Constructing Humanity's Conscience:
Violence, Victims, and the Practice of Justice in the Congo

By

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Abstract

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The International Criminal Court is a deeply divisive international organization. To some, it is the political pawn of neocolonial states; while for others, it represents hope for millions of victims of the world's gravest crimes. The autonomy and authority of international justice, however, remain poorly understood. In this dissertation, I examine the social conditions of power in the international justice field, focusing on the nexus between the ICC's organizational development and its interactions with communities in the Ituri district of the Democratic Republic of the Congo. Ituri, a small and relatively unknown corner of northeastern Congo, is where the ICC has pursued its first trials and will soon implement its first reparations orders for victims of war crimes and crimes against humanity. Contrary to notions of victims as a mere rhetorical or symbolic concern of global governance, I argue that victims have been central to the ICC's struggles to consolidate its autonomy and overcome fundamental sources of illegitimacy, both from the states whose sovereignty it threatens and the communities whose interests it claims to represent. To manage these threats, the ICC has come to depend on a variety of victim-centric practices, the majority of which ultimately serve its institutional interests while reinforcing local cycles of violence. At the same time, the ICC has displayed remarkable flexibility in crafting creative responses to victims that can serve as models for the practice of justice in the future. Ultimately, this analysis clarifies the social conditions of autonomy in fields of global governance, highlighting the productive practices that shape their authority and their relationship to vulnerable populations.

To Mom

Contents

Acronyms

AFDL	Alliance of Democratic Forces for the Liberation of Congo
ASP	Assembly of States Parties
CAAF	Children associated with armed forces
CAR	Central African Republic
CNDP	National Congress for the Defense of the People
DDR	Disarmament, demobilization, and reintegration
DRC or Congo	Democratic Republic of the Congo
ECCC	Extraordinary Chambers in the Courts of Cambodia
FARDC	Armed Forces of the Democratic Republic of the Congo
HRW	Human Rights Watch
ICC or Court	International Criminal Court
ICRC	International Committee of the Red Cross
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IMT	International Military Tribunal (at Nuremburg)
IR	International Relations
IRIN	Integrated Regional Information Networks
MLC	Movement for the Liberation of Congo
MONUSCO	The United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
OHCHR	Office of the High Commissioner of Human Rights
OPCV	Office of Public Council of Victims
OTP	Office of the Prosecutor
OVC	Orphans and vulnerable children
PHR	Physicians for Human Rights
RCD	Rally for Congolese Democracy
RHA	Réseau Haki na Amani
STL	Special Tribunal for Lebanon
TFV	Trust Fund for Victims
UN	United Nations
UNSC	United Nations Security Council
UPC	Union of Congolese Patriots
VPRS	Victims Participation and Reparation Section

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During this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity.

Preamble, Rome Statute

Chapter 1

The Conscience of Humanity: From Nuremburg to the Congo[1]

"The worldwide scope of the aggressions carried out by these men has left but few real neutrals," cautioned Robert H. Jackson, Chief of Counsel for the United States at the International Military Tribunal in Nuremburg in 1945. "We must summon such detachment and intellectual integrity to our task that this Trial will commend itself to posterity as fulfilling humanity's aspirations to do justice" (Jackson 1945). Almost sixty years later, on July 16, 2003, the Prosecutor of the newly created International Criminal Court (ICC or Court), Luis Moreno Ocampo, declared a small and relatively obscure corner of northeastern Democratic Republic of the Congo (DRC or Congo) called Ituri District as "the most urgent situation" for his newly created Office of the Prosecutor (OTP) (OTP 2003). It was a stark contrast to the Second World War. The Ituri conflict had pitted a number of Congolese ethnic groups with historic class differences against each other in a struggle over natural resources (Human Rights Watch 2003; IRIN 2002). While the broader Congo Wars were alleged to have left millions dead through disease, displacement and the destruction of infrastructure, the OTP cited an estimated 5,000 Ituri deaths at the time of its press release, amid allegations of summary executions, systematic torture, unlawful arrests, abductions and sexual violence.

[1] Photo on previous page: Ruins from the Ituri War in Nyankunde, Ituri, DRC, formerly referred to as "The Switzerland of Ituri" (Peter J. Dixon).

Nuremburg and Ituri represent two different visions of humanity's conscience under international criminal law. Where the Nuremburg Trials were led by a coalition of global powers united against a single, defeated state, the Ituri trials have pitted the Prosecutor of an independent and controversial international court against regional warlords in a part of the world that most of humanity has never heard of. Nuremburg was chosen because it was symbolically important to the Nazi Party, which held its annual propaganda rallies in the town. For international justice of the mid-twentieth century, it was the perfect war. Ituri, on the other hand, represents the seemingly perfect war for today's international justice. It was attractive to the Prosecutor because it was linked to violence in the Congo, which had already been recognized as the deadliest war since World War II (International Rescue Committee 2004), and because as a *sub*-national war it seemed to comply with the ICC's political constraints. Unlike the Allied Powers, the Prosecutor of the ICC has no army backing her decisions but is instead dependent on the leaders of the states she is investigating. The Ituri War had pitted regional warlords against each other in a bid for regional dominance—getting rid of them would only help Congo's president, Joseph Kabila.

The Challenge of International Justice

The shift from Nuremburg to Bunia as the central terrain of international justice demonstrates both the expansion of the field of international justice itself and the new challenges it faces as a result of this expansion. In this dissertation, I seek to chart this shift and outline both the consequent struggles and the myriad formal and informal practices that have emerged to deal with them. In so-doing, I seek to make two contributions to our understanding of the relationships between law, society and global governance. First, scholars of international justice have found it challenging to understand the field of international justice from a strictly legal perspective since it simultaneously combines elements from human rights, diplomatic and criminal-legal fields (Boas 2012; Dixon and Tenove 2013). Sociology is well placed to advance our understanding of what international justice *is* and how it works. Second, this dissertation draws on the theory of fields to build our understanding of how fields are constructed in significantly new and challenging contexts. While recent work on interstitial and global fields highlights how these fields work, in particular how power flows through them and accrues to different actors in them (Medvetz 2012a; Mudge and Vauchez 2012), these do not tell us about the challenging process of field-building that such actors must go through. The relatively nascent field of international justice and its work in the remote corners of Ituri district constitute useful, global terrain to inform contemporary theories of fields as to how field-building and consolidation work in global, interstitial settings.

By "interstitial" I refer to two fundamental qualities. First interstitial fields possess close relationships to several other, autonomous but related fields, so that we can say they exist at the intersection of these fields. Medvetz (2012b) developed this argument in application to the world of American think tanks, which occupy a position that is simultaneously strategic and precarious in relation to academia, government, and the media. Like the field of think tanks, international justice exists at the intersection of several autonomous, global fields: criminal justice, international diplomacy and transnational human rights advocacy (Dixon and Tenove 2013). And while we cannot quite talk of a global academic field, international justice maintains very close ties to a number of domestic academic fields, ranging from law to conflict and peace studies.

Second, interstitial fields are spaces where actors can often possess, and barter, the multiple forms of capital present across its neighboring fields. Thus, in think tanks, successful staff can draw on media

savvy, academic wonkiness and diplomatic acumen to operate in and across the media, academia and politics. Tenove and I put forth a similar argument in relation to international justice, where actors not only come from multiple sectors outside the law but also draw simultaneously on multiple forms of authority present in the fields of diplomacy, criminal justice and human rights. This has the duel effect of providing international justice actors strategic access to multiple forms of valuable, global capital while at the same time motivating numerous, internal struggles as actors vie for legitimate claims to authority. It also gives international justice an identity crisis, as its actors continually draw on and push away from the various forms of legal and non-legal capital to which they have access.

International justice is similarly "interstitial" to the field of American Think Tanks, but is even more precarious and ever-shifting. On one level, its members cannot as easily refer to commonly recognized credentials or markers of expertise to legitimize their positions. On a more profound level, its core objects—violence, victims, perpetrators, justice, etc.—constitute continually moving targets. These are moving because, while they are purported to have the gravitas of universality, they are at the same time very context-specific and complex notions. Such qualities, I suggest, are not unique to the field of international justice or even to international law in general. They are, rather, fundamental qualities of global fields that do not hinge on the authority and legitimacy of single, powerful states. Some of these are so context-specific as to never really "take root" as unitary fields, as understood in sociology. Transitional justice, for example, which has been described as a "non-field" (Bell 2009), is fundamentally torn between universal and particular visions of justice and the processes of transitioning from dictatorship to democracy or violence to peace (Shaw, Waldorf and Hazan 2010). Others like international justice however, continue to simultaneously expand *and* consolidate their boundaries, begging the question of how? The answer to this question lies in the analytical focus of the theory of fields: instead of focusing on the institutions that seemingly define a field, like the International Criminal Court or NGOs, our attention must be on the process of the field's object-construction. That is, it is through the struggles over a field's core objects, that a field becomes a field.

International justice, and its interactions with local conflicts in Ituri, provide particular analytic purchase on the question of how global fields engage in the precarious and challenging business of object-construction. On the one hand, as a fundamentally legal field, international justice magnifies the tension between the particular and the universal in a way that non-legal field's do not. Law is founded on claims to the universal (Bourdieu 1986). International law crystalizes this tension more-so than domestic law. International *justice*—which brings together the legal and the social—does-so to an even stronger degree. On the other hand, international justice is in a particular moment of growth and consolidation that makes it uniquely useful to study (Hagan and Levi 2005). While Nuremburg was in many ways the founding moment of modern international justice, the opening of the ICC in 2002 was a critical juncture that marked the field's true global reach and ambition. A little more than a decade in, international justice is still finding its feet.

The field of international justice and the construction of justice in Ituri help us understand how global fields reproduce themselves and consolidate their terrain in continually new and challenging contexts. The key elements on which my analysis is focused in this dissertation are thus twofold: first, the challenges that international justice actors encounter in managing and defining the field's objects; and second, the constant balancing acts and related practices in which international justice actors must engage as they struggle to manage these challenges. These practices range from rhetorical arguments over the conceptualization of victims to the use of workshops to teach local

Congolese partners how their interventions are not humanitarian assistance, but "transitional justice" projects.

Such practices, I suggest, are best analyzed as strategies to manage the fundamental challenges faced by actors in the field as they struggle to constitute its core objects. The challenges of international justice—and of global fields in general, I argue—are trifold: political, logistical and jurisdictional. In this dissertation, I am focused on the third. The political challenges of international justice are relatively well known: where the Prosecutors at Nuremburg had a coalition of victorious and powerful states to reinforce their legitimacy, the ICC is a treaty-based international organization that is not only *not* supported by many of the world's most powerful states but actively *opposed* by them. The logistical challenges are also relatively well known. The ICC has struggled with the day-to-day challenges of carrying out international criminal investigations in dangerous and inaccessible regions where it is often dependent on the very states it is supposed to be investigating. Its recent failure to advance cases against Kenya's current political leadership is a case-in-point.

The "jurisdictional" challenges of international justice, on the other hand, are less obvious. These are the gaps, inconsistencies and contradictions that arise when international justice actors encounter problems in the field to which their juridical tools are not well-suited. These are jurisdictional because they relate to the administration and implementation of international justice in practice. At the same time, they stem from the extension of international law into both geographic and social terrain where it is not always welcomed and does not always fit. In this dissertation, I focus on these jurisdictional challenges and the formal and informal strategies that actors have developed to manage them. I use Ituri to illustrate these challenges and strategies, and to chart their eventual consequences both for Iturians and the international justice field itself. Ituri, I argue, highlights that while the political and logistical challenges of international justice can be managed by intervening into certain conflicts and not into others, the field's jurisdictional challenges stem from the very development of the field itself and are in many ways inevitable, even in seemingly "perfect wars" like Ituri.

In Search of the Perfect War

World War II was in many ways the perfect war—and Nuremburg the perfect trial—for mid-century international justice because it pitted an alliance of superpowers against a single rogue state. Today, Ituri is seemingly the perfect war for the ICC. The wars of the late-twentieth and early-twenty first century are complex, both morally and politically (Blattman and Miguel 2010). There are no allies today united against a common state enemy like Germany and Japan of 1943. And the laws of war are playing catch-up to the conflicts they are meant to govern. When the ICC opened its doors in 2002, it faced not only the challenge of the shifting terrain of war, but also concerted opposition from the world's most powerful states and a simultaneous dependence on the very states it was meant to govern. It needed a war to serve the interests both of the project of international justice, founded on the idea that the world needs a global court, and the newly created international organization meant to operationalize this project. Ituri seemed to fit the bill.

Ituri, a relatively small and remote region of the eastern DRC, had been home to a brutal war where villages were burned to the ground and children recruited to commit horrible acts of violence and subjected to rape and other forms of sexual violence. And while Ituri is home to over a dozen ethnic groups, the Ituri War had pitted the two main ethnic groups—the Hema and the Lendu—against

each other, exacerbating historic class and ethnic divisions that bore similarity to the Hutu and Tutsi of Rwanda (Human Rights Watch 2003). Such ethnic-based violence, I and others have argued, played into existing and accessible tropes about African violence (Dixon Forthcoming; Sagan 2010). These tropes tend to cast African conflicts as savage wars fuelled by ethno-racial tensions rooted in longstanding grievances. Such a depoliticized vision of what in reality was a multifaceted and political conflict seemed to fit more easily within the ICC's diplomatic constraints than a conflict between the DRC's and its neighbors' leaders. At first glance, the Ituri War was a regional conflict that pitted sub-national warlords against each other and presented no real threat to national interests or sovereignty. Indeed, an ICC intervention likely served Kinshasa's interests. While the conflict's main actors were financed and armed by leaders in Kinshasa, Kigali and Kampala, the violence played out only on Iturian soil. And crucially, the conflict's warlords were (mostly) all in prison in Kinshasa.

For both Kabila and Ocampo, Ituri likely seemed a safe gamble. State leaders themselves operate according to a variety of logics under which it makes sense to engage the international justice project. States seek to engage with international justice on their own terms, in ways that require constant maneuvering but may bring substantial rewards. The goals pursued through this engagement go beyond simply "keeping international justice at bay" and include complex domestic and foreign policy objectives. The game is complicated, however, by the fact that international criminal tribunals seek to impose their own logic and priorities, or may at least not go along with every attempt to use them. However, there may also be spaces in which states and international criminal tribunals will come to mutually agreeable compromises. International criminal tribunals also have their own agendas of institutional development and capital acquisition that make them political players in these sorts of games, in ways that go far beyond what one might glean from their Statutes.

But while the political logics of the "international justice game", not to mention the Court's logistical shortcomings, are becoming increasingly clear as the project moves forward, the *jurisdictional* constraints of the international justice field are less well known. These are the myriad gaps between the international justice field's tools, concepts and forms of expertise and the realities into which it intervenes.

Almost ten years and four trials later, three of which are still ongoing, the reality of Ituri looks quite different from the perfect war Ocampo may have envisioned. While far more manageable than many of the other situations into which the Court has since intervened, Ituri exposed the jurisdictional struggles of the ICC and the broader international justice field to adapt to ever-changing geographies and rapidly expanding professional terrains. It has challenged the Court at every turn. The reality of the Ituri violence has proven more complicated than the Prosecutor's ethnic framing; civilians who suffered through the violence have not necessarily demanded justice and recognition in the ways assumed by the ICC; local intermediaries have not fully embraced the Court's concepts of "transitional justice"; internally, the ICC has struggled with inter-organizational competition over the legitimate right to speak for victims. These challenges, however, are not related only to the particulars of Ituri. Rather, they are more fundamental in origin, stemming from the very expansion of the field of international justice itself and the tensions, paradoxes, and struggles that accompany this expansion. In response, international justice actors have developed formal and informal practices to manage these challenges and in the process, reproduce the field itself. I use the Ituri conflict and trials to illustrate how these practices have developed and what their consequences ultimately are, both for the communities on whose behalf international justice actors claim to work and for the field of international justice itself.

Research Design

This dissertation draws principally on "global ethnography" (Burawoy 2001, 150), which entails the multi-sited, first-hand observation of the "production of globalization". Here, I focus on the production of one particular form of globalization—international justice—while seeking to draw lessons about global fields that can be extended to other facets of global governance. My research was not focused on the ICC per-se, but did involve 17 in-depth interviews with Court staff.[2] In partnership with an Ituri-based NGO with strong ties to the region, I conducted an additional 55 individual and group interviews with 182 leaders from Ituri's three most populous territories: Irumu, Djugu and Mahagi (Figure 1).

[2] Interviews were recorded and ranged from 1 to 2 hours.

Figure 1: Ituri District

Source: Rift Valley Institute

Source: Rift Valley Institute

The relatively recent creation of the ICC provided a valuable opportunity for global ethnography. As Burawoy (2001: 150) writes, "increasingly, social scientists have access to [global agencies"] inner workings….These are not all powerful behemoths that carve up the vulnerable as they will. Their policies do not result from a seamless conspiracy of global elites. Their programs are hotly contested within the agencies themselves, and national, regional and local groups appropriate their effects for their own interests." Indeed, my interviews at the ICC highlighted a number of contested terrains where seemingly simple concepts entail very different interpretations in practice, both in The Hague and on the ground. These are both apparent and hidden, both spoken and unspoken and stem from agents' personal backgrounds and positions within the ICC and international justice itself (cf Bourdieu 1984, 1986).

For example, the ICC is celebrated as a "victim-friendly" institution of international justice (Funk 2010; Musila 2010) and its victim-centered practices constituted a major element of my interviews. The inclusion of victim-centric practices like reparations, outreach and participation came as the result of hard-fought battles during the Rome Statute Preparatory Committees. And the establishment of specific units within the Court to carry out diverse victim-related tasks, from protection to outreach to applications for participation, is hailed as an important step beyond the ad-hoc tribunals, which were criticized for focusing more on retributive than restorative justice and for having relatively little local impact. But actors in the ICC and broader international justice field, including within civil society, use the term "victims" lightly, rarely explicating the hidden meanings, assumptions and interests behind it. Defining who the victims are and who can speak for them is a key struggle within international justice (Fletcher and Weinstein Forthcoming; Weinstein et al. 2010).

The ICC is divided into three principle offices: the OTP, which handles investigations, the collection of evidence and the prosecution of accused perpetrators; the Chambers, where the judges and their legal officers work; and the Registry, which handles matters related to victims' participation and reparation, the Court's field offices and its various administrative functions. I interviewed staff from all three offices, focusing largely on attitudes and opinions about the Court's various victim-related functions. Unlike its predecessors, which were ad-hoc tribunals established for specific conflicts—Yugoslavia, Rwanda, Sierra Leone, Cambodia, Lebanon—the ICC places victims at the center of its judicial process. Victims of the crimes with which an accused person is charged can participate in trials through common legal representation, and victims are also eligible to receive assistance measures (prior to and outside the scope of individual trials) and reparations awards (stemming from guilty verdicts and ordered directly against a guilty person). In my interviews, I sought to highlight how staff from countries around the world and from diverse background (both legal and non-legal) manage the many tensions, obstacles, and contradictions that arise as they seek to put international justice into practice in remote communities like Ituri. To take the example of victims, such challenges stem from how to physically find them to how to reconcile their desires for immediate assistance with the Court's offerings of justice and recognition. I look more closely at the tensions involved in victims' reparation in Chapters 6 and 7.

In Ituri, I worked with the local organization, Réseau Haki na Amani (RHA – Justice and Peace Network), which maintains close ties and networks in all five of Ituri's territories: Irumu, Djugu, Mahagi, Mambasa and Aru. At the time, RHA was running a project that trained local leaders as "community liaisons". These leaders would work on local conflicts mostly related to land, cattle, farming, and ethnic tensions—the key local issues that brought Ituri to war in 1999. Working through RHA networks and with RHA staff, I conducted 55 group and individual interviews, speaking to a total of 182 subjects. These were members of the international community, customary

leaders, deputies (political representatives), local administrators, notables (a separate category of customary leaders which I discuss below), members of the civil society (churches and NGOs), and victims of the war who had been identified by RHA and were receiving support through one of their projects.

Working with RHA researchers who I trained in survey administration techniques (most had worked on surveys before), I also conducted a non-representative, semi-randomized survey in Irumu and Djugu territories, including the capital Bunia, which is in Irumu territory. These were divided between the general population and a survey targeting only local leaders, defined as traditional, political, administrative or civil society leaders in each surveyed locality. This was a non-representative survey for two reasons. First, the purpose was to inform my in-depth interviews and not to obtain a truly representative understanding of Iturians' attitudes. Second, I did not have at my disposal enough resources to implement a fully representative survey given its lower priority compared to the in-depth interviews. Drawing on RHA's existing networks, though, the survey was widespread enough that I could, with confidence, capture a diverse snapshot of opinions and attitudes.

Table 1: Ituri Sample Populations

	Interviews Conducted	Subjects Interviewed	Bunia	Irumu	Djugu	Mahagi
In-Depth Interviews (Individual and Group)						
International community officials	7	14				
Traditional leaders	12	84				
Political/administrative authorities	6	8				
Notables	10	11				
Civil Society leaders (Churches, NGOs)	16	38				
Victims groups	5	32				
TOTAL	56	187	55%	13%	28%	4%
Non-Representative Surveys (Population and Leaders)						
Semi-randomized survey (Population)		558	12%	36%	52%	-
Targeted survey (Local leaders)		273				-
TOTAL		831				-

While not representative or fully randomized, this was a semi-randomized survey because data collectors did randomly sample households according to standard methods within the zones where RHA had networks. Furthermore, in the fall of 2013, I joined a far larger survey effort in eastern Congo (Vinck and Pham 2014), which was representative and according to which I could compare and verify my own results. In the Congo, regions are organized administratively according to the following hierarchy: province > district > territory > >collectivity > groupment > locality/village. In my Ituri survey, researchers were assigned to a random selection of villages based on the

groupments where RHA has a presence. Once in each village, researchers working in pairs randomly selected 4 houses, starting in the center of each village and working their way to the outer edge in a randomly chose direction, and leaving a minimum of three households between each selection. Once each household, defined as a group of people who eat and sleep together, was selected, each interviewer established a list of names of either males or females over 17 who lived there and selected the first name to interview. If that person was not at home, the interviewer was instructed to attempt to interview them at least three times before moving on to the next name on the list. Interviews were same-sex, meaning that men interviewed men and women interviewed women. This resulted in a male-biased sample, however, because RHA employs more men than women. Results for the questions presented in this dissertation, however, did not appear to vary significantly by sex.

Table 2: Demographic data for Population and Leader surveys

Age	Population (%)	Leaders (%)
18-30	20	14
31-40	29	22
41-50	29	35
51-60	16	21
Plus de 60	5	7
Sex		
Male	60	76
Female	40	24
Education		
No education	12	6
Primary school	33	26
Secondary school	43	55
Professional training	8	4
University	5	8
Ethnicity		
Hema (Djugu and Irumu)	28	37
Lendu (Lendu from Djugu)	23	21
Ngiti (Lendu from Irumu)	14	13
Ndo Okebo	4	4
Alur	14	13
Nyali Kilo	1	1
Bira	5	5

Nande	3	1
Other	7	3
Displaced during war?		
Yes	89	94
No	11	6
After displacement		
Returned to same community	71	77
Returned to new community	22	15
Still displaced	7	8

*Urban = Bunia and Mongbwalu

The in-depth interviews lasted between one and two hours and were divided according to key social groups into which Ituri's leadership can be divided. All were voluntary and light refreshment was provided, but no compensation was offered.

- Members of the international community were all located in Bunia and came from international NGOs, UN agencies and the UN's peacekeeping mission in the Congo (MONUSCO). In all cases, interviews were conducted with the directors of each agency or key expert staff when referred accordingly.

- Customary leaders form a parallel system of governance alongside the country's public administration and the hierarchy is structured according to the traditional three-level administration by which Ituri is divided: (1) collectivities (also called sectors or "chefferies" depending on the predominant ethnicity), (2) groupments, and (3) localities (also referred to as villages). Each level has a customary leader (chief of collectivity, chief of groupment, etc.), most of whom are hereditary but some of whom are elected. Generally, this division follows ethnic lines, although the ethnic makeup of Ituri is more complex than is often recognized, especially by outsiders like the ICC. As I explore in more detail in Chapters 5 and 7, ethnicity was used by the Prosecutor of the ICC to frame the Ituri's violence, which was also politically and economically motivated. Customary leaders, who are always male, also maintain a close circle of advisors of elders ("vieux sages" or "old wise men"), judges and other allies. Interviews with groups of customary leaders were arranged in advance and the highest available chief was asked to assemble the groups with whom I spoke.

- Alongside the hierarchy of customary leadership, there is a public, elected government in the DRC. Representatives are called deputies and form the main link between Ituri and Kinshasa. There are also lower-level administrators whose positions correspond to the administrative division down to the territory level. Ituri is within the Province Orientale. In 2003, it was granted provincial status to put it on the same administrative level as North and South Kivu, for example, but the transition from district to province is still in process.

- Along with customary and politico-administrative leaders, there is a broader category of recognized leaders and influential figures referred to as Notables. These are traditional

leaders whose authority does not correspond to an administrative hierarchy but is widely recognized and regarded nonetheless. Notables are ethnic leaders and are generally consulted on all key issues and decisions. Some work in civil society, others are academics while others are in business. Not all are wealthy but all are recognized as influential thinkers, speakers, and writers. Notables from the Hema and Lendu communities, played a particularly instrumental role in fueling the Ituri conflict and are still active in Iturian society today. In the buildup to the 1999 war, furthermore, there was a pivotal meeting of the Hema and Lendu notables, where it was decided by all present that the two communities could no longer live together. These 1999 "Nyakasanza Accords", named for the neighborhood of Bunia where they took place marked a pivotal turning point in the buildup to the violence.

- I also interviewed members of Ituri's civil society. These leaders were from church-based or non-governmental organizations, many dedicated for years to promoting peace in Ituri, even before the war. They are usually respected leaders in their communities, and some are considered Notables. Most were living and working in the capital, Bunia.

- Finally, I interviewed groups of victims who had been identified by RHA and were receiving assistance through one of their projects. The victims who participated in my interviews had been selected and verified by RHA as victims of the war. Most had been displaced at some point during the war. Many lost their homes, livestock, crops and other possession. Most, if not all, lost family members. Some were physically injured. These were the most vulnerable of my study populations and interviews were thus conducted with certain precautions. First, I reached out to these subjects through RHA, with whom these subjects were familiar and from whom they had already been receiving support. RHA's community liaisons, who were from the some communities and ethnic groups, were present throughout the interviews. As noted, these were staff who has received some form of training and had experience working with traumatized groups. All interviews took place in group formats.

Dissertation Outline

This dissertation is divided into two broader sections. Chapters 2, 3 and 4 present the theoretical and historical contexts in which my research is situated: the theories of interstitial and global fields and how they apply to international justice, whose expansion can be charted from the trials at Nuremburg to the terrain of Ituri. Chapters 5 through 7 then draw on my research in The Hague and Ituri to outline the challenges and struggles that have stemmed from this shift, along with the formal and informal practices that international justice actors draw on to manage them, and the consequences for victims on the ground. While I tend to see international justice practices as fundamentally antagonistic to local conceptions of violence and justice in Ituri, there are also examples of where these practices provide international justice lawyers and practitioners with remarkable flexibility to recognize and respond to victims' lived experiences.

Chapter 2 outlines the theory of fields with which this dissertation is engaged. It presents Bourdieu's foundational work on fields, particularly the juridical field and the "force of law". Key to Bourdieu's conception of the law is the tension between law's self-presentation as universal and its dependence on the state for legitimacy and authority. This raises important questions for international juridical fields like international justice. Here, I draw on more recent work on global and interstitial fields. This literature takes up the fundamental question of how power works in fields where the state, or

what Bourdieu called the "field of power", cannot act as a guarantor of legitimacy, as in the case of international law, and/or where fields rely on multiple, sometimes conflicting forms of authority that link them to various neighboring fields, as in the case of think tanks. This dissertation builds on this research by analyzing how fields operating in ever-new and challenging, global contexts manage to expand and consolidate in the face of sustained pressure. This, in turn, informs our understanding of contemporary forms of global governance.

Chapters 3 and 4 introduce the geographic, cultural and historical contexts in which this dissertation is based. Chapter 3 introduces the Ituri War, its antecedents, its place within the broader Congo Wars and the contemporary issues with which Iturians live today. The Congo Wars are an enormously complicated topic in-and-of themselves and I do not seek to contribute to our understanding of them or to debates about how to create sustainable peace in the Congo (for these, see Autesserre 2008; Fahey 2011b; Stearns 2011). Rather, I seek in this dissertation to stress two points about the Ituri conflict in particular, which do not often receive attention in work on the Congo. First, while ethnicity played a key role in the buildup to and explosion of violence in Ituri, the Ituri War must be understood as a multidimensional conflict caused also by internal and external political and economic forces. Iturians have been living with ethnic tensions and associated land conflicts for over a century, but the ICC has used ethnicity as the central motivating factor to explain the region's bloodshed. Second, while the Congo Wars have received a significant amount of scholarly attention, as the deadliest period of violence since the Second World War, Congolese themselves do not necessarily understand the origins of and explanations for their war. In Ituri, the schools do not teach the history of the war and most Iturians do not understand the instrumentalizing role that internal and external politics played alongside ethnicity. Rather, most Iturians learn from their parents or elders that this ethnic group or that ethnic group started the war because they were angry, resentful or greedy, and that, in many ways, the war is not in fact yet over as is evidenced by the ongoing land conflict that continues to embroil Iturians today. This is important to fully understanding the consequences of international justice practices on Ituri today, particularly the use of ethnicity to frame the region's complex violence. I return to this theme in Chapter 7.

Chapter 4 then traces the historical context of the international justice field, from Nuremburg to Bunia. As the introduction to this dissertation highlights, the juxtaposition of Nuremburg and Bunia captures much of what is particular about international justice today. Where Nuremburg represented the unequivocal domination of several powerful states over Nazi Germany, Bunia represents the fundamentally ambivalent position in which the ICC Prosecutor found himself in 2006, having to conjure enough legitimacy to intervene into a remote corner of the Congo that few states probably cared about or had even heard of. Where Nuremburg represented humanity's aspiration to condemn evil through the law, Bunia highlights the contextual and contested nature of justice, as not only did many of Thomas Lubanga's "victims"—the child soldiers he was proven to have used in his militia—actually support him, but he was only one of several leaders ultimately responsible for the region's suffering. And where Nuremburg represented the triumph of law over impunity, Bunia highlights the centrality of non-legal authority in the justice process, where international justice actors have to act simultaneously as lawyers, humanitarian experts, psychologists, diplomats and more. Bunia, that is, underscores the truly global and interstitial nature of the international justice field today.

Also in Chapter 4, I outline what it means in practice for international justice to be global and interstitial, particularly in terms of the key challenges and obstacles it faces in making justice happen:

the simultaneous challenges of constructing wars that it can manage and victims that desire it. These are necessary for international justice to overcome four key challenges to its consolidation as a global field. First, it is continually expanding into uncharted geographies and conceptual terrain. Its geographic expansion means that its actors must simultaneously claim universal legitimacy and contextual expertise, from the Congo to the Palestinian Territories. Its conceptual expansion—to include not just retributive justice but also restorative and reparative justice elements—means that its actors must continually reconcile their limited legal resources with the need to account for masses of affected victims with diverse needs and desires. Second, and relatedly, this has forced the international justice field to open itself up to more than just legal authority and thus more than just the "force of law", which Bourdieu saw as central to the domestic judicial field. The field is not only now open to non-lawyers but lawyers themselves must also draw simultaneously on diplomatic, humanitarian, psychological and other kinds of authority. Third, international justice is an internally competitive field. Because it continually faces uncharted geographies and new conceptual terrain and is reliant on non-lawyers and non-legal forms of authority, its actors are often in disagreement with each other about how to navigate its obstacles and, ultimately, represent the fundamental problems to which the field must present itself as the solution. Finally, the international justice field is, at heart, illegitimate because it cannot depend on the authority of a single, powerful state or other authoritative actor the same way that domestic law can.

Chapter 5 then outlines the practices that international justice actors utilize to manage these inherent challenges. Indeed, international justice actors are well aware of the field's pressures from non-legal actors and forms of authority and often use the distinction between the legal and the non-legal to reinforce the field's professional boundaries. Here, declarations that "we're not the World Bank!" are used to underscore the fundamentally legal nature of the ICC, despite its inherent expansion into social and political realms.[3] Such boundary work extends also to the symbolic goods that international justice actors are selling to victims of grave violence. Victims, in the ICC's view, "want to be recognized" and it is this recognition that fundamentally sets the Court apart from the development and humanitarian actors present in the same conflict zones. Recognition is also supposed to be what also distinguishes the symbolic good of reparations from mere assistance (which I explore in detail in Chapter 6). The representational practices that international justice actors use in response to the field's core challenges also thus extend to victims and victims' reparation.

Chapter 6 looks in-depth at one particularly important international justice practice: the symbolic work that actors must perform to enact the distinction between reparations and assistance. On one level, this distinction is relatively easy to see: reparations are legal while assistance is not. But the difference is far from obvious, particularly in practice and especially when considered from the perspective of the victims who receive them. Rather, the differences between reparations and assistance must be actively constructed and reproduced. International justice actors stress five elements of difference to highlight elements that set reparations apart from development and humanitarian assistance schemes: that reparations entail the apportionment of responsibility, that they signify the recognition of victims, that they differ in terms of process, that they are different in form, and that they can be distinguished through their impact. In reality, however, none of these elements are sufficient markers of difference, especially from the perspective of victims on the

[3] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.

receiving end, for whom reparations, development and humanitarian assistance can simply be different means to the same ends of survival. International justice actors must work to reproduce these differences.

Chapter 7 lays out my arguments about the consequences for victims of the challenges of the international justice field and the productive practices actors use to manage them, using the Court's work in Ituri as an exemplary case study. Drawing on Nancy Fraser (1999), I refer to these consequences as the "politics of recognition". For victims of grave violence, these politics are twofold. First, vulnerable groups may actually be harmed through recognition if it is not managed well. For the ICC, for instance, the child soldiers it is seeking to recognize have been shown to do better when they are *not* recognized as child soldiers but rather more broadly as "vulnerable children" like orphans and the unemployed. Second, the recognition of international justice inspires competitive claims to victimhood in ways that jeopardize local opportunities for reconciliation. Third, the ICC's reliance on ethnic tropes to frame Ituri's violence and explain the motivations of its accused reinforces local misconceptions that ethnicity was the leading cause of violence. On the one hand, this plays into some leaders' agendas to use ethnicity as a wedge issue for motivating their constituencies. On the other hand, this hinders other leaders' efforts to reduce the importance of ethnicity in sparking the war, and to stress the war's domestic and international political elements. Ultimately, I argue, international justice could play a crucial role in increasing and adding nuance to local understandings of conflict. Because of the field's challenges—and the practices that actors have turned to in response—this has not been the case in Ituri. At the same time, there are ways that the international justice practices discussed in this dissertation also create opportunities and flexibility for international justice actors to account for the lived experiences of victims of grave violence in their responses. I discuss these briefly in Chapter 6 and in more detail in Chapter 7.

Chapter 8 concludes with broader reflections on international justice as a form of global governance and what it can tell us about the theory of fields. The growth of the ICC as an international organization—and its work on the ground in Ituri—highlight how contemporary global fields can both expand and consolidate their boundaries in ever-changing and challenging circumstances. In historical perspective, I argue that these are circumstances that are likely to apply to a growing number of global fields and thus are quite relevant to contemporary notions of global governance. While observers of the ICC may be tempted to reduce its range of possibilities as a form of global governance to international power politics, the picture I outline here tells a more nuanced story. International organizations, and the global fields they anchor, are certainly limited by the will and interests of powerful states. But the extent to which they are able to gain autonomy as bona fide fields depends also on the practices that actors utilize to manage the challenges, inconsistencies and paradoxes that accompany their daily work. It is through these productive practices that the field is built, its boundaries affirmed and the objects of its concern—in this case: victims, violence, and justice—defined and reproduced. It is also through the complex interplay of these practices that we can ultimately trace these fields' effects and the extent to which they are able to effectively manage the problems they set out to govern.

Chapter 2

The Jurisdictional Challenges of an Expanding Field

International justice is hard to define and harder to study. It is simultaneously a legal, political and social affair, linking lawyers, academics, diplomats and advocates to perpetrators and victims of some of the worst kinds of violence in the world. And it is both rapidly expanding and shifting as it moves into new terrain and countries not traditionally the subject of international law. This dissertation seeks to gain analytical purchase on the field of international justice not through its laws, politics or actors, but through the practices upon which the field is based and through which it is reproduced. Ultimately, it seeks to elucidate how international justice is produced through such practices in both global capitals like The Hague and in the (thus far exclusively African) regions where it intervenes, and what such practices mean for victims and communities ravaged by war.

To illustrate the diversity of the field, and why it is can be hard to pin down analytically, this chapter begins with four scenes that represent several of its diverse layers. Together, I suggest, these scenes illustrate both the diversity and productive power of the international justice field. First, in early 2010, a group of Congolese NGO staff gathered in Bunia, DRC to discuss results from a recent survey on victims' preferences for reparations. The great majority of respondents had indicated that reparations should be targeted not to individuals alone, but to both individuals and communities. To explain why this did not surprise the panel, a Congolese NGO director offered the following anecdote: he had received funding to provide victims of sexual violence with goats for breeding, he said. Soon, word spread that the project was supporting women raped during the war and many in the community branded the goats as *les chèvres des violées*: the goats of the raped women. Victims of grave crimes, he explained, risk drawing harmful stigma when they are recognized as victims (cf Goffman 1963).

Later that year, in June 2010, an extraordinary range of people and organizations descended on the Speke Resort and Conference Centre in Kampala, Uganda. Diplomats, international law experts, representatives of international and community-based civil society groups, academics, criminal lawyers and victims' groups all gathered to participate in the first official Review Conference of the Rome Statute of the ICC. While the conference was originally intended as a legal meeting to debate technical revisions to the Rome Statute, it turned into a sprawling gathering of diverse stakeholders demanding to assess the Court's "impact" (Dixon and Tenove 2013).

In 2011, a research and advocacy organization called Physicians for Human Rights (PHR) launched a program on *Sexual Violence in Conflict Zones* to support victims' access to health and legal services. It selected the five countries where it would launch the program based on where the ICC had opened its first investigations: Central African Republic (CAR), the DRC, Kenya, Sudan, and Uganda. PHR has a strong history working on such issues and is widely recognized as a global expert, but its selection of countries was problematic. Sexual violence in Uganda, for instance, had been linked more to camp-based domestic violence, which stemmed from the government's policy of mass displacement, than to the use of rape as a weapon of war (Allen and Schomerus 2005). Its choice, rather, was linked to the ICC's "sanctioning" of these countries as legitimate sites of international justice.

Fourth, and finally, In February, 2014, Reuters reported on the ICC's first hearing against Bosco Ntaganda, a Congolese warlord who had finally been transferred to The Hague after years of openly flaunting the ICC's arrest warrants:

> Ntaganda, an ethnic Hema, is accused of crimes against humanity and war crimes including murder and rape, all allegedly committed … against the Lendu population and other ethnic groups in a bid to drive them out of the Ituri region … said the Prosecutor [of the ICC] (Escritt 2014).

Ntaganda's arrest and the subsequent coverage of his trial provided well-deserved recognition for the Court, but there was one problem. Ntaganda is not Hema, nor is he from Ituri. Rather, he is a Congolese Tutsi from North Kivu and an outsider in Ituri—so much so that victims participating in the ICC's various Ituri-based trials refer to him as "the foreigner".[4] Indeed, Congo experts agree that the Ituri War was not a simple ethnic conflict, but had political, economic and international elements. The Rift Valley Institute refers to this as the "external militarization of local politics" in Ituri (Tamm 2013). But the Prosecution framed the Ituri conflict as fundamentally ethnic and Ntaganda's participation in it as ethnically motivated.[5]

These scenes illustrate the diversity and productive power of international justice. It has the power to recognize people who have suffered multiple forms of deprivation, violence, and stigma as particular kinds of victims of particular kinds of harmful acts. These categories of recognition are productive because they are official, public, and often linked to material and symbolic rewards. They classify victims and perpetrators and sanction countries and regions as legitimate sites of

[4] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.
[5] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.

international justice. And international justice draws on an especially diverse body of experts and forms of authority, including legal, human rights, diplomatic, academic and more.

Each scenario raises important questions about the particular practices through which international justice is reproduced and what these mean for victims and communities on whose behalf it intervenes. While scholars have focused extensively on the politics of the international justice project, highlighting how its claims to impartiality are far from straightforward (e.g. Mamdani 2009; Mamdani 2010), less is known about the particular practices upon which international justice is being constructed and through which such scenes play out. These too are rooted in politics and power relations, but less obviously so. I argue in this dissertation that such diverse practices are best understood not as conscious political acts but as both conscious and subconscious practices, used by international justice actors as the field expands and continually encounters fundamental tensions.

These tensions are three-fold. First, as the field of law expands into a transnational field of international justice, it must do-so in largely uncharted terrain where its borders necessarily overlap with those of related, but distinct fields like international development, human rights and international diplomacy. Second, international justice continually encounters massive and complex problems to which the rule of law is far from a perfect fit. And third, all this happens far from the realities on the ground, forcing international justice agents to use simplified and ideal-typical conceptualizations of war and the people it affects. To deal with these tensions, I suggest, international justice agents have developed formal and informal, conscious and subconscious coping practices through which they actively construct violence, victims and perpetrators both from afar and on the ground. I seek to show both what these practices mean for the victims and communities on whose behalf international justice intervenes and what they mean for the autonomy and legitimacy of the international justice field itself.

In this chapter, I review the various approaches to defining and studying international justice—as a form of law, as an instance of global governance, as a profession, and ultimately, as a *field*. After briefly reviewing predominant approaches in political science and the sociology of law, I turn to frameworks rooted in the study of fields, both domestic and transnational. This is an auspicious time for such analysis. As Hagan, Levi and Ferrales (2006: 587) have noted, the inertia of criminal law "makes it rare to witness a new field and practice of criminal law … created and contested in our own time." With the ICC now over ten years old, its first trials coming to an end and the second Prosecutorial regime just beginning, social scientists can build off of previous work at the former tribunals and recent work in other transnational spaces to make important contributions to our understanding international justice specifically and global governance more broadly.

The Rise of International Justice

By "international justice", I refer to several different kinds of institutions and organizations. At the heart of the field of international justice is international criminal law and its associated international and domestic organizations: the international tribunals, professional associations like the International Bar Association, and academic law centers like the Hague-based Grotius Centre for International Legal Studies. But international justice is more than international criminal law. It also incorporates the diplomats of the Assembly of States Parties (ASP), which oversees the functioning of the ICC and maintains its ties to various countries' ministries of justice, and the advocates and researchers of NGOs like REDRESS, which convenes the ICC watchdog, the Victims Rights

Working Group. It includes actors in sites like The Hague and New York and in countries like Uganda and the DRC.

For evidence of such developments, we can look to three broad metrics. First and foremost, there is the rise of relevant formalized norms and organizations (Halliday and Osinsky 2006), most obviously the development of the international criminal tribunal as a legitimate response to post-atrocity transition, and international criminal law as a distinct and legitimate legal profession. Second, we can look more broadly to the birth and global rise of the human rights movements and its off-shoots and experiments with restorative and "transitional" justice. Finally, we find evidence of the rise of international justice in broader trends towards the internationalization of law in an era of globalization. While the third encompasses the globalization of law, broadly speaking (Fourcade and Savelsberg 2006), the first is about the rise of new legal categories of war crimes, crimes against humanity and genocide (Hagan and Levi 2005). The former must be set in the context of the globalization of neoliberalism (Dezalay and Garth 2002; Fourcade and Babb 2002). The latter, on the other hand, can be set in context with the global rise also of human rights and the human rights movement (Dixon and Tenove 2013).

While the idea of an international war crimes tribunal has been attributed to thinkers dating back to the mid-19th century, the post-WWII Nuremburg and Tokyo trials were the world's first real attempt to prosecute acts of war. For the next 45 years, relatively little happened along this front until the creation of the ad-hoc UN tribunals for the former Yugoslavia and Rwanda. Since then, tribunals were established for Sierra Leone, Cambodia, and Lebanon, and have been proposed or debated for a number of other countries and situations, from the eastern DRC to Sri Lanka. With the ratification of the Rome Statute in 1998, and the ICC's opening in 2002, the international justice field reached its current institutional pinnacle. In addition to growing acceptance of the tribunal as a legitimate instrument of global governance, there is also a growing body of international lawyers who have moved to or are starting their careers in The Hague. Whether "tribunal hopping post-conflict junkies" (Baylis 2008) or lawyers trained primarily in international criminal law, this and future generations of young, highly educated and ambitious lawyers are creating a new professional legal class—many never intending to practice in their own countries.

Second, international criminal law owes its success in no small measure to that of the transnational human rights movement. On the one hand, the ICC has been hailed as a "civil society achievement" (Glasius 2006). Its regimes for victims' participation and reparation have been attributed to the work of NGOs and advocates during the plenary discussions and at the Rome Conference. And international human rights NGOs have used the growth of international criminal law to support their own agendas and fundraising (Dezalay and Garth 2002). On the other hand, the expansion of international justice as a response to grave crimes and mass atrocity can also be measured by the strength of the reaction it has engendered from NGOs and other transitional justice actors rooted in "place-based" approaches (Shaw and Waldorf 2010; Weinstein et al. 2010). Some of these are oppositional, seeking to promote alternative approaches rooted in models of local or restorative justice. Some have sought to use the momentum and attention inspired by international trials to pursue their own advocacy agendas and build global networks of "local partners" (on the relationship between international criminal justice and transitional justice, see Dixon and Tenove 2013; Roht-Arriaza 2013).

Finally, the institutionalization and professionalization of international justice must also be set in the broader context of globalization. The globalization of law can be seen in a number of institutional

arenas, from the proliferation of markets to the dissemination of political liberalism to the rise of human rights (Dezalay and Garth 2002; Halliday and Osinsky 2006). Since the trials at Nuremburg, international law has expanded into a global network of domestic, regional and international courts, UN offices, NGOs and other civil society actors, to the extent that today, international law "has gained ascendancy as the dominant regulatory mechanism for extreme evil" (Drumbl 2007:3). The inauguration of the ICC in 2002 was a watershed moment in this recent history, marking "a change in the expertise valued for international governance … [and] a new consensus around international criminal law, with … an enlarged view of law's reach into matters of sovereignty" (Schoenfeld et al. 2007:37). Ultimately, however, while Halliday and Osinsky locate the growth of war crimes trials as one of four key pillars of research on the globalization of law, they (448) conclude that most sociology of law "remains bounded by the nation-state."

Theorizing International Justice

The growth of international justice, from Nuremburg to Ituri, is covered in more detail in Chapter 4. This chapter focuses on existing research, largely from law, political science and international relations (IR), with which a sociology of international justice practices must be in dialogue: these can be categorized roughly as legalist, political/realist, constructivist and localist/critical. Finally, a smaller number of sociologists, mostly working in the sociology of law, have started to focus on international justice and related fields like transitional justice. While these trends carry different and often radically opposed assumptions and conclusions, they are all rooted in an attempt to make sense of a common series of historical developments that have dramatically altered the way grave crimes and mass atrocity are understood and governed on the international stage. There remains, however, a paucity of empirical data on what the field of international justice *is*: its members, its key forms of material and symbolic capital, and the specific practices upon which it is based and through which it is reproduced.

Legalists focus, not surprisingly, on the legal development of international criminal law—its jurisprudence, the competing roles of common and civil law and its institutional history (e.g. Boas 2012; Brady 2000; Henham and Findlay 2011; Maogoto 2009; McCarthy 2009; Schiff 2008). Sometimes the advances of international criminal law are equated with the march of history and its glacial progression towards a permanent and universal court that can pursue an end to impunity away from the politics and shifting realities of ad-hoc tribunals (e.g. Bassiouni 1997). As Boas notes, however, international criminal lawyers have (if somewhat begrudgingly) come to realize that international justice equates to more than international *law* and as such have recognized the importance of other disciplines. Here, political scientists and IR scholars have tended to fill the void through accounts that are both political/realist and constructivist.

Political/realist accounts of the growth of international justice have proliferated since Gary Bass's (2000) seminal work on the politics of war crimes tribunals (e.g. Bosco 2014; Mégret 2002). Political accounts stress the power relations, often between states, that shape the choices that actors make in the design and implementation of the law. Such accounts generally run counter to the claims of impartiality by international criminal lawyers. While there are among the realists those who use the politics of international criminal law as reason to discount the entire project (e.g. Mamdani 2009; Mamdani 2010), the majority tend to support the international justice project and seek to understand better how political forces shape it to manage such forces in turn.

At the other end of the IR camp are those who adopt a more constructivist approach to explaining why and how international justice has developed as it has (e.g. Fehl 2004; Haslam 2011; Kendall and Nouwen 2014; Struett 2008). Still mostly rooted firmly in political science and IR, these approaches tend to consider the power of discourse and perception in shaping the development of international criminal law and legal institutions. Such accounts also often note the influence of non-state actors, especially civil society, in shaping the development of international justice. These come closest to a sociology of international justice practices, but they tend to ascribe power to discourses themselves or to view them as purely instrumental (e.g. Sagan 2010) and not to focus on the social relations through which such discourses are produced and consumed. This, however, is where sociology has particular purchase.

Finally, there is a similarly broad trend in scholarship on the growth of international justice that adopts a more critical and oftentimes localist perspective. These tend to see international justice not simply as the product of power relations between states, but of power relations between a diverse array of legal, diplomatic and human rights fields in both the global north and south (see Mégret 2014). Much of these have focused on the interaction between international criminal legal institutions and the local contexts where they intervene, pointing often to the lack of congruence between priorities in The Hague and the field (Branch 2004; Clarke 2007; Weinstein et al. 2010). Often, such work has pointed to the gap between international criminal law's lip service to victims and the actual voice that affected populations have in shaping international justice (Dixon and Tenove 2013; Glasius 2009; Okello 2010).

Toward a Sociology of the International Justice Field

Despite such diverse trends in scholarship, there is a surprising paucity of empirical data on the practices that constitute the field of international justice—a task to which a field-based sociological approach is well suited. The concept of the field is particularly adaptable to an investigation into the growth of international justice, as Dezalay and Madsen (2012: 439) write:

> The relatively open-ended definition of a field as a network of objective relations provides a broad conceptual ground for analyzing both the social continuities and the construction of new practices. Moreover, this approach emphasizes what is often downplayed in the context of weakly institutionalized international legal practices, namely, social interests and class. The field approach also underscores the generally adversarial nature of social practices and the political and institutional effects of sociolegal struggles over domination. What makes the return to such basic sociological issues seem further justified in the context of the internationalization of law is the observation that international strategies are often directly related to national processes of social and legal reproduction.

While Bourdieu's (1986) work has not been widely adopted in American law and society studies, his theoretical and methodological insights are suited to the task. He shares the constructivists' insight that international justice is more than the sum of the world's major political interests, treating as the field's building blocks the material and symbolic interests that political and localist accounts take as evidence of the law's bias. And it very much recognizes the localist critique that international justice is constructed not only in global capitals like The Hague but equally in African and other sites that the law takes as it subjects. Finally, a field approach questions the very problem to which

international justice poses itself as a legitimate response. It interrogates the historical circumstances and institutional arrangements that underlie the production of the field's core categories: crimes, violence, victims, perpetrators and justice.

A field is a space of relations "in which participants vie to establish monopoly over the species of capital effective in it – cultural authority in the artistic field, scientific authority in the scientific field, sacerdotal authority in the religious field, and so forth" (Bourdieu and Wacquant 1992: 17). Vis-à-vis "legal authority", Bourdieu (1986) wrote later in his career about the judicial field, albeit only from a national standpoint. Here, I review briefly this work and discuss its extension to the international level. In Bourdieu's analysis "juridical production" is a form of cultural production, like art or science, whose forms of knowledge emerge out of competition occurring within a particular social space. Access to this space is limited, determined both through education and through official screening and monitoring methods like the Bar, which in-turn produce the appearance of autonomy and can mask underlying struggles. For Bourdieu (1986: 852), interrogating these processes demands an analysis focused not on "ideologies" or on the summation of "random actions", but on these conscious and subconscious *struggles* over the right to legitimate production:

> the fact that juridical production, like other forms of cultural production, occurs within a 'field' is the basis of an ideological effect … that escapes the usual forms of analysis. … The effects that are created within social fields are neither the purely arithmetical sum of random actions, nor the integrated result of a concerted plan. They are produced by competition occurring within a social space.

The struggles between countries, within countries and within the field of international justice itself constitute the analytical focus of this dissertation. Bourdieu's primary objective is to problematize the seeming autonomy of fields by exposing their social-historical conditions and the power struggles that accompany them. In Bourdieu's larger theory, all fields tend to seek out autonomy for themselves, especially those of cultural production: artists seek out autonomy from the market in order to craft a specifically non-economic artistic capital (Bourdieu 1996) while scientists value autonomy from politics and economics in the production of unbiased knowledge (Bourdieu 1999). For the law, such autonomy is perhaps even more crucial since recognition of its neutrality is necessary for its legitimacy and, ultimately, power. Terdiman sums up Bourdieu's project here quite succinctly (Bourdieu 1986: 809):

> Professionals within the legal field are constantly engaged in a struggle with those outside the field to gain and sustain acceptance for their conception of the law's relation to the social whole and of the law's internal organization. Bourdieu traces in detail the social and particularly the linguistic strategies by which the inhabitants of the legal universe pursue this effort to impose their internal norms on broader realms and to establish the legitimacy of interpretations favorable to the self-conception of the field, to the ratification of its values, and to the internal consistency and outward extension of its prerogatives and practices.

In Bourdieu's analysis, the power of the law to establish its legitimacy, to ratify its values and to extend its prerogatives and practices is very much bound up in the power of the state. "Law consecrates the established order by consecrating the vision of that order which is held by the State" (Bourdieu 1986: 838). It is the through the state that access to the legal field is determined, through the state that the law is enforced and through the state that the law secures its powers of

"codification, of formulation and formalization, of neutralization and systematization" (Bourdieu 1986: 840) and ultimately, of naming. But for Bourdieu, what makes the law's symbolic power actually powerful is not that it comes from the state, but that it stems from particular social conditions that produce a correspondence between name and form. These social conditions entail naked interest in the more obvious sense, but also, crucially for the law, "the complicity of those who are dominated by it" (Bourdieu 1986: 844):

> Thus, one of the functions of the specifically juridical labor of formalizing and systematizing ethical representations and practices is to contribute to binding laypeople to the fundamental principle of the jurists' professional ideology – belief in the neutrality and autonomy of the law and of jurists themselves.

For the judicial field at the international level, I argue, this act becomes particularly salient. Lacking the relative stability and homogeneity that domestic judicial fields enjoy, both internally and vis-à-vis the state, international law is under constant pressure to reproduce its autonomy and along with it, the basis of its power. The field itself becomes less stable, more heterogeneous and ultimately, more contentious. There is no Bar to determine competence and to limit access (indeed, international criminal lawyers do not have to pass their domestic Bars to practice at the international tribunals) and employees come from a wide range of backgrounds outside law, including international relations, development, public relations, security and more. The "written and unwritten laws of the field itself" (Bourdieu 1986: 833) are less clear and more open to struggle and transformation than at the domestic level. Without a single state to back it up, the law faces a greater struggle for autonomy at the international level. Furthermore, the social conditions that produce the complicity of law's dominated subjects at the domestic level are not present—or at least not as stable or homogenous—at the international level. Each time the international justice field intervenes in a new site, from Ituri to Colombia, it must struggle with a lack of legitimacy from above, as it is challenged by hostile states bent on protecting their sovereignty, and from below, as victims and affected communities reject its interpretations and the legitimacy of its authority.

With limited funding, no police force or army and no authority from any one particular state to fall back on, international law appears very weak by any traditional measurement of power. The questions are then, what are the social conditions upon which international justice depends as a basis of its power, and relatedly, who are the "laypeople" that must be bound to the principles of its neutrality and autonomy? Clearly the international community (and the Assembly of States Parties specifically), upon whose money and armed forces the ICC depends, must be convinced. Civil society is also ever-present. As a permanent and seemingly universal Court, moreover, the ICC must also now convince the laypeople over whom it claims to hold legal authority and in whose interest it claims to act: that is, the societies where it opens situations and pursues cases. Here, I turn to more recent work on the sociology of international law and work on other interstitial fields to analyze these challenges.

The relatively open-ended definition of a field lends itself particularly well to a study of international justice, with its weakly instituted boundaries, weaker claims to legitimacy and relative ambiguity about who is and who is not a member. While Bourdieu's insights remain largely underutilized in American law and society scholarship, there are a number of valuable examples of such field-based analyses of international justice (Dezalay and Garth 2002, 2011; Dezalay and Madsen 2012; Fourcade and Savelsberg 2006; Hagan and Levi 2005; Hagan, Levi and Ferrales 2006) and other transnational or "interstitial" fields on which this dissertation draws (e.g. Medvetz 2012b; Mudge and

Vauchez 2012). Starting from Bourdieu's insight that the law and the legal profession can be analyzed as components of a broader juridical field, such work has focused on the law's transnational growth.

Yves Dezalay and Bryant Garth (2002, 2011) have perhaps gone the farthest in developing the literature on international law and what they call the "transnational justice field". In so-doing, they take direct inspiration from Bourdieu and his work on social fields and in particular, the "field of power" (Bourdieu 1985). In their earlier work, Dezalay and Garth were primarily concerned with using law as a lens into the field of power to examine the use of law—including human rights law—in "palace wars", or domestic political disputes rooted in claims over the growth and consolidation of neoliberal globalization. In their view, law is a product of state power, and transnational rules are the extension of battles within and between states in the broader historical context of the production of market hegemony. The spread of human rights, according to this view, coincided directly with the global spread of neoliberalism and was central to domestic struggles playing out in both the United States and Latin America.

In Bourdieu's analysis, the power of certain actors to impose their vision of law over others stems from their relative position within the field of power (for instance, in the United States, lawyers from top law schools can find influential positions in government). As such, law wields a particularly powerful variant of symbolic power "to impose a universally recognized principle of knowledge of the social world" and is often the servant of the State, the sole monopoly holder of this symbolic violence (Bourdieu 1986: 837).

What does this imply, then, for the *international* juridical field? Dezalay and Garth used the state as their primary unit of analysis, focusing on how the law that emerged from struggles within the field of power of hegemonic states like the United States was used for similar struggles in southern states in Latin America. But international justice is not state-based. Rather, it is caught in between state power on the one hand and state accountability, where legitimacy stems not from relative power, but from the protection of humanity. Using Hagan and Levi's (2005) approach, therefore, this dissertation takes a less state-centric approach and focuses instead on the diverse national and subnational actors that constitute the field of international justice.

Hagan and Levi (2005) first recognized the development of a field of international criminal law and proposed an approach to studying it through fieldwork at the International Criminal Tribunal for the Former Yugoslavia (ICTY). Through a mixed-methods ethnography, they analyzed both external political factors and internal organizational change to explain its development. As such, the ICTY itself became a site for studying the production of law—not just its initial design and setting-up, but "the everyday organization and operation of the law" (Hagan, Levi and Ferrales 2006: 590). It is important, they proposed, to move away from arguments for and against the impact of international tribunals and instead to approach them sociologically as "mutually constitutive schemas and resources" (586).

Hagan and Levi demonstrate such an approach in their analysis of the competing prosecutorial approaches across four "regimes" at the ICTY. Beginning with the Chair of the Commission of Experts, Cherif Bassiouni and ending with Carla Del Ponte, they argue that each regime featured unique prosecutorial strategies that over time led to a variety of key struggles between and within regimes and with the judges at trial. It was this process of struggle, they contend, that gradually led to the ICTY developing its own power—or "force of law"—autonomous from its initial creators

and backers (e.g. state-delegated authority). These struggles over the "enactment and practice" of international criminal legal texts strengthened the field because in the process, the participants granted their faith and belief in the legitimacy of international criminal law as the appropriate forum for waging them.

I suggest that Hagan and Levi provide a valuable starting point in their focus on the struggle over the enactments and practices of legal texts. Almost ten years after their fieldwork, however, international justice has undergone many transformations, especially with the founding of the ICC in 2002. There are today many struggles similar to the prosecutorial competition that they take as their focus, which together have drawn in a great many new and diverse actors. As Hagan and Levi found at the ICTY, where competition between diplomacy and the law dominated the Tribunal's early years, the ICC is today structured around a broad range of competing claims to expertise and forms of capital. But perhaps more-so than in the days of the ICTY, where the U.S. dominated the diplomatic arena and the NGOs were largely excluded, the ICC is today very much influenced by these struggles, both inside and outside the Court. Indeed, I would situate many of the scholars reviewed in the earlier section of this proposal as participants of the broader international justice field, where normative positions about international justice influence the forms of scholarship that researchers pursue.

At the same time, recent developments in field theory have also advanced the approach's utility in analyzing transnational and "interstitial" fields like international justice (Medvetz 2012a, 2012b; Mudge and Vauchez 2012). Interstitial fields are those where a field both has relatively porous institutional boundaries and is located in "social space" at the intersection of other fields such that it occupies an advantageous position relative to them. Medvetz (2012b) developed this approach to help explain the power of think tanks in the U.S. despite their relatively low capitalization.

Medvetz's (2012a) work on "murky power" is particularly relevant here. Following Eyal, (2013), Medvetz positions the field of think tanks in the *spaces between fields*. Stemming from an assumption that by any traditional measure of power—political, economic, cultural—think tanks are not that well endowed, he argues that think tanks are powerful because they are boundary organizations that exist between the fields of politics, media and the economy. As such, their power is two-fold: first, they mark the boundaries between political, market and media production versus the production of expertise, and second, they set the conversion rates between different forms of capital: political, economic and journalistic. That is, think tanks have managed to position themselves such that politicians, businessmen or journalists looking to gain recognition outside their profession can use the think tank to exchange their own field capital for those of the fields in which they are seeking entry. When it comes to think tanks, Medvetz (2012a: 128) suggests, "the organization is the boundary."

Vauchez's (2008) work on the European legal field provides another useful example. As a transnational field, the European legal field is "weak" and "porous". But this weakness provides it with a strategic advantage in Vauchez's view in that it allows it to function at the "crossroads" of political, bureaucratic, academic, economic and jurisdictional actors who are all engaged in the project of shaping the government of Europe. This is a powerful position in a transnational system with no single state to establish stable relations and hierarchies. "In a European polity deprived of a State that would organize … the mediation between social interests, it is our hypothesis that [lawyers] tend to occupy a "structural hole" bridging and mediating otherwise conflicting institutions and groups" (Vauchez 2008: 140).

Such bridging or boundary work can, I suggest, help explain the power of international justice, which is today heavily concentrated around one organization, the ICC, which in turn acts as a sort of boundary maker, both legally—in determining what acts count as crimes according to international criminal law—and culturally, in determining for example who counts as a victim of international crimes in need of assistance from organizations like Physicians for Human Rights. Such work plays an important role in declaring where fields like justice end and development or humanitarian assistance begin, even though these can look similar in reality (especially for those who are supposed to benefit from them). This, then, mobilizes agents and resources and, ultimately, shapes the kinds of services and networks to which victims have access. Like think tanks, I suggest, international justice is powerful despite its low capitalization relative to other institutions of global governance because it is located strategically in "international social space" at the intersection of powerful global fields like inter-state diplomacy, criminal justice, including legal scholarship, and transnational human rights advocacy and scholarship (Dixon and Tenove 2013).

The Production of International Justice

If international justice is thus composed of such diverse actors, institutions and forms of capital, how then can we speak of a uniform international justice "field"? The key, I suggest, is to look at the practices through which international justice actors cope with the field's inherent tensions and, ultimately, establish the field's legitimacy and autonomy. Such practices are utilized by international justice actors both consciously and subconsciously, I suggest, to navigate the field's internal ambiguities and its external tensions with neighboring fields. Similar to Hagan and Levi's legal texts, these practices ultimately reinforce the autonomy of international justice as a field—a process I refer to as the "production of international justice".

Several of the constructivist scholars cited above have written about such processes. These analyses focus often on the particular discourses that proliferate in international justice circles and their legitimizing power. Sagan's (2010) argument is exemplary here. She suggests that the ICC's almost exclusive focus on Africa stems from a kind of "discursive corroboration" between African subjects and the Court's "self-identity" as the savior of victimized populations—as opposed to a consciously planned neo-colonialism, as others have argued (Mamdani 2010). While previous international tribunals focused largely on perpetrators and the crimes they committed, the ICC's victims regime places victims – both individuals and victimized communities – at the center of much of its discourse, from courtroom arguments to public relations. Indeed, the ICC's former Prosecutor was well known for statements like, "I am bringing this case for *the victims*."

Sagan and others thus raise an interesting puzzle: what is it about *the victim* that works for the Court? While such discourse clearly does play some sort of legitimizing role, accounts like Sagan's fall short of fully elucidating why and how they offer legitimacy and what other less obvious roles they may play. In this dissertation, I approach such representations as practices embedded in social relations, and ask *where* do they come from, *how* are they formed, and what are the major *struggles* through which they crystallize? In this dissertation, I also look beyond particular discourses (on victims, for example) to consider other practices through which actors engage in "juridical production" (Bourdieu 1986: 852) to establish both the boundaries of the field and its *objects* (Jasanoff 2004). Both are particularly important for law, a field specifically geared toward the production and implementation of legitimate visions of the social world. They are perhaps even more important, as I have suggested, for international justice, which must apply itself on the ground in ever-new and

changing social contexts, continually running up against other professional fields that are also concerned with contexts of conflict, emergency and extreme poverty.

In this sense, the ICC is very different from its predecessors—the ad hoc criminal tribunals of Yugoslavia, Rwanda, Cambodia and Sierra Leone. The ICC must continually enter into new situations, contexts and countries as crises arise and fade, making itself accessible and responsive to scores of victims all with unique histories and experiences. It is the first of the major international courts to declare itself "victim friendly" and to develop a permanent administrative body capable of interacting with people and institutions in the situations where it intervenes. As such, it continually runs up against the borders of international justice in ways that other areas of law do not. International justice, for instance, tends to intervene in contexts defined by "poverty, huge inequalities, weak institutions, broken physical infrastructure, poor governance, high levels of insecurity, and low levels of social capital" (de Greiff 2009a: 29)—contexts, that is, where development and humanitarian actors are already working and have been for many years. In these kinds of contexts, the particular violations to which international justice measures like trials and reparations are meant to respond will always exist within a larger set of needs for safety, health, food, education and more. The international justice field, therefore, must distinguish itself from the other actors working to fulfill these other needs. Key to this distinction is the actual *production* of its object and the subjects who need its tools and forms of expertise.

Here, Bourdieu's (1984) notion of habitus is key, as it highlights the processes through which individuals in particular fields are constituted through visions and practices that correspond with the implicit rules and forms of capital that structure these fields. Foucault (1981, 1982, 1995) also offers a useful contribution here, pointing us toward the constitution of the individual through institutions of *discipline*. In Foucault's view, modern individuals are acted upon by all manner of modern disciplines, the modern concentration of which through the state produces "governmental" power (as opposed to "governance"). Where Bourdieu points us toward the *struggles* over symbolic power in distinct social fields, Foucault's productive vision of disciplinary power points us toward the *micro-processes* of discipline through which individuals are produced and ultimately produce themselves.

From this perspective, I suggest that the "victim" is key to the production of international justice because she represents both a site of struggle over the field's symbolic power (the power to name certain forms of violence as illegitimate) and because her representation entails a broad range of practices to which different forms and quantities of material and cultural capital are attached. The legitimate right to recognize the victim not as a victim of poverty, disease or the unequal distribution of power, but as a victim of "crimes of international concern" is the right to produce the field of international justice itself. And as I discuss below, this is a particularly valuable act of production because of the field of international justice's particular place in international social space—located as I have suggested at the intersection of other powerful global fields.

To illustrate, one such victim-centered set of practices are those related to the act of *recognition*. For international justice actors and advocates, recognition is core to international justice's treatment of victims. To recognize is to heal (Hamber 2006) and to transform social relations. It establishes "a consciousness of survivors as rights holders" and, ultimately, can rebalance power relations (Roht-Arriaza and Orlovsky 2009: 179). Such recognition, however, can look very different from the perspective of the victim of grave violence. On the one hand, the end result may look very similar to what she might receive from a development or humanitarian project: material support, rehabilitation, training, etc. Because international justice must intervene into circumstance of mass violence, the

great majority of those it recognizes may never actually step foot in a courtroom nor necessarily know that the support they are receiving is a form of "reparation". On the other hand, such recognition can bring harmful stigma, as one of the anecdotes with which this chapter began illustrates. I return to these issues in more detail in Chapters 6 and 7.

But recognition is important for international justice not necessarily for the benefit it supposedly accrues to victims of grave violence but because it is central to what sets it apart from other fields like development and humanitarian assistance—that is, it entails a set of practices through which international justice itself is produced. "The element of recognition that is part and parcel of reparations, and that makes them different from mere compensatory schemes," notes (de Greiff 2009b: 151) "will typically require targeting victims for special treatment. This is part of what it means to give them recognition".

Ultimately, both Bourdieu and Foucault point toward the state as the monopoly holder of symbolic and governmental power, respectively. But what of symbolic and governmental power at the *international* level, especially in a field of global governance where state authority is not only diluted but explicitly challenged? I argue that practices of juridical production take on particular importance in such circumstances because of the field's internal tensions. I explore these more in-depth in Chapter 4. I conclude this chapter with an analysis of what it means for the international justice field to lie at the cross-roads of other, powerful global fields.

The Symbolic Economy of International Justice

This chapter began with several scenes intended to illustrate some of the internal tensions with which the international justice field must learn to cope. In large-part, these stem from the fact that international justice is not an autonomous international legal field, but intersects with other global fields like transnational human rights, international diplomacy, and criminal justice. I suggest that international justice's location at the intersection of global fields makes it possible for a variety of actors to accumulate and mobilize authority across them, which in turn motivates actors to participate in the international justice game. By "authority" I refer both to Bourdieu's approach to authority as the symbolic capital at play in fields, and to IR scholarship on the forms of authority that are specifically relevant to international organizations: delegated, legal, moral and expert (Barnett and Finnemore 2004). In this section, I outline how these forms of authority work in the international justice field and its intersecting fields. I then introduce the concepts of "borrowing" and "brokering" authority to explain the strategic advantages that international justice actors accrue by wielding authority as different 'currencies' in a transnational symbolic economy.

International justice draws on delegated authority because states create and authorize tribunals to act as their agents in the pursuit of particular mandates. Tribunals are sometimes created through chains of delegation. For example, members of the United Nations delegate authority to the UN Security Council (UNSC) which in turn delegated authority to the ad hoc tribunals for Rwanda and the former Yugoslavia—and sometimes directly, as in the case of the ICC. States that ratify the ICC's Rome Statute obligate themselves to provide funding, cooperate with its operations and incorporate enabling laws into their own domestic legal systems. Those who oppose the ICC thus do not just oppose a medium-sized judicial bureaucracy, but also the intent of its 122 member states. Critics who see international criminal tribunals as serving the will of states are thus partly right. To take the case of the ICC, the Court is affected by and accountable to its member states, which are

undoubtedly more enthusiastic supporters when the ICC addresses their objectives in particular situations. However, the ICC and its staff are also partly insulated from state interference by its statute, as well as by the legal, expert and moral authority they wield and their strategic interactions with actors from the transnational civil society and criminal legal fields.

International justice actors possess legal authority in two different senses. First, international justice is animated by public international law, the law of states. International law shapes state and non-state behavior in numerous ways. It can create both enforced (hard) and aspirational (soft) rules for states to follow; it can crystallize state agreements in relatively precise terms; it can legitimize collective or self-help enforcement; it can coordinate and recruit domestic legal systems; it can cause defectors from legal agreements to suffer reputational losses; and the legality of rules confers a sense of obligation toward them.

In a second, related sense, law is also deeply embedded in the practices and understandings of modern societies. International law has authority because its rules integrate with those of domestic law and are analogous to domestic law. Individuals are familiar with many elements of international justice, including the re-staging of conflicts in criminal trials, the apparent neutrality of judges, the hierarchy of legal interpretation and the specificity and difficulty of legal discourse. In short, because legal practices within states are familiar and widely seen to be legitimate, the analogous legal practices of international justice gain authority. As this dissertation will explore in-depth, there is not one form of legal authority at play in the international justice field. Rather, there is a fundamental tension ongoing between the UK-based common law tradition and the continental European civil law. Where common law utilizes a jury and the legal theater, civil law relies on one or more expert judges to assess written submissions. Perhaps more importantly, civil law lawyers are far more comfortable with the presence and participation of victims in the courtroom since victims can participate as civil parties without biasing any assumed balance between prosecution and defense (which is central in common law). Struggles over legal authority in international justice are rooted in struggles over what kind of court the ICC will be: a common law court, a civil law court, an international court, a victims' court?

Third, practitioners draw on moral authority by proposing that international justice addresses terrible forms of violence and suffering. Campaigns in support of international justice emphasize the moral outrage of mass violence and claim it provides the most appropriate response. The international justice field also draws on moral authority by creating and mobilizing victims of international crimes as a transnational constituency. Without international justice, victims of international crimes would either be unlinked (e.g. we would not see victims of civil war in Sierra Leone and ethnic cleansing in Bosnia as belonging to the same category) or they would be linked through a different logic (such as the failure of human rights for minorities or violence against women). The field of international justice creates this social group, proposes itself as a solution to their plight and mobilizes this constituency and its supporters to promote international justice itself. Transnational civil society plays a key role in this activity.

Finally, international justice practitioners have expert authority because they possess and employ specialized knowledge. We defer to expertise not because we think it is the moral or mandated approach to a problem, but because we believe that knowledge specialization allows some to do it better. International justice actors draw on a broad range of expert knowledge about the problems they must try to solve; the contexts where they work; the techniques of understanding, investigating and proving crimes; and the eventual 'impact' of their initiatives. University-based research centers

have supported the field with such knowledge since at least the creation of the ICTY, when Cherif Bassiouni collaborated with Chicago's DePaul University to build a database of Balkan war crimes to push for the Tribunal's establishment. But so have other specialists, including from the UN, aid agencies and human rights NGOs. By referring to expert authority, however, I am not arguing that such authority is judged as expert or not according only to the value of its content. In the international justice field, rather, expertise seems to accrue to, on the one hand, those who have access to victims and victimized communities and, on the other hand, those who are recognized as experts in other global fields, particularly UN-designated experts or those based in global NGO advocacy organizations. Other potential forms of expert authority, such as academic, social scientific research or locally rooted analyses, are not as highly valued.

Ultimately, there is a need for more empirical data on how the international justice field has developed and how its actors navigate fundamental tensions to produce the field's legitimacy and autonomy. While Hagan and Levi located the focal point for their research in the prosecutor's office at the ICTY, the ICC is a different kind of institution, and demands a broader research strategy. This is for four key reasons. First, the ICC has a new, complicated and expensive victims' regime, where much of the field's competition takes place. Second, as a permanent, membership-based court with an independent prosecutor, the ICC is faced with a potentially infinite set of regions and contexts into which it can intervene and with whom it must navigate diplomatic relationships. This negotiation occurs within the Office of the Prosecutor, which has a unit dedicated to jurisdictional questions, within Chambers, where the President of the Appeals Chamber is also the President of the Court, within the Assembly of States Parties, etc. Third, NGOs have played a key role in the development of the ICTY and the ICC. But where they were eventually excluded from the ICTY to make room for a dedicated class of "international civil servants" focused on keeping the Tribunal running (Hagan and Levi 2005), NGOs have maintained a seat at the table at the ICC. Finally, while the ICTY was heavily dependent on U.S. politics, as the 2002 shift from a Democratic to a Republican presidency underscored, the ICC is not nearly as dependent on US foreign policy. The U.S. does exert influence, but in significantly more nuanced ways, in concert with a broad range of other countries and non-state actors.

The following chapters utilize interviews in The Hague and mixed-methods research in the Ituri district of the Congo to explicate my argument that international justice has gradually emerged as a legitimate and autonomous field of global governance in part through the emergence of conscious and subconscious coping strategies—or practices—to navigate some of its fundamental tensions. Chapter 3 provides background on the Congo Wars and the Ituri War that took place within them. Chapter 4 charts the development of international justice from Nuremburg to Bunia to illustrate what these fundamental tensions look like. While Nuremburg offered in some ways the "perfect" trial of good against evil, Bunia represents the perfect war for the international justice of today. Chapters 5 through 7 draw on my research in Ituri and The Hague to illustrate how international justice actors deal with the field's inherent tensions through practices rooted in the production of violence and victims. Chapter 5 describes why Ituri was in fact not the "perfect war" it was thought to be, outlining the key challenges that the international justice field faces and the practices its actors draw on to manage and overcome them, both in The Hague and on the ground in places like Ituri. For example, workshops to train local implementing partners about why their assistance projects are "transitional justice" projects and not like the general support they have already been providing to vulnerable populations. Chapter 6 then looks in-depth at a particular set of international justice practices that are rooted in articulating and reaffirming the differences between "reparations" and "assistance". This, I argue, is one of the key tensions that the international justice field must

overcome in order to establish its boundaries—it must provide "assistance" to secure legitimacy in the eyes of victims and the global human rights field. At the same time, it must construct reparations as more symbolically valuable than assistance in order to respond to victims' supposed need for recognition. In Chapter 7, finally, I lay out my argument about the consequences of such practices in The Hague and in Ituri for victims and communities emerging from violence. Chapter 8 concludes with a broader theory of international justice practice. I suggest, ultimately, that the "coping mechanisms" identified in this dissertation are crucial to the legitimacy and autonomy of international justice and, thus, to producing and consolidating global, interstitial fields.

Chapter 3

Ituri and the Congo Wars

The "Congo Wars" are in reality a complex set of international, national and subnational conflicts between countries, political actors, non-state rebel groups, proxy groups and local defense forces that have proven both intractable and extremely deadly over the last fifteen years (Prunier 2008; Stearns 2011). They have also proven enormously difficult for journalists to cover and scholars to explain. In the words of Congo researcher Jason Stearns (2011: 5), "how do you cover a war that involves at least 20 different rebel groups and the armies of nine countries, yet does not seem to have a clear cause or objective?" In the past few years, however, several studies of violence in the Congo have been published, offering some insight into its origins, dynamics and persistence. What emerges is a complex picture of mass violence and local conflict that links the agendas of national and subnational elites to longstanding material and cultural tensions, both inside and outside the Congo. In this chapter, I provide a brief background to the regional and national struggles that preceded and exacerbated the outbreak of violence in 1996 in Congo and later in Ituri to set the stage for my analysis in Chapter 4 of the international justice field's transformations after Nuremburg.

Regional, National and Local Struggles in the Congo Wars

Congo's struggles can be traced back to Belgium's extractive colonial policies first directly under King Leopold and then under the auspices of the Congo Free State (Hochschild 2006). The violence in the Congo known as the "Congo Wars" or "Africa's World War", however, dates back to 1996 when Rwanda and Uganda backed Laurent Kabila and his Alliance of Democratic Forces for the Liberation of Congo (AFDL) in a "war of liberation" against Mobutu Sese Seko. While framed as a

war of liberation, the political, military and economic interests of both Uganda and Rwanda in supporting—and also instigating, according to Stearns—have been well explicated (Autesserre 2010; OHCHR 2010; Stearns 2011; Vinck et al. 2008). The UN (OHCHR 2010), for instance, documented mass killings of Rwandan Hutu civilians by Tutsi fighters who were pursuing the "genocidaires" that had fled the border into North and South Kivu in 1994 after the Rwandan genocide, amounting to what many—including the UN in an unofficial version of their report—called "counter genocide". After assuming Rwanda's presidency in 1994, Paul Kagame actively sought out the rebellious, but largely insignificant, Laurent Kabila as a useful front man for his invasion of eastern Congo.

All this played out in a historical context of centuries-old land disputes and ethnic tensions (Autesserre 2008, 2010). In the Kivus, tensions already existed between Congolese tribal groups and "Congolese of Rwandan descent", 85,000 of whom had been relocated by Belgian colonial administrators at the start of the twentieth century. Today, Congolese Tutsis own most of the land in the Kivus, helping "the interests of Paul Kagame's newly empowered Tutsi government in Rwanda [converge] with those of the Congolese Tutsis" (Autesserre 2008: 99). At the same time, Uganda was pursuing its own interests in and around the Ituri district of Orientale Province. Uganda does not share any of the same ethnic ties to Congo as Rwanda. Its interests, rather, were purely economic, looting gold, timber and other valuable resources (OHCHR 2010; UN 2001). Uganda did, however, take advantage of longstanding ethnic tensions in Ituri between the Hema and Lendu ethnic groups, supporting each of them at different times during the war. But while Ituri and the Kivus have been and still are marked by both ethnic division and foreign invasion, Rwanda's involvement has made the Kivus significantly more important to Congolese national politics.

In 1997, Mobutu was defeated and fled, putting Laurent Kabila in the seat of power. At this point, however, Kabila's poor leadership skills came to the fore and he quickly lost control over the factions that had installed him (Stearns 2011). In 1998, both Uganda and Rwanda reacted, declaring all-out war against Kabila and three regional forces to whom he had promised a cut of Congo's wealth: Angola, Namibia and Zimbabwe. The 1998–2002 "Second Congo War" saw the country divided into four administrative blocks (Vinck et al. 2008): The Rwanda-backed RCD-Goma controlled North and South Kivu and other parts of the east, including Katanga, Maniema and Eastern Kasai province, while the Uganda-backed RCD-Kisangani controlled parts of North Kivu and Orientale Province, most notably Ituri District and its capital, Bunia. The Movement for the Liberation of Congo (MLC) controlled Equateur province, also with the support of Uganda, while Kabila maintained control over the western half of the country with the support of his three foreign backers.

Kabila could not satisfy his foreign financiers, however, and they grew tired of sending cash with no sign of their cut of Congo's wealth in return. In 2001, weakened and paranoid, Kabila was assassinated (the murder remains unsolved) and was quickly succeeded by his son, Joseph, who would eventually go on to win two UN-sanctioned, "democratic" elections in 2006 and 2011. Both were heavily supported by the international community, and also heavily criticized for their lack of significance to the local conflicts that would continue long past the peace accords that officially ended the war and established power-sharing agreements (Autesserre 2010). With the 2006 and 2011 elections, Joseph Kabila cemented his power over Congolese politics and the national army (FARDC), into which tens of thousands of ex-rebels had been integrated since the official end of the war in 2002 and again following the 2008 peace deal that was brokered in Goma. This, along with the arrest of Laurent Nkunda, leader of one of the last Tutsi rebel holdouts, was a significant step toward establishing durable peace.

Since 2009, while the death toll has declined since its wartime peaks, violence has continued in the Congo (Autesserre 2012; Human Rights Watch 2012; Stearns 2011). To explain why, a growing chorus of scholars have focused in recent years on local agendas and struggles and their relationship to broader national and regional conflicts. Vinck et al. (Vinck et al. 2008: 11), for instance, point out that "all belligerents used ethnic 'Mai Mai' and self-defense militias as surrogates, exacerbating local disputes … over land tenure and the control of local resources". This was the case in both Ituri, where the war took advantage of and exacerbated historical tensions between Lendu and Hema, and the Kivus, where the conflict also developed along ethnic lines, albeit of a different nature. In North Katanga, on the other hand, there was less of a foreign presence and less intense an ethnic divide. Violence continued there beyond the late-2008 accords due more, Autesserre (2010) suggests, to groups seeking to maintain the local privilege and national relevance they obtained during the war. I turn now to these points in more detail.

Identity, Politics and Power: The Importance of Local Agendas

Leading up to and during the war, regional and national struggles that sparked and intensified the war mapped onto, exploited, and exacerbated local conflicts and tensions that would perpetuate it down the road. On this theme, the anthropologist Séverine Autesserre has amassed a rich, qualitative account of the Congo Wars, in which she stresses both (1) the role of local tensions and agendas in perpetuating violence and (2) the failure of the international community to design appropriate interventions for local-level dynamics (focusing more on the 2006 election, for instance) (Autesserre 2008, 2009, 2010, 2011, 2012). Autesserre's key concept is the *local agenda*: a "decentralized", "micro-level" set of interests that revolves around political, military, economic or social goals. "Local agendas have held tremendous influence throughout modern Congolese history," she (2010: 38) writes, "and they have often been intertwined with macro-level dimensions."

All four regions of eastern Congo (Katanga, South Kivu, North Kivu, and Ituri) are dominated by power dynamics, but there are key differences in terms of the sources of struggle and kinds of alliances that hold influence. From the existing literature, we can identify three such differences: (1) the roles of and interactions between material (e.g. land, natural resources) and symbolic (e.g. identity-based) agendas in influencing the importation and experience of international justice; (2) the importance (or lack of importance) of regions' relevancy to international relations; and related to this, (3) the relative importance (or lack thereof) of regions' relationship to national politics and struggles.

There are relatively few sources that directly compare the eastern regions to each other. But histories of and reports on the war tend to highlight several key differences, especially between the Kivus on the one hand and Ituri on the other: first, it is relatively clear that while violence has largely abated in Ituri and Katanga, it has raged on in the Kivus, especially North Kivu, first with the CNDP rebellion led by Laurent Nkunda and most recently the "M23" rebellion of Bosco Ntaganda, both allegedly with support from Rwanda. Second, while struggles related to natural resources, land and ethnic identity have all played a role throughout the east, different configurations were more and less important in different regions. Land and ethnicity, for instance, are widely regarded as the predominant dynamics that influenced struggle in Ituri (Autesserre 2010; Vinck et al. 2008). In Vinck et al.'s population-based survey, for instance, 60% of Iturians said that violence originated in conflicts over land (followed by 40% who identified either ethnic divisions or conflicts of power, respectively), compared to 26% in the Kivus who said that land was the primary origin. In North

and South Kivu, rather, conflicts over power (49% and 50% in North and South Kivu, respectively) and exploitation of natural resources (39% and 42%) were considered the key instigators of violence.

These data highlight that Congolese' understandings of violence is regional. They also reflect the relative importance of each region to the national stage. While the Kivus have always been important players in national politics, Iturian affairs have always been fundamentally regional (Autesserre 2010). It was excluded from the national Congolese peace process that officially ended the war in 2003 and Autesserre argues that the surge in fighting in Ituri that followed was in-part an attempt by Iturians to assert themselves onto the national agenda. Outside of the Iturian elite, however, most Iturians see their conflict as rooted in land struggles. This could also stem from the region's relative obscurity, which may prevent most Iturians from seeing the broader context, but as I discuss in more detail below and in Chapter 7, Iturians are also not formally educated about their region's history and violence. Furthermore, most of the forces that fueled and exacerbated the fighting in Ituri used local agendas to fight their own proxy wars. While land and ethnicity were and still are a crucial source of tension, land conflict was exacerbated by outside forces who instrumentalized historic ethnic and class differences (Tamm 2013). The reliance on land and ethnicity to explain Ituri's violence, I suggest, thus reflects a fundamental misunderstanding of the Ituri conflict.

The Ituri War

Ituri District is a relatively small and picturesque region in northeastern Congo, bordering Uganda and South Sudan. In this section, I draw on interviews conducted in Ituri in 2013 with traditional leaders, politicians, civil society leaders and victims' groups, to present a brief historical context and illustrate the range of issues influencing contemporary Iturian society today. The final section of this chapter then reviews these issues according to the challenges and opportunities they present for the ICC and the broader international justice field.

Like much of eastern DRC, it is particularly rich in natural resources, including gold, diamonds, timber and oil. It is also home to numerous ethnic groups, although the two largest are by far the Lendu, who are mostly farmers, and the Hema, more often pastoralists. The Lendu and Hema have lived together since before colonial times, but Belgian policy favored the Hema and exacerbated tensions. Henry Morton Stanley, an Englishman working for the Belgian King Leopold, described the Hema as "amiable, quiet and friendly neighbors … with whom we have never exchanged angry words" and the Lendu as "abrasive and violent" (Fahey 2011a). Nevertheless, the two groups lived together relatively peacefully until 1999, when a series of small land conflicts led to some of the bloodiest fighting of the DRC's many conflicts. Through 2004, it was the scene of massacres, rapes, mass child abductions and other serious crimes.

During an interview with one of Ituri's "Notables", he expressed his vision of the region's future:

> Ituri is a small paradise! I am certain that I will come to see the day when Ituri will welcome visitors not only from the international community, but also tourists! But for that future to happen, we first need to talk about our past.[6]

This vision embodies the paradox of Ituri: rich with potential but held back by poverty, corruption, mismanagement, ethnic tension, international conflict and the scars of a bloody war that left 60,000 people dead and over 500,000 displaced. At the height of the conflict, which lasted from 1999 to 2004 (some put the end at 2007), there no fewer than 6 armed groups and between 20,000 and 25,000 armed fighters active in the relatively small region (IRIN 2002). The richness of Ituri—fertile land, an agreeable climate, dense deposits of natural resources—is what first attracted the Belgian colonists and later the Ugandans and Rwandans. All three groups of outsiders took advantage of Ituri's diverse ethnic groups to enrich themselves.

At first, the Belgians used a colonial policy similar to their management of Rwanda, using the Hema as middle-men to manage their extractive industries. As in Rwanda, this led to deep economic and cultural rifts and exacerbated pre-existing tensions based on the Hema's tendency to herd cattle and the Lendu's to farm (still to this day, farmers complain of the Hema letting their cows roam through and destroy their crops).[7] To the Lendu, the Hema are scheming manipulators who use their privilege and political connections to obtain land titles and influence the judicial system. To the Hema, the Lendu are poorly educated, fiery-tempered and jealous.[8]

In the mid-1990s, as the first Congo War raged through the Kivus to the south, Uganda and Rwanda exploited these historic differences. Others (Fahey 2013a; Fahey 2011a; Vlassenroot and Raeymaekers 2004) have already described the origins of the Ituri War in depth. In this dissertation, I do not seek to add to this literature but rather to use the case of Ituri to highlight how complex "polywars" (Fahey 2011a) like Ituri can be simplified and essentialized through international justice practices. Fahey (2011a) describes seven historical antecedents to war in Ituri:

- A history of foreign intrusion to exploit Ituri's natural resources and people;
- A history of collaboration and resistance among Ituri's tribes with various foreign intruders;
- A history of colonial manipulation of different ethnic groups and tribes in Ituri to support colonial exploitation of Ituri's natural resources;
- A history of sporadic Hema-Lendu violence during the colonial period and Mobutu era;
- A history of Hema dominance over Lendu in politics, religion, and business;

[6] Personal interview, Notable, Ituri, DRC, Spring/Summer, 2013.
[7] Personal interviews, Ituri, DRC, Spring/Summer, 2013.
[8] Personal interviews, Ituri, DRC, Spring/Summer, 2013.

- A history of declining industrial gold production and increasing artisanal gold production during Mobutu's rule;

- A history of increased commercial ties with Uganda during the late Mobutu era.

The "truth" of the Ituri War lies somewhere in between the two extremes of local struggles and outside manipulation. Some of the land conflicts that are still experienced by Iturians today were similar to those that sparked fighting in 1999, while some are actually the direct consequence of the war (notably, hundreds of thousands of Iturians were displaced into ethnic enclaves where farmable land is growing scarcer). Among the elite I interviewed, many had direct knowledge of the Ugandan, Rwandan and Kinshasa politicians who profited form the war, while many also directly profited themselves (making claims of outside manipulation a claim of innocence).

In the buildup to the war, Lendu leaders accused the Hema of orchestrating the war to complete their subjugation of the Lendu people. Hema leaders accused the Lendu of attempting genocide against them, fuelled by bitterness and jealousy. Allusions to the Hutu and Tutsi of Rwanda were occasionally made (Human Rights Watch 2003). On the surface, it seemed an apt comparison—a group subjugated by the Belgians and then relegated to poverty finally reaching the breaking point. But the comparisons were not accurate. The chain of events that ignited such conflicts cannot be boiled down to ethnic hatred; rather, the full causes are simultaneously economic, political, geo-political and ethnic. Many Iturians, in fact, believe that Uganda, Rwanda and Kinshasa manipulated and took advantage of ethnic grievances. Subjects I interviewed would ask, rhetorically, "Where did the guns come from?", referring to the thousands of weapons believed to have been brought into Ituri from outside to arm both Hema and Lendu militias. Both sides thus claim victim status, but the notion of outsider manipulation is central to Ituri's local politics of recognition. I return to these issues in Chapter 7.

Ituri Today

Today, Iturian society is split between a large agricultural "base" and a relatively small and powerful political elite, with the agricultural base further split between farmers and herders. While many Hema do in fact still her cattle, most are farmers like the Lendu and most co-exist peacefully (subjects from both ethnic groups often said, "we are condemned to live together!").[9] Contemporary relations are still strained, however, by land distribution and the ethnic-based stereotypes that proliferate. While many Iturians maintain hope and cautious optimism for the future, there is also widespread agreement that the region is today a "ticking time bomb". While this bifurcated view of Ituri was shared by a wide variety of subjects, Iturians with whom I spoke were on average more optimistic than the international community as a whole, who saw any sort of truth and reconciliation-related work in the region as simply too sensitive. This section reviews the social conditions and discourses that divide the region, before turning briefly to those that suggest opportunities for reconciliation. Ultimately, I argue that there is room for objective, external accounts of the war to make positive inroads toward reconciliation in Ituri. At the same time, because Iturians lack a nuanced understanding of the conflict's many proximate and ultimate causes,

[9] Personal interviews, Ituri, DRC, Spring/Summer, 2013.

the stereotypes that proliferated before the war are in many ways worse today, as parents use narratives of war to explain to their children why one ethnic group is innocent and the other guilty. Essentialized, ethnic-based accounts of violence like the ICC's can thus feed into these narratives.

Discourses of Hatred and Mistrust

The list offered by Iturians and the international community alike of why the region could fall back into war at any moment is a long one: the presence of active militias, large numbers of guns still hidden away in people's homes, land conflicts over borders between villages and between herders and farmers, thousands of demobilized youth who can be easily manipulated by local leaders, grave poverty and unemployment, conflicts over natural resources, and mistrust between communities that is exacerbated by lies and rumors.[10] In interviews, subjects spoke of the "coupers des routes" (literally, "cutters on the road") who stop people in the middle of the road and demand money, often at gunpoint and often within the same "community" (people use "community" or "tribe" to refer to ethnic groups). "People are afraid," subjects often repeated: afraid of the roads, afraid to pass through the villages from other communities, afraid to return to the villages from which they were expelled during the war.

- *The war is not over*

"The problem is *fear*," noted one representative of Ituri's civil society. "Is the war over? Can I trust [the other community]?"[11] This is linked to the other widespread sentiment that "Iturians live with the consequences of that war"; that is, while the fighting may have stopped, the war left a number of deep wounds in Iturian society that have not yet begun to heal. Perhaps the greatest wound was the widespread displacement of Iturians into ethnic enclaves where they still live today. While pre-war Ituri was described to me as a "mosaic" of ethnic groups, much of the District is today sharply divided by ethnic group. Iturians fear, therefore, is not without good cause. In November 2012, five years after the last vestiges of war had been put out, Bunia experienced two days of intense fighting that left several Iturians dead and a number of UN buildings and cars destroyed. The cause, while not entirely clear, was eventually isolated to a local extremist who had spread rumors about the UN to manipulate the town's several thousand "taximen", demobilized former soldiers who operate motorcycles as local taxis.

In another interview, a subject who represented the farmers of his mostly agricultural village spent the majority of our time together responding to questions about the ICC and the Ituri war with stories of ongoing land conflicts, mostly relating to a neighboring Hema community whose cows were destroying his constituents' crops.[12] After several minutes listening to his stories, I paused and asked, "so in your view, is the war over?" Without pausing, he emphatically responded, "No! The war is not over!". This discourse is perhaps one of the most challenging for the ICC's need to sell justice and reparation. How could this farmers' representative begin to think of justice when from his immediate perspective, Hema cows are still ruining his livelihood? "It is a war crime!" he exclaimed. I return to such challenges for the ICC in the last section of this chapter.

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[10] Personal Interviews, Ituri, DRC, Spring/Summer, 2013.
[11] Personal Interview, Notable, Ituri, DRC, Spring/Summer, 2013.
[12] Personal Interview, Political/administrative authority, Ituri, DRC, Spring/Summer, 2013.

From the perspective of Iturians themselves, speaking about the "history" of the war without addressing the ongoing conflicts that they live with on a daily basis was akin to "covering a wound with puss still inside".[13] This ongoing conflict was felt strongly by subjects from across the region primarily through land conflict:

> The war was caused by land conflict. It destroyed Ituri. Today, there is still not a solution—there is still a conflict between the herders and the farmers.[14]

But it was also felt through the presence of weapons and other signs that the region had yet to achieve lasting peace.

> [The ethnic groups] haven't accepted that the war is over. They say, "if we remit our weapons, we don't know what could happen." They hide their weapons for safety because of mistrust. They need to feel that the war is truly over.[15]

- *A State that cultivates weakness*

In this climate of fear, the weakness and outright absence of the state is strongly felt. One member of the international community said with a smile, "the state is not only weak, it *cultivates* weakness!"[16] Subjects cited the lack of solid leadership and political will to address current problems, the weakness and corruption of the judiciary, the lack of proper security and the presence in Ituri of political actors (from Ituri and beyond) who profit from the resulting insecurity. For some, Kinshasa was like "a new Belgium": an extractive colonizer for whom Ituri is only a source of personal profit. For others, they were just awaiting the day when the truth about Kinshasa's guilt would emerge.

> At the level of Ituri, they will support a truth and reconciliation process, but not at the level of Kinshasa. The day will come when [Kinshasa] will be implicated. … Here in Ituri, the people have advanced due to their own private initiative without the government's help.[17]

At the same time, as I discuss in more detail in Chapter 7, the state was cited as the one actor most responsible for leading Ituri away from the consequences of war in which it was still mired. While an international institution like the ICC has become increasingly well received in the Congo (Vinck and Pham 2014), the state is still seen as primarily accountable and, ultimately, responsible.

- *The extremists*

As with opinions toward the state, subjects in Ituri frequently cited those with "malicious intent" when describing social relations in Ituri. Many of these are seen as having profited from the war.

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[13] Personal Interview, Political/administrative authority, Ituri, DRC, Spring/Summer, 2013.
[14] Personal Interview, Political/administrative authority, Ituri, DRC, Spring/Summer, 2013.
[15] Personal Interview, Civil society leader, Ituri, DRC, Spring/Summer, 2013.
[16] Personal Interview, Official from the international community, Ituri, DRC, Spring/Summer, 2013.
[17] Personal Interview, Political/administrative authority, Ituri, DRC, Spring/Summer, 2013.

> Some chiefs … have managed things well after the conflict but others used the conflict for their own power—the war legitimized them! Therefore, they could be a source of blockage for a process of community dialogue [about the war and reconciliation].[18]

Another subject, a religious leader, lamented the influence of leaders over the "base":

> At the base, the people are easily manipulated. The politicians are influential, as are the traditional leaders who always have the deputies[19] behind them. Those who started the war are still in power. They are always causing problems![20]

This assumed link between today's leadership and the war related to subjects' sense that the war was a game between powerful people who took advantage of and stoked ethnic grievances. "We are condemned to live together!" subjects often repeated. But this was not meant to signify that Iturians are simply condemned to be at war with each other: quite the opposite in fact. The prevailing sentiment among subjects was that Iturians had learned how to live peacefully with each other despite their differences—out of necessity. Along with fear of those who directly benefitted from the war, however, subjects expressed concern over the "extremists": those community leaders who use ethnic-based discourse to motivate and mobilize constituencies and profit from their influence.

> There are extremists in every community—certain intellectuals who played a role during the conflict. They create tensions and then profit from them. The NGOs have done so much [toward reconciliation] but the extremists try to block them.[21]

Extremists were thought by many to know the "true" causes of the war, whereas the majority of subjects I interviewed had the sense they do not really understand what brought the region to war. "The traditional leaders know what caused the war," noted one low-level administrator, "but they won't tell us."[22]

Despite such widespread anxiety over and fear of the role of extremists and traditional leaders, subjects expressed often internally-contradictory opinions about them: not trustable but needing to be implicated, scheming but ultimately responsible for managing Ituri's conflicts. As with conceptions of the State's role, subjects' attitudes toward the local leadership were similarly paradoxical. "The NGOs can begin their work [toward reconciliation] but they will be blocked by the leaders if they are not invited so they must be implicated," noted one leader from civil society.[23] A member of the international community confirmed this perspective. "Iturians strongly follow their leaders and leaders give them instructions, so they must be implicated."[24] Talking to Iturians, it is relatively easy to develop the sense that that war was the product of greedy and scheming leaders who forced the region into war. As noted in the earlier sub-sections of this chapter, this is far from

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[18] Personal Interview, Civil society leader, Ituri, DRC, Spring/Summer, 2013.
[19] Deputies are the representatives in the Congolese parliament.
[20] Personal Interview, Civil society leader, Ituri, DRC, Spring/Summer, 2013.
[21] Personal Interview, Notable, Ituri, DRC, Spring/Summer, 2013.
[22] Personal Interview, Political/administrative leader, Ituri, DRC, Spring/Summer, 2013.
[23] Personal Interview, Civil society leader, Ituri, DRC, Spring/Summer, 2013.
[24] Personal Interview, Official from the international community, Ituri, DRC, Spring/Summer, 2013.

the truth. There are deep economic and cultural rifts in Iturian society. Outsiders and local extremists take advantage of these rifts to pursue political agendas but the rifts are there nonetheless.

- *The Hema are liars; the Lendu are dirty*

Iturians maintain deep-seeded stereotypes about the region's various ethnic groups. Even members of Iturian civil society, who are working to overcome the region's social rifts, expressed stereotypical views: "the Hema are liars, while the Lendu are dirty!" one prominent NGO leader said during an interview with a smile.[25] Much of this stems from theories about who are the original groups to occupy the plateau that spans Ituri District. "There is cohabitation," according to one notable for example, "but we are the *natives*."[26] According to another member of civil society:

> The politicians use cultural identity to manipulate and accentuate the [land] conflict. There is plenty of empty land, but there is always conflict. … There's an inferiority complex [among the Lendu] and an superiority complex [among the Hema].[27]

Some subjects even went so far as to describe the war as a "necessary evil." Generally, these were among the Lendu communities in a certain part of Ituri that gained access to significant portions of land after Hema communities were displaced. This displacement, in these Lendu communities' viewpoint, was a necessary evil to "equilibrate" Iturian society. There were those who lost and those who won from the war, the line went, and the Lendu deserved to win.

- *They brought the war to us*

There is also a widespread notion that "they brought the war to us" and that "we were acting in self-defense"—that is, that I and my ethnic group are innocent victims who had to defend ourselves against the aggressions of the other group. From the Lendu perspective, the Hema were seeking to extend their political and economic clout and gain total domination of Ituri. To the Hema, the Lendu were reacting in genocidal fury to their place as the dominated group.

> We do not know the causes [of the war] because we were attacked. There were guns but we did not know where they came from. It was a provocation! The other community took advantage of us and we defended ourselves. They had been preparing their attack for a long time, but we did not know where the weapons came from. … The advantage of publicizing this history [of the war] is that it will shame the [other ethnic community] and discourage them from repeating the same things.[28]

At the same time, subjects from multiple communities, along with members of the civil society, expressed knowledge that both they and members of other communities often lie about their knowledge of what happened.

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[25] Personal Interview, Civil society leader, Ituri, DRC, Spring/Summer, 2013.
[26] Personal Interview, Notable, Ituri, DRC, Spring/Summer, 2013.
[27] Personal Interview, Civil society leader, Ituri, DRC, Spring/Summer, 2013.
[28] Personal Interview, Traditional leader, Ituri, DRC, Spring/Summer, 2013.

- *The "second meeting"*

The lie is a key part of contemporary Iturian society. Subjects I interviews accused other of lying and admitted that they themselves had lied and would lie.

> Where you live, the whites, you write so many things, but here, even deep in our guts, we are not capable of telling you the whole truth. We are too hypocritical. Where you live, a journalist can say things, he can declare things, he can denounce [wrongdoing], But here, we are too scared.[29]

Some subjects approached the deliberate and unashamed lying in Ituri with laughter. "We will doubt what [the others] say because we do not know where the war came from and who promoted it," declared one group of local leaders in an area of Ituri very close to where the fighting first started between Hema and Lendu communities. "The others," they continued, "will also doubt the truth that comes from us! [LAUGHTER]"[30]

This was clear in discussions of the "second meeting". The second meeting is the meeting that leaders from one ethnic group will hold amongst themselves after a larger, multi-ethnic meeting or community dialogue. While community leaders may make certain proclamations at such multi-community meetings, the truth—what they *really* think and feel—will only come out later, at the "second meeting" they hold amongst themselves.

> The problem is the "second meeting". It is good to bring all the leaders [of different ethnic groups] together to speak with each other. They will come and they will talk. But after that, when they are back home, they will meet again. They will have the second meeting amongst themselves. And there, they will make the real decision.[31]

This illustrates the deep-seeded mistrust of each other, the state, and foreigners in which the ICC must operate in Ituri and, I suggest, in most other conflict-ridden contexts where it intervenes. At the same time, there are also conditions and discourses present in Ituri that present opportunities for reconciliation. These are less obvious, but equally important for international justice practitioners because they highlight how and where an organization like the ICC can make significant contributions toward the transition from violence to peace. While in this dissertation, I am most interested in the challenges that international justice practitioners face in the implementation of justice, I am also interested in analyzing the extent to which they can have a lasting impact in places like Ituri. Here, I present the prevailing discourses that suggest an opportunity for reconciliation.

Discourses of Reconciliation

- *Which war?*

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[29] Personal Interview, Traditional leader, Ituri, DRC, Spring/Summer, 2013.
[30] Personal Interview, Traditional leaders, Ituri, DRC, Spring/Summer, 2013.
[31] Personal Interview, Traditional leaders, Ituri, DRC, Spring/Summer, 2013.

First and foremost, as I discuss in more detail in Chapter 7, Iturians do not have a clear understanding of why the war started or how long-standing tensions turned into the bloodiest fighting the region had ever seen. "The people often say, 'there was war, there was war!'" noted one elder in an interview, "But *which* war?"[32] He meant that Iturians themselves do not have a firm grasp on what the war was over and who was primarily responsible for it. This clearly relates to the discourses cited above, which blame leaders, outsiders and other ethnic groups for the outbreak of violence. I cite it here as a discourse of reconciliation, however, because I argue that it represents perhaps the greatest opportunity for the international justice field to use its varied forms of capital and expertise to provide a more nuanced and unbiased contribution to local histories of the conflict. Where Iturians blame the other ethnic group and where children learn these biased histories since the local schools do not cover the war, the ICC's work could potentially highlight that while all ethnic groups played some sort of role in the violence, the great majority of Iturians were in fact enveloped by the conflict through their political leadership and leaders from Uganda and Rwanda. And where Iturians today see ongoing land conflict as evidence that "the war is not over", the ICC's account could clarify that today's conflicts in Ituri are a far cry from the brutality and political motivations of the violence during the war. I return to these arguments in Chapter 7.

- *The Iturians are tired!*

Second, subjects from both the base and the elite expressed a sentiment that "we are all victims of that war". In this sense, the war is indeed something distant, something horrible, like a storm that struck and devastated an entire region. There is no apportionment of blame to the *other* community here, but rather the resignation that nothing good came of the war and that no Iturian would ever wish its return:

> Iturians don't want that war. They are tired! The [other community] will accept the truth of the war because they are also tired. For example, their leaders tried to restart the war but the people refused. They said, "before the war we were together, but now, because of you the rich, the educated, we are separated."[33]

This coincided with notions that the war was only the game of the powerful and that the great majority of Iturians would not stand for such savage violence again.

> The war was savage! All the homes were burnt! Today the people are together, but we still doubt our neighbors a little. When we speak about reconciliation, we are referring to the base, not the elites. It's the people themselves who started to reconcile. We are together everywhere. The people don't want that war! Those who want to restart the war can try but they will not succeed.[34]

Another subject, who represented a prominent Iturian NGO, stressed a similar divide between the people, who are "at peace" and the leaders who continue to support violence.

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[32] Personal Interview, Traditional leader, Ituri, DRC, Spring/Summer, 2013.
[33] Personal Interview, Traditional leaders, Ituri, DRC, Spring/Summer, 2013.
[34] Personal Interview, Civil society leaders, Ituri, DRC, Spring/Summer, 2013.

> The politicians use historical and cultural identities to manipulate and accentuate the problem of land conflict. There is so much empty land but there is still land conflict! The people are at peace, but it is the political class that manipulates them.[35]

Such discourses, particularly those rooted in a conceptions of "the base versus the leaders", suggest that the ICC could in fact play a conciliatory role and be accepted by Iturians.

- *We were manipulated*

This points to a third, widespread discourse, which I also argue suggests opportunities for the ICC's contribution to local reconciliation. There is an almost universal sense in Ituri that everyday Iturians were manipulated into fighting—by power-hungry local leaders, corrupt national figures, and/or foreigners from Uganda and Rwanda.

> Even if there are different truths [about the war], the essential will come out. Because everyone thinks that the war was instrumentalized by other countries and by our government.[36]

While also a means to distance oneself from responsibility, as I have noted, such a discourse suggests that there is an opportunity for an international and objective authority like the ICC to present a multidimensional story about the war that transcends the political establishment and their grip on Iturian society.

- *Destroying history is like cutting the branch you're sitting on*

Finally, among the more educated subjects I interviewed, primarily among Ituri's civil society leadership, there was a common sense that Ituri needs to understand and preserve its history, not only to understand how and why the war started, but also to ensure it never happens again.

> We need to teach the next generation about the evil of war here. That history of hatred and superiority starts from an early age. At school, we could teach that this is not the case, but at home kids will learn something different. They will be taught to hate.[37]

There is a recognition in Ituri, that is, that history has an important role to play in establishing and sustaining the conditions for future peace. One subject presented me with a flyer he had saved from his work with DRC's 2003 national truth commission, following the Inter-Congolese Dialogue. It had a picture of a person sitting on a branch about to chop it off from the tree. The caption read, "destroying our archives is like cutting the branch on which we're sitting." Again, this was not a widespread sentiment among the majority of subjects with whom I spoke. But there was a certain element of the educated civil society, I suggest, who could help gain broader public support for the efforts of an international organization like the ICC to help illuminate and preserve Ituri's history.

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[35] Personal Interview, Civil society leader, Ituri, DRC, Spring/Summer, 2013.
[36] Personal Interview, Notable, Ituri, DRC, Spring/Summer, 2013.
[37] Personal Interview, Civil society leader, Ituri, DRC, Spring/Summer, 2013.

Ethnicity, Inequality, and the State

While there is evidence of these potential inroads toward reconciliation, these should not be over-emphasized. Ethnic tension in Ituri is real, and it is inextricable linked to economic differences, corruption, and political mismanagement—a perfect storm born out of centuries of inequality and manipulation, first by the Belgians and then by Mobutu, Kinshasa, Rwanda and Uganda. This history is complex and has played a central role in instigating violence (Fahey 2011a; Prunier 2008; Stearns 2011). As noted, I do not in this dissertation intend to enter into detail about this manipulation. Rather, I refer to it here to illustrate that inequality and state mismanagement have exacerbated Iturians' experience of ethnic tension and blocked trends toward reconciliation. In this dissertation, my intention is to set the ICC's intervention in Ituri within this broader context, to map out both how it may contribute to conflict and where there are opportunities to contribute to reconciliation.

Class differences in Ituri undermine reconciliation and reproduce ethnic difference. Iturian society is still divided today according to where communities fled during the war. As one Congolese official working on land issues in Ituri noted, "there is a limit of your study. People want to move home [but are stuck in enclaves]. They still live with the consequences of the war!"[38] Large swaths of Iturian society are in fact still stuck in "enclave" communities where they ended up during the war. Ethnic groups often fled to the same areas, creating very dense ethnic pockets. Where Ituri was once a "mosaic" it is today divided into these "enclaves" in which people live in cramped quarters with limited access to land for farming.

This creates a strong economic pressure that is felt as an ethnic pressure. As an official working in an international organization in Bunia explained,

> Before the war the Hema lived with the Lendu and had more space. Today, they are more concentrated in enclaves. They have less space and less to eat so that is why they take up arms [and attack people]. It is also why they want peace and never war.[39]

A local chief confirmed this:

> Before the war there were a lot of Hema with the Lendu, but the Hema are not there anymore. They are all in Bunia or somewhere else. They are traders with no land to cultivate. They Have to use motorcycles to travel and get their products.[40]

The fundamental pressure here is on livelihood but it manifests itself in ethnic violence. One chief of a Bira community, where almost the entire town was displaced, explained that while there are "intellectuals" who are still able to manipulate people along ethnic lines, "the majority [of the base] are against the war because it doesn't bring anything good. Being displaced is terrible."[41] Others in Djugu territory noted that "Djugu used to be a site of commerce, but now it is deserted—all are in Bunia,"[42] or that the "poor people of population know that war is not good. They suffered too

[38] Personal Interview, Official from the international community, Ituri, DRC, Spring/Summer, 2013.
[39] Personal Interview, Official from the international community, Ituri, DRC, Spring/Summer, 2013.
[40] Personal Interview, Traditional leader, Ituri, DRC, Spring/Summer, 2013.
[41] Personal Interview, Traditional leader, Ituri, DRC, Spring/Summer, 2013.
[42] Personal Interview, Traditional leaders, Ituri, DRC, Spring/Summer, 2013.

much."[43] "Before the war they were mixed!" noted another respondent, a religious leader, recalling the mosaic nature of many of Ituri's town and neighborhoods.[44]

Ethnic tension and people's lack of local understanding of the conflict, furthermore, are both exacerbated by the lack of state presence in Ituri, noted above. The absence of the state, the exploitation by its leaders, the corruption of its institutions were common refrains from across the socioeconomic spectrum. From victims' groups up to traditional leaders, virtually all interviews eventually turned to the state's absence, corruption and/or weakness. At the same time, the state was the most commonly cited actor in response to questions about who is responsible for memory work in Ituri.

> I have here a cooperative association and I reached out to the [other community] in an effort at reconciliation. But it is the Congolese State who should organize such efforts! But here in Congo, if you see things clearly, if you make your analysis, you will find that it is the non-governmental organizations who make 99% of the efforts in terms of rehabilitation, in terms of assistance, in terms of reconciliation. This is the responsibility of the State! Informing people, spreading message of peace, reconciliation and also to contribute to reparation. This is [the State's] country. It is [the State's] people! The State needs to play a very big role.[45]

For Iturians, therefore, there was a paradox: the state was simultaneously implicated in the violence, absent from everyday life, corrupt and responsible for the "memory work" needed to solidify Ituri's transition from peace to conflict. Without the State, or a local civil society strong enough to engage in memory work, the ICC's version of the truth—a conflict fundamentally rooted in ethnic grievances—holds particular influence and generates strong reactions.

Challenges and Opportunities for International Justice in Ituri

The presence of mistrust, ethnic stereotypes, and ongoing conflicts in Ituri pose significant challenges to the work of international justice practitioners. The ICC has had to operate in a climate of fear, rumors, and violence, some directed at the Court and its staff. At the same time, Iturians' hunger to learn about the war and to move forward present real opportunities. It is within this context that this dissertation seeks to chart how the ICC has responded to the challenges of a seemingly "perfect" war like Ituri and is living up to its potential to take advantage of these opportunities.

These challenges are four-fold: first, the ICC operates inside an expanding, but limited field. It is expanding for two reasons: on the one hand, it continually enters into new countries and localities so that as soon as practitioners are accustomed to the customs and politics of a place like Ituri, the Court must intervene in a new and altogether different region as new conflicts arise and fade. On the other hand, in addition to this *geographic* expansion, it is expanding *conceptually* as it encounters needs and priorities that go beyond the boundaries of justice—needs that are more traditionally met

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[43] Personal Interview, Traditional leader, Ituri, DRC, Spring/Summer, 2013.
[44] Personal Interview, Civil society leader, Ituri, DRC, Spring/Summer, 2013.
[45] Personal Interview, Notable, Ituri, DRC, Spring/Summer, 2013.

by international justice's neighboring fields like development and human rights. A second and related challenge, is that the international justice field is inherently interstitial, as I have written, so that responding to a complex conflict like the Ituri War forces the Court to draw on forms of capital that are not traditionally the purview of lawyers and judges.

Third, these multiple needs and various forms of capital foster internal competition within the field of international justice and key organizations like the ICC. Thus, international justice practitioners with backgrounds in law, social science, development, psychology, diplomacy, etc. must compete against each other to craft responses to the needs of victims and communities like those in Ituri. Finally, the international justice field is fundamentally illegitimate. This is both top-down—since the field is founded on the challenge to state sovereignty and must always compete with national and regional jurisdictions—and bottom-up, since it must also contend with a lack of legitimacy in the eyes of the communities it seeks to serve.

At the same time, the case of Ituri highlights that there are real opportunities for the field of international justice to make a transformative difference in regions like Ituri. This, I suggest, stems from Iturians' mistrust of the state and their foreign neighbors like Uganda and Rwanda, combined with their hunger for a more profound understanding of why and how the war started. The ICC is an international organization unattached (in theory) to any particular state. And it is founded on the basis of objectivity and neutrality. Fulfilling its potential is no easy matter by any means, however my Ituri data suggests that the opportunity is there. In the next chapters, I unpack both the Court's challenges and opportunities, and propose in Chapters 6 and 7 how the ICC is responding to them, for better or for worse. I argue that the ICC's practical responses to the fundamental challenges of the international justice field have interfered with its ability to take advantage of opportunities in Ituri and aligned with Iturian leaders' use of ethnic difference to drive constituencies—in particular, its reliance on a simplified framing of the Ituri War as a two-sided, ethnic conflict. At the same time, the Court has shown some creativity and flexibility in responding to the multidimensional needs and realities of Iturians, drawing on international justice practices that extend beyond the law. Such creativity, I argue furthermore, has resulted not from any top-down, conscious planning on the Court's part but precisely as a result of its interstitial, internal competitiveness. In particular, the ICC Appeals Chamber's recent suggestion that reparations in the *Lubanga* case be complemented by "assistance" so as to make more Iturians feel included, is a notable illustration.[46] I return to this particular example in Chapter 6.

[46] *The Prosecutor v. Thomas Lubanga Dyilo, 'Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012'*, ICC-01/04-01/06, International Criminal Court, (Reparations Judgment, Appeals Chamber, *Lubanga*, 3 March 2015).

Chapter 4

The Production of Judicial Truth: From Nuremburg to Ituri

> *In order to establish the truth, [the Prosecutor shall] extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally.*
>
> Article 54, Rome Statute

> *The judgment of a court, which decides conflicts or negotiations concerning persons or things by publicly proclaiming the truth about them, belongs in the final analysis to the class of acts of naming or of instituting.*
>
> Pierre Bourdieu, The Force of Law

Article 54 of the Rome Statute charges the Prosecutor of the ICC with establishing the truth of the violence investigated by the Court. She must uncover *all* the relevant facts and she must do-so while treating incriminating and exonerating evidence equally. This charge has not changed since the trials at Nuremburg, where prosecutors were equally obliged by international law to do the same. Indeed, Bourdieu underlines that the force of law is firmly rooted in its claims to neutrality and its autonomy from the political sphere. Yet, if we consider the production of judicial truth from Bourdieu's notion of "naming or instituting", there are key shifts since the trials at Nuremburg. Where the truth at

Nuremburg was based on the Allies' victory, despite their claims to detachment and to the representation of humanity's interests, the ICC's production of truth in Ituri—of its violence and its victims—is significantly more fraught. In this Chapter, I review the key shifts in the naming and instituting of violence and victims from Nuremburg to Ituri. I then use these to outline the key jurisdictional constraints under which the field of international justice operates today versus at Nuremburg in 1945.

The International Military Tribunal at Nuremburg

The implementation of the International Military Tribunal (IMT) At Nuremburg (as well as the Second World War trials at Tokyo) was not a foregone conclusion. While the Americans and France both supported the idea of an international tribunal, the United Kingdom and Russia argued for summary executions as appropriate punishments for Germany (Moffett 2012). The UK favored executions of top leaders and trials for their subordinates, while Russia, having lost around 20 million civilians to the war, favored the outright execution of 50,000 to 100,000 German officers. The Americans eventually won out.

The IMT's charter makes no reference to victims (Moffett 2012). Indeed, Moffett makes the important point that beyond general statements to invoke the masses who were killed during the War, "the victims" at the IMT referred primarily to states. The Americans focused their case on the crime of aggression—the unjust invasion of one state by another—as opposed to crimes against humanity and war crimes, which focus on the specific acts committed on the ground and by which individual victims suffered. The crime of aggression, on the other hand, ultimately sees the entirety of civilization as the victim. Thus, Chief Counsel Jackson's invocation of "humanity's aspirations to do justice" quoted at the beginning of this dissertation was fundamentally a call to protect the sanctity and sovereignty of states who were unjustly aggressed—states claiming to represent the interests of humanity through pursuing their own interests. As I argue in this chapter, "humanity" means something different for the ICC today. It is less homogenous, more contested, and divorced from the sovereignty of states.

Despite these differences, the "victims" were still invoked at the IMT by all parties as rhetorical justification for the prosecution and punishment of the German and Japanese leaders on trial (Moffett 2014). "Justice" for victims was construed as the punishment of the Nazi and Japanese leadership and ensuing "sense of justice and vindication" (Karstedt 2007: 1). This is the "imagined victim" (Fletcher 2015) who is crucial to the legitimacy of international law—both in Nuremburg and Ituri. International justice acts on behalf of this imagined victim and not out of its own or any state's interests. Indeed, international justice's sole interest is supposed to be the fair execution of the law with impartiality and neutrality. Key for our understanding of the differences between Nuremburg and Bunia is thus not whether "the victims" are used to justify the law but in the kind of victims invoked and the sort of work that goes into invoking them. Today's international justice, I contend, has a far harder time doing this.

At Nuremburg, we do not see the distant and exotic victim suffering at the hands of brutal warlords, but the whole of humanity—via the states that represent and protect it—suffering from Nazi aggression. There is no child soldier or victim of rape whose actual needs are probably better met by an NGO. The particularities of the victims of World War II's unspeakable crimes and widespread murder did not have a place in the justice process. They were not needed like they are today. While

the IMT was by no means an "easy" trial to undertake, I contend that the invocation of its imagined victim required fewer and more accessible productive practices to realize. The explanation is partly procedural but it mostly stems from the state of the international justice field at the time. Indeed, I suggest that it stems essentially from the fact that at the time of the IMT a "field" of international justice did not in fact exist. Rather, the tribunal was the product of dominant states. It drew on international law and sought to deliver justice on an international scale, but could not draw on specific forms of international justice capital or authority in the way we see international justice today operating at the intersection of powerful global fields. There was not a professionalized class of lawyers, advocates, and diplomats dedicated to the "international justice game". Strict, legal conceptions of the imagined victim could thus remain unchallenged, without the complexities of non-legal invocations or the actual lived experiences of victims.

On a procedural level, individual victims' actual participation in the proceedings was also limited, due in large part to the Americans' dominance of the process and the use of a common law "adversarial" model. While not central to the topic of this dissertation, the tensions between common law and civil law are an important feature of the international justice field, particularly for understanding the procedural and symbolic place of victims in the field. In civil law, victims can participate as civil parties at trial. Civil law lawyers and judges, therefore, tend to see the inclusion of victims in international justice as a natural extension of their domestic jurisdictions. Civil does not utilize an "adversarial" model, but rather sees the prosecutors, victims and defense as individual parties whose evidence can be reasonably assessed by an impartial judge. Common law, on the other hand, considers the balance between defense and prosecution as the basis of a fair trial. Adding victims as a third party, for common law lawyers and judges, calls into question the fairness of the trial process for the defense as it is generally assumed the victims and prosecution will both direct their cases against the defense, who will thus have two adversaries to deal with. Where the IMT could adopt one model over the other, through the dominance of one state, today's international justice field is perpetually torn between the two.

The procedural shifts from the London Agreement, which established the IMT, to the ICC's founding document, the Rome Statute, are an important part of the history of the international justice field. The Rome Statute inscribes into law the inclusion of victims at a much less abstracted level, institutionalizing the fundamental tensions between the imagined victim and the actual victim, discussed below. But the procedural differences are, I suggest, a function of the state of the field (or "non-field" at Nuremburg) at the time. The Rome Statute ultimately institutionalized the inclusion of victims precisely because of the strong presence of human rights advocates and civil law countries at the sessions where the Statute was crafted. It also institutionalized notions of procedural justice like outreach and other practices meant to strengthen the link between the court and the field and the "local ownership" of the process. At the IMT, aside from making claims to be working for the victims or seeking witness testimony from some victims, the prosecutors did not have to actually include the masses of victims affected by the Second World War in the trial process. Nor did they have to account for the many gaps and inconsistencies between their characterization of the violence and its complex history. For example, the Soviet Union used the IMT to accuse the Germans of perpetrating the massacre at Katyn, Poland (Moffett 2012). Other violent acts perpetrated by the Allies, including the mass rape of German women by Russians, the American forces' use of "comfort women" in Japan and the Americans' use of atomic bombs at Hiroshima and Nagasaki, were not included in the Nuremburg or Tokyo trials (Tomuschat 2006).

These omissions highlight the fundamental political foundations of the Nuremburg and Tokyo tribunals. Like the force of law of the domestic judicial field, the force of international law at Nuremburg drew its legitimacy from the dominance of the victors of the Second World War. At the same time, it demanded measures to mask these foundations: statements of neutrality, allusions to humanity, the very theater of trial itself. Indeed, most of the leaders that the UK felt should be executed outright were eventually executed following the IMT. International law today draws on some of the same rhetorical measures.[47] But the foundations of the force of law at Nuremburg, which extended the legitimacy of domestic law to the international stage, are today fundamentally different. International justice is today a field both in crisis and expanding, a field with many forms of capital and simultaneously consolidating its boundaries, and a field that simultaneously relies on the authority of powerful states while distancing itself from them.

This was not a sudden shift. Between Nuremburg and Ituri, between the IMT and the ICC, there were a number of hybrid institutional forms. In addition to taking on semi-permanent institutional forms, some of which blended international and domestic legal structures, these ad-hoc tribunals adopted hybrid forms of legitimacy as well. Hagan, Levi and Ferrales (2006) have argued, for instance, that the tribunal for the former Yugoslavia slowly moved away from a reliance on American dominance to acquire its own autonomy through internal struggles that resulted in unique institutional practices. I now turn to these ad-hoc tribunals before developing my argument about the foundations of legitimacy in international justice today and its fundamental crises.

The Ad-hoc Tribunals

In 2001, *The Guardian* reported that Secretary of State Colin Powell essentially bribed Serbia with a $120 million aid package to hand over Slobodan Milosovic, the world's most wanted war criminal at the time (Borger and O'Kane 2002). This stands in stark contrast to one of today's most wanted alleged war criminals, President of Sudan Omar al-Bashir, who has famously flouted international warrants for his arrest while traveling to other African countries—most recently in South Africa, where a judge ordered his detainment moments after he had left the country on a private jet. This juxtaposition highlights the important differences between the ad-hoc tribunals and the ICC, and between what we might call the "meso-field" of international justice that developed since the IMT and the fully fledged international justice field of today.

The International Criminal Tribunal for the former Yugoslavia was the first of these ad-hoc tribunals, developed by the UN to manage the breakup of the former Yugoslavia. While the ICTY was heavily dependent on American funding and diplomatic muscle, it was very different from the IMT in several key ways. First, it adopted a semi-permanent institutional form (and is still in existence today). And second, it was developed at a time when conflict in the former Yugoslavia was

[47] For example, declarations by the ICC Prosecutor of her neutrality provide daily fodder for critics of the ICC who see it as merely the extension of the victors' justice of Nuremburg to the African leaders of today. See, Mamdani. 2010. "Responsibility to protect or right to punish?" Journal of Intervention and Statebuilding 4(1):53-67. And the IMT today provides one of the common historical reference points for international justice actors today. Benjamin Ferencz, one of the US's Chief Prosecutors at Nuremburg and a vocal advocate for the establishment of the International Criminal Court, is today a giant in the field—an ever-present figure at ceremonies and conferences who is counted among the pillars of the field's legal capital.

still ongoing, making it a player in the conflict. Most notably, the genocide at Srebrenica took place *after* the ICTY was founded and had begin adjudicating its first cases.

As noted, Hagan and Levi approached the ICTY as a site for studying the production of law—not just its initial design and setting-up, but its daily organization and operation and its "mutually constitutive schemas and resources" (Hagan, Levi and Ferrales 2006: 586; Sewell 1992). In studying these, they argued, one can chart the development of the "force of law" inside the ICTY and thus trace the development of its autonomy from the delegated authority of powerful states, namely the United States. The ICTY and the other ad-hoc tribunals thus offer a useful example of the international justice field's gradual move away from political legitimacy and toward its own internal forms of autonomous legitimacy, founded on the sorts of prosecutorial practices identified by Hagan and Levi, and, I argue, the myriad other practices I outline in this dissertation that help the ICC and its staff manage the field's obstacles, challenges and crises.

Hagan and Levi's analysis can be extended to the other ad-hoc tribunals, many of which are also still in existence today. The International Criminal Tribunal for Rwanda (ICTR) was also founded with an initial push of American diplomacy (Bass 2000) and has also emerged as a semi-autonomous legal institution with its own judicial practices. Also like the ICTY, it has not faced the same sorts of legitimacy challenges as the ICC. Notably, the ICTR has only prosecuted one side of the Rwandan genocide—the Hutu *genocidaires*—and in the process reaffirmed and solidified the power base of the country's Tutsi president since the genocide, Paul Kagame. The Extraordinary Chambers in the Courts of Cambodia (ECCC) follows a different setup in that it is a hybrid tribunal that uses both international and Cambodian legal structures. In terms of legitimacy, however, it is marked by the same tension between autonomy and delegated authority as in the ICTY and ICTR. In the ECCC's case, however, this tension is heightened by the rift between international lawyers and Cambodian officials and lawyers. The ECCC does have a limited victims' regime, and does work to help NGOs provide assistance to victims on a small scale, but these sorts of practices are not nearly as central as they are to the ICC and the broader international justice field.

That Hagan and Levi located the focal point of their analysis in the Prosecutor's office at the ICTY—and not, for instance, in the communities where crimes are being investigated—highlights one of the key differences between the ad-hoc tribunals on the one hand, and the ICC and the broader international justice field on the other. While the ICC Office of the Prosecutor is a key site for the field's constitutive practices, where some its core objects of violence and victims are partly produced and reproduced, there are a number of other key sites. As I have discussed, the ICC has an expansive victims' regime, where much of the field's internal struggles takes place. As a permanent court, moreover, the ICC has a potentially infinite set of regions and contexts into which it can intervene. These regions are key sites in the field as well. And while NGOs played a central role in the development of the ICTY, they play a more integral role at the ICC. The NGOs were eventually excluded from the ICTY to make room for a dedicated class of "international civil servants" (Hagan, Levi and Ferrales 2006), but NGOs are woven into the networks and practices of the ICC. They are also central to the broader field's legitimacy, where the ICTY was firmly ensconced within the global reach of American power. Powerful states certainly still exert their influence at the ICC, including the U.S., but in more nuanced, technical and diffuse ways.

The International Criminal Court

The production of judicial truth at the ICC is more autonomous from the delegated authority of powerful states. As such, it is also more contested. In this dissertation, I refer to the challenges of truth production at the ICC as "jurisdictional" challenges and the practices used to manage them as "productive practices". Here, I review these challenges before turning to the productive practices used to manage them in the following chapters. I refer to these challenges as jurisdictional in order to differentiate them from the Court's political and logistical obstacles. While the political and logistical challenges of international justice can be managed in part by the selection of which conflicts to engage and which to forego, the jurisdictional challenges of expanding into new geographies and contexts are ever-present. This, I argue, is primarily because the tools of international justice are increasingly contradicted by the realities of the problems to which they are being applied. To manage them, international justice actors must continually develop new practices to shape these problems and adapt their truths to those of international justice. Understanding this process is key to understanding how power works in a global, interstitial field like international justice and how the field is ultimately reproduced and consolidated under challenging circumstances.

International justice establishes truth on several levels. On the one hand, the Prosecutor of the ICC must use her investigation to decide which crimes, actors and locations will form part of her case strategy and which she must leave out. On the other hand the Trial Chambers make proclamations on truth through judgments of the evidence brought before it. But as Bourdieu's vision of truth as an exercise in naming or instituting suggests, the construction of truth also happens through myriad other practices both inside and outside the courtroom. In this dissertation, I see such practices of truth-making as central to the work of constructing and reproducing the field of international justice in part because they help manage the challenges encountered by the field as it expands into new conceptual, professional and geographic terrain.

Such practices are particularly integral to a field like international justice for four reasons. First, it is relatively new and expanding, which means it must continually push into new geographies and uncharted conceptual contexts. Second, it is endowed with certain interstitial qualities, meaning it must continually draw on and push away from other neighboring fields like human rights, diplomacy and development. Third, it is founded on relatively new organizational bodies, like the ICC, which inspires intra-institutional competition over the right to legitimately speak for the field. And finally, it cannot rely on a single state or acceptance of its subjects for its legitimacy. This section reviews these four "crises" of international justice. Chapter 5 explores the key productive practices that have emerged to manage them in global centers like The Hague on the ground in places like Ituri.

As I have sought to lay out in this chapter and in Chapter 2, the field of international justice expanded dramatically over the latter half of the twentieth century and beginning of the twenty-first century. The pace of change and expansion has only accelerated in the last decades, marked by 123 countries becoming party to the Rome Statute since 1998 and the opening of the International Criminal Court in 2002. Where the perfect trial of mid-twentieth century international justice was defined by the victors' justice at Nuremburg, the seemingly perfect trial of today is in Ituri, marked by the savagery of the Congo War but also amenable to the Prosecutor's political and logistical constraints. As a relatively small region of the Congo, accessible via Uganda and the UN's peacekeeping force, where those on trial could pose no real threat to national political interests, Ituri

seemed like a feasible choice for the Court. It has highlighted, however, that the challenges faced by an interstitial global field are not only political and logistical, but jurisdictional in nature.

An Expanding but Limited Field

International justice's expansion into ever-new geographical and conceptual contexts entails significant jurisdictional challenges beyond the political and logistical obstacles discussed previously. Yet, it is limited in its abilities to adapt to these new contexts. Here, I present three challenges stemming from this expansion. The first is quite straightforward: international justice generally intervenes in contexts of mass violence where there are masses of victims and virtually everyone may at least consider themselves a victim. International justice actors like the ICC, however, have limited resources against which they must carefully balance the actual needs they encounter on the ground. Second, the victims and affected communities on whose behalf international justice actors must justify their interventions may not necessarily need or want the justice or recognition that international justice is selling. These victims will likely need and prioritize dimensions like security, shelter, and employment alongside or above justice. Third, depending on how it is put into practice, the recognition of international justice actors like the ICC may do more harm than good to some populations.

Since the ICC opened in 2002, the Prosecutor has only opened cases in Africa in countries marked by poverty, inequality, broken infrastructure, weak institutions, poor governance and insecurity. Indeed, all of the ICC's current situations are in countries with low human development indices (de Greiff 2009a). The first two countries where reparations are most likely to take place—the Congo and the Central African Republic—are in the bottom 3 out of the 187 countries for which the UNDP has data (UNDP 2014). Congo is second-to-last last on the list with a life expectancy of 50 years. In these kinds of contexts, the particular violations to which international justice is meant to respond will always exist alongside a larger set of needs for security, health, food, education, employment and more.

The following description fits the ICC's situation countries well: "poverty, huge inequalities, weak institutions, broken physical infrastructure, poor governance, high levels of insecurity, and low levels of social capital" (de Greiff 2009a: 29). Not surprisingly, these immediate needs often take priority (Weinstein et al. 2010). In these contexts, reparations can be seen as a means of satisfying basic ends, no matter the reasoning behind them, so for those on the receiving end they can be seen as simply more aid, assistance, or development. I return to this particular issue in Chapter 6. There are legitimate questions about the extent to which the international justice field can legitimately meet the needs and desires of the victims whose interests it purports to represent, and whether the distinction between justice, reparations, and development is even salient for victimized populations. Where the ICC can offer a victim of war crimes international recognition and the chance to "tell her story", she may very well only want food for her children and see the Court as one means among many to this end.

In the 2014 population-based survey of the eastern DRC in which I participated, respondents' main priorities included peace, money, jobs, education, security, food, land, housing, health and cattle (Vinck and Pham 2014). Granted, when asked directly about the importance of accountability and justice, nine out of ten respondents said that these were important, citing punishment, jail, trials, and removal from office as appropriate consequences for those responsible for violence. But when asked in an open format about priorities, justice was less pressing for people than security, shelter, food

and a stable income. International justice, with its promise of reparations, can be seen by their intended beneficiaries as a means to satisfying other more immediate ends, no matter how well they may desire that justice be done. In more than one case, Prosecution witnesses have been accused of providing their testimony only in exchange for assistance.

Equally importantly, the awarding of reparations will rarely go unnoticed by a recipient's broader community, even in the case of individual reparations. This raises important questions about whether victims of grave crimes can benefit from recognition, and whether they desire it or not. As I discuss in detail in later chapters, recognition can also mean stigma for many of the victims of crimes under the ICC's jurisdiction, such as former child soldiers or victims of rape and other forms of sexual violence. Agencies involved in the rehabilitation of child soldiers, for instance, actively try to de-label projects as "child soldier projects" and to recognize them instead more broadly as "vulnerable children".

Finally, in contexts like Ituri, the ICC is experienced in relation to multiple other aid agencies and humanitarian organizations and, in this regard, is often racialized. The common term for someone from the US or Europe is "muzungu", which has various forms in Swahili and means literally "white person". Staff from The Hague who arrive in Ituri are welcomed as would be staff from the other international agencies working in Ituri. Their cars are known, and they frequent the same restaurants as other international staff. The affected communities who experience the ICC do so not simply in the context of a war where crimes were committed but in a wider field of humanitarian and development responses, many of which started long before the ICC's arrival. People's experience of the ICC is thus filtered by the daily experience they have of all the international institutions that arrive. Here, linking oneself to the "wazungu" (plural for muzungu) can be a survival strategy. Ultimately, the ICC is selling a good that not only may not be wanted, but that its main constituency may not be expecting from it.

This raises a number of questions. For the purposes of this dissertation, I am primarily interested in how this challenges the Court's and its staff's self-identity as legal actors dispensing justice and recognition. ICC staff are often, albeit not always, aware of these dilemmas. Indeed, the role of "assistance" at the Court and its relationship to "reparations", is a particularly important debate that I explore in-depth in Chapter 6. As one senior ICC staff remarked in an interview, as her colleagues wrestle with the contradictions and challenges inherent in working in contexts of severe resource scarcity, they sometimes exclaim, "We're not an NGO!"[48]

These tensions force international justice actors to utilize productive practices like this statement that reinforce the field's boundaries and attempt to shape the objects with which it is principally concerned—victims, perpetrators and violence. From this perspective, a young father in Bunia who is primarily concerned about how he is going to feed his children is actually a former child soldier and must be recognized and provided justice as such. My argument is not that this is wrong or even necessarily a bad thing—indeed, the ICC's expansion into new and distant contexts like Ituri represents the expansion of justice and human rights into conflicts that could otherwise be managed only with further violence. My point, rather, is that there is a mismatch between the ICC's tools of

[48] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.

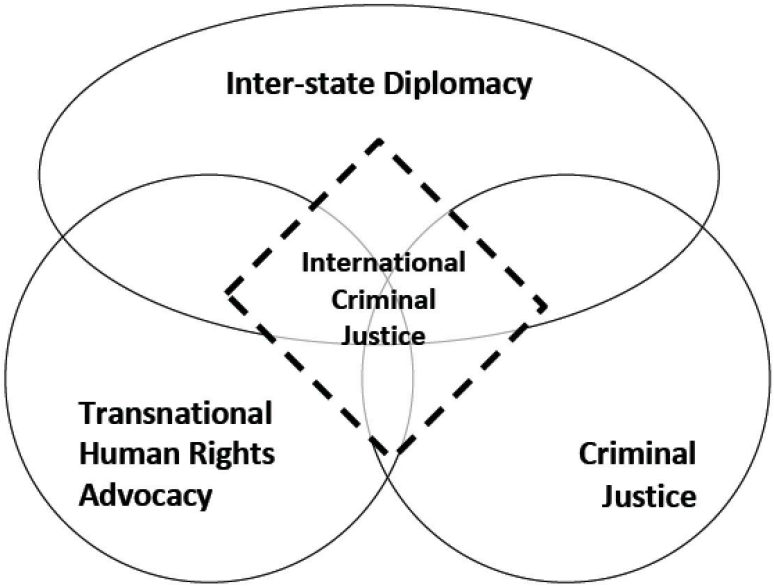
juridical production and the contexts like Ituri where it must use them. This mismatch, I suggest furthermore, is a particularly acute feature of global, interstitial fields, to which I now turn.

An Interstitial Field

International justice is today operating in a world where other professional fields often have more experience, expertise, and access to tools that are better suited to the myriad problems encountered on the ground. These fields also have the flexibility that law often lacks to adapt to victims' and vulnerable populations' multidimensional needs, such as to combine child soldiers with the broader category of vulnerable children or to purposively *not* recognize victims of sexual violence as such. International justice actors in these contexts thus continually find themselves working alongside actors from other professional fields like humanitarian relief, development, peacekeeping and security, many of whom know the local context better. Furthermore, these actors and their varied forms of authority and expertise are also present inside the field of international justice: as staff at the ICC, as officials from NGOs who are monitoring the Court, or elsewhere. But these fields and forms of authority are at the same time those against which international justice must define itself: as *not* development and as *not* relief. There is, therefore, a simultaneous push and pull.

Chapter 2 outlined the multiple forms of authority on which international justice actors draw in their work. Here, I illustrate how this push-pull has created fundamental tensions in the field in response to which its actors have come to rely on various productive practices. The fundamental rules and assorted practices of international justice did not arise de novo. Rather, the field of international justice developed at the intersection of three pre-existing and powerful global fields: inter-state diplomacy, criminal justice and human rights advocacy, and development (Figure 2, taken from Dixon and Tenove 2013). This development at the nexus of previously established fields is not peculiar to international justice—as noted, similar observations have been made about think tanks (Medvetz 2012b) and the European legal field (Mudge and Vauchez 2012). In each of these cases, the new field acts as a site of convergence and contest among participants in pre-existing fields. At the same time, practitioners within the new field gain power and seek to secure their autonomy from these intersecting fields. I now turn to these dynamics as they relate to international justice and its respective relationships to the fields of inter-state diplomacy, criminal justice, human rights advocacy, and development.

Figure 2: International Justice as a Global, Interstitial Field



First, the overlap between international justice and inter-state diplomacy is considerable. International criminal tribunals are created through negotiations between states, whether at the UN Security Council, which created the ICTY and ICTR, between groups of states and particular governments (to create the hybrid tribunals), or in the multi-lateral treaty-making that created the ICC, as well as the International Military Tribunals at Nuremberg and Tokyo. The pressure by state governments on the internal operations of tribunals is also well documented. States fund tribunals, their security forces arrest suspects, they jail convicted persons and they apply pressure on other states to adhere to international criminal law.

Competition among states with different visions for international justice and different amounts of influence over its direction could be seen in the negotiations to create the ICC. One faction, which included Permanent Members of the UNSC, wanted the ICC to be tethered to the UNSC and require state consent to gain jurisdiction. The other faction, which included many NGOs and a coalition of small and medium-sized states known as the 'Like-Minded Group', called for a strong and relatively autonomous court. They wanted an independent prosecutor, limitations on the UNSC's ability to refer cases to the court and automatic jurisdiction over core crimes. The Rome Statute followed this second vision. Partly as a result, major powers—including the United States, China and Russia—have not ratified the treaty.

The ICC remains dependent on state cooperation and assistance. States monitor the Court and meet periodically as the Assembly of State Parties to set its budget and shape its policies. Furthermore, the UNSC continues to play an important role—for instance, it granted the ICC jurisdiction over crimes in Sudan and Libya, but has not taken similar actions in cases such as Syria or Sri Lanka. Nevertheless, the creation of the ICC was an important step in the development of international justice's autonomy from inter-state diplomacy. With a permanent court, each new international justice initiative no longer requires new rounds of inter-state negotiation and institution-building.

The principles and practices of international justice can develop with somewhat less exposure to state interests and interference.

Second, criminal justice is a system of practices and institutions that seeks to identify, classify, and explain forms of violence and rule-breaking, and promote justice for law-breakers, victims and the wider society. Criminal justice was traditionally seen as a domestic matter for state governments, but it is an increasingly transnational field, one that is dominated by certain forms of expertise. Techniques and practices of criminal justice circulate widely and criminal justice institutions are increasingly networked across state borders. The overlap between international justice and criminal justice practices are numerous. The Rome Statute blends international and domestic criminal justice systems, with states incorporating Rome Statute definitions of crimes into their criminal codes and the ICC only gaining jurisdiction when domestic systems prove inadequate. International justice practitioners tack back and forth between aligning international criminal law and practice with domestic criminal justice and seeking autonomy or specialization from it. Indeed, many staff at international criminal tribunals come from domestic criminal justice organizations and many struggles at the international level reproduce organizational or ideological issues at the national level. In most countries where international criminal investigations occur, tribunal staff work extensively with domestic criminal justice personnel, especially on investigations and witness protection.

Nevertheless, international justice does have considerable autonomy from criminal justice. international justice practitioners often locate their work within the broader aims and practices of transitional justice, and suggest international justice can contribute to objectives such as historical truth-telling and community reconciliation. Employees come from a wide range of backgrounds outside law, including international relations, development, human rights, public relations, and conflict resolution. While international justice incorporates many of the practices of criminal justice and draws on its forms of legal and expert authority, it has the strategic advantage of drawing on forms of expertise and authority from beyond the criminal justice field.

Third, transnational civil society has transformed global politics in the last half-century and human rights advocacy has been one of its key projects. Thousands of human rights organizations exist today, often linked across borders as parts of transnational advocacy networks. Transnational civil society organizations that focus on human rights, including Amnesty International and Human Rights Watch, have given extensive attention to international justice. Approximately 2,500 NGOs from 150 countries are members of the Coalition for the International Criminal Court, and there are several international NGOs specializing in international justice issues, including Redress, No Peace Without Justice and the Women's Initiatives for Gender Justice.

Transnational civil society advances the international justice field at different political levels: lobbying and policy design at the level of inter-state diplomacy, pressure and expertise on national governments to adopt international justice principles, and communicative engagement and service delivery at the level of local communities. States frequently fund or align with NGOs to conduct international justice-related tasks that would constitute violations of sovereignty if done by their own officials. The ICC is particularly entwined with transnational civil society. As noted, civil society organizations were major contributors to the negotiations to create the ICC. Since its creation the ICC has engaged extensively with transnational civil society. It depends on the work of "intermediaries," formal or informal civil society actors who help with ICC activities including investigations, community outreach and liaising with victim participants. Senior Court staff meet frequently with civil society in The Hague (including during official semi-annual conferences) and in

situation countries. Many ICC staff have spent part of their careers at NGOs that focus on human rights or transitional justice. But civil society also acts as a watch-dog over the ICC and, sometimes in partnership with academics, strongly critiques the Court's practices and consequences.

International justice practitioners and institutions depend on transnational civil society to help them avoid capture by inter-state diplomacy or criminal justice sectors. Transnational civil society often pushes for openness and transparency, while diplomatic and criminal justice practitioners tend to value confidentiality. And transnational civil society is particularly important for mobilizing moral authority, including on behalf of victims of international crimes, so that states and international organizations devote attention and resources to international justice. But civil society organizations must delicately balance criticism of governments against their desire to have meaningful cooperation or suasion with them, and the ICC must maintain distance from the civil society field, lest it appear biased or insufficiently attuned to state dynamics.

Fourth and finally, international justice actors continually encounter and interact with development experts, humanitarian actors and experts in post-conflict reconstruction in the contexts where they intervene. Societies struggling with or emerging from conflict often face grave development and humanitarian challenges, and these fields often seek to address many of the same problems (as discussed above in the context of child soldiers and victims of sexual violence). Furthermore, international justice actors may themselves come from the development and humanitarian fields. The TFV, for instance, values its "technical" and "operational" expertise, the assumption being that lawyers are ill-equipped to handle the distribution of assistance and reparation (TFV 2010). The TFV, for instance, carried out a survey of its beneficiaries in northern Uganda and eastern DRC asking about people's priorities and attitudes toward the ICC (TFV 2010). It has since utilized the very fact that the study was conducted to highlight its operational expertise vis-à-vis victims. The study, according to the TFV's 2014 strategic plan "was an important learning opportunity for the TFV to gain information about the relevance of its projects within the framework of its assistance mandate and to … inform the operational realities of a future ICC reparations order" (TFV 2014: 7).

Overall, such proximity to other professional fields forces international justice actors to engage in precarious balancing acts: simultaneously engaging and maintaining distance from other fields and forms of expertise. The TFV, for instance, struggles with the question of what its "added value" is (TFV 2014)—what, that is, does it offer that development or humanitarian agencies with more capacity and more experience supporting victimized populations do not? Why should the ICC Trial Chamber listen to the TFV when it can hear directly from experts from other fields on operational issues? And why, more concretely, should a donor fund the TFV to support child soldiers if it can fund an organization with more experience and expertise outside the international justice field, who is already working with child soldiers?

> TFV fundraising must be supported by clear and articulate messages to existing and potential donors – public, private and individual – on what exactly it is that they are buying into; in other words, messages on the unique value, the added value and the impact value of the Trust Fund for Victims (TFV 2014: 37).

This is a particularly salient example of the international justice field's interstitial tensions. In having to incorporate development and humanitarian expertise alongside judicial capital, an institution like the TFV comes into direct competition with development and humanitarian agencies for funding.

A donor country with a programmatic focus on sexual violence, for instance, can choose to channel its money through the TFV, or to directly fund the international NGO already working in the Congo. The funded project will likely include vocational training, counseling, and some form of goods or supplies to help these young men and women establish a trade (TFV 2010). As I develop further in Chapters 6 and 7, these former child soldiers will likely also be integrated with other children affected by the war ("vulnerable children") so the project will not be known publicly as a "child soldier project". That same donor country, on the other hand, could give its money to the ICC's Trust Fund to then use for "assistance" or "reparations" projects that could in theory be implemented through the exact same international NGO and be identical in form (vocational training, counseling, goods and services, etc.). As I discuss in Chapter 6, furthermore, there is no guarantee that the beneficiaries of either country will know that what they are getting is "development", "humanitarian aid", "assistance", or "reparation".

This is an acute problem for the Court since it is often through the symbolic good of recognition that international justice actively seeks to distance itself from its neighbors. In theory, reparations are given to a recipient because she has been *wronged*, not because she is in need or is vulnerable. And reparations are awarded because a recipient's *rights* have been violated. Together, both dimensions are meant to (re)establish what de Greiff has called "inclusive citizenship" and what Brandon Hamber calls "social recognition" (de Greiff 2009a: 13: 62.; Hamber 2006). Both terms denote the social and political integration of victims back into society. In theory, then, the intended symbolism of a reparations award is thus potentially far more valuable than the particular good or service actually being distributed. But in practice, in contexts where the Court is working alongside other agencies, and where judicial recognition is not as highly valued as the ICC may hope, the line between "reparations" and "assistance" may be blurry for those on the receiving end.

An Internally Competitive Field

The international justice field must balance dependence on and distance from non-legal forms of authority and expertise. At the same time, it must manage internal competition between actors with diverse backgrounds who can draw on and compete with various forms of capital. Such competition, I suggest, manifests itself in the areas of the international justice field that are less common to traditional forms of law: notably, victims and knowledge about the various social contexts in which the Court is working. A key point to which I return in Chapter 5 is that such competition is not limited to ICC units. Rather other organizations from international justice's neighboring fields can also access the "international justice game", either through workshops and conferences that bring together Court officials with advocates and researchers or through submissions that seek to directly influence the trial process. Such submissions often tend to highlight the organization's field-based expertise in much the same way that the TFV has sought to lay claim to its own "operational" authority.

Within the ICC, much of this struggle has centered around the right to legitimately speak for victims, with the debate playing out mostly along a legal-operational continuum. On the legal side are ICC units like the Office of Public Counsel for Victims (OPCV), which represents victims in the trial process and tends to approach them as individuals seeking their day in court. The Trust Fund, on the other hand, has pushed a more collective vision of victims and tends to highlight the full extent of their vulnerabilities and needs, not just those related to specific crimes (TFV 2010). Such competition has played out through formal submissions in the Ituri trials as well as through more informal consultations and meetings. And it is recognized by the participants. "In my view," the lead

council of OPCV, Paolina Massidda noted in an interview with a popular trial monitor blog, "the [Trust] Fund is trying to have a prominent role in relation to the decision on which kind of reparations has to be provided, a role which should not be delegated directly to the Trust Fund" (Quoted in Wakabi 2013). She elaborated further that the evaluation of applications for reparations is "a typical judicial activity" which should not be delegated to a "non-judicial entity" like the Trust Fund. In my interviews with other legally-oriented staff across the Courts, such competition was reiterated. The following, for example, comes from another "legally"-oriented lawyer at the Court:

> The problem is, for me a reparations proceeding is a *judicial* phase. For me, the chambers should have said, now we are going to open a reparations proceeding, victims will have three months to apply (because some of our clients did not apply because they wanted to see if the person was convicted or not), so you open a certain amount of time, you set a hearing and during the hearing you speak with certain kinds of experts about which kind of reparations [to implement], about how to quantify reparations. And this will give more visibility to victims, which again is a already a form of reparations, more legitimacy for the Court, a more transparent process, and more straightforward guidelines and principles on how the Trust Fund should implement. Because, I'm very sorry, I can understand that the Trust Fund wants to have a role to play, but if you read the Rule of Procedure and Evidence and the Rome Statute, the reparation award is after a *judicial* decision, it's a *judicial* decision, and the Trust Fund has to implement. Full stop. The Trust Fund has no power, no expertise, and no knowledge to rule on victims' applications, on which kind of reparations, [etc.]. I'm sorry.[49]

Another line along which international justice staff are divided is between the ideal-typical "field" lawyers and "legal" lawyers. Because the ICC is an international organization that intervenes into foreign regions emerging from conflict, it attracts a certain type of lawyer who is drawn to such realities. These lawyers have been referred to elsewhere as the "post-conflict junkies" of international law (Baylis 2008). At the same time, international criminal law is an ever-developing body of law that must render incredibly complex realities legible to its tools, and thus attracts a certain type of lawyer drawn to these intellectual challenges. Such lawyers tend to look to various international justice scholars as the field's intellectual giants. In my interviews, field lawyers lamented their distance from the countries they were reading about and argued for a more holistic role for the Court in countries' post-conflict transitional processes. Legal lawyers, on the other hand, stressed the Court's limitations and while they did not necessarily desire to go to places like Ituri, they treated with a certain respect those staff, especially legal staff, who had actually been to the field and who therefore, it was assumed, had knowledge of what things were like on the ground.[50]

Part of this is due to the distance between The Hague and the field and part of it is due to the ICC's focus thus far on Africa, which may seem particularly remote to most international criminal lawyers. But another part of it, I contend, stems from the international justice field's expansion to include victims' issue so centrally. International criminal lawyers, especially those who have never personally met victims of the crimes they are prosecuting, can feel particularly removed from their work. This

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[49] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.
[50] Personal interviews, International Criminal Court, The Hague, Netherlands, Spring, 2014.

gives the field lawyers, especially those who have actually been to the field, particular credibility, but it also gives "legal" lawyers an "other" against which to define—or defend—themselves.

Capital for the legal lawyer accrues from the strict legal work of the Court: drafting decisions, for example, but also from participation in conferences. It is also academic in origin. One young Italian legal lawyer, for instance, had studied under Antonio Casese, one of the field's intellectual giants, and would publish in international criminal law journals. Young lawyers also slowly build this capital through internships at the various international tribunals. It is not uncommon, for example, for young lawyers to arrive in The Hague and pursue multiple unpaid internships at the ICC, ICTY and Special Tribunal for Lebanon (STL) before finding a job at one of the other three. One of the more experienced lawyers at the Court referred to these as the "young hopefuls", eager to get their foot in the door and willing to work for free and without stability.[51]

What I call "grounded" capital, on the other hand, accrues from time spent in conflict or post-conflict zones, often with organizations like the International Committee of the Red Cross (ICRC) or with UN peacekeeping missions. A related, but distinct source, I suggest, is work with international or domestic NGOs and advocacy organizations working on behalf of victimized populations. This does not apply, however, to field experience in the development sector. Development capital, rather, is too great a threat to the international justice field and is therefore not valued in the same way as are organizations more closely aligned with a justice-based perspective, like the Open Society Justice Initiative or certain units at places like Human Rights Watch or Amnesty International. One relatively senior Court staff, for example, did not have a legal background but rather tried to use her experience in a variety of development organizations as evidence of her "operational expertise".[52] In my observations, however, such efforts were usually rejected by lawyers at the ICC. "This is a Court!" one senior lawyer replied when I asked about the value of development experience, implying that such experience does not in fact have a place there.[53]

Judicial and grounded capital are ideal types in this argument. Actors can and do often combine them or even exchange them. One subject, for example, was a young lawyer on track to move up through the Court's hierarchy.[54] He had started as an intern before securing a valuable entry-level position with growth potential. Such positions are rare at the ICC because there are so many young lawyers seeking entry-level positions, relative to the Court's size, that they are often stuck in temporary positions that are continually renewed but do not lead anywhere. This particular young hopeful, however, often complained of the job's lack of exposure to the field and the victims on whose behalf he was working. Contrary to his initial ambitions to secure an ICC position at all costs, he used his experience at the Court to land a job at the ICRC in Kinshasa, leaving The Hague for the Congo and trading in his judicial capital to obtain grounded capital. Such an exchange would not be possible in a traditional, domestic court. But because of the ICC's interstitial and global positioning, it creates such opportunities for today's international justice actors.

Others in the international justice field occupy positions in constant tension between the field's dominant forms of capital. Another interview subject was a lawyer with experience at other

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[51] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.
[52] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.
[53] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.
[54] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.

international criminal tribunals who had come to the ICC to help build its victim-oriented procedures.[55] Throughout her work, though, she felt limited by the Court's judicial nature. She recounted to me a story of when she and another ICC staff with a similar, victim-oriented perspective arrived in Uganda to find local NGO intermediaries to help with the Court's activities on the ground. There she disregarded the official travel rules, whereby northern Uganda was deemed a conflict zone and was thus off-limits to international staff, traveling into restricted zones and staying out past curfew. She commented on her partner's cowboy boots at the time—a sign of his rebellion against the legal strictures of The Hague.

Ultimately, those who manage to credibly combine and hold onto both forms of capital can attain particular status in the international justice field because they have recognition from "above" and from "below". This, however, is particularly challenging, not only because judicial and grounded capital are in tension with each other, but also because there are multiple varieties of each. Rather, the majority of subjects I observed and interviewed maintained their ties to one or the other. This inspires defensiveness on the part of international justice actors, along with efforts to contain their vulnerability to such broad and relatively unknown worlds. I turn to these and other practices in Chapter 5.

An Illegitimate Field

Finally, as the field of international justice struggles with rapid expansion into unknown geographies and conceptual contexts, and engages in balancing acts vis-à-vis its neighboring fields, it must simultaneously struggle with a fundamental lack of legitimacy. As with the forms of capital discussed above, this illegitimacy stems from above—its lack of legitimate authority vis-à-vis other sovereign jurisdictions—and below—its lack of legitimacy in the eyes of victims and others it purports to serve. The political origins of international justice's "illegitimacy from above" are well documented. As a treaty-based organization, countries must submit themselves to the ICC's jurisdiction. Once under the ICC's jurisdiction, moreover, countries must also choose to cooperate to facilitate investigations since the Court does not have its own police force. It can get some logistical cooperation from the United Nations through peacekeeping operations, as in eastern Congo, but that too is limited. Finally, the ICC is subservient to the Security Council, which is the only mechanism through which a non-signatory to the Rome Statute, like the United States, can be investigated on its own territory (nationals of non-member states can be investigated if they commit crimes against other states that are members). Furthermore, Article 16 of the Rome Statute effectively gives the Security Council the power to halt all Court activities:

> No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.[56]

But here I am less concerned with the Court's political illegitimacy vis-à-vis other sovereign nations that with its "jurisdictional" legitimacy—that is, the acceptance of its universalizing perspective in all

[55] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.
[56] Article 16, Rome Statute.

the regions and fields into which it must intervene. The incongruences are multiple: civil law lawyers may disagree with the field's common law elements and vice-versa. Domestic courts may disagree with its international orientation (such as the definition of certain acts as "crimes of international concern"). Development and humanitarian actors may disagree with its need to force complex social problems into restrictive legal frames. And the very victims international justice purports to represent may disagree with the categories through which it defines them.

According to one ICC staff who was a member of a national delegation at the Rome Statute, the way the Court works now, particularly in regard to its victims' regime, "was really a terrible fight":

> We wanted the possibility for the Trust Fund or for the Court even … to give something to the victims before there is a conviction. … We tried to argue that you don't need criminal responsibility in order to see that someone has suffered harm. … But that goes deep into the mind-set of the Court: is this a criminal court, is this mainly a criminal court, is this a civil court, is this an international court, what kind of Court is it? … [For those saying that this is a criminal court], it has to be driven by criminal logic, which is that first you see that there is a conviction and then you go to reparation. … This was a terrible fight, really a terrible fight, because many states did not want to have this kind of interim relief, even through the Trust Fund.[57]

The fight, then, was not over what is best for the victims or how the ICC can most effectively work in their interests. Rather, the fight was about the "kind" of Court it was going to be, according to the various jurisdictions arguing over its creation. Not able to be all things to all parties, the Court faces a continual crisis of legitimacy vis-à-vis these various stakeholders. Chapter 6 is devoted to the specific fight over victims and the precise relationship between "assistance" and "reparations"—a particularly salient issue in the fight over what international justice is and what it is not.

There are similar legitimacy crises vis-à-vis the victims and affected communities to which the international justice field declares itself responsive. I have already discussed how the symbolic good of recognition that the ICC is selling is not necessarily what victimized populations want or need. In Chapter 7, I discuss in-depth how local populations may not agree with an international justice framing of the violence they have lived through. In the case of Ituri, the two-sided, ethnic framing of war contradicted local understandings and experiences of a multiethnic conflict exacerbated by outside forces. As an expanding, but still limited field, international justice also faces the challenge of gaining legitimacy in the eyes of local populations in ever-new and diverse contexts and geographies. Lawyers and investigators are not necessarily expected—nor rewarded—to gain expertise about the places they are investigating. A basic understanding is necessary, but ICC staff must simultaneously manage multiple cases and contexts. Staff who travel to the field are restricted in their movements and interactions. And investigators are tasked with investigating specific instances of violence. Even trial lawyers must "necessarily" limit their cases and case strategies due to resource and time constraints (OTP 2010).

The lack of legitimacy for the international justice field in the eyes of its local constituencies is an issue on which the field's human rights advocates have worked for many years. Indeed, advocates

[57] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.

for an enhanced and expanded victims' regime at the Court have long cited the previous tribunals' experience as evidence that international justice cannot simply ignore victims. But in solving one problem, the field has established new ones. While NGO advocates and ICC staff can now claim the field as more "victim friendly", with increased access, more outreach, and tangible benefits in the form of reparations, such measures may in fact prove only to highlight the field's more profound structural limitations vis-à-vis victimized communities. No matter how accessible the ICC works to make itself, there are fundamental limitations to the international justice field that will inevitably exclude local populations. At the same time, the presence of such internal contradictions, I suggest, does create openings that can be exploited by local constituencies and international justice actors. But the local demands for a more responsive international justice field and the structural limitations of that field will necessarily exist in tension to each other. Such tensions, I have suggested, stem from the international justice field's particularities as a global, interstitial field that must draw on multiple forms of authority to respond to problems that it is not necessarily well equipped to manage. Together with the above-described crises, this puts international justice actors in a difficult position vis-à-vis both the constituencies on whose behalf they are supposed to work and other actors in the international justice field. In response, I argue, the field has developed formal and informal practices to manage these crises. I now to turn to these as they manifest themselves both in The Hague and on the ground in places like Ituri.

Chapter 5

Constructing War, Producing Victims

To manage the four tensions outlined above, the field of international justice has developed a number of formal and informal practices to help actors simultaneously draw on and distance themselves from the field's neighbors—from diplomats to human rights activists to experts in post-conflict reconstruction. These are fields for whom the problems of international justice—violence, victims, and peace—are also core objects of concern, and which entail forms of expertise and symbolic capital on which international justice has also come to depend both in global centers like The Hague and on the ground in placed like Ituri. While the distinction is somewhat false, I use "The Hague" and "the ground" to organize this chapter in part because it is one of the key binaries through which international justice actors themselves make sense of the field.

The "ground" presents a particularly challenging terrain for international justice, both for logistical and conceptual reasons. While the ICC must rely on intermediaries to carry out many of its field-based operations, from finding witnesses to finding victims to getting assistance and reparations into the right hands, the victims on whose behalf the ICC is intervening are not just victims of war but also victims of poverty, domestic abuse, political negligence, and more. The boundaries and categories through which people understand the diverse array of development, humanitarian, and judicial actors are not rooted in professional categories. Rather, they come from years or decades of local interactions with domestic and international organizations. Often, as noted above, these are racialized experiences where partnerships with the latest newcomer in town can bring access to much-needed resources. The field of international justice is relatively new to this mix. It does not have its own ready-made categories of actors, tools and concepts that make intuitive sense to local perspectives. International justice actors must therefore actively work to produce such sense through a variety of productive practices.

Containing Conceptual Expansion through Practical Limits

Discourses that reinforce and construct international justice's core symbolic goods like recognition are useful for maintaining boundaries between the field and its non-legal neighbors. But such limiting practices go much deeper. The growth of international justice into a global, interstitial field also relies on practices through which actors can contain the world into which they are intervening, and produce international justice problems that make sense to its tools. Here, I outline two such practical limits: border work on the part of international justice actors to define the field according to what it is not: *not* the World Bank, *not* development, *not* political; and the use of limited and accessible tropes to frame violence. In Ituri, this was done primarily through the use of ethnicity to explain and frame a conflict that was simultaneously geopolitical, economic, and ethnic.

In my interviews at the ICC, a common refrain heard among international criminal lawyers was that international law cannot do everything. It cannot solve conflicts on its own. It cannot bring peace on its own. It is, in the eyes of many lawyers, an inherently limited tool suitable to the adjudication of guilt and innocence and should not be given too much responsibility in the transitional justice process. Indeed, traditional lawyers can appear somewhat resentful of the influence that NGOs and social scientists had during the Rome Conference.[58] The essentialist legal frame is epitomized on the one hand by the ICC Prosecutor's claims that her office is not motivated by politics and that her investigations are apolitical and on the other hand by ICC staff claims that "we're not the World Bank!".

The ICC's claims of apolitical objectivity are well known and well documented. In a recent statement on the ICC's approach to Palestine, for example, the Prosecutor used an oft-repeated phrase that the ICC is accountable not to states, but to "humanity" (Bensouda 2014):

> Whether States or the UN Security Council choose to confer jurisdiction on the ICC is a decision that is wholly independent of the Court. Once made, however, the legal rules that apply are clear and decidedly not political under any circumstances or situation. In both practice and words, I have made it clear in no uncertain terms that the Office of the Prosecutor of the ICC will execute its mandate, without fear or favor, wherever jurisdiction is established and will vigorously pursue those – irrespective of status or affiliation – who commit mass crimes that shock the conscience of humanity. The Office's approach to Palestine will be no different if the Court's jurisdiction is ever triggered over the situation.

Such claims also correspond to Bourdieu's conceptualization of the domestic legal field as inextricably linked to the political field (the "field of power") but simultaneously needing to project autonomy from it. But such proclamations of apolitical autonomy, I suggest, are also claims of "social autonomy"—or distance from the social world outside the judicial process. These are key for the field of international justice to distance itself both from the complexities of post-conflict societies like Ituri and from other professional fields for whom the "social" world is fair game.

[58] Personal interviews, International Criminal Court, The Hague, Netherlands, Spring, 2014.

In the case of reparations, for instance, the push for individual cash payments by some in the international justice field can also be read as a push for a more apolitical—and asocial—reparations process. Individual payments do not have to contend with the messy social realities of post-conflict societies, nor with the inherent limitations of reparations vis-à-vis the actual violence that occurred and the actual number of victims who could qualify for them. There is a fundamental tension between this limited, cash-based view and the perspective pushed by human rights advocates who are able to influence the Court. As I develop in more detail in Chapter 6, the ICC's forthcoming reparations order in the *Lubanga* trial adopts an NGO-influenced approach to reparations, that speaks to the importance of reconciliation, inclusiveness, reintegration, and the avoidance of stigma. Indeed, in a Judgment I discuss in detail in Chapter 6, the Appeals Chamber appear to be arguing for a mixed provision of "assistance" and "reparation" so that those victims who are excluded from the trial process can still feel included by receiving assistance (which may, in the end, look identical to the eventual reparations award).[59] The Chamber wrote that "the meaningfulness of reparation programs with respect to a community may depend on inclusion of all its members, irrespective of their link with the crimes for which Mr. Lubanga was found guilty." It thus made the suggestion that assistance be provided alongside reparations to those who are excluded from the latter because they were not victims of these specific crimes.

I call this approach to combining assistance and reparations a "Swiss cheese" model because it looks to non-judicial assistance to fill in the holes of a more restrictive judicial reparations process. It represents, I argue in Chapter 6, how international justice actors' responses to the field's interstitial tensions can ultimately result in creative practices with a high probability of meeting the diverse needs of local constituencies. Here, though, I raise the example to highlight the tension and illustrate the efforts of those who are more legally inclined in the field to contain such conceptual expansion and reaffirm the field's boundaries vis-à-vis its NGO neighbors. For those seeking to limit the Court's reach into the social messiness of this NGO-inspired vision of reparations, individual, cash-based payments are a valuable tool.

This, however, is harder to do for certain aspects of the field. Reparations, I suggest, are one such arena where conceptual containment is a less accessible strategy because they have become an integral source of symbolic capital within the field. Indeed, reparations allow international justice actors to make claims that the field is working toward justice for victims and avoid the criticism faced by older international criminal tribunals that such a huge machinery that costs billions of dollars leaves nothing for those who suffered most. This, I have noted, is important for overcoming the field's crises of legitimacy. Moreover, because international justice is an interstitial field that is closely bound to transnational human rights advocacy, it has no choice to but to engage the messy and political terrain of reparations. Reinforcing the field's practical limits through other means, therefore, becomes important for managing the tensions that arise.

The other way that international justice actors construct the field's practical limits, I suggest, is through the use of essentialist frames that reduce the complexity and messiness of war. At Nuremburg, the complexities of WWII did not greatly threaten the legitimacy of the trial, since it was founded upon the legitimacy of the states that won (who could simply ignore the atomic bomb, for example). The complexities of the Ituri conflict, on the other hand, do challenge the ICC. On

[59] Reparations Judgment, Appeals Chamber, *Lubanga*, 3 March 2015 [para 215].

the one hand, local and expert accounts of the violence implicated actors from Kinshasa, Rwanda, and Uganda in the violence but Ocampo could likely not have afforded to implicate them. On the other hand, the relative obscurity and small size of the Ituri conflict, especially vis-à-vis other areas of the DRC that were more central to the Congo Wars likely made it difficult for others within the Court to grasp the importance of Ituri as "the most urgent situation". In response to both, I argue, ethnicity proved an accessible frame through which to understand the Ituri violence.

Congo experts agree that the Ituri War had political, economic, and international elements and was far more than an ethnic conflict (Fahey 2011a; Stearns 2011; Tamm 2013; Vlassenroot and Raeymaekers 2004). Uganda, for instance, had a commanding presence in Ituri by the time violence started to flare up, and it armed local self-defense groups on both sides. Thomas Lubanga's Union of Congolese Patriots (UPC), which had formed to protect and promote the interests of the Hema community, then played a game of alliances with both Uganda and Rwanda and became embroiled in a Uganda-Rwanda proxy war (Tamm 2013). Kinshasa then joined forces with Uganda to take advantage of and reshape local rivalries. Throughout, Uganda was known to have profited off timber, gold, and other natural resources. The UN, for instance, cited a statistic that Uganda doubled its gold export after its troops crossed the border into Ituri despite the fact that its own domestic processing capacity did not increase (Human Rights Watch 2003).

For Iturians, the central roles of Uganda and Rwanda, as well as Congolese politicians from outside Ituri, are also important for local conceptions of the war.[60] For ethnic groups from all sides, the outside instrumentalization of local feuds was highlighted in my interviews with rhetorical questions such as, "where did the guns come from?", referring to the thousands of arms that self-defense groups eventually obtained, and "whose were the hands that manipulated us?" While such statements are also claims of innocence and should not be taken at face value, as I have noted, they do underscore the importance of outside actors in local conceptions of violence. Furthermore, Ituri is home to a dozen ethnic groups, including the Bira, Alur, Lugbara, Nyali, Ndo-Okebo, and the Lese. These groups have also been implicated in violent acts (Human Rights Watch 2003). And in my interviews, for example, the Bira and Alur spoke at length about their suffering during the war.

Despite these complexities, the OTP pursued an essentially ethnic framing of the Ituri war. Following President Joseph Kabila's referral of the DRC situation to the Court, the OTP has since charged four of the conflict's alleged leaders, two from the Hema side and two from the Lendu side. Three are originally from Ituri, including Thomas Lubanga Dyilo (who is Hema), while one, Bosco Ntaganda, is a Tutsi from Rwanda (who supported the Hema). In all four trials, the Prosecution repeatedly focused more on the ethnic nature of Ituri's violence than on its economic or geo-political dimensions. While the Trial Chamber in Lubanga acknowledged the observation that Ituri's ethnic tensions would not have turned into massive slaughter without the involvement of Kinshasa, Rwanda, or Uganda, it accepted the OTP's characterization.

This has persisted throughout the OTP's Ituri trials. In February, 2014, as noted, Reuters reported on the Court's first hearing against Ntaganda, mistaking him for a Hema:

[60] Personal interviews, Ituri, DRC, Spring/Summer, 2013.

> Ntaganda, an ethnic Hema, is accused of crimes against humanity and war crimes … . The crimes were committed against the Lendu population and other ethnic groups in a bid to drive them out of the Ituri region …, said the Prosecutor [of the ICC] (Escritt 2014).

Ntaganda, however, is not Hema and is not from Ituri. He was an outsider in Ituri referred to as "the foreigner" by victims.[61] But the Prosecution framed the Ituri conflict as a fundamentally ethnic war and Ntaganda's participation in it as ethnically motivated.[62] And this is the message that stuck with international media. At one level, this was a simple mistake by a news outlet who can be forgiven for muddling the details of an obscure corner of the Congo. But at a deeper level, it reflects one of the tensions at the heart of international justice: that it must translate inherently complex and multifaceted realities into legal problems suitable to its limits.

Such essentialist practices, however, can have important consequences, both for the practice of international justice and victimized communities on the ground. The ethnic representation of Ituri, for instance, may have served an important institutional purpose at first, when it was a relatively unknown part of the world, but almost ten years have passed since Ocampo first expressed interest in the region. It is today a well known region not only to practitioners inside the Court but to international justice experts and actors from across the field. Yet the ethnic framing used by the Prosecution is locked in. One ICC staff noted in an interview, for instance, that the Prosecution has had trouble finding evidence of ethnic motivation for Ntaganda's actions but that this was the framing with which they would have to stick in order to stay consistent with their previous arguments.[63]

This puts international justice actors in a particularly difficult position since the good they are selling is not necessarily the one their constituency is demanding (and may in fact fundamentally contradict local perspectives). This begs the question of *why*—why focus only on local Hema-Lendu violence when the amount of available literature on the geopolitics of Congolese violence is so substantial? The answer, I suggest, is simultaneously political, logistical, and "jurisdictional", according to the three constraints of the international justice field as I have described them here. It is political because by focusing only on local, Ituri violence, the ICC would not have to enter into the complex geopolitical relations of an extremely unstable region of the world. Nor would it have had to challenge the sovereignty of Congo, Rwanda or Uganda by implicating their national leaders. Ethnic framing avoids sovereignty issues by shifting the focus from states or powerful politicians. It renders complex, political conflicts as two-sided struggles and provides a ready excuse that if the ICC's interventions fail, it is the fault of long-standing ethnic rivalries. It also avoids touchy issues of economic distribution and wealth. The answer is also logistical also because a three-country investigation would likely not have been possible for the Court, especially in 2006 when it had just started operations. Indeed, such an investigation would prove enormously challenging for the Court today, in light of the challenges it has faced in Kenya.

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[61] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.
[62] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.
[63] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.

Finally, by jurisdictional challenges, I again refer the obstacles that the Court faces in extending into foreign regions and distant fields where the law works alongside other forms of global governance like international politics and development. By using a fundamentally ethnic framing, I suggest, the Court was able to draw on an accessible frame that fit well into existing conceptions of war crimes from Rwanda, the Balkans and the Kivu region of Eastern Congo. Furthermore, by depoliticizing the framing of war, I suggest, ethnic violence fits well into the international justice "habitus" (Bourdieu 1984). I turn briefly to this concept to conclude this section.

The notion of habitus was used by Bourdieu to capture the processes through which individual orientations and perspectives develop to correspond with the implicit rules and forms of capital that structure fields (Bourdieu 1984). For Bourdieu, the correspondence between habitus and field is one of the key sources of reproduction. In the international justice field, I suggest, there is less correspondence between habitus and field than in domestic legal fields, partly due to the varying national backgrounds that international lawyers and other actors bring to the field, and partly due to the multidisciplinary nature of the international justice field. Lawyers and other actors in the field have backgrounds in international relations, political science, diplomacy, development, humanitarian response, criminal investigation, security, and law, as I have noted below in my discussion of international justice as an "interstitial" field.

There is variation both within and between these (within the legal habitus, for instance, there is substantial divergence between civil and common law lawyers), but the legal habitus is in a dominant, albeit contested position. Ethnic violence, I suggest, corresponds well to the legal habitus, for which "politics" are a kind of untouchable other against which "the law" is defined. In one interview, for instance, a legal scholar and recognized expert on reparations suggested to me that the ICC should not even be involved in reparations because they are "inherently political": "I have argued," he said, "that the ICC should not be involved in reparations because they are about issues of distribution and thus inherently political."[64] The ICC prosecutor's oft-repeated claim to not be political is another variation of this stance. For the legal habitus, politics are an other in opposition to which legal stances and perspectives are defined. Ethnic violence fits more easily into this perspective since it excludes the political, economic, and other motivations behind grave conflict. It also helps the legal habitus to dominate over other, non-legal forms that are simultaneously present within the international justice field.

Managing Expansion through Representations of Victims

Representational practices centered around the construction of victims are core to the intra-institutional struggles between different organizational elements of the Court. These struggles stem from the institutional expansion of the international justice field, I suggest, which has come to incorporate not only the institutional management of investigations, evidence, and trials, but now also victims' issues and the concerns of affected populations. The various units designated with the tasks of managing victims' issues, however, do not necessarily know where the borders should (and do) lie. Each is responsible for different aspects of the victim's various interactions with the judicial process, but in practice these do not divide up so neatly. Indeed, both the Trust Fund for Victims

[64] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.

and the VPRS play a role in providing reparations. And as noted, the Court's various victims' units compete to "speak for" the victim—each unit in particular ways that correspond to their own particular expertise or claims to expertise. Here, I review two such struggles to demonstrate how representations of victims are used to manage the international justice field's challenges as it expands into new geographic and conceptual terrain: the representation of victims as either individuals or collectivities and the struggle between inclusivity and exclusivity in the reparations process.

In the first debate, "legal" lawyers tend to argue that "victims are individuals" and should be treated as such in the reparations phase through individual cash payments or other individual awards.[65] These individuals, in her opinion, "seek to have their voice heard", "to tell their story" and "to have their day in court".[66]

> [In] my experience, for victims' participation, the majority of the victims that we have met, they normally say to us that they want their story to be understood by the judges, so they want first of all to tell their story. It's a … form of having justice for them. So it's mainly telling their story, having the perpetrators recognized as perpetrators of the crimes and having someone who they trust in the courtroom that can address their concerns.[67]

It is fundamentally through their interaction with the judicial process, that is, that victims benefit from the ICC, notwithstanding the fact that they are also vulnerable and in need of material and psychological support. In a recent submission in the *Katanga* trial, for example, VPRS proposed individual cash payments after engaging in consultations with victims to ask what they wanted.[68] The corresponding view of the TFV as a fundamentally "non-judicial" entity implies that its role in the reparations process should be limited to the more technical and operational aspects of project implementation (distributing cash, monitoring, evaluation, etc.) and not its actual design. The TFV does not dispute that this is where it "adds value" to the judicial process, but argues that this operational expertise is valuable for the design of reparations and tends to express this position through representations of victims as groups, categories or collectivities: child soldiers, victims of sexual violence, mutilated victims, women, children, affected communities, etc.[69] Notably, these are the same sort of categories that development, reconstruction, and humanitarian experts use in the field, both to target and advocate for vulnerable groups.

ICC units like OPCV and VPRS have more individualized and intimate relationships with victims. OPCV represents them in the courtroom. And VPRS facilitates their relationships with the Court when they are back home in their countries. The TFV on the other hand, donates money to intermediaries who carry out projects for categories of victims like child soldiers and victims of

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[65] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.
[66] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.
[67] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.
[68] *The Prosecutor v. Germain Katanga, 'Report on applications for reparations in accordance with Trial Chamber II's Order of 27 August'*, ICC-01/04-01/07-3512-Anx1-Red2, International Criminal Court, 21 January, 2015 (Reparations Report, *Katanga*, 21 January 2015).
[69] *The Prosecutor v. Thomas Lubanga Dyilo, 'Observations on Reparations in Response to the Scheduling Order of 14 March 2012', Trust Fund for Victims*, ICC-01/04-01/06-2872, International Criminal Court, 25 April 2012 (Reparations Observations, Trust Fund for Victims, *Lubanga*, 25 April 2012).

sexual violence, and does not come to know them as individuals. But their representations of victims stem beyond they particular relationships with them. Rather, the actual tools they use to measure, represent and ultimately speak for victims also predetermine these representations. In its *Katanga* submission, for instance, VPRS only interviewed people who had already been accepted as official participants to the trial, whose names are already on a list maintained by the Court as official participants. It is not surprising that they would have asked for individual cash payments. I spoke to representatives of this group during my own fieldwork in Ituri and they told me, "there is a list" of victims, when I asked who the real victims are. "It is clear!" they said.[70] These were individuals who had invested a lot of time in their relationship with the ICC, first submitting applications to be accepted as victims, and then waiting years for an outcome to the trial. They took risks aligning themselves with an international court who is opposed by many (especially by those who maintain allegiances to those on trial) and may see nothing from the process (Katanga's supposed partner-in-crime, Mathieu Ngudjolo, was recently acquitted). These were, that is, the "legitimate" victims of the ICC.

This notion of "legitimate victimhood" is something I return to in more detail in Chapter 7. Briefly, through its restrictive framings and administrative procedures, the Court establishes on the ground a social category of the "true", "official," and "legitimate" victim. In my fieldwork in Ituri, I saw how this social identity permeates to the ground and embeds itself in social relations. On the one hand, there are (potential) concrete rewards attached to the legitimate right to claim victimhood. With its promises of reparations, however vague these may be, and its status as an international organization, the ICC holds the promise of real benefits if individuals can gain its recognition. Individual cash payments from the ICC would be the optimal outcome for these official victims.

On the other hand, competition over legitimate victimhood is, I argue, another way for local communities to play out longstanding feuds and grievances that follow ethnic, political, and geographic lines. My interviews underscore that suffering is an important dimension of collective self-identity in Ituri. The right to claim victimhood is both the right to claim a collective identity as well as the right to claim innocence. In Ituri, while there are important ethnic differences, ethnicity is in reality a porous and mutable construct—so much so that subjects repeatedly referred to the "mosaic" of identities.[71] There are also tenuous claims to various African ethno-linguistic groups through which different ethnic leaders make claims to be the region's original settlers. In reality, though, the lines that seemingly divide ethnic groups in Ituri are blurry. One large swath of Hema communities, for instance, speak the Lendu language. And while a minority of the Hema leadership are wealthy cattle owners, the majority of Hema are farmers like the Lendu and other ethnic groups. The conflicts that divide groups, I argue, are structured more along material and geographic lines than they are ethnic. There are well known land disputes, for instance, between Hema towns as there are between Hema and Bira, Lendu and Alur, etc. Ethnicity, however, is an important wedge through which Ituri's traditional and political leadership class can motivate their constituencies, making the variety of social categories seemingly attached to ethnicity important tools. Victimhood is one of these, all the more so thanks to the ICC's fundamental reliance on ethnicity to frame the conflict. Claims to victimhood were important, for example, during the initial build-up to the Ituri War as the Hema made claims of a Lendu-led genocide and the Lendu made claims of historic

[70] Personal interview, Traditional leaders, Ituri, DRC, Spring/Summer, 2013.
[71] Personal interviews, Ituri, DRC, Spring/Summer, 2013.

persecution by the Hema. The ICC Prosecutor's two-sided construction of violence has, ironically, helped perpetuate these claims of competitive victimhood.

Both Iturians and international justice actors are largely aware of this competitive victimhood, I suggest. Among Iturians, for example, survey data I conducted with Vinck and Pham (2014) reveals that Iturians favor *both* individual and collective awards for reparation, which I suggest can be read also as recognition of the wide-scale suffering that Iturians endured. Collective awards are a way to ensure that everyone who was affected by the war can access some sort of benefit, and virtually all Iturians consider themselves victims of the conflict. And individual awards are a way to ensure that goods are not captured by intermediaries or elites, as people fear often happens with the distribution of material and financial resources. My interview excerpts cited in Chapter 7 further underscore these perspectives.

Among international justice actors, particularly ICC staff, there is also a consciousness that the Court's framing of violence is necessarily limited and will thus always exclude certain deserving victims. Indeed, this is a tension that all legal processes must work through. It is particularly pronounced, however, in international criminal law where both the extent of violence is typically so massive and widespread and where the legal process is housed in an international organization far away from those who actually suffered. Still, the ICC has attempted to respond to this tension in creative ways, as noted, in particular by attempting to construct a reparations process that simultaneously targets those with official victimhood and those who are excluded from it. I return to this more in-depth in Chapter 6, which focuses on the tensions between "reparations" and "assistance".

The second struggle over the representation of victims at the ICC is between inclusive and exclusive conceptualizations. Inclusive representations seek to take into account a victim's or collectivity's broader social context—what I call "social inclusion". Exclusive representations envision victims as participants in a legal process and seek to filter out what does not fit or is not relevant—what I call "legal exclusion". Awards for reparations are supposed to be a form of recognition that entails including certain people and excluding others. But this is very hard to do in contexts of mass atrocity with a system limited to individual criminal responsibility. With its 2012 reparations award in *Lubanga*, Trial Chamber I of the ICC acknowledged this tightrope and attempted to walk it through principles of flexibility and inclusivity.[72] These principles alone, however, were not sufficient, as was recently underlined by the Appeals Chamber's March, 2015 Judgment, which struck down many of the Prosecutor's and Trial Chamber's attempts at social inclusion.[73]

As the first of the ICC's trials, the definition of victims in *Lubanga* was a vexed issue, especially since the Rome Statute system defines the term, "victims" quite generally.[74] Ocampo, who had only charged Lubanga with conscripting child soldiers, at first tried to expand the definition of victims for purposes of participation in the trial. Most notably, he argued that victims of sexual violence could

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[72] *The Prosecutor v. Thomas Lubanga Dyilo, 'Decision establishing the principles and procedures to be applied to reparations'*, ICC-01/04-01/06-2904, International Criminal Court, 7 August 2012 (Reparations Decision, Trial Chamber, *Lubanga*, 7 August 2012).

[73] Reparations Judgment, Appeals Chamber, *Lubanga*, 3 March 2015.

[74] Rule 85 (a) of the Rules of Procedure and Evidence states that the term "Victims" means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court.'

also participate. Eventually, however, the Appeals Chamber ruled that only victims of the Prosecutor's charges could participate. The Rome Statute, however, allows for both direct and indirect harm. Were, then, the victims of crimes committed by child soldiers the indirect victims of Thomas Lubanga?[75] Again the Prosecutor tried to include them and again the judges ruled that indirect victims were only those who had a close personal relationship to the direct victims, such as between a parent and child. Those harmed by the child soldiers, it followed, could not count as indirect victims.[76]

Three years later, similar questions about the definition of "victims" emerged for the purposes of reparations in *Lubanga*. Again, the Prosecutor favored inclusivity. The OTP had already noted that it "must *necessarily* limit the incidents selected in its investigation and prosecution", and that the reparations phase should therefore take a broader approach to fill in the gaps (OTP 2010: 9). This time, the Trial Chamber seemed to agree, writing in its 2012 Reparations Decision that reparations require a "broad and flexible" approach, which can "avoid further stigmatization of the victims and discrimination by their families and communities."[77] It underlined the value of a collective award and later introduced for these purposes a distinction between "victims" and the "beneficiaries" who reside in the communities where collective reparations programs will be developed but who will not be granted "victim status."[78]

This distinction, and the Trial Chamber's endorsement of collective reparations, reflects attempts to manage the inherent tension between social inclusion and legal exclusion in which judicial decisions are caught, in particular those within the international justice field. Ultimately, the Court ended on the side of the latter. The Appeals Chamber eventually determined that "an award of collective reparations to a community is not necessarily an error," but that "the scope of the convicted person's liability for reparations in respect of a community must be specified."[79] That is, collective reparations can only make a reparations order more inclusive to the extent that the convicted person is found to be specifically liable for the crimes to be addressed by the award. In the Appeals Chamber's view, victims of crimes of which Lubanga was not found guilty, including most notably crimes of sexual violence, could only benefit from "assistance"—not from reparations.[80]

Thus, while the Court had to maintain the principle of legal exclusivity, it could in the end establish social inclusivity through "assistance". As I discuss in detail in Chapter 6, the relationship between "assistance" and "reparation" in international justice is not straightforward. Indeed, as with their relationships to neighboring fields, international justice actors who work on victims' issues must maintain a precarious balance between assistance and reparation. While reparation entails the

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[75] Because Rule 85 (a) makes no mention of "direct" harm to natural persons (as 85 (b) does for organizations and institutions), the Trial Chamber found, and the Appeals Chamber confirmed, that people can suffer either 'direct' or 'indirect' harm and thus stand as either 'direct' or 'indirect' victims before the Court.

[76] *The Prosecutor v. Thomas Lubanga Dyilo, 'Decision on Indirect Victims'*, ICC-01/04-01/06-1813, International Criminal Court, 8 April 2009 (Decision on Indirect Victims, *Lubanga*, 8 April 2009).

[77] Reparations Decision, Trial Chamber, *Lubanga*, 7 August 2012 [paras 180, 92].

[78] Such a distinction was not introduced outright in the original 7 August Decision but clarified later in reply to the Defense's request for leave to appeal. *The Prosecutor v. Thomas Lubanga Dyilo, 'Decision on the defence request for leave to appeal the Decision establishing the principles and procedures to be applied to reparations'*, ICC-01/04-01/06-2911, International Criminal Court, 29 August 2012 [para 29], (Decision on Defence leave to appeal, *Lubanga*, 29 August 2012).

[79] Reparations Judgment, Appeals Chamber, *Lubanga*, 3 March 2015 [para 212].

[80] Ibid. [para 198-99].

recognition of a victim's rights having been violated, assistance is distributed on the basis of vulnerability and need. In the end, for the victim on the receiving end, these can in fact look very similar. International justice actors in the field have to draw on a variety of practices to actively construct the difference, through training intermediaries on the differences between reparations and assistance, to devising outreach campaigns. From the perspective of international justice, however, whether the eventual recipient sees the resource they are given as assistance or reparation does not, in the end, matter as much as whether the international justice actors responsible for it engage in practices to reinforce the difference. I return to these issues in Chapter 6.

The Black Box of Reparations

The Appeals Chamber in *Lubanga* ultimately attempted to utilize both legal exclusivity through its reparations decision and social inclusion through its reference to assistance. This, I contend, is the ultimate "added value" of an organization like the Trust Fund for the international justice field. It can function as a sort of "black box" of operations and implementation into which international justice actors can relegate aspects of the field that do not fit the legal frame of international criminal law. While the aforementioned practices have revolved primarily around struggles to construct the international justice field and its key objects of concern so that they correspond to each other, the Trust Fund as a block box implies that actors can and must sometimes access escape valves when the gaps between the afore-mentioned legal, professional, and social realities are too great.

This strategy, however, has important consequences. By relegating issues like beneficiary targeting and other operational issues to a seemingly technical phase of project implementation, international criminal reparations will eventually run into the same technical challenges that development, humanitarian, and reconstruction experts have faced in the field, like how to target child soldiers without stigmatizing them. Responding to such challenges outside the legal realm of the court room exposes the broader international justice field to encroachment from these neighboring fields, against which it must defend itself.

To illustrate, we can look to the Trust Fund's experience implementing "assistance" projects in Ituri. The Trust Fund staff raised money, for example, to support child soldiers and victims of sexual violence in eastern Congo and northern Uganda (TFV 2010). But the Trust Fund had to rely on other agencies like UNICEF to implement these projects, under whose guidance child soldiers are integrated with other "vulnerable children" so as to avoid the stigma of the "child soldier" label (TFV 2010). This project, however, may have violated the TFV's own rules and regulations, which clarify that it can only target victims of crimes under the ICC's jurisdiction. "Vulnerable children" do not meet this criteria. There are similar tensions in the TFV's sexual violence projects. With "war rape" as an ever-present and particularly grave issue in international justice, the Trust Fund has been particularly successful raising money around the cause of sexual violence (TFV 2010, 2011, 2014). But distinguishing between rape that is war-related and rape that is not war-related can be challenging for international justice actors (Allen and Schomerus 2005). In Uganda, rape had not even been a particularly grave part of the conflict; rather, domestic violence—particularly in the Government's own IDP camps—was the real culprit. The TFV, therefore, had to draw links between "war rape" and post-conflict domestic violence (TFV 2009, 2010) even though the latter is also not covered by the Rome Statute.

As a "black box", the TFV's discrepancies could largely be ignored by the ICC. But there are also consequences for the victims who are receiving support from the TFV, whether as "assistance" or as "reparations", when the "black box" of implementation is ignored or subsumed to a seemingly apolitical technical phase. The implementation strategies through which victims are identified, selected, verified and given either reparations or assistance are integral to how they ultimately experience reparations (Dixon Forthcoming). This, I suggest, is even more-so in the case of reparations than of development or humanitarian projects, since the element of recognition that is supposed to set reparations apart is also supposed to confer some sort of psychosocial benefit to those who experience it (Danieli 1995, 2009; Hamber 2001, 2006). Such challenges, however, cannot be managed through technical means alone. The truth implied in a reparations award is received and interpreted through the means and categories by which the award is targeted. This demands sustained involvement from ICC Chambers and meaningful participation from Iturians themselves throughout the reparations process. Moreover, where technical expertise does matter, it is not necessarily the kind that the Trust Fund has exhibited in its provision of assistance projects. Rather, the provision of reparations demands a very particular form of expertise about how to carry out meaningful participation in charged circumstances, like the "politics of recognition" in Ituri, to which I return in Chapter 7.

Reinforcing Professional Boundaries through Recognition

At a basic level, international justice actors must actively construct the goods they are selling. At one level, this is simply "justice". But justice is broad and can mean many things to many people. Indeed, the Rome Statute speaks of the "interests of justice", which has not yet actually been operationalized.[81] It is also not always possible to deliver justice to victims in the context of mass crimes, especially when international tribunals can only prosecute those most responsible for the violence. Justice for a victim in Ituri may be returning to his land or seeing the person who killed his son punished or forced to compensate him with cattle. The ICC can deliver none of these. What it can deliver, however, to as many victims as are eligible is *recognition*: recognition of their status as a victim, recognition of their status as a rights-holder whose rights were broken, and recognition of their suffering. It can offer to the abstract victim her "day in Court" and let her "voice be heard". "Victims," the Court's official line goes, "have indicated they want to be recognized" (ICC 2010).

Compared to reparations from domestic and international human rights courts, international criminal reparations will tend to communicate the meaning attached to them more exclusively via the particular targeting strategy through which they are distributed. As De Greiff writes, "the element of recognition that is part and parcel of reparations … will typically require targeting victims for special treatment" (de Greiff 2009b: 151). In domestic criminal proceedings, which are likely to play out closer to the victims themselves than international proceedings, outreach by itself may go a long way. In cases where the state is ordered by an international human rights court to pay for and implement awards, the state can directly manage communication, for better or worse. In either case, it is easier to communicate "the seriousness of the state and their fellow citizens [to] re-establish relations of equality and respect," which reparations are meant to convey (de Greiff 2009a: 145). But

[81] Article 53, Rome Statute.

international criminal reparations face a more daunting task. They come from a court that is far removed from the local context and which has little authority over the state in question.

From the international justice perspective, therefore, the significance of recognition must be effectively communicated to and understood by the recipient herself and by her broader community. Yet, that "victims want to be recognized" obscures the discretion, idiosyncrasies, assumptions, politics and power dynamics that make certain forms of victimization recognizable. And while this is not unique to reparations—indeed, development initiatives, humanitarian assistance and reconstruction projects all entail particular methods of targeting through which they define, measure and act upon the world, often obscuring the politics behind them—the international justice field must distinguish itself from these fields through the very act of recognition. While this happens in part in global centers like The Hague, through discourses and legal decisions that differentiate between "assistance" and "reparations", the symbolic good of recognition is more actively constructed through practices on the ground in place like Ituri through outreach campaigns, workshops, and other forms of interaction that enact the difference.

The "element of recognition" is one of five key ways that international justice actors construct the distinction between reparations and its neighboring fields. In practice, this plays out as the active construction of difference between reparations and "assistance" measures, which are usually recognized by international justice actors to be necessary but which are considered a less significant, less "pure" form of redress for victims. In the next chapter, I discuss in detail the work that goes into theorizing and reproducing the boundaries between reparations and assistance, and why such boundary work is important for the field of international justice. In practice, the differences are not always so obvious to victims on the receiving end. A reparations award can take the form of cash, services or goods, as can an "assistance" measure. To illustrate, I draw on the experience of the ICC in Ituri, but also briefly introduce the case of Colombia, which offers some useful parallels in a different corner in the international justice field. Both the ICC's work with victims in Ituri and the Colombian state's newly established program for victims of the armed conflict combine assistance and reparations, and thus offer useful examples of the work that is needed to differentiate them in practice. In total, I discuss five frameworks and three models through which international justice actors theorize and implement reparations and assistance as complementary transitional justice strategies. I suggest that such diversity highlights both the challenges as well as the opportunities for international justice in crafting interventions that can meet not only victims' needs, but those of the field itself.

Before concluding this chapter, a brief detour into the actual difference that international justice money can make in victims' lives is warranted, largely because the reality is likely to be far smaller than the expectation, both from victims and, I suggest, international justice actors themselves. Notably, while the notions of "reparations" can conjure images of life-changing payouts, the truth is that the available money is likely always going to be very small. To date, for example the TFV has provided assistance that amounts to around $100 per individual in terms of actual goods and services received (TFV 2010). For reparations, the amounts should be higher, but not by much. The TFV maintains a "reserve" of funds to finance a reparations order in the event the guilty party is found indigent, as in *Lubanga*. Currently, this is only at EUR 1.2 million. In total, the TFV funds projects amounting to around EUR 2 million per year for tens of thousands of estimated "direct" beneficiaries (not counting family members who are also meant to benefit as "indirect" beneficiaries and are counted among the Fund's totals). Currently this is divided, furthermore, between two

countries with more likely on the way, as the TFV has been expected for some time to initiate activities in the Central African Republic.

In contrast, the World Bank's programs in Congo amount to $3.7 billion, and MONUSCO operates at a budget of $1.4 billion/year. While this is for the Congo as a whole and not just from a region like Ituri, the juxtaposition is clear: as a core international justice institution, the ICC's funds for reparations are miniscule. They are almost inconceivably small in comparison to both victims' and international justice actors' expectations. For victims, not only can international justice carry the reputation of an international organization that claims to hold even heads of state accountable, but its discourse of justice for the victims can raise significant expectations. That victims can hold high expectation of significant payouts from the ICC is understandable. Notably, however, my observation underscored that international justice actors, particularly those operating more with judicial than with "grounded" capital, also hold high expectations for what reparations can supposedly deliver. This is in part, I suggest, related to how other reparations schemes have worked in practice. In domestic law, criminal and civil payouts can indeed be life changing. Other mass claims schemes, in Germany and Kuwait for example, have also resulted in very significant cash rewards. When delegates were arguing for the inclusion of a Trust Fund at the ICC, they were likely not imagining $100-per-victim vocational training projects.

Chapter 6

Distinguishing "Reparations" from "Assistance"

In March 2015, the ICC Appeals Chamber in *Lubanga* confirmed the Court's historic commitment to moving beyond retributive justice for victims of the gravest crimes with its Reparations Judgment for Lubanga's victims.[82] At the same time, as noted, it urged the Trust Fund for Victims to issue "assistance" measures to victims who fall outside the scope of victimization determined at trial, noting that "the meaningfulness of reparation programs with respect to a community may depend on inclusion of all its members, irrespective of their link with the crimes for which Mr. Lubanga was found guilty."[83] In international justice, the use of assistance to complement, fill in, and/or expand reparations programs is both novel and increasing as lawyers, advocates, and practitioners realize the gaps between what international justice can offer and the realities that victims of mass violence live with. While the Appeals Chamber's endorsement of "assistance" as a means to make the reparations process more "meaningful" may appear deeply self-contradictory, it in fact illustrates a wisdom very much in line with the practical strategies at the heart of this dissertation.

In this chapter, I explore the details of such practical wisdom and the tensions it tries to address. International justice practitioners draw on a number of frameworks and models to combine "reparations" and "assistance", carefully walking a line that recognizes the former's shortcomings but still attempts to assert their primacy. Ultimately, I argue that the Appeals Chamber's judgment illustrates that the tensions of international justice offer both challenges *and opportunities* to craft

[82] Reparations Judgment, Appeals Chamber, *Lubanga*, 3 March 2015.
[83] Ibid. [para 215].

interventions that respond to victims' lived experiences while still remaining inside the field of international justice.

Seemingly a technical issue, the relationship between reparations and assistance exposes fundamental tensions at the heart of international justice: between inclusive and exclusive approaches to reparative justice; between the legal strictures of redress and the complex realities of violence; and, ultimately, between the supposed symbolic power of reparative justice and victims' actual experience of reparations in practice. While scholars and practitioners often assume that reparations and assistance are clearly distinct and bounded instruments with unique forms, goals and impacts, their combination in practice suggests otherwise. Here, I present the ICC's forthcoming reparations awards in the Congo in comparison to another case not yet introduced in this dissertation: Colombia's recent reparations program for victims of its armed conflict. Colombia is a useful case to introduce for this chapter because it represents an entirely different corner of the international justice field, legally and socially, yet also illustrate how the line between reparations and assistance—and between international justice and other fields like development—can become blurry in practice. They can look similar in form, have similar impacts, be distributed through similar process and, I argue, impart similar notions of responsibility and recognition to victims of grave crimes and gross violations of human rights.

At the same time, the Colombian and Congolese cases also highlight that reparations and assistance are combined for good reason in transitional countries. As I have written, there will always be forms of harm, types of violence and immediate needs that fall outside the boundaries of any given reparations program (Weinstein et al. 2010). Assistance measures are a useful and necessary tool to help reparations overcome these shortcomings. To understand their role in this process, however, we must look to their implementation in practice as well as to the legal and theoretical frameworks used to define them. In this chapter, I seek to clarify the predominant frameworks that call for a distinction between assistance and reparations and the key practical models through which they can work together. Depending on how they are used and communicated to victims, assistance measures can both detract from the significance of reparations and increase their reach and impact. The Colombian and Congolese cases present useful example of how international justice practitioners attempt to manage this tension and, ultimately, offer valuable lessons about how to navigate it. In particular, they suggest that while practitioners should always clearly understand the differences between reparations and assistance efforts, it may be better in some cases to intentionally and carefully blur the distinction in program design.

In their most narrow definition, reparations are measures provided by a wrongdoing party out of obligation to redress the harm caused to an injured party (REDRESS 2003: 7). While often conflated with financial compensation, reparations can take any number of forms, from cash to goods and services, and can be material, symbolic, individual or collective (UNGA 2005). Recognizing that reparations do not always have to be provided by the actual wrongdoing party, REDRESS (2003: 8) defines the terms as "the range of measures that may be taken in response to an actual or threatened violation; embracing both the substance of relief as well as the procedure through which it may be obtained." While I return to different elements of this definition throughout this chapter, my intention in this dissertation is not to review in detail the robust scholarship on reparations (For these, see McCarthy 2009; Moffett 2014). Assistance, on the other hand, is a broader term that can refer to any number of measures provided in response not to injuries, but to needs, and can stem from development projects, humanitarian relief, aid initiatives, state subsidies, and more. I use the term more selectively, however, to refer only to those assistance measures that originate from the

same source as reparations and target the same general categories of victims of grave crimes and gross violations—that is, where assistance is used as an international justice strategy itself alongside reparations.

The ICC's work in the Congo and Colombia's recent program for victims of the armed conflict are valuable cases to interrogate this scenario because they represent quite different legal models and contexts and can illuminate critical differences in contemporary approaches to implementing reparations. Where the ICC is based on individual criminal responsibility, Colombia's program is based on state responsibility. And while the Ituri War was a brutal and deadly conflict, it is nowhere near the same scale as in Colombia, where almost 16% of the national population (7.6 million people) have already been registered as victims of the sixty-year armed conflict, mostly as victims of displacement (UARIV 2015). For these reasons, they have adopted different approaches to using assistance as a complement to reparations: to fill in the holes left by a restrictive legal process at the ICC and to help masses of displaced victims achieve a basic level of subsistence before receiving reparations in Colombia. Yet both cases reveal the challenges of combining and differentiating between reparations and assistance. While the Colombian state intends for beneficiaries to clearly understand the difference so as to maximize the impact of each, the ICC Appeals Chamber has implied, I suggest below, that it may make sense to blur the line if it means more people will feel included.[84]

This chapter is divided into three sections. The first provides a brief analysis of the history and definitions of reparations and assistance in international justice and presents my two case studies as key examples. The second section reviews the principle legal and theoretical frameworks used to differentiate between reparations and assistance, centered largely on notions of what reparations are that assistance measures are not. Here, I use the Congo and Colombia cases to show that challenges can arise for each of these principles when they are translated into practice. In the third section, finally, I extract lessons from the Colombian and Congolese cases about how reparations and assistance can be coordinated or combined.

Along with my independent research in Ituri, this chapter is informed by the team-based research I conducted in Colombia with cooperation from the Government agency administering the country's reparations program, the Unit for the Comprehensive Assistance and Reparation of Victims (Victims' Unit) (Sikkink et al. 2015). In this chapter, however, I draw principally on publically available literature and legislation to provide background information on the two case studies.

Reparations and Assistance in Colombia and the Congo

In transitional contexts, both reparations and assistance aim to help people and communities recover after grave violence. These goals are common across several different fields, notably transitional justice and development, and there is already a rich body of scholarship on their intersections (de Greiff 2009a, 2009b; Duthie 2008; Roht-Arriaza and Orlovsky 2009). Duthie (2008) argues that the two fields intersect on at least four levels: they share complementary goals of social transformation, they inevitably effect each other, they both possess opportunities for coordination

[84] Ibid.

and, ultimately, they directly address the other's core issues and intended outcomes. These same scholars, however, also warn against conflation. De Greif (2009a: 29), for instance, cautions that research on the connections between transitional justice and development must also seek to "draw certain boundaries around each—not just for reasons of clarity, but in the belief that effective synergies depend on sensible divisions of labor." This literature, however, tends to treat transitional justice and development as institutionally distinct fields and does not consider situations where assistance is used itself as part of a transitional justice strategy as a complement to reparations.

Such programs are relatively innovative in international justice. The ICC has the most robust reparations regime among the international criminal tribunals, as noted, responding to an enduring criticism that these tribunals do not provide tangible benefits to victims. The Extraordinary Chambers in the Courts of Cambodia has provisions for moral and collective reparations, as well as protective measures and limited assistance like psychological support, but the ICC goes significantly further. In international human rights law, reparations play a central role but there are no provisions for their combination with assistance as I define it here. The Inter-American Court of Human Rights' "provisional measures" come closest, granting the Court the statutory authority to order protective measures before the conclusion of a trial or even outside the scope of a trial if requested by the Inter-American Commission on Human Rights.[85] These, however, are not assistance, but are to be granted only "in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons."[86]

Rather, it is at the domestic level where the combination of reparations and "assistance" or "relief" has been used most frequently through large-scale, state-based administrative programs. These provide legal redress to victims, often according to categories of harm or classes of victims,[87] but do not necessarily recognize the offending party nor imply a state's culpability for any harms suffered. As in Colombia and Peru, furthermore, members of non-state armed groups are sometimes excluded from claiming benefits. A number of transitional countries have combined reparations and assistance measures either together or through different laws. Peru, for example, first instituted a humanitarian assistance program for internally displaced victims of its 20-year conflict in 2004, followed by a reparations program in 2005.[88] In Nepal, a World Bank-funded Interim Relief Program was created for victims of the internal armed conflict in 2008 to address victims' immediate needs (Carranza 2012). This was intended to be followed by a reparations program, although no such program has yet been established.[89] In Indonesia, a program originally envisaged to provide individual reparations to former combatants and victims of the armed struggle in the Aceh region was eventually folded into a World Bank-funded program that merged collective reparation with broader development goals (ICTJ 2012). In Colombia, following six decades of internal armed conflict, the Government passed the Law on Victims and Land Restitution (Law 1448) in 2011 and began implementing a Comprehensive Assistance and Reparations Program a year later. I will now present the Colombian and ICC programs in more detail.

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[85] Statute of the American Convention on Human Rights, Article 63(2)
[86] Ibid.
[87] See e.g., Colombia: Law 1448 (2011), Article 3; Peru: Law 28592 (2005), Articles 5-7; Guatemala: Accord 619 (2005), Article 2.
[88] Laws 28, 223 (2004), Laws 28, 592 (2005).
[89] The Nepal Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation 2071 (2014), sections 2(e) and 23.

Reparations and Assistance for Victims of Colombia's Armed Conflict

In 2011, Colombia passed Law 1448, a historic bill that set in place a large-scale reparations program for victims of the country's internal armed conflict. This followed the 2005 Justice and Peace Law, which created a demobilization and reparations program for members of Colombia's paramilitary groups, and other legislation from the Constitutional Court to protect internally displaced people and other victims of the conflict. Law 1448 is an ambitious assistance and reparations program, having registered almost 16% of Colombia's population as official victims of the conflict. It provides assistance and reparations to victims of violations of international humanitarian law or human rights law that occurred after 1 January, 1985 in the context of the internal armed conflict.[90] The Victims' Unit, which coordinates the program, categorizes victims according to a set of 12 victimizing acts: forced displacement, homicide, sexual violence, kidnapping, and more (UARIV 2015). Of these, over 85% of registered victims were included for forced displacement (UARIV 2015). Inclusion in the Victims' Registry is based on victims' declaration and an assessment as to whether the harm they report was related to the conflict. In Colombia, where the conflict has involved a complex web of actors and motivations, this is not an easy determination and the Law has been criticized for excluding violence related to demobilized paramilitary gangs (*bandas criminals* or BACRIM) and drug trafficking (Amnesty International 2012). More recently, however, Colombia's Constitutional Court expanded the eligibility for victims of displacement, declaring those displaced by BACRIM also eligible for reparations.[91]

Beyond the determination of whether a victim's harm occurred as part of the armed conflict, the actual identity of the victimizer is not relevant under Law 1448, meaning that victims of state-backed agents and illegal armed groups are equally eligible for reparations:

> This law paves the way for the recognition of victims, without regard to who the perpetrator was; it recognizes their rights, prioritizes access to state services and transforms victims and their families into recipients of reparation.[92]

Once verified and registered, victims have a right to receive reparations and various forms of "humanitarian aid," (*ayuda humanitaria*), "assistance" (*asistencia*)" and "care" (*atención*), which I refer to collectively here as "assistance". Reparations are defined "comprehensively" under Law 1448, categorized according to the UN Basic Principles as restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.[93] Assistance is also broadly defined, incorporating measures to fulfill immediate needs, like for food, medicine and housing (humanitarian aid); measures to help victims achieve a more stable life situation (assistance); and measures to help victims fulfill their rights to access truth, justice and reparation (care).[94] To date, Colombia has provided reparation payments to 473,257 victims and assistance payments to 1,184,418 (UARIV 2015). There are a number of challenges to distinguishing between these assistance and reparations

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[90] Law 1448, Article 3. Victims of violence linked to the armed conflict that occurred before 1 January, 1985 have the right to "truth, symbolic reparation measures, and guarantees of non-repetition" under the Law (Article 3, Paragraph 4).
[91] *SENTENCIA C-280/13*, C-280/13, Constitutional Court, (SENTENCIA C-280/13).
[92] Law 1448, Introduction.
[93] Law 1448, Article 12.
[94] Law 1448, Article 42, Article 49.

measures, to which I turn in the next section. First, however, I present the ICC's forthcoming provision of reparations and assistance in Ituri.

Reparations and Assistance at the ICC

In 2012, Thomas Lubanga was convicted and sentenced to 14 years for three counts of war crimes, including conscripting, enlisting, and using child soldiers in the Ituri War. In March, 2015, the Appeals Chamber issued its Judgment on reparations in the case—the first in the Court's history. While no rewards have yet been distributed, the *Lubanga* trial provides a useful case study because of the "assistance programs" that the Trust Fund has already been implementing in Ituri for over six years (TFV 2010). In its landmark Judgment, the Appeals Chamber urged the Trust Fund to consider "the possibility of including members of the affected communities in the *assistance programs* operating in the situation area in the DRC, where such persons do not meet the … criteria" of victimization established at trial (herewith "non-trial victims").[95] This would be the first time that the Trust Fund's "assistance" and "reparations" mandates are used in tandem.

As noted, the Trust Fund has two mandates according to Rule 98 of the Rules of Procedure and Evidence and its own Rules and Regulations: assistance, which can include material, psychological or physical aid, is separate from the judicial process; and reparations, which are linked to a guilty verdict and ordered against a perpetrator for the specific crimes he/she committed, and which can be material, symbolic, individual or collective.[96] While this dual-mandate is one of the Rome Statute System's fundamental responses to criticisms that international criminal justice does not provide tangible benefits for victims, it also complicates the task of distinguishing assistance measures from reparations awards, as no conceptual guidance is provided in the ICC's legal framework other than these definitions. The Rome Statute itself provides no detail as to the functioning of the Trust Fund, since delegates felt the complexities of its future operations would demand more flexibility than could be offered by the Statute (Jennings 2008). And while Article 75 of the Statute calls on the Court to establish reparations principles, it does not appear likely to ever do-so on a Court-wide basis (War Crimes Research Office 2010). Rather, this conceptual work will have to happen on a case-by-case basis, through the practice of providing reparations and assistance in tandem. As in Colombia, I suggest, the task will not be clear-cut. I now turn to these challenges for both cases, organized according to main legal and theoretical frameworks used to distinguish reparations from assistance by international justice actors.

Principles of Difference between Reparations and Assistance

The Colombian and Iturian cases highlight the jurisdictional challenges of implementing reparations and assistance in tandem. These can be elaborated, I suggest, according to the main theoretical and legal frameworks that distinguish reparations from assistance. I propose five intersecting frameworks: (1) that reparations imply the ascription of *responsibility*; (2) that reparations are at heart a form of *recognition* of victims and in particular their status as *rights-holders*; (3) that reparations differ in terms of the *process* through which victims become eligible for and receive them; (4) that reparations differ in *form* from assistance, in part because the former are addressed to victims' *harm*, not their

[95] Reparations Judgment, Appeals Chamber, *Lubanga*, 3 March 2015 [para 215].
[96] *Regulations of the Trust Fund for Victims* ICC-ASP/4/Res.3, The Hague: The Assembly of States Parties, 2005.

needs, and (5) that reparations differ fundamentally from assistance in terms of their *goals* and ultimate *impact*.

The Principle of Responsibility

The primary distinction between reparations and assistance is the principle of responsibility. In their clearest sense, reparations imply the responsibility of a wrongdoing party—an individual, organization or state—for acts committed against an injured party. Assistance is provided on the basis of need and not according to a determination of culpability. As Moffett (2014: 147) writes, "responsibility for reparations distinguishes such measures from charity or humanitarian assistance by achieving some form of accountability." Yet, reparations can also stem from the responsibility of a state for its citizens, irrespective of who committed the offending acts. In such programs, as in Colombia, the principle of responsibility is substituted by that of "subsidiarity". This holds that "states should endeavor to establish national programs for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations" (UNGA 2005: 16). And while this principle is foundational to state-based administrative reparations programs, it is also relevant to reparations at the ICC, since the Trust Fund can also fund reparations awards when the convicted party is indigent, as is the case in *Lubanga*.[97]

While responsibility provides the clearest distinction between reparations and assistance, there are certain shortcomings in practice. In Colombia, the responsibility in Law 1448 is for that of victims' wellbeing and redress, not for the acts they suffered. The law in fact contains a notable article that seeks to dissuade victims from pursuing judicial redress against perpetrators:

> The victim may voluntarily accept that the delivery and receipt of administrative compensation is understood as an agreement in which the victim agrees and states that the payment made includes all amounts that he is due on account of their victimization, in order to prevent future lawsuits or terminate pending litigation.[98]

This does not contradict the principle of responsibility, as the State is indeed taking responsibility for its citizens in important and novel ways. But it does weaken it, I suggest, in distancing victims' reparation from the responsibility of a wrongdoing party. Furthermore, the principle of subsidiarity refers to the responsibility of the state to provide reparations *and* assistance. Without a specific link to the accountability of the wrongdoing party, therefore, the principle of responsibility offer less distinction between reparations and assistance.

At the ICC, where the principle of subsidiarity suggests that the Trust Fund can fund reparations awards where the convicted person is indigent, the Court faces the challenge of distinguishing reparations from assistance when the two are funded with money from the same entity. This is on top of the possibility that they will look similar in form and be implemented by similar organizations, as I discuss below. Such challenges should not be overstated—in international criminal law, it is

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[97] Rome Statute, Article 75. The Article reads that "the Court may order that the award for reparations be made *through* the Trust Fund", thus implying that the award itself is ordered only against the guilty perpetrator and not the Trust Fund or States who finance it.

[98] Law 1448, Article 132

clear that reparations can only stem from the determination of guilt of a convicted party. But in practice, the difference may not be so clear for victims on the receiving end.

The Principle of Recognition

The principle of recognition is also central to notions of what distinguishes reparations from assistance. According to Roht-Arriaza and Orlovsky (2009: 172), "reparations are distinguished first by their roots as a legal entitlement based on an obligation to repair harm, and second by an element of recognition of wrongdoing as well as harm, atonement, or making good." In addition, reparations distinguish themselves through the recognition not only of victims' suffering but also their status as rights-holders. "What distinguishes reparations from assistance is the moral and political content of the former, positing that victims are entitled to reparations because their rights have been violated by the state (through acts or omissions)" (Roht-Arriaza and Orlovsky 2009: 179). As with the principle of responsibility, the principle of recognition is thus considered to entail a strong symbolic component that assistance does not possess, and which is sometimes considered to be even more valuable than an award's actual material value (Kristjansdottir 2009: 175; Roht-Arriaza and Orlovsky 2009: 172). It is also often assumed, furthermore, that victims *want* to be recognized (e.g. ICC 2010).

In practice, however, recognition can mean different things and does not always mark the distinction from assistance so clearly. As noted, the Colombian state recognizes victims' suffering and confirms their right to reparation, but does not recognize them as victims *of particular actors*. According to REDRESS (2003: 7), "states may use the same terms to refer to reparative measures that they institute locally as part of policies that do not necessarily arise from illegal acts committed by the State. It is therefore not always clear if reparation is a matter of right or simply a matter of policies or political priorities." In Colombia, the assistance and reparations measures provided thus stem from the same original act of recognition—as a victim entitled to assistance on the one hand and as a victim entitled to reparations on the other. To help emphasize the significance of the State's recognition, the Victims' Unit provides each registered victim with a "letter of dignity" (*carta de dignificación*) in which the state officially recognizes their suffering and status as rights-holders (UARIV 2013). The following is an excerpt of a copy provided by Victims' Unit staff:

> The Colombian State strongly feels that you have been affected by the violation of your rights within the framework of the internal armed conflict. We know that the suffering that you and your family have endured is not right and for that we have decided to say, NO MORE and to work decisively to guarantee you the comprehensive reparations to which you have a right. This is our greatest objective and responsibility as a state.

The letter of dignity goes on to say that the Government is prepared to pay a "long-overdue debt" to each victim "in the name of society". Again, however, this is a debt for both assistance and reparations. As commentators have noted, such recognition is a significant and important step beyond previous efforts in Colombia that have not previously recognized victims of the armed forces or state-backed paramilitary groups (Sánchez and Yepes 2011). But it does not differentiate reparations and assistance as clearly as the principle of recognition suggests.

At the ICC, victims will receive the recognition of a reparations award that was ordered against Lubanga for only for a relatively small set of crimes compared to the full extent of what they likely suffered. As in Colombia, furthermore, assistance from the Trust Fund could also be experienced by victims as a form of recognition. This is an especially relevant risk in light of the Appeals Chamber's

remarkable finding that "the meaningfulness of reparation programs with respect to a community may depend on inclusion of all its members, irrespective of their link with the crimes for which Mr. Lubanga was found guilty," a notable endorsement of the potential of assistance not only to reach those excluded from reparations, but to make them *feel* included.[99]

Furthermore, while practitioners often assume that victims want to be recognized, recognition can also harm victims in ways that are counter-intuitive to reparations' intended effects. At the ICC, both the Appeals Chamber and Trial Chamber in *Lubanga* stressed that reparations should help reduce the stigma of former child soldiers.[100] For such victims, however, reducing stigma will likely depend on recognizing them not as former child soldiers but more generally as vulnerable children (UNICEF 1997, 2007). This is not meant in anyway to suggest that former child soldiers do not have particular needs or have not experienced particular forms of harm, but rather to point out that some victims' rehabilitation can depend on not being recognized as much as on being recognized (Dixon Forthcoming). The principle of recognition, therefore, is not always a useful or relevant framework through which to distinguish reparations from assistance in practice. I discuss the role of stigma in international justice practices in more detail in Chapter 7.

The Principle of Process

As noted, reparations are seen to constitute not only the substance of redress, but also the process through which it is received (REDRESS 2003). From a procedural justice perspective, the possibilities that victims have to receive reparations and the extent to which they are consulted about the their design and implementation both influence the experience of justice (Leyh 2011; Weinstein et al. 2010). According to REDRESS,

> for victims, justice is an experience. It is as much about the way that they are treated, consulted and respected procedurally throughout the reparation process, as it is about the substantive remedy, material or otherwise, they may be granted as part of the end result (REDRESS 2015).

In the Colombian and ICC reparations programs, victims' participations and consultation both play an important role. For Law 1448, "the active participation of victims" is a necessary step toward the ultimate goal of overcoming vulnerability, inscribed in law.[101] At the ICC, the Trial Chamber identified a "consultation phase" as one of the necessary steps through which reparations must take place in *Lubanga*.[102]

In practice, however, the provision of reparations and the provision of assistance can stem from similar or identical processes. In Colombia, for instance, victims are registered in the Victims' Registry through a single declaration process. Once included, they are then provided either assistance measures or various forms of reparation, but the process to determine eligibility is not different. At the ICC, beneficiaries of assistance are identified by the Trust Fund's partners, while beneficiaries of reparations can apply for or may otherwise be identified by the Court (TFV 2010).

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[99] Reparations Judgment, Appeals Chamber, *Lubanga*, 3 March 2015 [para 215].
[100] Ibid. [para 202-3].
[101] Law 1448, Article 14.
[102] Reparations Decision, Trial Chamber, *Lubanga*, 7 August 2012 [para 282].

But because of the nature of the situations before the ICC, the great majority of recipients of reparations will not have appeared before the Court or testified as a witness.

Furthermore, the measures themselves—whether as reparations or as assistance—may be implemented by the same or similar implementing organizations. The Trust Fund's implementing partners for its assistance projects often have extensive experience working with vulnerable populations in post-conflict settings and will likely be a valuable asset in the implementation of reparations (TFV 2010). Furthermore, many of these organizations implement other projects funded by established donors in other fields like peacebuilding and development simultaneous to their Trust Fund-funded activities. This raises the possibility that reparations will be implemented by organizations who not only have already worked on assistance projects but also work outside the field of international justice altogether. This, I suggest, also increases the risk that assistance and reparations could be conflated in practice.

The Principle of Form

The principle of form holds that reparations are or should be unique in form compared to assistance, in part because they are targeting harms and not needs and in part because they are more symbolically or materially significant. Under international law, reparations have a higher benchmark to meet: they "must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed" (cited in REDRESS 2003: 7).[103] This implies that reparations should therefore be more significant than assistance, if not materially than at least symbolically, as assistance is intended only to meet the specific need(s) to which it is targeted. Both the Colombian and Congolese cases, however, highlight that reparations and assistance can look very similar or even identical, in form.

In Colombia, Law 1448 specifies that assistance measures do not replace reparations, but are meant to augment the latter's effect.[104] Yet it also notes that assistance can have a reparatory impact themselves.[105] The Victims' Unit generally distinguishes between them according to the endurance of each measure's intended effects: assistance is for short-term stability, while reparations are provided for longer-term transformation. In practice, I suggest, assistance and reparations can look and feel similar under this program. Short-term housing for displaced families is assistance, for example, while land and housing restitution are forms of reparation. Monthly housing subsidies are assistance, while lump-sum cash payments, coupled with counseling on how to invest them, are reparations. Some displaced families, furthermore, can receive humanitarian assistance over a long period of time. And while the Victims' Unit is responsible for coordinating the provision of reparations and assistance and for providing some measures itself, the entire program involves a complex network of government ministries and offices at the national and regional level, including the Ministries of Health and Education, the Police, the Attorney General's Office and numerous others. Some of these implement other cash subsidy programs for vulnerable populations that can also reach victimized groups, particularly displaced populations. All this, I suggest, can make it difficult for

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[103] *Chorzow Factory Case (Ger. V. Pol.)*, 17, Permanent Court of International Justice, 13 September [47], (Chorzow Factory Case (Ger. V. Pol.)).
[104] Law 1448, Article 25, para 1.
[105] Ibid.

beneficiaries to know when they are receiving reparations, assistance, or even a subsidy unrelated to the conflict.

There are similar risks at the ICC. As noted, the Appeals Chamber ruled that reparations in *Lubanga* should help reduce victims' stigma and promote their reintegration.[106] To comply, the Trust Fund may have to implement reparations measures that are more similar to its assistance projects in form than these principles of difference would suggest. The Trust Fund has already funded several assistance projects for former child soldiers in Ituri that are based on the same well established standards that were referenced by the Trial Chamber and confirmed by the Appeals Chambers (UNICEF 1997, 2007). The Trust Fund's assistance projects will therefore likely serve as a model for the implementation of reparations. One such notable strategy, for example, is to target former child soldiers and other vulnerable youth together in the same project in order to avoid the "child soldier" label and thus reduce stigma and promote reintegration (TFV 2010). Not only, therefore, could assistance and reparations measures comply with the same standards and look similar in form, but they could even integrate recipients of assistance and recipients of reparations into the same actual projects.

The Principle of Impact

The principle of impact, finally, suggests that because of their potent symbolic value, reparations have a greater, or at least different, impact vis-à-vis assistance measures. From this perspective, reparations are often considered to have a more transformative and/or healing effect, either because they are more materially valuable or more commonly, because of their unique symbolic significance. There is an extensive body of work examining the social and psychological healing potential of reparations (Danieli 1995, 2009; Hamber 2006). Hamber refers to it as "social recognition" to draw a victim out of their "acute" and "isolating" internal world. Danieli (2009: 59-60) locates their power in the sense of vindication that reparations impart.

> It's not the money but what the money signifies—vindication. It signifies the governments' own admission of guilt, and an apology. … The money *concretizes* for the victim the confirmation of responsibility, wrongfulness, he is not guilty, and somebody cares about it. It is at least a token. It does have a meaning.

Ultimately, there is very little empirical evidence as to the differential impacts of reparations and assistance Indeed, Danieli's own interviews with Holocaust survivors, for instance, revealed Germany's claims process to be bureaucratic and frustrating for victims (Danieli 2009). Given the practical shortcomings of the principles of responsibility, recognition, process, and form presented here, however, such differences are difficult to predict, especially if victims themselves do not clearly understand the difference themselves. Rather, more research is needed on this question, particularly on how beneficiaries' consciousness influences their experience of the reparative justice process.

[106] Reparations Judgment, Appeals Chamber, *Lubanga*, 3 March 2015 [para 202-3].

Models for Combining Reparations and Assistance

Reparations in Colombia and at the ICC show how the legal and theoretical frameworks that distinguish reparations from assistance do not necessarily hold up in practice, in both state-based and international criminal programs. My intent here, however, is not only to point out challenges but also to propose models and strategies to respond to them. One of my main contentions in this dissertation is that the tensions, gaps, and poor fits in response to which international justice actors draw on the practical strategies reviewed here are both obstacles as well as sources of creativity and opportunity. In this section, I draw on the Colombian and Congolese cases to illustrate the main practical models available for combining reparations and assistance in international justice today. Across both cases, I suggest, there are three "ideal-typical" models that each offer useful lessons about how reparations and assistance can complement each other and when practitioners should aim to accentuate or blur their differences.

Colombia has adopted what I call a "subsistence" model, where assistance is seen to help victims achieve a more stable situation so they can fully benefit from reparations. This is similar to a second approach, the "interim relief" model, where assistance is used to respond to victims' immediate needs as they wait for reparations. Such a model can be extrapolated from the ICC's victims' regime, although it is not currently being implemented by the Court. Rather, I suggest that the ICC has adopted what I call a "Swiss cheese" model, where assistance is used to fill in the holes of a legally restricted reparations process. These three models constitute the main forms that reparations and assistance take in programs that combine them. While the subsistence model is applicable only to domestic reparations programs, the interim relief and Swiss cheese models could apply to both domestic and international criminal jurisdictions. Depending on these contexts, each model has important implications for how the relationship between reparations and assistance should be clarified and communicated to victims according to the principles of responsibility, recognition, process, form, and impact.

The Subsistence Model

In the Colombian program, assistance is seen primarily as a means to help victims achieve a level of basic subsistence so that they can benefit more fully from the reparations process (Gaviria 2015).[107] To a large extent, this is particular to the Colombian case, where over four-fifths of registered victims are victims of forced displacement and thus live in very unstable circumstances. On a deeper level, however, the subsistence model is rooted in the notion that where assistance is transitory, reparations have a more transformative and long-term impact.[108] For victims of displacement, this approach is intended to follow a progressive, step-by-step model that begins with the recognition of a victim through their inclusion in the national Victims' Registry; continues with the provision of humanitarian assistance to guarantee minimal subsistence, defined as housing, food and health; progresses to the provision of transformative reparations measures; and, finally, ends with the victim's overcoming vulnerability and achieving socioeconomic stability (Gaviria 2015). According to Paula Gaviria, the Director of the Victims' Unit, "this model assumes that reparations come after and are distinct from humanitarian assistance, in a vertical process that permits the transition from

[107] Decreto 2569 (2015).
[108] Law 1448, Article 25.

short-term assistance to longer-term reparations" (Gaviria 2015). It also assumes, I suggest, that victims themselves are able to tell the difference. This is a model, that is, where the differences between reparations and assistance should be accentuated.

Because reparations are seen as more transformative than assistance and because victims must attain a certain level of stability in order to receive reparations measures, they should be able to know when they are receiving one and when they are receiving the other. If assistance measures are provided only as short-term support for basic needs, their confusion as reparations would risk disappointing and short-changing victims and also diminishing the process's intended significance. Conversely, if reparations measures are not materially or symbolically significant enough to be noticeably distinguishable from assistance measures, the process risks losing victims' confidence in the state and in the legitimacy of its response.

The differences between reparations and assistance measures in a subsistence model, furthermore, should be accentuated particularly in terms of their respective forms and impacts. The subsistence model, I suggest, applies primarily in domestic, administrative programs like Colombia's, where the state has acknowledged responsibility for victims' wellbeing and recognized them as rights holders. The principles of responsibility and recognition (and likely process) thus apply to *both* reparations and assistance in these contexts, leaving the supposed distinctions less clear. This leaves the principles of form and impact as key elements of differentiation. To illustrate, communicating to a displaced family that the assistance and reparations measures they receive under Law 1448 stem from different kinds of state responsibility will mean less than if the two actually take concretely different forms. For Colombia, and other states that pursue subsistence models, articulating such differences will depend on their ability to clearly communicate them to beneficiaries and on the resources they are willing to dedicate to ensure that reparations are indeed more symbolically and materially significant.

The Interim Relief Model

Under criminal law, perpetrators have no legal responsibility for victims' subsistence. In these contexts, however, there is a model similar to the "subsistence" approach in which assistance is used not to guarantee minimum subsistence but to provide "interim relief" while a full judicial or reparative process takes place. This "interim relief" model is present in the ICC's legal framework, although it has not yet been implemented at the Court, but can also apply to states (exemplified by Nepal's aforementioned Interim Relief Program). The differences between subsistence and interim relief are subtle but important. On the one hand, they have different goals: basic subsistence in one versus short-term relief in the other. On the other hand, they entail different processes. A subsistence model is more blended procedurally between assistance and reparations, since different people and families will reach the minimum subsistence level—and therefore start the reparative process—at different times. The interim relief model is more divided: one distinct phase for assistance followed by one for reparations, with unique procedural and legal processes for each.

At the ICC, "interim relief" only exists in theory. Assistance has thus far not been provided to victims as they await a verdict. Rather, the Trust Fund's assistance mandate is more accurately described according the third, "Swiss cheese" model below, where assistance is provided to patch the holes of a restrictive reparations process by targeting those not eligible to participate in it. Were the ICC to utilize interim relief, however, additional work would also be warranted to accentuate the

differences between assistance and reparation, although without as much difficulty as in a subsistence model. First, though, some brief background is warranted.

One potential explanation for the lack of interim relief at the ICC is Rule 50 (ii) of the Trust Fund's Rules and Regulations, which states that it must neither "pre-determine any issue to be determined by the Court" nor "violate the presumption of innocence" through its assistance activities.[109] First, though, the model was fiercely debated in Rome.[110] This was for two reasons: first, states did not support any notion that might expand the responsibility for victims beyond the framework of individual criminal responsibility; second, there were those who saw the Court as strictly a criminal institution and therefore considered the provision of such relief as beyond its mandate.[111]

> We wanted the possibility for the Trust Fund or for the Court even … to give something to the victims before there is a conviction. … We tried to argue that you don't need criminal responsibility in order to see that someone has suffered harm. … But that goes deep into the mind-set of the Court: is this a criminal court, is this mainly a criminal court, is this a civil court, is this an international court, what kind of Court is it? … [For those saying that this is a criminal court,] it has to be driven by criminal logic, which is that first you see that there is a conviction and then you go to reparation. … This was a terrible fight, really a terrible fight, because many states did not want to have this kind of interim relief, even through the Trust Fund.[112]

In the end, the Rome Statute provided no details as to the functioning of the Trust Fund. Interim relief, however, remains a potential model for both the Court and Trust Fund. Were it utilized, it would demand active differentiation between assistance and reparations, although with less difficulty than the subsistence model. Because interim relief by definition differs procedurally from reparations, I suggest, victims will have an easier time noting the distinction. Whereas different people will receive assistance and reparations at different times in a subsistence-based approach, the interim relief model proposes the provision of each measure in clear, distinct phases for all victims. In international criminal programs like the ICC's, furthermore, reparations and assistance will also differ more clearly according to the principles of responsibility and recognition under an interim relief model. This is in contrast to the "Swiss cheese" model below, where assistance is actually intended to impact a similar sense of recognition as reparations. Still, the provision of assistance as interim relief would require clear differentiation on all five principles presented here: responsibility, recognition, process, form, and impact. Indeed, providing assistance to trial victims before a verdict would run a higher risk of both "pre-determining" issues before the Court violating the presumption of innocence, regardless of how easy it might be for victims to tell the difference.

The Swiss Cheese Model

While the subsistence and interim relief models offer examples where programs will necessitate active differentiation between reparations and assistance, the "Swiss cheese" model is an example where practitioners may in fact want to blur the differences under certain circumstances.

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[109] *Regulations of the Trust Fund for Victims* 2005.
[110] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.
[111] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.
[112] Personal interview, International Criminal Court, The Hague, Netherlands, Spring, 2014.

Represented both by the Trust Fund's implementation of its assistance mandate outside of trials and the ICC Appeals Chamber's Judgment on reparations in *Lubanga*, I suggest, this model sees assistance as a means to fill in the gaps of reparations regimes where they are restricted by legal definitions of victims and victimization. As noted, the Trust Fund has used its assistance projects to expand the net of victims and affected communities beyond the scope of the ICC's trials, not as a form of "interim relief" for victims participating in trials. Indeed, the Trust Fund's assistance projects are not interim in nature because beneficiaries of Trust Fund assistance stand no greater chance of one day receiving reparations from the Court than any other victim of crimes under its jurisdiction. For these projects, assistance measures' distinction from reparations should be accentuated, although there is also less risk that victims will confuse them since they are provided without any connection to a trial. Rather, it is when assistance and reparations are provided side-by-side, as could likely be the case in *Lubanga*, where greater care and attention to the relationship between reparations and assistance must be utilized under a Swiss cheese model.

In *Lubanga,* as noted, the Appeals Chamber urged the Trust Fund to use its assistance measures to reach victims not included in the definition established at trial, finding it "appropriate" that the Trust Fund provide assistance to members of the broader "affected communities" who do not meet the eligibility criteria for reparations.[113] Here, notably, it may make sense to blur the distinction between reparations and assistance, especially in light of the Appeal Chamber's ruling that reparations' "meaningfulness" to affected communities can depend more on inclusion than on any link to specific crimes. Assistance, that is, could function as kind of quasi-recognition of non-trial victims who were not recognized through the trial process, but are still considered deserving. This of course should not be overstated, especially with regard to the principle of responsibility, since Lubanga has no legal responsibility to redress victims of crimes of which he was not convicted. Indeed, the Appeals Chamber also noted the presence of a "real risk" that the assistance and reparations mandates of the Trust Fund "may be blurred in a manner prejudicial to the rights of the convicted person" without proper oversight from the Trial Chamber.[114] But it does support an argument that reparations programs may benefit from less, not more, distinction from assistance in terms of recognition, process, form and impact in these particular circumstances.

[113] Reparations Judgment, Appeals Chamber, *Lubanga*, 3 March 2015 [para 215].
[114] Ibid. [paras 181-2].

Chapter 7

Reparations and the Politics of Recognition

This dissertation began with a series of anecdotes that I suggested help frame the many forms of capital and varieties of habitus at play in the international justice field. This final chapter focuses on one in particular, which comes from a personal experience conducting a workshop in Ituri and illustrates the ways in which the ICC's international justice practices shape local relations and identities on the ground. In my independent survey of victim-survivors of the war, results showed support for both collective and individual reparations and I was curious about theories as to why. Here, I review this anecdote—*les chevres des violées*—and discuss how it illustrates the "politics of recognition" in international justice. This chapter analyses how international justice practices can be detrimental—both to the victims and communities on whose behalf the Court intervenes and to the ability of the Court to contribute to the reconciliation process.

For the survey, I had assumed people would support individual reparations only, since it is a way to secure maximum benefit from an award. As noted in Chapter 5, for example, the VPRS's recent survey of victims participating in the *Katanga* case at the ICC found overwhelming support for individual, cash-based reparations.[115] The workshop participants explained, however, that views toward the question of individual versus collective reparations are more complex. Individual reparations, they explained, are seen not only as a way to maximize ones profit, but also as a means to cut out the "middle man" from stealing project benefits, whether for a reparations process or a development program. Congolese, they said, have a severe lack of trust toward government officials,

[115] Reparations Report, *Katanga*, 21 January 2015.

NGO officers, local leaders, and others when it comes to such projects. On the other hand, they noted, collective reparations were seen as a way to make projects more inclusive and to avoid stigma. Iturians, they explained, understand that the ICC only targets a minority of victims compared to the masses who actually suffered during the war. "We are all victims!" exclaimed one participant, echoing a sentiment often expressed in my interviews. At the same time, they noted, collective reparations are also a way to avoid stigmatizing vulnerable groups. To illustrate, one NGO director recounted his story of the *les chèvres des violées* (the goats of the raped women): he had been distributing goats to victims of sexual violence to help reintegrate them socioeconomically. The project backfired, though, when others in the community noticed and began to refer to these as the "goats of the raped women". Instead of reintegrating the women, the project had in fact further stigmatized them.

This was not a reparations or international justice project, but it was targeting the same kinds of people with forms of support that the ICC could also provide (and has through the TFV). As such, it illustrates one key consequence of international justice's productive practices: the increased suffering of victims for whom the stigma attached to violence can bring suffering beyond the violence itself. As I have argued, the recognition of victims is an important practice for international justice because it helps set it apart from neighboring fields that provide similar measures to similar kinds of people. Yet, the need to recognize is not necessarily accompanied by victims' desire to be recognized. In fact, it can do more harm than good. I refer to this and the other dimensions of the local consequences of international justice practices as the "politics of recognition" (cf Fraser 1999). The productive practices explored in this dissertation help actors manage the push and pull of the growing field of international justice vis-à-vis other, neighboring global fields. They are also needed to make sense of the many incongruences and tensions related to the field's expansion into conceptual and geographic terrain for which legal justice is not always a perfect or ideal fit. Whereas domestic law and international human rights law have the legitimacy of state authority to fall back on, international justice does not and must therefore draw on various other forms of authority to continually justify and produce its legitimacy. Yet, these practices have important local consequences.

In this chapter, I describe three general consequences, drawing on my own fieldwork in Ituri. First, the need to produce transitional justice through the recognition of victims can levy harmful stigma on vulnerable groups. Second, the inherently limited scope of international justice trials inspire local contests for official victimhood, especially when the prospect of financial reward is attached. The ICC Prosecutor has focused not only on a limited timeframe and set of crimes, but also on a limited number of locations, which has in turn encouraged inter-village competition over legitimate claims to victimization. And third, the ICC's reliance on accessible tropes like ethnicity to frame violence can contradict local understandings of conflict while at the same time play into the hands of local leaders who use ethnicity to manipulate their constituencies. Finally, it can limit the Court's ability to take full advantage of its potential to contribute to local reconciliation efforts, particularly as a source of objective and holistic truth.

Together, I argue, these three consequences are linked through the politics of recognition. Unlike the politics of distribution, which entail struggles over the allocation of goods, recognition entails interpreting, representing and rendering visible (and invisible) categories of people. Reparations involve both, which makes them an authoritative form of recognition in international justice, and an especially political process. Compared to assistance or development or humanitarian aid, reparations are particularly marked by these politics. And while the manner in which awards are designed can

help ameliorate these tensions, it is the actual targeting and implementation process through which victims ultimately experience them. As such, the productive practices described in this dissertation are integral to shaping the local politics of recognition.

The politics of recognition are not unique to reparations. Development initiatives, humanitarian assistance and reconstruction projects all entail particular methods of targeting through which they define, measure and act upon the world, often obscuring the politics behind them (Ferguson 1990). But simply analogizing ICC reparations to the politics of development assistance and humanitarian aid misses what is "legal" about international justice and ICC-ordered reparations. Where development, assistance and reconstruction might tend more toward struggles over distribution, international criminal reparations distinguish themselves through the very act of recognition—a "technology of truth" through which the truth is identified, measured, represented and, ultimately, objectified (Merry and Coutin 2014). This makes ICC reparations political not in the sense of interest groups politics, but through their introduction of such technology into the social relations and power struggles where the Court intervenes—into, that is, the politics of recognition.

Compared to development initiatives, furthermore, the ICC's productive practices are particularly powerful technologies. This is for two reasons, I suggest. First, the force of law is founded on the very notion of objectivity and legitimacy. Even though international justice struggles with legitimacy, as I have discussed, it still bears the mark of legal authority. Second, the ICC is focused on an element of Iturian society that Iturians themselves know very little about—the war and its *raisons d'être*. As the ICC's first situation to go to trial, Ituri is relatively well-known throughout the international justice field. Iturians themselves, however, remain relatively unaware of the war's events and origins, as discussed in Chapter 3.[116] People know it began with historic grievances over land between the Hema and Lendu in Djugu territory, for example, but they cannot explain how these grievances turned into years of bloodshed that pitted neighbor against neighbor. Many suspect the conflict was partly due to outside manipulation. Many also suspect that at least some of their neighbors benefitted from the war. The schools in Ituri, however, do not teach this history, relying on a curriculum designed in Kinshasa that teaches children about the independence leader Patrice Lumumba, but not their own war.[117] Instead, I was told, children learn ethnic hatred from their parents. Aside from a few small NGOs, Ituri lacks the sort of public space that is needed to engage in dialogue about this history. This gap is filled by rumors, suspicion, and lies.

In my fieldwork, many community leaders thus felt the region needed its own small-scale truth and reconciliation process—something more locally run than the DRC's failed 2003 attempt at a national Truth and Reconciliation Commission following the Inter-Congolese Dialogue.[118] Unlike the international community, which overwhelmingly expressed skepticism and fear over Ituri's "internal time bomb", these leaders generally felt that public dialogue about the war could help. My survey data from Irumu and Djugu indicates that the general population feels similarly. Almost 90 per cent of local respondents said it was either "important" or "very important" that the history of the war be made public. An equal number responded that if there were an opportunity to speak publicly about the war, they would share their story (Figures 3-6). This data informs my analysis in the following

[116] Personal interviews, Ituri, DRC, Spring/Summer, 2013.
[117] Personal interviews, Ituri, DRC, Spring/Summer, 2013.
[118] Personal interviews, Ituri, DRC, Spring/Summer, 2013.

sections. I suggest that Iturians generally want recognition for their suffering and desire a more public process to discuss the war, but not necessarily according to the categories through which international justice has constructed them.

Figure 3: Are Iturians ready to speak about the war?

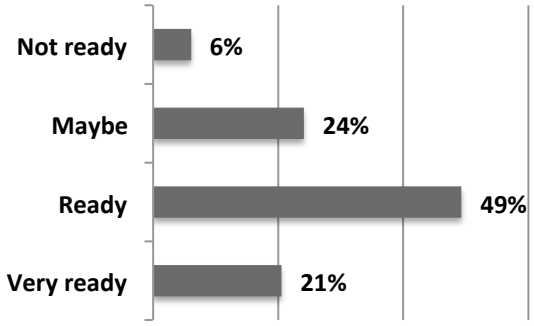


Figure 4: Is it important to have intercommunity dialogue?

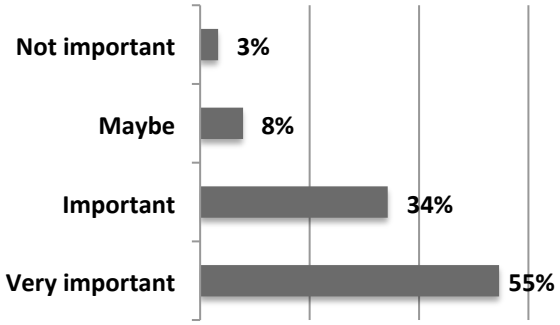


Figure 5: Is it important to publicize the history of the war?

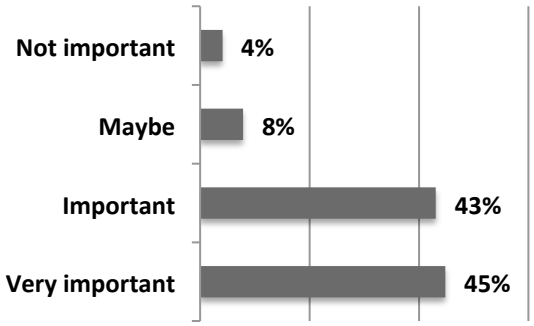
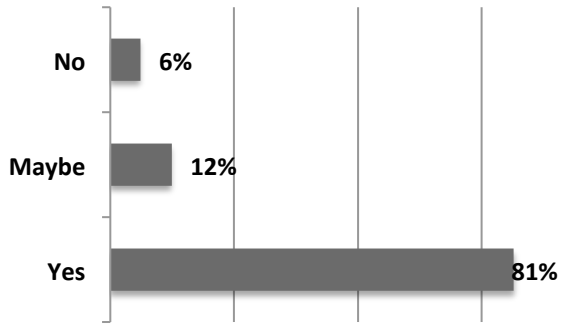


Figure 6: If there were a process to speak publically about the war, would you participate?



Stigma, Targeting, and Recognition

I have already presented the risk of stigma for vulnerable populations at various points in this dissertation. Here, I draw on my fieldwork and on the experience of professionals from the humanitarian and development fields to underscore in more detail that victims do not always express a desire for recognition and that, depending on how it is put into practice, recognition can in fact do more harm than good. To illustrate, I use two crimes that have received significant attention from the international justice project since the ICC opened in 2002: the forcible recruitment of children in armed forces and the widespread use of rape and other forms of sexual violence as weapons of war.

While international justice must repeatedly distinguish itself from neighboring fields like development, assistance, and reconstruction, it has in practice fallen into some of the same operational traps these fields have dealt with for decades. These include the targeting of beneficiary groups through bureaucratic categories. While for development, these originated as income or asset-based metrics, the standards are less clear-cut today. As discussed in Chapter 4, international justice, development, and reconstruction projects can utilize the same targeting categories. Stigma is a risk for all needs-based targeting, it is particularly risky for beneficiaries of international criminal reparations, as I have suggested.

As the sole crime charged in *Lubanga*, the enlistment of children associated with armed forces (CAAF) has received considerable attention. There is already an extensive body of literature on the challenges of defining, identifying, rehabilitating, and reintegrating such children and young adults (Blattman and Annan 2010; Drumbl 2012; Stark, Boothby and Ager 2009; UNICEF 2006, 2007). For the ICC, one of the greatest challenges will be deciding how to identify and target them in ways that reflect their reality and do not risk further stigmatization. Many CAAF, for instance, do not self-identify as "child soldiers"; many are no longer children; many were not abducted, but volunteered themselves or were volunteered by their families; and females, especially, may avoid the label because they are more often harmed by sexual violence and the resulting stigma than males. Moreover, there are many other ways young people can be made vulnerable by war. They can be orphaned, displaced, forced into camps, forced into prostitution, seriously injured and more. CAAF can be in better economic situations than their peers precisely *because* of their association with armed groups, which is often an incentive behind enlisting in the first place.

There is a wealth of information available from disarmament, demobilization, and reintegration (DDR) programs around the world, all with significant warnings and lessons. They unanimously reinforce the value of inclusive programming as a method to target child soldiers without stigmatizing them. When applied, though, inclusive programming generally means *not* recognizing CAAF. As noted, DDR projects thus blend child soldiers together with other "war-affected children", who, in programming parlance, are often narrowed down to "orphans and vulnerable children" (OVC). Different agencies use different ratios of CAAF to OVC, including the Trust Fund for Victims in Ituri (TFV 2010). The key, though, is that "community-based programming that applies to a wider group of vulnerable children is more effective than assistance targeted at a specific group identified by one experience alone" (MacVeigh, Maguire and Wedge 2007).

To this end, integration is considered a major step in the rehabilitation process, if not the most important one. Many note that girls may not want to participate in projects publicly labeled as DDR because they do not want to self-identify as "child soldiers" or do not self-identify as such in the first place. Instead, girls may "perceive themselves as "wives" or "cooks" and prefer these social categories" (McKay and Mazurana 2004). For these girls, integration might mean losing the social label "child mother" and becoming a "student" in the eyes of her peers. These lessons around inclusivity for female CAAF have been significant for the ICC's reparations regime. In one Trust Fund project for female CAAF, for example, providing girls with a school uniform to wear was among its most powerful interventions (TFV 2010).

For victims of sexual violence more generally, lessons about inclusivity are less clear than for CAAF, but are still significant. On the one hand, that victims of SGBV are specifically targeted is itself an accomplishment given the historic lack of public recognition of and resources devoted to sexual violence in and after war. However, experts in the field also recognize the risks of stigmatizing through overly restrictive approaches to targeting. In August 2010, for instance, a high-level panel convened to assess existing judicial mechanisms for victims of sexual violence in eastern DRC concluded that targeting reparations to victims of sexual violence can further stigmatize them—a particularly troubling idea, they noted, as "the reparation needs of victims of sexual violence may be caused more by the stigmatization than the sexual violence itself" (OHCHR 2011). The report quotes the coordinator of a Congolese NGO supporting victims of sexual violence, who herself requested that donors actually stop targeting SGBV exclusively, since "much attention given to sexual violence victims is fuelling jealousy and further stigmatization" (OHCHR 2011). Other agencies have come to similar conclusions (SIDA 2009).

The panel suggested that both collective and individual reparations are necessary. They found that individual and collective targeting can respond to different needs and demand different screening requirements and burdens of proof, providing the flexibility needed to adapt to different local conditions and needs. As for CAAF, proactively *not* recognizing victims of sexual violence for the harm they suffered can be a valuable part of the process. Rehabilitation projects, that is, not only provide vulnerable groups with valuable material and social services, but also with social identities that are often rooted in projects' eligibility criteria and targeting strategies.

Competitive Victim Status

While not recognizing victims can thus be the prudent choice for international justice actors, there is a seemingly contradictory competition over victim status in Ituri, which constitutes the second

element of the politics of recognition. Here, though, I do not refer to vulnerable people—for whom such recognition can and does bring harm—but to geographies, for example via community leaders from towns devastated by the war but to which the ICC and broader international justice field has paid relatively little attention. Such desire, coupled with the lack of faith in external representations by institutions like the ICC, motivates a competition over legitimate victimhood.

Vis-à-vis reparations, this competition expressed itself in my Ituri interviews primarily in debates about collective versus individual reparations. Overall, there was a strong preference for collective reparations. This would seem to fit with the *Lubanga* Trial Chamber's emphasis on collective reparations, but not with its linguistic distinction between victims and beneficiaries. Many subjects, for instance, expressed that it would be unfair to draw lines through individual awards because the Prosecution only investigated a subset of the towns and villages that were devastated by the war.

> Here, there is truly the need for collective reparations. Because, as I said, even if some were not chosen [for investigation by the Prosecutor], there were grave crimes affected almost everyone in Ituri … Even if Bunia was not chosen, the war affected all, and we need collective reparations, something from which the whole population can benefit.[119]

The emphasis here is on "chosen" localities; that is, the towns and villages officially sanctioned by the ICC as having suffered. Others added, along these lines, that it would simply be impractical to repair victims individually when everyone had suffered.

> There isn't a single village, a single person who escaped. So if everyone is to be awarded individually, where is that money going to come from? … It is important to recognize the victims, very important, but practically, in practice it is difficult to distribute reparations individually.[120]

Many also expressed a lack of faith in the ICC's objectivity, recalling the "fake victims" that beleaguered the Prosecution's case in *Lubanga*.[121] How, they asked, can we trust that someone is really the victim they claim to be?

> There are fake victims, like, for example, we can say that there are fake victims or falsified testimonies there at the ICC. Really, individual reparations will not be easy.[122]

One leader, in particular, offered an interesting case study. He is the leader of the town of Nyankunde, which endured one of the deadliest massacres of the Ituri war, but which has not received significant attention from the ICC. Nyankunde is ethnically Bira and therefore is difficult to place in the Hema-Lendu dichotomy, although the Bira were alleged to have supported the Hema in the ICC trials against Lendu leaders Germain Katanga and Mathieu Ngudjolo Chui. He recounted how at one point he had personally begun to collect the skulls of those killed in his town, after an

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[119] Personal interview, Notable, Ituri, DRC, Spring/Summer, 2013.
[120] Personal interview, Civil society leader, Ituri, DRC, Spring/Summer, 2013.
[121] Personal interviews, Ituri, DRC, Spring/Summer, 2013. See *The Prosecutor v. Thomas Lubanga Dyilo, 'Judgment pursuant to Article 74 of the Statute'*, ICC-01/04-01/06-2842, International Criminal Court, 14 March 2012 (Article 74 Judgment, *Lubanga*, 14 March 2012).
[122] Personal interview, Traditional leader, Ituri, DRC, Spring/Summer, 2013.

international church group brought him to Kigali to see a monument built for the Rwandan genocide. He believed something collective like a monument could help his town as well. "People must know what happened here," he said, "so it does not happen again."[123]

The Nyankunde Chief's perspective is significant because it differs quite sharply from those expressed in the town of Bogoro, a day's drive away and also the site of a brutal massacre. Unlike Nyankunde, Bogoro has played a key role in ICC proceedings as it is the town where Ngudjolo Chui and Katanga were alleged to have carried out an attack against the predominantly Hema population. Indeed, Bogoro is the only town in Ituri to have received such sustained focus, including a visit from former Prosecutor Moreno Ocampo and from ICC trial judges.

Community leaders in Bogoro expressed the strongest desire for individual reparations of all our interviewees, as noted in Chapter 5 and reflected in the VPRS's submission in *Katanga*.[124] Some NGOs in Bunia even suspected them of trying to turn their fellow villagers against the idea of collective reparations.[125] In Bogoro, leaders responded that "others were trying to generalize the list" of official victims as determined by the ICC.[126] These leaders recognized that other towns had also suffered during the war—including other Hema towns—and might be upset by Bogoro's individualized recognition, but this did not seem to matter. "The ICC talks about Bogoro," one village elder concluded. Such attitudes can also be seen in some of the submissions from those victims participating in the ICC's trials. Some of the participating victims in *Lubanga,* for example, suggested that they could receive a "war victim" certificate from the Court, designating their official status that would guarantee their access to services (Dixon 2014).

Ethnicity and the Truth of the Ituri War

The desire for individualized reparations in Bogoro was, I suggest, more of an expression of solidarity along geographic than ethnic lines. This reflects the final element of the struggle over recognition on which I focus in this chapter: contests over the legitimate characterization of the conflict itself, particularly over the Court's framing of it as essentially ethnic. The roles that ethnicity plays in Iturian society and in local explanations of the conflict are complex and seemingly contradictory. On the one hand, members of both the Iturian leadership and the agricultural base with whom I spoke expressed sentiments that would seemingly downplay the important of ethnicity as a fundamental organizing principle of Iturian society: for example, "all Iturians suffered", "Ituri is a mosaic of communities", "there is cohabitation and intermarriage" between the communities. Furthermore, as I note below, class divisions in Ituri cross ethnic lines, so that while wealthy Hema maintain herds of cattle, most Hema are in fact subsistence farmers like the majority Lendu and other ethnic groups. On the other hand, leaders and farmers alike reiterated the importance of ethnic difference in explaining the war and in describing the divisions of contemporary Iturian life: "they brought the war to us", "the communities could not be together," "we are innocent" (and *they* are not). These sentiments were also widespread among both the leadership and the agricultural base across all ethnic groups in my interviews.

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[123] Personal interview, Traditional leader, Ituri, DRC, Spring/Summer, 2013.
[124] Reparations Report, *Katanga*, 21 January 2015.
[125] Personal interviews, Ituri, DRC, Spring/Summer, 2013.
[126] Personal interview, Traditional leader, Ituri, DRC, Spring/Summer, 2013.

While seemingly contradictory, these two sentiments express a divergence between the daily lived experience of most Iturians, in which ethnicity is not as important a dividing principle as it would seem, and myths that reinforce ethnic divisions, and which are reproduced consciously and subconsciously through cultural and political practices. These latter myths are used by Iturian leaders quite consciously as a wedge issue to motivate constituencies. As such, they are transmitted across generations. The international justice field's reliance on ethnicity to frame violence, I argue, thus contradicts Iturians' lived experience of daily life but at the same time reinforces the conscious and subconscious practices that leaders and communities use to reinforce ethnic lines. With nothing about the war taught in school, Iturians lack other independent sources to learn their history and the role of ethnicity.

In this section, I discuss the role of ethnicity in everyday life and as a cultural myth. In the final section of this chapter, I argue that another common sentiment expressed in my interviews—that "the war is not over"—is in fact rooted essentially in *class* differences on the one hand, and a lack of education about the war on the other, both of which transcend ethnic lines. This sentiment, however, takes on an ethnic dimension and helps reproduce ethnic difference through cultural practices that are both conscious and subconscious, internal and external. The ICC's use of ethnicity to frame violence in Ituri, I suggest, should be counted among such practices. The role of ethnicity in structuring everyday life for Iturians is in fact less important, I argue, than what the predominant cultural myths about ethnicity, including those used by the ICC, would lead one to believe. In my interviews, I asked open-ended questions about what caused the war as well as more pointed questions about contemporary ethnic relations and about ethnicity as a cause of the war.[127] In response to questions about contemporary ethnic relations in Ituri, the majority or subjects, usually from the agricultural base, spoke of Ituri as a "mosaic" where "we are condemned together", but also spoke of "mistrust", "lies" and "rumors". Subjects thus did not attempt to sugar coat ethnic relations but rather expressed subtle recognition of Ituri's complex ethic makeup. One group of chiefs from Mahagi, summed up this perspective well, noting that Iturians are brothers and must therefore work together toward reconciliation

> We're brothers and we are obliged to live together. Even if we don't want to be, we're implicated in this situation [of reconciliation]. This problem starts from history…, [with] a poor interpretation of the history of our origins.[128]

The same group then remarked that the ICC has never understood this reality of Ituri—its history, its complexities, its struggles, and obligations to reconcile.

Ethnicity in Everyday Life

In my interviews, Iturians spoke often of cohabitation, intermixing, and even intermarriage. A Hema notable described this as follows, referring to the Hema of Djugu territory who speak the Lendu language:

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[127] To do-so, I did not ask specifically about "ethnicity" but rather asked about other "communities" or about a town's relations with another town, which I knew to be predominantly from a different ethnic group.
[128] Personal interview, Traditional leaders, Ituri, DRC, Spring/Summer, 2013.

> [The different communities] live in the same territory, the same hill, they spend time together. For example, they even speak the same language! There are those who almost lost their culture, their way of speaking.[129]

These anecdotes, I suggest, speak to contemporary efforts and obligations to make the best out of complex ethnic relations. There is some evidence, though, that ethnic relations are generally positive and improving. In Vinck and Pham's (2014) most recent data, just under 90% of Iturians described relations with members of other ethnic groups as good or very good (compared to 78% in North Kivu and 74% in South Kivu). Seven years ago, 64% of Iturians described social relations as good or very good (compared to 52% in North Kivu and 67% in South Kivu) (Vinck et al. 2008). In interviews, subjects also spoke of a gradual warming of relations between communities. The following comes from a group of miners who work in Mongbwalu, a town known for its gold deposits and ethnic diversity.

> [After the war] there was also a certain mistrust because of what was happening here and outside Mongbwalu. People sometimes felt threatened by the other. Today, things are better because everyone who comes here wants peace. For example, [the main mining company in town] organizes meetings every three months between the communities to talk and exchange. Now cohabitation is total.[130]

In other interviews, this description of ethnic cooperation in everyday life was described through anecdotes about trips to the market, where people had to walk through other communities and felt comfortable doing so. It was also described through anecdotes about how everyday conflict and violence in Ituri is not ethnically motivated. Subjects described the "coupeurs des routes" (street bandits) who would attack and rob indiscriminately. And they spoke of instances of land conflict between villages of the same ethnic group.

In response to questions about the war—who was responsible and what role ethnicity played—respondents replied along a range from "we are all guilty" to "they brought the war to us". The former, however, was more common. These underscored, on the one hand, a shared responsibility and, on the other hand, a vision of the war as propagated by outsiders and not ultimately the fault of any particular group. The former was expressed by a civil society leader who can be counted among the more progressive and pro-reconciliation voices of the notables of Ituri. In his view, because virtually all communities were somehow implicated in the violence, wide-scale, retributive justice would not make sense for Ituri. Rather, it would come at the expense of local initiatives toward peace and reconciliation.

> Where we are today, all those who participated in the pillages, in the destruction, in the killing, they have returned home. They are the members of those communities. How would you go to identify them today and say, for example, that you came to this village and pillaged the cows, killed the people and destroyed the village. … In my view, [retributive justice] should not happen because we are also in the process of consolidating peace and reconciliation. Certainly for peace and reconciliation we need

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[129] Personal interview, Notable, Ituri, DRC, Spring/Summer, 2013.
[130] Personal interview, Civil society leaders, Ituri, DRC, Spring/Summer, 2013.

> justice too. But if we must go and demand that the victims go to that community and identify all the groups that massacred them here, that destroyed them here, that is going to make the situation very complicated.[131]

Subjects also repeatedly noted that Ituri has more than two ethnic groups and that they all suffered from the conflict.

> The "two communities"… I would like to add something. It was not simply that the war was between two tribes. No! Because I know that the international community ignores that. The great majority of communities were victims during that war.[132]

This notion of all Iturians sharing the responsibility for and suffering of the Ituri War is complemented by another common sentiment that the war was imported by outsiders. Both, I suggest, downplay the divisive role of ethnicity in explaining the war's motivations. As noted, this sentiment was expressed through rhetorical questions such as, "whose were the hands that manipulated us?" or "where did the guns come from?" "Why are *they* not in The Hague?", subjects would ask, referring to the Ugandans, Rwandans and Politicians from Kinshasa who, in their mind, fuelled the conflict and gained from it. "The war was imported," explained the group of chiefs in Mahagi. In Mahagi, which borders Uganda and has significant natural resources like timber and gold, the was war was very much imported, with Ugandan forces maintaining a strong presence in the region up to and during the war.

But this notion of an imported war was expressed elsewhere as well. In Mongbwalu, a civil society leader noted that "when the war arrived here, it was for the conquest of power and the communities could not be together. Then we realized the biggest actors were Uganda and Rwanda."[133] The group of miners from the same region expressed a similar notion in an interview:

> It was a war from outside that arrived in Ituri. People who knew there were resources like gold and petrol to exploit. Those were the ones who brought war to Ituri. When we talk of the "tribal war", it was war between Hema and Lendu. But it's complicated because there was an interference from somewhere that created conflict between them. But we don't know from where. … Different communities started supporting different groups and that's how the war became tribal. Here it was an economic war.[134]

A Hema notable in Bunia laughed when I asked if communities would tell the truth in a process of intercommunity dialogue about the war:

> Yes, but with different truths! [LAUGHS] For some the cause is the land conflict. The Lendu say this is our land. But we have documents. It is the land of our ancestors. But

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131 Personal interview, Notable, Ituri, DRC, Spring/Summer, 2013.
132 Personal interview, Traditional leader, Ituri, DRC, Spring/Summer, 2013.
133 Personal interview, Civil society leader, Ituri, DRC, Spring/Summer, 2013.
134 Personal interview, Civil society leaders, Ituri, DRC, Spring/Summer, 2013.

> even though there will be different truths, the essential will come out. Because everyone believes that the war was instrumentalized by other countries and by our government.[135]

A Lendu Notable expressed a similar perspective when asked if his community knows the causes of the war.

> No, the community does not know the causes. In Ituri, there was a problem of concessions given by the Belgians to the Hema and the Hema tried to expand these limits, which were in Lendu land. But in reality the causes were national and international. Petrol played an important role. Outsiders wanted to enter quickly, so they shocked the Hema and Lendu to get access to Ituri's riches while they fought each other. Ituri is like a little paradise. But at the base, people think only in terms of land conflict. Intellectuals of Ituri have started to realize this.[136]

Here, we have the same notion expressed from opposite sides of the supposed ethnic conflict: one blames the Lendu for starting aggressions while the other faults the Hema. And both end with the broader roles of national and international politics as the underlying explanation.

A number of Iturian leaders agreed that "we were all massacred" is precisely the necessary frame through which to approach reconciliation in the region—focusing on the consequences rather than assigning blame.

> If we look at the consequences, everyone is ready to sit together and talk. There is no blockage [of a reconciliation process]. People say NO to the war. They lost everything and are starting from new. We don't want war anymore. Young people who were with the militias were there for their defense, but it is not their vocation. They didn't want that.[137]

This notion of consequences-over-blame is a complex one because it can be seen to be trading impunity for peace. While I do not enter into the peace-versus-justice debate in this dissertation (Sriram and Pillay 2010), I do recognize that such claims can be strategic and political in-and-of themselves, especially when they come from leaders who were likely somehow implicated in acts of violence. But I also approach these statements in this dissertation in the broader context of Iturians' statements about reconciliation, war, and ethnicity in contemporary Ituri. Considered within this broader context, I suggest, these can also be read as part of an effort to downplay the importance of ethnicity while shifting the larger responsibility for violence in Ituri to the powerful actors who profited from it.

There was a general consciousness across my interviews that a small minority had gained from the war while the rest only suffered. These responses were often provided in response to questions about whether Iturians were ready to start speaking about the war. The following, for example, were provided by two different Hema communities in Djugu territory:

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[135] Personal interview, Notable, Ituri, DRC, Spring/Summer, 2013.
[136] Personal interview, Notable, Ituri, DRC, Spring/Summer, 2013.
[137] Personal interview, Traditional leader, Ituri, DRC, Spring/Summer, 2013.

> Yes, the Hema can agree [to talk] because they are tired. For example, a Hema leader tried to start the war again, but the people denounced it with their words. They said that before the war we were together, but now because of you, the rich, the educated we are separated. Also, some Hema still have weapons and use these to attack people on the road at night, including people from their own community![138]
>
> There are extremists and they have their own vision of reality. But it's necessary to find a way to bypass them. Manipulation can come with money, but people are tired.[139]

In Mahagi, community leaders replied that "the population talks because they are victims. Mahagi never wants the war again."[140]

I do not intend here to overstate either Iturians' consciousness of the war's true origins or their willingness to forge ahead with reconciliation. Indeed, as I cover in more detail below, one of the main reasons for the proliferation of ethnic-based theories of war in Ituri is a profound lack of understanding of its origins. Subjects did, however, speak openly about the current divisions between Ituri's politico-ethnic leadership and the majority. When asked if Ituri could benefit from a process of discussing the truth of what happened during the war, for example, respondents from the interior of Ituri, replied that such a process would help but only if those who "really" lived the war and not those who likely fled across the border because they had connections, like the "notables of Bunia".[141] For others, again, it was the "politicians from outside, who polarized the war and made it between the Hema and Lendu. But it was everyone's war!"[142]

These sentiments, finally, were often accompanied by a sense that people at the "base" were beginning to see this manipulation—or at least to see that they had not gained anything from the war—and might be ready to start speaking publically about it. The following comes from an NGO leader in Bunia, who had already been working with various communities in Ituri.

> At first, people supported the groups and helped them buy arms in the name of self-defense, but they stopped at a certain point. As the armed groups became economically independent from the population, they didn't need people to support them anymore, so people only suffered from the war. The communities have remained victims. People know this and are ready to talk and denounce what they lived as victims.[143]

Another local leader spoke of an awareness that "there was no political dividend for the people. "People found out they were instrumentalized, but for what? All the communities ask themselves that. There was no political dividend … what did we fight for?!"[144] A group of victims responded that "during the war, we could not be together, but after the war the communities returned to be

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[138] Personal interview, Traditional leaders, Ituri, DRC, Spring/Summer, 2013.
[139] Personal interview, Traditional leaders, Ituri, DRC, Spring/Summer, 2013.
[140] Personal interview, Traditional leaders, Ituri, DRC, Spring/Summer, 2013.
[141] Personal interview, Traditional leaders, Ituri, DRC, Spring/Summer, 2013.
[142] Personal interview, Civil society leaders, Ituri, DRC, Spring/Summer, 2013.
[143] Personal interview, Civil society leader, Ituri, DRC, Spring/Summer, 2013.
[144] Personal interview, Traditional leaders, Ituri, DRC, Spring/Summer, 2013.

together because they realized that they suffered for nothing and they do not know why."[145] For another local leader, from a Lendu town, reconciliation was for "the base" and not the elite:

> Now people are together although we still doubt our neighbors a little. When we talk about reconciliation we talk about the *base*, not about the elite. It's the population that started the reconciliation. We're together everywhere. People don't want the war. Those who want to disturb the situation again, they can try but they won't succeed.[146]

Such statements inform my analysis of the ways that the ICC's framing of violence in Ituri has interacted with local experiences and conceptions of ethnicity and reconciliation. These statements are, I suggest, one main dimension of a complex web of ethnicity, politics, and power that is still intricately connected to the war and its consequences. At the same time, one can see in this web efforts to move on form the tensions and conflicts that led to war by shifting the roots of violence from ethnic difference to struggles over power and class difference. This is not meant to say that ethnicity does not plan an important role in contemporary Iturian social relations. Indeed, such tensions were evident across my interviews. In perhaps the most ethnically charged of my interviews, for example, local Lendu leaders replied that "God wanted that war" to avenge the Lendu for years of disempowerment.[147] These interviews were conducted in a Lendu stronghold that is one of the few places in Ituri that gained significant amounts of land as a result of the war and did not suffer major attacks. I now turn to these and other constructions rooted in ethnicity as a cultural myth.

Ethnic Difference as Cultural Myth

In place of a school curriculum on the Ituri War, as noted, children learn ethnic-based and hate-filled explanations from their parents and elders. Each ethnic community in Ituri has its oral histories that account for when their group arrived (usually first) and how it suffered at the hands of the "others". Here, I review these types of responses from my interviews. The sum, I argue, reflects the set of myths that ethnic leaders and the broader population use both consciously and subconsciously as cultural and political practices. Compared to the former section, these pose a substantial obstacle to local efforts toward reconciliation. Ultimately, I argue in this chapter's final section, the international justice field's accounting of ethnic violence in Ituri strengthens these cultural myths and weakens local efforts to reduce the ethnic element of violence.

Regarding schools and the transmission of ethnic hatred, the following comes from a local leader in Bunia who directs one of the region's more prominent schools. In his view, the absence of a school curriculum dedicated to the war creates a vacuum that is filled by the ethnic-based hatred that children learn from their parents.

> The state is responsible [for truth and reconciliation], but it is not well placed. It is better to go through the schools. … At school we can teach the consequences of the war. But this is not taught. The problem is with the school system – the books come from

[145] Personal interview, Victims group, Ituri, DRC, Spring/Summer, 2013.
[146] Personal interview, Traditional leader, Ituri, DRC, Spring/Summer, 2013.
[147] Personal interview, Traditional leaders, Ituri, DRC, Spring/Summer, 2013.

> Kinshasa. We need a local manual. We teach Lumumba, etc., but not the local history. This must be well written. Pilo writes a lot about the war, but he is a true extremist.[148]

The reference here to Professor Pilo Kamaragi is significant. Professor Kamaragi, or "Pilo" as he is colloquially known, represents the power that ethnic-based extremism still holds—and is still thought locally to hold—over Iturians. Pilo is an influential Hema intellectual, according to local leaders from across all communities, and an "extremist" according to civil society leaders. During the build-up to the war, he made radio broadcasts accusing the Lendu of genocidal intentions (drawing inferences to the Rwandan genocide). Today, Pilo's influence is less in inspiring ethnic protest than in propagating a particular history of the war. Pilo "is strong *intellectually*," according to the same school leader quoted above, because he writes: "his community chose him as the representative. The written word is strong. If you speak, people will hear, but the written word lasts. People will read it."

Among the Iturian leadership, the Hema-Lendu conflict is a conflict between identities: the Hema are smart and conniving. If you come to a Hema's house, I was told by multiple ethnic leaders, to ask for the father, the son will answer the door and tell you the father is not home. Meanwhile, the father will be watching from a window to find out who you are and what you want. They live "hidden," I was told.[149] Meanwhile, the Lendu are less intelligent, but they are angry and prone to intense rage. The Lendu father will answer the door, but you don't know what might happen if he gets angry. For the Hema, this Lendu rage expressed itself in genocidal intentions in the build-up to the war. For the Lendu, the Hema were becoming too greedy with their land holdings and pushed things one step too far. These are cultural tropes that ethnic leaders use to explain history and motivate constituencies. As one Lendu notable explained to me,

> Because our community was significantly behind, that was one of the causes [of the war], because the Hema have high-level professors, but us the Lendu, we are a little behind. We don't have the means to evolve.[150]

Pilo represents the opposite end of the spectrum from the citations presented above that seek to downplay the importance of ethnicity and presence of ethnic division. Pilo's intellectual efforts are centered around the ethnic origins of Ituri's war and ethnicity's role as an organizing principle of contemporary Iturian social relations. As an intellectual, he is remarkably influential because, aside from a few small NGOs, Ituri lacks the sort of public space that is needed to engage in dialogue about its history. This gap is filled by rumors, suspicion, lies and cultural myths. According to a Hema notable and local chief from a town outside Bunia, people often simply explain the Hema-Lendu conflict as the work of Satan:

> When the authorities come to gather us together and ask why we fought our brothers, very often the response is that Satan deceived us. But which Satan is going to mislead only the Lendu and Hema?![151]

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[148] Personal interview, Civil society leader, Ituri, DRC, Spring/Summer, 2013.
[149] Personal interviews, Ituri, DRC, Spring/Summer, 2013.
[150] Personal interview, Traditional leader, Ituri, DRC, Spring/Summer, 2013.
[151] Personal interview, Civil society leader, Ituri, DRC, Spring/Summer, 2013.

Even though Ituri is considered among the more pacified regions of north-eastern DRC, especially when compared to the Kivus to the south, it is still very much marked by lingering tensions (Fahey 2013b). In general, Iturians and the international community both agreed that Iturians still "live with the consequences" of the war, referring to the land conflict, ethnic hatred, poverty, and violence that plague the region. In interviews, leaders referred often to the district as a "ticking time-bomb", repeatedly returning to the same issues: severe poverty and hunger, entrenched land conflict, ethnic mistrust, rumors and political manipulation, conflicts over natural resources, thousands of hidden weapons and tens of thousands of former young combatants who are now in their twenties with no education and bleak job prospects. "The war is not over!" was a common refrain across my interviews, as I have noted. To many observers, peace is only held together by Ituri's patchwork of NGOs, UN agencies and the UN's peacekeeping mission in the Congo (MONUSCO).

But while Iturians themselves were more optimistic, international staff discounted almost entirely the possibility of reconciliation, particularly through publicizing the truth. "Publicize the truth? For what?!" exclaimed one chief of an international organization. "The reality of the present situation is poverty, insecurity, the lack of government, corruption. These are what matter!"[152] The list of reasons why there is no need and no room for the truth in Ituri was a long one: lack of political will, corruption, ongoing conflict and violence, unemployment, poverty, insecurity, lack of trust, interethnic hatred, guns, and more.

Certainly some Iturians expressed fears about ongoing tensions. For example, one NGO leader, who had also suggested that the population is beginning to wake up to the fact that they did not gain from the war, in the same interview called what reconciliation there was between the ethnic groups only "apparent", as in, only on the surface:

> The Hema and Lendu are obliged to eat together, to go to the market together, but this is empty reconciliation. The Hema think the Lendu are dirty and the Lendu think the Hema look down on them, and that they came from Uganda. There was never a true reconciliation because of these preconceptions. Reconciliation is only apparent.[153]

But in contrast to the international community, Iturian respondents from both the elite and the base found that this was precisely the reason why the past needed to be brought to light.

> The population is ready [to speak about the war] but with preconditions. Before realizing memorials, it's necessary to tell the truth, especially the causes—because people still do not know the reasons of the war.[154]

A Missed Opportunity

I argue that statement such as "the war is not over" stems from the general lack of understanding among Iturians as to why the region erupted into violence, even though fighting largely subsided around 2007. As I discussed in Chapter 3, this was exemplified in one interview when an elder

[152] Personal interview, Official from the international community, Ituri, DRC, Spring/Summer, 2013.
[153] Personal interview, Civil society leader, Ituri, DRC, Spring/Summer, 2013.
[154] Personal interview, Traditional leader, Ituri, DRC, Spring/Summer, 2013.

responded as follows to a question about how well people in his village understand the war and its origins. "The people often say, 'there was war, there was war!' But *which* war?" Iturians, he continued, do not understand the origins of the war, especially the base. At the same time, my interviews and survey revealed overwhelming support for some sort of locally-run and carefully designed truth process to help Iturians learn about their history. From this perspective, perhaps the most profound impact of the ICC's international justice practices has been that it has not yet succeeded in taking advantage of an opportunity to contribute to Ituri's self-understanding, relying instead on more simplified tropes of ethnically-motivated, two-sided conflict. Here, I draw on my interviews and survey data to present the two sides to this coin: on the one hand, a lack of understanding of what caused the war; and on the other hand, a wide-reaching desire to learn about this history.

To the elite, most Iturians do not know the causes of the war and cannot explain how it grew from a few isolated land struggles in one territory (Djugu) into a province-wide war that left so many dead, injured, and displaced.

> The base does not know anything. There were many reasons [for the war]: identity, economics, socio-cultural issues, land, politics. We need to know and analyze all these problems. We need to know the actors. And after that is done, we can have memorials.[155]

To the "base", despite the fact that all interviewees agreed that *all* Iturians were devastated by the war, most subjects tended to agree that they do not understand why it happened and where it came from. People could cite their local history: that this or that group arrived in their village and that there was a battle. But they generally could not say why they arrived or how a conflict that started with a few small struggles over land came to engulf an entire region, kill tens of thousands, and displace hundreds of thousands more.

As noted, there is a proliferation of theories about the war in everyday Iturian discourse: that it was linked to land conflict, that is was an interethnic war, that it was the attempt of one (ethnic) group to exterminate another, that it was economic in origin, that it was a war of "profiteers" and manipulators. To most Iturians, the war was sparked by land conflict, primarily between farmers and herders, and for those to whom land conflict still poses a significant issue of insecurity, this is evidence that the "war is not over". But when pressed further about how a land conflict between farmers and herders, which had been present in Ituri for a century, had turned into such a bloody conflict that engulfed all corners of the region, people were generally not able to articulate any details. Many in fact, readily recognized their lack of understanding in this area.

In general, Iturians both at the base and among the elite know the war began with historic grievances over land between the Hema and Lendu of Djugu territory. They also know that conflict today tends also to revolve around land, through disputes over where one property ends and the other begins, over the tendency of herders to let their livestock roam through and feed on agricultural land, and over the growing density of some areas and lack of access to land for both subsistence and commercial farming. For these reason, "land conflict" was the most commonly cited cause of the war. Most Iturians, however, could not explain how these grievances turned into years

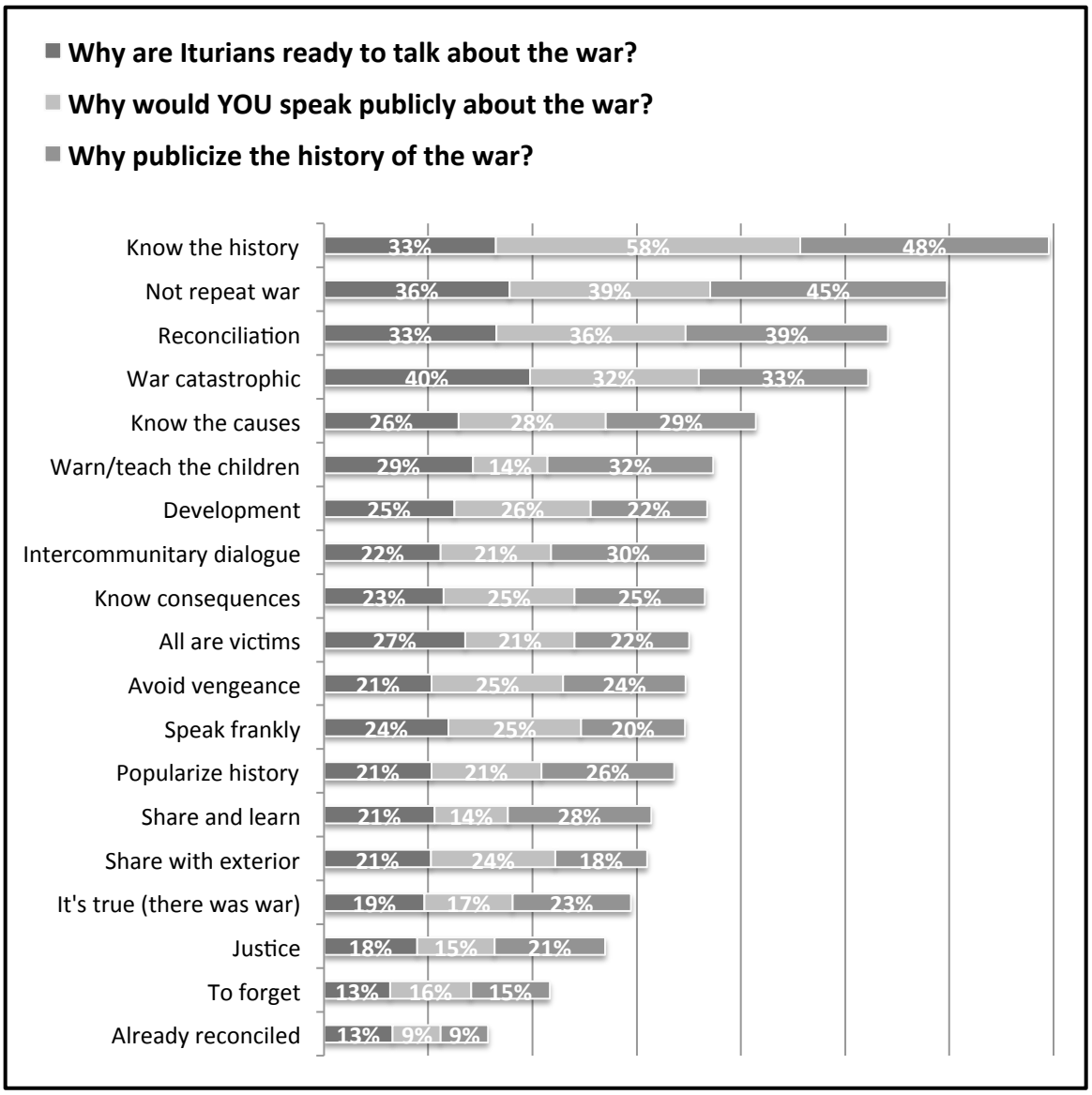
[155] Personal interview, Civil society leader, Ituri, DRC, Spring/Summer, 2013.

of bloodshed that pitted neighbor against neighbor. As noted, many suspected the conflict was partly due to outside manipulation. This was especially true of the elites I interviewed but many others also recognized that outsiders probably played a role. Indeed, the presence of Ugandan soldiers leading up to and during the war would have been impossible to miss for more Iturians. Many also know that Rwanda played some role as well. And virtually all Iturians are deeply distrustful of the politicians in Kinshasa. Many, finally, suspect that at least some of their own neighbors benefitted from the war and that these "war profiteers" are still around today.

These two trends—a lack of clarity about the war's origins and a generalized fear that it was instrumentalized—were both present in my quantitative data. As noted, the survey sought to uncover broader trends about the presence or lack of support for a truth and reconciliation in Ituri. While the survey also highlights the Iturians' ideas about whether and how to talk about the war are full of internal contradictions, it shows a very high level of support overall to talk about and make public the war's history. As noted, four-fifths of Iturians (80%) said they would participate personally in a process to speak publicly about the war, versus 12% who replied maybe and 6% who said no.

These were probed through a series of open-ended, multi-response questions with pre-coded responses obtained prior to the survey through focus group interviews. The percentages shown are percentages of those who answered the question, not the total sample. Chapter One and the Methodological Annex at the end provide more details on my methods. Respondents were asked why (or why not) to publicize history of the war, talk to each other about it and speak publically about what happened to them. The top four responses to all questions were "to know the history", "to not repeat the war", "reconciliation", and because the "war was catastrophic". "To know the causes" of the war was a close fifth, overall (Figure 7).

Figure 7: Justifications for Memory Work in Ituri



These results reflect the qualitative data, which tend to show agreement that Iturians do not really understand the history of their own war and that "memory work" (*travaile de memoire*) is needed to fill this gap. "It is very important to speak about the war," noted one elder. "I wish the causes had been know from the beginning because I think war could have been avoided."[156] "It is very important," agreed another in the same group interview, "so that when our children ask us the cause of the war we will be able to answer."[157] Ultimately, most respondents agreed, such dialogue and truth-seeking could help people understand their history and, ultimately, to reconcile their differences.

[156] Personal interview, Traditional leader, Ituri, DRC, Spring/Summer, 2013.
[157] Personal interview, Traditional leader, Ituri, DRC, Spring/Summer, 2013.

On the other hand, when asked what could block open discussions about the war, respondents' fear of manipulation was evident (Figures 8-10). Subjects spoke of "blockage" (*blocage*) and the presence of conflict and hatred, as well as the deformation of information about the war, the ubiquity of lies, and the trauma that all Iturians suffered during the war. Taken together, these data point to widespread agreement about the importance of a truth and reconciliation process in Ituri as well as widespread fear about the process. These are the "extremists" of Ituri—those like Professor Pilo who wield influence over the base through rumors, lies and propaganda and even who, according to some, know the "real" causes of the war but will not let this truth out.

Figure 8: Justifications Against Memory Work in Ituri

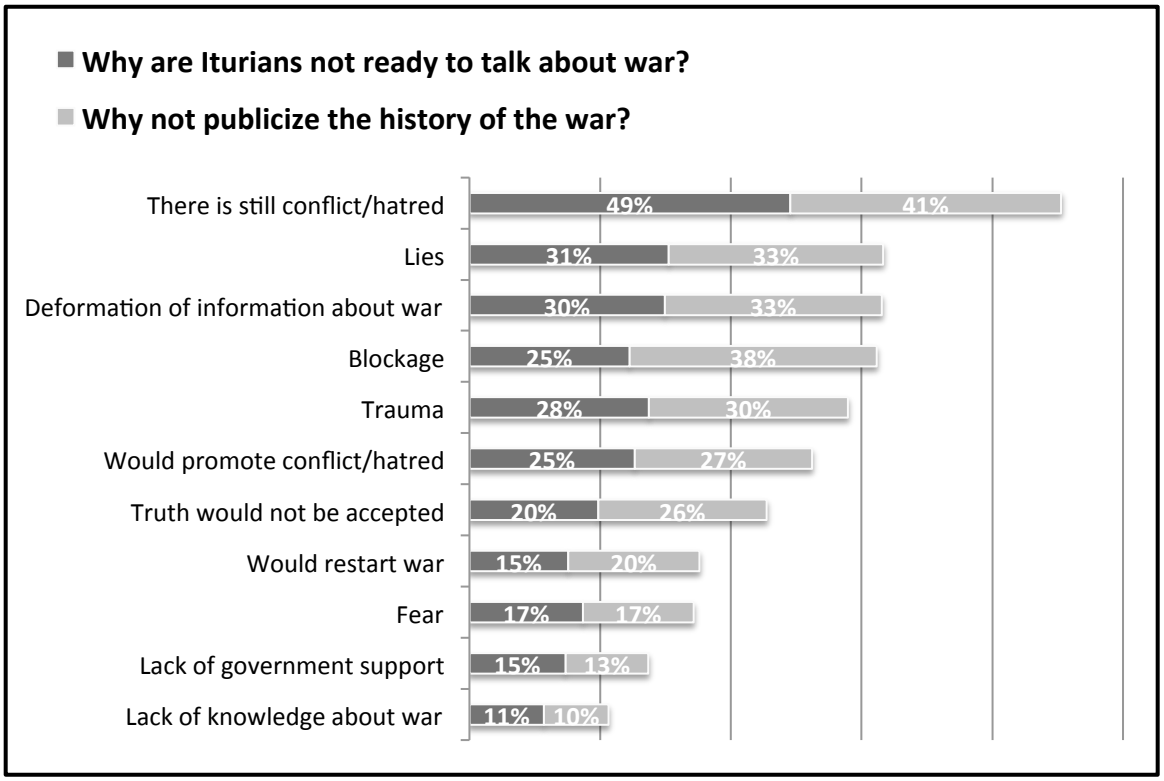


Figure 9: Justifications Against Memory Work in Ituri (contd.)

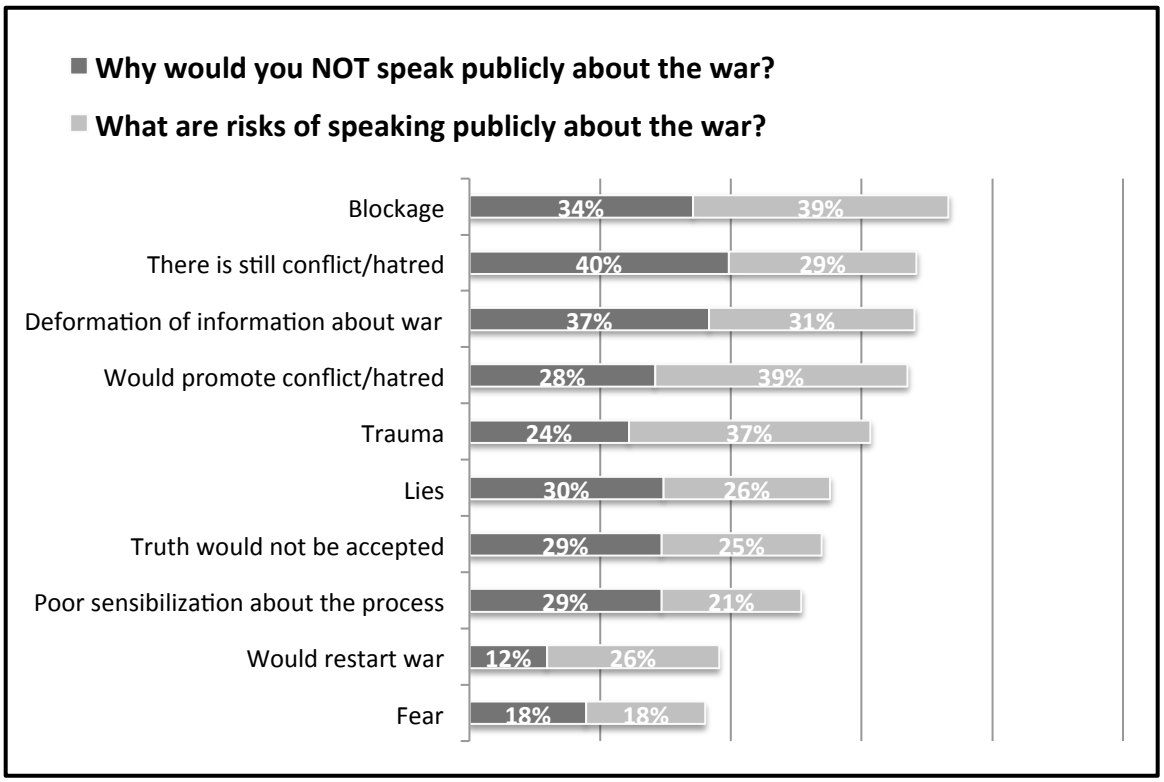
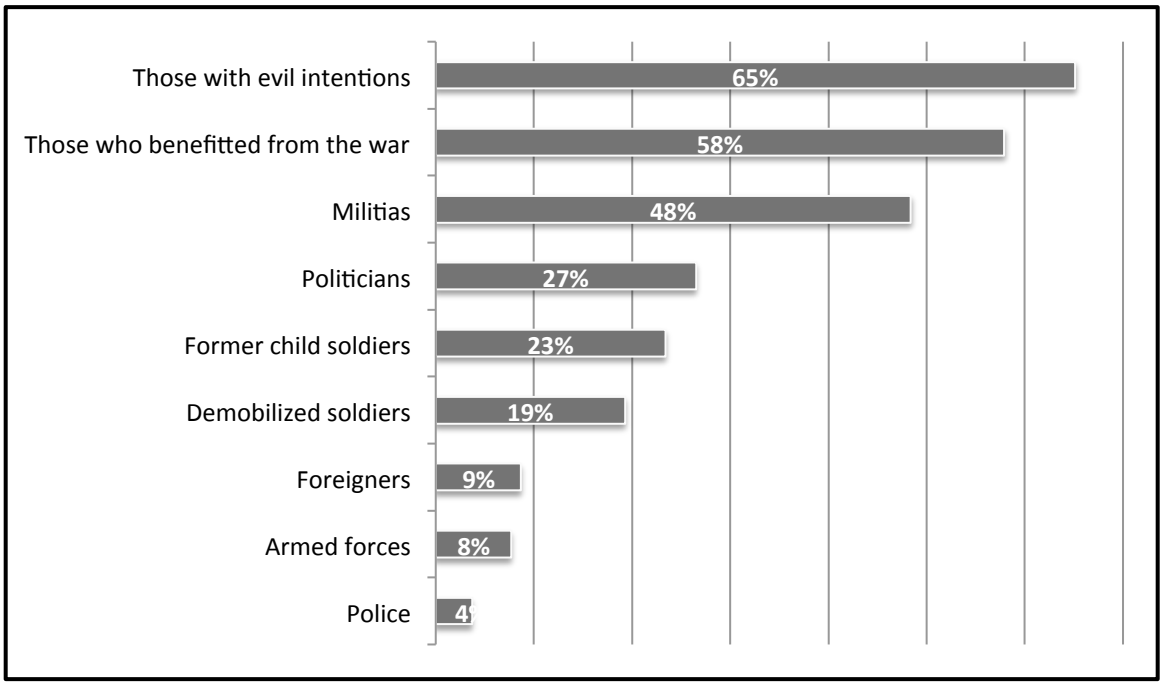


Figure 10: Sources of "Blockage" of Memory Work in Ituri



These are the two, seemingly contradictory sides of Ituri's web of ethnicity, violence, and politics: on the one hand, a desire for and efforts to minimize the importance of ethnic difference as a driver of conflict and to capitalize on grassroots trends toward reconciliation; on the other hand, the presence of marked ethnic tensions coupled with the use of ethnicity both consciously and subconsciously as a social divider. At the same time, my data reveal seemingly contradictory views about the state. In interviews, subjects repeatedly referred to the absence, incompetency, and corruption of the state. Yet the state was also the first choice of a majority of respondents to the questions, who should publicize the history of the war and who is most responsible for helping communities in Ituri reconcile their different versions of the truth (Figures 11-12).

Figure 11: Who should publicize the history of the war?

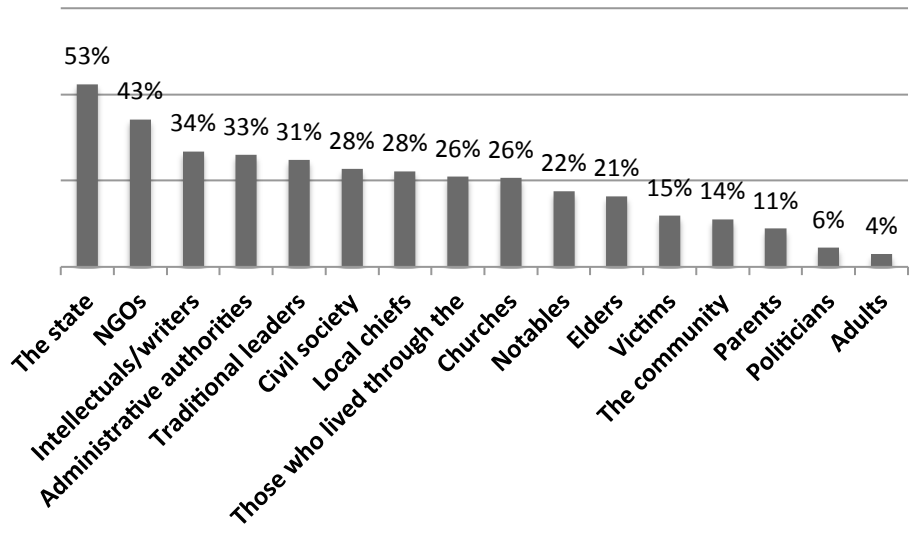
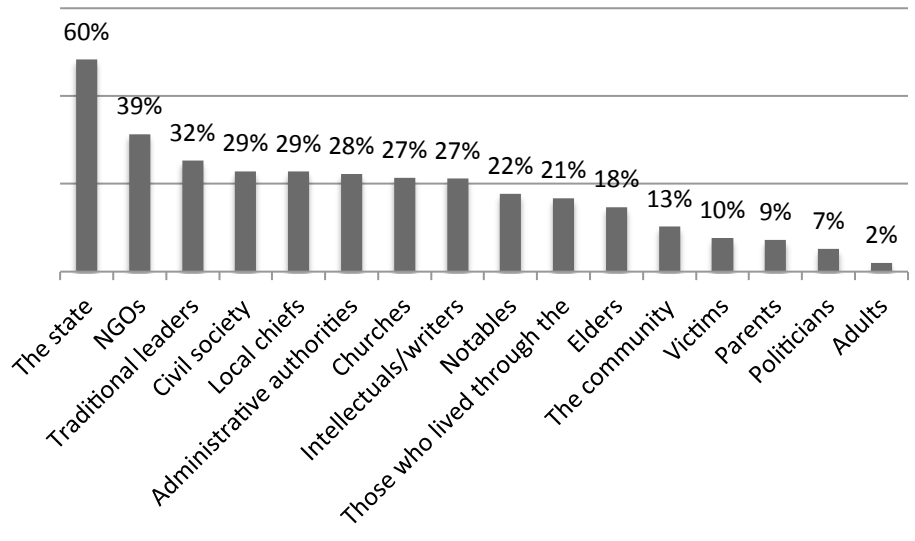


Figure 12: Who is most responsible for helping communities in Ituri reconcile their different versions of the truth?



Such contradictory attitudes toward truth and reconciliation in Ituri constitute the context in which the ICC's construction of ethnicity and violence must be analyzed. This is not easy terrain for the field of international justice. Yet, in responding to these challenges with the sorts of practical strategies I have outlined here, which ultimately seek to shape the Iturian landscape according to the contours of the international justice field, the ICC is not living up to its potential. At best, this is a missed opportunity. At worst, I suggest, it plays into discourses of ethnic hatred and helps obscure the underlying socioeconomic and political factors that exacerbate these tensions. In the next and final chapter, I seek to unpack both scenarios and to clarify the place of reconciliation in the international justice field, and its relationships to the ICC and the reparative process.

Chapter 8

Reparations, Reconciliation, and the Practice of Justice

Integral to debates over international justice, both internal and external to the field, is the question of how it should—and does—fit into broader post-violence reconciliation processes. At one end of the spectrum are legalists for whom the ICC is a court-of-law with one job: to adjudicate the guilt and innocence of individuals to the highest standards of the law. Whatever else happens outside the courtroom, for better or for worse, are externalities. At the other end of the spectrum are those who see international justice, and the ICC, as players in a broader process of reconciliation and judge the Court according to the roles that it plays in this process. On one level, this is a moral debate: how *should* the international force of law be wielded, to what ends, and for whom? On another level, on which I have tried to approach the international justice field in this dissertation, this is a sociological debate: given the social conditions under which the international force of law is possible today, can the ICC construct and maintain clear boundaries between its judicial functions and its role in the reconciliation process?

To the first debate, I believe that international justice does have a moral duty to acknowledge its roles outside the courtroom. But more importantly, to the second debate, I argue that the international justice field must *necessarily* enter reconciliation processes in every situation into which it intervenes as a key player because its practices, its capital, and ultimately its autonomy are bound up in these processes. To this end, I have sought to outline the fundamental challenges that have accompanied the international justice field's expansion, and how the strategies utilized by its practitioners influence the field's relationship to local reconciliation. To conclude this dissertation, I first review this core argument and reflect on what it tells us about power and autonomy in global, interstitial fields. I then suggest how the challenges, practices, and consequences outlined here

influence the kinds of roles that international justice and the ICC can play in the transition from violence to peace.

The Social Conditions of Autonomy in International Justice

I have argued in this dissertation that the international justice field achieved a significant level of consolidation and autonomy with the signing of the Rome Statute in 1998 and opening of the ICC in 2002. But the autonomy of this field is not based on the creation of international institutions alone. Rather, there are distinct social conditions under which its expansion and consolidation are made possible. These are political, logistical, and jurisdictional. Here, I have focused on the third, which is relatively less researched and less well-understood by scholars of international law and law and society. The practical conditions under which the force of law operates in the international justice field are rooted in a set of key challenges to the field's expansion and the strategies used both consciously and subconsciously by international justice actors to navigate and overcome them.

Jurisdictional Challenges and Practical Strategies

The jurisdictional challenges of international justice, presented in Chapter 4, are four-fold: international justice is simultaneously expanding into new geographic and conceptual terrain while remaining limited in the kinds of tools and authority it can bring to bear in these contexts. At the same time it intersects with other powerful, global fields whose authority permeates across it, allowing international justice actors to draw on diverse forms of capital but also forcing them to maintain distance from these neighboring fields. This, in turn, stimulates internal competition both across the broader international justice field and within its key organizations like the ICC. Ultimately, this culminates in a crisis of legitimacy from above—as international justice challenges the sovereignly of powerful states—and below—as the subjects who the field claims to represent reject is authority. These jurisdictional challenges apply, I suggest furthermore, to fields of global governance beyond international justice. International justice is a useful object of analysis, however, precisely because its legal nature accentuates these key tensions.

In response to these jurisdictional challenges, international justice actors draw on a range of productive practices to manage the field's inherent tensions. In Chapter 5, I discussed four key strategies. International justice actors seek to contain the field's expansion through practical strategies that reinforce its boundaries, such as the use of ethnicity to frame Ituri's violence. They use—and struggle over—representations of victims to shape the field and its objects in ways that legitimate their particular forms of capital. They use international justice processes that play out on the ground, most notably the reparations process, as "black boxes" that seemingly isolate the messy politics of distribution and recognition from the pure work of international law in the courtroom. And they reinforce the professional boundaries of international justice by selling a particular good—recognition—that international justice's neighboring fields cannot offer.

These strategies, however, have important consequences for both the field and for victim communities on the ground. The consequences are on the one hand internal, resulting in marked competition and struggle between international justice actors to represents the field's core objects in ways that legitimate the sort of capital they bring to bear, such as debates over victims as individuals or as collectivities. On the other hand, there are significant external constraints, as we can see in the ways that ethnic representations of violence feed into Ituri's politics of recognition and miss an

opportunity to satisfy a local hunger for truth. Ultimately, I have argued, international justice is limited by its core practices in its ability to contribute to local reconciliation processes, and can also have notably detrimental effects. But they also offer opportunities for creative strategies, such as the various combinations of assistance and reparations discussed in Chapter 6. I return to these at the end of this chapter.

Capital and Autonomy in Global Fields

The model of international justice practices I have outlined, furthermore, also helps us understand how power works in global, interstitial fields, as well as how such fields are able to gain autonomy from the political forces that help create and shape them. When we look at the international justice field, it is clear that multiple forms of authority are at play. What is striking about international justice actors is their capacity to strategically draw on or "borrow" a form of authority that dominates in an intersecting field: delegated authority in inter-state diplomacy, legal authority in inter-state diplomacy and criminal justice, and moral authority in transnational civil society. An interstitial global field like international justice can be used by actors to "bridge" between its neighboring fields and their respective forms of expertise. For example, diplomats, legal scholars, or human rights advocates can use international justice sites to establish direct connections with each other that otherwise would not be possible. Thus, a diplomat seeking to stake a position as "pro-victim" can use her relationships with the international justice field to negotiate new relationships with actors in transnational civil society, and vice-versa.

Furthermore, international justice actors and those in its neighboring fields can use the field strategically to exchange forms of capital. In this sense, the international justice field and its key institutions like the ICC, can act as "brokering" sites so that a diplomat or lawyer who has never been to a war zone or interacted with a war crime victim can use their diplomatic and legal authority, respectively, to gain access to varieties of expert authority that are more grounded. Or human rights groups seeking to position themselves as justice-oriented (and not, for example, development-oriented) can use the international justice field to gain access to valuable legal authority, which can later be pitched to donors. In sum, the field of international justice provides strategic openings for diplomatic, legal and civil society actors to convert their authority into forms recognizable in their own and adjacent fields.

This analysis helps us better understand how power works in a field like international justice. First, the international justice field possesses forms of authority that are global in spread and that can yield deference from powerful actors. In particular, the delegated and legal authority of international justice yields extensive material and normative resources. For example, civil society actors may be seen as more serious and fundable if they structure their programs according to where the ICC has started investigations, since the ICC's presence gives countries official recognition as legitimate sites of war crimes, and not according to other indexes of need. Second, because international justice actors can accumulate and mobilize multiple forms of authority, its actors have multiple forms of strategic action. This is important because each form of authority is vulnerable to contestation: states can threaten to withdraw their delegated support, legal actors can criticize the ICC for violating principles of international law (e.g. by indicting the sovereign leader of Sudan) or of criminal law (e.g. by failing to protect the rights of accused persons), criminal justice experts can criticize the failure of international justice to draw on criminological expertise and diverse actors can denounce international justice for the moral fault of failing to advance justice for victims. Yet when particular forms of authority are contested, international justice actors can emphasize others. Third, by

borrowing diverse varieties of authority and brokering relationships across diverse fields, international justice actors can define what forms of authority count in understanding and responding to mass violence. In doing so, international justice actors can craft multidimensional and holistic representations that seemingly reflect the complexities of international justice. And they can create linkages between actors in diverse fields that otherwise would not exist.

Ultimately, the international justice field's position vis-à-vis other global fields and its characteristics as an interstitial, global field together lead to a struggle among actors over what authority will dominate in the field, and a balancing act as international justice actors navigate their proximity to and distance from neighboring fields. The practices on which international justice actors draw to navigate these tensions and find balance constitute the heart of this dissertation's focus. Because there are multiple forms of authority deployed in international justice, there is a struggle among actors over what authority will dominate in the field. Thus, some actors push for international justice to be dominated by the logic of inter-state relations, others by legalism and still others by moral obligations. But if it is to borrow and broker authority, international justice cannot become reliant on any one field. To defend themselves, we therefore see international justice actors attempting to consolidate themselves as a group with criteria for membership and with regulation over appropriate behavior. The international criminal tribunals themselves demarcate and empower the field, but so do specialty academic journals, training programs, and professional associations. These and other ventures aim to shore up international justice as a durable and distinct field whose rules of the game define how mass violence is addressed.

Ultimately, this helps us understand how global fields like international justice, who owe their creation and reproduction in-part to powerful states, are not simply pawns of these states as some critics of the ICC contend. Rather, we see in the international justice field, I suggest, strategies for action that foster autonomy from powerful states and their delegated authority. Actors can draw on multiple forms of capital when one is threatened. These actors also foster unique international justice practices as they seek to respond to and contain the field's jurisdictional challenges. Such practices are essential to helping international justice overcome the identity crises that are central to its formation and expansion, and to affirm an "international justice identity" in their place.

Reparations, Reconciliation, and the Experience of Justice

The international justice field's autonomy is inextricably linked to local contexts, their politics, and their own local processes of reconciliation. The "conscience of humanity" at Nuremburg was fundamentally different from that of today. The "humanity" at Nuremburg, to which Chief of Counsel Robert H. Jackson made reference, was that of the Allies and the interests and alliances they represented. At the ICC, "humanity" is a more contested concept, actively opposed in many instances by some of the same powerful states that led the charge at Nuremburg, namely the U.S. and Russia. The ICC's "humanity", rather, is more diverse and more contested, and includes those victims and communities on whose behalf the Court intervenes into various situations and contexts. As such, the ICC will inevitably influence local experiences of justice and, in turn, local experiences of justice will help shape the Court's practical strategies.

"Reparations" or "Assistance"

In Chapter 7, I argued that the theoretical distinctions between reparations and assistance measures can be lost in practice, as the challenges of implementing state-based and international criminal programs challenge the principles of responsibility, recognition, process, form, and impact. Yet different models of combining reparations and assistance demand different approaches to articulating the relationship between them, depending on the experience of justice they intend to impart. In "subsistence" and "interim relief" programs, the difference should be clearly articulated to victims so as to maximize reparations' potential. In "Swiss cheese" models, on the other hand, it depends. Where assistance is used to reach non-trial victims to make more people feel included in the reparations process, as in *Lubanga*, the differences should be blurred, albeit not with respect to the principle of responsibility. Where assistance is provided unrelated to a trial and unaccompanied by reparations, there is less at stake.

Strategies to accentuate or blur the difference between reparations and assistance will depend largely on context. Clearly, communications strategies will be essential as will a rich and meaningful consultation process. Lawyers and practitioners themselves, I suggest, should also have a clear, nuanced and where possible, shared, understanding of how they intend for reparations and assistance to relate to each other in the programs they design. This is not easy, given the key tensions that are at stake in discussions about reparations and assistance. As the aforementioned quote from the Rome Conference delegate highlights, the theories and models presented here are linked to actors' positions on fundamental questions about what the law and justice are and should be. In a global field where criminal law, international diplomacy and transnational human rights advocacy are engaged in a constant struggle over how to define and intervene in situations of victimization, questions about the appropriate balance between reparations and assistance after atrocity are central.

For scholars of international justice, there are significant questions about how reparations and assistance work together in practice and how this impacts the kind of justice that victims experience. Perhaps the most fundamental question, which I have not attempted to answer in this dissertation, is how victims' consciousness of the reparations process affects their healing and broader experience of reparative justice. The forthcoming *Lubanga* reparations will provide a valuable opportunity to study the simultaneous provision of assistance and reparations. Soon, the Court will provide reparations awards through the Trust Fund to individuals and groups in communities where people have already received or will simultaneously receive assistance. This will provide a valuable "natural experiment" to compare and isolate the respective effects of both forms of support. Furthermore, comparative research between cases like Colombia and the Congo can help explain how the experience of reparations and assistance also depends on context and the kind of legal system in which they are being implemented.

In comparing reparations and assistance, the most fundamental questions are whether the two actually do differ in their ultimate impact on victims of grave crimes, and whether recipients are able to draw a distinction between them. Do reparations, with their supposed symbolic elements of responsibility and recognition and their assumed transformative power, really make a substantial difference in people's lives compared to financial or other forms of assistance? Here, however, the question is not so much whether as how: what are the key conditions and mechanisms according to which a difference can actually be measured between reparations and assistance measures? To what extent does a victim's direct versus indirect participation in trial matter? To what extent does it matter that a program is judicial versus administrative? And finally, what difference does the kind of

harm that a person or family has suffered make in their respective experiences of assistance and reparations?

Clearly, people's experiences of reparations, assistance and the broader justice process all depend heavily on context. There are important differences between Colombia and Congo, important differences between communities within those countries and important difference between the various forms of violence and harm that people have experienced. Comparative research can help isolate and explain these differences. In Chapter 6, I presented two key examples—Colombia's reparations program for victims of the armed conflict and the ICC's provision of reparations and assistance to victims in Ituri—but there are many more where reparations and assistance have been, are being or could be provided in tandem, including Indonesia, Nepal, Peru, Uganda, Northern Ireland and, eventually, other situations under investigation by the ICC.

Here, in addition to questions about the different kinds of reparations programs being implemented in each country, there are important questions about local definitions of justice and reparation and about people's differing attitudes toward conflict and, particularly, the state. This latter topics is an especially fruitful topic for future research on state-based, administrative reparations programs. As criminal justice grows into a consolidated global field, countries are increasingly turning to international principles of transitional justice to deal with the transition from violence to peace. Colombia is the most recent and thus far most ambitious example. Where states are or have been involved in violence, however, there are important questions about how the respective provision of reparations and assistance—often divorced from procedures of accountability—interact with victims' perceptions of the state and state responsibility. In such contexts, when reparations are divorced from accountability, do they influence victims attitudes toward the state in any noticeably different way from mere assistance measures?

Finally, in comparing assistance and reparations and the contexts where they are implemented, research must also account for different kinds of justice processes and the various models through which they combine reparations and assistance. First and foremost, there are important lessons to be drawn about the respective influence of judicial versus administrative programs. Is there more of a difference, for example, between the perceived impacts of assistance and reparations in judicial reparations programs versus administrative programs? One might assume that in a judicial process like the ICC's a recipient of assistance might feel somehow short-changed compared to a recipient of reparations, even if the respective measures are equal in value. Or perhaps, as the Appeals Chamber seems to be hoping, recipients of assistance will feel as included as recipients of reparations. In Colombia, conversely, one might hypothesize that the measureable differences between reparations and assistance are smaller than in a judicial process because reparations measures do not actually stem from a guilty verdict.

Ultimately, the answers to whether and how assistance and reparations should be provided in tandem will depend on the answers to the above research questions. Whatever the answers, lawyers and practitioners will have to navigate the tension between expanding the reparations process to be inclusive and extending it too far that it loses its distinction. This is a difficult balance to strike, but the cases presented in this dissertation, and the models they represent, can offer useful guidance. Where this balance lies should not depend entirely on how it is defined in theoretical or legal texts. Rather, the line between reparations and assistance must also take into account people's conceptions, attitudes and lived experiences. For this reason, I support the ICC Appeals Chamber's remarkable flexibility in remaining open to the possibility that assistance could expand Iturians'

sense of inclusion in the reparations process. In Ituri, justice is likely defined not only according to individual ICC trials, but according to people's understanding of the conflict and who it affected.

However the relationship between reparations and assistance is conceived and however the two measures are implemented in practice, it is essential that the institutions and organizations providing them not only take into account the sort of empirical research I am proposing, but also reflect consciously and carefully about the theories, models and assumptions they are working with. Ultimately, this will help judicial and state-based institutions manage the similarities and differences between reparations and assistance and communicate effectively to victims about them.

Reparations, Truth, and Reconciliation

The Colombian experience discussed in Chapter 7 highlights that reparations are seen to play a pivotal role in reconciliation. Without some atonement on the part of a perpetrator who caused harmed or a state who failed to protect, the logic goes, victims will not be able to move forward. The challenges I discussed that lie ahead for a state like Colombia, which is seeking to get by with only an "administrative" process, highlight that this logic is founded on a number of key assumptions that do not always hold up in practice. But even more complex is the question of where international reparations—and international actors like the ICC—fit into local reconciliation processes.

Reparations are a potentially restorative tool of transitional justice, but the restricted framing imposed by a system of individual criminal responsibility harbors a fundamental tension. In my view, though, the ICC's reparations regime still offers restorative potential. As a first and crucial step, the Court has acknowledged in *Lubanga* some of the resulting gaps and indicated that reparations and assistance could be used to bridge them, although not as easily as the Trial Chamber originally envisaged. The OTP's plan to begin realizing more expansive investigations, announced under Fatou Bensouda, could indicate similar acknowledgment (OTP 2013). Indeed, the Ituri trials were particularly limited in scope—*Lubanga* in terms of the charges and *Katanga* and *Ngudjolo* in terms of their geography. But the OTP will always be limited by time and resources.

Second, notwithstanding the Appeals Chamber's judgment, the Trial Chamber in *Lubanga* at least recognized the importance of inclusion, embracing the idea of collective reparations and arguing for a distinction between victims and beneficiaries to include more of the latter. Such inclusive measures could do much to ameliorate the distributive tensions that any reparations reward will cause, but the Appeals Chamber's judgment suggests that attempts at inclusivity will always be limited. And while assistance can fill in the gaps, as the Appeals Chamber has remarkably suggested, this in-turn risks rendering reparations and assistance ultimately indistinguishable from each other, especially without the sustained involvement of the Court in the former.

The Court, rather, should play a sustained role in the reparations process, from the reparations decision to the targeting of awards. Those on the receiving end of the ICC's technologies of truth, particularly its reparations regime, will not simply accept reparations at face value but will challenge, adapt, and incorporate them. This gives the ICC significant potential to play a restorative role in these processes, but it must embrace this potential. It can do so through two ways in particular, I suggest. First, the Court could adopt a participatory and consultative approach to the entire reparations process, drawing on the experience of community-driven reconstruction. Second, the

chambers could play a more active role in beneficiary identification and verification, helping to guide the meaning that recipients and their communities will attach to reparations.

International criminal reparations can look to the experience of community-driven development and reconstruction—particularly in lessons drawn from working with CAAF and SGBV victims—which utilize participatory approaches to targeting by incorporating local definitions of need and deprivation into program design (Conning and Kevane 2002; Jaspars and Shoham 1999; Kuehnast, de Berry and Ahmed 2006; Slaymaker, Christiansen and Hemming 2005; World Bank 2011). Proponents cite a number of potential advantages to this approach: lower costs, more community accountability, better information about and adaptation to realities on the ground, harnessing and strengthening of social capital as a positive external effect, more program legitimacy and the empowerment of disadvantaged groups. Community-driven reconstruction holds particular promise. These projects "support the democratic selection of local community councils, including measures on the representation of women, youth or other disadvantaged groups," and then provide them with grants to implement local priorities (Cliffe, Guggenheim and Kostner 2003: 2; International Rescue Committee 2007). Indeed, communities receiving this type of support have reported less social tension and greater acceptance of vulnerable groups as a result (Fearon, Humphreys and Weinstein 2009b). Moreover, marginalized groups, including women and CAAF, have been found to be better informed, more actively involved in reconstruction activities, and more likely to trust their community representatives when compared to control communities (Fearon, Humphreys and Weinstein 2009a).

Such projects, however, demand specific forms of expertise that neither the ICC nor the TFV are likely to have. The experts that Trial Chamber I discussed in the *Lubanga* reparations decision could thus include those who do possess such experience.[158] Indeed, "community-based" or "community-driven" approaches entail significant risks. In one such example from South Sudan, for instance, "relief committees and other community representatives put on a show for [the donor] which gave the appearance of targeting. In reality, 'targeted' women were chosen to carry food to a site where it was then redistributed by local chiefs" (Jaspars and Shoham 1999: 366). Close monitoring and oversight by organizations with specific experience in this area are both essential to avoid such scenarios.

Regardless of whether the ICC utilizes such an approach, trial chambers should involve themselves more closely in overseeing the entire reparations process. I have argued that much of the meaning attached to a reparations award will be communicated through its targeting strategy. In practice, the dichotomy between "design" and "implementation" is thus false; rather, the former depends upon the latter. In an ideal world, Trial Chamber I, or even a separately constituted Reparations Chamber, could hold hearings to oversee an implementation phase, which will be fundamental to the very design of the award itself.

Whether or not such hearings are feasible, the Chamber should stay involved to provide an authoritative forum through which Iturians can engage in debate over the categories and representations that make reparations symbolically powerful. Without the involvement of the ICC in such a role, the danger is that the politics of recognition will either overwhelm the reparations

[158] Reparations Decision, Trial Chamber, *Lubanga*, 7 August 2012 [para 263].

process or the process itself will become little more than long-delayed assistance, stripped of the meaning that is supposed to make reparations powerful beyond their material value.

Ultimately, international criminal law can transform social relations and identities through official designations of truth. Through reparations, categories of crime and victimization in the courtroom become social categories of people on the ground. This is part of what makes them symbolically powerful. But it also entails great risk. For vulnerable groups, the need for reparative justice can stem more from the social exclusion resulting from crimes than from the crimes themselves. In post-conflict settings like Ituri, the truths determined in a courtroom in The Hague, manifested through reparations, can interact with existing power relations in ways that antagonize social cohesion and promote competition.

Given these complexities, some might argue that international criminal reparations should perhaps be left entirely to non-legal agencies, with more relevant resources and experience. Indeed, scholars have warned that "many involved with international justice have lost sight of its goals in favor of developing and maintaining an international system of criminal law over and above what might be the needs and desires of the victims of abuse" (Weinstein et al. 2010). In my view, relegating reparations to an entirely non-legal body also sells the ICC and international justice short and overlooks the fact that the Court is already involved in the distribution of recognition, which is rooted in its power to issue definitions of crime, responsibility and victimization. Reparations are one form of this power, and the targeting strategies used to distribute them are its manifestation on the ground. By focusing on these strategies, and carefully managing them, the ICC can more fully embrace its restorative potential.

Bibliography

The Prosecutor V. Germain Katanga, 'Report on Applications for Reparations in Accordance with Trial Chamber Ii's Order of 27 August', ICC-01/04-01/07-3512-Anx1-Red2, International Criminal Court, (Reparations Report, *Katanga*, 21 January 2015).

The Prosecutor V. Thomas Lubanga Dyilo, 'Decision Establishing the Principles and Procedures to Be Applied to Reparations', ICC-01/04-01/06-2904, International Criminal Court, (Reparations Decision, Trial Chamber, *Lubanga*, 7 August 2012).

The Prosecutor V. Thomas Lubanga Dyilo, 'Decision on Indirect Victims', ICC-01/04-01/06-1813, International Criminal Court, (Decision on Indirect Victims, *Lubanga*, 8 April 2009).

The Prosecutor V. Thomas Lubanga Dyilo, 'Decision on the Defence Request for Leave to Appeal the Decision Establishing the Principles and Procedures to Be Applied to Reparations', ICC-01/04-01/06-2911, International Criminal Court, (Decision on Defence Leave to Appeal, *Lubanga*, 29 August 2012).

The Prosecutor V. Thomas Lubanga Dyilo, 'Judgment on the Appeals against the "Decision Establishing the Principles and Procedures to Be Applied to Reparations" of 7 August 2012', ICC-01/04-01/06, International Criminal Court, 3 March 2015 (Reparations Judgment, Appeals Chamber, *Lubanga*, 3 March 2015).

The Prosecutor V. Thomas Lubanga Dyilo, 'Judgment Pursuant to Article 74 of the Statute', ICC-01/04-01/06-2842, International Criminal Court, (Article 74 Judgment, *Lubanga*, 14 March 2012).

The Prosecutor V. Thomas Lubanga Dyilo, 'Observations on Reparations in Response to the Scheduling Order of 14 March 2012', Trust Fund for Victims, ICC-01/04-01/06-2872, International Criminal Court, (Reparations Observations, Trust Fund for Victims, *Lubanga*, 25 April 2012).

Chorzow Factory Case (Ger. V. Pol.), 17, Permanent Court of International Justice, (Chorzow Factory Case (Ger. V. Pol.)).

Regulations of the Trust Fund for Victims ICC-ASP/4/Res.3, The Hague: The Assembly of States Parties, 2005.

Sentencia C-280/13, C-280/13, Constitutional Court, 15 May (Sentencia C-280/13).

Allen, Tim, and Mareike Schomerus. 2005. "A Hard Homecoming: Lessons Learned from the Reception Centre Process on Effective Interventions for Former 'Abductees' in Northern Uganda." Washington D.C.: United Nations Children Fund and United States Agency for International Development.

Amnesty International. 2012. "Colombia: The Victims and Land Restitution Law." London: Amnesty International.

Autesserre, Séverine. 2008. "The Trouble with Congo: How Local Disputes Fuel Regional Conflict." *Foreign Affairs* 87(3):94-110.

—. 2009. "Hobbes and the Congo: Frames, Local Violence, and International Intervention." *International Organization* 63(02):249-80.

—. 2010. *The Trouble with the Congo: Local Violence and the Failure of International Peacebuilding*. Cambridge: Cambridge University Press.

—. 2011. "Construire La Paix : Conceptions Collectives De Son Établissement, De Son Maintien Et De Sa Consolidation." *Critique Internationale* 51(2):153-67.

—. 2012. "Dangerous Tales: Dominant Narratives on the Congo and Their Unintended Consequences." *African Affairs*.

Barnett, Michael N., and Martha Finnemore. 2004. *Rules for the World: International Organizations in Global Politics*. Ithaca, N.Y.: Cornell University Press.

Bass, Gary. J. 2000. *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*. Princeton: Princeton University Press.

Bassiouni, Mahmoud. 1997. "From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court." *Harvard Human Rights Journal* 10:11-62.

Baylis, Elena. 2008. "Tribunal-Hopping with the Post-Conflict Justice Junkies." *Oregon Review of International Law, Symposium Issue* 10(2):361-90.

Bell, Christine. 2009. "Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field'." *International Journal of Transitional Justice* 3:5-27.

Bensouda, Fatou. 2014. "Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda: 'The Public Deserves to Know the Truth About the Icc's Jurisdiction over Palestine'." International Criminal Court. http://www.icc-cpi.int/en_menus/icc/press and media/press releases/pages/otp-st-14-09-02.aspx. Accessed 30 July, 2015.

Blattman, Christopher, and Jeannie Annan. 2010. "The Consequences of Child Soldiering." *Review of Economics and Statistics* 92(4):882-98.

Blattman, Christopher, and Edward Miguel. 2010. "Civil War." *Journal of Economic Literature* 48(1):3-57.

Boas, Gideon. 2012. "What Is International Criminal Justice?" Pp. 1-24 in *International Criminal Justice: Legitimacy and Coherence*, edited by Gideon Boas, William A Schabas, and Michael P Scharf. Northampton, MA: Edward Elgar Publishing.

Borger, Julian, and Maggie O'Kane. 2002. "Serbia Offers to Arrest President." in *The Guardian*. London.

Bosco, David. 2014. *Rough Justice: The International Criminal Court's Battle to Fix the World, One Prosecution at a Time*. New York: Oxford University Press.

Bourdieu, Pierre. 1984. *Distinction: A Social Critique of the Judgment of Taste*: Harvard University Press.

—. 1985. "Social Space and the Genesis of Groups." *Theory and Society* 14:723-44.

—. 1986. "The Force of Law: Toward a Sociology of the Juridical Field." *Hastings Law Journal* 38:805-53.

—. 1996. *The Rules of Art: Genesis and Structure of the Literary Field*: Stanford University Press.

—. 1999. "The Specificity of the Scientific Field." Pp. 31-50 in *The Science Studies Reader*, edited by Biagioli M. New York: Routledge.

Bourdieu, Pierre, and Loïc J. D. Wacquant. 1992. *An Invitation to Reflexive Sociology*. Chicago: University Of Chicago Press.

Brady, Helen. 2000. "The System of Evidence in the Statute of the International Criminal Court." Pp. 279–302 in *Essays on the Rome Statute of the International Criminal Court*, edited by Flavia Lattanzi and William A. Schabas. Rome: Editrice il Sirente.

Branch, Adam. 2004. "International Justice, Local Injustice." *Dissent* 51(3):22-26.

Burawoy, Michael. 2001. "Manufacturing the Global." *Ethnography*:147-59.

Carranza, Ruben. 2012. "Relief, Reparations, and the Root Causes of Conflict in Nepal." New York: International Center for Transitional Justice.

Clarke, Kamari Maxime. 2007. "Global Justice, Local Controversies: The International Criminal Court and the Sovereignty of Victims." Pp. 134-60 in *Paths to International Justice: Social and Legal Perspectives*, edited by Marie-Bénédicte Dembour and Tobias Kelly. Cambridge: Cambridge University Press.

Cliffe, Sarah, Scott Guggenheim, and Markus Kostner. 2003. "Community-Driven Reconstruction as an Instrument in War-to-Peace Transitions." The World Bank: Conflict Prevention and Reconstruction Unit and Social Development Department.

Conning, Jonathan, and Michael Kevane. 2002. "Community-Based Targeting Mechanisms for Social Safety Nets: A Critical Review." *World Development* 30(3):375-94.

Danieli, Yael. 1995. "Preliminary Reflections from a Psychological Perspective." in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, edited by Neil J Kritz: US Institute of Peace Press.

—. 2009. "Massive Trauma and the Healing Role of Reparative Justice." in *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making*, edited by Carla Ferstman, Mariana Goetz, and Alan Stephens. Leiden: Martinus Nijhoff.

de Greiff, Pablo. 2009a. "Articulating the Links between Transitional Justice and Development: Justice and Social Integration." Pp. 28-75 in *Transitional Justice and Development: Making Connections*, edited by Roger Duthie and Pablo de Greiff. New York: International Center for Transitional Justice.

—. 2009b. "Establishing Links between Ddr and Reparations." Pp. 134-59 in *Disarming the Past: Transitional Justice and Ex-Combatants*, edited by Ana Cutter Patel, Pablo De Greiff, and Lars Waldorf. New York: International Center for Transitional Justice.

Dezalay, Yves, and Bryant Garth. 2002. *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States*. Chicago: University Of Chicago Press.

— (Eds.). 2011. *Lawyers and the Construction of Transnational Justice*: Routledge.

Dezalay, Yves, and Mikael Rask Madsen. 2012. "The Force of Law and Lawyers: Pierre Bourdieu and the Reflexive Sociology of Law." *Annual Review of Law and Social Science* 8(1):433-52.

Dixon, Peter J. 2014. "What Does Recognition Mean?" *Beyond The Hague*. http://beyondthehague.com/2014/02/05/what-does-recognition-mean/. Accessed 8 December, 2015.

—. Forthcoming. "Reparations and the Politics of Recognition." in *Contested Justice: The Politics and Practice of International Criminal Court Interventions*, edited by Carsten Stahn, Christian de Vos, and Sara Kendall. Cambridge: Cambridge University Press.

Dixon, Peter J., and Chris Tenove. 2013. "International Criminal Justice as a Transnational Field: Rules, Authority and Victims." *International Journal of Transitional Justice* 7(3):393-412.

Drumbl, Mark A. 2012. *Reimagining Child Soldiers in International Law and Policy*. Oxford: Oxford University Press.

Duthie, Roger. 2008. "Toward a Development-Sensitive Approach to Transitional Justice." *International Journal of Transitional Justice* 2(3):292-309.

Escritt, Thomas. 2014. "Congo Militia Leader Ordered Rapes, Massacres: Prosecutor." in *Reuters*: Reuters.

Eyal, Gil. 2013. "Spaces between Fields." Pp. 158-82 in *Bourdieu and Historical Analysis*, edited by Philip S. Gorski. Durham: Duke University Press.

Fahey, Dan. 2013a. *Ituri: Gold, Land, and Ethnicity in North-Eastern Congo*: Rift Valley Institute.

Fahey, Daniel. 2011a. "Rethinking the Resource Curse: Natural Resources and Polywar in the Ituri District, Democratic Republic of the Congo (Dissertation)." Berkeley: University of California, Berkeley.

—. 2011b. "The Trouble with Ituri." *African Security Review* 20(2):108-13.

—. 2013b. "Ituri: Gold, Land, and Ethnicity in North-Eastern Congo." in *Usalama Project*. London: Rift Valley Institute.

Fearon, J. D., M. Humphreys, and J. M. Weinstein. 2009a. "Can Development Aid Contribute to Social Cohesion after Civil War? Evidence from a Field Experiment in Post-Conflict Liberia." *The American Economic Review* 99(2):287–91.

—. 2009b. "Evaluating Community-Driven Reconstruction Lessons from Post-Conflict Liberia." Washington D.C.: The World Bank Institute.

Fehl, C. 2004. "Explaining the International Criminal Court: A 'Practice Test' for Rationalist and Constructivist Approaches." *European Journal of International Relations* 10(3):357-94.

Ferguson, James. 1990. *The Anti-Politics Machine:" Development," Depoliticization, and Bureaucratic Power in Lesotho*. Cambridge: Cambridge University Press.

Fletcher, Laurel. 2015. "Refracted Justice: The Imagined Victim and the International Criminal Court." in *Contested Justice: The Politics and Practice of International Criminal Court Interventions*, edited by Carsten Stahn, Sara Kendall, and Christian De Dos. Cambridge: Cambridge University Press.

Fletcher, Laurel E, and Harvey M Weinstein. Forthcoming. "Transitional Justice and the 'Plight' of Victimhood." in *Research Handbook on Transitional Justice*, edited by Dov Jacobs. London: Edward Elgar Publishing.

Foucault, Michel. 1981. "Towards a Criticism of 'Political Reason'." *The Tanner Lectures on Human Values*:246–54.

—. 1982. "The Subject and Power." *Critical Inquiry* 8(4):777-95.

—. 1995. *Discipline & Punish: The Birth of the Prison*. New York: Vintage Books.

Fourcade, Marion, and Sarah Babb. 2002. "The Rebirth of the Liberal Creed: Neoliberal Transitions in England, France, Mexico and Chile." *American Journal of Sociology* 108:533-79.

Fourcade, Marion, and Joachim J. Savelsberg. 2006. "Introduction: Global Processes, National Institutions, Local Bricolage: Shaping Law in an Era of Globalization." *Law & Social Inquiry* 31(3):513-19.

Fraser, Nancy. 1999. "Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation." Pp. 25-52 in *Culture and Economy after the Cultural Turn*, edited by Larry Ray and Andrew Sayer. London: Sage.

Funk, T Markus. 2010. *Victims' Rights and Advocacy at the International Criminal Court*. Oxford: Oxford University Press.

Gaviria, Paula. 2015. "Declaración Sobre La Política Del Estado Relacionada Con El Fenómeno Del Desplazamiento Forzado." Bogota: Unidad Administrativa para la Atención y Reparación a las Víctimas.

Glasius, Marlies. 2006. *The International Criminal Court: A Global Civil Society Achievement*. London; New York: Routledge.

—. 2009. "What Is Global Justice and Who Decides? Civil Society and Victim Responses to the International Criminal Court's First Investigations." *Human Rights Quarterly* 31(2):496-516.

Goffman, Erving. 1963. *Stigma: Notes on the Management of Spoiled Identity*. New York: Simon and Schuster.

Hagan, John, and Ron Levi. 2005. "Crimes of War and the Force of Law." *Social Forces* 83(4):1499-534.

Hagan, John, Ron Levi, and Gabrielle Ferrales. 2006. "Swaying the Hand of Justice: The Internal and External Dynamics of Regime Change at the International Criminal Tribunal for the Former Yugoslavia." *Law & Social Inquiry* 31(3):585-616.

Halliday, Terence C., and Pavel Osinsky. 2006. "Globalization of Law." *Annual Review of Sociology* 32:447-70.

Hamber, Brandon. 2001. "Does the Truth Heal? A Psychological Perspective on Political Strategies for Dealing with the Legacy of Political Violence." Pp. 131–48 in *Burying the Past: Making Peace and Doing Justice after Civil Conflict*, edited by Nigal Biggar. Washington D.C.: Georgetown University Press.

—. 2006. "Narrowing the Micro and Macro: A Psychological Perspective on Reparations in Societies in Transition." Pp. 560–89 in *The Handbook of Reparations*. Oxford: Oxford University Press.

Haslam, Emily. 2011. "Subjects and Objects: International Criminal Law and the Institutionalization of Civil Society." *International Journal of Transitional Justice* 5:221-24.

Henham, Ralph J, and Mark Findlay. 2011. "Introduction: Rethinking International Criminal Justice?" Pp. 1-23 in *Exploring the Boundaries of International Criminal Justice*, edited by Ralph J Henham and Mark Findlay. Surrey, England: Ashgate Publishing.

Hochschild, Adam. 2006. *King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa*: Houghton Mifflin Harcourt.

Human Rights Watch. 2003. "Ituri: "Covered in Blood" Ethnically Targeted Violence in Northeastern Dr Congo." Washington DC: Human Rights Watch.

—. 2012. "World Report 2012: Democratic Republic of Congo." New York: Human Rights Watch.

ICC. 2010. "Turning the Lens: Victims and Affected Communities on the Court and the Rome Statute System." The Hague, Netherlands: Registry, International Criminal Court.

ICTJ. 2012. "Ikohi, Kkpk, Policy Briefing: Indonesia's Obligations to Provide Reparations for Victims of Human Rights Violations." New York: International Center for Transitional Justice.

International Rescue Committee, The. 2004. "Mortality in the Democratic Republic of Congo: Results from a Nationwide Survey." International Rescue Committee.

—. 2007. "Irc's Approach to Community-Driven Reconstruction: A Basic Primer for First Generation Programming." The International Rescue Committee.

IRIN. 2002. "Special on Ituri." U.N. Integrated Regional Information Network.

Jackson, Robert H. 1945. "Opening Statement before the International Military Tribunal (November 21, 1945)."

Jasanoff, Sheila. 2004. *States of Knowledge: The Co-Production of Science and the Social Order*: Routledge.

Jaspars, Susanne, and Jeremy Shoham. 1999. "Targeting the Vulnerable: A Review of the Necessity and Feasibility of Targeting Vulnerable Households." *Disasters* 23(4):359-72.

Jennings, Mark. 2008. "Article 79: Trust Fund." in *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, edited by Otto Triffterer. London: Beck/Hart.

Karstedt, Susanne. 2007. "The Nuremberg Tribunal and German Society: International Justice and Local Judgment in Post-Conflict Reconstruction." Pp. 14-35 in *The Legacy of Nuremberg: Civilising Influence or Institutionalised Revenge*, edited by David Blumenthal and Timothy McCormack: Brill.

Kendall, Sara, and Sarah Nouwen. 2014. "Representational Practices at the International Criminal Court: The Gap between Juridified and Abstract Victimhood." *Law & Contemporary Problems* 76(3).

Kristjansdottir, Edda. 2009. "International Mass Claims Processes and the Icc Trust Fund for Victims." in *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making*, edited by Carla Ferstman, Mariana Goetz, and Alan Stephens. Leiden: Martinus Nijhoff.

Kuehnast, Kathleen, Joanna de Berry, and Naila Ahmed. 2006. "Community-Driven Development in the Context of Conflict-Affected Countries: Challenges and Opportunities." Washington D.C.: The World Bank: Social Development Department and Environmentally and Socially Sustainable Development Network.

Leyh, Brianne McGonigle. 2011. *Procedural Justice? Victim Participation in International Criminal Proceedings*: Intersentia.

MacVeigh, Johanna, Sarah Maguire, and Joanna Wedge. 2007. "Stolen Futures: The Reintegration of Children Affected by Armed Conflict." Save the Children.

Mamdani, Mahmood. 2009. "The International Criminal Court's Case against the President of Sudan: A Critical Look." *Journal of International Affairs* 62(2).

—. 2010. "Responsibility to Protect or Right to Punish?" *Journal of Intervention and Statebuilding* 4(1):53-67.

Maogoto, Jackson. 2009. "Early Efforts to Establish an International Criminal Court." in *The Legal Regime of the International Criminal Court: Essays in Honour of Professor Igor Blishchenko*, edited by Jose Doria, Hans-Peter Gasser, and Mahmoud Cherif Bassiouni: Martinus Nijhoff.

McCarthy, Conor. 2009. "Reparations under the Rome Statute of the International Criminal Court and Reparative Justice Theory." *International Journal of Transitional Justice* 3:250-71.

McKay, Susan, and Dyan Mazurana. 2004. "Where Are the Girls? Girls in Fighting Forces in Northern Uganda, Sierra Leone and Mozambique: Their Lives During and after War." Montral: Rights & Democracy (International Centre for Human Rights and Democratic Development).

Medvetz, Thomas. 2012a. "Murky Power: "Think Tanks" as Boundary Organizations." Pp. 113-33 in *Research in the Sociology of Organizations*, edited by David Courpasson, Damon Golsorkhi, and Jeffrey J. Sallaz: Emerald Group Publishing Limited.

—. 2012b. *Think Tanks in America*. Chicago: University of Chicago Press.

Mégret, Frédéric. 2002. "The Politics of International Criminal Justice." *European Journal of International Law* 13(5):1261-84.

—. 2014. "A Critical Research Agenda." *Critical Approaches to International Criminal Law: An Introduction*:17.

Merry, Sally Engle, and Susan Bibler Coutin. 2014. "Technologies of Truth in the Anthropology of Conflict: Aes/Apla Presidential Address, 2013." *American Ethnologist* 41(1):1-16.

Moffett, Luke. 2012. "The Role of Victims in the International Criminal Tribunals of the Second World War." *International Criminal Law Review* 12(2):245-70.

—. 2014. *Justice for Victims before the International Criminal Court*. London: Routledge.

Mudge, Stephanie, and Antoine Vauchez. 2012. "Building Europe on a Weak Field: Law, Economics, and Scholarly Avatars in Transnational Politics." *American Journal of Sociology* 118(2):449-92.

Musila, Godfrey M. 2010. *Rethinking International Criminal Law: Restorative Justice and the Rights of Victims in the International Criminal Court*. Saarbrücken: Lap Lambert Academic Publishing.

OHCHR. 2010. "Report of the Mapping Exercise Documenting the Most Serious Violations of Human Rights and International Humanitarian Law Committed within the Territory of the Democratic Republic of the Congo between March 1993 and June 2003." United Nations Office of the High Commissioner for Human Rights.

—. 2011. "Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo to the High Commissioner for Human Rights." United Nations Office of the High Commissioner for Human Rights.

Okello, Moses. 2010. "Afterword: Elevating Transitional Local Justice or Crystallising Global Governance?" Pp. 275-84 in *Localizing Transitional Justice: Interventions and Priorities after Mass Violence*, edited by Roland Shaw, Lars Waldorf, and Pierre Hazan: Stanford University Press.

OTP. 2003. "Communications Received by the Office of the Prosecutor of the Icc (Press Release)."

—. 2010. "Policy Paper on Victims' Participation." The Hague, Netherlands: Office of the Prosecutor, International Criminal Court.

—. 2013. "Strategic Plan, 2012-2015." The Hague: International Criminal Court.

Prunier, Gérard. 2008. *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe*. New York: Oxford University Press.

REDRESS. 2003. "Reparation: A Sourcebook for Victims of Torture and Other Violations of Human Rights and International Humanitarian Law." London: REDRESS Trust.

—. 2015. "Collective Reparations: Concepts & Principles." REDRESS Trust. http://www.redress.org/downloads/events/CollectiveReparationsMG.pdf. Accessed 8 December, 2015.

Roht-Arriaza, Naomi. 2013. "Editorial Note." *International Journal of Transitional Justice* 7(3):383-92.

Roht-Arriaza, Naomi, and Katharine Orlovsky. 2009. "A Complementary Relationship: Reparations and Development." Pp. 170-213 in *Transitional Justice and Development: Making Connections*. New York: International Center for Transitional Justice.

Sagan, Ann. 2010. "African Criminals/African Victims: The Institutionalised Production of Cultural Narratives in International Criminal Law." *Millennium - Journal of International Studies* 39(1):3-21.

Sánchez, Nelson Camilo, and Rodrigo Uprimny Yepes. 2011. "Transitional Justice without Transition? The Colombian Experience in the Implementation of Transition Measures." Pp. 121-52. San Jose: Inter-American Institute of Human Rights.

Schiff, Benjamin N. 2008. *Building the International Criminal Court*. Cambridge: Cambridge University Press.

Sewell, William. 1992. "A Theory of Structure: Duality, Agency, and Transformation." *American Journal of Sociology* 98:1-29.

Shaw, Rosalind, and Lars Waldorf. 2010. "Introduction: Localizing Transitional Justice." Pp. 3-26 in *Localising Transitional Justice: Interventions and Priorities after Mass Violence*, edited by Rosalind Shaw, Lars Waldorf, and Pierre Hazan: Stanford University Press.

Shaw, Rosalind, Lars Waldorf, and Pierre Hazan (Eds.). 2010. *Localizing Transitional Justice: Interventions and Priorities after Mass Violence*. Stanford: Stanford University Press.

SIDA. 2009. "The Democratic Republic of Congo: Country Gender Profile." SIDA: Department for Conflict and Post-Conflict Cooperation and Gender Equality Team.

Sikkink, Kathryn, Phuong N. Pham, Douglas A. Johnson, Peter J. Dixon, Bridget Marchesi, and Patrick Vinck. 2015. "An Evaluation of Comprehensive Reparations Measures in Colombia: Accomplishments and Challenges." Cambdridge: Carr Center for Human Rights Policy, Harvard Humanitarian Initiative.

Slaymaker, Tom, Karin Christiansen, and Isabel Hemming. 2005. "Community-Based Approaches and Service Delivery: Issues and Options in Difficult Environments and Partnerships." London: Overseas Development Institute.

Sriram, Chandra Lekha, and Suren Pillay (Eds.). 2010. *Peace Versus Justice? The Dilemma of Transitional Justice in Africa*. Scottsville: University of KwaZulu-Natal Press.

Stark, Lindsay, Neil Boothby, and Acham Ager. 2009. "Children and Fighting Forces: 10 Years on from Cape Town." *Disasters* 33(4):522–47.

Stearns, Jason. 2011. *Dancing in the Glory of Monsters: The Collapse of the Congo and the Great War of Africa*: PublicAffairs.

Struett, Michael J. 2008. *The Politics of Constructing the International Criminal Court: Ngos, Discourse, and Agency*. New York: Palgrave Macmillan.

Tamm, Henning. 2013. "Upc in Ituri: The External Militarization of Local Politics in North-Eastern Congo." in *Usalama Project*. London: Rift Valley Institute.

TFV. 2009. "Programme Progress Report: November 2009." The Hague: International Criminal Court, Trust Fund for Victims.

—. 2010. "Learning from the Tfv's Second Mandate: From Implementing Rehabilitation Assistance to Reparations, Programme Progress Report Fall 2010." The Hague: Trust Fund for Victims, International Criminal Court.

—. 2011. "Earmarked Support at the Trust Fund for Victims: Programme Progress Report Winter 2011." The Hague, Netherlands: Trust Fund For Victims, International Criminal Court.

—. 2014. "Tfv Strategic Plan 2014-2107." The Hague: Trust Fund for Victims.

Tomuschat, Christian. 2006. "The Legacy of Nuremberg." *Journal of International Criminal Justice* 4(4):830-44.

UARIV. 2013. "Con Acto Simbólico, Unidad Entregó Cartas De Dignificación a Víctimas En El Chocó." Unidad Administrativa para la Atención y Reparación Integral a las Víctimas. Accessed 3 October, 2015.

—. 2015. "Homepage of the Colombian Victims' Unit." Unidad Administrativa para la Atención y Reparación Administrative a las Víctimas. http://www.unidadvictimas.gov.co/index.php/en/. Accessed 7/15/15.

UN. 2001. "Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo." New York: United Nations Panel of Experts.

UNDP. 2014. "Human Development Report 2014: Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience." New York: United Nations Development Program.

UNGA. 2005. "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law." New York: United Nations General Assembly.

UNICEF. 1997. "Cape Town Princples and Best Practices, Adopted at the Symposium on the Prevention of Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa." Cape Town, South Africa: United Nations Children Fund.

—. 2006. "Children and Ddr: Integrated Disarmament Demobilization and Reintegration Standards." New York: United Nations Children Fund.

—. 2007. "The Paris Principles: Princples and Guidlines on Children Associated with Armed Forces or Armed Groups." Paris: United Nations Children's Fund.

Vauchez, Antoine. 2008. "The Force of a Weak Field: Law and Lawyers in the Government of the European Union (for a Renewed Research Agenda)." *International Political Sociology* 2(2):128–44.

Vinck, Patrick, and Phuong Pham. 2014. "Searching for Lasting Peace: Population-Based Survey on Perceptions and Attitudes About Peace, Security and Justice in Eastern Democratic Republic of the Congo." Cambridge: Harvard Humanitarian Initiative, United Nations Development Programme.

Vinck, Patrick, Phuong Pham, Suliman Baldo, and Rachel Shigekane. 2008. "Living with Fear: A Population-Based Survey on Attitudes About Peace, Justice, and Social Reconstruction in Eastern Democratic Republic of the Congo." Berkeley, CA: University of California, Berkeley Human Rights Center.

Vlassenroot, Koen, and Timothy Raeymaekers. 2004. "The Politics of Rebellion and Intervention in Ituri: The Emergence of a New Political Complex?" *African Affairs* 103(412):385-412.

Wakabi, Wairagala. 2013. "Q&a with Paolina Massidda, Principal Counsel of the Office of the Public Counsel for Victims at the Icc." *Open Society Justice Initiative*. http://www.ijmonitor.org/2013/07/qa-with-paolina-massidda-principal-counsel-of-the-office-of-the-public-counsel-for-victims-at-the-icc/. Accessed 8 December, 2015.

War Crimes Research Office. 2010. "The Case-Based Reparations Scheme at the International Criminal Court." War Crimes Research Office, Washington College of Law, American University.

Weinstein, Harvey M., Patrick Vinck, Laura Fletcher, and Phuong Pham. 2010. "Stay the Hand of Justice: Whose Priorities Take Priority?" in *Localizing Transitional Justice: Interventions and Priorities after Mass Violence*, edited by Roland Shaw, Lars Waldorf, and Pierre Hazan. Stanford: Stanford University Press.

World Bank, The. 2011. "World Development Report 2011: Conflict, Security, and Development." The World Bank.

Appendix A

Methodology

Ituri Data Collection, March-August 2013

Table 3: Ituri Sample Populations, Interviews & Survey

	Interviews Conducted	Subjects Interviewed	Bunia	Irumu	Djugu	Mahagi
In-Depth Interviews (Individual and Group)						
International community officials	7	14				
Traditional leaders	12	84				
Political/administrative authorities	6	8				
Notables	10	11				
Civil Society leaders (Churches, NGOs)	16	38				
Victims groups	5	32				
TOTAL	**56**	**187**	**55%**	**13%**	**28%**	**4%**
Non-Representative Surveys (Population and Leaders)						
Semi-randomized survey (Population)	-	558	12%	36%	52%	-
Targeted survey (Local leaders)	-	273				-
TOTAL	**-**	**831**				**-**

Table 4: Interviews, Ituri, March-August 2013

Date (2013)	Number present	Category
12-Mar	2	Notable
18-Mar	1	Traditional leader
21-Mar	1	Notable
21-Mar	1	Notable
22-Mar	1	Notable
22-Mar	1	Notable
23-Mar	1	Notable

25-Mar	6	Traditional leader
18-Jun	1	Civil society leader
20-Jun	1	Official from international community
21-Jun	1	Civil society leader
21-Jun	1	Official from international community
21-Jun	1	Civil society leader
21-Jun	2	Official from international community
24-Jun	1	Civil society leader
24-Jun	3	Official from international community
24-Jun	2	Official from international community
25-Jun	1	Civil society leader
25-Jun	1	Civil society leader
27-Jun	1	Traditional leader
27-Jun	9	Traditional leader
27-Jun	2	Political/administrative authority
27-Jun	2	Political/administrative authority
28-Jun	6	Civil society leader
28-Jun	6	Victims group
28-Jun	5	Traditional leader
2-Jul	10	Traditional leader
2-Jul	1	Political/administrative authority
3-Jul	5	Traditional leader
3-Jul	5	Victims group
3-Jul	2	Traditional leader
4-Jul	4	Civil society leader
4-Jul	12	Victims group
4-Jul	10	Traditional leader
6-Jul	9	Civil society leader
6-Jul	11	Traditional leader
6-Jul	1	Civil society leader
7-Jul	1	Political/administrative authority
8-Jul	5	Victims group
8-Jul	11	Traditional leader

8-Jul	13	Traditional leader
9-Jul	1	Civil society leader
9-Jul	8	Civil society leader
10-Jul	1	Notable
10-Jul	1	Notable
10-Jul	4	Victims group
18-Jul	1	Civil society leader
18-Jul	1	Notable
23-Jul	1	Notable
25-Jul	1	Official from international community
26-Jul	1	Political/administrative authority
26-Jul	1	Civil society leader
27-Jul	1	Political/administrative authority
1-Aug	1	Civil society leader
16-Aug	4	Official from international community

Table 5: Interview Questions, Ituri, March-August 2013

- Selon vous, est-ce que l'Ituri est prêt a rendre public l'histoire de la guerre ?
    - Pourquoi oui ?
    - Pourquoi non ?
    - Comment ?
- Quelles sont les risques et des avantages d'un processus de rendre public l'histoire ?
    - Risques :
    - Avantages :
- Faut-il établir la *vérité* de ce qui s'est passé ?
    - Quelles vérités ?
- En général, qui sont les acteurs qui peuvent bloquer un tel processus ?
- Si il y aura un processus de se parler sur l'histoire, participeriez-vous ?
    - Pourquoi oui ?
    - Pourquoi pas ?
- La CPI a-t-elle influé sur la mémoire de la guerre en Ituri ?
    - Comment ?
    - Pourquoi pas ?
- Quelle rôle pourrait-elle jouer dans un processus de rendre publique l'histoire de la guerre ?

Survey Questionnaire

FRANÇAIS – SWAHILI

1. Je travaille pour Réseau Haki na Amani, une ONG de la paix basée à Bunia.
2. C'est un projet de recherche pour savoir si l'Ituri est prêt a se parler de l'histoire de la guerre.
3. Je ne vais pas vous demander des informations sur vos expériences pendant la guerre.
4. Je ne vais pas noter votre nom, mais je voudrais noter vos réponses pour mieux me rappeler.
5. Si vous êtes d'accord, la discussion va durer plus ou moins 30 minutes.
6. **Peux-je vous demander ces questions ?**

DATE : _____ **GROUPEMENT :** _____ **LOCALITÉ :** _____

1	Selon vous, la situation actuelle de l'Ituri est comment ? **Kwakuona kwako, hali ya sasa kwa Ituri ni namna gani ?**	1. Très pacifiée 2. Pacifiée 3. A la fois pacifiée et violente 4. Violente 5. Très violente	
2	Qui a la plus grande responsabilité de transmettre l'histoire de l'Ituri? **Nani anamamulaka yakueleza historia ya Ituri?** *(REPONSES MULTIPLES)*	1. Leaders communautaires / personnes influentes 2. Vieux sages 3. Chefs du village / chefs locaux 4. Les notables 5. La communauté 6. Les autorités administratives 7. Les intellectuels / écrivains 8. L'état 9. Les politiciens 10. Les parents 11. Ce qui ont vécu la guerre 12. Les majeurs (plus de 18 ans) 13. Les victimes 14. Les ONG 15. Les Eglise 16. La société civile 17. AUTRES	**AUTRES :**
3	Pourquoi ? *(REPONSES MULTIPLES)*	1. Ils maîtrisent / savent l'histoire 2. Ils ont vécu le passé / la guerre 3. Ils ont l'expérience 4. Ils transmettent l'histoire aux enfants 5. Ils gardent la population 6. Ils sont écoutés 7. Ils ont les pouvoirs 8. Ils sont éduqués / scolarisés 9. AUTRES	**AUTRES :**
4	Comment transmettent-ils cette histoire précisément ? **Namuna gani wanaieleza ?** *(REPONSES MULTIPLES)*	1. Oralement / autour de feu / contes 2. Aux réunions 3. A l'écrit 4. Radio 5. Danses et autres rituelles 6. AUTRES	**AUTRES :**
5	Dans votre communauté, les habitants discutent-ils l'histoire de la guerre ? **Ndani ya vijiji na jamii wakaaji wanaelezaka mambo iliopita wakati ya vita ?**	1. Souvent 2. Temps en temps 3. Rarement 4. Jamais	
6	Ces discussions sont-elles d'habitude publiques ou privées ? **Ilmaungezi inapitika kwa wazi ao kwa uficho ?**	1. Publiques 2. Privées 3. Publiques et privées	

7	Vous même, parlez-vous avec votre famille ou vos enfants sur vos expériences pendant la guerre ? **Wewe pekee unaelezaka kwa jamaa au kwa watoto wako mambo uliopata wakati wa vita ?**	1. Souvent 2. Temps en temps 3. Rarement 4. Jamais	***Si Jamais → Nu. 9***
8	Pourquoi ? *(REPONSES MULTIPLES)*	1. Pour leur donner une bonne connaissance de l'histoire / des évènements 2. Car il y a déjà la paix / communautés déjà réconciliées / déjà la cohabitation pacifique 3. Pour pas retomber / plus revenir à la guerre / éviter les mêmes erreurs 4. Pour qu'ils sachent les causes / méfaits de la guerre 5. Car c'est vrais / pas secret que il y a eu guerre 6. Car la guerre était un catastrophe / les Ituriens ont souffert / ils sont fatigués 7. Pour qu'ils sachent les désavantages de la guerre 8. Pour arriver à la réconciliation / à la cohabitation pacifique / aux leçons constructives 9. Pour éviter la vengeance et mauvaises interprétations 10. Pour qu'ils puissent prévenir la génération à venir 11. Car les évènements ont touché tout le monde 12. Car ils étaient petits pendant la guerre 13. AUTRES	**AUTRES :**
9	Selon vous, est-ce que les Ituriens sont prêts a se parler de l'histoire de la guerre? **Kwakuona kwako watu wa Ituri wanaweza kuwa nautayari ya kuongelea historia ya vita ?**	1. Oui, ils sont très prêts 2. Oui, ils sont prêts 3. Peut-être 4. Non	
10	Pourquoi ? (Même si vous avez dit non pourquoi seraient-ils prêts ?) **(ata unasema hapana nini itawatuma kuwa tayari ?)** *(REPONSES MULTIPLES)*	1. Car ils connaissent bien de l'histoire / des évènements 2. Car il y a déjà la paix / communautés déjà réconciliées / déjà la cohabitation pacifique 3. Pour pas retomber / plus revenir à la guerre / éviter les mêmes erreurs 4. Car il faut savoir les causes / méfaits de la guerre 5. Car c'est vrais / pas secret que il y a eu guerre 6. Car il faut dire la vérité et parler franchement 7. Car il faut vulgariser l'histoire a tous 8. Car la guerre était un catastrophe / les Ituriens ont souffert / ils sont fatigués 9. Pour parler / savoir des désavantages de la guerre 10. Car il faut arriver à la réconciliation / cohabitation pacifique / leçons constructives 11. Pour promouvoir le dialogue intercommunautaire 12. Car il faut éviter la vengeance et mauvaises interprétations 13. Pour prévenir les enfants et la génération à venir 14. Pour arriver à la justice 15. Car les évènements ont touché tout le monde 16. Car il sont prêts à oublier le passé 17. Pour promouvoir le développement 18. Pour partager et échanger leurs expériences / apprendre ce que les autres ont vécu 19. Pour partager l'histoire avec l'extérieur 20. AUTRES	**AUTRES :**
11	Pourquoi pas ? (Même si vous avez dit oui Pourquoi ne seraient-ils pas prêts ?) **(ata unasema ndio nini haita watuma kuwa tayari ?)** *(REPONSES MULTIPLES)*	1. Il y a encore de conflit / de haine 2. La population ne connait pas bien l'histoire 3. Les acteurs vont bloquer le processus 4. Les gens ne vont pas accepter la vérité 5. Risque de susciter la haine / vengeance / colère / jalousie 6. Peur de se parler 7. Pas de soutien du gouvernement 8. Reprise de la guerre / nouvelle violence 9. Déformation et mal interprétation de l'information 10. Risque de ne pas dire la vérité / mensonges 11. Traumatisme et douleur aux personnes touchées 12. AUTRES	**AUTRES :**
12	Selon vous, est-ce que il y a la nécessite d'avoir un dialogue intercommunautaire ? **Unawaza kama nilazima makabila mbali mbali waweze kuongea pamoja kuhusu vita ilio pitika ?**	1. Oui, s'est très important 2. Oui, s'est important 3. Peut-être 4. Non	
13	L'histoire de la guerre doit-elle être rendu publique ? **Historia ya vita ina weza tangaziwa pa wazi ?**	1. Oui, s'est très important 2. Oui, s'est important 3. Peut-être 4. Non	***Si Non → Nu. 15***

14	Rendu publique par qui ? **Wanani wanaweza kuitangaza ?** *(REPONSES MULTIPLES)*	1. Leaders communautaires / personnes influentes 2. Vieux sages 3. Chefs du village / chefs locaux 4. Les notables 5. La communauté 6. Les autorités administratives 7. Les intellectuels / écrivains 8. L'état 9. Les politiciens 10. Les parents 11. Ce qui ont vécu la guerre 12. Les majeurs (plus de 18 ans) 13. Les victimes 14. Les ONG 15. Les Eglise 16. La société civile 17. AUTRES	**AUTRES :**
15	Pourquoi ? (Même si vous avez dit non pourquoi devrait-elle être rendue publique ?) **(ata unasema hapana nini inaweza tiya isemewe kwa uwazi ?)** *(REPONSES MULTIPLES)*	1. Pour avoir une bonne connaissance de l'histoire / des évènements 2. Il y a déjà la paix / communautés déjà réconciliées / déjà cohabitation pacifique 3. Pas retomber en guerre / plus revenir à la guerre / éviter les mêmes erreurs 4. Car il faut savoir les causes / méfaits de la guerre 5. Car c'est vrais / pas secret que il y a eu guerre 6. Car il faut dire la vérité et parler franchement 7. Pour vulgariser l'histoire a tous 8. Car la guerre était un catastrophe / les Ituriens ont souffert / ils sont fatigués 9. Pour parler / savoir des désavantages de la guerre 10. Pour arriver à la réconciliation / cohabitation pacifique / leçons constructives 11. Pour promouvoir le dialogue intercommunautaire 12. Pour éviter la vengeance et mauvaises interprétations 13. Pour prévenir les enfants et la génération à venir 14. Pour arriver à la justice 15. Car les évènements ont touché tout le monde 16. Pour oublier le passé 17. Pour promouvoir le développement 18. Partager et échanger mes expériences et apprendre ce que les autres ont vécu 19. Pour partager l'histoire avec l'extérieur 20. AUTRES	**AUTRES**
16	Pourquoi pas ? (Même si vous avez dit oui pourquoi ne devrait-elle pas être rendue publique ?) **(ata unasema ndio nini inaweza tiya isisemewe kwa uwazi ?)** *(REPONSES MULTIPLES)*	1. Il y a encore de conflit / de haine 2. La population ne connait pas bien l'histoire 3. Les acteurs vont bloquer le processus 4. Les gens ne vont pas accepter la vérité 5. Risque de susciter la haine / vengeance / colère / jalousie 6. Peur de se parler 7. Pas de soutien du gouvernement 8. Reprise de la guerre / nouvelle violence 9. Déformation et mal interprétation de l'information 10. Risque de ne pas dire la vérité / mensonges 11. Traumatisme et douleur aux personnes touchées 12. AUTRES	**AUTRES :**
17	Comment peuvent, toutes les communautés de l'Ituri, arriver à reconstituer et réunir leurs différentes histoires de la guerre ? **Namna gani wanaichi ya Ituri wanaweza fikia kiwango yaku kutanisha na kutiya pamoja historia ya vita ?** *(REPONSES MULTIPLES)*	1. Rencontres et dialogue communautaire 2. La sensibilisation 3. Réunions des chefs / des leaders communautaires 4. Radio 5. Journaux / brochures 6. Autres medias comme l'internet 7. La justice 8. Collection des témoignages des victimes 9. Mécanismes traditionnels : barza communautaires, palabres, danses 10. Rapport officiel de l'état 11. Un livre sur l'histoire de l'Ituri 12. Musée / monuments mémoriels / des dates commémoratives 13. AUTRES	**AUTRES :**

18	Qui aura la plus grande responsabilité de mener un tel processus ? **Nani anakuwa na mamulaka ya kuongoza maongezi kama hii ?** *(REPONSES MULTIPLES)*	1. Leaders communautaires / personnes influentes 2. Vieux sages 3. Chefs du village / chefs locaux 4. Les notables 5. La communauté 6. Les autorités administratives 7. Les intellectuelles / écrivains 8. L'état 9. Les politiciens 10. Les parents 11. Ce qui ont vécu la guerre 12. Les majeurs (plus de 18 ans) 13. Les victimes 14. Les ONG 15. Les Eglises 16. La société civile 17. AUTRES	**AUTRES :**
19	Est-ce que les ONG de la paix sont bien placées pour accompagner un processus de se parler publiquement de l'histoire de la guerre ? **Unafikiri kama ma ONG ya amini wanaweza kushindikiza wanaichi wa Ituri kwakuongea pawazi historia yao ?**	1. Oui 2. Peut-être 3. Non	
20	Est-ce que les Eglises sont bien placées pour accompagner un processus de se parler publiquement de l'histoire de la guerre ? **Unafikiri kama makanisa wanaweza kushindikiza wanaichi ya Ituri kwakuongelea pa wazi historia yao ?**	1. Oui 2. Peut-être 3. Non	
21	Est-ce que l'état doit mener un processus de se parler publiquement de l'histoire de la guerre ? **Unafikiri kama serkali ina weza kuongoza wanaichi ya Ituri kuongelea historia yao ?**	1. Oui 2. Peut-être 3. Non	
22	Si il y aura un processus de se parler publiquement sur l'histoire de la guerre, participeriez-vous ? **Ikiwezekana watu wengi waweze kusanyika kwa ile maongezi nakujiambia ukweli, unaweza ku shiriki ?**	1. Oui 2. Peut-être 3. Non	
23	Pourquoi ? (<u>Même si vous avez dit non</u> quelles sont les raisons qui vous pousseraient à participer ?) **(<u>ata unasema hapana</u> nini inaweza kuku tuma ku shiriki ?)** *(REPONSES MULTIPLES)*	1. Pour avoir une bonne connaissance de l'histoire / des évènements 2. Il y a déjà la paix / communautés déjà réconciliées / déjà la cohabitation pacifique 3. Pas retomber en guerre / plus revenir à la guerre / éviter les mêmes erreurs 4. Car il faut savoir les causes / méfaits de la guerre 5. Car c'est vrais / pas secret que il y a eu guerre 6. Pour dire la vérité et parler franchement 7. Pour vulgariser l'histoire a tous 8. Car la guerre était un catastrophe / les Ituriens ont souffert / ils sont fatigués 9. Pour parler / savoir des désavantages de la guerre 10. Pour arriver à la réconciliation / cohabitation pacifique / leçons constructives 11. Pour promouvoir le dialogue intercommunautaire 12. Pour éviter la vengeance et mauvaises interprétations 13. Pour partager les expériences aux enfants 14. Pour arriver à la justice 15. Car les évènements ont touché tout le monde 16. Pour oublier le passé 17. Pour promouvoir le développement 18. Partager et échanger mes expériences et apprendre ce que les autres ont vécu 19. Pour partager l'histoire avec l'extérieur 20. AUTRES	**AUTRES :**

24	Pourquoi pas ? (Même si vous avez dit oui quelles sont les raisons qui vous bloqueraient ?) **(ata unasema ndio nini ina weza kuku funga ushiriki ?)** *(REPONSES MULTIPLES)*	1. Il y a encore de conflit / de haine 2. Acteurs vont bloquer le processus 3. Les gens ne vont pas accepter la vérité 4. Risque de susciter la haine / vengeance / colère / jalousie 5. Peur de se parler 6. Reprise de la guerre / nouvelle violence 7. Déformation et mal interprétation de l'information 8. Risque de ne pas dire la vérité / mensonges 9. Traumatisme et douleur aux personnes touchées 10. Echec de la sensibilisation / mauvaise compréhension au processus 11. AUTRES	**AUTRES :**
25	Quels sont les avantages de se parler publiquement de l'histoire de la guerre ? **Kuna faida gani kuongelea historia hii pa wazi ?** *(REPONSES MULTIPLES)*	1. Arriver à une bonne connaissance de l'histoire / des évènements 2. Pas retomber en guerre / plus revenir à la guerre / éviter mêmes erreurs 3. Savoir les causes / méfaits de la guerre 4. Dire la vérité et parler franchement 5. Vulgariser l'histoire a tous 6. Parler / savoir des désavantages de la guerre 7. Arriver à la réconciliation / cohabitation pacifique / leçons constructives 8. Promouvoir le dialogue intercommunautaire 9. Eviter la vengeance et mauvaises interprétations 10. Pour prévenir les enfants et la génération à venir 11. Pour arriver à la justice 12. Oublier le passé 13. Pour promouvoir le développement 14. Partager des expériences et apprendre ce que les autres ont vécu 15. Partager l'histoire avec l'extérieur 16. AUTRES	**AUTRES :**
26	Quels sont les risques de se parler publiquement de l'histoire de la guerre ? **Matokeo mbaya ni nini ?** *(REPONSES MULTIPLES)*	1. Il y a encore de conflit / de haine 2. Acteurs vont bloquer le processus 3. Les gens ne vont pas accepter la vérité 4. Risque de susciter la haine / vengeance / colère / jalousie 5. Peur de se parler 6. Reprise de la guerre / nouvelle violence 7. Déformation et mal interprétation de l'information 8. Risque de ne pas dire la vérité / mensonges 9. Traumatisme et douleur aux personnes touchées 10. Echec de la sensibilisation / mauvaise compréhension au processus 11. AUTRES	**AUTRES :**
27	Qui sont les acteurs qui peuvent bloquer un tel processus de se parler publiquement de l'histoire de la guerre ? **Watu gani wanaweza kuzuia maongezi hii ?** *(REPONSES MULTIPLES)*	1. Les démobilisés 2. Personnes de mauvaise volonté 3. Les fumeurs de chanvre 4. Les auteurs des crimes / bénéficiaires de la guerre 5. Les milices / groupes rebelles 6. Les militaires 7. La police 8. Les politiciens 9. Les étrangers 10. AUTRES	**AUTRES :**
28	Comment peut-on éviter tel blocage ? **Namna gani tuna weza ku epuka watu wasizuie ile ukusanyiko ?** *(REPONSES MULTIPLES)*	1. Ne pas les inviter à telle rencontre / bien choisir les participants 2. Bien choisir le lieu de la rencontre 3. Les traduire en justice 4. Par des conseils et reproches 5. Par des déclarations ouvertes de la faute 6. En identifiant les personnes qui dénoncent la vérité 7. Renforcement du système sécuritaire 8. Avoir plus des rencontres communautaires 9. AUTRES	**AUTRES :**

29	Même si ces acteurs soient invités aux discussions, participeriez-vous toujours ? **Ijapo kuwa wale watu ya nia mbaya wanapatikana kwaii kusanyiko, unaweza kushiriki ?**	1. Oui 2. Peut-être 3. Non	
30	Je vais vous lister des méthodes différentes pour rendre publique l'histoire de la guerre: dites-moi si chacune serait très utile, utile, un peu utile ou pas utile: **Nina weza kuku onyesheya namna mbalimbali kwaku fikia kwaku tangaza pa wazi historia, uniambiye ya wapi ni ya lazima zaidi, ya wapi ni ya lazima, na ya wapi ni ya lazima kidogo, na ya wapi sio ya lazima :**		
	a. La justice **Sheria**	1. Très utile 2. Utile	3. Un peu utile 4. Pas utile
	b. Se parler publiquement et les dialogues intercommunautaires **Makabila kuongea pamoja**	1. Très utile 2. Utile	3. Un peu utile 4. Pas utile
	c. Processus de l'état d'amener les communautés ensemble a se parler de la vérité pour aboutir au pardon **Kiwango ya serkali kwakuweza kutanisha watu juu ya maongezi ya ukweli kusudi watu wafikiye usamaha**	1. Très utile 2. Utile	3. Un peu utile 4. Pas utile
	d. Médias indépendants comme la radio, les journaux, etc. **Wapashaji ya habari ao magazeti, redio. etc**	1. Très utile 2. Utile	3. Un peu utile 4. Pas utile
	e. Collection des témoignages des victimes par les ONG de la paix **Ukongolesho ya ushuuda ao utetezi ya walio pigwa na vita kupitia ma ONG ya amani**	1. Très utile 2. Utile	3. Un peu utile 4. Pas utile
	f. Les mécanismes traditionnels, par exemple les barza communautaires, les palabres, les danses et les rites traditionnels **Namna ya kiasili kupatanisha watu. Kwa mfano : baraza, michezo,…**	1. Très utile 2. Utile	3. Un peu utile 4. Pas utile
	g. Rapport officiel de l'état sur l'histoire de la guerre **Ripoti ya serkali kuusu vita**	1. Très utile 2. Utile	3. Un peu utile 4. Pas utile
	h. Un livre sur l'histoire de l'Ituri **Kitabu yenye kuongelea historia ya Ituri**	1. Très utile 2. Utile	3. Un peu utile 4. Pas utile
	i. Un musée sur l'histoire de la guerre, des monuments mémoriels, etc. **Pahali pakuchunga historia ya vita, majengo ya ukumbusho, …**	1. Très utile 2. Utile	3. Un peu utile 4. Pas utile

DES INFORMATIONS GENERALES

1	Etiez-vous déplacé pendant la guerre ? **Wakati ya vita ulikuwa mukimbizi mpia ?**			1. Oui 2. Non	***Si Oui → Nu. 2*** ***Si Non → Nu. 3***
2	Etes-vous retourné au même village ou dans une terre nouvelle, ou êtes-vous encore déplacé ? **Wakati ulirudi ulikaatu ku mgini ambao ulikuaka mbele ya vita, au ulirudi pahali pengine, au ukiangaliko mukimbizi ?**			1. La même communauté 2. Terre nouvelle 3. Encore déplacé	
3	Aviez-vous été a l'école ou dans une formation ? À quel niveau ? **Ulikuaka mpia ku masomo ? au kumafundisho** **Ulisoma kadiri gani ?**			1. Non, pas scolarisé 2. École primaire 3. École secondaire 4. Formation 5. Université 6. AUTRES	**AUTRES :**
4	Age	1. 18-30 2. 31-40	3. 41-50 4. 51-60	5. plus de 60	
5	Sexe	1. Homme 2. Femme			
6	Tribus	1. Hema 2. Lendu 3. Ngiti	4. Ndo okebu 5. Alur 6. Nyali kilo	7. Bira 8. Nandé 9. AUTRES	**AUTRES :**

Hague Interviews, April 2014

Table 6: Hague Interviews, April 2014

Date (2014)	Number present	Category
8-Apr	2	Mid-level ICC staff
8-Apr	1	Mid-level ICC staff
8-Apr	2	Mid-level ICC staff
8-Apr	1	Senior-level ICC staff
9-Apr	1	Senior-level ICC staff
9-Apr	1	Senior-level ICC staff
9-Apr	1	Mid-level ICC staff
10-Apr	1	Mid-level ICC staff
10-Apr	1	Mid-level ICC staff
10-Apr	1	Senior-level ICC staff
10-Apr	1	Mid-level ICC staff
11-Apr	1	Mid-level ICC staff
11-Apr	1	Mid-level ICC staff
11-Apr	1	Senior-level ICC staff
14-Apr	3	Senior-level ICC staff
15-Apr	1	Senior-level ICC staff
15-Apr	1	Senior-level ICC staff

Table 7: Interview Questions, The Hague, April 2014

RECOGNITION OF VICTIMS
What does recognition mean at the ICC?
Is recognition important? Why?
How does ICC recognize victims, specifically?
Outside of international criminal law, are there other ways to recognize victims? What's the difference?
REPARATION & PARTICIPATION
In broad terms, how would you describe purpose of victims' reparation and participation at ICC? In your opinion, are these primarily for individuals/communities/both?
Reparations: what are the different kinds of expertise available at the Court? (design/implement)
In Lubanga, TC1 introduced the principle of consultation: what role does consultation have in reparations process?
INTERNATIONAL JUSTICE FIELD
Why do you think ICC places so much emphasis on victims, compared to predecessors? Where from?
Connections, if any, between international criminal law and • development? • diplomacy? • human rights?
Is international criminal law a tool for peace-building? Why? Why not?