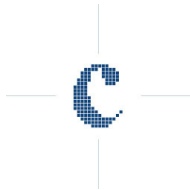


LOCAL JUSTICE AND SECURITY PROVIDERS IN SOUTH KIVU:

GOING LOCAL TO SUPPORT YOUTH-NEIGHBORHOOD WATCH-COMMUNITY DEVELOPMENT GROUPS

ERIC SCHEYE

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Netherlands Institute of International Relations 'Clingendael'
Clingendael 7
2597 VH The Hague
Tel.: +31 (0)70 – 3245384
Fax: +31 (0)70 – 3746667
P.O. Box 93080
2509 AB The Hague
E-mail: cru@clingendael.nl
Website: <http://www.clingendael.nl>

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CONTENTS

Executive Summary.....	1
I Introduction.....	3
II. The DR Congo, the State, and Donor-Supported Justice and Security Development.....	5
III. Local Providers of Justice and Security and Non-State Actors	9
IV. Going Local: Programming and Risks.....	15
V. Conclusion	23

EXECUTIVE SUMMARY

This report on South Kivu is part of the second phase of a three-step research project into the role of local justice and security providers and non-state actors in fragile states. The research explores how local justice and security networks deliver services to citizens when a significant percentage of the population in the community do not have confidence in the country’s centralized state agencies (national police service; judiciary and the courts) and/or where the services provided by those agencies are scarce and/or have limited effectiveness within distinct geographic areas.

In the case of the Government of the Democratic Republic of Congo, its delivery of justice and security to its citizenry is extremely weak and its institutions and agencies have performed poorly. It has been widely claimed that, in Bukavu, “the police doesn’t care about the safety of the people in the neighborhoods,” that “the state does not function,” and that many, if not most, residents “we feel completely abandoned into insecurity.”

Responding to rising insecurity and burgeoning crime within Bukavu, educated youths, from universities and secondary schools, created the NGO SAJECEK in 2005, from out of which a neighborhood safety initiative, Forces Vives, has been established. Conducting patrols of their communities and marketplaces to prevent and respond to crime and violence, SAJECEK-Forces Vives has up to 1,000 members organized in chapters in various neighborhoods throughout Bukavu. In these neighborhoods, the perception exists that there is a decline in crime because of the activities of SAJECEK-Forces Vives. SAJECEK-Forces Vives, however, may best be understood as an embryonic community-development organization whose roots began in justice and security development. Furthermore, the greatest contribution that SAJECEK-Forces Vives has made may be with its own membership, increasing their sense of social efficacy.

The report recommends that donors support SAJECEK-Forces Vives in a multi-dimensional way, roping together the different facets of the organization’s activities and blending community-development initiatives into justice and security efforts. As an entry point, donors could support SAJECEK-Forces Vives becoming a champion youth neighborhood watch organization throughout South Kivu, the one to whom others go for advice and assistance in providing justice and security in their urban communities.

On the justice side, because of the inability of the formal state courts' inability to deliver an adequate level of service, research was conducted into the role of local courts. With their jurisdiction established and defined by law, these courts are legally part of the chieftaincy system and, thereby, integrated into the state's system of local administration. Even though the local courts may be the best means through which residents of South Kivu may have access to justice, donor support for them is problematic given the Government of the Democratic Republic of Congo's intention of creating Tribunals of Peace, a hybrid court whose establishment abolishes the legal standing of local courts. At best, donor support for local courts is an intermediate alternative since the roll-out of Tribunals of Peace is a generational undertaking.

I INTRODUCTION

This report, based upon research carried out in South Kivu, eastern Congo, in February-March 2011¹, is the second phase of a larger, three-step, research project into the role of local justice and security providers and non-state actors in fragile states.² One of the principal objectives of the overall research project is to continue the expansion of the agenda of justice and security development and offer examples of how to incorporate local providers and non-state actors into donor supported programming in order to improve the efficacy and effectiveness of donor assistance.³

- 1 The background and field research for this report was conducted with a local Congolese consultant and Ms. Sylvie More, a CRU research fellow. The author however is solely responsible for the content of the report.
- 2 The research project was originally based upon the premise that local justice and security providers are, primarily, ‘non-state actors.’ Subsequent research, however, suggests that this presupposition is, in many instances, incorrect, for which this author assumes responsibility. The legal reality is that these allegedly ‘non-state’ justice and security providers are, very often, fundamental parts of the state as are the police service, tax collection agency, and public school system, albeit very different from the ministries and agencies of the centralized state, regardless of whether it is a national or federal entity. In countries as diverse as Colombia, Sierra Leone, Solomon Islands, and Yemen; South Sudan, Nepal and Bolivia; Timor Leste, Malawi, and Guatemala many of these local justice and security providers are legally authorized justice and security service providers written into the constitution and/or legislation. The main issue is one of legal pluralism and the political relationship and power dynamics of the institutions and agencies of the centralized state with local providers. Instead they adhere to a different form of jurisprudence, typically referred to as “customary,” even though their jurisprudence closely resembles common law, narrowly defined. Consequently, the challenge for justice and security development rests in the multiplicity of systems and institutions that provide the public goods and services of justice and security and the numerous linkages between and among differing systems and their forms of jurisprudence. ‘Non-state actors,’ on the other hand, are those providers who have no legal authority to deliver public goods and services, but may still provide justice and security services.
- 3 The larger research project is being carried out by the Conflict Research Unit of the Clingendael Institute in the Netherlands. The project consists of (1) a desk-study into the conceptual and policy issues surrounding supporting local providers of justice and security as part of SSR – published in July 2009; (2) three case studies examining the practical and programmatic challenges and opportunities for supporting local justice and security providers and non-state actors, the first of which on Colombia has already been published; Burundi (which is this report) and eastern DRC; and (3) a synthesis report which will look into more general lessons that can be learned as regards programmatic challenges and opportunities (to be carried out

The research examines how local justice and security networks deliver services to citizens when a significant percentage of the population in the community do not have confidence in the country's centralized state agencies (national police service; judiciary and the courts) and/or where the services provided by those agencies are scarce and/or have limited effectiveness within distinct geographic areas. Interviews were conducted in and around Bukavu, Kabare, and Kalehe in South Kivu. More than 70 persons were interviewed, which forms the material upon which the report's analysis is based. Interviewees included members of a youth-neighborhood watch-community development group, SAJECEK-Forces Vives⁴ (S-FV); local court judges and clerks; local civil officials; a judge; and NGOs. Slightly less than 10% of the interviewees were women, which is exceedingly low. The women interviewed were from S-FV, a local public official, women traders, and the proprietor of a beauty salon.

Two weeks were spent in-country conducting interviews. This is an inadequate collection period to develop a thorough understanding of the complexities and intricacies of local justice and security service delivery. The research period is also too short to form the basis from which a justice and security program can be fully fleshed out and designed.⁵ Nevertheless, this report recommends a series of practical entry points and programmatic alternatives for supporting local providers of justice and security services and non-state actors, as part of justice and security programs. These pragmatic entry points and programmatic alternatives are recommended in full knowledge of *and* because, first, the active resistance that the Government of DRC (GoDRC) has exhibited for engaging with donor-supported justice and security development for the past decade and, second, the widespread perception of the population that the state in eastern Congo has "abandoned" its obligations and responsibilities.

This report is divided into three sections. The first section outlines the context in which justice and security provision in Congo takes place, with particular attention paid to current donor-supported justice and security development. The second highlights two examples, S-FV in urban centers and local courts in rural areas and their provision of justice and security to their neighborhoods and communities. The last section outlines programmatic opportunities that donors can undertake, broaching important challenges confronting donors with regard to sustainability of their programming and the need to integrate justice and security initiatives with community-driven development.

in Autumn 2011). The project is carried out under a subsidy agreement between the Dutch Ministry of Foreign Affairs and the Clingendael Conflict Research Unit.

4 Synergie des Associations de Jeunes pour l'Education Civique Electorale et la promotion de leadership cohésif au Sud Kivu.

5 It should be noted that this phase of the project was not intended to design a justice and security program in South Kivu, see ToR, *Non-state/local security and justice networks and Security Sector Reform, Terms of Reference for Phase 2* (Clingendael Institute, September 2009). It should be noted that, given the specific focus of the research and the limited period of time in the area, it was impossible to examine the spectrum of Congolese NGOs to determine which ones might be suitable for working with donors in support of the delivery of justice and security to the local areas, individuals, and groups that are currently underserved. It is presumed that such NGOs exist, but who they and how donors can work with them will require additional research

II. THE DR CONGO, THE STATE, AND DONOR-SUPPORTED JUSTICE AND SECURITY DEVELOPMENT

The civil wars in the Democratic Republic of Congo (DRC) have been prolonged and bloody, “arguably the world’s deadliest since World War II,”⁶ with approximately 5.4 million deaths attributable to war-related causes.⁷ According to estimates, up to 1.4 million people have been displaced inside Congo,⁸ the preponderance of whom are from eastern Congo.⁹ A further 322,000 became refugees.¹⁰ The 2008 Brookings Institution’s Index of State Weakness ranked DRC 141 out of 143 countries, with only Afghanistan and Somalia having a worse ranking,¹¹ while the 2010 UN Development Programme’s Human Development Index placed DRC 168th out of 169 countries, with only Zimbabwe recording a lower score.¹²

In 2002, a peace agreement established a power-sharing arrangement between the principal competing parties, thereby facilitating the 2006 elections. Neither the peace agreement nor the elections seem to have “tackle[d] the fundamental obstacle to peace in the DRC, which is the violent and privatized governance of public goods and resources.”¹³ Furthermore, five years later, in eastern Congo armed

6 John Prendergast and Colin Thomas-Jensen. *Averting the Nightmare Scenario in Eastern Congo*. ENOUGH Strategy Paper #7, September 2007, p. 1.

7 International Rescue Committee (2008). Mortality in the Democratic Republic of Congo: An ongoing crisis. Available at http://www.theirc.org/resources/2007/2006-7_congomortalitysurvey.pdf.

8 Amnesty International (2008). Amnesty International Report 2008: The State of the World’s Human Rights. London, UK: International Secretariat. p.11. Available at <http://thereport.amnesty.org/eng/download-report>.

9 *Averting the Nightmare*, p. 1.

10 Amnesty *International Report*, p. 11. The State of the World’s Human Rights. London, UK: International Secretariat. p.11. Available at <http://thereport.amnesty.org/eng/download-report>.

11 Brookings Institution, “Index of State Weakness in the Developing World” (2008): www.brookings.edu/reports/2008/02_weak_states_index.aspx.

12 hdr.undp.org/en/media/HDR_2010_EN_Tables_reprint.pdf.

13 Koen Vlassenroot and Timothy Raeymaekers. “Kivu’s Intractable Security Conundrum.” *African Affairs*, Vol. 108, No. 432, p. 484. The article argues that in eastern Congo it is the GoDRC that acts as “a potential spoiling party” (p. 476). The conclusion of the article observes, “particularly in the domain of security

activities by the Armed Forces of the Democratic Republic of Congo (FARDC) and the Congolese National Police (PNC) continue to be necessary to disarm militia groups. Militia groups, however, are not solely responsible for insecurity, but, according to the 2009 US Department of State's Human Rights Report, DRC's security services are also culpable, engaging in extrajudicial killings, rape, torture, and looting.¹⁴ It appears that in South Kivu, the area covered by this report, women are "markedly more likely to say that their safety ha[s] declined" in areas where the FARDC has "gained control... from militia forces."¹⁵

With regard to the delivery of justice and security to its citizenry, the GoDRC is extremely weak and has performed poorly. A 2010 Clingendael Institute analysis argued that in the justice sector

*the interest of the Congolese authorities – both government and judicial – in reform appears to a large degree rhetorical and opportunistic: a façade of support for the reform allows the system's actors to attract financial resources and the Government to demonstrate its concern for good governance. In reality, reform is being delayed by both parliament and the executive branch who consider an independent judiciary as a threat...*¹⁶

The study's conclusion noted that the Congolese judicial sector suffers from "chronic under-funding," which "prevents any real change and makes donors' intervention purely artificial" and that "the institutional support programs succeed in constructing and equipping (without sustainability) but not in changing judicial practices and even less in changing mentalities."¹⁷ As the study intimates, the lack of resources, endemic to post-conflict and fragile countries, is particularly acute. In Kalehe Territoire of South Kivu, with a population of 88,000, only 2 magistrates have been assigned to the formal state court, a Tribunal de Paix. The distances the population must travel to the court can be upwards of 120 kilometers, suggesting the challenge posed with regard to access to justice.

The security situation is comparable, as already indicated. Instead of prioritizing security development, the GoDRC has concentrated on "the equipping of the army (and police) and the creation of the Rapid Reaction Force. The Congolese government appears to have little interest in Western visions of efficient and accountable security forces, instead focusing on the acquisition of

governance, peace-building instruments like DDR and SSR do not uphold their theoretical premises but instead serve interests that are coupled to violent modes of governance and appropriation" (p. 484).

14 US State Department Bureau of Democracy, Human Rights, and Labor, "2009 Human Rights Report: Democratic Republic of Congo," 2009 Country Reports on Human Rights Practices (2010): www.state.gov/g/drl/rls/hrrpt/2009/af/135947.htm.

15 Oxfam International, "Women and Children First."

16 Henri Boshoff, et al. *Supporting SSR in the DRC: between a Rock and a Hard Place*. (The Hague: Clingendael Institute, 2010), p. ii. The study, further, observed that the judicial system is "unable to deliver day-to-day rule of law," its independence is "highly questionable... [and] corruption is endemic." (p. 4). See also, Ernest Harsch, *Building a State for the Congolese People, Africa Renewal*, 21 (4), January 2008, www.un.org/ecosocdev/geninfo/afrec/vol21no4/214-DRC-building-a-state.html, accessed 15 September 2008, where the first president of the Supreme Court, Bruno Mbiango, conceded that political pressures have created a "deregulated justice, a perverted, dirty, degenerate justice" system.

17 Ibid, p. 10. Human Rights Center has, for instance, concluded, "despite considerable support for training and rehabilitation of the judicial infrastructure, corruption continues to be endemic, including, most insidiously, the protection of higher political interests," Patrick Vinck, et. al. *Living With Fear: A Population-Based Survey on Attitudes about Peace, Justice, and Social Reconstruction in Eastern Democratic Republic of the Congo*. (Berkeley: Human Rights Center, 2008), p. 14.

more weaponry and a useable Rapid Reaction Force”¹⁸ According to a 2010 Oxfam analysis, there have been few “genuine improvements in the professionalism, accountability, and respect for human rights of FARDC or the PNC... [because] overwhelmingly, the Congolese government has not demonstrated a commitment to building the basic institutions—the ministries of defense, interior, and justice, among others—that would support a professional security sector.”¹⁹

The interview data collected by the team in South Kivu seems to parallel the conclusions reached by scholars and justice and security practitioners. For instance, interviewees uniformly believed that the police are “complicit with criminals.” One interviewee accused the police of working with, if not explicitly organizing, street gangs composed of children. Another common complaint was that police routinely release alleged perpetrators from prison a day or two after their initial detention and, then, the case disappears. As far as the military is concerned, the widespread opinion is that the military “is involved with criminal groups.” In one instance, observed during the two-week visit, elements of a military contingent, which had been deployed to Kalehe to protect the citizenry from armed militias, had to be withdrawn because they were perpetuating insecurity and provoking animosity within the population. According to interviews, a senior general had to be called in to supervise the withdrawal so as to ensure that it was accomplished without further disturbances. In another incident, without legal justification, military troops dispossessed 400 families from their lands in and around Bukavu and their commanders refused efforts to resolve the conflict.

18 Henri Boshoff. “Completing the Demobilisation, Disarmament and Reintegration Process of Armed Groups in the Democratic Republic of Congo and the Link to Security Sector Reform of FARDC. Mission Difficult!” Institute of Security Studies, South Africa, Nov. 2010, www.iss.co.za/uploads/23Nov2010.pdf, accessed 2 August 2011), p. 6.

19 Oxfam, *No Will, No Way: US-funded Security Sector Reform in the Democratic Republic of Congo* (Oxfam America, 2010), p. 6. A US Government analysis has come to a similar conclusion. See US Government Accounting Office, *The Democratic Republic of the DRC: Major Challenges Impede Efforts to Achieve U.S. Policy Objectives; Systematic Assessment of Progress Is Needed*. Testimony Before the Congressional Human Rights Caucus, 6 March 2008.

III. LOCAL PROVIDERS OF JUSTICE AND SECURITY AND NON-STATE ACTORS

A general unanimity of opinion existed among interviewees. At best, as interviewees claimed that the police are “scared” to exercise their authorities in many parts of Bukavu and the judiciary “unreliable.” At worst, it was claimed that “the police doesn’t care about the safety of the people in the neighborhoods” of Bukavu. One interviewee succinctly summarized the situation, “the state does not function.” A local administrative leader stated frankly, “we feel completely abandoned into insecurity” by the GoDRC, while a local resident admitted that the “authorities have abandoned us to a sad life.”²⁰

Consequently, neighborhoods have had to rely on their own resources to secure a modicum of personal and group safety. As one interviewee stated, who is a member of a neighborhood group, “if we abandon what we do, we abandon our neighborhoods and our families,” for the GoDRC “already has effectively absconded.” Similarly, with regard to justice, rural populations have come to rely upon their local courts, which are an integral component of the DRC’s administrative and judicial system, written into the Constitution and national legislation.

SAJECEK-Forces Vives

Responding to rising insecurity and burgeoning crime within Bukavu, educated youths, from universities and secondary schools, created SAJECEK in 2005, an NGO, from out of which a neighborhood safety initiative, Forces Vives, arose in 2007-08 in Essence, a quartier of Bukavu.²¹ The youths²² organized themselves to defend their neighborhoods, because, they believed, the police were

20 These findings parallel those of focus groups conducted on behalf of Security Sector Accountability and Police Reform Programme (SSAPRP) in DRC in 2010, personal communication SSAPRP consultant.

21 Reputedly, in 1996, an effort had been made to organize neighborhood watch groups and patrols, but those groups, apparently, disappeared in time. At the time, the effort was undertaken in association with quartier officials, the local level of municipal administration.

22 The ages of members of S-FV interviewed spanned from 14 – 51, with the vast majority in the 23 -35 age range.

too afraid to enter the neighborhood for fear of being attacked by criminal elements and to put a stop to “popular justice” by groups that employed unmeasured methods, “killing those they didn’t know or like” under the guise of defending their neighborhoods from “invasion by criminals.” As a consequence, as a senior S-FV representative observed, from its inception, the neighborhood watch initiative has had to walk a fine line, balanced and “caught between three sides -- criminals, popular justice, and the police.”

S-FV has grown since its establishment, with up to 1,000 members organized in chapters in various neighborhoods throughout Bukavu. Each S-FV chapter has its own President, Vice President, Treasurer, and Secretary, each of who is elected and none of who is paid. Some, but not all of the neighborhood affiliates, have photo IDs. Initiation into the organization is US\$5 and some members also contribute \$2/month. Otherwise, all monies S-FV collects are voluntary contributions from residents of their neighborhoods.

S-FV chapters conduct night patrols in their neighborhoods. Based upon analysis of their neighborhood’s security, a chapter may initiate targeted nighttime patrols. “Sometimes we patrol for one or two months,” one group member said, “until a sense of security returns.” In addition, to these nighttime activities, which, typically, begin at 7 PM, S-FV also conducts patrols of marketplaces and other areas in which their neighborhood perceives a lack of safety and security. S-FV is able to do this because it identifies hotspots and maps crime. In 2008, for example, it created a database to correlate robbery victims with the loss and recovery of their property. When an alleged perpetrator is detained or S-FV members have found goods that were reported stolen, the alleged perpetrator is brought to the police and the goods are returned to the victim.

In all interviews in which the work of S-FV was mentioned, the opinion was that, in the neighborhoods in which the group operates, crime has declined. S-FV members assert this to be true. Although this evidence is anecdotal, as a member of Bukavu’s civil administration observed, “security improves when the youth patrol, especially in comparison with area’s without them.” The perception of a fall in crime and insecurity is as, if not more, potent a phenomenon as a statistically certified reduction.²³

S-FV’s effectiveness derives from the trust the neighborhoods have in them. As a local municipal official observed, “people go directly to the group; people prefer to go to the group. The population knows them and they feel abandoned by the government.” At one meeting the area’s civil administration representative discussed, at great length, how that neighborhood’s population relied on S-FV, in particular referring to a rape case that had recently occurred. Meetings were held at S-FV offices in three different areas of Bukavu and at each meeting, individuals were observed waiting on line to meet with S-FV members. “People have confidence in us and they bring cases to us,” one S-FV member said. Another mentioned that the “population would not trust the police, so the neighborhood came to us to lodge complaints of robberies. We organized and investigated and found the goods.”

This widespread perception that S-FV is an effective response to crime and insecurity in the neighborhoods in which it works arises despite the fact that provincial and municipal leaders have

23 These findings parallel those of focus groups conducted on behalf of SSAPRP in DRC in 2010, personal communication SSAPRP consultant.

only sporadically supported Bukavu's organization. S-FV met with the Governor of South Kivu in 2009, but his commitment to support them never materialized. There apparently was minor collaboration with the Vice-Governor on the collection of small arms, but that too has ceased. Neither has S-FV had any support from the international community, who do not appear to know much about the organization. The police distribute warrants to S-FV and request that the organization find and apprehend the alleged perpetrator for them. According to interviewees, this police request for assistance occurs a minimum of 2-3 times per week. Otherwise, there appears to be limited interaction between the police and S-FV and the association has received no training from the police.

"There is a limit to our relationship with the police," S-FV members conceded, "because we know that the police is corrupt." It was also acknowledged that one of the biggest problems for the group is the police. One interviewee claimed that the police feel that "they are in competition with us and the police feel humiliated because we have more success and legitimacy." Another asserted, "the police are jealous of us." In fact, the police has consistently tried to recruit S-FV members, but almost all have rejected the offer.²⁴ A lawyer, who had been involved in organizing S-FV, commented that the police "want to do their jobs as they used to do it, [corruptly,] and the group wants to defend the neighborhood."²⁵

The leading representatives of the S-FV, however, understand their security activities in a broader perspective, one which corresponds to contemporary criminology. They explicitly recognize that their neighborhoods' security depends upon the relationships and linkages between the municipal government, the criminal justice system, and community. The head of the organization, however, goes much further than that. "We see the whole," he argued, "as community development." In fact, S-FV may best be understood as an embryonic community-development organization whose roots began in justice and security development. For instance, S-FV chapters have broadened their activities into mediating local disputes. Of particular note is the organization's increasing involvement in the resolution of small debt and family conflicts.

Differing chapters of S-FV have organized football teams for various age groups -- 14 to 18 and 20 to 30. One chapter has created school vacation activities for children and youths. Others arrange for motorcycle or other transport for the sick; they collect stones and other building materials for those in need. S-FV chapters have repaired and built bridges, cleaned water collectors, and have organized bottle-recycling campaigns. In one area, they have been vigilant in ensuring that the area around the local water well remains safe and clean.

The greatest contribution that S-FV has made may be with its own membership, increasing their sense of social efficacy -- the belief that individuals within their groups can make changes to the environment in which they live. It appears that participation in S-FV has changed the self-perception of the youths who have joined. The initial motivation to join the organization was, as one interviewee summarized, "because I wanted to better the situation we live in... We wanted to show that not all youths are bad.... Our activities require a kind of sacrifice while not everyone wants to sacrifice. We

24 Mention was made of one member who had joined the police and was made a colonel. However, he has, subsequently, been arrested in "thrown in jail because of his continued allegiance to us."

25 Defense of the neighborhood may also mean resisting military incursions. For example, one S-FV chapter "destroyed two houses built by the soldiers in the middle of the road when the soldiers weren't there."

do it to help our families and neighborhoods.”²⁶ The outcome has been that “our image of ourselves has changed because we joined,” another member concluded. In another meeting, there was unanimous agreement about S-FV members that “being a member makes us proud. It makes us feel strong -- in a good sense” and that is a strong indication of an increase of individual and group social efficacy.

Local Courts²⁷

As mentioned above, the judicial system throughout DRC is challenged by an access to justice issue. In the case of the Kalehe Territoire of South Kivu, the formal state court is a Tribunal de Paix (ToP),²⁸ which has five locations,²⁹ but only two magistrates have been assigned to it, severely limiting the court's ability to deliver an adequate level of justice. Additionally, the language in which the court hears its cases is French, rendering it largely inaccessible to significant swathes of the population, given that French is not the primary language of much of the rural population.³⁰ According to one of the two magistrates who sit on the court, because of the interference of armed groups, the court is often unable to enforce its decisions with regard to one of the major types of cases brought before it -- the return of land of IDPs and refugees, the preponderance of the 1.4 million of whom, as already noted, live in eastern Congo.³¹

Above and beyond these difficulties, interviewees observed that cases before the formal state courts “take too long and they widen the conflict rather than help resolve them.” This is, as one interviewee observed, because decisions “contain a taint of revenge and coercion,” relying on state laws passed in Kinshasa rather than the traditions and values of South Kivu. This situation is compounded by the fact that, as the magistrate conceded, in 30% of the cases he hears in his ToP courtroom, both parties are not present during hearings and/or at session at which a decision is handed down. Sometimes, the magistrates of the ToP reach a decision that satisfies neither party to the dispute and they, together, seek to mediate and/or reconcile through “customary” mechanisms such as village elders.

26 “There is fear,” a member conceded. “If one acts against criminals, the criminals will attack them. Many think that the problem is one of the state and not one of their own!”

27 As discussed below, unlike the courts of the formal state system, local courts are not directly part of the judicial system, but instead legally belong to the executive branch through state's system of local administration. Furthermore, they utilize common law, rather than Western civil law, which is the predominant form of jurisprudence in the formal court system. The term ‘customary law’ is not used because ‘customary law’ is best described as common law in that it is unwritten, relies on precedence in the appeals process, and develops through accretion (case by case).

28 Unlike other courts of the formal state system, a Tribunal de Paix is a hybrid court in that it, effectively, has different chambers to hear cases that utilize Western civil law or local common law. In a ToP, the chief magistrate has the discretion to assign a case to the common law chamber, if the case pertains to that body of jurisprudence. When a case is heard that utilizes common law, the magistrate is aided in rendering decisions by magistrate assistants versed in that form of jurisprudence. In the Kalehe ToP, there are 21 magistrate assistants. It is important to note, first, that every case assigned to the common law chamber must be heard by one of the two magistrates and, second, where ToP exist, as in Kalehe, local courts have been abolished.

29 Kalehe centre, Minova, Bunyakiri, Kalonge and Nyabibwe.

30 The official language of the formal court system is French. Claimants, however, can choose to testify in the language of their preference. If that language is not French, an interpreter will be appointed to translate testimony into French.

31 The judge conceded, “it is too dangerous for me to enforce my decisions.”

It also happens, in areas where ToP exist, that cases bypass the formal court system altogether, particularly with regard to cases of unregistered land; instances where polygamy is pertinent to the case, given that the second and third wives are not recognized by state law; and inheritance disputes between “the possessor” (usually the elder son of the deceased) and his “joint heirs” (the widow and the brothers and sisters of the possessor), categories that the informal mechanisms deal with differently from the civil code. Consequently, interviewees noted that many Congolese do not perceive the formal court’s decisions as fair, legitimate, or just. In these instances, “customary” mechanisms are perceived to have more legitimacy than the formal state courts.

In South Kivu, the local courts are legally part of the chieftaincy system, which is, by virtue of the constitution, a local government endowed with legal status and capacity to have its own budget.³² Consequently, the local courts, whose jurisdiction is established and defined by law, are integrated into the state’s system of local administration, rather than its judicial system. In parts of South Kivu, where no ToP exists, local courts have jurisdiction over minor assaults, minor thefts, customary land, inheritance, witchcraft, dowry, and custody/paternity disputes.

The Chef de la Chefferie (“King”) is the President of the Tribunal de Chefferie (the local court) and of the second-level courts in the Groupements, but, invariably, the King nominates a Vice President, who serves as the head of the local courts. Only the President, Vice President, and court clerks receive salaries from the chieftaincy. The Vice President and some clerks who have official numbers receive also salaries from the central government. Regular local court judges do not receive salaries either from the Chieftaincy or from the Congolese government. Instead, they receive US\$1 per case for which they sit and participate in rendering a decision.³³ The three main sources of income for the local courts are fines (a maximum of US\$10), 15% of reparations (*dommages et intérêts*), and fees (US\$5 from the losing party). These monies fund the budget of the chieftaincy. The remaining monies -- from reparations and fees -- are transferred to the provincial and national governments. Additionally, for an individual to file a case in the local court system costs US\$10 per case and receiving a copy of the decision is US\$5. When an investigation on the field is required, both parties pay each US\$20.

The Vice President of the local courts in the Kabare Chefferie holds monthly meeting with his senior judges to review their activities and decisions. At the end of the year, all local court decisions are collected and sent to a provincial prosecutor³⁴ for evaluation and review. The prosecutor gives his/her “advice and opinion” on those decisions and can assign it to a formal higher-level state court, which practices Western civil law. According to information received in Kabare, the prosecutor only referred only one local court decision in 2010.

It is important to note that an established system of clerks exists in the local courts, even though the law itself is unwritten. In Kabare, where 14 second level local courts (Tribunaux de Groupements) exist, each court is staffed by a clerk and there is a court registry, in which cases are recorded according to the year, names of parties, and subject matter. After receiving training and undergoing an apprenticeship period, clerks maintain a written record of the testimony received by the courts and

32 Article 3 of the Constitution promulgated on 18 February 2006.

33 The sitting fee per case rose to US\$1 in 2011. It was conceded by interviewees that local court judges can and sometimes do receive “gifts” from the winning party to a case -- a goat, for instance.

34 The Prosecutor of the court in Kavumu, a secondary court of the Tribunal de Grande Instance de la Province du Sud Kivu in Uvira.

transcribe the court's decisions, including an elaboration of the legal reasoning. These written records of court decisions are crucial for when a case is appealed through the local court system. Furthermore, according to interviewees, case precedence is used when cases are heard on appeal, in accordance with common law traditions. An archive of all the area's cases had been kept dating back to 1948, but was burnt and destroyed in 2003.

Based upon interviewees' responses, it would appear that, in many instances, before disputes can be brought to a local court, they, first, are taken to chieftaincy's village elders for mediation. If they cannot resolve the conflict, the plaintiffs go to the local courts. There seems to be no agreement whether the majority of the cases involve land or family disputes, but there was no doubt among interviewees that the preponderance of family conflicts has domestic violence incidents connected to them.

IV. GOING LOCAL: PROGRAMMING AND RISKS

S-FV presents an excellent opportunity for donors to broaden their justice and security development portfolio, working directly with a non-state actor. Assisting the organization to become a “champion” youth-community development-neighborhood watch group of South Kivu could significantly improve the lives of many. Support for S-FV also raises important challenges for donors regarding sustainability and, particularly, the need to integrate justice and security initiatives with community-driven development.³⁵

Donor assistance to South Kivu’s local courts is recommended. However, donor support for the local courts is problematic for two reasons. First, the jurisdictions and legal standing of local courts is unsettled, given the absence of subsidiary law with regard to definitions of land title. Second, the GoDRC is committed to the expansion of ToPs, which if and when established in an area, effectively, abolish the legal standing of the local courts.³⁶

S-FV

For donor support of S-FV to be effective and sustainable, it would be optimal if it were to be multi-dimensional, roping together the different facets of the organization’s activities and blending community-development initiatives into justice and security efforts.

First, to strengthen its effectiveness, S-FV officials and members acknowledged an acute need for the rudimentary equipment with which it conducts its neighborhood nighttime patrols -- whistles, boots, raincoats, torches, communication/mobiles, etc. It would also be appropriate if S-FV members were to be given rudimentary self-defense training so that they could conduct their night patrols with a greater sense of personal security. It cannot be forgotten that S-FV are putting their physical safety on the line when on patrol and that the organization has already been targeted for retaliation, as their offices have been burnt down twice. Finally, it would be judicious if donor support would be given to enable the

35 The integration of economic development with justice and security development is a recurrent theme of the 2011 World Development Report.

36 Article 163 of the “Ordonnance-loi n°82-020” organizing the judiciary.

organization to have adequate offices in the various neighborhoods in which it has activities and for its headquarters too. The costs for this level of support are low, but essential for the organization to undertake its most basic activities. This support would also send an important political message throughout South Kivu, as the physical appearance of S-FV facilities and membership would be enhanced.

More tellingly, donor support for S-FV could have a multiplier effect. Repeatedly interviewees spoke about how other youth groups in other South Kivu urban centers -- for example, Uvira -- have requested S-FV's assistance in establishing their own neighborhood watch associations. The initial objective of donor assistance, therefore, should be to support S-FV becoming a champion youth neighborhood watch organization throughout South Kivu, the one to whom others go for advice and assistance in providing justice and security in their urban communities. This is not to suggest that neighborhood watch patrols are the only activity that S-FV undertakes, but only that donor support for these efforts is the entry point for a larger assistance program. Consequently, donor support could include assistance for:

- a selected number of S-FV members to be able to travel to other towns in South Kivu to assist their neighborhood watch groups in their activities;
- the preparation, materials, and conducting of S-FV workshops that its members will provide to these other groups; and
- the solidification and improvement of organization's rudimentary administration.

It is important that the indicators of this support not be institutional capacity development "outputs," such as the number of workshops held and individuals trained, but rather measurements, recording the activities and services of the neighborhood watch groups that S-FV is supporting.

Over time and with donor support, S-FV could become the incubation laboratory for South Kivu in the local provision of justice and security by neighborhood watch groups. As mentioned, S-FV is already engaged in identifying hotspots and mapping crime. These skills could be strengthened with the aim for the organization to be able to compile and, thereafter, analyse reliable safety and security data in areas of Bukavu and South Kivu. From these databases, baseline statistics could be derived and future development grounded upon a valid empirical foundation. The expectation, once again, would be for S-FV to propagate these skills and databases to other neighborhood and community groups throughout South Kivu. It should also be noted that S-FV is more than a neighborhood watch group and that its development of a reliable database that generates accurate baselines and statistics would be a valuable tool for civil society in holding the GoDRC accountable for its policing activities.

Furthermore, as a voice of civil society in Bukavu, and, perhaps, in time, if it were to become a youth and safety champion throughout South Kivu, S-FV could, begin to work with the PNC, being the vehicle by which the PNC becomes sensitized to the needs and priorities of the neighborhoods and communities to whom it is meant to, but does not currently, provide service. For instance, transferring the experiences of a Colombian NGO, DESEPAZ, to South Kivu, S-FV can become the mechanism by which the PNC could be re-introduced into selected neighborhoods for whom the police currently does not provide service. S-FV could, for instance, organize, conduct, and facilitate neighborhood meetings with the police. Through such meetings, it could be anticipated that neighborhoods would request S-FV to accompany the initial PNC patrols and/or have a presence in the local police station. How S-FV, in practice, would function as the effective "mediator" between neighborhoods and the

PNC cannot be predicted, but their role as a go-between would be essential, given the lack of trust and confidence in the PNC by the preponderance of the population.

Additionally, with the establishment of reliable databases S-FV could support the PNC with statistical crime and security information. Once again, this would be a South-South transfer of experience, in this case from Pakistan and Central America to South Kivu.³⁷ As in the Karachi and Honduras initiatives, S-FV could manage the databases on a day-to-day basis, as well as analyze crime patterns and information, for the PNC’s operational use and its formulation of police strategies and policies. Adopting service delivery and problem-solving approaches to justice and security development, emphasizing “what works” stratagems, this type of cooperation between civil society organizations and the police is an “arrangement for the provision of public services... where there has been a breakdown of conventional governance”³⁸ and donor-supported institutional capacity development of the ministries and agencies of the centralized state are unlikely to produce effective results. It goes without saying that the GoDRC and the PNC may resist this donor-supported initiative. Political engagement by donors may ease that resistance. But if GoDRC and PNC resistance were to persist, donor value-for-money would remain high, as the databases would continue to exist, providing civil society the opportunity to hold their local government accountable for its policies, strategies, and activities.

It is also important to acknowledge that building links between the ministries and agencies of the centralized state and local providers and non-state actors need not necessarily be directed *from* state institutions *to* organizations such as S-FV. Linkages are two-way streets, for the mutual benefit of all parties, and in certain instances -- Karachi, the barrios of Colombia, South Kivu -- it is more effective and sustainable for the relationship to be erected from local providers and non-state actors, given existing levels of trust and confidence in the government. It is a question of context, adhering to its strictures, and in South Kivu it is apparent that effective relationships and linkages may have to originate from local providers and non-state actors.

As already mentioned, S-FV is much more than a neighborhood watch group and has already moved into questions regarding community dispute mediation and reconciliation because it perceived an acute need. The organization identified family conflict and small debts as areas in which it could, and already does, provide a valuable neighborhood service. What precise activities donors could support in these areas requires additional research, but it is likely that they could evolve into S-FV transforming itself, over a five-year or longer period, into a fully-fledged paralegal organization. Once again, transferring South-South experiences, this time in Kenya and Sierra Leone, the lowest level of an emergent paralegal organization would consist of community mediators who work directly with clients in the neighborhoods in which they live to support the resolution of disputes. These mediators would be supported by paralegals, who have received appropriate training and to whom disputes are referred when the mediator cannot facilitate their resolution. Unlike the mediators, the paralegals would work within the DRC’s various legal systems, advising clients and shepherding them through administrative

37 Mohammad Masud. *Co-producing Citizen Security: The Citizen-Police Liaison Committee in Karachi*. IDS Working Paper # 172, Institute of Development Studies, University of Sussex, 2002. For a discussion of how crime data is collected in Honduras by civil society organizations and used by the police, see Mark Ungar, *Policing Democracy: Overcoming Obstacles to Citizen Security in Latin America* (Johns Hopkins University Press, 2011)

38 Ibid, p. iii.

procedures. These paralegals could be backstopped, first, by more senior paralegals and, ultimately, by lawyers, who when necessary advise, intervene, and represent S-FV’s clients before the courts.

Given that interviewees observed that the “main problem for women is sexual violence,” S-FV may also be ideally situated to be a vehicle within the neighborhoods of Bukavu by which to grapple with this challenge, as a central part of its dispute mediation and reconciliation component.³⁹ It is important to acknowledge, however, that this activity would not directly address gender violence arising out of the civil wars and crime (such as rape and other serious cases of sexual violence). Once again, donor assistance would support the provision of services rather than merely to conduct awareness-raising workshops and training sessions. Since S-FV chapter are already undertaking some of this work, with regard to family conflicts, donor support would begin by strengthening ongoing activities.

It must be acknowledged, however, that all of these initiatives are financially unsustainable, as is true for virtually all donor support to NGOs, legal aid schemes, paralegal organizations, etc. Once donor funds are withdrawn, these donor-supported schemes typically collapse. In the case of S-FV, the monies it collects from its membership photo IDs and monthly fees are insufficient to cover the organization’s costs. Consequently to avoid addictive dependence on donors,⁴⁰ it is important for donor-support to groups such as S-FV to be more consistently integrated into wider community-development initiatives.⁴¹

There are two different avenues to begin to blend community-driven development with justice and security initiatives. First, in those neighborhoods in which S-FV operates and in which it is providing effective justice and security services, donors could provide community-development grants, supporting small-scale community improvements. These initiatives could range from improving water wells and water collectors; roofs for schools and neighborhood centers, repairing and maintaining local roads, etc. They could also be directed to the delivery of other services within the communities, which are provided by local neighborhood groups. Monies for these initiatives would be given by donors to local neighborhoods and communities on behalf of S-FV, but not through or by S-FV. The local S-FV chapter would be completely divorced from these small-scale grants. Nevertheless, given in the name of S-FV, the objective of these grants is to bolster and cement the relationship between the effective delivery of justice and security service by S-FV and the neighborhoods in which it works, generating a virtuous circle.⁴²

It is imperative for these grants to be channeled through an organization wholly independent from S-FV that is skilled in models of community participation and donors would need to contract with such a

39 In one S-FV chapter, Gihamba, interviewees claimed that 29 of its 74 members were women.

40 In Guatemala, as this author learned during a two-week interview assignment, this dependent addiction has created a syndrome where NGOs are better and more accurately described as for-profit consulting companies than civil society organizations. One of the other terms used in Guatemala to characterize these NGOs is “expressions of civil society,” for it is acknowledged that they represent no-one other than themselves and have no civil society legitimacy. This is not to belittle the work that these Guatemalan NGOs undertake, but merely to acknowledge what and whom they represent. A very similar picture exists in Sierra Leone.

41 See World Bank Development Report, 2011, for the need, better, to integrate justice and security with community-driven development initiatives.

42 It needs to be recognized, however, that this initiative could strengthen S-FV, which may introduce a new set of political dynamics and risks that would need to be appropriately managed.

group to implement and manage the initiative. What is desirable is for neighborhoods as a collective whole to decide how to allocate the donor-provided monies, rather than relying a narrow sliver of a neighborhood’s existing power structure and leadership group to choose how grants are to be used and by whom. If done appropriately and the greater the neighborhood’s participation in deciding and implementing these small grants, this initiative may be a mechanism by which to strengthen the neighborhood’s social efficacy.

The second avenue directly addresses the challenge of financial sustainability, as well as attempting to produce a virtuous circle between S-FV, the neighborhoods in which S-FV operates, and, in this case, first of all, local business owners. As with community grants above, S-FV’s effective delivery of services in a given neighborhood triggers a donor response, in this instance, small grants of assistance to local businesses. Once again, the monies would not be given to S-FV to implement or manage, but would be given on their behalf and in their name and only to local small businesses in the neighborhoods in which S-FV operates. S-FV would have nothing to do with identifying local neighborhood businesses that qualify or selecting which qualifying businesses receive these venture capital-small business grants.

These venture capital-small business grants would be channeled, implemented, and managed through an independent organization versed in local and small business development. The monies granted to businesses would be small, if for no other reason than the local businesses would not be able to absorb significant donor inflows of assistance. In some cases, it may be beneficial for the grant to take the form of micro-credit financing. It is expected that each neighborhood and community will be slightly different from each other. In return for financial assistance, the recipient small businesses would sign a contract committing itself to contribute a small percentage of its income/profits to the S-FV chapter in their neighborhood, thereby ensuring S-FV’s financial sustainability.

In some neighborhoods, particularly rural ones, it may be more effective to support and/or establish community-owned enterprises than it is to provide assistance to privately owned small local businesses. The method of providing donor assistance, however, remains identical with S-FV having no voice in the selection of recipients, the choice of what type of community-owned enterprise would be established and/or supported, etc. An independent organization would implement and manage the monies and the initiative. As with the community grants described above, participatory processes are essential to determine what economic activity the community enterprise would undertake. A community-owned small-scale mill or irrigation services might be what is needed, but it would be the neighborhood’s decision, facilitated by the independent organization conversant in facilitating community participation and generating economic development. Similar to the local small business scheme, in return for the establishment of a community-owned entity, a contract would be signed between the community business and the implementing organization, stipulating that the community-owned business would contribute a small percentage of its earnings/profits to the S-FV chapter in its neighborhood.

It is acknowledged that this linkage between community-driven and justice and security development may pose certain risks. For instance, it is understandable to be concerned that this linkage could generate “protection rackets,” in which S-FV “extorts” monies from local businesses in return for providing security. The possibility exists, but the risk is well worth running. Risk management strategies can be implemented, designed to meet the local conditions and contingencies. For instance, it is reasonable for the implementing partner to establish oversight boards to ensure that “protection

rackets” are not perpetrated. On such a board could sit local municipal or other officials; a human rights association; civil society organizations other than S-FV; a local small business umbrella group (which in and of itself would be beneficial, as it would more organize small businesses into more cohesive group, enabling them to gain greater voice); the PNC; and the donor.

Local Courts

Donors could also effectively support local courts in South Kivu. Donor assistance to strengthen local courts could include:

- developing precedent casebooks;
- working with court clerks on their writing of court decisions;
- reviewing and improving the local court judges’ legal reasoning;
- supporting the Vice President of the local courts, in Kabare, for instance, in assessing the work of his colleagues; and
- increasing the interactions between the provincial prosecutor and the local courts.

There are, however, significant risks to this donor support. As already mentioned, local courts have jurisdiction over customary land disputes. It is difficult, however, to determine, first, what lands are susceptible to customary law, given that the promulgation of legislation and Presidential decrees regarding land title have significant gaps in them and that necessary subsidiary law,⁴³ which would partially fill in those gaps, has never been passed. As a result, the exact jurisdiction of the local courts with respect to land conflicts is open to dispute.

According to a local court judge, however, many young persons think that local judges are “witches,” which does not bespeak well for their legitimacy across generational lines.

A logical donor-supported initiative would be to assist the GoDRC to draft the necessary subsidiary laws, rules, and regulations regarding land title, but that is an exceptionally long-term process, albeit one that needs to be undertaken. The likelihood of such an endeavor having an effect on South Kivu within the next generation is, probably, very small. In the meantime, therefore, working with the local courts could be an appropriate option, despite the lack of legal clarity. This is especially relevant given the pressing need to accommodate returning IDPs and refugees, whose title to their original properties is based upon customary law. Support to local courts, therefore, could mitigate current and future conflicts over land that returning IDP and refugees is instigating. As one interviewee stated if nothing is done to lessen tensions and resolve these land disputes “it will create a civil war between the parties.”

The second risk to donor support to local courts is GoDRC’s commitment to establishing Tribunals of Peace (ToP). The establishment of a ToP immediately abolishes the right of local courts to reach

43 The issue and importance of subsidiary law and legislation cannot be minimized in post-conflict and fragile countries. It is primarily one concerning the implementation of law/legislation and not its initial passage. Implementation, invariably, requires the elaboration of a series of administrative rules and regulations in which the intent of the original law is given governance/bureaucratic substance (subsidiary law). In most Western countries, for example, the implementation of a piece of legislation may take up to a decade because of the intricacies of subsidiary law and the contestation of those rules and regulations in court. The current history in the US with regard to the passage of national healthcare and financial reform legislation is a case in point.

decisions based upon customary law, as that jurisdiction is transferred to the ToP. In South Kivu, a ToP has been established in Kalehe and, therefore, no local courts legally exist in the area.⁴⁴ It would thus be unwise for donors to support local customary law courts in a Territoire where a ToP will be shortly functioning. However given the slow rate at which the GoDRC has established and staffed ToPs in South Kivu, donors should consider rejuvenating the local courts that still have legal standing as a medium-term solution, as they represent the only locally-accessible existing instruments of law in many Territoires.

44 The GoDRC has decided to establish a Tribunal de Paix in every territory. There should thus be eight in the Province of South Kivu however only three exist currently in the province. The Tribunal de Paix of Kalehe is one of the three.

V. CONCLUSION

Research into the justice and security environment of South Kivu suggests a method by which donors can improve the immediate delivery of justice and security for the residents of the area, namely support the development of SAJECEK-Forces Vives to become a champion organization throughout the region. Such an undertaking also has the potential of strengthening overall police development, given that SAJECEK-Force Vives already has begun to map crime in the neighborhoods in which it works and has rudimentary baselines from which to evaluate future police development.

In addition, SAJECEK-Forces Vives is much more than merely a neighborhood watch group, whose activities, reputedly, have reduced crime rates in the areas in which it is active. SAJECEK-Forces Vives is an embryonic community-development organization whose roots began in justice and security development and who, over time, has the potential to evolve into a unique hybrid organization.