Part V

Africa

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Burundi

Middlemen and Opponents in the Shadow of the Ethno-state

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I. INTRODUCTION: A RESEARCH AGENDA ON LEGAL INTERMEDIARIES IN BURUNDI

A. Legal Professions in Burundi: Knowledge *Chiaroscuro* and the Puzzle of the Colonial Legacy

'Outlining the legal framework in the Congo, Rwanda and Burundi could appear to be at best a futile exercise, at worst an insult to the inhabitants of these countries, considering their state of lawlessness since the early 1990s' (Vanderlinden 1997: 551).[1] This statement by a prominent historian of Belgium's former African colonies echoes a common image of Burundi: a tiny, densely populated, landlocked Central African country, one of the five poorest in the world,[2] whose post-colonial history has been punctuated by massacres, wars and now another dictatorship.[3] These characteristics make it, at first blush, an unlikely place to study the transformation of legal professions.

Yet this image of lawlessness is contradicted by the core role law played in Burundi. To take just one recent example: the formidable investment of international non-governmental organisations (INGOs), diplomats, and European donors in Burundi from the mid-1990s focused on reforming a justice sector thought to be a root cause of the 1993 massacres but also a potential vector of peace and development. Yet identifying

* This chapter is based on fieldwork funded by the French national research agency (IRENE programme on international peace professionals, ISP/CNRS) and the Cluster of Excellence 'The Formation of normative orders', Goethe Universität. I am extremely grateful to Yves Dezalay for his invaluable comments and suggestions on earlier drafts.

[1] I have translated all French quotes.

[2] With a 40% official development aid to GDP ratio.

[3] At least five major waves of violence have marked Burundi's post-colonial history, in 1965, 1972, 1988, 1991 and 1993–2003/8. UNHCR reported about 400,000 Burundian refugees as of 2018.

and mapping the role, organisation and evolution of legal professions in Burundi pose significant difficulties for the canonic literature on legal professions, which starts from the premise that they constitute a relatively homogenous group governed either by internal competition or common universals.

The first challenge is the lack of primary sources. Studies of the 'colonial question' have undergone a relative boom in the past 15 years in Belgium, emulating the rich literature on the former French and British Empires (eg Renucci 2011; Dorsett and McLaren 2014). However, knowledge about legal professions in the Belgian Congo and Burundi-Rwanda is still in its infancy because of the ongoing ideological battles over the violence of Belgian colonisation (Ngongo et al 2017).[4] The relative neglect of Burundi, overshadowed by Cold War politics in 1962–93, was compounded by a dearth of research on the country, except for historical studies by Burundian, French and Belgian scholars (eg Gahama 2001; Deslaurier 2002; Chrétien and Dupaquier 2007). The vast volume of policy publications on rule of law reforms in post-conflict Burundi since 1993 overwhelmingly denounces the colonial legacy, including the legal transplants inherited from the mandate period. It therefore reads like a succession of abortive fixes to the perennial problem of justice in the country (Kolhagen 2012).

Legal professionals remain a blind-spot in this literature – as they do in many former African colonies (S Dezalay 2015; S Dezalay forthcoming). The resulting *chiaroscuro* of available knowledge is connected to a wider problem. Like other post-colonial settings, Burundi requires the researcher to remember Pierre Bourdieu's warning (1993) about the pitfall of being subjected to knowledge forged *for* and *by* the state.

What George Steinmetz (2013) termed 'imperial entanglements' help to account for the volume of doctrine on 'customary justice' produced by Belgian magistrates in colonial Congo, and later Burundi-Rwanda, and the contradictions of their position. The policy of 'indirect rule' aimed both to foster social order and to promote their own position as buffers against the extreme violence of Belgian colonialism. Political entanglement also explains knowledge production in the shadow of Cold War politics in Francophone Africa. With the repeated massacres in Burundi and neighbouring Rwanda either ignored or left to the policing role of France in its wide 'pré-carré'[5] throughout the Cold War, historical accounts continue to be permeated by intense political battles across Paris, Brussels, Bujumbura and Kigali. By the same token, the enormous volume of publications on post-conflict justice in Burundi since 1993 cannot be understood without considering the position of their producers as consultants for Belgian and other European NGOs and international development agencies, which, due to their own dependence on institutional funding, contribute actively – albeit unwittingly – to the ebb and flow of international policies in the region (see S Dezalay 2016).

The effect is a double bias when the focus turns to legal professions in Burundi. The tendency is both for historical short-cuts and a reduction of the country's trajectory to cycles of violence from the colonial administrator or the post-colonial state. Legal

[4] The files of the 400 Belgian magistrates who operated in Belgian colonies and protectorates after 1908 are still classified.

[5] 'Pré-carré' – or preserve – refers to the 'privileged relations' (primarily in economic and military terms) that France maintained with its former colonial Empire and beyond, in Francophone Africa through the Cold War as the 'Gendarme of Africa'.

professions are seen as either corrupted or antidotes to violence. This criticism could be generalised to studies of the British empire, which also tend to reify the opposition between the 'promise of civilisation' endorsed by European empires and the exceptionality of colonialism's violence (Halliday et al 2012).

B. From Legal *Professions* to Legal *Intermediaries* in the Trajectory of the State and Globalisation

This chapter responds to these studies in two ways, integrating the specificities of the Burundi case study into a wider reflection on the articulation between law, politics and globalisation in African (post)colonies (S Dezalay forthcoming). First, it espouses a political sociology of law and the state in switching the focus from *institutionalised occupations* to *structural positions*. This emphasises the position of lawyers as 'intermediary elites' or 'double agents' who juggle contradictory social, political, and economic interests (Y Dezalay and Garth 2010; Vauchez 2008). Focusing on *intermediaries of the law* – rather than legal professionals – is all the more imperative in Burundi in order to embrace those agents who were not lawyers, such as chiefs in colonial Burundi, but who operated as the 'middlemen' of colonisation (Benton and Ford 2016).

This shifts the focus towards the structuration over time of the *space* carved out for and by these intermediaries in relation to the state and external actors. Looking at the legal 'field' in Burundi as a relatively autonomous social microcosm – to borrow Bourdieu's conceptual tool (Bourdieu and Wacquant 1992) – transcends oppositions that have been reified in the literature, such as that between formal and informal law. The focus, rather, is on the strategies and types of resources (educational and political but also social and family capital) that produce and reproduce hierarchies within that space.

One prominent resource in Burundi has been ethnic affiliation. Paired with race in colonial Burundi, ethnicity was used to justify the promotion of certain groups – foremost the princely *Baganwa* and Tutsi elites – as middlemen between the colonial ruler and the population. As in Rwanda, ethnicity has continuously been instrumentalised as a political tool to justify violence through the post-independence period. Predominantly targeting the Hutu in Burundi,[6] this ethnic violence has shaped the organisation of the legal system and the distribution of positions within the legal field. Another core resource has been what Bayart (2000) terms 'extraversion': the *rent* derived from material and symbolic links with the international and deployed at the domestic level.

Rather than simply underlining the *dependence* of the Burundian legal field on external resources, this chapter examines the structuration of this space over time as a *globalised* history, underscoring the need to go beyond Burundi as the frame for analysis. The wealth of research on the history of empires and 'world-history' in the past 20 years has amply documented the need to trace what circulates rather than what partitions (Boucheron 2009): inter(national) connections that influence social, political, and legal change at the national level (see Subrahmanyam 2004). While the trajectory of Burundi must be understood in relation to that of its neighbours – foremost the

[6] It targeted the Tutsi minority in neighbouring Rwanda. This is an overly generalised account.

Democratic Republic of the Congo and Rwanda – this also suggests that the history of the legal field in colonial Burundi was primarily an *imperial* story, shaped by intra-imperial circulations across the Belgian empire, inter-imperial competition in the shadow of the British hegemon, and local struggles. This also foregrounds the question of legacy not as rupture but as 'revival' of earlier struggles and contradictions (Y Dezalay and Garth 2010). To trace the history of the Burundian legal field it is necessary, therefore, to relate it not only to the transformation of the national field of state power but also to the multi-scalar interconnections that have shaped the nationalised trajectory of Burundi over time (Steinmetz 2014; Bourdieu 2012).

This chapter identifies a defining thread in the relationship between the legal field and state power in Burundi, originating in Belgian colonial policies from the mid-1910s. What Mamdani (1996) describes as the 'decentralized despotism' fostered by 'indirect rule' was revived by each post-colonial regime. Each created its own despotism through fluid forms of legal pluralism enabling distinctions of race and/or ethnicity, urban and rural areas, and sometimes exacerbated by violence or ossified by post-conflict reforms and subjected to a regionalised 'politics of the belly'.[7] Shaped by a combination of ethnic identity and violence, virtue and economic extraction, as well as extraversion, the structure of the legal field has thus favoured successive systems of opposition in which lawyers have been positioned in relation to the state and external actors as middlemen of colonisation (be they White or racially and ethnically (re)defined 'customary chiefs'), ethnically co-opted into the state bureaucracy in the first decades of independence under a succession of military Republics, co-opted or 'NGOised' and politicised against the state in the post-1993 period, and, since 2005, co-opted as agents of an authoritarian state redeemed as 'developmental' following the transition from war.

The second section focuses on the positions and roles of legal intermediaries in colonial Burundi in 1916–62, a period that marked the beginning of globalisation in the country. Due to the limited first-hand data, it builds on secondary sources and interviews with agents (lawyers and historians), born during the mandate period, who witnessed and navigated the post-colonial history. It seeks to draw hypotheses about the impact of this early period on the structuration of the legal field in Burundi. Though the chronology is somewhat arbitrary, the sections are demarcated by events that have shaped Burundi's contemporary history. These sections are based on fieldwork in 2011–14 asking respondents about their educational, professional and social characteristics to reveal changes in the structuration of the legal field.[8] Section III, focusing on the first decades of independence, traces the structure of the legal field in the context of the military dictatorships in power between 1965 and 1993. Section IV recounts the effects on the structure of the legal field of the massive international investments responding to the 1993 massacres and the war that lasted until 2005. Section V concludes briefly with later developments, beyond the increasing violence of the current regime, pointing to a new wave of globalisation.

[7] 'Politics of the belly', a translation of the French 'politiques du ventre', refers to a Cameroonian expression popularised by Bayart (2009) to highlight the significance of idioms of eating and the belly to African conceptions of power and the importance of clientelism and corruption in power relations.

[8] I conducted about 70 interviews with practising lawyers (Burundians but also Europeans and North Americans in Burundi) as well as agents (nationals and internationals) working for NGOs and international organisations in Burundi. Except for well-known figures, all interviews have been anonymised to protect respondents

II. 1916–1962: UNRAVELLING THE LEGACY OF THE DEVIL'S 'PROMISE OF PROTECTION'

A. The Belgian Empire: A lawless realm?

It is suggestive of law's centrality to the colonial enterprise that victors' histories of independence in the post-colonial world were written by indigenous lawyers: Elias in Nigeria, Nehru in India, Mandela in South Africa. That lawyers could be 'freedom fighters' in the British and French empires but *not* in the Belgian would reinforce the common portrayal of Belgian colonialism as a lawless realm. The exceptional violence of Leopold II's colonial enterprise in the ill-named 'État indépendant du Congo' (ÉIC) pervades the image of a colonialism based on the 'colonial trinity' of state, missionary and private company interests (Turner 2007: 28): a 'paternalistic' model implemented by ruthless administrators, awash with rivalries among missionaries and lacking a social vision. The colonial history of the Congo's ill-fated neighbours, the Kingdoms of Rwanda and Burundi, commonly embraces this narrative. Those Kingdoms had been relatively protected from external intrusions until the nineteenth century: while there were slave raids from the Swahili of the coast, there was little Islamisation; the first European settlements were by Christian missionaries – officially to combat slavery – at the end of that century (Chrétien 2013).

Both countries were allocated to Germany at the Berlin conference in 1886 and, in 1903, effectively incorporated into the German empire, which relied on their hierarchical power structures to manage the two Kingdoms, under the name Ruanda-Urundi. Burundi had consolidated as a unified kingdom in the first half of the nineteenth century, with a society headed by a *mwami* (King) and organised along social categories, with the princely *Baganwa* at the apex (a specificity of the Burundian social structure, while the King's dynasty was drawn from the Tutsi in Rwanda), Tutsi and Hutu elites controlling hundreds of small fiefdoms consisting of a predominantly Hutu peasantry, and a group of outcasts, the Twa. World War I marked the second intrusion of globalisation: occupied by Congolese troops under the Belgian flag from 1916, they were formally entrusted to Belgium by the new League of Nations as mandate territories in 1922 and administratively annexed – transformed into *de facto* colonies – to the Congo in 1923.

The violence of the racial and ethnic discrimination by the Belgians looms large in the rejection of the legacy of colonialism. Singling out the Tutsi in Rwanda as an intermediary race (Chrétien and Kabanda 2013) between Europeans and natives has commonly been seen as a root cause of the 1994 genocide. Racial discrimination and ethnic hierarchies also dominated the organisation of justice in Burundi and determined the promotion (or demotion) of categories of middlemen in the colonial enterprise.

B. Middlemen of the Empire: Collaborators and Rebels

To make sense of the revival of this legacy, it is essential to trace how Belgian colonial strategies were reflected in the habitus of those designated as middlemen by the colonial administrator – whether White Europeans or indigenous chiefs – as well as in the *structure* of the legal field. Historiography has done much to dislodge the contradictory positions

and dynamics inherent in the Belgian colonial strategy. For instance, the new Burundian state negotiated its independence through Prince Rwagasore, the son of the *mwami*, Mwambutsa IV, along with a team of Belgian lawyers, whose nickname, the 'clan of the lawyers', undermines a historiography concerned with constructing Rwagasore as a national hero (Deslaurier 2013). There is very little information on these lawyers, who were decried by the colonial administration as sympathisers of the nationalist cause while being uneasily woven into the nationalist narrative as legal advisers, whose sole role was to assuage the distrust of the colonial administration and the distress of European traders based in Bujumbura (Deslaurier 2002). The message of their role for Europeans was clear: independence would not greatly affect the operations of indirect rule.

A couple of weeks into these negotiations a Greek national and two pro-Belgian Burundians, who were themselves middle-men of the Empire as chiefs and princes, assassinated Rwagasore. This triggered inter-ethnic rivalries among Tutsi and Hutu within the Union for National Progress (UPRONA), a political party created by Rwagasore as an inter-ethnic group, but which dominated political life until 1993 as a Tutsi-dominated party. Rwagasore's murder certainly helped make him a hero of the nation, the personification of a golden age of inter-ethnic harmony despite colonial rule. Yet the contradictions of colonialism were embedded in his own trajectory.

As the son of the *mwami*, Rwagasore epitomised a nationalist movement heralding the return of the King at the apex of Burundian society while simultaneously obscuring how the King's position had been simultaneously reinforced by collaboration with the Belgian administration and weakened by six decades of colonisation. Rwagasore himself was very much a product of 'indirect rule'. As a member of the princely elite of the *Baganwa*, he was educated at the École d'Astrida, founded by missionaries in the early 1920s with the endorsement of the Belgian administration to (re)create a class of 'chiefs' charged with dispensing 'customary' justice in rural Burundi and Rwanda. Although the Belgian project of creating a 'non-hereditary aristocracy' (Gahama 2001: 247) never succeeded, chiefs were handpicked by the colonial administration for their legitimacy as members of the *Baganwa* or Tutsi elites (considered racially superior by the Belgian rulers) and their subservience to the colonial administration. Reflecting the ambiguous role played by indigenous lawyers at independence in other colonial settings (Oguamanam and Pue 2006), Rwagasore was simultaneously collaborator and rebel, a necessary kingpin of the Empire while also – as the 'fighting brigade of the people' – a central factor in its demise.

C. The Belgian Colonial Model: Capitalist Extraction and Legal Pluralism

Recent research, most of it focused on the ÉIC and Belgian Congo, is tracing a story much more complex than the common dialectic between the *mission civilisatrice* advocated by King Leopold II and the *raubwirtschaft* (plunder economy) practised by the Belgian colonial ruler in Congo, Burundi and Rwanda (eg Plasman 2014). This scholarship suggests the need to analyse inter-imperial confrontations, intra-imperial circulations and struggles between (and within) the 'colonial state' and the *métropole* (see more generally Steinmetz 2014).

At the time of the Berlin conference, Belgium was a young nation, the product of European wars and inter-imperial confrontations shaped by the 'empire of the free trade'

imposed by the British hegemon, including the partition of Africa and the allocation of the Congo to Belgium. The position of colonial magistrates in the ÉIC, created as Leopold II's private domain, is emblematic. Law became a central terrain. Among other scandals, the Stokes-Lothaire incident in 1895, in which a Belgian administrator summarily executed an Irish missionary turned trader, epitomised ideological struggles – the right to a fair trial championed by the British, the fight against slavery invoked by the Belgians – which also expressed imperial confrontations.

Establishing a colonial legal system in the Congo was essential to resisting the power of European merchants, ie to evade the cost of free trade in the Congo imposed by merchants' justice. Seeking to counter the British imperial hegemon, Leopold II devised a Belgian variant: chartered companies, rule implemented through the military and missionaries, enabling a symbiosis between state and capital and using custom reinvented as law to achieve social order and present a civilising mission to the international audience.

In the face of a Belgian population opposed to the colonial enterprise, the handful of magistrates first sent to the ÉIC were from 'small' European countries (especially Italy and Norway). When the ÉIC was returned to the Belgian state in 1908, this colonial judiciary was gradually 'Belgianised' though very poorly staffed with about 400 magistrates sent to the Congo between 1908 and independence. A prosopography of these magistrates (Ngongo et al 2017) suggests they constituted a relatively homogeneous milieu, the majority originating from humanist legal networks in Liège. But the doctrine they produced reflected the ambiguity of their position. Developing a doctrinal body of customary law, these magistrates sought to position themselves in both the Belgian-style system of justice created for Europeans and the 'customary' judicial system designed for the indigenous population. Yet while the magistrates promoted a model of 'indirect rule' in contrast to the 'direct rule' implemented by Belgian administrators, their flagship journals[9] were funded by Belgian mining companies operating in Katanga, which considered the codification of customary law indispensable for the management of colonial Congo (Plasman 2014).

The rubber boom at the turn of the twentieth century profoundly shaped the colony, but the dominant role of the mining industry also contributed to the specificity of the Belgian colonial model (Etemad 2005). Called the 'Empire of the Générale' after the Société Générale, the first European bank established in Brussels in the early 1920s, Belgian colonialism built on the symbiosis of finance, corporate interests and the state, which (a uniquely Belgian feature) directly participated in mining corporations. This political economy is essential to understanding the position of Burundi and Rwanda in the Belgian empire. As in the Congo, the bulk of the metropole's colonial budget was devoted solely to the *Force publique* (police). Designed to fund the cost of administration themselves, the colonies were also shaped by a logic of extraction, producing primary goods for international markets, the profits of which could be infused into the Belgium economy. Although Burundi had experienced a mining boon in nickel, this was so overshadowed by the mineral resources of Katanga in the Congo that Belgium opted

[9] Notably the *Bulletin des jurisdictions indigènes et du droit coutumier congolais*, created in 1933 with the collaboration of missionaries to provide guidelines for the hundreds of 'indigenous' jurisdictions established in 1926 in the Congo and Burundi-Rwanda.

to maintain subsistence agriculture for the bulk of the Burundian population (who had to pay heavy tributes to the colonial administrator), settling on coffee (introduced by the Germans) and cotton as primary products intended for an export market and using the two territories as a reservoir of workers for the sparsely populated Katanga.

D. Indirect Rule in Burundi: Divide and Rule in the Shadow of Colonial Congo

Gahama's (2001) account of the mandate administration, which remains the most exhaustive source, suggests that the colonial legal and judicial strategy in Burundi and Rwanda emulated that in the Congo, with the racial/ethnic discrimination built on the social hierarchies of the two Kingdoms a local specificity. He is solely concerned with the co-optation (and eradication) of these hierarchies – what Mamdani (1996) has described as the elevation of 'custom' to a form of governmentality by the colonial state. But Gahama does not provide any information about the forms of government and justice devised in the new urban centres – especially Bujumbura, the capital – and among European merchants.

His account also overlooks the processual and conflicted nature of the colonisers' legal and judicial strategy. When Burundi and Rwanda were annexed to the Congo – an event that generated almost no debate at the League of Nations, despite these territories' protected status as mandates[10] – the dual judicial structure devised by Belgian magistrates for the Congo was extended to them. Until then the Congo's judicial system was totally separated from the Belgian. From the mid-1920s, the dual structure of civil law and customary justice was formally integrated into the hierarchy of Belgian courts, with the *Cour de Cassation* in Brussels at its apex. In practice, however, justice in the Congo remained an object of intense struggles between administrators and magistrates and mining corporations, which continued to invoke social disorder as an excuse for their private policing.

Similarly, governance in Burundi and Rwanda was contested by the Minister of the Colonies in Brussels, who favoured retaining the policy of indirect rule introduced by the Germans, and the *Commissaire général* of Belgian Congo, who advocated the application of direct rule. The indirect rule instituted in 1926 relied on chiefs as justices and administrators but also made the Belgian administrator the ultimate arbiter of justice. Socially, the system was more akin to direct rule: 'Belgium instituted an administrative apparatus devoid of "customary" agents considered to be uncooperative, thereby asserting full administrative powers' (Gahama 2001: 36). There were very few colonial administrators (just 56 in 1936), but the intense administrative reorganisation of the country (which reduced hundreds of fiefdoms to a few dozen administrative territories) ensured there were only 'chiefs who were either willing or resigned' (ibid: 62). The legal and judicial system in Burundi was both racialised and ethnicised, restricting some crimes to the indigenous population. The princely *Baganwa* and Tutsi elites, even when unruly, were made chiefs and sub-chiefs charged with dispensing customary justice.

[10] Only Germany protested. Belgium's position was strengthened by the fact that Britain was doing the same with Tanganyika.

Table 1 Judicial Organisation at the Beginning of (German) Colonisation

Family arbitration	among members of the family
'Hill' arbitration	through palavers, instruction and sentencing by the *bashingantahe*
Tribunals of the chief and sub-chiefs	appeals of hill arbitration sentences, before princes or local notabilities, with the *bashingantahe*
Tribunal of the King	tribunal of last resort, with the *bashingantahe* (royal advisers, mostly *Baganwa*)

Source: Gahama 2001.

Table 2 Judicial Organisation under the Belgian Mandate

Customary jurisdictions (indigenous populations)[11]	**Criminal jurisdictions (racial segregation; specific crimes by Africans)**[12]	**Civil jurisdictions (Europeans)**[13]
Tribunal de chefferie Chiefs, *bashingantahe* with only consultative role	*Tribunal de police* Territorial administrator Petty crimes by Africans	*Tribunal de district* Magistrates
Tribunal de territoire Presiding judge (Territorial administrator) and chiefs as assessors	*Tribunal de district* Magistrates All crimes by Africans Petty crimes by Europeans	*Tribunal de 1ère instance* Magistrates
Tribunal du mwami (King) Mwami presiding with Baganwa as assessors	*Tribunal de 1ère instance* Magistrates Some appeals for Africans *Cour d'Appel (Bujumbura)* Magistrates *Cour de Cassation (Brussels)* Magistrates	*Cour d'Appel (Bujumbura)* Magistrates *Cour de Cassation (Brussels)* Magistrates

Source: Gahama 2001; Cornet 2009.

III. 1965–93: IN THE SHADOW OF MILITARY REPUBLICS AND ETHNIC ULTRA-VIOLENCE: THE CHOICE BETWEEN CO-OPTATION AND MARGINALISATION

A. Ethnic Ultra-Violence: A Misleading Lens

> Nous avons reçu un entraînement à la souplesse. Un prévenu m'a dit que voir un avocat tutsi c'est comme si on était mordu par une vipère et qu'on allait se plaindre chez un python.[14]

[11] Non-customary jurisdictions (for Africans in the new urban centres) not included here: while they contributed to a further segregation (between urban and non-urban 'natives') they concerned very few people.

[12] Racial segregation was the primary criterion (with acute difficulties, notably for 'métis' individuals); repressive jurisdiction was progressively taken away from customary jurisdictions.

[13] Special jurisdictions for Europeans (Conseil de guerre; Conseil de guerre d'Appel) not included here.

[14] Author's interview with DN, a lawyer at the Burundi Bar, Bujumbura, 7 May 2013.

> [We were trained to be flexible. A defendant told me that to be assisted by a Tutsi lawyer was like complaining to a python about having been bitten by a viper.]

Talking about *ethnies* (ethnic groups) is taboo in Bujumbura, where all elites – administrative, legal, political, and commercial – are still concentrated. In rural areas, a euphemism is used for the waves of massacres that have plagued the country since independence – 'ikiza' in Kirundi ('great calamity') – a word that also invokes the collective memory of the persistent famines of the mandate era.

That a Bujumbura lawyer in 2013 should explicitly use the ethnic word to explain his position as a Tutsi lawyer for Hutu defendants was undoubtedly the result of the *juridical* process operating in the country since 2000. That year, the Arusha peace agreement officially ended the conflict that had begun in 1993. It was signed by all political parties and armed groups – except the National Council for the Defence of Democracy-Forces for the Defence of Democracy (CNDD-FDD), in control since 2005 – and redistributed power in the administrative, political, judicial and military spheres according to ethnic affiliation – a recipe known as 'consociational democracy' (Vandeginste 2010).

In 1996, the International Commission of Inquiry for Burundi had submitted a report to the UN Security Council[15] officially designating as 'genocides' two mass killings: the 1972 massacres of Hutu by the Tutsi-dominated army and the 1993 mass killings of both Tutsi and Hutu, perpetrated by the population, the Tutsi-dominated army, and Hutu-dominated armed groups. The 1972 events stayed under the radar of Cold War politics, whereas the response to the 1993 massacres was intensely internationalised. In 2003, the puzzle for the UN High Commissioner for Human Rights (which established its first local office in Bujumbura that year) and for the dozens of Belgian, French and US NGOs arriving in the country at the turn of the 2000s became how to deal with the thousands of Hutu who had been imprisoned since 1993 given that there were only a dozen lawyers called to the Burundi Bar, including just one Hutu.

The country's troubled past has had important consequences for the structure of the legal field since the early 2000s, as well as for other sectors of the public sphere where ethnicity has been ossified as an institutional resource. Contemporary scholarship, and the international policies implemented in the country over the past two decades, have been concerned primarily with countering the effects of the colonial legacy on a judicial system deemed either to have exacerbated ethnic violence or to be disconnected from local realities, notably the acute pressure on arable land by a population still depending on subsistence agriculture (Kolhagen 2009). Yet the violence of debates among historians and politicians about the 1994 genocide of Tutsi in Rwanda and the genocides in Burundi testifies to the fact that the politics of ethnic affiliation are also inter/national, part and parcel of a political controversy that was continuously waged in Kigali and Paris, Bujumbura and Brussels in the post-colonial period. It also exposes the pitfall of casually adopting a narrative that reduces collective violence, and with it legal politics, to ethnic *identity*.

[15] United Nations, 22 August 1996, pp 19, 75, S/1996/682.

The genocide in Rwanda in 1994 – and the massacres unfolding at the same time in neighbouring Burundi (which were less visible in the Western media) – sent a shock wave through the small world of historians (most located in Belgium and France) specialising in the Great Lakes region of Africa. Jean-Pierre Chrétien (eg 2012) argued against two persistent images of collective violence in that region and Africa generally. Like the first US intervention in Iraq, the 1994 genocide in Rwanda symbolised the 'CNN effect', displaying images of massacred bodies to Western viewers, almost in real time. These reinforced a persistent vision, embedded in decades of ignorance and Western racism, of 'machete violence' in Africa: an atavistic outburst devoid of political meaning. Criticism of this vision sought not only to integrate African massacres into the horrific litany of Western genocides but also to produce a historicised and political explanation emancipated from the legacy of colonial anthropology, which had been used to justify colonial racial and ethnic discrimination. Singling out the Tutsi as a superior, intermediary race – epitomised by the ethnic identity cards imposed by Belgian administrators in 1932 (Chrétien and Kabanda 2013) – had lasting effects, as did commingling the social fabrics of Rwanda and Burundi. The Hutu-led 'social revolution' in Rwanda in 1959, which brought a Hutu majority to power until 1994, had ripple effects in Burundi, where the persistent fear of a Hutu rebellion was used repeatedly to justify violent repression by the Tutsi-dominated army; and each violent episode had echoes in both countries.

Yet, Chrétien and Dupaquier (2007) underline how these flows and counter-flows of ethnic politics across both countries were also deeply connected to the structuration of the field of state power in Rwanda and Burundi. They start with the puzzle noted by a 1959 study of rural areas commissioned by the Belgian administration to prepare Burundi for independence: the 'problem' of relations between Tutsi and Hutu was not the same in Rwanda as it was in Burundi, where both groups seemed to enjoy the same social and economic rights. Rather, in Burundi it originated in abuses by the dominant class, the princely *Baganwa*, which had no equivalent in Rwanda (Deslaurier 2002: 15).

B. Reviving Colonial Legacies in the Structuration of the Field of State Power: Rent, Patrimonialism, Regionalism and Ethnicity

The 1972 massacres played a crucial role in crystallising ethnicity as a vehicle of violence and ethnic discrimination by operationalising it as a defining vector for the allocation of social, political, economic and symbolic power. Hutu elites were eradicated: either killed or forced to flee. These massacres, together with fears of a Hutu uprising fuelled by the military Republics that acceded to power from 1965, contributed to a process of conscientising ethnic divisions through violence. Indeed, ethnic violence justified the emergence of each military Republic through a coup d'état and the violent repression each orchestrated by means of military trials and summary executions in 1972, 1988 and 1991. Ethnic violence thus consolidated the despotic political system while reinforcing the dominance of a very small Tutsi urban elite over the field of state power: 'promoting tribalism as politics, members of the state apparatus endeavoured, unwittingly or consciously, to prevent the peasantry from building consciousness as a social class aware of its exploitation by the bourgeoisie connected to the state' (Chrétien and Dupaquier 2007: 39).

To trace the reciprocal effects of these dynamics between the fields of state power and law during this period it is necessary to look more closely at the structure of elites at independence. They exhibited the patrimonialisation of the state – what Bayart (2009) has termed the 'politics of the belly' – built on ethnic affiliation and extraversion. The colonial administration had initially resisted the emergence of elites (Gahama 2001: 247). Only in 1959 did the Belgians attempt to reverse this trend. However, efforts to 'Africanise' the administrative *cadres* abruptly ended with independence. The elites that competed for power at independence came from two main groups of secondary school graduates: the 'Astridiens' from the École d'Astrida for chiefs and the 'Séminaristes' from the Mugere seminary, originally designed to train local clergy but from which many school teachers and public servants also emerged.

Devolving education to missionaries had already been the practice in colonial Congo: the 1906 agreement between the Vatican and Brussels prioritised Catholic missions, which also held a prominent position in Burundi (while Protestant missions predominated in Rwanda). Conceived as a modality of social control,[16] education in colonial Burundi focused on the formation of the middlemen of the colonial administration:

> [G]enerally, [the missionaries] attempted to provide the bulk of the population with a limited education. [The colonial administration] tolerated the emergence of a small elite, but exclusively among the so-called customary leading class, who had to be trained in a separate school where they were to be educated to be subservient. (Gahama 2001: 245)

The dozen university graduates at independence (who did not include any lawyers) had been handpicked by the missions to receive their secondary education at the Collège du Saint Esprit, created in the 1940s for the best primary school graduates in Burundi and Rwanda. This Collège was conceived as a 'laboratory of inter-racial relations',[17] enrolling sons of Tutsi and Hutu from both Rwanda and Burundi, as well as Europeans. These endeavours contributed to the formation of a small 'bureaucratic-meritocratic elite' of 'semi-diploma' holders, most of whom served in the administration and army, often at high levels (Chrétien and Dupaquier 2007: 24).

The structure of this independence elite also exhibited the colonial administration's divide and rule strategy. General Michel Micombero, who took power through a coup d'état in 1966, was part of the small meritocratic elite formed by the Collège du Saint Esprit. Trained as an officer at the Royal Military Academy in Brussels, he also was the product of the Belgians' attempt to create an army from 1958 and pit a Tutsi elite against the princely *Baganwa* in order to weaken anti-Belgian factions within the nationalist movement. In so doing, the colonial administration built on the patrimonial competition among chiefs fostered by coffee production. Promoted as an export crop, coffee culture also relied on control of the population by chiefs motivated by their ability to extort rent through tributes. The 'Groupe de Bururi', which took power with Micombero and retained it under Colonel Bagaza in 1976 and Major Buyoya in 1987, came from the Bururi region, which had been sidelined by colonial strategies favouring the Muramvya region of the princely *Baganwa*.

[16] Based on the model devised for African-American pupils in the 1920s by the Phelps-Stokes Foundation in the US.

[17] Author's interview with EN, a lawyer at the Burundi Bar, Bujumbura, 21 December 2011.

Belgian colonial policies also extended the power of this small urban elite into the rural sphere. Between 1945 and 1952, colonial administrators introduced several reforms. The chiefs were replaced by elected mayors, while the institution of the '*bashingantahe*' (literally 'wise men'), which traditionally had played the role of countervailing power in administration and justice, was rendered impotent (Kolhagen 2012). Throughout the post-colonial history of the country until 1993, this ensured the monopoly of the country's single party, UPRONA, as the sole point of contact between the people and the state (Deslaurier 2003).

Thus, in Burundi, 'politics provide the opportunity and the means to *eat*' (Chrétien and Dupaquier 2007: 51, emphasis in the original). The state that emerged in the 1970s was intensely bureaucratic, dependent on rents from coffee as the country's primary export crop (Hatungimana 2008) but even more on development aid. Still provided mainly by the former *métropole*, the latter represented 30 per cent of the GDP in the early 1970s and ensured a tight Belgo-Burundian operational system in all public sectors. The fluid transition of the colonial administration into 'cooperation' ensured the lasting presence of *coopérants*, consultants, and religious missions.

C. Co-optation and Extraversion in the Structure of the Legal Field

The legal field was structured in the shadow of these dynamics. In 1962, the legal framework was officially 'de-racialised'. The law of 1962 on the organisation of justice dismantled customary law jurisdictions and universalised the colonial civil law system, previously reserved for Europeans. Since then there has been only one legal system, modelled on the Belgian and regulated by procedural rules inherited from the Germans in 1886. However, legal and judicial decolonisation was a slow process: the first codifications were undertaken only in the 1970s by Belgian consultants seconded to the Burundi Ministry of Justice. Belgian professors, judges and barristers continued to practise in Burundi after independence: 'the transition was soft'.[18] A law professor at the Université du Burundi recalled:

> The first elites were not lawyers. The colonial administrative authority did not favour the law. It was, rather, agronomy … . Law was considered a luxury. When I started there were, in fact, very few trained judges: only the presidents of tribunals had some legal background.[19]

Although nationalised, the post-colonial legal institutions reproduced the urban/rural divide constructed by the colonial regime, with professional judges sitting in higher courts in the urban centres and a mostly untrained staff in the lower courts, the 'Tribunaux d'instance', in the rural areas.

The Université du Burundi was created in 1964 as an extension of the Faculté Notre-Dame de la Paix in Namur, Belgium. The first cohort obtained their diplomas in 1974. As explained by a law professor at the Université: 'the first generation of Burundian lawyers, it was us in 1969. When I started studying law most of the classes were taught by Belgian

[18] Author's interview with GG, Professor at the Université du Burundi, Bujumbura, 3 May 2013.
[19] ibid.

professors …. It was clear that we were there to ensure the succession'.[20] This university, which monopolised legal education until the early 2000s and produced an average of 30 law diplomas a year, was also quickly affected by the ethnic and factionalist politics of the Micombero regime. From the 1972 massacres until the 2000s, over 90 per cent of law students were Tutsi, according to some reports (Vandeginste 2010: 97).

These dynamics of extraversion, clientelism and exclusion have heavily affected the structuration of the legal field, which was segmented between a small elite of law professors and a mass of magistrates distributed according to hierarchies determined by political, economic and ethnic resources. Law professors continue to construct their status by obtaining a PhD at a Belgian faculty. Mostly originating from the same region, Mwaro, they were suspected of bias against students from Bururi, the stronghold of the military elite, creating uneasy relations with the Micombero and Bagaza military juntas. Before the emergence of this academic legal elite, the Micombero regime had appealed to ideologically extremist lawyers, such as Artémon Simbananye, accused of orchestrating the 1972 purge against the Hutu. It is only in the Third Republic, following the 1987 coup d'état by Major Buyoya and some liberalisation, that law professors served as legal advisers on constitutional reforms.

The intensely bureaucratic nature of the state until the 2000s contributed to the rising demand for lawyers. A former judge, who entered the judiciary in 1998, explained: 'there was work for everybody, there weren't enough law professionals. We were not necessarily assigned where we wanted, but there was work for everybody'.[21] Executive control over the judiciary through a form of 'diffuse interference'[22] (selective promotions and demotions) was facilitated by the absence of an 'École de la magistrature', which made it easier to remove judges.

The political economy of a country whose people depend on subsistence agriculture limited the private market for legal services. As explained by a magistrate: 'the possibility that was offered to me was the judiciary. Because to be a barrister you needed to have economic resources'.[23] The repressive politics of the Micombero military regime, reproduced by the Bagaza junta, also made private practice a dangerous form of political opposition. Etienne Ntyiyankundiye was the first Burundian lawyer to be called to the Bar in 1966, after graduating from the Université of Namur in Belgium. His trajectory illustrates the Bar's relationship to the military juntas until the end of the 1980s. A friend of Micombero, with whom he had attended the Collège du Saint Esprit, Ntyiyankundiye was appointed Minister of Justice in 1969 before being disgraced. He was arrested in 1971 along with his clients – Tutsi military from the Muramvya region accused of having fomented a coup.

During the 1970s–80s, dozens of military trials were conducted to reinforce the military regimes, but defendants were assisted exclusively by foreign lawyers, mostly Belgian. Ntyiyankundiye explained: 'My choice was to stay out of politics … . My legal practice focused on businesses. Personally, I had hardly any income, I cultivated a plot

[20] ibid.
[21] Interview with AB, a lawyer at the Gitega Bar, Bujumbura, 7 May 2013.
[22] Interview with FN, a lawyer at the Burundi Bar, Bujumbura, 24 April 2014.
[23] ibid.

of land …. The avenue of justice was completely blocked'.[24] 'The monopoly of foreign lawyers'[25] – the Burundi Bar – had been founded around 1950, presumably to cater for European traders based in Bujumbura. Some of the Belgian lawyers associated with the 'clan of the lawyers' who assisted UPRONA in the negotiations for independence – such as Willy Vanderplancken – seem to have represented political defendants in the military trials conducted by the junta in the 1970s. This mobilisation of the Bar as a political platform through foreign lawyers later became a defining feature. Eric Gillet and Bernard Maingain, of the Brussels Bar, for example, often represented defendants in Rwanda and Burundi in political cases.

IV. 1993–2015: NAVIGATING THE (INTERNATIONAL) RULES OF ETHNIC REDISTRIBUTION

A. Burundi's Third Wave: Human Rights and Ethnicity as Mediums of Political Opposition

Major Buyoya, who installed himself as president in 1987 after a military coup, embodies the ambiguity of what has commonly been dubbed the 'Third Wave' of global democratisation. A native of the Bururi region like his predecessors, Buyoya continued to deploy the repressive toolkit of previous military juntas, suppressing a 1988 attempted Hutu uprising with extreme violence. But Buyoya also announced an agenda of political liberalisation and better Hutu-Tutsi relations. Indeed, he justified his coup d'état against Bagaza in the name of civil liberties. At a French-African summit in 1990 in La Baule, French President Mitterrand had announced that aid would flow 'more enthusiastically' to African countries taking steps towards democracy, effectively introducing conditionality in the disbursement of development funds. Belgium did not follow suit. Nonetheless, as Buyoya recalled: 'we were not subjected to the France-Africa summit at La Baule but we adapted ourselves to the political context' (Ngabire 2015).

This liberalisation policy had important domestic effects. The legalisation of opposition parties in 1991 fostered a rapprochement between Hutu and Tutsi. The creation of the Front for Democracy in Burundi (FRODEBU) by Melchior Ndadaye encouraged the return of the Hutu diaspora, who had fled the country after 1972. Exiled in Rwanda, Ndadaye epitomised the new political generation formed by an educated Hutu elite organised into resistance movements. Buyoya also appointed a commission tasked with drafting a new constitution, adopted by referendum in 1992, which called for a non-ethnic government with a president and a parliament.

In practice, however, the coupling of structural adjustment policies and political liberalisation echoed the contradictory dimensions of the impact of neo-liberal globalisation found elsewhere in the world during this period. While opening the possibility of a domestic space for human rights activism attuned to the international market for human rights, liberal reforms in Burundi also deepened the capacity of the state to shape and

[24] ibid.
[25] Interview with E Ntyiyankundiye, a lawyer at the Burundi Bar, Bujumbura, 21 December 2011.

neutralise political opposition. The practice of political interference in civil society even bears its own term in Kirundi: 'nyakurisation'. The Ligue Iteka, the country's first human rights organisation, is emblematic of this contradiction. It was created in 1994 as a sister organisation of the International League of Human Rights and became both a platform of political opposition and a site of professionalisation for new generations of human rights activists. Yet, it was rumoured to be a stronghold of FRODEBU. Thus, the very year of its creation, a concurrent organisation, the Ligue Sonera, was launched to compete for the same pool of international resources and funding as the preserve of close affiliates of UPRONA and members of the old Tutsi legal elite at the Université du Burundi.

Similarly, these liberalisation policies had a limited though symbolic impact on the social structure of the legal field. Buyoya's politics of inter-ethnic appeasement sought to transform the ethnic fabric of the judiciary by nominating Hutu judges. But that had little effect on the Burundi Bar, which remained the preserve of a dozen Tutsi lawyers in the early 1990s. Fabien Segatwa, the first Hutu lawyer called to the Burundi Bar in 1993, had lived in exile in the Democratic Republic of the Congo since 1972. He recalled: 'to encourage the return of the elite Hutu diaspora, the government and the UN High Commissioner for Refugees organised a visit of Hutu elites to campaign for their return from neighbouring countries'.[26] His own swearing in as a barrister was actively resisted by the Bar, which defended its monopoly over the very restricted market for private legal practice.

B. The Post-1993 Crisis: A Legal Boom in the Shadow of the Geopolitics of the 'Bottom-up' State

Democratic elections in June 1993 were won by Melchior Ndadaye, the first Hutu president. But this radical change in Burundi's political landscape was abruptly terminated by his assassination just months later by segments of the Tutsi-dominated army. Ndadaye's murder triggered large scale massacres and the country's descent into civil war.

The 1993 crisis in Burundi bulked large in the formidable expansion of international markets for conflict resolution. Burundi became the testing ground for novel forms of external intervention, involving INGOs seeking to promote rule of law reforms 'from the bottom up', sidestepping domestic state authorities and operating outside official diplomatic and military channels (S Dezalay 2016). These internationalised policies were shaped by post-Cold War politics and the opening of new non-governmental markets from the early 1990s, encouraged by transformations in international development politics, notably the emphasis on preventing violent conflict (S Dezalay 2011).

International reaction to the 1993 crisis was deeply shaped by the parallel disaster of US intervention in Somalia and the months-long hesitation of the US and other Western powers in reacting to the Rwanda genocide. The ad hoc solution was to involve NGOs, such as the US-based Search for Common Ground and the British International Alert, which specialised in 'conflict resolution', to rebuild the rule of law and reform judicial institutions outside official channels of intervention. Decentralised and non-governmental,

[26] Interview with Fabien Segatwa, lawyer at the Burundi Bar, Bujumbura, 16 April 2014.

these were a cheaper option than creating an international criminal tribunal, as in the case of Rwanda. They also enabled the disbursement of development monies outside official state channels in a war zone and in the face of the embargo imposed on Burundi following Buyoya's second coup in 1996.

These international endeavours were also integrated into a revival of colonial and autocratic politics. Indeed, Burundi's domestic response to the 1993 crisis was judicial. Following the second coup d'état by Major Buyoya in 1996, judicial proceedings were begun against those suspected of assassinating Ndadaye (before the Judicial Chamber of the Supreme Court) and those suspected of participating in the subsequent massacres (before the Criminal Chambers of the Court of Appeal) (Vandeginste 2010: 87ff). Previous attempted coups and uprisings had been prosecuted before military courts, usually on sedition and rebellion charges. The novelty here was the imprimatur of a genocidal wording in the judicial response to the 1993 crisis. This reflected pressure at the domestic level from victims' associations, including the extremist Tutsi defense organisation AC-Génocide. Thousands of suspects, predominantly Hutu, were arrested in a wartime context immediately after the massacres.

A prominent actor in the internationalisation of these post-1993 trials (commonly known as the *contentieux de 1993*), the Belgian NGO Avocats Sans Frontières (ASF), had been created in 1992 in collaboration with the International League of Human Rights. Its initial objective was to send lawyers – following the *sans frontières* approach of Médecins Sans Frontières (MSF) – to observe trials in autocratic contexts, especially in Africa. Following the Rwanda genocide, ASF shifted focus to criminal defence in the context of the ad hoc International Tribunal for Rwanda and the defence of Hutu defendants in the *contentieux de 1993*. According to a former director of the Belgian section of ASF, access to Burundi was eased by a 'good conjuncture': the crisis of Belgian development aid caused by the suspension of Belgium's development programmes in the context of the wars in the Democratic Republic of Congo, Rwanda and Burundi. This was coupled with the desire of then Development Minister Réginald Moreels, former director of MSF-Belgium, to reengage in the Great Lakes region through informal efforts to implement justice reforms.[27]

Another core organisation in these efforts, the UN High Commissioner for Human Rights, established its first office in Burundi to assemble a team of lawyers, international and local, to represent the Hutu defendants of the *contentieux de 1993*. In the wake of these initiatives, ASF appealed to international lawyers to intervene in the prosecutions and created rosters of domestic lawyers, whom they trained and assisted.

These endeavours had an enormous impact on the legal field in Burundi. There were only ten lawyers called to the Burundi Bar in 1993. There were over 400 in Bujumbura by 2000–01 and several hundred more in the competing Gitega Bar created in the mid-2010s. As expressed by a lawyer at the Burundi Bar: 'ultimately, Avocats Sans Frontières has created the market for barristers'.[28] The salary international organisations paid to lawyers involved in the *contentieux de 1993* – 1 million FBU per month as opposed to roughly 58,000 FBU for a higher court magistrate – played a large role in making private

[27] Interview with Luc Walleyn, former president of ASF, Brussels, 13 December 2012.
[28] Interview with WR, a lawyer at the Burundi Bar, Bujumbura, 3 May 2013.

law practice an attractive market and fostering what one lawyer described as the 'mental gymnastics'[29] necessary to overcome the resistance of Tutsi lawyers to defending Hutu. The expansion of the pool of private legal practitioners is also attributable to the devaluation of justice institutions. The judiciary and its infrastructure had been relatively unscathed by the 1993 crisis and resulting war, compared to those in Rwanda, but they were totally discredited by the peace process and the legacy of political subservience and corruption. As encapsulated ironically by a former magistrate called to the Burundi Bar at the end of the 1990s: 'the cow speaks better French than the barrister'.[30]

The 2005 general elections organised by the Arusha peace process enabled the ascendance of the CNDD-FDD (a former Hutu-dominated rebel group transformed into a political party). Its victory signalled the entry into the political field of 'bush elites', whose symbolic capital is derived mostly from fighting as members of Hutu-dominated rebel groups during the 1993–2003 war, thereby constituting a break with established elites, including those of the Catholic Church, symbolised by the fact that the current ruler, Pierre Nkurunziza, is a self-proclaimed 'born again' Christian. The change of regime also meant that 'a whole market for training new elites was opened'.[31] The long-standing negotiations between the government and the UN over the transitional justice mechanisms planned by the Arusha agreement (Lima and S Dezalay 2015), together with the expansion of the market for legal education, also contributed to the legal boom, reflected in the creation of dozens of domestic law-oriented NGOs.

C. The Private Market for (Inter)national Legal Practice: A Buffer between Foreign Diplomacy and Despotic Rule

These dynamics have fostered the emergence of a new generation of Burundian lawyers who are now called to the Bar right after graduating, rather than starting their careers in the judiciary. However, this legal boom has not been accompanied by an expansion of the private legal services market. This younger generation usually combines solo private practice as barristers with positions as human rights advocates within domestic NGOs and contracts as consultants for INGOs and international organisations. This domestic market therefore suffers from a double bind: dependent on and vulnerable to the volatile demand from international donors and organisations and weakened as a buffer between international diplomacy and a repressive government.

This contradictory position affects INGOs within the Burundian market. A former ASF director recalled the 'war of position' among INGOs competing for the same EU sources of funding and the difficulty of adapting to donors' short-time horizon and changing priorities.[32] Vulnerable to shifting donor demands, INGOs also occupy an insecure position in relation to local authorities. To explain the lack of international reaction when the CNDD-FDD abruptly terminated the post-1993 trials and amnestied

[29] Interview with DN, a lawyer at the Burundi Bar, Bujumbura, 7 May 2013.
[30] Interview with AN, a lawyer at the Burundi Bar, Bujumbura, 2 May 2013.
[31] Author's interview with JM, Thematic Expert, ASF, Brussels, 13 June 2013.
[32] Interview with LdC, Coopération technique belge, Bujumbura, 22 April 2014.

former Hutu rebel groups, another Belgian ASF employee explained: 'the problem is that political advocacy has been left to NGOs, while donors embrace a technical approach [to development aid] without any political capacity'.[33]

The result of these international rule of law efforts has been a haphazard, decentralised web of small-scale projects, vulnerable to international policy change and domestic political transformation. International initiatives did not seek to modify the framework of the *contentieux de 1993*, which primarily targeted the Hutu. The increasingly repressive politics of the CNDD-FDD government since 2005 have further accentuated a kind of 'tango dance' among international diplomats intent on maintaining the appearance of good relations with Burundian authorities in the face of an increasingly violent regime. In order to bypass a judicial system that is hard to reform because of political resistance and continuous diffuse interference by the executive, international donors, ironically, are now turning to 'informal' justice, notably by seeking to revive the *bashingantahe* (Deslaurier 2003).

These dynamics are also accentuating the role of the Bar and law-oriented NGOs as platforms of political opposition. The current regime is reviving the long tradition of political interference in civil society. The Burundi Bar, still seen as a stronghold of the Tutsi elite, has been paired with the Gitega Bar, allegedly infiltrated by CNDD-FDD. This contest within civil society conceals a professional competition: efforts by the Bar to preserve its monopoly over the very limited domestic market for private legal services. It also underscores the persistent legacy of the repressive practices of the military juntas, notwithstanding the outsider and Hutu identity of CNDD-FDD. Yet the Bar's position as an opposition platform is experiencing transformation under the impetus of regional dynamics. Since the integration of Burundi into the East African Community in 2007, the East African Court of Human Rights has regularly been used by prominent political lawyers at the Burundi Bar, in association with Kenyan and Tanzanian law societies. Integration into the East African Community may also mark the gradual opening of a business hemisphere within the Burundi Bar, evidenced by the emergence of firms with several associates (still a rarity in Bujumbura) catering to East African and Asian clients.

V. CONCLUSION 2015–

Since Nkurunziza's bid for a third presidential term in 2015 and his reelection in 2015, Burundi has again descended into a cycle of violence. But a quiet transformation is unfolding in parallel: viewed as a pariah by the diplomatic and development aid community, Nkurunziza's regime is being reinstated as a 'developmental' partner by mining corporations and European states, especially Germany, intent on exploiting Burundi's mineral resources (S Dezalay 2018), making the country once more a 'petri dish' where 'mobile, globally competitive capital … finds minimally regulated zones in which to vest its operations' (Comaroff and Comaroff 2012: 13).

[33] Interview with RC, Senior Justice Advisor, ISSAT-DCAF, Brussels, 13 June 2013.

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