda.

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