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Haut-Uele: Justice and Security Mechanisms in Times of Conflict and Isolation

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ABSTRACT

This paper discusses the justice and security mechanisms in Haut-Uele district. It shows how the district has a long history of marginalization and degradation. In the context of degraded state institutions and geographical isolation, the resolution of conflicts remains limited to a local and isolated level through which a small number of actors – particularly the customary chiefs - play an important role. Moreover, it is shown how different actors make deliberate efforts to concentrate decision-making processes at their own level. All this has strongly negative consequences for the beneficiaries. Secondly, it is shown how the presence of the LRA rebel group has further accelerated this process, since the conflict has increased the isolation of certain areas whilst at the same time making conflict resolution more multi-layered, as other actors such as the army and international organizations have become involved. The latter has had a positive impact for the beneficiaries.

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Introduction

The District of Haut-Uele is part of Orientale Province and is situated in the North-East of the Democratic Republic of Congo, bordering South Sudan and the Central African Republic in the North, and Ituri in the East and South.¹ It has six territories – Dungu, Faradje, Niangara, Rungu, Wamba and Watsa, and has a surface area of about 91,600 km² (Omasombo 2012: 27). During the last census in 2008, it was estimated to have 1,652,866 inhabitants (Omasombo 2012: 70).

This paper aims at explaining how Haut-Uele's governance structures, and particularly its justice and security sectors, function in this situation of historical and increasing isolation. This isolation occurs not only between the region and the rest of the country, but primarily within the district itself: it will be shown how the lack of infrastructure and communication have created a situation of far-reaching decentralization, in which localities are largely disconnected from the rest of the district, and from justice and security structures which go beyond that particular locality. This does not mean that there are no more actors available in the field of justice and security in these localities, but that power is concentrated in a number of actors –particularly the customary chief and also the police. The customary chief is closer to the population, and is considered more legitimate than the ‘modern’ courts, which are perceived to be corrupt and unfair. It will be shown how the LRA conflict had a dubious but strong impact on this concentration of power: on the one hand, processes of isolation and concentration further increased, as insecurity pushed the remaining state actors to urban centers, and insecurity made movement much more difficult. On the other hand, through the LRA conflict, more actors became involved in processes of justice and security – these were primarily international actors (international NGOs and political sections of MONUSCO), but also the Congolese army.

In order to demonstrate these arguments, this paper is structured in the following way: The first section gives a brief overview of the history of increasing isolation and conflict in Haut-Uele district. The next section looks at the general functioning of justice and security mechanisms in Haut-Uele. This is followed by a section explaining how isolation and concentration of power are key characteristics of these mechanisms, and how this affects their actual functioning. The final sections examine the impact of the LRA conflict on these characteristics and the new actors introduced, as well as elaborating on conflicts between displaced people and the host population.

¹ Its borders were determined by two agreements in 1894 – one English-Congolese agreement, and one French-Congolese agreement.

The paper is based on field research in Haut-Uele in August 2012, March 2013 and July 2013², in which interviews were conducted with a wide range of actors including government officials, customary chiefs, civil society actors, representatives from international organisations and traders. Because of the security situation, research was primarily conducted in Dungu. Additional research was conducted in localities on the Dungu-Duru axis. A research assistant conducted additional research for the author in Isiro and Faradje.

A history of increased isolation in Haut-Uele

Economic developments

In pre-colonial, and particularly in colonial times, the Haut-Uele district was relatively prosperous. Agriculture was very important and the region considered itself the ‘granary of Haut Zaire’ (Omasombo 2012: 262) with the most central activities being cotton and coffee farming, as well as subsistence farming (primarily in rice, maize, and manioc). Coffee played a particularly important role with 55% to 60% of national production of the Robusta coffee bean coming from Isiro.

However, the benefits of these agricultural activities to the local population were mixed. Firstly, European farmers and traders reaped most of the profits. They established themselves in the area at the beginning of the 20th century with primarily Greek traders playing a prominent role and having a presence in most towns of Uele (Faradje, Dungu, Niangara, Watsa, etc). The Greeks (as well as Belgian and Indian expatriates) strongly focused on the farming and trading of export crops (cotton and coffee) as well as on *elaeis* (the source of palm oil) and ivory. They were also active in the industrial transformation of Congolese agricultural products (Obasombo 2012: 259-260): Oil and rice mills and a cotton factory were installed (Omasombo 2012: 255-260). In other words, European (and to a lesser extent Indian) traders, rather than local actors, played an important role in the most profitable aspects of this trade. During this period, the necessary transport infrastructure was also put in place for the export of these crops: for example a railway line was constructed during the colonial period to export cotton and coffee (Omasombo 2012: 253-254).

Yet this did not mean that the region was an economic center. For instance, although coffee was a very important crop, the province did not have a coffee manufacturing plant despite being one of the most important coffee yielding areas of the country. It was instead being “treated in areas which produce coffee of worse quality”³.

In the post-colonial period, President Mobutu relied both politically and militarily on figures⁴ from the Uele region for his regime. However, the impact of this at the local level was very limited, since their political positions translated into little or no development for the area. In common with the rest of the country, Mobutu’s *Zairisation* had a strongly negative effect on Haut-Uele. By means of this policy, begun in November 1973, President Mobutu wanted to take Zairean economic resources out of the hands of foreigners and give them back to the Zairois. As a result, foreign (and particularly Greek) traders left the province. However, mismanagement,

² This paper was written in the second half of 2013.

³ Hally Mukimbwa-wa-Bakimbwanga ‘Isiro raconté par un journaliste’, Boyoma, Kisangani, vendredi 14 Septembre 1973, p.2; cited in Omasombo 2012: 262

⁴ For example Victor Nendaka, who had several high-level political positions under the Mobutu regime.

inexperience, and a lack of know-how, in combination with a worldwide economic crisis had disastrous consequences in Zaire as a whole, and also in Haut-Uele. This was particularly visible in the coffee sector, where most of the big coffee plantations were abandoned after their stocks were sold off. Other plantations were badly managed. As a result, whereas in 1974 44,000 tons of coffee were sold from the two Uélé districts, this had fallen to 12,000 tons by the end of the 1980s – going further downhill after this (Omasombo 2012: 276) A similar dynamic was seen in the cotton sector: mismanagement, in combination with a global crisis in cotton prices, led to the closure of cotton manufacturing plants in Haut-Uele. Moreover, most oil mills stopped their activities after the *Zairisation* with the last ones closing at the end of the 1980s.

The situation continued to worsen throughout the 1980s, 1990s, and 2000s. In this process, Haut-Uele became increasingly isolated. Regional trade became extremely limited and was largely concerned with products of little added value such as bananas, manioc, and paddy (Omasombo 2012: 263-274). Moreover, there was a general degradation of the road infrastructure; in 1934, Haut-Uele had 3,125km of roads but by the end of the 1990s there were only 1,942km left, all in a poor state. In these circumstances, Haut Uele became almost impossible to access, with plane and bicycle remaining the only options. Yet, there are hardly any flights to the area⁵, and cycling naturally takes a very long time. Apart from the transport infrastructure - and again mirroring developments in the rest of the country - the general state infrastructure also deteriorated; salaries were no longer paid and the disconnection from the central state increased. Medical facilities are, for example, largely insufficient: in 2003, there were 26 doctors for a population of 1,267,231 (Omasombo 2012: 336). Although this was an improvement on earlier times,⁶ it is still largely insufficient and certainly in a situation where medical facilities are seriously delapidated. Furthermore, only 8% of schools are provided by the state in Haut-Uele⁷ – which is about half as much as the national average of 16,2% (De Herdt, Titeca and Wagemakers 2012: 684).

An important contributing factor to this increasing degradation and isolation was the number of rebellions in the area and these are discussed in the next sub-section.

Rebel groups

The first rebellion in the area was the 1964-1966 Simba rebellion in which local political and intellectual elites were particularly targeted. After this rebellion, the area was peaceful for many years, until the ADFL (*Alliance des forces démocratiques pour la libération du Congo*) started its rebellion in 1996. It particularly targeted the area for its links with the Mobutu regime. The AFDL, and the subsequent rebel movements controlling the area, took over the politico-administrative structures.

In 1997 the *Rassemblement Congolais pour la Démocratie* (RCD) started its rebellion against the Kabila regime and in August 1998 the rebel troops arrived in Haut-Uele and took over its capital, Isiro. The Congolese armed forces (*Forces Armées*

⁵ Mobutu for example had abolished the Isiro-Bunia-Kigali plane route – as it was largely used by foreigners to export coffee.

⁶ In 1975, there were 13 doctors, 12 hospitals and 38 medical centres. (Omasombo 2012: 272).

⁷ Figures for 2008.

Congolais, or FAC) fled the town and looted the surrounding area⁸. At the same time, Mai Mai groupings that had supported the FAC on certain occasions, burnt down Dungu hospital. In September 1998, following the vacuum created by the retreat of the FAC, the RCD (which had only taken over Isiro) convinced the SPLA to join their fight. In September and October 1998, the SPLA took over Dungu and Doruma – primarily to force Southern Sudanese refugees to return to Southern Sudan. They also engaged in looting and destruction of the area. (Oxfam Quebec and UNHCR 2011: 10-13; Marks 2007: 15).

In 2000 the RCD split into RCD-Goma and RCD-KML and Haut-Uele fell under the control of Mbusa Nyamwisi's RCD-KML, that merged in 2001 with Bemba's *Mouvement de Libération du Congo* (MLC) to form the *Front de Libération de Congo* (FLC). In 2002, the FLC imploded and a conflict emerged between the RCD-KML and the MLC. These were titled respectively the ‘effaceurs’, or ‘effacer le tableau’, (erase the blackboard) and the ‘écrivains’ (writers). Haut-Uele fell into the hands of Nyamwisi's *effaceurs*. Both sides were engaged in a brutal military campaign that largely took place beyond Haut-Uele (mainly in Ituri – see for example HRW 2005: 24-25, 36-44; MRG 2004). However, this did not mean that Haut-Uele was exempt from conflict; several battles for Dungu took place between both forces, and in 2003 Dungu fell under the control of Bemba's *écrivains* who eventually manage to push out Nyamwisi's troops. Bemba largely controls Haut-Uele through an ally, Roger Lumbala's *Rassemblement Congolais pour la Démocratie Nationale* (RCDN), that is engaged in various exactions against the population (Oxfam Quebec and UNHCR 2011: 12). At this time RCD-N representatives were in charge of the major state positions.

Furthermore, in 2002 a political-religious movement created and led by Simon Kpologbele set out to conquer parts of Dungu and Ango territory. Kpologbele used forced recruitment to achieve this aim and according to a report by Oxfam Quebec and UNHCR (2011: 12), over 100 people were killed and at least 1,000 displaced because of this conflict.

At the end of the rebellion, Haut-Uele was under the rule of a military comprising the MLC and RCD-N troops, mixed with those of the RCD-KML, that came to constitute the Congolese army or ‘Forces Armées de la République Démocratique du Congo’ (FARDC). These troops behaved in an undisciplined manner towards the population and harassment was frequent since they were hardly ever paid and were thus preying on the population. This situation improved slightly after the 2006 elections.

In late 2005, the Lord’s Resistance Army (LRA) arrived in Haut-Uele. It was initially peacefully settled in Garamba National Park, but started launching small-scale attacks from late 2007 onwards. The main trigger for a brutal campaign of attacks and killings was the launch of ‘Operation Lightening Thunder’ by the armies of Uganda, DRC and South Sudan, supported by the USA, on 14 December 2008. The operation largely failed and led to major attacks in which around 1,500 people were killed, and around 2,300 abducted, in Haut- and Bas-Uele. Large-scale attacks continued up to mid-2010, after which time the LRA went into survival mode whereby it was primarily looting to survive, abducting people for a short time to carry food items, after which they were mostly released. Although only a few LRA rebels are left in the

⁸ Particularly the route to Niangara.

DRC, their presence continues to have a strong psychological impact, as many people prefer not to return home. (Titeca and Costeur 2015). Another important factor is the presence of the Mbororo. The Mbororo are nomadic cattle keepers who have a long history of moving through central Africa (Pax Christi 2007), but who started entering the DRC from around 2000 onwards, and became active in Bas and Haut-Uele from 2005-2006 (Pax Christi 2007). The number of Mbororo was estimated at between 10,000 and 20,000, with between 100,000 and 160,000 head of cattle (Bathily 2008: 5). Because of these large numbers of cattle the Mbororo occupy large plots of land and the animals destroy many crops and other assets. The local population complains that no compensation is given and this has led to major tensions, with many wanting the Mbororo to leave the area. The issue has been further exploited politically as the Mbororo are, for example, accused of collaborating with the LRA (Titeca and Costeur 2015).

In summary, a history of gradual economic, political and physical marginalization and degradation, combined with a recent history of conflict, has led to the increased geographical isolation of Haut-Uele from the wider region. Previously flourishing regional trade – for example with Southern Sudan – has come to a standstill over the years. Moreover, communication and transport within the district has become much more difficult.

The justice and security sector in Haut-Uele

Congo relies on a hierarchical judicial system in which both ‘modern’ and ‘customary’ courts play a part. As can be seen in *Table 1*, the different levels of customary courts are the lowest level of judicial process, after which ‘modern’⁹ courts come in. The lowest level of the modern courts is that of the Peace Courts (or ‘*Tribunaux de Paix*’). After their establishment in 1968, these Peace courts were intended to be the first level of judicial access which would eventually replace customary courts. Yet, through a lack of funding and political will, little of this materialized. According to a report from the International Crisis Group (2006: 15), it is estimated that 80 per cent of citizens do not have access to these ‘modern’ courts. As a result, customary courts continue to play a dominant role in judicial processes and they have a large degree of autonomy in doing so (Rubbers and Gallez 2012: 81).¹⁰ Every territory¹¹ also has a ‘*tribunal de territoire*’. Whereas the Peace Court has ‘judges with general competences’, and therefore has the mandate to decide on actual sentences, this is not the case with the ‘*tribunal de territoire*’, which only has ‘judges with limited competences’. The latter can only decide on transactional fines, hold someone for 48 hours, and refer cases to its hierarchy, but it cannot sentence someone as such. Every *chefferie* has a principal tribunal (at the level of the *chefferie*) and a secondary tribunal (at the level of the ‘*groupement*’).

⁹ This term is used by Rubbers and Galles 2012.

¹⁰ A donor report for example found that in 2004, of the 180 *tribunaux de paix* envisaged, only 53 were functioning (Mission conjointe multibailleurs 2004: 76, cited in Rubbes and 2013: 18).

¹¹ The district of Haut-Uele is divided into 6 territories (Dungu, Faradje, Niangara, Rungu, Wamba, Watsa), which are in turn divided into *chefferies*. The number of *chefferies* has reduced considerably. For example, in 1937, the territory of Dungu had 7 *chefferies*, 6 in 1939, 4 in 1952, and currently 3: Wando, Ndolomo and Malingindo. *Chefferies* are in turn divided into *groupements*.

Table one: the legal system in Congo (Rubbers and Gallez 2012: 81)

‘Modern’ courts	‘Customary’ courts
<i>Cours d’appel</i>	
<i>Tribunaux de grande instance</i>	
<i>Tribunaux de paix</i>	<i>Tribunaux de territoire</i>
	<i>Tribunaux de chefferie/secteur</i>
	<i>Tribunaux de groupement</i>

In Haut-Uele, the Grand Instance Court (‘tribunal des grandes instances’) and the public prosecutor associated with it (‘parquet des grandes instances’) are based in the capital Isiro. Normally, every territory should have a Peace Court (and associated with it, a secondary prosecutor or ‘parquet secondaire’). While all six territories in Dungu have Peace Courts, they are incomplete and/or lack personnel and infrastructure including the secondary prosecutor. Moreover, the Grand Instance court in Isiro is also incomplete, with only two instead of five judges.

The military have a garrison military court (‘tribunal militaire de garnison’) based in Isiro (and, associated with it, an ‘auditorat de garnison’). There is supposed to be a military prosecutor (the equivalent of a secondary prosecutor) in every territory; but these are present in only 3 out of 6 territories.

The Congolese judicial sector has a range of problems, mirroring the general crisis of the Congolese state. Corruption and a lack of resources are two major problems which date back to the early days of independence. The judiciary had already become strongly politicized and “clientelism and influence peddling among officeholders became common” in the first phase of the Mobutu regime (Rubbers and Gallez 2012: 82). The general decline of the Congolese public sector (Schatzberg 1980; Young and Turner 1985; Titeca and De Herdt 2011) further affected the judiciary sector. This was particularly the case from the end of the 1980s, as new conditions for foreign aid, and a shrinking internal economic base, accelerated the decline of the national economy and the public sector. In this situation, “corruption was institutionalized as the guiding principle of the behavior of the state representatives at all levels of society” (Vlassenroot and Romkema 2007: 17). As with other sectors, salaries within the judicial sector imploded, and the Mobutu regime encouraged corruption in the public sector to supplement meager incomes. Courts were also largely left to ‘fend for themselves’, which meant that salaries had to be raised locally. These tendencies continue up to today. Few state resources are available for the judiciary: figures vary between 0.1% of the state budget in 2008 (Vircoulon 2009: 94, cited in Rubbers and Gallez 2012: 84) and 0.22% of the total state budget in 2009 (Boshoff et al. 2010: 10). In common with other public sectors (cf. Titeca and De Herdt 2011; Titeca et al. 2012; De Herdt et al. 2013), the financing of this sector (and particularly the salaries) therefore largely depends on the users; a reality which strongly encourages corruption and affects the legitimacy of the judiciary. As Rubbers and Gallez (2012: 83) argue with regards to the judicial sector in the 1990s “if their jobs gave them the opportunity, they might also allow themselves to participate in fraudulent practices for money, e.g., destroying the evidence against someone charged for crime, making a judgment contrary to the law, or moonlighting as legal advisers for private businesses”. A similar analysis can be made of the situation today. Consequent reforms did little or

nothing to stop corruption or improve the expensive and unpredictable legal system (Rubbers and Galez 2012: 84). As Vlassenroot and Romkema (2007: 25) summarize “The enforcement of Congolese law suffers from a lack of capacities and resources, high levels of corruption and the weak institutional organization of the criminal justice system”. As a result, the legitimacy of the Congolese legal system is limited.

These general tendencies are reflected in Haut-Uele. In common with the rest of the country, the justice sector started experiencing difficulties in the late 1980s and this worsened during the 1990s. Salaries were no longer paid and the disconnection with the national state increased – factors which had a negative impact on all state institutions. As shown above, ‘modern’ courts are largely absent as a result. Therefore, it was mainly the customary courts that kept the judicial system afloat and active. Customary chiefs in the area are seen as particularly useful in ‘traditional’ or cultural cases, particularly cases involving supernatural phenomena such as fetishes and witchcraft, marriage problems and land issues. Also, even when ‘modern’ courts are present, customary courts remain the preferred form of justice for most litigants. Moreover, the legitimacy of modern courts is limited – actors from all levels of society talk in very negative terms about the judicial sector, reflecting a general belief that the modern justice system only reflects the financial power of the actors involved, as judges can easily be bribed, favoring the wealthiest or most influential bidder.¹² It is therefore not to be considered as a mechanism which is easily able to resolve conflicts but is instead seen as a mechanism which further engenders conflict.¹³

Customary authorities are perceived to have more advantages: they are perceived to be closer to the population and to be more accessible; and also to be ‘cheaper’ i.e. less money is charged than with the state. As a trader summarizes “they are closer to the population and easier accessible. Also for the most vulnerable: you don’t have to always pay for it”.¹⁴ As one civilian from Bangadi commented: “it is much easier to see the customary chief, and he doesn’t create any problems when people go to see him”.¹⁵ The result of this general situation was that in most of the territory, processes of justice were largely monopolized by customary courts.¹⁶ One final perceived advantage of the customary chief is that he allows things to be solved in a “friendly way”¹⁷ where there is not too much conflict involved. This advantage also brings us to the downsides: the judicial role of the customary court has become severely criticized by human rights and civil society organisations, as customary judicial authorities largely overstep their mandate. People can be held for a considerable time¹⁸ although customary chiefs are only allowed to hold people legally for 48 hours; forced labor is

¹² Throughout the research, a number of ‘notorious’ cases kept being mentioned, in which for example occupants were chased off their land by claimants who worked together with local political and judicial authorities.

¹³ In doing so, this finding mirrors research by Rubbers and Gallez in Lubumbashi, where they found that “The exchange of complaint after complaint may culminate in the level of the conflict becoming disproportionately high in comparison with the original problem” (Rubbers and Gallez 2012: 99).

¹⁴ Interview Dungu, 10 March 2013.

¹⁵ Interview civilian from Bangadi, Dungu, 07-03-13.

¹⁶ An international judiciary actor summarized this (by referring to the absence of modern courts) “there was nothing on the judicial level when we arrived here, it was non-existent. (...) It was only the first time with the chamber forain in Faradje, that people saw a tribunal there!” Interview international judicial actor, 09-03-03.

¹⁷ Interview civilian Dungu, 09-03-13

¹⁸ In one research site, a man who had wounded his brother-in-law had been imprisoned for 4 months with the customary chief, whereby he first had to build a hut, and then had to work on the chief’s land.

often used as a punishment; and, as will be explained below, the resolution of conflicts in a ‘friendly way’ often leads to conflicts which remain unresolved (e.g. with regards to sexual violence). Many of their practices are therefore in breach of the penal code.

In this situation, access to formal justice is a major challenge. In general, courts are rarely available, are often located (very) far away, often have few available staff, are often corrupt and incur a high financial cost, and cases can take a very long time.¹⁹ This situation naturally favors the wealthier and better-connected over the majority of the population, and particularly the poor, who do not have the resources, connections or knowledge to take cases to court. Moreover, language can also be a barrier as judges and magistrates largely come from Kinshasa and speak Lingala, rather than the Pazande spoken in Dungu. There is a consensus that access to justice remains particularly difficult for women; or, as a civil society leader summarized “women don’t have that much access to justice”.²⁰ This is related to several factors: in the words of a woman representative, women feel too “inferior”²¹ to go to court. “They fear the court, they do not dare to go there. There are only a few women who dare to go.”²²

It is also necessary to highlight that in this situation of weakly present state institutions, the state itself has rather limited legitimacy. As a petty trader summarized: “we feel abandoned by the state. We don’t see the authority of the state, we don’t understand what it does for us”.²³ It will be explained below how this became even more pronounced in the context of the (LRA) conflict. All of this contributed equally (and continues to contribute) to the choice of the customary chiefs as a first legal option, since they are seen as more legitimate than the state.

The security sector followed a similar trajectory as the judicial sector. During the Mobutu era, police (at that time *gendarmes*²⁴ and civil guards) were in place in every territory and every administration post (*‘poste d’administration’*) had small prisons (*‘cachots’*). Mirroring the general evolution of the Congolese state, this became very difficult from the late 1980s onwards, and particularly in the 1990s. During this period, many police posts disappeared and the remaining posts were largely concentrated in the large urban centers, which is still currently the case.²⁵ The police continued functioning during the second Congolese war, but proved powerless in the light of the different invasions. Generally, policemen are insufficient in number and their salary is inadequate, hence they seek to supplement their salary by extracting revenue from the population. In rural areas police are largely absent as not only are they not based there, but they rarely visit these areas since they have no funds, or means of transport.

¹⁹ This mirrors similar research in Eastern DRC by Scheye (2011: 13).

²⁰ Interview civil society leader, Dungu, 12-03-03.

²¹ Interview women leader, Dungu, 11-03-13.

²² Interview women leader, Dungu, 11-03-13. This is also related to a lack of knowledge as they are insufficiently informed about their rights. Their financial status also plays a role since women do not have sufficient resources to pay for justice. This not only affects their access to justice, but also the judicial process itself since those with more resources – usually men – can more easily corrupt the court.

²³ Interview trader, Duru, 12-08-12

²⁴ With the ‘Zairianisation’ in 1975, the police became ‘*gendarmes*’, and were installed in several posts on the territory (Ndedu, Bangadi, Doruma, Ngilima, Yakuluku, Gangala Na Bodiyo).

²⁵ In Faradje, there are for example 15 police agents.

The lack of prisons is another problem. Dungu had a prison dating back to the colonial era that was largely destroyed by a storm in 1998 and then looted by the military before being partly rebuilt in 2012 by Monusco. The capital, Isiro, has no real prison but merely a private home/depot where people are kept.

Fragmentation and concentration of power

In summary, Haut-Uele is characterized by a limited state presence and scarce resources. This came about historically and is very visible in the justice and security sectors. In generaly, state presence is largely concentrated in the few urban centers (Isiro, Dungu, Faradje, Watcha), with very little state representation elsewhere in the territory. ‘Modern’ courts and police are largely absent outside the few urban centers. This section aims at explaining how this lack of state presence did not create a vacuum, but rather the roles of the absent actors were taken over by others. A frequently voiced statement throughout the field research was that “there is no politics of empty chairs”,²⁶ as particular functions are taken over by other actors. However, this has led to a particularly strong concentration of power in the hands of certain actors such as the customary chiefs. This section will demonstrate the negative effects of this on the beneficiaries.

In Haut Uele, processes of justice are very much localized, since the means to refer cases to other, high-level courts are limited to non-existent. In theory, the most serious cases should be referred to the ‘*Tribunal des grandes instances*’ in Isiro but in practice most of these cases do not reach this level. Concretely, villages and towns outside of Isiro do not have the means or resources to transport the accused to the centers where higher-level judicial authorities are located. As described above, the general transport infrastructure in the district is very bad. The road between the two major towns – Isiro and Dungu – is for example only accessible by motorbike. Phone communication is also difficult as phone coverage only exists in a minority of the territory (e.g. Dungu, Isiro and Faradje). As a result, almost all cases – whatever the matter – are treated locally. In a situation in which ‘modern’ courts are far away or absent, but particularly because they are seen as largely corrupt, expensive and unfair, they are never the first entry point. In the area cases are always handled by other actors such as the customary authorities or the police.

The result is that many cases are dealt with by actors who often do not have the legal authority or expertise to do so. Cases of sexual violence, for example, are not handled by the relevant authority but are instead dealt with by customary authorities, or kept by the police, or solved through arrangements between the families involved (with or without a mediator).

This fragmentation, and concentration of power, is not only a consequence of the *de facto* isolation of the different localities. Most interviewees stressed that different actors try to concentrate power at their own judicial level by dealing with cases at their hierarchical levels, since this constitutes a source of income. Fragmentation and isolation therefore takes place in various ways: not only geographically, but also among the different hierarchical levels. Those at particular levels of justice and

²⁶ Interview civil society actor, Duru, 02-03-13.

security provision try to keep cases as much as possible at their level for financial reasons, as this gives them more opportunities to make money. Judicial and security actors use various mechanisms to do so. For example, they try to make the accused believe that a transfer to a higher authority will land them a significant prison sentence and that paying a certain amount of money to them is the best option. They might warn litigants about high expenses, long procedures, and little to no satisfactory results in modern courts. This situation reflects Englebert's (2009) idea of legal command, which highlights how state actors make use of their state power *vis-à-vis* citizens for survival and enrichment. This works particularly well in circumstances of isolation, fragmentation, and a non-transparent legal system. As a civil society actor summarizes “everyone tries to profit as much as possible on his level”²⁷. Hence, the introduction of the Peace Courts also led to conflict between customary and state justice actors (for example in Faradje), since the former were losing part of their revenue through this introduction.

Similar dynamics can be seen at play in the case of the police, who also try to keep cases as much as possible under their own authority. For example, although cases of sexual violence are supposed to go to the secondary prosecutor as the police can only keep the accused for 48 hours, this does not happen in reality and many of these cases are dealt with by the police. In such cases, complaints are often dropped or the accused have ‘escaped’, after payments have taken place. Moreover, the public prosecutor to a large extent keeps cases at his level, despite the fact that he is legally not allowed to keep an accused for extended periods of time in prison. As a local civil society report summarizes “there is a total malfunction and lack of collaboration between the prosecutor and the tribunal, which explains why in most cases the prosecutor does not bring cases before the tribunal, which leads to a total dissatisfaction and disappointment among litigants. The proliferation of impunity is a result of this situation.”²⁸ A factor which contributes to this situation (and is similar to other sectors) is the lack of control by the various higher hierarchical levels - “*il y a une vide totale*”²⁹ that gives the lower-level actors the opportunity to act in relative freedom – particularly in more remote areas. A common complaint is the impunity of the actors involved in these situations.

This concentration of power leads, however, to a number of tensions, as cases remain unresolved, or lead to an outcome which is deemed unsatisfactory. Throughout the research, examples were given of cases in which the customary chiefs did try to solve serious issues (such as sexual violence) ‘amicably’, but which led to strong discontent among one of the two parties, leading to violence, or threats of violence.³⁰ Thus, even when cases are brought before the customary chief, tensions often remain in the community - between the family of the victims and the accused, and between the family of the victims and the judicial authorities who are accused of incapacity and bias. In other words, as a religious actor summarizes, a major problem is “Conflicts are never fully solved, and uneasy situations remain.”³¹ For example, in one of the

²⁷ Interview, civil society actor Dungu, 08 March 2013.

²⁸ Coordination de la société civile du territoire de Dungu (2012) « Allocution à l'occasion de la visite de son excellence madame le vice ministre de la justice et droits humains » Dungu, juillet 2012)

²⁹ Local staff international NGO, 07-03-13

³⁰ In this context, a church leader argued how “there only is judicial anarchy here: the police, military and customary chiefs solve everything among themselves ‘à l’amicable’”.

³¹ Interview religious actor, Dungu, 08-03-13.

research localities in 2012, a man tried to kill someone but the victim survived the attack. As there is no police presence in the area, the local chief arrested the culprit and kept him for some time in his compound. Transporting the suspected attacker to Dungu, the nearest town with police and relevant authorities, was not possible as the chief only has a bike and the distance is too far (3 hours by car) and dangerous (as there are frequent attacks on the road). Therefore, the chief eventually decided to release the culprit, leading to major frustration among the family of the victim, who threatened to kill the culprit. Tensions remained in the locality until the man was ‘re-arrested’ by the army, to reduce tensions. These, and other examples, highlight how such situations of impunity can lead to acts of popular justice or to the accused fleeing the territory.

In sum, the concentration of power in the hand of a number of actors, in combination with geographical isolation creates a range of negative effects for beneficiaries. There are various unlawful and arbitrary practices, for example with regards to arrests and fines: the accused are imprisoned for extended periods of time without trial; and actors handle cases for which they often have no authority³². It has also created a situation of strong monetization of the justice and security sector, which – apart from the actual costs for the parties involved – creates a number of other negative consequences: wealthier actors have better access to judicial and security services, it creates unfair judicial practices, and so on. For many of those interviewed the judicial system had little legitimacy, a situation which leads to tension and conflicts. Importantly, many cases remain unresolved, as they remain stuck with a particular actor - particularly the police and the customary chief – who is unable to resolve the issue. Lastly, in this position of isolation and fragmentation there is very limited external control from other hierarchical levels or actors and this only worsens the situation.

The church and civil society in Haut-Uele

The church has played an important role in the history of the Congolese state, both in terms of politics and of service provision. The ‘traditional’ churches (Catholic, Protestant, Kimbanguist) have an elaborate organizational structure “encompassing almost every aspect of socio-economic life” (Tull 2005: 245). Thus, they provide a wide range of services in the light of an absent state (such as education, health, social affairs, and so on), and are “crucial points of access to the outside world” (Tull 2005: 245). These activities began during the colonial period, when they were part of the colonial power (Young 1965: 10), and continued into the post-colonial period. The church, and particularly the Catholic Church, has also played an important role in Congolese politics. On the one hand, the Catholic Church has headed national conferences and platforms for national dialogue, whilst on the other hand, it has played an important role in political opposition, particularly in the protests against the Mobutu regime (Boyle 1992).

The church has also played an important role in justice and security issues. This is visible in Haut-Uele, where the *Commission de Justice et Paix* (CDJP) in particular has played an important role. The CDJP is an organization of the Catholic Church that

³² For example, cases of murder and sexual violence can only be handled by the tribunal in Isiro.

was founded in 1996³³ to defend human rights and the dignity of human life. Its aim is “advocacy, lobbying, civic education, the functioning of the judiciary in Congo, the prevention and resolution of social conflicts, judicial assistance of victims, (...) small arms, monitoring of violence.”³⁴ The ‘*Commission Paroisse de Justice et Paix*’ was established to work at the local level and to get in touch with the headquarters if necessary. The CDJP considers itself as a ‘counter-power’ of the administration, to monitor abuses in the field of justice and protection. It plays an important role as a “go-between for every problem, and particularly towards the state”³⁵. For example, when the army lootings started in 1992-1993, it was the church that passed on this information to the state. Similarly, when the 1964 Simba rebellion erupted, it was the church that ensured this information was made public. In the field of protection, the CDJP started an early-warning radio system, which allows isolated communities to communicate, and seek help in case of problems. In general, people have more confidence in the church than in the state: the church is perceived to be easier to approach, causes less harassment, and is generally more effective. The church is, for example, quicker to take action when a problem arises. This is important in the porous border region of Haut-Uele where armed threats can appear suddenly. As an example, the church played a pivotal role in the LRA conflict: while the government consistently minimized and even denied the LRA threat, the church has been very vocal in informing the outside world about it and the church was the first to denounce the LRA violence in 2008.

The church also played an important role in the foundation of an ‘official’ civil society in Dungu. The first civil society platform was started in 1995 from an initiative of the church, and the first three leaders of civil society were church leaders.³⁶ After the launch of the civil society platform, many other individual civil society organisations (CSOs) came into being. The pressure from civil society organisations played an important role in reducing the ‘illegal’ practices of the customary chiefs (at least in urban centers), but it has also led to tensions between the CSOs and customary chiefs. Chiefs complain about CSOs – which go “directly to the population without consulting them first” – but particularly about human rights actors. According to one customary chief “they always operate aggressively (...) They act as if they represent another government.”³⁷

The impact of the LRA conflict on justice and security actors

Fewer actors in the field of justice and security

The LRA conflict further intensified the above processes of isolation and fragmentation: many state actors fled to urban centers (and particularly Dungu), leaving rural localities with a limited or non-existent state presence.³⁸ For example, in

³³ During the second Vatican Council that promoted this kind of initiative.

³⁴ Interview Abbée Benoit, coordinator CDJP, 07-03-13.

³⁵ Interview civil society leader, Dungu, 08-03-13.

³⁶ The organisations that founded civil society were the ‘*Bureau de développement Diocésaine*’, the ‘*Bureau des œuvres médicales*’, the ‘*Encadrement de la jeunesse pour la musique*’, the trade unions of teachers, nurses and workers, and Caritas.

³⁷ Interview customary chief, Dungu, 04-03-13.

³⁸ The influx of various state agents into more stable zones did not necessarily have a generally positive effect. For example, it led to a general increase in various fees, whereby the police demanded more inflated fees than usual. The conflict also allowed security actors such as the police and army to erect

Duru, a town on the border with South Sudan, all the state institutions have left including the police, border police, immigration services, and custom officials.

Moreover, rural areas became even more isolated from the rest of the region, due to insecurity on the roads. This made it more difficult – if not impossible – for the judicial system to physically communicate, for example by transporting the accused or victims to higher-level authorities; or for higher-level authorities to visit other locations. In early 2013 for instance, two minors were raped by a teacher in one of the research localities. Although the *chef de poste* wanted to transfer the cases to Dungu, this was simply not possible, as there was no way to transport the culprit safely. For want of other means, this would have had to happen by motor-taxi that would have had to travel along highly insecure roads.

In general, there was an increase not only of the isolation of physical areas, but also of various categories of state actors. For example, in theory local chiefs should report every month to their ‘headquarters’ - the *chefferie*. This hardly ever happens, as there is a lack of resources and as the ongoing insecurity makes mobility a problem. According to the overall chief, because of their isolation, the *chefs de groupement* “live in a vacuum (...) they cannot report messages to us, and we cannot report messages to them”. As a civil society actor summarized, because of the conflict, “There is a void left by the state and a crisis of authority”;³⁹ which other actors described as a “vacuum”⁴⁰, or a “situation of crisis”⁴¹.

The conflict also had a mixed impact on the role, and particularly on the legitimacy, of the customary chiefs. The Zande population, and particularly its chiefs, see themselves as a “belligerent”⁴² group, in which an important role of the chief is to protect his population and to be ‘in charge’ of his population.⁴³ Frequent reference is made to resistance to colonial rule. As the *chef de groupement* summarizes, “The Azande were a combative group. During colonial times, a number of chiefs for example refused to assimilate themselves, and have resisted.”⁴⁴ Another frequent reference is made to a ‘purely Zande regiment’ which participated in the second world war and defeated Italian troops in Ethiopia (at the battles of Gambela and Assossa). Throughout the history of the area, several self-defence units have been formed. The first time was in reaction to the 1964 Simba rebellion⁴⁵, when a ‘voluntary corps’⁴⁶ assisted South African mercenaries who did not know the terrain in Haut-Uele. A second time was in reaction to the 1998 SPLA attack mentioned above. This attack led to the forceful repatriation and recruitment of around 17,000 Sudanese refugees, after their settlements in Dungu were attacked. The SPLA troops stayed for about one month in which they were engaged in “wide scale looting (...) of vehicles,

roadblocks where fees were demanded.

³⁹ Interview civil society actor, Dungu, 20-05-13.

⁴⁰ Religioius actor, Dungu, 08-03-13.

⁴¹ Religioius actor, Dungu, 08-03-13.

⁴² Interview chef coutumier du Wando, 04-03-13.

⁴³ Even in pre-colonial times, the Zande used armed conquest both to defend and extend their territory, and also to extend their trading network (Omasombo 2012: 87).

⁴⁴ Chef de Groupement, Dungu, 04-03-13

⁴⁵ The Simba rebellion entered Haut-Uele in 1964, and it installed ‘people’s tribunals’, judging and executing many people, particularly targeting the political and intellectual elite (Omasombo 2012: 171-173).

⁴⁶ Started by a local Dominican father, father Sukala.

dispensaries, and food supplies in the area (...) and forcible recruitment of refugees. The looting also caused many civilians to abandon their homes and fields”⁴⁷. Self-defence units were started all over Haut-Uele in response to the SPLA looting and to defend the territory.⁴⁸ These self-defence units remained in place for a considerable time afterwards⁴⁹ and customary chiefs played an important role in the creation and functioning of these units.

Even today, chiefs are considered to be the ultimate protectors of the community and they are expected to protect their communities. When the LRA started attacking the population, the army was only weakly present and was unable to deal with the sudden threat. The population therefore organized itself once again into self-defence groups. Customary chiefs played an important role in the organization of these and it was the overall chief of the Wando *chefferie* – chef Constant – who was a catalyst, organising a successful self-defence unit in the locality of Doruma, that managed to fend off the LRA. A helpful factor for this self-defence unit was the availability of weapons in the porous border zone. At a local level, other chiefs followed his example. When the LRA attacks had seriously increased, customary chiefs sensitized and organized their villages, saying “We only have one village; if we leave, we no longer have a village. We have to resist these rebellions”⁵⁰. In a number of cases, the chiefs relied on traditional or spiritual elements to defend their village and several stories circulated in this regard. For example, it was argued that in Bangadi the LRA was defeated because the customary chief ordered bees to assist the self-defence units, and in the village of Kurukwata (45 km outside Faradje) the chief relied on the spirits of the ancestors, and through rituals such as the sprinkling of weapons was able to resist the LRA. “The LRA was using special fetishes to fight us; we also had to rely on special powers”⁵¹. The self-defence units proved to be very effective in protecting against the LRA, but were considered a political threat by the Congolese government. In other words, while being effective for state security, they were considered at the same time as a threat to state security and were thus declared illegal. Chef Constant, who had started the initiative, had to flee first to Isiro and then to Kinshasa, claiming to be threatened by the government.

However, the fleeing of customary chiefs, even in case of emergency, was not always well received. Chief Constant was eventually forced to return to his people⁵², as his departure had led to serious discussions about his legitimacy, in which his leadership became more and more contested. As one respondent commented: “it is the chief who assures the population. When he flees, the state flees, the tradition flees, the protection

⁴⁷ Human Rights Watch ‘DRC: Casualties of War, Civilians, Rule of Law, and Democratic Freedoms.’ Web edition. The SPLA remained in the border town of Aba, on the border with South Sudan, from 1998 until early 2005, when they were driven away by force. (The SPLA actors were engaged in the timber trade and poaching.) <http://hrw.org/reports/1999/congo/Congoweb.htm>. Consulted 20/05/13. The SPLA withdrew, but remained for several years in Kengezi-base and Aba (Marks 2007:15).

⁴⁸ For example, in Doruma, the units targeted and abducted SPLA actors.

⁴⁹ In 2003, the army’s Park Regiment tried to disarm these groups along the Dungu-Duru axis, but it was only in August 2006 that the Duru group “had collapsed under the military’s programme of disarmament, intimidation, and torture” (Marks 2007: 24). Yet, there were soon reports that these self-defence units were re-established to protect themselves from harassment by the army (Marks 2007: 24).

⁵⁰ Interview local chief, 03-08-12.

⁵¹ Interview inhabitant Kurukwata, Dungu, 02-03-13.

⁵² Not to his main seat (which was still severely affected by conflict) but to Dungu.

flees!”⁵³. In these circumstances, the population feels abandoned and powerless, they feel “they no longer have the power to protect themselves”. A number of chiefs had to flee the LRA violence and some were even specifically targeted⁵⁴. Conversely, the fact that some customary chiefs returned to their area of residence, for example the chief of Duru, gave the population enough confidence to return to their home areas. In certain localities, for example Kiliwa, chiefs were killed by the LRA when defending their territory.

As mentioned above, it is worth noting that this strong reliance on the customary chief should be understood in a context where people felt completely abandoned by the state. This was further enhanced by the LRA conflict; as the Congolese government minimized and even denied the LRA conflict, people felt it was not seriously interested in resolving it.

In sum, the LRA conflict had a negative effect on existing mechanisms of security and justice: isolation within the district increased, meaning that people had only limited options for justice and security. This led to a further increase in the concentration of power in the field of justice and security and customary chiefs in particular wield much power within their communities. However, this did not necessarily mean that their legitimacy increased. In many cases, their legitimacy was further eroded due to their incapacity to handle the LRA threat. While the self-defence units briefly empowered the customary chiefs (in 2009), it can be argued that in general the conflict and the militarisation of the region during the LRA conflict has eroded the legitimacy of the customary chiefs, who remained relatively powerless in the light of these armed groups. As a customary chief summarized “the power of the LRA has proven to be superior to the one of the chief”⁵⁵.

New actors introduced through the LRA conflict

Through these processes of isolation and fragmentation the LRA conflict led not only to a reduction in the number of decision-making actors in the field of justice and security, but also introduced two new categories of actors to Haut-Uele: the army and international organisations, both of which further limited the role of the customary chief.

The army traditionally had a rather weak presence in Haut-Uele. During the Mobutu regime, it only established a localised presence in the light of specific threats, such as armed poachers in Garamba national park in the late 1980s. After the Congolese wars the army re-established itself and from 2003 onwards the former rebel groups (MLC and RCD-KML) were integrated into the new Congolese army, called the *Forces Armées de la République Démocratique du Congo* (FARDC). This created a weak and undisciplined army presence in Haut-Uele and these troops were gradually withdrawn from the area. When the LRA started exactions against the population at the end of 2007, the army slowly increased its presence in Haut-Uele. Through Operation Rudia, it was planned that around 2,000 Congolese soldiers and 200 UN peacekeepers

⁵³ Interview university assistant, 02-03-13.

⁵⁴ Initially, the LRA specifically targeted a number of chiefs who had been collaborating with a DDR programme and were therefore seen as collaborators. Their role in the self-defence units also played a role.

⁵⁵ Interview customary chief, Dungu, 03-03-13.

would be present in Haut-Uele by September 2008 in order to contain the LRA and prevent attacks. In reality, only around 400 Congolese soldiers and around 150 MONUSCO troops arrived and these were only present in Dungu, the main town of the affected area. They were unable to prevent any LRA attacks in September 2008.

By mid-October, 2,200 soldiers had arrived in Haut-Uele, all of whom were stationed in or around Dungu and who were therefore unable to protect the population outside this main town (HRW 2009: 26-27). Subsequently, troop presence was gradually increased along the major axes (such as Dungu-Faradje) and in the major urban centers and in May 2009, the Congolese government and MONUC launched operation Rudia II in order to increase protection of the population. It is estimated that between 3,000 and 4,000 Congolese soldiers were in Haut- and Bas-Uele districts (HRW 2010: 52-53). Yet, the army faced major logistical challenges in its work, was largely ineffective in countering the LRA threat, and was in itself a source of insecurity for the population (Titeca and Costeur 2015). Moreover, after the eruption of the M23 conflict in the Kivus, many troops were transferred from Haut-Uele to the Kivus. Nevertheless, the mere presence of soldiers still acts to a certain extent as a deterrent for the LRA threat, meaning that the population prefers the army's presence to a security vacuum. Most interestingly for this paper, the military also play a (limited) role in local processes of dispute resolution. On the one hand, they are often an important factor in abuses of power, in which they prey on the population themselves, or help other actors, such as the customary chief or other local authorities, to do so.⁵⁶ In these circumstances, FARDC actors can be involved in a variety of cases that (in common with other areas in the DRC) include "the violent settling of scores (e.g. revenge and rivalries) and accounts (e.g. debts and land disputes) arising from envy and personal or family disputes. Examples are conflicts over heritage, marriage, debts, real estate, love affairs, land, power positions and past wrongdoing" (Verweijen 2013: 74). On the other hand, they can play a role in the resolution of disputes either directly or by preventing escalation. For example, in one research site once particular customary chief could not provide a legitimate solution for an attempted murder, which led to tensions and threats within the village until the FARDC 'rescued' the suspect. As a civil society actor argued: "When the soldiers become involved, no one dares to do anything anymore";⁵⁷ and the open threats to the accused and his family stopped. As also shown by this example, the involvement of military actors is particularly related to the weakness of other relevant authorities (customary and other civilian authorities) in providing a solution to particular disputes. Customary chiefs themselves claim that the military do not respect their authority, and that they are powerless in the light of their use of violence. This is also the case in other areas of the DRC - as Verweijen for example highlights for the Kivus, the military involvement in dispute resolution is not only a result of civilian demand, it also is the result of the military who "impose themselves in conflicts, sometimes with force" (Verweijen 2013; Baaz and Verweijen 2013:8).

A second 'new' category of actors is represented by the range of international organisations in the region. Previously, there were no, or very limited, activities by

⁵⁶ It is worth noting that this example is nothing new, as there have been previous instances in Haut Uele's history in which the military collaborated with local authorities to act and prey upon the displaced/refugees – this was the case in the first half of the 1990s with regard to Sudanese refugees in Haut-Uele.

⁵⁷ Interview civil servant, Dungu, 4 August 2012.

international organisations in Haut-Uele, all of whom arrived because of the LRA conflict. After the ‘Christmas Massacres’ in December 2008, a wide range of international humanitarian NGO’s (e.g. MSF, Intersos, Oxfam, Save the Children) well as UN organisations (UNHCR, WFP, Unicef) arrived in the area.⁵⁸ Around 80 per cent of these are based in Dungu, which is the headquarters for humanitarian interventions in the area. International actors are also present to a limited extent in Faradje, Doruma, Bangadi, Niangara and Duru. All of these actors are engaged in humanitarian interventions such as food security (World Food Programme, Intersos), material infrastructure for schools and wells (Danish Refugee Council, Save the Children), the reintegration of abducted children (COOPI) and so on. The main actors in the field of security and justice are the UN peacekeeping brigade MONUSCO (and more particularly the human rights section⁵⁹) and the so-called ‘protection cluster’, which brings together all international NGO’s⁶⁰ working on ‘protection’ issues,⁶¹ and which is coordinated by UNHCR. The main duty of these international actors is the monitoring and follow-up of security and justice incidents and they have had a largely positive impact. The problem of isolation was addressed by bringing the judicial system closer to the people through the financing of mobile courts (*‘chambre foraine’*) in which the main tribunal and prosecutor are transported to other places (more particularly Dungu and Faradje⁶²). This happened both for civil and military cases.⁶³ Importantly, the protection cluster also helps to document and follow-up individual judicial cases, where they assist with legal protection or the simple functioning of legal procedures. For example, in cases where normal judicial procedures are not being followed, the international actors hold the relevant local authorities to account and lobby the relevant judicial authorities. The protection cluster has worked with the FARDC to raise awareness of issues such as human rights, humanitarian law, and sexual violence and to provide training and advocacy. They also helped to rebuild the prison and the police station.⁶⁴

From 2012 onwards, humanitarian agencies gradually started leaving the area, a process which became particularly intense after 2014. There is currently only a minimal presence of agencies in the area.

Conflicts between the displaced and the local population

An important feature of the current conflict that allows us to further examine processes of justice is the tension between displaced people and the local population.

The influx of refugees has a long tradition in Haut-Uele. The first influx of refugees

⁵⁸ A limited consignment of MONUSCO was present in the area slightly earlier: from 2007 onwards.

⁵⁹ The Human Rights section of MONUSCO is a collaboration between UNHCHR and MONUSCO. Its main tasks are the sensitization of human rights and capacity building of state actors (army and police) and civil society. They also have a protection unit that amongst other things protects witnesses.

⁶⁰ Oxfam, Danish Refugee Council, COOPI, Intersos. Apart from the tasks mentioned, the protection cluster also helps with psycho-social issues and provides medical assistance.

⁶¹ These are for example sexual and physical violence, theft, looting, arbitrary arrests.

⁶² In which the Danish Refugee Council financed the presence of the court for Faradje (6 civilian cases) and Tadu (4 civilian cases).

⁶³ This has been financed both by MONUSCO and International NGOs such as the Danish Refugee Council

⁶⁴ In this case Monusco.

comprised Sudanese in 1965 but their number remained relatively limited. A larger influx occurred between 1989 and 1992 when around 40,000 refugees crossed to Haut-Uele, mainly to Dungu, where they were spread over five refugee settlements.⁶⁵ The cohabitation between Sudanese and the local population was largely peaceful, as many of the Sudanese refugees were also Zande. There were nevertheless minor tensions, for example around hunting and poaching, in which the local population claimed the Sudanese were taking away their animals, or around the use of land.⁶⁶ All these tensions were resolved through the local authorities. However, their subsequent participation in looting the area led to a major deterioration in relations. This occurred for the first time in 1993 when Congolese soldiers started looting and the refugees took advantage of this to loot UNHCR depots. This happened on a small scale, however, and tensions remained limited. As explained above, major looting took place in September 1998, when the SPLA invaded Haut-Uele to force the Sudanese refugees to return. In this case, the Sudanese refugees played an important role, guiding the SPLA soldiers in their looting efforts and even showing them where the local population was hiding. After this, there were serious tensions with the local population and education of refugee children ceased since they were no longer allowed to go to school outside the camps and local people refused to teach them inside the camps.⁶⁷

The LRA conflict caused major population displacement in Haut-Uele (in March 2011 around 250,000 people were displaced⁶⁸), which created many tensions with the local population. These centered particularly on access to land, the use of water, and humanitarian aid.

With regards to humanitarian aid,⁶⁹ frustrations particularly erupted around perceived unequal access, most commonly between the displaced and the local population, with the latter contesting the fact that they were not benefiting from humanitarian assistance while at the same time suffering equally from the LRA conflict. In some cases the local population even prevented humanitarian assistance and distribution of aid by attacking NGOs. When the NGOs changed their policy and began assisting host communities, tempers subsided, but never completely disappeared until the NGOs left the territory and humanitarian assistance stopped. In other areas, similar tensions developed along ethnic lines that in some cases led to threats of violence. For example, in the territory of Niangara, the Zande ethnic group claimed they were receiving much less humanitarian aid than the other group in the territory – the Ngbetu - while the Zande claimed that they were suffering most of the violence.

⁶⁵ Sudanese people were important for trade in the area; they traded with Sudan and also opened up the way to Ariwara.

⁶⁶ There were also rumours that the refugees were hiding weapons in the camps, because of which many locals feared going into the camps.

⁶⁷ After fighting between the Sudan Armed Forces (SAF) and the SPLA in 2000, up to 71,000 Sudanese fled back into northern DRC, of which 36,000 to Dungu (Marks 2007: 15). Their presence led to tensions with the local population who were no longer keen on taking in Sudanese refugees. The remaining refugees left between 2000 and 2002, when UNHCR decided to repatriate them.

⁶⁸ Figure from March 2011. Dungu had the biggest number of displaced – around 120,000 (Omasombo 2012: 73).

⁶⁹ It is worth noting that tensions with humanitarian actors is nothing new, as this was a frequent phenomenon throughout the 1990s, between the Sudanese refugees and humanitarian actors, in which the former for example accused the latter of not giving correct distributions. This sometimes led to violent confrontations.

Tensions rose to a point where the Zande threatened violence against the Ngbetu. Both sides tried to solve this conflict at a local level – with the local chiefs and the *Administrateur du Territoire* – but this failed. An international mission consisting of MONUSCO (civil affairs, child protection), OCHA, civil society, and customary chiefs also failed to resolve the conflict. The issue was only solved when humanitarian interventions also visibly targeted the Zande population.

Land conflicts between the displaced and the local population often center on different traditions with regards to land use.⁷⁰ This manifests itself concretely through tensions around land use contributions, in which the displaced refuse to pay the amount requested⁷¹ which can be up to 10 per cent of their yield. Once again, a major factor in these tensions is the concentration of power in the hands of certain actors, particularly the customary chief. There has been a number of cases in which the local/indigenous customary chiefs overstep their powers *vis-à-vis* the displaced population, for example by trying to chase the displaced from their territory, by demanding a significant portion of the yield of the displaced, or by obliging them to participate in (forced) communal work.⁷² For example, in one research site (with a concentration of around 20,000 displaced people), the local customary chief wanted to force them into extensive communal work. Since they did not accept his authority, they refused; after which the customary chief used the military to force them to cooperate, leading to the arrest and mistreatment of a number of displaced people. This example shows the different layers of decision-making structures that are involved in governing relations between displaced and local populations. This became particularly clear when two young men, who were severely mistreated by the military, tried to address their situation. They went to their customary chief – outside their locality of displacement, in Dungu – who did not want to implicate himself, as he had family relations with the other customary chief of the locality in question. Moreover, he had no power over the locality in which the displaced were located. They ended up consulting the regional civil society leaders, with whom they went to the highest administrative authority in the territory (*Administrateur du Territoire*). Representatives from international NGO's were also involved, through whom they managed to address the abuses from the military and the customary chief.

The above example not only shows the abuses that can take place against the displaced, it also illustrates the regular procedure for resolving conflicts, as well as the further fragmentation and complication brought about by the conflict and by displacement. When resolving disputes, in general, both the local population and the displaced seek assistance from local authorities in the first instance (including customary authorities) and local civil society. Sometimes the church authorities are also involved⁷³; and in certain localities, *ad hoc* solutions are found, such as ‘comités de suivi’ (follow-up committees) that particularly help to ensure existing tensions (around land, water or humanitarian aid) do not erupt into conflicts. If conflicts are of a more serious nature, and persist, then a range of higher-level authorities become

⁷⁰ In Dungu, land conflicts have increased not only because of the large influx of refugees, but also through the presence of international humanitarian actors, who occupy large parts of Dungu causing hugely increased land prices.

⁷¹ E.g. in the locality of Ndedu, conflicts erupted with the people of Kiliwa

⁷² In certain localities, the *Administrateur du Territoire* also demanded this.

⁷³ One case was encountered in which the displaced and local population tried to solve their conflict in the local church: since they were praying from the local church, they deemed the priest was the best-placed person to solve this conflict.

involved: these are high-level governmental and customary authorities, but also international actors, such as MONUSCO civil affairs, or representatives from International NGOs.

This is only a basic outline, since conflict and displacement guarantee that matters are continuously complicated, and that new possibilities and difficulties continuously arise. The displaced population is, for example, most familiar with their ‘own’ customary chiefs or civil society, and these may either be displaced with them or remain in the ‘old’ locality. Certainly in a situation of tension or conflict with the local host population, the displaced are likely to be distrustful of local authorities and unwilling to accept the customary authority of the locality they reside in. Yet, the power of the displaced (state or civil society) representatives is often contested in host localities, since they exercise little power over such places.⁷⁴ The power of the displaced chiefs may be contested not only in the host locality, but also in their home locality, as ruling from a distance is difficult. This situation has led to a further fragmentation of judicial procedures, in turn creating more isolation and the concentration of power. For example, areas with a high degree of insecurity may have most of their existing actors with authority in the field of justice and security displaced, including the customary chief. This does not necessarily lead to a vacuum, since the role of the customary chief is taken over by another representative, but this can lead to problems. In a number of cases, the host population has raised complaints about this local representative, who no longer communicates with the chief, and may be considered to be more corruptible etc. This is facilitated by the fact that he is often the only actor in the realm of justice and security who is actually present.

As already explained above, international actors have been active in attempting to improve justice provision. It is worth highlighting that they also help to mediate in case of conflicts, including those between displaced people and the host population. According to many local actors, the fact that a representative of MONUSCO or an international NGO is involved plays an important role in the resolution of conflicts, as this strongly increases pressure on the conflicting parties. As a local civil society representative summarizes “the local authorities are a bit afraid of MONUSCO”,⁷⁵ as they can get in touch directly with the local authorities’ hierarchy. This is also something which is particularly mentioned for judicial actors: “All this international presence has instilled fear among Congolese judicial actors: they really have to try and do their job now”⁷⁶.

A last useful example in this context is the presence in Haut-Uele of the Mbororo, who were mentioned earlier. A wide range of conflicts have erupted between the local population and the Mbororo; as the Mbororo move around with large groups of cattle, they occupy large areas of land, use common water resources, damage property etc. This use of common resources has led to a range of conflicts where the host population complains that the Mbororo refuse to pay any compensation. Moreover, given the armed nature of the Mbororo, the local population feels threatened by them and the Mbororo have been accused of collaborating with the LRA (Titeca and

⁷⁴ Further complicating the situation is that new ‘camp chiefs’ were elected as representatives for the displaced in the camps. Local chiefs sometimes formed a committee, but often lost their power. Also, camp chiefs have very limited power, resulting in disputes with host (customary and state) authorities.

⁷⁵ Interview civil society actor, Dungu, 27-02-13.

⁷⁶ Interview lawyer, Dungu, 12-03-13.

Costeur 2015). The population pressured the customary chief and other local authorities to act against the Mbororo so that they would be chased from their territory. Yet, many of these local authorities – including the customary chief – have received (or are suspected of receiving) cattle or other payments from the Mbororo, making them less inclined to do so. In this situation, the population feels that not enough action is taken against the Mbororo, and that the government and local authorities (including customary chief) were complicit in the problem. As a MONUSCO report argued “They feel they have been sold and abandoned to the mercy of the Mbororo”⁷⁷.

The population felt they were suffering too much and were not receiving any compensation and from November 2010, the FARDC received orders to take actions against the Mbororo. This was very much welcomed by the population but led to a wide range of abuses by the army against the Mbororo (Titeca and Costeur 2015). In this situation, the local authorities proved unable to find a solution to the tensions and conflict. They were either considered biased as they had often received, or were perceived to have received, cattle and thus lost their legitimacy, or they themselves had similarly hostile feelings towards the Mbororo as the population. In either case, they had become too implicated in the conflict to enable them to address it. Moreover, military actors were also too much involved, through the military campaign against the Mbororo. In the end it was international organisations that were particularly successful in addressing these tensions – including actors such as MONUSCO (civil affairs), and international NGOs such as Search for Common Ground – as well as local civil society. In the eyes of both sides - the local population and the Mbororo - these actors had sufficient legitimacy to address the tensions.

Conclusions

This paper discussed the justice and security mechanisms in Haut Uele district and the impact of the LRA conflict on those mechanisms. It has been shown how a wide variety of actors are active in the field of justice and security: customary chiefs, military, civil society and church leaders, police actors, international NGO's, and representatives of the displaced, amongst others. Although in certain circumstances this is reminiscent of Benda-Beckman's term ‘forum shopping’,⁷⁸ the situation is primarily characterised by a concentration of power in the hands of particular actors, such as customary authorities and the police, that has created negative effects for the beneficiaries.

The paper has shown how the region has a long history of weak state presence and a lack of resources, that has led to this concentration of power among a number of judicial and security actors. The region's geographical isolation further enhanced this concentration of power. In these circumstances the available conflict resolution fora are relatively limited: conflicts are primarily resolved at the local level and thus the available conflict-resolving actors remain limited to the local level. This was, and is,

⁷⁷ Monusco (2008) ‘Special report about Mbororo’, Isiro, 23 February 2008, p.1.

⁷⁸ In which “disputants have a choice between different institutions and they base their choice on what they hope the outcome of the dispute will be” (von Benda-Beckman 1981: 117), but also highlights how the forums themselves are involved in shopping, in which they “usually have interests different from those of the parties, and they use the processing of disputes to pursue these interests” (von Benda-Beckman 1981: 117).

the case partly because of geographic isolation and the limited possibilities of transport, but also because the institutions themselves actively try to monopolize power. It has been shown how a quest for financial profit has further accelerated the concentration of power among particular actors. All of the above serve to create an extremely difficult situation for the beneficiaries.

The LRA conflict has had a mixed impact on this situation. On the one hand, the processes of isolation increased, as state actors withdrew still further from rural areas, and as transport and communication became more difficult. This in turn increased the power of the customary chief but did not necessarily increase his legitimacy, since this was being eroded by the conflict. As a religious leader summarized: “part of the void is filled by the customary chief, but the situation remains one of crisis”.⁷⁹ This ‘crisis’ is even the case in urban areas where state actors (and security and justice mechanisms) are present: it has been shown how these are considered largely corrupt and ineffective. The conflict further accelerated this and the presence of the LRA led to a situation where the fees collected by state agents strongly increased - interviews mention a doubling or tripling of fees demanded by police and other actors.⁸⁰ As a trader explained “because of the LRA, the humanitarians are here, because of which more money circulates. The police and other state agents took advantage of that to increase their fees. (...) If you don’t want to pay, you are simply arrested.”⁸¹ In other words, this brought about a situation in which power was further concentrated in a few hands and in which the legitimacy of the main actors was further eroded, both issues creating negative effects for the beneficiaries.

Yet, on the other hand, a positive impact on judicial processes was brought about through the conflict by the fact that new actors entered the justice and security arena. These were primarily international actors such as international NGOs and (the human rights section of) MONUSCO who sought to address abuses and follow legal cases more closely. In this context, the shopping process became ‘thicker’, as the quality of justice mechanisms generally improved. However, displacement and the multiple ‘shopping’ possibilities, also made things more complicated, since multiple modes of interventions were possible, each relying on particular understandings of legitimacy and power, for both disputants and the fora themselves. A displaced group may, for example, find their customary chief the most legitimate actor to represent their interests, but outside of his jurisdiction his power is limited. Local customary chiefs are often a source of discontent, while international actors are found to be useful allies. The fora themselves will have a different viewpoint, in which the local customary chief might try to enhance his power by allying with the military and relying on his connections to enforce his rule. In this situation, no single actor has absolute power, and much depends on the particular situation and power-configuration. For example, it has been shown how international actors played an important role in the improvement of the judicial system. Although they wield important leverage, their authority is certainly not absolute. A telling example is the following: from 2010 onwards, a particular customary chief was collaborating with local soldiers in forcing the displaced to pay financial contributions or part of their yields to him. International actors – including an international NGO, MONUSCO’s civil affairs section, and other protection cluster representatives – stepped in to

⁷⁹ Interview, religious leader, Dungu, 08-03-13.

⁸⁰ See also Oxfam (2011).

⁸¹ Interview, Dungu, 12-03-13.

mediate and asked the chief to stop this practice. Yet, the chief did not change his behavior. According to a local civil society representative “for him [i.e. the chief], MONUSCO is something far away, that has no influence on his work. MONUSCO is not there. It is only in places where MONUSCO is present that one sees the importance of this”.⁸² This particular conflict was only resolved in 2011, when a new district commissioner arrived and managed to influence the chief. In other words, power remains a localized phenomenon, in which the reach of international actors is also limited. In this particular case, it was the state representative who managed to push through a solution.

In Haut-Uele, processes of justice have become increasingly multi-layered and complicated, through the increased engagement of a number of actors, where it is not clear *a priori* who will influence the outcome or be the most powerful. The way in which the judiciary system – and governance in general – functions reflects Bavinck’s idea of the ‘spatially splintered state’ or a “legal patchwork with strongly spatial connotations” (Bavinck 2003: 633). Depending on the particular political circumstances and centres of power at play, judicial processes, and regulatory practices in general, will have different outcomes. As described in the literature of, for example, the ‘negotiated state’ (Hagmann and Péclard 2010; Titeca and De Herdt 2011) or ‘practical norms’ (Olivier de Sardan 2010), this can to a certain extent be argued for all states and regulatory practices⁸³ but as the above shows, a situation of weak state presence, insufficient resources, geographical isolation and conflict make this ‘spatial splintering’ more pronounced. In this case, different localities operate largely independently in resolving conflicts and different actors have varying degrees of powers in these localities. Thus, the power of the customary chief in a particular locality depends on his local legitimacy, his relationship with the locality (displacement or not), his interest in financial accumulation, and various other factors such as his attitude towards the displaced. All these elements are by definition very local and context-specific processes and this highlights the open-ended nature of such mechanisms, since this complex of actors will not necessarily be able to find a solution for particular conflicts and problems.

⁸² Interview civil society representative, Dungu, 07 July 2013.

⁸³ By its very nature, we should see the state “as state personnel and physical resources, as being spatially grounded on the territory of villages and cities. (...) The important thing to note is that one can expect quite different relationships between village population and state apparatus that vary with the spatial location of state institutions and resources”. (von Benda-Beckmann 1999: 132, cited in Bavinck 2003: 654).

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