

## Seeking justice, experiencing the state: criminal justice and real legal uncertainty in the Democratic Republic of Congo

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# Seeking justice, experiencing the state: criminal justice and real legal uncertainty in the Democratic Republic of Congo

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## ABSTRACT

This article studies criminal justice in the conflict-affected east of the DR Congo, showing that in cases involving serious injury or violent death, people expect the involvement of the state's justice system despite their doubts about its functioning. The paper uses an ethnographic approach to study how the state, in a context of fragility becomes visible to people in the particular domain of criminal justice. The data show that Congolese justice seekers hardly expect "real legal certainty," but instead look for outcomes that come closest to their emic ideas about what is just and what is right. To access state justice, it is widely held necessary to have either money or connections with more powerful people. For those without such connections, resort to non-state justice, including popular justice, can be a viable alternative. The empirical data illustrate how a relational approach to the state can help in understanding people's experiences with and perceptions about the state and their reasons for resorting to state or non-state criminal justice provision. It thereby sheds light on how expectations about access to state justice and a lack of real legal certainty shape the existence of legal pluralism.

## ARTICLE HISTORY

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## KEYWORDS

Criminal justice; access to justice; real legal (un)certainty; state and non-state justice; DR Congo

## Introduction

I have now understood that the poor and the weak do not have a right to justice in this country

Floribert is a middle-aged Congolese man whose son got violently killed in 2008. In June 2017, Floribert was still waiting for a verdict in the trial. His words cited above give expression to a widespread feeling among Congolese that "justice" as provided by the state is inaccessible in the Democratic Republic of Congo (DRC), especially for poorer people who lack powerful connections.

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Conversations with Congolese people about the state often revolve around the state's malfunctioning. Indicatively, in January 2018, one of the most popular radio stations broadcasted a debate about the proposition that "the state does not really exist" in the DRC. Listeners could call in to give their opinion. Most of them showed their conviction that a state in Congo does not exist, or is weak. Comments referred to the non-respect of article 1 of the Constitution that states there is a rule of law in the country; to the lack of legal capacity and sovereignty; and to the incapacity of the state to deliver public services.<sup>1</sup> But what do people experience of this malfunctioning in their everyday lives? What does justice mean to them and what role does the state have in shaping this meaning? What type of justice are they looking for? To answer these questions, it makes sense to descend to the local level and look at the regular justice concerns that people have, regardless of the larger-scale conflicts that take place in the country. It also means looking at the strategies people follow when they are in need of justice and the role the state plays in this regard. Such an everyday perspective helps to gain an understanding of the way in which justice—and through it the state—appears to people (in analogy to Sarat and Kearns [1993], who suggest to look at *law* in everyday lives) in a conflict-affected society in which different legal orders coexist.

This paper explores experiences of Congolese citizens who lack the key assets to navigate the "official law": powerful connections with the state's criminal justice system and financial means. It shows how people's concrete experiences feed into their perceptions of justice, and which alternative strategies they follow to remedy the shortcomings they encounter in the state's provision of justice. Analytically, the paper provides insight into the extent at which people experience "real legal (un-)certainty" and the consequences this has for the pathways they follow to find the justice they are looking for.

This paper takes a primarily ethnographic perspective to study ways in which statutory justice becomes visible to the population especially in the domain of criminal law, as this is a domain in which people expect the state to play a role. This is in contrast to civil cases, where most people hardly expect a role for the state. Such a division between state and non-state justice already existed in most African countries during colonial times, when colonial power holders ruled that penal law was a state domain, whereas traditional authorities often kept authority over civil cases and minor criminal offences (see for instance Crowder 1978; Merry 1991). In Congo, like in many other African countries, this division continues to exist and results in a field of tension between statutory and culturally held notions about justice (Comaroff and Comaroff 2004). The duality is reflected in ideas about justice among Congolese who usually agree that severe penal cases need to be dealt with in state courts and not in more informal manners or through amicable settlement.<sup>2</sup>

The following section of this paper lays out how insights from legal anthropology, anthropology of the state, and law and development are used to study people's perceptions about the state's functioning by discussing some key concepts related to the state and to justice. The third and fourth section sketch some features of the Congolese state, how people perceive the justice that is provided by the state, and zoom in on a particular case to illustrate the point. These findings allow for a more in-depth analysis of people's experiences with the state in section five, before turning back to the main question of this paper in the conclusion: How do Congolese people experience the justice that is provided by the state in criminal law cases and which alternatives do they explore at the moment real legal certainty is lacking?

Data for this paper have been collected in Bukavu between June 2015 and September 2017, by the author, together with four Congolese researchers; partly with an academic background, partly with a civil society background. Bukavu is the provincial capital of South Kivu, located in the country's conflict-affected east. The research aimed to gain an understanding of ways in which internally displaced persons (IDPs) in an urban setting obtain access to justice: We looked at the main justice concerns of IDPs; the strategies they followed to address these concerns; and the way in which they were treated by different justice providers. We compared their experiences and perceptions with those of "regular" inhabitants of the same neighbourhoods. Under certain circumstances, IDPs were clearly at a disadvantage, in other circumstances they struggled just as much as others (for more detail see Jacobs and Kyamusugulwa 2018). Most of the research was qualitative and consisted of open and semi-structured interviews. Findings were discussed within the team on a rolling basis. To get a complete picture of people's "paths to justice" (Genn 1999), we tried as much as possible to follow cases through time, and to talk with respondents several times. This enabled us to follow paths to justice, to establish more trust, and to gain a richer story. In addition to the qualitative research, we carried out a survey ( $n = 278$ , of which 155 displaced and 123 non-displaced) in Bukavu's peripheral neighbourhoods. Finally, we organised a number of multi-stakeholder meetings to bring together a diverse range of actors from a neighbourhood to discuss concerns identified by the participants themselves. Findings were further validated during feedback workshops with different audiences (academics, state officials, NGO representatives, and justice seekers). In this paper, I only distinguish between the two categories of IDPs and "residents" when findings show divergence.

### **Connecting everyday reality with theories on the state and justice provision**

The state as a concept has received much scholarly attention from various disciplines. Within the field of anthropology the emergence of the state as a subject of study is relatively recent (Marcus 2008).<sup>3</sup> Authors such as Akhil Gupta have made us aware of the importance and relevance of carrying out an "ethnography of the state," in which we should look at "the everyday practices of local bureaucracies and the discursive construction of the state in public culture" (Gupta 1995, 375). It is widely acknowledged that the state should not be seen as a monolithic unit (Krohn-Hansen and Nustad 2005; Abrams 1988; Santos 2006; Sharma and Gupta 2005). A criticism against this perspective is that there is a lot of emphasis on discursive constructions of the state, without paying enough attention to the actual concrete relational practices and interactions people have with various state officials (Thelen, Vetter, and Benda-Beckmann 2017), whereas such interactions feed into people's perceptions and expectations about the state and impact on the state's legitimacy.

Diverging from the focus on street-level bureaucrats which characterizes many ethnographies of the state (see for instance Bierschenk and De Sardan 2014; Beek et al. 2017), this paper takes a people/citizens-centred perspective to analyse experiences with one dimension of the state, namely criminal justice provision and the extent to

which this justice coincides with ideas about justice that people have themselves. To get a good understanding of ways in which people access justice and the problems they encounter in this regard, it is important to follow their justice concerns over time: By unravelling whether and how unperceived injurious experiences become grievances that are expressed and addressed and whether they are ultimately transformed (Felstiner, Abel, and Sarat 1980/81). For the full picture, it is subsequently important to also monitor whether a proposed settlement of a claim, a recognition of one's claim to a right, or of a dispute is eventually enforced and leads to a durable settlement of the justice concern (Benda-Beckmann 1984).

In the Congolese context, the state is generally little solicited by people and its' presence is often empirically questioned (Aembe 2017). Yet, also in these settings, people's experiences with public services and the way in which these are provided shape their view of the state (Ferf et al. 2016). Bear and Mathur (2015) have pointed out that the provision of public goods and services contributes to the materialization of the social contract between citizens and the state and therefore warrants ethnographic attention. The provision of human security is often seen as the most critical function of a state in the perception of citizens, state officials and non-state actors alike. Therefore, the provision of justice and security has not only been of interest to anthropologists of the state but also to scholars studying the breakdown of state structures in situations of conflict. They found that even weak states or states affected by conflicts usually see the importance of maintaining control over the sector of security and justice: Börzel and Risse (2015) and Albrecht (2013) for instance hold that at the moment states fail to deliver certain services, an institutional void is created in which non-state actors are often quick to jump in to provide alternative modes of governance. Hoffmann and Vlassenroot (2014) argued that justice and security—alongside taxation, for pragmatic reasons—are also the first services non-state actors start to organise when taking over authority and control from the state in war-affected areas (Hoffmann and Vlassenroot 2014).<sup>4</sup> The increasing role of non-state actors is often “a gradual process accompanying state failure,” as Trefon (2011, 23) writes about the Congolese context. These non-state actors constitute a heterogeneous category, including local power holders, civil society actors, international organisations, private parties etc. (Albrecht 2013).

In the field of justice, the phenomenon of non-state actors providing dispute resolution has been addressed by legal anthropologists with the concept of legal pluralism for decades (see for instance the following classics: Benda-Beckmann 2002; Griffiths 1986; Merry 1988), others refer to “a semi-autonomous social field” (Moore 1973), “the heterogeneous state” (Santos 2006) or “multiple sovereignties” (Bertelsen 2009). These analytical concepts refer mostly to the various—sometimes overlapping—normative orders that play a role in a society. The scope and functioning of these normative orders differs widely and therefore need to be empirically established (Benda-Beckmann 2002). It should be noted that analytically these concepts are not necessarily linked to a weakening or failure of state structures.

How can these different disciplinary bodies of literature be brought into dialogue and made fruitful? I suggest, by approaching the question of justice provision from the perspectives of citizens and asking how they relate to state institutions or turn

elsewhere. What do they say about their expectations towards the state to deliver justice, and what kind of justice do they expect? A further helpful conceptual element comes from the work by socio-legal scholar Jan Michiel Otto. His concept of “real legal certainty” can help to bridge the more macro-oriented and normative perspectives on the state with perspectives and experiences of citizens in the everyday life. Whereas legal certainty is usually concerned primarily with the law itself, “real legal certainty” can be used analytically to consider “the practical results of the operation of a legal system” (Oomen and Bedner 2018, 10); the way in which institutions enact the laws; how people experience this; and to what extent the certainty provided is the certainty people are in need of. Following Otto, real legal certainty is defined here as “the chances that in a given situation:

- there are clear, consistent and accessible legal rules, issued or acknowledged by or on behalf of the state;
- the government institutions apply these rules consistently and themselves comply with them;
- most citizens in principle conform to such rules;
- in the course of dispute settlement, independent and impartial judges apply such rules consistently; and
- their judicial decisions are actually put into practice” (Otto 2002, 25).

To get an understanding of the factors that contribute (positively or negatively) to the real legal certainty that people experience, Otto suggests looking at four broad categories: a) the social and cultural fabric of society; b) the political power structures; c) the economic interests of certain social groups; d) the capacities of the institutions of the state (Otto 2002, 29). In this paper, I will focus primarily on two factors that our informants repeatedly pointed out as problematic, based on their experiences with the state: money and power. I argue that a lack of “real legal certainty” or rather the “certainty of real legal uncertainty” urges people under particular circumstances to resort to rather violent types of popular justice that are more readily enforced. Others refrain from seeking justice at all once they have gotten disappointed and frustrated about the lack of “real legal certainty.”

To sum up, this paper aims to better understand the way in which people perceive state power to be exercised and how people relate to it when they seek justice for severe penal cases in a context of legal pluralism. It looks at the state from the perspective of these justice seekers and “in terms of aggregated patterns of interaction among individuals with different rights and obligations, defined by an immense set of constitutive and regulative rules,” as argued by Frödin (Frödin 2012, 272). I follow his proposal to approach the state in relational terms, as it is only through social relations that institutions become activated. For this, we need to look at the way in which citizens relate—or do not relate—to the various institutions that represent the state to them (Thelen, Veters, and Benda-Beckmann 2017). Hence, the theoretically informed approach to ethnographically studying the state in this paper is to look at the state in practice from the perspective of the justice seeker and to see whether and how it becomes visible to people when they are in need of

one of the most basic services that a state is supposed to provide: delivery of justice and security.

### **The Congolese state and criminal law cases**

It is often argued that the Congolese state is not able to provide basic services to its population. Significantly, most people do not even expect the state anymore to be responsible for the provision of services such as water, livelihood support, education, or health care (Ferf et al. 2016). The role of the state in these sectors is primarily to provide a regulatory framework in which non-state actors can operate (Aembe 2017). It is remarkable to note that despite years of decline in the state's functioning, people still have an ideal image of the state in mind. This image comes close to a Weberian state. At the same time, people do not expect the Congolese state to function like that. Instead, they talk about a predatory state, or consider the state as a "father that does not provide for his children," as demonstrated by Van Overbeek, who asked respondents in Bukavu to sketch an image of the Congolese state (Overbeek 2014; see also Trefon 2009; Aembe 2017). Based on a survey carried out in South Kivu province in 2015 ( $n = 1045$ ), Ferf et al. made use of five perception-based questions on seven governance actors (ranging from local, customary, to the central state). Responses were combined into a single index showing respondents' perception of the government on a scale from 1 to 100, with 100 being the most positive. Customary governance actors scored 39 on this scale, formal local governance actors 24, and state government actors a meagre 13 (Ferf et al. 2016, 77–78).

Zooming in on people's trust in the Congolese state's provision of justice a similar gloomy picture can be sketched. A large survey carried out repetitively by Vinck et al. in the eastern provinces of the DRC, showed for instance that in 2016, only 20% of the respondents in Bukavu felt that courts treat people fairly and equally.<sup>5</sup> Most people in the DRC do not go to state courts and prefer to solve disputes "*à l'amiable*" with the help of relatives or other trusted relations (Vinck and Pham 2014; Meyer 2014). A reform to bring state justice closer to the people and to reduce the role of customary authorities started already in 1968 with legislation that was meant to establish Peace Tribunals in all territories across the country. But lack of funding and political will impeded effective implementation. New life was blown into these courts from 2007 onwards under the new Kabila government (Rubbers and Gallez 2012). Meanwhile the courts have become more numerous but they face similar problems as the overall state justice sector in the DRC: a lack of funds, understaffing, and a lack of legitimacy among the population (Vinck and Pham 2014; Meyer 2014; Rubbers and Gallez 2012). In a survey carried out as part of this research ( $n = 278$ ), we asked people whom they would turn to (or had turned to in the past) in case of disputes. 41% of respondents indicated to consult a family member, followed by the neighbourhood chief (11%), the chief of the street (10%), the police (9%) and the church (7%). Less than 1% indicated a preference for the Peace Tribunals, even though the Tribunal has its seat in one of the neighbourhoods where the survey was carried out. A Peace Tribunal is supposed to deal with family affairs, land conflicts and with minor criminal offences (such as fraud, theft, breaches of trust) for which a

maximum of five years of prison would apply plus a possible fine.<sup>6</sup> A level above the Peace Tribunals is the *Tribunal de Grande Instance* (TGI) that deals with cases that go beyond the jurisdiction of the Peace Tribunals. A TGI is supported in its work by police officers with criminal investigation powers (OPJs: *Officiers de police judiciaires*). These police officers are often the first entry point for people who seek state justice, as they have a presence in major police stations. Another indirect way to seek state justice is to consult an administrative chief, either at the level of the street, or the neighbourhood. These chiefs refer cases beyond their competence to the state courts. When asked whom they would turn to in second (and if necessary third) instance, the balance shifts slightly and people tend to go more to formal authorities oriented towards retributive justice.

Most of our respondents agree that severe penal cases need to be dealt with in state courts and not in more informal manners or through amicable agreement. Criminal law is therefore a domain where state justice becomes at least somewhat visible. To shed light on citizen-state relations, and given the limited significance of state courts in most people's lives, this paper zooms in on such a severe penal case from the perspective of a citizen. A reason why people consider the state responsible for penal cases is that such cases require punishment, rather than mediation and reconciliation. Non-state actors usually lack the power to enforce decisions and will aim at mediation between two disputing parties. This form of reconciliatory justice corresponds well with people's demands in terms of most civil cases, but does not provide an adequate punitive answer to address severe crimes. Such different expectations about justice almost self-evidently perpetuate a situation of legal pluralism in which different justice providers offer different types of justice.

Clearly not all people opt for interventions in case of disputes. Whereas 95% of our survey respondents reported having had a dispute, almost 30% reported not having taken any steps to seek justice. Main reasons to avoid seeking justice were: not to keep anger (20%); not knowing where to go (13%); fear (10%); avoiding further problems and conflicts (9%); too expensive (9%). Other respondents were not able to give clear reasons. These responses show a gap between the more punishment-oriented state justice, that is seen to be "pointing out guilt" as a respondent explained, and the more reconciliatory justice that respondents are looking for. The latter type of justice helps to restore harmony "*à l'amiable*." For serious crimes such as murder however, our respondents would usually agree on the need for punishment.

### **The case of Floribert**

The following story is of Floribert whose son Prosper got violently killed by strangulation in 2008. Floribert has meticulously stored all documents related to the case. Nine years after that fatal day Floribert's emotions easily surface as he explains what happened:

On a Saturday, after work, my son and his friends went to have a drink in E. (adjacent neighbourhood). Around 8.00 PM they all left for home. On his way back, not far from here, Prosper encountered two bandits, Safari and Bahati, who forcefully took him to the house of Safari, the same house where later that evening my son was killed. Safari and Bahati tied Prosper's arms and legs and tortured him in a gruesome way. While the



two were beating my child, another young man of our neighbourhood,- Janvier -, Safari's neighbour, recognized the voice of my son screaming in pain. Despite the widely shared fear for Safari, Janvier was brave enough to alert other neighbours and started to cry for help for my desperate son. The gathered crowd was too afraid to act against Safari because of his infamous reputation of always looking for a fight. After Prosper was killed, Safari woke his eldest brother and showed him the corpse of my son. Together they then went out to discard Prosper's corpse somewhere on the mountain slope, along the road leading to the office of the 'commune'<sup>7</sup> [...].

Around 5.00 AM the following day, churchgoers found Prosper's body and alerted the police of the commune. They quickly came to start the investigation. But Safari, the main perpetrator, apparently also received the information from his uncle [Major in the military] that he was being sought by the security services and the police. Safari managed to flee. The public prosecutor and the National Intelligence Agency (ANR) found the traces of the blood in Safari's house. [...] The same day, popular justice came to demolish the houses of the two killers.<sup>8</sup>

Bahati, one of the fled killers, was later found at L. [a mining site], looking for a job. Somebody [...] recognized him and alerted the local police. Because the search warrant had been distributed throughout the province, the police acted quickly, arrested Bahati and transferred him to Bukavu, where he was imprisoned. The file was transferred to the Tribunal by the Public Prosecutor. The latter also provided me with a lawyer because I am an indigent.<sup>9</sup>

The trial began. At the fourth session, my lawyer informed me that all the accused had been set free for the duration of the trial. I was surprised, but the case continued nevertheless.

In 2013 the Court finally deliberated the case. Only the verdict was pending. Meanwhile however, two of the neighbours [who could have testified] died, and other neighbours moved. We were left only with Safari's brother and Bahati. After the death of his father, Bahati fled for the second time. In the meantime, there has been a permutation of the judges. The presiding judge has been replaced and no progress has been made ever since. It is a status quo.

Floribert ended his narrative with the words with which this paper started; that he has now understood that the poor and the weak do not have a right to justice in his country. He admitted having spent already more than \$1000 on formal and informal costs at the Court. He was convinced that the process would be taken up again if he would add more money to the "enveloppe" in the file, but was not able to add more. The main perpetrator is still on the run and allegedly under the protection of his high-ranking military uncle.

## Dealing with disappointment

The case of Floribert is clearly beyond the jurisdiction of non-state justice providers. According to legislation and according to most of our interlocutors, such cases should be judged in a state court. But even when people have the intention to settle their cases through state justice, the outcome is often disappointing to them. As a result of this (or because of prior negative experiences), they either (have no other choice than to) refrain from taking further steps and resign, or they find support in non-state

justice provision, including the popular justice carried out by an angry crowd. This can result in burnt houses, or the torture or even death of supposed perpetrators. When both state and non-state authorities are unable to provide justice at a satisfactory level, popular justice is a last resort. In the case of Floribert, it resulted in an angry mob setting fire to the suspects' homes. In other cases we came across, people first fatally tortured a bandit before the police intervened and restored order. This form of justice can be seen as a form of self-help, where the less powerful bundle forces and become powerful to address the injustice they face (Jacobs and Schuetze 2011). Aware of such risks, state authorities often send police forces to patrol and to avoid further retaliatory acts by angry crowds.

Based on his experience, Floribert mentioned that the poor and the weak do not have access to state justice. His words reveal two elements that are widely seen to be indispensable; money or power. Somebody who does not possess either of the two, needs to have at least connections with people who are more powerful than the other party. This is clear as well in the following words of another respondent who related about one of his neighbours attacking him with a machete because of a dispute about the boundary of their plots. As a result, he got severely wounded at his left shoulder and had to spend three weeks in medical care:

I went to lodge a complaint at the Public Prosecutor's Office, but there was clearly corruption at the level of the Prosecutor because N. was undisturbed and could circulate freely, whereas my wife was going back and forth to the Prosecutor's office every day. It was only later, when my old mother went to see the Public Prosecutor, that the latter ordered the arrest.

In this case, his mother apparently was better positioned to convince the prosecutor to take up the case than his wife was. In the case of Floribert, the main perpetrator could flee to prevent arrest thanks to his uncle, a high-ranking military officer with access to crucial information. Although it is difficult to find concrete indications, accusations that there is traffic of influence, resulting in a positive outcome for the party that is on the side of the influential one abounded among our interlocutors. In some cases, family ties could be confirmed, which made it more likely that such influence indeed played a role. Others testified that they did not consider to go to court, as the following respondent explains: *"I knew the only way was to go to the court. But then you need to know that you are able to pay."* Influence is thus believed to run either through personalised connections or through financial means. This is detrimental to the people who are less connected or have less means at their disposal. Even if such traffic of influence cannot always be established empirically, it is influential in shaping people's perceptions about the state of justice and in preventing them from putting trust in the state. Combined with disappointing experiences with law enforcement agents, people might then refrain from resorting to state justice in future cases. A woman who had consulted a local chief about a case of physical abuse was sent home because she was not able to pay the requested \$10 for the chief's assistance. She told us: *"I went home without a solution and have decided that from now on, I will never go to the public authorities anymore. I prefer amicable solutions for my problems."* Another respondent said: *"Next time, I will leave it up to God to take revenge."*<sup>10</sup>

In our research we talked mostly with the less powerful; people who felt it was difficult to access state justice. It is clearly more difficult to hear the other side of such stories. One of the few exceptions was J., a business man active in the mining industry and clearly on the powerful side. He talked frankly about his view on justice:

Resistant workers sometimes dare to complain to the [...] authorities but the solution remains in my favour, as I am the one who finances justice at any price.[...] If I recognize my fault, for instance of beating somebody for no reason or because of drunkenness, or if I sleep with a girl who is not mine, if it concerns one of my workers, I make a little joke that makes him to forget my fault, or if the person drinks, we share a beer. If he still wants to sue me, I tell them to take the case to the Justice and Peace Commission [of the Catholic Church, author]. If he refuses, I need to find out the instance and the judicial actor who investigates the file to give something and to end the case quickly. But in such cases, the person better has to flee far from me.

The words of this business man reveal the strong conviction of a powerful person that he will always be able to bend justice in a direction that is favourable for him.

### **The certainty of real legal uncertainty**

This paper has zoomed in on people's experiences with state justice to understand their perceptions about it. Such perceptions feed into commonly held narratives about the state; narratives that are reproduced widely within society and therefore impact on the legitimacy of the state. Whereas most Congolese have a preference to solve disputes in amicable ways, this is much less the case for criminal cases. For criminal cases, interventions by the state are desired, but without financial means or powerful connections, many of the justice seekers that do not possess these resources get disappointed by the state actors that are supposed to provide justice to them. They feel the state actors themselves do not apply rules consistently to everybody or ignore the rules themselves. Whereas there might be clear legal rules, such rules are not always known to people. In addition, even if rules are known, it might not always be predictable what the outcome of a court case will be, as the complainant might not know which financial or social sources the other party will mobilise. Predictability of trials would need insight into the informal connections and the strings that can be pulled. Informal, implicit rules with limited transparency need to be read in a correct way to be able to advance. Taken together, the elements mentioned above provide a clear example of what Otto (2002) would call a lack of "real legal certainty."

The presented data show that people without adequate financial means or without the right vertical relations with the more powerful ones in the social/political/state hierarchy have low expectations of the justice that the state will provide to them and they might not even consider attending a state court for their justice concerns. They only do so in case of severe crimes that demand punitive justice that most non-state actors are not able to provide. This paper has therefore focused on such crimes to find out what the state actually offers to victims of such crimes and how people experience this. Without financial or social capital, most respondents indicate that it is difficult to access state justice in the DRC. If state justice does not work, people easily resort to popular justice, supported by other people in their social surrounding who share feelings of anger, frustration and distrust about the state, based on hearsay

or previous personal experiences. Through mobilisation of their peers they are able to take justice in their own hands, without depending on the state. People without hope nor connections are likely to opt for a strategy of resignation; they just leave the case and tell themselves they have to forgive the perpetrator to continue their lives or to forget about it altogether. But this is often a painful and unsatisfactory process that leads to a widespread feeling that the country's justice is not available for everybody. As long as reconciliation is seen to be an adequate form of justice, people can still resort to lower level (state and non-state) authorities, but when punishment is considered necessary to achieve justice, people are more inclined to opt for the state's penal justice or to popular justice. The paths to justice that people take are fed not only by the type of justice they are looking for, but also by the expectations they have of different justice providers, based on real experiences, hearsay and their social and financial capital.

For a good understanding of how justice works in a fragile setting such as the DRC, it is important to descend to a local level and to study concrete cases that show how the state becomes visible to its citizens through personalised connections. This reveals the complex entanglement of people's ideas about justice and the state, and how these are shaped by actual experiences and narratives. In this paper I have zoomed in on experiences of individual justice seekers with representatives of the state's justice. Taking a relational approach to analyse these experiences, the paper shows how such everyday experiences with the state in the domain of criminal justice lead to people's perceptions about the state. Narratives about state justice reveal that people are certain that they will find "real legal uncertainty" when resorting to state justice, unless they are able to overcome this uncertainty with financial means or through powerful connections. As long as money or connections are not within easy reach for most of the population, it is quite likely that Congolese will continue to claim that a state in Congo does not really exist or is weak, as was argued by the listeners of the radio show mentioned in the introduction.

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## Notes

1. <https://www.radiookapi.net/2018/01/22/emissions/parole-aux-auditeurs/letat-existe-t-il-reellement-en-rdc>, downloaded on 31.07.2018.
2. An exception in this regard are cases of sexual violence. Whereas this constitutes a penal offence, many people prefer to settle such cases amicably, assuming that this will at least

- allow them to negotiate some benefit/compensation from the offender and/or the offender's family.
3. It is outside the scope of this paper to provide a comprehensive overview of the ample flux of literature that has been published in recent decades on 'the state'. For further reading, see (Sharma and Gupta 2005; Krohn-Hansen and Nustad 2005; Hansen and Stepputat 2001; Bierschenk and De Sardan 2014). For a critical review of the development of an anthropology of the state, see (Marcus 2008). For a better understanding of the functioning of states under violent conditions, see the edited volume by (Kapferer and Bertelsen 2009).
  4. Although taxation is one of the key functions states and state-like actors engage in, it is a rather understudied field, as also argued by Mugler in this issue.
  5. For this and more, see [http://www.peacebuildingdata.org/interactivemaps/drc-polls/?series=Latest&indicator=13\\_4\\_11](http://www.peacebuildingdata.org/interactivemaps/drc-polls/?series=Latest&indicator=13_4_11), retrieved on 15.08.2017
  6. Loi organique n.13/011-B du 11 avril 2013 portant organisations, fonctionnement et compétences des juridictions de l'ordre judiciaire, art. 85 and 110. See also Rubbers and Gallez 2012.
  7. Commune is an administrative sub-division of the city.
  8. Popular justice refers to the members of the neighbourhood who spontaneously organized this act.
  9. People with limited financial means can obtain a 'carte d'indigence' at the communal office, entitling them to get a lawyer *pro bono*. Most people refrain from doing it and argue that it does not make sense to get such a card because they will have to pay informal costs anyway and that therefore the state's justice is still not within their reach.
  10. Contrasting with citizens' experiences and perceptions, are views expressed by state authorities. Several of them explained that people do not understand the way in which a court functions; that it is normal that investigation takes time, and that it is normal that citizens have to contribute to the running costs of the office if they want their case to be heard.

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