Index

Adversary Legal Process, 60, 198, 203
and truth-seeking, 308, 358–60
Afghanistan Situation, 178
Amnesty International
Ituri reports, 145
submission in Bemba trial, 395
Armed Conflict
classification of, 238, 251, 273–8
current relevance, 276–7
distinguished from random violence, 269
evolution of, 17–18, 166, 259, 277
in parochial networks, 111–12
Katanga testimony, 332–3
Bemba et al. Trial
appeals phase
commander’s duties, need for specificity,
414–22
dissent, 422–5
facts and circumstances, fairness aspects, 410
focus on specific criminal acts, 413
links to Ngudjolo appeal, 378
modes of judicial review, 200
overturning convictions, 378, 407
special hearing, 406, 414, 425–33
pre-trial phase
avoiding cumulative charges, 400
changing mode of liability, 376
command responsibility, 195
criminal intent, 396
knowledge standard, 399
shift to command responsibility, 394–400
short summary, 375–6
trial phase
commander’s duties, scope of, 414–22
final outcome on knowledge standard, 404
parsing Confirmation decision, 402–4
Regulation 55, 400–5
Bensouda, Fatou, 46, 293
investigating Bemba et al., 436
Central African Republic (CAR)
background, 12
Bozizé, François, 381, 383, 395
investigations by local NGOs, 381–2
Patassé, Ange-Félix, 380–1, 395
political coup (2003), 380–1
poverty and health conditions in, 384
Bemba, Jean-Pierre, 10, 30, 83
financial status, 380, 441
claims against ICC, 380
post-release plans, 380
release from detention, 446
role in national politics, 376, 384
Bemba Trial, 30–1, 56–7
appeals phase
commander’s duties, need for specificity,
444–22
dissent, 442–5
facts and circumstances, fairness aspects, 410
focus on specific criminal acts, 413
links to Ngudjolo appeal, 378
modes of judicial review, 200
overturning convictions, 378, 407
special hearing, 406, 414, 425–33
pre-trial phase
avoiding cumulative charges, 400
changing mode of liability, 376
command responsibility, 195
criminal intent, 396
knowledge standard, 399
shift to command responsibility, 394–400
short summary, 375–6
trial phase
commander’s duties, scope of, 414–22
final outcome on knowledge standard, 404
parsing Confirmation decision, 402–4
Regulation 55, 400–5
Bensouda, Fatou, 46, 293
investigating Bemba et al., 436

report on CAR victims, 382, 387–8
second self-referral to ICC, 181, 383
sectarian conflicts in, 383–4
self-referral to ICC, 177, 382
political aspects of, 386
Special Criminal Court established, 385
child soldiers, 20, 24, 42–3, 45–9, 115
credibility issues
Katanga and Ngudjolo trials, 296
Lubanga trial, 45–50, 231–3, 237–42
gender issues, 201, 252
sociological perspectives, 255, 270
statutory provisions, 187, 250–2, 277
Comoros (Union of) Situation, 178
Congo (Democratic Republic of)
amnesties, use of, 71
as ICC situation, 71–5, 202
Congo Wars, 66–8, 81–3
Intercongolaise Dialogue, 76, 81, 99, 102–3, 143, 376
international peacekeepers, 69–70, 83–4
Ituri strategies, 53
Mobutu period, 82, 322, 376
mortality figures, 68, 84, 132
self-referral to ICC, 70–7, 176
state collapse, 66–8, 77–9
Cotte, Bruno (Judge), 201, 314
leading questions to Katanga, 330
skeptical of “trust” relationships, 329
offences against humanity
contextual elements
Bemba trial, 425–33
Katanga trial, 337–40
definition, 186
Labanana Trial, abortive attempt to include in, 278
criminal responsibility, 55, 58
and victims’ justice, 150
command responsibility, 390–1
commander’s duties, 415
cultural adaptations, 260–3
ICC definitions, 189, 279, 331
Katanga Trial, 342–9
Labanana Trial, 253–66
NGO assessments of, 153
paradigms and presumptions, 252–3, 342–9
cultural difference, 52
live witnesses, 212–13, 223
outmoded legal paradigms, 253–6
paradigms of responsibility, 261–3
Katanga trial stereotypes, 348
Defense legal strategies, 50–1, 198
Bemba Defense response to Bemba et al., 444
Bemba trial, 424, 434–6
Katanga trial, 314
Labanana trial, 221–2, 232–3, 256–7
Ngudjolo appeal, 357
evidence
“holism” debate, 245–6, 360–8, 426–31
circumstantial evidence, 241, 268, 427–31, 432
disclosure rules, 224–31
documents
admissibility, rules on, 213–14
Labanana trial, 215–16
soap letter (Katanga trial), 364–8
duties of ICC Prosecutor, 228–9, 308
exonerating, 229, 308
trial chamber duty to consider, 417
from conflict zones, 95
inference chains, use of, 266–71, 342–9, 444, 432
pre-trial scrutiny of, 396
mathematical rubrics, 249, 416, 427
NGO reports as, 229, 397–8
paradigm chains, 271, 342–9
sexual crimes in Katanga trial, 348
Rules of Procedure and Evidence, 228
trial chamber practices, 198, 243–5, 339–41, 360–8
videos, 213–14
Labanana trial, 216–17, 242, 246–8
witness testimony, 212–13
fact-finding
Bemba trial
presumption chains, 426–31
cautions and circumspection, 243, 249–50, 296, 301, 341, 417
complex judgments as facts, 313, 413–14, 426
jurisprudential issues, 197, 266–7, 297, 424
Katanga trial
presumption chains, 342–9, 350
Labanana trial, 224, 237, 271
presumption chains, 266–71
material and subsidiary facts, 413–14, 426
Ngudjolo trial
sharp debates on appeal, 354–5

Index

© in this web service Cambridge University Press
www.cambridge.org
Index

fact-finding (cont.)
paradigm-driven results, 339–41
subjective authority, 213–14, 222, 243, 244–5, 341, 417
fair trial provisions
Bemba trial
specifcity of charges, 406–13
effect of mid-trial notifications to Defense, 411–12
facts and circumstances, in relation to, 379
Lubanga trial
abuse of process motion, 236–7
Ngudjolo trial
fairness for Prosecution?, 356–60
FIDH
activism in CAR, 177, 377
naming CAR suspects, 377
reports on CAR victims, 377, 382
Fulford, Adrian (Judge), 7–8, 45–9, 264, 273, 311
genocide
Convention on, 1948, 140, 184
definition, 194–5
in Sudan Situation, 185
Hochschild, Adam, 23, 77
human rights
and crimes against humanity, 185–6
evolution of, 139–40
global justice norms, 139–42
Responsibility to Protect (R2P), 141
role of prosecutions in, 137
Universal Declaration 1948, 140
victims’ rights, 154
Human Rights Watch
“Covered in Blood” report, 70
as breakthrough study, 144–8
classification of armed conflict, 275
first-person accounts, 133–5
Katanga and Ngudjolo trials, 323
Lubanga trial, 218, 229
table of acronyms, 149
Carnage of Gold report, 72
report on Uganda in Ituri, 132
reports prior to “Covered in Blood,” 147
ICC
Assembly of States Parties, 171
complementarity, 35, 37, 156, 165–6, 192
crime definitions, 182–8, 259
agression, 187–8
crimes against humanity, 185–6
genocide, 184–5
war crimes, 186–7
deterring crime, 26
faith and skepticism, 27–8, 167–9, 454–5
formal investigations, 37–8
general mission, 35, 140, 165
historical background, 35–20, 138
human rights, relation to, 157–9
jurisdiction, 99, 180–8
member states, 171–2, 182
operational functions, 164–7, 195
precedents in, 17, 200, 378, 431
relation to United Nations, 173–4
situations, 37–8, 40–1, 170, 177
referrals, 173
self-referrals, 76–7, 179
tensions and conflicts, 5–6, 59–60, 162–3,
173–5, 181, 191, 201, 203, 284–5, 308, 424
ICC Judges, 12–13, 33–4, 192–201
acquittals, consequences of, 306–7, 352
appeals phase, 199–201
final judgments, 200
modes of judicial review, 199, 213–4,
nominalism in Bemba trial, 413–14
reviewing acquittals, 357–4
checks and balances, 192
oversight of Prosecutor, 193
paradigms and presumptions, 252–3,
342–9, 397
pre-trial phase, 193–6
civil law elements, 104
Confirmation of Charges process, 195
crimes and circumstances, concept of,
196, 310
crimes and circumstances, fairness aspects,
406–13
reshaping Bemba narrative, 397–8
role of Defense during, 196
trial phase, 196–9
“holism” debate, 245–6, 360–8, 426–31
civil law elements, 108
enhancing own authority, 231, 308
evidence, 197
fact-finding, 197, 213–14, 249–50
main tasks, 197
motions for abuse of process, 237
recasting trial narratives, 309–13
reparations, 199, 283–9
Index

ICC Prosecution
arrest warrants, 176, 190
Article 70 offenses
Bemba et al. trial, 437
danger of show trials, 443–7
Kenyan arrest warrants, 190
process questions, 438
Prosecutor’s exclusive powers, 439
reform proposals, 443
resisted in Lubanga trial, 438
Bemba et al. trial
investigation timeline, 436
stiff sentences requested, 446
Bemba trial
resistance to command responsibility, 394–400
CAR, delay in investigating, 190, 382, 384–5
investigations, 51–2, 68–75
CAR, 387
intermediaries, 226–7
judicial oversight, 196
Katanga and Ngudjolo trials, 295–9
Lubanga intermediaries crisis, 231–5
Ituri, focus on, 71–3
field investigations, 218
master narratives, 42–3, 73–5
changed by Bemba Pre-Trial Chamber, 395
collapse in Katanga and Ngudjolo trials, 305
ethnic conflict theme, 295, 350
Katanga and Ngudjolo trials, 293, 300
Lubanga trial, 217–20
narrow framing of cases, 31–2, 73–5, 292–3
powers and constraints, 172–80
admissibility, 172
arrest warrants, 193
gravity and interests of justice, 173
proprio motu, 174–5, 193
triggers, 173–5
when, where, whom?, 180–2
preliminary examinations, 38, 69, 177, 385
Regulation 55
opposition in Lubanga trial, 280
reports from NGOs, 147, 377
intermediaries (investigations), 49
Katanga and Ngudjolo trials, 296, 299
Lubanga trial, 223
International Crisis Group, 145
Ituri
armed groups, 115–17
as described by NGOs, 148–51
recruitment, 118–19
Bogoro attack, 295, 301, 332, 338–9
current conditions, 23–5, 65–6, 95
ethnic conflicts, 74, 103–4
HRW reports on, 133–6
UN interpretations, 336
ICC investigations, 10–11, 71–3, 95–7, 181, 298
Ituri Pacification Commission, 103, 124–5, 323
Lendu communities, 319, 326, 333
local complexity, 93–4, 212, 294, 299
March 2003 events, 300, 303, 323, 368
network patterns, 106–8
NGO investigations, 144–8, 324
Nyankunde attack, 133–5, 350
political dynamics, 97–104
Ivory Coast Situation, 175, 387
ending Gbagbo and Blé Goude cases, 406
Kabila, Joseph, 82, 99, 128, 143, 176, 376
Katanga, Gemain, 10, 40, 55, 126
alleged confession, 325
coordinator, role of, 305
March 2003 events, 327
mentioned in NGO report, 151
return to Congolese custody, 292
the name “Simba,” 320
trial testimony, 314
“trust” connections, 329
Lendu communities, 319, 326, 333
personal background, 318–20
speaking in French, 318
Katanga Trial, 29–30, 54–6
short summary, 291–2
trial phase
abandoning sexual crimes, 345–9
confusion over military objectives, 331–3
contrast with Ngudjolo, 304
charges charged, 337–8
criminal responsibility, 342–9
criticisms of ICC Prosecutor, 298
facts and narratives, 313
judicially crafted criminal roles, 335
judicially crafted narrative, 331–5
managing facts and narratives, 309–13
moral paradigms, use of, 343–5
plan-within-a-plan, 335
presuming knowledge of the crimes, 345
Katanga Trial (cont.)
questions from the bench, 328–31
Regulation 55, 199, 304–18
Regulation 55 fairness issues, 314
Regulation 55 notification, 306
soap letter, 304–8
Kenya Situation, 42, 174
ending Muthaura and Kenyatta cases, 437
ending Ruto and Sang cases, 405, 437
new arrest warrants for witness
reconsideration, 437
pre-trial rejection of Kosgey and Ali
Kilolo, Aimé, 434–5, 445
Kisembo, Floribert, 72, 126, 271
Kivu Provinces (Congo), 66–7, 85, 144
violence patterns, 95, 336
Lavigne, Bernard, 226, 229
Le Fraper du Hellen, Béatrice, 235
legality
and faith, elements of, 162–4, 447
dynamic properties, 162–4, 203
fair trial principles, 314–18
final judgment in, 160–1, 200
in ICC trials, 334–4, 102, 204–4
Regulation 55, 306–7
nullem crimen principle, 182, 201
relation to moral purpose, 159–60, 308
rule of law, 170
show trials as contrast, 160, 443–7
Libya, 350
Libya Situation, 35, 42, 173
Lompondora, Jean-Pierre Molondo, 65, 99,
113, 225
Lubanga, Thomas, 8–9, 40, 43, 76,
99, 256
Lubanga trial, 8, 9, 40, 41, 43, 76,
99, 256
Lubanga trial, 9, 29
appeals phase
interpreting Regulation 55, 280
reparations decisions, 285
reviewing facts, 246–8
child soldiers charges, 42–3
gender issues, 202, 219
Ituri investigations, 225–7
opening session, 7–8, 20–1
pre-trial phase
armed conflict classification, 275–6
arrest warrants, 220
control-over-the-crime doctrine, 194, 220
short summary, 211–12

trial phase
abuse of process crisis, 256–7, 356
adding sexual charges, 278–83
armed conflict classification, 277–8
child soldiers charges, 237–40, 250–2
criminal responsibility, 352–66
criticisms of ICC Prosecutor, 227
disclosure crises, 230–1
documents, as evidence, 215–16
fact-finding, 224, 237
insect video, 216–20, 248
intermediaries, 223
intermediaries crisis, 234–5
intermediaries decision, 235
intermediaries, sanctions on, 438
judicial divide on modes of liability, 263–4
Le Fraper du Hellen letter, 235
moral paradigms, use of, 264–6
Regulation 55, 202
reparations, 283–9
videos, 242
witness credibility, 214–15, 223

Mbarushimana, Callixte, 73, 195
militias, 32, 75
acronyms applied by NGOs, 149
Milosevic, Slobodan
ICTY trial, 153–4
MLC, 86
deployment in CAR, 376, 395, 415
in Ituri, 377
internal structure, 395
national power-sharing, 126
origins, 76, 376–7
Mobutu Sese Seko, 67, 77, 322, 376
modes of liability
Bemba et al., presumption chains, 444
collective action issues, 183, 275, 332–3
command responsibility, 57–8, 377–8,
389–93
easier convictions?, 391
fairness issues, 389–421
history, 390–3
knowledge standard, 390, 399
knowledge, types of, 400–5
necessary and reasonable measures, 415
contributing in any other way, 331
control-over-the-crime doctrine, 189
abandoned in Katanga trial, 306
African adaptations, 261–3
Bemba trial, 309
Index

Labanga trial, 226
skepticism of legal process, 167
victims as strategic focus, 152–4
Ngudjolo, Mathieu, 10, 30, 40, 55, 127
alleged confession, 300
and March 2003 events, 324
asylum applications, 292
testimony, alibi, 297–8
the name “Chui,” 322
trial testimony
personal background, 320–2
Ngudjolo trial, 29–30, 54–6
appeals phase
obscurities in trial judgment, 333–4
presumption of innocence debate, 303
short summary, 291–2
trial phase
criticisms of ICC Prosecutor, 298
doubt versus truth, 302–4
Ngudjolo trial, 451–4
short summary, 454
Naganda trial, 10, 31, 66, 72, 127, 148
Nuremberg trials, 15–17, 152, 163
Nyamwisi, Antipas Mbusa, 98, 99, 107, 113, 127, 294
alliance with Lendu, 332
and national power-sharing, 322
Ongwen, Dominic, 180
Osie, Mark, 261–3
politics and law, 32–3
basis for distinction, 204–5
legalism critique, 167
reduction of law to politics, 161, 203
presumption of innocence, 221
and reasonable doubt standard, 372, 432
Bemba appeals judgment, 420
in relation to truth, 304
Ngudjolo trial, 303
Ponnier, Gérard, 241, 242, 258, 265, 268–70
RCD, 86–8
origins, 76
RCD-ML
alliance with Lendu, 294, 332
governing Ituri, 97–100, 256
internal conflicts, 99–100
and national power-sharing, 126
reasonable doubt standard, 204
alternative inferences, role of, 352, 431

origins, 260–1
presumption chains, 268
joint criminal enterprise (JCE), 188, 258
Katanga as coordinator, 328–31, 343–5
new characterization in Katanga trial, 305
paradigms, historical, 253
paradigms, moral, 253–60, 342–9
perpetration, 54–5, 255–60
indirect co-perpetration, 293
risk analysis in, 264–6, 345

Rome Statute provisions, 186–9, 252, 259, 306, 393
morality and law, 17, 57, 60
contrasts with legality, 160–1, 168, 201
impunity as moral imperative, 155–6, 276, 306–7
victims’ justice, 154
Moreno-Ocampo, Luis, 43, 47, 170, 293, 384–5
Museveni, Yoweri, 176, 179, 325

Naipaul, V. S., 322
network structures
and military command structures, 109, 116–17, 123–4, 332–3
comparative studies, 107–8, 119–22
contrast with NGO paradigms, 148–51, 215
global trading networks, 66, 68, 79
grassroots dynamics, 111–12, 117–19
Hema patronage network, 106, 111–12, 114–15
human rights advocacy networks, 139
Ituri alliance structures, 105–10
Lendu networks, 125–6, 293
“trust” relationships, 329, 334
courtroom debates about, 288
Katanga’s perspective, 319, 332–3
Nande trading networks, 97, 106, 204
network instability, 108, 119, 254–6
parochial groups, 50, 107, 215
violence patterns, 113–17, 122–3
NGOs
CAR investigations
feeding ICC narratives, 377
Congo reports, 132
status as evidence, 238
evolution of global NGOs, 141
Ituri investigations, 74–5, 96–7, 143–4
feeding ICC narratives, 219, 253, 257–8, 294
Lendu organizations, description, 149–51, 298

© in this web service Cambridge University Press
www.cambridge.org
reasonable doubt standard (cont.)
Bemba trial, 420
and presumption of innocence, 372
Bemba trial
‘material’ facts, 413–14
Katanga trial, 304
alternative inferences, 349–53
Lubanga trial, 271–3
Ngudjolo trial, 304
sharp debates on appeal, 354–5
strategic role of doubt, 222–2, 368–72
Regulation 55
as pursuit of truth, 317
Bemba trial, 379
adjusting knowledge standard, 400–5
expansive readings of, 281, 309
facts and circumstances, concept of, 196,
309–13, 402–4
facts as narratives, 312
fair trial issues, 313–18
interpretive issues, 280, 310
Katanga trial, 109, 304–18, 401
Lubanga trial
adding sexual crimes, 278–83
recharacterizing nature of armed conflict,
277–8
scope of change, 312
scope of charges, 401
outside commentary on, 282, 310
timing, controversies on, 315
reparations, 281–9
Al Mahdi trial, 289
Bemba trial, 289
Katanga trial, 289
Lubanga trial, 283–9
implementation decisions, 288
restorative justice, 35, 166
as alternative form of victims’ justice, 156–9
Rome Statute
aggression, belated definition of, 188, 259
definitions, 182–8, 259
history, 25–6, 142, 184, 279
legitimacy of, 164, 170
Preamble, 15, 155, 183
process perspective, 163, 192, 205
ratification, 9, 171
sexual violence, 183
victims in, 14–15, 154, 166
Rwanda
genocide, 67, 87, 185
intervention in Congo, 85–8
patterns of violence, 120–2
Rwanda Tribunal (ICTR), 18, 142, 259
cultural challenges, 215, 223
sexual violence
CAR victims, 377
child soldiers, 202
HRW reports, 43–5
Katanga trial, 337
abandoning criminal charges, 345–9
Lubanga trial, 219
adding criminal charges, 278–83
report of Médecins Sans Frontières, 136
Rome Statute provisions, 183
Sierra Leone Special Court, 142, 259
witness testimony, 223
Sudan Situation, 41, 185, 386
Trust Fund for Victims (ICC), 36
and restorative justice, 166
Bemba case, assistance mandate, 158, 380
dual mandates, 284
Lubanga trial initiatives, 284
Uganda
and MLC, 88, 376
and RCD-ML, 99–100
as ICC situation, 40
intervention in Congo, 85–8
Ituri, occupation of, 88, 97–8, 132, 175
Lord’s Resistance Army (LRA), 40, 169, 179
impact of ICC warrants, 180, 190
self-referral to ICC, 176
United Nations
and human rights, 140
and Ituri violence, 112, 144
ethnic hatred theories, 336
evidence controversies, 230
MONUC, 84, 87
governing Ituri, 103–4, 127
origins, 89–90
role in investigations, 225
statebuilding efforts, 143
testimony in court, 299
relation to ICC, 171, 173–4
Security Council, 38, 69, 104
and crime of aggression, 187
referrals to ICC, 173–4
UPC
alliance networks, 114–16
as described by NGOs, 144, 149
exclusion from nation-building, 102–3
governing Ituri, 100–3
internal conflicts, 101–2, 124, 254–6,
270, 271
internal structure, 216, 267–8
origins, 100

Van den Wyngaert, Christine (Judge)
Bemba appeals hearing, 427–33
interpreting facts and circumstances, 313
Katanga trial dissents, 317
alternative inferences, 351
victims
CAR reports, 387–8
CAR victim mobilization, 382
defined by crimes charged, 157, 166, 284, 415
defined by ICC situations, 158, 284
reparations, 36, 199, 283–9
trial participation, 14–15, 21–2, 43–5
Lubanga trial activism, 278
victim-perpetrator dyad, 21, 44, 151–5
victims’ justice
as strategic purpose, 152–4
relation to restorative justice, 157
violence
causal stereotypes, 93–4, 113–14, 343
international press coverage, 131
network structures and, 113–23

sociological perspectives, 113–14, 119–23, 258,
265, 270, 294
war crimes
contextual elements
Katanga trial, 340–1
definition, 186–7, 274
Geneva Conventions 1949, 140, 186, 399
witnesses
and corruption charges
Bemba et al. trial, 438
Lubanga trial, 438
credibility issues, 45–9, 214–15, 240, 413
Bemba trial, 439
Katanga and Ngudjolo trials, 296
Lubanga trial, 231–3, 246, 248
Ngudjolo appeal, 360
cultural challenges, 212–13
Katanga and Ngudjolo trials, 300
protection measures, 48, 226–7
vetting witnesses
ban on proofing, 441
ethical issues, 441
trial guidelines, 441
Yugoslavia Tribunal (ICTY), 18, 142, 259
and victors’ justice, 154
command responsibility cases, 378
joint criminal enterprise (JCE), 188, 258

© in this web service Cambridge University Press
www.cambridge.org