

Strong NGOs and Weak States

Over the past decade, the Democratic Republic of the Congo (DR Congo) and South Africa have attracted global attention for high rates of sexual and gender-based violence. Why is it that courts in eastern DR Congo prioritize gender crimes despite considerable logistical challenges, while courts in South Africa, home to a far stronger legal infrastructure and human rights record, have struggled to provide justice to victims of similar crimes? Lake shows that state fragility in DR Congo has created openings for human rights nongovernmental organizations (NGOs) to influence legal processes in ways that have proved impossible in countries like South Africa, where the state is stronger. Yet exploiting opportunities presented by state fragility to pursue narrow human rights goals invites a host of new challenges. *Strong NGOs and Weak States* documents the promises and pitfalls of human rights and rule of law advocacy undertaken by NGOs in strong and weak states alike.

Milli Lake is an assistant professor at the London School of Economics' International Relations Department. Her work focuses on human rights, violence, and state-building in weak, developing, and post-conflict states.

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*Pursuing Gender Justice in the Democratic
Republic of the Congo and South Africa*

Milli Lake

London School of Economics



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Preface

In July 2009, I was invited to participate in a conference on human rights and gender violence in Goma, a city in the eastern Democratic Republic of the Congo (DR Congo). The organizers had asked me to speak about justice and human rights in the aftermath of the Rwandan genocide. As I was preparing for my talk, Jacqueline, the conference organizer, told me: “One day, the victims of war here in Congo can be like those in Rwanda. Our people will see justice for the violence committed against them.”¹ With these words in mind, I took my place at the podium and addressed the women and men in the audience on the evolution of international justice and the merits of prosecuting human rights violations. The participants listened patiently.

When I finished speaking, Jacqueline turned to the audience members and invited them to share their experiences with me. One by one, the forty-five conference participants, all victims of unthinkable human rights violations, described their experiences. In turn, they shared graphic details of how they had been raped and sexually tortured. Some told me how they felt when they witnessed the murders of their loved ones. Others spoke of being forced to commit unspeakable harms against their partners or family members. Many showed me their wounds, recounting acts of physical and psychological torture. The participants explained how they had traveled from Walikale to the relative safety of Goma on foot, with only the clothes they were wearing, searching for a secure place to rest. On their arrival in Goma, many found refuge at a hospital renowned for its work with victims of gender violence. From there, a local NGO had recruited them to participate in the conference.

The conference participants received my rather abstract discussion of human rights and the rule of law with incredible generosity. Some asked questions and offered opinions. Yet, as the conference progressed,

¹ Jacqueline, DR Congo, July 18, 2009. For the purpose of confidentiality, all interviewees are referred to by first name pseudonyms throughout the text. Where direct quotations are used, interview dates are cited using footnotes.

members of the group expressed more concern about how they could access medical care, clean clothes, food for their children, and a secure place to live, rather than how to achieve justice for human rights atrocities. Some spoke about their desires for education and skills-based training. Above all, they told me, they wanted to live somewhere they did not have to fear violence and death.

It was too much, during the conference, to try to reconcile this collection of wants and needs with the ideas that first brought me to work in the field of human rights. Compared to the very real and practical concerns the conference participants faced, the idea that a strong and impartial justice system, grounded in the rule of law, could form the building blocks for the kind of society these individuals wanted to live in seemed abstract and remote. Despite my initial skepticism regarding legal capacity building following this encounter, over the years I have watched increasing numbers of victims and witnesses to sexual assault report crimes committed against them to local authorities and testify against perpetrators of human rights abuses in courts of law. In small villages, with no courtroom or police presence to speak of, I have observed innovative and groundbreaking human rights decisions that draw from some of the most complex contemporary human rights instruments. I have watched war criminals receive prison sentences for their roles in mass atrocities. And throughout this, many victims of violence have continued to express a desire for formal legal justice for crimes committed against them.

Criminal trials for human rights violations in eastern DR Congo provoke a number of questions. In a country whose government struggles to control more than a fraction of its territory, where do the ad hoc courts handing down judgments in remote Congolese villages derive their authority? How are cases selected and how are judicial decisions enforced? Who are the judges handing down these indictments and where did they develop their extraordinary knowledge of human rights and international criminal law? Finally, what do these trials mean for the landscape of violence in eastern DR Congo and the development of state infrastructure and the rule of law?

Understanding how to build the rule of law in fragile states is a challenge that has plagued scholars, donors, and development practitioners all over the world. From Afghanistan to Iraq, Rwanda to Sierra Leone, individuals and organizations in countries transitioning to peace have worked hard to build confidence in formal legal mechanisms as venues for resolving disputes between competing factions and coalitions. Many international organizations have devoted considerable resources to these ends, often focusing their efforts on legal capacity building and rule of law development.

In this book, I focus specifically on the pursuit of justice for sexual and gender-based violence. The successes and failures of advocacy and legal aid efforts in eastern DR Congo are brought into greater relief when compared with the pursuit of justice for sexual and gender-based crimes in another country in which I have conducted research: South Africa. South Africa has attracted similar magnitudes of international attention for its high rates of sexual assault and violent crime. South Africa is also recognized as a regional human rights leader on the African continent, with far greater resources at its disposal to deal with emerging challenges than many of its northern neighbors. Yet activists in South Africa have faced seemingly insurmountable obstacles in their efforts to improve legal accountability for gendered offenses, despite a great many domestic and international human rights organizations working toward this goal.

Since 2006, I have sought to better understand the relative successes and failures of rule of law development and human rights advocacy, and have examined the intended – and unintended – consequences of human rights programming. Questions about the successes and shortcomings of efforts to build the rule of law prove particularly illuminating in DR Congo and South Africa, where the respective successes and failures in each case dramatically challenge preconceived expectations. This book, therefore, analyzes how and why human rights practitioners in eastern DR Congo have succeeded in ensuring that specific Congolese courts give high priority to sexual and gender-based violence, whereas similarly situated in South Africa have remained resistant to efforts to improve gender justice.

Over the past decade of research on rule of law and human rights advocacy in sub-Saharan Africa, I have heard countless stories of violent crime from the perspectives of both perpetrators and survivors of violence. I have observed armed groups, militias, and social movements form and dissolve. I have watched territory fall from government control, symbolically and literally, and have witnessed many victims of devastating violence rebuild their lives after personal, political, and sexual attacks. While this project began as an effort to understand the intersection of gender advocacy, law, human rights, and state-building amid violence, it evolved into an analysis of the complex and often unanticipated ways that state strength and weakness have shaped efforts to promote human rights. I use in-depth case studies of gender violence advocacy in eastern DR Congo and South Africa's Western Cape to explore the challenges *and* opportunities that emerge for human rights activists working at the peripheries of the state and in some of the world's most challenged courts.

Acknowledgments

The communities featured in this book have witnessed far too many foreigners arriving to ask questions, and leaving, often never to return. Few have seen long-term improvements result from the millions of dollars of development aid that has been poured into the projects around them. Fewer still have anything to show for the community consultations, needs assessments, or research projects undertaken in their names. Yet each of the individuals I encountered over the course of my research was patient and accommodating.

It is an understatement to say that the project would not have been possible without their extraordinary generosity. I cannot thank most of the individuals who supported me by name, but special recognition is certainly due to Prisca Bwihangane, Innocent Cokola, Guy Mackongo, Richard Malengule, Henri Mashagiro, Passy Mubalama, Ilot Muthaka, Elysée Sindayigaya, James Songa, and Amani Matabaro Tom. In DR Congo, I would also like to thank Sofia Candeias, Natasha Carleton, Beau Davis, Pablo Kambale Ivanda, Abraham Leno, Desirée Lwambo, Jo Lusi, Emmanuel De Merode, Timo Mueller, Myriam Raymond Jetté, Cornelia Schneider, and Patrick Sikuli, for supporting me in various capacities, and at crucial moments of my research. Lina, Nadine, and Clarisse accompanied me to more trials than I can count. Jessie and her family kindly took me in and provided wonderful company with whom to wait out M23's occupation of Goma. Agnes and Dina always found room for me in Kigali, even when I showed up entirely unannounced. I was very fortunate to spend many weeks in the early periods of my dissertation working in Rwanda with Theoneste Bizimana, Batya Friedman, Zoe Khan, Freddy Mutanguha, Joseph Nkurunziza, Bob and Betty Utter, and Daisy Yoo. These trips gave me the opportunity to get many of the logistical arrangements for my fieldwork in place.

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Since leaving Seattle, I have been fortunate to spend time at Freie Universität, the University of Minnesota, Arizona State University, and the London School of Economics. Tanja Börzel, Thomas Risse, James Ron, and Kathryn Sikkink profoundly influenced my work, long before I knew any of them in person. Since our first encounters they have been incredibly generous with their time, attention, and feedback, and this book is far stronger for each of them. I am especially indebted to

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Researching human rights, gender violence, and civil conflict firsthand forces a different relationship with the world. It exposes the violence of

patriarchal power, and, in doing so, demands its rejection and dismantling in every corner. Because expressions of patriarchal power everywhere are sustained by its reproduction anywhere, researching violence requires living differently. And so the field of violence and human rights research is populated by extraordinary and uncompromising women. Women who refuse to participate. They push the field forward, and are changed by the work that they do. I am thankful for them every day. Marie Berry, Kate Cronin Furman, Alma David, Sarah Dreier, Roxani Krystalli, Chloe Lewis, Devorah Manekin, Sarah Parkinson, and many more. This book is dedicated to extraordinary and uncompromising women.

Translation of Key Foreign Terms

Terms translated from French, except where indicated:

<i>Arbre de paix</i>	Peace tree
<i>Arrangement à l'amiable</i>	Amicable arrangement
<i>Assesseurs indigènes</i>	Customary judges
<i>Auditorat militaire</i>	Military prosecutor
<i>Auditeur supérieure</i>	Chief prosecutor
<i>Avocats Sans Frontières</i>	Lawyers without Borders
<i>Baraza</i> (Swahili)	Council of elders
<i>Bourgmestre</i>	Mayor
<i>Chef coutumier</i>	Customary chief
<i>Chef de quartier</i>	Chief of the quarter
<i>Chef de village</i>	Village chief
<i>Chefferies</i>	Chiefdoms
<i>Conseil des sages</i>	Council of elders
<i>Cour de paix</i>	Peace court
<i>Dôte</i>	Dowry/bridewealth
<i>Génocidaires</i>	Perpetrators of genocide
<i>Indaba</i> (Zulu)	Business (referring to a meeting of elders)
<i>La Ligue pour la Protection de l'Enfance Noire</i>	League for the Protection of Black Children
<i>Lobola</i> (Xhosa)	Bridewealth
<i>Maire de la ville</i>	Town mayor
<i>Mutins</i>	Mutiny
<i>Mwami</i> (Swahili)	Chief
<i>Nyumbakumi</i>	Head of ten houses
<i>Procureur général</i>	Chief prosecutor
<i>Sensibilisation</i>	Sensitization
<i>Tribunal de centre</i>	Central court
<i>Tribunal de chefferie</i>	Court of the chiefdom

<i>Tribunal de grande instance</i>	High court
<i>Tribunal de secteur/collectivité</i>	Sector court
<i>Tribunal de territoire</i>	Territorial court
<i>Tribunal indigène</i>	Customary court
<i>Tribunal militaire de garnison</i>	Military garrison court
<i>Tribunaux de paix</i>	Court of the peace
<i>Tribunaux européens</i>	European court
<i>Ukuthwala</i> (Xhosa)	Bride capture
<i>Zone rurale</i>	Rural zone
<i>Zone urbaine</i>	Urban zone

Acronyms for armed actors referenced in this book:¹

AFDL	(Alliance des Forces Démocratiques pour la Libération du Congo-Zaïre): Democratic Alliance for the Liberation of Congo
CNDP	(Congrès National pour la Défense du Peuple): National Congress for the Defense of the People
FAR	(Forces Armées Rwandais): Armed Forces of Rwanda (pre-1994)
FARDC	(Forces Armées de la République Démocratique du Congo): Armed Forces of the Democratic Republic of the Congo
FAZ	(Forces Armées Zaïroises): Armed Forces of Zaire
FDLR	(Forces Démocratiques de Libération du Rwanda): Democratic Forces for the Liberation of Rwanda
FRF	(Forces Républicaines Fédéralistes): Federalist Republican Forces
MLC	(Mouvement de Libération du Congo): Movement for the Liberation of Congo
MONUSCO	(Mission de l’Organisation des Nations Unies en République Démocratique du Congo): United Nations Organization Mission in the Democratic Republic of the Congo
PNC	(Police Nationale Congolaise): Congolese National Police Force
RCD	(Rassemblement Congolais pour la Démocratie): Rally for Congolese Democracy

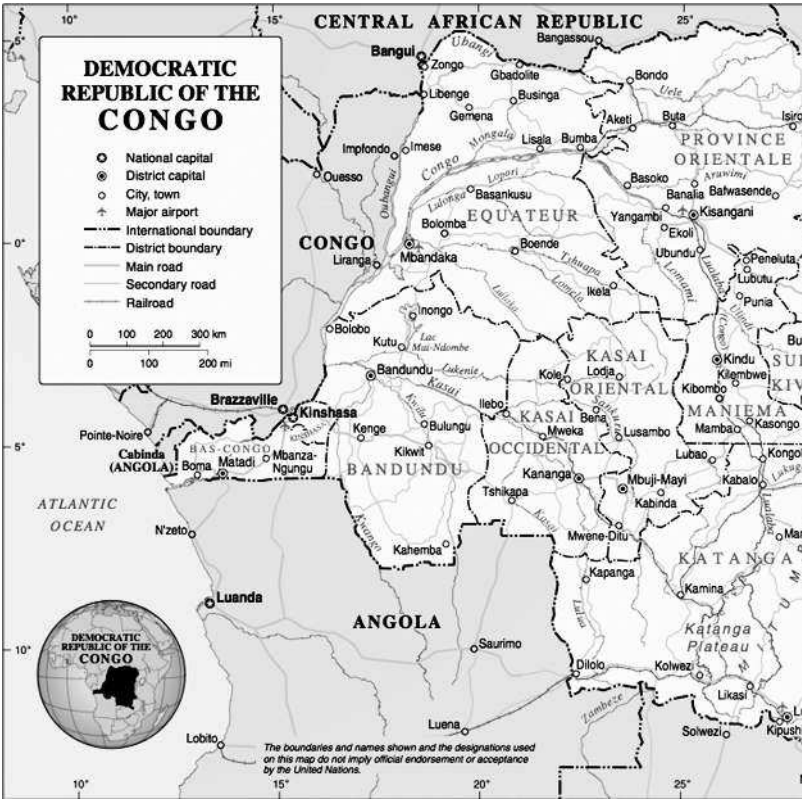
¹ This is not a complete list of armed actors in eastern DR Congo. These acronyms refer to groups discussed in this text. For a more complete list, see www.irinnews.org/report/89494/drc-who-s-who-among-armed-groups-in-the-east.

xvi	Translation of Key Foreign Terms
RPA	(Armée Patriotique Rwandaise): Rwandan Patriotic Army
RPF	(Front Patriotique Rwandais): Rwandan Patriotic Front

Maps

- 1 Democratic Republic of Congo, Map No. 4007 Rev. 11, May 2016, United Nations (<http://www.un.org/Depts/Cartographic/map/profile/drcongo.pdf>). Reproduced with permission from the United Nations Publications Board. *page xviii*
- 2 South Africa, Map No. 3768 Rev. 6, February 2007, United Nations (<http://www.un.org/Depts/Cartographic/map/profile/southafr.pdf>). Reproduced with permission from the United Nations Publications Board. *xix*

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