

# From Global to Local: SDG 16, Access to Justice and Women’s Strategies for Empowerment in North Kivu (DRC)

Évelyne Jean-Bouchard

## Key Points

- The conflicts that have ravaged the Democratic Republic of the Congo (DRC) are generally considered some of the most complex and violent in modern times. Although the state entered a transition toward peace in 2010, the cessation of hostilities did not result in the end of sexual violence.
- Goal 16 of the United Nations Sustainable Development Goals (SDGs) calls on states to promote peace, justice and strong institutions. This includes significantly reducing all forms of violence in all states and providing victims with access to justice.
- Criminal justice reforms in the DRC have garnered mixed results, as is the case in the implementation of the Law on Sexual Violence in North Kivu. The failure of legal reforms is not based on their inconsistency with traditional norms, but instead on the tendency to use a top-down governance approach to reforms.
- In order to fulfill Goal 16 targets, attention must be paid not only to states’ institutions but also to local customary structures and dynamics, including local women’s efforts to substantially improve their ability to access justice and participate in customary institutions.

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## Introduction

The conflicts that have ravaged the DRC are generally considered some of the most complex and violent in modern times.<sup>1</sup> Although the state entered a transition toward peace in 2010, the cessation of hostilities did not put a stop to sexual violence.<sup>2</sup>

Gender-based violence is a major obstacle to the advancement of women and girls, as it affects their ability to inclusively engage with society. Fair and effective justice systems are generally considered the best way to reduce the risks associated with violent conflict, including sexual violence.<sup>3</sup> In fact, the acceptance of the rule of law is a norm within the international community. It plays a central role in all indicator systems proposed to assess and measure

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1 Séverine Autesserre, *The Trouble with the Congo: Local Violence and the Failure of International Peacebuilding* (New York: Cambridge University Press, 2010) at 2.

2 Patrick Vinck et al, *Living with Fear: A Population-Based Survey on Attitudes about Peace, Justice, and Social Reconstruction in Eastern Democratic Republic of Congo* (Berkeley, New Orleans & New York: Human Rights Center, University of California; Payson Center for International Development, Tulane University & International Center for Transitional Justice, 2008); see also Malokele Nanivazo, “Sexual violence in the Democratic Republic of Congo”, United Nations University (24 May 2012), reporting that the UN special representative for sexual violence in conflict, Margot Wallström, once described the DRC as “the rape capital of the world.”

3 United Nations Development Programme (UNDP), *Programming for Justice: Access for All: A Practitioner’s Guide to a Human Rights-Based Approach to Access to Justice* (New York: UNDP, 2005).

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governance, a notion that, in turn, contributes to the sustainable development agenda and spreads globally. For example, SDG 16 calls on states to “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.”<sup>4</sup> Target 16.1 also urges states to significantly reduce all forms of violence and related deaths everywhere, and Indicator 16.1.3 records the “[p]roportion of the population subjected to physical, psychological or sexual violence in the previous 12 months.”

Access to justice for victims is also a basic principle of the rule of law. It allows people to have their voices heard, exercise their rights, challenge discrimination or hold decision makers accountable. Access to justice is a fundamental right, as much as it is a means to defend other rights, whether through formal or informal institutions of justice.<sup>5</sup> Indicator 16.3.1 also acknowledges the importance of access to justice, by measuring the “[p]roportion of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms,” such as customary structures.

For these reasons, criminal justice reforms are often treated as a priority intervention in post-conflict and transitional settings, as they represent a key feature of international efforts to strengthen the rule of law at the national level.<sup>6</sup> In the DRC, the Law on Sexual Violence is, so far, one of the most important legal reform efforts regarding women's rights and their access to justice. Indeed, this law makes it possible to strengthen the protection of victims and to fight against impunity, by broadening the definition of sexual violence and increasing the penalties for sexual offences. Several observers have noted serious shortcomings in the law's implementation, however, usually explained by the persistence of traditional local norms.<sup>7</sup> It seems that “accessibility” also depends

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4 UN, “Transforming our world: the 2030 Agenda for Sustainable Development”, SDG 16, online: <<https://sustainabledevelopment.un.org/post2015/transformingourworld>>.

5 UNDP, *supra* note 3 at 4.

6 *Ibid.* See also Louise Arbour, “Economic and Social Justice for Societies in Transition” (2007) 40:1 Int'l L & Pol 1 at 4–6.

7 Gaëlle Breton-Le Goff, “Aux confins du droit positif : socio-anthropologie de la production normative non gouvernementale en République Démocratique du Congo” (2013) 37:1 Anthropologie & Sociétés 75.

on how compatible laws are with the norms and understandings that shape people's lives.<sup>8</sup>

The problem with the implementation of the Law on Sexual Violence in North Kivu cannot be explained by the persistence of traditional local norms, but rather by the fact that this legislative reform has ignored local dynamics and issues. This situation stems from an exclusively top-down approach to legal reforms that is still predominant in the field of peacebuilding at the global level. This policy brief discusses these issues. It also examines the strategies women have used to substantially improve their access to local justice and their participation within customary authorities. It becomes apparent that a local contextualization of legal reforms is essential to their success. In this sense, local customary institutions, as well as local actors' strategic knowledge, must also be taken into account in order to effectively fulfill SDG 16 targets.

The policy brief is based, in part, on empirical data collected during an eight-month field study in North Kivu from July to November 2011 and from May to September 2012, before the Organic Law that removed customary courts came into force in 2013.<sup>9</sup> The study includes multi-sited ethnography and 57 semi-structured interviews with magistrates and judges of the High Court of Goma. Customary chiefs in rural Sake and urban Goma were interviewed, as were representatives of international non-governmental organizations, women living in rural areas and presidents of local women's associations. The interviews were supplemented by participatory observation sessions at local women's associations and analysis of cases involving women at the High Court of Goma.

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## The Law on Sexual Violence: A Mitigated Success

In order to retrace women's access to state law and courts, a statistical analysis of the 499 complaints introduced by women at the High Court of Goma in 2011 (on 1,729 files) was conducted. The analysis showed that the most frequent reason women turned to state courts was rape, which accounted for 203 cases out of the 334 criminal cases involving women at the time, or just over 60 percent, and accounted for 40 percent of all cases involving women. A qualitative analysis of 34 rape cases helps to better understand the extensive use of the law by local actors. It revealed that some Congolese families file rape complaints when a problem arises in their minor daughter's wedding process, or when their teenage daughter is impregnated by another teenager.<sup>10</sup> The law becomes an indirect means for families to access bigger dowries, or to obtain child support, because the judges usually authorize payment of damages to the victim's family. In fact, the law imposes an expanded definition of rape to comply with international humanitarian law standards. Notably, it considers any sexual intercourse with a minor under the age of 18 a criminal offence.<sup>11</sup> However, the Congolese Family Code authorizes the marriage of minor girls 15 years of age or older.<sup>12</sup>

The use by local actors of the Law on Sexual Violence to settle matrimonial disputes demonstrates two important facts. First, local actors do not blindly reproduce customary principles. Traditional justice aims to restore balance in the community when an act has disrupted it. The primary goal of traditional justice is not to punish but to preserve the relationships

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8 World Bank, *World Development Report 2006: Equity and Development* (Washington, DC: World Bank, 2005) at 157.

9 Loi organique n° 13/011-B du 11 avril 2013 portant organisation, fonctionnement et compétences des juridictions de l'ordre judiciaire, *Journal Officiel de la République Démocratique du Congo*, n° spécial, 4 mai 2013.

10 For a detailed description of the data, see Évelyne Jean-Bouchard, "Sexual violence issues in eastern DRC: processes of global and local co-constitution" (2017) 51:2 *Canadian J African Studies / R Canadienne Études Africaines* 257.

11 Loi n° 06/018 du 20 juillet 2006 modifiant et complétant le Décret du 30 janvier 1940 portant Code pénal congolais (loi sur les violences sexuelles partie I), art 170(d).

12 Livre 1<sup>er</sup> de la loi n° 87/010 du 1<sup>er</sup> août 1987 portant Code de la Famille, *Journal Officiel du Zaïre*, n° spécial, 1<sup>er</sup> août 1987, art 352.

among all group members.<sup>13</sup> But, contrary to customary law, official state criminal law is punitive and provides for prison sentences of five to 20 years for sexual offences. Consequently, local actors create new social arrangements to structure their exchanges.

Second, social actors turn to state courts if the courts allow them to satisfy an issue they consider vital, that is, access to material resources. Interviews with 11 female presidents of local associations and 18 of their members in the North Kivu region show that the key challenge women face is poverty. It was cited 29 times by female presidents and 41 times by “vulnerable” women, including unwed mothers, widows and victims of sexual violence. Poverty is linked to material resources that women try to mobilize either through access to land, small business ownership, or through marriage and succession rules. For a comparison, the issue of women’s safety (to which sexual violence relates) came up only eight times among vulnerable women and only twice among female presidents. It is therefore not surprising that local actors use the Law on Sexual Violence to gain access to material resources.

Moreover, it seems that the burden of proof for rape is much more important for adult victims. The law provides an objective standard for determining sexual consent, based on the age of the girl or woman. A pregnancy is also considered *de facto* evidence of sexual intercourse. Indeed, 25 of the 34 cases involved minor victims. Of the 11 acquittals, eight cases involved an adult victim. In five cases, the victim was pregnant, and three cases included no conclusive medical evidence. Of the 23 convictions, 22 cases involved a minor victim. In 11 of the cases where there was a conviction, evidence was either inconclusive or absent, and in seven other cases, the victim was pregnant. In fact, rape victims must present a medical certificate within 48 hours of the crime, which is impossible in most cases, given not only the context in which these crimes are committed and the high risk of stigmatization but also the fact that victims are usually far from any hospitals or law enforcement authorities.<sup>14</sup> However, women’s willingness to opt for state courts and laws also depends on how the state

handles their requests.<sup>15</sup> Unfortunately, despite the existence of the Law on Sexual Violence, adult women victims of rape may find little support from the state.

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## Local Contextualization: Customary Structures and Women’s Strategies

The problems related to the implementation of the Law on Sexual Violence are caused by the neglect of local dynamics by international actors and not by the persistence of traditional local norms. The failure of top-down approaches to judicial reforms is a well-known fact in the DRC. Indeed, this was one of the main findings of an evaluation by the International Security and Stabilization Support Strategy for Eastern DRC.<sup>16</sup> For example, international programs of judicial reforms have totally ignored the dominant role of customary chiefs and local governance structures in the management of local conflicts and access to justice, advocating instead for the suppression of customary courts. Consequently, the Organic Law that came into force in 2013 removed customary courts and replaced them with justices of the peace.<sup>17</sup>

However, customary law constitutes a local law for local communities that is very well adapted to the prevention and resolution of local conflicts.<sup>18</sup> In the DRC, the aim of customary or traditional justice is usually that of reparation. This goal of achieving harmony is also related to the flexibility and negotiability of norms, a common feature of many African customary law systems.

On the other hand, relationships between the flexibility of customary norms and the dynamics of women’s emancipation should not be easily drawn. While some authors believe that mediation and reparation promote access to justice for vulnerable groups, others argue that, in reality, not everything

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13 Charles Ntampaka, *Introduction aux systèmes juridiques africains*, Namur (Belgique), Presses universitaires de Namur, 2005.

14 Fédération Internationale des Ligues des Droits de L’Homme, Association Africaine des Droits de l’Homme & Le Groupe Lotus, *Déni de justice pour les victimes de crimes sexuels*, soumission du Comité pour l’élimination de la discrimination à l’égard des femmes, 55<sup>e</sup> sess., 8–26 juillet 2013 at 11.

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15 See Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: Chicago University Press, 2006).

16 United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, *Stratégie Internationale de Soutien à la Sécurité et la Stabilisation pour l’Est de la RDC* (2013).

17 Loi organique n° 13/011-B, *supra* note 9, art 10.

18 Boaventura de Sousa Santos, “Droit : une carte de la lecture déformée Pour une conception post-moderne du droit” (1988) 10 *Droit & Société* 390.

is negotiable and that some individuals have more bargaining power than others.<sup>19</sup> Therefore, attention must be paid to the strategies implemented by women in order to negotiate substantive access to justice at the local level.

For example, one of these strategies is for female leaders of local associations in North Kivu to seek media attention by emphasizing the shocking statistics on violence against women and using victims' testimony to appeal to the general public and the international community, where there are significant resources to mobilize.<sup>20</sup>

Without denying the extreme violence that women in North Kivu continue to suffer, Congolese women have been able to translate this important international attention regarding violence against women into social capital at the local level. Consequently, Congolese women have been granted new roles within their community, allowing them to negotiate their status with their traditional authorities. Female leaders are becoming increasingly prominent citizens within customary structures, as they must be consulted for conflicts affecting women. In the region of study, two women were chiefs of avenue, two were chiefs of 10 houses, and all four of them were also presidents of local women's associations working on sexual violence issues. This new negotiating power also allows women to access a wide range of rights, such as the right to land, which women do not have at the customary level, but remains a central concern.

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## SDG Recommendations

Some key elements relevant to the local implementation of SDG 16 can be generalized from this analysis. In particular, rule-of-law reformers should consider the following:

- Consider local specificities as potential vectors of social change and local conflict management structures as institutions that

also matter for sustainable development. While SDG 16 explicitly acknowledges the role of customary law and structures regarding access to justice, this concern is slow to materialize concretely in the field.

- Promote the development of local expertise on legal reform issues by working with local partners, notably customary chiefs and local associations. Local actors, including women, have strategic knowledge regarding their own access to justice.
- Acknowledge the multi-level nature of any legal system and put as much effort and financial resources into local justice reforms as those undertaken at the state level. This approach would prevent national reforms from reversing women's efforts at the local level, substantially improving their access to justice and their participation within local institutions. This strategy would also align efforts toward the inclusivity component of SDG 16.

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## Conclusion

If institutions matter for the sustainable development and stability of the Congolese state, removing one of the rare functional mechanisms of dispute resolution at the local level seems, at the very least, counterproductive. In light of SDG 16 targets, customary structures and local dynamics are essential for restoring peace and promoting access to justice, as well as building effective and inclusive institutions at all levels. In the same vein, the practice of perceiving women as victims of their own culture is a dangerous one. Women are relevant social actors who participate in the processes of defining, claiming and implementing their fundamental rights within their communities. Therefore women — and girls — also possess the strategic knowledge locally and substantially to implement SDG 16.

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19 Pauline E Peters, "The Limits of Negotiability: Security, Equity and Class Formation in Africa's Land Systems" in Kristine Juul & Christian Lund, eds, *Negotiating Property in Africa* (Portsmouth, NH: Heinemann, 2002) 45.

20 See notably Kamari Maxine Clarke, "The Rule of Law Through Its Economies of Appearances: The Making of the African Warlord" (2011) 18:1 *Ind J Global Leg Stud* 7; Ronald Niezen, *Public Justice and the Anthropology of Law* (New York: Cambridge University Press, 2010).





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