Experiencing Everyday Justice:

A study of end-user experiences of justice in South Kivu, DRC

by

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A thesis submitted to the University of Birmingham

for the degree of DOCTOR OF PHILOSOPHY

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University of Birmingham

November 2016

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Abstract

There is a growing need to develop a more robust understanding of the bottom-up view of justice in post-conflict states. Attempts to promote the liberal peace in post-conflict states through Security Sector Reform and promoting Rule of Law reforms have been insufficient to achieve sustainable peace in countries. Despite an awareness of the shortcomings of reform, uncertainty exists about how to promote peace after conflict. The thesis sets out to examine experiences of everyday judicial in South Kivu. By examining these experiences, common themes and user values can be identified to understand better how to improve access to justice and promote peace in post-conflict states.

This research analyzes ninety-one different user narratives with various judicial service in South Kivu, DRC conducted between May 2014 and August 2014; this research tries to understand how individuals understand and navigate through the judicial landscape. This study concludes that justice in South Kivu judicial users desires for judicial experiences are not unique but contain universal characteristics. While there are opportunities to build upon what is working for users, the long-term solutions for sustainable peace remain at the mercy of political solutions.

Acknowledgments

Dedicated to Emerson/Squidkid.

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List of Abbreviations

ABA - American Bar Association
ANR - Agence Nationale de Renseignements
ANT - Actor Network Theory

CNDP - Congrès National pour la Défense du Peuple
CBA - Congolese Bar Association
CBO - Community Based Organization
CSO - Civil Society Organization
CSRP - *Comite de Suivi de la Reforme de la Police*
EU - European Union
FARDC - Forces Armées de la République Démocratique du Congo
FBO - Faith-based Organization
FCO - Foreign Commonwealth Office
FDLR - Democratic Forces for the Liberation of Rwanda
DfID - Department for International Development

DDR - Disarmament Demobilization and Reintegration efforts
DRC - Democratic Republic of Congo
DCAF - Geneva Centre for the Democratic Control of Armed Forces
IBA - International Bar Association
ICC - International Criminal Court
ICJP - Initiative Congolaise pour la Justice et la Paix
IDP - Internally Displaced People
M23 - March 23 Movement
MONUSCO - The United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
NGO - Non-Governmental Organization

OECD - Organization for Economic Cooperation and Development
PNC - Police Nationale Congolaise
UK - United Kingdom

UN - United Nations
UNDP - United Nations Development Programme
PRI - Prison Reform International
REJUSCO - Restoration of Justice Program
RoL - Rule of Law
SGBV - Sexual and Gender Based Violence
SSR - Security Sector Reform

SVH - Solidarité des volontaires pour l'humanité

WJP - World Justice Project

Chapter 1
Introduction

In August of 2011, I stood in Goma, Democratic Republic of Congo (DRC) with a Congolese colleague waiting for a meeting to start. At one point, our conversation turned to the topic of justice. I posed the hypothetical question, "what would you do if someone stole something from you?" My colleague provided a recent example about a friend's motorcycle that was stolen. On the first telling of the story, he said the bike was stolen. Then my colleague and his friend went to the police, and the police returned the stolen bike. The narrative seemed simple and straightforward, which was a contradiction to the many narratives about the absence of a functioning judicial system in DRC.

I asked my colleague if it was as simple as going to the police and allowing them to perform the tasks of investigation, arresting suspects, and recovering the stolen bike. He then expanded on the initial telling of the story. When the bike was stolen, my colleague and his friends searched the community to find information about the identity of the thief and the location of the bike. After some time, they tracked the bike down to a distant village outside of Goma. My colleague and his friend traveling to the location of the bike to confirm it was there, they went to the police and brought the police with them to help broker the return of the bike to its rightful owner.

The judicial experience described by my colleague suggests the importance of nuance to understanding the judicial experience in the DRC. The absence of police involvement in the

early stages of the narrative suggests that there is a logical reason. Although I failed to ask,

the reasons could be that involvement early on would have been unproductive, cost

prohibitive, or a variety of other reasons. What was most interesting to me was the

involvement of the police at the point of actually recovering the stolen bike. This narrative

suggests that while the police might not function in the intended or desired manner, they

maintain some relevance in the everyday pursuit of justice.

The present legal landscape of DRC is unsettled due to extended periods of insecurity and a

lack of government investment in judicial services. The absence of a reliable state presence in

the judicial sector has given rise to non-governmental organizations, religious groups,

traditional authorities, and other actors offering judicial services. While the state's retreat

from the provision of security and judicial services did not improve the judicial experience in

eastern DRC, it did not end the pursuit of justice by the people living there either. Despite

periods of active conflict, chronic insecurity, and evolving authority structures, individuals,

families, ethnic groups, faith groups, neighborhoods, and communities continue to create and

sustain judicial service access to resolve everyday problems. The fragmentation of services is

a byproduct of the weakness of the Congolese state. User efforts to create alternatives to

oppressive institutions and reinvent judicial processes, systems, and structures is evidence of

efforts to build a functioning society in the midst of conflict and a weak state.

Further contributing to my curiosity about the judicial experience in South Kivu is a 2008

study titled *Living with Fear* by Patrick Vinck and Phuong Pham. The goal of the survey was

to provide a forum for the voices of victims to speak about their post-conflict priorities, with

a special focus given to war criminals and transitional justice. It was a quantitative survey of

2,620 adults[1] in eastern DRC along with 1,133 individuals in Kinshasa and Kisangani (Vinck & Pham 2008: 15). Peace and security accounted for more than 80% of the respondents' priorities, followed by livelihood concerns. The specific questions about justice were in the view of transitional justice priorities, but the answers still offer interesting insights.

In *Living with Fear*, justice was most consistently defined as establishing the truth,[2] being just or fair, and applying the law. It is noted that these answers bias towards judicial mechanisms and the rule of law. The authors view this as paradoxical due to the lack of these institutions but suggested this might indicate a desire for them existed among users (Ibid: 44). The government was deemed to be the actor most responsible for coordinating the establishment and operation of functional judicial services (Ibid). It seems a disconnect exists between the assertions of what kind of justice is preferred in Sub-Saharan Africa, the framing of the judicial experience by advocacy groups, the findings of Vinck and Pham, and the personal narrative I referenced in the opening of the paper. Based on this disconnect, it seemed there was a need to develop a more nuanced understanding of the judicial experience and the implications of that in the Kivu region of the DRC. In short, there is a distinction in asking a person what they did versus how they did it. While the *Living With Fear* report does support the idea that Congolese believe the national government is ultimately responsible for justice, the focus on transitional justice and war crimes did not capture attitudes towards everyday crime and everyday justice.

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[1] Individuals more than 18 years old.

[2] South Kivu reported a 54% preference for establishing the truth as the definition for justice.

In 2014, Patrick Vinck and Phuong Pham published *Searching for Lasting Peace*. The research focused on eastern Congo, but instead of looking specifically at transitional justice, the research examined perceptions of judicial actors and other security related views. More than 5,166 randomly selected adults from 600 villages in North Kivu, South Kivu, and Ituri participated in the research (Vinck & Pham 2014: 15). The survey identified peace as the main priority for respondents, who also identified peace and security as what should be the main priority of the government (Ibid: 22). From the research participants' viewpoint, peace held multiple nuances: absence of violence (49%), living together (46%), being free (41%), and having no fear (35%) (Ibid: 23). Vinck and Pham found that respondents trusted "the police (61%) and the FARDC (53%) to provide security," but the principle researchers noted the inconsistency with this position given the poor human rights records of both security actors. This inconsistency is one reason why the research in this report is valuable, as I was able to explore the nuances of personal experience.

The survey found that in the three districts, land issues, domestic issues, and theft were the dominant issues. Respondents in South Kivu (40%) identified theft as a more pressing issue than Ituri (18%) or North Kivu (22%). Domestic issues in South Kivu were more in line with the other two provinces, with 34% of South Kivu respondents identifying domestic problems as the main dispute where 32% and 20% of respondents in Ituri and North Kivu, respectively identified domestic issues as a key issue.

The survey asked about key actors' involvement in dispute resolution mechanism. In total, local leaders (56%), customary chiefs (39%), families (27%), police (26%), and courts (13%) were found to be the most common dispute resolution mechanisms. Specifically, in South

Kivu, respondents identified local leaders (61%), customary chiefs (42%), police (33%),

families (33%), courts (17%), and religious leaders (10%) as key actors. Unfortunately,

exactly what is meant by local leaders and how that is distinguished from traditional chiefs,

religious leaders, or other individuals is unclear. Similar to the *Living with Fear* report,

respondents were asked to define justice, and their definitions remain consistent with those in

the previous report, as truth, applying the law, and being fair were the dominant responses.

The final portion of the report covered local perceptions of justice as seen in Table 1.1 and

Table 1.2. Table 1.1 shows strong agreement on the importance of money for court cases but

does not ask about other judicial access points. Table 1.1 also shows a low confidence in

tribunals following the law. However, when surveying where people go to resolve disputes,

courts are very low in

importance. What Table 1.2

suggests is that money

might be an important

factor regarding the judicial

experience. The issue of

money in general and

payments to courts is

addressed at length in

Chapter 5. Table 1.2 also

shows a significant portion

of the population

expressing doubt at the

Table 1.1: Perception of justice (% agree with the statement)	
There must be a payment for the court to take a case	75%
Victims of sexual violence can have their cases prosecuted	63%
Judges & prosecutors follow the law	27%
Tribunals treat everyone fairly & equally	19%
Tribunal decisions are taken fairly	17%

Table 1.2: Perception of justice system (% of respondents)	Total	S. Kivu
Does not exist/impunity	42%	44%
Corrupted	50%	63%
Have to pay	20%	24%
Justice is for the rich	30%	36%
Works well	18%	10%
Other	13%	5%

existence of the formal judicial system.[3]

The purpose of this thesis research is to explore how individuals in eastern Congo navigate the judicial landscape around them and to examine the decision-making process behind the choices they make. The first task is to identify the actors involved in judicial services and understand the function of their services. Then, justice users need to be interviewed to understand what judicial services they use, why they use them, and what is involved in the usage of a particular judicial service. The insights gained from the user narratives should enable an examination of the rhetoric of impunity that currently dominates understandings of justice in the DRC.

For this research, I chose to focus on the judicial sector because justice is an idea and service that has the can societies together. Justice is a simple term, but the word connects to philosophy, governance, and exercises of power. The judicial process is an important ritual that builds the foundation of society. Justice operates in the everyday lives of individuals, but it is also a notion that exists in the minds of people (Addison 2009: 259). An individual's perception of justice and the actions taken in the pursuit of justice should provide insight into the individuals and institutions that are legitimate actors in the judicial sector. Justice is a loaded term, as it draws from philosophy, ideology, culture, politics, and power influence how justice is understood and experienced.

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[3] Vinck and Pham (2014) understand the formal justice system to be comprised of the police and courts.

Thesis Overview

The thesis sets out to understand what experiences of everyday judicial hybridity in South Kivu can contribute to current peacebuilding approaches. The thesis is broken into five main sections, with the introduction establishing the purpose of the study. Chapter 2 situates the research within the post-liberal peacebuilding dialogue, with a particular focus on the concepts of hybridity and frictions. These two concepts prove most useful for orienting my examination of due to their flexibility in accepting configurations of judicial structures outside of liberal models as the Democratic Republic of Congo is not functioning as a liberal state. The remainder of the chapter addresses the challenge of establishing a definition of justice.

Chapter 3 is a brief recap of the historical forces that shaped the judicial services available in the DRC, as well as the judicial experience. The chapter begins by examining justice during the colonial period followed by focusing on how traditional justice was altered during the Mobutu era as well as after his death. The 4th Chapter is the methodology section which establishes how the research design can develop an understanding of justice 'from below' as is identified in an underdeveloped area of research.

Chapter 5 is divided into two parts. The first part sketches the judicial landscape in South Kivu offering a brief context for each judicial service provider and their self-described process of administering justice. The second part of the chapter documents user experiences of these judicial services. Chapter 6 examines the extent to which the conceptual frameworks developed in chapter 2 offer insight into user experiences of justice. Additionally, cross-cutting themes identified in the user experiences of justice are discussed. The conclusion

attempts to present an alternative way to evaluate judicial services based on user criteria of quality services. Ultimately, this research seeks to understand better how users in South Kivu experience judicial services and how future peacebuilding approaches could meet their everyday judicial needs.

Chapter 2
Justice: A Concept in Tension

The central argument in this thesis is that the experience of judicial users offers an invaluable and often overlooked insight in judicial reforms which focuses on a top-down approach. I argue that user experiences of judicial services contain the potential to improve judicial reform programs in post-conflict countries. To develop an understanding of how the experience of everyday justice might influence peacebuilding approaches in South Kivu, a number of topics need addressing. The first section examines the definition of justice as well as the important terms used in this research. Justice is a complex concept. Though it might seem to be a straightforward concept, it touches on numerous aspects of personal life and societal constructs. Theory, policy, and practice can easily become entangled in a messy way. This is especially true in states recovering from conflict. The second section examines how failed states complicate the study of justice as well as how labels of judicial service providers tend to obscure the judicial landscape more instead of adding clarity. The third section reviews contemporary understandings and approaches to judicial sector reform. The need to incorporate local ideas and local ownership reform processes is widely accepted, but what is more difficult is navigating the network of actors with competing and potentially conflicting interests. The fourth and final section introduces the critical concepts of hybridity and frictions which serve as key concepts in orienting the research process and might bring clarity to the complicated network of interests within judicial reform processes. The everyday experience of justice in South Kivu, DRC occurs in a post-conflict setting which is shaped by numerous interventions by foreign states and international organizations as well as local and

national NGOs. Understanding the experience of justice in specific cases in South Kivu exists in the larger context of global judicial reform. This chapter opens with the conceptual nature of justice and gradually works through to connect the big ideas which inform understandings of justice to the everyday encounters in the lives of individuals.

The focus on improving access to justice and the connection of justice to sustainable peace is recognized by the UN as goal 16 of the post-2015 development agenda is to "promote just, peaceful, and inclusive societies."[4] This focus occurs during a period of reflection on past failures of achieving the desired reforms in judicial and security services. In 2014, the World Bank spent more than $3 billion dollars in order to rebuild institutions to increase security, the access to justice, and to creating a sustainable peace (WB HDR 2015: 30). This focus on building peace is a series of policies that are deeply influenced by the pursuit of a liberal peace. This chapter examines these assumptions as well as emerging alternative frameworks for understanding peace formation. It is important to develop deep and meaningful understandings of how to promote access to justice and establishing a sustainable peace. As successful and lasting improvements in the access and governance of justice and security services in conflict-affected states continues to present a challenge to donor countries, this research aims to develop insights into what users of judicial services expect and desire from their experiences of justice. These understandings inform new, and possibly better, efforts to promote judicial access and sustainable peace in post-conflict countries by developing an understanding of judicial users priorities, needs, and desires to influence the rebuilding and reform the judicial landscape in post-conflict states.

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[4] UNDP 2030 Development Goals - http://www.undp.org/content/undp/en/home/operations/about_us.html

Operating in countries that are emerging from conflict, these programs exist to implement

reforms and restore proper function to institutions often crippled by neglect, mismanagement,

or deliberate misuse to benefit those in power. The judicial reform process in Mozambique

demonstrates the challenge of integrating services understood to be state and non-state

services into a co-existing structure. A decree given in 2000 lifted a ban on traditional chiefs

and thus a key aspect of reform efforts sought to reintegrate marginalized, customary leaders

with existing state police and judiciary structures (Kyed 2009: 181). In Timor-Lest, judicial

reform efforts met with significant resistance from local elites who did not agree with the

externally imposed reform agenda (Richmond 2011: 119). In the Democratic Republic of the

Congo, mismanagement, underfunding, and political disinterest in building a functioning

judicial system resulted in billions of dollars spent with little meaningful progress (European

Court of Auditors 2013). The brief mention of challenges in Mozambique, Timor-Leste, and

the DRC suggest that the process of reforming underperforming or dysfunctional judicial is

fraught with difficulties.

In each example, the expectation and hope are that implemented reforms produce working

judicial systems. For different reasons, the reforms failed to deliver fully on their promise.

The following section develops the argument that a key reason behind the ineffectiveness of

judicial reforms creating the intended impact lies in under criticized assumptions about the

ideological foundations of their reforms, specifically the idea of justice itself. Philosophies

and frameworks contribute to the makeup of the how people think about justice. The

following section defines justice, describes commonly used labels for categorizing justice,

and discusses the influences of philosophical approaches to the ideas of justice.

2.1 Justice & Why It is Important

The judicial sector makes for an interesting space to gain insights on local governance and

local power since in most fragile contexts the state is not the only, and occasionally not the

dominant, provider of judicial services. Justice is a "field where power is contested, authority

is reconfigured and constituted, and different actors' interests are at stake over power,

resources, and clients, and as such, it is a highly political arena" (Albrecht & Kyed 2011: 19).

The intersection of power, resources, and numerous actors makes justice a natural space to

observe friction between them, which may be a more accurate way to understand the

evolution of peacebuilding and justice efforts (Millar 2013: 2014). As justice is an

intersection for so many different actors and frictions is a way to observe the interaction

between competing ideals, priorities, and agendas, I believe it will serve as a useful tool to

help make sense of a complex landscapes and rich experiences.

Developing an awareness and understanding of the political nature of the judicial sector and

the dynamics of local power relations is essential for structuring and implementing judicial

reforms which contribute to a sustainable peace. However, the international community, in

intervening within the sector, have failed to do this successfully. Reflecting the academic

criticism of liberal interventionism (Andersen 2012; Björkdahl & Höglund 2013; Baker 2010;

Bøäs 2010; Boshoff et al. 2010; Freire & Lopes 2013; Felices-Luna 2012; Jackson 2011;

Milliken & Krause 2002; Narten 2009; Schia & Karlsrud 2013; Richmond 2009; Richmond

2010; Roberts 2008; Taylor 2003; Umoju 2005; Willet 2005) a 2008 OECD report on fragile

states makes a common critique of judicial reform programs that focus on technical solutions

that attempt to recreate legal institutions from OECD countries and import laws from these

same contexts (OECD 2008: 38). The report criticizes this approach as ignoring the

"profoundly political" nature of justice and judicial reform (Ibid). In a previous report, the

OECD stated that "the question of who delivers justice and security services, and how, is

deeply and inherently political, wholly dependent upon local contexts, institutional capacities,

popular demands, and leadership. It cannot be answered generically" (OECD 2007: 17).

Their suggestion is to have external efforts focus on facilitating dialogue between competing

judicial systems or actors rather than creating laws (OECD 2008: 38). The lack of political

analysis as part of judicial reform is a reflection of how insufficient attention is given to the

unique factors that might impact the successful implementation of judicial reforms. I argue

that by understanding the nuances of political tensions, historical backgrounds, and the

divergent agendas by actors peacebuilding efforts will be built on a more robust knowledge

of the underlying conflicts. A better understanding of the problems allows for a better

opportunity to tailor solutions to the needs for building a sustainable peace and not defaulting

to a reliance on technocratic trainings which do not ultimately solve the problems.

Addressing the politics and power connected to the provision of justice is not as simple as

ceding to local groups. A study of community-based justice in Uganda found that "the

tendency to ascribe a morality and autonomy to local spaces obscures the ability of elites to

use informal institutions for purposes of social control" (Milliken & Krause 2002: 531-532).

The notion that traditional authorities might seek to exert control and influence on

populations through means of traditional justice should not be surprising. Traditional

authorities desire to maintain status in society, which originates through adherence to

traditional practices. Changes in these practices can alter the power they have over traditions

and thus could jeopardize their position in society. In fragile contexts, an uncritical embrace

of traditional power figures could very well be a recreation of the political imbalance which

contributed to the conflict in the first place, but that is not to say that traditional authorities

have no role in the future of society (Jackson 2010: 132). In a fragile context norms and

expectations are being reshaped and reimagined, judicial providers services could be altered

by the conflict, traditional authorities role in society might be changed, and new actors might

emerge during to fill vacuums of power. Amidst this change, the expectations and norms of

judicial users expectations and societies norms might have stayed the same or might have

changed. The potential for change is a key reason for not making assumptions about societal

norms after conflict and why it is important to investigate user voices in the reform process.

The presence of traditional justice creates an interesting dynamic, especially regarding the

politics and ownership of justice. As the above example from Uganda stated, there was

contention within the local community about individuals attempting to exert excess control

over the population. This internal tension exists between traditional authorities and state-

appointed authorities. It is becoming popular among researchers to conclude that instead of

trying to find the dividing line between "state and non-state," the focus should remain on

"how services are provided and by whom, how they are experienced by different users, and

how the providers are linked to each other" (Albrecht 2013: 2). This reflects a broader theme

in the literature on chiefs and the exercise of local power (Hinz 2011; Jackson 2011a; Jackson

2011b; Roberts 2008). The issue of state vs. non-state governance and judicial services will

be discussed further in the following section.

Likewise, the rhetoric of ownership can be abused by donors and NGOs using terms of local

ownership and participation. Creating the impression that local perspectives are incorporated

when in reality local voices, groups, and agendas are being "coopted into agents of a liberal

peace agenda" (Mac Ginty 2010: 399). A lack of ownership, or token ownership, of judicial

institutions and services, raises questions about the nature of debates around hybrid

governance. Do local and international systems work together (or not)? Do the reforms to

judicial institutions reflect, challenge, or incorporate into a neo-liberal hegemony (Richmond:

2011; Mac Ginty: 2007).

Regarding politics and justice, many authors are urging research to focus on the intersection

of politics and justice, specifically curious about "rethinking the Euro-American state-centric

model [of justice]" to increase the understanding of issues regarding access to justice and

security in fragile contexts (Albrecht et al. 2011: 4-5; DIIS Policy Brief 2010; Sannerholm,

Quinn, & Rabus 2016; Jackson 2011b; Scheye 2008; Mcloughlin & Batley 2012; Peterson

2010). They call for an exploration of alternatives instead of attempts to "fix failed

states" (Albrecht et al. 2011: 4-5). In 2008, the OECD made a similar case calling for "an

open mind with respect to institutional arrangements and honest acknowledgement of the

social foundations of existing forms of organization" (OECD 2008: 39). This research project

hopes to respond to this call by advancing the understanding of how individuals understand,

access, and navigate the judicial services and accompanying politics associated with judicial

access.

The political dynamic of justice connects to the idea of ownership, particularly the local

ownership of judicial services and judicial institutions. Scholars and practitioners explore this

dynamic by researching in security sector reform (SSR) (Albrecht & Buur 2009; Albrecht

2010; Anderson 2012; Baker & Scheme 2007; Bleiker & Krupanski 2009; Jackson 2011;

Mobekk 2001; Sedra 2010; Scherrer 2012; World Bank Report 2013). Within this research,

there is a broad consensus that justice and judicial reform should be locally owned, what

remains unsettled is how to achieve ownership (Martin & Wilson 2009: 314). The idea of

ownership begs the questions: who is local, and what does ownership mean? What can be

owned and by whom? (Jackson 2010: 131). These questions are at the center of my own

research in the field. One core concern of the research is in what ways power is exercised in

the administration and management of justice systems and what impact that has on those

seeking justice.

In attempting to define the local aspect of local ownership, Sara Hellmüller defines local

owners as "community-based and inclusive of varied voices and interests" (2012: 239).

Roger Mac Ginty's definition of local is "a system of beliefs and practices that loose

communities and networks may adopt" as opposed to a geographically situated place (Ibid:

852). Collectively, their definitions portray local owners as community-based individuals or

groups, whose voices, beliefs, practices, and networks form the basis of what consists of

locals who can then develop ownership.

One problem with talking about local owners is that it can be unclear who is 'local.' To

develop a more coherent understanding of the identity of local owners, Eric Scheye identifies

multiple categories of local owners: 1) National government and elite. 2) Local government

and elite. 3) Justice and security service providers. 4) Customers of the public good delivered

(Scheye 2008: 60). This breakdown of the various levels of what local can mean is most

helpful as it highlights the field of 'local' politics and power struggles that can enter into

judicial services and judicial reform. Theoretically, each one of these layers of the local

comprises of its own internal power structure that interacts with the other layers. Further, the

representation of the local can be manipulated by giving voice to certain segments of local

owners and portraying their views as representative of a monolithic local viewpoint.

The desire to increase local ownership over various development projects is noted by Roger

Mac Ginty who highlights an example of the growing inclusion of the idea of 'the local' in

recent years through the example of its use 382 times in the World Bank's 2011 World

Development Report and 197 times in the UNDP's 2011 Governance for Peace when it was

absent from the discussion in the 1992 UN publication *An Agenda for Peace* (Boutros-Ghali

1992; Mac Ginty 2015: 840). Recent re-discovery of the local clearly has resonance within

the literature and also the rhetoric of international intervention, but in practice

operationalization of what this actually means has been problematic and, in some cases,

tokenistic (Autesserre 2010: Kappler 2013a; Richmond 2009; Richmond 2010; Samuels

2006).

This reconceptualization of the local is important, Mac Ginty argues, because it has long been

deemed irrelevant due to five key factors: a state-centric worldview, the framing of the local

as something to be civilized and 'brought' to the rest of the world through empire,

colonialism, and globalization; a bias in social science which prefers universalizing findings

or making general claims; the growing power of state bureaucracies; and a global trend

towards urbanization (Ibid: 842). Collectively, these factors led to the local disappearing from

peacebuilding research over time. As Autesserre, Mac Ginty, Richmond, and others make

strong arguments for the inclusion of locals and local ownership into sustainable

peacebuilding efforts; it is important not to use it as a meaningless buzzword (Autesserre

2006; Autesserre 2009; Autesserre 2012; Mac Ginty 2014, 2015; Mac Ginty & Richmond

2013; Richmond 2009; Richmond 2010; Richmond 2011). The failures of liberal

peacemaking in Iraq and Afghanistan are significant turning points in the understanding of

how local ownership contributes to creating peace. Both Iraq and Afghanistan are examples

of technocratic reforms being implemented without accounting for local agendas and the

critical need for local ownership resulting in failed peacebuilding efforts (Jackson 2011a:

1807; Marriage 2011: 1893; Richmond 2013: 379; Trefon 2010: 705).

A genuine engagement with local ideas and developing a more inclusive view of local ideas

does not mean adopting an overly romanticized view of 'the local' as is a tendency in

discussions of transitional justice or restorative justice. Instead, Mac Ginty encourages taking

a critical localism. He acknowledges "individuals and communities at the local level can

provoke and sustain violence and exclusion." A critical localism aims to understand "that the

local is a social construction" (Ibid: 848). Further, his understanding of what is local is

relatively flexible. He offers four reasons for this flexibility. First, conflict areas tend to be

characterized by a "sense of belonging to a particular territory and movement from it" due to

violence. Second, insecurity as well as conflicts, tend to be about territory or the idea of

territory. Third, during a conflict, [territorial boundaries are] consistently made and remade

along with the demographics of areas. Fourth, conflicts "often involve labeling and relabeling

of people" (Ibid). Although Mac Ginty uses Northern Ireland as his example and is speaking

broadly about conflict, his descriptions are accurate to the experience in the Kivus as well.

The dynamic nature of conflict areas strongly influences his understanding of the local

simply as "a system of beliefs and practices that communities and networks may

adopt" (Ibid: 851). He adds

> To adopt this critical view of the local, it is useful to see the social, political and economic worlds in terms of networks, relationships, and activities. Thinking of the local as a site or a place encourages us to think in static terms. By focusing on activity, we are encouraged to have more flexible interpretations of what might constitute the local (Ibid).

The works of Richmond and Mac Ginty joins the growing body of research into the importance of local focusing on local realities in order to build sustainable peace (Autesserre 2010; Autesserre; 2012; Hellmüller 2016; Kappler 2013a; Millar 2014; Millar 2016; Narten 2008; Pouligny 2005; Sannerholm 2007; Verkoren & Leeuwen 2016). This research project aims to examine justice through the lens of critical localism, understanding that justice, particularly experiences of everyday justice, serve as a potential building block for sustainable peace in post-conflict environments.

2.1.1 What is Justice

The contention of this research project is to argue that much can be learned from user experiences of justice or everyday justice. Seeing justice, and particularly local justice through a political lens means examining and analyzing the everyday experience of people seeking justice at the local level. This research takes as it's starting point core questions facing those seeking justice from multiple providers – do I go to a police officer? If not, why not? If I do not do that, where else would I seek justice? What result can I expect to get? All of these questions are about justice, but all of them are also about political decision making relating to the positions, capabilities, and willingness of different providers and preferences of the potential justice-users that vary in different localities. One core feature of my research is mapping what this looks like for a variety of seekers of justice.

The idea of examining the everyday refers developing a sensitivity to the "seen, but unnoticed aspects of everyday life" (Featherstone 1992: 159). For the purpose of this

research, the term 'everyday justice' refers to individuals lived experience of seeking

solutions to problems in their lives. It is adapted from the idea of everyday peace which refers

to the "routinized practices used by individuals and collectives as they navigate their way

through life in a deeply divided society that may suffer from ethnic or religious cleavages and

be prone to episodic direct violence in addition to chronic or structural violence" (Mac Ginty

2014: 549). Similarly, everyday justice focuses on the processes and outcomes of an

individual, who considers themselves to have been wronged in some way and pursues a

resolution to their situation. While this research focuses on individuals who have experienced

theft seeking justice, the experience of everyday justice also applies to individuals who are

accused of an offense against another person and must defend themselves against the claims.

As everyday justice refers to common, lived experiences, this research focuses on the

experience of theft as opposed to other types of crime. The logic is explained in Chapter 4,

but there are two main reasons. First, the bulk of research on crime in the DRC focuses on

sexual violence, specifically sexual violence against women. Sexual violence is a serious

crime and worth the attention it receives, but the exclusive focus on sexual crimes against

women can lead to certain unhelpful framings of the full nature of the problem of judicial

access in the DRC. Sexual violence is a problem in the DRC, but it is not the only problem.

Examining the experience of the judicial process because of a different motivating incident

should identify if there are cross-cutting issues with the process of accessing justice across to

board or if some problems are unique to a specific type of crime. Second, judicial functions

capable of addressing violent crimes, including sexual violence, are state-run institutions

(Colonel Honorine, personal interview, June 14th, 2014). The purpose of this research is to

observe the process of seeking justice using a broad definition of justice. The issue of theft is one that is handled by a variety of judicial service providers which gives potential users more options to potentially express a preference for a specific provider or a specific typology of justice. In South Kivu, theft is a problem which impacts statistically more individuals than sexual violence[5] and can be addressed by a larger number of services.

This research takes the view the view that everyday justice is a product of three interconnected components: mental, societal and historical (Image 2.1). What an individual thinks about justice, including if justice is about an individual's rights or collective harmony, is shaped by personal and collective philosophical viewpoints (Carothers 2006: 8-9; Umoju 2005: 4). Societal structures impact mental, or philosophical, approaches to judicial services and shapes expectations of these services are rooted in history (Scheye 2009: 14). Personal experiences, as well as the experiences of others, also impact their conceptualization of justice. To be clear, I am not suggesting that any of these influences on perceptions of everyday justice are reducible to one specific source of influence. Mental conceptualizations influenced interpretations of history, but changing and evolving mental conceptions can influence understandings of history and societal practices and norms[6] (Bøås 2010: 457; Hellmüller 2013: 222).

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[5] In a survey published in 2014, theft was identified by 40% of the residents in South Kivu as the most pressing problem of justice while whereas physical violence was only identified as the most pressing problem by 13% (Vinck & Phan 2014: 62). The study did not specifically mention sexual violence as a category, but in the same survey 29% reported witnessing sexual violence against civilians in their community (Ibid 58). The purpose of citing these stats is not to suggest that one crime is more or less worthy of research, but to emphasize that in South Kivu four out of ten individuals believe theft to be a significant problem in their community which justifies the viability of studying theft alongside other types of crime in South Kivu.

[6] Practices and norms include traditions, customs, and religious practices.

Image 2.1   **Factors Influencing Individuals Conception of Justice**
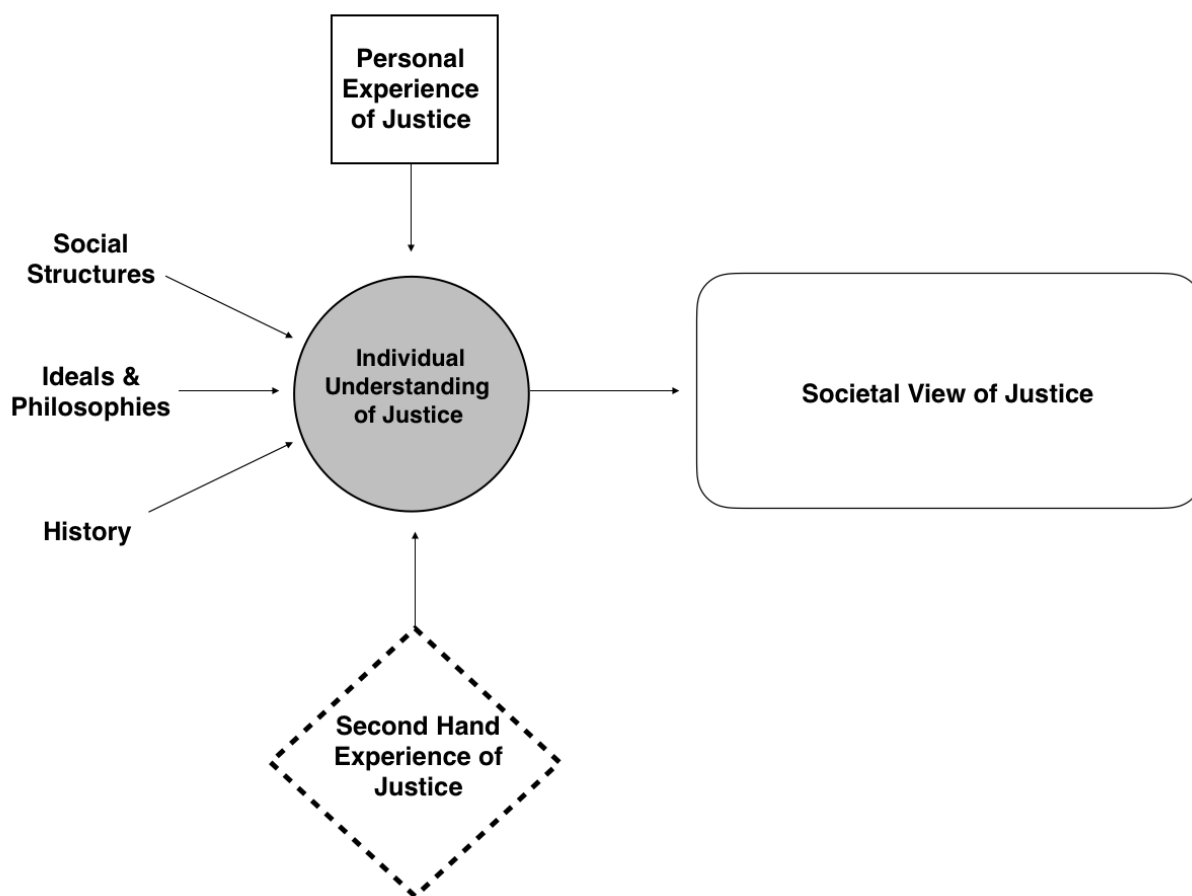
By approaching the study of justice from the perspective of the experience of justice, the

research acknowledges a bias towards more subjective understandings of justice. There is

value in philosophical discussions of justice, but this research on judicial experience

intertwines with personal experience such that it does not make sense to examine justice

unattached to additional influences. The mental constructs, ideas, and philosophies, are

discussed extensively throughout the remainder of this chapter. Further, the idea of normative

understandings of justice emanating from an individual's mind, influenced by the society they

live in, and impacted by the history of judicial experience is not limited to users in South

Kivu, DRC (Botero & Ponce 2011: 17; Samii 2013: 220). As a researcher, the normative

judicial experience to me might be different from another American, but a person raised in

Ferguson, Missouri or the upper Eastside of Manhattan, New York. This does not mean that it is impossible to identify universally agreed-upon principles of justice, but it does suggest that what an individual views as a normative understanding of justice is highly subjective depending on conditions in which individuals were raised (Hagmann & Peclard 2010: 541; Scheye 2009: 14; Sedra 2011: 119). It also acknowledges that 'justice' as an idea is not a fixed point but a social construct in itself (Botero & Ponce 2011: 4; Rawls 2001: 15). As such it is socially constructed within specific contexts, which may be one explanatory variable for the failure of very western models in radically different societies.

The next section addresses relevant definitions of justice to help focus the research. The following section examines the underlying foundations of traditional Western understandings of justice and how those influence judicial reform projects. The remainder of the chapter addresses non-Western understandings of justice and engages with current scholarly theories and approaches which attempt to create spaces for differing understandings of justice to co-exist.

2.1.2 Definitions

This section outlines the nature of justice at the local level in an African context. Specifically, it explores the idea that justice is not simply limited to laws and institutions but also relates to justice as an idea "that resides in the mind of individuals" (Carothers 2008: 8-9). This is particularly relevant in contexts where formal systems of justice are dysfunctional or not trusted and ideas of whether justice has been served or not become particularly important in looking at what is an acceptable or unacceptable outcome of a justice process.

2.1.2.1 Justice

What makes justice such an interesting arena for research is that it simultaneously exists as a physical extension of state power and authority (formal courts), an informal system of normative communal accountability (elders, ethnic chiefs, various dispute resolution mechanisms), and a dynamic mental construct living in an individual's mind (Ndulo & Duthie 2009: 259-260). Justice "refers to values and goals (freedom, fairness) as well as the institutions established to deliver them (police, courts)" (Bakrania 2014: 5). Erin Banes states that "justice is not a thing in and of itself, delivered by specific institutional mechanisms at the international, national, or local level: criminal courts; truth commissions; traditional courts; or reparations programmes. Rather, justice is a social project among many others" (Baines 2010: 415).

Justice is also a ritual that has the power to create and unmake a society. A judicial experience that is accessible, fair and consistent from the perspective of the user creates a positive impression of the state and reinforces a constructive social contract (Ibid). Ideally, a judicial system evolves along with society as societies progress which is true for both state judicial outlets as well as customary outlets (Joireman 2014: 237).

This relates to the idea of the political instrumentalization of disorder that attempts to explain the process of how Sub-Saharan states develop and continue to operate (Chabal & Daloz: 1999). Specifically, concerning crime, they argue that the hard boundaries between legal and illegal are both 'Eurocentric' and irrelevant. Irrelevant "not because there are no well-accepted notions of the legal and illegal," but because "the activities of the networks run by patrons and bosses resemble and straddle each other considerably" (Chabal & Daloz 1999:

79; Hagmann & Peclard 2010: 552; Huggins 2009: 342; Taylor 2003: 52). Essentially, legal

and illegal activities are simultaneously committed by the same security actors to the point

that the boundaries between legal and illegal begin to lose meaning.

At a certain point, citizens might find it more advantageous to avoid the state entirely or

circumvent the state's role in the judicial services altogether, even assuming that the state is

present or capable of enacting the law. As the state is but one source of judicial options,

individuals will either seek alternative judicial service options, whether it is customary

systems, non-governmental organizations (NGOs), faith-based groups (FBOs), family

mediation, or attempt to resolve the matter themselves by dialogue or revenge.

As such, justice is a composite of abstractions, societal structures, and historical realities. As

Carothers stated:

> "Law is also a normative system that resides in the minds of the citizens of a society. As rule-of-law
> providers seek to affect the rule of law in a country, it is not clear if they should focus on institution-
> building or instead try to intervene in ways that would affect how citizens understand, use, and value l
> aw" (2008: 8-9).

Each aspect of justice interacts with the others. Historical forces influence views of justice

which shape expectations of societal structures. Likewise, how an individual thinks about

justice influences their understanding and interpretation of history. Societal realities also

shape the remembrance of history and can shape expectations based on what options are

available. Similar to Carothers, Eric Scheye states that the "meaning [of justice/judicial

reform] resides in the different perceptions, beliefs, opinions and actions of national

stakeholders rather than in the minds, eyes, and reports of international actors" (Scheye 2008:

60). Scheye's definition of justice can be seen as both a critique of the tendency to impose

norms and behaviors on countries through judicial reform projects and a comment on how

important it is for ideas of justice to develop within the community in which it functions. In this way it links closely with critiques of the liberal state and assumed international norms (Richmond: 2008: 11; Richmond 2010: 684–685). These definitions share is the notion that a portion of justice is situated in the minds of individuals. Justice is about the "definitions of right and wrong; moral and immoral; fairness/equity and unfairness/inequity" (Scheye 2008: 70). Justice is also concerned with the "regard for the rights of the accused, for the interests of victims and the well-being of society at large" while affirming that the purpose of justice is to uphold "societal definitions, norms, and beliefs" (Ibid). Similarly, the rule of law is "concerned with issues of individual and collective responsibility; individuals and collective duty; personal and group dignity, and varying levels of individuals and associational autonomy" (Scheye 2009: 14). These definitions are extremely useful because they present thin notions of justice that expand in the context of a society's varying notions of fairness and morality.

Justice is understood to be the systems and processes that societies use to uphold and cultivate normative behavior. These systems and processes can be a part of a formal state, but judicial institutions can emerge from tradition or other communal initiatives. Communal norms are constructs of dynamic traditions in that they are both rooted in traditional practices and beliefs, but these practices and beliefs have the capacity to change over time.

This definition aims to describe justice in a value-neutral way but understands that justice is not value-neutral. It is unlikely that global, national, and subnational communities will entirely agree upon which norms are appropriate. This is part of what contributes to friction

when judicial ideas from various parties meet. Acknowledging that traditions are historically

embedded but also potentially quite dynamic important as well, this allows for recognition

that traditional authorities in some cases have evolved to reflect changing local realities.

2.1.2.2 Judicial Service Providers

An oft-cited estimate suggests 80-90% of individuals living in the Global South use non-state

judicial service instead of state judicial services (Albrecht 2013: 13). While it is difficult to

know how accurate that statistic is, Bruce Baker's research into non-state security structures

and hybridity within the security sector leaves little doubt about the importance of non-state

judicial service for citizens in the Global South (Baker 2010: 598). A core challenge to the

numerous judicial reform processes taking place in post-conflict contexts is that justice is a

means of enforcing and maintaining communal norms. What makes this task especially

difficult in post-conflict environments is that death of citizens and authority figures and

population displacement significantly disrupt social structures, the traditional authorities that

help maintain the structures, and the individuals who use them. Thus, the dynamics of post-

conflict societies present a context where norms, values, and traditions are in flux.

Justice is a product of multiple spheres: societal, historical, and mental. This research defines

justice as the process which upholds normative communal behavior. The justice system refers

to the network of dispute resolutions, processes, and authorities, whether formal or informal,

that mediates and/or enforces these decisions. Actors in the formal processes include courts,

lawyers, the police, and the military. Actors in the informal processes include family/clan

elders, traditional chiefs, religious leaders, IDP camp leaders and rebel groups. These legal

frameworks reside in any given society and, as Leila Chirayath argues, help to "mediate

social life and social disputes; without these, the level of cooperation necessary for everyday

life would be difficult to sustain" (Chirayath et al. 2005: 2). These frameworks consist of

normative behaviors which "maintain and reinforce these systems of meaning" (Ibid).

Chirayath concludes that while these norms are

> deeply constituent elements of cultural norms and social structures; power relations and structures of
> inequality are thus underpinned by everyday norms, and often entrenched by the rule based systems
> that perpetuate them. At the same time, these systems are continually shifting and changing, and are
> constantly being reinvented; while this happens within the confines of the social structures they serve
> to reproduce, they remain potential vehicles for social change (Ibid).

It is the dynamic and evolving nature of these normative frameworks that make justice

something that exists in laws but also exists in people minds. The historical and cultural

influences which created the legal and cultural norms are essentially a cultural narrative that

is, to some degree, in a constant state of revision. In stable, peaceful states, societal norms

and the legal framework produced are revisited, reinterpreted or reinforced through legal

challenges and legislative exercises. Despite the peace and stability experienced in these

societies, there remain deep divisions about the proper legal frameworks that should be

supporting communal norms. The deeply contested divisions in the United States around

abortion access, gun ownership, and gay marriage are just a few contentious issues that are

continually facing legal challenges with passionate delegations of supporters on both sides of

each issue (Abramowitz & Saunders 2005; Koleva et al. 2012; Motyl et al. 2014). Thus, the

legality of these particular issues is in a state of flux as the American population attempts to

grapple with what societal norms should be in America. The policing and enforcement of

drug possession is another relevant issue. Across the US, states are experimenting with the

reclassification of possession and usage charges as opinions of drug use and reflections on the

'War on Drugs' are re-examined. What these different issues have in common is the larger

question about 'what kind of world do we want to live in?' as both sides attempt to craft laws

and legislation to enforce the kind of society in which they want to live. If a stable,

developed, peaceful society experiences this degree of social discord about the proper legal

framework that governs a society, this level of discord will only amplify the experience of

protracted conflict and state failure.

A distinct advantage to using a definition of justice and judicial systems proposed here is that

linking definition of justice to communal norms allows for justice to be dynamic and change

with the evolution of society. Authors of a 2006 World Development Report addressed this

issue,

> The legal and norm-based frameworks in any given society serve to mediate social life and social disputes; without these, the level of cooperation necessary for everyday life— let alone a market economy—would be difficult to sustain. Norms and customs are embedded in the rule systems and institutions that govern everyday life, which in turn serve to maintain and reinforce these systems of meaning. Much like languages, rules systems are deeply constituent elements of cultural norms and social structures; power relations and structures of inequality are thus underpinned by everyday norms, and often entrenched by the rule-based systems that perpetuate them (Chirayath, Sage, and Woolcock 2005: 2).[7]

In the context of a post-conflict society where death and population displacement, societal

norms and values are in a state of flux, it is only logical that the values, traditions, and desires

of a group of people will change as well.

A disadvantage to using this definition, and any definition really, is that the dynamic nature of

the context, and the various actors within it, makes precise language a difficult endeavor. For

example, the terms 'formal' and 'informal' are problematic. While judges, lawyers, police,

and military make up what is typically considered the formal judicial system, some of these

actors perform dispute resolution services outside of the formal authority of their position.

Likewise, while traditional chiefs are typically classified as informal judicial actors, many

constitutions throughout Africa recognize traditional chiefs and the judgments they make as

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[7] This passage is taken from a background report published by Chirayath, Sage, and Woolcock prior to the publication of the 2006 World Development Report.

being a part of the formal legal system. Binary categories like formal and informal are ultimately unhelpful. Judicial actors and judicial networks are better understood to exist on a spectrum between what is traditionally considered formal and informal. The relative usefulness of binary definitions will be addressed below.

For example, in Sierra Leone formal and "semi-formal" legal structures are recognized authorities through the constitution (Corradi 2010: 76). In Mozambique, "traditional" chiefs bolster their rulings by using their affiliation with the police to increase the weight of their decisions by threatening state jail to those who do not comply (Kyed 2009: 194). In Benin the legal system set up by the state is so thoroughly corrupt, informalized and privatized that it can hardly be considered a formal system (Bierschenk 2008: 103). Each of these examples represent some of the challenges of purely binary labels of legal structures.

The state of flux experienced in post-conflict contexts is why the meaning of words is so important and yet so problematic. The contextual understanding of terms such as 'justice', 'state', and the 'rule of law' is important given that these terms are laden with specific values. In post-conflict settings in particularly, where national, local and international actors may seek to influence reconstruction in different ways, differing sets of values and norms converge upon these words. The following section examines the context of fragile states. The context is important since justice in corporates issues of power, governances, and ownership, each of these aspects of justice is exacerbated by the presence of conflict or attempts to move beyond a period of conflict.

2.2 Justice in Failed States

A consistent challenge in facing reforms in the aftermath of conflict is the uncertainty which follows non-decisive ends to an active conflict. This is partly reflected in the difficulty describing the nature of the state as seen in the labels failed states, weak states, collapsed, shadow or quasi, but in reality, these definitions tend to fixate on what the state is not rather than what it is (Hagmann & Didier 2010: 540). Morten Bøås critiques these labels for states because the labels fail to offer insight into the realities of power, peace, and security in the states (Bøås 2010: 444). The most common critique of these labels is that are they biased towards a neo-liberal end state without consideration of alternative possibilities. Thus, descriptions of states and efforts to reform them tend to be biased towards the goal of transforming failed states into neo-liberal ones. The OECD proposes a useful definition of fragile states as "one unable to meet its population's expectations or manage changes in expectations and capacity throughout the political process" (OECD 2008: 16). This definition is useful because it allows for state formation to be driven by the desires of citizens and does not privilege one particular style of a state or political organization.

The lament against Weberian/neoliberal biases is well established by Denis Tull, (2003) Morten Bøås, (2010) and the OECD (2007), but the emphasis to not forget the political dynamics of fragile states remains relevant. Failed states are understood to be states that have retreated from the public domain and are unable to provide basic public services. This description leads to the impression that there is a vacuum of authority in which the state is nothing more than "a mere geographical expression, a black hole into which a failed polity has fallen" (Titeca & De Herdt: 2010: 213). This can be a dangerous view. The solution to the

vacuum of power is to extend the reach of the state and provide the technical skills needed to

accomplish the extension of that power. Understanding the political and power dynamics in a

fragile state is a critical component to building a sustainable peace.

The OECD expands the concept of fragility as a spectrum by offering up descriptions of five

distinct types of fragile states:

> weak states, which exhibit low levels of administrative control either across an entire territory or in portions of it; divided states, which manifest substantial divisions between national, ethnic or religious groups; post-war states, which have experienced violent conflict; semi-authoritarian states, which impose order through coercion absent in political legitimacy; and collapsed states, whose core national institutions do not function at all. One could add to this mix fully authoritarian states, which, despite a track record of sometimes long periods of stability, are vulnerable to violent transitions (OECD 2008: 19).

The report emphasizes that multiple types of fragility can exist within a single state and that

the degree of fragility can vary significantly within the state (Ibid). The inconsistent

experience of fragility in a state is a reflection of its political nature. In their report, the

OECD argues for the opposite of fragility to be resilience which derives from "a combination

of capacity and resources, effective institutions and legitimacy" which are underpinned by

political processes that mediate state-society relations and expectations (Ibid: 11). The OECD

report also acknowledges that the process of state formation cannot be divorced from the

historical experience and that a communities' experience with the process of consolidating

state power[8] will significantly impact their expectations of the state (Ibid: 15). This is why

the tendency to focus on enhancing the reach of state power through technocratic means

towards a model Weberian type state is so shortsighted. Given the political complexities

present in fragile contexts, it is more productive to focus on "real governance" (Titeca & De

Herdt 2011: 216).

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[8] Chapter 3 examines the impact of the colonial experience, indirect rule, and a predatory state on the judicial landscape.

According to Olivier de Sarden, real governance is "infused with numerous neopatrimonial, clientelist, and informal characteristics" (2008: 4). De Sardan uses the term 'neopatrimonial' in the sense that there is a blurring of lines between public and private property, and clientelism is the presence of a highly unequal patron-client relationship. Informality means that real governance takes place outside of the bounds of formal norms (Ibid). While this should not be confused with the idea that there are not norms, de Sarden is careful to point out that real governance is full of practical norms known to local people (Ibid). He concludes by urging researchers to explore modes of local governance to understand how power functions in fragile contexts rather than settling for blanket labelling of local governance as venal or corrupt. As previous sections argued, the idea of justice, the practice of judicial institutions, and the reformation of judicial systems is ultimately concerned with moving towards a desired end state. This is not to suggest that societal progress and development ever reaches an end, but the values and ideals which inform how justice is intended to work influence the end judicial systems seek to create. When reforms are driven by mismatched expectations from donors, end users, and national leaders judicial systems can fail to deliver on their promise.

The impact of post-conflict politics and state ownership has a significant impact on the function of the national and local judicial landscape. Who is active as a judicial provider in the landscape of options for settling disputes dictates the options users can choose from and user preference for state-run, locally-run, traditionally-run, or internationally-run services could be significant. The significance of a users choice could be a preference for source of authority, a preference for a service type, or the user choice could be influenced by other factors. Thus justice, as an extension of power and authority, becomes an important measure

of both perceived authority and an important tool for peace. The next two sections continue

the examination of frequently used labels and conceptualizations of judicial service providers

in failed states.

2.2.1 Formal & Informal

Informal justice goes by many different names: traditional, customary, community-based,

grassroots, indigenous and local are all sometimes used interchangeably (Allen &

MacDonald 2013: 2). The use of informal justice, and similar terms, "has become a catch-

all designation to describe procedures in those places that other kinds of justice

provision cannot reach, and also as an explanation for why more formal judicial

mechanisms introduced in post-conflict settings seem to have such limited effects" (Ibid). In

2000, the organization Penal Reform International (PRI) published a valuable overview of

informal justice. The most crucial features of informal justice are in Table 2.1

Table 2.1 Informal Justice	
• the problem is viewed as that of the whole community or group;	• the rules of evidence and procedure are flexible;
• an emphasis on reconciliation and restoring social harmony;	• there is no professional legal representation;
• traditional arbitrators are appointed from within the community on the basis of status or lineage;	• the process is voluntary and the decision is based on agreement;
• a high degree of public participation;	• an emphasis on restorative penalties;
• customary law is merely one factor considered in reaching a compromise;	• enforcement of decisions secured through social pressure;
• like cases need not be treated alike.	• the decision is confirmed through rituals aiming at reintegration;

Penal Reform International 2000: 44, Trefon 2012, Allen & MacDonald 2013

Elements of traditional justice such as voluntary participation, community focus, and

restorative bias are understood to be the strength of informal justice mechanisms, while the

procedural flexibility, absence of records and potential gender bias are often cited as

weaknesses.

The focus on social harmony is one of the main reasons that many find favor in supporting

informal justice mechanisms (Penal Reform International 2000: 24). The PRI study identified

numerous advantages to informal justice mechanisms (see Table 2.2).

Table 2.2 Advantages of Informal Justice	
Geographic Proximity to Users	Cheaper filing fees than formal courts
Reduced Transportation Costs	Use of peer judges
Use of Local languages	No need for lawyer
Open & Participatory proceedings	Promotion of reconciliation over punishment
Quicker resolution than formal courts	Settlement of 'trivial disputes' thus reducing conflict

Penal Reform International 2000: 64, Trefon 2012, Allen & MacDonald 2013

The advantages found by PRI during their study of informal justice should not be surprising;

local populations tend to favor judicial mechanisms that tend to be a product of their

immediate community.

Although the advantages of informal justice mechanisms should not be ignored, it is

irresponsible to minimize the problems and challenges within it. These challenges are

recognized by PRI, but Tim Allen and Anna Macdonald offer a more thorough critique. Allen

and Macdonald concede on some items presented in the PRI study, including informal justice

being more accessible, affordable, and participatory experiences for users (Allen &

Macdonald 2013: 3-4). They recognize the adaptability of local systems to adjust to changing

conditions due to the lack of codification (Ibid: 9). A final important advantage identified is

that informal works particularly well in situations where the labels of "guilty, not guilty, and

perpetrator can be misleading and even harmful" (Ibid: 12-13).

Despite noting advantages, Allen and MacDonald provided many critiques, first the notion

that rural 'African justice' is guided by the spirit of Ubuntu, which is biased towards

restorative rather than retributive forms of justice (Ibid: 11). The South African TRC's

commission was cited as an example challenging the assertion of a bias towards restorative

justice due to the reluctance of the TRC committee to accept amnesty as an option, as well as

the victims' insistence on the acknowledgment of wrongdoing and learning new information

over reconciliation or forgiveness (Ibid). The Gacaca courts in Rwanda are also identified by

Allen and MacDonald as an example of a judicial process controlled by the "Rwandan

government and have been used by an increasingly oppressive and authoritarian state to

regulate reconciliation and justice processes in the peripheries" (Ibid: 9). The critique of

Gacaca is echoed by Bert Ingelaere, who views the idea of calling the Gacaca process

restorative solely based on the assumption that truth-telling leads to healing and restoration

"theoretical magic" (Ingelaere 2013).

In a study of customary courts in South Sudan, customary courts were observed to be

contentious and adversarial experiences for young people and women, who were also those

who had the most difficulty accessing these local courts. The courts served as a forum for

chiefs to assert their authority instead of serving restorative ends (Leondari et al. 2011: 123).

In the same survey, judicial users expressed a view of the law that was a power, resource or

tool that they could use to leverage their personal or property rights (Ibid: 128). Thus, even if

a verdict might restore land or stolen possessions to someone who experienced loss, it served

more as a practical avenue to reclaim what was lost more than some ideologically driven

desire for Ubuntu.

A central concern found in Allen and Macdonald's critique of some popular approaches to

informal justice was the tendency to view traditional systems as a universally adhered to

systems that all members of a society favored (Ibid: 19-20). This critique was mostly built

based on work done by Adam Branch, who offers a strong critique of what he called

'ethnojustice'.

At the center of Branch's critique is that an uncritical bias towards traditional justice

structures in post-conflict (or transitional) justice mechanisms can serve to preserve or re-

create a male dominated society that mostly serves to benefit the older males of society

(Branch 2014: 627). While others also make this critique, (Allen & Macdonald 2012; Jackson

2011), Branch's critique is one of the most eloquent and complete.

Branch argues that despite the appearance of traditional justice programs' desire to give local

voice to post-conflict reconstruction projects, these programs mostly co-opt traditional justice

structures to introduce liberal governance ideas into fragile states through transitional justice

programs (Branch 2014: 611). He states,

> There is no requirement that transitional justice grows from or responds to a social demand to be valid, as transitional justice is divorced from any necessary connection to social or democratic forces. Thus, when transitional justice invokes forgiveness in the name of reconciliation and peace, it is forgiveness for those who are deemed to be aligned with the liberal framework or redeemable within it. When it invokes punishment in the name of accountability, ending impunity, and peace, that is for those who are accused of having irredeemably violated the liberal order (Ibid: 611-612).

He adds that due to the ambiguities of the human rights framework, allies and enemies of the liberal peace will be determined by national political needs. Branch supports this claim by citing the decision to pursue ICC charges against the LRA but ignores the Ugandan government as one example (Ibid: 612). The fluidity within transitional justice is described as the "tensions and contradictions between the often lofty and abstract ideals of (transitional) justice and their actual enactments and realizations in practice" (Anders & Zenker 2014).

Branch pivots his critique of transitional justice to a critique of 'ethnojustice.' According to Branch, ethnojustice "conceives of Africans as possessing an unspoken unanimous worldview" that ultimately frames African institutions through a Western imagination and serves as an updated version of indirect rule (Ibid: 614-15). He argues that despite the 'Africanized' appearance of these interventions, the outcome is essentially the same as liberal transitional justice interventions. He bases this claim on the fact that both processes can be "effectively instrumentalized by states" and that the "internal logic of both can lead to reinforcing forms of inequality or domination through discipline" (Ibid: 615-616). His argument is echoed by Jackson and Allen/Macdonald as well.

 Since the end of colonial rule in Mozambique, traditional authorities have been gradually incorporated "into the service of the state" resulting in their current state where they are "little more than state bureaucrats" (Kyed 2009: 182). It is not uncommon for police to

investigate accusations of witchcraft, and chiefs often depend on state law when mediating a

dispute reflecting the blurring of clear boundaries.

The experiences of judicial reformation in Somaliland provide an interesting case. Customary

leaders were integrated with government authority in an effort to "create bonds between the

emerging de facto state" and a society with "multiple perceptions of what constitutes

legitimate representation and governance" (Moe 2011: 157). The hybrid authority structure is

examined later in the chapter, but the experience in Somaliland presents a scenario where the

binary notions of state and non-state become blurred in a hybrid structure. The Gacaca courts

in Rwanda serve as an example of "traditional processes" being reimagined by the state. The

Rwandan government presents Gacaca court as an indigenous Rwandan tradition that

respects human rights and provides restoration and reconciliatory services to users (Ingalaere

2013: 393-394). Bert Ingalaere strongly challenges this notion to the point of calling this,

particularly the restorative notion of the process, magical legalism (Ibid: 402). The Gacaca

courts are controlled by the Rwandan government and have been criticized by Human Rights

Watch and Amnesty International as being tools of an oppressive and authoritative state

(Allen & MacDonald 2013: 9). Although the roots of Gacaca lie in Rwandan tradition, the

modern incarnation is controlled by the Rwandan Ministry of Justice and is a version of a

traditional justice approach recreated to address a scale of crime the original version never

conceived of addressing (Chirayath et al. 2005: 20). This is not a critique of Gacaca courts as

much as it is acknowledging their close relationship with the Rwandan government.

Due to the realities of conflict, traditional authorities and the practices that served to maintain

their power are destroyed through death and displacement. While old, or traditional, forms of

authority are dismantled, new ones emerge since culture is a constantly evolving notion. Branch is particularly critical of the tendency of recreating traditional structures that alienate women and youth (Ibid: 622). He presents Alice Lakwena and Joseph Kony as examples of youth who used the spiritual realm to circumvent the limitations placed on them by a society dominated by elder males. Although men might settle for a society where they get to define the rules and oversee their enforcement, women, youth, and minorities likely would not (Ibid: 626-627).

Cultures are not inherently good or bad, but they all have their particular politics and power dynamics, and these dynamics influence the practice and experience of justice. Likewise, the ultimate aims of differing styles of justice might not be exceptionally different, and what separates them most is their procedures (Allen & Macdonald 2013: 12). The term 'traditional justice' is ultimately problematic as a label because it creates a false sense of judicial systems that pre-date colonial times, are relatively static, and reflect the values of a homogenous culture. Adam Branch offers the nuanced 'traditions of justice' where traditions are plural, contrasted, and contested (Branch 2014: 618). This label better reflects the dynamic nature of the category of justice it is attempting to describe.

While justice is a means of upholding communal norms, these norms change and evolve over time. Justice and tradition are not set in stone, and periods of conflict, though destructive, can create spaces for new social configurations that are not destructive. Branch describes justice as something that is 'yet to come' in that it is (or can be) open to "new voices, new options, new formulations and the ideas into the indefinite future" (Branch 2014: 628). This description speaks to the aspects of justice that live in the minds of individuals, and even if

the current traditions do not support it. Chum Himonga calls these living traditions and

suggests that it is possible for traditional justice structures to adapt to modern human rights

laws. Himonga cites the evolution of seven nations' growing acceptance of women being able

to inherit land and property from their parents as an example (Himonga 2011: 46). This is an

optimistic view that I do not discredit outright, and the ability of traditional justice to evolve

certainly presents the potential for traditional justice to incorporate respect for human rights.

This section examined the attempt to differentiate judicial service providers as either being

formal or informal processes. This distinction is ultimately unhelpful in framing useful

boundaries between different types of services. It is important to understand the informal and

informal labels as it is an element in determining the relative legitimacy of a judicial service

provider. The next section examines the usage of formal and informal as descriptive terms

which might create additional clarity when labeling judicial service providers.

2.2.2 State & Non-state

Another binary label used to attempt to create clarity when talking about justice is referring to

judicial services as state or non-state organizations. In every society, state and non-states

systems coexist. A background paper for the 2006 World Development Report states as fact

that only 5% of legal disputes end up in court (Chirayath et al. 2005: 2). Thus in well-

functioning societies, state and non-state systems often tend to "complement and reinforce

socially accepted codes and rules" and in many respects, formal laws are the formal

framework for normative behaviors (Ibid). In all states, the relationship between state and

non-state actors is part of the historical development of the state. Fragile states are no

different, with the possible exception that, as a byproduct of their fragility, the relationship

between state and non-state actors is constantly shifting (OECD 2008: 14). While all states are dynamic, change in fragile states can be more dramatic.

Systems that are a part of the state are understood to be best able to "provide the legal and procedural certainty required where serious penalties such as imprisonment are regarded as appropriate, or where the parties are unwilling or unable to reach a compromise" (PRI 2000: 4). Non-state systems are seen to best serve conflicts between "parties living in the same community who seek reconciliation based on restoration and who will have to live and work together in the future" (Ibid: 3). The Penal Reform International study on access to justice in Sub-Saharan Africa also highlights a common point of differentiation between state and non-state judicial services regarding the kind of justice it delivers. PRI found state judicial services tended to focus on retribution and non-state judicial services to focus on restorative methods of justice (Ibid: 9). The report suggests that many individuals in Sub-Saharan Africa prefer restorative methods because retributive methods of justice are not "always appropriate solutions for people living in close-knit communities who rely on continued social and economic co-operation with their neighbors" (Ibid). Bruce Baker adds to the discussion that the presence of 'non-state actors' in the judicial realm, some dating back many generations, suggests that the various actors are not "securing the same order" (Baker & Scheye 2007: 512). This is reflective of tensions within the ultimate aim of a service provider. The national police, local chiefs, a CSO, and an NGO might all share a desire for peace, but their expectations for what peace is and how it is actualized might result in the entities working to promote different ends.

Similar to the challenges found in the labels 'formal' and 'informal,' there are numerous

challenges in the labels 'state' and 'non-state.' A fundamental reason for the confusion behind

these labels is that it presumes a "neat differentiation between the realm of the state and realm

of society" which is not necessarily present (Hagmann & Peclard 2010: 552). Peter Albertch

& Helen Maria Kyed argue that clear distinctions between what is state and not state are

rarely seen as "normative and practical linkages and overlaps exist between institutions that

represent and draw authority from the central state and institutions that generate authority at

the local level. Collaboration between providers and competition between them over the

authority to provide services are continuous" (Albertch & Kyed 2011: 14). Traditional

authorities in Sierra Leone, Nigeria, and Mozambique are recognized as legitimate judicial

service providers by their respective constitutions, although the extent of their jurisdiction

varies (Obo 2011; Kyed 2014). Despite confusion behind the labels, there is still a desire by

many to use them.

One significant reason is due to the assumption that actors within non-state traditions of

justice are seen to be "backward and prone to human rights violations" (Sedra 2010: 108).

Eric Scheye attacks that critique stating

> Donors support state institutions that routinely violate human rights, in part to lessen the occurrence of
> the abuses. The same logic should be applied to non-state/local justice networks. Logic aside, it is an
> unanswered empirical question whether state justice and security institutions violate their citizenry's
> human rights more, the same, or less than non-state/local justice networks. State and non-state/local
> justice networks spring from the same culture, have endured the same national histories and embody
> comparable norms and values. In all likelihood then, there will be little variation in human rights
> abuses perpetuated by the two systems, and both systems are liable to be rife with abuse (Scheye 2008:
> 67).

Scheye's argument returns again to the reminder of justice being a framework deeply tied to

cultural norms and the historical context. The history and framework of norms influencing

non-state actors will not be much different from the norms impacting the practice of formal

justice. Granted, formal judicial institutions might have language and standards which

prevent discrimination based on gender, ethnicity, or sexual orientation, but it is likely that

any discrimination or human rights violations exist within both state and non-state judicial

services.

One way to reduce potential confusion is to understand areas with numerous judicial actors as

having "plural legal orders" (Albretch & Kyed 2011: 9). These legal orders within this

plurality exist upon a spectrum. Upon the spectrum there are actors who are employed by the

state, but "who either utilize power beyond the powers conferred upon them by the state, or

use power in a manner that is less determinative or enforceable than a court

decision" (Zurstrassen 2011: 116), such as police officers who act as street judges instead of

taking matters to the formal court. Likewise, actors are representing "non-state institutions

who have had some degree of power or legitimacy conferred upon them by the state" (Ibid).

In many Sub-Saharan countries such as Mozambique (Kyed 2009), South Sudan (Leonardi

2011), Democratic Republic of Congo (Rubbers & Gallez 2012), Ghana (Crook 2004), and

Somaliland (Moe 2011) traditional authorities are recognized by the state to preside over a

variety of cases and given state power to render verdicts.

The language of plural legal orders is sufficient in capturing the reality of the legal context in

fragile states, but the language does fall short of creating the evocative imagery of the labels

such as state/non-state or formal/informal. Thus, the additional label of 'power poles,' as

referenced by Tobias Hagmann and Didier Péclard (2010: 542-543), serves to fill that gap. It

is helpful to conceive of the plural legal orders as a judicial landscape, and that landscape is

filled with various power poles. These 'powers poles' are arrayed across the landscape. Some

are closer to others. Multiple paths exist between them, and the various strength and number of poles on the map ebbs and flows.

Each power pole represents an access point into a particular option for users to access as a means of resolving a given problem. The location of a potential user, in both a geographic and socio-economic sense, can determine which option they choose. While the judicial option selected by the judicial user might be determined, to some degree, by transaction costs, it is more likely that prospective users' choice of the actor will be determined by the power pole whose service is deemed most legitimate and reliable. These admittedly subjective criteria are further examined in this research project to try and better understand how users define legitimacy and reliability.

In a study of dispute settlement institutions in Ghana, researchers found that users looked for fairness and a balanced process in their judicial institutions. The emphasis was on making sure the "truth should be established, and that the parties involved must acknowledge or accept it" (Crook, Asante, & Brobbey. 2011: 135). The judicial biases identified in the study in Ghana were also found in a separate study by Peter Vinck in the Democratic Republic of Congo (Vinck et al. 2008: 44). While these two studies alone are not sufficient to make sweeping conclusions for an entire continent, it does further erode the assumptions that those living in sub-Saharan Africa prefer "traditional justice" or are strongly biased towards restorative justice (Crook, Asante, & Brobbey 2011: 135). The pursuit of justice is a search for the truth and also for some authority figure or entity to determine the appropriate accountability for the actors involved.

By examining two labels which attempt to create clarity about judicial service providers,

formal/informal and state/non-state, it becomes clear that binary categories are not productive

categorizations as judicial service providers in post-conflict nations defy neat categorization.

While it can be easy to pick apart the shortcomings of SSR and RoL approaches, as it has

been argued justice is a complicated web of cultural norms, political power, and personal

biases thus it is understandable that judicial reform is a difficult. The simplistic binaries

categorizations discussed in this chapter do no favors to reform approaches as they create

artificial depictions of local realities. The binary descriptions intersect with the default use of

the liberal peace as a normative understanding of judicial structures to help produce neat

conceptualizations of complex and messy realities in failed states. The next section examines

the liberal peace and how the dominant approaches to reforming judicial services and

institutions in failed states are built uncriticized assumptions and artificially binary

understandings of the judicial landscapes.

2.3 Contemporary Understandings of Justice

The two dominant paradigms of reforming judicial systems are security sector reform (SSR

or JSSR for Justice and Security Sector Reform) and the Rule of Law approach. Though

these are not the same in practice conceptually they are linked, although their connection to

each other is not often well articulated (Bleiker & Krupanski 2009: 5). SSR is "the efficient

and effective provision of state and human security within a framework of democratic

governance" (Hanggi 2004: 2; Bleiker & Krupanski 2009: 7). Similarly, the Rule of Law "is a

conceptual framework for a society in which the state adheres to the law, ensures equality

before the law, provides efficient and impartial justice and safeguards human rights" (Bleiker

& Krupanski 2009: 9). Where SSR and RoL projects agree is that both are designed to create

end states which are a product of systems and institutions adhering to the principles of the

liberal peace (Bleiker & Krupanski 2009: 7; Narten 2008: 307; Hickey 2012: 1232; Meagher

2012: 1073-74). The liberal peace is the sum of polices designed to expand liberty and

increase prosperity, and achieving the liberal peace consists of adopting democratic norms

and the right financial rules, specifically free trade (Oneal et al. 1996: 11). John Rawls is a

prominently cited scholar whose work is commonly cited as an orienting view of liberal

judicial theory.

Two important Weberian features of SSR programs are the "monopoly over the use of

coercive force" and the governance of security institutions (Sedra 2011: 16). Creating a

monopoly over the use of force is believed to be an essential precursor to creating peace and

this is essentially done through the creation and refinement of institutions. The focus on

institution-building as the means to the end has led critics to argue that the approach of SSR

is too technocratic (Jackson 2011: 1806-7; OECD 2008: 38; Addison 2008: 114; Chirayath et

al. 2005: 1). A problem with the fixation on the Weberian ideals which follows through to

issues of governance is that "states in Africa have never approached a Weberian ideal, nor

even resembled European approximations to that intellectual construct" (Tull 2003: 430).

Further, creating the institutional structure to enable a Weberian state and adhere to a

democratic process does not necessarily mean that the local political will exists to follow

through and use the institutions in that manner (OECD 2008: 36).

The following section examines the assumptions and understandings which underpin the

main approaches to judicial reform. Modern RoL and SSR approaches seek to establish

functioning justice systems that adhere to Western models of justice. These models operate

with an emphasis on state administered judicial services such as state courts and state police.

This is however problematic, not least because - as already discussed - a defining

characteristic of a fragile state is limited capacity.

2.3.1 Foundations of Reform

The work of John Rawls has provided important foundations for how justice and judicial

theory are understood by Western implementers of justice reform programs. In particular,

Rawls' work on 'justice as fairness' is particularly influential. Rawls positions justice as

emerging from social cooperation by members of a society (2001: 15). This social

cooperation to reach an agreement on a common understanding of justice stems from cultural

pluralism and an inability of citizens to agree on a singular moral authority or sacred text or

orient proper behavior (Ibid). The use of 'fair' does not imply a sense of egalitarian existence

under the law, but "the principles of justice are agreed to in an initial situation that is

fair" (1971: 655). In addition to social cooperation to agree upon a legal foundation, Rawls

also assumes political justice is the basis of the society and that justice is "a form of political

liberalism" (2001: 39-40). These assumptions form the core ideals of Western democratic

states. The reliance on this line of thinking by Western countries is clear, and these are the

assumptions which create the idealized path to becoming a liberal state in the image of the

modern Western state (Sannerholm 2007: 13; Willet 2005: 582; Bøås 2010: 445). In practice

this has been extremely difficult to achieve on the ground. For example, in Afghanistan,

different countries took the lead on different security institutions with Italy designated the

justice sector and Germany the police, but no integrated strategy guided the approach: "no

attempt was made to match sequencing of interventions in the justice sector", and no overall

strategy guided the interventions by the respective nations (Stone 2005: 23). While every

nation involved pursued a strategy which was designed to reproduce a functioning liberal

state, poorly coordinated effort compounded by unspoken assumptions resulted in piecemeal

SSR implementation. Similarly, in East Timor, UN interventions in judicial reform lacked a

coherent strategy. According to fieldwork of Kristi Samuels,

> No comprehensive assessment of the legal and judicial situation was undertaken before actions were
> initiated. The focus was almost entirely on issues of criminal law and justice, rather than on the
> creation of the areas of law associated with the longer term day-to-day governance (Samuels 2006: 16).

The judicial reform approach in East Timor uncritically assumed that the Weberian state

model was the only logical end product for their reforms (Andersen 2012: 113). The UN's

desire to build a liberal states created a disconnect with the population the structure was

meant to serve. For example, local frustrations were directed towards the judicial system

established by the UN which required evidence to support convictions of individuals for

committing a crime. Local people did not understand why this was needed as they "knew

who the real rebels were" and could just identify them (Harper 2005: 8-9). This is not to

suggest that both approaches are equally valid, but to emphasize that the expectations and

function of the justice system by reformers and end users were not aligned (Ibid).

This reliance on an idealized liberal state is most clearly observed in the pattern of reform as

a process of simply building the right institutions as seen in Afghanistan and East Timor. In

addition to the lack of alignment in understands how the justice system worked and what the

purpose of the system was designed for was also the sheer scale of what needed to be rebuilt.

A World Bank assessment of East Timor identified that "70% of all administrative buildings

were fully or partially destroyed, and almost all office equipment and other moveable

property left destroyed" so national records, property documents, and court files no longer

existed (Sannerholm 2007: 3). The relevance of this piece of detail is that it reflects the

massive scale of governmental function across the board post-conflict and highlights that

post-conflict reforms are not merely repairing dysfunctional systems but entirely rebuilding

systems and institutions from the ground up.

The reliance on normative western frameworks is seen in Rawls' two central principles of

justice;

> first, the liberty principle (equal liberties for all); second, fair equality of opportunity and the difference principle (i.e. economic inequalities are tolerable only when they are meant to ameliorate the least-advantaged members of society). The implementation of these principles would make a society qualify as just (Rawls: 1971 3-4).

These principles underpin Rawls' view that justice is the protection of individuals' equal

dignity. The reliance on the individual, as opposed to a collective, is a particularly western,

liberal understanding (Garza 2013: 3; Umoji 2005: 4). Oscar Garza interprets Rawls' view of

justice to conclude that the protection of equal dignity determines that society is "better

structured only if it respects all its individuals equally and treats them as ends in themselves

rather than the means for an externally imposed end" (Garza 2013: 3). Amartya Sen advances

a nuanced view of Rawls' perspective on justice by offering a capabilities and freedoms

approach to justice. Using this approach Sen argues that "human lives should be seen

inclusively and allowing individuals to be accountable for their actions" (Sen 2009: 19).

Advancing equal dignity is a worthy goal of justice, but there is tension in the focus on

individuals within this definition, as individual and communal rights frequently exist in

tension in non-Western settings. Although non-western judicial inclinations, specifically in

Sub-Saharan Africa, are depicted to value communal rights over individual rights, the reality

is that these values exist in tension throughout modern Sub-Saharan African societies

(Cohhab 1987: 311; Woodman 1998; Himonga 2011; Oba 2011). This study accepts that

tension exists between the rights of an individual and collective rights. Instead of attributing

greater value to individual rights or collective rights, the use of hybridity and frictions as orienting theories anticipates the tension within the different perspectives of rights and does not demand that tensions disappear. This will be further discussed in the chapter.

One particular attempt to work around the inherent tension between individual and communal rights is to work from a theory of injustice. Using non-ideal principles as a conceptual framework, Oscar Garza contends it is possible to engage with "real/non-ideal circumstances of the world" (Garza 2013: 10). Garza argues, a theory of injustice is transitional in that it "involves identifying the procedures, policies, background, concepts, and/or outcomes that best serve the aim of reducing injustice while leading towards the ideal; that is, it deals with the question about how can we advance justice once we know what we should aim for and why" (Ibid). He argues that a theory of injustice is both compatible with ideal theories and can connect with both liberal and illiberal perspectives of justice.

Amartya Sen recognized that justice is never fully achieved, but that justice is always being made and remade (Sen 2009). This research agrees with Sen in that regard. Similarly, Garza states that injustice is a product of "people's actual behavior, through actions and interaction with institutions which reinforce a structure to maintain an unjust world" (Garza 2013: 12). The existence of tension within philosophical discourses is recognized in this research, and though it is beyond my ability to conclusively settle this argument, the appeal of Garza's incremental approach to a theory of injustice is more influential in my approach than any other specific theory of justice. The influence of Garza's approach is less on the conceptualization of justice versus injustice, but more focused on individuals behavior via the interaction, or avoidance, of judicial services which help shape their world.

Further, Rawls acknowledges that justice emerges from a society through a process of agreement citizens reach amongst themselves (Rawls 2001: 15). This alludes to his acceptance that justice is a process of discussion, dialogue, integration, politics, and power. Given the historical experiences in societies, it is reasonable to assume that the expectations of justice in various societies will contain differing views on the definition of justice and how judicial services function within a society. Although Rawls presents justice as something that emerges from a society, he presumes the base unit of society is an individual, which is not a universally accepted understanding (Umoji 2005: 4). This is problematic in post-conflict societies where conflict has disrupted the normal function of society. As national institutions and systems are being rebuilt after war, so are communities within the nation. If the state is being reconstructed through an idealized path to a liberal state with an individualized bias, while some communities might continue to function in more communal, traditional ways, this might lead to challenges to the justice system being established through donor support.

This section briefly outlined the work of John Rawls as his contribution to thinking about justice continues to influence judicial reform as a way to understand the mutual philosophical underpinnings of SSR and RoL interventions. Rawls presents justice as an untethered, universal human desire centered on the preservation of individual liberty. The focus on individual liberty as a driving function of justice is generally agreed upon in Western nations, but not a universal viewpoint (Umoji 2005: 11). Rawls advanced an influential argument for liberal principles of justice which serve as the foundation for SSR and RoL, packaging together good governance and democratic models based on unexamined assumptions of universal principles of justice which, as has been argued, are not universal (Andersen 2012:

109). This creates the potential for an ideological disconnect between those implementing the reforms and the users of justice systems as mentioned in the example of East Timor. The practical impact of these biases, as seen in both SSR and RoL, is that the unexamined assumptions of what the end state of judicial services should be resulted in top-down or piecemeal reform efforts, as highlighted in Afghanistan where the assumption was that the reforms would simply work together. Even when there is an effort to engage with end-users or adopt 'bottom-up' approaches to reform, "international actors focus on the development of the liberal state, its institutions and it's neoliberal economy" (Richmond 2011: 560). Local perspectives are under-explored and under-appreciated as a source of important insight which could support the development of more accepted, effective and locally relevant justice systems. The next two sections examine both Rule of Law approaches and SSR in greater detail as these two approaches to judicial reform represent the traditional top down, technocratic approaches to judicial reform.

2.3.2 SSR

The break-up of the Soviet Union in the early 1990s "created space for issues such as governance, poverty reduction, and conflict prevention to enter the development and security assistance agendas of OECD countries" (Ball 2010: 31). By 1999, UK Secretary of State for Development Clare Short promoted Security Sector Reform as a framework for addressing problems of governance, poverty reduction, and conflict prevention (Sedra 2010: 16). Security Sector Reform's chief goal is to oversee a process of improvements to the implementation of security services in a country, typically one emerging from a period of conflict (Andersen 2012: 109; Baker & Scheme 2007: 524-525).

It is not surprising that in the relatively short history of SSR efforts, the track record ranges

from mixed to poor. Donor-supported SSR in Sierra Leone rebuilt a legal system partly

responsible for the initial violence (Jackson 2011). In Kosovo, the pressure to get 7500 police

officers on the street in two years meant that, as one international advisor stated, from the

beginning the "concern [was] with numbers rather than quality" (Milliken & Krause 2002:

528). One factor common in all of these failed experiences of SSR is the tendency to

minimize the importance of local politics and power dynamics in successful reforms. Put

another way; the external actors viewed institutional reform as an end in and of itself (Belton

2005). While it is not the intention to brand SSR as being the cause of every failed peace-

building effort over the past two decades, it is important to note that focusing on institutional

reforms as ends unto themselves has been a critical and recurring mistake.

A central challenge to implementing international efforts to change, improve, and influence

the security sector of fragile states is that the concept of SSR often a catchall term. At its

core, SSR refers to organizations within the state with the authority to "use, order the use of,

force, or the threat of force to protect the state and its citizens, as well as those civil structures

that are responsible for their management and oversight" (Chalmers 2000: 6). The goal of

SSR to support, reinforce or potentially create sustainable order in a post-conflict

environment is an important task and gives significant attention to the governance of security

sector institutions (Sedra 2010: 16). The focus on governance is particularly important given

that many in post-conflict societies lacking national institutions to deal with human rights

violations, both past and present (Ibid). Addressing human rights abuses is not the core

purpose of SSR programs, but ending human rights abuses represents an idealized end for

reforms.

Although this definition is relatively straightforward, OECD guidelines expand the focus of

SSR from purely military realms toward the human security agenda (Jackson 2011: 1811).

So, while many states classify security sector reform as military reform, other nations might

include judicial reform in their definitions. Further, the term "reform" is problematic because

the extent of the challenges in post-conflict and fragile states in security organizations

requires a reworking of the social contract, which is ideally the work of a dialogue between a

government and citizens, not an externally driven process.

Robin Luckham & Tom Kirk offer a definition of security, which includes justice. They state

that security is "a process of political and social ordering, maintained through authoritative

discourses and practices of power" (Luckham & Kirk 2012: 10). They opted for a two-part

definition to reflect the "web of relationship between political and social orders" as well as

the "entitlements between individuals and groups" (Ibid). Additionally, their definition

"rejects an exclusively state-centric" approach to security (Ibid).

An expanded understanding of SSR articulated in OECD reports is the "term used to describe

the transformation of the 'security system' which includes all the actors, their roles,

responsibilities and actions - working together to manage and operate the system in a manner

that is more consistent with democratic norms and sound principles of good governance, and

thus contributes to a well-functioning security framework" (OECD 2005: 20). The OECD

describes security as

> an all-encompassing condition in which people and communities live in freedom, peace, and safety,
> participate fully in the governance of their countries, enjoy the protection of fundamental rights, have
> access to resources and the basic necessities of life, and inhabit an environment which is not
> detrimental to their health and wellbeing. The security of people and the security of states are mutually
> reinforcing. A wide range of state institutions and other entities may be responsible for ensuring some
> aspect of security (Ibid).

This definition of security is justifiably broad and essentially describes security as the condition when a person can go about their lives without being harassed, robbed, beaten, or killed. Security building towards that particular end, a life relatively free of harassment and including structural mechanisms to handle harassment should it arise, does not dictate a particular state model. Yet, SSR is biased towards creating and recreating liberal democracies, given this is the preferred model of donor countries. Unfortunately, this bias serves as a set of guideposts rather than a solid foundation, because there is not a central theory guiding the implementation of SSR programs (Chirayath et al. 2005: 1; Sedra 2010: 102-108). The current debate over whether Weberian state models or Tillyian models are better conceptual understandings of state formation in addition to the lack of a consistent conceptual understanding of justice from theory to practice has dramatically impacted the implementation of reforms. SSR influenced by a Weberian view prioritizes the state gaining a monopoly on violence, while a Tillyian view sees violent struggle as a natural part of state formation (Meagher 2012: 1076; Sedra 2010: 16). As SSR remains conflicted between theory and implementation the fact remains that despite "SSR programming [seeking] to be a 'people-centered, locally owned' project, in practice, SSR's state-centric approach customarily fails to take into account the real needs, wishes, and demands of local populations for effective service delivery" (Baker & Scheye 2007: 505). While it is important and essential to continue exploring the idea of the state, the fact that SSR attempts reform while also trying to define the nature of the state is problematic.

A final point to mention in this section is the question of the ownership of judicial reforms, which was discussed in section 2.1. Ownership is not just a reference to national and international relationships, but ownership encompasses the varying strata of social dynamics

and tensions within a society (Mobekk 2010: 234). Ownership[9] is a crucial concept in judicial

reform as it addresses the tension present in broken relationships between states and citizens

and the extent to which they are incorporated into the planning and implementation of

judicial reforms. When reforms are implemented in a way that treats the post-conflict

environment like a 'blank slate' and ignores local norms, local history, and local power

relationship it can "recreate or reaffirm dysfunctional and potentially violent

relationship" (Miliken & Krause 2002: 528; Sedra 2011: 119; Andersen 2012: 110). The next

section examines the Rule of Law, which is similar to SSR, but differs in ways which are

important for this research project. Rule of Law is more exclusively focused on the judicial

sectors as opposed to SSRs broad security sector approach. Importantly, SSR and RoL

approaches can share common assumptions which can lead to deficiencies in countries where

the reforms are implemented.

2.3.3 Rule of Law

As stated previously, SSR and RoL share many common concerns and agendas. Whereas

SSR focus is broadly on "actors retaining the authority to use force in order to protect the

state and its citizens", RoL refers to the "aspirational end state where the exercise of state

power is controlled by law and restrained in the interest of the citizens" (Berling et al. 2012:

100-107). The RoL is interested in reforming the systems, structures, actors, and ideals of

justice. The World Justice Project (WJP) defines the RoL as a system that upholds four

universal principles; (1) "The government and its officials and agents, as well as individuals

and private entities, are accountable under the law." (2) "The laws are clear, publicized,

stable, and just, are applied evenly, and protect fundamental rights, including the security of

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[9] Ownership was first addressed in section 2.1 and will be discussed in the context of hybridity in section 2.5.1.1 and in the context of frictions in 2.5.

persons and property." (3) "The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient." (4) "Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources and reflect the makeup of the communities they serve" (Agrast et al. 2013: 3). A more concise definition suggests that the RoL is a set of rules and regulations, but also a framework "predicated on consent, the equality of rights, and the autonomy of individuals" (Chandler 2004: 326). The description of a framework is common, and thus the RoL describes the meeting point of the ideals of justice, the systems that provide judicial services, and the degree to which those services receive support at the communal and state level. RoL projects operate at the intersection of judicial ideals and the praxis of justice. For a government to respect and rule according to the RoL, it implies a harmony between the ideals of the citizens and the actions of state systems and institutions.

While the RoL does broadly project ideals of how a government should be structured, it also provides a functional definition as well. Ideally, a state operating under the RoL will have a "stable framework of rights and obligations" reducing potential risks investors might face in working in the country (Anderson 1999: 2). The economic component of RoL is seen in a 1997 World Development Report that outlines three essential conditions for markets to properly function: "(1) protection from theft, violence, and other acts of predation; (2) protection from arbitrary government actions - ranging from unpredictable, ad hoc regulations and taxes to outright corruption - that disrupt business activity; and (3) a reasonably fair and predictable judiciary" (WDR 1997: 5). According to the report, the absence of these characteristics creates the "lawlessness syndrome," which raises costs, deters investment, and depresses the economy (Ibid). In the report, these three characteristics

are focused on property law, but they are relatable to other types of justice as well. The RoL

is also important to the economy as it "was needed to create a clear context in which to invest

and extract an economic surplus. Dealing with a myriad of chiefs and other political entities

through processes of ongoing negotiation was simply not practical" (Hoyweghen & Smis

2002: 576). Further expanding the values embedded within the language of RoL extends

beyond just endorsing neoliberal economic values; in the ideal, a successful RoL project

protects citizens against the arbitrary power of the state or non-state elites (Crook, Asante,

Brobbey 2011: 119).

What is most interesting about this expanded vision of how the RoL manifests itself in a state

is how much is dependent upon neo-liberal conceptualizations of the state. Law "is present in

everyday life insofar as it uses the authority of the state to enforce, regulate, or define social

and economic relationships from marriage and sexual behavior to economic exchange, the

disposal of property and the power to command the services of others" (Ibid). Given that the

RoL is rooted in justice, which is understood in this research to be a function of upholding

communal norms, it makes sense that RoL would reflect the communities from where it

originates, but RoL programs tend to favor the legal norms of donors (Berling 2012:

103-105). From 2011-2015, the World Bank, has spent more than $2 billion dollars to support

Rule of Law programs globally (World Bank HDR 2015: 59). The tension between individual

and communal values is one a particular manifestation of the different conceptualizations

brings to reformers and judicial service providers.

In post-conflict contexts, it is not surprising to find a significant disconnect between the

desires of how the RoL, or experience of justice, should be and the reality of the judicial

experience. Bakrania develops a list of characteristics for security decision making in fragile

contexts: (1) security decision-making processes are inherently political, (2) citizens have

little influence, (3) multiple sources of authority are involved, (4) capabilities are limited, and

(5) there is a very real limitation to the political will for change and the capacity to oversee

change (Bakrania 2014: 17). Although Bakrania is broadly discussing the security sector,

these same issues are present in the judicial sector, especially regarding state-backed judicial

services.

Thomas Carothers, a widely cited critic of RoL interventions, identifies the primary barriers

to successful RoL projects as "political and human" going on to say,

> Rule-of-law reform will succeed only if it gets at the fundamental problem of leaders who refuse to be
> ruled by the law. Respect for the law will not easily take root in systems rife with corruption and
> cynicism since entrenched elites cede their traditional impunity and vested interests only under great
> pressure (Carothers 1998: 96).

Carothers concedes that liberal democracy is "intimately connected" with RoL interventions,

but adds that this connection tends to be "overly simplistic" noting that democracies often

exist with "substantial shortcomings" concerning RoL, even if well-established Western

democracies (Carothers 2008: 7). He expands his critique of the overly technical nature of

RoL reform projects by saying, "law is not just the sum of courts, legislatures, police,

prosecutors, and other formal institutions with some direct connection to law. Law is also a

normative system that resides in the minds of the citizens of a society" (Ibid: 8-9). This leads

him to question if practitioners should focus on institution building or "try to intervene in

ways that would affect how citizens understand, use and value law," noting compliance with

law depends on the perceived "fairness and legitimacy of the laws" (Ibid). Like critiques of

the technocratic reforms of SSR interventions, Carothers concludes that the current focus on

institution building in RoL projects is "more out of instinct than well-researched

knowledge" (Ibid).

The, often unchecked, culturally conditioned understanding of justice has caused RoL

advocates to "translate the rule of law into an institutional checklist… [resulting in]

breathtakingly mechanistic programs" (Carothers 2006: 8-9). Similarly, the biases of

international actors tend to alienate non-state actors from the justice process (Scheye 2008:

70). Building upon this critique, Michael Anderson argues that the language of justice used in

many contexts is foreign to the majority of justice users. In these states, the law

> is transacted in a foreign language, and often a language associated with the injustice of colonial
> rule is doubly alienating for those who have no access to it. The second sense in which the law is
> foreign is that its most fundamental concepts, including notions of identity and causation,
> are commonly at odds with the frame of reference used by local communities (Anderson 1999:
> 21).

Anderson continues his critique stating that while courts' symbols are "the beneficent

neutrality of blind justice," they are "designed to be operated by social and market forces"

and thus "reflect the agenda of those forces in their decisions" (Ibid: 9). A common refrain in

these critiques is that, in fragile contexts, RoL, and the justice systems with it, serve to

reinforce agendas that reflect external interests rather than the benefit of the citizens. These

themes are identical to the critiques of SSR identified in the previous section.

The critiques of Carothers and others, highlight the impact of liberal ideals have on RoL

interventions. The critiques are not intended to convey the idea that liberal democratic ideals

of justice are inherently wrong, but that these ideals are not necessarily universal nor can they

be imposed on other societies without creating potentially problematic outcomes. Paired with

Rawls view that justice emerges from a consensus of citizens seems to strengthen Carothers

suggestion of focusing on how individuals "understand, use, and value law" (Rawls 2001: 15;

Carothers 2008: 8-9). To fully adopt an end-based view of RoL and SSR, it is essential to

understand the end societal aims of the external actors, national leaders, local power brokers,

and, ultimately, the end users of security and judicial services. The failures of RoL and SSR

stem from unexamined beliefs on the end state combined with the often piecemeal,

technocratic reforms that fail to account for the holistic reality of judicial reform (Andersen

2012: 110).

The next section begins a transition into alternative ways to look at justice in order to offer

reforms better connected with the ideals end users. Developing to a bottom up understanding

of how judicial systems are used is not a utopian project as it does not assume the ideological

perspectives are superior to reformers or western nations. The goal of incorporating bottom

up, or user views of judicial systems and services seeks to acknowledge that within judicial

reform many different views of justice exist and that tension left unaddressed will continue to

lead to failed reforms.

2.3.4 Shifts in Reform

The evolution of western states informed modern state theories, but post-colonial African

states challenge these old concepts. It is reasonable to assert that a core function of a state is

to provide security and justice services to its citizens, but the provision of these services

might not fit into traditional models. The often-cited statistic that 80% of people in Africa

access justice through non-state providers highlights a context where the state competes with

other actors (Baker & Scheye 2007: 504). This statistic also suggests that the realities of state

practice might not fit within conventional structures of western liberal democracy. RoL and

SSR projects can do better by adopting the end-based definition advanced by Rachel

Kleinfeld Belton (2005). In writing on trust networks in state-building, Charles Tilly

identified the tension facing judicial reform efforts, that from the top down rulers face "the

challenge of how to get access to essential resources currently embedded in trust networks,

and how to enlist cooperation and consent on the part of participants in trust networks" (Tilly

2004: 14-15). In the Democratic Republic of Congo, the Belgians, Mobutu, Laurent Kabila,

and Joseph Kabila used indirect rule to gain access and control of local networks, but there

has not been an increase in trust of authorities. Tilly continued,

> from the bottom up, the problem looks very different. Ordinary people must worry about how to assure
> their own futures and those of the relations on which they rely as they defend crucial resources from
> expropriation. Because many vital enterprises that are either irrelevant or hostile to rulers' interests
> depend on the maintenance of trust networks, ordinary people or their patrons must usually preserve
> some insulation between their networks and public politics (Ibid).

This adds insight into the challenge facing judicial reform programs and why it is essential to

incorporate actors from the entire spectrum of stakeholders.

2.3.4.1 Judicial Reform & End Users

A trend observed in overall scholarship on SSR and reflected in this research is a shift

towards adopting a bottom-up view of SSR, also referred to as an end-user approach. End-

based peace-building focuses on the outcome of reforms and interventions instead of taking

the assumption that the institutions themselves will create the desired end state (Belton 2005:

8). An advantage and challenge of the end-based view is that it does not prescribe a single

pathway towards the desired end (UN RoL Intervention Report 2006: 10). The initial stages

of end-based peace-building apply thin definitions of justice and move towards thicker

definitions depending upon the desired end and the initial context (Ibid). In this respect, a thin

definition of RoL is a "government that stands above the law and is not accountable to it but

exercises its power through laws" (Bleiker & Krupanski 2009: 27-28). Belton begins from

the position that RoL ends are "so contested and historically determined, that they cannot be

stated as given" (2005: 8). Belton presents five RoL ends: government bound by law;

equality before the law; law & order; predictable, efficient justice; and a lack of state

violation of human rights (2005). Achieving these ends might take place on different

timetables, and it is possible for the ends to be in conflict with each other.

The shifting focus towards end-users is growing as prior reform failed to achieve the desired

results. An end-user focus advocates for reforms which appreciate the complex and

multilayered relationship between SSR and RoL and the need for more holistic solutions.

"Bottom up" thinking is driven by the idea that incorporating end users into the reform

process reflects a desire to make the reforms work better for those who will ultimately use the

services and institutions and is a part of a larger pro-poor attitude in development (Van Rooji

2012: 25 Botero et a. 2012; McLoughlin & Batley 2012: 30-31; Milliken & Krause 2002:

530-531; Meager 2012: 1082; Autesserre 2009: 260; Richmond 2006: 298; Niels & Karlsrud

2013: 234: Richmond 2013: 395). The Hague issued a report encouraging the adoption of

"end based" approaches to RoL and SSR as well as greater research into the role of non-state

actors' potential contribution to increasing the RoL (Hague Report 2007: 9). What remains

challenging about adopting an end-based approach is that by removing predetermined

pathways to peace-building, it opens up a variety of pathways and constructions of peace and

leaves open the possibility that the final product might not be a neoliberal state with a liberal

peace. Belton concludes by stating

> After twenty years of such fevered activity toward ambiguous ends, however, it is time to take a step
> back and reflect. Rule-of-law reformers have been working to improve an ever-growing number of
> rule-of-law institutions. However, the ends these institutions are intended to serve in society have
> become obscured (2005, 28).

The obscuring of the ultimate ends of justice lies at the center of the documented failures and

ongoing challenges in SSR and RoL projects worldwide. If peace-building activities are

going to adopt an end definition, then it must also accept that there is "no single model" for

peace to assume (RoL Intervention Report 2006: 10). Building upon the five ends proposed

by Belton, there are a wide variety of formations that could bring about those ends.

This section begins to focus on creating an understanding of justice from below. Attempting

to developing a bottom-up view of justice, or other concepts, is not unique to this research

project as bottom up, or grassroots perspectives have been an interest for peacebuilding and

transitional justice researchers for many years. In 2010, Séverine Autesserre published *The*

Trouble with the Congo. Autesserre emphasized the importance of "bottom-up thinking" and

how low-level conflict can play a significant role in conflict (2010). She argues,

> that a dominant international peacebuilding culture shaped the intervention in the Congo in a way
> that precluded action on local violence, ultimately dooming the international efforts… In the Congo,
> this culture established the parameters of acceptable action… It authorized and justified specific
> practices and policies while excluding others, notably grassroots peace building. In sum, this culture
> made impossible for foreign interveners to ignore the micro-level tensions that often jeopardize macro-
> level settlements (Autesserre 2010; 10-11).

Autesserre is quick to point out that 'bottom-up' thinking should not replace top-down

thinking, but that it is essential to complement top-down peacebuilding interventions.

Autesserre bases this analysis on a lengthy examination of peacebuilding culture as a social

object. She establishes three dominant understandings that have shaped peacebuilding culture

in the DRC: first an "exclusive focus on macro-level tensions; second, the labeling of the

Congo as a post-conflict situation; and third, the view of the Congo as inherently

violent" (Ibid: 42-43). These three understandings shaped peace building efforts in the Congo

in a way that made local conflicts and local violence invisible to the peace building process.

The assumption that violence in the DRC was a normal feature of life meant that when

conflict did not cease, despite the description of Congo as a post-conflict context, reformers

assumed it was a regular facet of life and not related to the previous conflict. The expectation

that life in the DRC would inevitably contain a degree amount of violence was not something

that individuals living in Congo before the war accepted as a normal part of life (Chou Chou,

personal interview, August 9th, 2014).

Additionally, Autesserre argues that failing to account for low level, individual and inter-

communal conflicts being drivers of national and regional violence in the Congo prevented

any of the intervention programs from creating local reconciliation projects or assisting in the

formation of "social mechanisms, such as local justice institutions, for the peaceful resolution

of conflict" (Ibid: 18). This failure represents a significant missed opportunity which is

reflected in her recommendation for advising experts to research about local conflict

resolution mechanisms and to develop and share their research with existing peacebuilding

organizations.

Autesserre makes a strong argument that a failure to address "bottom-up rivalries over land,

resources, and political power explain in large part why organized violence persisted in the

eastern provinces after the Congo was supposedly at peace" (Autesserre 2011: 123). The

importance of land related sources conflict in eastern DRC is widely supporter (Bøås 2010:

457; Mamdani 2001: 5; Prunier 2004: 147; Tull 2003: 436; Vinck et al. 2008: 7; Vlassenroot

2000: 445) and the emphasis of seeking bottom-up understandings to promote stable peace is

also generally accepted (Meager 2012; Hickey 2012; Richmond 2006; Richmond 2013). My

research uses Autesserre's observations as a starting point to examine the nature of this low-

level conflict resolution within the DRC. I contend that the particular ways that the justice

system is manifested and understood by citizens at a local level that is critical to the

continuation of conflict within the DRC, along with the continuing emphasis of the

international community on recognized groups at the macro level rather than on micro-level

factors. In so doing, it places justice at the centre of the answer to the question raised by

Autesserre of "how the DRC could host the largest and most expensive peacekeeping mission

in the world, and even though it recently experienced a transition from war to peace and

democracy" continues to endure a conflict which has directly claimed 2 million lives and

indirectly contributed to the deaths of approximately 3 million more individuals (Autesserre

2011: 271). Furthermore, my contention is that the reason the international community is

failing is that it fails to recognize the importance of justice to the people who are supposed to

be the beneficiaries of the peacekeeping. Whereas Autesserre focused on the failure of

international actors to account for bottom-up perspectives in the peace process, I became

curious about the reality of justice in DRC and how accounting for bottom-up perspectives

informed understandings of justice. Was impunity the reality? Given the length of time the

conflict endured, did individuals and grassroots organizations create alternative structures to

address conflicts and disputes amongst themselves?

One such endeavor to identify bottom-up viewpoints for the purpose of informing

peacebuilding efforts is the everyday peace indicators project lead by Roger Mac Ginty.

Surveys are based on peace indicators generated by the communities themselves through

focus group discussions (Mac Ginty 2014: 35). This research is ongoing, and thus there are

not findings to report yet, but Mac Ginty's research seeks to let communities create their own

interpretations of peace to give voice to their perspective.

This research project builds on that approach to seeking to understand judicial services in the light of how users of the services understand and utilize them. The critique of formal/ informal and state/non-state categorizations of justice is that those are dependent on a top down view of justice. It is not that a top down view is wrong, but as covered previously, the built in assumptions of reformers about judicial norms often rub against the assumptions of norms by judicial users. In the last section, the shift to researching justice from the perspective of users is addressed. It is possible that users consider like if a judicial provider is a state entity or a non-state entity. Likewise, users might prefer formally or informally structured judicial services.

Equally likely is that the priorities and essential features desired by those implementing reforms do not align with user. Even more likely is that users of judicial services do not view providers in binary terms, but understand that providers exist on spectrums of formal/ informal, state/non-state, or punitive/restorative framework. As this section has argued, it is therefore essential to be able to develop better understandings of how end users understand and engage with the world around them. Understanding the challenges of a post-conflict environment is critical to fully developing a bottom-up understanding.

2.4 Alternative Approaches to Justice

The tendency of donor nations to follow patterns of creating judicial institutions that are recognizable to them based on their experience is understandable. There is increasing awareness that incorporating bottom-up conceptualizations of justice demonstrate an awareness of potential bias and a need for inclusive reform and development is necessary for sustainable progress. This section identifies hybridity, frictions, and everyday justice as three

key, interconnected, ideas which can create better understandings of bottom up perspectives

and the interaction between competing understandings of justice. Rejecting binary notions of

justice for alternate views is rooted in the knowledge that justice is a product of numerous

interactions between historical, social structures, and philosophical factors, all of which

create a constant cycle of reinforcing current views, challenging existing understandings, and

stimulating new ideas of justice. Thus, approaches to researching the experience of justice

which rely on binary definitions are less useful in understanding the everyday judicial

experience. I argue it is more constructive and insightful to use definitions of justice which

present justice as existing on a spectrum of possibilities. The concepts of hybridity and

friction shape the approach to understanding and defining justice in this study, contributing to

the creation of a framework for examining the judicial experience in the DRC.

2.4.1 Hybridity

The dominant critiques of SSR focus its embeddedness in the neoliberal theory of state-

building. An emerging theory which seeks to mitigate the weakness of neoliberal SSR/state

building is hybridity. Building upon a growing belief that "state-society relations in non-

Western states, compared to Western states, are more likely to be influenced by informal,

unwritten rules rooted in custom and traditional social practice, as opposed to formal written,

legal rules" (OECD 2010: 17). This shift represents a move away from past "optimistic

democratization scenarios" and "emphasizes difference" (Moe 2011: 144). Scholars are

focusing on "forms of contemporary political ordering and peace building" which take place

between "state-based and liberal practice, local customs and everyday life" (Ibid: 145). Roger

Mac Ginty defines hybridity as "the composite forms of social thinking and practice that

emerge as the result of the interaction of different groups, practices, and worldviews" (2011:

210). Hybridity is "the composite forms of social thinking and practice that emerge as the

result of the interaction of different groups, practices and world views" (Hellmüller 2013:

223). Expanding on this definition, Hellmüller highlights the fact that in the encounter

between different worldviews, concepts are constantly being reshaped, and individuals in

fragile contexts are not passive actors (Ibid). This emphasis is an important one. In fragile

contexts, people in all spectrums of society are constantly reimagining concepts, beliefs,

traditions and practices. External intervention is a part of the reimagining process, as this type

of intervention typically seeks to reform state structures to align to accepted international

norms. Luckham and Kirk define hybrid political orders as "characterized by complex

interactions among a variety of actors following different animating logics and drawing on

varying sources of authority within fragile and conflict-affected spaces" (Luckham & Kirk

2012: 12).

The concept of the state has always been flexible, and this flexibility is something recognized

within hybridity. The view that state formation and development occur on a "teleological

process of development towards Westphalian sovereignty, following a Weberian perspective

[retains] a viselike grip over international relations" is increasingly understood to be a

problem (Richmond 2013: 301). Instead of liberal democracy, many post-colonial states are

characterized by "illiberal social contracts where state resources are used in various ways to

support elites and to buy off citizens which preserve the status quo of the current elites"[10]

(Ibid).

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[10] Burundi, the Democratic Republic of Congo, and Uganda are all examples. This needs some supporting evidence. For further discussion see the following sources: *The Democratic Republic of Congo* - Ian Taylor (2003): Conflict in Central Africa: Clandestine Networks & Regional/Global Configurations, Review of African Political Economy, 30:95, 45-55. *Burundi* - Rufyikiri, G., 2016. Grand corruption in Burundi: a collective action problem which poses major challenges for governance reforms (No. 2016.08). Universiteit Antwerpen, Institute of Development Policy and Management (IOB). and *Uganda* -Tangri, R. and Mwenda, A.M., 2013. The politics of elite corruption in Africa: Uganda in comparative African perspective (Vol. 3). Routledge.

Thus, hybridity is a way to describe and understand what is happening in a specific context

(Moe 2011: 148). Using the lens of hybridity and hybrid political orders allows for

> diverse and competing authority structures, sets of rules, logics of behavior and claims to power co-exist, overlap, interact and intertwine. They combine elements of introduced western models of governance and elements stemming from local indigenous traditions of governance and politics, with further influences exerted by the forces of globalization and related societal remaking or fragmentation
>
> (for example ethnic, tribal, religious) (Boege et al. 2009b: 24).

Terms like 'fragility' define and describe a state regarding what it lacks, but hybridity

attempts to describe how the state currently operates. Concepts which are features of fragile

states are reflected within hybridity as formalization, clientelism, and neopatrimonialism

(Ibid).

Although hybridity establishes a more accurate view of the complex institutional landscapes

existing in a post-conflict nation, it is limited. Hybridity works best as a descriptive tool, but

the usefulness of hybridity is limited when used beyond descriptive approaches. In an

examination of political order in Nigeria, the existence of courts in three Nigerian districts

using a mixture of sharia law and secular law to guide rulings is used to support the idea that

"existing social networks, linkages and service providers' may be utilized to increase

cooperation and increase legitimacy" (Johnson & Hutchinson 2012: 48-49). Gearoid Millar is

particularly critical of the idea of prescriptive hybridity. Although Millar allows that hybridity

can be a useful descriptive tool, but is critical of the idea that hybridity can be prescriptive in

any meaningful way. He argues that:

> there are some areas of social life in any context that are inherently resistant to purposeful planning – the ritual and the conceptual – but which do not demand willful action on the part of local actors to serve as points of resistance. Instead, because concepts of the world underpin experiences, local experiences of institutional hybridity will always be mediated by concepts in the local setting which are, by their nature, outside the scope of easy manipulation or management. As a result, the ingrained conceptions that underpin local experiences of conflict resolution, peacebuilding, and transitional

> justice institutions will be, even without local actor's knowledge or conscious agency, sources of unpredictability (Millar 2013: 508).

Thus, hybridity can help inform the observation of dynamics of institutions in post-conflict states, but is not capable of prescribing or forecasting outcomes. There are too many variables at play to suggest that adding pieces of religious law, secular law, and traditional law will produce consistent, repeatable outcomes. As Millar notes, hybridity is popular in numerous areas of research, but as this research is more focused on justice as a part of peacebuilding the next section examines hybridity as it relates to peacebuilding.

2.4.1.1 Hybridity and Peacebuilding

In the early phases of this research, examining the judicial experience from the vantage point of SSR and liberal peace dialogues seemed a viable way to make a contribution to our understandings of the gap between intentions, appearances, expectations, and realities on the ground in the DRC. However, it quickly became clear that, as the previous sections demonstrated, the critiques and shortcomings of SSR and liberal peacebuilding are well known and rehearsed. A critique or defense which focused on the intentions and actions of international actors would be unlikely to add a fresh voice to the debate. Despite consistent and recurring critiques, the challenge of understanding how to design and implement judicial systems and services capable of building a sustainable peace persist and the need to pursue solutions seemed more useful than repeating criticisms. This section looks at the intersections between peacebuilding and hybridity and sets up the continued evolution on how to best understand the needs of end users of justice systems.

An analysis of peacebuilding theory in light of lessons learned through the UN states that

there is a need to recognize and build on the capacities for peace already present in a society and to avoid creating cultural dissonance by imposing inappropriate mechanisms and processes "disconnected from the fundamental worldview of the people involved" (Herro et al. 2008: 279). The definition of peacebuilding they adopt is "a multifaceted task that implies a commitment to establishing the military, legal, political, economic, structural, cultural, and psychosocial conditions necessary to promote a culture of peace in place of a culture of violence" (Ibid). This significantly overlaps with the focus of SSR but takes a more all-encompassing view of the landscape.

Core lessons have undoubtedly been identified on the basis of extensive UN peacekeeping and peacebuilding efforts, particularly highlighting the importance of building "relationships as well as institutions and structures; civil society participation and local ownership; and coordination and integration of multiple actors, sectors, and disciplinary approaches" (Lambourne & Harro 2010: 277; Cooper & Pugh 2010: 12). Local ownership and agency, as highlighted by Mac Ginty and Richmond (Mac Ginty 2010: 407; Richmond 2011), are seen as essential elements to building sustainable peace. The enduring nature of the conflict in the DRC demonstrates that, despite significant effort to calm the insecurity in the region, an important factor behind the present instability in the DRC is "a crisis of the state and thus not something remedied by the presence of peacekeepers or technocratic reforms" (Mamdani 2001: 2). Moreover, the conflicts involve everyday issues like land, community security, and political representation (Autesserre 2010). Thus it is important to develop a more comprehensive 'bottom-up view' of life in those living in areas of insecurity.

Accepting that a 'bottom-up view' is important to understand is the beginning of the process, but it is essential for researchers and donors to position themselves in a posture to listen to local contributions to peacebuilding. Richmond argues that to understand a post-liberal peace one must "listen to local voices and narratives (not just elites) to enable self-government, self-determination, empathy, care, and an understanding of cultural dynamics" (Richmond 2011: 562). By listening to local voices, a "more sophisticated understanding of peace" and hybridity can be achieved (Ibid: 570). Thus the "post-liberal peace is a version of security, human rights, rule of law, a representative political process that reflects the local groupings and their ability to create consensus and legitimacy, as well as broader international expectations for peace" (Richmond 2011: 110). Richmond identifies a post-liberal agenda that

> everyday praxis that would enable political, social and economic organizations and institutions to represent and respect the communities with which they are effectively in a contractual relationship. As a consequence international forms of peacebuilding would be more likely to be participatory, empathetic, locally owned and self-sustaining, socially, politically, economically, and environmentally speaking. (Richmond 2012: 105)

Additionally, Richmond expands upon the connection between agency, legitimacy and the everyday. Richmond identifies one important goal of peacebuilding is to "accrue more everyday legitimacy, which might manifests in governmental, institutional, or constitutional structures and legal frameworks" and these would ultimately construct a new social contract. In this context, legitimacy is the product of the "provision social, cultural, economic, and political resources sufficient to meet the demands made upon it by its local, everyday, constituencies, and the international community of which [the state] would be a member a stakeholder" (Richmond 2011: 567-568). This localized view of peacebuilding, or focusing on the 'local-local,' requires understanding the "policies, systems, and hybridity that are produced, when such forms of agency come into contact with alternative, transformative

projects in everyday contexts, as well as the sorts of emancipation, empathy, and care

provided by the liberal peace versus that required in contextual terms" (Ibid: 3).

The emancipatory peace is understood to be an "everyday form of peace, offering care,

respecting but also mediating culture and identity, institutions, and customs, providing for

needs, and assisting the most marginalized in their local, state, regional, and international

contexts" (Ibid: 4). The emancipatory peace is more focused on everyday human security

instead of institution building. Richmond argues that the emancipatory model embraces the

blurred lines between needs and rights as well as the relationships between "custodians and

subjects" which invites questions of local ownership. Richmond's view also seeks to avoid

"false binary choices between everyday, local, international/state, the non-liberal other with

the liberal, but instead to see the everyday as a site where these meet and are negotiated,

leading to repulsion, modification, or acceptances, thus hybrid forms of peace in political

terms" (Richmond 2010: 672). Richmond's characterization of hybridity evolved over time,

moving from the perspective that "the liberal peace is a hybrid form that rests mainly on the

age-old victor's peace" into hybridity becoming as described above (Richmond 2006: 295).

Richmond's evolving understanding of hybridity is critiqued by Millar for moving his work a

prescriptive category (Millar 2014: 507).

The work on hybridity by Roger Mac Ginty is less criticized by Millar as it remains

consistently descriptive in nature. Mac Ginty, whose contributions to peacebuilding research

were highlighted earlier in this chapter, understands hybridity to be something that is "part of

constant lending and borrowing between cultures and societies" which helps us to move from

binary understandings of: "modern versus traditional, Western versus non-Western, legal-

rational versus ritualistic-irrational. Such binary combinations may simplify comprehension,

but they risk projecting oversimplified notions of human societies that are divided into

discrete compartmentalized units" (Mac Ginty 2010: 397). Mac Ginty embraces the inherent

fluidity in any hybridization process where "different interests and values coalesce,

cooperate, conflict, re-coalesce and re-cooperate (Mac Ginty 2010: 407; Millar 2013: 507).

Millar's critique and commentary of both Richmond, Mac Ginty, and hybridity as a whole is

relevant as the next section shifts towards the idea of frictions, is a field in which Millar is a

major contributor.

Hybridity is further explored by Julian Graef as he attempts to understand judicial

experiences in Liberia (Graef 2015). His research uses Actor Network Theory (ANT) to map

judicial services in Liberia and then uses randomized control trials to test if legal

empowerment techniques were improving judicial services. Graef observes hybridity within

Liberia's legal services, specifically how the Community Justice Advisor program

"incorporates the principles of legal pluralism and organizes them into a flexible legal

empowerment intervention which is neither statutory nor customary," but adapts to "meet the

needs of a client" (Graef 2015: Chapter 8).[11] He concludes by encouraging other researchers

to adopt "critical methodological orientation allows the researcher to move away from

epistemologies of difference" which serve to reinforce global-local distinctions and adopt

research processes which do not replicate artificial binary frameworks (Graef 2015:

Conclusion).[12]

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[11] Kindle ebook. Location 2439.

[12] Kindle ebook. Location 3244.

Expanding on the contributions to hybridity theory by Richmond and Mac Ginty, Graef

argues for an emergent hybridity which "treats hybridity as an unstable ontological process of

transformation and is defined temporal political tension" (Ibid: Introduction).[13] Graef

describes post-liberal hybridity as an attempt to understand and describe a liminal process of

change stating, "a post-liberal political situation is a temporal disjuncture between being and

becoming, between the liberal peace and the emerging post-liberal world in which new ways

of organizing peace and different ways of performing peacebuilding become

possible" (Ibid).[14] While hybridity has demonstrated a usefulness in understanding the

dynamics and formation of the peacebuilding landscape, it remains to be seen if hybridity can

serve as a useful concept for understanding the judicial experience.

2.4.1.2 Hybridity and Justice

What makes hybridity and hybrid political orders a potentially useful concepts for

understanding justice is that they are not a 'goal to be reached' or a prescriptive model for a

'better state,' but instead they reflect "what is the case in many so-called fragile states and

situations" (Boege et al. 2009c: 88). Christian Reisinger also states, "conceptualizing post-

conflict situations as merely in relation to some fixed end-point is, therefore, unsatisfactory"

and analysis is shifting to view each post-conflict space as distinct spaces which follow their

logic (2009: 483). Reisinger defines post-conflict statehood as a hybrid form of governance

in which authority is "fragmented and contentious and may be provided by multiple

(potentially competing) social organizations. Given that these seemingly provisional

governance structures often stabilize over time, external actors become a constant and

resilient feature of domestic governance" (Ibid). Acknowledging not only the presence of

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[13] Kindle ebook. Location 189.

[14] Kindle ebook. Location 276.

multiple and potentially competing authorities but also the presence of external actors makes this framework ideal for viewing the judicial landscape in post-conflict South Kivu.

Bruce Baker adds that the focus on hybridity is positive because it allows potential reforms to build upon what exists and what works, as opposed to conforming to pre-determined models of statehood (Baker 2010: 613). Kate Meagher cautions that an uncritically applied hybrid lens could obscure distinctions between "legitimate and illegitimate local orders as well as blurring the boundaries between state and non-state systems of order," particularly because the question remains: opt for specific services because it is locally preferred or if the state allows them to exist because it is cheaper than actually building a "sovereign and accountable state" (Meagher 2012: 1078).

Hybridity is useful in creating a top description of how judicial services function but falls short of creating a useful bottom-up understanding. Hybridity is useful when talking about hybrid pluralism in Cambodian state-building which produced a pluralist state with liberal-democratic institutions alongside traditional institutions (Roberts 2009: 80). In Columbia, hybridity accurately defines local tribunals which feature ritual apology, judgment, and a panel of 'wise women' (Allen & MacDonald 2013: 15). Where hybridity falls short in understanding justice, is that an over-focus on understanding hybrid arrangements can obscure other power dynamics between various actors in the judicial sector (Meagher 2012: 1078).

Despite the contribution of hybridity in understanding how the judicial landscape came into being, hybridity does not offer much insight into what users think of a hybrid judicial

landscape. Millar's critique of using hybridity to do anything more than describe what is being observed remains valid. Moving away from binary understandings of service providers is helpful, but hybridity is only useful to a point. This description of hybridity as a liminal, tension filled space is similar to the idea of frictions advanced by Anna Lowenhaupt Tsing and Gearoid Millar, which is discussed in the next section.

2.4.2 Frictions

The previous section discussed hybridity and the extent to which it helps advance the exploration of the judicial experience in South Kivu, DRC. Hybridity is useful in understanding the landscape, though a consistent critique of hybridity is that it is overly dependent upon binaries, particularly the "global-local dichotomy" (Björkdahl et al. 2016a: Introduction;[15] Björkdahl & Höglund 2013: 292). However, hybridity "tends to focus more on outcomes than process" and given the interest of this research project in the experience of justice, focusing on the process of seeking justice makes more sense than a focus out outcomes (Björkdahl et al. 2016a: Introduction;[16] Annika Björkdahl & Höglund 2013: 292-293). This section examines frictions as a potentially more useful framework for examining the experience of justice in South Kivu.

Frictions was originally developed by Tsing to describe "the unexpected and unstable aspects of global interaction" or as Millar contributed: "the generative process that allows creative re-imaginations as an organic response" to intersections between multiple, competing actors and interests (Tsing 2005: 3; Millar et al. 2013: 139). Where hybridity is descriptive of the nature of the landscape of blurred boundaries, frictions brings a vivid understanding of the processes

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[15] Kindle ebook. Location 932.

[16] Kindle ebook. Location 443.

which produce the blurred boundaries by focusing on "the emergent and unexpected nature of unintended and unplanned consequences" (Millar et al. 2013: 139). An analogy of a tyre moving on a road is the main comparison utilized by Tsing to conceptualize the interaction between movement and change (Tsing 2005: 5). These two features are dominant characteristics in contexts of prolonged insecurity where traditional systems are weakened by death and population dislocation. The Tillyian view that "war makes states and states make war" is echoed, updated in the idea that states are formed through "top-down elite forces, bottom-up social forces, or through different combinations of both forces" (Richmond 2013: 303; Tilly 1982: 3). As mentioned in the section 2.4.3.1, Autesserre argues that conflict in the DRC endures due to a lack of accounting for bottom-up contributors to violence. A commonality in the positions of Tilly, Autesserre, and Richmond is the insistence that something important happens at the point of intersection between these variables. The emergence of hybrid political orders in Somaliland provides insight "the 'crisis of African statehood' is not merely a matter of breakdown of old strategies of state control, and subsequent 'fragility' or 'failure' of political order, but also implies re-makings of order, beyond - but not necessarily in direct opposition to - the established Westphalian norm" (Moe 2009: 169). In the continual development of the state, especially in a volatile region where numerous forces are seeking to reshape the state, friction becomes an invaluable tool for understanding what emerges from spaces of contest and tension and is useful for examining justice in the DRC.

Friction brings to the fore the give-and-take relationship that transforms both the local landscape and the global counterpart and embraces the "inherently complex elements" of

peacebuilding processes (Björkdahl et al. 2016a: Introduction).[17] There are four distinct

positions on frictions: first, frictions is a process triggered by global-local interactions.

Second, the outcomes of frictions in peacebuilding are often hybrid and not necessarily

negative as frictions in peacebuilding efforts can result in positive change. Third, frictions

add complexity, indeterminacy, unpredictability and nonlinearity to peacebuilding

encounters. Fourth, friction is an analytical tool that provides both a more accurate

interpretation of the outcomes of interactions within complex post-conflict societies, and

which resist the co-optation of international actors experience by the concepts of hybridity

and ownership before it (Ibid). Friction describes "a process characterized by various sub-

processes - of compliance, adoption, adaption, co-option, resistance, and rejection - and as

such, the process of friction can be analyzed with an eye to understanding which (or which

combination) of these sub-processes are occurring. This process is a continual cycle of

encounters, responses, and outcomes, which repeat" (Ibid).

Through the lens of frictions, one remains aware that peacebuilding processes never take

place in a vacuum as "even in the absence of state structures, local actors tend to establish

some form of governance, be it through civil society organizations, traditional structures or

warlords, and other armed groups" (Ibid). The description of judicial services as existing in a

twilight space along a spectrum of state and not state services, formal and informal service. In

South Kivu, DRC, the court system functions as a formal, state-run institution, but due to a

variety of factors including lack of funding and corruption, contribute to legally entitled to

small fees, but also imposes informal, undocumented fees, blurring the lines between formal

and informal processes. Likewise, traditional chiefs operate traditional judicial services

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[17] Kindle ebook. Location 452.

which are dependent upon mediation and are classified as informal non-state services, but

they operate with the explicit permission of the state and, in the past, if and when they do not

please the state they can be replaced. The notion of clear distinctions in types of services does

not mesh with the reality of the situation on the group, which is why frictions embrace of the

complexity and acknowledgment of the twilight zones where the lines between services blur

makes frictions an appropriate framework for analyzing the judicial experience in South Kivu

(Björkdahl et al. 2016b: Conclusion).[18]

2.4.2.1 Frictions and Peacebuilding

This research focuses specifically on the contribution of judicial services as they relate to

building a post-conflict peace. Peacebuilding is understood to include "a range of efforts -

engaging with a variety of actors - aimed at political, institutional, social and economic

transformations in post-war societies for the purpose of sustainable and positive

peace" (Björkdahl et al. 2016a: Introduction).[19] Peacebuilding is "a process of

normalization… turning all [that has] become abnormal because of the war back to the

normal state" (Philipsen 2016: Chapter 4).[20] Friction provides a useful tool for researching

peacebuilding as it increases focus on the points of interaction between "various local actors

and international interveners" (Millar et al. 2013: 139). Framing peacebuilding as

normalization is an interesting way to conceive of the processes associated with

peacebuilding, as the ultimate goal is to help transition a nation or region which has been

mired in violence and conflict to a place of peace and normalcy. It will not be the 'normalcy'

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[18] Kindle ebook. Location 5493.

[19] Kindle ebook. Location 301.

[20] Kindle ebook. Location 2210.

which existed before the onset of conflict, but a new normal shaped by the conflict, ideally

one defined by a durable peace.

Friction makes key contributions to the theoretical understanding of peacebuilding. First,

frictions "helps us to understand the complex dynamics in the peacebuilding landscape,

including cooperation, contestation, and challenges to the status quo" (Björkdahl et al.

2016b).[21] Second, frictions embrace of complex arrangements "disaggregates binaries,

including commonly used dichotomies such as global/local, elite/non-elite and democracy/

non-democracy." Third, continuing idea of complexity, argues that frictions "demonstrates

the fuzziness of the local as a concept, especially point to how heterogenous local actors are

and the brand register of local agency." Fourth, and finally, frictions "shows how local

process and global processes are parallel in time and in space" (Björkdahl et al. 2016b:

Conclusion).[22] As Lise Philipsen says, "encountering these [peacebuilding] practices at a

micro level, however, sheds light on these processes of creative negotiation between liberal

peacebuilding and local power structures are often so filled with tension that parties attempt

to avoid and escape them" (Philipsen 2016: Chapter 4).[23] This, along with embracing

complexity, fuzziness, disaggregating binaries, and re-examining the interaction of global and

local processes makes frictions a very strong analytical tool for examining peacebuilding

practices. Judicial services functioning effectively is an important aspect of the

'normalization' process of creating new norms after conflict and the framework of frictions

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[21] Kindle ebook. Location 5508.

[22] Kindle book. Location 5511.

[23] Kindle book. Location 2275.

can help tailor reforms of judicial systems post conflict to meet the needs of end users of judicial services.

In a review of sites of friction in Afghanistan, researchers found that the complexity of the environment caused decision makers of reform to "simplify disorder" leading to "sub-optimal decision-making" (Lijn 2013: 185). As a result to over-simplified solutions to complex problems, Afghans to decide whether to collaborate with attempted reforms, corrupt the reform process, or confront the actions of those intervening on their behalf (Ibid). Using frictions as an analytical tool to examine the experience of reform in Timor-Leste resulted in identifying a process that was neither straightforward or linear (Freire & Lopes 2013: 214). Part of the complication resulted from the fact that the UN public security plan was designed to be a democratic system which supported human rights, but the implementors of the plan were UN police forces with little to no experience with establishing democratic processes which respected human rights (Ibid). Thus frictions existed from the top of the UN to the individuals on the ground. These micro-level experiences will help develop the understanding of the local power structures around judicial services in South Kivu. Additionally, the extent in which services are characterized by compliance, adoption, adaption, co-option, resistance, and rejection will be evident.

Building upon the work of Tsing and others, Gearoid Millar argues that the idea of compound friction makes it possible to see how the goals and procedures of parallel peacebuilding processes are intertwined with each other within the minds and imaginations of local individuals, who, for their part, take the information and create of it what they will within their control (Millar et al. 2013). The addition Millar makes with compound frictions, in his

view, is where Tsing's conceptualization of friction focuses on the interaction between global

and local groups, Millar's compound frictions looks at the interactions between "multiple

parallel interventions within and among local actors" and as such is interested in frictions

within 'local' groups as well as global or regional actors (Millar 2016: Chapter 2).[24] Millar is

also adamant that frictions, unlike hybridity resist the cooption into post-conflict peace

planning. Frictions focuses on the process and space of interaction and anticipates

"unexpected outcomes emerging" from the interaction (Verkoren & Van Leeuwen 2016:

Chapter 6).[25] Willemijn Verkoren and Mathijs Van Leeuwen highlight two cases of friction in

their work, one case in southern Sudan and another in Guatemala. In southern Sudan,

> the NGO-isation of a women's group brought about friction with the informal, voluntary character of
> its local partner and resulted in adverse consequences for the functioning of the organization. The
> intervention also had an unintended positive side effect by introducing a discourse on women and
> peace that continued to spread. Even if local women's groups did not conform to the multi-ethnic ideal
> of local peace work promoted by the donor, the appropriate the discourse on women and peace, and
> transformed it to fit their local reality" (Ibid).

The 'NGO-isation,' referred to here is the process in which a previously effective women's

group was compelled to change the way in which they operated to reflect the expectations of

donors better and as a result, limited their ability to impact peace in a positive manner.

Nevertheless, positive impacts were seen as a result of women reimagining the importance of

their contribution to peace and continued to work towards peace outside of the programs. In

Guatemala, friction occurred between different expectations of civil society. Whereas the

"interveners idea of civil society was a neutral, apolitical force," locals saw civil society as a

place for more "assertive political discourse" to address neoliberal agrarian policies which

locals wanted to change, but the NGO ultimately acquiesced to donor demands and as a result

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[24] Kindle ebook. Location 1102.

[25] Kindle ebook. Location 3182.

saw their local legitimacy wane as they were "unable to fulfill expectations in the rural

communities" (Ibid).

For this study, instead of broadly looking at all of peacebuilding, the specific focus is on

justice. By taking the stance that judicial services, regardless of origin, are in a process of

contestation and reformation due to the competing forces of local, national, and international

interests, which are not uniform even within those categories, it helps de-romanticize any

particular source of justice and examine the everyday experience of judicial options (Mac

Ginty 2008: 149-151). At a time when a popular topic in peacebuilding discusses "top-down

and bottom-up approaches to governance, democracy, and conflict transformation" it is

important that these debates are "informed by analysis of frictional encounters among various

global and local actors, discourses, and practices" (Björkdahl et al.: 2016b: Conclusion).[26]

The responses initially developed by Annika Björkdahl & Kristine Höglund (2013: 298), and

reiterated in (Björkdahl et al. 2016a: Introduction),[27] to understand the potential outcomes of

frictional encounters are laid out in Table 2.3. These reactions to encounters will be useful in

understanding the characteristics of the judicial services available to potential users of

judicial services in South Kivu, but are might be insufficient to understand the users'

experience of justice fully. The user experiences of justice will be examined through the six

descriptions listed in Table 2.3 which will demonstrate if these provide a comprehensive view

into the experiences of justice. The framework does enable this research to move beyond

negative depictions of the judicial experience and seek points of both positive elements

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[26] Kindle ebook. Location 5700.

[27] Kindle ebook. Location 367.

Table 2.3	Experiences of Friction
Compliance	forced adherence or submission to global/external discourses & practices
Adoption	adoption at the local level of global/external norms & practices
Adaptation	adaptation & contextualizing of global/external norms & practices to local characteristics
Co-Option	strategic adoption of the global/external into the local as a means of averting pressure
Resistance	dominance of local characteristics, limited adoption of global/external norms & practices
Rejection	exclusion of global/external norms and practices from the local

Definitions from - Björkdahl & Höglund 2013: 289-299.

alongside negative elements. The focus on points of "connections rather than [exclusively] disconnections" enables the articulation of a more holistic depiction of the judicial landscape in South Kivu and creates opportunities for engagement with positive trends instead of focusing on challenges and failures (Schia & Karlsrund 2013: 246). To create a more comprehensive picture of justice, a secondary framework needs to be used and is discussed in the following section. Where hybridity helps to establish an understanding of the judicial landscape and frictions provides an interesting way to approach spaces of contested ideas and practices in judicial services, more research is needed to be able to understand and analyze the user experiences of justice. The everyday experiences of justice will be developed in the next section.

2.5 Everyday Justice

The concept of frictions provides a framework for understanding the process of interaction, specifically between individuals and groups with competing ideologies and agendas. As the critique of the failure of past judicial interventions in the Democratic Republic of Congo as well as other countries is partially attributed to the 'top down' nature of the interventions, this research project aims to utilize research methods which can access views of 'justice from

below' that reflecting the experience of individuals seeking to create peace and stability in their everyday lives. The goal of this research is thus to develop insights into the everyday experiences of justice for individuals living in South Kivu, DRC.

After violent conflict, peacebuilding efforts are "supposed to heal the social wounds of war, fix the systems that create destructive conflict, and keep people safe" and establishing effective judicial systems is an important part of that process (Berents & McEvoy-Levy 2015: 115). The everyday "is illuminated as embodied practice, as the site of intergenerational tension, and as a political space for contestations of belonging rendered complex and diverse through considerations of gendered politics and the symbolic power of certain iterations of childhood. It is located as a transnational, subversive, mediated space" (Ibid: 124). Michel de Certeau writes that "everyday life response to structural attempts to organize life, re-appropriating these spaces" and that everyday practices are a "surreptitious reorganization of power" (de Certeau 1998: 14). De Certeau also identifies strategies and tactics utilized by individuals in everyday life. To de Certeau, a "strategy [is] the calculus (or the manipulation) of relations of force which becomes possible whenever a subject of will and power (a business enterprise, an army, a city, a scientific institution) can be isolated" while a tactic is "the calculated action which is determined by the absence of a proper place" (de Certeau 1980: 5-6). De Certeau envisions strategies reflective of institutional operation while tactics are utilized by individuals in response to institutions. Ultimately the everyday becomes a space where individuals engage with, react to, and potentially reshape institutional power.

Building on de Certeau's work, Richmond notes that a focus on the role of everyday life in peacebuilding presents "alternative sites of knowledge for peacebuilding" (Richmond 2008:

571-572). Exploring experiences of everyday life presents opportunities to engage with "local experiences, open to tradition and religion, that focus on communities and collectivism, that meet everyday needs, resonate with democratic practices and mixed economies, that engage with the extra needs inherent in very slow transitions out of violence" (Ibid: 580). The importance of a functioning legal system is also significant to economic development as noted in the 2016 Global Peace Index, which states, "business competitiveness and economic productivity are both associated with the most peaceful countries, as is the presence of regulatory systems that are conducive to business operations" (GPI 2016: 56; Barendrecht 2009: 5).

Thus the everyday becomes an important place, in the words of Richmond, to seek new knowledge of how individuals are coping with life, attempting to reorganize life in the wake of violence as well as in the midst of recurring conflict. The Democratic Republic of Congo serves as an interesting place to investigate the everyday experience of justice as it is frequently cited as a land of impunity. This is further developed in the next chapter, but to briefly summarize the nature of the problem,

> In general, the Congolese justice sector is unable to deliver day-to-day rule of law for the population, let alone tackle massive rights abuses. The infrastructure of the justice system has collapsed almost completely; the European-funded Rejusco project has made considerable strides in improving the infrastructure but is geographically limited to the East. On the whole, magistrates are poorly trained, ill-equipped (often lacking basic Congolese legal texts), and badly paid. The DRC does not lack the necessary legislation, but it faces serious problems in implementing laws and delivering justice (Davis & Hoyer 2008: 25).

Thus everyday justice becomes a meeting point for many key issues which can contribute to the creation of a stable, positive peace.

Research on the experiences of everyday justice is also important because while measuring justice is difficult, the tools which exist to measure justice remain focused on top down, state-centric views of justice. The UN Rule of Law report focuses on state-centered indicators, and while it mentions civil and common forms of justice, it only says that while they can be measured, they are not included in this first report (UN RoL Indicators 2011: v-vi). The 2015 World Justice Report offers three metrics for informal justice; 1) is it timely and effective, 2) is it impartial and free of improper influence, and 3) does it respect and protect fundamental rights (WJR 2015: 14). The third aspect of 'fundamental rights' is ill-defined and possibly refers to UN human rights or individual rights, the latter reference would indicate a distinctly western, liberal bias (Branch 2014: 612; Cobbah 1987: 309; Sedra 2010: 108) .

Returning to the ideas mentioned in the previous section, the potential outcomes of friction have been identified as cooption, compliance, adoption, adaptation, resistance, or rejection. It is possible that these may also serve as everyday indicators for experiences of everyday justice. It is also possible that additional indicators or outcomes of experiences of everyday justice will emerge through the investigation of judicial narratives and experiences within this research. Through investigating the experiences of everyday justice in South Kivu, DRC through the lens of friction, this research project hopes to begin with such humility and conclude by producing new and useful insights into how peacebuilding efforts can be improved through a better understanding of everyday experiences of justice (Richmond and Mac Ginty 2008: 14).

2.5.1 Typology of Everyday Justice

It is insufficient to reject the categorization for judicial services due to their weakness and offer no alternative. It would be naive to assert the labels have no value at all as though all

judicial service providers existed and operated as peers or without relation to one another. The state's coercive power alone remains an essential distinction that differentiates it from other providers. Though hybridity is an insufficient framework to understand the experiences of justice in the DRC, hybridity is helpful in understanding the judicial landscape in South Kivu, DRC. Table 2.4 attempts to offer a categorization of judicial service providers that do not fit neatly into the common categorizations of state or non-state series as well as operating in formal or informal patterns.

State services are recognized as existing in both formal, by the book incarnations as well as informal, arbitrary incarnations. Judicial service providers who are not directly employed by the state, but whose services are sanctioned by the state fall into non-state customary and

Table 2.4 Typology of Judicial Services	
Formal State	State judicial services which operate by the letter of the law.
Informal State	State operated judicial services which function outside of the law.
Non-state Customary	Judicial services provided by customary authorities (i.e. chiefs) based on cultural values. These service providers are typically sanctioned by the state via constitutional recognition or non-interference.
Non-state Emergent	Judicial services provided by entities which are not the state, but they are not customary authorities either. In post-conflict contexts, this space would be dominated by NGO and CSO based services. These services might reflect aspects of customary function but tend to integrate more modern human right frameworks into their work. Their status is recognized by the state which permits organizations to operate or, at a minimum, does not interfere with their service provision.
Non-state Adversarial	Judicial services operated by entities which actively seek to replace the state (i.e. a rebel group). These actors are not permitted to operate by state, but due to their status as rebels.

non-state emergent categories. Non-state customary services refer to customary chiefs who are stewards for services which are a part of cultural heritage. The non-state emergent category is an acceptance of the growing status of legal services provided by civil society groups, community-based groups (CBOs), faith-based groups (FBOs), and Non-governmental organizations (NGOs). These groups are formally recognized by the state through application and registrations processes to operate in a province. The UN's Global Declaration of Human Rights exerts influence on these groups. The final category is non-state adversarial to reflect judicial service providers whose actions are a part of their larger goals of replacing the state.

This conceptual chapter set out to bring clarity to the complex topic of justice. As laid out in Image 2.1, I posit that from the vantage point of an individual, justice is understood through a combination of historical influences, societal structures, and philosophical frameworks. The philosophical influences range from the highly sophisticated, such as arguments from scholars like John Rawls, to more simple notions such as innate fairness. Historical influences, examined in the following chapter, shape the judicial services available to individuals as well as inform the perception of societal structures which they engage. Historical developments of judicial services shape existing societal structures that offer judicial services within their country and community. The mental, societal, and historical influences do not exist in a vacuum but continually reinforce one another.

The analysis of the data collected in the fieldwork is examined through the two frameworks presented in this chapter. First, judicial service providers are placed on the spectrum of possibilities identified in the typology of judicial services: formal state service, informal state

service, non-state customary, non-state emergent, and non-state adversarial. It is plausible that services might occupy or straddle more than one type of description. For example, the national police are by definition a formal part of judicial services, but depending on how officers perform their duties the provider might resemble the ideal formal service it was designed to be, or if an officer deviates from the mandated function of the position as a police officer the police, at least in certain instances, would be more of an informal service. Additionally, as judicial services are expected to be potential sites of friction, individual user experiences will be examined on the spectrum of compliance, adaptation, adoption, co-option, resistance, or rejection. Like the services, it is possible that an experience might straddle more than one description of experience. Further, it's possible certain experiences do not conform fully with any of the six types of experience of friction and require the development of additional descriptive categories.

2.6 Conclusion

The understanding that an individual's view of justice was a product of competing influences, combined with the history of failed judicial reform efforts in post-conflict nations highlighted the potential of an ideological disconnect between those implementing judicial reforms and the end-users of judicial reforms. As this research is designed to understand the end-users experience of justice, the inclusion of 'bottom-up' views of peacebuilding alongside prevailing 'top-down' approaches to peacebuilding contributes a valuable perspective to the everyday experience of justice and might provide insights into what judicial services meet the needs of end-users and where other judicial services fail to meet user expectations. Hybridity and frictions were established as the orienting theoretical frameworks guiding this research as they accept and embrace conflicting and contradictory views, which is a reality in the judicial

landscape in South Kivu. The history of the judicial landscape is examined in the next chapter.

This research takes as its core element the idea that justice is socially and politically formulated and is not a technical element that can be imposed from the outside. As something that is locally constructed, any analysis of justice needs to be taken from the bottom-up, and so the approach I have taken is to incorporate the subjective view of users of the justice system into a justice mapping approach that seeks to understand how and why some providers are used (or not). As a contested area, subject to considerable political friction, justice provision at the local level is best understood through a lens of the everyday since it is intimately involved in power relations and the regulation of society. For traditional leaders, it may be a source of power, for police officers it may be a source of state legitimacy where that state control may be contested. For users, it represents a contested landscape where they face a series of choices over how to pursue justice.

Chapter 3
An Abridged History of Justice in the DRC

Following the discussion of justice as an idea and before presenting the data on justice as an experience, it is important to frame the influence of history on the evolution of judicial service providers in the Democratic Republic of Congo. As stated in Chapter 2, justice is a product of mental constructs, historical dynamics, and societal structures[28] none of which exist in isolation from each other, but consistently interact with each other to produce an understanding of justice that is, to a degree, ever evolving as the contributing factors change over time. The present judicial and security challenges facing Congolese citizens are deeply rooted in the nation's historical narrative. To understand the judicial service providers and the user experiences of these services, the context which informs the experience of the everyday must be understood. Unpacking historical events which shaped judicial service providers adds depth to the landscape of judicial service provision. This chapter is an overview of the historical development of judicial service providers operating in South Kivu.

The DRC is host to MONUSCO, the largest UN peacekeeping mission in the world.[29] More than 1 billion dollars has been spent to bring peace to Congo (Autesserre 2010: 182). This mission began the following violence from the Rwandan Genocide as the Rwandan Patriotic Front (RPF) chased the *genocidaires* across the border. The invasion of the DRC by Rwandan

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[28] Societal structures is a reference to judicial service providers which includes government services, traditional services, and any other entity providing judicial service.

[29] MONUSCO consisted of more than 20,000 troops at its highest level. The peacekeeping troops were recently supplemented with a Force Intervention Brigade (FIB) to combat the M23 and other key threats to peace in eastern Congo.

force stocked pre-existing tensions, and Congo plunged into the first of two wars. During a

ceremony to commemorate the twentieth anniversary of the Rwandan Genocide, the then UN

Secretary General Ban-ki Moon stated "we could've done more. We should've done more."[30]

In addition to a massive UN peacekeeping mission, Security Sector Reform programs (SSR),

Disarmament Demobilization and Reintegration efforts (DDR), and humanitarian agencies,

both emergency and development, exist in ongoing capacities to improve the security

situation in the DRC.

The presence of UN peacekeeping troops began with 500 military observers in 1999 and

currently involves 22,016[31] uniformed personnel, 19,815 of which are military personnel. The

expanded presence is due to ongoing insecurity issues stemming from the Rwandan Genocide

in 1994, Africa's World War in 1998, and ongoing efforts to combat rebel groups in the

eastern provinces. While it is not accurate to say that these efforts have not resulted in any

positives, the "free and fair" elections of 2006 and more challenging 2011 election have not

heralded in a democracy (Carter Center Report 2006: 86; Carter Center Report 2011: 3).[32]

DDR programs have not mitigated the presence of rebel groups, as a 2014 survey listed 34

armed groups[33] (Image 3.1) occupying various segments of eastern DRC. SSR programs to

reform the police and court systems are ongoing, and the impact of the programs is yet to be

determined. International humanitarian aid agencies are working throughout the region to

address health, education, security, water, sanitation, and access to justice needs. The

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[30] http://america.aljazeera.com/articles/2014/4/12/rwanda-genocide-un.html

[31] MONUSCO hosts a Facts and Figures website which lists the number of troops. http://www.un.org/en/peacekeeping/missions/monusco/facts.shtml

[32] President Joseph Kabila is actively seeking to change the constitution to remain in power longer.

[33] This map is from Cristoph Vogel's research blog where he produces a bi-annual map of rebel groups active in Eastern Congo as well as their area of influence. http://christophvogel.net/congo/mapping/.

Image 3.1

Mapping armed groups in eastern Congo

www.christophvogel.net

Armed Groups
(approximate spheres of influence)*

- 01 APCLS
- 02 FDLR FOCA
- 03 FPC/UPCP (Lafontaine)
- 04 FDC/Guides/MAC
- 05 FNL (Nwasa & Nzabampema groups)
- 06 Mayi Mayi Kifuafua (various factions)
- 07 Yakutumba (PARC-FAAL incl. allies)
- 08 MCC Bede
- 09 Nyatura Nord/FDDH/(FPP?)
- 10 Mayi Mayi Mulumba/Chochi
- 11 M27
- 12 NDC Sheka
- 13 Nyatura Sud
- 14 Raia Mutomboki Kalehe
- 15 Raia Mutomboki Walikale
- 16 Raia Mutomboki Shabunda
- 17 Raia Mutomboki Walungu/Kabare
- 18 Mayi Mayi Shetani/Bwira
- 19 Allied Democratic Forces (ADF)
- 20 Mayi Mayi Kapopo/Eradi
- 21 FRPI (ex-COGAI, hardly on map)
- 22 RUD-Urunana (FDLR)
- 23 FDLR-Soki/Kasongo
- 24 Mayi Mayi Morgan
- 25 Various Local Defense (Biakbne/Nindja, Virunga etc)
- 26 Mayi Mayi Kirikicho
- 27 Mayi Mayi Mayele MPDC/Marambo
- 28 Mayi Mayi Fujo & Nyerere
- 29 Mayi Mayi Nyakiliba
- 30 Mayi Mayi Karakara/Simusisi
- 31 Mayi Mayi Sikatenda
- 32 Mayi Mayi UCCB/Brown
- 33 Mayi Mayi Mushombe/Ilunga
- 34 Force du Peuple Congolais

Approx. FARDC positions in red:
Secteur   O
Regiment   X
Battalion   +
(early 2014)

not included:
Mayi Mayi Ntoto
Mayi Mayi Dodi
Mayi Mayi Kashumba
Mayi Mayi Nyerere
Tawimbi/Nyamushobora
Mayi Mayi Luc
Mayi Mayi Simba
Bakata Katanga
Force de Défense Nationale
CORAK
FRD-Abanyaghugu
RUC/Bapfakururimi
FLPC
LDF Busumba
FPPH
LRA
and all unconfirmed others

Découpage administratif du Nord Kivu

Découpage administratif du Sud Kivu

Orientale

DISTRICT DE L'ITURI

DISTRICT DE TSHOPO

Ouganda

Rwanda

Burundi

Maniema

State of October 2014

Primary sources

field research 2010-2014
confidential discussions
(ex-)members of armed groups
FARDC and state services
various local thinktanks

Secondary sources

IPIS
UN Group of Experts
RVI Usalama Project
MONUSCO
UN OCHA
OXFAM
Life and Peace Institute
International Crisis Group
Human Rights Watch
GRIP
Africa Confidential
Local & International Media

Approximate spheres of influence means the possible extension of the operations or mere presence through military elements or other staff across territory. It is used to approximate the area in which any given group can impact on the socio-economic life of civilian populations.

This map indicates such spheres of influence for the indicated point in time. High volatility and the fluctuating nature of DRC's various conflicts provide for quick changes in this topography.

challenge of peace in eastern Congo comes at a time when global leaders are looking at the

post-2015 global agenda. The 2012 Rio+20 conference agreed that peace and security should

be included in the goals moving forward, including a focus on promoting "the rule of law at

the national and international levels, and ensuring equal access to justice for all."[34] Also

included in the broad goal of peace and security is a reduction in "corruption; and the

creation of effective, accountable, and transparent institutions" (Ibid). These goals are

unquestionably worthwhile, but the path to these goals contains challenges and relies on

assumptions. Within security sector reform, the presence of easy judicial access,

transparency, government accountability, and respect for the rule of law are complex issues

that are not solved by capacity building programs alone. The next section identifies

assumptions which drive current judicial interventions around the world.

3.1 Brief History of Justice in the DRC

This section examines some of the historical influences which shaped judicial service

provision in the DRC. Condensing more than 600 years of history into a brief survey is a task

that risks oversimplifying events and their causes. What I aim to demonstrate in this section

is how the long history of competing influences shaped and reshaped the judicial experiences

of Congolese citizens. The section opens with an examination of Kevin Dunn's *Imagining the*

Congo which was influential in shaping my understanding of the Congo and provides a

useful framing of the historical experience.

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[34] Goals are listed on the UN Sustainable Development website: http://www.un.org/sustainabledevelopment/peace-justice/

3.1.1 Framing of the Congo

The history of the Congo is vividly retold in *King Leopold's Ghost* by Adam Hochschild as the brutality of both the early explorers and Belgian colonizers are examined (Hochschild 1998). Jason Sterns also recounts the history of Africa's World War in *Dancing in the Glory of Monsters* by unpacking the complex rule of Mobutu and how it led to his downfall as well as the rise and fall of Laurent Kabila (Stearns 2012). While the works of Hochschild and Stearns were key for developing an understanding of the complex history of the DRC, Kevin Dunn's *Imagining the Congo* was most influential in framing my understanding of the how the socio-political landscape of the DRC came to be as well as the challenges to peace throughout the DRC.

The two core themes in this work are, first, Western understandings are framed through the lens of the DRC being the 'Heart of Darkness'[35] which is a conceptualization developed by westerners for the consumption of western audiences. Second, the representation of the DRC as a "primitive, chaotic 'hearted of darkness' has made certain things happen in the political world" (Dunn 2003: 5). Essentially, the framing of the problems of the DRC brings significant political consequences to the solutions deemed possible. Representing the DRC as a land of impunity, devoid of justice, and labeling it the 'Rape Capital of the World' creates a context of an urgent, barbaric crisis with no internal solutions and no internal mechanisms addressing the problem. Thus it is a blank slate on which justice needs to be built from the ground up.

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[35] The Heart of Darkness is the title of Joseph Conrad's famous book about the DRC, but it is a label frequently reused in media pieces about the DRC.

By examining the discourse about the DRC/Zaire/Belgian Congo during precolonial times,

the transition to independence, the reign of Mobutu and the First Congo War Dunn develops a

long view of trends and themes that emerge and recur throughout the history of the DRC

(Ibid: 6). One key theme is that "external actors have frequently attempted to characterize the

country as divided, chaotic, and lacking the ability of self-articulation" which the external

actors then speak on behalf of the Congo (Ibid: 9). External actors speaking on behalf of the

people of Congo in a way that alters the narrative of the Congolese experience is most

noticeable in the Independence Day speeches given by King Baudoin of Belgium and Patrice

Lumumba, Prime Minister of Congo. King Baudoin noted:

> The independence of Congo institutes the culmination of the work conceived by the genius of King
> Leopold II, undertaken by Him with a tenacious courage and continued with perseverance by
> Belgium… For 80 years, Belgium sent to your soil her best sons, first in order to rescue the Congo
> basin from the odious slave trade that decimated its populations; afterwards in order to bring together
> the different tribes who, previously hostile, together will constitute the greatest of the independent
> States of Africa; finally in order to call forth a happier life for the various regions of the Congo that are
> represented here, united in one Parliament (Quoted in Gerard-Libios & Verhaegen 1961: 318).

King Baudoin's framing of the colonial experience consisting of rescuing Congolese people

from the perils of slavery, uniting warring tribes, and setting it on a path to being the best

state in all of Africa is in stark contrast to the speech given by Patrice Lumumba who said,

> Our lot was eighty years of colonial rule; our wounds are still too fresh and painful to be driven from
> our memory. We have known tiring labor exacted in exchange for salary which did not allow us to
> satisfy our hunger, to clothe and lodge ourselves decently or to raise our children like loved beings. We
> have known ironies, insults, blows which we had to endure morning, noon, and night because we were
> "Negroes."… We have known that our lands were despoiled in the name of supposedly legal texts
> which recognized only the law of the stronger. We are known that the law was never the same
> depending on whether it concerned a white or a Negro: accommodating for one group, it was cruel and
> inhuman for the other (excerpt translated and quoted in Merriam 1961: 352-353).

These contrasting presentations of the colonial experience, spoken from the same stage on the

same day, demonstrate that as much as the Belgian King Baudoin wanted the memory of the

colonial experience to be about liberation, peace, and the promise of a better future,

Lumumba's words reflected the experience of cruelty, hardship, and a legal system where the

Congolese were devalued and punished. The experience of a legal system which

accommodates the strong while oppressing the weak is particularly noted here as this

becomes an experience repeated later under the Mobutu regime.

The following sections provide a brief history of the development of judicial systems in the

DRC, Dunn's broad survey of highlights two important points. First, that in the history of the

DRC/Zaire there was never a "hard hegemonic state to being with. The state was constantly

reforming itself as it came in contact and competed with other social forces; that is to say, it

was consistently being (re)constructed and (re)constituted (Ibid: 136). Though Dunn does not

use the language of friction in his argument, the same ideas are present. This chapter looks

specifically at the hybrid nature of the Congolese legal landscape and the long history of

friction which produced the judicial institutions operating today. Further, the view originally

written by Henry Morton Stanley depicting a violent people in need of civilization influences

living in a land of chaos and are perpetuated in the present day (Dunn 2003: 4). It is worth

noting that the physical borders of the DRC, like all former colonies, are a product of external

intervention, while the political structures that govern the Congo originate from foreign

systems. Although it is understandable that the violence of colonial actors receives most of

the attention when looking at the DRC, it should also be mentioned that part of the violence

attributed to slavery is connected to internal conflicts of land and resources (Hochschild

1999). The relevance of mentioning localized conflict becomes important because while

international and national level conflict receives the bulk of the attention, local conflict and

agendas are a historical reality in the DRC that tend to receive little attention (Autesserre

2009).

3.1.2 Pre-Colonialism & Colonial Experience

International involvement in the DRC dates back to 1482 when the Portuguese traders first

set foot in the DRC (Hochschild 1998: 8). The slave trade, the creation of the Congolese Free

State by King Leopold, and Belgian colonization further established the physical space that is

now known as the Democratic Republic of Congo.

The Congolese colonial experience is well documented as a violent, brutal, and cruel period

of history. Adam Hochschild painstakingly recreates the brutality of the experience in *King*

Leopold's Ghost (Hochschild 1999), noting that approximately 10 million people were killed

during the colonial experience. This number is projected to be nearly half of the Congolese

population at the time. King Leopold never visited, but exploited Congolese people as

resources before an international movement forced him to relinquish control of the territory

to the Belgian government in 1908. Despite the change in oversight, the colonial experience

did not improve much for the Congolese.

A core problem frequently discussed by Séverine Autesserre, but overlooked by others, is that

of citizenship and land (2010). In eastern Congo, the intertwined problems of land and

citizenship originated during the colonial experience. To improve agrarian operations in

eastern Congo, the Belgian government brought over Banyarwandan people and helped them

gain access to land. The process involved the Belgian government using the Banande

traditional chiefs to give land to the incoming Banyarwandan people. Banande tribal chiefs

had absolute power over land attribution and could be 'convinced' to 'give' landholdings to

the newcomers. The fact that traditional systems of Banande landholding did not imply

permanent possession of freehold land was overlooked and the newcomers tended to settle on these plots as if they were theirs. With time, it became increasingly difficult to say what land belonged to whom since intermarriage with local Congolese Kinyarwanda speakers tended to confuse land-holding patterns at the time of inheritance. The autochthonous (native) tribes began to feel increasingly encroached upon, especially in the case of the smaller and weaker Bahunde and Banyanga (each about 5 percent of the population of North Kivu) who were already under strong pressure from the Banande themselves. By 1960, the Banyarwanda represented about 40 per cent of the population of North Kivu, with peaks of almost 70 per cent in the Masisi area (Priuner 2001: 147).

Over time, the influence of traditional chiefs declined, land ownership began transitioning from traditional ownership patterns to one of titles and deeds, and the legality of land ownership blurred (Ibid). Within this dynamic, conflict emerged where local groups fought the Banyarwandan people to take back land they obtained. This is the origin of the conflicts around land and identity in eastern Congo, but the resolution to the crisis remains elusive.

3.1.3 Independence and Mobutu

The Belgian government finally agreed to grant independence to the Congo on June 30, 1960. Despite a formal agreement of independence granted to Congo by the Belgians, foreign intervention remained strong. After independence, the Congolese military remained under the control of Belgian officers (Hochschild 1999). Patrice Lumumba, the first democratically elected president of Congo, lost power and his life to Joseph Mobutu in an allegedly foreign-sponsored coup. Thus, foreign interests continued to determine the development of the Congolese state. The political dynamics of the Cold War dictated Western interests during the

rule of Mobutu. Western countries remained willing to support his rule so long as he did not

turn to communism and the USSR.

Despite significant resources given to Mobutu from Western governments during the Cold

War, the ability of his government to establish a credible authority throughout the country

was never fully realized. The domination of his state was closer to that of an "archipelago

formation," as he held tight to the most important and lucrative areas, specifically mineral

rich areas of the country (Vlassenroot 2000: 445). The most common methods Mobutu used

to maintain control were manipulation of local interests and maintaining patronage networks.

The previously mentioned ethnic conflict in eastern Congo provided Mobutu the opportunity

to create a pro-government network in an area that tended to favor rebels (Pruiner 2001: 147).

The Congolese Constitution, passed in 1964, defined Congolese nationality as "inhabitants

beginning from the date of 30 June 1960 to all persons having now, or at some point in the

past, as one of their ancestors a member of a tribe or the part of a tribe established on the

territory of Congo before the 18th of October 1908" (Jackson 2006: 104). This definition

changed when a Mobutu loyalist redefined citizenship as extending to "all migrants living in

the Congo prior to 1950" (Boas 2012: 98). This redefinition granted political and economic

rights to Banyarwandan people and importantly included the ability to purchase land (Ibid).

Thus the local citizenship and land ownership problems stemming from the colonial period

were incorporated into national politics in an attempt to gain favor in a region where

Mobutu's government lacked strength. The citizenship saga was far from over, in 1981 when

the citizenship of Banyarwandan's reemerged as an issue as the Legislative Council reopened

the nationality question at the behest of Anzuluni Bembe and proposed marking the date of

citizenship requiring residence dating back to 1885 (Bøås 2012: 98). The 1981 law was never

implemented, but it still provided the institutional basis for increased discrimination against

the Banyarwanda, and the issue resurfaced again in the National Conference in 1991, a

national conference also based on the participation of civil society organizations (Ibid).

These constantly shifting definitions of citizenship without a lasting resolution did nothing to

solve the identity-related tensions in eastern Congo. Mobutu, and politicians after him, have

prioritized short-sighted power plays to strengthen their political power rather than pursue a

lasting solution to the problem. The manipulation of local grievances to maintain political

power throughout the country was a key feature of Mobutu's patronage network. Mobutu's

usage of patronage networks defined his time as head of state. He used revenues from

mineral extraction to ensure the state was the dominant political presence, using actors like

traditional chiefs to ensure that government interests were served from the highest levels of

government down to local levels (Tull 2003: 432). His manipulation of political outcomes

extended beyond national borders, however. Desiring to be a regional kingmaker, he offered

support to government or opposition parties, which resulted in neighbors needing, fearing,

and hating him. Ultimately, this political manipulation, and the enmity created by it, helped

mobilize a coalition of countries who worked together to topple his regime (Trefon et al.

2002: 385). Although Mobutu's usage of patronage networks enabled him to maintain power

for decades, changes in the commodity markets reduced revenue from state resources and

weakened his control of his patronage networks and state institutions (Boshoff et al. 2010: 1).

The gradual collapse of Mobutu's government did not improve on-the-ground realities for

citizens of Congo. Over the decades of Mobutu's rule, citizens' main relation to the state was

mediated by exploitation and violence. The social contract between citizens consisted of the

government abdicating any constructive role in public affairs and leaving citizens to "fend for

themselves" (Vlassenroot 2008: 3). This 'contract' is commonly referred to as 'Article 15' of

Mobutism. This attitude was replicated in the military as civilians were considered the "farm"

to serve as the resource to feed the army (Marriage 2011: 1897). Although Mobutu's exit

from leadership occurred over two decades ago, the legacy of Article 15 remains a dominant

factor in the current relationship of the Congolese state with citizens. Despite the hope which

initially surrounded Patrice Lumumba, the 32 year reign of Mobutu failed to produce a well

functioning state and the DRC's entrance to the post-colonial era failed created judicial

environment much different from the brutal violence known during the colonial experience.

3.1.4 Mobutu's Fall and Congolese State to the Present

While most scholars talk about the Congolese State collapsing or failing in the 1990s, Kevin

Dunn contends that it is

> more illuminating to talk not of 'state' collapse (for no such mythical state ever really existed), but of the alteration of discourses on 'stateness' (both at the international and local levels). What occurred in the 1990s was the removal of the guise of the 'sovereign state' and the exposure of the complexities of Zairian 'realities'" (Dunn 2003: 143).

This view is helpful in that it does not place too much emphasis on Mobutu's Zaire as a

functioning state but draws attention on the complex web of interests that existed in the form

of a state. I prefer this interpretation because engaging with Congo requires more attention to

be paid to the particular realities regarding actors, interests, and politics, rather than

attempting to fit the Congo/Zaire into a pre-existent definition of statehood.

As the Cold War ended, foreign support for Mobutu grew weak, and his foreign financed

system of patronage became further strained. Despite a few attempts to transition Zaire to

democracy, the fragmented and potentially non-existent nature of the Congolese state meant

that the end for Mobutu was near.

The end was stalled briefly in April of 1994 upon the outbreak of the Rwandan genocide.

Civilians were fleeing the brutal fighting poured across the border into the DRC, and the

international community was forced to engage with Mobutu once again. Adding a layer of

complexity to the massive influx of refugees into the DRC as the Rwandan Patriotic Front

advanced on the Interahamwe, many retreated into the refugee camps inside of the DRC.

Soon these groups were running the camps, managing the supplies flowing into the camps,

and began launching attacks from inside the camps.

The RPF eventually attacked the refugee camps to attempt to end the attacks. This drove the

militias further from the border, and they would eventually become the FDLR (Democratic

Forces for the Liberation of Rwanda). Given that the FDLR consisted primarily of Hutu's,

Congolese Banyarwandan citizens felt threatened by the presence of a militia run by those

who committed genocide in Rwanda and thus formed the CNDP (National Congress for the

Defense of the People).

In the midst of this conflict, Laurent Désiré Kabila overthrew Mobutu with the backing of

Rwanda and Uganda in 1998. Despite their initial backing, President Laurent Désiré Kabila

eventually lost their support through attempts to win over political networks in DRC, and this

loss of support escalated. The regional fighting eventually brought in Rwandan and Ugandan-

backed militias, and before long, Rwanda, Uganda, Burundi, Zimbabwe, Angola, Namibia,

Chad, Sudan, and Zaire/DRC were fighting in what is often referred to as Africa's First World

War. While many national armies ended up exploiting economic opportunities in eastern

DRC, it should not be overlooked that the Great African War and the manifestations of

violence in eastern Congo are "deeply rooted in political crisis and its manipulation by

political actors" (Vlassenroot 2000: 285). Current advocacy and scholarship tend to focus on

the economic dynamics of the conflict and often fails to consider these political dynamics.

In addition to international conflicts, the escalation of local grievances created problems.

Séverine Autesserre notes that micro-level rivalries over land, resources and traditional or

administrative power produced a series of cleavages both at the local and at the national

level. Most of the conflicts involved only a few villages, communities, or provincial leaders,

but some—most notably the conflicts between the Rwandophone minority and the

'indigenous' communities of the Kivus were reinforced by top-down manipulation by

national and provincial actors (Autesserre 2009: 256-7). Autesserre asserts that local

historical tensions exploded into violent conflict as Mobutu declined. While the regional wars

garnered most of the attention, from 1999 on the majority of the violence in the region

occurred behind official front lines, and civilians in eastern Congo accounted for the majority

of the estimated 3.3-6 million people who died[36] in the fighting (Ibid). The tendency of armed

groups to target civilian populations is a holdover attitude from the Mobutu era.

The regional politics referenced by Autesserre are important to highlight before moving

forward. In the context of Congolese conflicts, it can be difficult to separate "root causes"

from consequences of conflict due to the prolonged and overlapping nature of the conflict.

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[36] This estimate is based on IRC projects that include both battle deaths and deaths off the battlefield cause by
disease, malnutrition, displacement (IRC Mortality Report 2007: 11).

Nevertheless, it is important to understand that all actors have their agendas and are attempting to manipulate the conflict to serve their particular ends. As Mobutu's control over the country weakened, local political agendas and grievances became increasing violent in nature and began intertwining in regional and national conflicts (Vlassenroot & Raeymaekers 2008: 41). An influential driver pushing local grievances into violent conflicts is the role of alienation in motivating actors. State weakness in the DRC/Zaire offered many opportunities to local strongmen, which is also the key element for explaining the historical dimensions of social, political and economic alienation of large parts of the society. This process of alienation becomes crucial for understanding the recent increase of violence, and the formation of local militia (Vlassenroot 2000: 264-265). Many of these strongmen evolved into localized power brokers. In the 1990s they became "brokers" between the local community and the rest of the world (Vlassenroot & Raeymaekers 2008: 41). A function of these individuals is that they serve as gatekeepers between different competing groups, and thus can never resolve conflicts between [the groups]… while these groups can be seen as an evil to be opposed, they nonetheless can supply a real service of trust and protection to certain actors that feel unprotected by the state or its agents (Ibid: 46). These individuals are connected to a variety of outside groups, including "states, mafias, private armies, 'businessmen' and associated state elites inside and outside Africa" (ICG: 2000; UNSC: 2001). These complex networks also existed within long-running ethnic tensions in North and South Kivu, in particular among Rwandophones and 'native' communities (Autesserre 2009: 258-9). Each group is motivated by a unique set of interests, which creates a complex web of competing interests and conflicts layered on top of each other in the region. This complex intersection of local, regional, national and foreign interests all attempting to compete and

manipulate other groups for a variety of reasons must be included in any analysis of conflicts

in eastern Congo (Taylor 2003: 45).

3.1.5 Recent and Ongoing Judicial Reform Activities

As of the writing of this thesis, judicial reforms are ongoing in the DRC. Uncertainty looms

as tensions mount about the intentions of the current president, Joseph Kabila, and his

intentions to change the constitution to extend his stay in office. Violence continues to

sporadically pop up in the North and South Kivu. These tensions persist and, in the midst of

these tensions; efforts continue to bring lasting peace to Congo, and this section highlights

these efforts.

As of 2010, more Congolese were internally displaced than at the formal end of fighting in

2006 (Autesserre 2012: 203). The Index of Human Develop dropped the DRC to near the

very bottom of developed countries on earth (Human Development Report 2014). Further, on

January 25th 2010, President Kabila rejected a national budget that allocated such a

significant portion of the budget to parliamentarian salaries and perks that the rest of the

government was deprived of resources. Theodore Trefon cited this as an example of "the

political culture initiated under Mobutu persists and respects the logic of 'help yourself first'"

(Trefon 2012: 709). Continuing his critique, Trefon argues the Congolese government, which

is dominated by Kabila's party the People's Party for Reconstruction and Democratic, does

not govern. Trefon's observed,

> a fundamental flaw in the reform process is reliance on the Congolese administrative structure. In the context of state crisis, Congolese administrations are unable and often unwilling to work towards reform. Instead of facilitating reform, they undermine it. State crisis in Congo is characterized by loss of legitimacy, abdication from the development agenda, incapacity to maintain security (or assure the monopoly of coercion), shortcomings in the management of political and technical priorities and the inability to mobilize, generate or manage internal and external financial resources. (Ibid)

Going further to say the administration and have privatized official public service provision

creating an "ambiguous, arbitrary and hybrid" public administration. Procedures are

"conditioned by the mood, availability, and by the personal expectations and needs of civil

servants who drive on the ambiguity of their work environment" (Ibid: 714). Trefon's critique

is not limited to the judicial or police services, but the issues of ambitious, arbitrary, and

hybrid administration did not escape it. In 2010, the judiciary was not given an operating

budget but expected to function (Boshoff et al. 2010: 9). Carol Lancaster, briefly summarized

the involvement of the United States by saying,

> we are pretty sure the $1.6 billion in aid the United States has provided the Democratic Republic
> of Congo since 1960 has failed to produce lasting positive development results, mainly because
> of the political context of corruption, incapacity, and conflict. (Lancaster 2009: 33)

This corresponds with general overviews of liberal peace driven interventions.

Turning specifically to the security sector, after the DRC ratified the Rome Statue of the

International Criminal Court in 2002, legislative reforms attempted to address "incongruities"

between the provisions in the Rome Statute and the domestic military law (ICTJ 2009). The

problem is that the Military Penal Code, also adopted in 2002, does not provide "adequate

definitions for common elements of crimes and prohibited acts as mandated by the Rome

Statute" (Ibid). In 2013 the DRC Parliament took responsibility for the prosecution of serious

crimes, which had previously been conducted by the military, but the legislation that would

have formalized this shift of jurisdiction was stalled due to opposition by members of

Parliament who objected to the inclusion of foreign judges to assist in the courts (Ibid). This

small example illustrates the slow and frustrating pace of legal reform in the DRC.

A 2009 report by the International Bar Association (IBA) titled *Rebuilding Courts and Trust*

provides an assessment of the judicial system in the DRC. It found that the national budget

for the entire judiciary was 0.03% of the national budget, approximately $1.2 million USD

(IBA 2009: 19). The report concluded this figure was insufficient to cover one month of

salaries for the 2,000 judges allegedly earning $800 each, much less fund a judicial ministry

for a year (Ibid). Though Trefon refers to the privatization of administrative structures, it is a

function of necessity as much as it might be outright corruption. In addition to insufficient

funds for the judges, the number of judges averaged to one per 25,000 individuals compared

to the International Association of Judges recommended a minimum ratio of one judge for

every 3,000 to 5,000 individuals.[37] Other findings of the report highlighted corruption due as

a byproduct of the previous judges' salary which was $80 USD per month, questions of

independence based on interference from political and military sources, excessive pre-trial

detention of up to six months, poor investigative ability, weak enforcement of decisions,

weak communication ability, and geographical constraints.

The IBA report cited mobile courts as a point of encouragement. These mobile courts were a

pilot project funded by Open Society Institute (OSI). OSI gave the American Bar Association

$844,000 to conduct nine sessions throughout South Kivu (OSI 2012). These nine sessions

conducted between October 2009 to December 2010. Nine sessions heard 186 cases resulting

in 135 convictions, 94 for rape and 41 for other cases. 22 individuals were acquitted of rape,

and 18 were acquitted for other crimes (Ibid). OSI considered the performance of the mobile

courts to be impressive, but recalling that the budget for the entire Congolese judiciary was

$1.2 million USD for 2009 it should not be surprising that two-thirds of that mobile courts

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[37] This recommendation refers to judges serving in state court systems.

were able to prosecute 186 cases in 14 months. The only other indicator of success mentioned

in the report was the establishment of a website for individuals to ask questions of the

judiciary, but this accomplishment was immediately diminished by the statement "the near

total lack of IT infrastructure [in the DRC] will seriously limit the value of these innovations

in the short or medium term" (IBA Report 2009: 9).

The report also offers a small snapshot of other actors involved in the sector. UNPD launched

a US$390 million governance support program focused on legal and security governance.

This program supported drafting an updated legal code, upgraded equipment for courts and

training of judges. The European Union and European Commission financed REJUSCO

(Restoration of Justice Program) which focused on rehabilitating judicial infrastructure,

provision of transportation and technical capacity building, and supported local CSOs to

monitor human right violations. *Avocats Sans Frontières* (ASF) also supported mobile courts,

legal clinics, and legal training. Multiple other organizations performed a variety of legal

training, sensitization, and capacity building.

In a review of these interventions, the EU Court of Auditors found that from 2003 to 2011

1,868 million euros supported development, humanitarian, and security related programs. The

findings indicated the strategy was "sound and addresses known national problems, but

progress is uneven and limited" (European Court of Auditors 2013: 18-30). Additionally, less

than half of the programs delivered or were likely to deliver sustainable results. In particular,

the REJUSO programs objectives were over ambitious and only partially met because of the

programs procedures and the difficulty of the environment (Ibid). "Recruiting difficulties"

delayed efforts to strengthen the judiciary and the objectives of that effort are unlikely to be

achieved (Ibid). The report goes on and on to state that no sustainable results are expected

from any of the interventions in courts or police reforms. An International Crisis Group

Briefing from July 2015 identified tensions between the DRC government and MONSUCO

(ICG 2015: 6). Tensions between the DRC, the UN, and other agencies have built since the

publishing of a reporting on human rights violations by Congolese police. Violent protests are

ongoing, and the outcome of Kabila's attempts to cling to power remain uncertain. It does

seem that a significant amount of money and effort has been spent in the DRC to accomplish

insignificant improvements in security, especially in the Eastern provinces.

3.2 History: Hybridity, Frictions, and Everyday

The expeditions of Henry Morton Stanley are long past, the brutality of the Belgian colonial

experience is a part of history, though remembered, given that approximately 63% of those

living in the DRC are under 25 years old,[38] the speeches of Patrice Lumumba are also a relic

of the past, and yet despite the chronological distance of these events to the present, they

remain relevant. The evolution of the state influences the present, hybrid nature of judicial

services. The framing of the DRC as a country in chaos waiting to be saved from itself

continues to create sites of friction in efforts to create peace. This section addresses the role

of hybridity and friction in the context of the DRC.

3.2.1 Hybridity and Justice in the DRC

It is difficult to determine the stance of the Congolese government's stance on the

hybridization of judicial service provision. There are not any encouraging assessments of the

DRC's involvement in security, police, judicial, or defense reforms. Henri Boshoff cited that

"one of the major challenges for decision-making in all aspects of SSR, including police

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[38] Source: https://www.cia.gov/library/publications/the-world-factbook/geos/cg.html

reform, is the absence of a managerial culture in which delegation of authority is encouraged

or even tolerated" (Boshoff et al. 2010: 14). Every decision flows through the Inspector

General slowly any attempt at reform. Political interference remains an additional obstacle

(Ibid: 15).

Writing in 2010, Boshoff stated the likelihood of full implementation of the *Comite de Suivi*

de la Reforme de la Police (CSRP) is slim: there is not sufficient foreign funding nor interest

to cover costs (USD$1.3 billion) and the Congolese government has, thus far, shown no

willingness to make a financial commitment to the police reform process. This assessment

was followed up in by a summary of EU interventions by Laura Davis stating,

> The EU's engagement was – rhetorically at least – grounded on supporting human rights and
> peace – putting principle into practice. Yet without strong political engagement, it was unable to
> do this. After 2007–8, rather than help Congolese society mend in the wake of extensive and
> complex conflicts, the EU has seems to have retreated from its previously reformist agenda and
> concurrently, is no longer present, let alone influential, in crucial national and regional processes.
> Making do may have cost the EU its influence in the region, and therefore, its ability to help
> contribute to long-term peacebuilding and justice in the region (Davis 2015: 111).

The pessimism about a lack of political will for state involvement in reforms of security

services is consistent. What is less certain is if their actions would intentionally hinder other

entities, such as NGOs or traditional chiefs, from providing judicial services. This lack of

involvement is leading to an increased hybridization of the judicial landscape as other actors

are growing in the territory, but to this point, the Congolese government is not actively

hindering other entities provision of services.

3.2.2 A History of Frictions

Hybridity is a way understand how the current judicial landscape in the DRC evolved, but

functions as a descriptive tool. The hybrid judicial landscape is a byproduct from the

government's failure to develop a judicial sector as demonstrated by their lack of funding and

allow the gaps to be filled largely through foreign aid. Likewise, frictions provide a tool to examine the interaction of competing ideals, expectations, and agendas for judicial reform. Frictions is useful for examining the interactions local peasants as it is for western leaders and everyone in-between. The foreign policy interests, expertise, and biases of the implementing country shape its reform programs. Maintaining the view that the only solution for the DRC is a path to a liberal democracy assumes that the western state models are the best and only solutions to any state crisis (Bøås 2010: 444). This thinking leads to the fallacy often observed in SSR projects where failed efforts are only interpreted as limitations in finances, training, and capacity. To date, SSR programs are promoted through "technical" reforms to key military units, the promotion of power-sharing transitional governments, and assisting with the logistics of the 2006 elections. While these solutions help promote the image of a state, they do not result in one without the genuine participation of national government officials. Reforming security institutions is an inherently political project due to the power vested in the control of these organizations, and to date, the reform efforts are failing to motivate genuine political change (OECD 2008: 38).

In summary, the fluid nature of SSR, the varying interpretations and definitions of states where SSR programs are implemented, and the nature of security provision within states needing reform illustrates three primary challenges to successfully implementing reform programs. Besides, the lack of consistent frameworks to support the implementation of reform programs creates efforts that are scattered, poorly coordinated, redundant, and often ineffective. A current illustration of the ineffective nature of the reforms is the present accusations of mass rape surrounding a battalion of Congolese soldiers trained by US forces to become a model unit within the Congolese army. Engaging in technically focused reforms

within the DRC without also engaging the predatory nature of the state is producing failing

results that will not lead to an improvement in the DRC.

A curious feature of the Congolese state often identified by researchers is that despite its

"almost anti-Weberian features...the Congolese state has continued to survive" (Vlassenroot

& Raeymaekers 2008: 40). Working within a crippled, but somehow still functioning state, is

not an easy task. From 2001 to 2006 western states invested in a neoliberal overhaul of

Congolese state, including SSR programs that weren't limited to just the security sector

(Marriage 2011: 1898). A five-year plan was developed for reforming the judicial sector but

suffered from a lack of "strategic vision for reform or an analysis of needs" (Scherrer 2012:

149). The truth and reconciliation process never heard a case, and for a significant period, the

Ministry of Justice did not even have a budget (Boshoff et al. 2010: 9). Efforts were made to

develop incentives to demobilize combatants, create truth and reconciliation projects, and

hold elections. Unfortunately, the DDR process was poorly structured and proved ineffective

(Marriage 2011: 1899). National elections that were held in 2006 resulted in the election of

President Joseph Kabila and were seen as a positive move away from the violent past.

Unfortunately, the 2011 elections that resulted in the re-election of Joseph Kabila were met

with protests and doubts about the fairness of the election. The 2011 election cycle only

focused on national elections and local elections have yet to be conducted.

Not only were reform efforts poorly implemented, but an additional unfortunate consequence

was that the poor implementation of reform incentivized violent rebellion between 2003 and

2006 (Raeymaekers 2007: 25). Given the current state of reform efforts in the DRC,

Theodore Trefon offers a discouraging analysis,

> we have identified the problems, we know their causes and think we know the solutions...but things are going from bad to worse. State structures that have been targeted for reform, including administrative services, often do not even exist or are so weak that reforming them is just impossible. ... For these reasons, it could be argued that the reform process is little more than masquerade (Trefon 2012: 716).

The need for reforms in the DRC is evident, but the path forward is uncertain. Despite years of attention and financial resources being directed toward improving the security sector, the FARDC remains a source of insecurity. M23 rebels and government forces are fighting on the outskirts of Goma with UN troops soon deploying to join the fight. If, as Trefon states, current reforms are little more than a masquerade, it is unclear what will be gained by continuing the illusion of reform without any tangible results. This is where research from the 'bottom up' adds value to future reform efforts. By developing the understanding of judicial realities, options, challenges and opportunities from average civilians, future reforms will be able to include a perspective of the everyday experience of justice. Further research into current reform programs and evolving strategies is needed in order to articulate an answer to this question. To this point, my research makes it clear that the problems in Congo are deeply rooted in political choices, but the path to changing the lack of political interest in improving life for the citizens of the DRC is presently unknown.

3.3 Conclusion

This chapter contributes to the understanding of the judicial experience in Congo by establishing historical factors which contributed to the current landscape where police, courts, NGOs, and traditional chiefs operate judicial services. By mapping the formation of the formal context in which these services operate, instances of friction points are identified between international, national, and the local-local converge. The places of friction discussed began when the first European missionaries arrived in what would become the Democratic Republic Congo but as observed in other pre-colonial tribes, instances of friction can occur

any time different ideas of justice interact (Atkison 1989). Indirect rule entangled state

management with customary authorities and the traditions they kept. Events such as "Article

15 of Mobutism" established a predatory relationship between state agents which continues

to influence the judicial experience today. Decades of war, insecurity, and state interference

have fundamentally altered the local view of traditional chiefs and their place in society. The

chapter ends by connecting the present condition of the judicial experience in Congo to a

place of ongoing frictions with uncertain outcomes. This chapter also represents a shift in

perspective as well. As an individual's personal understanding of their place in their

community and country is shaped by their view of their place in the story of their nation.

Given the driving goal of this research is to understand the experiences of hybrid judicial

services on peacebuilding, it is time to transition to bottom-up views of the justice in South

Kivu.

Chapter 4
Methodology

This chapter focuses on the methodological choices made during the design of this research project. Beginning by providing an overview the motivations behind the research, the chapter then addresses the research paradigm informing the design. A few pivotal moments in the research process are discussed, the M23 invasion of Goma, and a period of illness. The first delay helped focus the research geographically and the second delay helped streamline the process of identifying interview subjects. The chapter then addresses how the sites and individuals were chosen for interviews and how process tracing enabled the narratives to be analyzed through key decision points to develop an understanding of everyday experiences of justice in South Kivu.

4.1 Motivations for Research

My interest in researching the judicial experience in eastern Congo is rooted in years of research, working, and living in central Africa. In a professional capacity, my work has supported local NGO's working on improving access to justice for victims of sexual violence and victims of state sponsored-torture, as well as general community development projects. I listened to personal accounts about the challenge of accessing justice in eastern Congo. My previous research experience primarily focused on tensions between Acholi traditional beliefs and the International Criminal Court (ICC) in northern Uganda. Working in eastern Congo, I observed tensions about accessing justice as well but noted differences I could not quite identify.

I worked with many human rights defenders, as they refer to themselves, creating programs

with services focused more on the logistics of getting individuals to court venues than on the

actual cases themselves. The focus on the logistical aspects of justice spurred my curiosity

into what were the real barriers, constraints, and opportunities to quality judicial access, as

well as opportunities to improve the experience of justice in eastern DRC. For my master's

thesis I researched traditional justice in Northern Uganda that helped fuel my hypothesis that

while judicial realities in the Kivu's remain far from ideal, individuals and communities had

developed and adapted mechanisms to resolve disputes and maintain a semblance of justice

in eastern Congo despite pervasive state weakness. Further, I suspected that these judicial

mechanisms might not fit neatly into the clean paradigms of state or non-state, formal or

informal, punitive or restorative. Ultimately, I wanted to understand the experience of judicial

services eastern DRC and how it fit into the present discourses around justice in Africa.

The existing gaps found in typical characterizations of security and justice in the DRC

inspired my research questions. The first characterization is the often cited statistic that

80-90% of people in Sub-Saharan Africa get their justice from non-state sources (Baker

2007). A second characterization is the Congolese citizen's creativity and resilience in spite

of chronic state weakness and predation (Vlassenroot & Raeymakers 2008, Trefon 2009,

Nordstrom 1997). The third characterization is the label "the rape capital of the world" and

the description of mass impunity used to describe the justice system. The "rape capital" title

stems from an estimated 400,000 rapes in 2011 in addition to the significant focus on SGBV

by numerous groups (Peterman et al. 2011: 1060). The fourth categorization of the judicial

reality in DRC is one of "mass impunity" which is the dominant framing of the judicial

experience by Human Rights Watch, Global Witness, Open Society Institute and many other International NGOs (Grayson 2012: 124; Global Rights 2005: 6; OECD 2007: 17; Scherrer 2012: 149; Trefon 2012: 706). Thus, if individuals were predisposed to non-state judicial services, state judicial services were weak, impunity was widespread and sexual violence was a massive problem, it seemed reasonable to suspect that alternative solutions might begin to manifest themselves in response to increases in violence, crime, and insecurity. Additionally, given the social, political, national, and cultural changes from periods of protracted violence from 1996 on, it seemed that generalizations about the judicial experience in South Kivu would be insufficient to present an accurate account of what, if any, judicial experiences existed.

Based on the assumption some forms of judicial experiences which circumvented exploitative and corrupt providers occurred in South Kivu, it was important to examine the judicial experience in South Kivu. Given the extensive research existing on sexual violence in the DRC, specifically the Kivu region, and my status as a male researcher it was determined that examining sexual violence was not the best route for this research to do ethical considerations as well as an already robust literature (Autesserre 2012; Bartels et al. 2006; Kalisya et al. 2011; Peterman et al. 2011; Casey et al. 2011). The choice to not research land disputes is rooted in the fact that land conflict is one of the key drivers of conflict and unresolved ethnic tension in the Kivu region and thus research into this are could potentially inflame tensions (Bøås 2010; Autesserre 2012: Prunier 2001; Raeymaekers 2007; Tull 2008; Vlassenroot 2000). As the goal of this study was to explore the process of justice-seeking, the initiating incident needed to be something that could involve the most diverse demographic possible. In this consideration, the topic of theft emerged as a 'democratic crime' meaning that it is an

incident that occurs to wealthy or poor individuals as well as male or female individuals. A

survey conducted in South Kivu identified that 40% of respondents viewed theft as the most

pressing issue for justice in their community, which supports the relevance of theft as an issue

impacting everyday life (Vinck & Pham 2014: 45).

The appeal of theft was reinforced by the fact that, unlike murder, assault, or sexual violence,

it is not a capital offense. The legal code provides a set of imprisonment and fines depending

on the nature of the offense[39] (Immanuel, Personal Interview, June 13th, 2014; EUPOL 2012:

294-298), but based on research prior to fieldwork, I knew that traditional authorities, NGOs,

and family meetings were often sites where disputes surrounding theft occurred (Burke-

White 2005: 580; Mushi 2013: 22). Though the legal code provides a framework for an

idealized process for handling cases of theft, the dysfunction of the Congolese legal system

caused me to anticipate that individuals would frequently use alternative sources of dispute

resolution (Boshoff et al. 2010: 5; Vinck & Pham 2008: 23). The variation in how victims of

theft seek to resolve their problem provided the best case scenario. It would allow the

research to examine the judicial experience in South Kivu in a way that would both provide a

detailed overview of how the various judicial 'services' operated, and potentially cause the

least amount of trauma for interviewees.

4.2 Research Paradigm

In an attempt to find the most natural approach fit for this research design, as the nature of the

research should guide the formation of the research design (Blaike 2003: 7), a number of

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[39] Theft without an act of violence can be penalized up to 5 years. Theft that includes breaking and entering into a building or vehicle can be punished up to 10 years. Theft which includes an act of violence can be punished with 5-20 years

options were considered. During this early phase of the research process, I was considering

using a multi-method research design with a quantitative survey of judicial experience

supplemented with qualitative user interviews to explore the user experience in greater detail.

However, before I developed this further, a few critical events happened. On April 4th, 2012,

fighting between the M23 and the FARDC broke out in North Kivu. By the end of 2012, the

M23 captured Goma, the capital of North Kivu, and meant I needed to reconsider my

approach. In practical terms, conducting a large-scale survey would be prohibitively

expensive due to the high level of transportation expense in DRC. Reviewing the research in

which underpinned *Living with Fear*, by Vinck and Pham, illustrated that although they were

able to cover a large number of individuals in multiple regions, and their research produced

data on a variety of local opinions on justice, the question of the experiential dimensions of

justice and how an individual went about finding justice remained unanswered. The desire to

address these questions refocused my project to allow for a more narrative-focused research

design.

Due to the outbreak of insecurity in North Kivu, I shifted my focus to South Kivu where

some tensions existed, but the UK FCO[40] allowed for travel to Bukavu, and avoiding the

most dangerous areas was not difficult at all. The DRC remained the location where I wanted

to conduct my research due to the tensions between how justice was presented in advocacy

and research documents, and the nuanced reality I expected to find upon micro-level

research. The additional factor of the intense focus and financial resources used to address

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[40] United Kingdom Foreign & Commonwealth Office.

security reform in DRC led me to believe this research was relevant and worth the risks I

knew I could mitigate.

4.3 Refocusing Research Design

Focusing on the narrative element of the judicial experience brought forward the important

and interconnected relationship between justice and power. The definition of justice I use in

this research refers to the structures and mechanisms to uphold norms. These structures and

mechanisms wield authority and power within the societies in which they operate. Although

just because they wield power and authority, it does not necessarily mean it is done without

consent of the population, though it does not guarantee it either. Whether it is the power of a

state to punish, of a local chief to rule, or the power of a cultural belief to hold sway over an

individual's actions, it is an exercise of power. Likewise, justice is a political act in the sense

that it involves power and authority (Salter 2013: 15). Given the important dynamic of power

in the experience of justice, I naturally began looking towards critical theory as the most

appropriate place to situate the research.

4.3.1 Research questions

Regarding the choice of a qualitative versus quantitative approach, a qualitative research

design served as the best option for both methodological and practical reasons. Researchers

with the Harvard Humanitarian Initiative conducted two surveys, one published in 2008 and

another 2014. Each of these surveys connected with 3000 - 5000 individuals to gauge their

views on justice in eastern DRC, providing a robust account of perspectives on justice in

South Kivu. However, financial costs and security risks required me to focus exclusively on

one province, and South Kivu proved to be the most appropriate and feasible option.

Additionally, as the driving question of the research was refined, it became obvious that a qualitative study of narratives examining justice on a micro-level would not only produce more interesting research findings alongside the existing large scale surveys, but would also be my unique contribution to knowledge in this field.

With this in mind, I developed the following research questions:

What can experiences of everyday justice in South Kivu contribute to peacebuilding approaches?

Sub Questions

1. In what ways do the choices made by citizens and their experiences of these justice providers reflect and shape their perceptions of state legitimacy?

2. To what extent do citizens of South Kivu control their judicial experience?

3. What access points exist for judicial services in South Kivu?

4. How might the relationships between different judicial service providers be characterized?

5. What factors influence who can (or chooses to) access different kinds of services?

4.3.2 Role of the Researcher

In constructing an appropriate research design, it was also essential to examine my potential to impact the research process. I knew my status as a foreign researcher would be something of an advantage and liability. The benefits lie in the ascribed status granted by my nation of birth and place of schooling. Simply by stepping foot in the DRC, I communicated that I had the means to travel there, and, by my nationality, it was assumed I carried some privilege. I anticipated that my status as an outsider researching justice, but not framing it through a study of sexual violence and asking for them to articulate their work in their words would

assist in establishing meetings with NGOs and government officials. I was additionally

cautious in how I framed the purpose of my research as I did not want to be seen as someone

seeking to criticize their work nor provide funding for services. Additionally, an important

part of my posture towards the individual judicial user needed to clarify that I was not a part

of an international NGO, government, or local civil society organization (CSO) and had no

power to actually resolve any problem they might be experiencing.[41]

Thus, I needed to establish myself in a place where I could mitigate concern about my

presence and situate the interviewees in a position to speak freely. Before arriving in the

country, I began to communicate with former colleagues to establish connections with

members of the civil society, government officials, and traditional leaders. During this phase,

I also obtained the proper letters of introduction and invitation that would facilitate proper

access to government officials without concern. Obtaining a letter of invitation and

introduction from the Mayor of Bukavu with the correct stamps ensured that I could move

about without fear of harassment and without inviting suspicion from local authorities.

As a white, American male, I could never be considered a cultural insider and there would

always be some degree of distance between myself and those whose experiences I wished to

capture. The status often ascribed to expats assumes the expat contains a status, prestige, and

power. While acknowledging there will inevitably be a distance between a researcher and an

interview subject during a three-month research project, I endeavored to ensure the interview

process was a secure, private, and comfortable experience for the interview subject. As

language abilities varied amongst the research subjects, I used three interpreters, one female,

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[41] I mostly succeeded in communicating this as only two interviews ended with the expectation that I was then going to mediate their dispute.

Alene Malekera, and two males, Amani Matabaro and Janvier Byamungu. Amani Matabaro is

a former colleague and is well established in Bukavu civil society. He acted as a 'fixer' to

introduce me to a variety of civil society actors before moving on to other projects. As

reputation and relationships are important forms of social currency regarding getting

meetings with local actors, particularly government officials, we were able to use his

relationship and status as a Rotarian to secure meetings with fellow Rotary Club members in

local government.

With government officials, local chiefs, and other judicial service operations, I made sure to

present myself as someone curious about what was happening at the local levels. They are

aware of the popular characterizations of their country as the "rape capital of the world" and

the judicial system being characterized by impunity; so, presenting myself as a curious,

impartial observer gave them the opportunity to vocalize their opinions of the situations. I did

not, of course, expect to access their unmediated views. While asking a Congolese police

chief about the police in Congo is bound to get a very biased and partial answer; my research

design counted on that receiving an ideal depiction of a judicial process (Tansey 2007: 10).

Their function in the research process was to capture the idealized nature of the specific

judicial service that they worked within. User interviews and focus group interviews would

work alongside the provider interviews for the purpose of cross-referencing information.

4.3.3 Getting Started

The goal upon arrival was to spend the first two weeks interviewing judicial service providers

to create an accurate understanding of the judicial services operating in South Kivu and their

intended function. I also conducted three test user interviews to get a sense of how

individuals would respond to question flow. The only significant change to the series of

questions was to ask the person to define justice before recounting their experience, as

reversing this order seemed to influence the definition.[42]

I expected that judicial providers would seek to present their service in the most positive light

possible as my questions to judicial providers asked them to present the way their specific

institution was designed to work. Interviewing NGO staff and civil society workers helped to

identify the barriers and opportunities that existed within the various judicial pathways. Once

the judicial landscape is developed, and the intended flow of judicial services is mapped, it

will be possible to understand how users interact with providers of judicial services and the

degree to which the intended flow of judicial services correlates with individuals' experience

of the services. Analyzing the patterns of access should identify common trends and

motivations behind who chooses certain access points and, possibly, identify some factors as

to why choices were made. Finally, it will be possible to reexamine the judicial experience to

see what, if any, labels might accurately reflect the judicial experience in South Kivu.

When I initially submitted the research design for ethical review, I expected to work through

a variety of local organizations to identify interview targets in areas around Bukavu. With the

assistance of Amani Matabaro and the translation help of Janvier Byamungu, I identified a

variety of judicial service NGOs to assist in gaining access to beneficiaries for the purpose of

interviews. The logic of working through existing judicial service organizations was

preferable for two main reasons. First, using an organization that the potential interviewee

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[42] The first week I was in Bukavu, I conducted a few practice interviews at an organization called Action Kivu in Mumosho. During one of those interviews, I went through the process of asking the interviewee about their experience which involved using the services of an NGO. At the end of the interview, I asked the interviewee what her definition of justice was, and she said it was the NGO. I asked for a less specific definition, and she said the only justice was the NGO she used. Thus I decided to ask about the definition of justice before talking about the experience.

already had a relationship with reduced the 'foreignness' of my presence and situated me with

a structure that was already familiar to them. Second, working through an organization in this

way would utilize a behavioral pattern that was not outside of the norm for this person,

reducing the potential risk to them. As a white, foreign researcher, visiting a victim of crime

could make their neighbors suspicious and create unhelpful assumptions about benefits or

advantages they were getting due to this connection.

4.3.3.1 Mitigating Risk

Throughout the research design process, I was acutely aware that this research could

potentially be seen in a negative light by government authorities.[43] To minimize risk, I

requested and received an invitation from a local organization, always visited government

officials and traditional leaders before beginning other interviews in an area, and presented

myself as someone who was interested in documenting how the systems functioned. In the

phrasing of my questions and the tone of the interviews, I tried to convey that I was not an

adversarial figure, but someone who was sympathetic to their place in the legal landscape.

Through being thorough in my collection of appropriately stamped letters, showing respect to

local authorities by greeting them when entering their territory, and posturing myself as an

empathetic researcher, I was able to minimize suspicion and concern about my research.

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[43] A 2013 Amnesty International report document threats against human rights advocates. "The threats and risks faced by human rights defenders are undoubtedly present in other regions affected by armed groups' activities and armed conflict. For example, in the village of Kawakolo, in Pweto territory, Katanga province, a member of the human rights NGO Libertas, named Godefroid Mutombo, was fatally shot on 7 August 2013, reportedly by members of a Mai Mai armed group.39 He had been serving as an interpreter from the local language of Kiluba to French in the proceedings of the mobile courts at the time. Libertas had previously denounced human rights abuses committed by armed groups in the region, including the Mai Mai Gédéon and the Bakata Katanga armed groups. The prosecutor of the chef-lieu, Kipuchi, was informed of the case but an investigation has yet to be opened (Amnesty International 2013: 14).

To ensure the safety and to respect the privacy of research participants, all interviews took

place in a private, neutral setting of an organization they had previously sought out on their

own, thereby mitigating some of these risks. All interview participants were explicitly

informed that their participation was voluntary, and they could end the interview at any point.

None of their full names were ever recorded and, to further decrease the level of risk, the

discussion of the judicial experience focused on issues related to theft. As discussed

previously, this focus served multiple purposes. First, theft is a relatively 'democratic crime,'

meaning that individuals across the spectrum of society could experience a similar event.

Second, the dominant research on justice in DRC focuses on sexual violence. Choosing a

different experience of crime contributes new data to an underdeveloped area of research.

While I make no claim to minimize any experience of theft, the discussion, and remembrance

of an experience of theft should be less traumatic than remembering experiences of sexual

violence. Third, other legal issues like land conflict are ethnically and politically charged. By

choosing a less volatile topic, I hope to remain focused on the experience of access without

bringing in too many additional elements.

4.3.3.2 Adapting to an Unexpected Opportunity

In the field, the approach as initially envisioned worked as expected for the most part. I

expected to utilize the connections to civil society through pre-existing relationships with

individuals at ABFEK, the organization which provided me with a letter of invitation to DRC

for the purpose of obtaining a visa. Through a connection facilitated by ABFEK, I was able to

find one organization that had an ideal structure to exclusively work through during my time

in Bukavu. During the second week of conducting landscape interviews, I interviewed

Raphael Wakenge at Initiative Congolaise pour la Justice et la Paix (ICJP). Raphael founded

ICJP twelve years ago and had worked as a human rights defender for twenty-five years. He

had experience of working with foreign researchers[44] in the past, and their organizational

structure involved working with listening posts throughout South Kivu. Not only was

Raphael informed, connected, and respected locally, he was enthusiastic to help facilitate the

identification of potential interview participants and allowed me to use the listening post

venues to conduct the interviews.

4.4.3.3 ICJP

Raphael agreed that ICJP would assist with recruiting interview subjects, provide

transportation, and allow for the interviews to be conducted in the ICJP field listening post. I

provided the characteristics of interview subjects I was looking for, and he would

communicate ahead five days before we went so that the field coordinator could locate the

appropriate subjects. The characteristics of interview subjects I wanted to identify were adults

(males and females 18+) who have had an experience with theft or a similar small dispute

and have made efforts to solve the issue using one of the following options: community

elders, Mwami system, religious leader, police, military, ANR,[45] court system or mob justice.

An option which I did not initially account for, but quickly knew to ask them to avoid, were

individuals who experienced theft, but then did nothing due to the high number of individuals

who potentially made that choice. While this course of action is a valuable data point and will

be discussed and addressed in the data analysis chapters, the purpose of my sampling method

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[44] Jason Stearns, respected DRC authority and author of *Dancing in the Glory of Monsters* (2011), also worked through ICJP to conduct his research.

[45] Agence Nationale de Renseignements

was to capture a representative sample of the potential experiences of justice and

not a representative sample of the

population.

4.4.3.4 Interview Sites

In total, nine different locations in three

districts were chosen in which to conduct

interviews (Map 4.1[46], Table 4.1). The

interviews in Mumosho (8) were

arranged through the NGO ABFEK and

the remainder of the judicial user

interviews were coordinated through

ICJP. In Walungu district, the towns of

Walungu (7), Mugogo (6), and Kaziba (9)

were selected. It was initially planned to visit an IDP

camp, located in Walungu district, but to access the

camp it would be required to travel through rebel-

held territory. Attempting to access the site was

unnecessarily risky as an IDP camp (Mugunga 1)

outside of Goma (1) was much easier to access

without the same security concerns. In Kabare

district, Katana (3), Cirunga (4) and Mumosho (8)

Map 4.1

Table 4.1 Interviews by location	Total	Female	Male
Bukavu (5)	27	11	16
Cirunga (4)	8	3	5
Mumosho (8)	18	11	7
Kalehe (2)	12	6	6
Katana (3)	10	4	6
Kaziba (9)	8	3	5
Mugogo (6)	3	2	1
Mugunga/Goma (1)	10	5	5
Walungu (7)	8	3	5
Unused	6	3	3
Total	110	51	59

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[46] Map 4.1 is a modified version of a UNOCHA Sud Kivu map, 2013. The original version is from: http://reliefweb.int/map/democratic-republic-congo/rd-congo-sud-kivu-carte-administrative-1-f%C3%A9vrier-2013. Accessed September 16, 2016.

were chosen. In Kalehe, Kalehe (2) were chosen. In Bukavu (5), the ICJP offices were used

to host interviews with five adult males and five adult females who met the above criteria.

These towns were chosen based on their proximity to Bukavu. Mumosho and Cirunga are

within an hour's drive of Bukavu, and it is feasible to go into town for the day, assuming one

can afford to hire a taxi or has access to other means of transportation. People do walk, but it

would not be feasible to walk, attend court, and return within the same day. Katana, Walungu,

Kaziba and Kalehe are more than one hour's drive from Bukavu, and transportation is less

frequent and more expensive. Selecting towns at differing distances to Bukavu allowed the

opportunity to gauge whether the judicial experience varied significantly from location to

location and if the distance from Bukavu, the administrative hub, influenced choices and

experience. Through ICJP five men and five women were to be identified in each area before

my arrival. In Bukavu, many additional people showed up, and I am not entirely confident as

to why. Word of mouth about the 2000FC ($2USD) I was providing for transportation across

the city possibly played a role. The trip to Mugogo produced only three usable interviews due

to a sudden and unexpected encounter with Typhoid Fever. This resulted in my needing a two

night, three-day hospital stay, but that proved to be the only significant change in the

interview plans.

4.4.3.5 Interviews

During the first two weeks in Bukavu I began conducting interviews with judicial service

providers such as lawyers, judges, and traditional chiefs. The reason for exclusively focusing

on collecting information from them initially served two purposes: to construct an image of

their ideal function of their particular judicial service and to try to see if any major

differences existed between their accounts of their services and what was written. In total, I conducted nineteen judicial provider interviews.

Over the remaining thirteen weeks, I conducted one hundred and ten individual justice user interviews which comprise the bulk of the data collected and conducted two focus group discussions to check the judicial user narratives collected. A breakdown of these interviews is shown in Table 4.2. These interviews focused on a single event which occurred within the last 12-16 months. Ideally, the process of justice-seeking would be concluded before the interview taking place. Two reasons exist for this preference. First, a completed narrative is the focus of my research. As I developed my methodology, I was under the impression that only "completed" narratives would fit for comparison. I learned along the way that a common challenge was interrupted, delayed, or stalled judicial experiences. The process did not end, it just stopped. Many of these narratives of

Table 4.2 Service Provider	Total	Female	Male
Police	22	7	15
Mwami System	17	9	8
Nothing	16	8	8
NGO	11	5	6
Multiple	11	1	10
Local Solution	8	6	2
Military	5	1	4
IDP Camp	5	3	2
Court	4	2	2
Other	3	2	1
Religious	2	2	0
Popular Justice	0	0	0
Chief du Post	0	0	0
Rebel	0	0	0
Unused	6	3	3
Total	110	49	61

stalled justice are included in the data analysis. The second reason is simply to preserve the memory of the event. I would tell an interviewee that if it happened yesterday it was more recent than what I was looking for, and if it happened more than two years ago then too much time had passed.

The focus groups took place at the end of my fieldwork. They occurred in Mumosho and

included individuals who did not participate in the previous research sample. The purpose of

these focus groups was to revisit topics which arose through other people's narratives and for

me to probe inconsistencies or seek clarification through asking questions about judicial

services in general and not pressing respondents to share personal experiences. The focus

group ended with a discussion of a riddle about power from George R.R. Martin's *Game of*

Thrones series.[47]

The logic of using this design was to obtain an understanding of how the judicial options in

DRC operated through initial document research that would be either validated, corrected, or

supplemented through interviews with judicial providers and human rights defenders. The

core of the research, the experience of the judicial system, would be covered in the one

hundred and ten judicial user interviews. The responses in these interviews and information

discovered in the judicial provider interviews would be discussed in a focus group setting to

gauge the accuracy of the information obtained. The breakdown of what judicial services

were used by the interviewees and a full analysis of them occurs in the following two

chapters.

Before moving on, there are five sections of Table 4.2 to mention briefly. The first is the

category labeled multiple. This category reflects individuals who attempted to use more than

one judicial service provider to resolve a single problem. Often this behavior is labeled

'justice shopping,' but that carries with it an assumption that the user is attempting to

---

[47] The context of the riddle was not important for the individuals to engage with the ideas in the riddle, which are about sources of power. The riddle is presented in 6.3.3 but it involves a nameless king, priest, rich man, and mercenary. Thus it was not relevant for the individuals in the focus group to have a familiarity with the book series Game of Thrones nor the HBO adaptation of the novels.

leverage a more favorable solution by playing different providers off each other. This was not

the case in these scenarios, and thus I elected for the label 'multiple.' The second section to

briefly mention is *unused*, as these interviews did not meet the criteria for the research. One

individual was involved in a dispute with his church choir and anticipated my assistance in

mediating the dispute. Another young woman was clearly troubled with either her problem or

the prospect of talking to me about it. Within a few minutes, her anxiety was evident, the

interview was terminated, and she was offered private assistance from ICJP. The final three

categories are *popular justice, rebel, and chief of post.* Each of these categories are discussed

further in Chapter 5. I expected *popular justice* to be something which occurred, but it is not

discussed or recorded in any meaningful way to measure it. *Rebel* groups are prevalent in

South Kivu, but poor infrastructure and general danger associated with contacting rebels

prevented their inclusion. The focus group was asked about rebels, and their response is

included in Chapter 5. Finally, *chief of post* is a figure who can

theoretically and legally settle disputes, but my cases did not reflect

individuals using their services.

Table 4.3 Event	
Theft	72
Disputes	17
Theft of Land	5
Accused of theft	3
Arrested	2
Child Injured	2
Assault	1
Slander	1
Witchcraft	1
Unused	6
Total	110

4.4.3.6 Experience of Crime

The intention was to focus on judicial experiences that were related to

theft in South Kivu. When ICJP sent information about the individuals

to recruit to the listening stations, they were instructed to identify

individuals who experienced theft in the last 12 months. As Table 4.3

shows, theft is the dominant group, but other events prompting

attempted judicial experiences were also captured. The 17 disputes documented include

family disputes (9), land dispute (3), dispute with local chief (1), IDP camp dispute (1),

market dispute (1), student/teacher dispute (1), and military dispute (1). Two individuals were

arrested for divergent reasons, and the design did not intend to scope in these experiences into

the research, but they provide unique insights into certain experiences of the legal system and

thus were retained.

4.4.3.7 Interview Analysis

The interviews are analyzed using an adapted process tracing method. Process tracing

originated as a tool to establish causal processes, causal chains, and causal mechanisms

(Taney 2007: 4; George & Bennett 2005: 6). Over time, researchers adapted and expanded

the utilization of process tracing to examine decision-making strategies (Riedl, Barndstatter,

& Roithmayr 2008: 804), political events and phenomenon (Collier 2012: 823), and causes of

conflict (Richards 2011: 219). Though many uses of process tracing methodology seek to

uncover the causal process behind events like the Cold War or the civil war in Sierra Leone,

this research saw the potential to apply process tracing to uncover decision making strategies

utilized by common individuals in South Kivu. The process tracing method allows for both

inductive and deductive methodological approaches. The approach utilized in this research

project is deductive, examining the experiences of everyday justice in light of the typology of

justice and typology of potential outcomes to frictional experiences presented in Chapter 2.

In arguing for the application of process tracing methods in elite interviews, four reasons

were identified, "first, corroborate what has been established from other sources. Second,

establish what a set of people think. Third, make inferences about a larger populations

characteristics/decisions. Fourth, reconstruct an event or set of events" (Taney 2007: 5).

Though process tracing is often used to establish causal factors in significant events, it is not

the intent of this research to establish definitive causation behind why individuals made the

choices they did in a particular situation. Process tracing is also useful for testing hypothesis

and decision-making processes (Bennett & Checkel 2010: 4).

Before the fieldwork, research established a spectrum of judicial service providers which

existed in South Kivu. These points of service provision were investigated through available

literature and the first two weeks of fieldwork was dedicated to interviewing leaders of the

identified judicial services in an attempt to corroborate the information gathered on how each

specific service functioned. Also, interviews were conducted with civil society members to

examine the possibility of additional judicial service providers operating that were not

identified before beginning the fieldwork. A quota sampling method was employed to ensure

that the spectrum of experience within each type of service was accounted for in the data. The

two key types of experience looked for were those that users defined as positive and negative.

Additionally, positive and negative experiences were sought by gender as well. This choice to

use a process tracing methodology to collect a representative sample of experiences rather

than a representative sample of judicial users was made due to a desire to address the core

question of this research: what can everyday experiences of justice contribute to a better

understanding of peacebuilding in South Kivu? That justice is insufficiently available to the

majority of the population is widely written researched (Vinck & Pham 2008; World Bank

2005; Trefon 2010; OECD 2007; Mushi 2013; Mamdani 2001). What is lacking is an

investigation of the variety of judicial experiences possible in South Kivu which is the key

contribution of this research. The common refrain about the judicial experience in South Kivu

is that it is defined by an absence of justice, due to impunity. This research challenges the

utility of these negative claims, arguing that they primarily serve to present the judicial

landscape in DRC to be a blank slate on which new and better judicial institutions can be built. By using a process tracing method to understand what experiences exist, using existing survey data to corroborate the relevance of these studies, the one hundred and ten interviews[48] collected in this fieldwork examine the decision-making experience of victims of theft to develop a better understanding of user perceptions of judicial services in South Kivu and how future peacebuilding approaches can work with existing user preferences to build a more sustainable peace.

Image 4.1 reflects the structure which guided the interviews with individuals regarding their experience with theft. The interview opened with a request to briefly discuss the experience with theft which is reflected in the box labeled event. Next, the individual would be asked about their first decision point, labeled D1, which pertained to take action against the thief/ theft of goods or to choose not to take action. If they elected to do nothing, then I would inquire why they chose that action and if they were satisfied with that action. If they elected to do something (D2) the choice of provider and the experience of pursuing that service was explored. The next potential decision point, D3, was to accept

Image 4.1 Process Tracing Template

Narrative Map

Event:_____

D1: Something // Nothing

Nothing

D2: Police / Court / Self / ADR: _____

Why?

Outcome?

Satisfied: Yes / No

D3: Accept / Appeal / Other

Accept

D4: Appeal/Try different Judicial Service

Why?

Outcome?

D5: Appeal/Try different Judicial Service

Accept

Why?

Location:___
Pseudonym
Age: 18 - 28
Gender: Ma
Education L
Occupation:

Notes:

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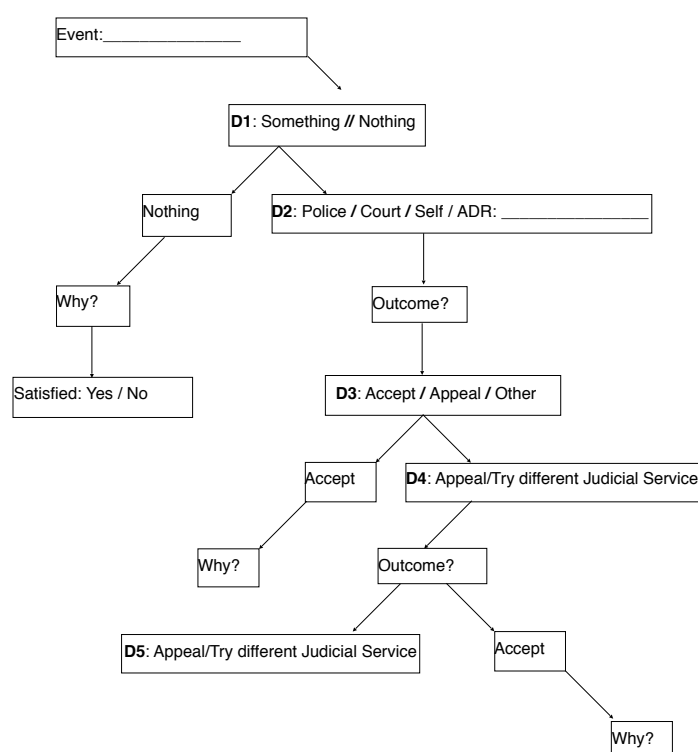
[48] 110 were collected, but only 92 fit the criter

the outcome, appeal the outcome through means provided by the judicial provider, or to seek

out a different judicial provider altogether (D4). This cycle repeated itself as necessary until

the issue was either resolved or no further action was taken by the individual being

interviewed.

4.4.3.8 Data Storage

All data (interview notes, audio recordings, diagrams) will be stored on an encrypted

computer which will be locked in a secured room when not in use in the field. Backup copies

of all electronic data will be in the possession of the researcher at all times on a secure USB

stick. After the completion of study, records will be maintained by the researcher for ten

years.

4.4 Conclusion

This chapter addressed the research design and the motivations behind it. It addressed the

complicated nature of defining justice due to the extent that it is a culturally embedded

concept. Examining the experiences of those seeking justice in South Kivu will produce thick

understandings of justice for connections to thin understandings of justice existent within

current peacebuilding approaches. The desire for security in one's home, the ability to seek

mediation for a dispute with another person, not being harassed by police and not feeling

exploited by the services that are supposed to provide security, are desires that cut across

culture and experience. How these ends are manifested in a society might vary greatly, but

the yearning for justice exists across cultural divides. Chapter 5 will set out the judicial

landscape in South Kivu before presenting the range of judicial experiences within that

landscape. Examining the experiences of justice, the decisions which users made, and their

anticipated future action will help identify elements of the judicial system that work well,

elements which work poorly, and possibly provide insight into some avenues to creating

better judicial experiences in future peacebuilding processes. Chapter 6 connects these

experiences with the ongoing debates and aims of peacebuilding practice.

Chapter 5
User Experiences of Judicial Services
in South Kivu

This chapter presents the user experiences of accessing judicial services. The experiences

were collected through interviews of in South Kivu. The first section of the chapter focuses

on defining the judicial landscape in South Kivu. The judicial landscape is created using

information collected from interviews I conducted in South Kivu, as well as agency reports

and other scholarly research on judicial services in South Kivu. This section is not a critical

commentary on the judicial services working in South Kivu, but an attempt to identify what

services are present, who they serve and how they are intended to function for those they

serve. The second section works through the various experiences of users attempting to

navigate the judicial landscape in South Kivu. Recurring or noteworthy themes within

individual experiences are highlighted for further commentary in Chapter 6.

Understanding how the services are designed to function will inform the second portion of

this chapter which examines personal experiences of justice with the judicial services

presented in the first section. Experiences which conform to the idealized procedural flow of

any given system reinforce the reality of a given services procedural flow. Experiences that

contradict the ideal experience elicit questions of why the process failed to operate as

intended. If a process never works the way it is presented then it raises a different set of

questions about how a process actually functions.

The data analysis will be divided into five sections. The first section uses the information

obtained in landscape interviews and is supplemented by additional literature to construct the

ideal process flow users should experience when going to a judicial service in South Kivu.

After developing the ideal user experience of the judicial services available in South Kivu,

actual user experiences will be examined. The second section examines the ninety-one[49]

usable judicial experiences gathered during the fieldwork phase of research. These

experiences are grouped together by the judicial service used.

5.1 Landscape Section

This section describes the intended function of the various judicial services present in South

Kivu. For each judicial service operating in South Kivu, an intended flow of the service was

created. This flow was created by pulling information from prior research, interviews with

individuals working in specific judicial services, and civil society organizations (CSO's) who

monitor judicial services. The chapter is organized using the typology of judicial service

providers presented in Chapter 2, formal state, informal state, non-state customary, non-state

emergent, and non-state adversarial. Formal and informal state services are combined in one

section with formal and informal as some experiences blur the distinction between formal and

informal. Beginning with the most frequently accessed sources, the following section will

provide a bit of history for each category of service, describe the flow, and discuss the

relationship the service has with other services.

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[49] The total number of interviews attempted is 110, but out of those interviews, 6 are unusable. Thus t he
narrative, or partial narrative, is not examined in this section.

5.1.1 State Providers - Formal & Informal

This section examines the state-run judicial services. The services included are the police, the

courts, and the military. These three services are combined as they are all agents of the state.

The police and court system are set up to administer formal judicial processes for citizens,

but the military does not have the formal authority to get involved in citizen disputes.

5.1.1.1 State Police

President Mobutu created the Police Nationale Congolaise (PNC) in July 1966 to establish a

national police service, centrally controlled and managed police force to "maintain public

order, ensure public safety and salubriousness, and carry out surveillance" (Mayamba 2012

36). For example, Colonel Munyole Honorine is the lead Sexual and Gender Based Violence

(SGBV) protection officer in South Kivu, stated that when "rights are violated, the violated

must be punished. The victim must be satisfied as to the implementation of justice" (Personal

Interview, June 14th, 2014). The PNC is tasked with enforcing the Congolese legal code. In

2002, reforms began to improve the responsiveness of police and restructured the police into

territorial units (Mayamba 2012: 39). In South Kivu, province headquarters is located in

Bukavu. Specialized units are granted jurisdiction over specific areas - DGM (immigration),

hygiene/environmental police, traffic police, Sexual and Gender Based Violence unit,

intelligence, Rapid Intervention Police (PIR), and the 'nearing police' (Personal Interview,

June 14th, 2014). The 'nearing police,' or *police de proximité,* is an effort to improve

response time by placing officers in specific communities to develop a better relationship

between citizens and officers (Mayamba 2012: 39). The police service also has a special

position called *Officiers et Inspectors de Police Judiciaire,* locally known as Judiciary Police

Officers, who are capable of mediating non-criminal disputes[50] (Ibid). Certain police officers

or politically appointed administrators called *chief du post* can serve as Judiciary Police

Officers.

5.1.1.2 Idealized User Experience of Police Services

The official flow of an encounter with law enforcement, as described by Captain Banweisze,

reflects an ideal experience. Crimes are either reported to or identified by the police. The

victim's claims are investigated, and if someone's rights have been violated, then an arrest is

made. Depending on the direction in the legal code, fines are administered, and/or the case is

transferred to court, and the accused is transferred to prison while the case is pending. The

accused is capable of posting bail (called provisional freedom) until the verdict is rendered.

At that point, jail time is served, or fines are paid. If a person is unable to pay a fine, they will

be jailed until the amount is paid. The services of the police are available to anyone in need,

and there is never a cost associated with police services.

The police most frequently interact with the state courts and NGOs in the provision of

judicial services. Their interaction with the courts is connected to the prosecution of a penal

offense. Their interaction with NGOs tends to focus on general reform efforts.

The gap between the current PNC force and free services provided by a professional,

accessible, competent, and accountable PNC is significant despite significant resources put

into sector-wide reform efforts (Boshoff et al. 2010; Mayamba 2012). The 2014/2015

Amnesty International Global Report found arbitrary arrests and detentions by the PNC to be

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[50] Officer Mwyka. Mumosho. August 15th 2014.

an ongoing problem (Amnesty International 2015: 128). An Open Societies Report titled

Taking a Stand on Security Sector Reform, notes that police reforms, specifically salary

increases, are inadequate and the police are frequently unpaid (OSI 2012: 9). Both Amnesty

International and Human Rights Watch discuss impunity and accountability of security

actors, but their focus is exclusively on rebel groups and the FARDC. The distance between

the expected function of police services and the reality of police services is significant. The

gap is captured in a Department for International Development DfID funded campaign which

produced two stickers which were widely distributed throughout Bukavu. The most prevalent

of the stickers reads, "Le services de la police sont gratiuts" (the services of the police are

free). The second sticker asked that citizens go to the police if they were experiencing a

problem. The need of a public campaign to inform citizens that police services are both free

and capable of solving problems highlight the two most commented upon problems, police

asking for money and police incapability of solving problems.[51]

5.1.1.3 State Courts

Like the PNC, the court system exists within an ongoing series of reform efforts to reduce

impunity and increase the credibility of the Congolese justice system. The framework for the

reforms was established in the *Feuille de route du Ministère de la justice pour l'exercise*

2009. The main elements of the framework are: "hiring and training magistrates; bringing

justice closer to the Congolese population; and strengthening control, oversight, and

renovation of infrastructures of the justice system" (IBA 2009: 7). Thus, while a part of the

state history, the court system is a relatively new, evolving system.

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[51] More specific examples of issues with police services are in section 5.4

The present court system came from the new constitution passed in 2006. The current

structure separates, as seen in image 5.1 and 5.2,[52] the Supreme Court into three distinct

courts, created a juvenile system, and involves the creation of 180 new institutions on the

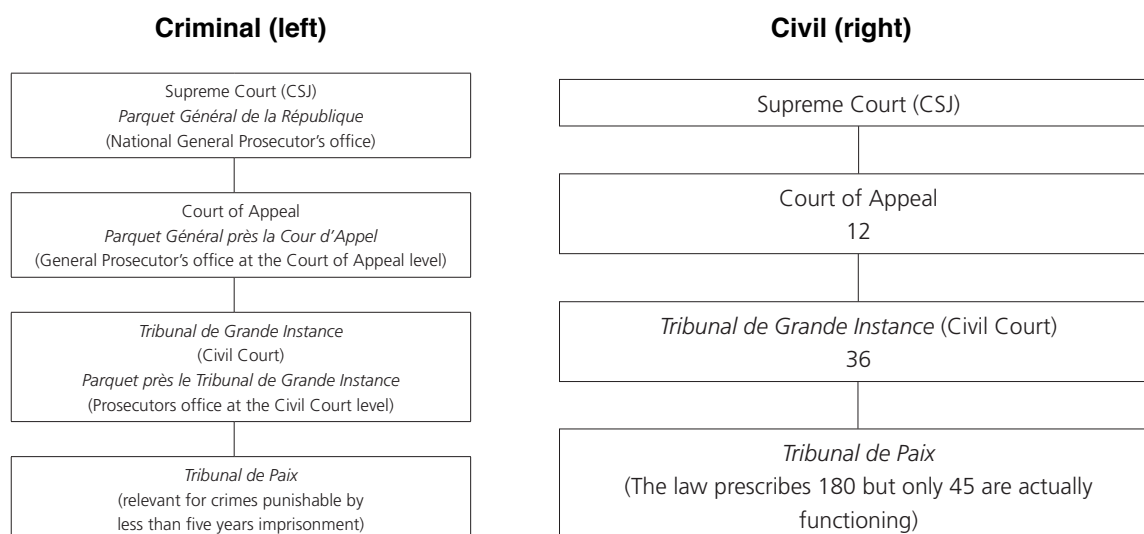lowest level (Tribunal de Paix) (IBA 2009: 18).

Image 5.1 National Court Structure

Cour de Cassation	Cour Constitutionnelle*	Conseil d'État

Haute Cour Militaire

Cour d'Appel 27	Parquet Général près la Cour d'Appel 27	Cour Militaire 27	Cour Administrative 27

Tribunal de Grande Instance 36	Parquet près les Tribunaux de Grande Instance	Tribunal Militaire de Garnison 36	Tribunal Administratif 36

Tribunal de Paix 180		Tribunal Militaire de Police	

The Tribunal de Paix should be present in each town as part of the effort to bring justice

closer to citizens, but funding has limited the number of actual courts from the proposed

number of 180 tribunals to only 45 tribunals actually in operation (Ibid: 18). A person seeking

justice can go to the court directly for civil disputes or have their case referred by the police

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[52] Chart taken from IBA 2009 report (IBA 2009: 17).

Image 5.2   **Criminal & Civil Court Structure**

Criminal (left)   **Civil (right)**

Criminal (left)
Supreme Court (CSJ)   *Parquet Général de la République*   (National General Prosecutor's office)
Court of Appeal   *Parquet Général près la Cour d'Appel*   (General Prosecutor's office at the Court of Appeal level)
Tribunal de Grande Instance   (Civil Court)   *Parquet près le Tribunal de Grande Instance*   (Prosecutors office at the Civil Court level)
Tribunal de Paix   (relevant for crimes punishable by   less than five years imprisonment)

Civil (right)
Supreme Court (CSJ)
Court of Appeal   12
Tribunal de Grande Instance (Civil Court)   36
Tribunal de Paix   (The law prescribes 180 but only 45 are actually   functioning)

in criminal cases. A filing fee of $5 for civil and $7 for criminal cases applies, but no other fees should be associated with a case. A person can either represent themselves or be represented by a lawyer. In the case that a person is not able to afford legal assistance, they can either go to an NGO, Faith-based Organization (FBO), or go to the Congolese Bar Association. The CBA has a pro-bono service. An individual must obtain a vulnerability certificate. To do this the CBA establishes proof of poverty, and at this point, the state is responsible for paying for the individual's services. In South Kivu, the only location for vulnerability certificates is in Bukavu. While this structure is in place to ensure everyone has access, it is not well known and seldom used. Pro-bono representation by NGOs and FBOs is widely known. Once a case is heard by the court, a judge has two weeks to render a verdict in criminal cases and one month for civil cases.

5.1.1.4 Idealized User Experience of Police Services

Similar to the experience of the process with the PNC, the difference between the intended procedural flow with the court and the experience is significant. Also, like the police, money

plays a critical role. In the legal system, the main leverage judges use to extract money from individuals comes at the point of rendering verdicts. While they are supposed to make judgments within a specific timeframe, often this will not happen. If someone visits the judge to inquire about his or her case or the delay, he or she will likely hear a lengthy list of problems at home that need to be handled before the case is settled. This is the indirect way of asking for a bribe. One party does not know if the another one has bribed a judge, so it is common for this to happen, and once money is on the table, it changes the way a case is decided. That said, if neither side bribes and the legal representation is competent enough to keep pushing the case forward, it is possible to get a verdict without bribing.

The criminal cases are seen by the court typically originate with the police department, so as previously stated, this is a common interaction. Local CSOs, national NGOs, and international NGOs work with the courts to conduct training for judges, lawyers, and judicial staff. A specific focus is given to legal services for women and children victims of sexual violence.[53] Local chiefs are not legally permitted to make verdicts on issues involving children and should refer these cases to either the police or local courts. Unfortunately, many of the village chiefs are ignorant of the law. Even police officers are unaware of the law concerning children. With the assistance of international NGOs, special courts were created and staffed with specialized judges and lawyers trained to deal with children issues.[54]

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[53] Advocate General Baudouin Lazumuken Bwalwel. Interview. Bukavu. June 11th 2014.

[54] Advocate General Baudouin Lazumuken Bwalwel. Interview. Bukavu. June 11th 2014.

5.1.1.5 State Military (FARDC)

The military has no formal jurisdiction over civil or criminal matters. Military courts exist to

deal with military discipline and not matters involving civilians. Therefore, no official

process exists to deal with civilian-soldier disputes. In theory, government courts would be a

more appropriate setting to resolve theft related disputes between soldiers, but the

examination of cases below suggests in practice that resolving problems with soldiers is not

so simple.

5.1.2 Non-State Customary Providers

As stated in Chapter 2, this research defines non-state customary providers as judicial

services provided by customary authorities (i.e. chiefs) based on cultural values. These

service providers are typically sanctioned by the state via constitutional recognition or non-

interference. The importance for noting that they are both not a state-administered service,

but do operate with the explicit consent of the state is to recognize that a relationship between

customary leaders and the state does exist.

5.1.2.1 Mwami Judicial System

The Mwami is a traditional leader who resides over ancestral land in the provinces of North

and South Kivu. The Mwami system refers to the structure of traditional authorities in the

DRC. The Mwami is a position traditionally handed down from father to son when the elder

is no longer capable of serving (Mirindi Makuba Chief Focus Group). The claimed role of the

Mwami and the chiefs who represent the Mwami is to "lead and serve their

community" (Ntabaza Chief Focus Group). This includes encouraging harmony and unity

amongst members of their community, specifically through helping to resolve disputes and

conflicts before they escalate into violent conflicts that destabilize the community. In the

Mwami hierarchy (Table 5.1), chiefs comprise the lowest level of the system. Members of the

community with problems first approach the local chief. The local chiefs, also known as

village chiefs in rural areas or street chiefs in urban settings, answer to the 'chief of the

locality' or cell chief and problems can be appealed to this level if a solution cannot be found

with the local chief. Chef de Groupement, or Quarter Chief, is responsible for reporting

directly to the chief and overseeing local chiefs and the "chief of the locality." The Mwami is

the traditional king who owns the land in a specific area. This title is inherited from father to

son (Mamdani 2001: 9; Mwami of Kalehe personal interview, July 24th 2014). The Mwami

has the power to allocate customary lands, oversee customary justice tribunals in the

kingdom, and oversee local markets (Ibid;

Mushi 2013: 18). If an individual is a part

of a minority ethnic group, then they

might be represented by a local chief, but

at the higher administrative levels, they

are represented by the chief of a different

ethnic group.

Table 5.1 Mwami System Structure	
Mwami	**Mwami**
Rural Titles	*Urban Titles*
Groupment Chief	Quarter Chief
Locality Chief	Cell Chief
Village Chief	Street Chief

This structure pre-dates the colonial era, but both colonial and national powers manipulated

the Mwami. The Belgians incorporated the Mwami system into their governance by indirect

rule which both brought the Mwami system closer to the national government, but also

helped cement the Mwami's position in the community (Vlassenroot 2013: 15). Mobutu

continued to use the Mwami system as they occupied a powerful and useful place at the

boundary between the state and customary. In 1973, Mobutu expanded the Mwami's existing

authority in customary courts to inclusions into rural administration structures by making

them representatives of the Congolese state (Van Acker 2005: 89). The Mwami's loyalty to

Mobutu's administration was maintained by patronage and directly meddling in succession.

One example of this occurred in 1961, the Mwami of Kabare "was removed of his official

position by provincial authorities" (Vlassenroot 2013: 25). An additional impact of the of the

co-option of the Mwami system into indirect rule is that individuals on the margins of the

Mwami system found themselves to be excluded from the Mwami services of dispute

resolution and land grants (Vlassenroot 2000: 266).

5.1.2.2 Idealized User Experience of Mwami Services

The process to settle a dispute is based on dialogue. The entry point to a dispute mediated in

the Mwami system begins with one party, typically the one who believes they have been

wronged, approaching the chief. The guiding principle for the chief is to establish the truth.[55]

To accomplish this, the chief talks with both parties involved in the dispute as well as others

who have knowledge of the matter. The chief will continue the dialogue about the issue until

he feels the truth of the matter has been established. The matter is often sealed by both parties

by sharing a banana beer with the chief. If the parties do not agree, the chief can refer the

case to his superior. Also, the parties can go to another mediation service, or take the case to

court.

The Chiefs interviewed stated that this process is free although participants might offer gifts

of appreciation once the issue is resolved. It is not uncommon for one or both parties to

attempt to bribe the chief as well, but all denied accepting bribes. Chief Cisirika Dieudonne

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[55] Chief Focus Group, Mumosho. June 16th 2014.

Bakulikira said that if someone offered him a goat, he would take it as a punishment to the one offering the bribe, but "the truth is the truth" and that is how a case must be decided.[56]

The Chiefs are officially empowered to mediate land related disputes and civil affairs. All of the chiefs interviewed stated that any offense involving weapons or large amounts of money is outside of their jurisdiction. Cases dealing with matters outside of their abilities are referred to either the groupment chief, the courts, or the local police. The village chief, or street chief in urban areas, oversees approximately ten households; thus individuals typically know their chief, so territorial jurisdiction is easily determined in rural areas. A Mwami's territory is well known as are the subdivisions of authority. In urban areas, the knowledge of street chief jurisdiction seems less clear. They exist, but in some parts, they are less well known.

Their relationship with local police and courts is mixed. The Chiefs interviewed articulated a knowledge of the need to refer cases when appropriate, but they also indicated the existence of a "turf war" with the police concerning who gets to resolve problems.[57] The ability to leverage people with problems into paying bribes was the rationale given as to why the police did not appreciate local chiefs deciding problems.[58]

In addition to the insights into the role of the Mwami/chief in the realm of justice, the chiefs were given the opportunity to add additional thoughts. The Chiefs still see themselves as the

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[56] Chief Focus Group, Mumosho. June 16th 2014.

[57] Chief Focus Group, Mumosho. June 16th 2014.

[58] Chief Focus Group, Mumosho. June 16th 2014.

gatekeepers to the community who should be consulted before anything happens, but they see

this function diminishing. While the incorporation into the government system by the Belgian

authorities and the further control exerted by President Mobutu weakened their authority, the

Chiefs identified the onset of war in the Kivus as the point when their power and influence in

the community began to wane. The fighting began in 1996 and killed many chiefs and

displaced many people. The Chiefs believe they were targeted because they represented the

government in the village. Chief Lukabukira stated that "in 10 years, the chief [will no

longer] have a voice in the community."

5.1.2.3 Religious Service Providers

Distinct from FBOs, religious leaders,[59] pastors, and imams are also figures who actively

participate in mediating various levels of conflict in South Kivu. The first introduction of

Christianity in the DRC traces back to 1483 when Portuguese missionaries first landed and

established a presence around the Congo River basin (Seay 2009: 103). Despite arriving so

early, it was not until "the late 1870s that a more sustained Christian mission effort" existed

in DRC (Ibid). Due to the spread of Christian mission activities, a steady stream of external

funding, and the long-standing challenges of the state to provide nationwide services,

Christian, specifically Catholic, hospitals, and schools were the only services available to

many Congolese.[60] Approximately 70%[61] of the population identify as Christians. Islam came

to the DRC via Swahili-Arab traders looking to expand ivory and slave trades (Leinweber

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[59] Mostly Christian and Islamic leaders. Traditional practitioners play a role for some people through divination, but their practices are illegal and mostly underground. Though some people admitted to seeking them out, it was not possible to track down a traditional healer for an interview.

[60] Christianity in general, and the Catholic Church specifically have a long history in the DRC. They have both supported oppressive regimes and challenged them. Laura Seay (2009) devoted the majority of her thesis to examining varied relationship of the church to both the state and to the citizens.

[61] 50% Catholic and 20% Protestant according to https://www.cia.gov/library/publications/the-world-factbook/geos/cg.html

2013: 5). Presently, approximately 10% of the population identifies themselves as Muslims. Whereas the Protestant and Catholic denominations have FBOs closely associated with their churches, Muslims, and smaller Christian denominations do not have these.

5.1.2.4 Idealized User Experience of Religious Services

Imams and pastors who offer to mediate disputes have no formal authority or established process to follow. Their function is similar to village elders or family who mediate disputes. Their role is to be impartial, listen to all sides, and try to find a way to bring the two parties together. Both pastors[62] and Imams[63] understand that police and courts can be very costly for users and see their services as a way to help other members of their faith. Neither the pastor or Imam indicated that their mediation was exclusively based upon their respective scriptures as both referenced national law, common sense, fairness, and compromise as resources for settling a dispute.[64] While the methods described by Pastor Innocent and Shiekh Assumani Kasongo were reasonable and claimed that they could only mediate minor disputes, Colonel Munyole Sikujuwa Honorine was very critical of the role of pastors in dispute resolution. Colonel Honorine served as the SGBV protection officer and encountered numerous cases of pastors attempting to mediate disputes involving sexual violence amongst those in their churches. At times, these were cases where the pastor was accused of committing the offense.[65]

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[62] Innocent. Pastor. Interview. Bukavu. July 10th 2014.

[63] Imam Sheikh Assumani Kasongo. Interview. Bukavu. July 1st 2014.

[64] Innocent Pastor. Interview. Bukavu July 10th 2014; Imam Sheikh Assumani Kasongo. Interview. Bukavu. July 1st 2014.

[65] PNC Colonel Honorine. Interview. Bukavu. June 6th 2014.

The scope of the research was not able to determine whether the dispute resolution services by religious leaders across the province was better reflected by modest and reasonable services as described by Pastor Innocent and Shiekh Kasongo or if it is more reflective of the incidents Colonel Honorine described. Research specifically focused on the churches' role in dispute resolution would develop a more comprehensive picture. Other than referring cases to police, there is not any connection between religious leaders and other judicial service providers.

5.1.3 Non-State Emergent Providers

This section examines services provided by non-state emergent providers. These providers as defined as judicial services provided by entities which are not the state, but they are not customary authorities either. In post-conflict contexts, this space would be dominated by NGO and CSO based services. These services might reflect aspects of customary function but tend to integrate more modern human right frameworks into their work. Their status is recognized by the state which permits organizations to operate or, at a minimum, does not interfere with their service provision. The first section examines services provided by NGOs, FBOs, and CSOs. The second section looks at services provided by IDP Camp leadership groups.

5.1.3.1 NGO, FBO, or CSO Service Providers

This category of judicial service providers works to create an improved atmosphere of peace and justice in DRC through advocacy for judicial reform; capacity building activities for police, courts, and others in the judicial sector; mediation services; and pro-bono legal services. The rise of NGOs, CSOs, and FBOs can be traced to the aftermath of the Second

Congo War (1998-2003). While some groups existed before that time, the Lusaka Peace

Accord signed in April of 2003 marked the beginning of increased funding towards projects

that transitioned towards peace. While the matter of religious belief can create different user

groups,[66] they share a common commitment to human rights, and the judicial services they

offer are comparable. Their activities range from critical activism, mediators, providers of

legal services, community education/sensitization, and capacity builders. Depending upon the

mission of an organization and the funding available to them, they might conduct multiple

functions within this spectrum. For example, The Life & Peace Institute is an NGO that

works exclusively on land-related conflict and devotes its resources to identifying conflicts

and providing mediation before the issues can escalate to violence.[67] The NGO Reform

Security Sector and Justice (RSSJ) promotes human rights education and compliance by

sensitizing police, the public, judges, and lawyers about changes in the Congolese legal

code.[68] ICJP maintains a relationship with 10-15 different field offices that document and

report human rights abuses throughout South Kivu. These reports are given to the

government and action is requested to reduce these abuses.

The FBO Archdiocese Justice & Peace Commission provides legal counseling and

representation to users with court cases, offers mediation services to disputing parties, human

rights education to communities and assistance to SGBV victims in South Kivu. They also

work across the border with Catholic agencies in Rwanda and Burundi to promote peace as

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[66] For example, the Archdiocese Justice and Peace Commission is a Catholic based group and deals exclusively with cases referred to them by catholic churches in the area. Heritiers de la Justice is funded by Swedish Episcopal churches and services Protestant and as well as other clients. ICJP is a non-religious organization that is open to anyone.

[67] Looche Muzaliwa, Coordinator Life & Peace Institute. Interview. Bukavu. June 13th 2014.

[68] Able Cimanuka. Secretary of the RSSJ Network. Interview. Bukavu. July 15th 2014.

well as linking up with global Catholic groups to advocate for peace in Congo and the region. Heritors de la Justice is a Protestant group that provides identical services to non-Catholics in South Kivu but does not partake in national or international activities.

Despite the variety of actors in this category and the absence of a standardized set of practices that must be followed, the direct legal services offered are similar enough to make some general statements about process.

5.1.3.2 Idealized User Experience in NGO, CSO, or FBO Services

Most groups are organized with a central office in Bukavu with smaller, satellite offices distributed around the province. FBOs use churches instead of offices as a means to maintain a presence throughout the province. Each office or church serves as a 'listening post' for community members to come to them for advice on legal matters. A listening post operates as a point of connection between rural communities and services which are often located in more populated areas. If medical attention is required, those services are seen to immediately through referrals to clinics or hospitals. Members of the listening post will then refer cases to the legal departments of the NGO/FBO to establish whether there is enough of a case to take it to court or give the parties an opportunity to go to mediation to resolve the issue.

As stated above, the exact interaction with other judicial services varies with each organization, but the interactions involve capacity building, critique, human rights education of police and judicial actors, and legal representation in courts.

5.1.3.4 IDP CAMP

Internally displaced camps (IDPs) are a dynamic feature of the landscape in the Kivu region

of Congo whose size builds and wanes depending on the level of insecurity. The location and

population size of the camps change relative to the level of insecurity. The most recent rise in

IDPs was attributed to the M23 movement which began fighting in April of 2012. In South

Kivu, the main camp is located in Walungu district, and the route to the camp involves travel

through an area populated by FLDR rebels. Alternatively, Mungunga Camp 1 is one of the

IDP located in North Kivu and is a short drive away from Goma along a secured route.

Although the ethnic demographics of IDP camps vary, the structure and management of IDP

camps are largely standardized due to the heavy participation of the UN and multinational

agencies that service the camp populations.

5.1.3.5 Idealized User Experience in IDP Camp Services

An outcome of the displacement that pushes civilians towards IDP camps is the dissolution of

the power structures they knew in their place of origin. Thus, camps seek to recreate new

structures for dispute resolution for camp members in addition to the presence of local police

officers.

The camp leadership's goal in solving problems is similar to a local chief; they do not have

binding authority to make a decision but serve to mediate a discussion between the parties in

a conflict.[69] The cost-free process of handling a complaint is quite similar to the chief

structure as well; the first step is that the committee is made aware of a problem between two

parties. Then members of the committee attempt to mediate a solution by talking with both

parties, establishing the truth through evidence and dialogue, and then navigating towards a

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[69] Claude (elected not to give a last name) Secretary of Camp Committee. Interview. Mugunga 1 June 24th 2014.

mutually agreed upon solution. The committee is not a judge. It is up to the individuals to

accept who is wrong and agree upon consequences or compensation.

If an individual refuses to participate in the process, the meeting will be suspended, and the

camp leadership council will attempt to discuss the matter with the non-participating party

and encourage their involvement in the process. If an individual is not happy, they could take

their problem to the police stationed in or near the camp. Individuals reported the limited

presence of NGOs, but other than that there no other options for camp residents.

5.1.4 Non-State Adversarial Providers

This section examines judicial services provided by non-state adversarial groups. Non-state

adversarial providers are defined as judicial services operated by entities which actively seek

to replace the state (i.e. a rebel group). These actors are not permitted to operate by state, but

due to their status as rebels. This section briefly discusses rebel actors and popular just, or

mob justice.

5.1.4.1 Rebel Justice

I was unable to assess the role of rebel groups in providing judicial services in South Kivu.

Security concerns made it unwise to travel to the southern districts of Fizi. I was going to

travel to Uvira in the southern region of South Kivu, to talk to displaced individuals from Fizi

as well as NGOs working in those areas, but tensions in the area made travel to Uvira a

security concern due to attacks near the road on June 6th 2014.[70] Additionally, research by

Koen Vlassenroot and Timothy Raeymaekers suggest that outside of road blocks to extract

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[70] https://www.hrw.org/news/2014/07/02/dr-congo-army-un-failed-stop-massacre

"taxes" from vehicles on the road, rebel groups do not provide much in the way of governance (Vlassenroot & Raeymaekers 2008). The example of their brokering the dispute about the motorbike suggests that they could be used as a method of one party to force an agreement on another party, which is very similar to the role of military members involved in settling matters. Essentially, if one has money, it is possible to hire FARDC soldiers or local militia to improve the odds of leveraging the desired outcome.

5.1.4.2 Popular Justice

Like rebel-operated judicial services, the role of 'popular justice' was not a feature of the judicial landscape I was able to assess. Of particular interest was the degree of difficulty involved in finding any information about it from local authorities or members of civil society who monitor justice. The police claimed to keep no records of any incidents, and I was unable to identify a group who tracked incidents of popular justice. Another NGO, Solidarité des volontaires pour l'humanité (SVH), reported 50 incidents of popular justice in Fizi district of South Kivu province in 2013.[71] In a brief review of popular justice in the Kivus, Judith Verweijen stated that acts of popular justice "should be seen as a result of, and commentary on, the current social and political crises."[72] Thus, popular justice remains an outlet of some kind for the people of South Kivu, but without more data, it is not possible to comment more on the subject.

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[71] http://radiookapi.net/actualite/2013/11/12/sud-kivu-50-personnes-lynchees-en-10-mois-fizi-selon-une-ong/

[72] http://blogs.lse.ac.uk/jsrp/2013/12/02/the-disconcerting-popularity-of-justice-populaire-in-the-eastern-dr-congo/

5.1.5 Judicial Landscape Conclusion

This section outlined the background, ideal process experience of a judicial experience, and

the interactions with other judicial experiences, if applicable. The purpose of the section was

to establish an understanding of what is supposed to happen when users initiate a judicial

experience, or a judicial experience is initiated by a judicial service. The following section

will first examine the definitions of justice provided by interviewees and then examine the

judicial experiences defined as successful by the user.

5.2 Narratives of Experience

This section examines the narratives of judicial access collected during the fieldwork

research in and around Bukavu, South Kivu. The narratives are presented in chronological

order communicated by the interviewee. Most of the events took place within a year of the

interview, so the memory of the event should not be distorted by time much. Conducting

interviews with judicial service providers, civil society members, and two small focus groups

provide further sources of information to either corroborate or contradict individual

narratives. Additionally, two critical research projects conducted in South Kivu by Patrick

Vinck and Peter Pham further provide a solid background with which to analyze the

experiences of justice.

This portion of the chapter is divided into six main sections. The first section examines user

definitions of justice and how the user experience was reconstructed. Sections two through

four examine the judicial experience with specific judicial service providers: CSO's/NGO's/

FBO's, police, the Mwami system, FARDC, the court system, local solutions, and IDP camp

systems. The fifth section examines narratives of judicial access that spanned across multiple

judicial services. The sixth and final section analyzes narratives where the individual could

have chosen to pursue justice to resolve a problem they experienced but chose not to do so.

As depicted in Table 5.2, after experiencing an event such as

theft, a person has one critical decision, to do something to

address the event or to do nothing. This section examines

experiences where the potential user chose not to pursue

justice of any kind. The rationale for the choice not to seek

justice and the potential implications for future choices are

examined and discussed. After reviewing the experiences of

not seeking justice, two important elements are highlighted:

the dangers of seeking justice and the 'justice shopping'

strategy.

Table 5.2 Judicial Service Provider	# of cases
Nothing	17
NGO	13
Police	25
Mwami	16
Military	4
Court	6
Local Solutions	6
IDP Camp	4
Force Vive	3
Multiple	10
Unusable	6
Total	110

5.2.1 Understanding the User

This section examines the user experience of the judicial services discussed in the prior

landscape section. This section consists of the core of the research collected and is further

analyzed in Chapter 6. The section opens by examining how individuals defined justice at the

opening of their interviews. The following section transitions to a discussion about the

experiences of justice. A general framework of how a person might move through a judicial

experience is presented. Briefly, that framework is: first, an event[73] occurs. Second, the

person can decide to do nothing or they can to something. Third, if they chose something,

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[73] I use event to represent an experience of theft, a family dispute, or anything that happens in the life of a
person which motivates them to seek a judicial service provider to intervene.

then what something do they choose and why? Fourth, once the process ends via conclusion or by some other means, they can choose to accept the outcome or continue to appeal the outcome. The combination of user-generated definitions of justice and user experiences of judicial services in South Kivu established a rich set of narratives which contribute to developing a 'bottom-up' view of justice in South Kivu, DRC.

5.2.1.1 User Definitions of Justice

Before asking individuals about their personal experiences accessing a judicial service, I enquired about their conceptualization of justice. Specifically, I asked what they thought of when they heard the word justice. The question was open-ended to allow for a response that was not guided. In the question, justice was translated into Swahili as haki and sharia.[74] Three main descriptions of justice were given: justice as ensuring rights (34), justice as creating peace and harmony (17), and justice as solving problems (17). Other descriptions were also given: justice as the application of the law (9); justice as a process to establish the truth (9); justice creating security (5); justice as something done by authorities (6). Descriptions of justice only given once were: justice is bought; justice is a place to accuse someone; justice is a place to punish someone, and justice is impartial. One individual was unable to answer the question at all despite many attempts to rephrase the question.

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[74] The question was phrased, what do you think about when you hear the word 'justice'? This definition was agreed to after a discussion with the translator in which he suggested the dual phrasing as a way to let the respondent know we were not just asking about 'formal' judicial institutions or services.

The dominant characterizations of judicial services focus on the authority of the provider,[75] the immediate outcome of the process,[76] and the consistency of the service.[77] From the responses collected during the interviews, these characteristics of judicial services are not what users seek. The sentiment behind preserving rights tended to be connected with the return of property, the expectation of security to live without fear, and a general absence of victimization. Judicial services which encourage peace and harmony operate with the belief that when problems can be resolved between individuals, animosity does not linger. A fairly consistent statement from an interviewee was frustration and bad feelings towards a neighbor with whom they had an unresolved conflict. Thus, the framing of justice by users and those attempting to reform judicial services is different. Returning to the framework discussed previously, the historical background, social experience, and mental expectations of justice will be different for local users, national elite, and international actors.

Two research studies on perceptions of justice by Vinck and Pham (2009; 2014) identify the most common definitions of justice in South Kivu as establishing the truth, being just or fair, and applying the law. In both studies, the commentary on these definitions and the tendencies to prefer punishment for the victim over compensation is given a passing comment about the local bias for justice taking a more retributive logic (2014: 63). Vinck and Pham identified establishing truth, fairness, and application of the law as the chief definitions of justice in South Kivu. My research identified a desire for judicial services to respect the rights of users, work to establish peace, and to solve problems. Taken together, the expectation of judicial

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[75] State vs. Non-state

[76] Punitive vs Restorative

[77] Formal vs. Informal

services on the part of judicial service users in South Kivu is for judicial systems that function, that are reliable, and that are fair. An additional aspect of cost will be factored in later, but these expectations of judicial services influence the choices they make and ultimately the services they want in their communities.

This section identified the definitions of justice gathered in the introductory portion of the individual interviews. These definitions were compared to recent research conducted in the same area, asking similar questions. It is suggested that the expectations of justice from judicial users in South Kivu are distinct from present debates on judicial users in post-conflict areas. The next section examines judicial experiences deemed successful by the user. Then the following section examines unsuccessful judicial experiences.

5.2.1.2 User Experiences of Justice

The narrative mentioned in the introduction about the stolen motorbike stated in the introduction suggests examining micro-level narratives of justice might produce useful insights into the experience of justice. The initial question 'what did you do?' Was answered 'I went to the police and got my bike back,' which was true, but also inaccurate compared to the experience leading up to contacting the police. Working with multiple other individuals to investigate the crime, identifying the location of the bike, and confirming that the bike was in possession of the thieves before contacting law enforcement suggests nuance in the relationship between a victim and a judicial service. The following two chapters analyze experiences with police, courts, NGOs, the Mwami system, IDP Camp systems, local solutions, and military judicial services. Before the analysis begins, the next section establishes the framework for analysis.

5.2.1.3 User Navigation of Judicial Experience

Early in the process, the simplest way to refer to the judicial experience in South Kivu was with the language of judicial landscape. The experience was the pathways in which an individual navigated through this landscape to their destination. This destination could be one of many "poles of power" that dominated an area where power and authority were fragmented and contested by the actors controlling the judicial services (Hageman & Didier 2010: 542 - 543). Before beginning the fieldwork, the picture 5.1[78] maps the anticipated flow of experience marked by three critical choices. The first choice occurs after experiencing of victimization (Event); an individual had two immediate choices, do something or do nothing. Doing nothing is as informative as doing something in terms of learning about an area's

Image 5.3

Experience of Justice

- Decision Point

Event

Something   Nothing

Police   Military   Rebel   ANR   Courts   Mob   Elders   Mwami/Chief   IDP Camp Leaders   Religious

Satisfactory Decision   Unsatisfactory Decision

Accept Outcome   Seek a Different Outcome

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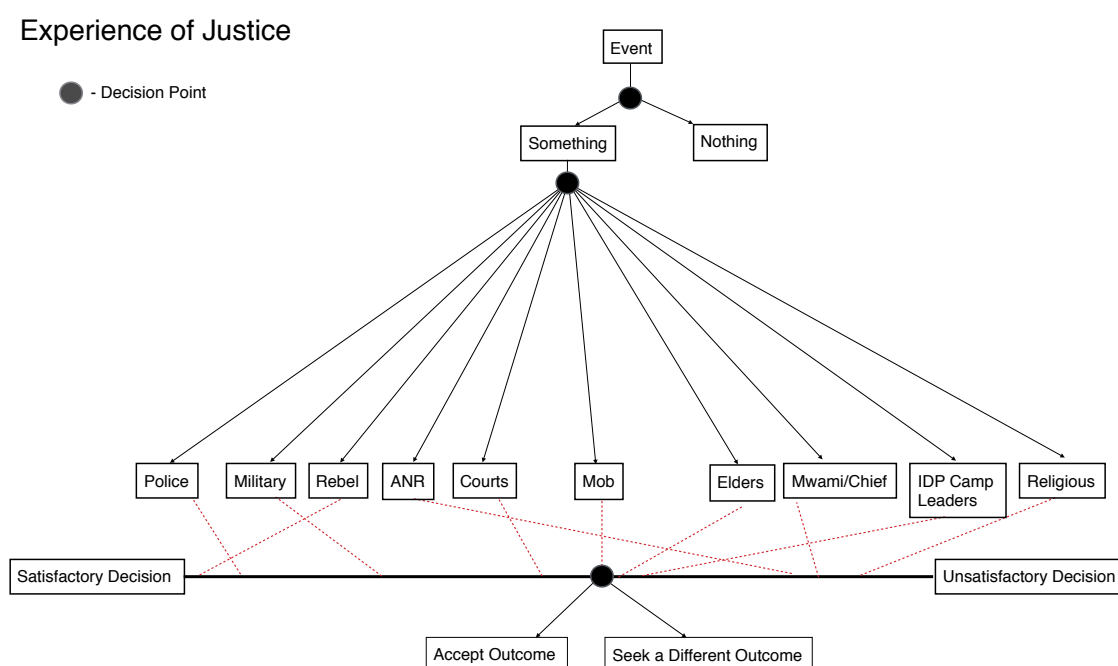
[78] Image 5.3 represents a simplified image of the flow of a judicial experience. As the user experiences are examined the messy nature of the experience is evident, particularly in experiences in which multiple service providers are approached by users.

judicial services. The experience of doing nothing is examined in the section on

unsatisfactory judicial experiences as "how can anyone be satisfied with this?"[79]

The second choice is which service to choose. The choice of judicial service and the

reasoning behind that choice forms the core of this research. Four main questions emerge

from the choice to use any judicial service. First, why that service? Second, what was the

experience of that judicial service? Third, how did that experience impact their thinking

towards which judicial services to use in the future? Fourth and finally, how did that

experience compare to the intended process of that service?

While the experiences of an individual seeking justice can vary extensively, there are five

possible ends. First, the victim chooses to do nothing, and the experience is finished. Second,

the victim initiated a judicial service process by contacting an agent of the service, but the

experience never progressed nor resolved. Third, the victim went to a judicial service and the

process completed, but the user was unsatisfied. Fourth, the service was completed, and the

user was satisfied. Fifth, the service completed, but the user was neither fully satisfied nor

dissatisfied.

An additional aspect of the experience is contacting a single service versus contacting

multiple judicial services. A single attempt is defined as a victim going to one access point for

judicial services and having their case accepted or not going to another access point to begin

the process of resolving their problems. Multiple attempts consist of a victim approaching

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[79] Jean. Interview #1 June 16th 2014.

multiple judicial services, not as a part of a judicial chain, in an attempt to initiate a judicial

service. Making multiple attempts at judicial services is often framed as 'justice shopping.'

Justice shopping is a term to describe the strategy of using multiple judicial services

simultaneously to attempt to leverage a better solution. This particular strategy can be

examined in the cases where individuals used multiple services.

5.2.1.4 Accessing Outcomes of Judicial Experience

I began the fieldwork portion of this research project with the expectation that the analysis of

the judicial experiences would provide insight into the elements of judicial services that are

important to users. Specifically, that experiences of justice would be separated widely into

two distinct categories of successful and unsuccessful judicial experiences. The interview

structure allowed the interviewee to define the relative success or failure of the judicial

experience. A consequence of the user's ability to define their experience was that the

personal criteria for success or failure varied greatly. For example, a thief stole one of

Daniel's[80] goats. The thief was captured while trying to sell the goat, and the goat was

returned with an apology. A few days later the thief came back and stole the goat again. This

time the thief fled the area, so there was no way of catching him or getting compensation for

the goat. Despite not completing a judicial experience in a manner that compensated him for

the loss of his goat or some method of accountability for the thief, Daniel was satisfied

because he forgave the thief. Marie-Louise[81] was fined by a disgruntled chief who was

frustrated that she went to the police instead of him, but was satisfied because she felt the

chief was correct to fine her.

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[80] Daniel. Interview #69 July 31st 2014.

[81] Marie-Louis. Interview #44 July 24th 2014.

Conversely, the process of Benoit's judicial experience was nearly textbook, but then a

massive prison break brought his case to an end, leaving him deeply unsatisfied.[82] While

understandable, the prison break was an a-typical breakdown in the judicial experience. Thus

the categories of 'satisfied' and 'unsatisfied' varied to a degree where they did not sufficiently

serve the analytical framework. The degree to which expectations were met, exceeded or

unmet is of interest. Also of interest understanding the extent to which a users choice of

provider relates to their perception of the service being a legitimate service provider. These

dynamics are addressed in Chapter 6. Thus the presentation of experiences in this chapter

follows the topology of judicial services presented in Chapter 2 and the analysis of the

judicial experiences in Chapter 6 are initially filtered through the experiences of friction

outlined by - compliance, adoption, adaptation, co-option, resistance, or rejection (Björkdahl

& Höglund 2013: 298).

This section opened by examining the definitions of justice held by the interviewees and

provided context for how the narratives of justice were understood, specifically the

importance of the decision points presented to the user during their experience pursuing

justice. Then the categorization of their experiences is discussed. The next chapter discusses

the experiences of justice in depth.

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[82] On the second day of my fieldwork there a wall at the prison fell over, or was knocked down, and more than 300 prisoners escaped. The suspect in Benoit's case was one of those prisoners.

5.3 State Judicial Services: Formal & Informal

This section examines the judicial experiences with state-administered judicial services. The

typology of judicial services listed in Chapter 2 identified two distinct classifications of state-

administered judicial services, formal and informal. Formal judicial service experiences that

operate by the letter of the law, while informal services operate outside the law. This section

segments the experiences by each particular service experience (police, court, and military)

and at the end of each section examines the extent to which experiences fit into the categories

of formal or informal labels. A final section compares cross-cutting themes to explore further

in Chapter 6.

5.3.1 Police

This section examines twenty individual experiences with police administered judicial

services. The judicial experiences involving the police reflect the most immediate contact that

citizens have with state-administered justice. The police most mentioned in this section are

the 'nearing police,' which is an attempt by the Congolese National Police (PNC) to place

police services closer to the populations that need them.[83] The judicial services provided by

the police are designed to be formal state services with a punitive view of justice.

Out of the ninety-one judicial experiences examined, twenty of the experiences involved the

services of the PNC.[84] One immediate difference was noted compared with the cases where

no judicial experience was initiated. Sixteen of the twenty cases involved a suspect who was

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[83] PNC Colonel Honorine. Interview. Bukavu. June 6th 2014.

[84] The final section in this chapter addresses experiences classified as *multiple.* In this context multiple means an individual attempted to initiate a judicial experience via numerous judicial service providers. Although some experiences in this section include other service providers, those providers serve as a gateway to a judicial experience with the police.

either immediately known or easily identified. In two additional cases,[85] no suspect was

known, but both cases were resolved as a result of an investigation into a different case[86]

ultimately involving the same thief. George and Maria's experiences are those exceptions to a

known suspect. George's[87] stolen mattress was found as a result of an investigation into other

thefts by a serial thief in their area. Maria's pharmacy was also robbed, and some of the

medicine was discovered along with George's mattress when the thief was arrested.

The events which motivated the person to initiate judicial experience involving police are

theft of property (20). Four main experiences were encountered by individuals accessing

justice: the dispute was resolved or stolen items returned (11); the problem was reported, but

no action was taken (2); the individual was harassed by the police (4), or the process was

incomplete (3).

The manner in which individuals began their experience with police services varied. Similar

to the individuals who opted not to pursue justice, eight of the cases were initially

investigated by the victim to identify witnesses and suspects. An immediate difference from

the experiences of an individual who did not pursue justice was the availability of

witnesses.[88] Four of the experiences began by a person going to the police immediately.[89] In

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[85] Georges #7 June 16th 2014; Marthe #9 June 16th 2014

[86] Jean #1 June 16th 2014

[87] Georges #7 June 16th 2014

[88] Marthe #9 June 16th 2014; Marcelle #10 June 16th 2014; Maria #11 June 16th 2014; Marie-Louise #44. July 24th 2014; Adrienne #46 July 24th 2014, Augustin #51 July 24th 2014, Daniel # 69 July 31st 2014; Arsene #107 August 8th 2014.

[89] Jean #1 June 16th 2014; Georges #7 June 16th 2014; Aime #50 July 24th 2014; Laurent #66 July 29th 2014.

four of the cases, the parties involved in the dispute were immediately known,[90] and the

police were quickly involved. Two cases were transferred from other judicial services. The

final two other cases involved the police being called on the interviewee by another party.

This section examines experiences with judicial services provided by the police. In all, there

are twenty experiences in this section. These experiences are grouped together based on the

circumstance in which their experience with police services began. The six different

circumstances leading to a police service are: (1) the victim investigated the crime and

approached the police after identifying suspects, (2) a suspect was immediately known, and

the police were approached, (3) the victim immediately approached the police, (4) the victim

was referred to the police by a different judicial service provider, (5) the police resolved the

problem during the investigation of a separate offense, and (6) the police were called upon

the interviewee.

5.3.1.1 Police: Self Investigation of Crime

The choice to investigate the crime was often as simple as talking to neighbors to determine

if any witnesses were available, but occasionally individuals went as far as identifying the

location of the stolen property first. In Adrienne's case, she approached the chief with a

known witness, but the chief did not provide assistance. Adrienne[91] concluded that the chief

had been paid off by the thieves not to pursue them. She then opted to take the case to the

police. The police questioned the suspects who admitted their guilt. They were fined six bags

of cassava, one more than they stole, and were required to cultivate Adrienne's field. Both of

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[90] Martin #86. Bukavu. August 7th 2014; Bruce #89 August 7th 2014; Raphael #99 August 7th 2014; Vincent #101 August 7th 2014.

[91] Adrienne #46 July 24th 2014.

the requirements were fulfilled.

Marie-Louise's[92] experience was nearly textbook, but for one odd addition. She had bananas stolen from her and went to the police to report the theft. Marie-Louise had already identified the thieves as she found them with her bananas, and the police arrested them. The thieves were ordered to pay Marie-Louise $30, and the matter was settled without her paying money to the police. After returning from the police station, the Village Chief was upset with Marie-Louise because he was not consulted first and he fined her $15. She gave him the $15 and promised to seek him out in the future. Demanding a penalty from Marie-Louise seemed to serve as a reminder for her not circumvent the authority of the Chief, but this fine is informal and while it serves to reinforce the Chiefs position in the chain of judicial access it appears the Chief is more interesting in maintaining his cut of dispute resolution more than he is interested in upholding communal peace.

Augustin's[93] TV was stolen, and after finding it by searching around in his community, he reported the person in possession of his TV to the police. The man claimed he purchased the TV, but refused to name the buyer. After being arrested, he identified the person he bought the TV from, who was also arrested. The TV was returned to Augustin, and the seller was ordered to repay the money. He initially refused but agreed to it after being doused with water and beaten. Augustin had his TV and did not need to pay the police, but the others were fined.

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[92] Marie-Louise #44 July 24th 2014.

[93] Augustin. Male. #51 July 24th 2014.

Daniel's case presents a different example. A man who was known for stealing goats took one of Daniel's and attempted to sell it. Daniel[94] found the goat and the man and took him to the police. The police helped mediate the return of the goat to Daniel, and Daniel's wife encouraged him to forgive the man. A few days later the same man came back, took the same goat, quickly sold it, and fled the area and has not been seen since. Daniel contacted the police again, but they were not able to find the thief and charged Daniel $10 for showing up.

The last case to review in this section is Arsene's.[95] While he was away from his house, someone came and stole his radio and clothes. After talking to his neighbors, a suspect was described to him. Arsene saw the man the next day and confronted him about the theft. The man began to beat Arsene, even threatening to "kick out his teeth."[96] This prompted Arsene to get the police, who arrested the suspect. Both parties were interviewed, and the thief was held overnight. Arsene went to the station the next day under the impression that he could collect his stolen goods, but the thief had been released; no one knew where he was nor had any information about Arsene's goods. The case ended there.

5.3.1.2 Police: Suspect Immediately Known

In four cases the suspect was immediately known. For example, Martin's computer was taken from an Internet cafe when he stepped away to make a phone call. He immediately suspected one of the cafe workers and began discussing it with the owner who initially offered to pay a portion of the computer, but soon changed his mind. Martin used an interesting phrasing in

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[94] Daniel #69 July 31st 2014

[95] Arsene #107 August 8th 2014.

[96] Ibid

describing the beginning of the process. He said, "I tried to intimidate him into making a local agreement."[97] This sentiment of using intimidation and exaggerated behavior is a strategy that was mentioned to me in other settings as well.[98] Once Martin determined he could not secure a deal on his own, he went to the local police to arrest the owner. Martin paid the police $30, and the owner was arrested and held in prison for two days. After that, he agreed to pay $200, and Martin gave the police another $20 settling the matter, but Martin said his relationship with the cafe owner, a former classmate, is bad and "causing trouble."[99]

Raphael's[100] case was more straightforward because his experience involved the suspect being immediately known. He is a street vendor who was playing music on his phone at a kiosk when it was stolen. He began arguing with the suspect when the police arrived. They were taken to the station, and the phone was determined to belong to Raphael. The police asked for $10, which Raphael did not have, but he gave 1500FC[101] to the police officer. The case was settled.

5.3.1.3 Police: First Choice

The police were the first service approached by four of the twenty individuals.[102] For example, George's[103] belongings were stolen from his house, and he reported it directly to the

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[97] Local agreements refer to agreements made between two parties without involving local authorities.

[98] Field notes.

[99] Martin #86 August 7th 2014.

[100] Raphael #99 August 7th 2014

[101] Approximately $2USD.

[102] Jean #1 June 14th 2014; Georges #7 June 14th 2014; Aime #50 July 24th 2014; Laurent #66 July 29th 2014.

[103] Georges #7 June 14th 2014.

police, but no witnesses were identified, so no further action was taken. Similarly, Marthe's

house was also robbed, and her experience was similar to George. The report was made, but

nothing came of the police's investigation. Marthe concluded that "the police cannot solve

anything."[104]

Gustave[105] operates a stone selling business in Kaziba. Some of his stones were stolen by

another person, and Gustave went to the police to file a complaint. When the thief heard that

Gustave went to the police, he came to try and make a "local agreement."[106] The thief agreed

to pay $30 for the stones but refused to make the agreement in writing. After two weeks,

Gustave approached chief du post[107] to see if he could assist with the case. The thief was

infuriated by Gustave's actions; the thief said, "you guy, you small guy, you reported the

case" and refused to pay for the stones. Gustave returned to the police to settle the matter.

The thief again learned about Gustave going to the police and finally agreed to pay for the

stolen goods. Once the thief agreed to pay for the goods, Gustave stopped asking for the

police's assistance. They asked him for $5 to pay for batteries, but he refused as it was not a

valid charge.

5.3.1.4 Police: Referred by Other Provider

In two cases the victims elected to go to the chief first. In Etienne's case, harvested bananas

were stolen from her land. The chief interviewed suspects identified by Etienne who claimed

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[104] Marthe #9 June 14th 2014.

[105] Gustave #37 July 23rd 2014.

[106] A local agreement is the phrasing that is used to describe an agreement negotiated between two parties instead of going through a justice process.

[107] The chief du post is a judiciary police officer who is empowered to settle civil matters.

to be sent by a third party. At this point, Etienne requested the chief to transfer the case to the police, which he did willingly.[108]

Two individuals contacted other parties to assist in the investigation before going to the police. Wood for building a house was stolen from Etienne,[109] and she went to the local chief to complain. The chief invited some individuals Etienne suspected of taking the wood to talk with him, and they confessed to taking the wood. At this point, Etienne requested the case be transferred to the police because she deemed the chief incompetent to settle the case. The case was transferred to the police, and the thieves testified they were sent by a third party after the police "intimidated them."[110] The person who asked for the wood to be stolen and the thieves paid Etienne a total of $70 USD for the stolen wood. Etienne did not pay the police anything nor was she asked. When the police went to the man responsible for planning the theft, he was asked to pay $5 USD for the "police's feet."[111]

Benoit's home was robbed while he was away, and he quickly went to the ANR for assistance. Benoit suspected his neighbor's house helper as he was very precise about what was stolen and how it was stolen. The ANR officer interviewed the neighbor's house helper, arrested him and sent him to the Judiciary Police. The suspect spent three days in jail before his case was transferred to the court, and the suspect was transferred to the central jail. After the transfer to the main prison, there was a massive prison break, and the suspect escaped and

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[108] Etienne #40.. July 23rd 2014.

[109] Etienne #40 July 23rd 2014; Benoit #87 August 7th 2014.

[110] Etienne #40. Kaziba. July 23rd 2014.

[111] Ibid.

fled the area with his family. Benoit spent $50 up to this point, but after the prison break did

not see any prospect of finding justice. Benoit's case is important, because apart from the

amount he paid for court fees, typing, transport, and other petty fees, the way his case worked

how it was intended to function.

5.3.1.5 Police: Accidental Resolution

George had everything from his house stolen and promptly filed a police report. His mattress

was only discovered while the police were investigating other crimes discussed in later

sections. Maria[112] owned and operated a pharmacy with her husband. Their pharmacy was

broken into twice in the past year. The first time, no action was taken as there was no known

suspect. After the second theft, some medicine was discovered while investigating the theft in

Jean's case[113]. Police wanted beer/bribe for the remaining medicine. She looked at the

medicine remaining and decided it was not worth the bribe. George was happy to recover his

mattress.

5.3.1.6 Police: Other Party contact police

The remaining two cases involving experiences with police are instances where the police

were either called on the interviewee or chose to engage with the interviewee. The first case

involves Amy. Amy is a 50-year-old female mediator in Kalehe district. In Amy's[114] case, she

bought a goat from a vendor at the market with the agreement he would deliver the goat to

her house. After she left, he sold the goat to another person, and Amy got angry with him

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[112] Maria #11 June 14th 2014

[113] Jean #1 June 14th 2014.

[114] Amy #65 July 29th 2014.

when she found out. He offered to return the money, but she said she wanted the goat she

purchased. At this point, the vendor went to the police to complain she was harassing him.

The police demanded Amy pay $26 or be arrested ($10 for "police food," $10 because they

came out to her house, $6 for typing). The Chief mediated her case before the police.

Eventually, she got a goat, but after spending more than $50 on the process. According to her

the only reason she faced the risk of being arrested was if she did not pay the "feet of the

police." From her perspective, if the police arrive and you are involved, failing to pay can

result in imprisonment. When asked if this was legal, she said, "it is the established law by

the police in this area."[115] The financial expectation of police and the threat of jail begins to

shed light on why people might want to avoid including police in a dispute.

A similar involved Leonce[116] and his brother. Leonce went to visit his brother who was a

vendor in Bukavu. According to Leonce, a policeman wanted to take an item and pay for it

later, but his brother refused. The policeman then began to take items and Leonce attempted

to stop him, resulting in his arrest. Both men were fined 20,000 Congolese Francs and

discharged 24 hours later. The goods were returned the next day, and neither man was

charged with a crime. Leonce wanted to go to a lawyer's office about the incident but

ultimately decided against it because doing so could bring insecurity against his brother.

5.3.1.7 Future Action

The purpose of this section is to examine the factors which contributed to the user's

conclusion that their experience with justice was a satisfactory one and to examine the user's

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[115] Amy #65 July 29th 2014.

[116] Leonce #98 August 7th 2014.

anticipated future behavior. Each of these cases was identified as satisfactory, but two of the cases were conditionally satisfied. The section concludes by highlighting some provocative statements made by a few of the users.

Three factors are present in cases where the user expressed satisfaction with the process and would utilize the process again in the future; the return of the stolen item or compensation for it; their expectations of the process were met; they did not pay for the services or the payment made was seen as acceptable to the user. Although simple factors, having a judicial service deliver the desired outcome through a process believed to be fair and affordable form the dominant expectations of what justice should be in the eyes of judicial users in South Kivu. Returning to the three most common understandings of justice: ensuring rights, creating peace, and solving problems, these expectations were largely met at the end of the judicial experience. The two cases where users were satisfied involved factors which did not align with the expectations of the users.

Adrienne's expectation of justice is that it is a place to resolve one's problems and believed the proper way to do that involved going to the chief first and then to a different judicial provider if the chief was unable to solve her problem. Her perception was that the thieves bribed the chief not to hold them accountable for the theft of the bananas. Whether the chief was bribed by the thieves or not is unknown, but it is also unimportant as her conclusion of the chief's action was that he is corrupted. She summarized the lasting memory of the experience with the chief, "our local chief was incompetent and a traitor to his own people. We could have lost the cassava if we had not gone to the police."[117] When asked what she

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[117] Adrienne #46 July 24th 2014.

would do if she encountered a similar problem in the future, she maintained that she would

either go to the chief first or to a local NGO that provides dispute resolution services. The

rationale for not going to the police first was that if you do, the thief will be charged money.

If a victim of a theft involves police or court services against the person who stole from them,

that person is seen to have caused offense. This is something that was encountered numerous

times and will be discussed in more detail in later sections. She also added that the chief gets

mad if you do not go to him first.

In Martin's case, he was satisfied that he received money to purchase a new computer, but he

was frustrated by having to pay $50 for the police to accomplish a resolution to the case. The

first $30 he paid to the police was described as a fee for "the feet of the police."[118] The

meaning attached to this saying is that if you do not pay it, the police do not move to help you

with your problem. When asked what actions he would take if he were a victim of theft in the

future, Martin said it depends on whom he was trying to accuse of wrong. He provided the

following example,

> if the guy [agreed] to pay me at the café, we could settle the matter locally; so if the matter is
> complicated, I would go to the police; let's say the matter would depend on the family; if the family of
> the thief is more powerful than yours, you will still be the loser because you will need much money to
> give to the police because justice is for rich people here. That is why they would violate your rights,
> and you would do nothing because you did not have money. Justice is for the rich.[119]

Martin makes a very clear argument that money, relationships, and social status are

determinants of the power than an individual has over another. If a person has sufficient

resources or connections, then they can accomplish more than another person with a less

powerful network of resources and connections. The conclusion that money and justice can

be the same is a view that will be common throughout the examination of these cases.

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[118] Martin #86 August 7th 2014.

[119] Ibid.

Martin's future actions are predicated on the comparative strength of the person he would be facing in the process, Marie-Louise would go to the chief first to avoid a fine, and the rest would repeat the same action. After the conclusion of the analysis of each satisfactory judicial experience, this will be looked at again to see if the anticipated future behavior tends to be inclined towards repeated satisfactory experiences.

5.3.1.8 Conclusion to Police Experiences

The conclusion of this section focuses on a few key elements of the experiences with police services: the extent to which the experiences were fit formal or informal classifications, the function of police in settling the dispute, and the role of money in the pursuit of police administered judicial services.

Based on the experiences recording during the interviews, the judicial services offered in South Kivu are on a spectrum of formal and informal definitions. To suggest the services are exclusively formal or informal would not be accurate. Using the definition of formal as a service which operates by the letter of the law, seven of the twenty would fit the definition of formal.

Regarding cases which fit the description of informal, thirteen of the twenty cases are classified as informal. The most common reason for an experience with police services to move outside the strict bounds of the law was due to a request for payment which happened in eleven interactions. The most brazen example involved Laurent[120] who paid police $5 to track down the thief who stole $200 from him. Laurent saw the police and the thief interact, but the thief was not arrested. When Laurent asked for his money from the police, they said it

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[120] Laurent Interview #66 July 29th 2014

was already spent. The distinction between of formality and informality remains worthwhile,

but based on user reactions it seems that payments to police officers are not seen as either

good or bad. Formal and informal distinctions will be further examined at the conclusion of

this section after court and military experiences are examined.

The experiences with police services had some common elements with easily identified

suspects and resolutions that occurred by going to the police, but the experiences were not

uniform. Twelve of the twenty individuals were asked for money in association with police

services. Four[121] declined to pay anything, but of the eight individuals[122] that did pay, the

amounts varied from $2USD to $50USD. There did not seem to be a set price for services,

but police often expected money before beginning assisting someone. Given that eleven[123]

did not pay for their police services, it is not guaranteed that an individual will be forced to

pay police for judicial services. Gustave and Marie-Louise got the desired result from their

judicial experience with the police and paid nothing. Obtaining a successful resolution to the

problem was not guaranteed by paying either as Benoit and Augustine paid the police, but did

not obtain their desired experience.

The experiences of Gustave, Leonce, and Augustine demonstrate the potential hazards that

might arise for involving the police in a dispute. The potential of advancing a dispute beyond

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[121] The following individuals were asked to pay, but refused. Maria #11 June 16th 2014; Gustav #37 July 23rd 2014; Bruce #89 August 7th 2014 (asked for $100, but paid nothing); Vincent #101 August 8th 2014.

[122] The following individuals paid for services. The amount is included before their name. ($7) Georges #7 June 16th 2014; ($5) Laurent #66 July 29th 2014; ($10) Daniel #69 July 31st 2014; ($50) Martin #86 August 7th 2014; ($50) Benoit #87 August 7th 2014; ($2) Raphael #99 August 7th 2014.

[123] The following individuals did not pay anything for their service. Jean #1 June 16th 2014; Marthe #9 June 16th 2014; Etienne #40 July 23rd 2014;, Marie-Louise #44 July 24th 2014 (paid nothing, but was fined $15); Adrienne #46 July 24th 2014; Aime #50 July 24th 2014, Augustin #51 July 24th 2014; Amy #65. Kalehe. July 29th 2014; Arsene #107 August 8th 2014.

a 'local solution'[124] causing additional problems was suggested in the section examining

experiences of choosing not to pursue judicial services. As the man who stole Gustave's

stones demonstrated, the inclusion of police initially angered him and caused him to walk

away from the negotiation. Ultimately, Gustave's use of the police services helped him reach

a solution with the thief, but the perception from the thief that Gustave was wrong for going

to the police was not unique. There is great pressure from victims, perpetrators, and

community members to seek a local solution without involving additional parties. This

dynamic frequently appears in the following chapters and will be further analyzed in Chapter

6.

5.3.2 Courts

The Congolese Court system is a state run, formal judicial service that is punitive in nature.

By design, it is a complementary system to the PNC, and when the system is working

properly, criminals apprehended by the police face trial in the courts and, if guilty, are

sentenced. From the case of Benoit, the flow of justice is not just a theoretical idea as his case

demonstrated that the police could investigate a crime, make an arrest, and refer a case to the

court. Benoit's case fell apart due to a large scale jailbreak, but the process still functioned as

designed. The potential for substantial abuses remains an issue. This section examines six

experiences. Three of the experiences are related to land disputes, and three of the disputes

are related to incidents of theft. The court was the first choice for judicial services for three of

the cases. Two others went to the court after failing to have the matter resolved by the police

or by themselves. In the final case, the individual was brought to the court by another person.

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[124] A local solution is a negotiated between parties and does not utilize a mediator.

5.3.2.1 Experiences

Raymond claims his land was "taken by Tutsi people." He filed a case in court to get his land back and won, but the court was not able to enforce the ruling, so he was unable to get it back. He is currently displaced in an IDP camp near Goma. In Raymond's view, a

> soldier [takes your] field because he has a gun, you may decide to take him to the court and get your right back[125] by the prosecutor. When you go back to the village the soldier with a gun becomes powerful, and he may kill you [in the] night because the prosecutor will not be with you anymore. That is why there is no justice here; it is for powerful people.

Raymond's take is very pessimistic, but not unique. Raymond's interview also served as a reminder why focusing on theft and not land issues was a good idea in the Kivus as Raymond went on to say that guns and fighting would be the only solution to his problem.

The next case involves Alfred,[126] a 32-year-old security guard living in Goma, who bought a piece of land. The seller provided him a signed document from the local chief as proof of ownership. Shortly after buying the land, a man approached Alfred and said the land belonged to him. Alfred opened a court case against the man, but he was a well-known Colonel in the FARDC. Alfred had already built a house on the property, but it was destroyed by the Colonel. Alfred met human rights activists and hired a lawyer. He has yet to hear anything further from his lawyer. He has spent $650 to date on fees and lawyers expenses, but no solution has been found.

The third case involves Raymonde, a 30-year-old female living in Kaziba, who works as a vendor of small goods. In May of 2014, her phone was stolen. Raymonde knew the identity of the thief and filed a case against the person at a tribunal of peace. Both individuals went to

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[125] 'Right back' means to get your property back in this case.

[126] Alfred #27 June 24th 2014.

the tribunal; the accused thief was fined, but Raymonde did not get her phone back. She has

given up hope for a resolution from the court.

The fourth case involves Hortense,[127] who is a 30-year-old vendor of small goods in

Walungu. She was attacked and had 15,000 CF and a necklace stolen. She went to the police,

but "they failed to give me justice because I did not have money." When her case was

referred to the tribunal of peace, she was asked to pay $5 to start the case. Later, they asked

for $10 more to continue the case, but she declined to pay, ending the case. In her view, the

other party "got their rights" because she could not afford to keep paying. Hortense said that

even if she had the $10, she would not give it to the court because she has children and needs

to use her money to feed them. Her view on the possibility of achieving justice echoes other

cases,

> I have no idea because I have noticed they always deceive us when they say there is a place where they
> should help us even though we are poor. If I were rich, I would go to the state to get my problems
> solved, but as I am poor, I know I would not get justice, poor people like me will still suffer. I would let
> them do whatever they want because I do not have justice as I am poor.

Hortense's strong belief that justice is for the rich influenced her decision to abort any further

attempts to achieve justice for the theft and assault she experienced.

The fifth case involves Baptiste who is a 35-year-old manager at Banro living in Bukavu. In

2011, Baptiste purchased a house in Bukavu from the Congolese government. At the time of

the purchase, soldiers were living in the house. After the purchase was complete, Baptiste

asked the soldiers to leave the house so he could move in. He attempted to negotiate an

agreement with the soldiers to leave, but despite trying to reason with them for four years,

they refused to leave. They said they were more powerful than Baptiste and thus had no

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[127] Hortense Interview 103 August 8th 2014.

reason to listen to him.

Baptiste became frustrated after four years of attempting to settle the problem himself and elected to file a court case. He used a lawyer to help with the case, but after two years and six months of no progress, he switched lawyers. Baptiste's second lawyer was able to get the case settled in six months, but the soldiers still refused to leave. The soldiers finally left after the lawyer wrote the court and the soldiers' commanding officers who ordered them to leave. It took around seven years and an amount of money that Baptiste elected not to share to get soldiers to leave a house he had bought from the government.

The sixth and final case involves Tucker, a 40-year-old customs officer living in Bukavu. Tucker bought a car at the border because the owner could not afford the import costs. Tucker took out a loan to pay for the car, but could not afford to pay back the loan on an agreed upon schedule. Tucker was taken to court by the seller, was charged with "crookery," and fined $800. He was forced to sell off possessions to repay the loan, fees, and bail. Tucker eventually agreed to a repayment deal with the other party using lawyers outside of court.

5.3.1.2 Future Action & Themes

This section examines the anticipated future actions of judicial users as well as the important themes found in the judicial experiences involving court administered judicial services. The lone user who stated a willingness to return is Baptiste, who was also the only person who received an enforced verdict in his favor. Raymond's future solutions involve war against "the Tutsi." Alfred, Hortense, and Raymonde do not view any viable judicial alternatives

available in their future. Tucker believes a local solution would serve him better in the future.

Three important elements of the court administered judicial experience emerged. The first is a correlation between justice and power. The second element is a view that spending money on justice is a waste. The third element is the importance of patience in the judicial experience.

The belief that justice is a resource for the powerful is not new within the judicial experiences, as traces of this thought are seen in the comments of Lucienne[128] and Rosalie.[129] This belief that justice "is not for me" is a powerful one that plays into the dynamic of corruption and impunity. Intimately connected to the belief that justice is for the rich is that spending money on justice is a waste of money. The expectation of corruption at the point of a judicial service serves as both a barrier to attempting to use the judicial service and a belief that bribing officials is essential to winning a case regardless of the evidence.

The case of Baptiste demonstrates the importance of patience, time, and resources in obtaining justice through the Congolese court system. Most of the individuals interviewed lost interest in pursuing justice after a few weeks or months, but Baptiste kept pursuing his case for four years and finally won.

Returning to the common categorization that the Congolese court system is an example of a formal system of state-sponsored judicial service that upholds the Congolese legal code and renders punitive verdicts. The six cases in this section are not enough to fully comment on the

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[128] Lucienne #20 June 24th 2014.

[129] Rosalie #61 July 29th 2014.

function of courts in the DRC. The difficulty encountered finding individuals who used the

services of court and the strong perception that the courts were fixed against the poor

suggests that at least the perception of the Congolese court is that it is a corrupt institution.

5.3.3.3 Court Conclusion

The recorded experiences of judicial services through the state court were more consistent

than the police. Five of the six cases seem to fit the description of a formal process. The one

exception is the case of Hortense. The initial portion of the case was formal, but when the

need came to transfer the case to another court, she needed to pay more money. Hortense

gave up because she perceived this request for money to be corruption. It is not entirely clear

if the extra money was a legitimate fee or not, but regardless her perception was that it was

corruption and thus she walked away. As seen in the interactions with police, many

encounters involving a series of small transactions to move the case along. It is possible that

when an individual can afford to pay these small fees or the promise of the verdict is valuable

enough; an individual will pay. When an individual no longer sees the value of return being

worth the cost of continuation, it is possible that they will cease to pay. The next section

examines encounters with military justice. The issue of payments and judicial services is

further discussed in Chapter 6.

5.3.3 Military

This section examines the four judicial experiences where the individual went to the Forces

Armées de la République Démocratique du Congo (FARDC) to resolve their problem. As

stated in chapter 4, civilians seeking judicial services from the FARDC are not a common

occurrence as the FARDC does not provide judicial services to civilians and thus this type of

judicial service is informal. Each of the cases in this section involves a conflict between a

civilian and a member of the military. Three of those conflicts involve theft, two where the

FARDC is requested to help investigate a theft due to their proximity to the crime and one

where a soldier is accused of theft. The other case involves a CSO worker who approached an

FARDC commander on behalf of a client beginning a series of problems.

5.3.3.1 Experiences

The first two judicial experiences are those of Andre and Anne. Both experienced a theft

which occurred near an FARDC outpost, and the victims felt the FARDC could help. The first

case involves Andre, who is a 57-year-old male pastor in Mumosho. In 2013 his church was

broken into four separate times. The thefts ranged from church offerings, beans, sewing

machine, and musical instruments. Pastor Andre first approached the local chief who referred

him to the chief du post, but Pastor Andre went to the local FARDC commander. The FARDC

commander gave him eight soldiers to investigate the theft, and eventually, they tracked

down a person suspected of many thefts in the area.[130] The suspected thief was arrested and

taken to their base but managed to escape within twenty minutes of arriving at the base.

Pastor Andre was skeptical about seeking out justice in the future. He gave me the following

example, "you might have been stolen something which can cost $20, and when you search

for justice, you will pay $20 more, and if they catch the wrongdoer, he pays them, but you

will still be the loser."[131]

The second case involves Anne, a 41-year-old female farmer living in Mumosho. She was

storing some cassava in a local grinding mill. Someone broke into the storehouse and stole

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[130] Pastor Andre had a list of 16 other individuals who made claims against this individual in Mumosho.

[131] Andre #8 June 16th 2014.

the cassava. Anne approached a nearby FARDC commander, but no action was taken. She was disappointed but saw no other possible action.

The third case involved a citizen who was robbed by FARDC soldiers during the night. Raoul is a 19-year-old male student living in Katana. Raoul was out watching a world cup match and returned home around 11 p.m. at night. While on his way, he was stopped by FARDC soldiers. He was forced to undress as the soldiers took his phone, money, and clothes. At 4 a.m. his clothes and shoes were returned, but they kept his phone and money as "punishment for being out late."[132] Raoul approached a local CSO the next day and was told that he should approach the FARDC. The FARDC officer called the soldiers in question to appear before him and ordered them to explain themselves and return the phone. Raoul got his phone back, but not his 1000FC.

5.3.3.2 Future Action

Understandably, none of the four individuals who went to the FARDC for judicial services would make that decision again. Andre is dismissive about the prospects of finding justice in the DRC. Anne stated that she would go to the police again because they are told to do that, but the police "cannot do anything."[133] She believed that the police might be able to help if the identity of the suspect was known. Raoul would go to either the police or the local chief in the future, but the choice depends on the nature of the dispute. In his view, violent offenses are better handled by the police. Mal followed the proper procedure for dealing with an

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[132] Ibid.

[133] Anne #12 June 16th 2014.

FARDC officer in his particular case as it was an issue that military discipline structures were best equipped to handle.

5.3.3.3 Military Experience Conclusion

An idea which emerged in this section was spending money on justice is losing twice. Andre also stated that thieves know the chance of being punished is slim, and so they will continue to steal without any meaningful consequences. His belief is supported by the suspect in his case who is accused of at least sixteen separate thefts in Mumosho but can continue stealing because he is believed to be bribing the local police.

The Raoul's experience showed the experience of military abuse of civilians at differing levels. Raoul was "disciplined" by soldiers just for walking home from a football match. This is just one examples, but it identifies some basis for the pervasive distrust of soldiers and security services in the DRC.

5.3.4 Informal State Conclusion

The formal and informal divide is not entirely useful, but it is not invalid either. The validity of being aware of formal and informal functions has merit, but it is unclear the degree to which formality matters to users. There was not a consistent frustration or rejection of being asked to pay for judicial services beyond what are legal fees. The frustration with fees seems to be more closely related either to an individual's ability to pay or the relative worth of what they would get from paying. For example, Maria was asked to pay to get the medicine stolen from her pharmacy back and declined because she deemed the contents not worth the price. Alternatively, George was willing to pay $7 to get his mattress back from the police because

a new mattress was going to cost more. Martin did not indicate he was upset at paying the police $50 to get $200 from the shop keeper he accused of helping to steal his laptop despite.

Thus what is formal and informal is useful to a degree, but based on user satisfaction with their experience, it seems that achieving the desired result might a more pressing issue than how that result is achieved. This dynamic will be further explored in Chapter 6 in conjunction with all the cases examined.

5.4 Non-state Customary

The Mwami system is a chiefdom system that represents traditional authority in South Kivu. This system falls into the categorization of a non-state, informal system of justice which uses restorative judicial practices to bring peace to the parties involved in the dispute. Seventeen judicial experiences occurred through the Mwami system. Twelve of the cases were initiated by theft. Four of the cases involved disputes between family members or neighbors. The final case involves Felix who was arrested. Thirteen individuals went straight to the chief with their problem, while three chose to investigate the problem themselves before going to the chief. Felix's case is unique as he was incorporated into a problem that was not originally his own.

5.4.1 Mwami

This section examines the experiences of fifteen individuals whose experience involved judicial services provided by the Mwami system. The Mwami system refers to the traditional chief system present in South Kivu. The experiences are divided into two distinct groups, those who went straight to a representative of the Mwami system and those who chose to investigate themselves before going to a representative of the Mwami system. A third section

examines the case of an individual named who was abused by a member of the Mwami

System in the process of assisting in a theft case these classifications, and yet deserving

enough of his own category.

5.4.1.1 Straight to Mwami[134]

This section examines judicial experiences in the Mwami system in which individuals elected

to go straight to a chief to find a solution to their problem. There are eleven cases in this

section. The first case involves Eugenie. Eugenie[135] is a beer vendor in Mumosho. One night

her beer was taken by armed robbers. Her neighbors heard her cries and came after the men

left. She approached the chief who sent men to help investigate the theft, but nothing was

uncovered. She said the chief had no money to help her. She opted to not pursue the case with

the police because "they may arrest innocent people and that would be under my

responsibility, which is a bad thing."

Next is Alice. Alice[136] is a 39-year-old, female farmer living in Mumosho. On February 26,

2013, armed men broke into her house while she was sleeping. They threatened her to stay

quiet, or they would hurt her family. They took her mattress and clothes. Alice realized the

men knew that she operated a small business of selling oil and vegetables when they

demanded money from her. The thieves left but threatened her not to make noise. She

reported the robbery to the local chief the next morning, but nothing came of it. As she did

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[134] Eugenie #14 June 16th 2014; Henriette #16 June 16th 2014; Alice #17 June 16th 2014; Helene #18 June 16th 2014; Lucie #19 June 16th 2014; Blanche #31 July 16th 2014; Theophile #74 July 31st 2014; Elisa #81 August 5th 2014; Rick #88 August 7th 2014; Denis #94 August 7th 2014; Amedee #96 August 7th 2014.

[135] Eugenie #14 June 16th 2014.

[136] Alice #17 June 16th 2014.

not know the identity of the robbers, the case ended.

Armed men broke into Helene's[137] house looking for her husband. They began shooting, but he managed to escape. Helene and her children were beaten by the men who then took everything from their house. She reported the attack to the quarter chief,[138] but because she was unable to identify the people who attacked her, the chief did not take any action.

Lucie[139] is a 19-year-old female farmer living in Mumosho. Her pigs were stolen, but she did not know who stole them until she found a person trying to sell them. Lucie promptly reported the case to the village chief who did not do anything. He said they were "friends and neighbors who must live together." Lucie dropped the matter, and said, "her heart is hurting." She warned the thief and his family that she would take him to the police if he harmed her in the future as this was not the first problem she had with this individual.

Theophile[140] is an 89-year-old male farmer living in Cirunga. On November 17th 2013, Theophile's local chief came to his compound with police officers and took two goats. Theophile was upset and appealed to the groupment chief to whom the local chief is accountable. The groupment chief told the local chief he was wrong to take the goats, and although the local chief accepted that his actions were wrong, he did not return the goats.

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[137] Helene #18 June 16th 2014.

[138] A quarter chief is the same thing as a local chief, but they are given different titles in urban and rural settings. A rural village chief is equal to a quarter chief in an urban area.

[139] Lucie #19 June 16th 2014.

[140] Theophile #74 July 31st 2014.

Theophile appealed to the territorial administrator for help with the local chief, but no action

has been taken against the local chief. Theophile believes the territorial administrator and the

groupment chief are being bribed not to act. The local chief continues to harass Theophile,

including physical violence. Theophile wants to take the matter to the tribunal of peace but

believes he needs to wait for the territorial administrator to settle the matter before filing a

court case.

Denis is a 28-year-old male law student living in Bukavu. In December of 2013, he woke

during the night to find someone reaching into his house trying to steal his television. Denis

went to the local chief for help, but the chief told Denis nothing could be done as theft is

common in the area, and it is probably the soldiers stationed nearby. When asked why Denis

did not seek help from other judicial services, he stated that it was the responsibility of the

chief to orient to the right action. Although he is a law student, Denis said he was unsure of

the right action on his own because "this is Congo [and they do not teach you] what you are

supposed to do." Denis did not take any further action.

Amedee[141] is a 20-year-old male student living in Bukavu. On August 1, 2014, someone stole

his phone from his dorm room. Amedee began searching for the thief. A suspect was

identified and confronted by Amedee. Amedee took the suspect and the phone before the

local chief. The chief separately asked each person to name five contacts in the phone.

Amedee successfully named five while the thief was unable to name one, and the chief

awarded the phone to Amedee. Similar to Amedee is the experience of Rick. Rick[142] is a 20-

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[141] Amedee #96 August 7th 2014.

[142] Rick #88 August 7th 2014.

year-old student in Bukavu whose phone was stolen but found his chief unwilling to try to get

the phone back from the "gangsters" who stole it.

Like Rick, Denis encountered a chief unwilling to attempt to pursue addressing the problem

of theft. Denis caught some people trying to break into his house but awoke before they took

more than his iron. He alerted the chief but was told that theft is common due to soldiers

stationed nearby, and nothing could be done.

Blanche[143] is a widower with five female children living in Mugogo, South Kivu. After her

husband died, a male neighbor who was renting a portion of her land attempted to take her

home so he could have it as she had no male children. He filed claims against her with the

groupment chief and the tribunal of peace. Blanche was reassured that she was in the right

when she went to the Mwami who gave her husband the land and provided her written

support for her claim to the land. This neighbor has filed multiple claims against her despite

consistently losing. To date he has been fined a total of two cows, two sheep, and one court

ordered his house destroyed as punishment, but that has not happened nor has he paid the

fines.

During the process, police, court officials, and men claiming to be representatives of the

Mwami would come to her house expecting food, gifts, or payment of some kind. Although

Blanche is the rightful owner of the land, the neighbor's repeated claims against her required

Blanche to sell her animals, and now she claims she is poor. Blanche said the neighbor is

currently trying to sell her land despite not owning it so her struggle with this man continues.

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[143] Blanche #31 July 16th 2014.

One of Henriette's[144] neighbors cut down her bananas and took it to his family. The family returned part of what was taken, but Henriette wanted all of it returned. She filed a complaint with the police and talked to the local chief. The family asked Henriette to forgive their son, and she accepted. Even though she accepted, she felt that she "didn't get my right." Since she forgave the thief, she later asked him to help her carry her crop of coffee beans from a market in Ngweshe, but the neighbor stole three measures/kilos from her sack. She has tried negotiating with the family and with the local chief, but the boy has left the area, and Henriette decided to stop pursuing a solution. She concluded by saying, "the local chief did his best so the guy can repay me, but he did not, and it has become a kind of oppression."

The experiences of individuals who went straight to a representative within the Mwami system identify some important aspects of the judicial experience worth identifying. These elements of the experience are further discussed in conjunction with all the experiences in Chapter 6, but they are briefly identified in the conclusion of this section.

The first aspect of the judicial experience is the high burden placed upon a victim when deciding whether or not to pursue a solution to a problem through a judicial service. Eugenie believed that if she went to the police, there was a strong probability that innocent individuals would suffer as a consequence, and she would be responsible for their suffering.

The cases of Lucie and Henriette offer a glimpse into the false harmony of forgiveness. Lucie is a poor woman whose income was significantly disrupted, but her chief told her to forgive,

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[144] Henriette #16 June 16th 2014.

and so she did, but her statement that her "heart hurts" suggests that forgiveness, in this case,

is not reconciliation as much as it is a cessation of seeking justice for the theft of her property.

Henriette's forgiveness seemed more reconciliatory in nature, but the individual who initially

wronged her victimized her again.

The case of Theophile and his harassment by a lower chief highlights the lack of

enforceability of the decisions of that particular groupment chief. Despite Theophile being

wronged by the chief, and securing a ruling supporting that position, his situation did not

change as no one held the chief who continued to harass him accountable. Connected to the

lack of enforced judicial decisions are the cases of Blanche case.

Recalling the case of Martin,[145] who mentioned that he attempted to intimidate the internet

cafe owner into a solution prior to taking the matter to a judicial service provider, there is a

possibility that threats of violence are a part of a strategy to portray strength to the other party

in a dispute to shift the outcome to be more favorable to the party making the threats. The

presence of this strategy will be examined in other cases.

Amedee's case is nearly identical to Raphael's[146] whose phone was stolen. Both the police

and the chief used a similar process to determine ownership and returned the phone to the

rightful owner. While there is nothing remarkable about this, it is important to highlight

instances where a judicial process functions well.

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[145] Martin #86 August 7th 2014.

[146] Raphael #99 August 7th 2014.

5.4.1.2 Self Investigate[147]

This section examines the three judicial experiences in the Mwami system where the victim

elected to investigate the crime before seeking assistance from the Mwami to help settle their

dispute. The first case involves Henri. He is a 40-year-old male farmer living in Mumosho.

One night $306 was stolen from Henri's[148] house. Henri approached the chief who was

unable to help him. When asked about going to the police, Henri's response was a dismissive

"you know the police in this area." "If the thief pays the police, they release him, and you

remain the loser." Henri negotiated a settlement with the thieve's family to repay the stolen

money, but they never paid. He elected to drop the case because he wanted to "avoid

problems."

The second case involves Elie. He is a 21-year-old airtime vendor in Katana. Four pigs he

was raising were stolen, and he began investigating throughout his village. Through his

investigation, he found some street kids who asked for $400 to assist him in finding the pigs.

He suspected they were behind the theft and offered to return with the chief to sign a

document agreeing to the debt. The kids said to him "you small guy if you do not have that

money; go away, you have lost and that is all." When he went to the chief to get help getting

the pigs back, the chief said that the street kids would kill him and refused to help. The chief

advised Elie to drop the case as there was not a prospect of recovering the pigs.

The final case involves Theodore. He is a 37-year-old male jeweler living in Bukavu. In

March of 2013 his TV, CD player, and a generator were taken from his home while both

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[147] Henri #5 June 16th 2014., Elie #49 July 24th 2014; Theodore #90 August 7th 2014.

[148] Henri #5 June 16th 2014.

Theodore and his wife were away. Theodore spoke to his neighbors who identified a

neighbor's son as the suspected thief. Theodore went to the suspect's family to attempt to find

an agreement, but the family said they were frustrated with the boy's actions and encouraged

Theodore to do whatever he wanted to the boy. Theodore then went to the local chief and

invited the thief to come with his family. The thief confessed but said he already sold the

items to a soldier.

Theodore, the chief, and the thief went to attempt to retrieve the stolen property from the

soldier. Theodore said the soldier began "menacing him" and felt that if he continued to

pursue the matter, he would be killed by the soldier. The thief gave Theodore the $40 he

received for selling the stolen goods although that was not close to the value of the items.

Theodore gave up all attempts to recover his stolen property.

Two important elements of the judicial experience appear in these three cases. The first is

Henri's opinion of spending money on justice as "losing twice," as his expectation is that the

opposing party will attempt to corrupt the judicial service providers. This belief about the

influence of money and corruption was seen in experiences when no judicial service was

used, the police narratives, and experiences with NGO services. The only difference in the

NGO experiences is that people viewed the service favorably because it was free.

The experiences of Elie and Theodore suggest the declining power and influence of

traditional leaders. In Elie's case, the chief was not strong enough or powerful enough to

command respect from a local street gang. For Theodore, the soldier rejected the appeal of

the chief to return Theodore's stolen property. As stated in the focus group discussion with

chiefs in Mumosho, the murder of many chiefs during the wars of the 90's lead to the prestige

and power of the office diminishing.[149] This trend will be further discussed in Chapter 6.

5.4.1.3 Mwami System Abuse of Power

The final experience involves Felix, which does involve a theft but does not fit neatly into the

other categories. This experience deserves to be included in this section as it offers insight

into how individuals in the Mwami system can abuse their authority and the risk of seeking

justice even for individuals who were not the victim of the crime. Felix is a human rights

defender for a local CSO in Kaziba. He went to testify on behalf of someone who came to his

CSO with a problem. The individual gave a goat to the secretary of the Mwami in exchange

for a job, but the job was given to someone else. Felix testified that he felt the chief's

secretary should honor the agreement made and give the person the job that was promised.

Precisely what happened next is unclear, but the testimony Felix gave angered the chief or the

chief's secretary, and Felix was "arrested" by the chief for six days. This particular detail is

especially confusing as the chief does not have the ability to arrest anyone nor are chiefs

supposed to have jails.[150] Felix said he was held in a hut on the chief's compound until local

police found him. The police were sent by Felix's family who could not find him. Felix was

freed from the "chief jail," but held by the police for two more nights while they investigated

the situation. Ultimately, no offense was found against Felix, and he was able to leave on the

condition that he paid the police $70. When asked why he was forced to pay, the police told

him that he had "fallen in the river and you cannot fall in a river and come back without

getting wet." They told him that despite his innocence if they wanted they could invent

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[149] Chief Focus Group, Mumosho. June 16th 2014.

[150] Kalehe Chief interview. Kalehe. July 24th 2014.

charges against him. So Felix decided to pay for his release. The person he testified for is

continuing to be harassed by soldiers. "I went to meet the soldier commander who told me he

is sending soldiers to harass the guy because the first time when he sent soldiers to the guy he

tried to quarrel with them; so he had to give beer to soldiers to leave him free."

5.4.2 Future Action

When asked about the action they would take faced with a similar problem in the future the

fifteen users of the Mwami system were largely skeptical about returning to the Mwami to

assist with future needs. Only five of the fifteen said they would return to the Mwami system

in the future. Five users said they would try the police; three did not know, one said they

would do nothing, and one said they would try the state courts. This low number of return

users might reflect that only two of the sixteen were satisfied with the outcome of their

experience. The Mwami System is further examined in Chapter 6.

5.4.3 Non-State Customary Conclusion

Two main items emerge from the narratives of judicial experience with Mwami's. The first is

a commentary on the state of traditional justice in South Kivu. It is not uncommon for

traditional forms of justice to be lauded as idealized notions of a connection with the past, but

as discussed in Chapter 3, the history of traditional justice in DRC has been undermined and

co-opted by both colonial authorities and post-independence leaders. The marginalized and

powerless Chiefs displayed in this section are a small, but insightful glimpse into this reality.

In a focus group session with chiefs in Mumosho they acknowledged that the role of Chiefs

was diminishing. Linked to war and population displacement, chiefs viewed their role in

society as rapidly diminishing. One Chief felt that within ten years they would no longer have

a place in society. This is admittedly a harsh statement, but when traditional authorities are intimidated by gangs of street kids, it is a stark admission of shifting balances of power. The decline of the societal importance of chiefs is further explored in Chapter 6.

The second, that judicial services can be used as an instrument of oppression, connects and expands an issue identified in both the experiences of no judicial experience and the experiences with police. This practice is most blatantly observed in Blanche's experience. She committed no offense, but her neighbor's repeated attempts to force Blanche from her land are using the financially extractive king's representatives, courts, and anyone else he can get to visit her house to destroy her ability to resist his attempts of exploitation. Her neighbor can continue his harassment because, despite the repeated rulings against him, there is no enforcement or follow up on the rulings. When those rulings are ignored, there are not consequences for him and no deterrent to change his behavior.

The Mwami system qualifies for the non-state and informal labels, but with its decline in ability to enforce rulings and shape society, it is hard to consider it a forum for restorative justice. Restorative justice requires consent from both parties to function, and this respect for both the role of the chief and norms seems to be in decline. Although Amedee's case does demonstrate, that restorative judicial experiences continue to occur. The NGO's seem to have filled the role of restorative judicial services, but, as observed in that section, one of their main points of leverage was the threat of involving police and courts into a process.

5.5 Non-state Emergent Experiences

As stated in Chapter 2, non-state emergent judicial services are defined as services provided

by entities which are not the state nor are they customary authorities. In post-conflict

contexts, this category is dominated by NGO, FBO, and CSO services. These services might

reflect aspects of customary function but tend to integrate more modern human right

frameworks into their work. Their status is recognized by the state which permits

organizations to operate or, at a minimum, does not interfere with their service provision.

This section covers experiences with individuals who used services provided by NGOs/

FBOs/CSO, IDP Camp leadership, and what is referred to as 'local solution,' which is

essentially a self negotiated arrangement.

5.5.1 NGOs, FBOs, or CSOs

The category of NGOs, CSOs, and FBOs contain twelve separate experiences. These three

are grouped together because the model of services they provide are so similar that any

distinction would be artificial, and in the eyes of justice users, they are grouped together.

These groups serve as both an advocate for victims of crimes and a potential judicial service

option. These groups are not affiliated with the state, but their existence is predicated upon

the approval of the state. The process is rooted in an informal dialogue structure which seeks

to create a solution to a dispute that both sides can agree upon. Decisions in the mediation

sessions claim to be rooted in the Congolese legal system, the UN Declaration of Human

Rights, tradition, and a general sense of 'what is fair.'

In seven[151] of the twelve cases, local civil society organizations (CSO) or NGO's were the first judicial service approached by the victim. In five cases, the NGO was approached after the victim determined the identity of the suspected thief in the case.

5.5.1.1 NGO, FBO, & CSO Experiences

Once an individual went to an NGO with their problem, the NGO listened to the person making the complaint and then questioned the suspect. After listening to both sides, the mediators determined that the party suspected of theft was responsible and needed to either return the stolen items or pay a portion of the item's value. For Xander, Victorine, Abel Celine[152] and Leopold, the negotiation of the settlement was easily agreed upon.

Rose's experience was one case where the identity of the suspect was not known. Rose is a 52-year-old female living in Mugogo. In December of 2013, someone stole two chickens and five pigs from her house. Rose appealed to members of her Catholic Justice and Peace Commission for assistance recovering her stolen animals. They began to search, but never found any suspects.

In the case of Valentine, the neighbor who took Valentine's metal sheets did not agree to return them. The neighbor was informed by *Muzerhe Bwacherhe* that the next step in the process involved Valentine making a complaint to the police. At this point, the neighbor agreed to return the sheets. Although the circumstances for Francis were different regarding

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[151] Rose #30 July 16th 2014.; Xander #56. July 29th 2014; Victorine #58. July 29th 2014; Abel #60 July 29th 2014; Leopold #67. July 29th 2014; Valentine #62. July 29th 2014; Francis #57 July 29th 2014.

[152] Celine #78 August 5th 2014.

the reason for seeking mediation, they ended similarly.[153] After Francis' father had died, a person showed up claiming he gave Francis' now dead father two goats for some land. The person had no documentation to support his claim, but when Francis did not meet his demands the accuser went to the police. The police told Francis he owed the man seven goats. Francis went to a local mediation service who determined there was no evidence to support the man's claim. The accuser was told if he continued to harass Francis about this matter that Francis could take him to court and he would lose based on a total lack of evidence. At this point, the accuser dropped the case as he did not want to face a court trial. When an impasse was reached with a mediated settlement, the parties were informed that the next step involved either the police or a tribunal of peace. At this point, the man agreed to drop his claim, and Francis elected to give him a goat to ward off any bad feelings between them.

In the remaining two cases, the individual did not immediately go to the CSO. Clement was robbed and beaten during the night by unknown armed men. He contacted the police, ANR,[154] and the local chief, but nothing happened. Because he did not think any of the authorities he contacted would help him, he went to talk about his experience to a local CSO that sponsored a local radio program. Clement is a human rights defender and used his connections to international NGO's and advocacy groups to express his frustration with the local insecurity. He believes that, as a result, many of the local administrators were reassigned to different posts, which in his opinion, increased local security.

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[153] Francis #57 July 29th 2014.

[154] Agence Nationale de Renseignements is the national intelligence agency in the DRC and has numerous outposts throughout the country.

The final case in this section is Antonin. Some thieves came during the night while he was away and stole a pig. Antonin initially suspected that his wife was behind the theft, but after investigating the matter with the local chief, it was determined that a neighbor stole the pig. At this point, the local chief contacted the head of a local CSO called *Muzerhe Bwacherhe* to help resolve the theft. A meeting was called between the chief, the victim's pastor, the victim, and the neighbor to discuss the matter, but the neighbor ran away. The process stalled.

The judicial experiences with NGO administered services were relatively successful at working with the parties involved in a dispute to reach an agreement. When the parties are willing to participate and agree upon the decision, NGO services seem to be very useful. NGO services were challenged when a party fled as they lacked the ability to pursue an individual.

5.5.1.2 NGO, FBO, & CSO User Future Action

All twelve individuals whose judicial experience was to choose NGO's, CSO's, or FBO's said they would use the same judicial services in the future. Two main factors contribute to their decision: cost and sense of fairness.

When asked about their satisfaction with the process, five of the eleven specifically mentioned the lack of payment for the process as a contributing factor for their satisfaction. The statements were; "the police take fines and do not share the fees,"[155] Francis said "police

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[155] Xander #56 July 29th 2014.

demand money;"[156] "[the police fail to solve] problems by asking [for] much money;"[157] "we

did not pay anything. The thieves did not pay anything. I was satisfied because they did not

ask for anything. I would go back because they do not ask for anything;"[158] and "I would go

back to this mediation group because there is freedom of speech, and they help solve

problems without asking any fees." A judicial experience where the process met their

expectations and did not require a fee was very strongly appreciated by those interviewed.

The strength of the appreciation for this process is best demonstrated by a few cases that in

some ways failed to deliver justice but were nevertheless labeled satisfactory by the user.

Victorine and Antonin labeled the experience of the process as satisfactory despite the

accused thief running away and not receiving any compensation for their stolen possessions.

Antonin said, "I could be satisfied with the process if the thief honored the promise; I could

not take legal actions against his family because he was the only one responsible for the theft

and not his family." Victorine's rationale for her satisfaction with the process includes many

issues,

> I was satisfied with the association because I cannot brutalize them because they would run away from
> the quarter and I would be shocked, and there is a family member; I would be disapproved by the
> family for my right, and again I am a widower, I have nobody to defend me … In addition, those guys
> are my neighbors and there are many problems with neighbors that we should avoid. That is why I had
> to follow the process of the women organization.

Victorine's belief is that despite her legal ability to pursue further action against the thieves

who have failed to repay the cement they stole, doing so would create problems within her

family and amongst her neighbors. The idea that pressing legal action against someone who

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[156] Francis #57 July 29th 2014.

[157] Abel #60 July 29th 2014.

[158] Rosalie #61 July 29th 2014.

wronged you as being taboo is a feature of many cases to come. After all the cases are examined, this idea will be revisited and looked at again in light of all the cases.

5.5.1.3 NGO, FBO, & CSO Conclusions

Three main themes emerged in these cases. First, the satisfaction of users is high with a process that is both free of charges and estimated to be fair. This is a trend to pay attention to through the remainder of the cases, both satisfactory and unsatisfactory. Second, the option to take a case before the police or courts seemed to be an option to avoid and served as leverage in the negotiations. Third, the case of Victorine suggests that a victim of a crime could be seen as an aggressor if they seek justice in a manner disproportionate to the offense.

5.5.2 IDP Camp

As mentioned in the landscape overview of judicial services in IDP camps, the structure of the services is a reflection of the Mwami system. Like the Mwami system, the camp services are classified as non-state, informal systems that provide restorative solutions for low-level disputes that occur in the camp. The national police also operate a station within the camp, and FARDC soldiers are posted nearby. This section contains three experiences of individuals using the judicial services provided by camp leaders in Mugunga Camp 1, which is located on the outskirts of Goma, DRC in North Kivu. All of these experiences involve instances of theft, and all of the individuals went to the camp leaders first to resolve their problem.

5.5.2.1 Experience

The first case involves Juliette[159] who is a 60-year-old female living in Mugunga Camp 1. Someone stole her clothes from her tent. She went to the camp leaders for help, but they did

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[159] Juliette #22 June 24th 2014.

not provide any help for her. Juliette declined to go to the police because they would ask for money, and she did not have any.

The second case involves, Augustine who is a 63-year-old female living in Mugunga Camp, located just outside of Goma. Augustine is originally from the Masisi area but came to the IDP camp because of the insecurity. Augustine's tent was destroyed during the night, and someone stole her clothes. She approached the camp leaders for help, but they just told her they were sorry and did not help her in any way. She continued "even though we report to the president of the camp, he cannot do anything. Even if he talks to the governor, he can do nothing. We do not receive the food and the money they send us; we are suffering, we remain voiceless, and no authority can listen to us. President Kabila, the Mwami, and other authorities are doing nothing for us; there is no road, no peace; we are suffering in Congo; we have been sold to someone. They are not helping; we want them to bring back peace and allow us to go back home." Her frustration with her displacement was evident as she connected the theft of her clothes to the larger issues of insecurity back in Masisi.

The third case involves Ernest[160] who is a 55-year-old male tailor living in Mugunga Camp. The place where he keeps the clothes he is mending was robbed, and clients' clothes were stolen. His clients went to the camp leadership for mediation, and Ernest agreed to pay for the clothes his clients lost. He is still struggling to repay the cost of the clothes.

Looking forward to future problems, Ernest would return to the camp leaders to solve a problem. Ernest said he would return to camp leaders because he is "under their control."

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[160] Ernest #29 June 24th 2014.

Both answers suggest a deference to following the proper procedure to resolve a problem and respect the present authorities.

Juliette and Augustine expressed a belief that there is no justice in the camp, and therefore, there is no purpose seeking justice for future problems. Juliette believes that all judicial services would ask for money, and they might be bribed by the other party so the victim would "remain the loser."[161] Augustine[162] sees all the leaders in the DRC from camp leaders to the president as not working to bring peace, so there is no prospect for justice.

5.5.2.2 Conclusion

Three elements of the experience emerge in the IDP Camp narratives. The first is Ernest expressing a desire to respect the proper flow of justice. Going to camp leaders opens the potential to go to the police. At the same time, Juliette and Augustine expressed deep skepticism about the ability of local and national leaders to address the judicial needs of the DRC population. Finally, the issue of money being perceived as a barrier to judicial access is raised by users.

5.5.3 Local Solutions

The inclusion of judicial services as a product of mediation by the victim and the accused, or 'local solutions,' play an important role in the judicial experience in South Kivu. Local solutions are clearly classified as non-state and informal. These solutions would also be considered restorative as an individual has no power to level punishment against another

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[161] Juliette #22 June 24th 2014.

[162] Augustine #26. June 24th 2014.

person. This section covers six cases, five of which involve theft, and one deals with a family

dispute. Although there are only six cases in this section, the impression I received while

listening to the experiences of justice is that there is a strong expectation for the victim to find

a 'local solution' to a problem before taking the matter to another authority. Recalling the

case of Gustave[163] who had stones stolen from his business by another individual and that the

thief became incensed when Gustave elected to get help from the police after the thief failed

to repay the value of the stolen goods. The scope of this research was unable to penetrate the

full sociological dynamics at play in these interactions, but identifying the real pressure

placed on individuals to investigate, mediate, and enforce their solutions is a real element of

the judicial experience in South Kivu. These six cases highlight a few of those attempts to

create a local solution.

5.5.3.1 Experiences with Local Solutions

As stated, five of the six experiences deal with issues of theft. The first experience involves

Louis[164] who is a 33-year-old male teacher living in Mumosho. Since 2013, he experienced

four separate break-ins into his house. After the first incident, Louis installed bars on his

windows. Louis did not have any suspects after the next two attempts, so he did not take

action. After the fourth attempt, Louis identified a neighbor as a suspect in the thefts. Louis

went to his neighbors, who were FARDC soldiers, to confront the woman who confessed to

the theft. Louis used the influence of off-duty soldiers to get the woman's family agreed to

pay for the money stolen. She stole $350, but the family has only paid back $30 to date.

Louis is thinking of taking the matter to the police, but he is uncertain.

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[163] Gustave #37 July 23rd 2014.

[164] Louis #2 June 16th 2014.

In the second experience, Renee[165] is a 44-year-old female living in Mugunga Camp 1, near

Goma. While in the camp, someone stole food from her house. Renee confronted her

neighbor, but her neighbor denied responsibility for the theft. Renee did not believe her

neighbor and decided to set a trap to catch her in the act. Renee informed her neighbor that

she was going to collect something from the road and would be away. Instead of going to the

road, Renee hid to watch her house. She ended up catching her neighbor in the act of stealing

food. Renee was very upset with her neighbor and planned to take her to the camp leader.

Renee's son calmed her down and encouraged Renee to forgive her neighbor for the theft.

Her son reasoned that if they were in the same position as her neighbor, they would steal

from someone else. Renee agreed with her son and forgave her neighbor.

The third experience involves Victor[166] who is a 44-year-old male living in Mugunga Camp

1. He co-owned a storehouse with another man. One evening the items were taken from the

storehouse, but none of the stolen items belonging to Victor were stolen. The co-owner

accused Victor of stealing his clothes. Victor stated that officials are a waste of time and

preferred to resolve the matter himself. Victor managed to persuade the co-owner that he did

not steal the clothes and asked him not to press charges. Victor assured him that he would

investigate the matter. Victor has identified a suspect in the theft, but the co-owner is not in

the camp, so the dispute stalled.

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[165] Renee #21 June 24th 2014.

[166] Victor #28 June 24th 2014.

The fourth experience involves Philomene[167] who is a 32-year-old female vendor living in Bukavu. While working in a shop, someone tricked her to look away and stole $300. Her boss was angry and demanded she repay the money. Philomene did not know the identity of the thief so she did not believe she could go to the police. Instead, she worked out an agreement with her boss to repay the stolen money over time.

The fifth experience related to theft belongs to Caroline.[168] She is a 23-year-old female student living in Bukavu. In 2013, a young relative from Burundi was visiting Caroline's family in Bukavu. When the relative left, he stole her clothes and sold them. Caroline was angry and wanted to go to the police, but "the police would ill-treat him" only creating more problems between Caroline and her family. The relative admitted he was wrong and apologized, but did not give her the money or give her new clothes. Caroline is a Christian and felt she had to forgive him, but thinking about the case still makes her angry.

In the sixth experience, Olga[169] a 35-year-old female farmer living in Cirunga, was repeatedly robbed by her husband. First, she bought a phone, which made him mad, so he took it from her. The following day he took 12,000 FC she had earned, and they began fighting when she asked for it back. The husband proceeded to cut up all of Olga's clothes. Olga went to her family and her husband's family asking for him to repay her for the phone, the money taken and clothes destroyed. The husband agreed to pay, but has failed to do so months after the

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[167] Philomene #79 August 5th 2014.

[168] Caroline #85 August 5th 2014.

[169] Olga #72 July 31st 2014.

agreement was made. Olga would like to take her husband before a local mediation group,

but her family is pressuring her to wait to see if he will pay.

Looking towards future action, Renee, Victor, and Caroline would elect to find a local

solution with the party they are experiencing a problem with before doing anything else.

Renee's logic was that if a party goes to jail, they will be asked for money, and that is not

good. Victor believed that the individuals would not be punished long, and when they got out

of prison, would return to harass you, and that was not worth it. Caroline would attempt to

find a local solution, but depending on how that went, she might consider other action.

Three individuals would make a different choice if faced with a similar problem in the future.

Louis would opt for the police as he doubts the ability to get compensation for theft from a

local solution. Olga simply wants to find a service that is quick so that the problem is settled.

She had no bias towards who provides that service nor did she know what service she would

choose. Philomene would elect to use the services of an NGO in the future as she did not

know they existed when she had her first problem.

5.5.3.2 Local Solution Conclusion

Two key elements of the experience of trying to negotiate a local solution emerge in this

section. The first is the difficulty individuals had in getting the settlement negotiated with the

offending party. If a significant appeal of negotiating a local solution is avoiding other

judicial services like police or courts, it should be expected that parties would make efforts to

repay theft to avoid the escalation of the dispute. The precise reasons for parties not paying

their debts agreed to in local solution settings is unknown, but an inability due to poverty or

an unwillingness due to the inability of the other party to force them to pay could also be a

factor.

As observed in the case of Caroline, her family pressured her to make a local solution; in her

case that meant forgiveness, to avoid creating additional problems between the extended

family. This logic factored into Renee and Victor electing to use local solutions again in the

future despite the failure to receive payment for their loss. Electing a judicial experience that

reduces the potential of future trouble or harassment for either the individual or their

extended family does little to address the problem at hand. The desire to avoid harassment in

the future mixed with the aggressive behavior exhibited in other narratives suggests the

possibility that individuals exaggerate their threats against the other party as a means of

leveraging a more favorable solution. Finally, if the impetus behind pursuing a judicial

experience in DRC is the understandable motivation to avoid harassment from judicial

services and the other party in a dispute, then the dynamics behind impunity is more complex

than previously imagined.

5.5.4 Force Vive

This section focuses on a specific judicial service, Force Vive. Force Vive operates as a

private investigative service in Bukavu, DRC. In March of 2008, Christian Wauduma created

Force Vive because he noticed a lack of authority in his community and wanted to help others

who were "suffering from crime."[170] Force Vive can help victims of theft in Bukavu because

they have developed an understanding of the shadow economy and the dynamics of local

gangs, and in general they know the area well. These three sources of knowledge enable them

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[170] Christian Waduma. Interview. Bukavu. August 12th 2014.

to typically respond quickly to a theft and hopefully recover the item. They do not operate on

a fee basis, but those using their services pay for the transportation during the investigation

and typically give Force Vive a gift if the stolen item is recovered.

Mr. Waduma acknowledges they have no mandate from the state nor any formal powers.

Although he believes the police are jealous of his success, their existence is known and

tolerated by local police and political authorities. He also stated that the motivations for theft

in Bukavu stem from poverty, the influence of street gangs on local youth, and professional

thieves. He estimates their success rate is between 60 - 80%. There are three cases where

individuals used Force Vive as their judicial service provider. All of the cases are located in

Bukavu and pertain to theft.

5.5.4.1 Experience

The first experience of Force Vive's services is Augusta[171] who is a 25-year-old female who

lives in Bukavu and works at a business photocopying documents for people. Augusta is also

the secretary of a local savings and loan group in Bukavu. In January of 2014, she went to the

market to purchase a photocopier with the money from the savings and loan group so she

could start her own business. As she was walking, someone snatched the bag with the money

away from her. Although she saw someone take the bag, she did not succeed in following

them. Desperate to get the money back, she went to Force Vive. They offered to help her as

they told her they knew the thieves. Augusta was asked to pay $10 USD to begin the process.

Her brother joined the men at Force Vive as they searched local hotels for the suspected

thieves. After paying $20 in transportation fees without succeeding to find the men, Augusta

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[171]Augusta #77 August 5th 2014.

decided to stop the search. She felt continuing to search was a waste of time and money.

Augusta believes that "God would help her now."[172]

The second experience belongs to Laure[173] who is a 26-year-female student living in Bukavu. At some point in 2013, she was riding in a taxi with a computer in her bag. When she got out of the taxi, she noticed the computer was missing, but she did not know who took it or when during the journey it was taken. A friend referred her to Force Vive as they helped her friend find some stolen property. Laure paid $10 for Force Vive to begin investigating the computer theft, but they failed to find the computer. Laure gave up looking for the computer.

The third involves Eva,[174] a 33-year-old female non-profit manager living in Bukavu. In May of 2012, an expatriate who was volunteering with the NGO Eva managed had her computer stolen. Eva was recommended to contact Force Vive by a person who heard the nature of their problem. Eva met with Christian Waduma and described the computer's appearance as well as the location where it was stolen. Christian was eventually able to track down the computer by giving the thieves $100. The expat paid that fee and gave Christian $100 for recovering the computer as well. Eva opted for Force Vive because she believed going to the police would be a waste of time, money, and effort.

Both Augusta and Laure failed to get their stolen property back. Augusta was frustrated with the fact that she had to pay for transportation at Force Vive and would elect to go to the

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[172] Ibid.

[173] Laure #84 August 5th 2014.

[174] Eva #110 August 20th 2014.

police if she experienced theft in the future. Laure would not return to Force Vive "because they did not find a solution the first time." She believes the police might do better at following up an investigation if she experienced theft a second time. Eva was pleased to receive the computer back and would go to Force Vive again if she faced a similar problem.

5.5.4.2 Conclusion

The existence of this organization was not learned until late in the fieldwork phase, so it is difficult to assess the reach of the organization, the public perception, and the success rate of recovering stolen items. The existence of Force Vive speaks to the perceived inability of police to adequately investigate crime in Bukavu. The only experiential element which stuck out of these experiences was the tendency to return to judicial services that delivered the expected result and not return to those which failed to deliver the expected result.

5.6 Judicial Experience with Multiple Providers

This section examines judicial experiences that span numerous judicial services. All the services accessed in this section have been discussed in the previous sections, but the key difference in these cases is that the individuals attempted to use more than one judicial service to resolve one problem. These cases include referrals, but suggest a pattern of 'competence shopping.' As opposed to 'justice shopping,' where an individual uses multiple forums to leverage the best solution to a problem for themselves, 'competence shopping' reflects an individual's effort to find a judicial service that can address their problem in a way they can access. There are nine unique cases within this section. In eight of the cases, the reason for an individual pursuing justice from numerous different judicial service providers is based on a lack of help found. In one case, Alphonse, the reason was to avoid the high cost of police. The reasons for seeking justice vary; four individuals experienced theft, two

encountered neighbors slandering them which created problems in the community. Two experienced a dispute with a partner. The final case involves a man whose child was injured by another person.

5.6.1 Experiences with Multiple Service Providers

This section describes the experiences of justice that involve multiple services. Each experience will be briefly summarized and future action discussed. The first experience was Joseph's, a 38-year-old unemployed man in Mumosho. In 2013 he was working at a cassava mill in Mumosho. One night someone broke into the cassava storage and stole everything. This storage area was 50 meters from an FARDC outpost. Joseph went to the village chief for assistance, but the chief claimed he was unable to investigate. Then Joseph went to the police chief who promised to investigate but nothing happened. Joseph then approached the FARDC due to the proximity of the base to the storage area. The commander promised to investigate, but never did. As a result of the theft, people stopped bringing their cassava for milling, and Joseph is without work.

Second, Octave is a 62-year-old male farmer from Walungu. In May of 2013, someone cut down trees and bamboo on his land without his permission. He talked to his neighbors to determine if they witnessed anyone cutting down his trees. Octave's son was able to identify suspects, and Octave approached them to achieve a local solution. He went to his local chief who fined the thieves a goat each, but they refused to pay. Octave then decided to ask the police for help. The police asked for money before beginning the case. Octave paid $30 for the investigation, but they failed to arrest the thieves. Octave concluded that he wasted his time, energy, trees, and money, so he decided to give up. In the future, Octave will use

"witchcraft to send lightening after people." This plan for future action was particularly

interesting as Octave also claimed to be a human rights defender.

Third, Clement is a 40-year-old male living in Katana, presently working as a journalist. In

June 2013, armed men broke into his house. He was beaten with an axe and guns and was

asked to give them $1000, but he only had $400. They also took a computer, radio, phones

and his voice recorder. He believed they spared his life because they found items of sufficient

value. Clement called the police, military intelligence, and the local chief for assistance. He

proceeded to file a claim against an unknown person at the tribunal of peace. Despite

contacting every judicial service provider in the area, no one was able to help identify the

individuals who attacked him. Clement contacted local radio, CSO groups, and some

international NGOs about the crime. These activities eventually created pressure against the

government who relocated the police commander and other administrators in the area.

Clement believes these changes have ultimately made life better in the area.

Fourth, Alphonse is a 36-year-old male secondary teacher in Mugogo. He also owns three

cows and paid two shepherds to look after them. While teaching, he was informed that the

shepherds had taken the cows to be slaughtered and intended to take the money instead of

giving it to Alphonse. He went to the slaughterhouse to stop them. When he got to the

market, two of the cows had already been sold, and he asked the buyers for the identity of the

sellers. After four hours, the sellers were identified as the shepherds of Alphonse's cows and

were arrested. The thieves begged Alphonse for forgiveness. He did not want them to be left

to the police as "it would cost too much" and paid $30 for their release so the matter "could

be solved locally." The money from the sale was returned to the buyers, and Alphonse got his

cows back.

Alphonse took the thieves to the local chief who was "astonished" to hear about the theft of Alphonse's cattle and fined the thieves $50 each. This fine was split between Alphonse and the chief. Alphonse felt it was important to try and solve all matters himself. He said that he must "apply what they teach us in church." When asked what he meant by that he said, "there is a biblical verse which forbids us to take our cases to false judges, and the latter are those people who do not say justice as it is required." By that, Alphonse meant that police and courts in the area were corrupt so it was essential to resolve matters yourself so it would be fair.

Fifth, Edouard was having a dispute with someone who was trying to steal his farm. Edouard said that this other party paid an individual to spread rumors about Edouard throughout the community by saying that Edouard was using the court to "kill people."[175] The one spreading rumors accused Edouard of trying to kill him when he visited Edouard's home. Edouard went to the chief to stop this person from spreading the malicious rumors about him, but the chief asked for $70 from Edouard before he would do anything. Edouard declined to pay that amount. While Edouard was away with the chief, the police arrested his wife under the pretense that she was responsible for the death threats.

Edouard went to the police to try to get his wife released and try to get their help with the rumors being spread against him, but they wanted $20 to open a case. Edouard declined to

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[175] Killing people in this context was metaphorical. Given cost of court the rumor was that Edouard used the court to oppress people financially.

pay. Shortly afterward, the individual spreading rumors against Edouard was arrested for matters unrelated to Edouard's case. When Edouard wanted to press charges against him, the police commander said they could not charge the man with two different crimes at the same time. Edouard is under the impression that although the man was arrested, he bribed them and went free. The rumors against him continue to circulate throughout the community, and the issue remains unresolved.

The sixth experience is Aimee,[176] an 18-year-old unemployed female living in Cirunga. In February 2013, Aimee was hospitalized with a health problem. When she returned home, her clothes were missing, and her husband asked her to leave their home. Her husband said that because she had three surgeries she "was no longer a woman"[177] and he wanted to marry another woman. Aimee went to her local chief for advice on how to handle this problem. The chief invited Aimee's husband to discuss the problem, but he did not show up. Aimee then went to Colonel Honorine, the PNC Commander in charge of Women's and Children's Affairs, who asked Aimee's husband to sign a document agreeing to pay Aimee $20 per month to take care of their children, but he has not paid her anything.

More than other experiences examined, those who went to multiple judicial service providers without finding a resolution are more mixed towards future action. Looking towards future action, Joseph stated he is skeptical about their ability to help. Alphonse would rely on local

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[176] Aimee #73 July 31st 2014.

[177] Ibid.

solutions before doing anything else. He stated that as a Christian he could not take a person

"before a false judge"[178] which is implied to include police, courts, or Mwami's.

Edouard and Melanie said they would do nothing in the future. Edouard does not believe

there will be a solution anywhere. Clement would take his case to a tribunal of peace. Octave

chose the most interesting of options for future actions; he said, "I would use witchcraft. I

would use lightning, and it would kill the thief."

5.6.2 Multiple: Future Action & Conclusion

Of the six users whose experience involved attempting to access justice from multiple

sources, three would go to the police, two are unsure, two would do nothing, one would seek

to broker a local solution, one would go to an NGO, and one would use witchcraft.

Four distinct elements emerge from the judicial experiences with multiple service providers.

The overwhelming initial experience is the challenge of getting a judicial service to take

action on a case. The next challenge is getting a judicial service to take action without paying

for the services in advance. Edouard and Octave were all asked to pay the provider before the

handling of their case began. Third, there is a belief that justice is corrupt, and this is not

distinct to a specific type of judicial service. Edouard felt his case was influenced by bribes.

Finally, even getting a favorable verdict is not enough to guarantee that the outcome will be

favorable. Poor enforceability of decision means that despite winning their cases, Aimee was

not able to enjoy the results of a victory because the other party elected not to pay without

consequence.

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[178] Alphonse #32 July 16th 2014.

5.7 The Absence of A Judicial Experience

The choice of not approaching a judicial service provider after experiencing a crime is an important one, especially since the option to file a claim against an unknown person with the police or tribunal of peace is an option. Of the experiential interviews conducted, sixteen of the experiences involved doing nothing to resolve the dispute.[179] In these cases, nothing is defined as not attempting to initiate a judicial experience through any available provider. In all cases, the victim's first step was to talk with individuals in their immediate vicinity to collect information about the incident. Within this group of experiences, thirteen of the individuals were unable to identify a suspect and felt there was no use in pursuing justice; two of the individuals were talked out of going to justice by their family and friends, and one said she was unable to afford to go the police.

The two individuals who were talked out of taking action were encouraged to do so because pursuing justice could damage the relationships with the accused. In the first case, Clotilde is a student who was saving money to begin a small business upon graduating, but her nephew stole from her the $100 she had saved. She initially wanted to go to a traditional doctor to send magic after her nephew but was talked out of that course of action by her mother. She was encouraged to drop the matter entirely because she "could not get her relative harmed because of money," "that God is the provider," and "she might need her nephew's help in the future."[180] Associating justice with harm for the perpetrator is a common theme in these experiences and will be discussed more in the next section. The encouragement to trust God

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[179] After conducting interviews in the Mumosho, Walungu, Mugogo, and Kaziba I requested that individuals who chose not to pursue justice to not be selected. This request was made because it seemed to be a very common experience and if the selection was not done carefully narratives of not doing anything would crowd out the other experiences.

[180] Clotilde #83 August 5th 2014.

for provision is also common and is reflected as the view of approximately 32%[181] in the

Vinck & Pham survey. Refraining from seeking justice due because of the possibility that she

might need his help in the future is an interesting notion. This is another theme to be

discussed in full later as it often appears throughout the interviews, but I initially highlight it

here.

In the second case, Brock's house was robbed of a camera, and he suspected one of his

friends of the theft. When he told other friends of this, they told him it was "ridiculous" to

take a friend to the police over a camera.[182] He said he is "partially" friends with the person

he suspects stole his camera but is no longer able to trust the person.[183] Similar to Clotilde,

the logic of his friends was to maintain the relationship as going to the police would damage

it, but from Brock's perspective, the relationship was already damaged by the suspected theft.

The final case involves Laurence whose house was broken into, losing two phones and two

SIM cards. Her children, who witnessed the thieves leaving, were beaten by the thieves.

Laurence wanted to go to the police with the case, but as a widow, she felt she lacked the

means and did not have anyone to turn to for assistance. She received some medicine from a

local doctor, but her child has ongoing complications from the attack, and she has no means

to provide the necessary medications. Laurence knew the identity of the thieves but also

knew they were orphans, so there was no family to complain to about their behavior. She

concluded saying, "I always face many problems, but as I am alone, I have no father, no

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[181] Vinck & Pham combined Nobody/God into the same category

[182] Brock #93 August 7th 2014.

[183] Ibid

mother, no husband, and no brother. Therefore I always give up because once I go they would

ask for money while I do not have it."[184]

The sixteen experiences contain three of the defining characteristics of the judicial experience

in South Kivu, DRC. First, the crucial role of an easily identifiable suspect. Second, the

association of justice and relationship discord. Third, the belief that money is an important, if

not an essential gateway to justice. While highlighted here, these narrative characteristics are

discussed fully in Chapter 6.

5.7.1 Future Action

Each interview concluded with a question about what action would be taken if a similar

experience occurred. Of the sixteen interviews, four of the cases[185] reported a willingness to

seek help from local police or their village chief if a suspect is known. Another four cases[186]

reported that without money it would not be possible to pursue justice. Josephine's[187] house

was robbed, and her husband wanted to move the family, but they had no money to move or

seek justice so she professed that God would save her in the future. Laurence believed that,

without money, accessing justice is impossible.[188] In three cases, the individuals expressed

doubt that any attempt to access justice to resolve a problem would be successful. Leonard

said, "I am disappointed; if I knew they would give back my right, say justice in the right

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[184] Laurence #104 August 8th 2014.

[185] Yvonne #6 June 16th 2014; Marcelle #10 June 16th 2014; Mathilde #41 July 23rd 2014; Achille #95 August 7th 2014.

[186] Josephine #13 June 16th 2014; Francine #82 August 5th 2014; Brock #93 August 7th 2014; Laurence #104 August 8th 2014.

[187] Josephine #13 June 16th 2014

[188] Laurence #104 August 8th 2014.

way I would go there. I know they never give the right back."[189] This disappointment with

justice and expectation for failure in future attempts is an important dynamic to observe in the

following case analysis. The expectation of failure, if commonplace, might be an important

piece in the larger narrative of widespread impunity that looms over discussions of justice in

DRC. If an individual expects justice to fail, they abstain from even trying to access judicial

services and thus reinforce the narrative that justice does not exist in DRC. A recurring theme

in narratives to follow is the expectation of corruption on the part of judicial service

providers. This expectation is not unfounded, but legal bail, the inability to solve crimes

without witnesses or evidence, and legal fees are often interpreted as signs of a corrupt and

unfair system from the perspective of interviewees.

5.8 Conclusion

This chapter examined the narratives of judicial experiences collected during the fieldwork

portion of the research phase. The circumstances and reasons the choice was made will be

examined. The first section examined the judicial experience with specific judicial service

providers: CSO's/NGO's/FBO's, police, the Mwami system, FARDC, the court system, local

solutions, and IDP camp systems. The second section examines narratives of judicial access

that spanned across multiple judicial services. The final section analyzed narratives where the

individual could have chosen to pursue justice to resolve a problem they experienced but

chose not to do so. An important feature of the judicial experience which emerged in the

narratives is the role of payment as a gatekeeper to beginning a judicial experience in South

Kivu is examined in Chapter 6. The impact of success or disappointment also emerged as a

factor worth examining further as positive experiences seemed to encourage returning to

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[189] Leonard #91 August 7th 2014.

judicial services for assistance while negative experiences discouraged future action. The narratives in this section support Theodore Trefon's view of all of the Congolese public administration saying it is "based on uncertainty and discrimination resulting in a culture of fear, evasion, and occasional predation" (Trefon 2009: 11). Arbitrary detention, exploitation, and fear were common features in these narratives, but so was satisfaction, appreciation, and contentment with judicial services. A key contribution that these narratives bring to the discussion of peacebuilding is the diversity of experiences. The judicial experience in South Kivu is a spectrum of experiences from good to unspeakably bad. Chapter 6 also explores the questions: What is the relevance of gender in the experience of justice? Are CBOs a hybridization of customary justice and western human rights agenda?

CHAPTER 6
Moving Towards Peace

The goal of this research is to understand how everyday experiences of justice can inform

peacebuilding activities, specifically improved access to justice. In Chapter 2, the emerging

research interest in developing an understanding of 'bottom-up' perspectives of peacebuilding

was noted. Oliver Richmond states, "by listening to local voices a more sophisticated

understanding of peace" can be achieved (Richmond 2009: 570). Chapter 5 presented ninety-

one narratives of judicial experiences in South Kivu. Chapter 6 examines features of judicial

experience that emerged during the narratives of judicial experience presented through

frictions and lens of the everyday. Instead of looking at the cases within the confines of a

particular service, this chapter examines recurrent features across all judicial experiences.

The first section uses the framework of experiences of frictions presented in Chapter 2[190] to

understand if frictions is an adequate framework for understanding experiences of justice.

The second section examines user satisfaction, power, and paying for justice and the extent to

which legitimacy is connected to those facets of experience in South Kivu. The third section

explores user perceptions of the legitimacy of judicial service providers through user

satisfaction and anticipated returns. The role money and power is also considered in how it

impacts user perceptions of provider legitimacy. A fourth and final section looks at the

potential hybridization of customary authorities and NGOs.

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[190] Section 2.5.2.1

6.1 Experiences of Friction

The experiences of friction first discussed in Chapter 2, provide a useful framework to examine the potential for user experiences of friction in judicial services. While initially created to understand experiences of friction between local and global interaction, as noted in section 2.5.2, there is no homogenous global or homogenous local group. The global and local spheres consist of a variety of actors whose agendas interact in different ways (Björkdahl & Höglund 2013: 298). Thus the definitions of experiences of friction have been altered from their original focus on the global/local interaction. The purpose of emphasizing an individual's understanding of justice as a byproduct of social structures, ideals/ philosophies, history, and experiences (personal and second hand) in Chapter 2, was to highlight views and expectations of justice that will vary based on differing understandings of history, different experiences, and different notions of how society should be constructed. A user's experience of friction was determined by looking at their experience of justice compared to how they anticipated reacting to a similar situation in the future. Two additional categories were added to capture user experiences, no friction and did not know about anticipated future action. An experience of no friction demonstrates that the user did not encounter an experience that conflicted with their expectations of the experience. Those who said they did not know what they would do were a few individuals who did not indicate any direction for future action.

When looking at the ninety-one experiences through the framework of frictions (Table 6.1), three experiences were most common: compliance (19), no friction (17), and rejection (25). The least common responses were adoption (2) and did not know (4). Adaptation (9), co-

option (8), and resistance (7) received some support as well. The following sections break

down each of the three tiers of frictional responses.

6.1.1 Justice & Friction: Compliance, Rejection, & No Friction

The three most common categorizations of judicial experiences are interesting as they are the

most different possible experiences on the spectrum. Of the ninety-one user experiences,

seventeen individuals did not experience any friction. What is meant by this is that their

expectation of what the experience would be or should be matched the experience they

encountered. All seventeen users considered their experience to be successful, so there is a

strong connection between getting the desired result, satisfaction with the experience, and the

extent to which the experience aligned with expectations. Given that the experiences

examined were concerning theft, the driving concern was to get the stolen goods back or the

approximate value of their goods.[191]

Of these seventeen experiences without friction, nine of them took place with CSO/NGO/

FBO administered services, four with police services, three with mwami services, one with

the court, and one with Force Vive. This represents a mix of state providers formal services,

informal state services, non-state emergent groups, non-state customary groups. Thus it

seems possible that the result of the process might be more important than the means to get to

the desired end.

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[191] This is supported by the main definitions of justice involving upholding rights, creating peace, and solving problems. Discussed in Section 5.2.1.1, a driving concern for users was the return of property.

Table 6.1 User Experiences of Friction Accessing Justice		
Compliance	User anticipates adhering or submitting to judicial practices & norms which do not align with individuals view of justice but sees no alternative.	19
Adoption	User adopts judicial practices & norms to achieve their desired outcome.	2
Adaptation	User adjusts expectation and method of how they pursue judicial services to achieve their desired outcome.	9
Co-Option	User strategically adopts the global/external into the local as a means of averting pressure	8
Resistance	User actively seeks certain judicial service providers with particular characteristics, while actively avoiding other providers.	7
Rejection	User rejects the possibility of finding a viable judicial service provider.	25
Doesn't Know	User is uncertain of future action.	4
No Friction	User did not experience friction	17
Total		91

A second common response was the rejection of the possibility of finding justice in South

Kivu. Twenty-four user experiences fit this categorization. This correlates with the

anticipated future action of users who said there was nothing they could do to access justice

in the future. In this category, users seemed to believe they were better off relying on faith or

avoiding conflict than attempting to seek a resolution. Not one of the thirteen users was

satisfied with their experience making statements such as "justice is for the rich,"[192] "justice

is futile,"[193] and "everything is a waste of time."[194] This type of response is further discussed

in section 6.3, but this mindset could potentially reinforce criminal actors to exploit users

with impunity. As more individuals reject the prospect of accessing justice by trying to avoid

victimization or, if victimized in some way, seeking to cope the event believing that access

justice will only further increase their problems then it continues to foster hopelessness and

potentially resentment towards the authorities that continue to fail them.

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[192] Edouard #35 July 23rd 2014.

[193] Alfred #27 June 24rd 2014.

[194] Raymonde #39 July 23rd 2014.

The final category of justice covered in this section is that of compliance. In total, eighteen

user experiences expressed resigned compliance to trying to pursue justice for a similar

problem in the future but were not expecting to get any positive result. Twenty-three of the

twenty-eight users were unsatisfied with their experience. The respondents in this group

expressed a willingness to try to access justice in the future but did not anticipate that the

judicial service provider would be any more capable of assisting them finding a solution to

their problem in the future.

6.1.2 Justice & Friction: Adaptation, Co-Option, & Resistance

The second grouping of experiences of friction is adaptation (9), co-option (8), and resistance

(8). Experiences of adaptation are best summarized as users changing their preferred method

of justice or understanding of justice to achieve a more desirable end in the future. For

example, Alphonse views justice as something which helps maintain social welfare, but also

frames the current spectrum of judicial services in South Kivu as false judges and cannot

reconcile using them due to his Christian faith. Thus, Alphonse pursues local solutions

mediated between himself and others to maintain social harmony. Alphonse went as far as to

pay the police a bribe for the release of his shepherds who stole his cattle to come to an

agreement among themselves instead of settling the problem with police or local chiefs.

6.1.3 Adoption & Do Not Know

The four individuals who did not know what they would do represented a small portion of the

respondents. Their future action was uncertain, but not in a way that fit into the spectrum of

experiences of friction. Users simply expressed an inability to answer the question about

what they would do in the future. The two cases of adoption involve Henri and Theophile.

Henri defined justice as that which hears peoples problems and helps to solve them. Henri

was frustrated because he was unable to broker a local solution with the individual who stole

his money. While Henri acknowledged that he did not go to the police in this case because

they would demand payment, he expressed a willingness to go to the police in the future to

get his money back. Henri was willing to bribe the police to get a solution because he saw his

previously preferred pathway, a local solution, as no longer being workable and opted for a

path he knew was corrupted.

Theophile is an 89-year-old man who has known judicial experiences during colonial times,

during the reign of Mobutu, and throughout the postcolonial experience, was a long time

believer in the Mwami system of justice. After a local chief came into his compound and

stole two goats, he attempted to use the Mwami system to get the goats back, but repeated

attempts proved unsuccessful. Theophile now believes the Mwami system to be heavily

corrupted and has turned away from it. He now prefers the national court system, which,

despite being slow, he perceives as being less corrupted.

6.1.4 Frictions & Experiences of Justice

This section examined the user narratives of accessing justice through the lens of friction. As

put forth in Chapter 2, hybridity is a useful concept for understanding the judicial landscape

and was used to frame Chapter 5. Friction's key contributions to this research is directing

focus on interactions between competing or conflict ideals of justice, but it is not sufficient to

entirely capture every detail of the experience which is why the broader concept of everyday

experiences is used to capture the nuances of user experiences.

The three main categories of experience illustrate why frictions is a useful concept to approach the experience of justice, while at the same time being incomplete. The dominance of compliance (18) and rejection (25) experiences demonstrated that significant portions of the user responses chose a future action which does not change the status quo in which they already dissatisfied. This dynamic is further examined in sections 6.2.5 and 6.2.6, but the third dominant reaction, no friction (17), demonstrates that it is also possible to access justice in South Kivu in a fashion which meets user expectations. Thus, frictions can provide important insights into user experiences of justice but do not tell the entire story. The remainder of this chapter examines the legitimacy of services providers and the future of traditional figures in South Kivu to understand everyday experiences of justice.

6.2 Experience and Legitimacy

This section examines user experiences of justice and the extent to which legitimacy is a factor in the experience. This section uses user satisfaction with a judicial experience and the user's expectation for future action to understand perceptions of legitimacy. Understanding how users view the legitimacy of service providers is instructive in understanding qualities users desire in service providers.

The precise definition of legitimacy is contested. Legitimacy is the use of power by authorities in ways that citizens consciously accept, but it is not limited to the deference to power (Gilley 2006: 499; Mcloughlin 2014: 1). Legitimacy is also about citizens belief in authorities right to rule, citizen attitudes towards the state, and is a dynamic process

(Mcloughlin 2014: 1). Put another way, legitimacy is concerned with the social contract and must take into account "the coupled nature of sociopolitical cohesion" (Lemay-Hébert 2009: 22-23; Mcloughlin 2015: 343). As established in Chapter 3, the social contract in the DRC is weak and defined by a long predatory relationship between the state and Congolese citizens leaving citizens to "fend for themselves" (Vlassenroot 2008: 3).

A 2012 study examined the role of service delivery in four countries, including the DRC. The study noted there was some connection between the provision of services and increased state legitimacy while cautioning that the sustainability of the services was an issue (Stel et al. 2012: 6). In the DRC, the research focused on water and electrical services and found the provision to be erratic, of poor quality, and involving fraudulent pricing for the services (Ibid: 22). Despite a focus on a different set of state services, the similarities to the experience of using the services are familiar, and service users concluded: "basic services are considered an avenue for making money rather than a fundamental right of citizens" (Ibid). Despite the financially extractive nature of service provision, service-users were still willing to pay for access to the services as they need them, but because the "state relinquished its mission of providing services to citizens, they will try any means to gain access to these services" (Ibid). The study concluded making steps towards regaining legitimacy the DRC government would need to improve citizens perception of the state to establish a minimum "threshold of legitimacy" (Ibid). By looking at user satisfaction with judicial services, local perceptions of power, and the impact money in the judicial experience and the potential connection to institutional legitimacy might be better understood to guide future interventions and reforms.

6.2.1 User Satisfaction and Service Reuse

Each interview about an experience of justice ended with two questions: were they satisfied, and if they faced a similar problem in the future what action would they take. As previously stated, the satisfaction question proved analytically unhelpful as individual definitions of successful and unsuccessful varied

Table 6.2: Outcome	Total	Male	Female
Unsatisfied	59	30	29
Mixed	3	2	1
Conditionally Satisfied	5	5	0
Satisfied	24	13	11
Unused	6	3	3
Not theft	13	6	7
Total	110	59	51

greatly. The second question about future action proved more useful. This section examines individuals' expectations of future behavior. Table 6.2 illustrates that the majority of users were dissatisfied with their experience and the full range of experiences are examined in the following section.

6.2.1.1 Satisfied

Although judicial users' satisfaction with the process hinged on varying definitions, satisfaction with a process played a significant role in an individual's willingness to use a particular service again. There is no strict definition of satisfaction or dissatisfaction, but interviewees were allowed to define the term themselves. Additionally, if the dispute was resolved, it is noted as well as the anticipated future reaction on behalf of the user.

As seen in Table 6.3, twenty-four users were fully satisfied with their judicial experience. Thirteen are male, eleven female, and they are represented in every interview site. These individuals were victims of theft or involved in disputes. They used local solutions, NGOs,

Table 6.3 Int #	Outcome	Judicial Service	Future Plan	Gender	Location	Education
7	Satisfied: Got Stolen Mattress	Police	Police	M	Mumosho	College Diploma
21	Satisfied	Local Solution	Local Solution	F	Mugunga	P4
29	Satisfied: Accepted Decision	Camp Leaders	Camp Leaders	M	Mugunga	S4
31	Satisfied: Dispute settled	Mwami System	Mwami System	F	Mugogo	None
32	Satisfied: Dispute settled	Multiple	Local Solution	M	Mugogo	College 3 years
40	Satisfied: Got compensation	Police	Tribunal	M	Kaziba	College 3 years
44	Satisfied: Got compensation	Police	Chief / Police	F	Katana	P5
46	Satisfied: Got compensation	Police	Depends	F	Katana	S6 - Diploma
47	Satisfied with process	NGO	NGO	F	Katana	College
48	Satisfied: Stolen items returned	Military	Depends	M	Katana	in college
51	Satisfied: Stolen items returned	Police	Police	M	Katana	S6 - Diploma
57	Satisfied: Dispute settled	NGO	NGO	M	Kalehe	S6 - Diploma
58	Satisfied: Dispute settled	NGO	NGO	F	Kalehe	College 3 year
61	Satisfied: Stolen items returned	NGO	NGO	F	Kalehe	Literacy
62	Satisfied: Stolen items returned	NGO	NGO	F	Kalehe	P2
64	Satisfied with process: thief fled	NGO	NGO	M	Kalehe	S2
67	Satisfied: Got compensation	NGO	NGO	M	Kalehe	S5
69	Satisfied: forgave thief	Police	Police	M	Cirunga	S3
78	Satisfied: Accepted Decision	NGO	NGO	F	Bukavu	None
85	Satisfied: forgave thief	Local Solution	Local Solution	F	Bukavu	College - 3 yr
96	Satisfied: Stolen items returned	Mwami System	Mwami System	M	Bukavu	College - 2yr
99	Satisfied: Stolen items returned	Police	Local Solution	M	Bukavu	S6
108	Satisfied: Dispute settled	Court	Court	M	Bukavu	College - 5yr
110	Satisfied: Stolen items returned	Force Vive	Force Vive	F	Bukavu	College - 3 yr

IDP camps, Court, Force Vive, Mwami system, and police to resolve their problems. Educationally they are represented across the board. The most common element these cases possess is that nineteen of users had their problem resolved. Twelve received their stolen goods back or were compensated for the loss, and five had their dispute settled. Of the remaining seven cases, three forgave the person who stole from them; two were satisfied with the process, but the guilty party failed to honor the agreement; two were vendors who lost property and were required to repay.

Twenty of those individuals stated they would use the same service in the future. With the exception of military mediated solutions, all significant judicial service providers are

represented in this category. An additional six users are conditionally satisfied with their experience, assuming the solutions agreed upon would unfold as expected. Four of these individuals would return to the same service (1 to an NGO, 1 to the police), while the other two would opt for a different judicial service provider.

Four of the individuals satisfied with the outcome would opt for a different judicial service if faced with a similar experience. Alphonse would seek to make a local solution with the other party before even considering further action. Alphonse felt strongly that, as a human rights defender, he must struggle to make an agreement himself before going to any judicial service. He added that as a Christian, he was not supposed to take his problems before "false judges," which was the blanket description of police, courts, and chiefs. Adrienne and Raoul both stated they would have to weigh the case before making a decision on a judicial service.

Three individuals were neither fully satisfied nor dissatisfied. Martin and Clement both felt unsure about future action. Martin[195] went to the police to resolve the theft of a laptop from an internet cafe. Although he received $250 USD for the purchase of a new computer from the cafe owner, he paid $50 USD to the police for their assistance in settling the dispute. When looking towards future action on similar problems, Martin would prefer to settle the dispute with a local solution. Despite that desire, he stated,

> the [right service to address the dispute] would depend on the family; if the family of the thief is more powerful than yours, you will still be the loser because you will need much money to give to the police because justice is for rich people here. That is why they would violate your rights, and you would do nothing because you did not have money.

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[195] Martin #86 August 7th 2014.

Similarly, Clement[196] was satisfied that some officials were relocated and local security improved but dissatisfied that he never recovered his stolen items and never received compensation from the thieves. He believes if he catches a thief he will take the person to a tribunal for a trial, but when the identity of the thief is unknown, it is difficult to find help from authorities.

The final individual not entirely satisfied by the experience was Amy. She felt relieved to have the dispute with the goat vendor resolved and to have the goat she initially purchased, but the amount of time involved in settling the dispute caused her to miss the event where the goat was going to be served. Additionally, Amy paid $50 USD to settle the matter and was unsatisfied because of the time and cost. In the future, Amy will use NGO mediation so that the mediation is free and the amount of time involved in finding a solution is reduced.

Regarding creating everyday peace, a judicial service delivering on the desired outcome, even if that is forgiveness, brings an issue to a close and individuals who are satisfied with the experience are more inclined to replicate the experience. The ability to have closure through a settled dispute, the return of stolen property, or choosing to forgive an individual is important. Building on this, Chapter 7 attempts to create criteria for user defined successful judicial services.

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[196] Clement #54 July 24th 2014.

6.2.1.2 Unsatisfied

In total, fifty-nine of the ninety-one[197] individual cases examined had users who were not

satisfied with their experience. Of the fifty-nine unsatisfied users, eight believed they would

return to the same experience. Their willingness to return to the same is curious given their

dissatisfaction with the service. The reasons for returning to the same service vary.

First, Bruce[198] provided one of the more candid answers of the entire interview sessions; he

stated that if he were unable to kill a thief at night, then he would take them to the police in

the morning. This is what happened in the incident examined in the interview. Bruce and his

neighbors were in the process of lynching a thief when the police arrived and arrested him,

but ultimately no charges were placed against the thief.

Next, Maxime received his land back as a product of the NGO Advocate Sans Frontière but

did not receive compensation for the stolen wood taken from his land. He would return to the

NGO in the future because the police would "ask me for money [as there] is much corruption

in this area."

Rose[199] lost chickens to a thief and used the Catholic FBO working in her parish to help

search for the thief. While no thief was identified, she remains confident that they could help

in the future. Maria[200] and Benoit[201] would follow the instructed procedure because it is the

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[197] 110 total interviews were conducted. 6 were unusable and 12 involved experiences unrelated to theft.

[198] Bruce #89 August 7th 2014.

[199] Rose #30 July 16th 2014.

[200] Maria #11, June 16th 2014. The proper authorities in her case are police.

[201] Benoit #87 August 7th 2014. The proper authorities in his case are police.

proper procedure. Lucie[202] would determine the appropriate action once the details of the
case were known.

Marthe[203] would return to the police if she were a victim of theft in the future, but she is
extremely skeptical about their ability to help. She said, "reporting to the police never helps,
but it is a law when [something is stolen you] must inform the police about the theft."

Bruce, Maxime, and Rose felt their experience of justice was sufficient enough to revisit
another time. Maria, Benoit, and Marthe stated that they would go through the motions of
reporting to authorities, but did not hold much hope in finding help for their problems. This
lack of confidence in the ability of authorities' capability undermines a willingness to pursue
dispute resolution in the future.

Seventeen individuals stated they would not pursue justice of any kind for a future dispute.
Andre, a 57-year-old male in Mumosho felt paying money for justice was akin to being
robbed twice. If a thief stole "something worth $20 and when you search for justice, you
would pay $20 more and if they catch the thief, [he will pay] then as well and you will still be
the loser."[204] Raymond, a 30-year-old female living in Kaziba said any attempt to pursue
justice would be a waste of time. [205] Hortense and Laurence, both females living in Walungu,
felt poverty prevented them from finding justice in the future. Arsene, also in Walungu,

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[202] Lucie #19 June 16th 2014.

[203] Marthe #9 June 16th 2014.

[204] Andrew #8 June 16th 2014.

[205] Raymond #39 July 23th 2014.

offered a fitting quote to encapsulate the experience of doing nothing. He said, "if I faced

another problem in the future I would not go to justice because I will not get [a] solution and

there is no state here. I would simply [keep my hurt inside]."[206]

The final group consists of thirty-three individuals who stated they would opt for a different

judicial service provider if faced with a similar problem in the future. The anticipated

services do not provide a solid picture of whom they trust but suggest they hope a different

judicial service will result in a better experience in the future. The largest number of users,

eleven, would go to the police, suggesting that the state is still seen as an entity capable of

providing justice. Two services, NGO and Mwami, received five votes for future service.

Three did not know what they would do in the future, and an additional three would make a

choice based on the details of the case. The remaining individuals divided their future service

plans amongst churches, witchcraft, war, changing their behavior, any fast option, or local

solutions.

In twenty cases, the pursuit of a judicial solution just ended without resolution. Something

peacebuilding efforts could take away from this is to focus on supporting local CSO type

organizations who provide no-cost mediation services across a wide geographic area. This

would not be to the exclusion of focusing on war crimes or violent crimes, but a focus on

resolving small-scale interpersonal disputes might build trust in the ability to solve larger,

more complex disputes in South Kivu.

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[206] Arsene #107 August 20th 2014.

CSOs are not the only potential outlet for resolving small-scale disputes as police remain a provider that individuals remain willing to attempt to use. The continued willingness to pursue judicial services from police is occasionally described as a paradox in that governmental services in Congo are so often portrayed as failed, but the citizens continue to return to them. I believe this a reflection of local aspiration and expectations of the government's provision of services in addition to a perceived lack of alternative sources of judicial services.

6.2.1.3 User Return to Service in the Future

Out of the ninety-one interviews done (Table 6.4), forty individuals would take the same action as used in the experience analyzed in Chapter 5. Within those, returning to the judicial service of NGOs accounts for a third of that total. Three main options dominated anticipated future action: police, NGOs, and doing nothing. Twenty individuals expected to go to the police if they faced a similar situation in the future. Only nine of the twenty individuals who previously used police services said they would return in the future. Seven[207] of the respondents expressed skepticism at the ability of the police to settle their problem.

Table 6.4 Future Action: Returning & New Users	Future Action	Returning Users	New Users
Police	20	9	11
NGO	17	12	5
Nothing	17	8	9
Mwami System	7	4	3
Depends on Case	7	0	7
Local Solution	5	3	2
Court System	2	1	1
Don't know	3	0	3
Church/Faith	3	0	3
Camp Leaders	1	1	0
Force Vive	1	1	0
War	1	0	1
Witchcraft	1	0	1
Anything Fast	1	0	1
Changing Behavior	1	0	1
Elders	1	0	1
Chief or Police	1	1	0
Complicated	2	0	2
Unused	6	-	-
Not theft	13	-	-
TOTAL	110	40	51

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[207] Four of the seven went to the police in the experience.

Seventeen individuals stated that they would go to an NGO or CSO for future judicial services. All twelve individuals who initially used NGO services said they would return. This was the only judicial experience where users were completely satisfied with the experience of the process.

Seventeen interviewees stated that they would not do anything in the future. Of the seventeen individuals who would not pursue a judicial service in the future, eight individuals did not attempt to use a judicial service in the experience covered in the interview. Those stating that it was useless to pursue a judicial service in the future had experience with courts, the Mwami system, military officers, police services, and IDP camp leadership. Based on how their decision to not pursue justice was expressed in the interviews, opting for nothing appears to be an individual's expression of the futility of attempting to access justice.

After the three main judicial options anticipated for future use, three additional judicial service options received modest support: Mwami, local solutions, and 'Depends on the Situation.' Seven stated they would use the Mwami system. Four are returning users, and two had their previous case settled in their favor. Three others previously did nothing and would only go to the chief if they had a suspect identified.

Five stated they would opt for local solutions in the future. Three are returning users, and the other two used police service and court services. An additional seven users stated that they are unsure of their future action as it would depend on the nature of the case and the individuals involved.

At first sight, there is little in common between the most popular anticipated future service

providers. NGO judicial services fit the criteria of informal, non-state, and restorative

processes while police services are designed to be formal, state, and punitive processes. With

nearly as many individuals opting for abandoning the hope of useful judicial services in the

future, it is puzzling what exactly is being sought from a judicial experience. Returning to

judicial services provided by NGO's makes sense given their popularity with users, but it was

surprising that police services ranked highest given the perception of their unpopularity.

Vinck and Pham note that 51% of the population perceives the police to be protectors (Vinck

& Pham 2014: 53). A sense of skepticism accompanied six of the twenty-two statements that

police would be used to resolve future problems. I believe this reflects the popular

understanding that the ideal function of police services is known and desired by the public,

despite a history of failing.

Returning to the idea of legitimacy, it is worth noting that the police seem to be a default

option for many users. This default to police services suggests, that despite the expectation of

police only being interested in helping if there is payment users would like the state services

to function properly. Some users seem willing to pay for the police services if what they stand

to gain from using police is of enough value. However, the skepticism of police doing their

job without payment remains high as 73% of citizens in South Kivu proclaimed little trust in

formal judicial service providers (Vinck & Pham 2014: 65). Customary services were only

trusted by 38%, and CSOs trusted by 34% (Ibid). As noted in the service delivery study of

water and electric services referenced in the opening of this section noted, there is a basic

threshold of legitimacy that is not yet present for users to view most judicial service providers

as legitimate. The police, NGOs/CSOs, and no action categories were nearly equally possible

future options it seems users might hope for solutions but also do not expect them. The next

section further examines legitimacy through user notions of power and money.

6.2.2 Perceived Sources of Power

If legitimacy is concerned with citizens' acceptance of power, then it is important to

understand users' perceptions of power. Two things happened during my field work; first I

observed a recurring pattern of powerful individuals exploiting those less powerful. Second, I

read Game of Thrones by George RR Martin. Though the tales of Westeros[208] were more

violent than the minor disputes covered in my research interviews, the narratives in the lives

of citizens in South Kivu and those in Westeros were dominated by power. In the book titled

Clash of Kings, two characters discuss a riddle concerning power. As I wanted to better

understand perspectives on power in South Kivu, I decided to present the riddle in the focus

group to get a response. The riddle goes,

> In a room sit three great men, a king, a priest, and a rich man with his gold. Between them stands a mercenary, an average man and with average intelligence. Each of the great ones bids him slay the other two. 'Do it,' says the king, 'for I am your lawful ruler.' 'Do it,' says the priest, 'for I command you in the names of the God.' 'Do it,' says the rich man, 'and all this gold shall be yours.' So tell me - who lives and who dies?

At this point, I left individuals open to respond. The answers were short, but nevertheless

insightful. In the female focus group the five answers were; (1) "the one who has no money

will die," (2) "can I kill someone without getting paid?," (3) "People do not know God in

front of money. Though God is first, money…," (4) "when you do not have money you do

not have power," and (5) "The priest can be right, but because he does not have money no

one will listen to what he is saying." The male focus group's answers were: (1) "all men must

die," (2) the Bible forbids us to kill. So no one dies. The mercenary dies because he will

observe the teachings, (3) "for the mercenary to live, he must kill them all," (4)"All of them

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[208] Westeros is the world where the Game of Thrones books are set.

have the idea to kill, it means they are killers. If you kill the king, the others will condemn you, same with the others. You can leave them alive, but you know they will kill you," (5) "you must kill all of them, because the one that lives will kill you as well," and (6) "leave them and let them kill you."

The women all stated that money would determine the outcome in this scenario. The priest might speak the truth, but without money his words are empty. The men's responses were more split. Four opted to kill everyone in the room because they expected to be killed by whatever authority remained alive. Two chose to die because killing is wrong. This simple riddle served as an interesting summary of the pessimistic view that if you are rich enough and powerful enough, you can have anything you want, but if you are weak, you will die.

The present experience of justice in South Kivu, from the view of users, is that the experience is determined by the wealth and power of the individuals involved in the dispute. If one party can afford to pay more than the other, they will win. If one party has a relationship with a powerful figure in the area, they can gather sufficient resources to turn the case in their favor. For judicial reform and peacebuilding activities to make any meaningful headway towards improving the current situation, reformers must be willing to address the politics and power that are at play even in low-level conflicts.

6.2.3 Justice and Money

The next two sections examine the role of money in accessing judicial services. A connection between justice, power, and money was frequently mentioned during the interview process. This section connects user perceptions of power and money experience of justice and how

they collectively impact the legitimacy of service providers. This section addresses instances

where money or power influenced a case. The next section examines a specific phrase

mentioned multiple times by different individuals.

Of the ninety-one cases examined, twenty-seven cases involved a payment which was

interpreted by the user as a bribe. These experiences are divided into two distinct categories:

in the first category a payment was requested from the user; the second category of cases

involve individuals who assume a payment was made or would be made if they pursued

justice. The line between legitimate fees and bribes is not a well defined one. For police

cases, the only legitimate fees are fines and bail payments. According to the Congolese Legal

Code,[209] fine amounts vary from $35 for minor traffic violations to $1000 for violent crimes;

specifics to the study of theft and neighbor disputes are not specified but can be issued by

police or courts.[210] These fees are for individuals who commit infractions only as no

legitimate fees exist for judicial users. For courts, the fees to start cases are $5 for a civil trial

and $7 for a criminal trial. No formal fee structure exists for traditional courts.

Image 6.1

In an attempt to encourage individuals to utilize police services, an

informational campaign was launched, publicly declaring 'les

services de la police sont gratuits.'[211] This campaign utilizes public

billboards and stickers on public transportation vehicles. Despite

seeing these stickers and billboards for this campaign throughout

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[209] Amounts taken from the Recueil de textes legaux.

[210] Baudouin Lazumuken Bwalwel. Lawyer. Bukavu.

[211] The services of the police are free. Sign in Image 6.1. Photograph by Shearon, Edward (2014) *Les Services*.

Bukavu, the individuals interviewed in Bukavu were unaware of its existence and were skeptical of the messages. Another effort sponsored by DFID to reduce financial exchanges with police was the creation of a bank account where you could pay fines and get a receipt to demonstrate the fine was paid. In response, police began to offer discounted fines if paid on the spot as opposed the bank.[212]

The police account for eighteen of the twenty-seven cases where money was either requested or paid by a user from a judicial service provider. An additional nine users were deterred from going to the police because they believed they would have to pay money. Edouard was asked to pay $20 to begin the case, but before Edouard could pay the money, a more important case came to the station, and he was dismissed by the captain. Police asked Gustave to pay $5 for batteries for the police torches. Gustave refused because it was an illegal request and the police stopped asking.[213] Bruce was asked to pay police for their work on the theft from his house, but, since they released the one thief who was arrested and did not find his property nor make additional arrests, he refused.[214] Etienne was asked to pay $5 for a fee known as "the soldier's feet." Amy[215] and Martin[216] also described their fees as for the "feet of the police," but their payments were $10 and $50 respectively. Amy additionally paid $10 for a document and $6 for "typing" which was her explanation of the case to the police clerk. Claudine paid less than $5 for the police's transportation to arrest her abusive husband,[217] and

[212] Abel Cimanuka, Reform Sector Security & Justice. Personal Interview. July 15th 2014.

[213] Gustave #37 July 23rd 2014.

[214] Bruce #89 August 5th 2014.

[215] Amy #65 July 29th 2014.

[216] Martin #86 August 7th 2014.

[217] Claudine #102 August 8th 2014.

Octave paid $30 for the police's transportation on three different occasions while trying to

work out a solution with a chief who illegally cut down trees on his land. Octave stated, "you

must pay for their transportation."[218] Adrienne had a positive, bribe-free experience with the

police, but was asked for payment from her local chief before he would take action.[219]

Daniel initially paid nothing for the police's help in mediating a dispute with a neighbor who

stole a goat, but when the goat was stolen a second time, he was charged $10 for no other

reason than that they came to his house. Blanche experienced similar demands, giving police

goats and meals on multiple occasions as her neighbor continues to harass her by filing

multiple legal cases against her legal possession of the land he wants.[220] This expectation for

payment is best summarized by Raphael's assessment that, "the police [will never leave you]

without [receiving] payment."[221] Raphael was asked to pay $10 after the police returned his

stolen cellphone, but accepted less than $2 as that was all the money he possessed. Felix paid

$70 to be released from prison despite never committing an offense.[222]

Leonce and his brother were each fined 20,000CF after being arrested by a police officer who

wanted to take items from Leonce's brother's shop without paying. Vincent's brother was

arrested for getting into an argument with a woman in the market who stole wages from

Vincent's brother. Vincent and his uncle were arrested because the police said he "came to

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[218] Valentine #62 July 29th 2014.

[219] Adrienne #46 July 29th 2014.

[220] Blanche #31 July 16th 2014.

[221] Raphael #99 August 7th 2014.

[222] Felix #42 July 23rd 2014.

attack the police." The police asked for $500 for the release of both men. At the point of the interview, both men were still in jail.

Two cases of fees were a part of the larger research project. Jaques paid approximately $23 to start a case in the local tribunal, but it has been more than six months without any progress. Jaques was told by a chief that you cannot go to the court without money. Benoit paid $50 to start a court case. The money went for transport, police, and a variety of fees he does not quite remember.

It is significant that twelve of the twenty-one experiences with police officers involved a payment of some kind. Moreover, only one person expressed the knowledge that the police did not have the right to demand payment. Transactions for transportation, dictation, and basic action are common. The expectation of payment for services is a difficult reality to untangle. As stated in the DFID campaign, it is clearly stated that police services are free, but given the reality that many rural offices operate without government-supplied vehicles or sufficient means of communication, specifically airtime credit, it is understandable why police might demand payment before initiating a case. The lack of police resources, in addition to blatant corruption, creates a challenging web of informal fees needed to cover basic services and outright bribes designed to make individual officers wealthy.

Individuals' acceptance of the fees asked of them suggests they expect the costs even if they do not like them. In the female focus group, one participant said, "Justice only asks for money for everything. They charge money to get your items back, if you cannot afford it then

the police will sell the goods back to the thief."[223] A participant in the male focus group's

perspective was resigned to the expectation of money in exchange for access to justice. He

said, you "cannot get angry [about paying money], but if [you go to the police to settle a

debt] and the person repays the police, you only get half [and] cannot be satisfied. If the

police hate you, they will eat all your money." To summarize his logic, if a person decides to

use the police services, it is understood it will cost money, and it is wise to remain friendly

with the police, or everything could be lost.

There is a perception that spending money on justice is "losing twice."[224] Andre also stated

that thieves know the chance of their being punished is slim, and so they will continue to

steal without any meaningful consequences. His belief is supported by his experience, as the

suspect in his case who is accused of at least sixteen separate thefts in Mumosho but can

continue stealing because he is believed to be bribing the local police. Henri concluded the

police are untrustworthy as they "keep on asking you [for] money while you are the

victim."[225] Martin concluded simply that, "justice is for rich people."[226] Andre said, "Justice

is a boutique for others to make money."[227]

For the user, the connection between money and access to justice creates artificial and

unnecessary barriers to judicial services. The expected requirement of money can deter an

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[223] Female Focus Group. Mumosho. August 15th 2014.

[224] Andre #8 June 16th 2014

[225] Henri #5 June 16th 2014.

[226] Martin #86 August 7th 2014.

[227] Andre #8 June 16th 2014.

individual from a specific action, going to the police or courts, or from pursuing any judicial

service as the person believes they cannot afford a service. This is partly seen in the

assumptions of individuals whose judicial service process is stalled or unsuccessful. Four

individuals[228] whose judicial experience stalled believed the reason was that an official was

bribed by the other party in the case. Hortense concluded, "I have no idea because I have

noticed they always deceive us when they say there is a place where they should help us even

though we are poor. If I were rich, I would go to the state to get my problems solved, but as I

am poor, I know I would not get justice, poor people like me will still suffer. I would let them

do whatever they want because I do not have justice/right as I am poor."

Closely connected to the influence of money to accessing justice is the presence of other

forms of power. This is clearly seen in the case of Maxime, who had a dispute with a chief in

Cirguna. Despite getting his land back through an NGO mediated process, the chief

continued to use his power and resources to harass Maxime. The village chief had him

arrested and fined. He continues to be harassed by "local defense soldiers."[229] The belief that

justice is a resource for the powerful is not new within the judicial experiences, as traces of

this thought are seen in the comments of Lucienne[230] and Rosalie.[231] This belief that justice

"is not for me" is a powerful one that plays into the dynamic of corruption and impunity.

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[228] Theophile #74. July 31st 2014; Hortense #103 August 8th 2014.; Alfred #27 June 24th 2014.; & Abel #60 July 29th 2014.

[229] Maxime #75 July 31st 2014.

[230] Lucienne #20 June 24th 2014.

[231] Rosalie #61 July 29th 2014.

Addressing the issue of money corrupting the judicial experience is both simple and

immensely complicated. Simple in that improving funding, infrastructure, and creating

accountability mechanisms to hold bad actors accountable for their actions should

dramatically alter the situation. Where reform gets challenging is that this is what current

reforms have attempted to do in a piecemeal fashion. Citing weak coordination between

donor groups, in an analysis of SSR programs in the DRC Henri Boshoff said, "current

institutional assistance merely keeps the sector on life-support, remaining artificial and

unsustainable (Boshoff et al. 2010: 11).

The reason that current reform efforts fail to be implemented in a meaningful way is due to a

lack of political will within the Congolese government to follow through with these reforms.

The status quo might be bad for everyday justice users and might prevent peacebuilding

efforts in South Kivu, but that is apparently acceptable to the Congolese government based

on long running lack of investment in service reforms.[232]

6.2.4 Falling in the Water

One particular phrase connects the exploitation of power and expectation of money from a

judicial experience in South Kivu. The phrase is, "You cannot fall in the water without

getting wet," and it was mentioned by three different individuals in different locations; Jeff in

Walungu, Felix in Kaziba, and during the female focus group discussion in Mumosho all

located in Walungu district. The experience of Felix was discussed Chapter 5. Jeff's

experience was not included as it is not an experience of theft, but it is important to mention

in this section. It is possible that this saying is popular exclusively in the Walungu District,

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[232] See Chapter 3.1.3.

but given the geographical spread of the experiences of financial payment for judicial

services and exploitative power, it stands to reason that this statement is widely known. What

this statement represents is the summation of the expectation about the judicial experience in

South Kivu will result in exploitation and financial loss regardless of merit. This belief is

another critical component the failure of police services as this belief creates a barrier for

potential users.

Jeff's experience is not one of theft but is included here because it is illustrative of the

experiences of justice from the perspective of someone accused of a crime. It is significant

because it illustrates the potential danger of getting caught in the DRC legal system and how

difficult it can be to get out even if the individual is not charged with a crime. Jeff is a 38-

year-old farmer in Walungu who was accused of murdering the son of a neighbor. He denied

being responsible, but the mother of the victim went to the local ANR office and accused

him. According to Jeff, there was never any evidence against him other than the accusation

from the mother of the murder victim. He went through what he said was a short trial at the

local jail but did not have access to a lawyer. He also did not recall who conducted the trial,

whether it was a judiciary police officer, an ANR agent or someone else. He was arrested and

taken to the local prison for 1 month before being transferred to the central prison. Jeff was

required to pay $35 to enter the central prison or be beaten.

 After seven months in the central prison, he was called before the court to be tried. The

victim's mother was at the trial and accused him again. A witness was brought who claimed

that Jeff did not kill the boy and claimed this was their story when the case was in Walungu.

Jeff was acquitted of the charges, but remained in prison for one year as family members

raised the $600 for his release as "nobody can get into water without getting wet."[233] The

police originally requested $2000. While in prison, Jeff was regularly beaten. His family was

responsible for bringing him food.

Although Jeff's experience is extreme, both his and Benoit's experiences demonstrate the

financial cost associated with police administered justice. Neither was ever charged with

committing a crime, but they were expected to pay the police regardless. Jeff's statement of

"you cannot fall in the water without getting wet" is a sentiment encountered in two other

places.[234] What Jeff's case represents is a potential worst case scenario for engaging police for

help. Once the process began, Jeff's guilt or innocence did not free him. Only money was

able to secure his freedom.

The narratives of Jeff and Felix offer insight into the logic behind those who elect to leverage

their position of power over others. A legacy of article 15 of Mobutism and the historical

pattern of government administration as a tool for exploitation and privatization has produced

the "pay as you go" type system currently experienced throughout the DRC, not just South

Kivu. The creation of this dynamic was due to a series of political choices to ignore

corruption, seek personal gain, and not instill any meaningful accountability for doing wrong.

Thus the solution must be a political one as much as it is a problem that can be fixed by

workshops and resources. The presence of both successful and unsuccessful experiences in

numerous service providers suggests that multiple providers can function properly. However,

the conditions to provide services without taking illegal fees from users requires

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[233] Jeff #105 August 8th 2014.

[234] Female Focus Group Interview. Mumosho. August 15th 2014.

accountability which must be a choice made by the government administrators who oversee the services operating in South Kivu.

Again returning to the idea of legitimacy for service providers in South Kivu, it is clear there is a need for providers to meet users expectations, but equally evident that judicial service providers are considered to fail users more than succeed. That twenty of twenty-four users who indicated their judicial experience was satisfactory said they would return to the same experience for future strongly suggests if a service is perceived to work, users will return. If a service is perceived to be incapable of helping, users will try something else or settle for nothing at all. This is most explicitly presented in the depiction of seeking justice as setting oneself up to be 'robbed twice.'[235]

6.3 Features in Everyday Experiences of Justice

Two final aspects of the everyday experience deserve mention. They do not fit neatly into the previously discussed categories, but they do contribute to an understanding of the experience of everyday justice. The three additional defining characteristics found in experiences of everyday justice are the expectation of failure, a large burden of responsibility by victims by both services and society, and the question of a service provider's ability to enforce a ruling even if the person wins the case.

6.3.1 Expectation of Failure

A pervasive belief that bears a strong influence on opting out of using available judicial services is the expectation that the experience will end in disappointment or failure for the user. Leonard has given up on the prospect of using judicial services to settle problems.

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[235] Andre #8 June 16th 2014.

Raymonde views the pursuit of justice as a "waste of time." [236] Laurence feels she has no

support system to help her navigate and afford justice, "I am alone, I have no father, no

mother, no husband, and no brother. Therefore I always give up because once I go on they

would ask for money while I do not have it."[237] Arsene would opt to "keep her hurt inside,"

because there is "no solution and no state here."[238] The focus group discussion with females

summed up the pervasive skepticism of judicial solutions as "no one solves problems here.

No one can even refer [a person] to [a judicial service] to solve a problem.[239]

Specifically, about the police, Andre[240] and Edouard [241] believe there is no way anyone would

respect their rights and so will not even try. Andre believes most thieves "eat and drink" with

the police, so there is no chance of the police helping. Eugenie is worried the police will

arbitrarily arrest, harass, and torture innocent people just to extract a payment and is wary of

using them.[242]

Juliette, Augustine, and Anna[243] expressed a common frustration of being instructed on the

right course of action if you experience theft or a dispute, but that following those

instructions never helped resolve the situation. She went on to say that even if you "catch the

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[236] Raymonde #39 July 23rd 2014.

[237] Laurence #104 August 8th 2014.

[238] Arsene #107 August 8th 2014.

[239] Female Focus Group, Mumosho. August 15th 2014.

[240] Andre #8. June 16th 2014.

[241] Edouard #35 July 23rd, 2014.

[242] Eugenie #14 June 16th 2014.

[243] Anna #24 June 24th 2014.

thief and take him to the police, they would ask for money; if you do not give them the

money the thief may be able to give it to them and get released. So you remain the loser."[244]

Augustine believed that the lack of action was a result of unhelpful leaders from the lowest

level all the way to President Kabila.[245] The individual statements about a lack of confidence

in most judicial service options are supported in the focus group discussions with both male

and female individuals.

As stated, if the core purpose of peacebuilding is to establish sustainable peace in post-

conflict environments, then looking at the experience of justice from the bottom up is

important. At present judicial reform seeks to mitigate abuse through technical reform,

improving salaries and better training. These efforts do little to repair the distrust and

suspicion which has been cultivated through numerous negative experiences. Looking back at

the historical experience of state services in DRC, the colonial state was a violent presence in

the lives of the Congolese. State predation on the population continued under Mobutu, and

the instability, especially in the eastern provinces, which has been a constant issue under both

Laurent Kabila and Joseph Kabila has further decreased government functions. The

expectations of failure and social pressure to avoid seeking justice due to inviting harm to the

other parties are byproducts of the dysfunctional systems in the South Kivu, and not much

can be done to alter them. A deep skepticism exists towards the government to provide fair

judicial experiences. Putting up signs about free police services or telling people to go to the

police are not as influential as recurrent encounters with judicial service providers which

leave users dissatisfied. This study found success and satisfaction across the spectrum of

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[244] Juliette #22 June 24th 2014.

[245] Augustine #26 June 24th 2014.

judicial service providers. Based on the successful experiences and user desires for improvements, the conclusion will develop common characteristics of what users want from a judicial provider.

The anticipation of failure and the skepticism towards the ability of judicial services to provide a satisfactory experience leads many individuals to believe that pursuing justice is a total waste of time and effort. This attitude, while understandable, contributes to a climate of impunity due to individuals not taking action against someone who committed a crime against them.

6.3.2 Pressure of being a Victim

Once a person enters a dispute with a neighbor or family member or is a victim of a crime, they face a significant burden to satisfy many competing interests in their pursuit of justice. If an individual pursues a judicial solution that does not conform to the expectations of their friends, family, the community, or even the other person involved in the dispute, it can be problematic to the individual's prospect of resolving the conflict, to their personal safety, as well as presenting them with moral challenges. As seen in the case of Edouard[246] he was accused of using "justice to kill people" simply because he was involved in a court proceeding with another individual.

After $100 she was saving to start a business after college was stolen by her relative, Coltide[247] faced challenges finding a solution to her problem because she was pressured by

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[246] Edourd #35 July 23rd 2014.

[247] Coltide #83 August 5th 2014.

her family to avoid further problems. Brock[248] was persuaded by his friends not to attempt to

take a friend to the police over a stolen cellphone. In Kaziba, Gustave angered a person who

stole his rocks and then refused to compensate him. Gustave was believed to be in the wrong

because he went to the police and not the person who stole the rocks. Theophile continues to

face problems from a local chief and is patiently waiting for the proper procedure to unfold

so he is not seen to be in the wrong despite the local chief being the initial, and continued,

instigator. He believes he cannot go to the police because they will "torture and charge much

money from the other party" without bringing about a resolution to the problem.[249]

The fear that an innocent person might be fined and treated poorly is supported by the

experiences of Jeff and Felix. Jeff was accused of a crime and, while never convicted, spent

two months in jail and had to pay $600 to get out of prison. Felix testified on behalf of a

friend in a manner displeasing to the secretary of the local chief and was illegally detained.

Once freed, he was fined just because the police were in a position of power over him.

This pressure placed on victims is immense and considerable. To pursue a judicial solution, a

person has to navigate a system with multiple actors with competing interests. Marie-

Louise[250] went to the police after her bananas were stolen only to be fined by a chief who was

angry he was not contacted first. Eugenie expressed concern over the potential hazard to

other members of the community because the police would mistreat innocent people in

pursuit of justice. Eugenie believed it was his responsibility to be completely certain of the

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[248] Brock #93 August 7th 2014.

[249] Theophile #74 July 31st 2014.

[250] Marie-Louise #44 July 24th 2014.

suspect before going to the police because he did not want the responsibility of harming an innocent person. Changing the disincentives of seeking justice is not something which can be solved through one specific program or policy, but will be the result of restoring users trust in a functioning judicial system.

6.3.3 Enforceability of Provider Decisions

Even when individuals are successful in receiving a settlement in their favor from a judicial service provider, it is not guaranteed that the ruling will have any bearing on the situation. Maxime was involved in a dispute with a local chief and used the Mwami system to get the chief who was harassing him to quit. Although the harassing chief was found to be wrong and told to quit, the chief fined Maxime and continues to harass him by sending armed men to attack him and steal from him.

Augustine also won a case against a person who took possession of the land he legally purchased but failed to retain ownership of the land as an FARDC commander who sent soldiers to squat on the land and chase Augustine away. The court did nothing to enforce the ruling in Augustine's favor.

Blanche faced multiple challenges from her neighbor who wanted to take her land after the death of Blanche's husband. Blanche had the title for the property, and her claim for the land was upheld by the Mwami and a local tribunal. The local tribunal ruled that the man's house should be demolished, but this has never happened. He continues to harass Blanche and make unsubstantiated claims against her which continue to drain her financial resources.

Similarly, Raymond won a court case against local soldiers who took his land, but the court did not enforce his rightful ownership of the land, and the soldiers refused to leave. This also happened to Baptiste who purchased a house from the government but fought soldiers who were living in the house for four years before a commanding officer finally ordered them to leave.

The decisions of judicial service providers must carry some sense of binding force to them. State courts and police have the ability to threaten fines and imprisonment to maintain order, but theses fines and imprisonments must be applied consistently and transparently. Extra effort must be taken to educate the population on what are legal fees and what are illegal fees. Bail needs to be returned after it is paid, and not simply disappear into the pockets of police and prison wardens as it then becomes interpreted as a bribe by the population.

Local chiefs, NGO services, and those partaking local solutions lack the ability to threaten prison, and the enforcement of fines is based on parties honoring the agreement. As seen in the cases of Rosalie,[251] and Sifa,[252] individuals, often agree upon a solution but fail to honor it. One way in which chiefs, NGO services, and those negotiating local solutions created leverage for themselves to get the other party to pay up was to suggest escalating the issue to the police. In these cases, this was sufficient to get the other party to honor the agreement. Thus the incentive to settle was not a preservation of social harmony, but a desire to avoid the potential for a more expensive state process.

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[251] Rosalie #61 July 29th 2014.

[252] Valentine Interview #62 July 29th 2014.

6.4 Tradition, Frictions, & Change in South Kivu

An unexpected discovery of the research is that the Mwami system in South Kivu, this section examines its slow decline. Research by Patrick Vinck and Phuong Pham found that the Mwami system and communal dispute resolution are important actors in dispute resolution (Vinck & Pham 2014: 62). Those interviewed in this research expressed a preference for community-based solutions as well, but their experiences reflect a frustration with the experience of judicial services. Only one individual was satisfied with their experience with Mwami services while thirteen were unsatisfied.

The role of the chiefs in South Kivu is approaching a crossroad. As stated in Chapter 4, although the social status of Mwami's and chiefs has been diminished due to their historical co-option by colonial authorities and national governments to become quasi-agents of the state, the onset of war marked a more serious decrease in their importance. In the interview with Chiefs in Mumosho, Chief Ntabaza stated, "The chief was respected and listened to by people. The chief is no longer respected. The targeting of chief has undermined their power and control over the people. Post-war period has seen a weakened chiefdom. Before the wars, no one could come and kill the chief [because we had] respect, power, and control."[253] Beginning in 1996 chiefs were targeted and killed by rebels because there were viewed as agents of Mobutu.[254] The increasing marginalization of Chiefs represents a critical aspect of how chronic insecurity in eastern DRC is reshaping everyday life. Due to war and population displacement, chiefs viewed their role in society as rapidly diminishing. One chief felt that within ten years they would no longer have a place in society. This is admittedly a harsh

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[253] Chief Ntabaza, Chief focus group interview. Mumosho. June 16th 2014.

[254] Chief Makuba, Chief focus group interview. Mumosho. June 16th 2014.

statement, but when traditional authorities are intimidated by gangs of street kids, it is a stark

admission of shifting balances of power.

Another indicator of changes to communal life in South Kivu is the increase of sexual

violence. While frequently depicted as a weapon of war perpetuated by soldiers, a significant

number of rapes are committed by community members (Johnson et al. 2010; Quijano &

Kelly 2011: 450-454). Chou Chou, an award-winning defender of women's rights, insisted

rape was not a part of society before the onset of war. However, once the war began, the

deterioration of social relationships coincided with an increase in rape. According to Chief

Lukabukira Mihigo, citizens with bad attitudes were copying the behavior of soldiers and

committing acts of sexual violence against their neighbors.[255]

Chiefs used to be financed by voluntary forms of taxation by receiving money from land

sales and a portion of the national tax. This pattern of tribute is changing, and so the Chief's

resources are diminishing. Some chiefs use their position to extract payment for helping a

person. The reasons can be because they hold a position of power, or because of real costs of

the logistics of mediation especially transportation and communication, which are the same

pressures police face. Also challenging the position of chiefs is the rise of civil society and

CSOs. Through the lens of frictions, this shift can be understood as the adaptation of local

services to changing user desires and expectations. This particular experience of friction is

defined as the adaptation and contextualizing of global/external norms & practices to local

characteristics (Björkdahl & Höglund 2013: 289-299). Where chiefs once offered judicial

services which reflected communal values and needs, it seems that CSOs are emerging as the

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[255] Chief Lukabukira Mihigo, Chief focus group interview. Mumosho. June 16th 2014.

modern reflection of communal values. Offering free, voluntary, and efficient services, in

many ways they are similar to customary services, but instead of being funded by tributes to

chiefs, they are typically funded or affiliated by NGOs or some foreign funding. CSOs like

ICJP, RSSJ, and local mediators are incorporating aspects of the human rights agenda into

their mediation services, particularly the rights of women and children.[256] This poses a

problem to chiefs because they can never compete with a subsidized competitor offering a

similar style service. Money is not the sole determinant of preference either, the perception of

chiefs as corrupt and incompetent diminishes their status just as it has the state and just as it

would to an NGO that accepted money for a favorable outcome. Additionally, the experience

of prolonged violence, widespread sexual violence, and growing awareness of global human

rights agenda is reshaping the expectations and desires of the local community.

Further challenging the role of traditional chiefs is the rise of NGOs and CSOs whose dispute

resolution services resemble the dialogue based, mediation services the cCiefs offer, but since

they are either volunteer organizations or externally funded, they do not require a payment of

any kind. Baraza courts[257] are frequently cited as examples of traditional justice in South

Kivu (Mushi 2013; Peace Direct 2014). Baraza courts are presented as the "basis for

community justice in South Kivu" whose main focus is to promote inter-ethnic dialogue

amongst traditional leaders throughout. Despite the depiction as being a central feature of

traditional justice, according to Musole Maharaza Emmanuel, the President and Coordinator

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[256] Abel Cimanuka - RSSJ, Personal Interview. Bukavu. July 15th 2014; Raphael Wakenga - ICJP. Personal Interview. Bukavu. June 18th 2014; Godalive Mediator with Muzerhe Bwacherhe. Personal Interview. July 31st 2014.

[257] *Baraza* courts and local dispute resolution services - *Baraza* courts operate in South Kivu, but were not observed in my study. *Baraza communitares* operate mainly within Fizi and Uvira districts with were inaccessible due to security concerns.

of Baraza Intercommunity in South Kivu, *baraza communitares* were created in 2002 by

leaders trying to address inter-community violence in Fizi, Uvira, and Kahele.[258] Baraza

courts represent an important tool for addressing disputes in the communities where they are

operational, but given their specific focus on inter-ethnic dialogue and limited geographical

coverage, it is not accurate to present their work as a comprehensive traditional outlet. In

Kalehe, NGOs seem to have filled a similar role as the *baraza communitares* in offering

judicial services similar to the restorative justice processes once dominated by chiefs, but as

opposed to appealing to communal harmony, one of their main points of leverage was the

threat of involving police and courts into a process.

A group similar to *baraza communitares*, called Muzerhe Bwacherhe in Kalehe, was

observed in this research. These organizations represent interesting hybrid groups emerging

into the judicial landscape in South Kivu. They bear resemblance to *Gacaca* courts in

Rwanda in that they are a traditional practice retooled for the modern world. Unlike *Gacaca*

courts in Rwanda, *baraza communitares* are not operated by the state, but like all CSO's they

function with the state's approval. *Baraza communitares* are community-based mediation

services which attempt to settle petty disputes. The present iteration of *baraza communitares*

was specifically recreated to focus on areas with extensive ethnic tension.

The popularity of *baraza communitares* and other CBO services lies in the lack of payment

for the service, the perception of fairness, and the tendency of these services to settle the

matter. As seen in the NGO cases, individuals would flee beyond the reach of intervention by

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[258] While I interviewed a number of individuals in Kalehe who used NGO services to resolve a dispute, I did not encounter anyone who explicitly mentioned using a baraza service.

the CBO, but often the suggestion of escalating a dispute to the police or courts was sufficient to settle the matter. Free, quick, and competent services were the criteria proposed earlier in this section and the NGO/CBO model was the one service which most closely reflects that service. One observation about the popularity of community-based dispute resolution services is that they serve as a connection point between local designs of dispute resolution and the global human rights agenda. This idea is further addressed in the conclusion.

Similarly, local solutions present a window into the fragmented social fabric in South Kivu. A local solution is simply an informal, non-binding agreement between individuals concerning the settlement of a dispute. As discussed in Chapter 5, these types of agreements are important because they avoid using more costly alternatives like police or courts. These agreements are predicated on some kind between neighbors to make the agreement meaningful. A confusing pattern which began to emerge during the interviews is the strong social pressure to seek a local solution with a person, but also a tendency for the agreement to be either unresolved or delayed so long it might as well be meaningless. It cannot be definitively stated, but it seems a possibility that local solutions are valuable because they avoid the cost and exploitation of the police or courts, but avoid reaching any binding decision that would compel them to rectify the situation.

With the Mwami system of justice weakened through repeated co-option by state interests over the years, the fractured traditional systems and the erosion of communal relationships suggest that communal harmony is diminished, particularly within the avenues of traditional justice and local solutions. For restorative justice to be effective, it is essential that individuals must desire to restore their status within the collective society. The village chief,

though diminished in social importance, is still an important figure in everyday life in South

Kivu. As Chief Namusale in Mumosho said, "there are more chiefs when there are problems"

meaning that the position of a chief is not remembered when it comes to other matters of

custom, particularly paying the chief 10% of taxes and 10% of land sales, but there is still a

general expectation that the chief is an important avenue to dispute resolution locally, even if

individuals are increasingly unsatisfied with the solutions they find in Mwami services.[259]

Another CBO, Force Vive presents another interesting addition to judicial services in DRC.

Offering the equivalent of basic investigative services for theft related cases, Force Vive is a

CBO version of what the police in Bukavu should be doing. Force Vive performed basic

investigative services for victims of theft and, when possible, reclaimed stolen property from

thieves by either confiscating it or negotiating payment for the stolen item.

The reduced enforceability of chiefs' decisions or local solutions contributes a weakened core

component of low-level dispute resolution. As individuals see these avenues become less

useful, they will stop using them and, as seen in many examples in this study, give up hope.

The degraded nature of social harmony in South Kivu has significantly impacted the ability

of traditional leaders to compel traditional restorative justice techniques: however, this does

not mean similar services are not available to individuals living in South Kivu. Historically

the Chiefs served as mediators for communal disputes, but they are now facing competition

from local CSOs and internationally supported NGOs offering similar services and

potentially assuming a role the Chiefs once held in the pre-war society.

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[259] Chief Namusale. Mumosho. June 6th 2014.

6.4 Conclusion

This research sought to understand the experience of justice from the perspective of users in

South Kivu. By adopting this approach, it would be possible to listen to experiences at the

local-local level to develop a more robust understanding of what current roadblocks exist to

judicial access as well as understanding what components of the judicial experience are

working. Overall, the findings are not surprising, but they are not entirely discouraging either.

It was not surprising to find failures across the spectrum of judicial service providers, but it

was encouraging to identify positive experiences within each service experience as well.

Collecting and understanding local voices on the judicial experience highlighted important

features of user satisfaction, money, power, and the impact of prior experiences on

perceptions of a service's perceived legitimacy. The impact of prior experiences identified a

simplistic, but important factor. If individuals who achieve closure (either restitution,

forgiveness of the person who wronged them, or punishment of the person who wronged

them), then they are inclined to use the same service again in the future. If an individual does

not achieve closure and feels the process was corrupted or biased against them, then they will

be less likely to return.

Recalling that theft was identified as a problem by 40% of the population in South Kivu, and

domestic/interpersonal disputes were identified by 34% of the population in South Kivu,

these types of problems present an opportunity for judicial service providers to dramatically

improve their public perception by delivering the services expected of them. This data

suggests that if local mediation services received further training, funding, and recognition, in

peacebuilding and reform agendas, then positive experiences with judicial services could

increase across the region which would strengthen public perception of using such services. Both police and local chiefs referred individuals to these services, and so there is no structural reason these services cannot be better integrated into the judicial system as a tool to increase peace at the lowest levels. Admittedly, theft and interpersonal disputes do not have a stigma as SGBV, but as Severiné Autesserre argued, attention to local issues does not mean ignoring higher level issues (Autesserre 2010: 229). It is possible to continue working on high-level peacebuilding efforts while working to build peace from below as well.

A challenge to this approach is that while it would be possible to restore user confidence in the ability to have their disputes resolved, CSOs are not direct state service providers, the process would be building trust services outside of the state system. While the state's administration of police and courts currently help fuel a desire to use alternative providers for dispute resolution, that does not mean they would welcome a change to a personal revenue stream. Altering the role of money and power to influence a judicial process requires an engagement into the local and national political landscape and requires the commitment and desire on the part of the Congolese government to keep money and power from creating undue influence. Thus focusing on small disputes has to potential to improve everyday justice in South Kivu and promote peace, but it does not have the capacity to fundamentally change the unchecked influence of money and power in the judicial landscape of South Kivu.

Chapter 7
Conclusion

7.1 Summary of Research

This research began with a casual observation of a potential for tension between the dominant

discourse surrounding justice in Congo and the manner in which individuals experienced

justice in Congo. The initial telling of the story, 'my friend's motorcycle was stolen, so we

went to the police and got it back' did not align with the dominant narratives of corruption

and impunity often associated with justice in the DRC. The second telling of the story

incorporated additional detail. Specifically, that police were uninvolved in the investigation

of the motorbike; the police were only brought into the situation once the bike was located,

and then the police were contacted and invited to mediate the exchange. Given that

individuals frequently have to pay for police communication and transportation, this scenario

presents a potential 'cost saving' strategy. Another possible factor influencing their choices

could be the tendency of individuals to investigate a crime themselves to determine if it is

worth going to the police. Regardless, the differences between the initial telling and the

retelling of the account suggested that much could be learned from a detailed study of judicial

narratives.

The experience of conversing with a colleague about justice, combined with the 2008 report

titled *Living with Fear,* which reflected a more positive than anticipated user view of justice,

created the impression that a gap existed between the way justice in South Kivu was

characterized and the way justice was experienced. The main purpose of the research project

was to answer the overarching question: what experiences of everyday judicial hybridity in

South Kivu can contribute to peacebuilding approaches? The potential importance of

narrative experiences of justice alluded to in my conversation with the co-worker were

confirmed through the literature review, which highlighted a gap in research into micro-level

narratives of disputes, and called for more research employing 'bottom-up' methodologies in

post-conflict environments. Examining user experiences of justice enabled insight into user

struggles and expectations with judicial providers.

The key findings from research on a bottom-up view of justice in South Kivu offer insights

into local perceptions of justice and add new dimensions to the user experience of justice. A

particular focus is the observed importance of money in the judicial experience. The

theoretical lenses of hybridity and frictions enabled the adoption of a bottom-up view of

justice by embracing a dynamically chaotic series of events. As Graef said, post-liberal

hybridity is about finding the "temporal disjuncture between being and becoming… in which

new ways of organizing peace and performing peacebuilding become possible" (Graef 2015:

Introduction).[260] Gearoid Millar added that frictions is the "generative process that allows

creative re-imaginations" of peacebuilding processes (Millar 2016: Introduction).[261] I used

hybridity and frictions to orient my approach and my view of narratives of judicial

experience, which enabled me to avoid predetermining user pathway to justice or imposing

an expectation for a user to access a specific judicial provider.

Instead of attempting to force service providers into existing judicial frameworks, the bottom-

up methodology enabled me as a researcher cast a wide net and scope out services that are

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[260] Kindle ebook. Location 276.

[261] Kindle ebooks. Location 267.

important to users. Using hybridity and frictions to orient my approach to mapping the judicial landscape in South Kivu helped to identify that two judicial services (CSOs and Force Vive) have emerged into the South Kivu judicial landscape as a product of friction. These concepts further helped to reduce some of the problematic binary understandings commonly associated with post-conflict research and to identify judicial concerns that are universal in nature such as concern over the safety of one's home and possessions, and desire not to be harassed by authorities. This final chapter summarizes the insights into everyday justice in South Kivu that were gleaned through this project, as well as the limitations of the study and opportunities for future research.

7.2 Summary of Findings

The first major finding from this research is the role of money as a gatekeeper to accessing justice, specifically through police, court, and the Mwami system. The second is the presence of positive experiences across the spectrum of judicial service providers. The third pertains to the continued value of police services in South Kivu. The fourth finding concerns the nature of impunity in South Kivu.

7.2.1 Transactional Justice

A significant finding is a complex relationship between money and justice. I characterize this as a complex relationship because it is insufficient to simply categorize the judicial experience in South Kivu as corrupt. Recalling the idea of frictions put forth by Anna Lowenhaupt Tsing and expanded upon by Gearoid Millar (Tsing 2005; Millar 2013; Millar 2016), the intersection of historically weak financial support for police services (a legacy of 'Article 15' of Mobutism encouraging state predation on the citizens) poor accountability, and piecemeal reforms to the judicial system produced a present experience where money

often serves as a gatekeeper for the services of police, courts, and traditional chiefs. Police

can issue fines and courts have minor filing fees, but these legitimate fees are often

indistinguishable from illegitimate ones in the eyes of users. Users reported fines for getting

personal belongings back from the police: if they did not pay, the goods were sold back to the

thief.[262] Users complained about experiencing fees for every minor transaction, including

typing, referrals, and basic paperwork.[263]

Even a specific scheme set up by DfID that made fines payable into a bank account, thereby

improving transparency, is hampered by police officers willing to accept a "discount fine" if

the user pays them directly. A judicial reform effort to pay judges better backfired according

to Remey,[264] a Bukavu-based human rights advocate, as the increased payment to judges only

increased the financial expectations of immediate and extended family members of the

judges.

The current system of justice in South Kivu, specifically courts, police, and the Mwami

system, reflects a process of commodification. By this, I mean that payment for services, both

legitimate and illegitimate, have become so ingrained into the status quo that it is an expected

part of the system. A significant factor in the success that of NGO's and CSO's in the areas

where they operate is that they are either volunteer operations or they are externally funded.

Judicial users are confused by the uncertainty around legitimate versus illegitimate fees.

Further compounding the problem, specifically for police, is that if an officer or department

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[262] Female Focus Group Interview. Mumosho. August 15th 2014.

[263] Female Focus Group Interviews. Mumosho. August 15th 2014.

[264] Remey. Personal Interview. Bukavu. July 6th 2014.

has not been issued sufficient fuel for their vehicle (if they have one), or credit for their

mobile phone, they are unable to conduct a proper investigation. An additional complication

is that it is difficult to discern whether the deficiency of airtime is caused by personal

mismanagement or corruption at some point along the way. Colonel Honorine expressed that

airtime and fuel were challenges to her work and Mbilizi Mwyka in Mumosho did not have a

work vehicle to use.[265]

7.2.2 Everyday Justice: Building on Success

All of the judicial services investigated in this research had recorded successful experiences

from the viewpoint of users, with over half of the successful experiences reported through

NGO/CSO (8) and police services (7). Granted, twenty-four successful experiences out of

ninety-one is not much, but the fact that successful experiences exist alongside unsuccessful

ones demonstrated that multiple services were capable of providing users expectations.

This research project set out to understand how experiences of everyday judicial hybridity in

South Kivu might contribute to peacebuilding approaches. One key contribution I believe this

research makes through an examination of judicial experiences is that users utilize a

pragmatic set of criteria as opposed to an ideological one in determining what judicial

services to access for the resolution of their problems. Users are less concerned with who is

providing justice than they are with the outcome. This preference might change over time as

justice provision becomes better established, at which point specific provider preferences

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[265] Mbilizi Mwyka. PNC Officer. Mumosho August 15th 2014.

might begin to emerge.[266] As stated in Chapter 6, the most common characteristic of a

successful experience was a favorable conclusion to the process.

The alternative to actively doing something in pursuit of a judicial service for a problem is

the choice to abstain. This is an important element of in the experience of justice. Justice is

diminished when victims elect not to participate in the process. Doing nothing in the face of

victimization, whether from a local dispute or theft, is a damning commentary on the judicial

service options which an individual perceives they can access. However, it is an

understandable choice to make if a person does not have money to fund a case, the time to

devote to the pursuit of justice, or does not believe that available services are competent to

handle their problem.

Although this factor was not directly examined in this research due to my decision to avoid

the traumatic issue of sexual violence, it stands to reason overlapping logics within the

decision to pursue or not pursue justice are shared across different . It is understandable for

an individual who observes that judicial services are incapable of recovering a goat stolen

neighbor or arresting a known thief, it is reasonable to wonder whether those same services

could handle a rape or problems with soldiers or rebels. Consider the view of Arsene, a male

in Walungu, who, when asked about future action, said, "if I faced another problem in the

future I would not go justice because I know I will not get a solution and there is no state

here. I would simply keep it inside my hurt."[267] This was after his home was robbed, which is

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[266] Recalling Image 2.1 from Chapter 2, user preferences of justice bias towards judicial
service by the PNC, CSO, Mwami's, local solutions, or some other type of service.

[267] Arsene #107 August 8th 2014.

perhaps relatively minor but sufficient enough to discourage him from hoping for resolution of future action. While I intentionally did not push individual interviewees to make disparaging comments about any particular service, when the focus groups were broadly asked about the judicial services, they offered nearly universal condemnation.

Somewhat paradoxically, despite the widespread lack of faith in government services to provide any assistance, in the eyes of users, the government remains quite important in the judicial landscape in South Kivu. The next section attempts to reconcile the tension between the state's failing to provide adequate judicial services and the desire expressed implicitly and explicitly in my data, for the state to provide judicial services.

7.2.2.1 Characteristics of Everyday Justice in South Kivu

As I began researching justice in the DRC, impunity was frequently cited as one of the most important problems to combat. Discussion of impunity tends to center on armed groups and crimes of sexual violence. Both sexual violence and armed groups are complicated and interrelated issues in South Kivu; however, the lack of accountability for crimes is not a feature unique to a specific set of criminal actors or a specific set of criminal offenses. Theft and domestic disputes rival land disputes as the most frequently occurring problems in South Kivu (Vinck & Pham 2014: 62). A single experience of theft can impact personal businesses,[268] the ability to send children to school, and families' general sense of security in their home. A person can feel trapped and powerless to change their situation, resulting in an acceptance of injustice and a lack of hope for a better future.

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[268] Joseph #4, a female from Mumosho, shut down his milling business because people lost faith in his ability to securely store their harvest after the theft and failure to recover the stolen cassava.

A core aspect of judicial reform is to reduce impunity, increase access to justice, and build confidence in the ability of judicial services to solve the needs of citizens. While judicial reform programs tend to interpret this as a mandate to improve the function of state services, my research suggests that this is a limited view of local options. State services are only one among multiple options that an individual has, and the variety of services should be included within reform and integration programs.[269] It is also important to better understand which values of a judicial service are most important to its' users. As argued in Chapter 2, the framework and discussion of formal/informal, state/non-state, and retributive/punitive has little place in the minds of judicial users. Going further, the distribution of anticipated future action to police (a state service), NGOs/CSOs (a non-state emergent service), and an expectation to not pursue any judicial service, suggests that the source of the services' authority does not matter in the minds of justice users. Individuals want services that work regardless of the source of authority, and if they cannot obtain workable solutions, users seem inclined to abandon the hope of justice. A justice user cares much more about the ability to mediate and enforce a decision than about the originating source of that ability. The typology of hybrid judicial service providers suggested in Chapter 2 is an interesting proposal, but given that users, at this point, did not express an observed interest in the relationship between service providers, it seems as though it is not a significant priority to users.

Based on the interviews conducted in this research, I propose four different categories that are particularly important to everyday judicial users in choosing a pathway after theft: free/ cost, fair/unfair, competent/incompetent, quick/slow. Considering a user at the juncture of

electing to do something versus nothing, these categories help make sense of why individuals

either elect to pursue judicial resolutions or abstain from seeking judicial solutions.

Understanding the factors which motivate an individual to pursue justice can influence

positive judicial reform efforts, and conversely, understanding the factors which discourage

the pursuit of justice can contribute to a better understanding of the experience of impunity.

7.2.2.2 Free vs. Cost & Fair vs. Unfair

As discussed in Chapter 6, money is an important element within the decision-making

framework in South Kivu. This was most readily apparent from the statements of those who

used NGO or CSO services to resolve their disputes: all thirteen users of NGO-administered

judicial services expressed a desire to return, including those who did not get their problem

solved through their experience with the organization. Augustin[270] had a positive experience

with the police in Katana: his stolen items were returned, he did not have to pay anything and

expressed a willingness to return. Similarly, Etienne[271] did not pay for her service and

expressed a willingness to return. While it is not the only factor, a judicial experience free

from an expectation of payment is an important contributor to an individual's willingness to

use the service.

The importance of a free service is better demonstrated by those who cited how the potential

cost of an experience kept them from pursuing justice. Henri and Juliette expressed a belief

that it was pointless to pursue justice after a theft because the thief would simply pay the

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[270] Augustin #51 July 24th 2014

[271] Etienne #40 July 23rd 2014

police, and the victim would lose twice.[272] Denise avoided going to the police because she

believed the police only to be interested in taking money from people.[273] Thus, as important

as a judicial experience without a financial transaction can be to promote increased trust in a

judicial service, the experience of paying a fee or even the perception that a fee is expected

can close off a judicial service for a person. Unawareness of free judicial services can result

in a person believing that justice is beyond their possible experience and reach.

Closely associated with the payment of fees is the perception of a judicial service being fair

or unfair. Specifically, a perception of fairness is associated with the relationship between

fees and the outcome. For example, Francis, a male in Kalehe, went to the police to mediate a

claimed debt of goats and was ordered to pay seven goats to the other party by the police. A

local CSO determined the case did not have merit and told the person making the claim they

had no case. Victorine, another male in Kalehe, viewed the same CSO as impartial because

they did not accept money for their services.[274] This research suggests that a dominant belief

in South Kivu is that the presence of money in a judicial process leads to a contest over who

can pay more and makes an impartial experience impossible.

7.2.2.3 Competent vs. Incompetent

The ability of a judicial service to solve a problem is a significant factor in electing to use it

to settle a problem. Admittedly, the label of competent or incompetent is a subjective one.

Nevertheless, it is a criterion applied by judicial users. After the police had failed to

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[272] Henri #5. June 16th 2014; Juliette #22 June 24th 2014.

[273] Denise #47 July 24th 2014

[274] Victorine #58 July 29th 2014.

apprehend the person who robbed his house, Georges said he would return to the police for a

future incident, but only as a "formality" as he does not "see [a way] in which they helped

me."[275] When asked about future behavior, Marcelle stated, "if I know there is a place where

my problems can be solved, I can still go there."[276] Anna, Augustine, and Raymonde adopted

a similar view, by expressing a total lack of faith in the ability of authorities to resolve their

problems, and Raymonde stated that approaching any authority was a "waste of time."[277]

Recalling the idea of 'competence shopping' mentioned in Chapter 5, I believe this reflects

the reality in South Kivu. Instead of individuals attempting to leverage judicial service

providers to get a better deal for themselves, my research observed individuals shifting from

one judicial service provider to another, desperately trying to find someone with the ability to

help settle their problem.

7.2.2.4 Fast vs. Slow

Judicial users prefer a judicial experience that resolves their problem quickly Abel elected to

go to a CSO mediation service over the police or tribunal because he wanted a quick solution.

The CSO settled his case within a month whereas Baptiste spent four years fighting in the

court to evict squatting soldiers from a house he had purchased from the government.

Alfred's land dispute stalled in court after he could not afford to keep paying his lawyer to

oversee the case. Olga offered a very straightforward rationale for seeking a future judicial

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[275] Georges #7 June 16th 2014.

[276] Marcelle #10 June 16th 2014.

[277] Raymonde #39 July 23rd 2014.

service stating she would go "anywhere fast."[278] Within these four categories, services which

provided an experience perceived to be free/fair, competently administered, and quick

encouraged an individual to take action. Services where the experience is perceived to be

expensive/unfair, incompetently administered and slow create barriers to judicial access. I

believe these alternative categories of user perceptions of justice offer insight into the

pragmatic framework users examine judicial providers.

Importantly, none of these characteristics demand the judicial provider originate from a

certain background, meaning that traditional chiefs, state agents, or NGOs could provide

these services. At this juncture, users are less inclined to care about *who* is operating a system

that works, so long as the system *is* working. If it were the case that multiple judicial systems

were working in tandem then the research question would consider why users choose one

functional service over another. So long as few judicial outlets are providing reliable services,

it is not possible to make such comparisons. Furthermore, free, fast, fair, and competent are

universal qualities.

7.2.3 Role of the State
The police represent both a major opportunity for the state to regain judicial service users'

trust and a barrier to the state regaining the public's trust. This is not to suggest that police are

the sole barrier to public trust of the state, but they remain one the most tangible

manifestation of the state in the everyday life of citizens. The Congolese PNC, a major focus

for reform among state administered services, are frequently criticized for failure to provide

justice in South Kivu. However, when users were asked about their anticipated future action,

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[278] Olga # 72 July 31st 2014.

the police remained one of the more frequently cited services. Thus, if police can offer free, consistent, and quick services which are perceived as fair by users, this might begin to shift public opinion of the state's overall ability to administer justice.

That said, the Congolese police are in a difficult position. Police in Mumosho operated entirely on foot, as they had no vehicle provided by the state. In Bukavu, Colonel Honorine stated that fuel and airtime were a constant problem for officers. Interventions, specifically the 'nearing police'[279] are attempting to address these problems, but until vehicles are reliably fueled, and airtime is consistently provided, officers will have a difficult time doing police work and while not asking for funds directly from those seeking their help (Mayamba 2012: 39).

The action extends beyond simply posting signs on buses which state "police services are free." Helping citizens to genuinely understand which fees are legitimate and which are not is an essential task which goes beyond signage. Although this is not an experience which is guaranteed to apply universally, Gustave was able to reject the request or demand for fees by stating his knowledge of legal fees.[280]

Regardless of the specific action, two ideas need to be held in tension while examining the role of the state in the provision of justice. First, the state is an important judicial access point in the minds of the population in South Kivu. Second, the state is not the only judicial access

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[279] The nearing police are discussed in section 5.1.1.1.

[280] Gustave #37 July 23rd 2014.

point in the minds of the population in South Kivu. For some, the state remains a viable

option to resolve disputes, while to others, the state is not a relevant judicial service provider.

As the police have domain over violent crime and capital offenses, Mwami courts focus on

land and community disputes, and these roles are supplemented by NGO, CSO, and FBO, it

seems they could co-exist in a compatible fashion. Adoption of a bottom-up view of justice

requires flexibility in the end product. It will not be perfect, but it could be a step towards an

improved resolution of low-level conflicts, such as theft, and user experiences of everyday

justice.

7.3 Contribution of the Study

I believe this study of the experiences of justice users in South Kivu, DRC makes a few

important contributions to understanding everyday justice. First, through an extensive

narrative collection, this study provides a profile of a typical end-user experience of justice.

By identifying different elements of the experience which either encourage or discourage

engagement with judicial services, this study presents multiple points of adjustment that

could increase user satisfaction with a judicial experience. Increased satisfaction, in turn,

increases users' likelihood to return to the service in the future, which could contribute to a

more positive perception of the service's legitimacy. Second, the role of money in the judicial

experience became clear as twenty-seven users either identified money as a barrier to

accessing judicial services[281] or had to pay to use a service intended to be free.[282] When

asked, 67% of individuals in South Kivu identified reducing corruption as the top priority to

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[281] 9 deterred, 4 were asked but declined ending the process

[282] 14 users paid for their use of police services.

improve the experience of justice in their community (Vinck & Pham 2014: 68). Despite efforts to reduce corruption, the challenge remains. Third, this study offers categorizations of judicial service characteristics which are desirable to users in South Kivu. This study argues that, presently, users are not so concerned with the source of authority of a judicial service as much as they are concerned with how the service performs. Quick, competent, fair, and free services are desired over anything else. Finally, this study finds that police services are deeply flawed, but users still hold out hope for the police to provide functional services are this could be built upon in future RoL and SSR efforts.

7.4 Limitations and Future Research

This research project is most limited by the immense size of South Kivu, combined with the expense and logistical difficulty in maneuvering within and between different communities. Looking at three regions of one province within the Democratic Republic of Congo can identify some interesting paths to continue to research, but to draw larger conclusions around preferences of judicial experiences and the manner in which judicial services have evolved during the decades of conflict, this work needs to be conducted at a national and even multinational scale. Thus, future research could further establish critical characteristics within judicial experiences by conducting interviews in multiple provinces in the DRC and by conducting similar research in other Great Lakes countries and beyond. Additionally, this research voiced the narrative experiences of victims of crimes, but based on the limited experiences of Jeff and Felix, including the experiences of accused individuals would add an interesting dimension. Ultimately, the more detail that is collected about the experience of justice, the better user expectations and desires can be accounted for when attempting to address local judicial needs.

Additionally, my design to understand the judicial landscape in South Kivu resulted in a more broad reflection of the judicial experience and did not drill down as deep into specific channels of judicial service provision as future studies could do. Similarly, the "experiences of nothing" proved to be both an interesting component of the culture of impunity and also could serve as an instructive research project into perceptions of judicial and security functions in post-conflict situations.

Given their place as a product of hybridization between the international human rights agenda and local mechanisms for peace, a deeper study into the life cycle of mediation based CSOs in post-conflict, post-liberal situations could prove fascinating. Who starts them, do they scale, how?, How do they die? How are they received by other judicial service providers? I believe a better understanding of these judicial service providers might open new avenues to improving access to justice for users and new points of engagement for peacebuilding.

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