

**Transitional Justice in Times of Conflict:  
A Case Study of the *Barza Inter-Communautaire* in the Kivus**

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**COMPULSORY DECLARATION**

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## Abstract

In the aftermath of the Second Congo War, a range of transitional justice mechanisms was adopted in the ungoverned Kivu provinces in the eastern Democratic Republic of Congo (DRC), characterised by the lack of political settlement, the decline of government control, and the prevalence of different types of violence other than armed fighting. In the wake of this, the Kivus became entangled in a myriad of daunting challenges in their pursuit of justice and sustainable peace, particularly through the formal transitional justice mechanisms introduced by the transitional government. The failure of state-led transitional justice mechanisms led to the implementation of the *Barza Inter-Communautaire (Barza)* – a local justice mechanism - as a part of a national strategy for reconciliation.

In times of ongoing conflict, the *Barza* was embodied in the constellation of power shaped by local, national and international political dynamics. The *Barza*-led justice processes during armed conflicts have had both positive and negative impacts on the Kivu provinces. On the one hand, the mechanism - with its restorative potentials - had a pacifying effect on armed conflict since it had the capacity to resolve conflict and de-escalate ethnic violence. On the other hand, the mechanism also had an increasing effect on conflict intensity which would contribute to a greater likelihood of conflict recurrence. This is because the *Barza* mechanism was capable of being manipulated by warring parties as a part of their political tactics, in conjunction with their military operations. Hence, the manner in which armed conflicts were settled and wrongdoings were addressed through the *Barza* during the 2003-06 transition had significant implications for conflict dynamics in the Kivu provinces.



Map: The eastern region of the Democratic Republic of Congo (DRC)  
 Source: the Rift Valley Institute

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# Chapter 1

## Introduction

### **1.1 Background: The Continuing Violence in the Kivu Provinces in the Eastern DRC**

Since its independence in 1960, the Democratic Republic of Congo (DRC) has been characterised by its persistent state of violence. This violence has proven difficult to be resolved and managed effectively owing to the country's complex and interrelated issues linking to colonial legacies, as well as to political and economic performances of the post-colonial state. Throughout the history of the DRC conflict, the eastern border region - comprised of the North and South Kivu provinces, as well as the Ituri district - has been identified as the epicentre of conflict in the country, even though the region is geographically isolated from the centre of state power in Kinshasa (the DRC's capital city). That is to say, political violence in the country has been concentrated primarily in the eastern borderland regions, away from the capital.

After the signing of the 2002 Global and Inclusive Agreement on Transition in the Democratic Republic of Congo, the DRC was categorised as a country in the period of political transition. The peace agreement, which prescribed a formal cessation of the hostilities that had consumed the country since 1998, was successful in reuniting rival factions in the transitional government and in producing credible elections in 2006. However, the agreement was unable to bring about the termination to conflict and violence. While areas such as northern Katanga and Ituri had experienced a sharp decline in violence by the year 2002, the Kivu provinces found themselves embroiled in an upward spiral of conflict reaching levels as high as they had been during wartime. Since the political transition, the Kivu provinces have been experiencing continued armed mobilisation, and generating a multitude of armed groups, which has resulted in over two dozen emerging over the past two decades (Stearns, 2012:7) Living conditions in the Kivus have also been deteriorating considerably due to the escalation of hostilities. Hence, rather than the entire eastern region, the North and South Kivu provinces in particular have arguably become major sources of instability in the DRC; in fact, they have become regions where the Congolese government faces the most substantial threat to its authority.

Most studies on conflict and violence in the Kivu provinces ascribe grievance over identity and land (Autesserre, 2009; Huggins, 2010); greedy local and international elites (Lyall, 2017); and, most significantly, a weak Congolese state (Vlassenroot & Raeymaekers, 2009; Trefon, 2011) as the underlying structural conditions for long-standing armed conflict. The absence or weakness of state power in the Kivus has facilitated the development of ‘ungoverned spaces’; spaces beyond the state’s control. These ‘ungoverned spaces’ create political vacuums that provide opportunities for non-state political and societal actors [for example, warlords, strongmen and traditional authorities] to ‘function’ as the state by exercising their ‘alternative’ modes of governance (Tull, 2003:435). In addition, the Kivu region has been subjected to external interference due to two factors: its geopolitical significance in the Great Lakes region, and its possession of strategic minerals. Thus, in the course of time, the Kivus have evolved to become a crucial site in which a range of local, national and international actors - both state and non-state - engages in competition and negotiation to exert its influence over major aspects of local politics, economics and security. As a result of the presence of multiple actors other than the central government, it becomes a necessity for local populations to develop their own risk-minimising strategies to survive and cope with everyday uncertainties and insecurities. Locals frequently do so by choosing to cooperate and negotiate with various military and political groups.

The political contestation among several authorities to gain control over local populations and resources results in a series of armed fighting. The term ‘intractable conflict’ has been cited by several scholars to describe the conflicts in the Kivu provinces. According to Crocker and others, ‘conflicts as contestations’ are phenomena where parties will search for political options other than violence when the costs of continuing to fight begin to outweigh the benefits (Crocker et al., 2004:7). Over time, unrestrained violence not only causes physical and psychological suffering for locals, but also transforms patterns of the society in which locals can survive, cope and, moreover, profit from an uncertain socio-political environment (Larmer et al., 2013:1). The long-standing and widespread violence in the Kivus, on the one hand, has disrupted traditional social and economic structures and has militarised communities. More importantly, on the other hand, the violence has prompted local, national and regional actors to develop innovative strategies of political, social and economic control (Vlassenroot, 2004:39), resulting in a transformation of political and economic structures, social norms, modes of thinking and identities in the locality (Verweijen, 2013:69). The emergence of new local governance structures, characterised by violent modes of regulation, progressively sets a

frame for local social and economic interaction outside the realm of the state (Beneduce et al., 2006; Bernazzori & Flint, 2009). In societies experiencing prolonged armed conflict, the interaction and cooperation between civilians and armed actors becomes a 'routine practice'; a part of their everyday lives (Giddens, 1984:60). Hence, as a result of daily negotiation between these actors, violence becomes normalised, routinised and, moreover, institutionalised. This all contributes to the (re)production of the dominance of violent actors in the community, and to discourses that legitimise violence. Accordingly, the prolonged existence of violence in the Kivu provinces can also be perceived as an outcome of the routine negotiation between armed and non-armed actors (Verweijen, 2013:69)

The Kivus thus meet the definition of 'ungoverned spaces. The Kivus are zones that have become sites of contested authority because of three factors: the presence of multiple authorities that have developed a respective stake in the provinces; the potential upheaval of established governance (Beswick, 2009:337); and the continuous prevalence of violence. In ungoverned areas, violence becomes a means of making a profit for opportunists, and assists them in leveraging their power. Also, the use of violence can be morally justified as a coping mechanism by local populations in insecure environments. These aforementioned characteristics of the Kivus create barriers to successful state-led peace and security efforts in the areas.

In the aftermath of the Second Congo War, several post-conflict reconstruction mechanisms were implemented - transitional justice mechanisms included. Importantly, transitional justice mechanisms were implemented in the Kivu localities during the 2003-06 political transition. The transitional justice mechanisms were adopted to respond to past systematic and widespread human rights violations, and to provide 'justice' through the set of judicial and non-judicial measures. The objective of these endeavours was to create a stepping stone for peace, reconciliation and democracy. These reconstructive mechanisms, however, were implemented in vain; the transitional justice operation was thwarted because of the complexity of the conflicts, as well as by the prevalence of political turmoil and the incessant violence in the Kivus.

## 1.2 Statement of Problem: Transitional Justice Mechanisms in Ungoverned Spaces

The Kivus encountered a myriad of daunting challenges in their pursuit of justice and sustainable peace, particularly through the two formal transitional justice mechanisms introduced by the transitional government: (1) the domestic judicial system; and (2) the Truth and Reconciliation Commission (*Commission Verité et Réconciliation: CVR*). These two mechanisms will be elaborated on briefly.

In terms of the domestic judicial system, the DRC's judicial system was in a state of disarray due to poor investment over the previous decades. Domestic prosecutions would therefore been unfeasible because of a lack juridical independence, an inadequate investigative capacity, widespread corruption, the amnesty provision that was established as a part of the peace agreement, and the role of the military tribunal (Savage & Kambala, 2008:338).

In terms of the Truth and Reconciliation Commission, the Commission had failed to unveil itself as an independent and credible institution. This was largely because it had an unrealistically board mandate, a lack of professional capacity among the Commission's staff, corruption among magistrates, and the Commission's process of reconciliation without truth seeking and 'just' retribution (Savage, 2006:9). These factors inevitably created challenges to truth finding (Savage & Kambala, 2008:347).

The failure of formal transitional justice mechanisms to respond to serious crimes in the Kivus led to an increased interest into the possibilities of implementing local justice mechanisms. Alternative mechanisms were thus pursued by local communities in order to seek peace and to restore justice. Among the plethora of traditional or community-based dispute mechanisms, the system of traditional community court - known as the *Barza* - had previously been used in the locality for generations. Its functions were to compensate for criminal actions and to restore relations between local community members. It thus had similar functions to that of the state-initiated CVR (Villa-Vicencio et al., 2005:58).

In the wake of the growing hostility along ethnic lines throughout the pre-national election, the community-led court in the Kivu provinces - known as the *Barza Inter-Communautaire* (*Barza*) - was established and was formally recognised in 2003 as a part of a national strategy for reconciliation. The adoption of the *Barza* mechanism can be attributed to the fact that it dealt directly with the most large-scale conflict in the Kivu provinces: the interethnic conflict

between the *Banyarwanda* and the *Non-Banyarwanda*. Most of the fighting in the Kivus in the present draws directly on a long-standing rift between the Hutu and Tutsi populations (Banyarwandan)- those who arrived as immigrants during the colonial and post-colonial periods, and the so-called ‘autochthonous’ Congolese groups- comprised of Hunde, Nyanga, Tembo, Kano, Twa, and Pere communities (Stearns, 2012: 11).

Sometime between 1998 and 2004, which was a period of tremendous political turmoil and armed conflict in many parts of the eastern DRC, the *Barza* was recognised as an effective mechanism in resolving ethnic conflicts, especially those over land ownership. The *Barza* was regarded as a pre-emptive measure, as it had the potential to resolve conflicts before they evolved into mass violent conflict (Clark, 2008:2). The *Barza*’s work had a pacifying effect on conflict intensity, which enabled the enhancement of stability and peace in the region. More of the *Barza*’s positive impacts included the reintegration of demobilised combatants, female empowerment (which will be elaborated on later in this thesis) and community development (Poole, 2014). However, in 2005, the *Barza*’s operation in the Kivu provinces was halted because of local and national political dynamics, largely linked to ethnic animosity throughout the pre-national election. Eventually, the *Barza* had collapsed altogether by the end of 2005.

After the transition, or since the 2006 national election, political tensions and conflict in the region gradually intensified (Human Rights Watch, 2009). Approximately 70 armed groups were believed to be actively operating in the eastern DRC (Stearns & Vogel, 2015:5). Two armed groups in particular - the National Congress for the Defence of the People (CNDP) and the Democratic Forces for the Liberation of Rwanda (FDLR) (Neethling, 2014:341) – effectively destabilised the region. These groups are regarded as the two most institutionalised armed movements in the Kivu provinces in post-electoral DRC (Neethling, 2014:341).

The escalation of hostilities, which can be accredited largely to the rise of the CNDP and the proliferation of small armed groups, invites questions regarding the strengths and weaknesses of local justice mechanisms in the context of ongoing conflict, as well as the impacts of these mechanisms.

### **1.3 Purpose of the Study: Impacts of the *Barza Inter-Communautaire* on Conflict Dynamics**

Transitional justice has gained global significance as a discipline concerned with confronting the past in the aftermath of violent conflict or dictatorial regimes (Buckley-Zistel et al., 2013). A range of mechanisms and institutions is conventionally designed to operate in post-conflict settings. Realistically speaking, however, these operations only have the potential to be effective in societies with certain degrees of stability. Thus, a suspension of fighting that has been agreed upon by all relevant parties is crucial and necessary before commencing the transitional justice processes. In the Kivus, however, transitional justice mechanisms were established in a context where violence had not yet ceased, despite several peace agreements having already been signed.

In the wake of the instability and violent conflicts in the Kivus, the *Barza* - whose practices were in line with restorative justice aimed at improving and repairing the damaged relationships between conflicting parties – was rendered a more preferable justice mechanism, as opposed to formal - or retribution-oriented - justice mechanisms. The *Barza* justice mechanism subscribed to the notions of *truth-telling* and *forgiveness*, working towards social repair and reconciliation. In facilitating reconciliation and peace, the *Barza* provided structures and spaces for conflicting parties to express and share their grievances. Alleged perpetrators were invited to engage in dialogue and rituals, and to hear and respond to the allegations from victims so that the truth would be uncovered (Villa-Vicencio et al., 2005:59). Reconciliation could then be achieved through acts of forgiveness from the victims (Villa-Vicencio et al., 2005:59).

Even though the *Barza* could settle intercommunal disputes, its operation during armed conflict could also have adverse impacts on conflict intensity and termination. In times of ongoing conflict, both government and insurgents tend to resort a wide range of non-violent strategies combined with military operations, which directly contribute to the course of conflict and their favorable outcomes (Loyle & Binningsbø, 2018). Thus, the use of transitional justice mechanisms during ongoing conflict can be seen as a part of political strategies which has the potential to impact on conflict dynamics both positively and negatively. Evidently, in case of the Kivus, the *Barza* was not only employed as the local justice mechanism, but also became a political platform for belligerents to assert their authority on the ground.

Hence, by studying how violent conflict is settled and how wrongdoings are addressed through the *Barza* mechanism, we can enhance our understanding of the tactics that belligerents use in conflicts, as well as the impacts of traditional-based justice mechanisms on conflict dynamics.

#### **1.4 Research Question**

In recent years, there has been a growing interest in the potential use of traditional-based practices of dispute resolution and reconciliation to address past human rights abuses. The rise of local justice in the field of transitional justice stems from a growing realisation that a successful transition depends greatly on the legitimacy of mechanisms and institutions. Owing to cultural resonance, its familiarity and its comprehensibility for locals, local justice has been expected to appeal to a larger number of participants, resulting in an increase in the legitimacy of the local transitional justice mechanism and to an increased likelihood of successful transition. In case of the Kivu provinces in the eastern DRC, the *Barza* is a case-in-point.

To analyse the potential impacts of the *Barza* on conflict dynamics in the Kivus, this study aims to produce a reliable answer to the following question: *‘What are the contributions and failures of the Barza Inter-Communaire, a local justice mechanism in the Kivu provinces in the eastern DRC, during the period of political transition (2003-2006)?’*

#### **1.5 Research Design**

The research question is addressed through a theoretical case study. A discussion of local justice scholarship provides a theoretical background, and the case study is the *Barza Inter-Communaire* - the local justice mechanism in the two Kivu provinces of the eastern DRC.

The thesis has been divided into six chapters. Chapter 1 provides the reader with a background to the conflict and violence, as well as a background to the implementation of transitional justice mechanisms in the Kivu provinces. Chapter 2 addresses the theoretical issues of the thesis: the concepts of local justice and ungoverned space. Chapter 3 then presents the contextual framework of the thesis by providing a brief history of the conflict and a description of the political situation in the Kivu provinces during the transitional period (2003-2006). Next, chapter 4 and chapter 5 will analyse the positive contributions and the failures of the *Barza* in producing justice and peace in the Kivu provinces respectively. Lastly, chapter 6 will present the findings of the study of the impacts of the *Barza* on the Kivu provinces.

## 1.6 Research Methodology

### Data collection and analysis

The analysis is based on secondary materials that address the processes of transitional justice in the Kivu provinces in the eastern DRC, particularly the operation of the *Barza*, which can arguably be considered as the only active and effective transitional justice mechanism in the provinces during the period of transition. Therefore, official documents and publications from the Congolese government, the international organisations such as the United Nations, and local non-governmental organisations have primarily been examined. In addition, contributions from various sets of academic literature have been taken into account. Both general theoretical concepts in the fields of transitional justice, and conflict and peace studies - including state governance and the specific study of the *Barza* - have been drawn on in the study so as to develop the reliable analysis.

This study takes critical analysis approach to secondary data with an aim to offer alternative perspectives to knowledge, theory-building, and social reality relating to local transitional justice in the ungoverned and protracted violent conflict setting like the Kivu provinces in the eastern DRC.

### Scope

The study will be focused only on the Kivu provinces. The Kivu provinces consist of the lower part of North Kivu [namely the Goma city and the territories of Masisi, Rutshuru, Nyiragongo, and Walikale, commonly known as the *Petit Nord*] - arguably the epicentre of conflict in the eastern DRC. The Ituri district, although located in the northern part of the eastern DRC, has been excluded from the analysis since it has a very specific pattern of violence and a different set of actors from the lower part of North Kivu. The major source of conflict in the Ituri district has been between the agriculturist *Lendu*, and pastoralist *Hema* ethnic groups. More importantly, the *Barza* was employed only in the Kivu provinces, where violence has been ongoing; the Ituri district experienced a sharp decline in violence from 2002 (Stearns, 2012:9).

## 1.7 Definition of Terms

The following concepts are critical for following and understanding the study:

**‘Transitional justice’** is defined as the concept of justice related to political developments in times of post-conflict, prominently characterised by legal responses to the transgressions of predecessor regimes (Teitel, 2003:69). The aims of transitional justice vary depending on the context where they operate, but the following features are common and constant, regardless of the context: redressing legacies of mass human rights abuse, recognising the dignity of victims, and preventing the recurrence of conflict and violence (ICTJ, 2008).

**‘Transitional context’** describes the context in which societies undertake transitional justice processes. Such contexts can vary widely in terms of institutional and political fragility, the nature of conflict and violence, and levels of economic and social development (Duthie, 2017:1). Transitional contexts have significant implications for transitional justice processes’ response to massive human rights violations.

**‘Local justice’** will be defined as ‘everyday justice’ in the locality; that is, how local people produce justice in their everyday lives, which is influenced by their understandings of state law, customary law, spiritual practices and normative beliefs - including situations on the ground (Waldorf, 2016:160). Local justice has been perceived as a type of restorative justice: a normative theory of social repair that aims to improve the relationship between conflicting parties in conflict-torn societies, rather than prosecute perpetrators.

**‘Ungoverned’** describes the decline of formal political order in a particular area. This decline eventually culminates in the distribution or reconfiguration of power and authority, in which rebel groups act as substitutes for a central government and exercise political domination (Tull, 2003:432). Accordingly, the ‘ungoverned space’ is a site in which multiple regulatory authorities cooperate and contest over the management of local security, public services and resources. As a result, such an area typically finds itself enveloped in chronic armed conflict and violence.

## Chapter 2

# Local Transitional Justice in Ungoverned Spaces: Theoretical Issues

### 2.1 Introduction

In chapter 2, the two core concepts of the thesis will be examined. The first section addresses the concept of local justice. This section introduces the brief historical evolution and definition of local justice, as well as its positive features and limitations. In this regard, this section is aimed at providing general ideas of local justice; that is, what local justice is, how it works, and what its potential impacts are. In the second section, the concept of ‘ungoverned space’ will be conceptualised. The two fundamental features of ungoverned space - multiple regulatory authorities and the prevalence of violence - will be examined. The second section purposes to demonstrate the complex reality of ungoverned space as ‘transitional context.’

### Section 1: Local Justice

### 2.2 A Brief Historical Evolution and Definition: Local Justice in Transitional Justice

#### *2.2.1 The Emergence of Local Justice in Transitional Justice*

Historically, the origins of modern transitional justice can be traced to World War I, but the concept has not become mainstreamed into the language of academic and policy practices until the 1980s to the early 1990s- years associated with the collapse of the military regimes in Latin America and the dissolution of Soviet Union in Central and Eastern Europe (Balasco, 2013:200). In contemporary times, transitional justice has gained global significance as an emerging discipline that addresses past transgressions in the aftermath of violent conflict or dictatorial regimes. In the course of its evolution, the discipline has hinged itself on victim-oriented perspectives, thereby providing a sense of recognition to victims as people affected by mass atrocities, and - more fundamentally - as citizens. Hence, transitional justice

mechanisms, both judicial and non-judicial tools which relate to the different concepts of justice [retributive, restorative and distributive justice], can be interpreted as efforts to institutionalise the recognition of individuals in a conflict-torn society as full citizens with equal rights (De Greiff, 2012:42-43). However, the mechanisms are conventionally designed as corrective, legalistic and short-term affairs (Waldorf, 2012:173) by over-eulogising the notion of legal or retributive justice.

Over time, the growth of transitional justice as an international norm and practice has resulted greater introspection of the field. Conventional transitional justice, characterised by legal fundamentalism, is interrogated with theoretical questions as well as pragmatic and ethical concerns, particularly the question of the effectiveness and impacts of transitional justice mechanisms on localities (Buckley-Zistel, 2013:9). There are several serious arguments against the retributive justice; namely, the politics of prosecution (victor's justice); the difficulty in prosecuting all perpetrators and the impossibility of mass arrests; the impunity gap due to the selective prosecution and the strict dichotomy of victim and perpetrator; the inability to deal with structural context of violence; the focus on perpetrators over victims; and the problem of social and cultural alienation, including the cost of trials (Valji, 2009). Under the light of both substantial and technical concerns, conventional transitional justice faces a major challenge: the problem of legitimacy, which has the potential to generate resentment, resistance and conflict in localities.

Accordingly, from the mid-1980s onwards, there has been a growing demand for an expansion of the transitional justice discipline to accept the notion of 'legal pluralism': the acknowledgment of the multiple overlapping systems of justice that exist in reality. This demand has resulted in the rise of 'local', 'traditional', or 'non-Western' modalities of dispute resolution and forms of justice; in other words, a shift from hegemonic international criminal justice - or a dichotomy of impunity and trials - towards multiple conceptions of justice, which are intimately bound with context-specific histories and cultures (Huyse, 2008:3; Sharp, 2015).

### ***2.2.2 Definition of Local Justice***

Local justice can be defined as 'everyday justice' in the locality; how local people produce justice in their everyday lives, which is influenced by their understandings of state law, customary law, spiritual practices and normative beliefs, including situations on the ground (Waldorf, 2016:160). Local justice works towards social repair and reconciliation. Its practices

seek to restore social order through traditional rituals and dialogue in which affected people can negotiate and mediate disputes in order to co-exist.

## **2.3 The Local Turn in Transitional Justice: Promises and Pitfalls**

In recent years, transitional justice has been characterised as a ‘fascination with locality’ (Shaw & Waldorf, 2010:4) in which local justice is perceived as a means to overcome limitations of conventional transitional justice, particularly the problem of legitimacy. However, local justice itself is not infallible and has generated controversy. Its practices can have unintended consequences that can exacerbate situations on the ground. Accordingly, the following section will address the positive features and limitations of local justice.

### ***2.3.1 The Promises of Local Justice Mechanisms***

#### ***2.3.1.1 The Perceived Legitimacy and Increased Effectiveness***

The rise of local justice in the transitional justice industry can be attributed to the realisation that the goals of transitional justice can only be achieved through the legitimacy given by the majority of those who have been affected by mass atrocities and those who have to live with consequences of transitional justice processes. The reason for the inclination towards traditional-based practices of dispute resolution is because traditional-based practices are regarded as more culturally resonant, familiar to and comprehensible for local populations, leading to a greater degree of social and cultural acceptance in communities afflicted with conflict (Sharp, 2015:4). Apart from the advantages of familiarity and accessibility, local justice is believed to be less political owing to its lower perceived intervention from national governmental officials (Sharp, 2015:5). Traditional-based justice, thus, bears the potential to draw a greater number of participants, which prescribes the perceived legitimacy and increased effectiveness of transitional justice mechanisms contributing to a greater likelihood of successful transition.

#### ***2.3.1.2 Greater Responsiveness to Affected Populations***

The current transitional justice paradigm is distinguished by the notion of local ownership and public participation. The model has been redesigned to pave the way for public dialogue in which locals not only advise on the shape and direction of the process, but also have the opportunity to participate in the decision-making process (Lundy & McGovern, 2008:281).

Because the model incorporates the value of public participation, it is capable of assisting victims in overcoming the reproduction of conditions of alienation and oppression that envelop their lives. Participatory action is thus a means of empowering; it enables local people to define local problems or obstacles and, moreover, to initiate, design and implement their own solutions (Lundy & McGovern, 2008:280). Through this method, transitional justice has become more responsive to affected populations by accounting for their cultural values, traditional institutions and everyday practices of dispute resolution (Waldorf, 2016:158).

### ***2.3.1.3 A Promise for Reconciliation***

Local justice is perceived to be symptomatic of restorative justice; a normative theory of social repair that aims to improve the relationship between conflicting parties in conflict-torn societies. According to Van Ness and Strong, the four core elements of restorative justice are: *encountering*, *ensuring reparations*, *participating*, and *reintegrating* (Van Ness & Strong, 2002). Unlike international criminal justice, local justice, with its restorative aspiration, reflects both backward-looking justice – namely, encountering and ensuring reparations, and forward-looking justice – that is, participation and reintegration. By working on two aspects of justice, local justice bears the potential to nurture peaceful transition possible in complex conflict settings.

Since local transitional justice processes are designed to confront legacies of past human rights abuses, their objectives are to hold perpetrators accountable through the following processes: truth-telling; promoting the virtue of forgiveness; and ensuring both symbolic and material reparations for victims (that is, backward-looking justice). Thus, local justice processes are influenced by the positive attributes of *truth-telling* and *forgiveness*. On the one hand, the restorative potential of truth can be registered through therapeutic language as a way of healing victims' psychological wounds. This argument hinges on the assumption that truth as knowledge about the past possesses curative power. Knowing of *what* happened during the mass atrocities and *why* it happened would help to alleviate psychological suffering (Muddell & Hawkins, 2018:8). Victims can perceive a disclosure of the past as an acknowledgement of their resentment and hardship in times of conflict, which can potentially lead to a revival of trust among affected populations that was broken during wartime. On the other hand, the practice of forgiveness has been expected to provide a possible course of actions for peaceful transition in fragmented communities. The programmes of forgiveness and amnesty are

morally justified for the sake of the community (reconciliation), as well as for personal psychological benefits (healing). The concept of restorative justice is thus constructed through a mix of legal, political and moral (religious) languages, in which moral and psychological significances are highlighted.

Besides, the restorative justice model is characterised by community participation and dialogue which possibly contribute to reintegration and reconciliation in affected communities (forward-looking justice). The model provides a platform for victims, perpetrators and the larger community to engage in dialogue in order to achieve sustainable solutions together.

Although the overall concept of local justice is closely linked with the restorative model of justice, local justice can incorporate elements of retribution and reparation. However, the practices of punishment and compensation hinge on their perceived legitimacy and power dynamics in local communities. Arguably, the restorative-retributive dichotomy in the transitional justice field is overstated and essentialised (Huyse & Salter, 2008).

#### *2.3.1.4 Potential Complements to Other Transitional Justice Mechanisms*

While all local justice processes involve public participation, their processes can be varied in the term of 'localness' in the extent to whether they are top-down or bottom-up initiatives; whether they are under local or state control; and how they are linked to more formal, state-run transitional justice measures (Duthie, 2010:1). In this sense, local justice processes in transitional context are always linked to formal transitional justice and peace processes, albeit in varying degrees. Therefore, rather than being presented as an alternative, local justice is often presented as a complementary tool to formal transitional justice and peace mechanisms (Duthie, 2010).

Local justice, with its restorative potentials, may be linked in concrete ways to disarmament, demobilisation, and reintegration (DDR) programmes. The incorporation of restorative, retributive and reparative measures within local justice mechanisms can make an important contribution to the process of reintegration. Local justice seeks to repair the damaged relationship between victims and perpetrators through traditional rituals and dialogue, in which victims' need for empowerment and perpetrators' need for social acceptance can be met. Local justice processes can thus be instrumental in reconciling victims and perpetrators, and in reintegrating perpetrators into their communities.

### ***2.3.2 The Pitfalls of Local Justice Mechanisms***

#### ***2.3.2.1 Over-Eulogising of Local Justice***

The over-eulogising of local justice and traditional authorities is high-risk as it is likely to obscure the working of power and force in affected communities (Theidon, 2009:2). The romanticisation of local justice downplays the coercive element of its practices. Local justice's function of (re)asserting social control can restrict the meaningful participation of victims and marginalised people (Waldorf, 2006:10). The incorporation of local justice mechanisms into the design of transitional justice arguably reactivates the primordial modes of patriarchy in which indigenous custom had been invented to promote social control and political ideologies and led by traditional chieftaincies (Macdonald, 2017:302). Local justice can therefore be understood as political justice in the sense that traditional judicial elites are neither impartial nor independent, since the rationales behind their discretionary rulings typically serve 'community solidarity' (Waldorf, 2006:11). In a search for social reconciliation, local justice practices promote the idea of individual responsibility to one's community as a moral and political obligation, rather than promote the concept of fostering individuals' rights and entitlements (Allen, 1999). In this manner, local justice is theoretically congruent with the notion of communitarianism; that is, the status and rights of community members are secured through their responsibility to the (traditional) community, and individuals cannot claim any rights that would jeopardise the community's claims (Ekeh, 1975). Accordingly, local justice processes not only have the capacity to re-traumatise victims, but also have the potential to invigorate patriarchal and oppressive structures in which women and minorities are marginalised (Arriaza & Roht-Arriaza, 2008:161).

#### ***2.3.2.2 The Problem of Horizontalising Conflict***

The preoccupation with local justice in transitional justice processes renders local justice susceptible to the danger of 'excessive localisation' (Drexler, 2009). Overemphasizing on customs associated with particular groups in the country can give a misleading account of conflict as local affairs which significantly distorts the fact that systematic human rights abuses can be driven by national and international factors. Hence, horizontalising conflict in particular areas - by framing them as simple disputes between different community groups in a society rather than between a state and its citizenry - not only carries the risk of stigmatising particular entire groups as a cause of conflict, but also conceals state-sponsored crimes perpetrated by

government and army officials. Such practices can result in an impunity gap between state and non-state violent actors (Allen & Macdonald, 2013:10). While acknowledging that the state is often a party to conflict, the absence of the state in local justices processes is not necessarily a positive undertaking, since the state has the ability to conduct accountability oversight ensuring that due process, proportionality and human rights are upheld during community-led justice processes (Johnstone, 2002:31). In this sense, the presence of the state in local justice processes can be advantageous to affected populations and can ensure accountability.

### *2.3.2.3 State-Sponsored Informalism*

The dominant role of the state in local justice processes, known as ‘state-sponsored informalism’, can raise practical and substantial concerns about the effectiveness and intrinsic value of local justice. One of prominent characteristics of transitional society is that the environment is highly political in nature. The transitional period is a critical moment in the aftermath of mass atrocities, and it provides domestic elites with considerable room for negotiation. The high stakes in post-transitional societies lead to intense competition and strategic bargaining between new and old elite groups, both striving to protect their status quos whilst also repositioning themselves in a post-transitional society. In such a climate of political uncertainty, the state in transition may be more likely to reassert its hegemony amidst shifts in the loci of power (Clamp & Doak, 2012:350). Consequently, (formal) transitional justice mechanisms appear to be wielded by the state for its own political ends. Therefore, the decentralisation of national reconciliation processes can be perceived by local populations, especially in ungoverned areas, as a means for the state to use local socio-cultural capitals to advance its power rather than localise political decision-making. As Richard Abel argues, ‘state-sponsored informalism expands the grasp of the state at the expense of other sources of authority that appear to be potential competitors’ (Abel, 1982:275). Thus, state-imposed local justice mechanisms can generate political tensions and increase the likelihood of conflict recurrence. Furthermore, the introduction of local justice mechanisms led by the state and sponsored by foreign actors can substantially undermine the positive attributes of informal systems of justice. Under state control, affected communities stand to lose their discretion in terms of when and how their ceremonies should be arranged. Placing local justice systems into a limited timeframe of national reconciliation tends to dilute the meaning of the system and renders it coercive (Waldorf, 2006:13).

Hence, a ‘state-community’ balance with regard to the multiple dimensions of local ownership (practices, principles, and values) is necessary because it can assist in enhancing the capacity and legitimacy of local justice mechanisms.

#### ***2.3.2.4 Ill-Suited Approach to Dealing with Mass Atrocities***

Local justice mechanisms have conventionally been designed to address petty crimes and family or communal disputes, rather than mass violence or genocide - both widespread and systematic attacks against civilian populations. By focusing on interpersonal and community levels of conflict, local justice processes can overlook structural injustices and violence – both of which remain prevalent and severe in post-conflict societies. The existing structures of injustices and violence not only fundamentally undermine the legitimacy of transitional mechanisms (Murphy, 2015:64), but also sustain conflict identities among parties, which can serve as a major hindrance to developing a mutual sense of commitment to shared norms and values. In light of this, local justice mechanisms seldom produce a perceived sense of justice and/or sustainable peace in their respective localities.

#### ***2.3.2.5 The Trouble with Social Capital***

Local justice and social capital are related in two problematic ways. Firstly, the legitimacy of a local justice mechanism depends largely on the degree of social capital in the locality. Nonetheless, in war-torn societies, social capitals have usually been eroded and weakened by violent conflict (Waldrof, 2016:164). Without adequate existing social capitals, it is impossible for local justice mechanisms to operate effectively. Secondly, local justice is aimed at (re)building social capital, which is understood as the cornerstone of social cohesion. However, the relation between social capital and social cohesion is essentialised; higher degrees of social capital do not necessarily lead to greater social cohesion (Wiebelhaus-Brahm, 2017). As Putnam proposes, there are two different types of social capital: *bonding* and *bridging* social capitals (Putnam, 2000). The former refers to the strengthening of intragroup social relationships, whereas the latter indicates fostering connections across the social groups (Putnam & Svendsen, 2007). Promoting bonding social capital within a community in the context of widespread hostility is not only extremely challenging, but also risky, as it may lead to intergroup antagonism. In relation to the concept of ungoverned spaces, bonding social capital can translate into local community solidarity but also into an antagonistic relationship between the government and its civilians. Therefore, one of the major challenges of local

justice mechanism is developing cross-cutting ties that assist in preventing the recurrence of both horizontal and vertical hostilities.

### ***2.3.2.6 Problematic Relationship Between Forgiveness and Reconciliation***

The preoccupation with forgiveness as a means to achieving reconciliation is further problematic. Forgiveness, in this thesis, refers to the overcoming of negative emotions, such as anger, resentment, hatred and indignation – which, incidentally, are natural responses to transgressions. From this perspective, a primary source of the damaged (political) relationships is the presence of widespread negative attitudes toward the horrific character of human rights abuses. Therefore, reconciliation in the aftermath of systematic wrongdoings can be achieved mainly through internal changes in citizens' attitudes, particularly in victims. In other words, the restoration of relationships hinges on the capacity and willingness of victims to forgive their transgressors (Murphy, 2010: 9-10). However, this outlook on reconciliation is misguided and destructive because it overlooks the external structural changes that need to take place in order to end injustice, oppression and conditions that facilitate and support systematic wrongdoing (Murphy, 2010:11). Rather than negative emotions among affected populations, the root cause of damage to political relationships is violence and injustice during armed conflict and repressive rule. Hence, the post-conflict mechanisms that promote the act of resigning to resentment (forgiveness) among victims implicitly encourage the kind of capitulation that repressive regimes and violent actors were attempting to achieve in the first place. As Amery argues, resentment is 'the weapon in the hands of the victims in their struggle against "cheap" reconciliation' (Nadler, 2012:304, Amery, 1999). Resentment among victims reflects their profound commitment to the moral values that had been violated by the perpetrator. According to Murphy, resentment is, thus, an expression of 'respect for self, for others, and for morality' (Murphy, 1982:507). In this light, the major question is whether - and in what way - forgiveness is necessary for reconciliation, the prevention of conflict recurrence, and furthering the successful transition to democracy. The moral justifiability of pursuing reconciliation through forgiveness requires more than demonstrating that it is reasonable for a particular individual to forgive; it needs more complicated claim to answer why the community and state should exercise their power to encourage individuals to forgive in the name of promoting a societal good (Murphy, 2010: 13).

## **Section 2: Ungoverned Spaces**

### **2.4 Transitional Justice in Ungoverned Spaces**

Apart from the issue of local justice having its limitations, another significant challenge to local justice is the particularities of the contexts in which transitional justice mechanisms operate. The contexts- in which societies attempt to address legacies of mass human rights abuses- are an integral to the concept of transitional justice. Such contexts can vary in terms of institutional and political fragility, the nature of conflict and violence as well as underlying economic and social structural problems (Duthie, 2017:1). The fact that context varies is important since contextual factors have significant implications for responding to massive human rights violations. Contextual factors not only shape the design of transitional justice processes in each setting, but can also serve as constraints or obstacles for addressing past human rights abuses.

In this thesis, the context in which the societies undertake transitional justice process is extremely complex, as it is classified as ‘ungoverned spaces’. These societies find themselves enduring insecure environments portrayed through a lack of genuine political settlements and government control including the presence of different types of violence that have gradually superseded armed fighting (Raeymaekers, et al., 2008:11). In this context, local modalities of dispute resolution and reconciliation start appealing to people. However, communities that look to adopt local justice mechanism will inevitably be confronted with two features of ungoverned spaces: the presence of multiple regulatory authorities and the prevalence of violence.

#### ***2.4.1 The Presence of Multiple Regulatory Authorities***

‘Ungoverned space’ is a concept associated with the issue of state consolidation. A non-functioning state has been identified as an underlying cause of internal conflict, since it creates enabling circumstances for non-state actors to exercise their authority in particular geographical areas where the state authority is weak or absent.

Accordingly, the term ‘ungoverned space’ has been coined to describe a zone of contested authority; a site of potential innovation in governance and challenges the notion of zero-sum sovereignty (Beswick, 2009:337), leading to what Janet Roitman has introduced ‘the pluralization of regulatory authority’ (Roitman, 2005:18). Rather than the resistance and opposition, the emergence of innovative governance in ungoverned area demonstrates the great

deal of complicity and overlap between the state and non-state forms of political power (Raeymaekers et al, 2008); they are likely to cooperate in the management of local security, public services, and resources. Thus, the existence of non-state governance does not mean the disappearance of the state. Rather, the state - as a party to conflict - retains its status as a crucial actor in the social and political arena and constantly competes with non-state actors over rules, territories, populations and resources (Tull, 2003:431). With regard to the transitional justice processes, the state continues to serve a preponderant role both through its intervention(s) in the domain of conflict resolution, and in the brokerage of local decision-making processes through grassroot-level bureaucracies and everyday political interaction (Raeymaekers et al, 2008).

Hence, the term 'ungoverned' - rather than referring to the absence of the state - refers to the decline of formal political order in a particular area, which culminates in the distribution or reconfiguration of power and authority in which non-state actors act as substitutes for a central government exercising political domination (Tull, 2003:432).

#### ***2.4.2 The Prevalence of Violence: Direct, Structural, and Cultural Violence***

The ungoverned space is, evidently, characterised by chronic political turmoil and violence. According to Galtung's typology of violence, three distinct forms of violence are particularly pronounced in ungoverned areas: direct, structural and cultural<sup>1</sup>(Galtung, 1990). In other

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<sup>1</sup> Direct violence refers to the manifest presence of threats that threaten life and/or diminish one's capacity to meet basic human needs; in other words, physical or behavioural violence (Galtung, 1990:292). Structural violence represents conditions in which social institutions and systems perpetuate inequality and injustice. As Galtung argues, 'Structural violence is silent, it does not show - it is essentially static, it is the tranquil waters... structural violence may be seen as about as natural as the air around us' (Galtung, 1969:173) Thus, its devastating impacts are static, pervasive and without objects (or the object of structural violence may be persuaded not to perceive this at all). Cultural violence is the existence of prevailing or prominent social norms that justify and legitimise or normalise direct and structural violence (Galtung, 1990:291).

words, violence exists in both visible and invisible forms, causing suffering in everyday life. Owing to the presence of violence in several forms, ungoverned space can be defined as a ‘no war, no peace’ situation, whereby societies continue to be entangled in insecurity, chronic political turmoil and economic difficulties. The persistence of these factors can trigger conflict recurrence even if a ceasefire or peace agreement has already been signed by warring parties (Mac Ginty, 2010).

#### ***2.4.2.1 Direct Violence in Ungoverned Spaces***

In the course of political contestation, armed fighting between government and armed groups (or among armed groups themselves) - for the sake of claiming local political control and legitimacy - is a recurring event in ungoverned areas. When a suspension of fighting is agreed upon by warring parties, there can be several reasons *other than* a political will to resolve the issues in dispute.

Transitional justice, as a part of post-conflict reconstruction and development programmes, rests on the assumption that the signing of a peace agreement signals the official cessation of a conflict, and thus it is the optimal time for kick-starting the processes of transition and establishing of the rule of law. Nevertheless, this assumption has been discredited by the experiences of African conflicts in the 1990s. Beyond a dichotomy of war and peace, transition from war to peace is likely regarded as a ‘realignment of political interests and a readjustment of economic strategies rather than a clean break from violence to consent, from theft to production, or from repression to democracy’ (Berdal and Keen, 1997: 798). Accordingly, a halt in fighting can inaugurate a sustainable peace whereas its termination can also introduce a short interregnum until the outbreak of the next violent confrontation (Swart, 2011:144). In this sense, a pause in fighting does not necessarily mean that a conflict has reached its end; instead, the pause could be a strategic, maybe even subversive, and calculated choice deliberately taken by conflicting parties. So, while armed fighting may cease, the persistent and underlying antagonism between conflicting parties can continue in other forms, carrying with it the possibility of conflict recurrence.

#### ***2.4.2.2 Structural Violence in Ungoverned Spaces***

The mainstream explanation of internal conflict or civil war is hinged on the basis of the ‘weak state’ theory - the dominant framework for understanding violent conflict globally since the end of World War II (Roessler, 2016:9). The deterministic logic of the framework is that a weak state is significantly more vulnerable to outbreaks of violent conflict since it lacks monopoly on legitimate violence and has feeble bureaucratic and administrative capacities (Roessler, 2016:9-10). Accordingly, the circumstance in which rebellion is materially feasible constitute a vital part in explaining the phenomenon of large-scale political violence (Collier et al., 2008:3).

In an ungoverned space, where the government becomes a far less dominating and agenda-setting actor, there exists a vacuum that allows local non-state actors (for example, businesspeople, militias, youngsters, customary authorities and civil society) to claim local political control and legitimacy (Raeymaekers et al, 2008: 9). The prevalence of conflict and violence, as a result of the weakness of the government and inherently authority contestation, creates a discontent with the government among affected populations. The antagonistic sentiment towards the government not only paves the way for a sense of reliance on armed groups as a legitimate provider of security and protection (instead of the state,) but also reinforces the popular support for armed groups, which can enable the groups to engage in non-military domains of social life. The growing role of armed actors in both military and non-military spheres is indicative of the increased militarisation that further results in the escalation of violence in localities. From this perspective, the weak state is understood as the underlying structural condition of conflict and violence in ungoverned areas.

#### ***2.4.2.3 Cultural Violence in Ungoverned Spaces***

The possibility of the reproduction of violence in ungoverned spaces emanates arguably not only from the contestation of authority between state and non-state actors, but also from the perilous social transformation within a society whereby local armed and non-armed actors have developed their strategies in dealing with and adapting to existing conflicts. The civilian-military/militia relations in the ungoverned areas are complex, since the two groups share living and socio-economic spaces. Civilians frequently encounter military and militia personnel in their everyday lives. Over time, while locals may develop their own psychological and/or cathartic risk-minimising strategies to survive and cope in the precarious socio-

political environment, some turn to cooperating with the armed actors in order to profit from the conflict (Larmer et al., 2013:1).

Under this light, the prolonged violent conflict fundamentally transforms social norms, modes of thinking, and political and economic structures in the conflict zone. The civilian-armed actor negotiation and collaboration as an everyday practice renders violence a phenomenon that is normalised, routinised and institutionalised - contributing to the (re)production of the dominant position of violent actors in the area, and of discourses that legitimise the use of violence (Verweijen, 2013:69). The complex relationships between soldiers and civilians, as well as the inherently vague delineation of violence and peace, present major challenges to transitional justice mechanisms when it comes to addressing past human rights violations and holding wrongdoers to account.

## **2.5 Conclusion**

Local justice as an innovative ‘toolkit’ in transitional justice has gained its appeal largely because of the following reasons: its perceived legitimacy and, subsequently, its increased likelihood of effectiveness; its ability to be more responsive to affected populations; its perceived higher likelihood of fostering reconciliation; and its potential to complement other transitional justice mechanisms. However, local justice has also generated controversy because of its limitations - namely, the fact that local justice is over-eulogised; the horizontalising of conflict, the issue of state-sponsored informalism; and local justice’s ill-suited approach to dealing with mass atrocities. Its approach is ill-suited largely since it does not consider the problematic relationship between social capital and social cohesion, as well as the relationship between forgiveness and reconciliation. In this sense, local justice presents both opportunities and constraints for responding to severe and massive human rights violations in localities.

However, according to a comprehensive review of literature, local justice contains an enormous breadth of processes, stretching from state-sponsored, punitive, community-level systems such as *Gacaca* in Rwanda to more informal, dialogue-centred, society-led approaches in northern Uganda and Timor-Leste. Therefore, the major challenge of conceptualizing ‘local justice’ is the vast heterogeneity of practices deployed in different contexts, with greatly different consequences for the societies concerned, although available empirical evidence (in a highly contested literature) indicates that community-based approaches have considerably greater

benefits in some but not other locations. In other words, local justice practices are highly contextual and contingent.

Ungoverned space, as the ‘transitional context’ in which a government lose its authority and control, is a contextual factor that justifies and legitimises the use of local justice mechanism in the area. However, the quintessential characteristics of an ungoverned space create challenges for local justice mechanisms in their pursuit of (restorative) justice and reconciliation. In the midst of *myriad regulatory authorities*, competing discourses over the legitimacy and morality of actors and their actions bear significant implications for transitional justice processes. The question becomes: *who has legitimacy to exercise its power to provide ‘justice’?*. In addition, *the prevalence of violence* also affects its operation; that is to say, *how do transitional justice mechanisms produce perceived justice and durable peace under the prevailing conditions of instability and violence?*

Taking the literature into account, local transitional justice mechanisms in the context of ungoverned space can have both positive and negative implications for the trajectory of conflict. Thus, the thesis will figure out whether these theoretical issues apply to the Kivu provinces in the eastern DRC.

## Chapter 3

### The Political Landscape in the Kivu Provinces: Contextual Framework

#### 3.1 Introduction

Chapter 3 is divided into three parts. The first part presents the brief history of conflict and violence in the Kivu provinces, allowing us to understand the larger structural forces underlying the conflict and violence in the locality. The second part concerns the crises in the Kivus throughout the 2003-06 political transition, which created substantial barriers to achieving transitional justice goals. The last part demonstrates the history of the *Barza Inter-Communautaire* and elaborates on how the institution responded to severe and mass human rights violations.

#### 3.2 A Brief History of Conflict and Violence in the Kivu Provinces

The conflict and violence in the Kivu provinces in the eastern DRC has its roots in the Belgian colonial administration, which promoted the mass immigration of Rwandans and manipulated ethnic power structures. After the independence in 1960, the social realities have evolved. Conflicts in the Kivus, which were rooted largely in local rural dynamics in the 1960s, have linked into national and regional politics.

The advent of European imperialism radically transformed social structures in the Kivus. After the Belgian and German governments agreed on the borders of their African colonies in 1910, the Belgians - who gained control over the Kivus - immediately set about reorganising local power structures for their own purposes. The colonial government issued a decree recognising chieftaincies, but placed them under the control of Belgian administrative officials and the military. The Belgians reshaped customary rule by rendering it more hierarchical and regrouping small chieftaincies into new divisions called 'sectors' (Stearns, 2012:13). More importantly, the Belgians manipulated the ground rules by importing chieftains from certain groups considered as 'indigenous' to rule over local populations, comprised mostly of the Rwandophones. This decentralized despotism not only created artificial rules which was the material basis for the territorialisation of identity, but also allowed the colonial government to claim customary rule over ethnically diverse populations (Stearns, 2012:14).

The historical event that rendered a fundamental change in the Kivus was the mass immigration of over 150,000 Rwandans during the colonial rule since it marked the beginning of Rwandan domination in the locality. Owing to the growing number of Belgian settlers, there became an acute shortage of labour for their plantations and mining operations in the region. Thus, between 1937 and 1955, the Belgian colonial administration transplanted a large number of Hutu-Rwandans as a part of the Mission d'Immigration des Banyarwanda (MIB) – an undertaking aimed at managing the labour for the large colonial coffee, tea and cotton farms, and cattle ranches in the Kivu highlands (Vlassenroot, 2004:40-41). This mass immigration occurred on land controlled by 'autochthonous' ethnic groups: the Bahunde and Banyanga. Then, in 1959, the Rwandan Social Revolution caused the political turmoil and another mass migration of Tutsi-Rwandans to the Kivus (Vlassenroot, 2004:41). As a result, the composition of local populations in the Kivus became increasingly heterogenous, and within a decade, the so-called indigenous groups became minorities on their own land. Throughout the colonial period, the presence of 'autochthonous' and 'immigrant' communities living together in the same territories has led to regular local disputes over access to resources and control over land. However, such local disputes never produced serious levels of violence (Vlassenroot, 2004:41).

The advent of democracy after the independence introduced new dynamics to the Kivus. The first democratic election triggered fears of 'immigrant domination' among those who consider themselves as indigenous whereas the Hutu and Tutsi immigrant populations deeply concerned about their citizenship (Stearns, 2012:21). These electoral politics began tightening links between political elites in Kinshasa and local populations in the Kivus through ethnic mobilization. The far-reaching changes occurred in the Mobutu's regime where the politicisation of ethnicity became a central feature of his 'divide-and-rule' strategy. In the build-up to the 1990 election, local politicians in Mobutu's patronage networks were encouraged to mobilize their followings on an ethnic basis to support his power position and prevent the formation of opposition forces (Vlassenroot, 2004:41). In this regard, Mobutu's strategy reawakened long-standing hostilities between local ethnic communities.

The politics of patrimonialism is the systematic exclusion that generates grievances among the marginalised non-indigenous populations: the *Banyarwanda* and then the *Banyamulenge*. Up until 1994, the Kinyarwanda-speaking residents of the eastern DRC were collectively known as the 'Banyarwanda.' Since the influx of Rwandans in 1994, the term 'Banyamulenge' has been used to refer to the Tutsi Congolese, who reside mostly in the South Kivu province. Under

the Mobutu's regime, the non-indigenous populations experienced and suffered with the threat of expulsion, political marginalization, including socio-economic vulnerability. The status of *Banyarwanda* as Congolese citizens was highly politicized. In 1972, a nationality law was passed granting Zairian citizenship to the *Banyarwanda*. Subsequently, in 1981, the law retroactively retracted their status, leaving them faced with the extreme vulnerability and permanent insecurity (Joanne, 2012:2). Arguably, the political exclusion of the Banyarwanda under the Mobutu regime marked the beginning of conflicting identity formation in the Kivus. The climate of exclusion created by the central government and other groups solidified an ethnic consciousness and group identity among the Banyarwanda (Muraya & Ahere, 2014:14). But, collective identity built on a shared traumatic past can be destructive; descendants, who may share the psychological trauma that their ancestors suffered, can reactivate the trauma in order to justify their use of violence (Volkan, 2009).

In the early 1990s, the hostilities between the so-called autochthonous and Banyarwanda communities were exacerbated by political events in neighbouring Burundi and Rwanda. Both events acted as catalysts for the crises that had long been in the region for many years (Prunier, 2009). This was the critical moment that the Kivus were linked into regional politics. In 1993, the assassination of Burundian President Ndadaye triggered an exodus of Burundian Hutu into South Kivu. Then, roughly 1.2 million Rwandan Hutus crossed into North and South Kivu following the 1994 Rwandan genocide (Joanne, 2012:2). Consequently, a large number of Hutu génocidaires and former Rwandan soldiers went into refugee camps in Uvira and Fizi (South Kivu province) – areas that had traditionally been home to Congolese Tutsi Banyamulenge. Under these circumstances, 'indigenous' communities took an opportunity to collude with Hutu refugees in order to drive out the Banyamulenge. However, the Banyamulenge refused to leave and appealed to Rwanda's Tutsi-led government for assistance.

In the meantime, Rwanda's Tutsi-led government was attempting to manage cross-border attacks launched by Hutu génocidaires from refugee camps in the DRC. The coalescence of Banyamulenge and Rwandan communities led to the formation of an armed group known as the Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL), led by Laurent Désiré Kabila. The ADFL armed group was a diverse coalition of anti-Mobutuist rebel movements claiming to oppose Mobutu's dictatorial regime. With massive supports, the AFDL was successful in overthrowing the Mobutu regime. The conflict between the ADFL and the Mobutu regime is known as the First Congo War (1996-1997).

After Mobutu was removed from power, relations between Kabila and the Tutsi-led Rwandan government began to deteriorate because of the prominence of Rwandans in the DRC's national army and government. As a result, Kabila ordered all Rwandans and other foreign militaries to leave the DRC in 1998, with the hope of increasing his legitimacy domestically. In an act of retaliation to Kabila's order, Rwanda and Uganda's armies raided the eastern DRC region, claiming to secure their borders and to protect their interests in the mineral-rich eastern region. The mutual interest shared by Rwanda and Uganda led to the formation of the Rally for Congolese Democracy (RCD). Kabila then appealed to Angola, Namibia, Zimbabwe and, to a lesser extent, Sudan for military support. In a frightening echo of genocidal call, Kabila convinced Congolese citizens to attack their Tutsi neighbours. The war then entered a period of stalemate where several new armed groups formed to challenge Kabila's authority, as well as to fight against foreign armed forces. The Mai Mai, the local and community-based militias in the Kivu provinces, was formed to protect their communities from rival armed groups, largely because there has been little government presence in remote areas. As a result of the proliferation of armed groups, the country became a patchwork of private fiefdoms controlled by a range of military groups for the outright privatisation of natural resources (Villa-Vicencio et al., 2005:45).

The devastating five-year conflict (1998-2003), known as the Second Congo War, affected the lives of more than three million people in the manner of violence, disease and starvation (Di Piazza, 2008). During the war, the international community created a platform for all belligerents to negotiate so as to put an end to the conflict. The Lusaka Ceasefire Agreement, for instance, was signed by conflicting parties in 1999, but was quickly broken due to a very fragile degree of trust among the signatories. After the assassination of Kabila in 2001, the peace process was again revived in 2002 through the Inter-Congolese Dialogue (ICD) held in South Africa. The political dialogue from the ICD led to the signing of the 2002 Global and Inclusive Agreement, which eventually concluded the stalemate of conflict and paved the way for the establishment of a transitional government in 2003. However, stability has remained elusive in the DRC.

### **3.3 The Kivus in the Transitional Period (2003-2006)**

The starting point of transitional justice efforts in the DRC can be dated to when the *2001 Inter-Congolese Dialogue* (ICD), the political negotiations, were completed at Sun City, South Africa, on 25 February 2002. The practice of transitional justice was discussed at the ICD in order to find a way to address these past atrocities, prosecute war criminals and prevent them from consolidate their grip on power, and redress the suffering of Congolese citizens. Thus, the Commission on Peace and Reconciliation, as one of five transitional institutions, was set up and adopted two keys resolutions: the establishment of a truth and reconciliation commission, and prosecutions for war criminals through judicial systems (Borello, 2004: 14).

However, the transitional arrangements held in the face of extreme challenges: an excessively prescriptive nature of the ICD, a lack of political will, fears of destabilisation, a scarcity of financial, human, and technical resources, and most significantly, the ongoing conflict in the Kivu provinces. The continuation of conflict in the Kivus can be attributed to the unsuccessful disarmament, demobilisation and reintegration (DDR) programme, having been introduced in May 2004 (Borello, 2004: 14). In addition, many local administrative, juridical and military authorities - who had been in power during wartime and were alleged to be involved in human rights abuses – retained their power. The ICD deal allowed the RCD to keep control of the North Kivu province as the deal appointed Eugène Serufuli as governor and other RCD offices as regional military commanders. However, Mai Mai officers felt that they lacked political and military representation within the patronage-riddled hierarchy of the security forces, although they had received their share of seats and positions (Stearns, 2012: 35-36). In this way, the first sign of trouble already emerged at the very beginning of transitional processes. Predictably, these unresolved matters would aggravate security situations on the ground and pose serious obstacles to reaching transitional justice objectives.

#### ***3.3.1 The Political Stalemate***

After the Second Congo War, the political climate of the Kivu provinces was thrown into flux soon after the inception of the transition process. The most significant conflict in the midst of the transitional justice process was the dispute between Kabila and the Rally for Congolese Democracy-Goma (RCD-G) – an organisation whom many believed to be a puppet for the Rwandan government. The dispute between the two was a result of disagreement within the transitional government over power-sharing in the army and the administration (International

Crisis Group, 2005:1-2). In February 2004, a violent confrontation between the Congolese national army and the RCD-G erupted in Bukavu - the capital of the South Kivu province - and triggered a series of armed conflicts in the region. The political transition was now on the brink of collapse. The struggle, which had devastating effects, reoccurred in May 2004. Supported by Rwanda, Laurent Nkunda marched his troops to Bukavu, claiming to protect the Tutsi population from a national army-led genocide. However, there was no evidence of genocidal intent. Moreover, Nkunda's troops committed gross human right violations under the siege of Bukavu (Stearns, 2012:37). In November 2004, the already-volatile security situation in the region was intensified by the interference of the Rwandan government, claiming to pursue the Hutu extremist FDLR. Rwanda's military incursion provoked divisions within the RCD-G between those who supported the transitional government, led by Serufuli - a governor of North Kivu - and the dissidents, headed by Nkunda. As a result, fighting erupted between the *Forces Armées de la République Démocratique du Congo* (FARDC), the new national army, and the dissidents in North Kivu in late 2004 (International Crisis Group, 2005:2).

On the one hand, the ongoing fighting in the Kivu provinces was closely linked to the political impasse in the capital, where conflicting parties negotiated a solution to resolving political differences (International Crisis Group, 2005:i). Different parties attempted different strategies - particularly militaristic strategies - that entailed (re)positioning themselves and competing for the access to resources. On the other hand, the ICD power-sharing agreements were significant contributors to the reproduction of violence. The institutionalisation of power-sharing as an instrument of peace-making created a degree of predictability for politically ambitious entrepreneurs to trade off their military victory for a share of state power (Tull & Mehler, 2005) – inadvertently bestowing more power to insurgents in ungoverned spaces.

### ***3.3.2 The Manipulation of Ethnicity***

The series of conflicts in the Kivu provinces during the transition period reflects both political battles between the former government and RCD's rebel leaders in Kinshasa, and local conflicts between the Banyarwanda (supporters of the RCD) and the non-Banyarwanda (opponents of the RCD) in the Kivus. These conflicts were fundamentally driven by xenophobic and ethnical ideologies promoted by each party for its own political gain (International Crisis Group, 2005:8).

The tensions reached a climax in December 2004, when a march of Banyarwanda in Goma protesting the mass deployment of government troops in North Kivu clashed with a counter-march organized by non-Banyarwanda (Clark, 2008:5). Governor Serufuli, a Hutu RCD-G official in North Kivu, and other Banyarwanda leaders manipulated existing ethnic tensions by constructing a concept called ‘Rwandaphonie’; a political ideology that advocates for the building of Rwandan solidarity among Hutu and Tutsi populations in the Kivus. They claimed that the Banyarwandans were facing with exclusion and discrimination and therefore needed to protect themselves from government oppression. Since early 2005, the RCD-G troops redeployed to North Kivu have regularly attacked non-Banyarwanda people.

At the same time, Kabila was promoting a xenophobic ideology depicting the RCD-G as a puppet of Kigali and as a major security threat to the country (International Crisis Group, 2005). Moreover, the existing discourses of ‘autochthony’ in the Kivus - centred around the notions of ethnicised territory and citizenship, as well as memories of massacre and other violence that people ascribe primarily to Rwanda-backed rebel groups- were instrumental in serving non-Banyarwanda militias. The Mai-Mai groups in particular were able to mobilise civilian support for defending ancestral lands and state territory against the ‘foreign enemy’ (Hoffmann & Verweijen, 2018).

### ***3.3.3 The Proliferation of Armed Groups***

The number of armed actors involved in the Congolese conflict has proliferated since 1998, largely because of the fragmentation of the RCD rebel groups and the growing resistance to the RCD in the region (Vlassenroot, 2004:51). Armed fighting against Kabila’s regime and hostilities between Rwanda and Uganda led to a reconfiguration of the rebellion; the RCD-G became a Rwanda-controlled section, while the RCD-ML became a Uganda-commanded unit. Moreover, the presence of the RCD in the region not only mounted urban resistance led by civil society and church leaders, but also provoked the formation of community-based militias such as the Mai Mai (Vlassenroot, 2004:51). The aim of the Mai Mai groups was to protect their communities from rival armed groups, since government presence had been virtually non-existent in many remote areas. However, the Kinshasa government also labelled Mai Mai groups as security threats to the central government because of its growing numbers (Wambua-Soi, 2017). The Kivu provinces was divided into four politico-military sections controlled by the national army (FARDC), Mai Mai, and the two foreign-sponsored armed groups, the RCD-G and RCD-ML.

In light of the newly localised configuration of power, foreign actors - including both transnational economic and crime networks – found opportunities to maximise their profit from the lucrative trade in natural resources through the proxy structure of exploitation, by supporting local warlords and armed groups in the Kivus (Vlassenroot, 2008:5). The cooperation between local and foreign actors gave rise to the emergence of smaller armed groups that would take their own shares of the profits. As a result of the increasing engagement of lower-level political and military actors in militarised politics, the armed group landscape of the Kivu provinces became increasingly fragmented. Large rebel movements tended to disappear and scatter, leading to the emergence of smaller armed groups (Verweijen & Wakenge, 2015). The proliferation of armed actors significantly hindered the political processes that aimed to convince armed groups to lay down their weapons. The logic of comparative advantage dictates that the armed mobilisation of one group stimulates the mobilisation of others considerably, leading to a self-perpetuating upward spiral of violence in the Kivus.

### ***3.3.4 The Emergence of a New Order in the Kivus***

The prolonged state of disorder in the Kivus provided fertile ground for the formation of new patterns of social and economic control which could enable the perpetuation of violence and conflict (Vlassenroot, 2004:53, Adams & Bradbury, 1995). Owing to the declining competence of the central government, local leaders and warlords attempted to (re)assert control over their local populations by performing the functions of the state; this included providing protection to their populations and collecting taxes (Jackson, 2003:137-139). War became an opportunity for profit and power, where local armed actors would create alternative systems of economic control and protection. Traditional trading mechanisms evolved into ‘military commercialism’, whereby natural resources became lucrative tradable commodities in the market. The natural resources were controlled by armed groups with the cooperation of local civilians. In these precarious conditions, options were limited, and local populations needed to adopt risk-minimising strategies which included participating in the operation of militarised predation led by armed groups and working in settings or markets controlled by militarised forces (Vlassenroot, 2004:54). The everyday cooperation between armed and non-armed actors (which could be either coerced or voluntary) rendered the distinction between war crimes and peace vague and obscure. Violence became normalised, routinised and, moreover, institutionalised, resulting in the persistence of violent conflict in the Kivus.

Long-standing armed fighting creates new social realities and power dynamics. These emerging patterns of social and economic relations are destructive because violent actors are the ones that typically find themselves in dominant positions of power, while civilians are subordinate to them. Accordingly, to preserve this asymmetric relationship, armed actors typically wield their influence over civilians through the recourse of violence and by instilling fear (Beswick, 2009:339). Additionally, due to the presence of multiple armed militias, the competition among them to establish their authority over territories is likely to be intense and leads to periodic outbursts of armed fighting.

### **3.4 The History and Functions of the *Barza Inter-Communautaire***

#### ***3.4.1 The Rise and Fall of the Barza Inter-Communautaire***

Transitional justice processes in the DRC were launched despite the fact that violence and conflict were continuing to rage the country - especially in the Kivu provinces in the eastern DRC. Against this backdrop, transitional mechanisms were challenged by a myriad of dilemmas and obstacles, stemming from complex conflict situations and the politics of transition. Evidently, state-led transitional justice mechanisms had limited impacts on transforming the society. The failure of formal transitional justice mechanisms in responding to serious human right abuses led to a growing interest amongst locals in searching justice and peace through their local justice mechanisms.

From the outset, the *Barza Inter-Communautaire* operated as a provincial branch of the *Commission de Pacification et de Concorde* (CPC), established by Kabila's government in 1997. In the wake of long-standing ethnic tensions in the eastern DRC, Kabila established a branch of the CPC in Goma in late 1997 so as to monitor peacebuilding process throughout the eastern region (Clark, 2008:6). The CPC was a commission comprised of two elder representatives from each of the nine ethnic groups in North Kivu, who travelled throughout the territory conducting conflict resolution and peacebuilding programmes. However, the commission could operate only in the territories of Masisi, Rutshuru, Beni and Lubero because other areas like Walikale were controlled by the RCD (Life and Peace Institution, 2001:43). The CPC established 'peace cells' in each territory in which local esteemed persons convened a meeting between leaders of conflicting ethnic groups, convinced them to surrender their weapons, and reintegrated them into their communities (Pole Institute, 2000:3). In this manner,

the CPC contributed significantly to peacebuilding efforts in eastern DRC as it created inter-communal discussions which had previously been impossible.

In 1998, after a series of negotiations, the *Barza* was re-established as an independent local justice institution with the objective of consolidating the work of the CPC. In general, these two institutions were similar in their operation and goals. The major difference was that the CPC was a government-led institution while the *Barza* was perceived as a community-led justice mechanism that was independent and non-partisan (Clark, 2008:6). Local community leaders attempted to distance themselves from any potential links with Kinshasa in order to render the *Barza* more credible to the conflicting parties in the region. Owing to its impressive success, the *Barza* was formally recognised as a part of the national strategy for reconciliation in 2003 (Villa-Vicencio et al., 2005:58)

The *Barza* had successfully managed to create a platform for interethnic dialogue in North Kivu between 1998 and early 2004 before it was plagued by two major challenges which eventually led to its collapse in 2005: the politics of transition and the increase in ethnic hostility throughout the pre-election.

Firstly, the *Barza* had long been accused of being hijacked, controlled and influenced by political elites from Kinshasa and from the locality itself, which significantly undermined the *Barza's* legitimacy and effectiveness (Kamwimbi, 2008:366). The emergence of the *Barza* during times when the RCD took political and military control over almost areas of North Kivu generated a distrust among civilians. The *Barza* was perceived as a means for the RCD to exercise their sympathetic leadership at the grassroots level. The problem of intimate links between the *Barza* and the RCD leadership was illustrated by the failure of establishing the *Barza* model outside the North Kivu (Clark, 2008:8).

Secondly, interethnic disputes manifested within the *Barza* institution itself; there was a deep-seated division between the Banyarwanda and the non-Banyarwanda people. The major concern among many non-Banyarwanda leaders was the lack of endeavour from their Banyarwanda (Hutu and Tutsi) colleagues to counter the rise of *Rwandaphonie* and to stop violent acts against non-Banyarwanda civilians in Rutshuru and Masisi in 2004 (Clark, 2008:10). In the atmosphere of suspicion, non-Banyarwanda leaders renounced the *Barza*, leading to the collapse of the institution in 2005.

### ***3.4.2 The Functions of the Barza Inter-Communautaire***

The origins of the *Barza* lie in traditional dispute resolution practices that were performed in the eastern DRC region called ‘Baraza’, which refers to a place where kings and community elders would meet to resolve conflicts and address concerns in the community before they escalated to more serious conflict (Villa-Vicencio et al., 2005:58). Examples of disputes that had regularly been resolved by the *Barza* included conflicts over land and resources; speech and literature inciting ethnic hatred; social disturbances resulting from the influx of refugees into the region; and crimes - such as nocturnal arrests, kidnappings and the illegal detention of civilians - perpetrated by state police and rebel groups (Clark, 2008:7).

Based on restorative justice and the rule of law, the *Barza* functions to reconcile antagonistic ethnic groups with one another. The institution provides a platform for perpetrators and victims to engage with one another through dialogue and rituals. The fellowship usually takes place under a tree, where everyone shares a meal together and drinks from the same calabash (Villa-Vicencio et al., 2005:59). Moreover, other community members are also invited to participate in the process. In this manner, the *Barza* provides an opportunity for victims, perpetrators, and the entire community to mediate and seek a sustainable solution to the conflict together.

The *Barza* functions on three main principles: resolving disputes, preventing violent conflict, and healing suffering after conflict (Clark, 2008:6). With regards to dispute resolution, victims are granted an opportunity to share their experience of suffering in front of mediators and perpetrators. Then, perpetrators are requested to explain the rationale behind their actions. Throughout the process, victims can ask for reparation, if they wish, while perpetrators have the opportunity to be accepted back into the community. Accordingly, the ceremony entails elements of the acknowledgement of guilt (truth-telling) and the virtue of forgiveness – both of which are expected to improve the relationship between the antagonistic parties, as well as to reactivate communal solidarity. With regards to preventing conflict, the *Barza* counteracts aggressive attitudes and incendiary statements that certain ethnic groups may express towards others. For instance, the institution denounces politicians perceived to be attempting to stir up ethnic hatred for political gain (Clark, 2008:6). Lastly, healing entails material and symbolic reparations to victims done through traditional rituals.

The *Barza*, however, was not designed to adjudicate serious crimes against humanity, so its members would usually transfer such crimes to a customary court – the lowest level of civilian

courts in the Congolese judicial system. In other words, the *Barza* has a mediation function, while the task of punishment falls under the jurisdiction of a customary court. Nonetheless, there is no concrete distinction between the jurisdiction of the *Barza* and customary courts since both institutions deal with community-based disputes (Clark, 2008:7).

### **3.5 Conclusion**

The conflict in the Kivu provinces in the eastern DRC has its origins in the Belgian colonial administration, where the decentralised despotism created artificial rules that served as the material basis for the territorialisation of ethnic identity. The advent of democracy in 1960, after independence, introduced new dynamics to the Kivus. This was the critical moment that the Kivus started becoming entangled in national and regional politics in which the problem of state weakness and the self-seeking interests of elites reinforced ethnic hostilities that has long been in the region since the colonial era. Accordingly, the potent blend of ethnic discrimination, state weakness and elite interests is arguably the underlying structural force behind the instability and violence in the Kivus.

However, the very nature of the Congolese conflict is intriguing; new driving forces have constantly been emerging to replace the original sources of conflict, rendering the conflict incessant. The structural elements driving the Congo Wars – namely, the weak state, corruption and kleptocracy, the marginalisation and disenfranchisement of communities, and ethnic divisions (Muraya & Ahere, 2014) – get overshadowed by local and regional causes of conflict. Since 1996, local conflicts over political power have increasingly become self-seeking in nature, parallel to national tracks. The strategic and state-oriented agendas of conflict have been replaced by individual-oriented agendas, leading to a fragmentation of the politico-military landscape (Vlassenroot, 2004:50-51).

In this way, an explanation based on static conditions becomes irrelevant in the face of the multifaceted conflict(s) in the Kivus, since it does not account for social and political dynamics in the localities. In other words, the relationship between static structural conditions and armed conflict is not linear, but is mediated by many other variables. Unpacking the dynamic processes within the weak state paradigm can enhance our understanding of the evolution of conflict in the Kivus; more precisely, how underlying structural conditions were stimulated into explosive political violence by the transitional justice processes.

Transitional justice mechanisms were established under prevailing conditions of instability and violence in the Kivu provinces. The *Barza* operation during armed conflict had both positive and negative effects on the localities that it intended to serve. On the one hand, the *Barza* had a pacifying effect on armed conflict, and was a potential tool for conflict resolution and prevention. On the other hand, it had the potential to intensify conflict, which translated into a higher likelihood of conflict recurrence. Accordingly, chapters 4 and 5 will examine how the *Barza* operation affected the trajectory of conflict in the Kivus.

## Chapter 4

### The Contributions of the *Barza Inter-Communautaire*

#### 4.1 Introduction

What is so remarkable about the *Barza* is that it managed to make major contributions to peace and justice processes in the Kivu provinces when state-led mechanisms had failed – all in a volatile climate of armed conflict. Even though the enduring conflict in the region posed serious challenges and jeopardised the entire transitional justice process, *Barza* leaders went to tremendous lengths to ensure that peace and justice proceedings advanced.

This chapter will unpack and analyse the positive contributions of the *Barza* during a violent and volatile transition period. With regards to the theoretical literature, four contributions of local justice have been highlighted by scholars: perceived legitimacy and increased effectiveness; responsiveness; reconciliation; and the potential to complement other transitional justice mechanisms. These contributions can be seen through three positive features of the *Barza* that will be elaborated on: (1) the inclusion of violent non-state actors to transitional justice processes; (2) reconciliation between ethnic groups; and (3) complements to other transitional justice mechanisms.

#### 4.2 Inclusion of Violent Non-State Actors

In consideration of the nature of ungoverned spaces, the Kivu provinces can be viewed as a patchwork controlled by different armed groups besides the state. Over time, protracted violent conflict has generated a trend towards the proliferation of non-state armed actors. Arguably, the growing number of small armed groups can be attributed to a desperate need for protection at the grassroots level. Once the state can no longer guarantee the security of its citizens, security and protection become a subject of negotiation between rebels and local social forces (Vlassenroot, 2008:10). Accordingly, the decision of civilians to negotiate with rebels is a tactical one; civilians negotiate with rebels for the purpose of developing a coping mechanism to assist them in managing their fears of insecurity and anarchy. However, in most cases, the negotiation is conducted in an apparently asymmetric power setting, whereby violent actors use protection mechanisms as an apparatus to control over local populations as well as to exploit local resources. The security provided by ‘protection forces’ is granted only on

condition that taxes and supports are paid to them. In this sense, a strategy of protection led by non-state armed groups is typically adopted in the form of predation. Armed groups (in complicity with local political elites) use force and fear to maintain their status ‘relevance’ to civilians – albeit ultimately for their own political benefit. Hence, in situations where a multiplicity of non-state armed groups are involved in a violent conflict, it is imperative to include violent non-state groups as agents in the transitional justice processes.

One particular argument purports that instead of focusing solely on the prosecution of non-state armed actors who commit atrocities, ‘inclusion’ should entail an acknowledgement of ownership and responsibility from non-state armed groups in justice and peace processes; this necessitates documenting their political outlooks and connecting them to the transitional justice processes (Bellal, 2017). The rationale behind this argument is that in ungoverned areas a system of accountability that is based entirely on a state-centric paradigm tends to fall short in dealing with mass atrocities, as the state is only a single actor out of a myriad of violent actors. The state also does not possess moral superiority over other actors. Thus, the representation of *all* rebels as ‘terrorists’, regardless of their nature and political motivations, not only creates difficulties for the production of justice and peace, but also assists a repressive regime in consolidating its grip on power domestically.

Formal transitional justice mechanisms were manipulated by the Kabila-led government to serve its own ends; that is, prosecuting its own military and political opponents. For example, the International Criminal Court (ICC) indicted Thomas Lubanga and Germain Katanga – two Congolese rebel leaders - whereas Mathieu Chui, a senior commander in a Congolese army in Ituri, was acquitted without a clear explanation for public why he was not being pursued by the Court (CICC, n.d.). Moreover, domestic trials - largely led by the Congolese military courts – rarely imposed charges against government officials and soldiers who were alleged to be involved in serious human rights violations. The Congolese military courts, whose purpose was to discipline soldiers for their military infractions, had been exploited by the central government as a tool of repression of its own dissents (Borello, 2004: 22). There was thus minimal room for non-state armed actors to participate meaningfully in the national transitional justice processes, since they were usually identified by the government as suspects of serious crimes, ultimately disenfranchising them from the processes. The lack of faith from non-state armed groups in the transitional justice institutions, which were inherently biased against them,

resulted in their abandonment of the transitional justice processes and in their return to violence.

In contrast to the formal transitional justice procedures, the *Barza* had closer connections to local political leaders, especially the RCD leaderships. They met regularly to discuss problems between ethnic communities in North Kivu (Clark, 2008:8). The fruitful discussions between the *Barza*'s members and the non-state (violent) actors had the potential to create a common understanding of the roots of and the motivations behind armed fighting, resulting in a (potential) revival of trust among the parties. Considering that the violent conflict of the past had its roots in the failure of people to recognise the common humanity and worth of others (Schaap, 2004:524), the interethnic dialogue arranged by the *Barza* aided in providing perpetrators with a sense of recognition of human dignity. Such political dialogue not only created a shared horizon that past wrongs ought to be condemned, but also inaugurated new civic relationships (Schaap, 2004). Further, the *Barza* allowed the voices and stories of victims, which had long been silenced, to be brought forward to the public at large. Thus, the interethnic dialogue held by the *Barza* can be described as a stepping stone to reconciliation in the locality.

The *Barza* was proactive in its approaches to conflict resolution. *Barza* leaders, on a number of occasions, arranged meetings with the several warring parties. For instance, in 2006, the *Barza* initiated a meeting with the Army Chief-of-Staff in Goma in order to find a resolution to the violent conflict between the FARDC and armed militia led by Commander Laurent Nkunda – a key figure in the violent conflicts in the Kivus since transition (Kamwimbi, 2008:367). Moreover, the *Barza* leaders also sent delegates to Kampala to address their concerns to President Yoweri Museveni about crimes carried out by Ugandan-backed rebel groups in North Kivu (Clark, 2008:7). Accordingly, to a certain degree, the *Barza*'s operations had a pacifying effect on conflict in the region. The decrease in conflict intensity could help to minimize the significance of violent non-state actors, as the 'protection providers', towards civilians.

The *Barza* holds the record for the most successful number of mediations between warlords and the transitional government, as well as between armed groups and communal leaders (Kilaya, 2016:36). Connecting non-state armed groups to local peace and justice processes - for example, peace settlement, truth-seeking and accountability initiatives – can considerably enhance the legitimacy and transparency of institutions, especially in ungoverned areas like the Kivu provinces. That is to say, local justice mechanisms send out the crucial message to local

military and political elites that they are not government-invented institutions, and are therefore impartial to rebel groups. Furthermore, given that non-state armed groups can also take a positive role in transitional justice and peace processes, their participation could help advance the capacity of the mechanism(s) to address systematic human rights violations.

### **4.3 Reconciliation among Ethnic Communities**

In a gesture of reconciliation, the *Barza* bore its relevance to local norms and needs. Essentially, the popular support for *Barza*-led reconciliation efforts is reflective of local perceptions of justice. For example, in Dunn's interview, Pierre - a South Kivutian man – explains his understanding of the difference between 'justice' and 'reconciliation'. Pierre states that, 'justice means sentencing the presumed offender [whereas] reconciliation means bringing two sides together to help them resolve the disputes peacefully and fairly' (Dunn, 2013:99-100). Furthermore, within the confines of ethnic violence, civilians tend to prefer a dispute settlement through reconciliation in order to coexist with each other peacefully. As Evelyne, another of Dunn's interviewees, explains, 'For me, the [state] justice approach leads to jail sentences and turns the parties into permanent enemies. Reconciliation leads to renewed relationships and love between parties' (Dunn, 2013: 95). In this regard, the *Barza* has the potential to appeal to a greater audience, contributing a greater degree of legitimacy, and – consequently - the prospect of successful reconciliation.

During the transitional period, ethnic violence in the Kivus erupted in the context of communal disputes that had been manipulated and politicised by political and military elites since the colonial era. The two Congo wars have produced irreconcilably opposed ethnic identities that have bitterly divided local populations along ethnic lines. One prominent point of contention between different ethnic groups has been that of access to land. The decades of violent conflict in the region have created a climate of distrust and deepened antagonistic sentiments, which souring interpersonal and social relations, and culminating in the collapse of 'social norms, values and institutions that have regulated and coordinated collective actions for the well-being of the community' (Murithi, 2008:17). The breakdown of trust in the Kivus not only stimulates, but also sustains ethnic conflict.

Thus, in a climate with long-standing conflict where parties had not only suffered from direct violence, but also suffered from deeply damaged social relationships, (re)building trust and constructing newly reconciled identities became two major tasks of the *Barza* in its

reconciliation project. Interethnic reconciliation led by the institution operated on the basis of relational and identity-based perspectives of reconciliation. On the one hand, the relational perspective attributes conflict's intractability to distrust and negative perceptions of the adversary, and thus the pursuit of reconciliation is to (re)build relations of trust and positive perceptions of 'the other'. On the other hand, the identity-related perspective sees reconciliation as premised on a departure from antagonistic identities to the collective identities of each of the parties to conflict (Nadler, 2012: 294). Hence, the expected outcome of interethnic reconciliation is trustworthy and positive relations between ethnic groups that enjoy relatively secure identities.

### ***4.3.1 Relational Perspective on Reconciliation: (Re)building Trust***

Several Kivutians cited that distrust, as a result of years of warfare and instability, persisted in their societies, and that relationships between local people continued to deteriorate (Dunn, 2013:93-94). Living in a state of constant fear, on the one hand, renders local civilians vulnerable to mobilisation from armed groups which represent themselves as 'protection forces' following a particular ethnic agenda and interests. On the other hand, it can cultivate a profound desire to restore trust with one's neighbours through the reconciliation process. The popular support for the *Braza* in North Kivu during the transition (Clark, 2008; Kiyala, 2016), and in South Kivu after transition (Dunn, 2013), is indicative of the desire of locals to reconcile with their neighbours.

As a traditional mechanism of conflict resolution, the *Barza* relied heavily on the practices of truth-telling and forgiveness, as well as a mediation mechanism led by the commission of elders and notables. Then, the *Barza's* meaning would be solidified through reconciliation rite as a mark of the termination of disputes. The processes of truth-telling (or apology) and forgiveness are performed as social exchanges based on the victim's and perpetrator's needs to the extent that reconciliation can be achieved once victims' need for empowerment and perpetrators' need for social acceptance are met by the conflicting parties in an interactive manner. (Nadler, 2012: 298-299). Through an 'apology-forgiveness' cycle, when perpetrators apologise and seek forgiveness from the victims, they grant the formerly powerless victims the power to decide whether they wish to grant forgiveness. Arguably, this can be seen as empowering and equalizing experiences for victims and the payment of moral debt on the side of perpetrators that bestows them a chance to gain (re)acceptance into the moral community to which they belong (Nadler, 2012: 299). Then, the ritual of reconciliation can be viewed as a

platform for victims and perpetrators to make a ‘promise’ to live together with peaceful manners and not to repeat the offence. Such a promise generally helps to foster a greater sense of security and trust, and facilitates further psychological healing (Staub, et al., 2005:134). Hence, because it operates in accordance with basic needs of victim and perpetrator, as well as local norms, the *Barza*-led reconciliation process undoubtedly has the capacity to achieve interethnic reconciliation.

In addition, the *Barza* also involved some reparative and retributive measures which had the potential to reduce resentment among victims and to allow perpetrators to contribute to their communities through community service(s) as a primary sanction. In this manner, the *Barza* played a critical role in the revival of civil trust in affected communities. However, it is vital to note that the work of the *Barza* was only aimed at reviving horizontal relationships among civilians that had been damaged by long-standing conflict, rather than vertical relationships between the state and civilians.

#### ***4.3.2 Identity-Based Perspectives on Reconciliation: Constructing Newly Reconciled Identities***

In the Kivu provinces, the media - particularly radio broadcasting – had been an effective tool for warring parties to propagate messages of hate and ethnic division, in turn mobilising local populations (Vollhardt et al., 2007). These hate radio stations not only created, but also sustained ethnic-based antagonism. They circulated hate speech which was constructed by unsubstantiated and intense negative views of particular ethnic community so as to strengthen and politicise ethnic identities, arouse animosity, and encourage violent activities against the targeted groups (Tsesis 2002). Having awareness of the violence that the media was stoking, the *Barza* aimed to counter ‘negative values’, referring to incendiary attitudes and statements against other ethnic groups, in local communities (Clark, 2008:6). Combatting such sentiments could prevent growing hostilities and violent conflict. The *Barza*’s remarkable success in averting ethnic violence was acknowledged by the European Union, who commended the institution on its ability to deter authorities and armed groups from attempting to mobilise civilians along ethnic lines (European Union: 2001).

In order to overcome the legacy of identity-based violence, the *Barza* not only challenged existing antagonistic sentiments, but also endeavoured to forge new identities that would embrace diversity. In post-conflict realities, parties to interethnic conflict frequently compete

for the role of victim. Each party sees its opponent as responsible for initiating conciliatory post-violence exchange by apologising and seeking forgiveness, whereas the parties perceive themselves as passive victims. The reluctance to acknowledge responsibility for having caused suffering can be explained by the fact that interethnic conflict is usually symmetrical in nature, where warring parties typically inflict suffering on their foes. More importantly, the position of perpetrators in post-conflict society is socially vulnerable; they are likely to be perceived as morally deficient, leading to social exclusion. Victims, on the contrary, possess a psychological safe haven and are given an elevated moral status, over their perpetrators (Nadler, 2012:300). Accordingly, the competition for the role of victim is, arguably, one of the most prominent features of a post-conflict society, which contributes to the likelihood that a conflict will become intractable.

In support of the reconciliation effort, the *Barza* - together with its partners –commenced its work of memorialisation. They worked with affected communities, organised inter-ethnic group activities, and conducted research so as to appropriate the shared memories of violence and injustices among affected communities – for the purpose of creating a new reconciled identity and for (re)building harmony (Tegera et al, 2004). The *Barza*'s attempt to conduct the 'memory work' among affected ethnic communities helped to end the cycle of competitive victimhood and replaced the toxic cycle with collective memories of past atrocities. So, instead of identifying affected populations as either victims or perpetrators, local civilians – who suffered a long history of violence and fragmentation of their communities - could share their traumatic memories as victims of structural violence. Daily insecurities and hardships had plagued their lives, and had often pushed them into moral dilemmas; for instance, civilians were frequently placed in positions of having to choose to participate in armed operations or engage in illegal activities for the purpose of survival. Therefore, the construction of secure and collective identities in post-conflict societies not only dissuades the guilty wrongdoers from defending themselves for the sake of securing their moral status, but also reduces victims' desires for revenge.

Julie, a South Kivutian, explained how the *Barza* had encouraged a feeling of empathy for others, which enabled reconciliation to become possible on the ground:

'...at the *Barza*, you are required to think not only about your own problems, but also the problems of other parties. In that way, you can listen to each other and see what can be done to resolve the issue, That's why I prefer the *Barza*' (Dunn, 2013:96).

## 4.4 Complements to Other Transitional Justice Mechanisms

Given the failure of formal mechanisms in responding to serious crimes in the Kivu provinces, the *Barza* stepped in to carry on local peace and justice processes. The *Barza*, as a traditional transitional justice institution, not only fulfilled the tasks that state-led transitional justice institutions could not accomplish, but also supported other informal transitional justice mechanisms led by local non-government organisations (NGOs).

### 4.4.1 Reintegration of Demobilised Combatants

In the Kivus, auto-demobilised soldiers had faced several challenges when returning to their homes. These difficulties included being rejected by their communities, struggling to find economic opportunities to earn their life, being isolated and dealing with personal trauma by themselves. Without effective accountability and reintegration mechanisms, ex-combatants are inclined to reengage in different sorts of violence and their returns to communities tend to create tensions that can escalate into full-blown communal conflict with other community members. Under the light of struggling implementation of the DDR program and its limited impacts on human security in the Kivu provinces (Boshoff, 2007), the *Barza* with its restorative potentials made a substantial contribution in facilitating the transition of ex-combatants to civilian life and family reunification. The work of the *Barza* thus played an integral part in the demilitarisation process in the Kivu localities.

The *Barza*'s principle of 'Accountability through Acknowledgement' opened possibilities of attaining justice in times of instability. The *Barza* held former soldiers accountable without (re)victimising them, paving the way for reconciliation and reintegration under complex circumstances. With regards to perpetrators, the *Barza*, as a grassroots-level platform for establishing accountability, functioned as a 'customary tribunal' that held perpetrators accountable for violating codes of ancestral and social norms. Examples of code violations included engaging in sexual relations with persons under the age of 15, the use of children as soldiers, and serious crimes like the murder of community members. The *Barza* operated on the moral principle that all community members were 'custodians' of ancestral moral norms; accordingly, its rationale behind holding perpetrators accountable was to educate the community and to foster communal reconciliation through rituals performed to cleanse and rehabilitate wrongdoers and to restore dignity to victims (Kiyala, 2016:39). In light of this, the punishment imposed by the council of elders or notables was designed only for community

services and reparative penalties. For instance, cultivating a field for the community, building a hut in the chief's courtyard, paying reparations (goats, *mizaba* (pearls), and so on), including the restriction of movement and banned from travelling out of his/her village for a certain period. However, penal sanctions such as imprisonment were never imposed (Kiyala, 2016:37-38). The *Barza* thus became a local mechanism for holding ex-belligerents accountable and restoring them back into harmony with community values.

Furthermore, the traditional mode of reintegration led by the *Barza* also worked effectively in the case of child soldiers, largely because of its sympathetic nature which included educating moral norms and providing advice, rather than prosecuting and humiliating. A 13-year-old former child soldier in Kahanga perceived the *Barza* as 'a place where children get advice... Instead of incarceration, it is better that children make reparations for their offences to the community' (Kilaya, 2016:42). For the prevention of the recruitment of child soldiers, the *Barza* took the following proactive measures: (1) dissuading armed group leaders from recruiting children and negotiating with them for the release of child soldiers; (2) meeting with parents whose children joined or intended to join armed forces, so as to find a way to demobilise and dissuade them; (3) announcing that traditional customs forbade children from engaging in armed fighting; and (4) advising youth not to engage in soldiering activities, in accordance with traditional customs (Kilaya, 2016:47).

With regards to victims and their communities, their trust towards the perpetrators could be revived through the process of truth-telling. The truth-telling process not only empowered victims by bestowing them with the decision to forgive their perpetrators, but also enhanced their understanding of the nature and root causes of a conflict by sensitising perpetrators and crushing the general stigma towards them (Duthie, 2005:2). The restoration of trust in affected populations can be seen as a key for social reintegration since victims and community members in local justice processes perform as the gatekeepers of moral communities to which perpetrators belong.

#### ***4.4.2 Truth-Seeking***

One of the most tragic events during the transition occurred in December 2004: the massacre in Nyabyondo, which took place in North Kivu during the transition period. In mid-December, Mai-Mai troops- with the support from the central government - started fighting with RCD-Goma forces in and around Nyabyondo. They attacked Hutu communities and killed civilians indiscriminately. Then, RCD-Goma troops retaliated by attacking the Mai-Mai stronghold at Nyabyondo; they systematically looted the villages, terrorised civilians, and raped women and girls. In this incident, at least 100 civilians were slaughtered, and many women and girls were raped by soldiers.

However, the Truth and Reconciliation Commission failed to investigate the incident and could not produce any facts for the case. In the meantime, the MONUC launched an investigation into the atrocities and submitted its findings to the transitional government, as well as to Eugène Serufuli - the governor of the North Kivu province. Yet, the state handed down no charges to alleged perpetrators of the serious crimes (Kamwimbi, 2008:367). In this circumstance, the *Barza* entered a partnership with the Pole Institute, a local think tank in Goma, to conduct investigations into truth recovery in Nyabyondo - including other parts of the eastern region – before commencing its peace and justice processes (Tegera et al, 2004:10).

#### ***4.4.3 Women and Child Empowerment***

The *Barza* also contributed greatly to the work of civil society in dealing with post-conflict effects on women and children. Considering that the violent conflict in the Kivus has been characterized by the high rates of sexual violence and the use of children soldiers, women and children were arguably the most vulnerable groups both during and after armed conflicts. The tremendous physical and psychological suffering amongst them rendered ‘justice’ a prerequisite for rebuilding a damaged social fabric, as well as for constructing sustainable peace. As the former president of SOCICO, a network of representatives of Congolese civil society, stated, ‘Unless the women and youth are heard, which are presently two large constituencies in the DRC that have been largely ignored in the past, the chances of lasting peace in the Congo are slim’(Villa-Vicencio, 2005:61).

Although customary practices have widely been perceived as patriarchal, the work of the *Barza* contributed substantially to initiatives for the empowerment of women and children. In terms of structure, the *Barza* attempted to involve more women as members of the commission by

encouraging each ethnic group to send at least one woman as a representative (Clark, 2008:7). This enhanced the *Barza*'s capacity to deal with sensitive issues such as sexual and domestic violence, as it could confront the issues in a sympathetic manner. Furthermore, the *Barza* arranged a platform for co-generative dialogue and local public hearings, in which victims - regardless of gender or age - could address their grievances and needs to their perpetrators directly. Perpetrators, including former child soldiers, could voice their problems and concerns, and, moreover, acknowledge their wrongdoings. Hence, the *Barza* helped to enable the voices of women and children to be heard, and assisted them to engage constructively in peace and justice processes.

## 4.5 Conclusion

At the beginning of transitional period, the *Barza Inter-Communautaire* - through its traditional approach to justice - induced a pacifying effect on armed conflict, and also cultivated fruitful grounds for justice and durable peace. The *Barza*'s positive contributions to conflict dynamics in the Kivus can be described in three ways, which will be elaborated on below.

In terms of the proliferation of armed groups, the inclusive justice and peace processes led by the *Barza* not only advanced its capacity to address human rights violations by providing rebel groups a participatory platform for their voices to be heard by authorities, but also has a pacifying effect during the course of conflict. That is to say, the *Barza*'s ethos of inclusivity assisted in preventing armed group from resorting to violence as a means of political leverage. Acknowledging the grievances and needs of rebel groups can diminish their motivation to use violence to acquire favourable agreements, which can lead to a higher likelihood of reaching a negotiated settlement and to a lower likelihood of conflict recurrence (Loyle & Appel, 2017).

Secondly, the *Barza* adopted both reactive and proactive approaches in managing conflict<sup>2</sup>. On one hand, the *Barza*-led conflict resolution was aimed at reviving a sense of mutual trust among local populations through traditional practices of reconciliation. On the other hand, the *Barza*

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<sup>2</sup> According to Dinsmore, there are two primary approaches for managing conflict: *reactive* and *proactive*. 'Reactive' describes the approach that deals with a conflict after its outbreak, by using techniques such as negotiation and mediation. 'Proactive' describes an approach adopted to prevent a conflict before it occurs (Dinsmore, 1988).

countered negative values by denouncing politicians who stirred up ethnic hatred for political gain (Clark, 2008:6). Moreover, the institution organised inter-ethnic activities and conducted research to appropriate the shared memory of violence and conflict in affected communities so as to forge new reconciled identities and (re)build harmony for community members (Tegera et al, 2004). The *Barza* was hence recognized by the central government and its international partners that the institution with its restorative potentials had spectacular successes in settling ethnic conflict and preventing armed mobilization along ethnic lines in the Kivu region.

Lastly, the *Barza* was an effective complement to the state-led transition justice mechanisms; namely, the DDR programmes and the TRC, including to other informal justice initiatives led by NGOs. Reconciling reintegration pursued by the *Barza* created possibilities of fostering justice and peace in the situations where the lines between perpetrators and victims were blurred. Through the principle of ‘Accountability through Acknowledgement’, the *Barza* was able to hold perpetrators accountable without (re)victimising them, while also acknowledging the need for redress for victims of past atrocities. The accountability measures of the *Barza* included the processes of truth-telling, community service and reparative penalties. Arguably, punishment without trials assisted in demobilising and dissuading combatants, especially child soldiers, from joining armed groups - encouraging them instead to return to civilian life. Furthermore, truth-seeking process conducted by the *Barza* significantly contributed to the justice processes in terms of accountability ensuring that human rights were upheld during the transitional period. Also, the *Barza* supported other informal justice initiatives led by NGOs, specifically women and child empowerment programmes. The institution included women and children – the two groups most susceptible to violence - in its justice and peace processes. With the *Barza*’s active supports, some justice and peace mechanisms could operate in the Kivus, notwithstanding that ongoing conflicts posed serious hindrances to the whole process of transitional justice.

## Chapter 5

### The Failures of the *Barza Inter-Communautaire*

#### 5.1 Introduction

Despite of the *Barza*'s remarkable success in reducing rates of ethnic violence, armed conflicts in the Kivu provinces remained persistent stubbornly and maintained the overall atmosphere of terror of the wartime throughout the period of transition. The prolonged violent conflict in the aftermath of the Second Congo War invited questions of the effectiveness and impacts of the *Barza* on the Kivu societies. Arguably, the failures of the *Barza* in delivering justice and sustainable peace emanate from limited capacity and the problematic performance of the institution itself, as well as from innate impediments from a context of ongoing conflict. In this chapter, the *Barza* will be interrogated with theoretical and pragmatic questions so as to answer *why* it failed to find a sustainable resolution to violence and conflict, and, more significantly, *how* it strengthened the structure of violence and injustices that resulted in the continuity of violence after the transition.

#### 5.2 The Danger of 'Excessive Localisation' of Transitional Justice

As mentioned before, the *Barza* was recognised by the Congolese government in 2003 as a national strategy for reconciliation, and garnered significance and relevance in many parts of the Kivu region. However, rather than providing access to justice for local civilians, the 'excessive localisation' of transitional justice in the DRC gave rise to more injustices, largely because of the limited capacity of local justice mechanisms to hold the state accountable, and of its general inability to dismantle structures of violence and injustice.

Throughout the transition from war to peace, justice initiatives led by the transitional government were hindered by a deteriorated state-society relationship that had resulted from a history of state-sponsored violence and from the state's failure to protect its civilians from atrocities. In light of the growing autonomy of non-state actors, the Congolese state attempted to re-establish its rule and authority across the ungoverned Kivu provinces through both political and military strategies, in the hope of proceeding with political transition in the localities. The political competition between the state and local elites during the transition was intense, and evolved into armed fighting, generating a series of mass human rights violations,

massacres and population displacement. Accordingly, both state and non-state armed groups were perpetrators of mass atrocities and had to be held accountable.

The *Barza* operated to resolve disputes between local ethnic communities. The institution put their huge efforts to deal with local political, economic and social agendas, all of which had caused widespread violence along ethnic lines, whereas they were either unable or unwilling to deal with national agendas of conflict in which the political and economic antagonisms between the state and local elites ran parallel to local conflicts and potentially reinforced local tensions. That is to say, the *Barza*'s principles and practices were geared towards interpersonal and interethnic reconciliation, aiming to ameliorate the acrimonious relationships between local populations who were either victims, perpetrators or beneficiaries of ethnic violence (Seils, 2017:5). In this sense, the *Barza* conceived violent conflict in the Kivus as individual and communal affairs, which could be resolved adequately through the process of mediation and negotiation. By this means, the *Barza* arguably produced three major adversities: (1) the disregard of structural violence; (2) the absence of state actors and the presence of predatory non-state actors in local justice processes, and (3) the deteriorated relations between the state and its citizens.

Firstly, the conflicts in the Kivus had increasingly become self-sustaining and autonomous in nature (Autesserre, 2006). However, horizontalising mass atrocities in the localities, by classifying them simply as 'local affairs', distorts the fact that armed conflict in the Kivus was a result of political competition between various local, national and international elites. In other words, conflict in the Kivus was not simply a matter of disputes between various ethnic groups, but also between the state, its neighbouring countries - especially Rwanda - and its civilians. Thus, overstating individual and communal levels of ethnic conflict obscures the structure of violence. The existence of structural violence and injustices not only sustains antagonistic sentiments among parties, which is a hindrance to developing a mutual sense of commitment to shared norms and values, but also fundamentally undermines the legitimacy of transitional justice mechanisms (Murphy, 2015:64). In case of the *Barza*, the history of ethnic divisions inherently split the commission's members, which were comprised of different ethnic representatives, into two groups along ethnic lines: the Banyarwanda and non-Banyarwanda. Several human rights observers accused *Barza* leaders as of 'blatant hypocrisy', as the leaders professed to be nurturing harmony among ethnic communities and would denounce others'

manipulation of ethnicity, while they were an ethnically divided ‘cohort’ themselves (Clark, 2008:9).

Secondly, the *Barza*’s exclusive focus on *local* violent actors (local militias) in its justice processes resulted in the absence of state actors as belligerents and enablers of mass atrocities, leading to the question of state accountability for their serious crimes. This created not only a gap of impunity between state and non-state violent actors, but also a reservoir of unprocessed resentment on the part of victims of state-sponsored violence. More importantly, despite the fact that effective justice and peace mechanisms were inclusive and participatory, the inclusion of armed groups - regardless of their predatory and abusive practices towards civilians - was likely to be destructive. The recognition of armed groups as political actors rather than criminal actors, by negotiating and agreeing to their political demands for the sake of their demobilization, implicitly rewards violent actors and entrenches impunity. In this sense, the *Barza* wound up turning justice into a negotiable commodity, and this form of justice provision created an impediment to the successful transition to a just and peaceful society. Arguably, to forge more effective inclusion in transitional justice and peace processes, the major considerations should be more about exclusion matters; in other words, setting a limit on inclusion needed to be considered. For instance, *who* is to be included, *why* are they included, and in *what* processes should they be included?. In this view, armed actors should perhaps be excluded from decision-making processes, and non-violent actors be recognised as legitimate actors instead. Consequently, justice and peace initiatives may be deflected from political agendas that serve armed group’s interests.

Thirdly, in ungoverned areas, local justice mechanisms which attach too much weight to creating bonding social capital among local communities are inclined to damage bridging social capital between the state and local civilians. Given the history of a deteriorating relationship between the state and its civilians in the Kivus, the *Barza*’s attempt to rebuild relationships between local communities – through the rekindling of shared memories of violence among affected communities - may have invigorated antagonistic sentiments between the state and local populations. Furthermore, the prevalence of anti-government sentiments could provide fertile grounds for the creation of rebel groups, and the subsequent mobilisation of civilians to support them. Hence, through the lens of social capital, the presence of crosscutting ties - that cut across social groups and between social groups and the government - is essential for preventing the recurrence of both horizontal and vertical hostilities.

### 5.3 The Pitfalls of Reconciliation

In the realm of transitional politics, reconciliation always casts social conflict in the service of the unity of political community (Schaap, 2008:249). Apart from positive accounts of reconciliation for post-conflict societies, its political objective also underwrites coercive aspects of reconciliation which can undermine a sense of ownership and restrict the meaningful participation of victims.

#### 5.3.1 Reconciliation as Resignation

Reconciliation as a means of post-conflict nation-building has long been criticized on the ground that it places a burden of dealing with past atrocities on the side of victims by demanding them to forgive and forget their perpetrators when they have rights to resent and resist (Schaap, 2008:257). With its ‘resignation’ feature, reconciliation appears to revictimise those who have suffered from past violence and to privilege the acquiescence to the injustices in which the affected society originated so as to make the establishment of a new political association possible (Schaap, 2008:258).

In case of the *Barza*, reconciliation lied at the heart of its operation. The institution leaned more towards achieving communal unity and stability than to administering ‘justice’. The community leaders or elders, who were the judicial elites, were neither independent nor impartial, since their discretion was always applied for the betterment of community harmony and peace, and not for the sake of justice demanded by individuals. By extolling the virtue of forgiveness, the *Barza* did not promote victims’ right *not* to reconcile, but instead encouraged them to forgive unconditionally for the sake of re-building the community. In this manner, the local justice process led by the *Barza* not only revictimized but also reproduced conditions of oppression that enveloped the lives of victims. Encouraging forgiveness, rather than restoring agency to victims, deprives them from agency as it denies their right and willingness to *not* reconcile with perpetrators. In addition, inauthentic forgiveness can create further resistance to reconciliation; the ‘peaceful coexistence’ of conflicting individuals and groups does not necessarily mean that antagonistic relationships among them have been resolved, as antagonistic parties can live more or less separately without bearing a mutual respect for one another (Seils, 2017:6, Bloomfield, 2006:13-16). In the wake of such fragile degrees of trust, conflict can recur whenever individuals or ethnic groups feel threatened.

Accordingly, in the process of post-conflict reconciliation, there is always the risk that oppression becomes legitimised for the sake of building a utopian community. Forced forgiveness and cheap reconciliation can have adverse impacts on post-conflict societies, largely because they are detrimental to victims' human dignity as their (justified) feelings of resentment get dismissed.

Arguably, rather than abandoning resentment and replacing it with false forgiveness, the presence of resentment during the process of reconciliation can be regarded as a contributor to genuine reconciliation. That is to say, genuine reconciliation should begin with the consummation of resentment, meaning the perpetrator's acknowledgment and acceptance of his or her past wrongdoing, as well as an acknowledgment of the adverse consequences that it had on others (Nadler, 2012:304). This, in turn, is more likely to usher in genuine forgiveness and reconciliation. In this sense, the apparent absence of victim resentment cannot be assumed to be an indication of reconciliation. Hence, the difference between false and genuine reconciliation lies in the manner in which victims' feelings of resentment are confronted and managed within the process of reconciliation.

### ***5.3.2 The Problem of State-Sponsored Informalism***

Reconciliation can also be seen as an ideological instrument that invokes the common good to legitimate a particular order in which the privileged attain their own interests over 'have-nots' (Loyle & Davenport, 2015). In 2003, the transitional government agreed to employ the model of the *Barza* in support of social-cultural measures used to pacify social tensions across the DRC (Villa-Vicencio et al., 2005: 58). After its success in North Kivu, Arthur Z'Ahidi Ngoma, a former RCD leader who was one of four vice presidents of transitional government, attempted to introduce the *Barza* to South Kivu in 2005. The Kinshasa-led initiative for establishing the *Barza* caused popular demonstrations in March 2005; demonstrators waved placards bearing messages that read 'Barza=Conflict' (Clark, 2008:8). Opponents to the *Barza* claimed that the *Barza* was another form of political imposition and control from Kinshasa; the interethnic members of the *Barza* were not representative of the affected groups, but were government lackeys who worked for the good of state interests. One of the local NGO workers in South Kivu remarked the following;

*'It wasn't considered a priority in a period of major insecurity. There were massacres at Wilungu. FDLR [Forces De'mocratiques pour la Libe'ration du Rwanda] brutality*

*was continuing. The government couldn't pay teachers but now was trying to tell us how to calm [inter-ethnic] tensions. And we couldn't recognise these so-called community elders they wanted to install in the Barza. They weren't our leaders...'*  
(Clark, 2008:8)

Evidently, the *Barza* was perceived by locals as a means for political elites in Kinshasa to pacify resentment and resistance on the ground by wielding the traditional practices of reconciliation for their own gain. The state attempts to impose central rules through the cooperation with local elites can result not only in the forfeiting popular legitimacy of local leaders and the collapse of local institutions, but also in a soured relationship between the central government and its local civilians. Another human rights worker in Bukavu said the following;

*'It is telling that the Vice- President hasn't returned to South Kivu since the Barza project collapsed [...] it is an admission of a huge failure. The people of South Kivu sent a clear message to Kinshasa that they will not accept any form of political interference in their affairs'* (Clark, 2008:9).

In sum, a lack genuine reconciliation could become a major hindrance to the establishment of just and long-term peaceful society as victims may still harbour feelings of resentment, sowing a seed for the future outbreak of conflict. On the one hand, traditional practices of reconciliation, with their aspirations of rebuilding the community, tend to disregard victim's right *not* to reconcile; the individual demand of justice is denied for the sake of community harmony. On the other hand, tradition practices of reconciliation can be exploited by the state to pacify and silence resentment from the affected populations in order to overcome the state's own crisis of legitimacy in the affected localities.

## 5.4 Justice Processes during Armed Conflict

According to Loyle and Binningsbø's cross-national dataset, 2,205 justice processes implemented during 204 internal armed conflicts between 1946 and 2011 demonstrate that during-conflict justice processes have a decreasing effect on conflict intensity, and an increasing effect on the likelihood of a negotiated settlement (Loyle&Binningsbø, 2018). However, experiences in the Kivu provinces show the tendency that transitional justice processes appear to be associated with less beneficial conflict development; and moreover, perhaps have a negative effect on conflict intensity and termination.

In the moments of ongoing conflict in the Kivus, the *Barza* was embodied in the constellation of power shaped by local, national and international political dynamics. Rather than influencing conflict trajectory, the collapse of the *Barza* in late 2005 are indicative how its existence and operation were conditioned and circumscribed by conflict dynamics and boarder political developments. As a community-led institution, the *Barza* hardly withstood the massive flow of political tensions and contestations in the locality during the run-up to the national election. The institution became an alternative platform for domestic elites to gain and consolidate their political power against oppositions. Thus, the following section of this thesis will analyse how conflict development during the 2003-06 transition affected the *Barza*'s operations, culminating its breakdown in 2005.

### 5.4.1 The Invention of the 'Rwandaphonie' Ideology

At the very beginning of the transition, the disagreement within the transitional government over power-sharing led to fragmentation within the national army and its administration; many RCD-G representatives decided to create alliances to oppose the Kabila-led transitional government. At the time, the RCD-G gained political and military control over many parts of North Kivu and purposed to expand its influence over the Kivus region in order to achieve a grassroots base for the upcoming general election (International Crisis Group, 2005:11). Consequently, the government began to support the Mai-Mai - the community-led militia in the eastern region - to fight against the RCD-G militia, who was sponsored by Rwanda.

Accordingly, during the transition period, the conflict development in the Kivus arguably was on an upward trajectory, driven by the dissension between Kabila and RCD-G, as well as by the growing political tensions and uncertainty during the pre-election period. Conflicting

parties appeared to be enthusiastic about using the 'ethnic card' as an integral part of their campaigning strategies, even if it meant fostering communal conflict in their localities. The ethnic disputes between the Banyarwanda and non-Banyarwanda reached a climax in late 2004, largely due to the invention of 'Rwandaphonie' by Governor Serufuli, claiming that the very survival of Banyarwanda was at stake and that the harmony between Hutu and Tutsi communities was needed as a shield against the oppressors (International Crisis Group, 2005:8).

The emergence of the 'Rwandaphonie' ideology triggered a series of identity-focused discourses underpinned by the specific history of marginalisation and oppression against Banyarwanda. Such ethnic discourses were an effective tool for political elites to mobilise the grassroots for particular ends, as well as to justify fighting against their opponents. For example, in early 2004, Francois Gachaba and Felicien Nzitatira, leaders of the Hutu and Tutsi communities respectively, published the '*Memrandum of Congolese Rwandaphonie*' in the local newspaper *Le Soft*, describing the systematic persecution and stereotyping of Congolese Hutu and Tutsi by the post-independence government. They urged the transitional government to keep this history in mind when debating the draft constitution and the law on citizenship (International Crisis Group, 2005:11). Through emphasising the traumatic past, the publication generated a collective identity among Congolese Hutu and Tutsi as the marginalised and oppressed populations, paving the way for RCD-G political elites to mobilise the Banyarwanda against the transitional government. Then, in March 2004, armed men forced a private radio station in Bukavu to broadcast a series of messages stating that the Catholic Church and other organisations were preparing a genocide against the 'Banyamulenge' - the Tutsi in the South Kivu province. Consequently, in June 2004, Laurent Nkunda marched on Bukavu, claiming that General Mbuza Mabe - the Congolese army commander in South Kivu - was perpetrating a genocide against the Banyamulenge (International Crisis Group, 2005:11). However, there was no evidence that a genocide had been taking place, and the siege of Bukavu led to the deterioration of human security as mass human rights violations were perpetrated by Nkunda's armed troops (Stearns, 2012:37).

In the meantime, anti-Tutsi sentiment was evident and widespread both in Kinshasa and in the Kivu provinces. For instance, when a group of several hundred of refugees who had fled Bukavu after armed fighting in May and June 2004 attempted to return to the city, they were met by an anti-Tutsi rally that was organised and supported by local political elites. Some of

the Tutsi refugees were subjected to arrest and harassment by the army (International Crisis Group, 2005:12-13). As a result, the notion of the ‘Rwandaphonie’ was embraced by the Congolese Tutsi as it could protect them from the former Rwandan army (ex-FAR), the former Rwandan Hutu militias (Interahamwe), and the so-called ‘autochthonous’ Congolese groups. Majune, a Hutu secretary of the *Barza*, remarked;

*‘Hutu and Tutsi have not been listening to the Barza [...] Rwandaphonie has come to mean something to them. It is only a political dynamic, not the reality, but the Barza has found it difficult to get that message across to the people’* (Clark, 2008:10).

#### **5.4.2 The Malfunctions of the Barza: Mirrors of Ethnic Division**

The emergence of *Rwandaphonie* ideology not only exacerbated the ethnic divisions between Banyarwanda and non-Banyarwanda in the Kivus, but also in the *Barza*. Non-Banyarwanda members of the *Barza* accused their Banyarwanda colleagues of facilitating the fostering of the ‘Rwandaphonie’ ideology, and of supporting Hutu and Tutsi movements in their mobilisation against other ethnic groups. The ‘Rwandaphonie’ ideology naturally gained credence among Hutu and especially Tutsi groups because it afforded them a sense of security in the face of growing antagonism from the ‘autochthonous’ ethnic groups. Although Banyarwanda members insisted that the emerging ‘Rwandaphonie’ ideology was not reflective of the reality of life in the Hutu and Tutsi communities, the growing solidarity between Hutu and Tutsi around the ideology generated a climate of distrust among non-Banyarwanda leaders. Alexis Kalinda, a Nyanga representative in the *Barza*, expressed his worry;

*‘The manipulators came to the Barza to explain to us what ‘Rwandaphonie’ meant. They said, ‘We need a communal sense of language and identity to protect ourselves.’ [...] This is what scares many groups in North Kivu. The Rwandans have an army, which makes them dangerous... There are extremists like those who killed [Rwandan President] Habyarimana in 1994 operating here now. All ethnic groups live together and the Barza reflects that, but non-Banyarwanda are very fearful’* (Clark, 2008:10).

Furthermore, non-Banyarwanda members of the *Barza* also accused Hutu and Tutsi leaders of being aware of the mass import and distribution of weapons among Hutu and not attempting to stop it. Many non-Banyarwanda leaders interpreted the distribution of arms as the ultimate manifestation of *Rwandaphonie*, and suggested that Hutu and Tutsi leaders should intervene

directly to halt to spread of weapons, as the weapons could potentially be used against non-Banyarwanda civilians (Clark, 2008:10). However, the prevention of mass distribution of arms across the Rwandan-Congolese border and amongst Hutu was beyond the Banyarwanda community leaders' capabilities, as Governor Serufuli - the instigator of the incident – had seized control of the North Kivu province's political and military resources. Serufuli was known as '*l'homme incontournable*' (literally 'the indispensable man') of Goma, and was the nexus of military and economic power in the eastern region (International Crisis Group, 2005:10).

With the support of Rwandan authorities, Serufuli established a local NGO, '*Tous pour la Paix et le Développement*' (TPD), that operated parallel to his official military and administrative bodies. The TPD played an important role in providing assistance to the RCD-G by supplying trucks for the transportation of troops and arms. Evidently, the TPD was aligned with Nkunda's troops in his siege of Bukavu (Wolter, 2004:3) through its transportation of weapons for distribution to Banyarwanda populations in Masisi and Rutshuru, North Kivu in early 2005 (UN Security Council, 2018). Moreover, Serufuli's grip on power and his 'Rwandaphonie' ideology were backed by his colleagues in local government and business; these colleagues included Léon Muheto, the director of the state electricity company *Société Nationale d'Electricité* (SNEL) in Goma, and Modeste Makabuza - the most powerful businessman in Goma - who controlled much of the fuel brought into Goma, owned the *Société Congolaise d'Assurances et de R assurances* (SCAR) insurance company, held shares in the Supercell phone company, and owned a niobium mine in Rutshuru. Moreover, the Rwandan government was also an integral part of this alliance.

Under the light of powerful alliance among political and economic elites, it is impossible for communal leaders to intervene this robust interest-based network. The unrealistic expectation from non-Banyarwanda towards Banyarwanda members creates a pool of resentment within the *Barza* itself, which significantly undermines the enabling environment for parties to have a dialogue and maintain their cooperation. Hence, the distrust among the *Barza*'s members, as a result of the spread of the 'Rwandaphonie' ideology and of weapons among Banyarwanda, is instrumental in the malfunction and collapse of the *Barza*. That is to say, rather than a mechanism for conflict resolution, the *Barza* performs as a mirror of ethnic divisions in the Kivu provinces; it reflects the root cause of conflict accurately but cannot resolve it.

## 5.5 Conclusion

There are three explanations for the perceived failure of the *Barza* to deliver justice and durable peace: the excessive localisation of transitional justice, the pitfalls of reconciliation, and the state of ongoing armed conflict throughout the transition period. The pitfalls and failures of the *Barza* not only negated the success of the institution in the nascent stages of the transitional period, but also partially contributed to the phenomenon of armed group proliferation in the post-transition Kivus.

In terms of the excessive localisation of transitional justice, transitional justice in the Kivus relied too heavily on the local justice mechanism in conflict-affected areas appears to have an increasing effect on conflict intensity. Firstly, the failure of the state-led transitional justice mechanisms and the implementation of the *Barza*'s reconciliatory approach as the national strategy to decrease social tension in the Kivus may signal a weak government and thus motivates both rebel groups and political and military elites to use violence to reach their goals (Davies, 2014). Evidently, since the 2003-06 political transition, the use of violence by politicians and military officers has become a means of bargaining political power with the central government. (Stearns, 2014:169). Secondly, the excessive reliance on local justice mechanisms is likely to produce more injustices which can be a source of future conflicts. The *Barza*'s exclusive focus on local political, economic, social agendas that contribute to the outbreak of violent conflict horizontalises mass human rights violation in the Kivus which is also systematic and vertical by its nature. Consequently, the state actors, as belligerents and enablers of mass atrocities, appear to be absent from the *Barza*'s justice processes, resulting in the gap of impunity between state and non-state actors as well as a reservoir of unprocessed resentment on the part of victims of state-sponsored violence. Thirdly, the *Barza*'s ultimate goal as interethnic reconciliation possibly generates undesirable outcomes in ungoverned areas to the extent that the imbalance in creating bonding social capital (ties across social groups) and bridging social capital (ties between the government and social groups) in the locality may lead to the endurance of antagonistic sentiments between the central state and its civilians. The existing deep-seated distrust towards the state among local populations may raise a sense of reliance on armed groups as a legitimate provider of protection and security which further fuels the proliferation of small armed groups in the Kivus.

The pitfalls of reconciliation are two-dimensional. With regards to the political objective of reconciliation in post-conflict society, the *Barza*'s justice and peace mechanisms accentuated

on coercive aspects of reconciliation. To that extent, the institution espoused the notion that victims had a moral obligation to forgive their perpetrators for the sake of uniting their communities. In this manner, the *Barza*-led reconciliation not only revictimised, but also reproduced conditions of subjugation and oppression, by privileging the acquiescence of victims to forgive over their enthusiastic consent for the sake of establishing a new political community. As a consequence, the unprocessed resentment among victims formed the breeding ground for rebel groups to mobilise local populations against their oppressors [either the government or other armed groups]. This created an increased likelihood of armed confrontation in the post-conflict period. In another aspect, the *Barza*, as the state-sponsored local justice mechanisms, was perceived by local civilians as a tool of pacifying and silencing resentment and resistance used by political elites in Kinshasa in order to overcome the state's crisis of legitimacy in the Kivus, as well as to consolidate the Kabila regime. The widespread discontent with the central government and its social and political order reinforced popular support for armed groups to exercise their authority as a state in both military and non-military domains, which resulted in the ubiquitous militarisation of the Kivus.

Finally, the ongoing armed conflict amidst a transitional context presents challenges for transitional justice processes. The Kivus were in the process of political transition when armed conflict was still raging in the provinces. In this period of unsettlement, the advent of political transition introduced what had been termed a 'formalised political unsettlement', referring to a political settlement that manages and contains a conflict rather than resolves it, by translating it into new political and legal institutions that enable the continuing process of negotiation between competing ethno-political groups (Bell&Pospisil, 2017: 8-10). In other words, a set of transitional justice institutions becomes another theatre for ongoing conflict providing belligerents with space and time to negotiate and consolidate their political power, which culminates in the persistence of 'unsettledness' in the post-transitional period. Apart from the use of violence, both the government and the RCD-G competed to control the *Barza* so as to project power and exert influence in the locality rather than resolve conflict through this contingent mechanism. The *Barza* was perceived by Kivutians as a means for the RCD-G to establish sympathetic leadership at the grassroots level during the political transition, so as to create a voter base for the general elections in 2006, whereas the Kabila-led government claimed the *Barza* to be part of its national strategy to build peace and consolidate state power in the Kivus. The competition between these two major armed actors generated smaller rebel groups who felt that they had been excluded from the political settlement.

## Chapter 6

### Conclusion

#### 6.1 Introduction

The continuity of armed conflict and the proliferation of small armed groups in the post-transitional Kivu provinces raises questions about the effectiveness and impacts of the *Barza*-led justice mechanism on ungoverned localities. Chapter 6 will attempt to answer these questions by presenting the contributions and failures of *the Barza* during the period of political transition (2003-2006) when violence and conflict continued to rage the Kivu provinces.

The *Barza* - with its restorative potentials - not only functioned as a transitional justice mechanism focusing on redressing legacies of mass human rights abuses, but its works also related to conflict resolution and peacebuilding. Throughout the years 1998 to 2004 - which were years of tremendous political turmoil and armed conflict in the many parts of the eastern DRC – the *Barza* was recognized as an effective mechanism for resolving and preventing ethnic violence which contributed to the increased stability in the Kivus (European Union: 2001; Bourque & Sampson, 2001:33).

However, the achievements of the *Barza* were varied and short-lived. Owing to local particularities, it was successful only in the North Kivu province and not in the South Kivu province (Clark, 2008). Arguably, there are two main explanations as to why South Kivutians did not embrace the *Barza*. Firstly, the model of the *Barza* in South Kivu was state-imposed. This differed from North Kivu, where the system of traditional community court - known as the ‘baraza’ - had already been in the locality for generations (Villa-Vicencio et al., 2005:58). South Kivutians perceived the *Barza* as an attempt of political elites in Kinshasa to expand the state’s control over the South Kivu province (Clark, 2008:8-9). The second explanation for the South Kivutians’ rejection of the *Barza* is rooted in the relationship between the *Barza* and the RCD leadership - the latter representing the interests of the Banyarwandan people. Due to the constant presence of anti-Tutsi sentiments in South Kivu, non-Tutsi populations had been fighting against any form of rule by the Banyamulenge, who were perceived by the non-Tutsi as the owners of a disproportionate share of land and other resources.

Furthermore, in 2005, the quality of *Barza*'s operations in North Kivu progressively worsened owing to regional and national political dynamics, which were linked to the ethnic animosity during the pre-national election. The escalation of ethnic hostilities in the Kivus stemmed largely from the emergence of the 'Rwandaphonie' ideology that was embraced by non-Banyarwanda populations. The ongoing conflict and its complexity imposed both methodological and political constraints for the *Barza* in its pursuit of justice and peace. Eventually, the *Barza* collapsed altogether by the end of 2005. Since the 2006 national election, tensions and conflict in the Kivus have gradually intensified (Human Rights Watch, 2009) largely because of the rise of the *Congrès National pour la Défense du Peuple* (CNDP) and the proliferation of small armed groups.

The rise and fall of the *Barza* not only demonstrate the structural elements of violence and conflict in the DRC - namely, the problem of weak state and the manipulation of ethnicity - but also highlights the politics of transition. Both the transitional government and insurgents resorted to a wide range of non-violent strategies, as well as military operations, which escalated the conflict and resulted in their own respective favourable outcomes. Accordingly, the use of local justice mechanisms during ongoing conflict in the Kivus can be perceived as a part of a political strategy that ended up having both positive and negative implications for conflict dynamics.

## **6.2 The Contributions of the *Barza Inter-Communautaire***

In the prevailing conditions of instability and violence, limited steps had been taken towards achieving a reasonable degree of accountability, acknowledgement and reconciliation. To an extent, the *Barza*-led justice and peace processes had pacifying effects on armed conflict and were tools for conflict resolution and the de-escalation of violence.

Firstly, given conflict in the Kivus involving a range of non-state armed groups that have different motivations for their operations, the inclusion of non-state armed groups in the justice processes could advance the effectiveness of the mechanism to address systematic human rights violations, hold belligerents accountable, and, moreover, prevent the recurrence of violent conflict. Acknowledging grievances and the needs of rebel groups can diminish their motivation to use violence to acquire favourable agreements for themselves, leading to an increased possibility of negotiated settlements and a decreased likelihood of conflict recurrence.

Secondly, dialogue was an integral part of the justice process and conflict resolution led by the *Barza*. Participating in dialogue was a means of empowering to the extent that victims can voice their grievances and needs directly to perpetrators, and to the public at large, while perpetrators could acknowledge responsibility their crimes. In this sense, dialogue was a platform that restored agency to the victims since it rendered a sense of recognition to affected people. Furthermore, through the processes of apology and forgiveness, when perpetrators apologise and seek forgiveness from victims, they give the formerly powerless victim the power to grant forgiveness, and moreover, the status of gatekeepers of the moral communities to which perpetrators belong. This practice can be empowering and equalizing experiences for victims. In this way, processed resentment on the part of victims and affected communities not only has the potential to settle conflict but can also deter the future mobilisation of civilian populations.

Thirdly, distrust, as a result of the years of warfare and instability, persisted stubbornly and continued to degrade relationships between the Kivutians. The absence of trust is regarded as damaging to relationships and making an entire society more vulnerable to violent conflict. Accordingly, the revival of trust becomes instrumental in transitional justice processes in the sense that trust can bolster and stabilise the normative expectations constitutive of moral relationships in transitional societies. In this light, the *Barza* underscores relational and identity-based perspectives of reconciliation, in which the instrumental value of trust is explored and nurtured. The presence of trust is considered an essential condition for reconciliation, conflict prevention and other positive changes to be made possible.

Lastly, the *Barza*'s principle of 'Accountability through Acknowledgement' invites possibilities for attaining perceived justice in the complex conflict situations. The institution holds former soldiers accountable and also recognises and redresses victim's sufferings through the traditional processes of truth-telling and public hearings. In addition, retributive measures were also adopted by the *Barza* in the forms of community services and reparative penalties, aimed at restoring social harmony and order. Arguably, punishment without trial, as the traditional mode of reconciliation and reintegration, contributed significantly to reintegration; it helps to demobilise and dissuade combatants, especially child soldiers, from joining armed group and encouraged them return to civilian life. In this sense, the *Barza*-led justice process can be closely linked to peace building efforts, since it benefited the process of demilitarisation in the Kivu provinces.

### 6.3 The Failures of the *Barza Inter-Communautaire*

As mentioned in the chapter 5, the failures of the *Barza* to deliver justice and transform conflict dynamics can be explained by three reasons: the excessive localisation of transitional justice, the pitfalls of reconciliation, and the state of ongoing armed conflict in the transitional context. These three matters reflect limitations and fallacies of the *Barza* as a local justice mechanism itself, as well as challenges associated with responding to serious and massive human rights violations in the midst of ongoing armed conflict. In the context of an ungoverned space characterised by the presence of multiple regulatory authorities and the prevalence of violence, the *Barza* was embedded in the middle of provincial, national and international powers, and thus straightforwardly became a political instrument for warring parties in the course of conflict. Arguably, rather than establishing justice and durable peace, the *Barza* mechanism produced conflict settlement; it strengthened existing structures of injustices capable of consolidating the political unsettlement and the (re)production of violence in the Kivu provinces. The following section will articulate how during-conflict justice processes have an increasing effect on conflict intensity, leading to the continuity of conflict in the Kivus.

The pursuit of attitudinal and interpersonal reconciliation is problematic when a conflict involves widespread and systematic attack against civilian populations. The disregard of structural dimensions of reconciliation implicitly denies the fact that a significant source of distrust and a negative perception of ‘the other’ is the erosion of the rule of law. The existence of structural violence in which institutions and systems perpetuate inequality and injustices is the key argument as to why conflict becomes intractable. In this sense, the advancement of the virtue of forgiveness among victims is destructive to the extent that it places the burden of dealing with atrocities on the side of victims and creates a culture of impunity for wrongdoers. In the case of the Kivus, positing forgiveness as a moral obligation of victims absolved government officials and soldiers from accountability for their crimes. Hence, the *Barza*, as the state-sponsored local justice mechanism, functioned as a tool to pacify and silence civilian the dissatisfaction with the central government and the current social-political order. Rather than establishing justice, the *Barza* inadvertently assisted the central government in overcoming its crisis of legitimacy in the locality.

Furthermore, by recognising the *Barza* as a part of a national strategy for political transition, the central government may have exposed its weaknesses and its willingness to negotiate. The state-sponsored *Barza* can be seen as a tool of negotiation and balancing power in the ungoverned Kivus where rebel strength far outweighs the government. Rather than settling conflict, the *Barza*, with its peace-based approach to justice, managed conflict through interethnic dialogue. The institution enabled the continuing process of negotiation between competing ethno-political groups by providing them space and time to negotiate. Ongoing negotiations without any meaningful agreements is detrimental and toxic, since it does not resolve issues, but rather exacerbates conflict intensity. As Swart argues, each new incident of violence emerging from a violation of a 'peace' agreement would exacerbate the existing conflict by adding new conditions of conflict potential (Swart, 2011:144). Moreover, the signal of weak state may also inspire non-state armed groups to use a violent means to achieve their ends once the negotiation does not produce favourable outcomes for them. Arguably, the establishment of the *Barza* reflects consensus among conflicting parties to continue to work out disagreement through a set of temporary and contingent institutions, rather than through outright violence (Bell&Pospisil, 2017:9). In other words, they create the institution that contains 'agreement to disagree' and provides a space for (re)negotiation, which culminates in the persistence of political unsettledness in the post-transitional period.

The general circumstances in the Kivu provinces after the transition can be described as 'stable instability'; the region was plagued by violent conflict, and nothing was significantly different from the wartime period. In fact, the circumstances in the post-transitional period may have been worse than before. The proliferation of armed groups was the most striking phenomenon in the Kivus. In 2008, there were approximately twenty armed groups. In 2015, at least seventy armed groups were active in the eastern DRC, primarily in the Kivu provinces (Stearns & Vogel, 2015:5).

After the transition, the conflict was heavily concentrated in the 'Petit Nord' area - located in the southern part of North Kivu province. The 'Petit Nord' area includes Goma and the territories of Nyragongo, Walikale, Masisi and Rutshuru. The four major armed groups, who were all involved in an armed battle causing serious human rights violations in the early period after the transition, were the former warring parties: National Congress for the Defence of the People (CNDP), the Democratic Forces for the Liberation of Rwanda (FDLR), the Mai-Mai coalition of PARECO, and the Armed Forces of the Democratic Republic of the Congo (FARDC) (Spittaels & Hilgert, 2008). In general, the FDLR, the Mai-Mai groups and the

FARDC tended to cooperate in the battle against the CNDP, which was probably the most powerful rebel movement in the post-transition era (Spittaels & Hilgert, 2008:3). The CNDP - a Tutsi-led dissident faction of the RCD-G that was backed by the Rwandan government - positioned itself as a politico-military movement, with the aim of protecting the interests (particularly those concerning grazing lands) of Congolese Tutsi population. However, the CNDP militia has been infamous for committing serious crimes against civilians, including Tutsi people, and its use of child soldiers. The back-and-forth fighting between the CNDP and three armies created security issues that led to large scale human displacement and other human suffering. Additionally, the prevalence of violence and conflict triggered the mobilisation of other armed groups in the region, either allied with or against the Nkunda-led militia. Several armed groups in the Kivus in 2008 cited the security threat imposed by the CNDP as the main reason for their mobilisation (Stearns, 2014:166). The rapid increase in the number of self-defence groups in many parts of the Kivus can be interpreted as a grassroots response to growing instability and violence. The demand for protection at a grassroots community level provides fertile grounds for rural militias to mobilise local populations and to function as legitimate providers of protection and security.

As a consequence, collaboration with armed groups became normalised in the logic of comparative advantage; those who lacked 'protection' from armed actors were at an enormous disadvantage in violent and volatile political spaces. This disadvantage necessitated civilians' need to collaborate with armed groups - not only because of a need for protection, but also to fulfil their own personal objectives. However, there were several civilian resistance against armed personnel occurring in the Kivus, which were influenced by estimations of how dangerous or useful a certain soldier, officer, or military unit would be in the future (Verweijen, 2018:292). Everyday micro-resistance, such as bargaining with armed agents, was probably the most common social practice in the localities, but its personalized, unorganized, and incoherent acts had not enough potentials to undermine the armed actors' domination (Verweijen, 2018).

Furthermore, civilian dissatisfaction with the central government and the social-political order reinforced popular support for armed groups to engage in social activities in the Kivus. The growing role of armed groups in non-military domains of social life led to an increased climate of militarisation. In several cases, the ambitions of local militia leaderships went further than safeguarding community members and protecting the interests of ethnic groups. Armed groups struggled over the authority to rule territory and grassroots populations including to use local

resources by increasing their presence in non-military domains, particularly in local justice processes and taxation mechanisms (Vlassenroot, et al., 2016:42).

In sum, the unresolved conflict and widespread violence in the post-transitional Kivus led to the increasing civilian demand for protection, the normalization of civilian collaboration with armed groups, and the civilian discontent with the central government and the current social-political order. These factors raised the significance of armed groups in both military and non-military domains. Armed groups became a central feature of political settlement in the Kivus and played a critical role in non-military aspects of social life. As a consequence, the very presence of armed groups contributed to a climate of insecurity in the region, since their existence was based on the public's perception that they defended specific ethnic communities, and this further fuelled intercommunal conflict (Verweijen, 2016:67). Thus, the circumstances in the post-transitional Kivus - characterised by the proliferation of armed groups and the increased militarisation – are indicative of the failure of the *Barza* in its pursuit of justice and sustainable peace.

## 6.4 Conclusion

The diversity of *Barza*'s actions can be seen to belong to three historical periods: between 1998 and 2005 in North Kivu; from 2013 to the present in South Kivu; and the more recent revival through the Ministry of the interior in North Kivu. Each of these periods involves different actors and approaches.

The earlier *Barza* in North Kivu represented an attempt by community –level ethnic leaders to carve out a more independent space in the face of political encroachment by state and rebel elites. Thus, the earlier incarnation in North Kivu was exclusively a space for dialogue and negotiation. Whereas, the current practices of *Barza* in the North Kivu is, in effect, a state-run institution with a high degree of community participation, and also the present *Barza* in South Kivu contains more routinised approaches to apology, confession and forgiveness, with a closer connection to customary and formal courts.

The *Barza*'s practices have significant implications for the success of transitional justice processes in the Kivu provinces in each historical period. Without denying its major contributions to conflict de-escalation, the *Barza* as the local justice mechanism was an effective tool for conflict resolution due to its proximity to affected populations and its

relevance to local norms and needs. However, local justice itself is not without its imperfections, and has been criticised for its approach to confronting widespread human rights violations. In addition, operating in ungoverned spaces, which are characterised by the presence of multiple regulatory authorities and the prevalence of violence, is extremely challenging. In times of ongoing conflict, the *Barza* was wielded by warring parties as a part of non-violent strategies, which rendered the adverse impacts on conflict intensity and conflict termination. A series of violent conflicts and peace deals in the post-transitional period are tangible evidence that the dynamic processes of the 2003-06 political transition contributed to the ongoing armed conflict characterised by the proliferation of armed groups. Hence, the *Barza* is a fitting illustration of how temporary institutions are capable of producing enduring outcomes.

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