



DISSERTATION BRIEFS SERIES 2015:05
STRONGER THAN JUSTICE:
ARMED GROUP IMPUNITY FOR SEXUAL VIOLENCE

Angela Muvumba Sellström

*Stronger than Justice:
Armed Group Impunity for Sexual Violence*

Angela Muvumba Sellström

*Development Dissertation Brief 2015:05
Expertgruppen för Biståndsanalys (EBA)*

Angela Muvumba Sellström is a Project Manager at the Department of Peace and Conflict Research, Uppsala University and a researcher at the Nordic Africa Institute. She defended her dissertation "Stronger than Justice: Armed Group Impunity for Sexual Violence" at Uppsala University in January 2015. The dissertation can be found at <http://uu.diva-portal.org/smash/get/diva2:766398/FULLTEXT01.pdf>. Her e-mail is angela.muvumba-sellstrom@pcr.uu.se.

The Expert Group for Aid Studies - EBA - is a government committee analysing and evaluating Swedish international development aid. This report can be downloaded free of charge at www.eba.se

Printed by Elanders Sverige AB
Stockholm 2015

Cover design by Julia Demchenko

Introduction and Overview

IMPUNITY, noun. Exemption from punishment or freedom from the injurious consequences of an action: the impunity enjoyed by military officers implicated in civilian killings; protestors burned flags on the streets with impunity
(from the Oxford English Dictionary, 2014)

...if they could see you talking to girls, that simple suspicion equalled death... (Former CNDD-FDD and FNL member).

You would be killed and they used a hoe, it was a less expensive instrument and they used it to kill the guilty. (FNL ex-combatants).

FNL rules were written in a small notebook. We were taught the rules. (Former FNL members).

If you spend a year with no leave and you see your commander raping, you would also rape. (Former member of the Armed Forces of Burundi).

Who will make a judgment against him? A chief was a chief... (CNDD-FDD ex-combatants).

Sexual violence happened in CNDD-FDD, there were no strict laws. (Former CNDD-FDD combatants).

Some combatants of civil war interpret sexual violence as banal and a matter of course in the theatre of war. They appear to expect their leaders and comrades to commit rape and other sexual abuse and exploitation. Others believe there will be retribution for these acts. These differences are not simply individual conceptions of right and wrong. They exemplify diverse armed group beliefs about impunity for sexual violence. A fuzzy concept, impunity is generally understood as exemption from punishment or penalty. It is commonly evoked as ‘getting away with it’, a cliché term that has some significance in the

fight to end impunity for human rights violations, mass atrocity and increasingly, wartime sexual violence.

Puzzling aspects of impunity for sexual violence are evident among formally-organised armed groups. For example, most victims of sexual violence in Sierra Leone's civil war reported members of the Revolutionary United Front (RUF) as perpetrators, although it instituted ideological education which stressed the illegitimacy of rape (Cohen, 2013; Marks, 2013). In the resistance against South Africa's apartheid government, the African National Congress's (ANC) armed wing, Umkhonto we Sizwe (MK) had a military code specifically citing rape as a punishable offence (ANC, 1996). Yet, female members of MK were abused by their comrades in its military camp in Quibaxe, Angola (SAPA, 1996). Indeed, there appears to be differences *across* as well as *within* armed groups. Finally, impunity may vary *across time*.

This is the subject of my doctoral dissertation¹, and this *Development Dissertation Brief*. I ask: *Which conditions lead to armed group impunity for sexual violence?* I focus on African armed actors that have been exposed to settlement processes in the post-Cold War period. The dissertation was composed of two components. First, a cross-actor analysis that addresses one part of our impunity puzzle: the association between 'pardons' as exemplified by amnesties, and the levels of rape, sexual slavery and other abuses by signatories to peace accords. The second and main part of the study compared two rebel armed groups, CNDD-FDD (National Council for the Defence of Democracy-Forces for the Defence of Democracy) and FNL (Palipehutu-Forces for National Liberation) from Burundi.

This brief is organized in the following way. First, I will (very) briefly position the study within the liberal peacebuilding paradigm. The second part is a summary of the main theory and methods. Third, the brief turns to a short précis of my preliminary analysis of the association between amnesties and post-settlement sexual violence, based on a dataset of amnesties from negotiated settlements, and reported post-settlement sexual violence events for 23 different armed actors in Burundi, the Democratic Republic

¹ Pilot research for the study was partly funded by a Swedish International Development Cooperation Agency (Sida) grant to the African Centre for the Constructive Resolution of Disputes and the University of Uppsala's Department of Peace and Conflict Research. The findings from that preliminary study will be published in "Impunity for Conflict-Related Sexual Violence: Insights from Burundi's Former Fighters", In Chedelin, S.I. and M. Mutisi (eds.) 2015 (forthcoming). *Deconstructing Women, Peace and Security: A Critical Review of Approaches to Gender and Empowerment*, Cape Town: Human Sciences Research Council (HSRC).

of the Congo (DRC), Liberia, Mozambique, Sierra Leone and South Africa. Surprisingly, the findings indicate that amnesties do not lead to more violence. Fourth, the brief covers the comparison between the rebel groups in Burundi, concentrating on the evidence I have gathered from focus groups of ex-combatants of CNDD-FDD and FNL. This part provides an account of how armed group impunity arises. I conclude that flawed prohibitions within an armed group fuel impunity. The role of leaders is negligible as long as they do not formally institute clear and constant rules and punishments. And, importantly, in the end, amnesties do not lead to impunity in the post-settlement period. Overall, ex-combatants in this study clearly distinguished between wartime and peacetime, with the post-war practices of corruption having more significance for impunity. Finally, the brief concludes with commentary on the significance of the study for policy efforts to address impunity, amnesty and sexual violence by armed groups.

Liberal Peacebuilding, Impunity and Wartime Sexual Violence

Liberal peacebuilding actors from different policy arenas have brought the concept of impunity front and centre, making it particularly important for conflict resolution, post-war peacebuilding and transitional justice. I borrow from Roland Paris to define what is meant by liberal peacebuilding. It is the Wilsonian notion that “democratization and marketization will foster peace in war-shattered societies” (Paris 2004, 6). Liberal peacebuilding prioritises certain tasks: establishing the rule of law and accountable governance in order to address past atrocities and prevent their recurrence; building traditions of justice based on a social contract; and protecting human rights. Impunity for wartime sexual violence is increasingly viewed through this lens. The United Nations (UN) Security Council’s 10 resolutions on women, peace and security (between 2000 and 2014), all propose a need to counter impunity. The 2010 European Union (EU) policy emphasises links between impunity and torture, violence against women, prosecution of human rights violators and more. Human rights advocates blame impunity for continued abuses, including sexual violence. The United Kingdom’s (UK) Foreign Office’s Global Summit to End Sexual Violence in Conflict (ESVC) in June 2014 launched an International Protocol on the Documentation and Investigation of Sexual Violence in Conflict for the purposes of improving evidence-gathering in order to get justice.

Amnesties in peace agreements are increasingly viewed as determinants of impunity (not just for sexual violence, *but also* for these acts). The UN Security Council has stressed the need for excluding sexual violence from amnesty provisions in peacemaking processes by brokers of peace (UNSC, 2008; 2009; 2010). The UN Security Council's resolution 1960 firmly established an international process of naming and shaming perpetrator armed groups (UNSC, 2010). Finally, UN Security Council resolution 2016 further sought to implement the fight against impunity by stressing the need to sanction these actors for the commission of sexual violence (UNSC 2013).

Although lagging behind UN and EU approaches, the imperative to prevent sexual violence is taking on resonance at the regional level, particularly in Africa. The African Union (AU) has appointed a Special Envoy for Women, Peace, Bineta Diop of Senegal. The International Conference of the Great Lakes Region (ICGLR) adopted a declaration on sexual and gender based violence which affirms the regional body's pre-existing legal and political commitments from 2006 (Ndinga-Muvumba, 2012).

Setting up the Study

Bearing in mind the foregoing policy landscape, the research turned to the differences in impunity among armed groups, and their dissimilar levels of accountability for sexual violence. This variation existed in the real world, but it had not yet been theorized. The research design was built around a theoretical framework, *with armed group impunity for sexual violence defined as confidence in the absence of negative consequences for sexual violence*. The study's empirical and causal focus required a definition of impunity that did not include its causes. I noted that scholars and policymakers have tended to define impunity on the basis of its potential explanations. This may be viable for legal practice or policymaking, but for the purposes of causal logic, it is necessary to avoid explaining 'impunity' with 'impunity'.

An important assumption of the framework was that combatants would develop beliefs about the likelihood of punishments, based on social learning, i.e. the events and processes which happened around them and within the armed group. My hypotheses were based on a supposition that weak enforcement and pardons could contribute to impunity by 'teaching' combatants that there is a low risk for committing sexual violence and that

consequences will not be severe. To be more specific, three factors — *flawed prohibitions*; *negligent authorities*; and *amnesties* — were proposed as conditions that lead to impunity.

The focus of the dissertation is between 1989 and the end of the first decade of the twenty-first century, 2011. Two main methods were used for gathering data. First, I constructed a dataset based on reports on sexual violence for 23 state and non-state armed actors in Burundi, the DRC, Liberia, Mozambique, Sierra Leone and South Africa, during the first three years after war. Only those actors that had signed comprehensive agreements and were not in conflict with one another, were included. The events constituted the main data for assessing whether or not armed actors that had received amnesties in peace agreements were more or less likely to be associated with post-settlement sexual violence. Though not entirely satisfactory as sources for such data, 137 events of post-settlement sexual violence were identified through Amnesty International and Human Rights Watch reports; newspapers and media agencies; and the US State Department human rights country reports.

Second, evidence for the comparison of CNDD-FDD and FNL rebel groups in Burundi was based on 19 focus groups with ex-combatants. A total of 74 individuals (10 female, 64 male) participated in the focus groups. In this study, 32 participants had been fighters in CNDD-FDD between 1993 and 2006. Of these, 31 percent (10 out of 32) were women and 69 percent (22 out of 32) were male. Importantly, four of the women from CNDD-FDD left it to join FNL. Most of the ex-combatants from CNDD-FDD had served under Pierre Nkurunziza, currently president of the country. The focus group data gathering also included 44 participants who had been fighters in FNL between 1994 and 2009. Of these, 14 percent (6 out of 44) were women and 86 percent (38 out of 44) were male. All of the FNL ex-combatants served under Agathon Rwasa, now a prominent opposition leader in Burundi.

Amnesty and Post-settlement Sexual Violence

The collection of post-settlement sexual violence, and the comparison across 23 armed actors, yielded several distinct observations about these acts, as well as the link between amnesties and their occurrence. First, many of the 137 events recorded involve more than one type of sexual violence. Approximately 30 combinations of violence were identified,

ranging from single incidents of rape; to combinations of multiple rapes with variations on gang-rape, mass rape, sexual slavery, torture or harm to children. Second, victims are grossly under-counted and un-identified in the reports on post-settlement sexual violence. About 44 percent (61 out of 137) of post-settlement sexual violence events had an unknown number of victims. Third, confirming previous research (Nordås, 2011; 2012) government security agents, police and army personnel were more likely to be associated with reports of post-settlement sexual violence than were members of the rebel groups. Fourth, a small percentage of particularly large-scale post-settlement sexual violence events was linked to just three actors, the Congolese Liberation Movement (MLC) in the DRC; Renamo of Mozambique; and the RUF in Sierra Leone, all in the first post-settlement year. Fifth and finally, most of the armed actors in this study reduced their levels of sexual violence within the three years after settlement.

An important finding is that amnesties are ubiquitous. I expected some of the peace agreements to have no amnesty provisions at all. This was based on the prevailing view within the international community that amnesties should not be given to armed actors suspected of committing violations of international human rights and humanitarian law. Nonetheless, it was found that all nine agreements for the actors in the dataset included some form of amnesty. The majority of actors were eligible for partial amnesty in agreements signed in Burundi, the DRC, Sierra Leone and South Africa. However, the General Peace Agreement (AGP) (1992- 10-04) for Mozambique and the Abuja II Peace Agreement (1996-08-17) of Liberia provided *blanket amnesties* to signatories. A partial amnesty would include truth-seeking conditions, address serious crimes under international law or explicitly provide for a tribunal to investigate and hold accountable perpetrators of war-related human rights violations. A blanket amnesty in a peace agreement had none of these limiting pre-conditions.

I expected to find lower rates of sexual violence for the Burundian, Sierra Leonean, DRC and South African actors that had received partial amnesty. This was not the case. More post-settlement sexual violence events were associated with these groups, than with the Mozambican and Liberian actors. This means that blanket amnesties co-vary with a *lower* number of post-settlement sexual violence reports. This lends credence to a

surprising and novel argument that pardons, at least in form of amnesties arising from the peace process, do not lead to sexual violence.

Comparing Armed Groups: CNDD-FDD and FNL

Burundi

Burundi's civil war of 1994-2008² followed a long succession of mass political violence. From independence in 1962 until the end of the twentieth century, tensions between the ruling Tutsi minority and the excluded Hutu majority led to violent rebellions by the latter and ensuing retaliation by the former. Large-scale massacres occurred in 1965, 1972, 1988, 1991 and 1993, followed by internal displacement and exile of hundreds of thousands of mainly Hutu refugees. Some estimate that "over the past fifty years, more than 500,000 Burundians have been killed or maimed and over one million have been displaced" (Mthembu Salter, Elana, and Kikoler, 2011:2). None of the organisers have been brought to justice.

A history of sexual violence

In terms of rape, Burundi's 1981 penal code imposed a prison term of 5 to 15 years (Government of Burundi, 1981). The sentence was proportional to the crime, with a maximum of the death penalty if the rape resulted in the victim's death (GoB, 1981:Art.386). But it is not evident that there were many investigations, prosecutions and sentences (Author Interview 9, 2011; Author Interview 17, 2013), even after revisions to the law in 2009 (GoB). References to sexual violence can also be found in the Arusha Peace and Reconciliation Agreement; in the CNDD-FDD ceasefire agreement of 2002; and in the FNL Comprehensive ceasefire agreement of 2006. A reform of the law against sexual violence was in the process of promulgation until 2014.

Within the broader social context, forced marriage appeared prominent before the war (Seckinelgin et al, 2011; Skloot, 2009). Victims were stigmatised for reporting sexual violence (Author Interview 10, 2011). Gender relations were not equal, with women and

² Generally, the civil war is described by scholars and policymakers as taking place between 1994 and 2006 or even 2003. Since the conflict continued between CNDD-FDD and FNL after 2006, I prefer to describe the war period as 1994-2008 when FNL registered as a political party and settled its conflict with the then government, which was governed by the CNDD-FDD.

girls discriminated against in most spheres of political, social and economic life (Daley, 2007). Many believe that the levels of sexual violence in Burundi are high as a result of the civil war. In 2013, the police's national coordinating office for Women, Ethics and Welfare explained to me that the majority of perpetrators of rape and domestic violence were ex-combatants of Burundi's civil war (Author Interview 20, 2013). The ex-combatants I met with were aware of the new legislation that required perpetrators be tried and sent to prisons. However, many also acknowledged that "...sexual crimes are permitted because of poverty and the judiciary is corrupted" (Focus group 7, 2011).

CNDD-FDD: Rebel army

From its inception in 1994, CNDD-FDD encompassed different political, ethnic, religious, ideological and military 'cultures'. It began as a network of activists, intellectuals and Hutu military trainees from Burundi's Higher Institute of Military Officers (ICSAM). It refused to sign the 2000 Arusha agreement, but in 2003 agreed to a settlement that was predicated on many of the guidelines and stipulations of Arusha. CNDD-FDD underwent many internal splits and divisions, one of which resulted in Pierre Nkurunziza's take-over of leadership of the rebel army in May 1998. Between 8,000 and 12,000 armed soldiers were part of CNDD-FDD (Nindorera, 2012:15). Less than 5 percent of the group was made up of women, who were not represented on the CNDD-FDD high command (Nindorera, 2012:16). The armed group relied on support from a range of sources (Dilworth, 2006) from taxing the Burundi population in areas it controlled and support from exiled and refugee groups, to cooperation with governments in Kinshasa and Dar es Salaam. Arms, funds, travel documents and safety were provided by neighbouring countries. Presidents Mobutu, Kabil Sr. and Kabil Jr. exchanged their support for CNDD-FDD's involvement in fighting on their behalf inside the DRC (Nindorera, 2012). Meanwhile, the group established parallel policing and local administrations inside Burundi; developed a way to secure more financial support from the Hutu diaspora; engaged in systematic ransoming of vehicles; carried out forced recruitment through abductions and diverted humanitarian support, including food, from refugees (Author Interview 19, 2013). These practices were, however, arranged within a diverse organisation, with differences causing tensions about how to organize the rebel

group, and which aims to pursue (Nindorera, 2012). Members of the movement who had been part of the Burundi armed forces or had formal military backgrounds disagreed with more “informally trained fighters” about the importance of a military hierarchy and methods for discipline (Nindorera, 2012, 16).

FNL: The believers

FNL emerged out of Burundi's 1972 genocide, and operated as a peasant guerrilla movement during the civil war of the 1990s. Its political arm, Palipehutu was founded by Rémi Gahutu, at refugee camps in Tanzania in April 1980 (Lemarchand, 1994:144). The movement clung to a stern ideological viewpoint that focused on the oppression of the Hutu and vilified the Tutsi minority for its violent past (Watt, 2008:86). The armed group was estimated as a force of 2,000 to 3,000 fighters, and this was “most of the group’s total manpower” (IRIN News Service, 1999). An unknown, but large minority within the movement were women. It was most active in Bujumbura Rural, Bubanza and Cibitoke, in eastern Burundi and along the border with the Democratic Republic of Congo (then Zaire). Among other strategies, it raised funds for operations by taxing villagers and residents of Bujumbura suburbs and recruited child soldiers. It is infamous for selective assassinations and ambushes of civilians identified as Tutsis, the most notorious example is the Titanic Express incident in 2000. FNL fighters also participated in the massacre of 153 Banyamulenge Congolese refugees in Gatumba, in 2004 (Watt, 2008:86-87; Human Rights Watch, 2004). The FNL was considered a negative force under the Lusaka Accords of August 1998. It was first invited to the Arusha talks in 2000. However, it demanded radical ethnic re-distribution and refused to participate in talks until 2003 when CNDD-FDD signed a ceasefire. By then, Agathon Rwasa, a grassroots organizer and some would say, hardnosed Christian zealot, was the leader of FNL. Its members were required to espouse Christian, born-again, evangelical beliefs. They held prayer sessions regularly, including before and after offensive operations. FNL employed some similar revenue-generation strategies as CNDD-FDD. However, it never managed to secure widespread funding from the region and relied heavily on local civilian support for information, recruitment, food and other supplies.

The rebel groups and sexual violence

Inviolable proof about levels of sexual violence committed by the two rebel groups is difficult to obtain. However, through an examination of the sources used for the larger post-settlement exploration, there is enough evidence to make an estimation.³

Comparing the two, it was clear that CNDD-FDD committed more sexual violence in the early stages of the civil war. However, after CNDD-FDD's democratic ascension to power, between 2005 and 2011, reports of the Burundi government's sexual violence acts were more numerous than that of FNL. Since the two armed groups continued to be in conflict (despite a number of peace agreements) until 2008, this difference is arresting. The CNDD-FDD government was linked to 16 reports of events between 2005 and 2011 while FNL was attributed to three. Most strikingly, FNL was not associated with reports of sexual violence from 2004 to 2007. Moreover, there is no evidence that FNL used sexual violence in its more infamous assaults on civilians, such as the August 2004 attack on a refugee transit centre in Gatumba (in Bujumbura Rural Province). The FNL is also operating in Uvira, South Kivu, DRC, and its fighters have not been reported to commit sexual violence as part of their operations (Correspondence Van Acker, 2014).

Armed group impunity for sexual violence

The dissertation finds that CNDD-FDD and not FNL adopted beliefs of armed group impunity for sexual violence. In most respects, the two rebel organisations were similar. However, CNDD-FDD cohorts regularly underestimated the consequences for sexual violence. In their experience, CNDD-FDD perpetrators would not necessarily be punished for sexual violence—it all depended on who did what, against whom and when. Penalties were unclear and at times assumed to be non-lethal: perpetrators could be demoted, beaten or denied food and water, or they might be killed. But, it was possible to get away with rape. In contrast, the FNL former fighters were overwhelmingly certain that sexual violence would result in severe consequences, mainly death, which applied to foot-soldiers as well as commanders. They believed in this outcome consistently and

³ This comparison of the rebel groups had a different timeframe from the post-settlement sexual violence sub-study discussed earlier. In this qualitative comparison, I recorded sexual violence during the civil war and the three years after a final settlement, i.e. 1998-2011.

coherently. Of the two, CNDD-FDD former fighters were prone to describe sexual violence in war and in peace with euphemistic language. The concepts of love and romance were iterated in their descriptions of rape and forced marriage. Sexual violence was considered a commonplace way of securing sexual partners. Desire was a justification for coercive sexual encounters. The ex-FNL members however, more often depicted rape as illicit and harmful, despite its frequency in the wider society. For ex-FNL fighters, such violence was not attached to desire but to the perpetrator's weakness.

The differences between these two frameworks of sexual violence may be negligible, particularly when taking into account the impact of sexual aggression and coercion on victims. They may nonetheless feel the same stigma and violation regardless of how the community frames such acts. However, considering research on social learning mechanisms and their role in preventing sexual aggression, the two frameworks are worth noting. Henry et al suggest that impunity co-varies with individuals' diffusion and displacement of responsibility, distortions of consequences and euphemistic labelling (Henry, Ward and Hirsberg, 2004: 550). The different ways of labelling sexual violence indicate that CNDD-FDD ex-combatants were likelier to obscure and distort responsibility for sexual violence. Former FNL foot-soldiers recognised desire, but believed that giving into it was a sign of human frailty, sin, selfishness and indiscipline.

Impunity is not necessarily 'absent' or 'present', and therefore it is not an all or nothing outcome. Among CNDD-FDD, impunity was particularly contingent. Punishments were meted out to perpetrators who had violated young children or the relative of a powerful member of the organisation. Significantly, contingency was not as evident among FNL fighters, who had a more consistent sense that sexual violence would also result in dire consequences for higher ranking perpetrators. Unlike CNDD-FDD, the FNL fighters did not distinguish as different, wartime rape of co-combatants or civilians on one hand, and coercive sex with minors and relatives of commanders. This might explain why ex-FNL respondents, mainly, did not provide caveats for accountability.

Finally, peer policing played an important role. To exemplify, CNDD-FDD foot-soldiers were unlikely to censure one another for relationships or events of a violent, sexual nature. In contrast, FNL combatants exposed their guilty brothers at arms.

Fighters would publicly denounce one another for commission of sexual violence. They encouraged confessions for disciplinary infractions, including for coercive sex. Possibly, some of these exercises in public shaming could be based on a desire to harm a rival for other reasons. Female combatants might declare that a consensual sexual act or events was actually rape. Or, a rape did not take place, but a member wanted to ‘get rid’ of another combatant. Regardless, the pressure to conform did not emanate only from the top. Evidence of this peer pressure was missing in the testimonies from the CNDD-FDD ex- combatants.

Flawed prohibitions

In the two cases, the presence or absence of flawed prohibitions determined the occurrence of armed group impunity for sexual violence. CNDD-FDD’s code of conduct was mainly transmitted informally, and in an *ad hoc* manner, while FNL had a written and documented sanction against sexual violence. The ex-combatants of CNDD-FDD did not recall, with any uniformity, the parameters of punishment. New recruits and members were not given its content orally. In contrast, FNL recruits were indoctrinated against sexual violence. There was a written code of conduct and a culture of documenting accusations as well as records of punishment. Even though more powerful FNL leaders might have faced reduced sentences, the death penalty was known unvaryingly and witnessed widely. All ex-FNL members could recite the rationale and content of the armed group’s prohibition. This difference in the prohibition and its effect on levels of impunity, confirm that combatants require uniform and clear codes in order to understand the particular liabilities they face. Lacking clear instructions creates uncertainty and generates impunity.

Negligent authorities

Both CNDD-FDD and FNL had authorities that were at one time or another, in one way or another, negligent. The leaders in each group shared some similar characteristics. Authorities held tremendous power over who would receive a penalty. And yet, the armed groups diverged in some interesting ways. In CNDD-FDD, authorities were negligent about the frequency of punishment. Since they also engaged in various forms of

sexual violence, they were complicit in undermining the punishment norms of the group. Combatants could construe whether or not a commander would punish a perpetrator based on if he also engaged in sexual violence, even if it was a ‘non-violent’ type of sexual coercion involving the taking of a ‘bush’ wife. Such actions highlighted hypocrisies within the CNDD-FDD leadership. Commanders also utilised their authority to ensure sexual submission and ordered subordinates to guard or dismiss women and girls. Similar practices occurred within FNL on a minor scale. The study only finds that the FNL leadership mainly took on sexual partners toward the end of the conflict, after formally instituting a less costly punishment for sexual relationships and permitting some marriages among the leadership. More importantly, even if they could use their authority to commit rape or dismiss charges against one another, leaders in FNL still faced demotion if they broke the code. In this regard, discipline was not undermined by the hierarchy. While its leaders enjoyed an elevated status, foot-soldiers were equally invested in fostering cohesion and discipline through peer policing. Moreover, FNL’s leadership was acutely aware of its dependence on the civilian population. Its combatants revealed a strong sense of reliance on civilians for information, supplies and shelter. This was not the case with CNDD-FDD which while controlling local civilians, had a more robust base of support from external parties and engaged in forced recruitment. However, since both cases ‘present’ with negligent authorities, it cannot be a single cause of impunity.

Amnesties

Concerning amnesty, the rebel groups shared a common experience of having been recipients of amnesty. While CNDD-FDD was the party to a partial amnesty from 2003 and FNL had to negotiate hard for provisional immunity in 2005 and 2006, the two groups have enjoyed *de facto* blanket amnesty ever since. The ex-combatants in this study had limited or poor understanding of the amnesty. Across the focus groups, amnesty was described as a new beginning, an opportunity to put down weapons. For many, there was a conflation of amnesty with the prospect of securing jobs as members of an integrated police or army. Even though they understood little about the specifics of each group’s amnesty conditions, it had never occurred to them that perpetrators of sexual violence would be eligible for an amnesty. They distinguished between wartime and peacetime

sexual violence. Similarly, the authorities interviewed from CNDD-FDD and FNL were conscientious in their depictions of the amnesty conditions for their particular groups. Agathon Rwasa was particularly careful in formulating his responses; for him, FNL and the other parties to the civil war were only entitled to a limited, conditional amnesty and the country needed the implementation of a genuine truth and reconciliation commission (TRC) as outlined in the Arusha agreement (Author Interview 18, 2013). Among CNDD-FDD former high ranking commanders, the amnesty was also limited and time-bound. This confirms that armed group members on all levels distinguish between wartime absolution and the conditions for long-term accountability and justice.

Finally, it appears that post-settlement issues, such as corruption, play a more significant role. The ex-combatants in this study pointed out, with some consistency, the widespread corruption of the police and courts in Burundi. They provided examples of individuals escaping punishment through bribery. And, they noted that powerful individuals in government, particularly CNDD-FDD officials, benefited from this system of corruption. It seems much more likely that post-war corruption carries greater blame in the generation of impunity, than amnesty. It is also noteworthy that many of these problems were present before the war, and hence cannot be attributed to amnesties in peace agreements.

Policy Conclusions

As this study has emphasised, amnesty is not a conduit for armed group impunity for sexual violence. However, in order to prevent sexual violence, the international community opposes amnesties for individuals suspected of serious crimes. This policy position warrants further reflection. On one hand, these serious crimes are abhorrent and the victims of genocide or mass rape deserve justice. On the other hand, armed groups expect some form of amnesty as a way to guarantee their safety and opportunity for transitioning into post-settlement positions of power. These actors will continue to expect some type of pardon, even if it is conditional. However, the Burundi context shows that regardless of the provisional or limited aspects of an amnesty, full-scale justice can still remain elusive. Nevertheless, I have not found evidence to suggest that removing amnesties deters sexual violence. Other post-settlement processes are more important.

The justice mechanisms which follow a settlement (whether at the international level, through national courts and TRCs or by a hybrid approach), probably matter more in terms of leveraging partial amnesty. Overall, however, this study's findings indicate that policymakers should carefully question the assumption that blanket amnesties generate impunity.

Finally, the study clearly motivates for future policies that would increase the likelihood of armed group enforcement of norms against sexual violence. FNL was successful in controlling the sexual violence of its fighters because of its clear and constant code, which rarely deviated (except through an institutionalized process). It had an internal belief structure, Christianity, to maintain cohesion and peer policing. And, it seemed willing to do the hard work of fostering accountability because it needed to maintain good relations with the civilian population. Thus, armed groups have incentives and unique ways to control sexual violence. It is not clear whether or not these incentives or mechanisms are properly integrated into policy formulations to address sexual violence in conflict. A strategic policy approach would concentrate on the ways armed groups are organised, offering carrots such as the opportunity to negotiate, in exchange for effective prohibitions through clear and constant codes of conduct. It would simultaneously implement robust protection of civilians and coordinated use of force to reduce the potential for forced recruitment. It would cut off external sources of weapons and financing. Sequencing these policies might also be necessary, with protection of civilians followed by international economic sanctions, arms embargoes, and public campaigns and boycotts against corporations and private interests that facilitate the funding of perpetrator-groups. Perhaps then, a new influence – international intervention – will lead to stronger justice and accountability for wartime sexual violence.

References

- African National Congress (ANC). (1996). "Submission to the South African Truth and Reconciliation Commission (TRC)." [Online] Available: <http://www.anc.org.za/show.php?id=2639> [24 Nov 2014].
- Author interview 9, (2011). Women's Law Association staff member. Bujumbura, 6 Dec.
- Author interview 10, (2013). NGO consultant and researcher. Bujumbura, 19 Jan.

- Author interview 17, (2013). Former Palipehutu-FNL fighter. Bujumbura, 30 Nov.
- Author interview 18, (2013). Agathon Rwasa/FNL leader. Bujumbura, 2 Dec.
- Author interview 19, (2013). Former government official, Bujumbura, 2 Dec.
- Author interview 20, (2013). Christine Sanibionba, Chief National Commissioner for Police Unit for Women, Ethics and Welfare. Bujumbura, 3 December.
- Cohen, D.K. (2013). "Explaining rape during civil war: Cross-national evidence (1980–2009)." *American Political Science Review* 107(03), pp: 461–77.
- Daley, P. (2007). *Gender and genocide in Burundi: The Search for spaces of peace in the Great Lakes region*. Oxford, Bloomington, Kampala, Nairobi and Auckland: James Currey, Indiana University Press, Fountain Publishers, East African Educational Publishers and Jacana Media.
- Dilworth, A. (2006). *The CNDD-FDD (Nkurunziza) and the use of child soldiers*. Chateau de Bossey, Switzerland.
- Focus Group 7 (G7). (2011). Focus group of CNDD-FDD former combatants. Bujumbura, 2-December.
- Government of Burundi. (1981). Reform of the criminal code. Burundi. Public Law No 1/6, 4 April.
- . (2009). Revision of the criminal code, law decree. Burundi. Public Law No 1/05, 22 April.
- Human Rights Watch (HRW). (2004). *Burundi: The Gatumba massacre, war crimes and political agendas*. New York, London, Brussels, Nairobi: HRW.
- IRIN News Service. (1999). "DRC: Glossary of main rebel groups operating in the Great Lakes region." [Online] Available <http://www.irinnews.org/report/7669/drc-glossary-of-main-rebel-groups-operating-in-the-great-lakes-region> [15 Oct 2014]
- Lemarchand, R. (1994). *Burundi: ethnic conflict and genocide*. Cambridge: Woodrow Wilson Centre Press and Cambridge University Press.
- Marks, Z. (2013). "Sexual violence in Sierra Leone's civil war: 'Virgination', rape, and marriage." *African Affairs* 113(450), pp:67–87.
- Mthembu-Salter, G, B. Elana, and N. Kikoler. (2011). *Prioritizing protection from mass atrocities: Lessons from Burundi*. Global Centre for the Responsibility to Protect, Occasional Paper Series.

- Ndinga-Muvumba, A. (2012). *Preventing and punishing sexual violence: The Work of the International Conference of the Great Lakes region*. African Centre for the Constructive Resolution of Disputes (ACCORD), Durban, Policy and Practice Brief, Issue 017, August.
- Nindorera, W. (2012). *The CNDD-FDD in Burundi: The Path from armed to political struggle*. Berlin: Berghof Transitions Series; No 10.
- Nordås, R. (2011). *Sexual violence in African conflicts*. Centre for the Study of Civil Wars. Oslo: Peace Research Institute of Oslo, Policy Brief 01.
- . (2012). *Sexual violence on the decline? Recent debates and evidence suggest ‘unlikely’*. Centre for the Study of Civil Wars. Oslo: Peace Research Institute of Oslo, Policy Brief 03.
- Paris, R. (2004). *At war’s end: Building peace after civil conflict*. New York, NY: Cambridge University Press.
- Seckinelgin, H., J. Bigirumwami, and J. Morris. (2011). “Conflict and gender: The Implications of the Burundian conflict on HIV/AIDS risks.” *Conflict, Security & Development* 11(1), pp:55–77.
- Skloot, F. (2009). *Shattered lives: Immediate medical care vital for sexual violence victims*. Brussels: Médecins Sans Frontières.
- UN Security Council (UNSC). (2008). *Resolution 1820*. New York, NY: UNSC, S/Res/1820, 19 June.
- . (2009). *Resolution 1888*. New York, NY: UNSC, S/Res/1888, 30 September.
- . (2010). *Resolution 1960*. New York, NY: UNSC, S/Res/1960, 16 December.
- . (2013). *Resolution 2106*. New York, NY: UNSC, S/Res/2106, 24 June.
- Van Acker, T. (2014). Correspondence, Conflict Research Group, Ghent University, 18 November.